

## Lawyers' Earnings in the Canadian Private and Public Sectors

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### Résumé de l'article

Le nombre d'avocats travaillant dans les services gouvernementaux au Canada a augmenté d'environ 10 pour cent annuellement pendant la décennie 1970, dépassant ainsi le taux de croissance dans les cabinets privés et les services juridiques des entreprises. Le présent article traite des différences de revenus entre les avocats de pratique privée et ceux des services de l'État ainsi que des changements relatifs qui se sont produits depuis 1970 pour les deux groupes.

Le modèle d'évaluation des revenus comprend plusieurs variables explicatives : nature des entreprises, catégories de travailleurs, importance de la ville, localisation des bureaux, âge, sexe, statut patrimonial, langue parlée à la maison, religion, scolarité, origine ethnique, régions desservies. Les données, extraites des recensements de 1971 et de 1981, n'incluent que les revenus d'emploi des seules personnes qui travaillaient à temps plein pendant l'année entière dans la pratique active du droit. Certaines publications spécialisées des recensements et l'importance de la ville ont servi d'indicateurs pour apprécier l'importance et le type de pratique et de clientèle.

Une fois les autres variables explicatives contrôlées, on n'a découvert aucune différence significative entre les revenus des avocats du secteur public et ceux de la pratique privée. Toutefois, lorsque l'on compare les coefficients de revenus de l'avocat de pratique privé avec les avantages sociaux qu'on trouve dans le secteur public, il y a un différentiel d'environ 2 200 \$ qui pourrait compenser l'insécurité du revenu qui existe dans le secteur privé. En 1980, la moyenne des revenus des avocats du secteur public n'était que de 86 pour cent de celle des revenus du secteur privé. La ventilation de cette différence montre que 92 pour cent de celle-ci est attribuable aux différences dans les caractéristiques personnelles et dans les conditions de travail. Les services gouvernementaux comptent, parmi les membres de la profession, une plus grande proportion de femmes, de catholiques, d'étrangers et de célibataires. Le reste, soit huit pour cent, se rattache à divers coefficients de revenus se rapportant à l'âge, au sexe, à la langue, à la religion, à la scolarité et au statut matrimonial dans les deux secteurs. La valeur moyenne nette des avantages sociaux réduirait ce différentiel à 2 500,00 \$ environ.

Le revenu réel moyen des avocats de pratique privée a baissé pendant la décennie 1970, mais il n'y eut à peu près pas de changement dans celui des avocats du secteur public. On a décomposé les changements survenus au cours de la décennie en trois classes : composition (changement dans les caractéristiques des avocats); rémunération (changements rattachés à la structure des revenus attribuables à ces caractéristiques) et marche (changements dans les conditions de l'offre et de la demande de services des avocats). Le déclin de 17 pour cent dans le secteur privé était attribuable à des modifications à la composition (-8 pour cent), à la rémunération (+ 5 pour cent) et au marché (-14 pour cent). Pour ce qui est des avocats des services publics, le résultat des changements dans leur composition indique une baisse des revenus de 5 pour cent; la modification de leur rémunération était négligeable, mais on a remarqué un effet positif du marché de presque 5 pour cent. Ceci laisse voir qu'il y a eu une plus grande demande d'avocats dans les services gouvernementaux que dans le secteur privé, ou que l'offre s'est inexplicablement concentrée dans le secteur privé.

Ceci confirme le fait que le différentiel de 5 600,00 \$ qui existait en 1970 avait disparu en 1980. De toute évidence, les salaires des avocats des services gouvernementaux ont monté au cours de la décennie 1970 pour permettre l'engagement de nouveaux avocats, malgré la croissance sans précédent de la profession d'avocat.

# *Lawyers' Earnings in the Canadian Private and Public Sectors*

David A.A. Stager

*Earnings of lawyers in the government service are compared with those in private practice in Canada during the 1970's, a period of rapid growth in the supply of lawyers.*

Empirical evidence for Canada and the United States shows that earnings in the public sector are generally higher than in the private sector, but that this relationship may be reversed at higher salary levels (Gunderson, 1978 and 1984). Much of the empirical analysis, however, has included broad occupational groups; less analytical attention has been given to specific occupations<sup>1</sup>. This paper addresses the particular case of the legal profession, to analyze the intersectoral earnings differentials and changes in real earnings in the two sectors during the 1970s.

The number of lawyers in government service in Canada grew at about 10 per cent annually during the 1970s, outpacing the growth rates of private law firms and corporate legal departments, as well as of the total public service<sup>2</sup>. Lawyers employed by the provincial governments increased at a greater rate than in the federal or local governments. (Much of this provin-

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\*\* I am grateful to Statistics Canada for permission to use results obtained in conjunction with its larger study of selected professions in Canada, and invaluable computer assistance of Ted Wannell. Statistics Canada, however, bears no responsibility for the analysis reported here. I am also indebted to David K. Foot for his helpful comments at various stages in the development of the paper, and to an anonymous referee for several suggestions that were incorporated in the final version of the paper.

1 Although such studies have controlled for other variables explaining earnings differentials in order to isolate a pure intersectoral effect, there has remained some heterogeneity within categories (for education and employment, for example) due to broadly defined groups being studied. Such heterogeneity is lessened here where occupation, industry, and education are all narrowly defined.

2 At the federal and municipal levels, the number of lawyers doubled, while all other employment in the federal government rose by 40 per cent, and all other municipal employment rose by 60 per cent. In the provincial governments, lawyers tripled in number but other provincial public servants increased by 60 per cent (Census of Canada, 1971 and 1981).

cial expansion occurred in Québec, where most Legal Aid service is provided by salaried lawyers, rather than through public payments to private lawyers.) This rapid growth in government legal counsel was attributable both to an increase in litigation by the crown, as well as to the increasing complexity of legislation and of fiscal and regulatory programs that occurred during the 1970s. These programs also required the federal departments to be involved with their provincial counterparts in on-going negotiation for monetary claims or jurisdiction<sup>3</sup>. As a result, more than 10 per cent of all practising lawyers were employed in government service by 1981.

