

***Budgetary Arrangements
for Overseas Judiciaries***

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Executive Summary

1. The three overseas judiciaries studied have different degrees of autonomy and participation in the budgeting process. The budgetary arrangement of the Federal Judiciary in the United States of America (US) reflects the adherence to the constitutional principle of separation of powers. The Federal Judiciary has complete authority to prepare its own budget, and is free from any explicit Executive interference.
2. Contrary to the US, without a strict separation of powers, the Estimate of the Court of Justice in the Province of Ontario of Canada (Ontario) is jointly prepared by the Judiciary and the Executive, while that of the Judiciary in the United Kingdom (UK) is mostly drafted by the Court Service, an agency of the Executive. The Executive of both the UK and Ontario can alter the proposed Estimate of their respective Judiciary before it is submitted to the Legislature. Although the Judiciary of Hong Kong is authorized to draft its own Estimate, its Estimate is not free from review and revision by the Executive.
3. Regarding the approval process, the US is the only place studied where members of the Legislature can either increase or reduce the budget for the Judiciary, as well as add programmes to the Judiciary. In both the UK and Ontario, members of the Legislature who are not Ministers may reduce but not increase the Estimate for the Judiciary. Similarly, Members of the Legislative Council of Hong Kong may reduce but not increase the Estimate for the Judiciary.
4. In all three overseas jurisdictions and in Hong Kong, the Judiciary itself is responsible for the resource allocation which has direct bearing on its judicial duties, such as assigning judges to cases.
5. Judicial remuneration forms a significant part of the Judiciary's budget. Among the three overseas Judiciaries, only Ontario has an automatic mechanism to annually adjust judges' salaries. In the US, the annual adjustment decision on judges' salary is made either by the Executive or the Legislature, whilst in the UK, it is decided by the Executive. In Hong Kong, the adjustment mechanism is under review.
6. In both the UK and Ontario, the Executive is answerable to the Legislature for the resources allocated to the Judiciary. Judges do not appear before the Legislature since they are not budget holders in their own rights, and have no line of accountability for the resources allocated. In the US, judges appear before hearings and the Federal Judiciary answers to Congress for resources allocated for its use. In Hong Kong, the Judiciary Administrator is accountable for the resources allocated to the Judiciary.

Budgetary Arrangements for Overseas Judiciaries

Chapter 1 - Introduction

1.1 Background

1.1.1 The Legislative Council (LegCo) Panel on Administration of Justice and Legal Services, at its meeting on 27 January 2003, requested the Research and Library Services Division to conduct a research on the budgetary arrangements for overseas judiciaries.

1.1.2 The Panel agreed that the research should examine how the budgetary arrangements for the Judiciary were handled in overseas jurisdictions so that both judicial independence and public accountability could be assured.

1.2 Scope of research

1.2.1 This research covers judiciaries of the following overseas jurisdictions:

- (a) the United States of America (the US);
- (b) England and Wales (hereafter referred to as the UK) of the United Kingdom; and
- (c) the Province of Ontario of Canada (Ontario).

1.2.2 The US has a written constitution guaranteeing the separation of powers and has a committee of judges to prepare the Judiciary's budget. For this study, the focus is on the US justice system at the federal level. In the UK, the Executive prepares the budget for the Judiciary and there is no written constitutional provision on separation of powers. In Canada, a number of significant case laws have been built up on the financial aspect of judicial independence of the provincial judiciaries. The Ontario Judiciary as the largest court system in Canada is chosen as an example to illustrate the mechanism of budgeting for provincial judiciaries.

1.2.3 The selected judiciaries are examined in the following aspects:

- (a) Source of funding;
- (b) Preparation of budget;
- (c) Approval of budget;
- (d) Allocation of voted resources and court administration;
- (e) Pay adjustment of judges; and
- (f) Public accountability.

1.3 Methodology

1.3.1 This research adopts a desk research method, which involves Internet research, literature review and analysis, and correspondence with the relevant authorities in the jurisdictions studied.

1.4 Acknowledgement

1.4.1 I would like to acknowledge the valuable assistance offered by many bodies and individuals in the jurisdictions studied in this research paper. In particular, I would like to thank the Honourable Mr Justice Brian W. Lennox of the Ontario Court of Justice, Professor Diana Woodhouse of the Oxford Brookes University and Professor Martin L. Friedland of the University of Toronto for their prompt and kind assistance.

Chapter 2 - Concept of judicial independence

2.1 Introduction

2.1.1 Judicial independence is generally viewed as a sine qua non for rule of law and a liberal society. All three overseas jurisdictions studied have judicial independence guaranteed either in their written constitution or through statutes and precedents. Likewise, Article 85 of the Basic Law of Hong Kong provides that the courts of Hong Kong “*shall exercise judicial power independently, free from any interference*”. In addition, Article 10 of Part II of the Hong Kong Bill of Rights¹ guarantees that in civil and criminal cases, “*everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.*”

2.1.2 The principle of judicial independence is not an end in itself.² It is rather an essential element in safeguarding the impartiality of judges, which in turn, protects the right of individuals to a fair trial conducted by an impartial third person, and enables checks on governmental powers.³

2.1.3 The independence of the Judiciary implies the capacity and willingness of the Judiciary to resist improper pressures that may undermine a judge’s capacity to adjudicate. In essence, judicial independence is about the relationship of judges within the Judiciary and with other spheres of the government and society, which allows the Judiciary to discharge its function properly. Therefore, modern conception of judicial independence is not confined to the independence of individual judges. It includes collective independence of the Judiciary as a branch.⁴

¹ Hong Kong Bill of Rights Ordinance, Cap. 383.

² Mauro Cappelletti, “Who Watches the Watchmen? A Comparative Study on Judicial Responsibility” in S. Shetreet and J. Deschenes, eds., *Judicial Independence: A Contemporary Debate*, Netherlands: Martinus Nijhoff Publishers, 1985.

³ S.H. Bailey and M.J. Gunn, *Smith and Bailey on the Modern English Legal System*, London: Sweet & Maxwell, 1996; and J. Deschenes, “Towards an Independent Judiciary: Canadian and International Perspectives” in S. Shetreet and J. Deschenes, eds., *Judicial Independence: A Contemporary Debate*, Netherlands: Martinus Nijhoff Publishers, 1985.

⁴ Shimon Shetreet, “Judicial Independence: New Conceptual Dimensions and Contemporary Challenges” in S. Shetreet and J. Deschenes, eds., *Judicial Independence: A Contemporary Debate*, Netherlands: Martinus Nijhoff Publishers, 1985 and P. Russell, “Toward a General Theory of Judicial Independence” in P. Russell and D. O’Brien eds., *Judicial Independence in the Age of Democracy: Critical Perspectives From Around the World*, University Press of Virginia: London, 2001.

2.2 International standards

Universal Declaration on the Independence of Justice

2.2.1 In 1983, the First World Conference on the independence of justice was held in Montreal, with about 130 jurists representing some 20 international and regional organizations. The conference adopted the Universal Declaration on the Independence of Justice (the Montreal Declaration) unanimously. The Montreal Declaration states that “*the Judiciary shall be independent of the Executive and Legislative*”. It requires that “*it shall be a priority of the highest order, for the state to provide adequate resources to allow for the due administration of justice, including physical facilities appropriate for the maintenance of judicial independence, dignity and efficiency, judicial and administrative personnel, and operating budgets.*”

2.2.2 The Montreal Declaration states that the budget of the court “*shall be prepared by the competent authority in collaboration with the Judiciary and the Judiciary shall submit their estimate of the budget requirements to the appropriate authority*”. Although it does not advocate that the budget has to be solely prepared by the Judiciary, it does state that the “*main responsibility for court administration shall vest in the Judiciary.*”

2.2.3 The Montreal Declaration provides that judicial remuneration should be adequate and advises against reduction on judges’ salaries except “*as a coherent part of an overall public economic measure.*” It also states that the terms of compensation and pension of judges “*shall be established and maintained so as to ensure their independence.*”

The Beijing Statement of Principles of the Independence of the Judiciary

2.2.4 Views of the Montreal Declaration are supplemented by the Beijing Statement of Principles of the Independence of the Judiciary (the Beijing Statement) which is of particular relevance to Hong Kong. The Beijing Statement was adopted in 1995 at a conference of Chief Justices of Asia and the Pacific, organized by LAWASIA⁵. The Statement is now adopted by more than 30 Chief Justices in the region, including that of Hong Kong.⁶

⁵ LAWASIA is a professional association of representatives of bar councils, law associations, individual lawyers and law firms principally from the Asia Pacific region for fostering professional and business relations among lawyers, businesses and government representatives.

⁶ It was signed and subscribed by the then Chief Justice of Hong Kong, Sir T L Yang, who later became a Member of the Executive Council of the first government of the Special Administrative Region of Hong Kong. It is also accepted by the present Chief Justice of Hong Kong, the Honourable Mr Justice Andrew Li.

2.2.5 Article 37 of the Beijing Statement states that “*the budget of the courts should be prepared by the courts or a competent authority in collaboration with the courts having regard to the needs of the independence of the Judiciary and its administration. The amount allocated should be sufficient to enable each court to function without an excessive workload.*” Article 31 of the Beijing Statement states that “*Judges must receive adequate remuneration and be given appropriate terms and conditions of service.*”

2.2.6 Article 36 of the Beijing Statement provides that “*the principal responsibility for court administration, including appointment, supervision and disciplinary control of administrative personnel and support staff must vest in the Judiciary, or in a body in which the Judiciary is represented and has an effective role.*”

Chapter 3 - The United States of America

3.1 Background

3.1.1 The United States of America (US) is a federal state with a presidential system of government. Under the Constitution, three branches of government, namely the Executive, the Legislature and the Judiciary, are established with clearly separated and balanced powers.

3.1.2 As a federal state, there exists a dual system of courts — the federal courts and the state courts. This report focuses on the budgetary arrangement of the Federal Judiciary.

3.1.3 The framework for the Federal Judiciary is established by Article III of the Constitution and the Judiciary Act of 1789.

3.1.4 The federal courts are organized in a three-tiered structure and along geographical divisions. At the lowest level are the District Courts, which are the trial courts.⁷ The US and its territories are divided into 94 federal judicial districts, each with a District Court. These districts are grouped into 12 regional circuits, each of which has a US Court of Appeals.⁸ At the apex of the hierarchy is the US Supreme Court, the highest court of appeal in the Federal Judiciary. It consists of the Chief Justice of the US and eight associate justices.

3.1.5 The Judicial Conference of the United States (Judicial Conference hereafter) is the national policy-making body concerned with the administration of federal courts, and speaks for the Judiciary as a whole. It is presided over by the Chief Justice of the United States and composed of 26 additional judges⁹. It works through committees along subject matter lines to recommend national policies and legislation on all aspects of federal judicial administration, including budget and court administration of the Judiciary¹⁰. The Judicial Conference meets twice a year, with the Executive Committee¹¹ acting on behalf of it and making timely decisions when time-sensitive issues arise between meetings.

⁷ In addition, there are two special trial courts that have nationwide jurisdiction over certain types of cases, namely the Court of International Trade and the United States Court of Federal Claims.

⁸ The Court of Appeals hears appeals from the District Courts located within its circuit. In addition, the Court of Appeals for the federal circuit has nationwide jurisdiction to hear appeals in specialized cases.

⁹ The 26 judges include the chief judge of each of the 13 federal Courts of Appeals, one district (trial) judge elected from each of the 12 geographical circuits, and the chief judge of the Court of International Trade.

¹⁰ It has more than 20 committees, consisting mostly of judges appointed by the Chief Justice.

¹¹ The seven members of the Executive Committee are drawn from the Judicial Conference.

3.1.6 The Administrative Office of the US Courts (Administrative Office) is the executive arm of the Judicial Conference. The Director and the Deputy Director heading this judicial housekeeping agency are appointed by the Chief Justice of the Supreme Court, in consultation with the Judicial Conference. The Administrative Office is responsible for the administration of all federal courts except for the Supreme Court. The day-to-day responsibility for judicial administration rests with each individual court.

3.1.7 As the only federal court specifically created by the Constitution, the Supreme Court has historically operated independently. The Supreme Court has its own administration and budget that are separate from the other federal courts, and thus its budgetary process will not be discussed in detail in this report.

3.2 Constitutional guarantee of judicial independence

3.2.1 The first three Articles of the Constitution laid down the foundation for the doctrine of separation of powers. The federal government is made up of three independent branches: the Judiciary, the Legislature (Congress) and the Executive. The Judiciary's equality with and independence from the Legislature and the Executive is ensured.

3.2.2 The Constitution guarantees judicial independence in two substantial ways. Firstly, federal judges appointed under Article III of the Constitution serve for life. They can be removed from office only through impeachment and conviction by Congress of "*treason, bribery, or other high crimes and misdemeanors.*"¹²

3.2.3 Secondly, Section 1 of Article III provides that the compensation of federal judges¹³ "*shall not be diminished during their Continuance in Office*". Neither the President nor Congress can reduce the salaries of those federal judges appointed under Article III. This clause is regarded as "*an important pillar supporting judicial independence in the United States*".¹⁴ For federal judges not appointed under Article III, i.e. bankruptcy judges and magistrate judges, their salaries are linked to those of the Article III judges by statute, and set at a level equal to 92% of that for district judges.¹⁵

¹² Section 4 of Article II, the Constitution.

