

# THE INDEPENDENCE AND IMPARTIALITY OF PROVINCIAL COURT JUDGES: RAPPORTEUR'S REPORT

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The independence and impartiality of Provincial Court judges has become a matter of significant public concern. I do not think it an exaggeration to suggest that we, in Alberta, are reaching a point of crisis: Albertans may decide to respect the constitutional integrity of the judicial function; or we may, to the extent possible, seek to subordinate judging to politics — and a bitter and narrow politics that could turn out to be.

The catalyst for events leading to this crisis was, it appears, a 1994 radio interview of Premier Klein. Commenting on the actions of a particular judge, Premier Klein said the following:<sup>1</sup>

If he doesn't go back to work and he doesn't perform, he should be fired. I mean fired. Very, very quickly fired.

Subsequently, the Premier said:<sup>2</sup>

Whoever appoints should be able to un-appoint .... It seems to me if we have the power to hire, then we ought to have the power to fire.

The Premier's elliptical pronouncements, which epitomize the view that politics should have dominion

over judging, touched off reverberations which have yet to cease. Indeed, this symposium took place in the shadow of two initiatives of the Klein government — the hearings of the Judicial Selection Process Review Committee, co-chaired by Marlene Graham, Q.C., M.L.A. (a government member) and Chief Judge Edward R. Wachowich, established “to review the process for the selection of judges for the Provincial Court of Alberta and to identify alternative mechanisms that could be used;”<sup>3</sup> and the development of the “Summit on Justice,” which had its origins in governmental claims of an alleged loss of public confidence in the administration of justice in the province.<sup>4</sup> Outside the symposium, even in the legislature, one might have heard the murmurings of discontent with the Supreme Court's *Vriend* decision,<sup>5</sup> which some felt was yet another example of the improper elevation of the *Canadian Charter of Rights and Freedoms* over moral judgment (that is, the moral judgment of a more-or-less large group of Albertans).<sup>6</sup>

The current threat to the provincial judiciary, however, is not the product only of the particular actions of particular politicians. These actions only gain significance and effect by channeling the energy of

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<sup>1</sup> This remark was made in the course of an April 30, 1994 interview with Dave Rutherford on CHED Radio: *R. v. Campbell* (1994), 160 A.R. 81 (Q.B.), McDonald J., at 175 [hereinafter *Campbell*.] This case was ultimately appealed to the Supreme Court of Canada. See *infra*, note 8.

<sup>2</sup> D. Coulter, “Klein's remarks stir legal storm” *Edmonton Journal* (3 May 1994) A1. The Premier, it should be noted, did send a letter on May 4, 1994 to Chief Judge Edward R. Wachowich, containing the following clarification: “I have always respected and will continue to respect [the independence of the judiciary]. It is unfortunate that certain comments I made concerning a Judge have been misinterpreted to suggest otherwise .... Let me assure you that nothing I said was intended to in any way impinge on the judicial independence of the Provincial Court.” *Campbell*, *supra* note 1 at 178. The Premier initiated a now-familiar pattern of politicians escalating rhetoric against the courts, then drawing back. One might gain the impression that limits are being tested.

<sup>3</sup> Judicial Selection Process Review Committee, *Report and Recommendations* (Edmonton: Alberta Justice, 1998) 1 [hereinafter the *JSPRC Report*]. The other committee members were Gordon Flynn, Q.C., Shirley Keith, Jeffrey McCaig, and Michael Procter.

<sup>4</sup> The Honourable Jonathan N. Havelock, Q.C., M.L.A., Minister of Justice and Attorney General for the Province of Alberta, Speech to the Mid-Winter Meeting of the Canadian Bar Association, January 30, 1998, in Calgary, Alberta. The Minister said, among other things, that “[a] recent national survey of Canadians regarding their confidence in various elements of the justice system revealed, as Dr. Seuss would say, ‘All is not well in Whoville.’” The Minister referred to the public's “52% confidence rating” in “the courts.”

<sup>5</sup> *Vriend v. The Queen in right of Alberta* (1998), 156 D.L.R. (4th) 385 (S.C.C.).

