



JUDICIAL INDEPENDENCE

Judicial independence is critical to ensuring that the rule of law is upheld in Alberta and Canada.

The Supreme Court of Canada has determined that judges' compensation should be set by an independent commission. When governments reject the recommendations of the commission, it undermines the independence of the judiciary by interfering in the structure that was established to protect that independence. Judges must protect their independence, even from the government, part of which is to force the government to follow the rules for setting judges' compensation.

CBA Alberta believes that judicial compensation must be adequate and structured to make judges independent from outside influences, including from government. We ask that the Government of Alberta pass legislation requiring the government to accept the recommendations of the independent commission on judicial compensation.



RESPECTING JUDICIAL INDEPENDENCE REINFORCES PUBLIC CONFIDENCE IN THE JUDICIAL SYSTEM.

BACKGROUND

The courts protect the rights and freedoms granted to every person in Canada under the *Canadian Charter of Rights and Freedoms*. The fundamental freedoms protected by the *Charter* are freedom of conscience and religion; freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication; freedom of peaceful assembly; and freedom of association.¹

The courts protect our freedoms by striking down laws passed by the government that unreasonably limit those rights or freedoms in a way that cannot be justified. Importantly, the courts are responsible for upholding the rule of law so that we can all enjoy a civil society. For this reason, it is crucial that judges be independent, and, in particular, be independent of government influence.


THE ISSUES

In 1997, the Supreme Court of Canada ordered that the salary and benefits of judges be set by an independent commission and not by the government.² This decision was made to protect the independence of the judiciary by ensuring that the government was not in a position to control judicial compensation.


Since then, the Alberta government has rejected the recommendations of the independent Judicial Compensation Commission for the compensation of Alberta Court of Justice judges and imposed their own views on compensation on several occasions. Each time that the Alberta government rejected the Commission's recommendations, the judges have taken the Alberta government to court and won, which required the Alberta government to provide the compensation recommended by the independent Commission.

¹ *Section 2 of The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11, <<https://canlii.ca/t/ltsx>> retrieved on 2022-12-01.*

² *Ref re Remuneration of Judges of the Prov. Court of P.E.I.; Ref re Independence and Impartiality of Judges of the Prov. Court of P.E.I., 1997 CanLII 317 (SCC), [1997] 3 SCR 3, <<https://canlii.ca/t/1fqzp>>, retrieved on 2022-12-01*



When the government rejects the recommendations of the Commission, it undermines the independence of the judiciary by interfering in the structure that was established to protect that independence. It forces the judges to take the government to court to protect their independence and to ensure that the government follows the rules for setting judges' compensation as established by the Supreme Court of Canada.



Canada is a constitutional democracy which, amongst other things, protects the rights granted to Albertans by the Charter by providing checks and balances. One of the most important checks that we have is the independence of judges because judges must decide whether a government law is permitted under the Charter. Therefore, it is critically important that judges be independent, especially from the government.

In addition, judges make decisions with respect to matters affecting the lives and livelihoods of Albertans. In this matter, judges must be free from influence for any litigant or party related to a litigant to ensure that those decisions are also fair and unbiased.

What does the independence of judges have to do with how much they get paid?

1. **Judges cannot have a second job.** Once a person becomes a judge, being a judge is their sole source of employment income. So, a judge's salary must ensure that the judge is compensated for the requirement of giving up all other sources of income. Since all judges must be lawyers before they can become a judge, a judge's salary must be enough to convince a lawyer to stop being a lawyer and become a judge.
2. **"Independence" means that a judge should not be influenced by outside considerations.** It is important that judges are not susceptible to bribes or financial influence by litigants or persons on behalf of litigants. By making sure that judges are paid well, we are helping to ensure that judges are not even tempted to take a bribe.
3. **The reason that the Supreme Court of Canada determined that an independent commission would set judges' salaries is that the independence of judges is so important that judges are not even allowed to negotiate with the government for their salary, let alone go on strike.**

Judges also cannot make any public comments about what the government does about their salary. In other words, judges are so independent that they can't even protect themselves.

(While the Alberta Provincial Judges' Association does make submissions to the Commission about what they think judges' compensation should be, the Commission can make whatever recommendation it feels is appropriate.)

4. Judges' independence means that they are not dependent on the government, including not being dependent on the government to set their salaries.

The government, quite rightly, must weigh political considerations when it makes most of its decisions. However, political considerations should not apply when the government is considering whether to accept or reject the Commission's recommendation for judges' salaries.

The Supreme Court of Canada gives the government a limited set of reasons to reject the Commission's recommendations. Political considerations is not one of those reasons.

CBA Alberta believes that the Alberta government does not fully understand the important role that the Alberta Court of Justice plays in Alberta and is unintentionally undermining public confidence in the judicial system by rejecting the Commission's recommendations for reasons that are not permitted by the Supreme Court of Canada.

RECOMMENDATION

That the Government of Alberta pass legislation that requires the government to accept the recommendations of the independent commission to set the compensation for judges of the Alberta Court of Justice.