### THE MODEL

Several factors would suggest that lawyers in private practice and in government service are linked by competitive labour markets and that, after controlling for standard earnings determinants and other compensated differences, there should be no significant earnings differential between the sectors<sup>4</sup>. Lawyers can and do move readily between the sectors, and much of the legal work is similar in both sectors, in both criminal and civil law. Indeed, many private practice lawyers in certain fields, such as taxation and litigation, arrange for short-term employment periods in the public sector to augment their competence in these fields. Lawyers employed in the public sector can be expected to have a detailed knowledge of earnings in private practice, such that public sector salaries must be comparable, in order to retain lawyers of comparable quality. Indeed, salary scales for lawyers in government service generally are based on surveys of earnings in private practice (see for example, Peat Marwick, 1985). Furthermore, most lawyers in the public sector are excluded from the collective bargaining unit, with the result that their senior administrators can more readily establish salaries that are competitive with the private sector.

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3 About one-half of the lawyers employed in the federal government in 1980 were engaged in litigation; the others worked in various fields such as drafting legislation, developing amendments in criminal and constitutional law, and providing legal services to various federal departments. About 8 per cent of the federal lawyers worked in various federal boards and commissions, especially in the regulatory agencies; and about 5 per cent act on behalf of war veterans (in the Bureau of Pension Advocates) in making claims and appeals for pension payments. All of the lawyers employed by the federal department of justice and most other federal lawyers are excluded from the collective bargaining unit of the federal civil service.

4 Although the two sectors are described as competitive with respect to each other, this is not the case for the private market for legal services. Osberg (1985) has described the characteristics that more closely resemble a model of monopolistic competition in the case of delivery of legal services through private practice.

This analysis of lawyers' earnings is based on a conventional human capital model that is augmented by variables selected to represent the employment structure in private practice<sup>5</sup>. Explanatory variables used in the model are arranged in three major groups: (i) employment characteristics, including industry, location, and employment status; (ii) regional characteristics representing the geographical segmentation of the legal profession; and (iii) personal characteristics, both ascriptive and acquired.

The focal point of the model is the industry of employment, namely private practice or government service. (Lawyers employed in corporations and nonprofit organizations are also identified in the analysis for secondary comparisons.) In addition to variables discussed later for both sectors, certain variables must be included to take account of distinctive features in the market structure of private practice, especially with respect to demand for lawyers' services. A differentiation among lawyers in private practice has evolved that is based on the differentiation of clients served<sup>6</sup>. Law firms therefore tend to be distinguished by size and location, to match the size and location of their clients.

Large law firms, usually located in the financial core of a metropolis, are expected to realize higher earnings per lawyer. With several lawyers in a firm, it is possible for each lawyer to develop specialized skills and accordingly charge a higher hourly rate for these exclusive skills. Paradoxically, this specialization by individual lawyers means that the large firm can be a complete generalist, such that these «full service» firms are able to handle all of the legal work for any large corporate client. There may also be economies of scale in large firms, with respect to their staff, accommodation and other facilities.

Lawyers practising outside the financial core of large cities, and in the smaller cities, generally do so as solo practitioners or in firms of two to four lawyers. Their practice consists mainly of real estate, minor commercial law, family law, and other administrative matters that are charged at lower hourly rates or in accordance with very competitive tariff schedules<sup>7</sup>.

<sup>5</sup> See Gunderson (1978) for a discussion of alternative models of public sector wage determination. He concludes that there is no single, best model and that «they often predict the same set of variables as important determinants of public sector wages» (p. 173).

<sup>6</sup> In an intensive study of Chicago lawyers, Laumann and Heinz (1979, p. 246) found that lawyers are not so much specialized according to substantial areas of law as they are by different clients:

Their specialization is not so much a division of labour as a division of clientele. Lawyers tend to specialize in the representation of limited, identifiable types of clients and to perform as broad or narrow a range of tasks as their clientele demands.

<sup>7</sup> Adam and Baer (1984) found that in Ontario the large firms (more than twenty lawyers) spent two-thirds of their time on civil litigation and corporate or commercial work; the smaller firms did a higher proportion of real estate law; and solo firms were confined to real estate, family law, and criminal law.

Regional differences in the earnings of Canadian lawyers can also be expected since lawyers can practise only in the province where they have been licensed. There is therefore very little interprovincial mobility because this would require additional bar admission examinations in the destination province<sup>8</sup>. Moreover, the head offices of large corporations are concentrated in Montréal, Toronto, and Vancouver, with a concomitant concentration of the large law firms.

The personal characteristics included in the earnings model are age, gender, religion, language, birthplace, marital status and education. Age is a more acceptable proxy for employment experience in the case of lawyers than it is for much of the labour force because most lawyers begin practising at ages 27 to 30, and usually have an uninterrupted career in the practice of law. Gender is included because earnings differentials in favour of males have been widely observed after controlling for other variables (Gunderson and Riddell, 1988), and even within the legal profession (Weisbrod, 1983). Religion, language, and other ascriptive personal characteristics have been identified as important variables in occupational choice, employment discrimination, and earnings differentials<sup>9</sup>.

The effect of education on earnings differentials *within* the legal profession has not been examined previously. Since all lawyers must be graduates of a law school, there is little variation in years of schooling. However, a substantial minority also obtain a master's degree in law (LLM)<sup>10</sup>. Although higher earnings are usually associated with higher levels of formal education, the net returns tend to decline at higher education levels (Psacharopoulos, 1985). Since an advanced degree in law (LLM) is a *third* degree, it cannot be expected that there should be a large earnings differential associated with this further education.

