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federal judicial appointments process

Minister of Justice
and Attorney General of Canada



Ministre de la Justice
et Procureur général du Canada

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FEDERAL JUDICIAL APPOINTMENTS PROCESS

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Introduction

The federal judicial appointments process has been in place since 1988. A number of revisions have been made to it. This document describes the process with revisions to date and is intended for those interested in submitting their candidacies for appointment, or in nominating others as candidates.

This policy applies to the appointment of judges of the superior courts of every province, the supreme courts of the Yukon and Northwest Territories, the Federal Court of Canada and the Tax Court of Canada.

The Judicial Appointments Process

Expression of Interest

Qualified lawyers and persons holding provincial judicial office who wish to be considered for appointment as a judge of one of the courts referred to above must apply to the Commissioner for Federal Judicial Affairs. The Commissioner maintains records of those interested in appointment and ensures that the candidates are reviewed by the appropriate provincial or territorial advisory committee. In addition to candidates themselves, members of the legal community and all other interested persons and organizations are invited to submit the names of persons they consider qualified for judicial office. Nominees will be contacted by the Commissioner to ascertain whether they wish to be considered for a judicial appointment.

Interested persons should write to:

Commissioner for Federal Judicial Affairs
110 O'Connor Street, 11th Floor
Ottawa, Ontario
K1A 1E3

Upon receiving an expression of interest or a nomination, the Commissioner will request completion of a personal history form, which will provide the basic data for the subsequent assessment of the candidature by the appropriate advisory committee as described hereunder. Candidates should ensure that the information they provide is complete and up to date. All information received is treated confidentially.

The statutory qualifications for appointment are 10 years at the bar (or combination of 10 years at the bar and as a provincial judge). Candidates will be asked to sign a waiver authorizing the Commissioner to obtain a statement of their standing with the law society.

Upon determining that a candidate meets the threshold constitutional and statutory criteria for a federal judicial appointment, the Commissioner will forward the candidate's file to the appropriate committee for assessment.

Persons holding provincial judicial office must notify the Commissioner in writing of their interest in a federal judicial appointment and complete a personal history form. These candidates are not formally assessed by the committees. Their files are verified by the Commissioner and their names placed on the list of those available for appointment. Provincial judges who apply for federal appointments will be the subject of consultations by the Minister of Justice with their current and proposed Chief Judge and Chief Justice, and with the Attorney General or Minister of Justice of the jurisdiction concerned. Federally appointed judges being considered for elevation to higher judicial office will be the subject of similar consultations and are not assessed by the committees.

Committees

Advisory committees for assessing each applicant's qualifications for the bench constitute the heart of the appointments system. An advisory committee is established in each province and territory; Ontario has three regionally based committees and Quebec has two. Each committee consists of the following seven members of the bench, the bar and the general public:

- a nominee of the provincial or territorial law society;
- a nominee of the provincial or territorial branch of the Canadian Bar Association;
- a judge nominated by the Chief Justice of the province or territory;
- a nominee of the provincial Attorney General or territorial Minister of Justice; and
- three nominees of the federal Minister of Justice.

Each nominator is asked by the federal Minister of Justice to submit a list of names from whom an appointment to the relevant committee can be made. The Minister, with the assistance of the Commissioner for Federal Judicial Affairs, then selects persons to serve on each committee who reflect factors appropriate to the jurisdiction, including geography, language, multiculturalism and gender. Committee members are appointed by the Minister of Justice to serve two-year terms, with the possibility of a single renewal. Lawyer members of the committees cannot themselves be considered for judicial appointment for one year following their term of office.

Two of the federal nominees on the committee are persons, other than a practising lawyer, capable of representing the public interest. The provincial attorneys general and ministers of justice are encouraged to choose their own nominees on a similar basis.

Regionally based committees have been established in Ontario and Quebec because of those provinces' large population. Candidates are assessed by the regional committee established for the judicial district of their practice or occupation, or by the committee judged most appropriate by the Commissioner.

All committee proceedings and consultations take place on a confidential basis.

Assessments

The committees are asked to assess candidates on the basis of three categories - "recommended", "highly recommended" and "unable to recommend". These categories reflect the advisory nature of the committee process. Ultimate responsibility and accountability for appointments rest with the Minister of Justice.

Committee members are provided with criteria concerning the characteristics required of a good judge. A list of these is attached as an Appendix. The criteria include: proficiency in the law; a well-rounded legal experience; maturity and objectivity in judgment; an appreciation of social issues arising in litigation; a capacity to exercise the role conferred upon the judiciary by the Charter of Rights and Freedoms; and the ideal of public service. Committees are encouraged to respect diversity and to give due consideration to all legal experience, including that outside a mainstream legal practice.

Committees are encouraged to interview candidates when they consider this both practical and desirable. They are not required to do so.

In order to provide comprehensive advice to the Minister, each committee is also asked to give the Minister a full and frank précis of the candidate's qualities that lead to the assessment.

The Minister may seek further information from the committees on any candidate. Where advice received from other sources appears to be at variance with that of a committee, the Minister may ask the committee concerned for a reassessment.

Confidentiality and Duration of Assessment

Candidates are notified of the date they were assessed by the committee. They are not provided with the results of the assessment, which are confidential and solely for the Minister's use.

Assessments are valid for a period of three years. Each candidate is notified by the Commissioner three months before the three-year period expires and is invited to apply for an updated assessment if still interested in being considered for a judicial appointment. An assessment remains valid until the new assessment can be completed.