¹³ Not all judges in the federal system are Article III judges. Justices of the Supreme Court, judges of the Courts of Appeals and the District Courts, and judges of the Court of International Trade are appointed under Article III of the Constitution. They are known as Article III judges and their tenure and salaries are protected by the Constitution. Bankruptcy judges and magistrate judges are judicial officers of the District Courts, but they are not Article III judges.

¹⁴ Henry J. Abraham, *Judicial Independence in the United States*, quoted in Peter H. Russell and David M. O'Brien eds. *Judicial Independence in the Age of Democracy: Critical Perspectives from around the World*, 2001: The University Press of Virginia, Charlottesville and London.

¹⁵ CRS Report for Congress, *Judicial Salaries: Current Situation*, January 2000.

3.2.4 It was argued in *Atkins v. United States* that the failure to increase the judicial pay in line with inflation resulted in an erosion of remuneration contrary to the protection offered by Article III.¹⁶ Nonetheless, the US Court of Claims held that such indirect, non-discriminatory reduction did not amount to a violation of Article III.

3.2.5 However, in *Williams v. United States*¹⁷, the Supreme Court found that no matter whether it was non-discriminatory or not, if Congress passed legislation to stop a cost-of-living adjustment of judicial pay after it had taken effect, it was in breach of Article III. Nonetheless, it is constitutional for Congress to deny any cost-of-living adjustment for judges before such adjustment takes effect. This decision reaffirms an earlier authority in *United States v. Will*¹⁸.

3.3 Source of funding

3.3.1 The Federal Judiciary is dependent upon Congress to enact the annual appropriation that gives the courts funding to discharge their duties. Incomes of the Judiciary must be deposited into a general fund at the Treasury Department and not be expended by the courts, but there are a few exceptions. For instance, Congress has authorized the Judiciary to use the revenue generated from the electronic public access to Judiciary information to maintain and improve the electronic public access programme. Meanwhile, none of the court business is required to be self-financed.

3.4 Preparation of budget

No budget guidance from the Executive

3.4.1 In recognition of the constitutional separation of powers among the three branches of the federal government, the Federal Judiciary is given both the authority and autonomy to prepare and execute its own budget.¹⁹ Unlike executive branch agencies, the Federal Judiciary does not receive any budget planning guidance, policy direction, or spending ceiling from the President's Office of Management and Budget (OMB), prior to or during the preparation of its budget.²⁰

¹⁶ *Atkins v. United States*, 556 F2d 1028 (1977).

¹⁷ *Williams v. United States*, 240 F3d 1019 (2001).

¹⁸ *United States v. Will*, 449 US 200 (1980).

¹⁹ 31 U.S.G. 1105 (33) (b).

²⁰ Reply from OMB.

Preparation of the draft budget

3.4.2 The Judiciary's budgetary process begins with the Administrative Office, in consultation with the courts and various Judicial Conference committees, preparing a proposed budget for the Judiciary. When an annual "budget call" is made, the courts provide the Administrative Office with projections for the upcoming fiscal year for staffing, travel, office space, and other needs that require non-recurring operating expenses.

3.4.3 In addition to the courts' projected needs, the Administrative Office, based on workload, staffing and resources formulas, and new national legislation or other new programmes and initiatives, produces the budget estimates for the Federal Judiciary as a whole. About 95% of the funds allotted to individual courts are determined by formulas which are developed by the Judiciary as an objective means for determining the workload and resource needs of the Judiciary and are used to justify budget estimates to Congress.²¹ The proposal also incorporates requests of various Judicial Conference committees for funding new or expanded programmes.

Political and budget realities taken into account

3.4.4 The proposed Estimate is first reviewed by the Judicial Conference's Budget Committee, taking into account "*the political and budget realities*" against requests by the courts and other Judicial Conference committees for additional funding and the projected budgetary constraints which may be levied upon the Judiciary and the executive agencies by Congress.²² In addition, the Budget Committee as well as the Administrative Office are in regular communication with Congressional staff and also monitor the overall budget guidance provided by OMB for executive branch agencies.

3.4.5 After the Budget Committee's review, the Judicial Conference considers the Budget Committee's recommendations and approves a budget submission. Meanwhile, the Supreme Court prepares its own budget proposal and has it incorporated in the budget prepared by the Administrative Office.

²¹ Reply from the Administrative Office of the United States Courts.

²² Ibid.

The Executive cannot revise the proposed budget

3.4.6 The Judiciary's proposed Estimate is submitted to OMB to be included in the President's overall budget before presentation to Congress.²³ However, it does not need to be reviewed by OMB and the Executive has no other involvement in the determination of the Judiciary's proposed budget.

3.4.7 The President must include the Judiciary's budget proposal in his budget to Congress without change. By statute, "*Estimated expenditures and proposed appropriations for the legislative branch and the judicial branch to be included in each budget under subsection (a)(5) of this subsection shall be ...included in the budget by the President without revision.*"²⁴

3.5 Approval of budget

3.5.1 Congress has the sole authority under the Constitution to appropriate funds. Congress considers the President's budget, including that of the Federal Judiciary, and approves, modifies, or disapproves it. The Judiciary's budget and the remainder of the President's budget are affected by the nation's overall economic situation in the same way. For instance, the Judiciary had to plan for the curtailment of trials in 1990 because its budget was subject to the limits specified in the Gramm-Rudman-Hollings Deficit Reduction Act²⁵. In addition, Congress may enact laws creating more work for the courts without providing resources for additional judges and other staff.²⁶

3.5.2 Every year, Congress adopts a budget resolution setting the overall levels of new federal budget authority and spending, revenue and debt levels for the coming fiscal year. The resolution may require across-the-board cuts in discretionary spending, and the Federal Judiciary would be affected. However, judges' salaries are regarded as mandatory spending and will not be subject to such spending cuts.

²³ One of OMB's major functions is to assist the President in overseeing the preparation of the federal budget, assess competing funding demands among executive branch agencies, and set funding priorities.

²⁴ 31 U.S.G. 1105 (33) (b).

²⁵ In 1985, the Balanced Budget and Deficit Reduction Act, better known as the Gramm-Rudman-Hollings bill, was passed into law. This law presented a five-year schedule for reducing the deficit, with a balanced budget set for the sixth year. If the President and Congress could not agree on the cuts needed, a series of mandatory cuts, known as sequesters, would automatically take place.

²⁶ Stephen L. Wasby, "Judicial Administration in the Federal Courts", in Steven W. Hays and Cole B. Graham, Jr. eds. *Handbook of Court Administration and Management*, New York: Marcel Dekker: 1993.

3.5.3 Congress usually passes 13 appropriations acts each year to fund executive branch agencies, Congress and the Judiciary. The Appropriations Committee in each chamber of Congress is divided into subcommittees. The Subcommittee on Commerce, Justice, State and the Judiciary of each chamber reviews the proposed budget of the Federal Judiciary and conducts hearings at which judges and the Director of the Administrative Office present and justify the projected expenditures.

3.5.4 Congress usually does not provide all of the funding requested by the Judicial Conference. The Judiciary may appeal to the Conference Committee of Congress²⁷ (which consists of members of both chambers of Congress) if funds approved by Congress do not meet its original request.

3.5.5 Reports of the House, Senate, and the Conference Committee accompanying an appropriations bill may provide specific guidelines as to how funds can be used. When the two chambers have approved the respective appropriations bill that covers the Judiciary, they send them to the President for approval. The President can only veto or approve each of the entire appropriations bills passed by Congress. He cannot approve or veto selected part or parts of a bill.²⁸

3.6 Allocation of voted resources and court administration

3.6.1 Since Congress normally does not provide all of the funding requested, the Executive Committee of the Judicial Conference approves or modifies the initial financial plan after Congress enacts a budget for the Judiciary. According to the financial plan, the Administrative Office distributes the funds directly to each court and other units of the Judiciary, and gives the courts the official authority to spend up to the amount allocated.

3.6.2 Each court is responsible for managing the resources allocated to it and has wide discretion to transfer funds among most accounts. The courts receive their funds in allotments for three broad budget categories, namely salaries, operating expenses and automation. However, not all funding is decentralized. The appropriated funds for judges and staff's salaries and travel are retained and administered centrally by the Administrative Office.

²⁷ If the House of Representatives and Senate initially approve different amounts, a congressional Conference Committee comprising Representatives and Senators is appointed to reach agreement on a final appropriations bill. The conference bill has to be passed by both chambers of Congress.

²⁸ In 1996, Congress enacted the Line Item Veto Act, granting the President limited authority to cancel new spending and limited tax benefits when he signed laws enacted by Congress. However, in 1998, the Supreme Court held the authority provided by the Line Item Veto Act to be unconstitutional in *Clinton v. City of New York*, 118 S. Ct. 2091 (1998). Office of Management and Budget, the Executive Office of the President, "*Budget system and concepts and glossary*", available at <http://www.whitehouse.gov/omb/budget/fy2004>.

3.6.3 Most courts have established a committee of judges to oversee the budget development and implementation process and to establish priorities within the court as a whole for the spending of funds.

3.6.4 The responsibility for many day-to-day administrative matters is delegated from the Administrative Office to individual courts. Each court in the federal system has a chief judge²⁹ who, in addition to hearing cases, has administrative responsibilities relating to the court. The chief judge plays a key role in overseeing the operations of the court, promoting its efficiency, and ensuring accountability to the public. Important decisions are made by all judges of the court working together under the leadership of the chief judge.³⁰

3.6.5 Judicial branch staff are not part of the federal civil service system. Each court is given the responsibility to appoint its own support staff and has wide discretion to hire and pay its own employees. Court staff are supervised by and responsible to the judges of their court instead of under the Administrative Office.³¹

3.7 Pay adjustment of judges

Congress and the President set the judicial pay

3.7.1 Congress and the President set the salaries of federal judges. Although the Constitution guarantees that salaries of federal judges appointed according to Article III cannot be reduced, Congress and the President have the authority to raise or not to raise the judges' pay.

3.7.2 Any expenditure of funds for increasing the annual pay adjustment of judges is allowed only with specific approval by Congress. In addition, as the federal judges' salaries are linked to those of Members of Congress,³² judges will not receive any salary adjustment if Congress denies itself any adjustment. As in the case of other Congress legislation, the President can veto the Congress approval of any pay adjustment or reduce such adjustment.

²⁹ The chief judge is usually the judge who has served on the court the longest. A chief judge may serve for a maximum of seven years and is not eligible to serve as a chief judge beyond the age of 70.

³⁰ Administrative Office of the United States Courts, *The Federal Court System in the United States: An Introduction for Judges and Judicial Administrators in Other Countries*, 2001 is available at <http://www.uscourts.gov/publications.html>

³¹ Ibid.

³² CRS Report for Congress, *Judicial Salaries: Current Situation*, January 2003.

3.7.3 In theory, the judges' salaries can be adjusted in three ways: (a) by adopting an annual cost-of-living adjustment³³; (b) by adopting a pay increase recommended by the regular review of a Commission; and (c) by passing special legislation authorizing a pay rise.

3.7.4 In practice, judges may not get any pay adjustment for one or more years. There have only been five cost-of-living adjustments in federal judicial pay since January 1993. As the cost-of-living adjustment was sporadic rather than regular, Congress enacts legislation from time to time to grant catch-up adjustments. Both the American Bar Association and the Federal Bar Association believe that the declining salary in real terms is a factor contributing to the recent increase in the number of judges resigning or retiring from the bench.³⁴ Between 1990 and April 2003, 77 Article III judges resigned or retired from the bench, and 64 of them returned to work in the private sector.

No regular pay review

3.7.5 An act was passed in 1989 to replace the Quadrennial Commission³⁵ with a Citizens' Commission on Public Service and Compensation³⁶ to conduct reviews of the adequacy of federal judicial salaries. In spite of the existence of the statutory framework for the Citizens' Commission, no money has been appropriated for this Commission, and Congress and the President have not appointed its members. Therefore, regular reviews of the judges' pay have not been conducted since the establishment of the statutory framework of the new commission.

³³ The rate of annual adjustment in the pay for judges, Members of Congress, and senior executive branch officials is derived by deducing 0.5 from the Employment Cost Index (ECI)³³, an index measuring the percentage of change in private sector wages and salaries. Any such adjustment cannot exceed five per cent, nor can it exceed the rate of adjustment for the General Schedule (GS).³³

³⁴ The American Bar Association and the Federal Bar Association, *Federal Judicial Pay: An Update on the Urgent Need for Action*, May 2003.

³⁵ The Quadrennial Commission was composed of private sector members appointed by the President, leaders of the Senate and House of Representatives, and the Chief Justice of the United States. In general, the Commission convened every four years and made salary recommendations for judges, Members of Congress and other high-ranking officials. These recommendations were sent to the President, who made final recommendations to Congress. The President's recommendations became effective, unless Congress passed an act or a resolution to reject them.

³⁶ Six Commission members are to be appointed by leaders of the three branches of government, five are to be selected from the public at large.

3.8 Public accountability

3.8.1 The chair of the Budget Committee of the Judicial Conference (a judge himself), other judges³⁷ and the Director of the Administrative Office present the Judiciary's budget request in person at hearings held by both chambers of Congress. The Administrative Office staff prepare responses to questions raised by members and staff of Congress regarding various items in the Judiciary's proposed budget. Two Associate Justices appear as witnesses to present the Supreme Court's budget to both the House and Senate Appropriations Subcommittees.

3.8.2 The Judicial Conference establishes guidelines as to what courts may spend for various programmes. Each court has been given local budget authority. The chief judge of each court is responsible for ensuring court funds are spent legally, wisely and efficiently. The Administrative Office conducts regular financial audits of all courts and court programmes, while the Supreme Court files monthly and end-of-year accounting reports with the US Treasury Department. The General Accounting Office, an audit arm of Congress, may conduct general reviews of court operations as well.

