

SUPREME COURT OF CANADA -- JUDGMENT ON REHEARING

OTTAWA, 10/2/98. THE SUPREME COURT OF CANADA HAS TODAY RENDERED JUDGMENT IN THE FOLLOWING REHEARING.

FROM: SUPREME COURT OF CANADA (613) 995-4330

COUR SUPRÊME DU CANADA -- JUGEMENT SUR NOUVELLE AUDITION

OTTAWA, 10/2/98. LA COUR SUPRÊME DU CANADA A RENDU JUGEMENT AUJOURD'HUI DANS LA NOUVELLE AUDITION SUIVANTE.

SOURCE: COUR SUPRÊME DU CANADA (613) 995-4330

IN THE MATTER OF A REFERENCE FROM THE LIEUTENANT GOVERNOR IN COUNCIL PURSUANT TO SECTION 18 OF THE *SUPREME COURT ACT*, R.S.P.E.I. 1988, CAP. S-10, REGARDING THE REMUNERATION OF JUDGES OF THE PROVINCIAL COURT OF PRINCE EDWARD ISLAND AND THE JURISDICTION OF THE LEGISLATURE IN RESPECT THEREOF

- and -

IN THE MATTER OF A REFERENCE FROM THE LIEUTENANT GOVERNOR IN COUNCIL PURSUANT TO SECTION 18 OF THE *SUPREME COURT ACT*, R.S.P.E.I. 1988, CAP. S-10, REGARDING THE INDEPENDENCE AND IMPARTIALITY OF JUDGES OF THE PROVINCIAL COURT OF PRINCE EDWARD ISLAND

MERLIN McDONALD, OMER PINEAU AND ROBERT CHRISTIE - v. - THE ATTORNEY GENERAL OF PRINCE EDWARD ISLAND - and - THE ATTORNEY GENERAL OF CANADA, THE ATTORNEY GENERAL OF QUEBEC, THE ATTORNEY GENERAL OF MANITOBA, THE ATTORNEY GENERAL FOR SASKATCHEWAN, THE ATTORNEY GENERAL FOR ALBERTA, THE CANADIAN ASSOCIATION OF PROVINCIAL COURT JUDGES, THE CONFÉRENCE DES JUGES DU QUÉBEC, THE SASKATCHEWAN PROVINCIAL COURT JUDGES ASSOCIATION, THE ALBERTA PROVINCIAL JUDGES' ASSOCIATION, THE CANADIAN BAR ASSOCIATION AND THE FEDERATION OF LAW SOCIETIES OF CANADA (P.E.I.)(24508)(24778)

- and between -

HER MAJESTY THE QUEEN - v. - SHAWN CARL CAMPBELL - and between - HER MAJESTY THE QUEEN - v. - IVICA EKMECIC - and between - HER MAJESTY THE QUEEN - v. - PERCY DWIGHT WICKMAN - and - THE ATTORNEY GENERAL OF CANADA, THE ATTORNEY GENERAL OF QUEBEC, THE ATTORNEY GENERAL OF MANITOBA, THE ATTORNEY GENERAL OF PRINCE EDWARD ISLAND, THE ATTORNEY GENERAL FOR SASKATCHEWAN, THE CANADIAN ASSOCIATION OF PROVINCIAL COURT JUDGES, THE CONFÉRENCE DES JUGES DU QUÉBEC, THE SASKATCHEWAN PROVINCIAL COURT JUDGES ASSOCIATION, THE ALBERTA PROVINCIAL JUDGES' ASSOCIATION, THE CANADIAN BAR ASSOCIATION AND THE FEDERATION OF LAW SOCIETIES OF CANADA (Crim.)(Alta.)(24831)

