

January 30, 2012

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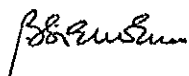
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Dear Mr. Chairperson, Members of the Commission:

Judicial Compensation and Benefits Commission 2011-2012

We enclose the joint Reply Submission of the Canadian Superior Courts Judges Association and the Canadian Judicial Council to the Judicial Compensation and Benefits Commission.

Sincerely,



Pierre Bienvenu, Ad. E.
Senior Partner

c.c.: Ms. Cathy Beagan-Flood

REPLY SUBMISSION

of the

CANADIAN SUPERIOR COURTS JUDGES ASSOCIATION

and the

CANADIAN JUDICIAL COUNCIL

to the

JUDICIAL COMPENSATION AND BENEFITS COMMISSION

January 30, 2012

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TABLE OF CONTENTS

INTRODUCTION	1
I. THE GOVERNMENT'S VIEW ON PREVAILING ECONOMIC CONDITIONS.....	1
II. THE GOVERNMENT'S POSITION ON JUDICIAL SALARIES.....	2
A. THE IMPORTANCE OF IAI ADJUSTMENTS IN SAFEGUARDING FINANCIAL SECURITY	3
B. IMPACT ON JUDICIAL SALARIES OF THE NON-IMPLEMENTATION OF PAST COMMISSION RECOMMENDATIONS..	9
III. THE GOVERNMENT'S ATTEMPT TO RE-LITIGATE SETTLED ISSUES.....	11
A. SUBMISSIONS AS TO THE APPROPRIATE LEVEL OF SALARIES AND ALLOWANCES BASED ON THE REASONING SUPPORTING THE BLOCK COMMISSION'S RECOMMENDATIONS	13
B. THE DM-3 COMPARATOR AND THE INCLUSION OF AT-RISK PAY.....	14
1. <i>The principled and historical basis for the DM-3 comparator</i>	15
2. <i>The need for deference to the consensus emerging from past Commission recommendations</i>	17
C. PARAMETERS TO ANALYZE CRA DATA ON SELF-EMPLOYED LAWYERS.....	21
1. <i>65th vs. 75th percentile</i>	22
2. <i>Age range</i>	23
3. <i>Low-income exclusion of \$60,000</i>	23
4. <i>Census metropolitan area</i>	24
5. <i>Annuity</i>	24
IV. THE GOVERNMENT'S POSITION WITH RESPECT TO ITS RESPONSE TO THE BLOCK REPORT.....	27
V. CONCLUSION.....	28
ANNEX A – REPORT OF DIANE MARLEAU (JANUARY 27, 2012)	
ANNEX B – REPORT OF ROBERT LEVASSEUR AND LARRY MOATE (JANUARY 27, 2012)	
ANNEX C – REPORT OF BRIAN FITZGERALD (JANUARY 27, 2012)	
ANNEX D – REPORT OF PAUL WAZZAN (JANUARY 28, 2008)	
ANNEX E – LETTER OF MR. SAUVÉ TO THE COMMISSION DATED MARCH 24, 2004	
ANNEX F – REPORT OF HARIPAUL PANNU (JANUARY 2004)	
ANNEX G – REPORT OF HARIPAUL PANNU (DECEMBER 2007)	

INTRODUCTION

1. The present Reply Submission of the Canadian Superior Courts Judges Association (“**Association**”) and the Canadian Judicial Council (“**Council**”) addresses the main arguments made by the Government of Canada in its Submission dated December 23, 2011 (the “**Government Submission**”). The Reply Submission will be complemented by counsel’s oral argument at the hearings scheduled for February 20 and 27, 2012.
2. Specifically, this Reply Submission addresses the arguments made by the Government regarding economic conditions in Canada, the denial of any increase to judicial salaries and the imposition of a 1.5% cap on IAI adjustments. It also comments on the Government’s attempt to re-litigate settled issues and its position with respect to its response to the Block Report.

I. THE GOVERNMENT’S VIEW ON PREVAILING ECONOMIC CONDITIONS

3. The Association and Council set out in their opening Submission information and statistics showing that economic conditions in Canada do not constitute an obstacle to the implementation of the Block Commission’s salary, and other recommendations. For its part, the Government has painted a negative picture of the Canadian economy in order to support its position for no increase in judicial salaries and the imposition of a 1.5% cap on IAI annual adjustments.
4. Ms. Diane Marleau, an economist from Étude Économique Conseil Inc. retained by the Association and Council, has prepared a report responding to the Government’s claims regarding the economy and the financial position of the federal Government. Her report is in Annex A to this Reply Submission. She concludes that the analysis of the current economic and fiscal conditions submitted by the Government covers a very short period, both historically and forward-looking. This limitation, she opines, may lead to wrong conclusions and mistaken interpretations. According to Ms. Marleau, the Canadian economy shows positive and encouraging signs of recovery. The details of her analysis are set out in her report, and they are not repeated here to avoid redundancy.

II. THE GOVERNMENT'S POSITION ON JUDICIAL SALARIES

5. The Government proposes not only that there be no increase in judicial salaries during the four-year mandate of this Commission, but also that IAI salary adjustments resulting from statutory indexation pursuant to s. 25 of the *Judges Act* be capped at a maximum of 1.5% annually. This measure is presented as "temporary", but it is clear that the Government's proposal is that it should apply for the entire quadrennial period under the present Commission's mandate.
6. The Government is seeking to justify its position on the basis of current economic conditions and the contention that it is no longer justified that the judiciary be exempted from fiscal measures applicable to others paid from the public purse.
7. As discussed in the Association and Council's Submission at paras. 86-98, and above in section I, the current economic conditions do not present an obstacle to this Commission recommending an increase in judicial salaries that would otherwise be justified by reference to the traditional comparators. With respect to the alleged exemption from fiscal measures, the Government's proposal ignores the fiscal restraint that has already been applied to the judiciary as a result of the non-implementation of past Commission's salary recommendations. The proposal also ignores the fact that, unlike most Canadians, judges cannot supplement their income through other work. Furthermore, rather than providing for a salary increase, the Government's proposal would result in an actual reduction in the value of judicial salaries given the projected CPI over the quadrennial period.
8. As for the proposed cap on IAI, the Submission of the Government fails to consider that the IAI adjustment is an essential safeguard against erosion in the value of judicial salaries through inflation. This safeguard should be considered inviolable since it is the only protection the judiciary has against salary erosion during the long (4-6 years) period between quadrennial judicial compensation reviews and until an appropriate salary increase can be considered by the Quadrennial Commission and implemented by Parliament.

9. Moreover, it lies ill in the mouth of the Government, which has refused to fully implement the salary recommendations of both the McLennan and Block Commissions, to now seek to undermine the statutory IAI adjustment, which is only concerned with protecting against erosion through inflation the 2004 salary level that was established by the Government in 2006.
10. In the judiciary's respectful submission, the Commission should not only reject the Government's request for a recommendation of a cap on IAI, it should positively recommend against the imposition of such a cap and in favour of maintaining the IAI adjustment as an essential mechanism to ensure financial security and, as a consequence, preserve the independence of the judiciary.

A. The importance of IAI adjustments in safeguarding financial security

11. The IAI adjustment in s. 25 of the *Judges Act* is, along with the judicial annuity, one of the cornerstones of judicial financial security and an integral part of the "social contract"¹ entered into between the Government and lawyers appointed to the Bench. IAI adjustments to judicial salaries guard against erosion of those salaries through inflation. It is a fundamental premise and expectation of those who accept a judicial appointment that the value of their salary will not erode through the effect of inflation.
12. Since IAI is simply a reflection of the year-to-year changes in wages and salaries of all Canadians, it tracks the general state of the economy. Therefore, the adjustment is merely consistent with the general economic conditions of the country. If the economy is not generating increases in wages and salaries of Canadians generally, then the IAI will be correspondingly low and judges salaries will be adjusted only to that extent.
13. In view of the constant risk of the politicization of the setting of judicial compensation, IAI adjustments have long been recognized as an essential tool to preserve judicial independence through financial security for the judiciary. Its critical function in this respect is illustrated by observing the extent to which judicial salaries would have fallen

¹ This is the expression used by the Scott Commission to describe the expectations arising from the salary indexation provided by the *Judges Act*. See below, para 19.

behind the traditional comparators, DM-3s and self-employed lawyers' income, since 2004 had IAI adjustments not protected judicial salaries from erosion during that period.

14. The Government provides examples of others paid from the public purse and the fiscal measures imposed on them. However, a significant distinction between them and the judiciary is that there is a statutory prohibition on judges regarding supplementary employment. Section 55 of the *Judges Act* provides:
 55. No judge shall, either directly or indirectly, for himself or herself or others, engage in any occupation or business other than his or her judicial duties, but every judge shall devote himself or herself exclusively to those judicial duties.
 55. *Les juges se consacrent à leurs fonctions judiciaires à l'exclusion de toute autre activité, qu'elle soit exercée directement ou indirectement, pour leur compte ou celui d'autrui.*
15. Therefore, while others who are covered by the Government's fiscal measures can, for example, enter into business and professional ventures to mitigate the effects of those measures, members of the judiciary cannot. In the private sector, while self-employed lawyers can work more in an attempt to weather the effects of hard times, judges do not have that option. These are critical factors for the Commission to take into account when considering the Government's arguments.
16. The above prohibition makes IAI protection for judges all the more important. The Government's proposed cap on the statutory mechanism in s. 25 of the *Judges Act* dilutes a statutory mechanism meant to safeguard financial security and ensure judicial independence. It ignores the fact that judges are solely dependent on the judicial salary for their employment income in a way that others paid from the public purse are not.
17. The Government added statutory indexing to the *Judges Act* in 1981 along with other reforms that provided for the creation of the Triennial Commission process.²
18. The Government viewed statutory indexing as an economically responsible mechanism for incremental salary adjustments that helped free the judiciary from its dependence on

² *An Act to amend the Judges Act and certain other Acts in consequence thereof*, SC 1980-81-82-83, c 50, s. 12.

Parliament for salary adjustments. The Minister of Justice provided the following rationale for the introduction of statutory indexing in a speech to the House of Commons:

[T]here comes a time when inaction on the salaries of judges in an inflationary period begins to have profound effects, not only on the morale of those sitting on the bench but also on the attractiveness of judicial appointment to the more highly qualified lawyers whom we would like to see appointed to the bench. At some stage, subtly and slowly, no doubt, a failure to maintain judicial compensation in line to some degree with inflationary tendencies must come to affect the quality of our judiciary. I have not doubt about the correctness of that proposition, and I venture to suggest that there is a real concern about judicial compensation that underlies section 100 of the British North America Act. [...]

Bill C-34 seeks to fulfil that constitutional responsibility and to improve the structure of compensation for the federally appointed judiciary. It does so in a way that is responsive to the present concerns for judicial morale and recruitment. It also makes provision for future remuneration which should avoid further difficulties flowing from the dependence of the judges on salary adjustments by statute, in a manner consistent with the principles of ministerial responsibility for financial management under our system of government.³

19. The above rationale has been accepted by successive compensation commissions, both Triennial and Quadrennial. The Crawford Commission stated that the statutory mechanism “serves a special purpose relating to judicial independence”,⁴ while the Scott Commission described the importance of statutory indexing as follows:

The provisions of s.25 of the Judges Act are reflective of much more than a mere indexing of judges' salaries. They are, more specifically, a statutory mechanism for ensuring that there will be, to the extent possible, a constant relationship, in terms of degree, between judges' salaries and the incomes of those members of the Bar most suited in experience and ability for appointment to the Bench. The importance of the maintenance of this constant cannot

³ House of Commons Debates, 32nd Parl, 1st Sess (1 December 1980) at 5206 (Hon Jean Chrétien).

⁴ Crawford Report (1993) at 28.

be overstated. It represents, in effect, a social contract between the state and the judiciary.⁵

20. Accordingly, full annual application of the IAI statutory adjustment plays an important role in safeguarding financial security. For those lawyers who accepted a judicial appointment and entered into the “social contract” mentioned by the Scott Commission, the IAI adjustment provides some protection against inflationary tendencies. For those lawyers considering a judicial appointment, the adjustment, because it helps judicial salaries keep pace with salary increases generally, and particularly with the incomes of senior and experienced members of the Bar, ensures that an appointment to the Bench remains attractive to outstanding candidates.
21. The Drouin Commission highlighted the importance of statutory indexing in depoliticizing the relationship between the Government and the judiciary:

In part to offset the prohibition on negotiation, and the politicization that would otherwise result with respect to judicial compensation, the Judiciary enjoys the benefit of mandatory annual indexation of their salaries, as a matter of law.⁶

22. Indeed, the Government appeared to have accepted the importance of statutory indexing. Before the Drouin Commission, the Government submitted in the context of a discussion on setting representational allowances that “judicial independence may require indexing protection to prevent erosion of judicial salaries by inflation”.⁷
23. By the Government’s own admission, the current projections of CPI⁸ are above the 1.5% indexation cap proposed by the Government, thereby forecasting an erosion of the value of judicial salaries by inflation. The Government’s proposal would obviously have a long-term impact on the sufficiency of judicial compensation.

⁵ Scott Report (1996) at 15 [emphasis added].

⁶ Drouin Report (2000) at 16.

⁷ Reply Submissions of the Government of Canada to the Drouin Commission at 10.

⁸ Government Submission at para 53.

24. The Government's proposal to review the adequacy of the resulting salary during the next Quadrennial Commission process, in 2015, is unsatisfactory. The impact of the Government's proposal is clear. Imposing a cap on IAI would unfairly burden the judiciary and would widen the gap between judicial salaries and DM-3 compensation. This Commission should not endorse a proposal that will exacerbate an existing problem in the expectation that a future compensation commission will be in a position to correct the problem.
25. Furthermore, once the cap is in place, there is every reason to fear that the Government will want to maintain it after the initial quadrennial period in which it would apply. The goal posts will have shifted and, politicization being what it is, the day will inevitably come when the debate about judicial salaries will be whether the cap should remain or be removed.
26. The imposition of the 1.5% cap on IAI proposed by the Government would have a significant impact on individual judges between 2012 and 2015, namely a *manque à gagner* of \$29,300, as set out in the table below. With 1117 judges, the total amount for the judiciary would be \$32,728,100.

[table appears on next page]

Year	Salary with increases pursuant to <i>Judges Act</i>	Government's proposal	Annual difference between Government's proposal and salary with increases pursuant to <i>Judges Act</i>	Cap	IAI ⁹
April 1, 2011	\$281,100	\$281,100	-	n/a	n/a
April 1, 2012	\$287,200	\$285,300	\$1,900	1.5%	2.2%
April 1, 2013	\$294,600	\$289,500	\$5,100	1.5%	2.6%
April 1, 2014	\$302,800	\$293,800	\$9,000	1.5%	2.8%
April 1, 2015	\$311,500	\$298,200	\$13,300	1.5%	2.9%
Total 2012-2015			\$29,300 per judge		

27. It is submitted that it is unacceptable for the Government to come before this Commission seeking a recommendation to cap the IAI adjustment, which involves an amendment to a statutory right, while it has steadfastly refused to fully implement the salary recommendations made by two successive Quadrennial Commissions. The only measure that has served to counterbalance somewhat the effects of the Government's failure to fully implement these salary recommendations has been the IAI statutory adjustment, the very mechanism that the Government now targets. The Association and Council ask this Commission to emphasize the importance of the IAI in safeguarding financial security and judicial independence.

⁹ IAI is based on a letter from the Office of the Chief Actuary dated December 8, 2011. The Government has presented two different sets of IAI projections, one from the Chief Actuary and another from the Department of Finance. The Association and Council rely on the projections made by the Chief Actuary since his projections are the ones supplied by the Government whenever the judiciary requests IAI projections.

28. In sum, there are compelling reasons for this Commission not only to decline to recommend the Government's proposed cap on the statutory indexation mechanism in s. 25 of the *Judges Act*, but indeed to urge the Government not to take any measure that would in any way dilute the protection against the erosion of the value of judicial salaries through inflation set out in s. 25 of the *Judges Act*.

B. Impact on judicial salaries of the non-implementation of past Commission recommendations

29. The Government argues that the judiciary should be subject to the same fiscal measures that have been applied to others who are paid from the public purse. This position ignores the fact that the Government has already significantly limited salary increases for the judiciary over the last two quadrennial periods through the Government's non-implementation of past salary recommendations of the Quadrennial Commission.

30. The Government has not increased judicial salaries since April 1, 2004, exclusive of statutory indexing. The Government, in its Second Response of May 29, 2006, refused to implement the McLennan Commission's salary recommendation. The impact for every judge was \$31,900 through the term of that Commission. With 1056 judges at the start of the McLennan Commission, the Government's refusal to implement that recommendation represents \$33,686,400 over four years, as set out in the following table:

Year	McLennan Commission recommendation	Actual salaries of puisne judges	Annual difference between McLennan Commission recommendation and actual salaries
April 1, 2004	\$240,000	\$232,300	\$7,700
April 1, 2005	\$245,200	\$237,400	\$7,800
April 1, 2006	\$252,800	\$244,700	\$8,100
April 1, 2007	\$260,300	\$252,000	\$8,300
Total 2004-2007			\$31,900 per judge

31. The Government also refused to implement the Block Commission's salary recommendation. The impact for every judge was \$51,100 through the term of that Commission. With around 1050 judges at the start of the Block Commission, the Government's refusal to implement that recommendation represents \$53,655,000 over four years, as set out in the following table:¹⁰

Year	Block Commission recommendation	Actual salaries of puisne judges	Annual difference between Block Commission recommendation and actual salaries
April 1, 2008	\$264,300	\$260,000	\$4,300
April 1, 2009	\$276,900	\$267,200	\$9,700
April 1, 2010	\$286,800	\$271,400	\$15,400
April 1, 2011	\$302,800	\$281,100	\$21,700
Total 2008-2011			\$51,100 per judge

32. Far from being shielded from the financial burdens visited upon Canadians generally, federally appointed judges actually started shouldering their share of that burden well before the economic crisis even started and have continued to shoulder it through the crisis.

33. The Commission's recommendation regarding judicial salaries will be applicable for the next four years. The Government Submission itself does not refer to anything beyond 2014 for the salary restrictions it invokes in respect of others, which is an implicit acknowledgment that imposing restrictions beyond the next two years would not be justifiable. Yet, the measures it is proposing for the judiciary would be applicable for four years, thereby extending into 2015 the restrictive position that the Government has

¹⁰ The calculation does not take into account the appellate differential.

adopted regarding the judiciary since 2004. The Government can point to no other group in the federal sphere that is subject to such a 12-year restraint period.

34. The Association and Council do not seek to recover the amounts from the recommendations of the McLennan and Block Commissions. Instead, the judiciary simply urges this Commission to adopt the salary recommendations of the Block Commission on a prospective basis in order to achieve rough equivalence between judicial salaries and the midpoint of DM-3 compensation. The current economic conditions do not justify the continuation of a significant gap between judicial salaries and DM-3 compensation.

III. THE GOVERNMENT'S ATTEMPT TO RE-LITIGATE SETTLED ISSUES

35. As noted in the judiciary's Submission, Recommendation 14 of the Block Commission stated that settled issues should not be re-opened with every new Commission. The Government has done exactly that by calling into question the comparison with DM-3s, consideration of their at-risk pay, and by proposing yet again those very statistical parameters for the comparison with self-employed lawyers that were rejected by past Commissions. The Commission should not countenance this.
36. The Block Commission recognized that the promotion of continuity between the mandates of each Commission is essential for the development of an effective and constitutionally sound Commission process. The Block Commission's recommendation was consistent with, and indeed built on the following statement by the Supreme Court of Canada in *Bodner v. Alberta*:

Each commission must make its assessment in its own context. However, this rule does not mean that each new compensation commission operates in a void, disregarding the work and recommendations of its predecessors. The reports of previous commissions and their outcomes form part of the background and context that a new compensation committee should consider. A new commission may very well decide that, in the circumstances, its predecessors conducted a thorough review of judicial compensation and that, in the absence of demonstrated change, only minor adjustments are necessary. If on the other hand, it considers that previous reports failed to set compensation and benefits at the appropriate level due to particular circumstances,

the new commission may legitimately go beyond the findings of the previous commission, and after a careful review, make its own recommendations on that basis.¹¹

37. The benefits of adopting and applying Recommendation 14 are obvious for reasons of efficiency. The parties avoid wasting time and resources on re-litigating the same issues every four years.¹²
38. The judiciary submits that Recommendation 14 is also important for reasons of principle. It is wrong in principle for any party involved in the Commission process to re-open settled issues in the absence of demonstrated change. The public interest is not served by permitting parties to re-open and contest any and every issue every four years.
39. The authority and integrity of the Commission process, and public confidence in that process, are also undermined if a party is permitted to disregard the consensus that has emerged around contested issues during previous Commission inquiries. It is therefore essential to the integrity of the quadrennial process that all parties defer to the majority trend of past compensation commissions, absent a demonstrated change of facts or circumstances.
40. The Association and Council submit that a necessary implication of the principle of continuity underlying Recommendation 14 is that this Commission should endorse, and urge the prompt implementation of the Block Commission's Recommendations 2, 5, 6, 7, 8, 10 and 11, as well as Recommendations 3 and 4 with changes to the salary amounts

¹¹ *Bodner v. Alberta*, [2005] 2 S.C.R. 286 at para. 15.

¹² A good example of an issue that the Government has sought to re-litigate over three Commission cycles is the inclusion of at-risk pay in calculating the compensation of DM-3s for the purpose of comparing it with judicial salaries. Much to the frustration and consternation of the judiciary, the Government is seeking to re-litigate the issue yet again. There has not been any change in facts or circumstances that would justify a reconsideration of this issue. The only change that has occurred is that the maximum eligible amount for at-risk pay for DM-3s has increased, which speaks to the continued need to take at-risk pay into account when comparing the compensation of DM-3s.

therein mentioned reflecting this Commission's recommendation for the salary of puisne judges.¹³

A. Submissions as to the appropriate level of salaries and allowances based on the reasoning supporting the Block Commission's recommendations

41. The Commission has asked the parties to provide submissions on what the salaries and allowances for judges should be, based on the Block Commission's reasoning supporting Recommendations 1 and 9, and the aspect of Recommendation 4 fixing actual amounts.¹⁴ To the latter recommendation, the judiciary would add Recommendation 3, as it also contains a salary amount.
42. The judiciary's position on what the salary of puisne judges should be as of April 1, 2012 is set out at paragraphs 159-160 of the Submission. The Submission also sets out at Table 7 what the salary of puisne judges would have been between 2008 and 2011 had the Block Commission's recommendations been implemented.
43. The position of the Association and Council regarding the salary of trial-level puisne judges as of April 1, 2012 is set out in paragraphs 159 to 169 of the Submission, namely that the salary of these judges should be set at \$294,800. As for Recommendations 3 (appellate judges) and 4 (chief justices and Supreme Court judges), the judiciary's position is explained at paragraph 170 of the Submission.
44. Regarding Recommendation 9, the Block Commission did not tie the representational allowances to statutory indexing. Accordingly, the Association and Council take the position that the same amounts recommended by the Block Commission for representational allowances should be recommended by this Commission. This position is explained at paragraphs 171 to 172 of the Submission.

¹³ The judiciary's position with regard to salary differentials is set out in paragraphs 170 and 173 of the Submission.

¹⁴ Notice issued by the Commission on December 8, 2011 (the "December 8 Notice").

45. The Government responded to the Commission's December 8 Notice in a letter dated December 13, 2011, as well as in paras. 15-16 and 106-109 of its Submission. The Government argued that the December 8 Notice is not consistent with the Commission's mandate or the principles of natural justice. The Government said in its December 13 letter:

The Commission has apparently met *ex parte*, deliberated, and determined the bulk of the issues that are the subject of its inquiry under Section 26 of the *Judges Act* prior to receiving and considering submissions from any party or from the public.

46. In the judiciary's respectful submission, the Government misinterpreted the Notice and overstated its import. The Notice determined no issue that is the subject of the Commission's inquiry under s. 26 of the *Judges Act*. Nor did the Notice preclude any party from making submissions on any subject. The Notice followed the Public Notice published on December 7, 2011, which invited submissions from interested parties, including the Government and the judiciary, and confirmed that the Commission would be holding public hearings. Clearly, the Commission has always intended to conduct a full inquiry, consistent with the provisions of s. 26 of the *Judges Act*.

47. The Notice merely directed interested parties not to approach their respective submissions in a vacuum, disregarding the work of previous Commissions. The Notice also signalled to interested parties the Commission's interest in receiving submissions on changes in facts or circumstances since the last Commission.

48. The Association and Council therefore consider ill-founded the Government's contention that the Notice was inconsistent with the Commission's mandate or the principles of natural justice. Equally ill-founded is the assertion that the Notice contained "legal errors".

B. The DM-3 comparator and the inclusion of at-risk pay

49. The DM-3 comparison is based on sound principle, and reflects a strong consensus in the reports of past compensation commissions. The Government has not put forward any persuasive arguments as to why the DM-3 comparator should be abandoned, nor has it

shown that the at-risk pay given to DM-3s is not a standard feature of their total compensation.

1. The principled and historical basis for the DM-3 comparator

50. The principled basis for the DM-3 comparator is set out in the Association and Council's Submission at para. 127; the historical basis for the DM-3 comparator is set out in the Submission at paras. 111-133. There has not been any change in facts or circumstances that justifies reconsideration of this issue. However, given the Government's current opposition to the use of the DM-3 comparator, it is important to briefly recall the Government's role in its adoption.
51. The DM-3 comparator has been used since the 1975 amendments to the *Judges Act*, when the Government set the salary of puisne judges to the rough equivalent of the midpoint salary of DM-3s.¹⁵ As set out in the Association and Council's Submission at paras. 113-114, successive compensation commissions referred to the "1975 equivalency", which entailed going back to the midpoint DM-3 salary in 1975 and adjusting for inflation.
52. The Crawford Commission in 1993 recommended the adoption of a direct comparison between judicial salaries and DM-3 compensation. The Government itself advocated for this position. The Drouin Commission reproduced in its Report the following extract from the Government's submission to the Crawford Commission:

Despite the historically lower salaries of judges as compared with senior deputy ministers, the government has indicated to the judges that a rough equivalence between judicial salaries and the midpoint of the DM-3 salary scale would be considered appropriate. Support for this sort of rough parity between judges and top-level public servants is found in comparative figures from other common-law countries that are most like Canada. ...

1975 was a long time ago, and much has changed in the meantime, not the least of which has been our economy. There seems to be little point in trying to tie judicial salaries to some arbitrary level set so long ago and in very different circumstances. Therefore, the

¹⁵ Guthrie Report (1987) at 8.

government thinks it would be better to do away with both the concept and the terminology of 1975 equivalence, and instead deal with judicial salary levels on the basis that there should be a rough equivalence to the DM-3 midpoint.¹⁶

53. The Government's position at the time underscored the relevance of using as a comparator the most senior echelon of the executive branch, and it accorded with the practice in other common-law democracies, as the Government itself observed. In fact, the first Triennial Commission, the Lang Commission in 1983, confirmed the wisdom of the DM-3 comparator and observed that its recommendations "which would bring the salary of a superior court judge to approximately that of a DM3, are consistent with the salary scale adopted in the United Kingdom, by which it has been determined that a High Court Judge should be paid the same as the Secretary to the Cabinet."¹⁷
54. The latter part of the passage is especially instructive. The Government makes an argument about the small number of DM-3s as the reason why the comparator should be seen as inappropriate, yet the comparator in the U.K. when the Lang Commission was writing was a total of one person, the Secretary to the Cabinet.
55. It is plainly incorrect for the Government to state, in para. 110 of its Submission, that the phrase "what the marketplace expects to pay individuals of outstanding character and ability, which are qualities shared by deputy ministers and judges" does not refer to DM-3s. In fact, the first compensation commission to use that phrase, the Courtois Commission in 1990, did explicitly refer to DM-3s right at the beginning of the sentence containing the above phrase:

The DM-3 mid-point, we believe, reflects what the market place expects to pay individuals of outstanding character and ability, which are attributes shared by deputy ministers and judges. The salaries of superior court judges are now materially below that mid-point and this situation should be rectified.¹⁸

¹⁶ Drouin Report (2000) at 28 [emphasis added].

¹⁷ Lang Report (1983) at 6.

¹⁸ Courtois Report (1990) at 10.

