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# **Appendix 1**

## **Orders-in-Council**



CANADA

PRIVY COUNCIL - CONSEIL PRIVÉ

**P.C. 2003 - 1437**  
**September 25, 2003**

Whereas section 26.1 of the *Judges Act* provides that the Judicial Compensation and Benefits Commission consists of three members appointed by the Governor in Council;

And whereas paragraph 26.1 (c) of the *Judges Act*, specifies that one person, who shall act as chairperson, shall be nominated by the members who are nominated by the Judiciary and the Minister of Justice of Canada;

Therefore, Her Excellency the Governor General in Council, on the recommendation of the Minister of Justice, pursuant to section 26.1 of the *Judges Act*, hereby appoints Roderick A. McLennan of Edmonton, Alberta, to be Chairperson of the Judicial Compensation and Benefits Commission, to hold office during good behaviour for a term ending August 31, 2007, and fixes his remuneration as set out in the schedule hereto, which remuneration is comprised of a per diem within the range (\$650 - \$750).

CERTIFIED TO BE A TRUE COPY - COPIE CERTIFIÉE CONFORME

A handwritten signature in black ink, appearing to be 'G. H. B.' or similar, written in a cursive style.

CLERK OF THE PRIVY COUNCIL - LE GREFFIER DU CONSEIL PRIVÉ



CANADA

PRIVY COUNCIL - CONSEIL PRIVÉ

**P.C. 2003 - 1166**  
**August 12, 2003**

Whereas section 26.1 of the *Judges Act* provides that the Judicial Compensation and Benefits Commission consists of three members appointed by the Governor in Council;

And whereas paragraph 26.1 (b) of the *Judges Act*, specifies that one person shall be nominated by the Minister of Justice of Canada;

Therefore, Her Excellency the Governor General in Council, on the recommendation of the Minister of Justice, pursuant to section 26.1 of the *Judges Act*, hereby appoints Gretta Chambers of Westmount, Quebec, to be a member of the Judicial Compensation and Benefits Commission, to hold office during good behaviour, for a term of four years, and fixes her remuneration as set out in the schedule hereto, which remuneration is comprised of a per diem within the range (\$600 - \$700), effective September 1, 2003.

CERTIFIED TO BE A TRUE COPY - COPIE CERTIFIÉE CONFORME

A handwritten signature in black ink, appearing to be 'G. Chambers'.

CLERK OF THE PRIVY COUNCIL - LE GREFFIER DU CONSEIL PRIVÉ



CANADA

PRIVY COUNCIL - CONSEIL PRIVÉ

**P.C. 2003 - 1167**  
**August 12, 2003**

Whereas section 26.1 of the *Judges Act* provides that the Judicial Compensation and Benefits Commission consists of three members appointed by the Governor in Council;

And whereas paragraph 26.1 (a) of the *Judges Act* , specifies that one person shall be nominated by the judiciary;

Therefore, Her Excellency the Governor General in Council, on the recommendation of the Minister of Justice, pursuant to section 26.1 of the *Judges Act*, hereby reappoints Earl A. Cherniak of Toronto, Ontario, to be a member of the Judicial Compensation and Benefits Commission, to hold office during good behaviour, for a term of four years, and fixes his remuneration as set out in the schedule hereto, which remuneration is comprised of a per diem within the range (\$600 - \$700), effective September 1, 2003.

CERTIFIED TO BE A TRUE COPY - COPIE CERTIFIÉE CONFORME

A handwritten signature in black ink, appearing to be 'G. H. B.' or similar.

CLERK OF THE PRIVY COUNCIL - LE GREFFIER DU CONSEIL PRIVÉ

# **Appendix 2**

## **Legislation Tying the Compensation of Other Individuals to Judicial Salaries**

# ***Parliament of Canada Act***

## **PART IV REMUNERATION OF MEMBERS OF PARLIAMENT**

### ***Remuneration Reference Amount***

**54.1** (1) Commencing on January 1, 2001, the remuneration reference amount is equal to the amount of the annual salary of the Chief Justice of the Supreme Court of Canada.

Retroactive adjustments to reference amount

(2) Adjustments to the remuneration reference amount shall be made retroactively to take into account any retroactive changes in the annual salary of the Chief Justice.

2001, c. 20, s. 1.

### ***Salaries and Additional Allowances of Members***

**55.** (12) Notwithstanding anything in this section, the annual sessional allowance that shall be paid, commencing on January 1, 2001,

(a) to members of the Senate is equal to 50 per cent of the remuneration reference amount referred to in section 54.1 minus \$25,000; and

(b) to members of the House of Commons is equal to 50 per cent of the remuneration reference amount referred to in section 54.1.

2001, c. 20, s. 2

Presiding officers

**60.** There shall be paid to the following members of the Senate or House of Commons annual salaries equal to the remuneration reference amount referred to in section 54.1 multiplied by the following percentages:

(a) the Speaker of the Senate, 17.6 per cent;

(b) any member of the Senate occupying the recognized position of Speaker *pro tempore* of the Senate, 7.3 per cent;

(c) the Speaker of the House of Commons, 24 per cent;

- (d) the Deputy Speaker of the House of Commons, 12.5 per cent;
- (e) the Deputy Chair of the Committee of the Whole House of Commons, 5.1 per cent;
- (f) the Assistant Deputy Chair of the Committee of the Whole House of Commons, 5.1 per cent;
- (g) any member -- except one who receives a salary under the *Salaries Act* -- occupying the position of Chair of a Standing or Special Committee of the Senate or House of Commons or a Standing or Special Joint Committee, other than the Liaison Committee of the House of Commons and the Standing Joint Committee on the Library of Parliament, 3.6%; and
- (h) any member -- except one who receives a salary under the *Salaries Act* -- occupying the position of Vice-Chair of a Standing or Special Committee of the Senate or House of Commons or a Standing or Special Joint Committee, other than the Liaison Committee of the House of Commons and the Standing Joint Committee on the Library of Parliament, 1.9%.

