



JUDICIAL INDEPENDENCE

BACKGROUND:

Provincial Court judges face tough decisions that affect the daily lives, liberty, and security of Albertans. The quality of those decisions will be maintained only if the quality of the judges making them is maintained, which impacts the administration of justice for all Albertans.

Establishing salaries and benefits that attract the best candidates for judicial appointment protects public confidence in the independence of the judiciary, both financially and as an independent branch of the government.

Judicial independence is important to Albertans because it **guarantees that judges** are free to **decide honestly and impartially**, in accordance with the **law and evidence**, without concern or **fear of interference, control, or improper influence** from anyone.¹

THE ISSUE:

The Provincial Court is at the front line of the public's perception of our justice system, and faith in this institution is paramount.

Once appointed, judges do not have the same opportunity for growth in their salary or benefits as other professionals do—i.e., market and economic conditions, increasing productivity and/or efficiency, working longer hours, gaining more experience, and taking advantage of technology.

It is in the best interests of Albertans and the administration of justice to attract the most qualified candidates for judicial appointment. Therefore, an appropriate level of compensation is critical and must reflect and recognize:

- The significant role the Provincial Court and its judges play in shaping the administration and the public perception of the system of justice.
- The significant professional, financial, political, and social sacrifices that must be made when accepting a judicial appointment.

¹ "Judicial Independence." Provincial Court of Alberta. Accessed 12 04, 2018.
<https://albertacourts.ca/pc/about-the-court/judicial-information/judicial-independence>.



- The ever-increasing workload of the Provincial Court over the years, as its role has dramatically increased due to new offences being added to the Criminal Code, new and ever-expanding federal and provincial laws dealing with security issues, young offenders, and increasing numbers of self-represented litigants that add to the judiciary workload in terms of caseload, complexity, time, and energy.

WHY CBA IS INVOLVED:

The independence of the judiciary from the executive and legislative branches of government is a foundation of Canada's justice system, democracy, and overriding rule of law, and eliminates the risk of political interference in the appointment and compensation of judges.

As such, the Supreme Court of Canada has imposed a constitutional obligation on governments to set compensation for judicial officers through an independent, objective, and effective commission process.

In keeping with this obligation, the Government of Alberta establishes an independent Judicial Compensation Commission, which is beholden to neither the judiciary nor the government, every four years to review and recommend changes in judicial compensation.

As it has with past Commissions, the Canadian Bar Association – Alberta Branch (CBA Alberta) welcomes the opportunity to assist the 2017 Judicial Compensation Commission (the "Commission") as it works to determine fair and just judicial compensation for the period between April 1, 2017 to March 31, 2021.

The CBA has an independent role from the work of the Commissions, but has regularly provided submissions to assist the Commissions in their work to ensure that judicial compensation and benefits are structured and maintained to:

- Protect and promote the independence of the judiciary through the institution and maintenance of appropriate financial safeguards for its members.
- Strengthen and advance the judiciary by ensuring adequate compensation for judicial officers in order to attract the best and most qualified candidates for appointment.

DESIRED OUTCOME:

To help guide the current Commission in its process of determining judicial compensation and benefits, and ensure the substantive outcome maintains the constitutional imperative of judicial independence, The Canadian Bar Association encourages support of the following principles:

1. Ensure the timely establishment of Commissions to review and recommend changes in compensation for the Judicial Officers.
2. Establish a formal schedule and process for the appointment of Commissions to maintain predictability and transparency and ensure mechanisms are put in place to resolve disputes between parties regarding the composition of a particular Commission.
3. Ensure that the majority of individuals appointed to the Commissions are Alberta residents, who adequately understand the province's judicial and financial circumstances and who are directly impacted by decisions made by the Commissions.



4. Ensure the government considers and responds to the Commissions' findings and recommendations in a timely manner.
5. Caution the legislature that its consideration of Commission reports involves special constitutional considerations that must not be endangered by a politicized approach, or by making any links between judges' remuneration and the decisions they make.
6. Ensure judicial salaries are consistent with prevailing and predicted market conditions and "comparables" of lawyers who are senior private practitioners and senior public servants.
7. Determine compensation levels that ensure judges and their dependents do not experience significant economic disparity between pre-appointment and post-appointment.
8. Ensure the government understands its obligation to show conclusive evidence of competing priorities between other fiscal obligations of similar importance to judicial independence before they can be used as rationale to reduce what the Commissions conclude to be appropriate compensation.



WORKS CITED

"Judicial Independence." Provincial Court of Alberta. Accessed 12 04, 2018.

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