Commissioner for Federal Judicial Affairs

The Commissioner for Federal Judicial Affairs has overall responsibility for the administration of the appointments process on behalf of the Minister of Justice. That responsibility is exercised directly or by his delegate, the Judicial Appointments Secretary. The Commissioner is required to attend every committee meeting as an ex officio member and serves as the link between the Minister and the committees. All communications between the Minister and the committees are effected through the Commissioner. The Commissioner assists the chair with the agenda regarding the assessments to be completed at each meeting, with the information required for each assessment and with all services required by the committee. It is the Commissioner's particular responsibility on behalf of the Minister to ensure that all assessments are completed expeditiously and thoroughly. The Commissioner maintains the files of all candidates in a confidential data bank for the sole use of the Minister of Justice. The Commissioner provides the committee's assessments to the Minister of Justice following each committee meeting.

Appointments

Federal judicial appointments are made by the Governor General acting on the advice of the federal Cabinet. A recommendation is made to Cabinet by the Minister of Justice with respect to the appointment of puisne judges, and by the Prime Minister with respect to the appointment of chief justices.

Before recommending an appointment to Cabinet, the Minister consults with senior members of the judiciary and the bar, and with provincial attorneys general and territorial ministers of justice. The Minister welcomes the advice of interested groups and informed individuals on particular appointments, especially in the furtherance of the government's commitment to gender equality and to representativeness on the bench. The work of the committees, the informal contacts with interested groups, and the traditional consultations with senior members of the judiciary and bar and with attorneys general provide the Minister of Justice and, through the Minister, the government, with the best advice available on the qualifications of candidates for judicial office.

Conclusion

Those considering applying for a judicial appointment should be aware of the implications of becoming a judge, and should assume the responsibilities of judicial office only if they are fully prepared to accept the significant changes it will bring, not just to their own lives, but to those of their families.

To assist those interested in appointment, a guide on benefits and programs for the judiciary is available from the Commissioner for Federal Judicial Affairs.

In addition to these practical considerations, there are others.

The independence of the judiciary both isolates the individual judge from former associations to avoid the possibility of conflict of interest, and imposes upon him or her the need to maintain the highest standards in performing the duties and responsibilities of judicial office. It requires that each judge devote himself or herself exclusively to the duties of the judicial office, and not engage in any outside business. The range of activities that are available to a practising lawyer is severely curtailed upon appointment to the bench.

At the same time, a long-term commitment is required from each judge: generally, judges cannot retire with a pension, except on medical grounds, until they have served 15 years in office and have attained age 65. Mandatory retirement is at age 75. The options available to those who accept appointment at an early age are limited: either remain on the bench until the statutory requirements for retirement with a pension are met, or leave with only a return of contributions.

All who aspire to judicial office should be aware that their responsibilities will include not only the fair and just application of the law but the maintenance of the high reputation of the judiciary itself. Candidates should be prepared to make full disclosure of any matter that would reflect upon their ability to perform the functions of judicial office, or upon the credibility and repute of the judiciary as a whole.

Once appointed, judges are expected to comport themselves so that no criticism attaches to their office. The judge is not permitted to engage in public debate on any of his or her decisions, and should avoid expressing personal opinions on major social issues which might lead to an apprehension of bias when such issues come to be adjudicated by the court. When a judge performs his or her duties in a way that falls short of the standards expected of the bench, or where the personal life of the judge intrudes upon his or her judicial duties, a complaint may be made to the Canadian Judicial Council. The Council has a statutory mandate to investigate all complaints and allegations of misconduct on the part of federally appointed judges and to recommend to the Minister of Justice whether there are grounds for removing a judge from office.

Persons who require additional information concerning the federal judicial appointments process should write to: The Commissioner for Federal Judicial Affairs, 110 O'Connor Street, 11th Floor, Ottawa, Ontario, K1A 1E3.

APPENDIX

CANDIDATES FOR FEDERAL JUDICIAL APPOINTMENTS - SUGGESTED CRITERIA

MERIT CONSIDERATIONS	GENERAL
Proficiency in the law	Professional standards/reputation
Well rounded legal experience	Commitment to the law
Maturity and objectivity in judgment	Professional achievements/contributions
Appreciation of social issues arising in litigation	Specialization
Capacity to exercise role conferred by <u>Charter of Rights and Freedoms</u>	Advocacy experience - trial - appellate - boards and tribunals
Ideal of public service	Non-mainstream legal experience (academic, corporate, government, public interest advocacy)
	Books and articles
	Public and community service
APPELLATE COURTS	Reputation in community
Collegiality	Ethical Standards
Scholarly ability	Honesty/Integrity/Fairness
Receptivity to ideas	Consideration for others
Interest in development of law	Patience/Tolerance/Courtesy/Humility
	Common sense
	Ability to listen
FEDERAL COURT/TAX COURT	Ability to make decisions
Proficiency in matters under court's jurisdiction	Reliability/Punctuality/Work habits/Organizational skills
Willingness/ability to travel	Writing and communication skills
	Politeness/Tact
	Sensitivity to gender equality and other social context issues
	Drug or alcohol dependency
	Sexual harassment complaints
	Professional complaints/civil actions
	Financial difficulties
	Health
	Bilingualism (as applicable)

Note This is a non-exhaustive list of considerations that may arise in applying the definition of merit to applicants for judicial appointment and is intended to provide guidance only to the Advisory Committees in their assessment of candidates.