³⁷ The chair of the Budget Committee is often accompanied by a member of the Budget Committee at Congressional budget hearings. If it is known in advance that a particular aspect of the Judiciary's budget request will be closely questioned, a judge from a Judicial Conference committee with particular subject matter expertise may also be present.

Chapter 4 - The United Kingdom

4.1 Background

4.1.1 The United Kingdom (UK) has a parliamentary system of government. The UK does not have a constitution set out in any single document. Its constitution is made up of statute law, common law and conventions, which is the result of a gradual evolution over many centuries.

4.1.2 England and Wales, Scotland and Northern Ireland all have their own legal systems. This report focuses on the Judiciary of England and Wales.³⁸ Trial courts in England and Wales are divided according to civil versus criminal matters and less serious/complex versus more serious/complex cases. In addition, there are a number of administrative tribunals as well. The two levels of criminal trial courts are the Magistrates' Courts and the Crown Courts, and the two levels of civil trial courts are the County Courts and the High Court. There are two levels of appellate courts: the Court of Appeal, which is the first level appellate court, and the House of Lords³⁹, which is the court of last resort.

4.1.3 The Court of Appeal, the High Court, the Crown Courts and the County Courts in England and Wales are directly administered by the newly established Department for Constitutional Affairs⁴⁰ (DCA) (which replaced the former Lord Chancellor's Department) through the Court Service which provides staff, buildings and equipment. The Court Service, which gained the status of an executive agency⁴¹ in 1995, has been the main operational arm of the Lord Chancellor's Department and remains so under DCA. More than 10 000 civil servants, out of the 12 000 employees of DCA, work in the Court Service throughout England and Wales. Meanwhile, the Judicial Office, which is part of the House of Lords administration, is responsible for the administration of judicial business of the House of Lords.

³⁸ The UK courts or Judiciary mentioned in this report is referred to the courts or Judiciary of England and Wales.

³⁹ The House of Lords is one of the two houses of Parliament. It also acts as the final court of appeal in the UK when it sits as a judicial body comprising the Law Lords who hear the cases.

⁴⁰ The Prime Minister announced on 12 June 2003 the creation of the Department for Constitutional Affairs (DCA) to replace the Lord Chancellor's Department. DCA takes over most of the responsibilities of the Lord Chancellor's Department and remains responsible for the courts and legal system.

⁴¹ An executive agency is a distinct unit performing government administrative tasks but remains as part of the civil service. Under an individual Framework Document, it has greater delegation of authority over financial, pay and personnel matters with the objective of delivering government services more efficiently and effectively within available resources. The budget of an executive agency still needs the approval of Parliament.

4.1.4 While DCA takes ministerial responsibility for the operation of the Magistrates' Courts, the Magistrates' Courts in England and Wales are run by 42 separate local Magistrates' Courts Committees (MCCs), consisting almost entirely of local magistrates or Justices of the Peace. The Magistrates' Courts are financed by local authorities who reclaim 80% of their expenditure on the courts from DCA⁴². Apart from courts, there are also a number of tribunals dealing with disputes arising from the conduct of the government. As the budgetary arrangement of the Magistrates' Courts is currently under review, it is not covered in this report.

4.1.5 If the Courts Bill introduced in November 2002 is approved by Parliament⁴³, the administration of the courts will be unified. A new executive agency will be established under DCA to replace the Court Service and the 42 MCCs. It will be responsible for the management of the courts in England and Wales, including the Magistrates' Courts. The earliest day of the establishment of the new executive agency is not expected before April 2005.⁴⁴

4.2 Constitutional guarantee of judicial independence

4.2.1 In the UK, as stated by Lord Mackay, the former Lord Chancellor, the "*independence of the judiciary is rightly regarded as a key principle of the constitution*".⁴⁵ The Act of Settlement 1701 guaranteed the tenure of judges "*during good behaviour*" and the salaries of judges ascertained and established, and provided for their removal "*upon the address of both Houses of Parliament*". More recently, the Courts Act 1971, the Administration of Justice Act 1973 and the Supreme Court Act 1981 also expressly provide that the salaries of judges "*be increased but not reduced*". The Executive, therefore, cannot bring pressure to bear on judges by threatening to reduce their salaries.

4.2.2 The provision of salaries is secured by charging judicial salaries on the Consolidated Fund (the government's current account)⁴⁶. In other words, Parliament has decided by statutes to have the judicial remuneration paid out of the Consolidated Fund without year-by-year parliamentary authorisation. Such arrangement for payment is a standing order. Judicial salaries do not come up for annual review of the budget by the House of Commons⁴⁷ as do most Estimates⁴⁸ of public expenditure, and therefore, Parliament cannot alter the proposed Estimate on judicial salaries during the review.

⁴² Information available at the web site of the Lord Chancellor's Department: <http://www.lcd.gov.uk>

⁴³ The Courts Bill is now laid before the House of Commons.

⁴⁴ The Departmental Report of the Lord Chancellor's Department 2002-2003, May 2003.

⁴⁵ Lord Mackay, *The Administration of Justice*, London: Sweet and Maxwell, 1994.

⁴⁶ Parliament has passed statutes that authorize certain expenditure to be charged to the Consolidated Fund. These Consolidated Fund standing services include payments to the salaries and pensions of certain people who are constitutionally independent of the Executive.

⁴⁷ The House of Lords as part of Parliament is not involved in taxation and finance.

⁴⁸ The term "Estimates" is used formally for the government request for the House of Commons approval for the sums needed to cover recurring public expenditure.

4.2.3 However, there is no strict separation of legislative, executive and judicial powers in the English constitution. Most notably, the Lord Chancellor wears three hats at the same time: he presides over the House of Lords and functions as the principal defender of government policies there, heads the Judiciary and is a Cabinet Minister. The former Lord Chancellors argued that the head of the Judiciary being placed at the centre of the government served as “*a buffer between the Judiciary and the Executive*”, which protects judicial independence⁴⁹. Nonetheless, the current plan of establishing a Supreme Court⁵⁰ and finding a new speaker for the House of Lords should provide a division of labour⁵¹.

4.2.4 After the recent establishment of DCA to replace the Lord Chancellor’s Department, the new Cabinet Minister, i.e. the Secretary of State for Constitutional Affairs, remains known as the Lord Chancellor as well before all the reforms are in place.⁵² He will continue to be the nominal head of the Judiciary but he will neither sit as a judge in the House of Lords nor act as the Speaker for the House of Lords once a new speaker is found. In addition, a new Supreme Court will be set up to replace the existing system of Law Lords⁵³ operating as a committee of the House of Lords. At the moment, the budgetary arrangements remain the same as before the reform and no plan has been announced to change the present arrangements.⁵⁴

4.2.5 Although the separation of powers is not absolute, judges rely on the doctrine in making their decisions.⁵⁵ In addition, the Lord Chancellor has reassured in the Framework Document⁵⁶ of the Court Service that while court resources are voted by Parliament, “*judges and judicial officers who sit in the courts act independently of both Parliament and the Executive.*”

⁴⁹ House of Lords Debate vol. 597, col. 734, 17 February 1999 and Woolf (1998) 114 Law Quarterly Review 579 at pp 582-3.

⁵⁰ The plans were announced on 12 June 2003, and details are disclosed in the Consultation Paper: “Constitutional Reform: A Supreme Court for the United Kingdom”, July 2003.

⁵¹ The plan was announced on 12 June 2003, but the House of Lords has not made any decision on the future of the Speakership.

⁵² The post of the Lord Chancellor will be abolished after the creation of a Supreme Court to replace the judicial function of the House of Lords.

⁵³ Those appointed to life peerage to carry out the judicial functions of the House of Lords.

⁵⁴ Reply from the Department for Constitutional Affairs.

⁵⁵ *Hinds v. The Queen* (1977) A. C. 195; *R v. Home Secretary ex p. Fire Brigades Union* (1995) 2 A. C. 513.

⁵⁶ A Framework Document is a document which sets out the aims and objectives, and the delegated powers of the executive agency concerned. It also lists the respective responsibilities of the Chief Executive of the executive agency and the Minister of the parent department.

4.3 Source of funding

The House of Lords

4.3.1 Except for the Law Lords' salaries, the House of Lords is funded through its Estimate which is voted by Parliament. The Law Lords' salaries are financed by the Consolidated Fund. In the consultation paper released in July 2003, the UK government proposes to have the future Supreme Court (which will take up the existing judicial functions of the House of Lords) funded by the Estimate of DCA voted by Parliament. Salaries for the members of the Supreme Court will continue to be payable out of the Consolidated Fund.

The Courts administered by the Court Service⁵⁷

4.3.2 The Court Service's expenditure is accounted for within the Appropriation Account of DCA and approved by Parliament.

4.3.3 The remuneration of judges is met either by the Court Service or from the Consolidated Fund. The Court Service meets the salary costs of District Judges, tribunal chairmen and members, and all fees paid to deputy judges from the parliamentary appropriation. The salaries and pension for senior judges and stipendiary magistrates⁵⁸ are not directly provided for in Supply Estimates. Their salaries and pensions are financed directly from the Consolidated Fund, and therefore do not require approval from Parliament.

4.3.4 The Court Service is required to recover the full administrative costs of civil proceedings. Any shortfall is financed from the Court Service's parent department, DCA. The subsidy aims to ensure that no sector of the population is being denied access to justice through the inability to afford the requisite fee.⁵⁹ The fee recovery in the civil courts is based on the principle that it is reasonable to expect those parties who can pay to meet the cost of the part of the civil justice system that they use to resolve their disputes.

⁵⁷ The Court of Appeal, the High Court of Justice, the Crown Courts and the County Courts.

⁵⁸ All judges at or above the level of High Court Judges, Senior or Specialist Circuit Judges, Circuit Judges and District Judges in the Magistrates' Courts are all paid from the Consolidated Fund.

⁵⁹ In 2000-01, there was a shortfall of £28 million, after subsidy, with 92% of costs recovered.

4.4 Preparation of budget

The House of Lords

4.4.1 The House of Lords' Judicial Office prepares the Lords' budget for its judicial business, which forms part of the overall budget for the Lords. The budget does not include the salaries of the Law Lords, which are paid from the Consolidated Fund. In general, the Law Lords are not involved in the preparation of the budget.

4.4.2 In theory, HM Treasury can make changes to the proposed budget for the House of Lords before it is approved by Parliament, but this has not happened in practice.⁶⁰ The House of Commons can also make changes to the proposed budget for the House of Lords, but this has not happened either.⁶¹

The Courts administered by the Court Service⁶²

4.4.3 The Chief Executive of the Court Service⁶³ each year submits to the Lord Chancellor his plans for current and capital expenditures to meet the Court Service's needs, including salaries paid to some judicial officers.⁶⁴ Such plans form the Estimate of the Court Service and are included in the overall Estimate of DCA. The Court Service's Estimate is submitted at the same time as the draft corporate and business plans.⁶⁵ The Lord Chancellor's approval of the plans provides the formal authority for the Chief Executive to act in accordance with the plans. DCA can, if it sees fit, impose expenditure limits on the Court Service resources.

4.4.4 In a letter of instruction to the Chief Executive of the Court Service, the Lord Chancellor requires the Chief Executive, in determining priorities across the Court Service, to ensure that all courts are provided with adequate resources to meet workload and planned levels of sittings. The Lord Chancellor specifically requires the Chief Executive "*to have discussed with the Judiciary*" the content of his corporate and business plans before they are submitted for approval. This letter of instruction is kept as an annex in the Framework Document of the Court Service.⁶⁶

⁶⁰ Reply from the House of Lords.

⁶¹ Ibid.

⁶² The Court of Appeal, the High Court of Justice, the Crown Courts and the County Courts.

⁶³ The Court Service is run by the Court Service Board. The Board is chaired by the Chief Executive of the Court Service and has seven other members (six senior staff of the Court Service and a Non-Executive Director from the private sector).

⁶⁴ Salaries of those judges not covered by the Consolidated Fund are paid by the Court Service.

⁶⁵ The annual corporate plan sets out the Service's strategy for the following three financial years. The annual business plan sets out detailed plans for the forthcoming financial year, which include the priorities and work programmes for the year and key assumptions on workload and the resources.

⁶⁶ Annex 4 of the Framework Document of the Court Service.

4.4.5 In the past, judges had a significant input in formulating the size of funds required in the preparation of the annual budget. Although judges did not always get what they wanted, the initiatives were theirs.⁶⁷ Since the 1980s, judges have no longer been involved in the preparation of the budget, although some budget items may result from consultations with them.

4.4.6 The Estimate of DCA, including that for the Court Service, is sent to HM Treasury, which scrutinizes the Estimate in the interests of the economy. HM Treasury checks to see if the Estimate is within the cash limit which the government intends to spend on DCA.

4.4.7 There is nothing to prevent the Executive from altering the budget submitted by DCA for the operation of the Judiciary. DCA also has to compete with all other spending departments for funding. If there is any dispute between DCA and HM Treasury over the Estimate, the Cabinet settles the dispute and the Estimate is presented to the House of Commons for approval.

4.5 Approval of budget

4.5.1 The House of Commons authorizes all government expenditure annually by voting on the Estimates, including that of DCA. Parliament's consideration of individual Estimate is primarily a task for those Select Committees concerned with activities and expenditure of particular departments. A Select Committee's conclusions often take the form of a report printed by the House.