2. The need for deference to the consensus emerging from past Commission recommendations

56. The judiciary recognizes the benefits of Recommendation 14, and has not attempted to re-open some of its positions that were rejected by past compensation commissions.
57. For example, and as set out in the Association and Council's Submission at paras. 116-117, the judiciary believes that the average salary of DM-3s provides a more accurate measure of the base salary of DM-3s than the midpoint measure. However, even though the average salary measure is higher than the midpoint measure, the judiciary has accepted that the majority of compensation commissions have adopted the midpoint measure. Similarly, and taking account of the fact that the creation of the DM-4 level is recent, the judiciary has not contested the Block Commission's view that DM-4 compensation should not currently be referred to as a comparator for judicial salaries.
58. As already mentioned, the judiciary submits that, quite apart from considerations of efficiency, the public interest is not served by permitting parties to re-open and contest any and every issue every four years.
59. The Government has put forward two new points of a factual nature to seek to justify a departure from the majority trend of past recommendations regarding DM-3s.
60. First, it has provided information on the respective tenures of DM-3s and judges.¹⁹ The Association and Council consider this comparison to be flawed. The pension plan of the DM-3s is such as to render a comparison of their tenure with that of judges irrelevant. When a DM becomes a DM-3, he or she will likely have spent many years in the public service, accumulating pensionable years and qualifying towards retirement eligibility. Accordingly, there is a built-in incentive to retire soon after attainment of the DM-3 position. The judiciary's compensation experts, Messrs. Levasseur and Moate, confirm this fact in their report. Their report is in Annex B to this Reply Submission.

¹⁹ Government Submission, paras. 114-116.

61. In contrast, the annuity regime for judges obviously disregards time spent as a lawyer and requires at least 15 years as a judge, with satisfaction of the Rule of 80 (age + years as judge = 80) in order to be eligible to retire. The incentive here is opposite to that of DM-3s: judges must work many years before being eligible to retire.
62. As a second point, the Government indicates that 40% of at-risk pay will henceforth depend on achievement of the Government's deficit-reduction goals, and argues that that constitutes a change of facts since the Block Commission. It does not. At any given time, performance qualifying for eligibility for at-risk pay can be tied to any number of objectives, many of which might be irrelevant to the judicial function. The point of including at-risk pay is that it is a standard feature of DM-3s' compensation and that it forms an integral part of their compensation.
63. The Government has also put forward the same arguments that have already been rejected by previous compensation commissions, and seeks to rely on portions of the McLennan Report that are out of step with the majority of past compensation commissions. It is necessary to expand on the latter point for the present Commission to understand the entire context of the McLennan Report's reference to the entire DM category, not just DM-3s.
64. There are serious problems with a comparison with the entire range of DMs. The DM-2 level is attained automatically after one year of service as a DM-1.²⁰ Where promotion from one level to another is automatic after a certain amount of time, it makes no sense to have either of those levels as comparators for judges, who do not get appointed automatically after a certain number of years as lawyers. To the contrary: regardless of the fact that a segment of the lawyer population falls into the category of senior jurists by virtue of the number of years since their call to the Bar, only some of them will fall within the category of "outstanding" candidates contemplated by s. 26(1.1)(c).

²⁰ J. Bourgault & S. Dion, "How Should the Performance of Senior Officials be Appraised? The Response from Federal Deputy Ministers-Summary" (Canadian Centre for Management Development, 1993) at 1.

65. It would therefore be wholly inappropriate to compare judicial salaries with the DM-2 level or with the whole DM class. There is no uniformity of qualities and skills across the class and it would be untenable to compare superior court judges with a variegated class of public servants, some of whom have risen through the ranks because of their superior capabilities, while others have been held back because of their limitations.
66. Furthermore, the Government's Submission does not refer to the fact that the McLennan Commission also called for comparisons with other Governor-in-Council appointees who earn more than DM-3s. For example, the McLennan Report referred to GC-9s, GCQ-9s, GC-10s, and GCQ-10s, the latter two listed as having salaries greater than DM-3s.²¹
67. It bears emphasizing that the judiciary itself refrained from endorsing this comparison, even though it would have been in its interest to encourage a comparison with GC-10s and GCQ-10s. The judiciary refrained from endorsing the comparison because it was not historically grounded and it did not reflect the important principle manifested in the DM-3 comparison.
68. GCs and GCQs occupy leadership positions in various federal institutions like the Canadian Institute of Health Research ("CIHR") and the National Research Council ("NRC"), and quasi-judicial bodies like the Canadian Radio and Telecommunications Commission and the Canadian Transportation Agency. At the time of the McLennan Report, the GC-10s were the presidents of the CIHR and NRC, while there were no GCQ-10s at all.
69. Comparison with positions in the federal administrative sphere, and with theoretical levels like GCQ-10 for which there is no position, is not consistent with the principled comparison with DM-3s. The Association and Council have set out at paras 123-128 of their Submission the principled and historical basis for the DM-3 comparison. To compare judges with the heads of administrative bodies, even if those bodies are quasi-judicial, puts judges at a level lower than the senior members of the executive branch, the DM-3s and DM-4s. This is not in keeping with the rationale behind the comparison

²¹ McLennan Report (2004) at 31, Table 12.

between the executive and judicial branches, namely that judicial independence requires that the executive branch not be seen as superior to the judicial branch.

70. The Government does not even propose any comparator to use in the place of DM-3s. The Government simply states in of its Submission that it is “not necessary for this Commission to consider deputy minister compensation at all”.²² In and of itself, the measure by which this statement breaks with the practice and reasoned recommendations of successive Triennial and Quadrennial Commissions makes it a remarkable statement. However, what makes this an unsustainable position is that it would deprive the Commission of a crucial objective tool to formulate salary recommendations for judges. Objectivity is one of the pillars of the compensation commission process. If there are no comparators, then the exercise to be undertaken by the Commission will be arbitrary and unprincipled. It is not without reason that the process ever since the first Triennial Commission has always involved the use of comparators.
71. The Government does state, in the alternative, that should this Commission consider deputy minister compensation, it should consider all deputy ministers and not just DM-3s.²³ The reasons to reject such an approach are set out above, and the Block Commission specifically rejected the Government’s past submissions on this issue. As set out in the Association and Council’s Submission at paras. 123-126, the Block Commission held that it was not useful to look at the compensation levels of deputy ministers at the DM-1 and DM-2 levels because they, unlike judges, could be promoted to the DM-3 level. In rejecting the approach suggested by the Government, the Block Commission was simply being consistent with the position taken since the first Triennial Commission, the Lang Commission in 1983, which applied the DM-3 comparator, as mentioned above. The Block Commission had before it the entire history of the use of this comparator.

²² Government Submission, at para 127.

²³ Government Submission, at para 121.

72. As for at-risk pay for DM-3s, the Block Commission confirmed that this was an integral part of DM-3 compensation, and should be considered as part of the comparison with judicial salaries. The Drouin Commission also confirmed that at-risk pay should be considered.²⁴ As for the McLennan Commission, it said that at-risk pay “cannot be ignored”.²⁵ Once again, the Government has not put forward any sound basis, or change of facts or circumstances that would justify this Commission to revisit the issue, still less come to a different conclusion than past Commissions.

C. Parameters to analyze CRA data on self-employed lawyers

73. Just as in the past, the Government would like to re-litigate the issue of the appropriate parameters for the analysis of CRA data on self-employed lawyers. This is inconsistent with Recommendation 14 of the Block Commission.

74. The Government proposes the following parameters:

- the income of lawyers at the 65th rather than the 75th percentile;
- the entire age range of 35-69 rather than the range of 44-56 from which a majority of judges are appointed;
- no exclusion of lawyers earning less than \$60,000;
- no consideration of the fact that the majority of appointees come from the largest 10 CMAs;
- a new value of the judicial annuity to be added to the judicial salary for comparative purposes.

Each of these parameters is addressed in turn below.

²⁴ Drouin Report (2000) at 26.

²⁵ McLennan Report (2004) at 27.

1. 65th vs. 75th percentile

75. The Government proposes through its expert Mr. Haripaul Pannu, for the third time, that the income of self-employed lawyers at the 65th percentile rather than the 75th percentile in the CRA data be the point of comparison when assessing the adequacy of judicial salaries. It made the same argument before the McLennan Commission and the Block Commission. The McLennan Commission rejected the position while the Block Commission did not get into the details of self-employed lawyer income data.
76. It is important for the Commission to note that the Government itself proposed the 75th percentile when it was before the Drouin Commission. Its expert, Hay Management Consultants Ltd., stated that “an aggressive tie in to comparable market data for executives would be the 75th percentile.”²⁶ The Drouin Commission’s experts, Messrs. Gaudet and Sauvé, of Morneau Sobeco, agreed with this position. In contrast, the Association and Council had proposed a higher percentile level, effectively the 83rd or 87th percentile.²⁷ However, out of respect for the principle of continuity, the Association and Council have since adhered to the 75th percentile. Not content with its own figure, the Government now wants a further reduction.
77. The judiciary’s compensation experts explain in their report at pages 1 to 3 that compensation principles support the application of the 75th percentile in the present case. Briefly, their opinion is that the 75th percentile ought to be applied because it acts as a counter-weight to the lower incomes in the data, even after applying the low-income exclusion (discussed below).
78. Messrs. Levasseur and Moate also support the view expressed by the judiciary’s expert before the Block Commission, Dr. Paul Wazzan of Navigant Consulting, to the effect that comparing with the 75th percentile does not imply that the judiciary will be comprised of

²⁶ Drouin Report (2000) at 40.

²⁷ Drouin Report (2000) at 39.

the top 25% of lawyers in Canada,²⁸ as asserted by Mr. Pannu.²⁹ Dr. Wazzan had pointed out that economic behaviour is such that setting compensation at a certain percentile always attracts more people below that level than above it.

2. Age range

79. The Government proposes the age range of 35-69 when analyzing the CRA data. It also applies a weight according to the number of appointees within sub-ranges of that general range.

80. The Association and Council have proposed the age range of 44-56, being the age range of the majority of appointees. This was the age range applied by the Drouin Commission and the McLennan Commission. Mr. Sauvé, the Commission's expert, advised by way of a letter dated March 24, 2004, that "there is no reason to conclude" that the 44-56 age range "is no longer an appropriate comparator group for compensation benchmarking purposes."³⁰ Messrs. Levasseur and Moate's expert opinion is that the age range of the majority of appointees is the appropriate range since the entire range, even with weighting, can introduce various forms of distortion. They address the point at page 3 of their report.

3. Low-income exclusion of \$60,000

81. The Association and Council reiterate that the use of income figures for self-employed lawyers of under \$60,000, as proposed by the Government, distorts the income data to be analyzed for the purpose of assessing the adequacy of judicial salaries. Among the parameters discussed in this Reply Submission, the low-income exclusion has the most

²⁸ P. Wazzan, Navigant Consulting, A Review of Canadian Private-Sector Lawyer Income: Supplemental Report (28 January 2008) at para 16, Annex D to the present Reply Submission.

²⁹ Report of Mr. Pannu at Annex E at 5, Submission of the Government of Canada.

³⁰ Letter of Mr. Sauvé to the Commission dated March 24, 2004, at 6/8, Annex E to the present Reply Submission.

significant effect on the CRA data. By insisting on including annual income as low as \$12,007,³¹ the Government seeks to bring down the income at all of the percentiles.

82. Both the Drouin and the McLennan Commissions applied the low-income exclusion. At the time of the Drouin Report, the level was \$50,000, and this was increased to \$60,000 by the McLennan Commission to account for inflation. Mr. Pannu's position of including low incomes was not accepted by the McLennan Commission's expert, Mr. Sauvé, who set out his position in his letter of March 24, 2004.³²

83. Messrs. Levasseur and Moate are categorical that including incomes below \$60,000 makes no sense from a compensation benchmarking point of view. Messrs. Levasseur and Moate address this issue at pages 3 to 4 of their report.

4. Census metropolitan area

84. Mr. Pannu for the Government does not address the fact that most appointees come from the ten largest CMAs and therefore special consideration should be given to this parameter when looking at the CRA data. Instead, he does a calculation showing the respective differentials in self-employed lawyer income of each of the CMAs vis-à-vis the national average. Messrs. Levasseur and Moate consider this irrelevant. They address this issue at page 4 of their report.

5. Annuity

85. The Commission's actuarial expert, Mr. Sauvé, calculated the value of the annuity for the McLennan Commission. The McLennan Commission accepted his figure of 22.5%.³³ The Government's expert Mr. Pannu came to a figure of 24% in 2004³⁴ and 24.6% in

³¹ Income at the 5th percentile in 2010, see Report of Mr. Pannu at Annex E, Submission of the Government of Canada.

³² Annex E at 5-6/8.

³³ McLennan Report (2004) at 58.

³⁴ H. Pannu, Report on the Earnings of Self-Employed Lawyers for the Department of Justice Canada for the 2003 Judicial Compensation and Benefits Commission (January 2004) at 11, Annex F to the present Reply Submission.

2007.³⁵ He now puts forward the figure of 27.2% and an additional 9.7% for the disability benefit, for a total of 36.9%. The latter category was not added in Mr. Pannu's two previous reports, notwithstanding the existence of the disability benefit at the time.

86. The Association and Council retained Mr. Brian FitzGerald, an actuary specializing in pension valuation, to calculate the value of the annuity and comment on Mr. Pannu's most recent view on this subject. His report is attached as Annex C. He arrives at the conclusion that the value of the annuity is 23.8%. As for the disability benefit, he considers this not to be an actuarial issue but rather an administrative decision as to whether it should be under the annuity regime or an insurance plan. Parliament happened to include permanent disability within the annuity regime, as set out in s. 42(c) of the *Judges Act*.

87. Even if disability were to be considered in assessing the value of the annuity, Mr. FitzGerald is of the view that its value is 3% and, accordingly, the pension value would be 22.7%, to give a total of 25.7%. A comparison of CRA data with judicial salaries increased by the value of the judicial annuity, with and without disability, as calculated by Mr. FitzGerald yields the following tables:

[tables appear on next page]

³⁵ H. Pannu, Report on the Earnings of Self-Employed Lawyers for the Department of Justice Canada in Preparation for the 2007 Judicial Compensation and Benefits Commission (December 2007) at 11, Annex G to the present Reply Submission.

**Comparison of salary of puisne judges with judicial annuity of 23.8%
with net professional income of self-employed lawyers at the 75th percentile
(Net professional income ≥ \$60 000, Age group – 44-56)
Canada and Top 10 CMAs, 2006 to 2010**

	75th Percentile Income		Salary of Puisne Judges + value of judicial annuity of 23.8%		
	Canada	Top 10 CMAs	\$	% Difference from	
				Canada	Top 10 CMAs
2006	\$343,985	\$414,078	\$302,939	-11.9%	-26.8%
2007	\$368,458	\$451,031	\$311,976	-15.3%	-30.8%
2008	\$366,577	\$446,370	\$321,880	-12.2%	-27.9%
2009	\$380,087	\$452,906	\$330,794	-13.0%	-27.0%
2010	\$395,274	\$468,261	\$335,993	-15.0%	-28.2%

**Comparison of salary of puisne judges with judicial annuity of 25.7% (including disability)
with net professional income of self-employed lawyers at the 75th percentile
(Net professional income ≥ \$60 000, Age group – 44-56)
Canada and Top 10 CMAs, 2006 to 2010**

	75th Percentile Income		Salary of Puisne Judges + value of judicial annuity of 25.7% (including disability)		
	Canada	Top 10 CMAs	\$	% Difference from	
				Canada	Top 10 CMAs
2006	\$343,985	\$414,078	\$307,588	-10.6%	-25.7%
2007	\$368,458	\$451,031	\$316,764	-14.0%	-29.8%
2008	\$366,577	\$446,370	\$326,820	-10.8%	-26.8%
2009	\$380,087	\$452,906	\$335,870	-11.6%	-25.8%
2010	\$395,274	\$468,261	\$341,150	-13.7%	-27.1%

IV. THE GOVERNMENT'S POSITION WITH RESPECT TO ITS RESPONSE TO THE BLOCK REPORT

88. The Commission asked in its December 8 Notice whether it is "necessary or advisable" for this Commission to "turn its mind" to the timeliness and substance of the Government's response to the report of the Block Commission. The Association and Council answer in the affirmative. The judiciary's concern with the timeliness and substance of the Government's response to the Block Report is set out in paragraphs 75 to 79 of the Submission.

89. More generally, the Association and Council made extensive submissions to the Block Commission on the need for the Commission to comment on process-related issues, especially regarding the conduct of the parties should they run afoul of the constitutionally mandated process. Before the Block Commission, the concern was the issuance by the Government of a second response to the McLennan Commission's report after the previous Government had already issued a response. The Block Commission held at paragraph 37 of its report that it was not only acceptable but its duty to act as a "guardian" of the Commission process and to safeguard its integrity:

The parties nevertheless require access to a forum where concerns related to process can legitimately be raised. It is our view that Quadrennial Commissions, by virtue of their independence and objectivity, are well-placed to serve as that forum and to offer constructive comments on process issues as they arise. While the structure and mandate of the Commission are outlined in statute, any question of process that affects the independence, objectivity or effectiveness of the Commission is properly within its mandate. It is entirely appropriate and arguably imperative that the Commission serve as guardian of the Quadrennial Commission process and actively safeguard these Constitutional requirements.

90. The Block Commission correctly held that the constitutional imperative that led to the creation of the Commission process necessarily requires that Commissions control their own process. The Block Commission came to this position after a detailed discussion and careful consideration of the decisions of the Supreme Court of Canada in the *PEI Reference* and *Bodner*. Specifically, the Block Commission's position was responsive to the Supreme Court of Canada's holding that the judiciary and Government required a

non-litigious means to deal with the issue of judicial remuneration, as described by the Block Commission at paragraph 35 of its report:

The Supreme Court's decisions in the *PEI Reference* and in *Bodner* make clear that the judiciary can approach the courts for the purpose of seeking judicial review of Government decisions relating to questions of judicial remuneration. It is equally clear however, that this option is available as a last resort and that its use has serious implications. As the Supreme Court indicated in *Bodner*, litigation on these questions "casts a dim light on all involved". The Court also expressed its hope that courts would rarely be involved in these questions; not only does litigation between the judiciary and the executive branch risk creating strains between the parties, it also runs the real risk of affecting the public perception of the judiciary and the judicial system.

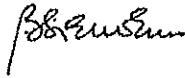
91. The public interest is not served if either party is required to resort to the courts in order to address issues arising from the compensation commission process, whether they are substantive or relate to process. Accordingly, this Commission should maintain the principled approach adopted by the Block Commission and turn its mind to the fact that the Government's response to the Block Commission was issued beyond the statutory deadline and the fact that it did not substantively reject any of the recommendations made by the Block Commission. Consequently, the Commission should accept the judiciary's urging to issue a recommendation reiterating the importance of strict adherence by all parties to the Commission process in order to preserve confidence and maintain the effectiveness of this constitutional process.

V. CONCLUSION

92. The Association and Council reiterate the arguments set out in their Submission filed on December 20, 2011 in support of a recommendation for the implementation of the Block Commission's recommendations on a prospective basis. The Government has presented no convincing argument justifying the measures it seeks to take against the judiciary, namely the capping of the IAI adjustment and the refusal of any increases to judicial salaries.

The whole respectfully submitted
on behalf of the Canadian Superior Courts Judges Association
and the Canadian Judicial Council.

Montréal, January 30, 2012



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Annex A – Report of Diane Marleau (January 27, 2012)



ETUDE ECONOMIQUE CONSEIL

January 27th 2012
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RE: Submission to the Judicial Compensation and Benefits Commission

Etude Economique Conseil (EEC Canada) Inc. ("EEC") has been retained by Norton Rose Canada LLP acting on behalf of the Canadian Superior Court Judges Association and the Canadian Judicial Council as a consulting expert firm in economics. EEC has been asked to review Section 2 of Part III, "Current Economic and Fiscal Conditions", presented in the Submission of the Government of Canada. This document provides EEC's comments.

The analysis of the current economic and fiscal conditions submitted by the Government of Canada covers a very short period, both historically and forward looking. This limitation may lead to wrong conclusions and mistaken interpretations.

In order to detect trends and their eventual reversal, it is important to include in the analytical line-of-sight data from a significant number of preceding periods. In doing so, it becomes clear that in spite of the uncertainty regarding the global economy, the Canadian economy shows positive and encouraging signs of recovery, something recognized by many economic forecasters.

As explained below, Canada is on the path of an economic recovery as shown by its recently published results on foreign trade and on employment. This is confirmed by most if not all published economic forecasts.

Foreign Trade

A first example concerns the evolution of exports. Whereas Canada's trade balance and exports have not returned to the levels before the recession of 2009-2010 (see Table 1), recent key statistics pertaining to foreign trade show encouraging material signs of recovery:

- ▶ Canada's trade balance with the world went from a deficit of \$487 M in October 2011 to a surplus of \$1.1 billion in November 2011¹;
- ▶ For the first eleven months of the year in 2011 (Table 1), Canada had a trade deficit of \$1.5 billion dollars, a serious improvement compared with the deficits of 2010 (\$10.9 billion) and 2009 (\$4 billion);
- ▶ Canada's trade surplus with the United States increased from \$3.5 billion in October 2011 to \$4.6 billion in November 2011². For the first eleven months of the year in 2011 (Table 1), the trade surplus reached \$43.5 billion, in continuous progress from 2009 and 2010;

¹ Statistics Canada, Catalogue no. 65-001x, "Canadian International Merchandise Trade", November 2011, p.5.

² Statistics Canada, Catalogue no. 65-001x, "Canadian International Merchandise Trade", November 2011, p.5.

- ▶ Finally, for the year 2011 from January to November, Canadian exports to the world rose to \$415 billion, a level exceeding those of 2009 and 2010, and more closer to those observed before the recession (Table 2). The trend is also positive for Canadian exports to the United States with an increase in 2011 to a level closer to the pre-recession ones.

Table 1
Canadian Merchandise Trade Balance
For the first 11 months of the year
(January to November)
(Millions of dollars)

First 11 months of the year (January to November)	Total	With the United States
2007	45,949	80,061
2008	47,590	85,879
2009	-4,738	30,335
2010	-10,894	32,390
2011	-1,487	43,479

Source: Statistics Canada, Cat. 65-001x, Text Table 1,
November 2011, November 2010, November 2009, November 2008

Table 2
Canadian Merchandise Exports
For the first 11 months of the year
(January to November)
(Millions of dollars)

First 11 months of the year (January to November)	Total	With the United States
2007	426,779	328,021
2008	454,883	344,220
2009	336,744	246,357
2010	367,468	270,371
2011	415,308	300,138

Source: Statistics Canada, Cat. 65-001x, Text Table 1,
November 2011, November 2010, November 2009, November 2008

According to the Bank of Canada³, external demand for Canada's exports is projected to grow moderately in 2012 and to pick up further in 2013 in response to a rebound in the growth in the United States. Deteriorating economic conditions in Europe should have a relatively modest impact given Canada's limited direct trade links with Europe: the European situation should affect Canadian exports primarily through their spillover effects on the United States private domestic demand.

³ Bank of Canada, "Monetary Policy Report", January 2012, p.17.



Employment

A second example relates to employment trends. After a deceleration from August to November 2011 (Table 4), employment rose in December. On a yearly basis (Table 3), there are 265,000 more employed than in 2010 and 219,000 more employed than in 2008 before the recession. The unemployment rate rose to 7.5% in December and is estimated at 7.4% for 2011, an improvement compared to the recession period. According to CIBC World Markets⁴, Canada had one of the most robust employment recoveries in the G7, regaining the jobs lost during the recession.

Table 3
Employment and Unemployment rate in Canada
2007 to 2011

Year	Employment level (Seasonally adjusted) (Thousands)	Change (Thousands)	Unemployment rate
2007	16,806	396	6.0%
2008	17,087	281	6.1%
2009	16,813	-274	8.3%
2010	17,041	228	8.0%
2011	17,306	265	7.4%

Source: Statistics Canada, Canadian Economic Observer, cat.11-010-X, Tables 5.1-1 and 5.1-4, January 2012, Tables 6.1-1 and 6.1-4 for the other years

Table 4
Employment and Unemployment rate in Canada
by month in 2011

Year	Employment level (Seasonally adjusted) (Thousands)	Change (Thousands)	Unemployment rate
January	17,214	69	7.8%
February	17,230	16	7.8%
March	17,228	-2	7.7%
April	17,286	58	7.6%
May	17,309	23	7.4%
June	17,337	28	7.4%
July	17,344	7	7.2%
August	17,339	-5	7.3%
September	17,400	61	7.1%
October	17,346	-54	7.3%
November	17,327	-19	7.4%
December	17,344	17	7.5%

Source: Statistics Canada, Canadian Economic Observer, cat.11-010-X, Tables 5.1-1 and 5.1-4, January 2012,

⁴ CIBC, "Economic Insights", December 22, 2011, p6.



The Bank of Canada anticipates that the Canadian economy will gradually return to full capacity by the third quarter of 2013⁵. This should have a positive impact on employment. The analysis of the Royal Bank of Canada as of December 2011⁶ points also in this direction with an employment increase in 2012. The unemployment rate is expected to decline gradually to 6.9% by mid-2013.

Longer Term Perspective of the Canadian Economy⁷

While it is difficult to predict with accuracy specific future events for a medium and long-term period, the forecast horizon of the economic outlook, in the current context, should not be limited only to 2012 but should extend at least to 2013.

There is a common view that Canadian economic activity is expected to improve in 2012, mainly during the second half, ending with a modest growth between 1.7% and 2.5% according to numerous forecasters (Table 5). However, in 2013, the overwhelming majority of published projections expect real GDP to grow at a faster pace than in 2012.

The most recent notice of the International Monetary Fund on Canada as of December 2011 reaffirms the positive view expressed in the recent past that "Canada's medium term outlook remains broadly favorable"⁸ despite the near term high downside risks due to the financial turmoil in Europe and rising household indebtedness in Canada. On January 24 2012, the IMF revised downward its projections for world growth in 2012, expecting a mild recession in the Euro area and a slowdown of the growth in the rest of world⁹. Even though the projections of growth for Canada are now lower than they were in September 2011, the perspective for 2012 is still of a positive growth rate of 1.7%, with an increase to 2% in 2013. Furthermore, the IMF recommends that countries should avoid too rapid tightening of fiscal policies and those that have the fiscal space should consider slowing the pace of consolidation this year.

Table 5
Projections of Real GDP Growth by forecasters

Indicator	Forecaster	Date of projection	2011	2012	2013
Real GDP growth (%)	Bank of Canada	January 13, 2012	2.4	2.0	2.8
	Bank of Montreal	January 27, 2012	2.3	2.0	2.5
	CIBC	January 26, 2012	2.4	2.0	2.1
	Desjardins	January 23, 2012	2.3	2.1	2.5
	International Monetary Fund	January 24, 2012	2.3	1.7	2.0
	Royal Bank of Canada	December 2011	2.3	2.5	2.6
	Scotiabank	January 3, 2012	2.3	1.8	2.4
	Toronto Dominion	December 14, 2011	2.4	1.7	2.2

⁵ Bank of Canada, "Monetary Policy Report", January 2012, pp1, 28.

⁶ Royal Bank of Canada, "Economic and Financial Market Outlook", December 2011, p.6.

⁷ This section is based on published information as at January 27th 2012.

⁸ International Monetary Fund, "Canada 2011 Article IV Consultation" IMF Country Report No.11/364, December 2011, p.7 and Public Information Notice No. 11/160, December 22, 2011, p.3.

⁹ International Monetary Fund, "World Economic Outlook UPDATE", January 24, 2012, p.1.

International Monetary Fund, "IMF Marks Down Global Growth Forecast, Sees Risk on Rise", IMF Survey online, January 24, 2012.

International Monetary Fund, "Fiscal Monitor UPDATE", January 24, 2012.



The Bank of Canada concurs with this positive view. In January 2012, it presented its updated outlook for the Canadian economy, which is "little changed"¹⁰ from October 2011 (Table 6). The Bank estimates that the economy grew by 2.4% in 2011 and projected a modest growth of 2% in 2012, after which it would climb to 2.8% in 2013, returning to full capacity by the third quarter of 2013, one quarter earlier than was expected in October 2011. Its updated scenario takes into account the following:

- i) The European crisis will be contained by the measures implemented by the European authorities supporting a gradual recovery beginning in late 2012¹¹; the failure to contain the crisis in Europe remains one of the two main downside risks to inflation in Canada¹²;
- ii) Recent improvement in economic conditions in the United States and some recovery in consumer confidence will contribute to its projected growth through 2013¹³;
- iii) "Aggregate supply and the price of credit to businesses and households in Canada remain very stimulative providing important ongoing support to the economic expansion"¹⁴;
- iv) Growth of household expenditures (consumer spending and residential investment) at a steady pace through 2013 (higher than its outlook in October 2011¹⁵); however, household debt levels may lead to a deceleration in household spending, which constitutes the second main downside risk to inflation in Canada¹⁶;
- v) Solid growth in business fixed investment in 2012 with strengthening in 2013 as confidence recovers¹⁷ and financial conditions remaining very stimulative, a fundamental supporting business investment in Canada¹⁸;
- vi) Modest contribution of government spending to real GDP growth, in line with fiscal plans of federal and provincial governments¹⁹;
- vii) Slow growth in foreign activity, with competitiveness remaining a challenge for Canadian firms (high unit labour costs, appreciation of the Canadian dollar)²⁰.

¹⁰ Bank of Canada, "Monetary Policy Report", January 2012, pp.1, 19, 23.

¹¹ Bank of Canada, "Monetary Policy Report", January 2012, pp.3, 10.