Lawyers in private practice may also have different earnings depending on whether they are salaried employees or self-employed partners in a law firm. In medium and large firms, lawyers typically spend four to eight years as employees before becoming a partner (Clarkson Gordon, 1985). The more important comparison is between the self-employed lawyer in private practice and the salaried lawyer in government service. Government lawyers receive several monetary benefits that are not enjoyed by most lawyers in

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8 Six per cent of all lawyers had moved interprovincially in the five years preceding the 1981 census; but half of these were under age 30. Their moves likely occurred in conjunction with attending law school or a bar admission course.

9 See, for example, Tomes (1983) on the relationship between earnings and religion, language, and marital status.

10 Several lawyers have advanced degrees in other disciplines (e.g., MBA, MSc, MD) but these were usually earned before the law degree.

private practice, whether they are salaried or self-employed. A pension plan is the most valuable additional benefit; other benefits include severance payments and sick leave credits. Some law firms provide insurance benefits, such as group life insurance, health insurance, and dental plans, but these are universally available in the public service<sup>11</sup>. The annual value of all (non-salary) monetary benefits was estimated at approximately \$4,700 for federal lawyers, \$3,200 for provincial lawyers, and \$3,900 for municipal lawyers, for a 40 year old, married male (Peat Marwick, 1985; data converted to \$ 1980 by the author). The comparable annual value for health, dental, and life insurance benefits for private practice lawyers was \$500, resulting in a net value of benefits for government lawyers of \$4,200, \$2,700, and \$3,400 at the federal, provincial, and municipal levels respectively, or a weighted average net benefit of \$3,200 for all levels combined. It could be expected therefore, given the competitive conditions that are assumed, that this net difference in fringe benefits should be compensated in lawyers' earnings in the private sector, after taking other explanatory variables into account.

To summarize, a lawyer's annual earnings are hypothesized to be a function of age, gender, religion, language, birthplace, marital status, education, class of worker, city size, office location, region, and industry. Definitions of the variables as used in this study are described in the following section.

## THE DATA

Data used in this study are drawn from the 1971 and 1981 population censuses of Canada<sup>12</sup>. Only persons who were classified as lawyers (currently engaged in the practice of law), and who worked full-time for the full year, are included<sup>13</sup>. Law teachers, government administrators, and other members of a law society, who were not actively practising law are excluded. The dependent earnings variable includes wages and salaries plus self-

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11 A few law firms provide a lump-sum retirement allowance and/or a repayment of the occasional capital levies on partners required to augment working capital of the firm. But such retirement payments are rare, and much less than the value of an indexed retirement pension.

12 The occupation and income data were obtained from a one-third sample of the population in 1971 and a one-fifth sample in 1981.

13 This group is defined by code 2343, Lawyers and Notaries, in the 1980 Standard Occupational Classification. Notaries in Québec (and in British Columbia in 1981) are included but in other provinces notaries are in the paralegal group. However, some articling students, legal secretaries and law clerks may have been incorrectly coded as lawyers. In an effort to exclude any miscoded paralegals, all respondents without a university degree were deleted from the data. The data for 1971 and 1981 are comparable because there were no significant changes in the occupational classification for lawyers over this period.

employment net income (non-farm) for the calendar year preceding the census. The 1970 earnings are inflated to 1980 dollars to provide direct comparability of earnings in the two years<sup>14</sup>. In addition to the industry<sup>15</sup> of employment — public administration or private law offices — dummy variables are also used to identify lawyers according to gender, religion,<sup>16</sup> language,<sup>17</sup> birthplace,<sup>18</sup> marital status,<sup>19</sup> education,<sup>20</sup> and class of worker<sup>21</sup>. Age and age-squared are continuous variables incorporated to estimate an expected parabolic age-earnings profile.

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<sup>14</sup> The inflation factor based on the consumer price index between 1970 and 1980 was 2.168. The comparison of earnings in 1970 and 1980 should not be influenced by economic conditions in these years since each was a period of economic slowdown just prior to expansionary phases.

<sup>15</sup> Industries are defined in accordance with the *Standard Industrial Classification, 1970*. Lawyers in public administration include those who are actively practising law in the federal, provincial, and local governments as well as other public agencies such as legal aid centres and community legal clinics. There are also many lawyers working as managers and administrators in the public service, but these are not classified as lawyers in the census, even though they may bring much of their legal experience and skills to their administrative responsibilities. Lawyers in most crown corporations are also excluded because they appear under the industrial class related to the product or service of the corporation. Hospitals, universities, and other public organizations are included in other public service industries.

<sup>16</sup> A trivariate classification is used for religion, with Jewish and Roman Catholic religions represented by separate dummy variables. All other religions were combined with Protestant for the reference group because most of this remainder were in the «no religion» category.

<sup>17</sup> Home language is a better variable for ethnicity than the census question on ethnic origin because the latter allows for a multiplicity of origins in 1981 and differs from the 1971 question on ethnic origin.

<sup>18</sup> A bivariate classification is used for birthplace, with foreign-born represented by a dummy variable and Canadian-born treated as the reference group. Foreign-born lawyers are not correlated with those preferring a third language. In the 1981 census, 71 per cent of the foreign-born lawyers in law offices were anglophones and 6 per cent were francophones. At least three-quarters of all immigrant lawyers came to Canada prior to attending law school (1981 Census, special tabulations).

<sup>19</sup> To reduce the number of variables, widowed lawyers were included in the singles category, but they are less than 1 per cent of the total.