4.5.2 The House of Commons has the opportunity to debate and vote on individual Estimate and reports from the departmentally-related Select Committees on three Estimates Days. The debates are usually on matters of general policy.

4.5.3 Any Member of Parliament other than a Minister is prevented from initiating legislation, the main effect of which is to cause an increase in public expenditure.⁶⁸ In other words, any amendment initiated by Members other than Ministers may only reduce the request for resources by a department, including DCA.

⁶⁷ J. A. G. Griffith, *The Politics of the Judiciary*, 5ed., London: Fontana Press, 1997.

⁶⁸ The long-established constitutional practice is that the Crown demands money, the House of Commons grants it and the House of Lords assents to the grant.

4.5.4 It is the sole right of the House of Commons to initiate and amend a bill whose primary purpose is to levy taxes or authorize expenditure. The House of Lords does not amend bills relating to the Estimates because its financial powers are limited⁶⁹.

4.5.5 After the House of Commons has passed the bills relating to the Estimates, the bills can go for Royal Assent to become enacted with or without the House of Lords approval, provided the required procedure is followed.⁷⁰ In other words, the consideration and approval of the Estimates by the House of Lords is proforma.

4.6 Allocation of voted resources and court administration

The House of Lords

4.6.1 The House of Lords' judicial business is administered by the Judicial Office, which is staffed by the employees of the House of Lords.

The Courts administered by the Court Service⁷¹

4.6.2 The Corporate Board⁷² of DCA may reprioritise its allocation of voted resources within DCA, including deployment of budgeted resources for the Judiciary. However, it may not make any reduction to the resources paid directly from the Consolidated Fund.

4.6.3 The Court Service is free to decide for itself where to spend the money and deploy staff in order to achieve its targets.⁷³ Subject to standard government supply procedures, the Chief Executive of the Court Service has authority to approve all voted expenditure which is consistent with the corporate and business plans up to a limit set out in the Framework Document.⁷⁴

⁶⁹ The financial powers of the Lords are restricted firstly by the ancient "*rights and privileges*" of the House of Commons, and secondly by the terms of the Parliament Acts 1911 and 1949.

⁷⁰ Such a bill passed by the House of Commons and brought to the House of Lords at least one month before the end of the session, but not passed by the House of Lords within one month can be presented for Royal Assent without the House of Lords' consent.

⁷¹ The Court of Appeal, the High Court of Justice, the Crown Courts and the County Courts.

⁷² The Corporate Board, a six-member team, delivers DCA's commitments under the Public Service Agreement. The Board is composed of five senior civil servants, namely the Permanent Secretary of DCA, the Director General (Finance), the Director General (Legal and Judicial Services), the Chief Executive (Operations) and the Director General (Clients and Policy), and a non-executive director.

⁷³ Michael Zander, *Cases and Materials on the English Legal System*, Butterworths, 1999.

⁷⁴ Annex 1, Framework Document of the Court Service.

4.6.4 The Lord Chancellor requires the Chief Executive to discuss with the Judiciary any “plans for dealing with any major in-year change in resource allocation which may materially affect the performance of the Court Service” before putting the revised plans for his approval.⁷⁵

4.6.5 The listing of cases for hearing in the civil and criminal courts is a responsibility of the Judiciary, and in practice, is undertaken by court officers on judicial directions.

4.7 Pay adjustment of judges

The Lord Chancellor sets the pay with the Prime Minister’s consent

4.7.1 By statutes⁷⁶, the Lord Chancellor, with the agreement of the Prime Minister, has the discretion to raise, but not reduce, judicial salaries. The salaries of most judges⁷⁷ are charged directly by statutes on the Consolidated Fund.

Advice from the independent Senior Salaries Review Body

4.7.2 The Lord Chancellor also receives advice⁷⁸ of the independent Senior Salaries Review Body (the Review Body).⁷⁹ By convention, he usually accepts its advice, but there were cases where recommended increases were implemented in stages.

4.7.3 There is no formal mechanism for judges to negotiate their salaries but they can make representations to the Review Body or the Lord Chancellor, and present evidence to support their case for an increase.

⁷⁵ Letter of Instruction, annex 4 of the Framework Document of the Court Service.

⁷⁶ Section 12 of the Supreme Court Act 1981, Section 18 of the Courts Act 1971 and Section 9 of the Administration of Justice Act 1973.

⁷⁷ Salaries of higher Judiciary and stipendiary magistrates are paid by the Consolidated Fund while district judges by the Court Service. According to DCA, such a difference in arrangement is due to historical reasons.

⁷⁸ In autumn of each year, the Review Body receives written and oral evidence from both the government and representative organizations. Other interested parties may also submit evidence. The Review Body weighs the evidence and its own independent research to formulate recommendations on the remuneration of judicial officers.

⁷⁹ The Chairman of the Senior Salaries Review Body is appointed by the Prime Minister, whilst other members of the Review Body are appointed by either the Prime Minister or the Lord Chancellor. These appointments are voluntary and unpaid. The Review Body is supported by the Office of Manpower Economics, which is a secretariat serving several Review Bodies.

4.7.4 Apart from providing recommendations on the annual adjustment, the Review Body conducts a Fundamental Review every five years to evaluate the grading of each level of the Judiciary and the relativities between groups⁸⁰, with a view to correcting any anomalies which have arisen.

4.8 Public accountability

The Lord Chancellor and the Chief Executive of the Court Service

4.8.1 The Framework Document of the Court Service clearly states that the Lord Chancellor is accountable to Parliament for the Court Service. He appoints the Chief Executive of the Court Service, allocates resources to the Court Service and approves its corporate and business plans, but does not intervene in the day to day management of the Court Service, which is the responsibility of the Chief Executive. The Chief Executive is “*directly accountable to the Lord Chancellor for the effective, efficient and economic management of the Court Service.*”⁸¹

4.8.2 Unlike other Cabinet Ministers, the Lord Chancellor⁸² sits in the House of Lords, not in the House of Commons that votes the money. His accountability on the floor of the House of Commons operates through parliamentary secretaries, who answer for the Lord Chancellor in the House of Commons.

4.8.3 The Lord Chancellor is answerable to the Select Committee on the Lord Chancellor’s Department⁸³ for funds, whose name has not changed in accordance with the creation of DCA. In practice, the Chief Executive of the Court Service, and the Permanent Secretary and junior ministers of DCA tend to answer most of the questions. They appear “*on behalf of the Lord Chancellor*” and there are concerns that they can be limited as to what they can say.⁸⁴

⁸⁰ The judicial posts are divided into nine salary groups. Each member of a salary group is paid the same spot rate.

⁸¹ Framework Document of the Court Service.

⁸² The newly appointed Lord Chancellor, Lord Falconer, is also a Member of the House of Lords, like his predecessors.

⁸³ Up until 2002, the Lord Chancellor’s Department was the only department not being monitored by a separate Select Committee in the House of Commons on the grounds that there should not be political scrutiny of the administration of courts and appointment of judges. In January 2003, a Select Committee on the Lord Chancellor’s Department was established by the House of Commons to replace the Home Affairs Committee in scrutinizing the policies, administration and expenditure of the Lord Chancellor’s Department (and now DCA). As the new Select Committee is dedicated to the scrutiny of just one department, it is expected to have more time and resources to scrutinize the work of DCA than the Home Affairs Committee did.

⁸⁴ Reply from Professor Diana Woodhouse, Oxford Brookes University.

4.8.4 Both the Permanent Secretary of DCA and the Chief Executive of the Court Service may be summoned to appear before the Public Accounts Committee (PAC) of the House of Commons concerning their respective Accounting Officer responsibilities for DCA and the Court Service. The Court Service is required by law to provide an annual report to be laid before Parliament.

Judges

4.8.5 Judges are not required to appear before the Select Committee or PAC of the House of Commons. However, the Lord Chief Justice and/or the Master of the Rolls may be asked to give views at a meeting, but they are not answerable to the Select Committee. They are not budget holders in their own rights, and they have therefore no line of accountability for the resources allocated.

The House of Lords

4.8.6 The budget of the Judicial Office of the House of Lords is not under the jurisdiction of the Lord Chancellor. The Clerk of the Parliaments⁸⁵ is the accounting officer of the House of Lords. He is answerable to the House Committee⁸⁶ of the House of the Lords and PAC of the House of Commons. The Law Lords themselves are not accountable for the budget of the Judicial Office.

Constraint under the present constitutional arrangement

4.8.7 In the UK, Ministers are responsible for all the public expenditure and accountable to Parliament. If a Minister does not satisfy Parliament, he or she can be dismissed. Sir (now Lord) Nicholas Browne-Wilkinson (the former Vice-Chancellor of the Judiciary in England and Wales) has opined that the US model on the budgetary arrangement for the Judiciary is conceptually favourable, but it is difficult to fit the US model into the UK constitutional arrangement.⁸⁷ This is because the application of the US model would mean that judges rather than Ministers (who could be dismissed) would be held accountable to the Legislature and in Sir Nicholas' opinion, would be unacceptable to the constitutional position of the UK.

⁸⁵ The Clerk of the Parliaments is the head of the Parliament Office of the House of Lords, which consists of permanent staff of the House.

⁸⁶ The House Committee scrutinizes the annual Estimate for the administration of the House of Lords, including the judicial office. The Clerk of the Parliaments attends the House Committee, presents the Estimate and answers questions on expenditure.

⁸⁷ Nicholas Browne-Wilkinson, *The Independence of the Judiciary in the 1980s*, Public Law, London: Stevens and Sons, 1988.

Chapter 5 - The Province of Ontario of Canada

5.1 Background

5.1.1 Canada is a federal state with a bicameral parliamentary system of government. There is no general separation of powers in the Constitution Act 1867. The province of Ontario (Ontario) also practises a parliamentary system of government but with an elected single-chamber Legislative Assembly.

5.1.2 By virtue of the Constitution Act 1867, authority for the judicial system in Canada is divided between the federal government and the provincial governments. The federal government has authority over the constitution, organization and maintenance of the Supreme Court of Canada, the Federal Court and the Tax Court, as well as the appointment of judges to these courts. The provincial governments have jurisdiction over the constitution, organization and maintenance of the superior and inferior courts within the respective provinces.⁸⁸ However, this jurisdiction only extends to the appointment and remuneration of judges of the inferior courts.

5.1.3 There are several levels of courts in Ontario: the Ontario Court of Justice (OCJ) as the inferior court (also known as the provincial court); and the Superior Court of Justice (including the Family Court, the Divisional Court and the Small Claims Court) and the Court of Appeal for Ontario as the superior courts. The provincial government makes judicial appointment to the inferior courts and pays for their remuneration, while the federal government makes judicial appointments to the superior courts of Ontario and has obligation to provide for their remuneration and authority to remove them.⁸⁹ At the top of the hierarchy is the Supreme Court of Canada, which hears appeals from the Court of Appeal for Ontario. The Ministry of the Attorney General of Ontario is responsible for the administration of justice and court services in Ontario.⁹⁰

5.1.4 Apart from the aspect of judicial remuneration, the budgetary arrangement of OCJ⁹¹, procedure-wise, is more or less the same as that of the superior courts in the Province. However, detailed information on the superior courts is not available as at the publication of this report.

⁸⁸ S. 92 (14), the Constitution Act, 1867.

⁸⁹ The federal appointments are made by the federal Cabinet, with the Minister of Justice recommending the names of puisne judges, and the Prime Minister recommending the names of chief justices. Payment of the salaries for federally appointed judges is made from the Consolidated Revenue Fund and is not subject to any government appropriation process or budget legislation.

⁹⁰ The statutory responsibilities of the Ministry are specified in Section 5 of the Ministry of the Attorney General Act.

⁹¹ The Ontario Court of Justice exercises jurisdiction over trial matters involving family, criminal cases and matters under the Young Offenders Act. It is made up of more than 250 justices, and presided by the Chief Justice and two Associate Chief Justices. It is organized in seven geographic regions, with a Senior Justice appointed for each region.

5.2 Constitutional guarantee of judicial independence

5.2.1 The Constitution Act 1867 does not have an explicit provision on the independence of the Judiciary in Canada like that of the US Constitution. An implicit constitutional guarantee of judicial independence is in the preamble to the Constitution Act 1867. The preamble states that the basic purpose of the Constitution is to unite the founding colonies of British North America into a federal union “*with a Constitution similar in Principle to that of the United Kingdom.*” As the principle of judicial independence is a fundamental principle at the heart of the British constitutional system, the preamble implies protection of judicial independence in Canada as well.⁹²

5.2.2 Features of judicial independence provided for in the Constitution are the security of tenure and protection of judges’ salaries from executive interference.

5.2.3 Section 99 of the Constitution Act 1867 guarantees the tenure of judges of the superior courts so that they “*shall hold office during good behaviour, but shall be removable by the Governor General on Address of the Senate and House of Commons*”.

5.2.4 Section 100 of the Constitution Act 1867 provides that the salaries of the federally appointed judges are to be fixed and provided by the Parliament of Canada, which prevents the Executive from impairing judicial independence by controlling the reductions and raises of judges’ salaries.⁹³ However, it does not impose an absolute bar on the reduction in judges’ salaries. Moreover, the guarantee of this section is only provided for the federally appointed judges, not for those provincially appointed.

5.2.5 Neither Section 99 nor Section 100 covers the provincially appointed judges of inferior courts. However, by the introduction of the Charter of Rights and Freedoms and the Supreme Court decisions in Reference re Remuneration of Judges (1997)⁹⁴ and the accumulation of precedents, independence of the provincially-appointed judges is secured.