R.S., 1985, c. P-1, s. 60; 1998, c. 23, s. 2; 2001, c. 20, s. 4; 2003, c. 16, s. 10.

#### Parliamentary Secretaries

- 61.** Commencing on January 1, 2001, a Parliamentary Secretary shall be paid an annual salary equal to the remuneration reference amount referred to in section 54.1 multiplied by 5.1 per cent.

R.S., 1985, c. P-1, s. 61; 1998, c. 23, s. 3; 2001, c. 20, s. 4.

#### ***Additional allowances***

- 62.** Commencing on January 1, 2001, there shall be paid to the following members of the Senate or the House of Commons additional annual allowances equal to the remuneration reference amount referred to in section 54.1 multiplied by the following percentages:

- (a) the member of the Senate occupying the position of Leader of the Government in the Senate, except any such member in receipt of a salary under the *Salaries Act*, 24 per cent;
- (b) the member of the Senate occupying the position of Leader of the Opposition in the Senate, 11.5 per cent;
- (c) the member of the Senate occupying the position of Deputy Leader of the Government in the Senate, 11.5 per cent;
- (d) the member of the Senate occupying the position of Deputy Leader of the Opposition in the Senate, 7.3 per cent;



- (e) the member of the Senate occupying the position of Government Whip in the Senate, 3.6 per cent;
- (f) the member of the Senate occupying the position of Opposition Whip in the Senate, 2.2 per cent;
- (g) the member occupying the position of Leader of the Opposition in the House of Commons, 24 per cent;
- (h) each member of the House of Commons, other than the Prime Minister or the member occupying the position of Leader of the Opposition in the House of Commons, who is the leader of a party that has a recognized membership of twelve or more persons in the House, 17.1 per cent;
- (i) each of the members occupying the positions of Chief Government Whip and Chief Opposition Whip in the House of Commons, 9.1 per cent;
- (j) each of the members occupying the positions of Deputy Government Whip and Deputy Opposition Whip and the position of Whip of a party that has a recognized membership of twelve or more persons in the House of Commons, 3.6 per cent;
- (k) the member occupying the position of Opposition House Leader in the House of Commons, 12.5 per cent; and
- (l) the member occupying the position of House Leader of a party that has a recognized membership of twelve or more persons in the House of Commons, 5.1 per cent.

R.S., 1985, c. P-1, s. 62; 1998, c. 23, s. 4; 2001, c. 20, s. 4.

# **Salaries Act**

## **SALARIES**

### Prime Minister

4. (1) Commencing on January 1, 2001, the Prime Minister's annual salary is equal to the remuneration reference amount referred to in section 54.1 of the *Parliament of Canada Act*, multiplied by 50 per cent.

### Salaries of Ministers

- (2) Commencing on January 1, 2001, the annual salary of the following ministers, being members of the Queen's Privy Council for Canada, is equal to the remuneration reference amount referred to in section 54.1 of the *Parliament of Canada Act*, multiplied by 24 per cent:
- (a) the Minister of Justice and Attorney General;
  - (b) the Minister of National Defence;
  - (c) the Minister of National Revenue;
  - (d) the Minister of Finance;
  - (e) the Minister of Transport;
  - (f) the President of the Queen's Privy Council for Canada;
  - (g) the Minister of Agriculture and Agri-Food;
  - (h) the Minister of Labour;
  - (i) the Minister of Veterans Affairs;
  - (j) the Associate Minister of National Defence;
  - (k) the Solicitor General of Canada;
  - (l) the Minister of Indian Affairs and Northern Development;
  - (m) the President of the Treasury Board;
  - (n) the Minister of the Environment;
  - (o) the Leader of the Government in the Senate;
  - (p) the Minister of Fisheries and Oceans;
  - (q) the Minister for International Trade;
  - (r) the Minister for International Cooperation;
  - (s) the Minister of Western Economic Diversification;

- (t) the Member of the Queen's Privy Council for Canada appointed by Commission under the Great Seal to be the Minister for the purposes of the *Atlantic Canada Opportunities Agency Act*;
- (u) the Minister of Citizenship and Immigration;
- (v) the Minister of Natural Resources;
- (w) the Minister of Industry;
- (x) the Minister of Foreign Affairs;
- (y) the Minister of Public Works and Government Services;
- (z) the Minister of Canadian Heritage;
- (z.1) the Minister of Health; and
- (z.2) the Minister of Human Resources Development.

#### Salaries of Ministers of State

- (3) Commencing on January 1, 2001, the annual salary of each minister of State, being a member of the Queen's Privy Council for Canada, who presides over a ministry of State is equal to the remuneration reference amount referred to in section 54.1 of the *Parliament of Canada Act*, multiplied by 24 per cent.

R.S., 1985, c. S-3, s. 4; R.S., 1985, c. 11 (4th Supp.), s. 16, c. 41 (4th Supp.), s. 56; 1989, c. 27, s. 23; 1990, c. 1, s. 32; 1991, c. 3, s. 13; 1992, c. 1, s. 145(F); 1993, c. 12, s. 14; 1994, c. 31, s. 22, c. 38, s. 25, c. 41, s. 36; 1995, c. 1, s. 61, c. 5, s. 24, c. 11, s. 35; 1996, c. 8, s. 31, c. 11, s. 87, c. 16, s. 56; 1998, c. 23, s. 15; 2000, c. 34, s. 94(F); 2001, c. 20, s. 29.