<sup>20</sup> The 1971 census provided only one category for advanced degrees, namely a master's degree or earned doctorate. The three detailed categories available in the 1981 were combined for comparability with 1971. These latter categories revealed that a master's degree was held by 81 per cent of those with advanced degrees, and only 19 per cent held a doctorate. The reference group for 1971 was those with a first professional degree, and for 1981 it was the combination of bachelor's degree (including LLB) and university certificate or diploma above bachelor level because the latter includes the notarial diploma in Québec. Biographical data in the *Martindale-Hubble Law Directory* confirmed that the LLM degree predominates among the advanced degrees held by practising lawyers.

<sup>21</sup> Lawyers were identified as either salaried (paid workers) or self-employed. All lawyers in public administration are in the salaried category.

Lawyers are also identified by one of the five standard regions of Canada: the Atlantic Provinces, Québec, Ontario, the Prairies and British Columbia (including Yukon and the Territories)<sup>22</sup>. The location of a lawyer's office, as a proxy for potential earnings determinants such as size of law firm, type of practice, and clientele, is identified by census tracts. Five census tracts were selected to serve as proxy variables for large law offices in major financial districts in Montréal, Toronto, Edmonton and Calgary combined, and Vancouver<sup>23</sup>. Lawyers working in these census tracts are identified with dummy variables, with those in all other locations comprising the workplace reference group. Place of residence is used to identify lawyers located in small, medium and large cities, as defined by three community sizes: a population of less than 100,000; between 100,000 and 500,000; and over 500,000 persons<sup>24</sup>. These variables, and the reference group in each case, are listed in Table 1.

## THE RESULTS

The regression analyses were designed to examine three basic issues: 1) the extent of competition or segmentation between the private and public sectors, with respect to the market for lawyers' services; 2) the components of the differential between average earnings in the private and public sectors; and 3) the effect on real average earnings of changes in the supply of lawyers to each sector during the 1970s. Earnings for each level of government were also compared, as a further test of the competitiveness between these markets.

Results from the original regression equation, which included an industry variable, showed that in 1980 there was no significant difference between earnings of lawyers in private practice and in government service,

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22 Further breakdowns by provinces were also examined, but small sample sizes for some provinces made it necessary to use regional variables.

23 An individual's workplace address was reported in the census and coded according to census tract. By comparing street addresses of the largest law firms with census tract definitions, it was confirmed that these firms were highly concentrated within a single census tract in each of the major cities. There are also medium and small firms in these census tracts but they tend to share the same expensive locations and the higher-income clientele of the largest firms.

24 Osberg (1985) has used a «service ratio» (population/number of lawyers) to capture differing market conditions for lawyers in private practice. However, it was not feasible to use this variable as a proxy for local market conditions because a comparison of individual cities shows that lawyer density is not closely correlated with city size.



**Table 1**  
**Percentage Distribution of Lawyers in Full-Time Private Practice**  
**and Public Administration in Canada, 1981**

<i>Explanatory Variables</i>	<i>Public Administration</i>			<i>Private Practice</i>	
	<i>Federal</i>	<i>Provincial</i>	<i>Local</i>	<i>Total</i>	<i>Practice</i>
No. of observations	120	285	52	457	3763
<b>PERSONAL</b>					
Age (mean years)	39.7	38.6	37.8	38.8	38.2
Gender					
Male	87.6	81.2	89.6	83.8	91.3
Female*	12.4	18.8	10.4	16.2	8.7
Education					
Advanced degree	19.1	11.9	3.9	12.8	8.7
Bachelor or equivalent*	80.9	88.1	96.1	87.2	91.3
Religion					
Jewish	7.4	6.1	3.4	6.1	11.7
Catholic	48.0	49.6	38.5	47.9	36.6
Protestant and other*	44.6	44.3	58.1	46.0	51.7
Home Language					
French	24.2	37.6	23.4	32.5	19.9
English*	75.8	61.4	76.6	66.9	79.1
Other language	0.0	1.0	0.0	0.6	1.0
Birthplace					
Foreign-born	8.9	12.3	11.4	11.3	10.5
Canadian born*	91.1	87.7	88.6	88.7	89.5
Marital Status					
Married	76.5	73.7	76.5	74.7	81.0
Divorced/separated	8.1	7.1	0.0	6.5	5.4
Single/widowed*	15.4	19.2	23.5	18.8	13.6
<b>REGION</b>					
Atlantic				7.4	6.6
Québec				32.2	22.7
Ontario*				34.8	40.5
Prairies				15.9	16.9
British Columbia				9.7	13.3
<b>EMPLOYMENT</b>					
City Core: Census tract					
Montréal CT62				3.6	3.0
Toronto CT14				23.3	10.9
Edmonton/Calgary CT33/43				2.8	3.2
Vancouver CT59				3.6	3.6
Non-core*				66.7	79.3
City Size: Population					
Small City and other* < 100,000	11.9	20.7	19.8	18.3	28.3
Medium City 100,000 to 500,000	6.5	14.5	23.2	13.5	12.0
Large City > 500,000	81.6	64.8	57.0	68.2	59.7
Class of Worker					
Paid employee					31.6
Self-employed*					68.4

\* Reference group for dummy variables.

after controlling for all of the variables described above<sup>25</sup>. (See Table 2.) In the same regression equation, the dummy variable for salaried/self-employed had a positive coefficient of \$5,441 (t-value 5.225) for self-employed lawyers. This can be interpreted as compensation in lieu of the fringe benefits received by government lawyers, as well as for the risk and uncertainty of private practice. When this coefficient is compared with the government lawyers' net value of fringe benefits of \$3,200, there remains at least \$2,200 that may be regarded as a compensating difference for the employment and income uncertainty in private practice. This comparison must be treated cautiously, of course, because the values for fringe benefits are based on the benefits package for 1985 (adjusted to 1980 dollars) for a specific age/gender/salary group, albeit the modal group in this study.

