

Judicial Appointments
Some Considerations for Applicants of African Descent
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From January 2002 to December 2006 I have had the extreme privilege of sitting on the Nova Scotia Advisory Committee on Provincial Judicial Appointments. My interests in applying to be a member of this committee were and are several. At the time I worked as the executive director of a private child welfare agency. I am also a forensic social work clinician and have had a long history of involvement with the justice system. As an African Nova Scotian I also have a strong belief that the provincial bench in Nova Scotia would be further strengthened by having greater diversity among its members. From those perspectives I believe I made a significant contribution to the committee and am proud of the appointments that were made during my tenure on the committee (which I should emphasize is an advisory committee that recommends candidates. The appointment of judges remains a direct provincial government responsibility). However, there were no appointments of African Nova Scotians to the bench during that time.

I have just noticed that the Provincial Government has posted notice of its intention to “appoint several Judges to fill upcoming vacancies in the Provincial and Family Courts.” This call provides a great opportunity for qualified lawyers of African descent to consider their own judicial aspirations and to promote and support the interest and aspirations of their Black colleagues.

It would be inappropriate for me as a member of the Advisory Committee to be actively engaged in public and private discussion of the need for Black judges and issues related to the technical and other considerations that factor into recommending persons for judicial appointment. It has been a year since the expiration of my tenure on the committee however, so in keeping with my keen interest in supporting the strength and integrity of the bench, I felt it would be more than appropriate for me to pen some of my thoughts on the topic for general distribution. It is my hope that these comments would be useful both to promote public discussion of the issues generally and to encourage and empower every qualified lawyer of African descent to make a credible application and have a strong interview before the Advisory Committee.

I should say that this document is oriented around this stated hope. It does not discuss or consider the more critical aspects of the issue of Judicial appointments: Why aren't there more Black judges, why don't more Black lawyers apply, why haven't Black applicants been more successful? These are questions for a later time; questions of which I am eager to engage in active discussion. This paper will limit itself for the sake of brevity and timing to issues most critical for potential applicants to the present call.

The Call: As Published in InForum, The Nova Scotia Barrister's Society semi-monthly electronic newsletter

**Nova Scotia Judicial Appointments Advisory Committee:
Applications Invited**

The Government of Nova Scotia expects to appoint several Judges to fill upcoming vacancies in the Provincial and Family Courts. One appointee will adjudicate predominately family matters and sit in the Annapolis Valley area. Three appointees will adjudicate predominately criminal matters – one will sit mainly in the Cape Breton area, another mainly in the Pictou/New Glasgow area and another mainly in Halifax Regional Municipality. The appointments will be made on the express understanding that the appointees may be required to relocate within the Province if requested to do so by the Chief Judge, and will also be required to travel to court locations as directed by the Chief Judge. All appointments will be joint appointments to the Provincial and Family Courts.

The Government of Nova Scotia has established guidelines for judicial appointments which will continue to ensure that appointments are based on merit. Applicants are required to have a minimum of ten years standing before the Bar of a Canadian jurisdiction, and five years at the Nova Scotia Bar. Under the guidelines, the Judicial Appointments Advisory Committee is required to consider whether the applicant displays “a high level of professional achievement in area(s) of legal work in which the candidate has been engaged”.

The ability to conduct a hearing in French is considered an asset.

A person who has applied on an earlier occasion should submit a new application in order to be considered.

Applicants are encouraged to provide with their resumes, two letters of reference, one relating specifically to their achievements in the legal profession.

To obtain an application form and a copy of the guidelines for judicial appointment, write or call:

Judicial Appointments Advisory Committee
5151 Terminal Road, P.O. Box 7
Halifax, Nova Scotia B3J 2L6
Attention: Heather Boyle
Telephone: 424-4020
Fax: 424-0510

Applications must be received by May 16, 2008. We thank all applicants for their interest, however, only those selected for an interview will be contacted.

Some Considerations in Answering the Call

First, it is important to call and get the guidelines. There is a very particular method of applying that is necessary, specific questions that need to be answered in a standard fashion to aid those who are organizing the applicants for committee screening.

Secondly the resume that you submit with the application form needs to be comprehensive and professional. As a human resource professional it never ceases to amaze me the number of extremely competent professionals who don't have a comprehensive and professional resume. In a position I held previously, I required all staff in my employ to present an updated resume on the occasion of their annual performance review. In many cases it was the first time that 20 year employees had ever constructed a resume. Many lawyers are essentially self-employed individuals who may not have applied for jobs before. Whether this is the case or not, all applicants would likely benefit from having their resume reviewed by a couple of persons who are human resource professionals.

Third, though demonstration of involvement in community service and civic life is an important screening criteria for potential judges, a judge must often separate themselves completely from those involvements once appointed. Applicants need to show in their resume and prepare to speak to how they would make the transition from participation in community life as a private individual to appropriate participation as a member of the Bench. For example, continued participation in the African Nova Scotian Music Association may be completely appropriate, while continued participation in a local Development or Rate Payers Association may not.

Often, evidence of significant involvement in the legal community helps to demonstrate that an applicant would have the capacity to make the transition to judicial life and continue to have avenues for appropriate extracurricular activities. Make no mistake, judicial applicants get marks for being able to demonstrate that they are immersed in the practice of law, not to the exclusion of a life, but that they are intellectually curious about the law and find thinking, talking and relating to the law an easy and even satisfying thing. Attending and, better yet, presenting at legal workshops is highly valued. Of course everyone does this. Salaried lawyers of course have an advantage over private practitioners because they don't lose income when taking a day off to present at a NSBS education day. Private practice lawyers may demonstrate their facility with the law through a record of involvement with student lawyers or through focused pro-bono work that demonstrates particular interest in an area of law. Remember again the need for a comprehensive resume. All of these involvements should be accurately recorded there.

