

1 **Q. Evidence of Ms. McShane Background Pages 4 – 6: Please indicate how the**
2 **definition of Mr. Justice Lamont and the decision of the Federal Court of Appeal**
3 **can justify comparable earnings testimony.**
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5 A. With respect to the former, the referenced Court decision was issued in 1929. Canadian
6 regulators have given weight to comparable earnings tests on many occasions since that
7 time. As discussed in response to CA NP 047, the interpretation of and the enunciation
8 of the fair return standard and its requirements by Canadian regulators, including the
9 PUB, has relied on additional legal precedents, including the *Hope* and *Bluefield*
10 decisions of the U.S. Supreme Court. As noted in response to CA NP 47, the *Bluefield*
11 decision states: “A public utility is entitled to such rates as will permit it to earn a return
12 on the value of the property which it employs for the convenience of the public equal to
13 that generally being made at the same time and in the same general part of the country on
14 investments in other business undertakings which are attended by corresponding risks
15 and uncertainties.” Ms. McShane is not aware of any subsequent Canadian Court
16 decisions that have overturned the findings of a Canadian regulator as a result of its
17 having given weight to comparable earnings. With respect to the Federal Court of
18 Appeal decision, which used the term “cost of equity”, the results of the comparable
19 earnings test represent an opportunity cost of equity. That same decision referred to the
20 broad authority of the Board to determine just and reasonable tolls.