When dummy variables for level of government were added to the government service equation, there was no significant difference between the earnings of federal and provincial lawyers in 1980. (See Table 2.) There was, however, a positive differential in 1980 of almost \$2,400 for the local government lawyers, when compared with their federal counterparts. Separate regressions for each level of government showed that there was little difference in 1980 among the average earnings for lawyers in the three levels of government: these were \$35,700 for federal; \$34,900 for provincial; and \$35,000 for local. These findings strongly suggest that there is a high degree of competitiveness and potential mobility between the private and public sectors and among the three levels of government.

The comparable regression equation for 1970 showed, however, that there was a positive differential of \$5,600 for private practice. Furthermore, the positive coefficient for self-employment was \$12,000 (with t-value 7.646). Although data are not available for fringe benefits in 1970, the comparison of these results with those discussed above for 1980 shows that the non-competitive differential and the compensating difference for private practice was sharply diminished during the 1970s. As is indicated later, this narrowing was one of the several consequences of a rapid increase in the number of lawyers available to both sectors.

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25 In both 1970 and 1980, there were no significant differences in earnings between private practice and the two other industrial categories (private industry and nonprofit organizations), after controlling for the other explanatory variables. The regression results for separate equations for the other two industrial categories have not been discussed in this paper because they include a much smaller number of lawyers. However, the results are available on request from the author. F-tests showed that these industry variables as a group did not provide a significant contribution to the explanation of earnings in 1980.

**Table 2**  
**Earnings Coefficients for Lawyers in Full-time Employment,**  
**for Industry and Level of Government, Canada, 1970 and 1980**

<i>Explanatory Variable</i>	<i>1970</i>		<i>1980</i>	
	<i>coefficient<sup>a</sup></i>	<i>t-value</i>	<i>coefficient<sup>a</sup></i>	<i>t-value</i>
<i>Industry<sup>b</sup></i>				
Public Administration	-5582*	-2.32	-513	-0.32
Private Industry	81	0.03	1030	0.49
Nonprofit Organizations	-2013	-0.52	1287	0.42
<i>Level of Government<sup>c</sup></i>				
Federal	1594	0.72	-2364	-1.57°
Provincial	-1863	-0.91	-1061	-0.77

a Coefficients are obtained from a regression based on pooled data for all industries, and a regression for public administration that included dummy variables for level of government.

All other explanatory variables are listed in Table 1.

b Reference group for industry is law offices.

c Reference group for level of government is local government.

Statistical significance is indicated by \* for the 0.05 level for a two-tail test, and ° for the 0.10 level for a one-tail test.

### **Decomposing the Private-Public Earnings Differential**

When equations were estimated separately for lawyers in private practice and in government service, these showed that the average earnings of government service lawyers in 1980 were \$35,186, or 86 per cent of the \$40,855 average earnings in private practice<sup>26</sup>. By using a conventional methodology for decomposition of the earnings differential, it can be seen that the difference in average earnings between the two sectors is attributable to differences in personal and employment characteristics, rather than to differences between the two sectors in the remuneration for various

<sup>26</sup> Since the particular parameter estimates were extremely robust under several alternative specifications, it was decided to base the analysis on the OLS regression computations. The dependent variable is measured in level of earnings in \$1980, rather than logarithms, so that the coefficient on each of the dummy variables directly represents the earnings increment associated with that characteristic. Coefficients discussed in the paper have been rounded to the nearest \$100.

characteristics or endowments<sup>27</sup>. The lower average earnings of the government service lawyers are due almost entirely (92 per cent) to the differences in characteristics, or the composition of each group. Only a small part of the differential (8 per cent) was associated with the net differences in remuneration related to the characteristics.

The several differences between personal characteristics of lawyers in government service and in private practice, that explain so much of the earnings differential, are apparent from the data in Table 1<sup>28</sup>. The major difference was that the majority (68 per cent) of lawyers in private practice were self-employed, but all of the government lawyers were employees. Female lawyers constituted 16 per cent of the lawyers in government service, compared with only 9 per cent of those in private practice. There was also a considerable difference in religious affiliation: Jewish lawyers were only half as well represented in government service as they were in private practice (6 per cent compared with 12 per cent), while Catholic lawyers were relatively more numerous in the government service (48 per cent compared with 37 per cent). Francophones constituted 20 per cent of the private practice group and 33 per cent of those in government service. (These latter two differences were associated with the relatively high proportion of Canada's lawyers that are employed in the Québec government service.) A larger proportion of the government lawyers were unmarried than were those in private practice; and advanced degrees were more common within the government service.

Although the *net* effect of remuneration differences is only a small part of the private-public sector earnings differential, some of the individual explanatory variables had quite different effects on earnings in the two

<sup>27</sup> This decomposition of the private-public earnings differential can be expressed as  $\bar{y}_p - \bar{y}_g = \Sigma b_p(\bar{X}_p - \bar{X}_g) + \Sigma (b_p - b_g)\bar{X}_g$  where  $\bar{y}$  refers to mean earnings;  $b$ , to the estimated regression coefficients;  $\bar{X}$ , to the mean values of each of the explanatory variables; and the subscripts  $p$  and  $g$ , to private practice and government service. The left-hand term represents the difference in mean earnings for the private and government sectors; the first right-hand term represents the differences in characteristics or composition of the two groups, and the second term (which includes the constant terms) measures the difference in remuneration associated with each explanatory variable. The latter has been interpreted as a measure of discrimination in remuneration, when genders or various ethnic groups are compared. (See Oaxaca, 1973; and Blinder, 1973.)

