

CASE LAW UPDATE

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Masters Association of Ontario v Ontario

2011 ONCA 243 (Released 30 March, 2011)

Judicial Independence — Compensation of the Judiciary

In August 2010 Platana J. of the Superior Court held that certain provisions of the *Courts of Justice Act* (“**CJA**”) governing the tenure and compensation of Case Management Masters were unconstitutional because they violated the principle of judicial independence. The declaration of invalidity was suspended for 12 months to allow the province to create a constitutional scheme. The Crown appealed the compensation-related elements of the decision. The Masters Association cross-appealed; it argued Case Management Masters should be read into the scheme governing the compensation and tenure of Traditional Masters (the latter’s tenure and promotion are essentially the same as provincial court judges).

Under the impugned regime, compensation of Case Management Masters was set by an Order-in-Council so that their salaries would be identical to those of public servants paid at the SMG3 level (a senior classification). The Court of Appeal (the “**Court**”) dismissed the appeal and concluded that this linkage mechanism was unconstitutional.

Drawing on the established jurisprudence regarding judicial independence, the Court held that for a compensation scheme to adhere to the constitutional principle of judicial independence there must be a special process for dealing with judicial remuneration, the process must be “independent, effective, and objective,” and there must be an independent body involved in making recommendations regarding compensation to the executive.

In light of these principles Case Management Masters were not required to receive identical compensation as provincial court judges. However, the Court held that the absence of an independent body acting as an “institutional sieve between the judiciary and the other branches of government” meant the existing scheme was unconstitutional. The Court concluded that an external compensation metric that is ultimately set by the executive is insufficient to preserve judicial independence. The Court also noted that previous decisions have emphasized the need for a consultation between an independent body, the judiciary, and the executive in the process for formulating recommendations for compensation. The Court held that a linkage structure does not permit this process to “develop, unfold, and deliver.” The Court did acknowledge that

comparisons with other public sector employees can play a part in this broader process, but it concluded that such comparators cannot be the sole determinant of compensation.

The Superior Court had held that s. 53(1) (b) of the *CJA* was unconstitutional. The Court however, decided that the statutory provision, which permits the Lieutenant-Governor to make regulations regarding remuneration of Case Management Masters, is constitutionally valid. Instead, the Court held that it was the Order-in-Council that set out the compensation scheme at issue that was unconstitutional.

In dismissing the cross-appeal Court found it would be inappropriate to dictate a solution to the government by having Case Management Masters compensated in the same fashion as Traditional Masters. The Court concluded that the appropriate approach would be to extend the suspension of the declaration of invalidity originally ordered by Platana J. for an additional 12 month period, given the difficulties in developing a constitutional scheme in the face of an impending provincial election in October 2011.

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