5.2.6 Explicit reference was made to the concepts of judicial independence in the written Constitution for the first time in 1982. Section 11(d) of the Charter of Rights and Freedoms⁹⁵ grants to “*any person charged with an offence*” the right “*to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal (i.e. both superior and inferior courts)*”.

⁹² Peter H. Russell, *The Judiciary in Canada: The Third Branch of Government*, Canada: McGraw-Hill Ryerson, 1987.

⁹³ *Beauregard v. Canada* (1986) 2 S. C. R. 56, 75.

⁹⁴ *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island* (1997) 3 S. C. R. 3.

⁹⁵ The Charter sets out the fundamental rights and freedoms of individuals and groups in Canada, and is an integral part of the Canadian Constitution Act 1982. All provincial and federal laws must be consistent with the Charter.

5.2.7 In *Valente v. The Queen* (1985), the issue centred around whether Ontario's Provincial Court (Criminal Division) which consisted of provincially-appointed judges was an "*independent and impartial*" tribunal according to Section 11(d) of the Charter of Rights and Freedoms. The argument was that the degree of control over judges by the provincial Attorney General, including fixing judges' salaries by regulation, raised a reasonable apprehension that judges would be biased in favour of the Executive.

5.2.8 The Supreme Court in *Valente v. The Queen* held that the three essential conditions of judicial independence had been satisfied by the Ontario court and therefore it was capable of trying criminal cases without breaching Section 11(d). The first condition was the security of tenure. The second condition of "*financial security*" did not require salaries fixed by the Legislature but the right to have salary or pension "*established by law and not be subject to arbitrary interference by the Executive in a manner that could affect judicial independence*". The third one was the institutional independence of the court with respect to matters of administration bearing directly on the exercise of its judicial function, which did not preclude the involvement of the Attorney General in the administration of the courts. The minimum requirement was that the Judiciary controlled "*the assignment of judges, sittings of the court, and court lists*".

5.2.9 Another landmark case, *Re Remuneration of Judges* (1997),⁹⁶ has established new constitutional requirements in support of the principle of judicial independence. According to Chief Justice Lamer, the institutional dimension of financial security has three components.⁹⁷ Firstly, in order to avoid the possibility of, or the appearance of, political interference through economic manipulation, every Canadian jurisdiction is constitutionally required to have an "*independent, effective and objective*" commission to make recommendations to the Executive regarding the salaries and benefits of judges. Any changes to or freezes in judicial remuneration made without prior recourse to the commission is regarded as unconstitutional.

5.2.10 Secondly, judges, collectively or as individuals, are not permitted to engage in negotiations over remuneration with the Executive or representatives of the Legislature to avoid the appearance that "*judges would alter the manner in which they adjudicate cases in order to curry favour with the executive*". However, they can make representations to the Executive regarding remuneration.

5.2.11 Thirdly, "*any reductions to judicial remuneration, including de facto reductions through the erosion of judicial salaries by inflation, cannot take those salaries below a basic minimum level, which is required for the office of a judge*".⁹⁸ Otherwise, judges could be perceived as susceptible to political pressure through economic manipulation.

⁹⁶ *Re Remuneration of Judges of the Provincial Court of Prince Edward Island* (1997) 3 S. C. R. 3.

⁹⁷ The components of the institutional dimension of financial security need not be adhered to in cases of dire and exceptional financial emergency precipitated by unusual circumstances.

⁹⁸ See note 96.

5.2.12 In Ontario, there is a Memorandum of Understanding signed between the Attorney General of Ontario and the Chief Justice of OCJ⁹⁹, defining the authority and responsibility of the Office of the Chief Justice for financial and administrative matters. In its preamble, it is stated clearly that both the Executive and the Judiciary are committed to “*the principle of judicial independence*” and “*the furtherance of the efficiency of the courts and the administration of justice*”.

5.3 Source of funding

Ontario Court of Justice

5.3.1 OCJ is entirely funded by the provincial government. OCJ has a small administrative staff which support the functions provided by the Office of the Chief Justice. The budget for expenditure on OCJ is composed of two parts. Firstly, the budget for OCJ¹⁰⁰ forms a line item in the budget of the Ministry of the Attorney General of Ontario and is voted by the Legislature as part of that budget. Secondly, courthouses, courtrooms, court administrative staff (both in and out of OCJ) and support services are all funded out of the budget of the Ministry of the Attorney General and do not form part of OCJ’s budget.

5.3.2 OCJ as well as the Ministry of the Attorney General as a whole have to compete for resources with other public services. OCJ does not self-finance in any respect or generate any revenue for its own operations. Fines, fees and other revenues go directly to the provincial or federal government.

Superior Court of Justice and Court of Appeal for Ontario

5.3.3 The source of funding of the superior courts is the same as that of OCJ, except for the salaries of the federally appointed judges working for the superior courts which are paid by the federal government. The Office of the Commissioner for Federal Judicial Affairs, which is a federal department, is responsible for preparing the budget of the salaries of the federally appointed judges.

5.3.4 Salaries for the judges of the superior courts are met by the Consolidated Revenue Fund. The payment for the federally appointed judges is a statutory obligation and is not subject to any government appropriation process or budget legislation.¹⁰¹ Details on how this statutory obligation works are pending a reply by the relevant authority.

⁹⁹ The Memorandum was signed in 1993. It was amended in 1996 and 1998 respectively, and has remained in force.

¹⁰⁰ Includes salaries and benefits of judges and administrative staff in the Office of the Chief Justice and Offices of the Regional Senior Justice and Regional Senior Justices of the Peace, and operational expenditure of the Ontario Court of Justice.

¹⁰¹ Reply from the Office of the Commissioner for Federal Judicial Affairs.

5.4 Preparation of budget

Ontario Court of Justice

5.4.1 According to the Memorandum of Understanding, the Office of the Chief Justice prepares an operating budget for inclusion as a line item in the estimates of the Ministry of the Attorney General. The Associate Chief Justices are involved in the preparation of the budget while other judges may or may not be consulted in the process. Generally speaking, the budget of the Office of the Chief Justice is modelled on the preceding year's budget with modifications to reflect changes in judicial complement and related expenses. Such operating budget includes, inter alia, the salaries for the administrative staff in the Office of the Chief Justice.

5.4.2 The salaries of the administrative staff who work in courthouses form part of the budget of the Court Services Division of the Ministry of the Attorney General.

5.4.3 After receiving the operating budget of the Office of the Chief Justice of the Ontario Court of Justice, the Court Services Division of the Ministry prepares its own budget as a whole, considering government expenditure reduction initiatives and Ministry funding restrictions. Changes are often made to the proposed budget of the Office of the Chief Justice.¹⁰² The Chief Justice, the Associate Chief Justices and the Regional Senior Judges are consulted during the process.¹⁰³

5.4.4 While the Ministry of the Attorney General and the Executive as a whole can change the total amount of resources allocated to OCJ's operations, they would not change any particular item in the proposed budget.¹⁰⁴ It is for OCJ to decide how it allocates the revised total budget to individual items of the proposed expenditure.

Superior Court of Justice and Court of Appeal for Ontario

5.4.5 The Offices of the Chief Justice of the Superior Court of Justice and the Court of Appeal for Ontario are responsible for drafting an operating budget for inclusion in the budget of the Ministry of the Attorney General. The Court Services Division will have its own budget within the Ministry's larger budget. The Ministry and the Executive as a whole can change the allocations to the superior courts.

5.4.6 The Office of the Commissioner for Federal Judicial Affairs submits an estimate of the statutory funding required to support the salaries of the federally appointed judges to the Federal Treasury Board Secretariat¹⁰⁵, but this funding is not subject to any government appropriation process or budget legislation.

¹⁰² Reply from the Ministry of the Attorney General.

¹⁰³ Reply from the Ministry of the Attorney General.

¹⁰⁴ Reply from the Honourable Mr. Brian Lennon, Chief Justice of the Ontario Court of Justice.

¹⁰⁵ The Secretariat is the executive arm of the Federal Treasury Board which is responsible for preparing the government's Estimates and monitoring program spending in departments.

5.5 Approval of budget

5.5.1 The proposed budgets for spending on OCJ and the superior courts are included in the budget of the Ministry of the Attorney General, which has to be approved by the Legislative Assembly. The Standing Committee on Estimates of the Legislative Assembly considers the budgets of executive departments, including allocations to the Ontario Courts. After the Standing Committee's consideration, the Legislative Assembly as a whole examines and votes upon a supply bill for the approval of the estimates of the Ministry of the Attorney General.

5.5.2 Members of the Legislative Assembly may amend the estimates but only Ministers can propose motions or amendments which may have "*the effect of causing an expenditure of any government departments*". In other words, Members who are not Ministers may only amend to reduce but not to increase the expenditures of government departments, including that of the Ministry of the Attorney General. So far, the Legislative Assembly has not changed any OCJ's proposed budget.¹⁰⁶

5.5.3 The recommendations of the Provincial Judges Remuneration Commission on salaries of provincially appointed judges are binding on the government. Therefore, if Members of the Legislative Assembly reduce the Ministry of the Attorney General's allocation, the Ministry would have to find some other ways to cover the salaries of the provincially appointed judges.

5.5.4 Payment for the salaries of the federally appointed judges is met by the Consolidated Revenue Fund. The Office of the Commissioner for Federal Judicial Affairs provides the estimated payment for the salaries of the federally appointed judges in its budget. This information is tabled in the Federal Parliament but is not subject to any budget legislation. Although the annual funding for the salaries of the federally appointed judges does not require the approval of the Federal Parliament, amendments introduced to the Judges Act to implement recommendations on periodic salary adjustments accepted by the Federal Government requires the approval of the Federal Parliament.

5.6 Allocation of voted resources and court administration

Ontario Court of Justice

5.6.1 The Chief Justice of OCJ is responsible for the resources allocated to OCJ. The responsibilities of court administration are exercised through the Executive Coordinator of the Office of the Chief Justice who takes direction from the Chief Justice.

¹⁰⁶ Reply from the Honourable Mr. Brian Lennon, Chief Justice of the Ontario Court of Justice.

5.6.2 The Executive Coordinator is a civil servant seconded from the Ministry of the Attorney General, with the approval of the Chief Justice and Associate Chief Justices. His principal accountability is to the Chief Justice and Associate Chief Justices, with a reporting responsibility to the Assistant Deputy Attorney General. All other administrative staff in the Office of the Chief Justice are employees of the Office and report to the Executive Coordinator.

5.6.3 The Chief Justice of OCJ has the authority to supervise and direct the sittings of OCJ and to assign judicial duties, such as assigning cases and other judicial duties to judges; and determining sitting schedules and places of sittings. The administrative staff assisting him in carrying out these functions are employees of the Court Services Division of the Ministry of the Attorney General.

5.6.4 The Court Services Division manages court offices. Court staff must act at the direction of the chief judge of the particular court. There could be an “inherent conflict” when Ministry of the Attorney General, which is the chief litigator before the courts, is also responsible for administering the resources of the courts. There could also be “conflicting loyalties” when the staff are subject to both directions by the Judiciary and the Ministry.¹⁰⁷ At present, there is no plan to transfer all court administration responsibilities to OCJ. In the longer term, OCJ supports the creation of a Courts Services Agency, independent of the Ministry of the Attorney General.¹⁰⁸

Superior Court of Justice and Court of Appeal for Ontario

5.6.5 Information regarding the allocation of voted resources and court administration for the Superior Court of Justice and the Court of Appeal for Ontario is pending a reply from the related authorities.

¹⁰⁷ Martin L. Friedland, *A Place Apart: Judicial Independence and Accountability in Canada, A Report for the Canadian Judicial Council*, 1995.

¹⁰⁸ Reply from the Honourable Mr. Brian Lennon, Chief Justice of the Ontario Court of Justice.

5.7 Pay adjustment of judges

Annual adjustment

5.7.1 The mechanism on the annual adjustment of judges' salaries is applicable to both provincially and federally appointed judges. The annual adjustment is automatic, and does not require further approval of the Executive or the Legislature. On the first day of every April after 1995, the annual salaries of judges are adjusted by multiplying the current salaries with the change in the Industrial Aggregate Index¹⁰⁹ of Canada, up to a maximum of 7%. Judges' salaries cannot be reduced by this annual adjustment even if the rate of adjustment is a negative one.¹¹⁰

Review by an independent commission

5.7.2 In *Re Remuneration of Judges (1997)*¹¹¹, the Supreme Court of Canada decided that judges' salaries could be reduced but reduction (as well as freeze) not preceded by a report of an "*independent, objective and effective*" commission would be regarded as unconstitutional. This decision is applicable to both provincially and federally appointed judges.

5.7.3 Under the Superior Court's decision, any reductions to judicial remuneration cannot take those salaries below a basic minimum level, which is required for the office of a judge. Judges are not permissible to engage in negotiations over remuneration with the Executive or the Legislature. However, they can express concerns or make representations to the government concerning judicial remuneration. If the Executive or the Legislature chooses not to accept the recommendations or to have them modified, it has to provide a reasonable justification for its decision. Any increases recommended by the independent commission would be in addition to the automatic annual adjustment.

¹⁰⁹ The Industrial Aggregate Index is the average for the 12-month period of the weekly salaries and wages of the Industrial Aggregate in Canada as published by Statistics Canada.

¹¹⁰ Section 51.13(1) of the Courts of Justice Act 1990 provides that if the Industrial Aggregate Index does not exceed 100, judges' salaries remain unchanged.