# Appendix 3

## Case Law

## Case Law Relating to Provincial Judicial Compensation

- 1 *N.A.P.E. v. Newfoundland and Labrador (Minister of Justice)*, 2004 Carswell Nfld 97, 2004 NLSCTD 54 (N.L. T.D. Mar 23, 2004)
- 2 *British Columbia (Judicial Compensation Committee), Re*, 160 D.L.R. (4<sup>th</sup>) 477, 51 B.C.L.R. (3d) 139, 108 B.C.A.C. 177, 1998 Carswell BC 1181, 12 Admin. L.R. (3d) 161, 176 W.A.C. 177, [1998] B.C.J. No. 1230 (B.C. C.A. May 26, 1998)
- 3 *Ontario Judges' Assn. v. Ontario (Chair, Management Board)*, 233 D.L.R. (4<sup>th</sup>) 711
- 4 *Newfoundland Assn. of Provincial Court Judges v. Newfoundland and Labrador*, 2003 Carswell Nfld 193, 2003 NLSCTD 117 (N.L. T.D. Aug 27, 2003), 2003 NBCA 54
- 5 *Provincial Court Judges' Assn. (New Brunswick) v. New Brunswick (Minister of Justice)*, 231 D.L.R. (4<sup>th</sup>) 38, 260 N.B.R. (2d) 201
- 6 *Provincial Court Judges' Assn. (New Brunswick) v. New Brunswick (Minister of Justice)*, 213 D.L.R. (4<sup>th</sup>) 329, 249 N.B.R. (2d) 275
- 7 *Mackin v. New Brunswick (Minister of Justice)*, 209 D.L.R. (4<sup>th</sup>) 564, [2002] 1 S.C.R. 405, 245 N.B.R. (2d) 299, 31
- 8 *Bodner v. Alberta*, [2001] 10 W.W.R. 444, 296 A.R. 22, 93 AltaL.R. (3d) 358, 2001 Carswell Alta 1039, 2001 ABQB 650, [2001] A.W.L.D. 550, 10 C.P.C. (5<sup>th</sup>) 157 (Alta. Q.B. July 25, 2001)
- 9 *Northwest Territories v. P.S.A.C.*, 201 D.L.R. (4<sup>th</sup>) 128, 2001 FCA 162, [2001] F.C.J. No. 791 (Fed. C.A. May 24, 2001)
- 10 *Independence of the Provincial Court of British Columbia Justices of the Peace, Re*, [2000] 11 W.W.R. 157, 81 B.C.L.R. (3d) 164
- 11 *Alberta (Provincial Court Judge) v. Alberta (Provincial Court Chief Judge)*, 192 D.L.R. (4<sup>th</sup>) 540, [2001] 1 W.W.R. 55, 266 A.R. 296, 84 Alta L.R. (3d) 201, (3d) 45, 48 C.P.C. (4<sup>th</sup>) 222, 228 W.A.C. 296, 2000 ABCA 241, [2000] A.J. No. 1029 (Alta C.A. Sep 05, 2000)

- 12 *Newfoundland Assn. of Provincial Court Judges v. Newfoundland*, 191 D.L.R. (4<sup>th</sup>) 225, 192 Nfld. and P.E.I.R. 183
- 13 *Rice v. New Brunswick*, 181 D.L.R. (4<sup>th</sup>) 643, 235 N.B.R. (2d) 1
- 14 *Collins v. Canada*, [2000] 2 F.C. 3, 178 F.T.R. 161, 1999 Carswell Nat 2171, 1999 Carswell Nat 3048, 69 C.R.R. (2d) 205, [1999] F.C.J. No. 1578 (Fed. T.D. Oct 25, 1999)
- 15 *Provincial Judges' Assn. (Alberta) v. Alberta*, 177 D.L.R. (4<sup>th</sup>) 418, [1999] 12 W.W.R. 66
- 16 *Provincial Judges' Assn. (Alberta) v. Alberta*, [1999] 10 W.W.R. 356
- 17 *Mackin v. New Brunswick (Minister of Justice)*, 202 N.B.R. (2d) 324
- 18 *Newfoundland Assn. of Provincial Court Judges v. Newfoundland*, 160 D.L.R. (4<sup>th</sup>) 337, 163 Nfld. and P.E.I.R. 319, 1998

# **Appendix 4**

## **Public Notice and List of Newspapers**

**Judicial Compensation  
and  
Benefits Commission**



**Commission d'examen  
de la rémunération des  
juges**

**NOTICE**

The Commission was established under the *Judges Act*, to inquire into the adequacy of the salaries and other amounts payable under the *Act* and into the adequacy of judges' benefits generally. The Commission will report to the Minister of Justice by May 31, 2004.

The Commission invites written submissions in either official language concerning the matters within the Commission's mandate. Written submissions must reach the Commission by December 15, 2003, and must be provided in 10 copies as well as in electronic format. Copies of written submissions received by the Commission may be obtained by contacting the Executive Director of the Commission at the address noted below.

A party intending to file a written submission with the Commission may also request an opportunity to make a presentation at an oral hearing. The Commission must be notified by January 23, 2004, of the party's desire to appear at an oral hearing. Parties wishing to make comments on the submissions must submit their comments, also in 10 copies and electronically, by January 23, 2004.