The final thing that gives a person good marks is having a "judicial bearing". I know that this sounds very subjective and a concept that immediately brings to mind how such considerations have been used historically to exclude women and visible minorities from positions of influence. In the past, judges who were appointed needed to come from a certain class, and even political persuasion. Though I'm pleased to say that this is no longer the case, there are some "soft considerations" that are still relevant and highly debated when considering judicial recommendations. You will have to speak to some of this in an interview:

Can this person sit and hear a case and visibly communicate the impartiality, civility and sobriety that is expected of the judiciary? There are people in the community who are so passionate, positioned or partisan that the fear would be that their presentation on the bench, visible reaction to hearing certain things that offend their sensibilities and such, would make it appear that they were unable to suspend judgement until after hearing all evidence. A would-be Judge needs to be able to speak to that in an interview, and present themselves in such a way that they demonstrate judicial bearing to the committee. I'm sure that the people who interviewed me for my current position had to consider these things when contemplating my appointment: "We know he is an extremely competent practitioner and a passionate advocate for children, youth and families . . . but can he BE a senior civil servant?" Somehow I must have been able to communicate that my background would be a strength to government and that I would be able to make the professional and personal transition.

Can this person conduct themselves in the community understanding the fine line that judges must walk between being members of the community and affiliating too closely to certain issues as to taint their perceived impartiality? So think of Barack Obama. He's a Black man, he attends a Black church. His Black pastor preached a Black sermon . . . and all of a sudden the question is if Barack attends that church can he really be balanced and broad enough in his thinking to serve all of America? Never before in my knowledge of the history of American presidential politics has a candidate been judged by the comments of his pastor . . . but this is new territory for the American public. Black worship by its nature is dramatic and passionate in its expression. Barack had to come out to explain and contextualize his involvement in the Black church and why Americans can be certain this makes him a better candidate, not a questionable one. The concern comes from certain historical and racist perspectives for sure, but nevertheless real, and something he needed to address. Applicants must understand that all members of our community that stand in front of a Judge must have confidence in the impartiality of the bench, and though there is a great need for a more diverse bench, Black applicants should remember that should they be successful, the vast majority of people who stand before them for adjudication will be members of the White community.

Can this person "fit into" the judicial community? Again this at first glance seems completely subjective and simply an opportunity to exclude candidates based on their gender, race and class. But there are some legitimate considerations here. Because of the role of the bench, particularly the principle of judicial independence, judges are in some ways peerless individuals. The minimal oversight that is given to members of the bench appropriately responds to only the grossest incidents of judicial incompetence. This is important because intruding on the freedom of judges to say their peace and make judgements, even about the character of the individuals who stand before them, could chill the concept of judicial independence and go a long way towards undermining this important pillar of our democratic system. So really, the only appropriate person to counsel a judge is a judicial colleague. The only place that a judge can engage in frank and honest discussion about the nature of sitting on the bench is with other judges. So judges must have the capacity to be collegial and contribute to the continuing development of the bench by being a part of those conversations. A lone-wolf judge cannot

make a contribution in this way.

Also there must be a recognition that the provincial courts these days are very busy places and that the demands on the court require that each member of the bench pulls their own weight and practices in a way that supports their colleagues in their work load, not compromises it. Judges need to know that if they engage in the practice of too often reserving decisions, they will only fall behind. If they take too long in their deliberations or decision writing, they are defacto asking their colleagues to pick up the slack. If they abuse their judicial independence to schedule themselves 5 hour work days, and treat their appointment like an honorific title instead of the serious public service role that it is, that the whole of the bench is compromised.

A willingness to travel to help manage the provincial judicial workload in other areas of the province (even being a traveling judge!) is important. The willingness even to relocate at the time of appointment or as may be necessary later on is critical. Judicial appointments don't come up very often and in the case of these appointments only one is based in metro. Though there is generally a desire to fill positions with people with roots in the local area, sometimes judicial appointments might be made in recognition of provincial requirements of the bench, so the only real answer to the question about willingness to relocate and travel is "Absolutely!". Now if you get the call, it is appropriate to have frank communications with the chief judge about your interest to eventually return to a certain geography, but I'll say with no hesitation that a lack of willingness to see the appointment as a provincial one is a deal breaker from my perspective. Judicial appointments are hard to fill and if there is a vacancy for any length of time, everyone is expected to pitch in and do their part to travel and ensure the integrity of the provincial bench.

So, these are a few comments for your consideration. I believe we have a strong and competent Provincial Bench in Nova Scotia and I am confident that Judges understand the need for the Bench to be more representative to the ever-increasing diversity of the Province of Nova Scotia. This judicial diversity most appropriately begins with increasing the representation on the bench of Nova Scotia's indigenous diverse communities. Persons of African descent, Acadians and members of the Mi'kmaq communities have done the hard work of pursuing professional education and positioning themselves for these positions. It is time now for them to begin applying en masse when calls are made in order to showcase the broad spectrum of talents that exist in these communities and give those who screen such applicants multiple options for recommending appointments that support diversity.