



JUDICIAL APPOINTMENTS: OFFICE OF DISTRICT COURT JUDGE

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Introduction

This booklet sets out the process for appointing Judges of the District Court. It is intended to provide information and guidance to those interested in appointment.

To provide some context for the process brief reference is made to New Zealand's constitutional arrangements as they affect the role of the judiciary, and to aspects of judicial appointment processes in general.

New Zealand's constitution

The separation of powers between the legislature, executive, and judiciary is a fundamental principle of democratic governments such as that of New Zealand. Each branch of government has a role in balancing the power of the other two branches. For instance, the judiciary examine the actions of the executive through the process of judicial review. Conversely, the executive is principally involved in the selection of Judges, and both the executive and Parliament would be involved in the dismissal of Judges in the event of misconduct.

The role of the judiciary

The constitutional importance of appointments to the judiciary reflects the two essential functions of the courts, namely, to settle disputes between citizens and the state (or between two individuals), and in doing so, to clarify and declare the law of New Zealand.

The independence of the judiciary is an important element of New Zealand's constitutional arrangements. The essential element of the principle of judicial independence is that members of the judiciary should be able to decide matters according to law free of all inappropriate pressures. This constitutional principle is reflected for the Supreme Court, Court of Appeal and High Court Judges in the Constitution Act 1986, and has general application in other laws and conventions.

The structure of the courts

New Zealand has a hierarchy of courts. The Supreme Court is the highest court, followed by the Court of Appeal, the High Court, and finally the District Court. The Employment Court, the Environment Court and the Māori Land Court are separate, specialist courts.

The Supreme Court

The Supreme Court is the court of final appeal and has the role of maintaining overall coherence in the legal system. Appeals to the Supreme Court can be heard only with the leave of the court. It must give leave to appeal only if it is satisfied that it is necessary in the interests of justice (s 74 Senior Courts Act 2016).

The court can sit only as a bench of five to hear substantive appeals. The Governor-General may appoint retired Judges of the Supreme Court or Court of Appeal (under the age of 75) as Acting Judges of the Supreme Court to sit when a permanent member is not able to sit. The Judges of the Supreme Court continue to be Judges of the High Court, which maintains the formal integration of the high courts judicature. Appointments to the Supreme Court are made under the Senior Courts Act 2016.

The Court of Appeal

The Court of Appeal consists of up to ten Judges, one of whom is appointed as President. Judges of the Court of Appeal are also Judges of the High Court. Additional High Court Judges may be nominated to sit on divisions of the Court of Appeal. Appointments to the Court of Appeal are made under the Senior Courts Act 2016.

The High Court

The High Court consists of the Chief Justice and 54 other Judges. (This number includes the Judges of the Supreme Court and the Court of Appeal). There are up to nine Associate Judges who can exercise certain powers specified in the Senior Courts Act 2016. High Court Judges and Associate Judges are appointed under that legislation.

The Employment Court

The Employment Court is constituted under the Employment Relations Act 2000. The Court consists of the Chief Judge of the Employment Court and at least two other judges.

The District Court

The District Court is presided over by District Court Judges. District Court Judges are appointed under the District Court Act 2016. The maximum number of District Court Judges is 182.

The Family Court and the Youth Court are divisions of the District Court. Family Court Judges are District Court Judges who, by reason of their training, experience and personality, are deemed suitable to deal with matters of family law. They are appointed under the Family Court Act 1980.

Youth Court Judges are District Court Judges who, by reason of their training, experience and personality and understanding of the significance and importance of different cultural perspectives and values, are deemed suitable to deal with matters to do with youth justice. They are designated as Youth Court Judges by the Chief District Court Judge under the Oranga Tamariki Act 1989.

The Environment Court

The Environment Court is constituted under the Resource Management Act 1991. The Court consists of not more than ten Environment Judges and a number of Environment Commissioners. Environment Judges are District Court Judges, appointed as Environment Judges under the Resource Management Act 1991.

Community Magistrates

Community Magistrates are appointed under the District Court Act 2016. They are members of the community who are selected by reason of their personal qualities, experience and skills to hear minor criminal cases in the District Court. They can impose a range of sentences, but do not have the power to imprison offenders.

Community Magistrates cannot at the time of their appointment be a practising lawyer or be concurrently working in the justice sector.

Appointment processes

With one exception, appointments to the judicial positions described above are made by the Governor-General on the recommendation of the Attorney-General. The exception is Community Magistrates, who are appointed under the District Court Act on the recommendation of the Minister of Justice. In making appointments to the Environment Court, the Attorney-General must consult with the Minister for the Environment and the Minister of Māori Affairs. Appointments to the Māori Land Court are made by the Governor-General on the recommendation of the Minister of Māori Affairs.

The Attorney-General places great importance on maintaining the quality and integrity of the judiciary. Putting the responsibility for all these appointments in the hands of the Attorney-General is intended to help to ensure a consistent and principled approach to these important decisions. In the case of appointments to the Supreme Court, the Court of Appeal and the High Court (Judges and Associate Judges), the administrative process is carried out under the direction of the Solicitor-General. For appointments to the District Court, Family Court, Environment Court and Employment Court, the process is carried out under the direction of the Secretary for Justice.