**Chairman:**

Roderick McLennan

**Commissioners:**

Gretta Chambers

*Earl Cherniak*

**Executive Director:**

*Jeanne Ruest*

**Mailing address:** 9<sup>th</sup> floor – 99 Metcalfe Street

Ottawa, Ontario K1A 1E3

Tel : 613-992-4304 Fax: 613-947-4442

E-mail : [info@quadcom.gc.ca](mailto:info@quadcom.gc.ca)



The notice was published in 2003 in the following newspapers:

<b>Newspaper</b>	<b>Dates Published</b>	<b>Newspaper</b>	<b>Dates Published</b>
The National Post	Nov 20 and 22	Le Soleil	Nov 22
The Globe and Mail	Nov 22 and 26	Le Journal de Montreal	Nov 22
Law Times	December 2003	Le Devoir	Nov 20
St. John's Telegram	Nov 22	Calgary Sun	Nov 22
Halifax Daily News	Nov 22	Edmonton Sun	Nov 22
Regina Leader Post	Nov 22	Acadie Nouvelle	Nov 22
Saskatoon Star Phoenix	Nov 22	Times & Transcript	Nov 22
Prince Albert Daily Herald	Nov 22	The Daily Gleaner	Nov 22
Moose Jaw Times Herald	Nov 22	Saint John Telegraph	Nov 22
Calgary Herald	Nov 22	Halifax Herald	Nov 21
Edmonton Journal	Nov 22	L'Express Pacifique	Nov 25
Vancouver Sun	Nov 22	L'Aurore Boréale	Nov 28
Victoria Time Colonist	Nov 22	L'eau vive	Nov 27
Windsor Star	Nov 22	Express du Pacifique	Nov 24
Winnipeg Free Press	Nov 22	L'Express (Toronto)	Nov 25
Brandon Sun	Nov 22	Yukon News	Nov 21
The Guardian PEI	Nov 22	Nunatsiaq News	Nov 28
The Gazette	Nov 22	Whiteshorse Star	Nov 21
Toronto Sun	Nov 20 and 22	Yellowknifer	Nov 21
Ottawa Sun	Nov 19 and 22	L'Aquilon	Nov 21
Toronto Star	Nov 22	La Voix Acadienne	Nov 26
Ottawa Citizen	Nov 20, 22, 26	La Liberté	Nov 27
Le Droit	Nov 20 and 22	Business Examiner	Dec 1
La Presse	Nov 22	Quebec Chronicle Telegraph	Nov 26

# **Appendix 5**

## **List of Submissions Received by the Commission**

## Submissions from Organizations, Associations and Departments

- Alberta Law Society
- Alberta Justice
- Canadian Bar Association
- Canadian Judges Association
- Canadian Judicial Council
- Government of Canada
- Northwest Territories Department of Justice

## Individual Submissions

- Mr. Roger Callow
- Mr. Stephen Brausewetter
- Hon. Madam Justice Alice Desjardins
- Mr. Robert Drinnan
- Mr. Harold Geltman
- Hon. Mr. Justice Joseph Nuss
- Hon. Mr. Lawrence Poitras and Hon. Mr. Claude Bisson
- Hon. Mr. Justice J. E. Richard
- Hon. Mr. Justice John deP. Wright

# Appendix 6

*Public Hearings*

*List of Presentations*

*February 3 and 4, 2004*

## **Representing the Canadian Superior Courts Judges Association/Canadian Judicial Council**

Mr. Yves Fortier, Barrister and Solicitor, Ogilvy Renault  
Mr. Pierre Bienvenu, Barrister and Solicitor, Ogilvy Renault  
Mr. Azim Hussain, Barrister and Solicitor, Ogilvy Renault  
Hon. Justice Diane Marcellin, President, Superior Courts Judges Association  
Hon. Associate Chief Justice Michael MacDonald, Supreme Court of Nova Scotia  
Hon. Justice Stephen Goudge, Court of Appeal for Ontario  
Hon. Justice Alan MacInnes, Court of Queen's Bench for Manitoba

## **Representing the Government of Canada**

Mr. Paul Vickery, Senior General Counsel, Office of the Assistant Deputy Attorney General, Department of Justice  
Ms. Judith Bellis, General Counsel, Judicial Affairs, Courts and Tribunal Policy, Department of Justice  
Ms. Linda Wall, Senior Counsel, Civil Litigation Section, Department of Justice  
Ms. Monika Lozinska, Counsel, Civil Litigation Section, Department of Justice

## **Representing Certain Appellate Court Judges**

Hon. Chief Justice of Quebec, Michel Robert  
Hon. Justice Joseph Nuss, Court of Appeal for Quebec  
Hon. Justice Charles Huband, Court of Appeal for Manitoba  
Hon. Justice Brian J. D. Malone, Federal Court of Appeal  
Hon. Justice Karen Sharlow, Federal Court of Appeal  
Hon. Justice Carole M. Conrad, Court of Appeal for Alberta

## **Individual Presentations**

Hon. Justice Alice Desjardins, Federal Court of Appeal  
Hon. Justice Ronald Veale, Supreme Court of Yukon  
Hon. Lawrence Poitras and Hon. Claude Bisson

# **Appendix 7**

## **List of Individuals Whose Salaries Are Tied to Judicial Salaries**

Based on information received from the Office of the Commissioner for Federal Judicial Affairs and the Department of Justice, the salaries of the following individuals are tied to judicial salaries.