<sup>6</sup> After some deliberation, the government decided not to invoke the “notwithstanding clause” and override the Supreme Court's *Vriend* decision: *Alberta Hansard*, 24th Legislature, Second Session, Issue 39 (6 April 1998) at 1356.

larger social developments. These developments, in themselves, are not hostile to judicial independence, but they do create an environment in which judicial independence may seem not to be necessary, or in which compromising judicial independence to secure other ends may seem appropriate. These developments pose challenges to the independence of the judiciary. Three main sources of challenge may be identified — (1) economics, (2) culture, and (3) federalism.

## ECONOMICS

At the stage of mature capitalism we have reached, either there is less money available for public institutions or we simply wish to devote less money to public institutions. Considerations of thrift and budget-balancing tend to have great influence on allocations of public resources.

The most obvious effect of economics on judicial independence has been the attempt by governments to cut-back or freeze judicial compensation, because of real or alleged diminished public resources. It is true that judges are elements in our set of public institutions, and are paid through public funds. If public resources shrink, simple distributive justice entails that funds available to pay judges should shrink too. If judges were immunized from decreases in compensation when public resources were diminished, some other group or groups would be forced to bear not only their own share of the loss of resources, but the judges' share as well. This does not seem fair. Ultimately, decisions about distributions of public resources affecting judicial compensation — whether to decrease compensation, and by how much — must be political decisions, in the sense that the people who pay must decide what they can and should pay. Thus, economic considerations tend to encourage the view that judges are subordinate to political decision, at least in an economic dimension.

Nonetheless, even if it is fair to decrease (or increase) judicial compensation, the change in compensation cannot be effected in a way that offends judicial independence. Judges cannot be put in a position in which a reasonable person could conclude that they may be manipulated by compensation alterations.<sup>7</sup>

The governments of Alberta, Manitoba, and Prince Edward Island sought to reduce their judges' compensation. The result was that a group of cases was

brought before the Supreme Court of Canada.<sup>8</sup> Very generally, the Supreme Court invalidated these reductions, because the processes leading to the reductions did not meet constitutional requirements. The Supreme Court's approach might have been considered somewhat surprising, in that it did not focus on the reductions themselves (in fact, Lamer C.J.C. remarked that the Alberta reduction was *prima facie* rational<sup>9</sup>) but on the manner in which the reduction decisions were made. The Supreme Court allowed that a province could alter judicial compensation, but only following the recommendation of a Judicial Compensation Committee ("JCC"), which must be independent, objective, and effective.<sup>10</sup> A province is entitled to depart from a JCC's recommendation only if (ultimately) the courts determine that the departure is justified, by a "simple rationality" test.<sup>11</sup>

The Supreme Court's decision is, as one might expect, a strong affirmation of judicial independence and impartiality. Two further aspects of the decision are relevant. First, since the provinces have not mounted any opposition to the Supreme Court's decision, and have taken steps to implement its procedural dictates,<sup>12</sup> this particular source of challenge to judicial independence has been — for now — contained.

Second, the decision is emblematic of the appropriate approach to the economic linkage of the judiciary to taxpayers. The Supreme Court affirmed that linkage by affirming that governments may alter judicial compensation. The Court did not arrogate to itself the power to substitute its own views on compensation changes in preference to those of governments. Rather, as is typical in judicial review of exercises of discretionary authority, the Court required that the government's compensation decisions be, in a large sense, rational. To protect the rationality of compensation decisions from the taint

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<sup>7</sup> For a more detailed development of this argument, see W. N. Renke, *Invoking Independence: Judicial Independence as a Not-cut Wage Guarantee, Points of View (No. 5)* (Edmonton: Centre for Constitutional Studies, 1994).

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<sup>8</sup> *Reference re: Public Sector Pay Reduction Act (P.E.I.), s. 10; Reference re: Provincial Court Act (P.E.I.); R. v. Campbell; R. v. Ekmecic; R. v. Wickman; Manitoba Provincial Judges Association v. Manitoba (Minister of Justice)* (1997), 118 C.C.C. (3d) 193 (S.C.C.) [hereinafter the "Provincial Court Judges Reference"]. Chief Justice Lamer wrote for a majority of six (L'Heureux-Dubé, Sopinka, Gonthier, Cory, and Iacobucci JJ., concurring); La Forest J. dissented in part. See J. S. Ziegel, "The Supreme Court Radicalizes Judicial Compensation" (1998) 9 *Constitutional Forum* 31.

<sup>9</sup> *Provincial Court Judges Reference, ibid.* at 283-284.

<sup>10</sup> *Ibid.* at 253, 265-267.