¹¹¹ *Re Remuneration of Judges (1997)* 3 S. C. R. 3.

Triennial review of provincial judges' pay

5.7.4 The independent Provincial Judges Remuneration Commission¹¹² (PJR Commission) reviews the appropriate base level of salaries and pensions for provincially appointed judges every three years.¹¹³ Recommendations with respect to salaries are to be implemented by the Cabinet of the Ontario government, within 60 days upon receipt of the PJR Commission's report. If the Executive chooses not to adopt the recommendations or to have them modified, it has to provide a reasonable justification for its decision. Such decision may be subject to judicial review.

5.7.5 Any difference between the Executive and the judges' associations relating to the implementation of the pay recommendations is referred to the PJR Commission. The PJR Commission's decision is final and binding on both the Executive and the judges' associations.¹¹⁴

5.7.6 The statutory agreement between the Chair of the Management Board of Cabinet of Ontario¹¹⁵ and the Provincial Court Judges Association provides that the PJR Commission must give every consideration to the criteria set out in Article 25 of the agreement before making recommendations on the salaries of the provincially-appointed judges.¹¹⁶ One of the criteria is that "*the government may not reduce the salaries, pensions or benefits of Judges, individually or collectively, without infringing the principle of judicial independence*".

Quadrennial review of federally appointed judges' pay

5.7.7 Section 100 of the Constitutional Act provides that salaries of the federally appointed judges should be fixed and provided by the Parliament of Canada. In other words, the federally appointed judges are paid by the Federal Government, even if they are working for the superior courts of the Provinces.

¹¹² The Commission consists of three members, one appointed jointly by (i) the associations representing provincial judges; one appointed by (ii) the Lieutenant Governor in Council and one, who shall head the Commission, appointed jointly by (i) and (ii). It was decided in *Re Remuneration of Judges* (1997) 3 S. C. R. 3. that members of any judicial compensation commission should not be appointed all by the Executive.

¹¹³ It was decided in *Re Remuneration of Judges* (1997) that each province had to establish a judicial compensation commission to report on the salaries and benefits of judges.

¹¹⁴ This binding arbitration procedure came into operation on 1 July 1995.

¹¹⁵ The Management Board of Cabinet of Ontario is a committee of the Ontario Cabinet, and acts as the manager of the government's resources: people, money, technology, information and real estate. Its Chair is a Cabinet Minister who currently is the Minister of Culture.

¹¹⁶ The agreement is set out in the Schedule of the Ontario Courts of Justice Statute Law Amendment Act, 1994.

5.7.8 The Re Remuneration of Judges (1997) resulted in the establishment of the Judicial Compensation and Benefits Commission (the JCAB Commission) in 1998,¹¹⁷ which inquires, every four years, into the general adequacy of the salaries and benefits of the federally appointed judges.

5.7.9 Upon receipt of the report by the JCAB Commission, the Minister of Justice is required to table a copy of the report to each House of the Federal Parliament on any of the first ten days when that House is sitting after the Minister has received the report. The Minister of Justice is also required to respond to the report within six months after receiving it. If the government decides to adjust the salaries of the judges, it will propose amendments to the Judges Act and submit them to the Federal Parliament for approval.

5.7.10 Although the recommendations of the JCAB Commission are not binding, “*they should not be set aside lightly*”¹¹⁸. If the Federal Government or the Federal Parliament chooses not to accept the recommendations or to have them modified, it has to provide a reasonable justification for its decision. Such decision may be subject to judicial review.

¹¹⁷ The Re Remuneration of Judges (1997) case established that the appointments to compensation commissions must not be entirely controlled by any one branch of government. Its members must not all be appointed by the government, and some must come from the judiciary; they must enjoy some security of tenure and must report regularly. The JCAB Commission now consists of three members, one nominated by federally appointed judges and another by the federal Minister of Justice, and a Chairperson chosen by the first two nominees.

¹¹⁸ Lamer C. J., Re Remuneration of Judges (1997).

5.8 Public accountability

Ontario Court of Justice

5.8.1 The Memorandum of Understanding signed between the Attorney General and the Chief Justice of OCJ sets out their respective roles and responsibilities. The Attorney General is answerable to the Legislative Assembly for the OCJ budget, a line item in the larger budget of the Ministry of the Attorney General. The Deputy Attorney General normally appears before the Standing Committee of the Legislative Assembly on Estimates. There is no formal process of accountability to the Legislative Assembly for judges or OCJ.¹¹⁹ Judges are not required to appear before the Standing Committee on Estimates with respect to the proposed budget of OCJ.¹²⁰

5.8.2 Judges are also not required to appear before the Standing Committee of the Legislative Assembly on Public Accounts (the Public Accounts Committee).¹²¹ Such attendance is the responsibility of the Attorney General, Deputy Attorney General and Assistant Deputy Minister of the Court Services Division.¹²²

Superior Court of Justice and Court of Appeal for Ontario

5.8.3 Information regarding public accountability of the Superior Court of Justice and the Court of Appeal for Ontario is pending a reply from the related authorities.

¹¹⁹ Reply from the Honourable Mr. Brian Lennon, Chief Justice of the Ontario Court of Justice.

¹²⁰ Theoretically, any individual who derives payment for employment services from public funds is callable by the Committee; but it would be unusual for a judge to be called before the Committee.

¹²¹ Theoretically, it is possible to have judges appear before the Public Accounts Committee.

¹²² Reply from the Ministry of the Attorney General.

Chapter 6 - Analysis

6.1 Introduction

6.1.1 In times of budgetary constraints, judicial work is not the only public service affected by a lack of resources, but it is one of the few activities which cannot control its own workload.¹²³ There appears to be a general consensus among the overseas jurisdictions studied in this report that judicial independence should not be compromised under budgetary constraints. The major issue on the financial aspect of judicial independence is whether or not sufficient safeguards are in place to ensure adequate resources are allocated to the Judiciary. Below is an analysis of the budgetary arrangements of the overseas judiciaries studied and those of Hong Kong. (See Appendix I for the comparison table)

6.2 Preparation of budget

Participation of the Judiciary and its relationship with constitutional structure

6.2.1 Among the three overseas judiciaries studied, the Federal Judiciary of the United States of America (US) enjoys the highest autonomy in the preparation of budget, as it drafts the Estimate on its own. The budgetary arrangement of the US is a reflection of its adherence to its constitutional principle of the separation of powers.

6.2.2 Contrary to the US, without a strict separation of powers, both the United Kingdom (UK) and the Province of Ontario of Canada (Ontario) practise a parliamentary system of government where Ministers are accountable for all public expenditure, including that of the Judiciary. Therefore, the Executive is involved in preparing the Judiciary's budget in both the UK and Ontario.

6.2.3 The Judiciary of Hong Kong prepares its own budget through the Judiciary Administrator, a civil servant employed on renewable contracts and reports only to the Chief Justice.¹²⁴ The budget is prepared on the basis of actual expenditure and projected workload of the courts, with the Chief Justice and other Court Leaders¹²⁵ being involved in formulating bids for additional resources. The Chief Justice endorses the Judiciary Administrator's draft before it is submitted to the Financial Services and the Treasury Bureau (FSTB) to form part of the Government's Estimates.

¹²³ Jerome J. Shestack, President of the American Bar Association (1997-98), *Road Maps: Funding the Justice System*, American Bar Association, 1998.

¹²⁴ Structurally, the Judiciary Administrator is under the Chief Justice and not any Bureau. In line with the established practice for appointment of senior directorate civil servants, his appointment is made by the Secretary for the Civil Service on the basis of the recommendation of a selection board chaired by the Chief Justice and the advice of the Public Service Commission.

¹²⁵ The Court Leaders are the Chief Justice of the Court of Final Appeal, the Chief Judge of the High Court, the Chief District Judge and the Chief Magistrate.

The extent of the Executive's interference

6.2.4 The Federal Judiciary in the US is the only Judiciary under study that is protected from Executive interference in the budgeting process. The Executive cannot set spending ceiling on or provide guidance to, or review the Judiciary's Estimate. Furthermore, the President must include the request of the Judiciary in his overall budget for the Executive without any change.

6.2.5 The Judiciary's Estimate in both the UK and Ontario is included in the larger budget of a department or ministry of the Executive. The Executive may review and alter the Judiciary's Estimate before it is submitted for the Legislature's approval. In practice, the Executive is not involved in every step of the budgetary process of the Judiciary, but it retains the final say on the proposed Estimate.

6.2.6 In Hong Kong, the annual draft Estimate preparation process for government bureaux and departments is similarly applicable to the Judiciary. Although the Judiciary is authorized to draft its own Estimate, the Executive can alter the draft. The Treasury Branch of FSTB examines and discusses with the Judiciary Administrator on the provision sought for the Judiciary before incorporating the proposed submission into the overall draft Estimates. The Treasury Branch of FSTB states that "*as a general practice*", FSTB and the Judiciary Administrator "*will agree on the final draft Estimate submission before it is incorporated into the overall draft Estimates*".

6.3 Approval of budget

6.3.1 Among the three overseas jurisdictions, the US is the only place where all members of the Legislature have the right to both increase and reduce the budget for the Judiciary. However, appropriations for judges' salaries are regarded as mandatory spending and are not subject to any across-the-board cut in spending. The US President can only veto or approve the entire appropriations bill passed by Congress to fund the Judiciary. In both the UK and Ontario, members of the Legislature who are not Ministers may only amend to reduce but not increase the Estimate for the Judiciary. Similarly, Members of the Legislative Council of Hong Kong may reduce but not increase the Estimate of the Judiciary.

6.4 Safeguards to ensure allocation of sufficient resources

6.4.1 In the US, formulas are developed by the Judiciary as an objective means for determining the workload and resource needs of the Judiciary and are used to justify budget estimates to Congress. A large part of the funds (95%) allotted to individual courts are determined by formulas.

6.4.2 In the UK, the Court Service under the Department for Constitutional Affairs (DCA) has written instructions from the Lord Chancellor to ensure all the courts are provided with adequate resources to meet workload. Whereas HM Treasury can amend the Judiciary's Estimate proposed by the Court Service, in the event that discrepancies occur, the Cabinet settles disputes between DCA and HM Treasury over the Estimate.

6.4.3 In Ontario, although the Executive can change the total amount of resources allocated to the Ontario Court of Justice (OCJ), it has not changed any individual item in the proposed budget so far. It is for OCJ to decide how it allocates the revised total budget to individual items of the proposed expenditure.

6.5 Participation of judges in the allocation of voted resources

6.5.1 In all three overseas jurisdictions and in Hong Kong, the Judiciaries themselves are responsible for the administrative decisions which have direct bearing on their judicial duties, such as assigning judges to cases.

6.5.2 The US Federal Judiciary is also solely responsible for the general administration of the courts and the allocation of resources, with the assistance of administrative staff who are employed by the Judiciary. In both the UK and Ontario, the Executive has different degrees of involvement in these areas.

6.5.3 In Hong Kong, the Judiciary Administrator assists the Chief Justice in the overall administration of the Judiciary, including the deployment of resources within the Judiciary. The assignment of judges, sittings of the court and other administration matters directly related to adjudication are mainly the responsibilities of the Court Leaders and the Listing Judges.¹²⁶

6.6 Pay adjustment of judges

6.6.1 Judges' remuneration forms a substantial part of the Judiciary's budget. For instance, in Hong Kong, 27% of the Judiciary's budget is spent on personal emoluments for judges.

¹²⁶ The Listing Judges are Judges of the High Court, the District Court and Magistrates' Courts who have been designated by the respective Court Leaders to deal with listing matters in addition to their normal duties.

6.6.2 Among the three overseas Judiciaries, only the Ontario Courts have the annual judicial pay automatically adjusted on the basis of an index. In the US, both the President and Congress may decide to raise or not to raise judges' remuneration. In the UK, it is up to the Executive to decide whether or not to adopt the recommendations on salary adjustments for judges from the independent Senior Salaries Review Body, and by convention, the recommendations are usually accepted.

6.6.3 Independent commissions are established for conducting periodic reviews on judicial remuneration in all three overseas jurisdictions. Recommendations made by such commissions are not binding in the US and the UK. In Ontario, different commissions are in charge of reviewing salaries of the provincially appointed judges of OCJ and the federally appointed judges of the superior courts. The Judicial Compensation and Benefits Commission's recommendations on the salaries of federally appointed judges are not binding on the Executive. However, the Provincial Judges Remuneration Commission which gives recommendations on the salaries of the provincially appointed judges, is also responsible for settling differences between the Executive and the judges' associations on the Commission's recommendations. The Commission's decision is final and binding.

6.6.4 The annual adjustment mechanism of judicial pay in Hong Kong is under review. The Judicial Service Pay Scale was adjusted in line with the civil service pay adjustment from 1989 to 2001. The pay reduction for the civil service in 2002 was not applied to the judicial pay, and neither will the reductions to take effect from 1 January 2004 be applied to judges.¹²⁷ The Consultancy Report¹²⁸ commissioned by the Hong Kong Judiciary has recommended judicial remuneration to be determined by the Executive after considering recommendations by an independent body.

6.6.5 The Standing Committee on Judicial Salaries and Conditions of Service is responsible for conducting an overall review of the pay and conditions of services of judicial officers in Hong Kong. The latest review was conducted in 1989.