1. Prime Minister of Canada – whose remuneration is equal to that of the Chief Justice of Canada. Half of this amount is pursuant to the *Salaries Act*, subsection 4(1) while the other half consists of the sessional allowance accorded to members of the House of Commons pursuant to the *Parliament of Canada Act*, s. 55(12)(b).
2. Certain Ministers – whose salaries consist of 24% of the annual salary of the Chief Justice of Canada (*Salaries Act*, subsection 4(2)). This amount is in addition to the annual sessional allowance (s. 55 (12)(b), *Parliament of Canada Act*).
3. Members of the House of Commons – whose salaries consist of the annual sessional allowance (s. 55(12)(b), *Parliament of Canada Act*).
4. Speaker of the House of Commons, Chairs of Committees, Parliamentary Secretary and the Leader of the Opposition – whose salaries are calculated as varying percentages of the salary of the Chief Justice of Canada. These amounts are in addition to the annual sessional allowance (s. 55(12)(b), *Parliament of Canada Act*).
5. Senators – whose salaries consist of 50% of the annual salary of the Chief Justice of Canada less \$25,000 (s. 55(12)(a), *Parliament of Canada Act*).
6. Auditor General – receives the same salary as a Supreme Court of Canada puisne judge.
7. Information Commissioner of Canada – receives the same salary as a Federal Court puisne judge.
8. Privacy Commissioner of Canada – receives the same salary as a Federal Court puisne judge.
9. Commissioner of Official Languages – receives the same salary as a Federal Court puisne judge.
10. Chief Electoral Officer of Elections Canada – receives the same salary of Federal Court puisne judge.
11. Ministers of State, Privy Council – whose salaries are made up of the annual sessional allowance (s. 55(12)(b) *Parliament of Canada Act*) plus 24% of the annual salary of the Chief Justice of Canada [*Salaries Act*, subsection 4(3)].

# **Appendix 8**

**Letter from Morneau Sobeco**





SERVICES-CONSEILS EN RESSOURCES HUMAINES ET SOLUTIONS ADMINISTRATIVES HUMAN  
RESOURCE CONSULTING AND ADMINISTRATIVE SOLUTIONS  
Calgary • Des Moines • Fredericton • Halifax • Harrisburg • London • Montreal • Pittsburgh • Quebec • St. John's • Toronto • Vancouver  
[www.morneausobeco.com](http://www.morneausobeco.com)  
500, boulevard René-Lévesque Ouest  
Bureau 1100  
Montréal QC H2Z 1W7  
tél.: 514.878.9090 • t61&: 514.875.2673

March 25, 2004

PRIVILEGED and CONFIDENTIAL

JUGCAN-0010

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

Attn: Mrs. Jeanne N. Ruest, Executive Director

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

Dear Members of the Commission:

We have reviewed the following documents:

- The January 2004 Report on the Earnings of Self-Employed Lawyers prepared by Western Compensation and 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 and 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 the 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 CRA.

Judicial Compensation and Benefits Commission  
March 25, 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 CRA.

In 2000, SGM also obtained from CRA 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 CRA 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, CRA adopted the North American Industry Classification System (NAICS) (check with André Sauvé) under which separate codes apply to lawyers and notaries (541110 and 541120, respectively).

WCBC indicated that CRA 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 25, 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 75<sup>th</sup> 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 CRA 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 CRA 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 CRA 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.

We note that the 2001 data presented as Conditions nos. 1, 2 and 3 by CRA 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) <sup>1</sup>	N/A <sup>1</sup>
			\$119,200 (25,879) <sup>2</sup>
Average Net Income Excluding Lawyers With Zero Income (Number)	\$97,000 (31,270) <sup>1</sup>	\$124,600 (20,670) <sup>1</sup>	\$88,100 (16,802) <sup>1</sup>
			\$125,200 (24,000) <sup>4,4</sup>
Average Net Income Excluding Lawyers With Zero or Negative Income (Number)	\$106,200 (28,664) <sup>1,3</sup>	\$135,600 <sup>2</sup> (18,954) <sup>1,3</sup>	\$94,000 (15,864) <sup>1</sup>
			\$130,700 (23,062) <sup>2,5</sup>

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 tile which showed negative average income  
 (4) Derived as Part (A)+ Part (C) of The 2001 data submitted by CRA  
 (5) Derived as Part (A)+Condition no. 5 of the data submitted by CRA

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 CRA 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.

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.

#### 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.

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 that 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%).

Judicial Compensation and Benefits Commission  
March 25, 2004

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%.

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,

A handwritten signature in black ink, appearing to read 'Sauvé', written in a cursive style.

André Sauvé, F.S.A., F.C.I.A.  
Partner

/td

# **Appendix 9**

**Letters from Individuals Who Replied to the  
Submission on a Salary Differential for Puisne Judges  
in the Appeal Courts of Canada**



**THE HONOURABLE  
CONSTANCE R. GLUBE**

CHIEF JUSTICE OF NOVA SCOTIA



THE LAW COURTS  
P.O. BOX 2314  
HALIFAX, NOVA SCOTIA  
B3J 3C8

January 6, 2004

Fax 613-947-4442

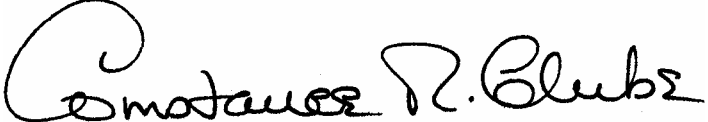
Mr. Roderick A. McLennan, Chairperson  
Judicial Compensation and Benefits Commission  
99 Metcalfe St.  
Ottawa, Ont. K1A 1E3

Dear Commissioners:

Recent press reports may have left the impression that all Canadian appellate judges or Courts of Appeal are in favour of a salary differential between federally appointed trial judges and appellate judges. Such a view would be erroneous.

I am writing on behalf of all the members of the Nova Scotia Court of Appeal. We are unanimous in our opposition to a differential in salary between judges of superior trial courts and courts of appeal. We believe that a differential would be divisive and is unwarranted.

Yours very truly

  
Constance R. Glube

THE HONOURABLE  
CONSTANCE R, GLUBE  
CHIEF JUSTICE OF NOVA SCOTIA



THE LAW COURTS  
P.O. BOX 2314  
HALIFAX, NOVA SCOTIA  
B3J 3C8

January 22, 2004

**Fax 613-947-4442**

Mr. Roderick A. McLennan, Chairperson  
Judicial Compensation and Benefits Commission  
99 Metcalfe St.  
Ottawa, Ont. K1A 1E3

Dear Mr. McLennan:

Further to your letter of January 13, 2004, I confirm that all but one of the members of the Nova Scotia Court of Appeal (8 + 2 supernumerary judges) wish to put on record that they are opposed to the requests made in Mr. Justice Nuss' brief.