<sup>28</sup> The descriptive statistics reported in Table 1 are for the unweighted samples only. Data published by Statistics Canada for the total population of lawyers differ slightly due to the weighting techniques used for the latter publications, and the minor data adjustment described in footnote 13.

**Table 3**  
**Determinants of Earnings for Lawyers' in Full-Time Private Practice**  
**and in Public Administration, Canada, 1980**

<i>Explanatory Variables</i>	<i>Public Administration</i>		<i>Private Practice</i>	
	<i>coefficient</i>	<i>t-value</i>	<i>coefficient</i>	<i>t-value</i>
<b>PERSONAL</b>				
Age and Gender	3700.8***	9.7	5574.9***	17.1
Age-squared	-36.0***	-8.3	-54.0***	-15.2
Male	4026.3***	3.4	9547.5***	5.3
Education				
Advanced degree	-2235.5*	-1.7	4963.8***	2.9
Religion/Language/Birthplace				
Jewish	267.9	0.1	1614.0	1.0
Catholic	-155.7	-0.1	2335.4*	1.8
French	2768.2	1.2	-1606.0	-0.6
Other language	-454.9	-0.1	-17834.4***	-3.5
Foreign-born	-2345.2*	-1.7	-5439.0***	-3.3
Marital Status				
Married	2156.2*	1.9	4465.6***	3.0
Divorced/Separated	2970.8°	1.5	1242.2	0.5
<b>REGION</b>				
Atlantic	-3626.7*	-1.9	1645.4	0.8
Québec	-3063.1°	-1.4	1715.0	0.6
Prairies	-451.1	-0.3	8178.1***	5.1
British Columbia	-1596.2	-1.0	4750.9***	2.6
<b>EMPLOYMENT</b>				
Location				
City Core				
Montréal	1.5	0.0	17366.8***	5.4
Toronto	1409.5	0.5	17814.1***	9.9
Edmonton/Calgary	2074.5	0.7	6947.0**	2.3
Vancouver	-511.3	0.1	6940.1**	2.3
City Size				
Medium City	2457.7°	1.6	4209.2**	2.5
Large City	1731.5°	1.4	4239.4***	3.3
Class of Worker				
Paid employee	-	-	-5333.0***	-4.7
Intercept	-56213		-107355	
Mean Earnings	<b>35186</b>		<b>40855</b>	
No. of Observations	457		3763	
R <sup>2</sup>	0.4495		0.2097	

Statistical significance is indicated by \*\*\* for the 0.01 level, \*\* for the 0.05 level, and \* for the 0.10 level, for a two-tail test; and ° for the 0.10 level for a one-tail test. Critical t-values for a two-tail test are 2.576, 1.960 and 1.645 respectively.

groups<sup>29</sup> (See Table 3.) The earnings coefficient for males in government service (\$4,000) was less than half the coefficient for males in private practice (\$9,500). The religion and language variables had no statistically significant effect on lawyers' earnings in the government service, but these were important determinants in private practice. An advanced degree increased lawyers' earnings in private practice by \$5,500, but *decreased* lawyers' earnings in government service by \$2,200<sup>30</sup>.

Marital status also had a different effect in the public service than in private practice: married lawyers in government earned \$2,100 more than single lawyers, but this differential increased to almost \$4,500 in private practice. Divorced or separated lawyers in government also earned more than single lawyers, by almost \$3,000, but there was no significant difference between these two groups in the private sector. While lawyers in the larger cities have higher earnings in both sectors, the effect is not as large in the public sector; this is partly due to province-wide salary scales.

The region of employment also has a different impact on each sector. Lawyers in the government service in Ontario earned \$3,100 more than those in Québec, and \$3,600 more than in the Atlantic provinces, but their earnings were not significantly different from the government lawyers located in the Prairies and British Columbia. The opposite is true in private practice: Ontario lawyers earned less than those in the Prairies and British Columbia, but their earnings were not statistically different from those in Québec and the Atlantic provinces.

The net effect of these remuneration differences also includes the self-employment coefficient, but does not include the differential value of fringe benefits. These latter two factors would narrow the private-public sector difference in average compensation to about \$2,500; this is remarkably similar to the net difference of about \$2,200 calculated on the basis of the results for the original pooled regression.

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<sup>29</sup> Appropriate tests for multicollinearity revealed that this was not a problem, with the possible exception of the age and age-squared variables. The robustness of the particular parameter estimates under alternative specifications added further confirmation to this conclusion. Testing with interactive variables yielded generally non-significant results so these were not included in the final specification of the model.

<sup>30</sup> This sectoral difference in the effect of an advanced degree may be due to qualitative differences in the degrees held in each sector. The more likely explanation is that the scale and procedures used for salary determination in the government service do not compensate additional productivity resulting from the advanced training sufficiently to offset the loss of experience while studying for an advanced degree (Stager and Foot, 1988). (In Table 4, it is seen that this effect is significant at the federal level only; advanced degrees have no effect on earnings at the other levels.)

### Intertemporal Changes in Public Sector Earnings

During the 1970s, the average real earnings for lawyers in private practice declined by 17 per cent, from \$49,367 to \$40,855, while there was virtually no change in the average real earnings for government lawyers (from \$35,564 to \$35,186)<sup>31</sup>. But not all of the drop in earnings for private practice can be attributed to the rapid growth in numbers of lawyers. Changes in the composition of the groups, changes in the remuneration associated with each of the explanatory variables, as well as changes in the relative supply and demand conditions, would all be reflected in the intertemporal changes in average earnings<sup>32</sup>.