<sup>11</sup> *Ibid.* at 270.

<sup>12</sup> See the *Justice Statutes Amendment Act, 1998*, S.A. 1998, c. 18; formerly Bill 25, 2nd Session, 24th Legislature, s. 4(10), creating a new s. 17.1 of the *Provincial Court Judges Act*, S.A. 1981, c. P-20.1. The Bill received Royal Assent on April 30, 1998 and awaits proclamation, except for the provisions concerning judicial compensation review, which came into force on Royal Assent, allowing Alberta's JCC procedure to go forward to the recommendation stage.

of merely political influences, and thereby to protect the judiciary from politically-based economic manipulation, the Court required the procedural interposition of JCCs.<sup>13</sup> If governments wish to depart from the recommendations of JCCs, the test is one of “simple rationality.” This test accords greater deference to governmental decisions than the *Oakes* test under section 1 of the *Charter*. It ensures that compensation decisions are, again, not the product of purely political or other irrelevant considerations, and that compensation decisions have a reasonable factual foundation.<sup>14</sup> Because compensation changes must be rational and cannot be the product of arbitrary political action, judging is not subordinated to politics, even in the economic dimension. Instead of speaking of subordination, we should speak of the coordination of judging and politics, under the external standard of rationality. Judicial compensation should not be changed because of political will; rather, changes to judicial compensation should be politically willed only if they are rational.

Economic pressures threaten judicial independence in another way — not through affecting judges directly, but through displacing judicial functions to officials who lack guarantees of independence. If public resources are diminished, finding alternative, cheaper means for delivering public services seems prudent. This economic reasoning may be coupled with a legitimate distinction between paradigmatic judicial functions, such as the hearing of criminal trials, and functions carried out by judges, but apparently less central to the judicial role — for example, the pre-trial processing of criminal accuseds, and mediation and informal dispute resolution.<sup>15</sup> The combination of economic pressure and functional analysis may incline governments to allocate some judicial functions (usually those falling outside the paradigmatic group) to officials who are less expensive to employ and who operate in less expensive institutional and procedural environments than judges — and who lack judges’ protections of independence.

A source of particular concern is Alberta’s *Justice Statutes Amendment Act (JSSA)*,<sup>16</sup> which amends, among other things, the *Justice of the Peace Act (JPA)*.<sup>17</sup> The *JSAA* expands the categories of justices of the peace, enhances their authority (thereby permitting

the practical displacement of judicial functions to justices of the peace), and diminishes their independence.

Formerly, under the *JPA*, justices of the peace and sitting justices of the peace held their appointments until (generally) age 70, termination by the Lieutenant Governor in Council for cause, or resignation.<sup>18</sup> The *JSAA*, however, establishes more tenuous tenure. The *JSAA* creates the office of “non-presiding justice of the peace,” who “holds office at the discretion of the Minister.”<sup>19</sup> The *JSSA* also contemplates not only the appointment of “sitting” but “presiding” justices of the peace, who have term-limited positions — 10 years, unless (generally) removed for cause.<sup>20</sup> Both types of appointment (discretionary and term-limited) provide lesser guarantees of independence than appointment until retirement age, subject to good behaviour, enjoyed under the *JPA*.

Sitting and presiding justices of the peace have the powers granted to justices of the peace under the *JPA* — receiving informations, issuing warrants, subpoenas, and summonses, and doing “all other acts and matters necessary (*sic*) preliminary to a hearing.”<sup>21</sup> Under both the *JSSA* and the *JPA*, a sitting justice of the peace may conduct a hearing or settlement conference or hear an application under Part 4 of the *Provincial Court Act*.<sup>22</sup>

The powers of non-presiding justices of the peace, who have the most precarious tenure, are problematic. Under section 2.2(2) of the *JSSA*, a non-presiding justice of the peace may exercise any of the following four functions:

to the extent that their exercise is consistent with the constitutional requirements for independence, if any:

- (a) administering oaths or affirmations or taking declarations;
- (b) processing judicial interim release orders;
- (c) adjourning cases where a judge of the Provincial Court or a sitting justice of the peace is not present;
- (d) performing any other functions and duties prescribed by the regulations.

The breadth of non-presiding justices’ of the peace powers is not clear. The meaning of the power to “process” judicial interim release orders is uncertain. It

<sup>13</sup> “The constitutional function of this body is to depoliticize the process of determining changes or freezes to judicial remuneration:” *Provincial Court Judges Reference*, *supra* note 8, at 264.