The appointment process for District Court Judges

Criteria for appointment

Section 15 of the District Court Act 2016 specifies that no person shall be appointed a District Court Judge unless he or she has held a practising certificate as a barrister or solicitor for at least seven years.

The constitutional importance of the judicial role, and the fact that Judges have to make decisions which significantly affect the liberties and rights of citizens, make it vital that those who become Judges are suitable to hold that office. The suitability of

prospective candidates is assessed by reference to a range of clearly defined, transparent and publicly announced core competencies. These cover legal ability, qualities of character, personal technical skills and reflection of society.

Legal ability:

- Sound knowledge of the law and experience of its application.
- Requisite applied experience and/or application of legal knowledge in other branches of legal practice.
- Capacity to discern general principles of law and in doing so to weight competing policies and values.
- Overall excellence demonstrated in a relevant legal occupation.

Qualities of character:

- Personal honesty and integrity.
- Open-mindedness and impartiality.
- Courtesy, patience and social sensitivity.
- Good judgement and common sense.
- Ability to work hard, to listen and concentrate.
- Collegiality, breadth of vision, independence, and acceptable of public scrutiny.

Personal technical skills:

- Effective oral and written communication.
- Ability to absorb and analyse and explain in a concise and lucid manner complex and competing factual and legal material.
- Mental agility, administrative and organisational skills.
- Capacity to be forceful when necessary and to maintain charge and control of a court.
- Ability to inspire respect and confidence.
- Impartiality and collegiality.
- A person shall not be appointed to be a Family Court Judge unless they are by reason of their training, experience and personality, a suitable person to deal with matters of family law. (Section 5(2) of the Family Court Act 1980).

Reflection of society:

- Aware of, and sensitive to, the diversity of modern New Zealand society including of tikanga Māori and Te Reo.
- Experience of the community of which the court is part.
- Social awareness.

The steps in the process

The steps in the appointment process for District Court Judges are as follows:

1. Prospective candidates may submit an expression of interest for judicial office on the prescribed form at any time. Alternatively, as a result of the consultation process described below, prospective candidates may be nominated, invited to express their interest and to enter the process. All prospective candidates are provided with an application form for completion.
2. A proposed shortlist is submitted to the Attorney-General for approval. The Attorney-General, after such consultation as he or she believes necessary, decides who should be on the shortlist for interview. Those approved are interviewed.
3. Following the interviews, the Solicitor-General and the President of the Law Society are consulted.
4. The interview panel reports on the interviews and the results of the assessments and checks to the Attorney-General, who may choose to interview candidates. The Attorney-General selects the candidate(s) for appointment, mentions the appointment(s) in Cabinet and tenders formal advice to the Governor-General.

The interview panel

The interview panel is generally the Chief District Court Judge, the Head of Bench where relevant, the Executive Judge for the relevant region and a representative of the Ministry of Justice.

Consultation

A range of groups and people are contacted at various stages in the appointment process. The intention is to ensure a sufficiently broad perspective is obtained as to prospective candidates. The Attorney-General regards the knowledge, experience and judgement of the professional legal community as a very good source of informed opinion on the relative merits of prospective candidates. They are prominent among those consulted accordingly.

The list of parties who may be contacted includes the Chief Justice, the President of the Court of Appeal, the President of the New Zealand Law Society and other organisations or groups representative of lawyers who the Attorney-General believes can contribute names of suitable persons. Such groups may include the New Zealand Bar Association, the Criminal Bar Association, and, in the interests of increasing diversity, the Women's Consultative Group of the New Zealand Law Society, the Māori Law Society and women lawyers' associations. Also Community groups with which the applicant has had involvement may be consulted. Nominations may also be sought from the Minister of Justice, the Chair for the Justice and Electoral Select Committee and the Opposition Spokespersons for the Attorney-General portfolio.

Information sought

Persons interested in appointment as a District Court Judge are asked to complete an expression of interest form and to provide a curriculum vitae. Candidates selected for interview are asked to provide information on their health status and financial security.

Expression of interest form

The expression of interest form is a formal document. It seeks a variety of personal and professional information such as a brief description of the person's legal experience. It also seeks the person's consent to the information being conveyed as necessary to those consulted during the appointment process. Information contained in the expression of interest form is intended to supplement material in the curriculum vitae. The form is also intended to provide an opportunity to highlight experience which is considered to be of particular relevance to the criteria on which appointments are made.

Statutory declaration

Enclosed with the expression of interest form is a statutory declaration as to convictions, disciplinary action, bankruptcy and tax status.

Curriculum vitae

Persons interested in appointment are also asked to provide a curriculum vitae so that more detail about their legal career, including a full work history, is available together with any relevant experience outside the law.

The Attorney-General's Judicial Appointments Unit

The Appointments Unit was set up specifically to handle expressions of interest in judicial appointments with the highest degree of confidentiality and security. The Appointments Unit is attached to the Ministry of Justice, but its records are held separately from those of the Ministry. The Appointments Unit has its own email address, telephone and facsimile numbers and postal address.

The role of the Appointments Unit is to provide administrative assistance throughout the appointments process.

Contact details for the Appointments Unit are:

The Judicial Appointments Officer
The Attorney-General's Judicial Appointments Unit
SX10088
WELLINGTON

Email: judicialappointments@justice.govt.nz
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Facsimile: 04 473 3891

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