An intertemporal change in average real earnings can be decomposed into three effects to capture the contribution of these various influences (Foot and Stager, 1987). The composition effect is the change in earnings due to changes in the demographic and employment structure of the group. A second component, the remuneration effect, is attributable to changes in the earning power, whether due to discrimination, motivation, skill, or other factors, associated with changes in each of the explanatory variables. The third component, the market effect, is the change in earnings attributable to the net changes in supply and demand for lawyer's services. Each of these effects can be calculated using a methodology similar to the decomposition of the cross-sectional earnings differential between the two sectors<sup>33</sup>.

These calculations show that the real earnings for lawyers in private practice declined by about 8 per cent due to the composition effect. Much of this was the result of the increasing proportion of young lawyers, sup-

<sup>31</sup> The detailed regression results for 1970 that are used for these decomposition calculations could not be included in the tables, due to space limitation, but are available on request from the author.

<sup>32</sup> Osberg (1985) has examined the effect of supply and demand changes on lawyers' average incomes, but the data precluded any attempt to deal with changes in composition or remuneration.

<sup>33</sup> The decomposition calculations can be represented by

$$\begin{aligned} \bar{y}_1 - \bar{y}_2 &= \Sigma b_1 \bar{X}_1 - \Sigma b_2 \bar{X}_2 \\ &= \Sigma b_1 (\bar{X}_1 - \bar{X}_2) + \Sigma (b_1 - b_2) (\bar{X}_2 - \bar{X}_1) + \Sigma (b_1 - b_2) \bar{X}_1 \end{aligned}$$

where  $\bar{y}$ ,  $\bar{X}$  and  $b$  refer to mean earnings, the mean values for the explanatory variables, and the associated estimated coefficients respectively, and the subscripts 1 and 2 refer to 1970 and 1980 (or 1971 and 1981 for the  $\bar{X}$  values). The first term on the right-hand side measures the effect of changes in the composition or characteristics; the second term measures the remuneration effect; and the last term measures the market effect, which also incorporates the change in constant terms in the regressions. The base for comparison is 1970, whereas for the cross-sectional decomposition, private practice was the base. To see the similarity of the methodology, note that  $\Sigma (b_1 - b_2) \bar{X}_2 = \Sigma (b_1 - b_2) (\bar{X}_2 - \bar{X}_1) + \Sigma (b_1 - b_2) \bar{X}_1$ .

plemented by the effect of relatively more female, single, and salaried lawyers. A further 14 per cent was due to the market effect, namely, the greater increase in supply than in the demand for lawyers' services. But an improvement in the remuneration of several characteristics, such as location in the financial core, and the relative earnings of salaried and francophone lawyers, increased earnings by 5 per cent. The net result was the 17 per cent decline noted previously.

By contrast, the almost negligible change in real earnings in the government service was the net result of two offsetting effects. Changes in the composition of the group, and especially an increase in young, female, and single lawyers, decreased earnings by just over 5 per cent. But the market effect (resulting from a relatively greater increase in demand than in supply) increased earnings by almost 5 per cent. The small negative residual (less than one per cent) — the remuneration effect — was attributable to the net change in remuneration for several characteristics.

The major contrast in the calculations for these two sectors is between the market effects; namely, the 14 per cent *decline* in earnings in private practice compared with the 5 per cent *increase* for government service lawyers. This comparison suggests that, since there is a common source of supply in both sectors, the growth in demand was much greater in the public sector than in the private sector, for reasons discussed briefly in the introduction, and that demand was increasing more rapidly than supply. This result supports and explains the change between 1970 and 1980 in the coefficient associated with the industry variable, namely, that the \$5,600 differential received by lawyers in private practice in 1970 had disappeared by 1980, and the average earnings associated with self-employed lawyers had sharply diminished.

### **Earnings By Level of Government**

The most notable result emerging from separate regressions for each level of government was that the gender differential, in favour of male lawyers, is larger in the federal government (\$7,900) than at the provincial level (\$4,300). Moreover, there was no significant gender differential in the largest provincial governments (Québec, Ontario, and British Columbia). One could easily allege that the gender differentials were due to discrimination, but that would beg an explanation for the absence of such discrimination in the three largest provincial governments.

Each level of government differs noticeably in the effect of the selected explanatory variables on earnings, as shown in Table 4. At the federal level,



only age, gender, and education have a statistically significant effect on lawyers' earnings. Perhaps it is of greater consequence to observe that no other personal characteristics relating to religion, language, birthplace, or marital status, have any significant effect. At the provincial level, in addition to the age and gender variables, marital status, birthplace, and city size have a statistically significant impact on earnings. At the local level, the positive coefficients for females and foreign-born lawyers would be quite remarkable findings were they based on a greater number of observations.

**Table 4**  
**Determinants of Earnings for Lawyers in Public Administration,**  
**by Level of Government, Canada, 1980**

<i>Explanatory Variables</i>	<i>Federal</i>	<i>Provincial</i>	<i>Local</i>
Age and Gender			
Age	3482***	3586***	3913***
Age-squared	-32.2***	-35.9***	-33.2***
Male	7937***	4308***	(-5672**)
Education			
Advanced degree	-3796**	-1202	(2088)
Religion/Language/Birthplace			
Jewish	(1885)	-716	(-1418)
Catholic	-1600	-612	-190
French	1853	-308	4867°
Other language	-	(2786)	-
Foreign-born	-1045	-3562**	(5012* )
Marital Status			
Married	-847	3127**	3459*
Divorced/separated	(-1354)	5736***	-
Location			
Medium city	(-1148)	2975°	-1089
Large city	1922	3361**	1244
Intercept	-55338	-54245	-60876
Mean Earnings	35740	34896	35529
No. of observations	120	285	52
R <sup>2</sup>	0.58	0.38	0.83

Statistical significance is indicated by \*\*\* for the 0.01 level, \*\* for the 0.05 level, and \* for the 0.10 level for a two tail test; and ° for the 0.10 level for a one-tail test.