**Yours very truly**

A handwritten signature in cursive script that reads "Constance R. Glube".

Constance R. Glube

The Honorable Madam Justice  
Bonnie L. Rawlins



COURT OF QUEEN'S BENCH OF ALBERTA

The Court House  
811 4<sup>th</sup> Street S. W.  
Calgary, (Alberta  
T2P 1T5

January 22, 2004

Judicial Compensation and Benefits Commission  
9<sup>th</sup> Floor  
99 Metcalfe Street  
OTTAWA, Ontario  
K1A 1E3 (Via email: [jruest@quadcom.gc.ca](mailto:jruest@quadcom.gc.ca))

Dear Commission:

I am a member of the Alberta Court of Queen's Bench. I would ordinarily not file a separate submission with the Quadrennial Commission; however, given the import of certain submissions you have received on judicial benefits, the salary differential sought by members of Courts of Appeal across Canada, and the recent Provincial Court Judges Commission in Alberta, I feel compelled to do so. My position can be summed up quite simply: hierarchy counts for all court levels and it should be reflected in the salary paid to judges at each court level.

The judicial system is based on hierarchy, as is every corporation, government and organization. Hierarchy exists for a reason; it is a direct reflection of the fact that the duties and responsibilities imposed on members of a court change as a case proceeds up the hierarchical ladder. So too do the consequences of the decision made by each Court. Traditionally, and properly, with the anomaly of Courts of Appeal, a corresponding pay differential has always existed amongst various court levels. It is beyond dispute that such a differential is justified by the nature of the duties and responsibilities assumed at each level by those appointed to those positions. No one would seriously suggest, for example, that a Traffic Commissioner does the same job as a justice of the Supreme Court of Canada, or should receive the same salary.

Without in any way diminishing the importance and the value of the work done by intake courts in Canada, the reality is that a day in docket court is not the same as a day presiding over a multi-party criminal jury trial or a complex oil and gas dispute with hundreds of documents, both of which trials can last for months. The issue is not about the training or intelligence of individual judges of any Court. It is about the nature of the work undertaken at the various court levels. This holds true with respect to each step up the judicial ladder from justice of the peace, to traffic commissioner, Provincial Court, Superior Trial Court, Court of Appeal, and finally, Supreme Court of Canada. A justice of the peace may be as intelligent as a judge of the highest court, but the duties and responsibilities imposed on each differ significantly as do the consequences of the decisions made.

Consequently, s.96 trial judges, to whom Parliament and Legislatures have assigned duties which may be fairly characterized as more complex than those assigned to provincial courts, and who are constituted as appellate courts for most of the decisions of those provincial courts, should receive a salary commensurate with those responsibilities and that appellate jurisdiction. Historically, that differential has been recognized as being at least 20% more than the salary paid to judges of Provincial Courts and in any event, an amount equal to the mid point of the highest level of federal Deputy Ministers. There is no valid reason to resile from these parameters. For Alberta, it is my understanding that the recent Provincial Court Judges Commission has recommended the retention of a differential between the salary of the Provincial Court and s. 96 Courts. The salary recommended for Provincial Court Judges is \$210,000 as of April 1, 2004 and \$220,000 as of April 1, 2005. I am assuming that you have already been provided with the information on the current salary and benefits package received by the majority of federal Deputy Ministers.

For the same reasons, I fully support the submission that judges of Courts of Appeal should receive an increased salary to reflect the appellate duties assigned to them. These duties closely approximate in nature and substance the type of work undertaken by the Supreme Court of Canada. Indeed, for more than 95% of cases heard and decided in each Province in Canada, Courts of Appeal are effectively the courts of last resort. I am sure that there are many who would be surprised to learn that judges on Courts of Appeal do not presently receive an increased salary. I urge this Commission to rectify this inequity. As you may be aware, in Alberta, trial judges occasionally sit ad hoc on the Court of Appeal from time to time, but this is not a reason to deny the principle of a salary differential.

Recognizing judicial hierarchy and compensating those holding positions in accordance with their place in that hierarchy will not negatively affect collegiality amongst judges at any court levels. Surely, fair-minded judges at all court levels would acknowledge that the nature of the work done by those in judicial positions who can overrule their decisions warrants an appropriate salary differential. Such a differential would encourage all judges to strive for, and consider, appointment to a higher court level, not only for the increased salary, but for the imposition of additional duties and responsibilities.

If, however, the principle of hierarchy with its accompanying salary differential were to be rejected, and the governing principle becomes that every judge is paid the same, regardless of the judicial office they hold and the responsibilities they discharge, then fairness demands that all judges' salaries be moved up to the highest paid court level, that is the salary received by the judges on the Supreme Court of Canada, and contemplated increases proceed from that level. There would be no principled basis for doing otherwise. This suggestion alone should prove my point.

In conclusion, I support the principle of hierarchy in the court system from justices of the peace to the Supreme Court of Canada, with appropriate salary differentials at each level.