¹² Bank of Canada, "Monetary Policy Report", January 2012, pp.1, 2, 31.

¹³ Bank of Canada, "Monetary Policy Report", January 2012, pp.3, 12.

¹⁴ Bank of Canada, "Monetary Policy Report", January 2012, p.19.

¹⁵ Bank of Canada, "Monetary Policy Report", January 2012, p.24.

¹⁶ Bank of Canada, "Monetary Policy Report", January 2012, pp.2, 31.

¹⁷ Bank of Canada, "Monetary Policy Report", January 2012, p. 26.

¹⁸ Bank of Canada, "Monetary Policy Report", January 2012, p. 25.

¹⁹ Bank of Canada, "Monetary Policy Report", January 2012, p.26.

²⁰ Bank of Canada, "Monetary Policy Report", January 2012, pp.26, 27.



Table 6
Bank of Canada -Summary of the base-case projection for Canada

	2011	2012	2013
Real GDP Growth (%)			
January 2012	2.4	2.0	2.8
October 2011	2.1	1.9	2.9
July 2011	2.8	2.6	2.1
April 2011	2.9	2.6	2.1
January 2011	2.4	2.8	-
Consumer Price Index (4 Quarters Average)			
January 2012	2.9	1.8	1.9
October 2011	2.9	1.4	1.9
July 2011	2.9	2.1	2
April 2011	2.5	2.1	2
January 2011	2.1	1.9	-

US Real GDP Growth (%)			
January 2012	1.8	2.0	2.2
October 2011	1.7	1.7	3.3
July 2011	2.4	3.2	3.3
April 2011	3	3.2	3.3
January 2011	3.3	3.2	-

Source: Bank of Canada, Monetary Policy Report Summary, January 2012, October 2011, July 2011, April 2011, January 2011.



Conclusion

As at the end of 2011, Canada is on the path to economic recovery. Its external merchandise trade balance is moving towards its past surpluses. Its balance with the US, its main trading partner, is positive and increasing for the last two years. The lagging employment indicators point to material growth, as unemployment is on the decrease as a result of a fairly dynamic underlying growth. The Bank of Canada projects a return to full capacity utilization before the end of 2013.

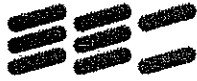
In terms of medium term perspective, most if not all forecasters project growth for Canada in 2012 and an even stronger economy in 2013.

Yours sincerely



Diane Marleau
Vice-president, Economist





ETUDE ECONOMIQUE CONSEIL

CURRICULUM VITAE

Diane Marleau

PROFESSIONAL INTERESTS

VICE-PRESIDENT OF ÉTUDE ÉCONOMIQUE CONSEIL (EEC CANADA)

Ms. Diane Marleau is vice-president of *Étude Économique Conseil (EEC Canada) Inc.*, a private Canadian consulting firm with headquarters in Montreal. Since its creation in 1980, the firm has been operating on national and international markets. Specialized in economic and management planning, EEC Canada is today one of the largest private, bilingual and research companies working in the area of applied economics in North America. Agreements with associated enterprises allow to EEC Canada to offer complementary services in Canada and Europe.

Under the direction of its partners, the professionals of EEC Canada offer a variety of complementary expertise and have developed integrated and systematic methods, approaches and work habits to insure the quality of the content of its studies and reports. EEC Canada cultivates lasting relationships with its clientele. Its services, often initially contracted in the context of ad-hoc studies, evolve regularly into long lasting service contracts due to their quality. Such long-term relationships are increasingly becoming the norm at EEC Canada. They are due to the professionalism and the ethical conduct of EEC Canada's professionals, who place all the most recent and most relevant knowledge and work methods at the disposal of its clients.

PROFESSIONAL EXPERTISE

Both the management and economic skills of Ms. Marleau have enabled her to work in various areas of applied economics over the last twenty-seven years. Her fields of interest and specialization include organizational issues, sectoral economic analysis (in social and industrial sectors), economic planning and development, economic and financial project assessment, marketing, strategic planning and management information system. In the course of her work, Ms. Marleau has developed an important expertise in surveys methodologies, data bases analyses and economic quantitative methods (demand forecasting, econometric models, financial simulation models, etc.).

TEACHING EXPERIENCE

Concurrent to her consulting work, Ms. Marleau has been an university lecturer in macroeconomics, microeconomics, cost-benefits analysis, and business economics.



EDUCATION

M. Sc. Management «Applied economics »	École des Hautes Études Commerciales – Montréal	1980
B.A.A. Management « Economics » Affaires	École des Hautes Études Commerciales – Montréal	1977
D.E.C Administratives sciences	Collège Bois-de-Boulogne Montréal	1973

EMPLOYMENT

1978 – 1980	Teaching and research assistant Institut d'Économie appliquée École des Hautes Études Commerciales, Montréal
1980 – 1982	Economic Consultant TAMEC, Montréal
1983 – 1987	Economic Consultant CEGIR, Montréal
1987 à ce jour	Economic Consultant Vice-president and partner Étude Économique Conseil (EEC Canada)

OTHER WORKING EXPERIENCE

1979 - 1984	Lecturer (MBA and BAA programs) Institut d'économie appliquée École des Hautes Études Commerciales
1980 – 1983	Lecturer (BAA program) Département d'économie Université du Québec à Montréal

PROFESSIONAL ASSOCIATIONS

- Association des économistes québécois
- Financial Women's Association Québec

BOARD MEMBERSHIPS

- Royal Canadian Mint, member of the Human Resources Committee (January 1995 – June 2001)
- La Société Générale de Financement du Québec, member of the Executive Committee and of the Audit Committee, chairman of the Audit Committee (April 1995 – December 2003)
- The Kenneth Wood Portfolio Management Program, Concordia University (from October 2000 to April 2004), member of the Client Committee
- The Kenneth Wood Portfolio Management Program, Concordia University (from 2007): mentoring of program's students
- SGF Chimie, member of the Consultative Committee (April 2002 – December 2003)



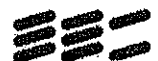
NATIONAL EXPERIENCE

Sectorial studies: strategy, competition analysis, economic policy and program

- Philanthropy Sector – Efficiency and equity of voluntary wage's withholding as a mode of contribution to fundraising campaign of Entraide with the employees of the Public Service of Quebec (support to the preparation of the argumentation and the document presented to the Government of Quebec in the context of the revision of the 2006 decree: analysis of the Entraide campaigns' results from 2005 to 2009 and of the distribution of the funds between the partners of Entraide, analysis of the existing documentation on fundraising costs according to the collection methods in Canada and United States) – *Partenairesanté Québec* (2010)
- Health Sector – The cost of the dispill pharmaceutical services in the Public Prescription Drug Insurance Plan of Quebec: analysis of the evolution of this activity since 2000 (annual volume and total costs of the services, profile of the dispill activity in private pharmacies, production cost structure, degree of concentration of the supply, role of the dispill services in reaching the pharmaceutical service price ceiling for private pharmacies, impact on the average revenue per prescription), analysis of the trends of the demand for dispill services (population aging, use of the services according to the number of drugs served and to the variety of the medication profiles of the clientele) - *Association québécoise des pharmaciens propriétaires* (2010)
- Health Sector – Impact of the revision of the standards and norms for the pharmaceutical compounding sterile preparation in private pharmacies (impact of the new requirements on the tasks organisation in laboratories, on the management process of the activity, on the human resources certification, on investment, production costs, transportation costs and temperature controls, on the viability and the supply of these services in private pharmacies) - *Association québécoise des pharmaciens propriétaires* (2009 – 2010)
- Life Sciences Sector – Direct and indirect effects of the Centre hospitalier de l'Université de Montréal (CHUM)'s in its downtown location: review and analysis of prior evaluations and of examples of life sciences's cluster/area/district in North America. Analysis of existing documentation and its economic relevance regarding the potential of traditional activities being regrouped around a new CHUM with a capacity of 700 beds. Assessment of a regrouping concept for biomedical activities and Life science clusters from the analysis of a dozen biotech/ Life science areas/districts/parks in North America. Identification of (1) essential components for creating requested synergies, (2) relevant local and regional location factors, (3) issues and priorities for the purpose of developing a business plan for the Quartier de la Santé along with a development strategy and a private sector-government partnership model. City of Montreal, Borough of Ville-Marie (2005).
- Transportation sector – Review of the cogency of the recommendations of a study on the taxi industry in Gatineau presented by the Corporation de développement économique de la Ville de Gatineau to the Commission des Transports du Québec in the context of the public hearings on the taxi situation in this city. Identification of the main public interest concerns related to the taxi regulation, of the main economic indicators for an adequate understanding of the impact of structural changes as taxi zones amalgamation and additional licenses issuing, , and of the main deficiencies of the content and the methodology of the study in regards of its recommendations. Presentation to the CTQ. –Private client (2004)
- Electronic legal information sector – Preliminary examination of various price structures compared to the pricing practices of main competitors. - *Société québécoise d'information juridique* (2003)
- Publishing sector – The issue of succession of publishing enterprises in Canada. Survey with all the Canadian publishing enterprises from which the majority was created since more than 20 years. – *Canadian Heritage* (2003)
- Health sector – Economic role and profile of the private pharmacy in Quebec (Revenues, direct employment, wages, investment, impact of pharmacists' shortage on laboratory's operations, anticipations of pharmacists owners on the future evolution of their sector-) - *Association québécoise des pharmaciens propriétaires* (2001 - 2002)
- Communications/telecommunications – Exploratory study of the relative importance of local advertising and revenues at conventionnal television stations - *Union des artistes* (2000 - 2001)
- Health sector – Study of the sub-sector of parenteral preparations in the private pharmacy (organisation of production, investment cost structure, production cost structure, supply and demand evaluation, impact of the shift towards ambulatory care, impact of the implementation of new technologies) - *Association québécoise des pharmaciens propriétaires* (1998)
- Intellectual property - Determination of a tariff for a public performance right of audio-visual works and elaboration of a royalties calculation formula. Participation to the mediation process between users and right owners (Private clients, 1997-1998)



- Communications/telecommunications – The exploitation of a multipoint distribution system (MDS) service for video signals (participation to the preparation of the presentation of the licence application at the CRTC public hearings, revision of the main aspects of the licence application, compared analysis with the applications of competitors, preparation of the various presentations and interventions of the main representatives of the company) - AirComm Inc. (1997)
- Health services - Economic profile of the private pharmacy sector in Quebec - Association québécoise des pharmaciens propriétaires (AQPP) (1996-1997)
- Transportation sector - Study on air freight at Montreal's airports - Montreal Urban Community and Aéroports de Montréal (1994 - 1995)
- Transportation sector - Tariff structure of logs and bolts transportation - L'Association des transporteurs de bois de l'Estrie (1994)
- Communications / telecommunications sector - Analysis of the multimedia phenomenon and of the issues influencing the elaboration of public policies in the cultural sector - Department of Canadian Heritage (1994)
- Communications / telecommunications sector - The future of the Canadian Broadcasting Corporation in a multichannel environment - Private clients group (1994)
- Transportation sector (small parcels delivery) - Impact on competition of the acquisition of a private courier in Canada by Canada Post Corporation - Group of private clients (1993)
- Transportation sector - Study on book transportation organization and recommendations on efficient alternatives to the books postal program financed by the Department of Communications - Department of Communications of Canada (1991-1992)
- Communications / telecommunications sector - Evaluation of the impact of the Canada-US free trade agreement on the telecommunications equipment industry of Quebec - Department of Communications of Quebec (1991)
- Communications / telecommunications sector - The situation of the Canadian television industry and the trends of advertising industry and television advertising revenues - The Girard-Peters Task Force (1991)
- Headquarters - Study of headquarters located in the city of Montreal and nearest suburbs (economic profile, effective corporate functions, needs, economic impact, and links with the milieu). Strategy to develop actual headquarters and enhance Montreal's capacities to attract new headquarters - Montreal City - Comité des initiatives de développement économique de Montréal (CIDEM) (1990-1991)
- Intellectual property - The system of neighboring rights (foundations, nature and scope of these rights, international agreements in place, understanding of the main national laws) and main issues for the French radio industry - Department of Communications of Quebec (1990)
- Transportation sector - The impact of tariff structure changes for the transportation of salt in bulk in Quebec - Salt Institute (1990)
- Transportation sector - Study of the milk transportation organisation by different cooperatives in Quebec, following the market needs and efficiency criteria - Dairy Cooperatives of Quebec (1990)
- Agro-industries - Impact on competition of a firm acquisition in the agro-industrial sector - Private client (1990)
- Communications / telecommunications sector - Preparation of an argumentation and documents presented at the public hearings held by the CRTC on the French vocal music quota imposed on the French radio industry - Association canadienne des radiodiffuseurs de langue française (1989)
- Communications / telecommunications sector - Study of the issues related to production, broadcasting and promotion of French vocal music in view of the revision of CRTC regulation on French vocal music quota at the French radio - Association canadienne des radiodiffuseurs de langue française (1988-1989)
- Transportation sector - Study on the economic and social effects of the potential entry of a new firm within the extra-provincial small parcels delivery market - UPS Canada (1988)
- Communications / telecommunications sector - Study of the economic, regulatory and cultural context related to the implementation of a new French-speaking sport channel in Quebec in view of public hearings held by CRTC - Telemedia (1987)
- Tourism sector - Elaboration of a touristic development plan for the Laurentians region - Laurentians Tourism Association (Quebec, 1986-1987)
- Mining sector - Evaluation of the privatization of SOQUEM's specific operations - Société québécoise d'exploration minière (Quebec, 1985)



- Garment sector - Assessment of the provincial regulation's impact on the enterprises competitiveness from a comparative analysis of Quebec, Ontario and Manitoba - Centre québécois de productivité du vêtement (Institut national de productivité, Québec 1984)
- Communications / telecommunications sector - Study of the main structural aspects of the Canadian television program production industry, appraisal of its performance and development of growth policies for the near future - Department of Communications of Canada (1980)

Marketing, market and feasibility studies

- Transportation sector – Market and feasibility study for an exclusive taxi service at the Casino du Lac Leamy – Conduct of a survey. Presentation to the Commission des transports du Québec in the context of licence applications for taxi restricted service (Private client, 2002-2003).
- Information sector - Economic and financial feasibility study of a national corporate information system which would integrate the systems of provincial and federal jurisdictions - Consumer and Corporate Affairs Department of Canada (1986)
- Retail trade Sector - Market study for the implementation of a record store in Montreal - Dallaire Inc. (Montréal, 1986)
- Communications / telecommunications sector - Identification of new opportunities of additional radio and television signals for French-speaking people outside Quebec, specifically for those in rural areas. Elaboration of a development strategy - Fédération des francophones hors-Québec, Canada (1985)
- Tourism sector - Market study of international touristic exhibitions and outlining of a marketing strategy - Montreal Congress Center (1985)
- Advertising sector - Analysis of the Canadian advertising market by type of media and assessment of the Quebec market share and its evolution - Confédération générale de la publicité, Québec (1984)
- Building materials sector - Assessment of the Canadian market for a roofing, waterproof barrier made with modified elastomer bitumen - Victomix Inc. (Québec, 1984):
- Financial / banking sector - Development of an econometric demand model and determination of potential markets and their subjacent variables for various asset and liability items - Fédération des caisses populaires Desjardins du centre du Québec (1983-1984)
- Financial / banking sector - Development of a cross-section econometric model and study of the term loan market for given sectors during different economic cycles - Crédit Industriel Desjardins (Québec, 1983)
- Communications / telecommunications sector - Financial and economic feasibility study of distribution alternatives for DBS (direct broadcasting satellite) signals in remote regions - Department of Communications of Canada (1982)
- Communications / telecommunications sector - Feasibility study of a satellite distribution of new television signals and elaboration of a marketing strategy (product mix, tariff structure) - Canadian Satellite Communication Inc., Canada (1982)
- Communications / telecommunications sector - Feasibility study on the introduction of a converter for cable subscribers - Videotron Inc., Québec (1981)
- Communications / telecommunications sector - Feasibility study of a direct diffusion satellite projects (DBS) with different packages of signals - Department of Communications of Canada (1980-1981)
- Communications / telecommunications sector - Feasibility study on a French language pay television - Civitas Inc. (1980)

Cost-benefit analysis, impact studies, financial and economic evaluation

- Municipal Infrastructures Sector – Analysis of the management performance and assessment of the business model of the CSEM – The mandate of the CSEM consists of planning, conceiving, building, servicing and exploiting a network of underground conduits for electrical and telecommunication distribution purposes on the Island of Montreal. Light survey with the users and clients of CSEM and with network managers in similar cities, analysis of the financial and operational information system and of the key performance indicators, assessment of the current business model and comparisons with other models and rationales implemented in other cities, recommendations on areas of improvement – Commission des Services Électriques de Montréal (2010).



- Health sector -- Anticoagulothrapy follow-up services in private pharmacies -- In the context of a mixed committee MSSS-AQPP aiming to present a new public program to the Minister of the Department of Health and Social Services of Quebec, the study has covered the conditions and modalities of the implementation of anticoagulothrapy follow-up services in private pharmacies and has identified the advantages and disadvantage of the transfer of these services from hospitals towards private pharmacies. - Association québécoise des pharmaciens propriétaires (2007, 2008)
- Health sector - Verification of the guaranteed average tariff for 2002 -- In the context of the negotiated agreement for pharmaceutical services with Québec Health Department, the study has verified if the guaranteed average tariff had been reached in 2002. Evaluation of the monetary claim. Presentation of the report to a committee of arbitration. Association québécoise des pharmaciens propriétaires (2005-2006)
- Health services -- Evaluation of the gross margin of pharmaceutical services provided by private pharmacies in 2004 and according to the market served. Association des pharmaciens propriétaires du Québec (2005)
- Nanotechnology sector -- Due diligence review of the market and revenue forecasts for an enterprise in nanotechnology in the context of a second equity investment. Hydro-Québec CapiTech (2002)
- Equipment for monitoring, control and maintenance of electrical power networks -- Study of maximization of an enterprise value in the context of its sale (review of revenues and profits forecasts, estimation of needed investment, and liquidity needs, examination of scenarios for the realization of the full enterprise value) - Hydro-Québec CapiTech (2002)
- Household equipment sector -- Post-evaluation of an investment in a franchised business. Examination of markets studies and methodologies supporting the investment (Private client, 2002-on going)
- Telecommunication sector - Validation of the main business plan scenarios of a wireless services company in the context of a refinancing: determination of the fundamental value of the company, sensitivity analysis in regard to specific determining variables, examination of the evolution of Canadian supply of wireless services - CDP Capital Communications (2001)
- Legal services -- Examination of the financial situation of Quebec municipalities and of municipal courts, impact of a unique tariff per audition for municipal judges on the operating budget of municipal courts - Comité de la Rémunération des Juges de la Cour du Québec et des Cours Municipales, Ministère de la Justice du Québec (2001)
- Transportation sector -- Financial value of a limousines business and of the potential damages caused by a reduction of transportation licence privileges. (Private client, 2000)
- Communications/telecommunications -- The remuneration of artist's services used in local advertising at television. Exploratory study identifying the problems and the factors influencing the relative share of artistic talent remuneration in the total production and broadcasting cost of an advertisement - Union des artistes (2000 - 2001)
- Intellectual property - Economic value of a reproduction right of audio-visual works used by specialized television channels. Participation to the elaboration of the methodology and the collection formulae, and to the preparation of the expert report presented to the Copyright Board. (Private client, 2000)
- Industrial minerals - Evaluation of damages caused by a lack of raw material in the context of the exploitation of a calcite quarry. Elaboration of the methodology and participation to the preparation of the expert report - Les Calcites du Nord inc. (1998-en cours)
- Intellectual property - Evaluation of a sound recording works catalogue. Methodological opinion and establishing of a rough estimate (Private client. 1999)
- Intellectual property -- Economic value of the reproduction for private use of sound recording works in Canada and impact of a levy on the sale of blank audio recording media. Participation to the preparation of experts presentations to the Copyright Board - Canadian Private Copying Collective (1999)
- Health services - Economic impact of various monetary demands presented by AQPP in the context of the pharmaceutical services' remuneration agreement renewal between the between the Department of Health and Social Services of Quebec and the pharmacists represented by the Association des pharmaciens propriétaires du Québec (AQPP) - Association des pharmaciens propriétaires du Québec (1998 -- on going)
- Health services -- Study of the prescription operating cost in private pharmacies. Comparative analysis since 1988 - Association des pharmaciens propriétaires du Québec (1999)
- Health services - Preparation of a tariff structure by type of preparation of sterile products (parenteral drugs) in private pharmacy and participation in the negotiation between the Department of Health and Social Services of Quebec and the pharmacists represented by the Association des pharmaciens propriétaires du Québec (AQPP) - Association des pharmaciens propriétaires du Québec (1997,1998)
- Transportation sector -- Analysis and review of the financial situation of a transportation enterprise. Preparation of an expert report in the context of legal procedure. (Private client, 1998 -2001)



- Health services - Participation in the negotiation of the pharmaceutical services' remuneration agreement in the context of the First Nations Program between Health Canada and the pharmacists represented by the Association des pharmaciens propriétaires du Québec (AQPP) - Association des pharmaciens propriétaires du Québec (1997-on going)
- Legal services – Economic impact of a unique tariff per audition for municipal judges in Quebec – La Conférence des Juges Municipaux du Québec (1997)
- Health services - Participation in the negotiation of the pharmaceutical services' remuneration agreement between the Department of Health and Social Services of Quebec and the pharmacists represented by the Association des pharmaciens propriétaires du Québec (AQPP) (economic analyses supporting the AQPP's position) - Association des pharmaciens propriétaires du Québec (1996)
- Health services - Analysis of the interactive communication project proposed to the pharmacies by the RAMQ (the governmental agency responsible of the administration of the drugs governmental plan) jointly with Bell-Canada in the context of the implementation of the universal plan of drugs insurance - Association des pharmaciens propriétaires du Québec (1996)
- Health services - Preparation of an argument presented by the AQPP in front of the parliamentary committee on the law project related to the universal program of drugs insurance (bill 33) and on its potential effects on the private pharmacy sector in Quebec (1996) - Association des pharmaciens propriétaires du Québec (1996)
- Publishing sector - Evaluation of the decision to publish a literary work in a new format - Private client (1995-1997)
- Intellectual property - Assessment of the economic and non-economic impacts of a legislation introducing a commercial rental right in the course of the revision of the copyright act in Canada - Department of Canadian Heritage (1994)
- Intellectual property - Assessment of the financial consequences for authors, artists, cultural industries and consumers of the Quebec requests on the revision of the Canadian copyright act (five areas of economic rights were examined) - Ministère de la Culture du Québec (1992-1993)
- Health services - Analysis of various scenarios of the effect of the disinsurance of optometrical services by the Government of Quebec - Ordre des optométristes du Québec (1992)
- Transportation sector - Assessment of operating costs and investment costs of an innovative railway equipment building project -Private client (1992)
- Transportation sector - Financial and economic assessment of a trucking firm in Quebec - Transport Belmire Inc. (1991)
- Tourism sector - Economic impact analysis of the Rimouski Congress Centre's project - Department of Regional Industrial Expansion, Canada (1985)
- Tourism sector - Economic impact analysis of the Percé Arts Centre's project - Department of Regional Industrial Expansion, Canada (1985)
- Tourism sector - Design of a project analysis model applicable to the tourist industry characteristics in order to verify the eligibility of the projects to the Department's financial assistance program - Department of Regional Industrial Expansion of Canada (1984)

Programs evaluation

- Small enterprises - Evaluation of the Strategic *Information program in the context of the agreement with the Groupement des Chefs d'entreprises du Québec (GCEQ) – Développement économique Canada (1999)
- Small enterprises financing and start-up - Evaluation of technological incubators and of university entrepreneurship centers - Développement économique Canada, Ministère de l'Industrie, de la Science et de la Technologie du Québec (1998 - 1999)
- Small enterprises financing - Evaluation of the grant component of special programs for the areas of Laprade and Thetford Mines consisting in financial support for small enterprises - Federal Office of Regional Development (Quebec) (1992)
- Tourism sector - Conception and preparation of the methodology evaluating the federal-provincial agreement on tourism development in Quebec - Department of Industry, Sciences and Technology of Canada, Department of Industry and Tourism of Quebec, Ministère des Loisirs, Chasse et Pêche du Québec (1989-1990) .



Regional / Industrial Development - Economic situation and forecasts

- Regional development – Review and analysis of evaluation and audit studies reports of past and current programs of CED. This mandated aimed at assisting the evaluation of the implementation of two programs « Business and Regional Growth » and « Community Diversification » and the strategic examination of expenses. The tasks included a) the data extraction from approximately forty evaluation and audit reports of CED (2002 to 2006) b) the building of a database with more than 800 citations characterized according to specific criteria (e.g.: activities of CED programs, evaluation issues, the current relevance, the issues concerned by the evaluation frame of the implementation of the two programs, the type of results and recommendations, ..) c) the identification of results about the integration of the lessons learned by the Agency. Canada Economic Development for Quebec Regions (2008-2009)
- Regional and Industrial Scoreboard – Conceptual Phase. Exploratory study identifying the main concepts of industrial scoreboards and economic intelligence systems for monitoring the evolution, the structure and the performance of industries. Review of 44 existing tools of industrial economic information produced in 15 countries in Europe, Asia and North America and by three international/interregional organizations (European Union, UNIDO and OECD). Review of the specialized literature on structure and performance indicators (productivity, innovation, competitiveness, etc), of international benchmarking systems and on growth and innovation indicators. Industry Canada (2006)
- Legal services – Analysis of the economic situation in Quebec, of the public finances situation (provincial and municipal), of the collective wealth compare to other Canadian provinces and of the short term economic forecasts. Comité de la Rémunération des Juges de la Cour du Québec et des Cours Municipales, Ministère de la Justice du Québec (2004)
- Legal services – Analysis of the economic situation in Quebec, of the public finances situation and of the short term economic forecasts. Comité de la Rémunération des Juges de la Cour du Québec et des Cours Municipales, Ministère de la Justice du Québec (2001)
- Industrial policy - Preparation of a document synthetizing the principles underlying an industrial policy in Quebec - Fonds de solidarité des travailleurs du Québec (1995)
- Regional development - Study of the regional development issues of the Montérégie region - Federal Office of Regional Development (Quebec) (1993)
- Risk capital - Identification of an optimal form of intervention for the FORD(Q) as a funds supplier in the area of risk capital, of the conditions and criteria orienting the contribution of the FORD(Q) in the financing of risk capital, notably to meet the objectives of regional development - Federal Office of Regional Development (Quebec) (1991)

Firm strategy, management system and organisation

- Health sector - Annual surveys on salaries in pharmacies: level of salary by type of job (in the laboratory and in the front shop) and number of years of experience, fringe benefits program, evaluation of the shortage of pharmacists and its impact on pharmacist's wage level, regional disparities in salaries and shortage of pharmacists, evaluation of the work of the pharmacy's owner between dispensing, counseling and management, work organisation in the laboratories or dispensaries. - Association québécoise des pharmaciens propriétaires (2004, 2005, 2006, 2007, 2009, 2010)
- Health Sector – Impact of the implementation of the first phase of the experimental project of the Quebec Health Electronic Record (EHR) on work organisation in private pharmacies – Association des pharmaciens propriétaires du Québec (2008 – on going)
- Health sector - Organisational analysis of the workload of an omni-practician doctor on few years – Private client (2007 – 2008)
- Transportation sector – Assessment of the waiting times to obtain taxi services at the Casino of Hull and at the Hotel of Lake Leamy. Private client (2005)
- Forestry sector - Providing services for the financial turnover of the company - Analysis of its financial situation and recent evolution, preparation of a short term action plan in order to reduce liquidity pressures, projection for the next year. Presentation to the lending financial institutions and monitoring. Private client (2004 -2005).
- Legal services – Review of the workload of municipal judges in Quebec in 2002 and impact of a unique tariff per audition. Comité de la Rémunération des Juges de la Cour du Québec et des Cours Municipales, Ministère de la Justice du Québec (2004)



- Health sector – The remuneration of specialist doctors in Quebec compared to other Canadian provinces. Acting as a methodological expert in the Committee on the remuneration of specialist doctors implemented in the context of the agreement between the Department of Health and Social Services of Quebec and the Fédération des médecins spécialistes du Québec - Ministère de la Santé et des Services Sociaux et La Fédération des médecins spécialistes du Québec (2003 – 2004)
- Transportation sector – The taxi coupons financing system – Examination of the system of payments with taxi coupons in terms of workload and financial burden for a taxi enterprise. Identification of the type of potential impacts on the enterprise operations following the eventual issuing of licences for a restricted taxi transportation. Presentation to the public hearings held by the Commission des transports du Québec (Private client, 2002-2003).
- Legal services – Review of the workload of municipal judges in Quebec in 1999 and impact of a unique tariff per audition. Comité de la Rémunération des Juges de la Cour du Québec et des Cours Municipales, Ministère de la Justice du Québec (2001)
- Legal services - Evaluation and description of the positions of President and judges of the Tribunal administratif du Québec. Examination of evaluation methodologies for existing posts, of criteria applicability to the post of judge, identification of reference positions and examination of principles providing guidances for the judges remuneration in different jurisdictions. - Tribunal administratif du Québec, Ministère de la Justice du Québec (2001)
- Legal services - Organisational analysis and evaluation of the workload of municipal judges in Quebec. Profile of the global activity of the municipal courts. Evaluation of the workload of the municipal judges in terms of effective worked hours. According to the current remuneration structure, review of the global remuneration and of the real remuneration per audition and per hour worked. Evaluation of the financial impact of implementing a unique tariff per audition. Comité de la Rémunération des Juges de la Cour du Québec et des Cours Municipales, Ministère de la Justice du Québec (1998).
- Transportation sector - Providing various management and financial services to a taxi company (1998 - on going).
- Organisation - Organisational analysis of the work in nuclear medicine of the Hospital of Chicoutimi - Les nucléistes associés (1995-1997)
- Transportation sector (refrigerating transportation) - Providing various management and financial services to the company -Revision of the tariff policy by type of services and the geographic area, implementation of an information system, including financial and commercial information, adapted to the activities of the firm and the management needs. Transport Belmire (1991-1994).
- Industrial equipment sector - Study of the optimal localisation of research and development activities of a forestry equipment manufacturer - La Société générale de financement du Québec (1985)
- Financial / banking sector - Strategic planning in the term loan market for the period 1984-1988 - Crédit industriel Desjardins (1983)



INTERNATIONAL EXPERIENCE

Poverty and social dimensions of structural adjustment

- Analysis and comments of the methodological approach for the analysis of social dimensions of structural adjustment and of intervention models - CIDA (1989)
- Participation in a social infrastructure project assessment mission in Guinea-Bissau and review of the social dimension component of the World Bank project - World Bank (1988)
- Poverty profile in Guinea-Bissau and identification of poverty alleviation measures compatible with the current structural adjustment program - World Bank (1988)
- Study on the nature and the state of poverty in Guinea-Conakry in order to identify and design poverty alleviation measures (as macroeconomic policy, programs and projects) to be implemented in conjunction with structural adjustment program - World Bank (1987-1988)

Industrial development, strategy and policies

- Local transport services in Ethiopia – World Bank (2011 – 2012) : Assignment aiming to build data and knowledge about the rural transport services, particularly the segments relevant to farming population and agriculture sector. More specifically, this study intends to (i) identify operational, economic and financial characteristics, including operation costs and prices of transport services available in Ethiopian rural and small town areas, (ii) construct a database for the characteristics of the transport services, and (iii) assess constraints and necessary condition for development of transport services. Primary data will be collected from four key stakeholder groups: transport services users (farmers and other villagers, traders/operators, transport services operators (including truck drivers), transport authorities/regulators (at regional, district and local levels) and associations. Villages and small towns of four regions in Ethiopia will be covered.