and between -

THE JUDGES OF THE PROVINCIAL COURT OF MANITOBA AS REPRESENTED BY THE MANITOBA PROVINCIAL JUDGES ASSOCIATION, JUDGE MARVIN GARFINKEL, JUDGE PHILIP ASHDOWN, JUDGE ARNOLD CONNER, JUDGE LINDA GIESBRECHT, JUDGE RONALD MYERS, JUDGE SUSAN DEVINE AND JUDGE WESLEY SWAIL, AND THE JUDGES OF THE PROVINCIAL COURT OF MANITOBA AS REPRESENTED BY JUDGE MARVIN GARFINKEL, JUDGE PHILIP ASHDOWN, JUDGE ARNOLD CONNER, JUDGE LINDA GIESBRECHT, JUDGE RONALD MYERS, JUDGE SUSAN DEVINE AND JUDGE WESLEY SWAIL - v. - HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF MANITOBA AS REPRESENTED BY ROSEMARY VODREY, THE MINISTER OF JUSTICE AND THE ATTORNEY GENERAL OF MANITOBA, AND DARREN PRAZNIK, THE MINISTER OF LABOUR AS THE MINISTER RESPONSIBLE FOR *THE PUBLIC SECTOR REDUCED WORK WEEK AND COMPENSATION MANAGEMENT ACT* - and - THE ATTORNEY GENERAL OF CANADA, THE ATTORNEY GENERAL OF QUEBEC, THE ATTORNEY GENERAL OF PRINCE EDWARD ISLAND, THE ATTORNEY GENERAL FOR SASKATCHEWAN, THE ATTORNEY GENERAL FOR ALBERTA, THE CANADIAN JUDGES CONFERENCE, THE CANADIAN ASSOCIATION OF PROVINCIAL COURT JUDGES, THE CONFÉRENCE DES JUGES DU QUÉBEC, THE SASKATCHEWAN PROVINCIAL COURT JUDGES ASSOCIATION, THE ALBERTA PROVINCIAL JUDGES' ASSOCIATION, THE CANADIAN BAR ASSOCIATION and THE FEDERATION OF LAW SOCIETIES OF CANADA (Man.)(24846)

CORAM: The Chief Justice and L'Heureux-Dubé, Gonthier, Cory and Iacobucci JJ.

This Court's order of September 18, 1997 is varied in the following respects:

1. The requirement for an independent, objective and effective process for setting judicial remuneration, including any reimbursement for past salary reductions, is suspended for one year from the date of the original judgment, September 18, 1997. As of September 18, 1998, the judicial compensation commission requirement will apply prospectively.
2. Section 17(1) of the *Provincial Court Judges Act* of Alberta is declared to be unconstitutional. However, given the institutional burdens that must be met by Alberta, this declaration of invalidity is suspended for a period of one year from the date of the original judgment. The *Payment to Provincial Judges Amendment Regulation*, Alta. Reg. 116/94, is also of no force or effect; that declaration takes effect retroactively as of September 18, 1997.
3. The Court will remain seized of this matter until the end of the suspension period, and the parties or any intervener may apply to the Court for further directions as needed during the suspension.

All other orders requested by the Attorneys General of Alberta, Manitoba and Prince Edward Island, and the request of the Manitoba Appellants to vary the order as to costs are denied.

[TRANSLATION]

L'ordonnance rendue par la Cour le 18 septembre 1997 est modifiée de la façon suivante:

1. L'application de l'exigence concernant le mécanisme indépendant, objectif et efficace de détermination de la rémunération des juges, y compris tout remboursement pour réduction antérieure de traitement, est suspendue pour un an à compter de la date du jugement initial, en l'occurrence le 18 septembre 1997. Le 18 septembre 1998, l'exigence relative à la commission de rémunération des juges s'appliquera pour l'avenir.
2. Le paragraphe 17(1) de la *Provincial Court Judges Act* de l'Alberta est déclaré inconstitutionnel. Toutefois, vu le fardeau institutionnel auquel doit faire face l'Alberta, cette déclaration d'invalidité est suspendue pour une période d'un an à compter de la date du jugement initial. Le *Payment to Provincial*

Judges Amendment Regulation, Alta. Reg. 116/94, est également inopérant; cette déclaration produit ses effets rétroactivement depuis le 18 septembre 1997.

3. La Cour reste saisie de la question jusqu'à l'expiration de la période de suspension, et les parties ainsi que tout intervenant peuvent au besoin demander d'autres directives à la Cour durant cette période.

Toutes les autres ordonnances demandées par les procureurs généraux de l'Alberta, du Manitoba et de l'Île-du-Prince-Édouard, ainsi que la demande de modification de l'ordonnance relative aux dépens présentée par les appelants du Manitoba sont rejetées.