6.7 Safeguards against manipulation of judicial remuneration through budgeting

6.7.1 Both the US and the UK have statutory provisions prohibiting the reduction of most judges' salaries. In Ontario, the annual adjustment is automatic and if the adjustment rate turns out to be negative, judges' salaries will only be frozen but not be reduced. There is no explicitly specified constitutional guarantee to impose an absolute bar on the reduction in judges' salaries of Ontario. However, judicial salaries cannot be reduced or frozen without a prior report from a judicial compensation commission.

¹²⁷ The Civil Service Bureau, Brief for the Legislative Council, Public Officers Pay Adjustments (2004/2005) Bill, 13 May 2003, CSB CR PG/4-085-00/33.

¹²⁸ Anthony Mason, *Consultancy Report: System for the Determination of Judicial Remuneration*, the Judiciary of Hong Kong, February 2003.

6.7.2 The UK has a standing appropriation to meet the payment of judicial remuneration. Payment for the salaries of the federally appointed judges of the superior courts of Ontario is met by the Consolidated Revenue Fund and it is a statutory obligation to do so. The funding of this payment is not subject to any government appropriation process or budget legislation. However, judges of the inferior court, i.e. OCJ judges, are paid through an annual appropriation approved by the provincial legislature. Judges of the US Federal Judiciary are paid through an annual appropriation approved by Congress.

6.7.3 Article 93 of the Basic Law of Hong Kong provides that judges and other members of the Judiciary serving in Hong Kong before the establishment of the Hong Kong Special Administrative Region may retain their seniority with pay, allowances, benefits and conditions of service no less favourable than before. The Consultancy Report¹²⁹ commissioned by the Hong Kong Judiciary has recommended that legislation should be enacted prohibiting absolutely any reduction in judicial remuneration.

6.8 Public accountability

6.8.1 In both the UK and Ontario, it is the Executive, who is answerable to the Legislature for the resources allocated to the Judiciary. Judges do not appear before the Legislature since they are not budget holders in their own rights, and so they have no line of accountability for the resources allocated. In the US, the line of accountability is shared by the Chairman of the Budget Committee of the Judicial Conference of the United States (who is a judge) and an employee of the Judiciary, the Director of the Administrative Office of the United States Courts. Judges of the Federal Judiciary may also appear as witnesses in subcommittee hearings of Congress on budget matters.

6.8.2 The Judiciary Administrator is the Controlling Officer of the Judiciary in Hong Kong. He is responsible and accountable for the resources allocated to the Judiciary, and therefore, is required to appear before both the Public Accounts Committee and the Finance Committee of the Legislative Council.

¹²⁹ Anthony Mason, *Consultancy Report: System for the Determination of Judicial Remuneration*, the Judiciary of Hong Kong, February 2003.

Appendix I

Comparison of the various attributes of the budgetary arrangements for judiciaries in selected overseas places and the Hong Kong Special Administrative Region

	The United States of America (the Federal Courts)	England and Wales of the United Kingdom ¹³⁰	The Province of Ontario of Canada	The Hong Kong Special Administrative Region
Source of funding				
Source of funding	<ul style="list-style-type: none"> Funds appropriated by Congress. None of the court business is self-financed 	<ul style="list-style-type: none"> Funds appropriated by Parliament except for judicial remuneration and cost of civil proceedings which is largely self-financed Judicial remuneration is charged on the Consolidated Fund and does not require annual parliamentary approval 	<ul style="list-style-type: none"> Funds appropriated by the Legislative Assembly of Ontario, except for judicial remuneration of the federally appointed judges of the superior courts of Ontario. None of the court business is self-financed Salaries of federally appointed judges are met by the Consolidated Revenue Fund of the Federal Government 	<ul style="list-style-type: none"> Funds appropriated by the Legislative Council. None of the court business is self-financed
Competing for resources with government departments?	<ul style="list-style-type: none"> Yes 	<ul style="list-style-type: none"> Yes, except for the salaries of judges which have standing appropriation 	<ul style="list-style-type: none"> Yes, except for the salaries of the federally appointed judges which have standing appropriation 	<ul style="list-style-type: none"> Yes
Preparation of budget				
Who prepares the Judiciary's budget, the Executive or the Judiciary?	<ul style="list-style-type: none"> The Judiciary The Supreme Court prepares its own budget The Administrative Office of the United States Courts prepares for federal courts other than the Supreme Court 	<ul style="list-style-type: none"> The Executive and the Judiciary The Court Service, an executive agency of the Department for Constitutional Affairs, prepares the budget for courts other than the House of Lords and the Magistrates' Courts The House of Lords prepares its own budget 	<ul style="list-style-type: none"> The Judiciary and the Executive The Offices of the Chief Justice of the Ontario Court of Justice, the Superior Court of Justice and Court of Appeal for Ontario draft their respective operating budgets for their Offices to be included in the budget of the Ministry of the Attorney General, while the Court Services Division of the Ministry drafts the budget for providing supporting services to judges and courts 	<ul style="list-style-type: none"> The Judiciary Administrator, the Chief Administrator under the Chief Justice, drafts the budget and the Chief Justice endorses it

¹³⁰ Magistrates' Courts are not included in this study.

Appendix I (cont'd)

Comparison of the various attributes of the budgetary arrangements for judiciaries in selected overseas places and the Hong Kong Special Administrative Region

	The United States of America (the Federal Courts)	England and Wales of the United Kingdom	The Province of Ontario of Canada	The Hong Kong Special Administrative Region
Preparation of budget (cont'd)				
Judges' involvement in the preparation of judicial budget	<ul style="list-style-type: none"> Individual courts provide the Administrative Office of the United States Courts with expense projections for the upcoming fiscal year 	<ul style="list-style-type: none"> Judges are generally not involved, but some items in the budget may result from consultations with judges 	<p>Ontario Court of Justice:</p> <ul style="list-style-type: none"> Judges may or may not be consulted in the budgetary process of the Office of the Chief Justice In the budgetary process of the Court Services Division, the Chief Justice and other senior judges are consulted <p>Superior Court of Justice and Court of Appeal for Ontario:</p> <ul style="list-style-type: none"> Pending information 	<ul style="list-style-type: none"> The Judiciary Administrator seeks the direction of the Chief Justice as appropriate. The Chief Justice and other Court Leaders¹³¹ are normally involved in formulating bids for additional resources and the Chief Justice endorses the Judiciary Administrator's report for the purpose of the Estimates
Measures against executive interference	<ul style="list-style-type: none"> By statute, the President must include the Judiciary's budget in his overall budget without any change 	<ul style="list-style-type: none"> No explicit measure However, the Lord Chancellor requires the Chief Executive of the Court Service to ensure all courts are provided with adequate resources to meet workload and planned level of sittings 	<p>Ontario Court of Justice:</p> <ul style="list-style-type: none"> The Chief Justice of the Ontario Court of Justice and the Attorney General signed a Memorandum of Understanding, providing that the Office of the Chief Justice prepares an operating budget and defining the scope of such budget <p>Superior Court of Justice and Court of Appeal for Ontario:</p> <ul style="list-style-type: none"> Pending information 	<ul style="list-style-type: none"> No explicit measure The annual budget preparation processes for the Judiciary follow those applicable to other government bureau/departments
Can the Executive impose a spending ceiling or a limit on the percentage increase on the Estimate being prepared for the Judiciary?	<ul style="list-style-type: none"> No (precluded by law) 	<ul style="list-style-type: none"> Yes 	<p>Ontario Court of Justice:</p> <ul style="list-style-type: none"> Pending information <p>Superior Court of Justice and Court of Appeal for Ontario:</p> <ul style="list-style-type: none"> Pending information 	<ul style="list-style-type: none"> Yes

¹³¹ The Court Leaders are the Chief Justice of the Court of Final Appeal, the Chief Judge of the High Court, the Chief District Judge and the Chief Magistrate.

Appendix I (cont'd)

Comparison of the various attributes of the budgetary arrangements for judiciaries in selected overseas places and the Hong Kong Special Administrative Region

	The United States of America (the Federal Courts)	England and Wales of the United Kingdom	The Province of Ontario of Canada	The Hong Kong Special Administrative Region
Preparation of budget (cont'd)				
Can the Executive alter the budget proposal for the Judiciary?	<ul style="list-style-type: none"> • No (precluded by law) • But the President of the United States can veto the entire appropriations bill passed by Congress 	<ul style="list-style-type: none"> • Yes • In practice, the Executive has not amended the proposed budget of the House of Lords 	Ontario Court of Justice: <ul style="list-style-type: none"> • Yes • But it is for the Judiciary to decide how it allocates the revised budget to individual items Superior Court of Justice and Court of Appeal for Ontario: <ul style="list-style-type: none"> • Yes 	<ul style="list-style-type: none"> • Yes • The Treasury Branch will discuss with the Judiciary Administrator the proposed submission before it is incorporated into the overall draft Estimates
Approval of budget				
Can the Legislature alter the budget proposal?	<ul style="list-style-type: none"> • Yes • Congress can modify the budget proposals 	<ul style="list-style-type: none"> • Yes • Any Member of the House of Commons other than a Minister can propose a reduction but not an increase of the proposed expenses 	Ontario Court of Justice: <ul style="list-style-type: none"> • Yes • Any Member of the Legislative Assembly other than a Minister can propose a reduction but not an increase of the proposed expenses Superior Court of Justice and Court of Appeal for Ontario: <ul style="list-style-type: none"> • Yes, the same as the Ontario Court of Justice. However, the budget for the salaries of the federally appointed judges is not subject to any budget legislation to be approved by the Federal Parliament 	<ul style="list-style-type: none"> • Yes • Any Member of the Legislative Council can propose to reduce but not increase the Estimates

Appendix I (cont'd)

Comparison of the various attributes of the budgetary arrangements for judiciaries in selected overseas places and the Hong Kong Special Administrative Region

	The United States of America (the Federal Courts)	England and Wales of the United Kingdom	The Province of Ontario of Canada	The Hong Kong Special Administrative Region
Court administration				
Who is responsible for the allocation of voted resources?	<ul style="list-style-type: none"> Each court is responsible for managing the funds allocated to them 	<ul style="list-style-type: none"> The Court Service for most courts.¹³² The Department for Constitutional Affairs may decide to reprioritize the resources for the deployment of the Court Service The Judicial Office¹³³ for the House of Lords 	Ontario Court of Justice: <ul style="list-style-type: none"> The Office of the Chief Justice and the Court Services Division are responsible for the allocation of resources they have requested for respectively Superior Court of Justice and Court of Appeal for Ontario: <ul style="list-style-type: none"> Pending information 	<ul style="list-style-type: none"> The Chief Justice assisted by the Judiciary Administrator
Is the Judiciary responsible for administrative decisions that have direct bearing on judicial work?	<ul style="list-style-type: none"> Yes 	<ul style="list-style-type: none"> Yes 	Ontario Court of Justice: <ul style="list-style-type: none"> Yes Superior Court of Justice and Court of Appeal for Ontario: <ul style="list-style-type: none"> Pending information 	<ul style="list-style-type: none"> Yes¹³⁴
Does the Judiciary employ its own administrative staff?	<ul style="list-style-type: none"> Yes 	<ul style="list-style-type: none"> No, except for the House of Lords which employs its own staff 	Ontario Court of Justice: <ul style="list-style-type: none"> The Office of the Chief Justice employs its own staff except for the Executive Coordinator, the head of the administrative staff, who is hired by the Ministry of the Attorney General. The staff providing supporting services in court are also employed by the Ministry Superior Court of Justice and Court of Appeal for Ontario: <ul style="list-style-type: none"> Pending information 	<ul style="list-style-type: none"> No

¹³² Excluding the House of Lords and the Magistrates' Courts.

¹³³ The Judicial Office is staffed by the employees of the House of Lords.

¹³⁴ It is mainly the responsibility of the Court Leaders and the Listing Judges.