EEC is responsible for the preparation of the survey tools (interview guides for transport authorities/regulators and associations, questionnaires for transport services users, operators and traders, of training guides for enumerators, data entry and validation tools), for the overall project management, for the planning and the supervision of the survey, including planning and monitoring the fieldwork, recruiting, training and supervision of interview enumerators, implementation of quality control, validation and auditing of questionnaires, and data entry and cleaning. Data analysis and main findings. The target sample will include 200 respondents and 360 routes (O-D movements).

- The Caribbean Enterprise and Indicator Survey (CES 2010) – World Bank, Inter-American Development Bank (2010 – on going). This survey covers 13 countries of the Caribbean's and 150 or 360 enterprises by country according of the type of the survey conducted. The objective of this project are: i) to provide feedback from enterprises on the state of the private sector in each country, ii) to provide statistically significant business environment indicators that are comparable across countries, iii) to analyze in more detail the topics of business development services, innovations and labor markets, iv) to assess the constraints to private sector growth and enterprise performance, and v) to stimulate systematic policy dialogue on the business environment and to help shape the agenda for reform.

Preparation of the list of enterprises to be surveyed following specific strata for each country, preparation of the survey tools (questionnaires, training guides, data entry and validation tools), overall management of the project in the field including the planning and the supervision of the survey, the recruiting, training and supervision of local enumerators, the implementation of quality control, validation and auditing of questionnaires, and data entry and cleaning.

- Trucking Survey in Vietnam – World Bank (2010): in the context of an Urbanization Review in Vietnam, the Trucking Survey was one of several background studies undertaken with World Bank support as an input to the Urbanization Review. This survey was designed to help better understand how inter-city transport costs vary across cities and to separate the effects of different policies and logistics from infrastructure conditions. The data collected in the course of the survey helped to determine the implications of policy, logistics and infrastructure conditions on intercity transport costs and logistics decision making.

Country manager in Vietnam. The survey included more than 250 individual structured interviews with trucking enterprise managers and with independent truckers. The subjects discussed related to the enterprise's history and profile, the cost structure by main served route, the technology integration and the bottlenecks, the constraints regarding external trade (exports and imports), the characteristics of the vehicles fleet, the performance and financial results and the obstacles and constraints face by the business in the course of its operation. Elaboration of an origin-destination matrix with more than 850 routes classified according to the type of origin and the type of destination.



Preparation of the list of enterprises to be surveyed following specific strata for each country, preparation of the survey tools (questionnaires, training guides, data entry and validation tools), overall management of the project in the field including the planning and the supervision of the survey, the recruiting, training and supervision of local enumerators, the implementation of quality control, validation and auditing of questionnaires, and data entry and cleaning.

- **Barriers to Regional Integration in the Maghreb – World Bank (2008-on going):** In order to better understand the nature and the extent of existing constraints to a greater level of economic integration among the Maghreb countries, the purpose of this project is to carry out structured interviews of establishments in each of the Survey countries (Algeria, Morocco and Tunisia). Two specific surveys are conducted: a first one related to firms engaging in trade of merchandise and service activities (the "barriers to intraregional trade survey") and a second one related to Foreign Direct Investment (FDI) in the Maghreb region, (the "barriers to Intraregional FDI survey").

During this project, EEC has to coordinate the surveys both on substance and from a logistical point of view and has to produce quality data sets usable for comparisons. For each country all the tasks from planning to implementation are completed, including planning and monitoring the field work, training of interviewers, supervision of interviewers, implementation of quality controls, validation and auditing of questionnaires as well as data entry and cleaning. Through this survey, approximately 600 business establishments (top management) will be interviewed.

- **Bank Corporate Governance study – Tools design – World Bank (2008)**

The Corporate Governance Policy Practice Unit (CGGPP) has developed a toolkit to conduct diagnostic reviews of bank governance practices to support WB's client countries reform agenda on corporate governance. This toolkit includes 4 items: a supervisory questionnaire, a bank specific questionnaire, a bundle of bank specific financial indicators, and a legal and regulatory template. The exercise aims at providing a set of policy recommendations for countries seeking to foster corporate governance practices in their respective banking sectors.

The mandate given to EEC Canada was to convert components of the toolkit (bank specific questionnaire and legal and regulatory template) into a survey tool. The need for the survey arises from the importance of establishing firm-level and legal-regulatory level evidence to support a wide range of policy reforms in the reviewed countries and quantify the potential impact of the recommended course of action stemming from the country reviews. The specific purpose of this mandate was to carry out a structured revision of one/two tools of the bank governance review process, namely the bank specific questionnaire (and the legal/regulatory framework). The revision plan was structured in three phases:

- Identification of measurable items (Information road map)
- Conversion of the questionnaire into a survey product (Survey conversion)
- Map the items back to the benchmarks

- **Burundi's Investment Climate Assessment – World Bank (2007- 2008)**

Analysis and preparation of the Investment Climate Assessment report of Burundi from the ES data collected in 2006 and including a list of key business environment indicators currently used in the comparative or benchmarking analysis with neighboring countries or countries with similar economy. Presentation of the main results of the ICA and leading a workshop on the recommendations with a group of around sixty persons working in the private sector or in the development of the private sector.

- **Investment Climate Survey in Africa: 6 countries roll-out – Ghana, Mali, Mozambique, Senegal, South Africa, Zambia – World Bank (2007- 2008)**

Lead Statistical Specialist: preparation of the sample plans and of the lists of enterprises to be surveyed in the 6 countries.

- **Sub-Saharan Africa Trucking Sector Surveys in 7 Africa countries – Burkina Faso, Cameroon, Chad, Ghana, Kenya, Uganda, Zambia – World Bank (2006 – 2007)**

The project involves carrying out a survey on the Trucking Industry. For each country, EEC was responsible for the preparation of the survey tools (questionnaires, training guides, data entry and validation tools), for the overall management, for the planning, and the supervision of the survey, including planning and monitoring the fieldwork, training and supervision of Interview enumerators, implementation of quality control, validation and auditing of questionnaires, and data entry and cleaning. The overall targeted sample size in the six countries is a total of 120 trucking establishments and 360 truck drivers.



- Investment Climate Survey in Kenya – World Bank (2006 – 2007)
Country manager: preparation of the sample plans and of the lists of enterprises to be surveyed, survey planning in the field, recruitment and training of the surveyors, communication and sensitization campaign, management of the survey, interviews in the field, validation of the questionnaires and electronic validation of data. More than 700 establishments from various sizes and industrial sectors and from 4 important cities of the country have participated to the survey.
- Investment Climate Survey in Africa: 13 countries roll-out – Angola, Burundi, Botswana, Gambia, Guinea, Guinea-Bissau, Mauritania, Namibia, Uganda, Democratic Republic of Congo, Rwanda, Swaziland, Tanzania – World Bank (2006 – 2007)
Lead Statistical Specialist: preparation of the sample plans and of the lists of enterprises to be surveyed in the 13 countries.
Project Director in Burundi and Rwanda (survey planning in the field, recruitment and training of the surveyors, communication and sensitization campaign, management of the survey, interviews in the field, validation of the questionnaires and electronic validation of data).
- Business Investment Climate Assessment in Africa –Malawi, Niger, Cameroon, Cape-Verde et Burkina Faso – World Bank (2005 – 2006)
The improvement of the business climate is one of the pillar in the World Bank's strategy for the promotion of economic growth and poverty alleviation in underdeveloped countries. The main objective of this project is to assess the business climate and to provide insights, analysis and benchmarking for countries seeking to promote private investment and enterprise growth. Each assessment is based on a standardized establishment level survey methodology designed to measure a number of investment climate constraints in a country and compare the findings across countries. Quantitative data (establishment's operations, financial results) and qualitative data (opinions, perceptions) are gathered from about 1 500 establishments.
The subjects discussed relate to the enterprise's history, the technology integration and the bottlenecks, the constraints regarding external trade (exports and imports), the utilization and appreciation of public utilities, the perceptions and opinions on the business environment, the political climate, and the confidence in the economy, the operations (sales, production capacity, inputs purchases, investments), the recent financial results and the workforce (number of employees, level of education and qualifications of the workforce) .
Lead Statistical Specialist: preparation of the sample plans and of the lists of enterprises to be surveyed in the 5 countries.
In Malawi, participation to the survey planning in the field, to the recruitment and training of the surveyors, to the communication and sensitization campaign, management of the survey, interviews in the field, validation of the questionnaires and electronic validation of data.
- Participation in an industrial development project definition mission in Madagascar for the Department of Industry, Energy and Mines (in the context of the strategic management of industrial development) - UNIDO (1991)
- Entrepreneurship in Guinea and potentialities in industrial sector (in the context of a strategic management industrial development project) - UNIDO (1991)
- Analysis of the Informal Sector in Guinea-Conakry and identification of the obstacles for an efficient resources utilisation, and of its potentialities - World Bank (1986-1987)
- Study of the manufacturing sector for identification of trade opportunities and elaboration of a strategy strengthening intra-regional trade - Caricom (Commonwealth) (1985)
- Comparative analysis between Montreal and other large cities regarding their industrial urban and socio-economic developments and in order to increase Montreal's role on the international scene - Institute of Applied Economics, Hautes Études Commerciales de Montréal (1979)



Project and investment analysis, economic and financial evaluation, monitoring

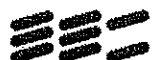
- Evaluation of a private sector foundation in Senegal: assessment and prospect - Agence de promotion des investissements et des grands travaux, Ministère de l'Économie et des Finances (2001)
- Loan monitoring system for the national telecommunication company in Hungary - European Bank of reconstruction and development (1993)
- Due diligence of the national telecommunication company in Hungary in view of its privatisation - European Bank of reconstruction and development (1993)
- Manual for Economic Project Assessment for the Ivory Coast with illustration of real cases - World Bank (1984)
- Economic analysis of a road Infrastructure project in Mali and Senegal - CIDA (1982)
- Review and analysis of the operations and of the financial position of the Upper Volta Airline Company to whom a Canadian aircraft was to be granted - CIDA (1982)

Public services tariffs

- Designing of local, national and international tariff structures for telephone services in the five member countries of Panaftel in Africa - CIDA (1985-1986) Designing of local, national and international tariff structures for telephone services in the five member countries of Panaftel in Africa - CIDA (1985-1986)

Training

- Training and capacity building on Investment Climate Surveys in Nigeria. The purpose was to increase Nigerian capacity to conduct the next future enterprises surveys in the country. The substance of the training program was to transfer know-how on key aspects of the ES in order to ensure its future smooth execution. Three areas were covered: pre-survey planning activities (delineating of the statistical universe, selection of respondents, preparation of the stratified master list, schedule of implementation, recruitment of enumerators, design of the questionnaires, data-entry forms, etc.) survey implementation and control procedures (tools used to implement the survey on a daily basis, methods used for call-backs, control data-entry and internal consistency checks, etc.), post-survey analysis (effective meaning of questions and variables, subjective and objective measures of investment climate). The training was provided to a group of 20 persons with an high academic background and a professional experience. Two training methods were used: formal or in-class sessions, and on-the-job (during key moments of the ES to demonstrate ways with which tasks are accomplished).
- Preparation of teaching and training materials (bibliography, detailed course outlined, educational advices to teachers, practical cases) in the context of a social projects economic assessment course - Management and Planning Institute of Algeria - UNIDO (1989)



ACADEMIC EXPERIENCE

Ms. Marleau has taught various fields of economics in BAA and MBA university programmes in Quebec.

WORKS AND PUBLICATIONS

- *Le fret aérien à Montréal*, Routes et transports, Volume 25, Numéro 4, Hiver 1995-1996.
- *Le marché des maisons de chambres dans la région de Montréal et l'impact des diverses réglementations*. L'habitat, Revue Actualité Immobilière, septembre 1980, volume 4, numéro 3.
- *L'économie du marché des maisons de chambres (1980)*.

Empirical study of the rooming houses market in Montreal: description and analysis of the market and of the type of proposed governmental intervention (law 107 project).

- *La réglementation des professionnels: intérêt public ou intérêt privé (1979)*.

Economic analysis of the market, of its regulation and the subsequent economic impacts in regard to public interest and private interest.

- *La théorie du «full-line forcing» (1978)*

Academic text for a MBA level course in economics.



Annex B – Report of Robert Levasseur and Larry Moate (January 27, 2012)



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January 27th 2012

Mr. Azim Hussain
c/o Norton Rose Canada LLP
Suite 2500
1 Place Ville Marie
Montréal, Quebec H3B 1R1
CANADA

Dear Mr.Hussain,

RE: Submission to the Judicial Compensation and Benefits Commission

McDowall Associates ("McDowall") has been retained by Norton Rose Canada LLP acting on behalf of the Association and Council in McDowall's capacity as a Canadian compensation consulting expert firm and specifically compensation benchmarking. Please find below McDowall's responses to compensation issues raised by the reading of the 2011 Government of Canada Submission and the expert report submitted by Mr. Pannu forming Appendix E of that submission.

65th percentile vs.75th percentile

Mr. Pannu states in his report that using the 75th percentile is inappropriate but provides no justification for his stance. The Government of Canada Submission argues that factors which had previously rendered the data of lawyers conservative have been removed. We will be arguing below that the data set selected is still conservative.

We suspect the "lawyers" data set, even with all the filters, contains many part-timers. Without casting value judgments on lower income lawyers, we are not convinced these individuals are working at their profession with the intensity required to qualify them as candidates for the judiciary. In compensation terms, these part-timers would not be considered a position match for inclusion in a data set used to determine the percentile rankings. In our consulting work, when we survey the base salary levels of lawyers employed by government and corporations, the median value is approximately \$127,000 (sources: Towers Watson Canadian 2011 Survey and Toronto Board of Trade 2011 Survey). This number is twice the minimum value used once the self employed exclusion has been applied. It is our contention that any lawyer committed to his/her practice on a full-time basis would be aware, albeit informally, of this compensation magnitude and would consider career re-orientation in the direction of corporate or government employment if earning much less than \$60,000.

The Government's Submission also asserts that the 65th percentile is appropriate due to current economic conditions (para. 68). Our view is the data itself serves as a bellwether for economic conditions and adjusting percentile placement to account for economic conditions effectively distorts the integrity of the results. In his chapter entitled Compensation Surveys (The Compensation Handbook – 4th Edition) D Terence Lichty states with respect to percentile positioning:

Regardless of the [survey] format, above average does not equal "over paid"; "below average" does not equal "under paid." "Average" does not equal proper pay posture for your organization versus your market. [...] Remember the pay environment in which you operate; performance, internal organizational values, job family, and other issues come to bear on what's right for you. If your compensation policy is to pay the 75th percentile, you may consider someone at the market average to be underpaid.

Moreover the 1999 Drouin Commission Report states on pages 39 and 40 that Hay Group, as the Government's expert, recommended that the use of the 75th percentile would be appropriate when analyzing CRA data.

The 2008 Navigant Consulting supplementary report also supports the use of the 75th percentile. Its author points out in paragraph 16 that using the 75th percentile allows for a greater group of potential lawyers willing to apply for the judiciary. At the 65th percentile, this pool would be smaller. The report states: "...setting the salary of the judiciary equal to the 75th percentile of private sector lawyers would not ensure that the judiciary would be comprised of the top 25% of lawyers in Canada." In fact, the author argues: "...setting judicial pay at the 75th percentile will result in a distribution of judges that comes predominately from the ranks of the lawyers below the cut-off point."

Indeed, use of a compensation percentile position in excess of the median (i.e.: values above the 50th percentile) is usually the result of a policy decision by an organization and is dictated by one or more of the following strategic imperatives:

- Attraction and retention due to sparse or highly specialized employment market.
- Recognition of technical complexity or breadth associated with certain positions
- Recognition of business challenges the organization may face.
- How the organization wishes to portray itself. For example, if an organization sells a premium product, it may wish to compensate its employees with premium pay.

Point 1: While the Government's Submission argues (para. 68) that there is an ample supply of lawyers applying for judicial appointment, the real issue is whether the Government wishes to ensure its pool of applicants is not eroded by uncompetitive compensation.

Point 2: The group used as a comparator is made up of self employed lawyers. Bearing in mind that the data set used by CRA in its analysis is based on self employed individuals identifying themselves as lawyers in Forms T2032 or T2124 we can safely presume that a number of these observations would include lawyers who are working on a part-time basis or are semi-retired. We understand this low income bias was mitigated by the data set being filtered by an age bracket of 44 to 56 years of age and a minimum annual income of \$60,000. Notwithstanding these filters we suspect it is weighted downward by lower income self employed lawyers. This impression is borne out when the difference in the number of CRA self employed lawyer observations by "All of Canada" and "All of Canada excluding those earning less than \$60,000" is tabulated. We have found that 25.9% of the total group is comprised of lawyers earning less than \$60,000. The distribution of the CRA data set by age group is as follows:

Percentage of filers earning less than \$60,000

Age	35-43	44-47	48-51	52-55	56-59	60-63	64-69
%	22.8	22.6	23.3	24.2	26.8	29.8	34.2

As will be discussed further below, we believe that the data is diluted and that using the 75th Percentile is necessary to provide a true representation of the market for lawyers.

Point 3: While the use of the 75th percentile has decreased somewhat in prevalence in the private sector in recent years, this is primarily in senior positions where a significant proportion of their compensation is delivered through variable compensation. Organizations with lower levels of variable compensation continue to monitor market position very closely. We have found that companies with lower variable compensation tend to espouse above-median market positioning in an effort to remain competitive. This state of affairs is significant to judges because they earn a base salary alone and the year-to-year variance available to senior executives (and to lawyers, for that matter) is not available to them. As "fixed-income" earners the base salary position of judges is a critical factor.

Age range

By increasing the age selection from 44-56 years to 35-69 years the Government's Submission is increasing the number of low earners, especially at the higher end of the age scale. (See table above.) The Pannu report mentions on the top of page 3 that CRA suspects that self employed lawyers are retiring at a greater rate than younger lawyers are joining their ranks. We therefore infer by this behavior which is supported by the data that there are likely to be a large number of higher aged lawyers working part-time and pulling down the median.

We disagree with the data weighting approach proposed by the Government's Submission. Age has been used in both submissions to filter out poor matches from the CRA data set and we believe that this use is appropriate if the correct filters are in place. The explicit purpose for selecting an age bracket is to capture lawyers who are most likely to be appointed as judges. Implicitly, age bracketing also contributes to filtering out part-timers and semi-retired lawyers.

Adding age weighting to the determination adds a foreign factor to the percentile distribution, which detracts from the integrity of the selected data set. Age implies step progressions and there is likely to be little correlation between the compensation of seasoned lawyers and their age over such a broad time span. Age cannot be used as a proxy for years at the Bar. Lawyers do not all begin practicing law at the same age. Some in fact join the profession later in life.

In our work we are reluctant to use age or seniority for senior positions. Compensation professionals as a general rule avoid using any type of data weighting. Weighting takes away from the integrity of the data set and the percentile being selected. This is particularly important when market data is reviewed annually. Weighting blurs the data by introducing other criteria to the analysis thereby potentially distorting the year-over-year results.

In our view selecting an age bracket that captures lawyers who are most likely to be appointed as judges suggests that that this age group is when lawyers are most likely to be committed to their profession and "at the top of their game" in terms of ability. A graduated scale, as proposed by the weightings Mr. Pannu suggests, creates unnecessary differentiations.

Low-income exclusion

We believe that including low-income lawyers adds considerable "noise" to the data, given the inordinate number of part-time practitioners included in the data-set. The impact this inclusion has on the median is significant and as the exclusion selection criteria implies, lawyers who are not really committed to their profession or are not successful should not be candidates to join the judiciary. It should be noted that Mr. Pannu acknowledges that it is important to filter out lawyers who are not full-time self employed lawyers by excluding individuals who receive C/QPP amounts exceeding the sum of

their professional income and individuals whose employment income exceeds the sum of their professional/business income. (page 2, bullets 4 and 5.) The selection criteria, however, are not sensitive enough to capture most of them. For example, a 40 year old lawyer working from his/her home and processing a few real estate transactions in a tax year would remain in the data-set.

We disagree with Mr. Pannu's assertion that the \$60,000 exclusion is inappropriate and uncommon in benchmarking salaries for comparative purposes. From the perspective of compensation professionals the use of such a broad sample as he suggests is unusual. There are two fundamental factors to consider when conducting a compensation market review: the comparator group of organizations used and the matched positions. While the judges' review is based on the specific universe of self employed lawyers we assume the survey group is valid. On the other hand, we cannot be certain that we are matching the surveyed individuals to judiciary eligible positions. Mr. Pannu illustrates this very point in his analysis table that shows the difference between the 5th and 95th percentiles. Using the 2010 numbers as an example, no compensation professional would accept a sample starting at \$12,007 for a specific position which has a current salary of \$281,100. Entry level file clerks earn at least twice as much as \$12,000. By including all these low earners Mr. Pannu is effectively pulling down the median. We believe that such a broad data-set as that provided by CRA creates an imperfect universe of lawyers suitable to be appointed as judges. It is therefore in our view essential to retain the \$60,000 exclusion because it eliminates observations that are nothing more than statistical "noise."

Census metropolitan areas

We understand that most judges originate from the 10 Canadian largest metropolitan centers (CMAs). Generally speaking, higher compensation levels are paid in CMAs for major two reasons:

- Cost of living is higher in these centers, and
- Lawyers practicing in these centers are typically involved in legal matters of higher complexity.

Therefore, it should come as no surprise that the lawyers working in larger urban centers are more likely to earn more than those in smaller urban centers or rural areas. Examining these differentials individually is irrelevant given that most appointees come from the top 10 CMAs and Mr. Pannu fails to mention this fact in his report.

Assertions about DM tenure

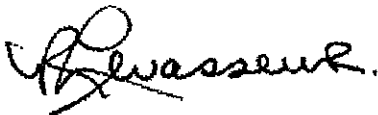
Before commenting on the Government Submission's assertions about tenure, we are unsure about the accuracy of the spreadsheet that was provided. It lists all deputy ministers since 1960 (DM2s and above.) There are 15 DMs listed as active employees in the spreadsheet. The Parliament of Canada's web site lists 28 DM's. Unless the remaining DMs are paid under the DM 1 or EX scale, their list is incomplete. Confirmation of this list would be useful.

Upon further examination of the DM data spreadsheet, few retirements are given as a reason for termination. We question the validity of the data set. Please note that "Promo/Transfer" is given as the most frequent reason for termination from the DM positions listed. While twelve DM-4 observations were noted (the most senior level of the DM rank) seven were tagged with "Promo/Transfer" as the reason for the termination. Where did these DM-4s go next in the Federal Public Service? The same can be said for DM-3 employees as well. 247 DM-3s were reported. 154 (62%) of these entries were tagged "Promo/Transfer." This proportion appears large for such senior functionaries.

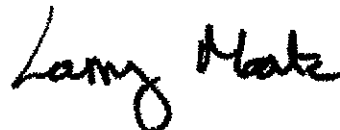
The Government's Submission in paragraphs 114-120 shows that the tenure of DM-3s is lower than that of judges. In fact, low tenure as DM-3s is understood given this position is typically the culmination

of a long career with the public service and incumbents are usually appointed in the latter part of their careers when they are approaching eligibility for a full unreduced pension. Conversely, newly appointed judges are beginning a new career with the judiciary. As compensation experts, it is obvious that comparing the respective average tenure of these two positions does not contribute to the analysis.

Yours sincerely,

Handwritten signature of Robert Levasseur in black ink.

Robert Levasseur
Senior Consultant and Principal

Handwritten signature of Larry Moate in black ink.

Larry Moate
Senior Consultant and Principal



Robert Levasseur

Background

Robert Levasseur is a Senior Consultant and Principal with McDowall Associates specializing in Executive Compensation. Prior to purchasing this firm with two partners, Robert practiced for 12 years as a senior executive-compensation consultant with Towers Watson and Hay Group. Before 1998, he held positions as a senior compensation and labour practitioner with a number of prominent Canadian corporations including Rothmans International, Canada Post Corporation, Sherritt International and Steinberg Inc.

Executive Compensation Expert

Robert's experience covers all aspects of executive compensation. He has assisted various clients in developing both equity and cash-based performance management and incentive plans and has provided pay-for-performance reviews including the valuation of equity based and non-monetary compensation. Most recently he has advised both compensation committees and management regarding executive compensation governance and executive compensation strategy. His client group spans the private and public sectors and he has consulted to a wide range of organizations from small private companies to large multi-nationals.

Roberts's private sector assignments have hailed from many industry sectors, including pharmaceuticals, financial services, technology and manufacturing. Within the public sector, Robert has extensive experience with government, Crown corporations, not-for-profits, the health and regulatory sectors. Notably, He advised the Stephenson Commission between 2001 and 2006.

Credentials and Public Profile

Robert holds a Bachelor of Arts (Honors) from McGill University and is on the faculty of The Directors College and Humber College's CEB program. He has been quoted in various daily and monthly publications and speaks regularly on executive compensation matters. Most recently Robert has spoken at the 2010 World at Work Conference, the HRPAs 2011 Compensation Conference, a CGA development course, was quoted in Canadian Business magazine, the Globe & Mail, has been published in the Canadian Compensation and Benefits Reporter and the August 2011 edition of Work Span magazine.



Larry Moate

Background

Larry has been consulting in the Human Resources field for over 25 years. Prior to joining McDowall Associates, Larry was a Senior Consultant in Compensation with Watson Wyatt Canada ULC.

Market Analysis, Program Design and Compensation Expert

Larry has over 15 years' experience assisting clients with their compensation strategy, compensation program design and administration needs. Larry's areas of expertise include the management and co-ordination of complex competitive market compensation reviews for Executive, Board Director and Non-Executive positions, as well as the management and co-ordination of custom compensation survey projects for a wide range of industry sectors including the financial, education, food and consumer products, logistics, and auto-parts sectors.

Larry has assisted clients with the design and calibration of variable pay programs, as well as salary structure design projects including complex Pay Equity analysis.

Larry's expertise also includes the development of job measurement methodologies and the facilitation of job measurement sessions.

Prior to assisting clients with their compensation program needs, Larry accumulated over 10 years of experience in the retirement benefits field, where he specialized in pension plan administration, and assisted clients with a complete range of administrative activities.

