

Financial security relates to the pay judges receive for performing their job. It protects against an “unscrupulous government” that “could utilize its authority to set judges’ salaries as a vehicle to influence the course and outcome of adjudication.”¹⁹⁶ Security of tenure goes to how judges may be dismissed. It insulates judges from the fear that their job may depend on a given outcome in a case before them. Administrative independence centres on the means by which judges hearing a given matter are determined. It precludes governments (or other parties) from exercising such control over the allocation of cases between judges as to enable them to select judges likely to favour their cases.

Table 2.4 outlines the individual and institutional independence requirements the Supreme Court has identified for each of these three guarantees.

Table 2.4 Constitutional Judicial Independence Requirements

	Individual Dimension	Institutional Dimension
Security of tenure	Judges may not be dismissed by the executive before the age of retirement except for misconduct or disability, following a judicial inquiry. Thus, a judge may be removed from office only for a reason relating to his or her capacity to perform judicial duties. Arbitrary removal is prohibited. ^A	Before a judge may be removed for cause, “there must be a judicial inquiry to establish that such cause exists, at which the judge affected must be afforded an opportunity to be heard.” ^B Superior court judges are removable only by a joint address of the House of Commons and the senate, per section 99 of the <i>Constitution Act, 1867</i> . ^C
Financial security	Judges’ salaries must be provided for by law, and the other branches may not arbitrarily encroach upon this right in a manner affecting the independence of the courts. ^D	Judges’ salaries may generally be reduced, increased, or frozen. However, in making these decisions the government must resort to a salary commission that is independent, effective, and objective, and that will make recommendations on judicial wages. ^E If the government decides to ignore these recommendations, the decision must be justified, if necessary, in a court of law on the basis of a simple rationality test. ^F Negotiation — “in the sense of trade-offs — concerning the salaries of the judges between a member or representative of the judiciary, on the one hand, and a member or representative of the

A Mackin, above note 174 at paras. 42–43.

B *Re Therrien*, [2001] 2 S.C.R. 3 at para 39.

C *Ell*, above note 175 at para. 31.

D Mackin, above note 174 at para. 50.

E *Ibid.* at para. 57.

F *Ibid.*

196 *Re Remuneration of Judges*, above note 19 at para. 145.

	Individual Dimension	Institutional Dimension
Financial security		executive or legislative branch, on the other hand, is prohibited. Such negotiations are fundamentally inconsistent with the independence of the judiciary." ^G Finally, "reductions in the salaries of judges must not result in lowering these below the minimum required by the office of judge. Public trust in the independence of the judiciary would be weakened if the salaries paid to judges were so low that they led people to think that the judges were vulnerable to political or other pressures through financial manipulation." ^H
Administrative independence	N/A ^I	Courts themselves have control over the administrative decisions "that bear directly and immediately on the exercise of the judicial function," such as "assignment of judges, sittings of the court, and court lists—as well as the related matters of allocation of court rooms and direction of the administrative staff engaged in carrying out these functions." ^I

G *Ibid.* at para. 58.

H *Ibid.* at para. 59.

I *Re Remuneration of Judges*, above note 19 at para. 120.

J *Ibid.* at para. 117.

Parliamentary Privilege

Just as judicial independence inhibits the capacity of the executive and legislature to meddle with the judiciary, the doctrine of parliamentary privilege carves out a zone in which legislatures are immune from court (or Crown) intervention. These privileges are, in the words of the Supreme Court, "necessary to ensure that legislatures can perform their functions, free from interference by the Crown and the courts. Given that legislatures are representative and deliberative institutions, those privileges ultimately serve to protect the democratic nature of those bodies."¹⁹⁷

"Privilege" in this context means "the legal exemption from some duty, burden, attendance or liability to which others are subject."¹⁹⁸ Privilege has been defined comprehensively in several learned treatises, frequently relied upon by the courts. Thus, Joseph Maingot's *Parliamentary Privilege in Canada*, defines it as

the necessary immunity that the law provides for Members of Parliament, and for Members of the legislatures of each of the ten provinces and two

¹⁹⁷ *Ibid.* at para. 101.

¹⁹⁸ *New Brunswick Broadcasting*, above note 24 at 378, L'Heureux-Dubé, Gonthier, McLachlin, and Iacobucci JJ.