

AGENDA FOR JUSTICE BACKGROUND

CANADIAN BAR ASSOCIATION ALBERTA BRANCH

JUDICIAL COMPENSATION

Background: The independence of the judiciary from the executive and legislative branches is a cornerstone of Canada's justice system, promoting democracy and the rule of law. An independent judiciary is essential to our democratic society. An independent judiciary serves as a means to maintain public confidence in the administration of justice.

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 accordance with this obligation, the Government of Alberta regularly establishes independent Judicial Compensation Commissions to review and recommend changes in compensation for Alberta's Provincial Court Judges, Masters in Chambers, and Provincial Justices of the Peace.

The Issue: The next Alberta Judicial Compensation Commission process is expected to begin in 2017. If past practice is indicative of how the next process will be conducted, the Commission will review and recommend changes in compensation for Alberta's Provincial Court Judges and Masters in Chambers. The Commission invites submissions and holds hearings, and submits its recommendations to the Minister of Justice and Solicitor General.

Why the CBA is Involved: The Canadian Bar Association supports a principled approach to ensure that judicial compensation and benefits are properly structured and maintained to protect the independence of the judiciary and to ensure sufficient financial independence of the judiciary and adequate compensation to attract the best and most qualified candidates for appointment. Further, the CBA supports the determination of judicial salary and benefits by an objective, independent commission that is beholden to neither the judiciary nor the government.

The recommendations of the 2013 for the period of April 1, 2013 to March 31, 2017 were accepted by the provincial government. However, CBA Alberta notes that there have been times when provincial and federal governments have not implemented the recommendations of independent commissions on judicial compensation and benefits. To the extent that governments do not implement the recommendations on judicial compensation and benefits, or delay acting upon them, the integrity of the process for setting judicial compensation is compromised. Ultimately, judicial independence may be threatened and access to justice may be affected.

Desired Outcome: Once the Commission reports its findings, the Government of Alberta should respond in a timely manner to the report and seriously consider the recommendations put forward.

Members of the Legislature should be aware that consideration of the Judicial Compensation Commission's report involves special constitutional considerations, which risk being endangered by a politicized approach and by making any links between Judges' and Masters' remuneration and the decisions they make. Further, before competing priorities are used as a rationale to reduce what the Commission concludes to be appropriate compensation for Judges and Masters, the Government must show conclusive evidence of other pressing government fiscal obligations of similar importance to judicial independence.