Education and Public Profile

Larry graduated with an Honors BA in English and History from the University of Toronto.

Larry has spoken at HRPAs conferences and numerous industry groups on a variety of compensation related topics, and has contributed to Canadian HR Reporter Magazine.

Annex C – Report of Brian FitzGerald (January 27, 2012)



January 27, 2012

Mr. Azim Hussain
Norton Rose Canada LLP
1 Place Ville Marie, Suite 2500
Montréal, Québec
H3B 1R1

Re: Valuation of Judicial Annuity

I have been retained by the firm of Norton Rose Canada LLP acting on behalf of the Canadian Superior Court Judges Association and the Canadian Judicial Council to analyse and provide commentary on those parts of the "Report on the Earnings of Self-Employed Lawyers" (the "Pannu report") which relate to the calculation of the value of the judicial annuity. The report was prepared by Mr. Haripaul Pannu and formed part of the submission of the Government of Canada to the 2011 Judicial Compensation and Benefits Commission (the "2011 Government submission").

A brief summary of my qualifications follows; more details may be found in Appendix H of this report. I have been a Fellow of the Canadian Institute of Actuaries (CIA) since 1969. Since that date I have continuously practiced as an actuary, almost exclusively in the area of pension plans, providing consulting services on the design, administration and financing of such plans, and advice on the requirements for compliance with applicable legislation and the administrative rules of the regulators. Between 1969 and 1998 I was directly involved with the preparation of pension plan actuarial valuations on a regular basis, usually as the signing actuary. From 1999 until 2003, I managed the investment and administration of the \$12 billion Ontario Hydro pension plan while negotiating the terms of the transfer of the assets and liabilities to the successor companies of Ontario Hydro on behalf of the Ontario government. I served on the board of the Ontario Electricity Financial Corporation from 1999 until 2005 and was Chair of the Pension Committee throughout that time.

Between 1998 and 2009 I served a total of 8 years on the CIA Committee of Professional Conduct, including two years as Chair. During that time I was called upon to review many actuarial reports and provide my opinion as to whether they complied with the professional standards of the CIA. In 2007 I was hired by the federal Office of the Superintendent of Financial Institutions (OSFI) to review actuarial reports submitted to the Superintendent and to advise as to any technical issues or concerns with those reports. I have chaired a number of other committees of the CIA, including the Committee on Pension Plan Financial Reporting and the Committee on Adoption of Standards of Practice. I have twice been elected by my peers to the governing board of the Canadian Institute of Actuaries and also to the position of President. I am a recognized expert in pension actuarial issues. I have been accepted as an actuarial expert in the Ontario Superior Court of Justice. I have testified before the Ontario Financial Services Tribunal and at mediation and arbitration hearings.

As will be evident from the summary of my experience and qualifications, I have no legal training. However, I am required in the course of my work to read and understand legal documents relating

to pension plans. When I refer to such documents it is not with any intent to offer any legal opinion as to their meaning. I defer to legal counsel for such interpretations.

I have incorporated in this report the results of certain actuarial calculations prepared under my direction by the firm of Actuarial Solutions Inc. (ASI). I have reviewed and approved the methods used by ASI in preparing these calculations and have satisfied myself as to the reasonableness of the results. The selection of actuarial assumptions is mine, as are all opinions given in this report.

While I have relied upon counsel to provide me with the necessary background information in order to prepare my report, the opinions contained in it are entirely my own.

Appendix G provides a list of the documents that were made available to me for the preparation of this report.

My report follows:

1. My review and commentary are restricted to those parts of the Pannu report that relate to the calculation of the value of the judicial annuity as referred to in Paragraphs 76 to 83 of the Government submission.
2. The Government submission and the Pannu reports both contained brief descriptions of the judicial annuity. I also had a copy of the Actuarial Report on the Pension Plan for Federally Appointed Judges as at March 31, 2010 (dated October 29, 2010) prepared by the Office of the Chief Actuary of the Office of the Superintendent of Financial Institutions (the "2010 OSFI report"). To the extent that there were differences between these documents in the description of the judicial annuity the, 2010 OSFI report was relied upon.
3. It should be noted that the pension plan is not a registered pension plan for the purposes of the Income Tax Act, nor is it funded like all private sector plans and an increasing number of public sector plans¹. The financing of the plan is through the Consolidated Revenue Fund of the federal government².
4. The federal Public Pensions Reporting Act requires that the plan be valued as if it were a funded plan³. The most recent valuation is reported in the 2010 OSFI report. The next OSFI report is scheduled to be as at March 31, 2012. The valuation of funded plans is done on a conservative basis. The reason being that for funding, it is desirable to slightly overstate the required contributions, that is to err on the high side, and by doing so create a margin that can be accessed when experience is not good. This helps to stabilize the contributions from year to year. If the contributions are overstated in one valuation, they can be used to reduce contributions at a later date.

¹ See 2010 OSFI report, page 6

² Ibid, page 6

³ Ibid, page 6

5. In the case of the judicial annuity, the value is to be used to adjust the judges' compensation. If the value is too high it will overstate the adjustment, if too low it will understate it. Also, there is no mechanism for correcting for overstatements or understatements at a later date.
6. It is, in my opinion, more appropriate to use a "best estimate basis" when determining a value to be used to adjust current compensation. The assumptions that the actuary selects should be those which, in the actuary's opinion, are the most likely to be reflected in the actual future experience.
7. I note that Mr. Pannu includes the value of disability benefits in his 2010 report but did not do so in 2007 or in 2004. He gives no reason for this change in methodology. Compensation arrangements that include disability benefits sometimes provide some or all of these benefits under the pension plan and sometimes outside the pension plan, often through an insurance policy. The Judges Act places the disability benefit inside the pension plan. The decision as to which route to take is administrative not actuarial. The Chief Actuary includes the disability benefit in his valuation, which is appropriate as he is determining the "funding" status of the plan (see paragraph 4 above). The question as to whether the disability benefit is to be included in the judicial annuity value is, in my view, a matter of agreement between the parties, as are such other items as life insurance and other benefits as discussed in paragraph 84 of the Government submission.
8. As the disability benefit was not included in earlier calculations and because I find no reasons why a change in methodology should be made at this time, disability benefits have not been included in the determination of the value of the judicial annuity. However, in Appendix D there is a calculation of the value if the disability benefit were it to be included.
9. The calculations have been undertaken using a method which expresses the value of the benefits provided by the Government of Canada under the plan as a level percentage of a judge's annual income during their appointment to the bench. This method provides an appropriate measure of the value the benefits under the plan.
10. A "Benefit Value" has been calculated for appointment ages 40 through 65. The "Benefit Value" for each appointment age has been determined by calculating the total actuarial present value of the benefits provided under the plan, then reducing this value by the total actuarial present value of benefits which are funded by the judge's contributions, and then dividing the resulting value by the actuarial present value of the judges salary during their appointment to the bench. For greater clarity, the actuarial present value calculations noted above are calculated as at the judge's date of appointment. The "Benefit Value" for appointment ages 40 through 65 expressed as a formula is as follows:

$\text{Benefit Value}_{\text{Age } x} = \{ \text{PVFBen}_{\text{Age } x} - \text{PVFCont}_{\text{Age } x} \} / \text{PVFSal}_{\text{Age } x}$; where

$\text{PVFBen}_{\text{Age } x}$ is the Actuarial Present Value, calculated at the appointment date, of the benefits provided under the plan for a judge appointed at age x;

$\text{PVFCont}_{\text{Age } x}$ is the Actuarial Present Value, calculated at the appointment date, of the judge's contributions for a judge appointed at age x; and

$\text{PVFSal}_{\text{Age } x}$ is the Actuarial Present Value, calculated at the appointment date, of the judge's salary for a judge appointed at age x.

The "Benefit Values" above vary significantly by appointment age. Therefore, a "Weighted Average Benefit Value" to determine a single value applicable to all judges has been calculated.

What follows illustrates the "Benefit Value_{Age 40}" and "Benefit Value_{Age 65}" calculations.

The results of the calculations for "Benefit Value_{Age 40}" are as follows⁴:

$$\text{Benefit Value}_{\text{Age } 40} = \{ \text{PVFBen}_{\text{Age } 40} - \text{PVFCont}_{\text{Age } 40} \} / \text{PVFSal}_{\text{Age } 40}$$

$$\text{Benefit Value}_{\text{Age } 40} = \{ \$1,132,500 - \$311,600 \} / \$5,595,800$$

$$\text{Benefit Value}_{\text{Age } 40} = 14.7\%$$

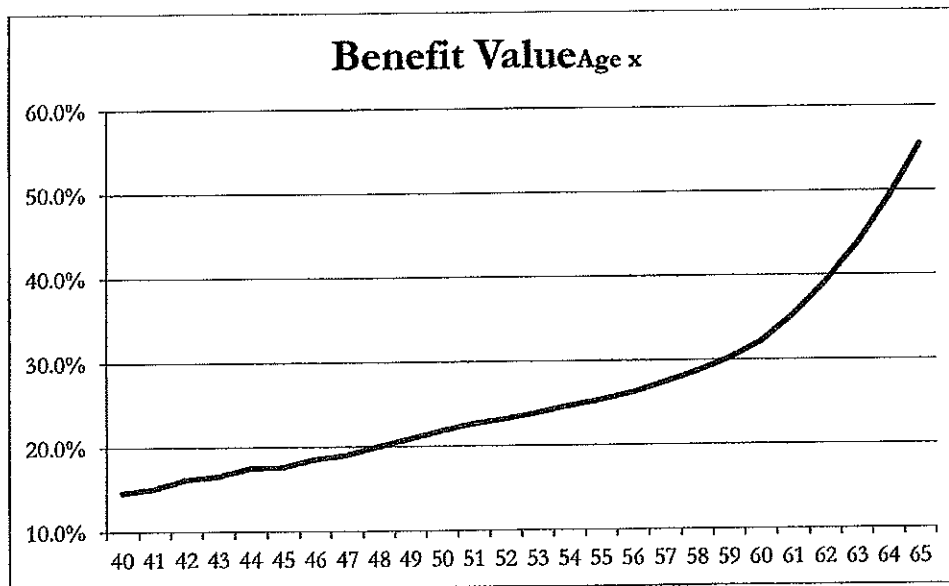
The results of the calculations for "Benefit Value_{Age 65}" are as follows³:

$$\text{Benefit Value}_{\text{Age } 65} = \{ \text{PVFBen}_{\text{Age } 65} - \text{PVFCont}_{\text{Age } 65} \} / \text{PVFSal}_{\text{Age } 65}$$

$$\text{Benefit Value}_{\text{Age } 65} = \{ \$1,512,600 - \$169,500 \} / \$2,421,300$$

$$\text{Benefit Value}_{\text{Age } 65} = 55.5\%$$

The chart below illustrates the "Benefit Value_{Age x}" from ages 40 through 65.



⁴ A salary rate of \$279,542 (or \$271,400 increased by 3.0%) was used as the basis to calculate the actuarial present value of benefits, contributions, and salaries in these examples. While a different salary rate would alter the actuarial present value components in the formula, it would not change the net result of the "Benefit Value_{Age x}" calculation.

11. In determining the “Weighted Average Benefit Value”, the following formula has been used:

$$\begin{aligned} \text{Weighted Average Benefit Value} = & \{5.2\% \times \text{Average Benefit Value}_{\text{Age 40 to 43}}\} + \\ & \{20.7\% \times \text{Average Benefit Value}_{\text{Age 44 to 47}}\} + \\ & \{24.0\% \times \text{Average Benefit Value}_{\text{Age 48 to 51}}\} + \\ & \{25.0\% \times \text{Average Benefit Value}_{\text{Age 52 to 55}}\} + \\ & \{16.9\% \times \text{Average Benefit Value}_{\text{Age 56 to 59}}\} + \\ & \{6.7\% \times \text{Average Benefit Value}_{\text{Age 60 to 63}}\} + \\ & \{1.5\% \times \text{Average Benefit Value}_{\text{Age 64 to 65}}\}; \text{ where} \end{aligned}$$

Average Benefit Value_{Age y to z} is the average of the “Benefit Value_{Age x}” from ages y to age z.

Age at Appointment	Percentage of Appointments	Benefit Value	Weighted Average Benefit Value
40-43	5.2%	15.6%	0.8%
44-47	20.7%	18.2%	3.8%
48-51	24.0%	21.4%	5.1%
52-55	25.0%	24.2%	6.0%
56-59	16.9%	28.2%	4.8%
60-63	6.7%	37.5%	2.5%
64-65	1.5%	52.2%	0.8%
	100%		23.8%

12. The weighting rates applicable to the “Average Benefit Values” in the formula above are representative of the ages of appointment for federal judges for the period January 1, 1997 to March 31, 2011 as outlined in the Pannu report.
13. While the methodology described above does not consider a specific calculation date, it is appropriate for the purposes of expressing the value of the benefits provided by the Government of Canada under the plan as a level percentage of a judge’s annual income during their appointment to the bench.
14. Using the methodology outlined above, and the plan provisions outlined in Appendix A and the actuarial assumptions in Appendix B, the “**Weighted Average Benefit Value**” is calculated to be **23.8%**. If it is decided that the disability benefit should be included in the judicial annuity, the pension value is calculated to be 22.7% and the disability value 3.0% for a total of 25.7% (see table in Appendix D).
15. In the process of performing the calculations above, an attempt was made to reproduce the results of the judicial annuity calculations prepared by Mr. Pannu in his current report and in his reports of 2007 and 2004. The results of this analysis are presented in Appendix D.



January 27, 2012

16. The methodology and assumptions used to perform this calculation are appropriate for the purposes of expressing the value of the benefits provided by the Government of Canada under the plan as a level percentage of a judge's annual income during their appointment to the bench. It should be understood that the methods and assumptions used to perform this calculation are not necessarily appropriate for any other purpose – including for the purposes of pre-funding the benefits under the plan.
17. The calculations in this report have been performed without using an incidence of pre-retirement disability assumption. Pre-retirement disability assumptions are outlined in the 2010 OSFI report and are used in the calculations prepared by Mr. Pannu. There has been favourable disability experience over the past few years (i.e. the actual number of disabled pensioners has been lower than the expected number of disabled pensioners). As outlined in the 2010 OSFI Report, during the three years ending March 31, 2010 there were 2 reported male disabilities compared with an expected number of 10.7 (i.e. 19% of expected), and there were 4 reported female disabilities compared with an expected number of 5.4 (i.e. 74% of expected). Also, OSFI has decreased the disability incidence rates in recent valuation reports when preparing their valuations for the plan. Moreover, the favourable disability experience can be seen in the actuarial deficit gain and loss analysis in recent reports prepared by OSFI:
 - a. 2010 OSFI Report: Pensionable Disability Gain of \$20 million;
 - b. OSFI Report: Pensionable Disability Gain of \$14 million;
 - c. OSFI Report: Pensionable Disability Gain of \$7.7 million

In the 2010 OSFI Report, the Pensionable Disability Gain/Loss was not disclosed in isolation as it was combined with the Retirement Gain/Loss. In conclusion, the use of the disability assumption as outlined in the 2010 OSFI Report overstates the cost of the disability benefit. In Appendix D, the calculation of the value of the judicial annuity, including the disability benefit, has been determined using disability rates at 50% of the OSFI rates.

18. For a summary of possible limitations on the work in this report, see Appendix F.
19. In my opinion, the data on which the calculations are based are sufficient and reliable for the purposes of the calculations.

In my opinion, the calculations outlined in this report have been performed in accordance with accepted actuarial practice in Canada.

A handwritten signature in black ink, appearing to read 'Brian A. P. FitzGerald', is written over a light blue horizontal line.

Brian A. P. FitzGerald F.I.A., F.C.I.A.

Appendix A

Summary of Plan Provisions Pension Plan for the Federally Appointed Judges

Membership	Compulsory for all judges appointed to federal or provincial courts by the Government of Canada.
Contributions - Judges	Judges appointed after February 16, 1975: 1% of salary to the Supplementary Retirement Benefits Account, and if not eligible for a full annuity, 6% of salary to the Consolidated Revenue Fund.
Contributions - Government	The government deemed contributions are the excess of the plan benefits paid from the Consolidated Revenue Fund over the contributions by judges thereto. The Government also contributes 1% of the salary which is credited to the Supplementary Retirement Benefits Account for judges appointed after February 16, 1975.
Eligibility to Normal Pensionable Retirement	Judicial office held until age 75; or age plus years of service of at least 80 (minimum 15 years of service); or in respect only of a judge of the Supreme Court of Canada, that service may be 10 years.
Normal Retirement Pension	2/3 of the judge's annual salary at the time of ceasing to hold office. The pension is reduced on a pro-rata basis if the judicial office was held for less than 10 years.
Eligibility to Early Retirement Pension	Age 55 with 10 years of Service.
Early Retirement Pension	Normal Retirement Pension above, adjusted by the following ratio: <ul style="list-style-type: none"> a) The numerator is the number of years during which the judge has continued in judicial office, and b) The denominator is the total number of years during which the judge would have been required to be in judicial office in order to be eligible for an unreduced pension. <p>Such pension is also reduced by 5% for every year that the pension commences in advance of age 60.</p>
Normal Form of Pension	Married judges: Joint life and 50% survivor pension. Single judges: Lifetime pension.
Cost of Living Adjustments	Pensions fully indexed to Consumer Price Indexed each year.
Termination prior to retirement	Refund of contributions with interest.
Disability benefits	Immediate unreduced pension payable to the judge.
Pre-retirement Death Benefits	A lump-sum benefit equal to 1/6 of salary, plus <ul style="list-style-type: none"> • If no surviving spouse exists, a refund of contributions;

- If a surviving spouse exists, 1/3 of the salary at death is payable as a lifetime pension; and
 - If dependent children exist, a pension equal to 1/5 of the surviving spouses pension is payable (and is adjusted if there are more than 4 children, or the child is orphaned).
-

Membership in the plan is compulsory for all judges appointed to federal or provincial courts by the Government of Canada. The benefits provided under the plan for judges who meet specific eligibility criteria include retirement and disability pension benefits, and preretirement death benefits.

The plan is financed by contributions by the judges, who are required to contribute 1% of salary to the supplementary Retirement Benefit Account, and if not eligible for a full annuity, 6% of salary to the Consolidated Revenue Fund. The government deemed contributions are the excess of the plan benefits paid from the Consolidated Revenue Fund over the contributions by the judges⁵. For greater clarity, the plan is financed through the Consolidated Revenue Fund primarily on a pay-as-you-go basis rather than being financed on a funding basis as are the other major pension plans sponsored by the Federal Government.

⁵ The government also contributes 1% of salary which is credited to the Supplementary Retirement Benefits Account for judges appointed after February 16, 1975.



Appendix B

Actuarial Assumptions Use in This Report

Interest Rate	5.75% per annum
Salary Increase Rate	3.00% per annum
Consumer Price Index Increase Rate	2.00% per annum
Post-retirement Pension Indexing	2.00% per annum
Termination of Employment or Death Prior to Retirement	Nil
Incidence of Disability Prior to Retirement	Nil
Retirement Age	Retirement rates specified in the actuarial report on the Pension Plan for Federally Appointed Judges as at 31 March 2010 prepared by the Office of the Chief Actuary of the Office of the Superintendent of Financial Institutions
Mortality Rates – Post-Retirement	UP1994 mortality table projected to 2020 using scale AA; Unisex Mortality rates (judges 66.7% male, spouse 33.3% female)
Marital Status at Retirement	Judges assumed to be 90% married at retirement; Male spouses assumed to be 3 years older than female spouse

Appendix C

Valuation Assumptions used by Mr. Pannu in his Reports

	December 13, 2011 Report	December 2007 Report	January 2004 Report
Interest Rate	5.75% per annum	6.00% per annum	6.00% per annum
Salary Increase	3.00% per annum	3.00% per annum	3.00% per annum
Consumer Price Index Increase Rate	2.00% per annum	2.00% per annum	2.00% per annum
Post-retirement Pension Indexing	100% of Consumer Price Index	100% of Consumer Price Index	100% of Consumer Price Index
Termination of Employment or Death Prior to Retirement	Nil	Nil	Nil
Incidence of Disability Prior to Retirement	Rates specified in the actuarial report on the Pension Plan for Federally Appointed Judges as at 31 March 2010 prepared by the Office of the Chief Actuary of the Office of the Superintendent of Financial Institutions (Unisex 67% male, 33% female)	Nil	Nil
Retirement Age	Retirement rates specified in the actuarial report on the Pension Plan for Federally Appointed Judges as at 31 March 2010 prepared by the Office of the Chief Actuary of the Office of the Superintendent of Financial Institutions	Retirement rates specified in the actuarial report on the Pension Plan for Federally Appointed Judges as at 31 March 2004 prepared by the Office of the Chief Actuary of the Office of the Superintendent of Financial Institutions	Retirement rates specified in the actuarial report on the Pension Plan for Federally Appointed Judges as at 31 March 2001 prepared by the Office of the Chief Actuary of the Office of the Superintendent of Financial Institutions
Mortality Rates -- Post-Retirement	UP1994 Mortality table projected to 2020 (unisex 67% male, 33% female)	UP1994 Mortality table projected to 2015 (unisex 67% male, 33% female)	80% of the average of the male and female mortality rates of the 1983 Group Annuity Mortality Table

Appendix D

Comparison of Results

The following table compares the results calculated by Mr. Pannu in his 2010 Report, 2007 Report, and 2004 Report and those that have been calculated in an attempt to reproduce his calculations.

Comparison of Results			
	Mr. Pannu	Capital G Consulting	Difference
December 13, 2011 Report			
Weighted Average Pension Value	27.2%	22.7%	4.5%
Weighted Average Disability Value	9.7%	3.0%	6.7%
Total Judicial Annuity Value	36.9%	25.7% ⁶	11.2%
December 2007 Report			
Weighted Average Pension Value	24.6%	21.5%	3.1%
January 2004 Report			
Weighted Average Pension Value	24.0%	22.8%	1.2%

The "Weighted Average Disability Value" was not included in the 2007 or 2004 reports prepared by Mr. Pannu.

The results obtained are consistently lower than those calculated by Mr. Pannu. In addition, Mr. André Sauvé, F.S.A, F.C.I.A. of Morneau Sobeco also attempted to replicate Mr. Pannu's results from the 2004 report and obtained a "Weighted Average Pension Value" of 22.5%, which is close to 22.8% in the table above.

When two actuaries prepare actuarial reports on the same plan the results may differ for a number of reasons:

1. The valuations may be for different purposes. If one valuation is for funding purposes the margin for adverse experience will lead to higher liability values and greater required contributions – not applicable in this situation.
2. There may be a difference in the actuaries' professional opinions as to what constitutes the best estimate for one or more of the assumptions.
3. There may be a difference in the data used by each – not applicable in this situation.
4. There may be different interpretations of the terms of the plan.

⁶ This result has been determined on a basis using 50% of the OSFI disability rates see paragraph 17 of this report.



January 27, 2012

5. The computer programs used by each may be designed with different levels of sophistication, with one using more approximations than the other.
6. One or the other of the two actuaries may have made an error.

When such differences are identified it is not unusual for the two actuaries to compare notes to identify the sources of the differences. There has not been an opportunity for such discussions to take place in this instance so I cannot be certain that I know why differences exist.

The consistency of the differences points to the possibility that there are differences in the interpretation of the terms of the plan and/or there are differences in the computer programs used. With due respect to Mr. Pannu, the calculations from this report were prepared using state-of-the-art actuarial valuation programs, thereby providing a very high level of confidence in their accuracy. It is my opinion, therefore, that further work on this issue would draw Mr. Pannu's results closer to ours.

Appendix E

Comparisons to Other Calculations

In addition to performing the calculations described elsewhere in this report, an attempt has been made to reproduce the results of the judicial annuity calculations prepared by Mr. Haripaul Pannu in his reports of 2010, 2007 and 2004.

It is understood that Mr. Pannu has used a methodology consistent with the methodology outlined in the section above when preparing his calculations of the "Weighted Average Pension Value" in reports listed above. As a result, an attempt has been made to reproduce the results calculated by Mr. Pannu using this methodology and the assumptions outlined in Mr. Pannu's reports.

A summary of the assumptions used by Mr. Pannu in these reports are listed in Appendix C.



January 27, 2012

Appendix F

Summary of Possible Limitations

The following is a summary of the possible limitations in the work leading to this report:

With respect to the Plan provisions:

1. The plan provisions used in the calculations of this report are based on an interpretation of the 2010 OSFI Report.
2. The 2010 OSFI Report is not fully clear as to what early retirement pensions are provided to judges who retire without qualifying for an unreduced pension. Specifically, this OSFI report indicates that the early retirement pension is reduced by the fraction of which:
 - a. The numerator is the number of years during which the judge has continued in judicial office, and
 - b. The denominator is the number of years during which the judge would have been *required to continue* in judicial office in order to be eligible for an unreduced pension (*emphasis added*).

For this report, it has been assumed that this fraction should be determined as follows:

- a. The numerator is the number of years during which the judge has continued in judicial office, and
- b. The denominator is the total number of years during which the judge would have been required to be in judicial office in order to be eligible for an unreduced pension.

It is further noted that this understanding does not have a material impact on the results, as the retirement age assumption used for the calculations do not place significant weights to ages where an early retirement reduction is applicable.

Appendix G

Schedule of Documents

In performing these calculations, reliance has been placed upon the following documents and information which were provided to me:

1. "Report on the Earnings of Self-Employed Lawyers for the Department of Justice Canada in Preparation for the 2007 Judicial Compensation and Benefits Commission" dated December 2007 (the "2007 Report"); and
2. "Report on the Earnings of Self-Employed Lawyers for the Department of Justice Canada in Preparation for the 2003 Judicial Compensation and Benefits Commission" dated January 2004 (the "2004 Report").
3. Letter entitled "Review of Submissions on the Earnings of Layers in Private Practice" dated March 24, 2004, from Mr. André Sauvé, F.S.A, F.C.I.A. of Morneau Sobeco to the Judicial Compensation and Benefits Commission.
4. Letter entitled "Judicial Compensation and Benefits Commission Report on the Incomes of Canadian Lawyers" dated February 27, 2004, from Mr. Haripaul Pannu of Western Compensation & Benefits Consultants to Mr. Paul B. Vickery of the Department of Justice Canada.

In addition, reliance has been placed upon the following information, which is publicly available:

1. "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 (the "Pannu Report")
2. The Submission of the Government of Canada to the 2011 Judicial Compensation and Benefits Commission as prepared by Ms. Catherine Flood of Blake, Cassels & Graydon LLP (the "Government Report").
3. The actuarial report on the Pension Plan for Federally Appointed Judges as at 31 March 2010 prepared by the Office of the Chief Actuary of the Office of the Superintendent of Financial Institutions (the "2010 OSFI Report");
4. The actuarial report on the Pension Plan for Federally Appointed Judges as at 31 March 2007 prepared by the Office of the Chief Actuary of the Office of the Superintendent of Financial Institutions (the "2007 OSFI Report");
5. The actuarial report on the Pension Plan for Federally Appointed Judges as at 31 March 2004 prepared by the Office of the Chief Actuary of the Office of the Superintendent of Financial Institutions (the "2004 OSFI Report"); and
6. The actuarial report on the Pension Plan for Federally Appointed Judges as at 31 March 2001 prepared by the Office of the Chief Actuary of the Office of the Superintendent of Financial Institutions (the "2001 OSFI Report").

Appendix H

Summary of Experience & Qualifications

Experience

- Consulting Actuary and co-owner of Capital G Consulting Inc., providing advice on actuarial and human resource issues including expert witness and related services.
- Recognized expert in pension actuarial issues; accepted as an actuarial expert in the Ontario Superior Court of Justice; testified before the Ontario Financial Services Tribunal and at mediation and arbitration hearings.
- Co-author of *The Pension Puzzle*, the plan member's guide to pensions in Canada, now in its third edition.
- Former President of the Canadian Institute of Actuaries (CIA).
- Member of the federal Auditor General's Advisory Committee on Tax Assistance for Retirement Savings (1994).
- Retired as Principal of Towers Perrin Inc., December 1998.
- Over 30 years experience as a consulting actuary: designing and administering pension plans and governance policies (public and private sector, single and multi-employer); advising on pension tax issues; and designing and conducting retirement education programs.
- Former Chair of the Board and CEO of Ontario Electricity Pension Services Corporation.
- Former Chair of the Pension Committee and member of the Board of Ontario Electricity Financial Corporation.
- Managed investment and administration of \$12 billion pension plan of the former Ontario Hydro and negotiated transition to successor companies (1999-2003).
- Fellow of the Institute of Actuaries (UK), Fellow of the Canadian Institute of Actuaries, Associate of the Society of Actuaries.
- Graduated from Oxford University with honours degree in Mathematics.

Professional Activities

- Society of Actuaries - Education and Examinations - Canadian Pension Course Committee (1988-1995).
- Society of Actuaries - Fellowship Admissions Course facilitator (1992- 2004).
- Society of Actuaries - Pension Section Council (1991-93).
- Canadian Institute of Actuaries (CIA) - Younger Actuaries Committee (1972-75), Chair (1974-75).
- CIA - Program Committee (1974-75).
- CIA - Private Pensions Steering Committee (1975-77).