<sup>14</sup> *Ibid.* at 270.

<sup>15</sup> See C. Baar, “Judicial Independence and Judicial Administration: the Case of Provincial Court Judges” (1998) 9 *Constitutional Forum* 114.

<sup>16</sup> *Supra* note 12.

<sup>17</sup> R.S.A. 1980, c. J - 3.

<sup>18</sup> *Ibid.* ss. 5, 5.01, 5.2, and 6.

<sup>19</sup> *JSAA*, s. 3(3), proposed s. 2.4(3).

<sup>20</sup> *Ibid.* proposed s. 2.4(1).

<sup>21</sup> *Ibid.* proposed s. 2.3(1), and the *JPA*, s. 4(3). The “necessary preliminary” language occurs in both statutes. The *JSAA* refers to “a hearing,” while the *JPA* refers to “the hearing.”

<sup>22</sup> *JSAA*, proposed s. 2.3(2), and *JPA*, s. 4(1.2).

cannot mean only that non-presiding justices of the peace are authorized to perform paper-work associated with other justices or judges' granting of bail. Court clerks can already do that. Yet it is not clear that the power to "process" judicial interim release orders permits non-presiding justices to grant bail. More importantly, paragraph (d) leaves the scope of their powers to be determined by regulation. The Legislature, presumably, would not have created the office of non-presiding justice of the peace unless it was intended to be used. The danger posed by the *JSSA* is that it allows for judicial powers — and we cannot even tell, at this time, what those powers might be — to be exercised by highly vulnerable officials. In the *JSSA*, economics has threatened the independence of the judiciary, not directly, but by allowing for the transfer of judicial powers to officials who lack independence.

We should note the remarkable qualification preceding the list of non-presiding justices' of the peace powers — "to the extent that their exercise is consistent with the constitutional requirements for independence, if any." The very language of the statutory provision betrays a fear of lack of constitutionality.

## CULTURE

Cultural forces pose challenges to the independence of the judiciary, again encouraging the subordination of judging to politics. These cultural forces have both positive and negative aspects.

On the positive side, contemporary democracies have come to make a number of legitimate demands of public institutions. The public seeks greater openness and accountability from institutions. It has an anti-authoritarian and anti-professional bent, which, at its best, seeks to regain personal meaning from over-professionalized approaches to human problems. It seeks local solutions to local problems, as opposed to centralized, distantly-mediated solutions.

The negative aspects of these cultural forces include the loss of a sense of tradition, the loss of a sense of history, the loss of faith in public institutions. They include the loss of critical sense and critical judgment respecting public institutions, replaced by a rapidly shifting emotionalism. These losses permit demands that judges' decisions conform more closely with the general will, and result in thoughtless disparagement of the legal norms and constitutional protections that help protect democracy itself.

In response to the negative aspects of cultural forces, judges can only continue to judge, to carry out the work assigned to them by the constitution. Judges, though, should respond to and have responded to positive democratic developments.

An important aspect of the response to calls for openness and accountability has been the development of disciplinary mechanisms for judges.<sup>23</sup> The availability of sanctions for judges on proof of inappropriate conduct addresses the need for accountability. The relatively simple and increasingly well-publicized character of disciplinary processes, as well as the presence of "lay" members in judicial councils, address the need for openness. The central tension of judicial discipline lies between judges' need for freedom from controls over their conduct as judges, and the public's desire to control conduct considered to be inappropriate. Independence cannot entail license; but discipline cannot entail manipulation.

In the abstract, the need for judicial discipline seems obvious. Judges are not above the law; they are not above their authority as judges. If they act beyond the bounds of civility, if they use the bench as a pulpit for non-legal sermonizing, if they exhibit prejudice or practice discrimination, they should be called to account. Discipline for what amounts to non-judicial behaviour does not offend the proper independence of the judiciary. In practice, however, separating conduct that falls within the sphere of proper judicial conduct from that which falls without, and separating conduct that is properly private from that which is subject to public review, can be extremely difficult. A grave worry is that the standards imported to judge judges, reflective though they may be of public opinion, are not the standards by which judges should be judged. Judges lose independence if they are liable to discipline just because they fail to express themselves in accordance with prevailing idioms, fail to accept as given any current beliefs, or fail to make the findings that public opinion desires. While certainly there is room in judicial councils for members of the public, and certainly it is true that disciplinary committees should be open to public perspectives, it is vital that a judge be judged by his or her judicial and professional peers, who are aware of the appropriate standards, tolerances, and limits applicable to judicial conduct in what may be highly emotional and factually complex particular cases.