Appendix I (cont'd)

Comparison of the various attributes of the budgetary arrangements for judiciaries in selected overseas places and the Hong Kong Special Administrative Region

	The United States of America (the Federal Courts)	England and Wales of the United Kingdom	The Province of Ontario of Canada	The Hong Kong Special Administrative Region
Judicial remuneration				
Any standing appropriation for the payment of judicial remuneration?	<ul style="list-style-type: none"> No 	<ul style="list-style-type: none"> Yes, except for the salaries of District Judges, tribunal chairmen and members, and fees paid to deputy judges, which are covered by the budget of the Court Service and require funding appropriated by Parliament 	Ontario Court of Justice: <ul style="list-style-type: none"> No Superior Court of Justice and Court of Appeal for Ontario: <ul style="list-style-type: none"> Payment for the salaries of the federally appointed judges to be met by the Consolidated Revenue Fund is a statutory obligation and is not subject to any budget legislation or government appropriation process 	<ul style="list-style-type: none"> No
Basis of annual adjustment of judicial remuneration	<ul style="list-style-type: none"> The Employment Cost Index which measures the percentage change in private sector wages and salaries, reduced by 0.5 is the rate of adjustment recommended 	<ul style="list-style-type: none"> Recommendations of the independent Senior Salaries Review Body 	Ontario Court of Justice, Superior Court of Justice and Court of Appeal for Ontario: <ul style="list-style-type: none"> The 12-month index of the salaries of the Industrial Aggregate in Canada 	<ul style="list-style-type: none"> Recommendations of the Standing Committee on Judicial Salaries and Conditions of Service (the Judicial Committee), which is based on the annual adjustments of the upper salary band of civil servants
Is the annual adjustment in salary automatic?	<ul style="list-style-type: none"> No The President and Congress may decide whether or not to allow such adjustment in accordance with the Employment Cost Index 	<ul style="list-style-type: none"> No However, by convention, the recommended adjustments by the Senior Salaries Review Body are accepted most of the time There were cases where the recommended increases were implemented in stages 	<ul style="list-style-type: none"> Yes, for both the Ontario Court of Justice and the two superior courts On the first day of April in every year, judges' salaries are adjusted by multiplying the current salaries with the change in the Industrial Aggregate Index of Canada, up to a maximum of 7%. Salaries are allowed to adjust upwards but not downwards 	<ul style="list-style-type: none"> No, the Judicial Committee, which recommends an annual adjustment rate, is an advisory body. Decisions are made by the Administration

Appendix I (cont'd)

Comparison of the various attributes of the budgetary arrangements for judiciaries in selected overseas places and the Hong Kong Special Administrative Region

	The United States of America (the Federal Courts)	England and Wales of the United Kingdom	The Province of Ontario of Canada	The Hong Kong Special Administrative Region
Judicial remuneration (cont'd)				
Is the periodic review on judicial remuneration conducted by an independent body?	<ul style="list-style-type: none"> • Yes • Six members of the Citizens' Commission are to be appointed by leaders of the three branches of government and five are to be selected from the public at large 	<ul style="list-style-type: none"> • Yes • Members of the Senior Salaries Review Body are appointed by the Prime Minister or the Lord Chancellor 	<ul style="list-style-type: none"> • Yes, for both the inferior and superior courts <p>Ontario Court of Justice:</p> <ul style="list-style-type: none"> • Members of the Provincial Judges Remuneration Commission (PJR Commission) are appointed by the Executive and associations representing judges <p>Superior Court of Justice and Court of Appeal for Ontario:</p> <ul style="list-style-type: none"> • Members of the Judicial Compensation and Benefits Commission are appointed by the Executive and judges 	<ul style="list-style-type: none"> • Yes • Members of the Judicial Committee are appointed by the Chief Executive of Hong Kong
Is the review on judicial remuneration conducted on a regular basis?	<ul style="list-style-type: none"> • No • After the Quadrennial Commission was replaced by the Citizens' Commission in 1989, no such review has been conducted as no money has ever been provided to the Commission 	<ul style="list-style-type: none"> • Yes • Every five years 	<p>Ontario Court of Justice</p> <ul style="list-style-type: none"> • Yes, every three years <p>Superior Court of Justice and Court of Appeal for Ontario:</p> <ul style="list-style-type: none"> • Yes, every four years 	<ul style="list-style-type: none"> • No • Since the last review in 1989, no such review has been conducted. The mechanism is currently under review

Appendix I (cont'd)

Comparison of the various attributes of the budgetary arrangements for judiciaries in selected overseas places and the Hong Kong Special Administrative Region

	The United States of America (the Federal Courts)	England and Wales of the United Kingdom	The Province of Ontario of Canada	The Hong Kong Special Administrative Region
Judicial remuneration (cont'd)				
Are the recommendations of the salary review binding on the Executive?	<ul style="list-style-type: none"> • No 	<ul style="list-style-type: none"> • No 	<p>Ontario Court of Justice:</p> <ul style="list-style-type: none"> • If a difference arises between the government and the judges' associations relating to the implementation of the recommendations, the difference is referred to the PJR Commission whose decision is final and binding on the parties involved <p>Superior Court of Justice and Court of Appeal for Ontario:</p> <ul style="list-style-type: none"> • No, but the Executive has to provide a reasonable justification for not adopting the recommendations 	<ul style="list-style-type: none"> • No, the Standing Committee on Judicial Salaries and Conditions of Service is an advisory body. Decisions are made by the Administration.
Constitutional guarantee against reduction in judges' salaries	<ul style="list-style-type: none"> • Yes, for most judges who are federal judges appointed under Article III¹³⁵ 	<ul style="list-style-type: none"> • Yes, for most judges who are higher Judiciary and stipendiary magistrates 	<ul style="list-style-type: none"> • There is no explicitly specified constitutional provision to impose an absolute bar on the reduction of salaries for both provincially and federally appointed judges. However, salaries cannot be reduced or frozen without a prior report from a judicial compensation commission • By statute, if the Industrial Aggregate Index does not exceed 100, the salaries will remain unchanged. In other words, a negative rate of adjustment will not reduce judges' salaries 	<ul style="list-style-type: none"> • There is no overall constitutional guarantee against reduction. Judges who serve before the establishment of the HKSAR are guaranteed by the Basic Law that their pay and benefits will be no less favourable than those before 1 July 1997

¹³⁵ Justices of the Supreme Court, judges of Courts of Appeal and District Courts, and judges of the Court of International Trade are appointed under Article III of the Constitution.

Appendix I (cont'd)

Comparison of the various attributes of the budgetary arrangements for judiciaries in selected overseas places and the Hong Kong Special Administrative Region

	The United States of America (the Federal Courts)	England and Wales of the United Kingdom	The Province of Ontario of Canada	The Hong Kong Special Administrative Region
Public accountability				
Who is answerable to the Legislature for the resources allocated for spending on the Judiciary?	<ul style="list-style-type: none"> The Chairman of the Budget Committee of the Judicial Conference of the United States, other judges and the Director of the Administrative Office of the United States Courts 	<ul style="list-style-type: none"> The Clerk of the Parliaments for the House of Lords The Lord Chancellor, the Permanent Secretary of the Department for Constitutional Affairs, and the Chief Executive of the Court Service for the rest of the Judiciary 	<ul style="list-style-type: none"> The Attorney General, the Deputy Attorney General and the Assistant Deputy Minister of the Court Services Division for the allocations to all the Ontario Courts 	<ul style="list-style-type: none"> The Judiciary Administrator
Are judges answerable to the Legislature for the resources allocated to the Judiciary?	<ul style="list-style-type: none"> Yes 	<ul style="list-style-type: none"> No, because judges are not budget holders themselves 	<ul style="list-style-type: none"> No 	<ul style="list-style-type: none"> No, judges are not budget holders themselves. Only the Judiciary Administrator is answerable to the Legislative Council

Appendix II

The United States Federal Courts

SUPREME COURT

UNITED STATES SUPREME COURT

APPELLATE COURTS

US Courts of Appeals
12 Regional Circuit Courts of Appeals
US Court of Appeals for the Federal Circuit

TRIAL COURTS

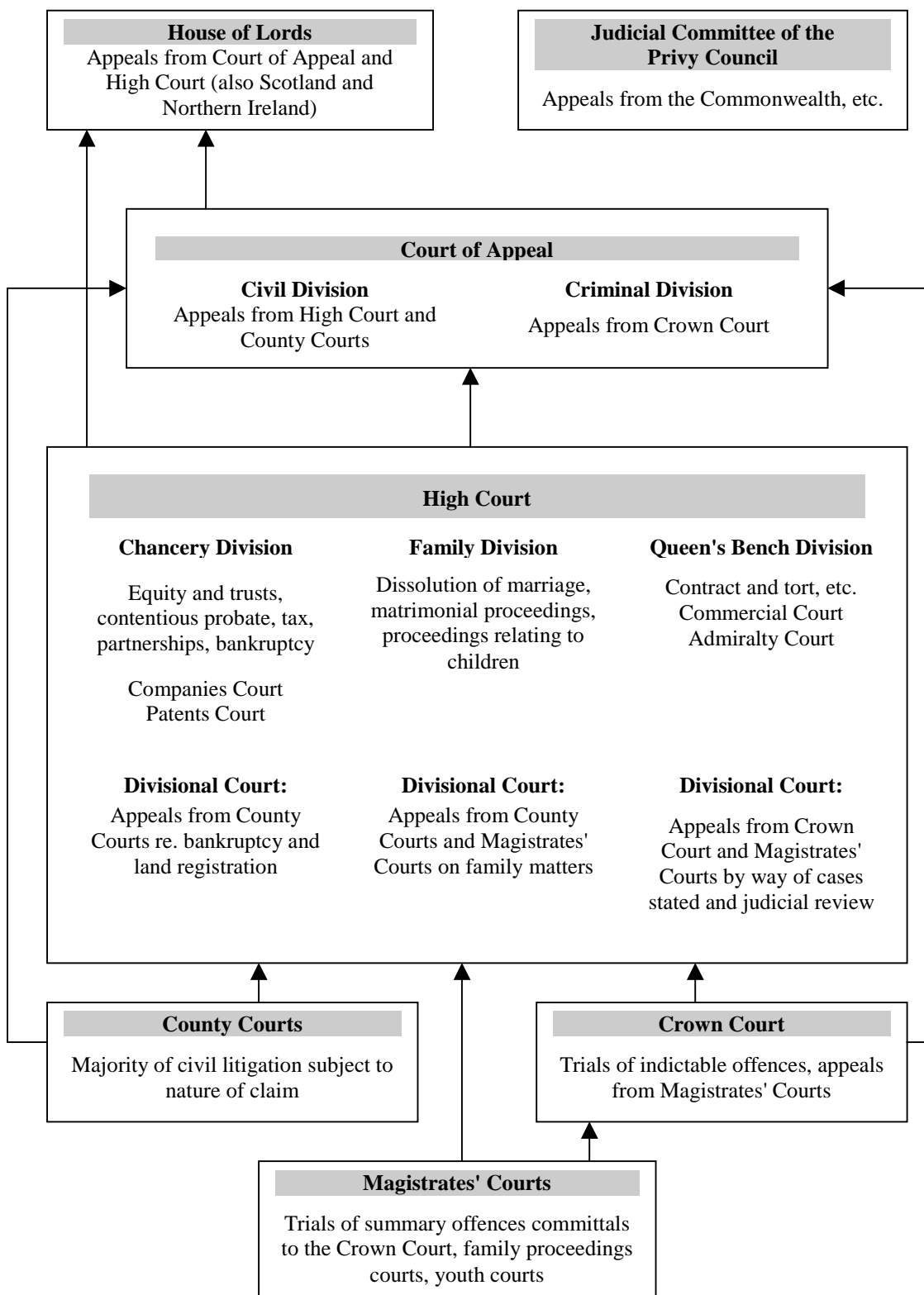
US DISTRICT COURTS
94 Judicial Districts
US Bankruptcy Courts
US Court of International Trade
US Court of Federal Claims

**FEDERAL COURTS
AND OTHER ENTITIES
OUTSIDE THE
JUDICIAL BRANCH**

Military Courts (Trial and Appellate)
Court of Veterans Appeals
US Tax Court
Federal administrative agencies and boards

Appendix III

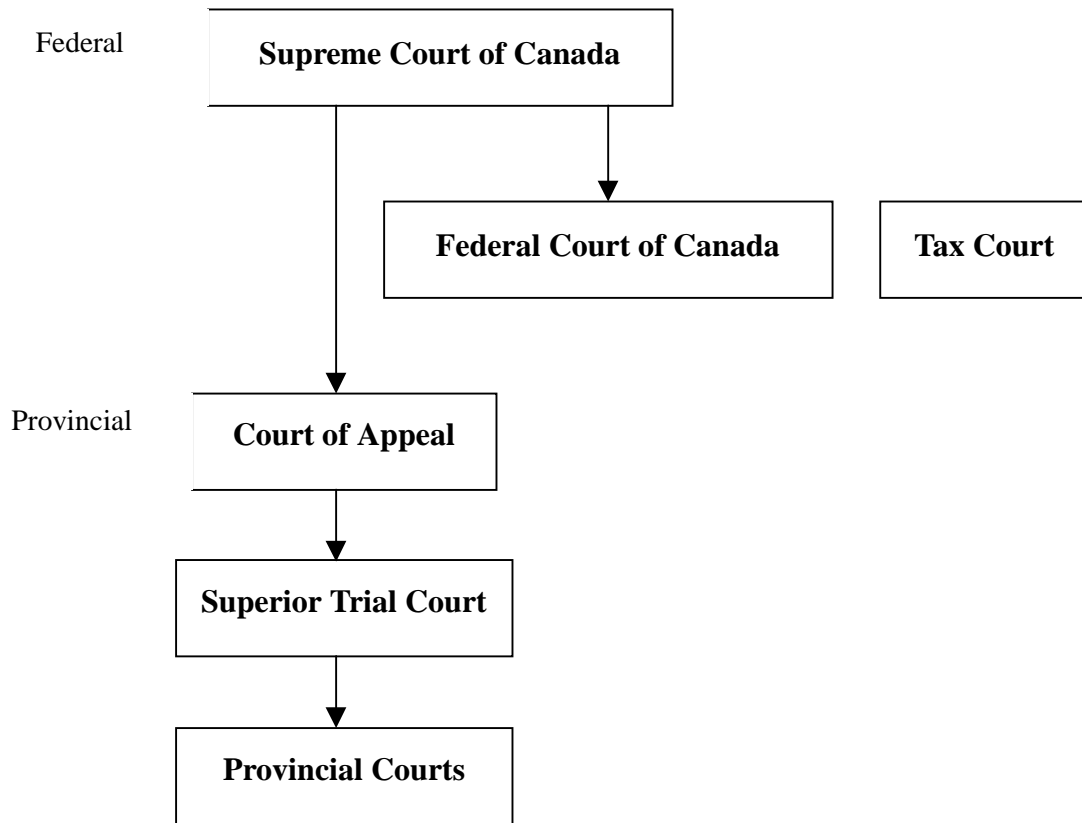
An Outline of the Court Structure in England and Wales



Source: The Lord Chancellor's Department, *Judicial Statistics Annual Report 2000*, p. 3.

Appendix IV

The Court Structure in Canada



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