- CIA - Pension Standards Committee (1982-87).
- CIA - Pension Plan Financial Reporting Committee (1987-91); Chair (1989-91).
- CIA - Co-Chair Task Force on Economic Assumptions (1991-93).
- CIA - Member of Council (1990-93 and 1995-97).
- CIA - Chair, Committee on Adoption of Standards of Practice (1993-95).
- CIA - Vice-President (1995-97).
- CIA –Committee on Professional Conduct; Vice-Chair (1998-2001); Chair (2001-2003); member (2005-2009).
- CIA – President (2004-05).
- CIA – Chair of Elections Committee (2006-2007).

Community Activities

- Member of National Board and Chair of Major Gifts and Investment Committees of Parkinson Society Canada.
- Former member of United Way of Greater Toronto Pension and Benefits Committee.
- Former Member of the Board of the International Foundation for St. Catherine’s College, Oxford.
- Member of the Board and former Chair and Treasurer of One Balmoral Condominium.
- Former Mentor for Covenant House “Ticket to Life” youth employment programme.
- Volunteer for Canadian National Institute for the Blind – book recording programme.
- Recipient of Canadian Institute of Actuaries Gold Award for Volunteer Services.

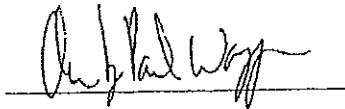
Annex D – Report of Paul Wazzan (January 28, 2008)

A REVIEW OF CANADIAN PRIVATE-SECTOR LAWYER INCOME

SUPPLEMENTAL REPORT

Submitted to the Canadian Superior Courts Judges Association

January 28, 2008

A handwritten signature in black ink, appearing to read "C. Paul Wazzan", is written over a horizontal line.

C. Paul Wazzan, Ph.D.
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This is a supplemental report that we have been asked by Ogilvy Renault to prepare on behalf of the Canadian Superior Courts Judges Association in order to comment on the December 2007 report entitled "Report on the Earnings of Self-Employed Lawyers for the Department of Justice Canada in Preparation for the 2007 Judicial Compensation and Benefits Commission", prepared by Mr. Haripaul Pannu (the "Pannu Report") on behalf of the Government. We have also been asked to comment on the methodological argument made in Annex A of the Government's Submission dated December 14, 2007.

I. Review of the Pannu Report

Reliability of Data

1. The Pannu Report comments on 2002-2005 data provided by the Canadian Revenue Agency ("CRA"). Mr. Pannu indicates that he has tested the data for "reliability," "comparability," and "consistency."¹
2. Our understanding is that both parties were given the same information on the CRA data. This took the form of income tables broken down by age and region. Neither party had access to the raw data given concerns for confidentiality. Without access to the raw data, we fail to see how Mr. Pannu would have been able to test the data for reliability.
3. It should be noted that the CRA data represents approximately 21,000 to 23,000 self-employed lawyers depending on the reporting year.² This figure is substantially lower than the known number of lawyers in Canada, estimated at 74,000, which includes both self-employed and employed lawyers.³ While the

¹ Pannu Report, p. 3

² Pannu Report, p 3.

³ See 2005 Law Society Statistics, FLSC, p 2.

latter fact might explain the discrepancy between the two figures, Mr. Pannu does not engage in the exercise of determining whether the CRA data reflects the actual universe of self-employed lawyers. It is customary statistical practice to ensure that a survey population reflects the actual universe sought to be surveyed. For example, this is why the Navigant Report of December 14, 2007 sought to validate the survey results it obtained by comparing the demographic features of its respondent population with those of the purported universe of lawyers available from the Federation of Law Societies of Canada.⁴

4. Also, Mr. Pannu does not explain why there is a general downward trend of the number of self-employed lawyers from 2002 to 2005, even though this is counter-intuitive. The fact that 2005 income data might not include all self-employed lawyers who will eventually file for that year does not explain the general downward trend in the CRA data. Any exercise testing the reliability of the CRA data would require delving into this issue.

The low income exclusion

5. Mr. Pannu takes the position in his report that the \$60,000 exclusion applied by the McLennan Commission (his reasoning would extend to the \$50,000 exclusion applied by the earlier Drouin Commission) is not appropriate. His opinion seems based on the fact that the CRA data shows that some self-employed lawyers in fact earned less than this amount and should therefore be included. He acknowledges that these individuals may be part-time workers but he states that they are still theoretically eligible.

⁴ Navigant Report, pp. 21-23.

6. Mr. Pannu fails to recognize that the very reason for applying the exclusion is to remove such workers so as to ensure that the statistics reflect only fully employed private-sector lawyers who can be reasonably presumed to be qualified for appointment. Indeed, the justifications advanced by Mr. Pannu (e.g., working less because of life-style choice, raising children, or taking care of elderly family members) all confirm that the data related to these lawyers should be excluded from the analysis.
7. As a final point, we note that the \$60,000 income cut-off is very conservative. A higher cut-off could readily be justified based solely on the need to make an adjustment for inflation since the \$60,000 cut-off was applied by the last commission in the same way the McLennan Commission increased the amount of the cut-off from \$50,000 (as applied by the Drouin Commission) to \$60,000. When adjusted for inflation since 2004, the amount of \$60,000 would be \$64,000.
8. In sum, it is our opinion that the previous Commissions were correct in applying a low-income exclusion to the CRA data, and Mr. Pannu has advanced no justification to deviate from that methodology.

The proposed exclusion of high-end earners

9. Mr. Pannu attempts to justify an exclusion of private sector lawyer incomes at the higher end of the distribution on the basis of 1) the low-end exclusion and 2) statistical reasoning. Both justifications are flawed.
10. First, the low-end exclusion, as explained above, is made simply to eliminate those lawyers who were not likely to be employed full time or otherwise not likely to be qualified for the Bench. In other words, the exclusion is methodologically justified, not statistically motivated. In contrast, excluding the

highest earning lawyers is not methodologically justified at all – these are in fact likely to be the most highly qualified candidates.

11. Second, when computing income percentiles (e.g., at the 75th percentile) as we are doing, one certainly would not want to eliminate observations for qualified lawyers. The statistical practice of eliminating data at the top and bottom is not justified in this instance and moreover would only be appropriate in any event if one was concerned merely with the mean and wished to reduce the standard deviation of the results due to outliers. Outliers are data points that are somehow erroneous or not part of the trend for some anomalous reason. They can be excluded without any consequent distortion to the data because they do not have much in common with the data in general. It is for this reason that they should be excluded regardless of where they appear, whether at the top or the bottom.

12. In the present case, outliers are not an issue. Even those incomes below \$60,000 do not constitute outliers, but rather, data points of individuals who would not effectively qualify for the Bench. It is for that methodological reason that those data points must be excluded.

Flawed age weighting

13. Mr. Pannu opposes using the 44-56 age band, in spite of the fact that 75% of the appointees fall in that category,⁵ and indicates that a weighted average which includes ages from “under 44” to “over 64” is preferable. The 44-56 age band is, in our opinion, methodologically appropriate. Mr. Pannu’s alternative methodology, even if it is acceptable, is flawed in the manner in which Mr. Pannu

⁵ See Pannu Report, p. 6, the cumulative result of the percentages for the three age bands between 44 and 56 in the table at the bottom of the page.

has implemented it. Mr. Pannu notes that there were thirty appointments of lawyers under the age of 44 and six appointments of lawyers aged 64 and over. He attaches a weight to those age bands reflecting the number of appointments from those bands. He then applies those weights to everyone within those bands, i.e. the whole CRA self-employed lawyers population under 44 and over 64. However, he neglects to consider the actual lowest and highest ages of appointments, found at Appendix C of his report. The table at Appendix C of his report shows us that the lowest age of appointment between 1997⁶ and 2007 was 41 and the highest was 65. This is significant since his weights are being applied so as to include lawyers who are as young as 35 and as old as 69 (the lower and upper limits of the CRA data, respectively), who also happen to have lower incomes, yet are extremely unlikely to be appointed at such ages.

14. This fact can be discerned from the tables on page 7 of the Pannu Report. The difference in the percentile incomes between the first and second age bands, and the difference between the penultimate and last age bands, are greater than the differences between the other adjacent age bands.

⁶ It is unclear how Mr. Pannu integrated data from the 1997-2004 period given that Margaret Rose Jamieson of the Office of the Commissioner for Federal Judicial Affairs advised the parties on October 1, 2007 by e-mail that Table 9 "Information Linked by Judge" for the 1997-2004 period (see Table 9 in Appendix 7 of the Government's Submission for analogous 2004-2007 data) was not reliable and should not be used.

The use of a 65th percentile

15. Mr. Pannu presents results at both the 65th and 75th percentiles, and he indicates that the use of a 65th percentile may be appropriate.⁷
16. It must be borne in mind that setting compensation for federally appointed judges at the 75th (or 65th) percentile does not imply that the “quality” of the judges will likewise be at the 75th (or 65th) percentile. Said otherwise, setting the salary of the judiciary equal to the 75th percentile of private-sector lawyers would not ensure that the judiciary would be comprised of the top 25% of lawyers in Canada. The economics which inform this conclusion are well defined and are often referred to as the “market for lemons”.⁸ In short, with any selected cut-off (e.g., the 75th percentile) a *greater* proportion of private-sector lawyers making less than that figure will remain in, or enter into, the applicant pool, relative to lawyers making more than that amount who will opt out of the pool to a greater degree. As a result, setting judicial pay at the 75th percentile will result in a distribution of judges that comes predominantly from the ranks of the lawyers below that cut-off point.
17. Given the current nature of judicial compensation in Canada (*i.e.*, one universal salary), the distribution of candidates will always skew below any selected cut-off point. In order to compensate for this skewness, one must shift the cut-off point to higher percentiles. Unfortunately, a percentile cut-off cannot be set so as to ensure a judiciary comprised of the top 25% of lawyers. One can affirm,

⁷ On page 7 of his report, Mr. Pannu indicates 66th percentile. We are unsure as to whether this is a typographical error or whether Mr. Pannu has actually computed the 66th percentile instead of the 65th percentile.

⁸ See, e.g., Akerlof, George A., “The Market for ‘Lemons’: Quality Uncertainty and the Market Mechanism.” *Quarterly Journal of Economics* 84 (3), Aug. 1970, pp 488–500.

however, that no matter what percentile cut-off is selected, the distribution of applicants will always skew below. The implication is that the higher the percentile is set, the higher the quality of the judiciary.

18. Consequently, our understanding of the type of candidates contemplated by the *Judges Act* ("outstanding candidates") leads us to conclude that past commissions were correct in the cut-off at the 75th instead of 65th percentile.

Annuity Valuation

19. Mr. Pannu computes the value of the annuity received by retired judges for the purpose of comparing judicial compensation with other comparators. He has determined that the weighted average value is 24.6% of the annual salary. It should be noted that should one wish to compare judicial salaries to the compensation of deputy ministers, one would similarly need to account for the annuity available to DMs.

II. Annex to Government's Submission

20. In the Annex to the Government's submission, the contention is made that when past Quadrennial Commissions applied the three criteria of age, private practice and geographic location, in addition to the 75th percentile cut-off, the result is the elimination of 11/12^{ths} of the population of lawyers. The calculation supporting the contention is incorrect.
21. The Government arrives at its conclusion by applying the first three criteria (age, private practice and geographic location) to the population of judges appointed between April 2004 and March 2007. Only 33% of those judges satisfy all three criteria. The Government then applies the fourth criterion, the 75th percentile, and

concludes that this leaves only $1/12^{\text{th}}$ of the population for consideration ($1/4 \times 1/3$).

22. The fundamental flaw is that the Government applied the criteria to existing judges, while it should have applied them to self-employed lawyers across Canada. The purpose of the four criteria is to ascertain a comparable group from all self-employed lawyers across Canada, not from all judicial appointees. The latter category is irrelevant.
23. Consequently, the application of the 75th percentile to an incorrectly determined 33% figure (which was derived from appointed judges as opposed to all Canadian lawyers) results in a nonsensical $1/12^{\text{th}}$ figure. The Government has in fact produced no evidence with respect to how many Canadian lawyers in private practice would be eliminated based on the criteria.
24. Having reviewed the Annex to the Government Submission, we reiterate our opinion that the application by past Commissions of the three criteria of age, private practice, and geographic location, along with the application of the fourth criterion of the 75th percentile to the population of self-employed lawyers in Canada is an appropriate methodology to arrive at an income level that represents the income of self-employed lawyers who would qualify as candidates for the judiciary.

Annex E – Letter of Mr. Sauvé to the Commission dated March 24, 2004



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March 24, 2004

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**Judicial Compensation and
Benefits Commission**
99 Metcalfe Street, Suite 812
Ottawa ON K1A 1E3

Attn: Mrs. Jeanne N. Ruet, Executive Director

Re: Review of Submissions on the Earnings of Lawyers in Private Practice

Dear Members of the Commission:

This letter replaces our February 27, 2004 letter and includes our notes and comments on the February 27, 2004 replies submitted by the Government and the judges' representatives and on the 2001 data provided to the Commission at the same time.

We have reviewed the following documents:

- The January 2004 Report on the Earnings of Self-Employed Lawyers prepared by Western Compensation & Benefits Consultants ("WCBC") on behalf of the Department of Justice Canada for the 2003 Judicial Compensation and Benefits Commission.
- The January 30, 2004 Report on The Incomes of Canadian Lawyers Based on Income Tax Data prepared by Sack Goldblatt Mitchell ("SGM") on behalf of the Canadian Superior Courts Judges Association and the Canadian Judicial Council with Report Exhibit Book, Volumes I, II and III.
- The February 27, 2004 Reply submission of the Government of Canada accompanied by the February 27, 2004 letter from Mr. Haripaul Pannu of Western Compensation & Benefits Consultants.
- The February 27, 2004 Submissions of the Canadian Superior Courts Judges Association and the Canadian Judicial Council in reply to the Government of Canada's submissions and report on income trends in the private sector.
- The February 27, 2004 Reply to the report of the Western Compensation and Benefits Consultants prepared by Mr. Michael Mitchell of Sack Goldblatt Mitchell with Appendices containing tables of 2001 data prepared by CCRA.

Judicial Compensation and Benefits Commission

March 24, 2004

A key difference between the two January 2004 reports prepared by SGM and WCBC is the database used for the underlying analysis as SGM used data for taxation year 2000 while WCBC used data for taxation year 2001. Both sets of data were provided by CCRA.

In 2000, SGM also obtained from CCRA similar data for taxation year 1997 for the 1999 Judicial Compensation and Benefits Commission (the Drouin Commission). Morneau Sobeco (MS) subsequently obtained additional 1997 data from CCRA on behalf of the Drouin Commission.

Reliability of the Data

In its report, WCBC identified the following issues which may affect the comparability and reliability of the 1997 and 2000 data relative to the 2001 data:

- The change in the standard industrial classification system commencing in 2001 and the grouping of lawyers and notaries under the same Standard Industrial Classification (SIC) code prior to 2001;
- The fact that the 1997 data excluded lawyers with zero net income but did not exclude lawyers with negative net incomes;
- The possibility that income from other sources than the practice of law was included;
- The substantial reduction in the number of reported lawyers from 1997 to 2000 and 2001.

Change in the Standard Industrial Classification System

For taxation years 1997 and 2000, professional income derived from the practice of law was associated with a SIC code 7760 or 7761 which included notaries and paralegals. However, in 2001, CCRA adopted the North American Industry Classification System (NAICS) under which separate codes apply to lawyers and notaries (541110 and 541120 respectively).

WCBC indicated that CCRA was unable to measure the impact of including "non-lawyers" in the 1997 data but suggested that the relative magnitude of this group would not likely cause a major distortion in the analysis of the data.

We understand that there are approximately 3,200 notaries in Quebec and practically none outside of Quebec. *La Chambre des notaires du Québec* has advised the Commission that the average net professional income of Quebec notaries in 2000, 2001 and 2002 was between \$85,000 and \$90,000 and that less than 10% of Quebec notaries earned more than \$100,000.

Judicial Compensation and Benefits Commission
March 24, 2004

We agree with WCBC that the impact of including notaries in 1997 did not likely cause a major distortion in the national results given the relatively small number of notaries. Of course, the impact on Quebec results might be more material.

On the basis of the information obtained on Quebec notaries, it is safe to assume that the presence of notaries in the 1997 and 2000 data probably reduced the overall net income of lawyers in private practice measured at the 75th percentile.

If needed, the impact of including notaries could be measured based on the 2001 data as lawyers and notaries are now separately identified.

Lawyers with Zero or Negative Net Income

With respect to the 1997 data, we understand that CCRA excluded lawyers with zero net income but did not exclude lawyers with negative net incomes. For instance, the first tile was comprised of 2,606 lawyers with a negative average net income of (\$5,025).

Paragraph 9 of the SGM reply dated February 27, 2004 suggests that the 1997 data included lawyers with zero net income. We concluded otherwise on the basis of the progression of the net average income of lawyers in the first few tiles.

The negative earnings had an impact on the overall average net income. However, they had no impact once lawyers in private practice earning less than \$50,000 were excluded for purposes of the analysis adopted by the Drouin Commission.

Income from other sources than the practice of law

The Department of Justice obtained net professional income data from CCRA for individuals identified as lawyers in 2001 counting either

- net professional income derived solely from the practice of law, or
- total net professional income from the practice of law or other sources.

Table 1 below compares the 1997, 2000 and 2001 net income of lawyers in private practice as reported by CCRA first including lawyers with zero and negative income, then excluding lawyers with zero income and finally excluding lawyers with zero or negative income.

The 2001 data is presented either including or excluding the 7,198 lawyers with professional income but no professional income from the practice of law.

The 1997 and 2000 average incomes excluding lawyers with zero or negative income are rough estimates derived for illustration purposes only by excluding lawyers in the first tile which showed negative income.

Judicial Compensation and Benefits Commission
 March 24, 2004

We note that the 2001 data presented as Conditions nos. 1, 2 and 3 by CCRA included the 7,198 lawyers (with professional income but no professional income from the practice of law) but did not include any portion of their net professional income. The results under those three conditions are not presented below as they are not appropriate in the circumstances.

Table 1 - Number and Average Net Income of Lawyers in Private Practice in Specified Taxation Years

	Taxation Year		
	1997	2000	2001
Average Net Income of Lawyers in Private Practice	N/A	\$89,800 (28,684) ¹	N/A ¹ \$119,200 (25,879) ²
Average Net Income Excluding Lawyers With Zero Income (Number)	\$97,000 (31,270) ¹	\$124,600 (20,670) ¹	\$88,100 (16,802) ¹ \$125,200 (24,000) ^{2,4}
Average Net Income Excluding Lawyers With Zero or Negative Income (Number)	\$106,200 (28,664) ^{1,3}	\$135,600 ² (18,954) ^{1,3}	\$94,000 (15,864) ¹ \$130,700 (23,062) ^{2,5}

Note : (1) Including only professional income from the practice of law.
 (2) Including the professional income of lawyers with no professional income from the practice of law.
 (3) Rough estimates derived by excluding lawyers in the first file which showed negative average income
 (4) Derived as Part (A)+ Part (C) of the 2001 data submitted by CCRA
 (5) Derived as Part (A)+Condition no. 5 of the data submitted by CCRA

We can anticipate a reduction in the number of lawyers between 2000 and 2001 as a result of the change in the industrial classification system adopted by CCRA in 2001. However, this change does not explain the substantial reduction in average lawyers' income between 2000 and 2001. In fact, the exclusion of notaries should have the effect of increasing the reported average income of the remaining lawyers as opposed to reducing it given the information obtained on the earnings of Quebec notaries.

With respect to the substantial reduction in the reported number of lawyers in private practice between 1997 and 2000, possible explanations include the increase use of personal corporations. However, to the best of our knowledge, no complete and satisfactory explanation has been found for the substantial reduction in the number of reported cases.

Judicial Compensation and Benefits Commission
March 24, 2004

The lawyers' net professional incomes reported for 1997, 2000 and 2001 are not directly comparable because of the significant difference in the reported number of cases. Nevertheless, the number of lawyers in private practice reported in 2000 (18,954) and 2001 (15,864) should represent sufficient samples (the best available) to study the net income of lawyers in private practice.

The 1997 and 2000 results are not inconsistent with the 2001 results if the 7,198 lawyers with professional income but no professional incomes from the practice of law are included. However, if these lawyers are included, the total number of lawyers in 2000 and 2001 becomes inconsistent given the expectation of a reduction in number due to the elimination of notaries and paralegals.

The 2001 average net incomes excluding these 7,198 lawyers are more difficult to explain as the removal of notaries and paralegals should have had the effect of increasing the average net incomes rather than reducing them.

On that basis and considering the above analysis, we find it difficult to attach more credibility to the 2001 results than to the 2000 and 1997 results.

The \$50,000 Earnings Exclusion

The WCBC report noted correctly that lawyers in private practice earning less than \$50,000 may not necessarily be employed on a part time basis. They may have made a life style choice. Other possible explanations mentioned in the Drouin Commission's report include new practices that are not yet fully established and less successful or profitable practices.

WCBC also suggest that a parallel rationale could be used to exclude lawyers' earnings in excess of an identified salary amount, as they would not likely accept an appointment to the bench due to the significant salary reduction they would incur. We note that the use of the 75th or any other percentile as opposed to the average income of lawyers in private practice does remove the impact of the highest salaries.

WCBC also mentioned that it is a common statistical practice to eliminate both the very low and the very large values as opposed to just the low values. We fully agree that if a statistical analysis of the net income of lawyers in private practice was needed, it would not be appropriate to exclude the very low values only. However, the intention is not to do such a statistical analysis. It is rather to identify a comparator group made of lawyers from which excellent candidates will be recruited. Lawyers earning less than \$50,000, or such other amount as may be deemed appropriate in the circumstances, may be excluded from the comparator group for compensation benchmarking purposes, even though some of these lawyers may qualify for a judicial position and be appointed to the bench.

Judicial Compensation and Benefits Commission
March 24, 2004

The SGM report suggested that the \$50,000 earnings exclusion should be indexed to reflect salary inflation over time; otherwise, its value would gradually diminish. A threshold of \$53,122 is suggested for 2004 taking into account the increase in the Industrial Aggregate between 1997 and 2000.

We agree that the \$50,000 threshold should be reviewed periodically to take into account inflation but also changing perceptions of what might constitute an appropriate comparator group for compensation benchmarking purposes. Given the subjective nature of this threshold, the Commission should retain the flexibility to adjust it periodically taking into account inflation and changing circumstances.

Age Groups

WCBC suggested an approach based on a weighted average of the net income of lawyers in private practice in various age groups considering the proportion of judges appointed in each age group. In our opinion, this is a valid approach.

However, it is also appropriate for compensation benchmarking purposes to define a comparator group more narrowly on the basis that a substantial proportion of newly appointed judges are in such narrower group.

We note that in the period between 1989 and 1999, 69% of newly appointed judges were in the 44-56 age group whereas, in the period between 1997 and 2003, this percentage increased to 84%. Accordingly, in our opinion, there is no reason to conclude that this age group is no longer an appropriate comparator group for compensation benchmarking purposes.

Judicial Annuity

We have reviewed the methods and assumptions adopted by WCBC to estimate the value of the judicial annuity. We have also estimated the value of the judicial annuity as a level percentage of pay net of the judges' own contributions for judges appointed at the ages of 45 to 60 in 5 year increments.

The weighted average value of the judicial pension determined by WCBC (24% of salary) was determined on the basis of data for 364 judges appointed between January 1, 1997 and November 14, 2003 (Volume II, Tab 8 of the December 15, 2003 Appendices submitted by the Department of Justice).

A comment from Eckler Partners Limited included in Mr. Mitchell's February 27, 2004 reply suggested that the weighted average value of the judicial pension should have been determined on the basis of the total population of judges as opposed to the population of 364 judges appointed in the period from January 1, 1997 to November 14, 2003.

Judicial Compensation and Benefits Commission

March 24, 2004

The average age at the date of appointment for judges in service on March 31, 2001 was 48.7, based on membership data included in the actuarial report on the Pension Plan for Federally Appointed Judges prepared by OSFI as at March 31, 2001. This compares to an average age at the date of appointment of 51 for the 364 judges appointed in the period from January 1, 1997 to November 14, 2003.

It should be noted that for any given group of judges, the average age at the date of appointment will tend to decline over time as judges appointed at older ages are expected to retire or die first.

Considering that the purpose of this exercise is to compare the compensation of newly appointed judges with that of lawyers in private practice of similar age and experience, it is more appropriate to determine the average age at the date of appointment for all judges appointed in any given period of time as opposed to determining such average age only for those who survived to date. Of course, one could choose to take into account the age at the date of appointment of judges appointed over a longer or shorter period of time. In this case, WCBC made use of the available information which is adequate considering that it is based on the experience of 364 judges.

It should be noted that the value of the judicial annuity for any individual judge varies significantly according to the age at the date of appointment and the assumed retirement age. Accordingly, the results are very sensitive to these two assumptions.

In our opinion, the methods and assumptions adopted by WCBC are within the range of acceptable assumptions and are appropriate for compensation benchmarking purposes. Nevertheless, the Commission should reserve its right to review and adjust these actuarial assumptions as it sees fit for compensation benchmarking purposes.

At this stage, our preliminary valuation results are slightly lower than those determined by WCBC (22.5% versus 24% of salary). Subject to this difference being reconciled, such percentage is an appropriate measure of the value of the judicial pension for compensation benchmarking purposes.

Projection of 2000 Salary Data to April 1, 2004

Pursuant to Section 25 of the Judge's Act, judges' salaries are increased each year in accordance with the increase in the Industrial Aggregate for the most recent twelve month period relative to the immediately preceding twelve month period (up to a maximum of 7%).

Accordingly, if more recent information on the net earnings of lawyers in private practice is not available, it is appropriate to project the 2000 salary data to April 1, 2004 on the basis of the increase in the Industrial Aggregate. SGM estimated such increase to be 6.8%.

Judicial Compensation and Benefits Commission
March 24, 2004

We reviewed SGM's calculations in Appendix 13 (Exhibit Book Volume III) and agree with that estimate based on the available information.

In fact, based on the most recent data (December 2003) and assuming increases in 2004 at the same rate as in 2003 (1.6%) between January and March 2004, an adjustment of 7.1% would be justified instead of 6.8% to project the 2000 salary data to April 1, 2004.

The undersigned remains available to discuss any of these issues.

Respectfully submitted,



André Sauvé, F.S.A., F.C.I.A.
Partner

/td

Annex F – Report of Haripaul Pannu (January 2004)

PHOND (30)

**REPORT ON THE EARNINGS OF SELF-
EMPLOYED LAWYERS
FOR THE
DEPARTMENT OF JUSTICE CANADA
FOR THE
2003 JUDICIAL COMPENSATION AND
BENEFITS COMMISSION**

January, 2004

Table of Contents

<i>Data.....</i>	<i>2</i>
<i>Process.....</i>	<i>4</i>
<i>Analysis.....</i>	<i>5</i>
<i>Major Metropolitan Centers</i>	<i>8</i>
<i>Judicial Annuity Scheme</i>	<i>9</i>
<i>Percentile Ranking of Judicial Compensation.....</i>	<i>12</i>
<i>Other Compensation Issues.....</i>	<i>12</i>
<i>Appendix A.....</i>	<i>14</i>
<i>Appendix B.....</i>	<i>15</i>
<i>Appendix C.....</i>	<i>16</i>
<i>Appendix D.....</i>	<i>17</i>

Report on the Earnings of Self-Employed Lawyers

Western Compensation & Benefits Consultants has been retained by the Department of Justice Canada to conduct an analysis of year 2001 net income of self-employed lawyers as reported by individuals who filed personal income taxes for the 2001 tax year. The study will be used in preparation of the Judicial Compensation and Benefits Commission. The purpose of the study is to analyze the data and identify significant trends in the income of self-employed lawyers. This analysis will then be used to make comparisons of the income of federally appointed judges with the income of self-employed lawyers.

Data

Data for the analysis of the earnings of self-employed lawyers was provided by the Department of Justice. The source of the data was the year 2001 personal taxation information of self-employed lawyers in Canada collected and supplied by Canada Customs and Revenue Agency ("CCRA").

CCRA generated tables of tax information from all individuals who filed a 2001 tax year T1 Return. The selection of self-employed lawyers was based on identification codes for professionals who practice law and are self-employed.

The information was tabulated and provided in a 12 file format. Data was provided by provinces; age bands; major urban centers; and with net income thresholds. The net income provided was net professional income derived from the practice of law. The classification of lawyers was further refined such that information was tabulated based on all net income; excluding zero net income (that is only negative and positive net income was included); and positive net income only.