Another aspect of the response to calls for openness and accountability has been the current discussion, in which judges have been involved, respecting judicial appointment policies.<sup>24</sup> An extreme view heard lately in Alberta is that openness and accountability can be satisfied only if judges are elected. This not only subordinates judging to politics,

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<sup>23</sup> See P. McCormick, "Twelve Paradoxes of Judicial Discipline" (1998) 9 Constitutional Forum 105.

<sup>24</sup> See R. A. Macdonald and A. Lajoie, "Auctioneers, Fence-Viewers, Popes — and Judges" (1998) 9 Constitutional Forum 95.

but transforms judges into politicians. Fortunately, the Graham-Wachowich committee rejected this idea.<sup>25</sup>

A view which has gained some currency in Alberta is that openness and accountability are served if judges are subject to renewable or non-renewable limits on the terms of their appointments. Term limits also transform judges into politicians, whose constituencies are either government or litigants. Renewable term limits offend the independence of the judiciary, since the government could renew judges that have favoured it, and not renew judges whose decisions it disliked. Tenure would be subject to political control, and would therefore lack security. We might concede that legislated non-renewable term limits would not directly offend independence by affecting security of tenure, since a judge could not be terminated during his or her term without cause, and the judge's position would terminate not because of his or her decisions or conduct, but through the operation of law. Nevertheless, term limits, whether renewable or non-renewable, compromise the impartiality<sup>26</sup> of judges. The main practical difficulty faced by term-limited judges is life after term expiration. Presumably, a large number of term-limited judges would not be ready for retirement upon reaching their term limits. One could expect judges to begin thinking about post-term life before their terms have expired. Therein lies the problem: If term-limits were renewable, the public might reasonably fear that a judge who wished to continue his or her profession as a judge would favour the government, which ultimately would decide whether the judge's term should be renewed. If term limits were non-renewable, judges would probably re-enter the practice of law. If judges were contemplating post-termination employment while on the bench, the public could reasonably fear that judges might be inclined to favour potential clients (particular litigants), or potential employers (law firms or the government). Fortunately again, the Graham-Wachowich committee rejected the term-limits idea, too.<sup>27</sup>

<sup>25</sup> *JSPRC Report*, *supra* note 4 at 3.

<sup>26</sup> The "impartiality" of the judiciary relates, generally, to the subjective conditions of judging, the lack of conditions tending to cause judicial bias or prejudice.

<sup>27</sup> *JSPRC Report*, *supra* note 4 at 2. A suggestion regarded with favour by the Graham-Wachowich committee was the setting of fixed terms for the appointment of judges to the positions of Chief Judge and Assistant Chief Judge: *Ibid.*, 8, 42. (Chief Judge Wachowich abstained on this issue.) There are two main bases for the term limits proposal — the risks of abuses of administrative power, and the benefits of collegial governance. See M.L. Friedland, *A Place Apart: Judicial Independence and Accountability in Canada* (Ottawa: Canadian Judicial Council, 1995) 225-231. A Chief Judge not bound by term limits could exercise his or her administrative powers over other judges in an arbitrary manner. Term limits might deter improper conduct because the Chief Judge would rejoin his or her colleagues and share their status under another Chief Judge's administration

Yet another view is that while judges should not be elected, openness and accountability demand some sort of pre-appointment public vetting procedure before an independent appointment committee, so that the public can gain some appreciation of the characters and philosophies of those who will hold the powerful position of judge.<sup>28</sup> This sort of procedure would not (or need not) subordinate judging to politics, so long as the committee itself had proper guarantees of independence, was not itself politicized, and confined itself to inquiries respecting philosophy and experience relevant to judging. As the experience of our American neighbours has demonstrated, politicized public vetting degenerates into barely a form of entertainment. A good public vetting procedure, though, might well be a salutary development — not only (or not so much) for provincial court judges, but for section 96 judges, and particularly for judges of the Supreme Court of Canada.

