

# Judges will also suffer from the Troubled Economic Times

Federally appointed judges will feel the effects of troubled economic times just like most other Canadians. Superior court judges have been told the salary restraints placed upon other public servants would also apply to them.[\[1\]](#)

In 1998, the Supreme Court of Canada dealt with the issue of whether salary reductions for provincial judges compromised their judicial independence in Reference re Remuneration of Judges of the Prov. Court of P.E.I.[\[2\]](#) The constitutionality of these salary reductions were challenged as infringing the independence and impartiality of the courts as protected by section 11(d) of the Canadian Charter of Rights and Freedoms.[\[3\]](#)

The Court recognized judicial independence as an unwritten norm, recognized and affirmed by the preamble to the Constitution Act, 1867.[\[4\]](#) Judicial independence was also recognized as a principle that extends to all courts, federal and provincial. While section 11(d) of the Charter does not automatically provide the same level of protection to provincial courts as section 100 of the Constitution Act, 1867 does to federal court judges, the power to change superior court judges' salaries under section 100 was held to be equally applicable to the guarantee of financial security provided by section 11(d) of the Charter to provincial court judges.

Additionally, the Court held that a body be created to review judicial compensation. The body would be positioned between the judiciary and the other branches of government in order to avoid the possibility or appearance of political interference through economic manipulation.[\[5\]](#) The constitutional function of the body would be to depoliticize the process of determining changes in judicial remuneration, and the objective would be achieved by having the body issue a report on the salaries and benefits of judges to the executive and the legislature.

Following the decision, the provincial governments created such bodies to review the compensation of provincially appointed judges.[\[6\]](#) The federal government also created the Judicial Compensation and Benefits Commission, which evaluates the adequacy of the salaries and benefits of the federally appointed judiciary every four years.[\[7\]](#) In determining the appropriate level of compensation and benefits the commission considers several factors, including the general economic condition across the country, the role of financial security of the judiciary in ensuring judicial independence, and the need to attract exceptional candidates to the judiciary. The recommendations of the Commission are not binding; however, in order to disregard the recommendations, the government must demonstrate a rational justification for doing so.

Federally appointed judges are seeking an 18 percent salary increase by 2011, but they are unlikely to receive this amount. It would be the second time the government has gone

against the recommendation of the Judicial Compensation and Benefits Commission. In 2006, the Conservative government reduced a 10.5 percent salary increase that had been supported in principle by the previous liberal government.<sup>[8]</sup>

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[1] Tracey Tyler, "[Judges told to forget 18 per cent pay hike](#)" (12 February 2009) The Star.

[2] *Reference re Remuneration of Judges of the Prov. Court of P.E.I.*, [1997] 3 S.C.R. 3 (CanLII).

[3] *Canadian Charter of Rights and Freedoms*, Part I of the Constitution Act, 1982, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 (CanLII).

[4] *Constitution Act, 1867* (U.K.), 30 & 31 Victoria, c. 3 (CanLII).

[5] *Supra* note 2, at para 166.

[6] See [Alberta's Judicial Compensation Commission](#).

[7] Judicial Compensation and Benefits Process, Department of Justice.

[8] *Supra* note 1.