We have conducted tests of the data for the purposes of determining its reliability and comparability with previous data provided. A previous study was conducted based on similar data with 1997 personal taxation information on self-employed lawyers' income. We have used this data as the basis of our analysis of the comparability and reliability of the 2001 income information. In particular, we tested the consistency between the number of self-employed lawyers and the average net income between the two sets of data.

We also tested the internal consistency of the 2001 data by examining the totals for Canada with the provincial totals and with the totals from the major urban centers. The net income across the age-bands was also reviewed for consistency.

In comparing the two sets of data there was a decrease in the number of self-employed lawyers between the two dates.

	<u>1997 Taxation Year</u>	<u>2001 Taxation Year</u> <u>All Income</u> <u>Sources</u>	<u>Positive Net Income</u> <u>from Practice of Law</u>
Self-employed lawyers	31,270	25,879	15,864

We contacted CCRA to inquire about the decrease in the number of self-employed

Report on the Earnings of Self-Employed Lawyers

lawyers filing tax returns. CCRA has informed us the reason for the decrease is that the previous study included tax filers who were not lawyers, such as paralegals and notaries. The inclusion of such "non-lawyers" would distort the information but given the relative magnitude of this group would not likely cause a major distortion in the analysis of the data. CCRA was unable to provide information which would indicate the exact effect of inclusion of the "non-lawyers" in the 1997 information. However the use a new occupation coding system in 2001 corrected the problem of "non-lawyers" being classified as lawyers.

A second difference between the 1997 and 2001 data sets is that in 1997, the data excluded only zero net incomes and not negative net incomes. The inclusion of negative data would decrease the average net income amounts.

A determination of the exact effect on including negative incomes on 1997 data could not be conducted by CCRA. However, we have looked at this factor in the 2001 data to determine the potential effect on the 1997 data.

There were 25,879 individuals classified as lawyers in 2001, 23,137 had a positive net professional income (either from the practice of law or from other sources). Focusing on lawyers who had net professional income derived from the practice of law, there were 16,802 who had a non-zero income and 15,864 who had a positive net professional income derived solely from the practice of law. The results of the analysis are presented below along with the average net professional income from the practice of law for each category:

2001 Net Income

	<u>All Income Sources</u>		<u>Income From Practice of Law</u>	
	<u>All Income</u>	<u>Positive Income</u>	<u>Non-zero Income</u>	<u>Positive Income</u>
Number of Lawyers	25,879	23,137	16,802	15,864
Average Net Income	\$57,266	\$64,338	\$88,141	\$94,005

The number of lawyers drops considerably when only income from the practice of law is taken into account. As well, the average net income varies depending on the source of net income used. If we look at lawyers with positive net income from the practice of law, this results in an average net income 46% higher than would be the case if income from all sources was included.

In order for a proper comparison to take place between two sets of data, the data should contain the same information for the same groups but at different points in time. We have concluded that without major modifications to the 1997 data to ensure it is on the same basis in terms of the information included, a comparison of the trends cannot be made between the 1997 and 2001 tax year net income information. Although further clarification on the 1997 data would provide useful information, we are told that due to a change in the classification system of occupations that occurred for the 2001 data, this will not be possible.

Report on the Earnings of Self-Employed Lawyers

We have thus decided to focus entirely on the 2001 data. In particular, we will use positive net professional income derived solely from the practice of law. As this group is the most likely group that is practicing law for a living.

We have concluded that the 2001 taxation data is reliable based on our own internal tests, the information received from CCRA and the explanations offered on the previous 1997 data.

A detailed summary of the data is included as Appendix D. The data is separated into 2 different sections. The first section is data on all lawyers, with income from all sources. The second section is data on all lawyers, with income from the practice of law whose income is positive.

Process

A study conducted for the previous Judicial Compensation and Benefit Commission arrived at its findings by concentrating on self-employed lawyers earning in excess of \$50,000 who were 44 to 56 years old. This group was chosen as it represents the group where a majority of lawyers are appointed to the bench. However it does not represent the entire pool of eligible candidates from which judges would be appointed. The use of such a narrow band of data may not provide the appropriate information and could result in inappropriate conclusions.

The first exclusion was lawyers earning below \$50,000. The rationale for focusing on lawyers earning above \$50,000 was that those earning below this amount were likely to be working part-time. However a parallel rationale could be used to exclude lawyers earning in excess of an identified salary amount, as they would not likely accept an appointment to the bench due to a significant salary reduction. It is a common statistical practice to eliminate both the very low values and the very large values of the data as opposed to just the low values. In this way, the data is not skewed by the inclusion of extreme values. In addition, those lawyers earning below \$50,000 may not necessarily be employed on a part time basis. They may have made a life style choice to work for a period of time at a lower income so that they may raise a family, take care of older family members or for other personal reasons. The exclusion of such lawyers does not mean that they are not suitable candidates for an appointment to the bench.

The previous study focused on lawyers who were aged 44-56 as this was the group from which the majority of lawyers were appointed as judges. This may represent the group from which the majority of judges are appointed. However the use of such exclusions does not properly reflect the entire pool of lawyers who may be appointed as judges and excludes data that should be incorporated into the analysis. It is a better reflection of the information to include all of the available data.

There are more appropriate statistical methods which would take into account the majority and include the minority information as well. One such technique to ensure that all of the data is included is to weight the data so that the larger group is given a larger emphasis than the smaller group.

We have decided to base our analysis on the entire range of available data, but to give more emphasis to the group where the majority of judges are appointed. We do not

Report on the Earnings of Self-Employed Lawyers

propose to use one statistical measure but to provide a range of values and leave it to the readers to determine what is the most suitable statistic for their purposes.

In addition, as the judicial annuity provided to judges is a significant and important portion of a judge's compensation, we have provided a separate analysis including this benefit as a part of the judge's compensation. In most cases, self-employed lawyers would have to use a portion of their income to fund for their retirement. Thus to make the comparison more equitable between self-employed lawyers and judges, the judicial annuity should be included as part of the judicial compensation.

Analysis

The analysis of the data is based on the 12 tile income information for the 2001 taxation year provided by CCRA. The data utilized is that of self-employed lawyers who had a positive net professional income from the practice of law. A detailed summary of the data is provided in Appendix D, Section 2.

To determine a general net income for lawyers, we have looked at the average net income, that is the sum of all the lawyers net income divided by the number of lawyers:

2001 Taxation Year Average Net Income

	<u>2001</u>
Net Professional Income	\$94,005

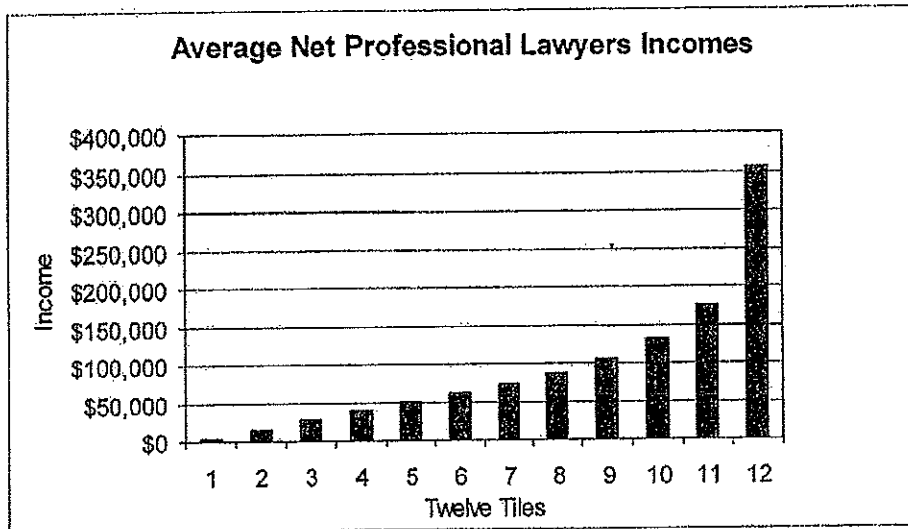
The average net income may not present an accurate picture of the data. This is because the average can be skewed by extreme results at the tails, that is the very high net incomes or very low net incomes.

This is the situation for self-employed lawyers as presented in the table below:

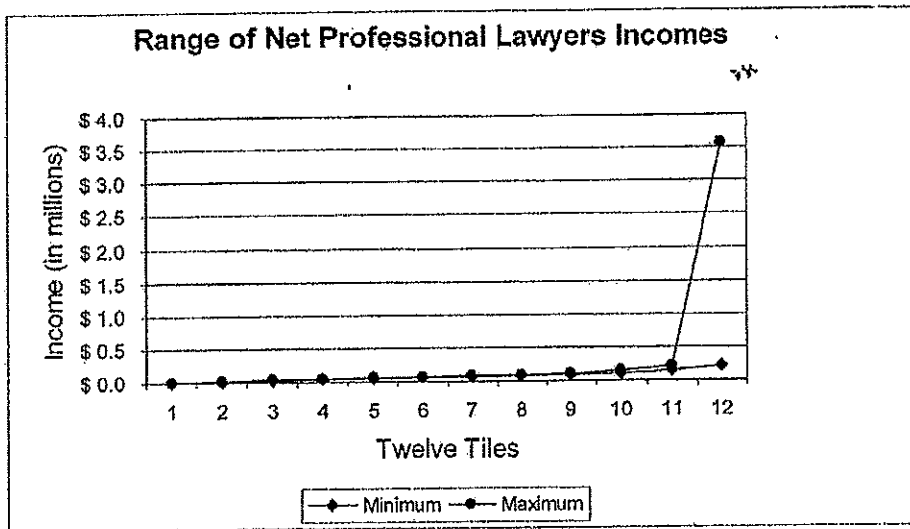
Lowest and Highest Net Income Groups

<u>Year</u>	<u>Lowest Group</u> <u>Average</u>	<u>Highest Group</u> <u>Average</u>	<u>Minimum</u> <u>Value</u>	<u>Maximum</u> <u>Value</u>
2001	\$3,094	\$355,927	\$1	\$3,558,186

The shape of the distribution of net incomes over the whole group is markedly skewed to the right, as the following chart demonstrates in terms of the sharp rise in the average net income for each subsequent tile.



The skewing of the data can be further underscored if the range in each of the tiles is examined. Whereas throughout most of its range, the ratio of the highest to lowest net incomes within a twelve file category is about 1.3, in the twelfth tile the highest net incomes are more than ten times larger than the lowest. This is presented in the chart below.



A better representation of the net incomes can be obtained by examining the median net income. The median is the middle point of the data. That is half the data is larger than this amount and half the data is smaller than this amount. It is not impacted by the extreme values at either ends of the tails.

Report on the Earnings of Self-Employed Lawyers

Median Net Income for the 2001 Taxation Year

	<u>2001</u>
Net Professional Income	\$67,213

However, it is reasonable to assume that judge's salaries should not be based on the median but rather the 66th percentile or the 75th percentile. It is a common practice in compensation studies to use the 66th percentile or 75th percentiles as benchmarks in ensuring the recruitment and retention of exceptional individuals.

These statistics would provide a better representation of the most likely comparator group for judges. That is, those in the top third or quarter of the legal profession, assuming that incomes are a proxy for talent.

66th and 75th Percentile Net Income for the 2001 Taxation Year

	<u>2001</u>
66 th Percentile	\$95,850
75 th Percentile	\$116,822

A further refinement can be made by examining the income of self-employed lawyers by age bands. Data was provided for lawyers in five year age bands from age 35 to age 64. That is, under the age of 35; between 35 and 39; between 40 and 44; between 45 and 49; between 50 and 54; between 55 and 59; between 60 and 64; and those older than 64. As judges are appointed to the bench at various ages, it would be appropriate to factor this into determining the income.

The approach we have used is to weight the income from the age bands by the proportion of judges that were appointed from that age band and arrive at a single age-weighted income.

Information was obtained from the Office of the Commissioner for Federal Judicial Affairs on the ages of appointment of federal judges. The information was from judges appointed between January 1, 1997 to November 14, 2003. This information is outlined in Appendix C.

Summarizing the information:

<u>Age at Appointment</u>	<u>Appointments</u>	<u>Percentage</u>
Under 40	0	0%
40 - 44	25	6.9%
45 - 49	126	34.6%
50 - 54	126	34.6%
55 - 59	67	18.4%
60 - 64	18	4.9%
Over 64	2	0.6%
Total	364	100%

Report on the Earnings of Self-Employed Lawyers

Therefore to obtain a weighted average for the income of all lawyers, the following formula was used:

$$\text{income}_{\text{all lawyers}} = 6.9\% \times \text{income}_{40-44} + 34.6\% \times \text{income}_{45-49} + 34.6\% \times \text{income}_{50-54} + 18.4\% \times \text{income}_{55-59} + 4.9\% \times \text{income}_{60-64} + 0.6\% \times \text{income}_{64 \text{ and over}}$$

The results for the 66th percentile and 75th percentile are outlined below.

66th Percentile Age-Weighted Income

<u>Age</u>	<u>Weight</u>	<u>66th Percentile Income</u>	<u>Age-Weighted</u>
40 - 44	6.9%	\$95,653	\$6,600
45 - 49	34.6%	\$105,705	\$36,574
50 - 54	34.6%	\$109,383	\$37,847
55 - 59	18.4%	\$108,523	19,968
60 - 64	4.9%	\$94,214	\$4,616
Over 64	0.6%	\$70,462	\$388
Age-Weighted 66th Percentile Income			\$105,993

75th Percentile Age-Weighted Income

<u>Age</u>	<u>Weight</u>	<u>75th Percentile Income</u>	<u>Age-Weighted</u>
40 - 44	6.9%	\$116,861	\$8,063
45 - 49	34.6%	126,370	\$43,724
50 - 54	34.6%	133,061	\$46,039
55 - 59	18.4%	131,044	\$24,112
60 - 64	4.9%	\$114,404	\$5,606
Over 64	0.6%	\$85,733	\$472
Age-Weighted 75th Percentile Income			\$128,016

The 66th and 75th percentile incomes increase by 11% and 10% respectively when an age-weighted basis is used.

Major Metropolitan Centers

The above is an analysis of the income of self-employed lawyers over the entire country. However, we should also examine the distribution of such incomes in the major metropolitan centers in Canada to determine whether there are any centers where the net income is significantly different from the national number.

We have analyzed the incomes of self-employed lawyers for the major metropolitan centers in Canada and have outlined the 66th percentile and 75th percentile age-weighted incomes. The results are presented below.

66th Percentile Age-Weighted Income for Major Metropolitan Centers

<u>Metropolitan Area</u>	<u>Income</u>	<u>% Difference from Canada</u>
Toronto	\$125,305	18%
Montreal	\$91,941	(13)%
Vancouver	\$103,663	(2)%
Edmonton	\$112,250	6%
Calgary	\$115,958	9%
Quebec	\$85,095	(20)%
Ottawa/Hull	\$122,008	15%
Hamilton	\$136,257	29%
All Canada	\$105,993	

75th Percentile Income for Major Metropolitan Centers

<u>Metropolitan Area</u>	<u>Income</u>	<u>% Difference from Canada</u>
Toronto	\$156,070	22%
Montreal	\$114,084	(11)%
Vancouver	\$128,223	0%
Edmonton	\$129,560	1%
Calgary	\$146,555	15%
Quebec	\$105,820	(17)%
Ottawa/Hull	\$145,926	14%
Hamilton	\$155,482	22%
All Canada	\$128,016	

A comparison of the major metropolitan centers indicates that the 66th percentile figures for Toronto, Edmonton, Calgary and Ottawa/Hull and Hamilton are higher than the national number and 75th percentile figures for Toronto, Calgary and Ottawa/Hull and Hamilton are substantially higher than the national number.

Judicial Annuity Scheme

The final part of our analysis is the impact of the judicial annuity on the judge's total compensation in comparison with the income of a self-employed lawyer. The judicial annuity is an important benefit available to judges. The magnitude of this benefit should not be overlooked when comparing judicial compensation with that of self-employed lawyers. As in most likelihood, self-employed lawyers would have to save for their own retirement.

Report on the Earnings of Self-Employed Lawyers

The judicial annuity scheme as it currently exists has the following provisions:

- an annuity of 2/3 of final year earnings is provided at retirement;
- a judge is eligible to retire with a full annuity when:
 - they have served at least 15 years and their combined age and service is at least 80;
 - they have attained age 75 and have at least 10 years of service; or
 - they are a judge of the Supreme Court of Canada and have attained age 65 with at least 10 years of service;
- if the judge is not eligible for a full annuity, the annuity is reduced as follows:
 - if the judge has less than 10 years of service and is 75, the annuity is reduced by 1/10 for each year of service below 10 years;
 - if the judge has less than 80 points (age plus service) and is retiring prior to age 75, a pro-rated annuity is provided with an additional reduction if the annuity is commencing prior to age 60 of 5% per year for each year prior to age 60.
- the annuity is payable for the life of the judge and if the judge has a spouse or common-law partner 50% of the annuity will be paid to the spouse or common-law partner for their lifetime on the death of the judge;
- the annuity is indexed at 100% of the increase in CPI; and
- judges contribute 7% of earnings each year towards the plan. The contributions drop to 1% of earnings when a judge is eligible for an unreduced annuity.

A detailed summary of the judicial annuity scheme is outlined in Appendix A.

In order to compare the incomes of self-employed lawyers and judges, the value of the judicial annuity should be included as part of the overall compensation package of judges. One method to accomplish this is to determine the value of the judicial annuity as a percent of the judge's income and then gross-up the judicial income by that amount.

In particular, we calculated the value of the judicial annuity at appointment ages from 40 to 65, in 5 year increments. From this value, the impact of the judge's contributions was removed to reflect the portion that is not funded by the judge's own contributions. This value was then stated as a level percent of a judge's career income to reflect the average annual benefit.

It is important that the value not include the impact of the judge's contributions. This is a more representative value of the "additional benefit" judges receive from participating in the judicial annuity scheme. Likewise, self-employed lawyers would be able to deduct contributions to their personal RRSP's from income. Thus it is reasonable to exclude the judge's own contributions to the judicial annuity scheme from the pension value.

The method and assumptions used in determining the value of the judicial annuity are outlined in Appendix B.

Report on the Earnings of Self-Employed Lawyers

The value of the judicial annuity as a level percent of a judge's career income is outlined below.

Value of Judicial Annuity

<u>Appointment Age to Bench</u>	<u>Pension Value</u>
40 - 44	17.2%
45 - 49	20.7%
50 - 54	24.3%
55 - 59	27.4%
60 - 64	38.5%
Over 64	54.8%

To determine a single pension value applicable to all judges, we have calculated an age-weighted pension value. The age of appointment information was obtained from the Office of the Commissioner for Federal Judicial Affairs, previously used in determining the age-weighted percentile value. Each pension value determined above was weighted by the proportion of judges who were appointed from that age band.

Therefore to obtain a weighted average of the pension value, the following formula was used:

$$\text{Pension Value} = 6.9\% \times \text{pension value}_{40-44} + 34.6\% \times \text{pension value}_{45-49} + 34.6\% \times \text{pension value}_{50-54} + 18.4\% \times \text{pension value}_{55-59} + 4.9\% \times \text{pension value}_{60-64} + 0.6\% \times \text{pension value}_{64 \text{ and over}}$$

The results of the pension value is outlined below.

Weighted Average Value of Judicial Annuity Based on Age at Appointment

<u>Appointment Age to Bench</u>	<u>Percentage Appointment</u>	<u>Pension Value</u>	<u>Weighted Average Pension Value</u>
40 - 44	6.8%	17.2%	1.2%
45 - 49	34.6%	20.7%	7.2%
50 - 54	34.6%	24.3%	8.4%
55 - 59	18.4%	27.4%	5.0%
60 - 64	4.9%	38.5%	1.9%
Over 64	0.6%	54.8%	0.3%
Weighted Average			24.0%

Taking a weighted average of the pension value based on a judge's appointment age results in a pension value of 24.0%.

Federally appointed judges currently receive an income of \$216,600 per annum. Taking into account the value of the pension and grossing up the income to include this value increases judicial compensation to \$268,584 per annum (\$216,600 x 1.240).

Percentile Ranking of Judicial Compensation

By combining the above analysis, we have determined the percentile ranking of the judicial salary both including and excluding the gross-up for the annuity scheme in relation to that of self-employed lawyers for each major urban center. The judges' currently earn a salary of \$216,600 per annum. Incorporating the gross-up for the judicial annuity scheme increase the salary to \$268,584. The following would be the percentile ranking of the corresponding salaries:

Percentile Rankings of Judicial Compensation

<u>Metropolitan Area</u>	<u>Percentile Ranking (excluding Judicial Annuity)</u>	<u>Percentile Ranking (including Judicial Annuity)</u>
Toronto	83 rd to 91 st	83 rd to 91 st
Montreal	83 rd to 91 st	Over 91 st
Vancouver	83 rd to 91 st	Over 91 st
Edmonton	83 rd to 91 st	Over 91 st
Calgary	83 rd to 91 st	Over 91 st
Quebec	Over 91 st	Over 91 st
Ottawa/Hull	83 rd to 91 st	Over 91 st
Hamilton	83 rd to 91 st	83 rd to 91 st
All Canada	83 rd to 91 st	Over 91 st

The judicial salary of \$216,00 per annum would place it in the 83rd to 91st percentile nationally and in all major urban centers in Canada, except for Quebec City where it would be over the 91st percentile. This would mean the judicial salary is greater than 83% of the net income of self-employed lawyers.

When the value of the judicial annuity is included as part of the judicial compensation the percentile ranking increases to over the 91st percentile, nationally and for all major urban centers except for Toronto and Hamilton. This would mean that judicial compensation exceeds the net income of at least 91% of self-employed lawyers.

Other Compensation Issues

One final aspect which should be considered when a comparison of compensation is done between self-employed lawyers and judges is the generous benefits package in addition to the judicial annuity that is provided to judges. In particular, the judges have:

- an extensive group benefits plan which includes:
 - basic life insurance, supplementary life insurance, post-retirement life insurance and dependents' life insurance;
 - accidental death and dismemberment insurance;
 - a health care plan;

Report on the Earnings of Self-Employed Lawyers

-- a dental service plan

Most self-employed lawyers would have to provide for their own individual extended health/dental benefits; and

- the option to elect supernumerary status. Supernumerary judges are judges who have reached age 65 and have at least 15 years of service and have elected supernumerary office, which permits them to work a reduced workload (commonly understood to be around 50%) for a full salary.

Appendix A

Summary of the Plan Provisions of the Judicial Annuity Scheme

Retirement	Age 75 (70 for certain judges appointed prior to March 1, 1987); or Age plus years of service of at least 80 years (minimum 15 years of service); or Age 65 with 10 or more years of service, if a judge of the Supreme Court of Canada
Retirement Pension	66 2/3% of salary at the time of retirement.
Early Retirement	Age 55 with 10 years of service.
Early Retirement Reduction	5% per year that the pension commences before age 60
Normal Form of Pension	Conjugal relationship: Joint life and 50% survivor pension. otherwise: Lifetime pension with no guarantee.
Cost-of-Living Adjustments	100% of the Consumer Price Index
Death Before Retirement	A lump sum equal to one-sixth of salary is paid to the surviving spouse or common-law partner or to the estate if there is no survivor. Conjugal relationship: A pension is payable to the surviving spouse or common-law partner equal to one-third of the annual salary of the judge. Dependents: A pension is payable to each surviving dependent equal to 20% of the surviving spouse's or common-law's pension, with a reduction if there are more than four dependent children. The pension for a surviving dependent is doubled if that child is an orphan.
Termination prior to retirement	Refund of contributions, with interest.
Disability	Immediate pension.
Employee Contributions	For judges appointed before February 17, 1975: 1.5% of salary. For judges appointed after February 16, 1975: 1% of salary to the Supplementary Retirement Benefits Account plus an additional 6% of salary if the judge is not eligible for an unreduced pension.

Appendix B

Assumption and Methods Employed in Determining Pension Values

<i>Actuarial assumptions</i>	Interest rate	6.0% per year
	Rate of future increase in income	3.0% per year
	Consumer Price Index increase	2% per year
	Post-retirement pension indexing	100% of increase in Consumer Price Index
	Termination of employment, disability or death prior to retirement	Nil
	Retirement age	Retirement rates specified in the actuarial report on the Pension Plan for Federally Appointed Judges as at 31 March 2001 prepared by the Office of the Chief Actuary of the Office of the Superintendent of Financial Institutions
	Mortality after retirement	80% of the average of the male and female mortality rates of the 1983 Group Annuity Mortality table
<i>Actuarial valuation method</i>	Relationship status at retirement	conjugal relationship, with spouse of opposite gender and same age as the member
		Projected Benefit

Appendix C

Judicial Ages at Appointment from January 1, 1997 to November 14, 2003

<u>Appointment Age</u>	<u>Number</u>
40	
41	2
42	6
43	6
44	11
45	26
46	27
47	27
48	23
49	23
50	22
51	33
52	20
53	28
54	23
55	27
56	16
57	7
58	10
59	7
60	3
61	3
62	7
63	4
64	1
65	1
66	1
Total	364

Source: Letter of December 3, 2003 to Mr. P. Vickery, Department of Justice from Ms. M. Jamieson, Office of the Commissioner for Federal Judicial Affairs.

Appendix D

Self-Employed Lawyer Income Data

Section 1: Income from all sources

Section 2: Income derived from the practice of law

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Annex G – Report of Haripaul Pannu (December 2007)

**REPORT ON THE EARNINGS OF
SELF-EMPLOYED LAWYERS
FOR THE
DEPARTMENT OF JUSTICE CANADA
IN PREPARATION FOR THE
2007 JUDICIAL COMPENSATION AND
BENEFITS COMMISSION**

December, 2007

Table of Contents

Data.....	2
Process.....	3
Analysis.....	4
Major Metropolitan Centers.....	8
Judicial Annuity Scheme.....	9
Percentile Ranking of Judicial Compensation.....	12
Other Compensation Issues.....	13
Appendix A.....	14
Appendix B.....	15
Appendix C.....	16
Appendix D.....	17

Report on the Earnings of Self-Employed Lawyers

Haripaul Pannu has been retained by the Department of Justice Canada to conduct an analysis of the net income of self-employed lawyers as reported by individuals who filed personal income taxes for the 2002 to 2005 tax years. The study will be used in preparation for the Judicial Compensation and Benefits Commission. The purpose of the study is to analyze the data and identify significant trends in the income of self-employed lawyers. This analysis will then be used to make comparisons of the income of federally appointed judges with the income of self-employed lawyers.

Data

Data for the analysis of the earnings of self-employed lawyers was provided by the Department of Justice. The source of the data was the 2002 to 2005 personal taxation information of self-employed lawyers in Canada collected and supplied by Canada Revenue Agency ("CRA").

CRA extracted data from the T1 Assessing Master Database, which is CRA's master database system for capturing all filed individual tax returns since 1985. The T1 assessing master database captures assessed individual tax data. This is taxation data that is the current or updated form of the initial assessed data. This means that CRA has validated and verified the quality, precision and integrity of the data.

The information was for self-employed lawyers as identified by the North American Industry Classification code for lawyers:

- who were between 35 and 69 years of age;
- with no duplicated records;
- excluding those filing from abroad; and
- excluding those whose employment income exceeded income from self-employment, but including those whose employment income was less than their income from self-employment.

For the 2003 Commission, a study was conducted based on similar self-employed lawyers' income data but with 2001 personal taxation information. It was found by the previous Commission not to be reliable and useful, so I have decided not to compare the current tax data with the 2001 tax data.

The data provided for this study is more reliable than the income data used for the previous Commission. The previous data was initial assessed data while the current data is the current or updated form of the initial assessed data, that is, the current data has up-to-date amounts that either the tax-filer has updated or was updated at the request of the auditors or CRA. In particular, the previous data included self-employed lawyers who filed twice in the same tax year. The first filing was for an income of zero or \$1 and a second filing with the actual income. This situation is not present in the current

Report on the Earnings of Self-Employed Lawyers

data as all amounts used were the most current assessed incomes and does not include duplicate entries.

I have conducted tests of the 2002 to 2005 data for the purposes of determining its reliability and comparability. I tested the internal consistency of the 2002 to 2005 data by examining the totals for Canada with the provincial totals and with the totals from the major urban centers. The net income across the age-bands was also reviewed for consistency.

The number of self-employed lawyers filing tax information is provided below:

2002 to 2005 Number of Self-Employed Lawyers

	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
Number of Lawyers	23,183	23,174	22,645	21,334

I contacted CRA to inquire about the decrease in the number of self-employed lawyers from 2002 to 2005. CRA has informed me that this is not an unusual situation. The 2005 income data was filed in 2006 and may not include all self-employed lawyers who will file income tax information. It is CRA's belief that the 2005 income data will not change materially. The number of self-employed lawyers may increase but the overall statistics will not change.

I have concluded that the 2002 to 2005 taxation data is reliable based on my own internal tests and the information received from CRA.

A detailed summary of the data is included as Appendix D.

Process

Studies conducted for previous Judicial Compensation and Benefit Commissions arrived at their findings by concentrating on self-employed lawyers earnings in excess of an income threshold who were 44 to 56 years old. This group was chosen as it represents the group where a majority of lawyers are appointed to the bench. However, it does not represent the entire pool of eligible candidates from which judges would be appointed. The use of such a narrow band of data may not provide the appropriate information and could result in inappropriate conclusions.