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after his or her term had expired (assuming that he or she would not retire). Perhaps more important than controlling hypothetical risks are the benefits that would follow from adopting a more collegial approach to the governance of the Court. The Court lends itself to collegial — as opposed to hierarchical — organization. Judges work relatively independently. Cases must be decided on their merits; judges do not decide cases to meet some superior's demands. Each judge is something of an expert in an area or areas. There is no particular reason for a current Chief Judge to remain Chief Judge indefinitely. Others with inclination and talent are equally capable of the job. Sharing administrative duties would allow all judges to take "ownership" of their organization, and to develop a commitment to their Court as an organization; it would encourage judges to share their experiences and learning and to accept the input of others. Adopting a collegial governance structure might well enhance the Provincial Court. Unlike term limits for judicial appointments, term limits for managerial or administrative positions need not violate the independence or impartiality of the judiciary. To avoid offending constitutional norms the appointment process would have to be independent of governmental control. Neither cabinet nor the legislature (except as it might set out the general process rules in statute) should control managerial or administrative appointments.

<sup>28</sup> At the symposium, Judge Albie Sachs described the selection process for judges of the Constitutional Court of South Africa. Selection is made by a Judicial Service Commission, an institution independent of both the legislature and the executive. The Commission holds public hearings in which Commissioners vigorously question candidates for judicial office. The hearings are widely reported in the media. Indeed, the hearings are viewed as having an important public educational value. Despite the openness of the proceedings and the toughness of the questioning, strong candidates, even with controversial backgrounds, have put themselves forward for consideration. Judge Sachs' view was that the vetting process provides legitimacy to the appointments process and credibility for successful candidates. Judge Sachs' opinions on the salutary effects of the vetting procedure and on the lack of deterrence of good candidates were confirmed by the Honourable Dollah Omar, Minister of Justice of South Africa, at an informal round-table discussion at the University of Alberta Faculty of Law on July 10, 1998.

The public would undoubtedly benefit from listening in on discussions of political philosophy, the proper role of judges in a democracy, the nature of contemporary judicial functions, the nature of federalism, and the relationship of the *Charter* to legislative governance (even a lack of discussion would be revealing). As Judge Albie Sachs has suggested, a public vetting procedure can enhance the legitimacy of the appointments process and the credibility of judges. Regrettably, the vetting option was rejected by the Graham-Wachowich committee.<sup>29</sup>

## FEDERALISM

The third source of challenge to the independence of the judiciary lies in Canadian federalism, which may also support the subordination of judging to politics.

A key political problem for Provincial Court judges is that Provincial Courts are provincial. Now, it is true that a virtue of provincial governments in a federation is that they are close to grassroots or local concerns, and can reflect those concerns better than national governments. Moreover, legislative and institutional change is relatively easier to achieve at the provincial level than at the national level. These virtues, however, can become vices when applied to judges and courts. Provincial governments are more easily pressured than the federal government to take steps against judges, the courts, and the administration of justice. Moreover, because of the smaller size and relatively more homogeneous nature of provincial constituencies, provincial governments may also exert a greater influence on provincial public opinion than can the federal government on national public opinion.

What provincial governments must bear in mind, whether in shaping or responding to public opinion, is that the independence of the judiciary is not just another political position, subject to modification or abolition by a decision of cabinet or the legislature. It is a constitutionally-protected foundation of the Canadian democratic federation. The judiciary is not the servant of any legislature. Within the jurisdiction assigned to it by the Canadian constitution, including the *Charter*, the judiciary is as sovereign, distinct, and necessary as the provincial legislatures and their executives and Parliament and the federal executive. The basic rule for provincial governments — which we would have hoped should have gone without saying — is that they should neither attack nor encourage attacks on the independence of the judiciary.

## CONCLUSION

A burden lies on all who attended the symposium. This burden rests least heavily on judges. Judges no longer live under, in effect, a vow of silence, but they do face real risks if they enter the public arena too loudly or too often — particularly where the issues at stake concern their own institutional well-being. The burden does rest heavily on academics, members of the bar, and the media to inform, educate, and seek to convince with rational arguments those who through error or opportunism seek to undermine the independence and impartiality of the judiciary. □

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Faculty of Law, University of Alberta. These comments, originally presented at a Symposium on “Independence and Impartiality: The Case of Provincial Court Judges,” Centre for Constitutional Studies, University of Alberta, 21 April 1998, have been modified and updated for publication purposes.

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<sup>29</sup> *JSPRC Report*, *supra* note 4 at 3.