Sincerely,

B.L. Rawlins

THE HONOURABLE  
MR. JUSTICE JOHN D. ROOKE



THE COURT HOUSE 611-4TH  
STREET S.W.  
CALGARY, ALBERTA  
T2P 1T5  
PHONE (403) 297-7223  
FAX (403) 297-7536

COURT OF QUEEN'S BENCH OF ALBERTA

January 15, 2004

Mr. Rod A. McLennan, Q.C.  
Chairman  
Judicial Compensation & Benefits Commission  
9<sup>th</sup> Floor, 99 Metcalfe Street  
Ottawa, Ontario K1A 1E3

**Transmitted by fax to  
613-947-4442, e-mail  
and 10 copies by mail**

Dear Mr. McLennan:

**Re: Judicial Compensation & Benefits Commission - 2003**

I write to bring to the attention of the Commission the submission of Justice Berger of the Alberta Court of Appeal, dated December 16, 1999, to the 1999 Commission, on the subject of salary differential for justices of the courts of appeal of Canada. A review of your website [www.guadcom.gc.ca](http://www.guadcom.gc.ca) reveals that a copy is available in your archives.

While I leave it to the Commission as to whether to make any recommendation, and, if so, what recommendation, on this non-pressing issue, I believe you may benefit from the input of this very insightful perspective, which I believe continues to have validity today as it did when originally written.

I note, as Justice Berger points out, that the Table of Precedence for Canada recognizes no different hierarchy in law between puisne justices of courts of appeal and superior trial courts.

I recommend Justice Berger's letter for your consideration as you consider this issue.

I do not wish to make an oral presentation at your scheduled hearings.

Yours truly,

  
John D. Rooke

J D R/vh

cc: The Honourable C.A. Fraser, Chief Justice of Alberta  
The Honourable A.H.J. Wachowich, Chief Justice of the Court of Queen's Bench  
The Honourable A.B. Sulatycky, Associate Chief Justice of the Court of Queen's Bench  
The Honourable Mr. Justice R.L. Berger

THE HONOURABLE RONALD L. BERGER  
JUSTICE OF APPEAL



THE LAW COURTS  
EDMONTON, ALBERTA  
T5J 0R2

COURT OF APPEAL OF ALBERTA  
COUR D'APPEL DE L'ALBERTA

December 16, 1999

**Judicial Compensation and Benefits Commission**  
99 Metcalfe Street  
8<sup>h</sup> Floor  
OTTAWA  
ON KIA 1E3

## **SALARY DIFFERENTIAL BETWEEN TRIAL AND APPELLATE COURTS**

Commissioners,

I am given to understand that the Quadrennial Commission may be invited to address the question of a salary differential between appellate and trial judges. I write to oppose any such proposal. I do so as a puisne judge of the Court of Appeal of Alberta. While others may share my views, I speak only for myself and not for any court, organization, or group of judges.

I was privileged to serve on the Court of Queen's Bench of Alberta from 1985 to 1996. Her Majesty's patent expressly names all Queen's Bench judges as ex officio members of the Court of Appeal. In this jurisdiction, members of the Court of Queen's Bench, to this day, continue to sit with the Court of Appeal on both regular and sentence appeal panels. This is in keeping with an established historical tradition in this Province. Prior to the creation of the Court of Queen's Bench in 1979 marking the amalgamation of the district courts with the trial division of the Supreme Court of Alberta, the latter was a single superior court with two divisions: trial and appellate. Apart from the issue of *stare decisis*, hierarchal distinctions were non-existent. Indeed, the Federal Order of Precedence among superior court judges in Alberta fixes precedence based on date of appointment rather than membership in one court or another.

This strongly entrenched traditions has served us well. It has strengthened collegiality and fostered mutual respect. Most importantly, the sound policy and operational reasons behind this traditional legal culture has promoted the kind of interaction that educates and enlightens members of both courts.

I have spoken with many trial judges in Alberta. It would not be unfair to say that the adoption of a salary differential runs the very real risk of destroying the goodwill, collegiality and interaction that we have worked so hard to achieve.

There are, in addition, practical reasons to reject the proposal. If trial judges, under the authority of their patents, are to continue to sit with courts of appeal, it is arguable that a pay differential among puisne judges performing the same judicial function would be constitutionally barred. It has been suggested that the solution would be to pay trial judges who sit with the Court of Appeal a per diem or "ad hoc bonus". Under such an arrangement, the spectre of some trial judges earning more money than others would loom large - a prospect, I respectfully suggest, which should be firmly rejected.

On the other hand, if the proponents of a salary differential contemplate that trial judges would no longer sit on an ad hoc basis with appellate judges, I wonder whether the consent of Provincial Governments would be required. By way of illustration, in Alberta, s. 9 of the *Court of Appeal Act* reads as follows:

"A judge of the Court of Queen's Bench may sit or act

- (a) in place of a judge who is absent,
- (b) when an office of a judge is vacant, or
- (c) as an additional judge,

on the request of a judge of the Court of Appeal. "

There are, arguably, other constitutional issues that must be addressed. As set out above, all judges of the Court of Queen's Bench of Alberta are ex officio members of the Court of Appeal. They hold office during good behaviour. Is it suggested that their ex officio appointments be revoked? What constitutional mechanism would be employed to achieve that end? If no revocation is anticipated, is it intended that the ex officio appointments be rendered nugatory by other than constitutional means?

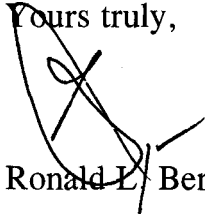
It has also been argued that the nature of the work of the final court of appeal within a province justifies a salary differential. I suggest that this is not sufficient reason to justify the proposal. Members of appellate courts sit as a group, diffusing the workload and responsibilities within the group. Trial judges sit alone, often away from home in less than ideal working conditions and must make complex and difficult decisions without the opportunity or comfort of consulting with their colleagues. Trial judges must bear the responsibilities of their decisions and accept the attendant publicity and criticism alone. The appellate court has a collective responsibility and as such individual judges are rarely



subject to personal criticism.