The first exclusion was lawyers earning below an income threshold (\$60,000 for the 2003 Commission). The rationale for focusing on lawyers earning above \$60,000 was that those earning below this amount were likely to be working part-time. However a parallel rationale could be used to exclude lawyers earning in excess of an identified salary amount, as they would not likely accept an appointment to the bench due to a significant salary reduction. It is a common statistical practice to eliminate both the very low values and the very large values of the data as opposed to just the low values. In this way, the data is not skewed by the inclusion of extreme values. In addition, those lawyers earning below \$60,000 may not necessarily be working on a part time basis. They may have made a life style choice to lessen their workload for a period of time so that they may raise a family, take care of older family members or for other personal reasons. As well, a lawyer with a net income below \$60,000 may have had a large

Report on the Earnings of Self-Employed Lawyers

gross income. However, the lawyer deducted a lot of expenses in that year, which resulted in a net income below \$60,000. The exclusion of such lawyers does not mean that they are not suitable candidates for an appointment to the bench.

In addition, previous studies focused on lawyers who were aged 44 to 56 as this was the group from which the majority of lawyers were appointed as judges. The use of such exclusions does not properly reflect the entire pool of lawyers who may be appointed as judges and excludes data that should be incorporated into the analysis. It is a better reflection of the information to include all of the available data.

There are statistical methods that will take into account the majority and include the minority information as well. One such technique to ensure that all of the data is included is to weight the data so that the larger group is given a larger emphasis than the smaller group.

I have decided to base my analysis on the entire range of available data, but to give more emphasis to the group where the majority of judges are appointed. I do not propose to use one statistical value but to provide a range of values and leave it to the readers to determine what the most suitable statistic is for their purposes.

In addition, as the judicial annuity provided to judges is a significant and important portion of a judge's compensation, I have provided a separate analysis including this benefit as a part of the judge's compensation. In most cases, self-employed lawyers would have to use a portion of their income to fund for their retirement. Thus to make the comparison more equitable between self-employed lawyers and judges, the judicial annuity should be included as part of the judicial compensation.

Analysis

The analysis of the data is based on the percentile net income information for the 2002 to 2005 taxation years provided by CRA.

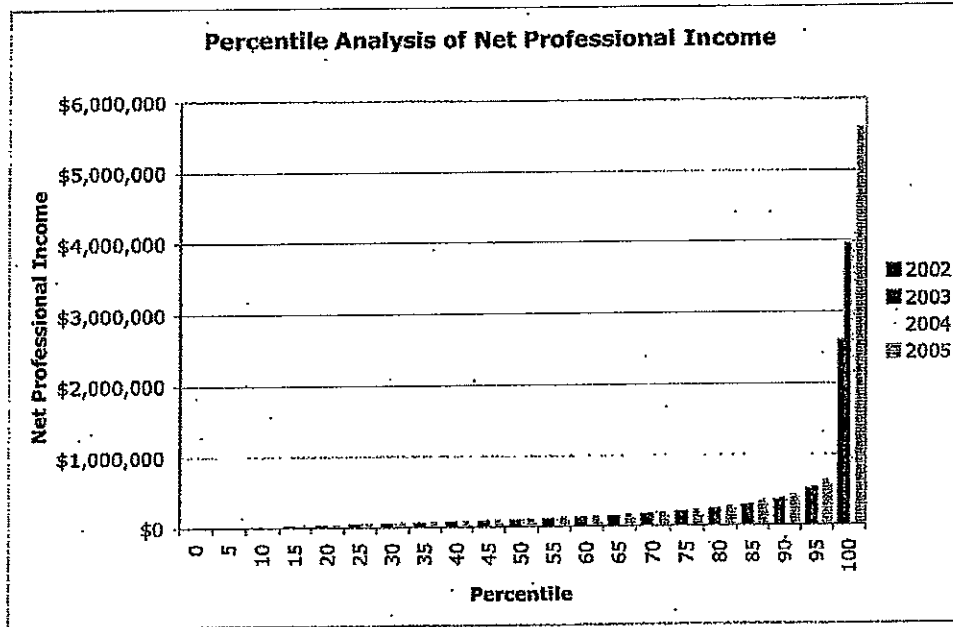
The range of income information for the years 2002 to 2005 is presented in the table below:

Lowest and Highest Net Income Percentiles

<u>Year</u>	<u>Fifth Percentile</u> <u>Income</u>	<u>Highest Percentile</u> <u>Income</u>
2002	\$11,694	\$2,613,180
2003	\$11,834	\$3,955,463
2004	\$12,628	\$4,486,646
2005	\$12,607	\$5,601,264

The shape of the distribution of net incomes over the whole group is markedly skewed to the right, as the following chart demonstrates in terms of the sharp rise in the net income for each percentile.

Report on the Earnings of Self-Employed Lawyers



As the data is markedly skewed, an appropriate representation of the net incomes can be obtained by examining the median net income. The median is the middle point of the data. That is, half the data is larger than this amount and half the data is smaller than this amount. It is not impacted by the extreme values at either end of the tails.

Median Net Income - 2002 to 2005 Taxation Years

	<u>Net Professional Income</u>
2002	\$98,696
2003	\$102,896
2004	\$111,233
2005	\$112,646

However, it is reasonable to assume that judge's salaries should not be based on the median but rather the 65th percentile or the 75th percentile. It is a common practice in compensation studies to use the 65th percentile or 75th percentile as benchmarks in ensuring the recruitment and retention of exceptional individuals.

These statistics would provide a better representation of the most likely comparator group for judges. That is, those in the top third or quarter of the legal profession, assuming that incomes are a proxy for talent.

Report on the Earnings of Self-Employed Lawyers

65th and 75th Percentile Net Income

	<u>65th Percentile</u>	<u>75th Percentile</u>
2002	\$147,077	\$198,950
2003	\$153,491	\$207,429
2004	\$168,523	\$229,797
2005	\$170,261	\$233,932

A further refinement can be made by examining the income of self-employed lawyers by age bands. Data was provided for lawyers in the following age bands:

- under age 44
- age 44 to under age 48;
- age 48 to under age 52;
- age 52 to under age 56;
- age 56 to under age 60;
- age 60 to under age 64; and
- older than age 64.

As judges are appointed to the bench at various ages, it would be appropriate to factor this into determining the income.

The approach I have used is to weight the income from the age bands by the proportion of judges that were appointed from that age band and then arrive at a single age-weighted income.

Information was obtained from the Department of Justice on the ages of appointment of federal judges. The information was for judges appointed to the bench from January 1, 1997 to March 31, 2007. This information is outlined in Appendix C.

Summarizing the information:

<u>Age at Appointment</u>	<u>Appointments</u>	<u>Percentage</u>
Under 44	30	5.9%
44 to under 48	121	23.8%
48 to under 52	133	26.1%
52 to under 56	127	25.0%
56 to under 60	68	13.4%
60 to under 64	24	4.7%
64 and over	6	1.2%
Total	509	100%

Report on the Earnings of Self-Employed Lawyers

Therefore to obtain a weighted average for the income of all lawyers, the following formula was used:

$$\begin{aligned} \text{income}_{\text{all lawyers}} = & 5.9\% \times \text{income}_{\text{under 44}} + 23.8\% \times \text{income}_{44-47} + 26.1\% \times \text{income}_{48-51} \\ & + 25.0\% \times \text{income}_{52-55} + 13.4\% \times \text{income}_{56-59} + 4.7\% \times \text{income}_{60-63} \\ & + 1.2\% \text{ income}_{64 \text{ and over}} \end{aligned}$$

The results for the 65th percentile and 75th percentile are outlined below.

65th Percentile Age-Weighted 2005 Income

<u>Age</u>	<u>Weight</u>	<u>66th Percentile Income</u>	<u>Age-Weighted</u>
Under 44	5.9%	\$155,065	\$9,139
44 to under 48	23.8%	\$188,107	\$44,717
48 to under 52	26.1%	\$184,722	\$48,267
52 to under 56	25.0%	\$185,910	\$46,386
56 to under 60	13.4%	\$177,234	\$23,678
60 to under 64	4.7%	\$159,901	\$7,540
64 and over	1.2%	\$131,598	\$1,551
Age-Weighted 65th Percentile 2005 Income			\$181,278

75th Percentile Age-Weighted 2005 Income

<u>Age</u>	<u>Weight</u>	<u>75th Percentile Income</u>	<u>Age-Weighted</u>
Under 44	5.9%	\$207,594	\$12,235
44 to under 48	23.8%	\$247,242	\$58,775
48 to under 52	26.1%	\$258,482	\$67,540
52 to under 56	25.0%	\$264,093	\$65,894
56 to under 60	13.4%	\$239,400	\$31,983
60 to under 64	4.7%	\$217,606	\$10,260
64 and over	1.2%	\$189,119	\$2,229
Age-Weighted 75th Percentile 2005 Income			\$248,916

The 65th and 75th percentile incomes increase by 6% when an age-weighted basis is used.

Report on the Earnings of Self-Employed Lawyers

Major Metropolitan Centers

The above was an analysis of the income of self-employed lawyers over the entire country. However, we should also examine the distribution of such incomes in the major metropolitan centers in Canada to determine whether there are any centers where the net income is significantly different from the national number.

I have analyzed the incomes of self-employed lawyers for the major metropolitan centers in Canada and have outlined the 65th percentile and 75th percentile incomes. The results are presented below.

65th Percentile Income for Major Metropolitan Centers

<u>Metropolitan Area</u>	<u>Income</u>	<u>% Difference from Canada</u>
Toronto	\$274,393	61%
Montreal	\$163,107	(4)%
Vancouver	\$192,550	13%
Edmonton	\$155,215	(9)%
Calgary	\$231,589	36%
Quebec City	\$138,830	(18)%
Ottawa / Gatineau	\$182,506	7%
Hamilton	\$174,512	2%
Winnipeg	\$138,717	(19)%
London	\$164,981	(3)%
All Canada	\$170,261	

75th Percentile Income for Major Metropolitan Centers

<u>Metropolitan Area</u>	<u>Income</u>	<u>% Difference from Canada</u>
Toronto	\$393,790	68%
Montreal	\$235,305	1%
Vancouver	\$252,899	8%
Edmonton	\$196,236	(16)%
Calgary	\$326,348	40%
Quebec City	\$178,755	(24)%
Ottawa / Gatineau	\$238,075	2%
Hamilton	\$214,905	(8)%
Winnipeg	\$183,119	(22)%
London	\$215,238	(8)%
All Canada	\$233,932	

Report on the Earnings of Self-Employed Lawyers

A comparison of the major metropolitan centers indicates that the 65th percentile figures for Toronto, Vancouver, Calgary, Ottawa / Gatineau and Hamilton are higher than the national number and 75th percentile figures for Toronto, Montreal, Vancouver, Calgary and Ottawa / Gatineau Hull are higher than the national number.

Judicial Annuity Scheme

The final part of our analysis is the impact of the judicial annuity on the judge's total compensation in comparison with the income of a self-employed lawyer. The judicial annuity is an important benefit available to judges. The magnitude of this benefit should not be overlooked when comparing judicial compensation with that of self-employed lawyers. As in most likelihood, self-employed lawyers would have to save for their own retirement.

The judicial annuity scheme as it currently exists has the following provisions:

- an annuity of 2/3 of final year earnings is provided at retirement;
- a judge is eligible to retire with a full annuity when:
 - they have served at least 15 years and their combined age and service is at least 80;
 - they have attained age 75 and have at least 10 years of service;
 - they are a judge of the Supreme Court of Canada with at least 10 years of service; or
 - they become disabled
- if the judge is not eligible for a full annuity, the annuity is reduced as follows:
 - if the judge has less than 10 years of service and is 75, the annuity is reduced by 1/10 for each year of service below 10 years;
 - if the judge has less than 80 points (age plus service) and is retiring prior to age 75, a pro-rated annuity is provided with an additional reduction if the annuity is commencing prior to age 60 of 5% per year for each year prior to age 60.
- the annuity is payable for the life of the judge and if the judge has a spouse or common-law partner 50% of the annuity will be paid to the spouse or common-law partner for their lifetime on the death of the judge;
- the annuity is indexed at 100% of the increase in CPI; and
- judges contribute 7% of earnings each year towards the plan. The contributions drop to 1% of earnings when a judge is eligible for an unreduced annuity.

A detailed summary of the judicial annuity scheme is outlined in Appendix A.

In order to compare the incomes of self-employed lawyers and judges, the value of the judicial annuity should be included as part of the overall compensation package of judges. One method to accomplish this is to determine the value of the judicial annuity as a percent of the judge's income and then gross-up the judicial income by that amount.

In particular, I calculated the value of the judicial annuity at appointment ages from 40 to 65, in 5 year increments. From this value, the impact of the judge's contributions was removed to reflect the portion that is not funded by the judge's own contributions. This value was then stated as a level percent of a judge's career income to reflect the average annual benefit.

Report on the Earnings of Self-Employed Lawyers

It is important that the value not include the impact of the judge's contributions. This is a more representative value of the "additional benefit" judges receive from participating in the judicial annuity scheme. Likewise, self-employed lawyers would be able to deduct contributions to their personal RRSP's from income. Thus it is reasonable to exclude the judge's own contributions to the judicial annuity scheme from the pension value.

The method and assumptions used in determining the value of the judicial annuity are outlined in Appendix B.

The value of the judicial annuity as a level percent of a judge's career income is outlined below.

Value of Judicial Annuity

<u>Appointment Age to Bench</u>	<u>Pension Value</u>
Under 44	18.2%
44 to under 48	19.7%
48 to under 52	23.5%
52 to under 56	25.8%
56 to under 60	30.0%
60 to under 64	39.5%
64 and over	52.9%

To determine a single pension value applicable to all judges, I have calculated an age-weighted pension value. The age of appointment information was obtained from the Department of Justice, previously used in determining the age-weighted percentile value. Each pension value determined above was weighted by the proportion of judges who were appointed from that age band.

Therefore to obtain a weighted average of the pension value, the following formula was used:

$$\begin{aligned} \text{Pension Value} = & 5.9\% \times \text{pension value}_{\text{under 44}} + 23.8\% \times \text{pension value}_{44-47} \\ & + 26.1\% \times \text{pension value}_{48-51} + 25.0\% \times \text{pension value}_{52-55} \\ & + 13.4\% \times \text{pension value}_{56-59} + 4.7\% \times \text{pension value}_{60-63} \\ & + 1.2\% \times \text{pension value}_{64 \text{ and over}} \end{aligned}$$

Report on the Earnings of Self-Employed Lawyers

The result of the pension value is outlined below.

Weighted Average Value of Judicial Annuity Based on Age at Appointment

<u>Appointment Age to Bench</u>	<u>Percentage Appointment</u>	<u>Pension Value</u>	<u>Weighted Average Pension Value</u>
Under 44	5.9%	18.0%	1.1%
44 to under 48	23.8%	19.5%	4.6%
48 to under 52	26.1%	23.3%	6.1%
52 to under 56	25.0%	25.5%	6.4%
56 to under 60	13.4%	29.7%	4.0%
60 to under 64	4.7%	39.1%	1.8%
64 and over	1.2%	52.4%	<u>0.6%</u>

Weighted Average

24.6%

Taking a weighted average of the pension value based on a judge's appointment age results in a pension value of 24.6%.

Federally appointed judges received an income of \$237,400 per annum in 2005 (\$252,000 per annum in 2007). Taking into account the value of the pension and grossing up the income to include this value increases judicial compensation to \$295,777 per annum (\$237,400 x 1.246).

Percentile Ranking of Judicial Compensation

By combining the above analysis, I have determined the percentile ranking of the judicial salary both including and excluding the gross-up for the annuity scheme in relation to that of self-employed lawyers for each major urban center. That is, using the judges' 2005 salary of \$237,400 per annum and incorporating the gross-up for the judicial annuity scheme by increasing the salary to \$295,777.

The following would be the percentile ranking of the corresponding salaries:

Percentile Rankings of Judicial Compensation

<u>Metropolitan Area</u>	<u>Percentile Ranking (excluding Judicial Annuity)</u>	<u>Percentile Ranking (including Judicial Annuity)</u>
Toronto	60 th to 65 th	65 th to 70 th
Montreal	75 th to 80 th	80 th to 85 th
Vancouver	70 th to 75 th	75 th to 80 th
Edmonton	80 th to 85 th	85 th to 90 th
Calgary	65 th to 70 th	70 th to 75 th
Quebec	85 th to 90 th	90 th to 95 th
Ottawa / Gatineau	70 th to 75 th	80 th to 85 th
Hamilton	80 th to 85 th	85 th to 90 th
Winnipeg	80 th to 85 th	90 th to 95 th
London	75 th to 80 th	85 th to 90 th
All Canada	75 th to 80 th	80 th to 85 th

The judicial salary of \$237,400 per annum would place it in the 75th to 80th percentile nationally and the judicial salary would be in at least the 70th percentile in all major urban centers in Canada, except for Toronto (60th to 65th) and Calgary (65th to 70th). This would mean the judicial salary is greater than 75% of the net income of self-employed lawyers.

When the value of the judicial annuity is included as part of the judicial compensation the percentile ranking increases to over the 80th percentile, nationally and for all major urban centers except for Toronto, Vancouver and Calgary. This would mean that judicial compensation exceeds the net income of at least 80% of self-employed lawyers.

Other Compensation Issues

One final aspect which should be considered when a comparison of compensation is done between self-employed lawyers and judges is the generous benefits package in addition to the judicial annuity that is provided to judges. In particular, the judges have:

- an extensive group benefits plan which includes:
 - basic life insurance, supplementary life insurance, post-retirement life insurance and dependents' life insurance;
 - accidental death and dismemberment insurance;
 - a health care plan;
 - a dental service plan

Most self-employed lawyers would have to provide for their own individual extended health/dental benefits; and

- the option to elect supernumerary status. Supernumerary judges are judges who are eligible to retire with a full annuity (have at least 15 years of service and whose combined age and number of years in judicial office is not less than 80 or who have attained the age of 70 and have at least 10 years of judicial service) and have elected supernumerary office, which permits them to work a reduced workload (commonly understood to be around 50%) for a full salary.

Report on the Earnings of Self-Employed Lawyers

Appendix A

Summary of the Plan Provisions of the Judicial Annuity Scheme

Retirement	Age 75 (70 for certain judges appointed prior to March 1, 1987); or Age plus years of service of at least 80 years (minimum 15 years of service); or 10 or more years of service, if a judge of the Supreme Court of Canada
Retirement Pension	66 2/3% of salary at the time of retirement. If less than 10 years of service, the pension is reduced by 1/10 for each year of service below 10 years.
Early Retirement	Age 55 with 10 years of service.
Early Retirement Reduction	5% per year that the pension commences before age 60
Normal Form of Pension	Conjugal relationship: Joint life and 50% survivor pension. otherwise: Lifetime pension with no guarantee. 100% of the Consumer Price Index
Cost-of-Living Adjustments	
Death Before Retirement	A lump sum equal to one-sixth of salary is paid to the surviving spouse or common-law partner or to the estate if there is no survivor. Conjugal relationship: A pension is payable to the surviving spouse or common-law partner equal to one-third of the annual salary of the judge. Dependents: A pension is payable to each surviving dependent equal to 20% of the surviving spouse's or common-law's pension, with a reduction if there are more than four dependent children. The pension for a surviving dependent is doubled if that child is an orphan.
Termination prior to retirement	Refund of contributions, with interest.
Disability	Immediate unreduced pension.
Employee Contributions	For judges appointed before February 17, 1975: 1.5% of salary. For judges appointed after February 16, 1975: 1% of salary to the Supplementary Retirement Benefits Account plus 6% of salary to the Consolidated Revenue Fund if the judge is not eligible for an unreduced pension. Contributions cease when a judge elects supernumerary status

Appendix B

Assumption and Methods Employed in Determining Pension Values

Actuarial assumptions	Interest rate	6.0% per year
	Rate of future increase in income	3.0% per year
	Consumer Price Index increase	2% per year
	Post-retirement pension indexing	100% of increase in Consumer Price Index
	Termination of employment, disability or death prior to retirement	Nil
	Retirement age	Retirement rates specified in the actuarial report on the Pension Plan for Federally Appointed Judges as at 31 March 2004 prepared by the Office of the Chief Actuary of the Office of the Superintendent of Financial Institutions
	Mortality after retirement	UP1994 mortality table projected to 2015 (unisex 67% male, 33% female)
	Relationship status at retirement	conjugal relationship, with spouse of opposite gender and same age as the member
Actuarial valuation method		Projected Benefit

Appendix C

Judicial Ages at Appointment from January 1, 1997 to March 31, 2007

<u>Appointment Age</u>	<u>Number</u>
41	7
42	7
43	16
44	17
45	36
46	35
47	33
48	40
49	25
50	33
51	35
52	31
53	26
54	40
55	30
56	19
57	23
58	15
59	11
60	5
61	9
62	5
63	5
64	2
65	4
Total	509

Gender of Judicial Appointments from January 1, 1997 to March 31, 2007

<u>Gender</u>	<u>Number</u>
Male	328
Female	181
Total	509

Report on the Earnings of Self-Employed Lawyers

Appendix D

Self-Employed Lawyer Income Data

Percentile Analysis of Net Professional Income

Percentiles	2002	2003	2004	2005
0	\$0	\$0	\$0	\$0
5	\$11,694	\$11,834	\$12,628	\$12,607
10	\$21,224	\$21,785	\$23,265	\$23,297
15	\$30,011	\$30,898	\$32,904	\$33,133
20	\$38,534	\$39,717	\$42,139	\$42,710
25	\$47,451	\$48,474	\$52,267	\$53,195
30	\$56,310	\$58,019	\$62,413	\$63,247
35	\$65,561	\$68,205	\$73,254	\$73,970
40	\$75,258	\$78,703	\$84,854	\$85,198
45	\$86,407	\$90,093	\$97,597	\$98,036
50	\$98,696	\$102,896	\$111,233	\$112,646
55	\$112,296	\$117,207	\$127,351	\$129,232
60	\$128,015	\$134,330	\$146,396	\$148,007
65	\$147,077	\$153,491	\$168,523	\$170,261
70	\$170,390	\$177,786	\$195,821	\$198,009
75	\$198,950	\$207,429	\$229,797	\$233,932
80	\$239,082	\$248,772	\$274,363	\$278,905
85	\$288,192	\$303,333	\$336,435	\$348,289
90	\$368,984	\$384,357	\$437,219	\$448,784
95	\$521,725	\$539,313	\$634,531	\$648,062
100	\$2,613,180	\$3,955,463	\$4,486,646	\$5,601,264
Number	23,183	23,174	22,645	21,334

Report on the Earnings of Self-Employed Lawyers

2005 Net Income Percentiles - By Age Bands

Percentiles	Age < 44	44<=Age<48	48<=Age<52	52<=age<56	56<=age<60	60<=age<64	Age>64
0(Min)	\$0	\$0	\$0	\$0	\$0	\$0	\$0
5	\$12,406	\$15,271	\$16,377	\$15,054	\$13,877	\$11,524	\$5,920
10	\$22,757	\$26,963	\$28,112	\$26,663	\$26,181	\$20,369	\$12,094
15	\$31,697	\$36,565	\$38,910	\$37,005	\$35,741	\$30,267	\$19,110
20	\$39,828	\$46,415	\$49,933	\$48,599	\$46,168	\$40,246	\$26,000
25	\$49,143	\$56,105	\$60,338	\$60,266	\$56,894	\$50,264	\$34,325
30	\$58,079	\$67,088	\$71,765	\$69,728	\$68,855	\$61,282	\$43,891
35	\$67,679	\$77,722	\$82,757	\$80,193	\$78,480	\$69,932	\$53,455
40	\$77,483	\$91,320	\$94,234	\$94,204	\$90,711	\$81,328	\$61,925
45	\$88,261	\$105,358	\$107,244	\$107,760	\$102,797	\$93,703	\$73,236
50	\$101,422	\$122,464	\$123,044	\$124,133	\$117,368	\$106,127	\$85,817
55	\$117,219	\$139,265	\$142,009	\$141,511	\$133,885	\$121,822	\$100,972
60	\$135,520	\$162,369	\$159,933	\$160,701	\$153,687	\$138,246	\$113,243
65	\$155,065	\$188,107	\$184,722	\$185,910	\$177,234	\$159,901	\$131,598
70	\$177,915	\$214,954	\$216,910	\$220,340	\$204,410	\$185,052	\$156,321
75	\$207,594	\$247,242	\$258,482	\$264,093	\$239,400	\$217,606	\$189,119
80	\$242,066	\$292,957	\$319,762	\$314,966	\$288,212	\$263,582	\$234,334
85	\$290,220	\$360,978	\$402,966	\$388,273	\$358,102	\$334,123	\$285,899
90	\$366,983	\$473,210	\$520,529	\$511,774	\$462,739	\$438,756	\$383,437
95	\$481,207	\$661,677	\$763,417	\$763,947	\$696,590	\$642,117	\$543,099
100 (Max)	>\$1M	>\$1M	>\$1M	>\$1M	>\$1M	>\$1M	>\$1M
Number	3,918	3,005	3,202	3,467	3,260	2,542	1,940

2005 Percentile Analysis of Total Net Income

City	Toronto	Montreal	Vancouver	Edmonton	Calgary	Quebec City	Ottawa/Gatineau	Hamilton	Winnipeg	London	All Top 10 CMA's
Percentiles											
0(Min)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$1,143	\$0	\$0
5	\$17,498	\$8,210	\$11,407	\$13,710	\$12,580	\$9,010	\$12,189	\$22,718	\$12,764	\$22,321	\$12,594
10	\$32,583	\$14,272	\$23,166	\$22,762	\$24,348	\$20,201	\$23,584	\$33,949	\$20,807	\$36,402	\$23,297
15	\$45,535	\$19,894	\$34,056	\$32,122	\$35,000	\$29,016	\$36,186	\$47,435	\$33,133	\$49,077	\$33,769
20	\$59,262	\$27,018	\$43,302	\$39,850	\$50,609	\$36,527	\$45,054	\$59,668	\$41,984	\$61,688	\$44,193
25	\$74,087	\$33,627	\$54,567	\$53,423	\$59,005	\$43,620	\$56,715	\$69,805	\$52,186	\$72,306	\$55,949
30	\$87,601	\$41,924	\$64,388	\$60,000	\$68,371	\$52,045	\$68,259	\$77,452	\$59,000	\$84,670	\$67,775
35	\$103,009	\$50,935	\$76,735	\$70,860	\$83,242	\$63,506	\$80,004	\$87,334	\$66,576	\$94,122	\$80,157
40	\$121,652	\$61,384	\$91,455	\$80,476	\$97,558	\$72,824	\$93,494	\$98,335	\$76,007	\$104,108	\$94,748
45	\$142,778	\$73,685	\$106,985	\$94,070	\$116,205	\$81,358	\$105,857	\$114,356	\$82,883	\$114,765	\$110,808
50	\$167,743	\$88,489	\$127,321	\$107,541	\$133,019	\$95,719	\$120,827	\$126,366	\$94,658	\$125,043	\$129,757
55	\$195,940	\$108,672	\$147,932	\$120,817	\$159,378	\$110,385	\$138,170	\$141,069	\$110,629	\$139,788	\$151,617
60	\$232,994	\$134,024	\$168,309	\$137,255	\$191,723	\$122,483	\$158,658	\$154,178	\$124,851	\$156,159	\$175,789
65	\$274,393	\$163,107	\$192,550	\$155,215	\$231,589	\$138,830	\$182,508	\$174,512	\$138,717	\$164,961	\$204,899
70	\$327,793	\$193,136	\$217,665	\$177,537	\$271,666	\$157,209	\$205,566	\$187,076	\$158,479	\$182,917	\$239,547
75	\$393,790	\$235,305	\$252,899	\$195,238	\$326,348	\$178,755	\$236,075	\$214,905	\$183,119	\$215,238	\$282,803
80	\$460,340	\$278,857	\$305,686	\$223,559	\$390,874	\$198,860	\$274,657	\$235,241	\$202,772	\$243,833	\$338,874
85	\$559,204	\$336,386	\$370,112	\$250,562	\$480,366	\$227,961	\$315,197	\$291,732	\$246,530	\$275,963	\$413,655
90	\$710,440	\$411,846	\$444,472	\$308,845	\$648,716	\$261,848	\$387,340	\$342,526	\$295,424	\$317,353	\$522,696
95	\$938,608	\$557,157	\$569,546	\$354,766	\$883,635	\$346,910	\$502,071	\$458,778	\$353,793	\$450,512	\$752,269
100 (Max)	>\$1M	>\$1M	>\$1M	>\$1M	>\$1M	>\$1M	>\$1M	<\$1M	<\$1M	<\$1M	>\$1M
Number	6,352	3,183	1,575	489	741	638	1,030	418	539	382	15,339