( ) Estimate is based on fewer than 10 observations and therefore should be interpreted with caution.

## SUMMARY AND CONCLUSIONS

There was no significant difference between the earnings of lawyers in private practice and in government service in 1980, after controlling for the other explanatory variables. But one of these variables, self-employment, had a large, positive coefficient. This was partly offset by the net value of fringe benefits received by government lawyers, but not by those in private practice. The difference of about \$2,200 could be interpreted as an approximation of the compensating difference for the uncertainty of employment and income in private practice.

The private-public sector differential, based on average earnings for the two groups of lawyers, arises because they differ in several demographic aspects. The government service has a greater proportion of female, foreign-born, Catholic, and single lawyers, each of which have lower earnings than the reference group for these variables. There are also important differences between the sectors in the earnings associated with several personal characteristics. In particular, there are substantial differences in the effect of age, gender, language, religion, education, and marital status on lawyers' earnings in the two sectors.

The small difference in total compensation between the two sectors, after taking fringe benefits into account, together with the finding that more than 90 per cent of the average earnings differential is due to compositional differences, strongly suggests that there is a high degree of earnings competitiveness between the sectors. This invites a number of possible explanations: the work is reasonably similar in the two sectors, particularly for the large percentage of government lawyers who act as crown counsel; the majority of government lawyers are not included in collective bargaining, and are therefore subject to pay scales that can be closely aligned with average earnings in private practice, rather than with general public service compensation; and competitive pressure is maintained through unfettered mobility (actual or potential) of lawyers between the two sectors.

The analysis of intertemporal changes in earnings in each sector revealed a positive market effect on lawyers' earnings in the government service. This suggests that there was a much greater increase in the demand for lawyers' services in government than in the private sector, and/or that the increase in supply was inexplicably concentrated in the private sector. This accords with the finding that the industry differential of \$5,600 in favour of private practice lawyers in 1970 had disappeared by 1980. Evidently, in order to recruit new lawyers during the 1970s, salaries for lawyers in the government service were increased substantially, despite the unprecedented growth of the legal profession in total.

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## *Le revenu des avocats dans les secteurs public et privé au Canada*

Le nombre d'avocats travaillant dans les services gouvernementaux au Canada a augmenté d'environ 10 pour cent annuellement pendant la décennie 1970, dépassant ainsi le taux de croissance dans les cabinets privés et les services juridiques des entreprises. Le présent article traite des différences de revenus entre les avocats de pratique privée et ceux des services de l'État ainsi que des changements relatifs qui se sont produits depuis 1970 pour les deux groupes.

Le modèle d'évaluation des revenus comprend plusieurs variables explicatives: nature des entreprises, catégories de travailleurs, importance de la ville, localisation des bureaux, âge, sexe, statut matrimonial, langue parlée à la maison, religion, scolarité, origine ethnique, régions desservies. Les données, extraites des recensements de 1971 et de 1981, n'incluent que les revenus d'emploi des seules personnes qui travaillaient à temps plein pendant l'année entière dans la pratique active du droit. Certaines publications spécialisées des recensements et l'importance de la ville ont servi d'indicateurs pour apprécier l'importance et le type de pratique et de clientèle.

Une fois les autres variables explicatives contrôlées, on n'a découvert aucune différence significative entre les revenus des avocats du secteur public et ceux de la pratique privée. Toutefois, lorsque l'on compare les coefficients de revenus de l'avocat de pratique privée avec les avantages sociaux qu'on trouve dans le secteur public, il y a un différentiel d'environ 2 200\$ qui pourrait compenser l'insécurité du revenu qui existe dans le secteur privé. En 1980, la moyenne des revenus des avocats du secteur public n'était que de 86 pour cent de celle des revenus du secteur privé. La ventilation de cette différence montre que 92 pour cent de celle-ci est attribuable aux différences dans les caractéristiques personnelles et dans les conditions de travail. Les services gouvernementaux comptent, parmi les membres de la profession, une plus grande proportion de femmes, de catholiques, d'étrangers et de célibataires. Le reste, soit huit pour cent, se rattache à divers coefficients de revenus se rapportant à l'âge, au sexe, à la langue, à la religion, à la scolarité et au statut matrimonial dans les deux secteurs. La valeur moyenne nette des avantages sociaux réduirait ce différentiel à 2 500,00\$ environ.

Le revenu réel moyen des avocats de pratique privée a baissé pendant la décennie 1970, mais il n'y eut à peu près pas de changement dans celui des avocats du secteur public. On a décomposé les changements survenus au cours de la décennie en trois classes: composition (changement dans les caractéristiques des avocats); rémunération (changements rattachés à la structure des revenus attribuables à ces caractéristiques) et marché (changements dans les conditions de l'offre et de la demande de services des avocats). Le déclin de 17 pour cent dans le secteur privé était attribuable à des modifications à la composition (-8 pour cent), à la rémunération (+5 pour cent) et au marché (-14 pour cent). Pour ce qui est des avocats des services publics, le résultat des changements dans leur composition indique une baisse des revenus de 5 pour cent; la modification de leur rémunération était négligeable, mais on a remar-

qué un effet positif du marché de presque 5 pour cent. Ceci laisse voir qu'il y a eu une plus grande demande d'avocats dans les services gouvernementaux que dans le secteur privé, ou que l'offre s'est inexplicablement concentrée dans le secteur privé. Ceci confirme le fait que le différentiel de 5 600,00\$ qui existait en 1970 avait disparu en 1980. De toute évidence, les salaires des avocats des services gouvernementaux ont monté au cours de la décennie 1970 pour permettre l'engagement de nouveaux avocats, malgré la croissance sans précédent de la profession d'avocat.

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