In addition to the foregoing, I urge you to question the suggestion that the workload of an appellate court judge is more onerous than that of a trial judge. No one would contest the proposition that appeal court judges have far more reading and far more judgments to write. But it would be a mistake to compare the appellate apple with the trial orange. I well recall sitting at a rickety kitchen table in St. Paul, Alberta, at two o'clock in the morning, attempting to craft a jury charge to be delivered at 10.00 a. m that addressed, among other matters, self-defence, provocation, drunkenness, unsavoury witnesses and similar fact evidence. If I had put my mind to the subject at that time, I might well have argued for a salary differential in favour of trial judges.

I wish you well in your deliberations.

Yours truly,  
  
Ronald L. Berger

RLB/re  
Sent by fax - hard copy to follow.

THE HONOURABLE MR. JUSTICE  
D. W. SHAW



THE LAW COURTS  
800 SMITHE STREET  
VANCOUVER, B. C.  
V6Z 2E1

THE SUPREME COURT  
OF BRITISH COLUMBIA

January 16, 2004

The Judicial Compensation and  
Benefits Commission  
99, Metcalfe  
Ottawa, Ontario  
K1A 1E3

Dear Commissioners:

This letter is in response to the submission on behalf of many of the judges of the courts of appeal requesting a salary difference between the courts of appeal and the federally appointed trial courts. That submission is dated December 3, 2003. The co-ordinating judge is Mr. Justice Nuss of the Quebec Court of Appeal.

I respectfully disagree with the Nuss submission's request that there should be a salary differential between the two courts.

The equality of salaries between these two court levels has existed throughout Canadian history. It has worked well and there is no basis to suggest that it will not continue to do so. Put simply, there is no compelling reason why a change should be made.

The dominant reason offered for a change is that our court system is hierarchical. While this is correct, it by no means describes the total picture. A more accurate comparison of these courts is derived from examining the nature of their respective responsibilities.

The work in the trial courts involves both fact finding and the law. The judges hear the witnesses give their testimony, weigh their evidence carefully and, based on the evidence, make the findings of fact. The federally appointed trial courts handle all the jury trials - including murder trials - with all the attendant pressure of doing so. They are responsible for judicial review, the process by which the courts ensure that governments are bound by the rule of law.

The brunt of responsibility for the vast majority of major cases in Canada is shouldered by the federally appointed trial judges. These include cases such as the biker trials in Quebec and the Air India trial in British Columbia.

This is not to say that the responsibilities undertaken by the other courts in Canada are not also onerous - they are.

I turn to the courts of appeal. Their main responsibility is as courts of error. If trial court judges err, courts of appeal may make whatever orders are necessary to rectify the errors. Courts of appeal also have a responsibility to interpret and develop the law. While this is also done in the trial courts, this is more central to the role of appellate courts. On occasion, appellate courts will review findings of fact made in the trial courts. However, this is a relatively rare occurrence because of the recognition that it is the trial court judges who have had the opportunity to hear the witnesses, weigh their evidence carefully and make the findings of fact accordingly.

What emerges from this comparison is that trial courts and courts of appeal have quite different types of work and responsibilities. It is not simply a matter of hierarchy. The differences are far more significant than that. I suggest, however, that the respective levels of work and responsibility are roughly equal.

The Nuss submission states that for all practical purposes the courts of appeal are effectively courts of last resort for approximately 98% of all cases in this country. With respect, I must disagree with the impression that this assertion creates. For most litigants the reality is that the trial courts are their courts of last resort. This is so because most trial court decisions end the matter in dispute and are never appealed.

The Nuss report suggests an important institutional purpose would be served by providing "additional incentive" to encourage trial court judges "to move up the judicial ladder". With respect, there is no evidence to indicate that. I suggest that a salary differential will not make any difference to the availability or quality of trial court judges prepared to accept appointments to courts of appeal.

The Nuss submission points to the salary differential enjoyed by the judges at the Supreme Court of Canada. I suggest that nothing significant can be drawn from this. It is well recognized that the job of a judge at the Supreme Court of Canada entails levels of workload and responsibility well beyond those ordinarily encountered in the trial courts and in the courts of appeal.

The Nuss submission points out that there are salary differentials between trial courts and courts of appeal in many other jurisdictions. The fact that we operate differently does not mean that our system is flawed.

This brings me back to my essential point. We have, in Canada, a system that has worked well throughout our history. There is no compelling evidence that it needs to be changed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. W. Shaw". The signature is written in a cursive style with a large initial "D" and a long horizontal stroke at the end.

Mr. Justice Duncan W. Shaw

THE HONOURABLE MR. JUSTICE  
D. W. SHAW



THE LAW COURTS  
800 SMITHE STREET  
VANCOUVER, B. C.  
V6Z 2E1

THE SUPREME COURT  
OF BRITISH COLUMBIA

January 23, 2004

The Judicial Compensation and  
Benefits Commission  
99, Metcalfe  
Ottawa, Ontario  
K1A 1E3

Dear Commissioners:

This is further to my submission letter of January 16, 2004, in which I expresses disagreement with the idea of a salary differential between federally appointed trial judges and the courts of appeal. Since then, I have circulated my colleagues on the British Columbia Supreme Court by e-mail and asked them to advise me whether they "support" or "do not support" my submission letter. Our court presently has 99 members. To date I have had 68 responses. Of those, 64 have indicated support and 4 advise they are neutral. None have taken the position that there ought to be a differential.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. W. Shaw', written in a cursive style.

Mr. Justice Duncan W. Shaw

On peut se procurer ce rapport en français

auprès du

Bureau de la Commission d'examen de la rémunération des juges

Téléphone : 613-992-4304

Télécopieur : 613-947-4442

ou par

Courriel : [info@quadcom.gc.ca](mailto:info@quadcom.gc.ca)

ou sur le site Internet de la Commission à l'adresse

[www.quadcom.gc.ca](http://www.quadcom.gc.ca)