

*Judges Act*

some potentially capricious rule by the unlimited discretion of persons.

Our Canadian judiciary has served us well. We have been blessed with judges of integrity and dedication. Examples of corruption or even of indiscretion are few and far between. We have been particularly fortunate, however, because of the strength and dignity by which our judiciary has maintained its independence of the legislative and executive branches of government. We need only examine the experience of some other countries to realize the significance of maintaining a judiciary which can neither be bribed with riches nor intimidated by the offices of the state. It seems so often to be the case that the weakening of the judiciary is a large step on a short path to dictatorial forms of government.

The judiciary is of particular importance to us as legislators. It would do us little good conscientiously and strenuously to analyse and debate legislation being created for the benefit of our citizens if that legislation could be frustrated in its application. It is essential to our task that our judges be intelligent, industrious and experienced lawyers. They must not only be able to apply a law reasonably to achieve a result in a particular case, but they must also avoid losing sight of the significance of that result in similar and related situations in future.

The performance of judges is also of tremendous importance to the particular persons who appear before them. Judges hear cases, day after day, for years. Often these cases involve painstaking and boring details. Yet all judges must constantly bear in mind that for the individual litigant, his or her "day in court" will often be one of the most important days of his or her life. In particular cases, judges can act as catalysts to accelerate the machinery of justice so that litigants are not frustrated by delay. Judges can also, within limits, temper the strict letter of the law with compassion and common sense.

It is true that even with our increasingly crowded court lists today, only a very small proportion of our citizens will ever come before these 500 or so judges in our courtrooms. However, the performance of judges in particular cases has an impact far beyond the courtroom itself. A judicial decision will often result in thousands of lawyers advising tens of thousands of clients to order their affairs—sell their property, draw their wills, enter into agreements—in a particular way. The point is illustrated in a passage from an article written by the treasurer of the Law Society of Upper Canada, Mr. Stuart Thom, Q.C., and published in the December, 1974, issue of the *Law Society of Upper Canada Gazette*:

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The lawyer going about his mundane solicitor's daily round does not and cannot possibly see each phrase that he tosses off to his secretary or each clause that he scribbles out on the margin of a document after tiresome hours of negotiation in the context of a Supreme Court appeal. The lawyer must have some inner feeling, however, that what he has just said or done will meet the test of the judicial process, if it is ever exposed to it. In that sense, I say that everything a lawyer does is part of the judicial process in some manner.

The impact in this sense is very broad indeed. The ramifications of judicial decision-making can also be considered with reference to the nature of the issues which must be determined. There is an increasing number of

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complexity of cases generated through changes in our attitudes, economics and technology. Judicial decisions can profoundly affect society. One need only mention cases such as those affecting rights of our native population, matrimonial property, the rights of women, offshore rights and other constitutional questions involving the relationship between the Government of Canada and the provinces. In the resolution of these and other serious problems, the appointed judges must have the trust and confidence of the Canadian people to void the growth of the pressures of anarchy.

There is another important dimension of the influence of these judges beyond their courtrooms. This is related to their appellate and supervisory functions in relation to other courts and administrative tribunals. Many statutes contain provisions for appeals from provincially-appointed courts and from both federal and provincial administrative tribunals to courts consisting of these federally-appointed judges. Even where no appeal is expressly provided, there is a general supervisory jurisdiction which permits the quashing of the decisions of these bodies where they have acted without jurisdiction. This has been interpreted to include the denial of a fair hearing through bias or the non-compliance with the minimal procedures necessary to a fair hearing for the parties.

Thus, protections are available to the thousands who are directly affected by the myriad of federal and provincial administrative tribunals which daily determine the rights of our citizens. Once again, decisions in particular appeals and on particular applications will often affect the manner in which many of these diverse bodies will carry out their responsibilities. The existence of an able, conscientious and hard working judiciary is important for all of these reasons. It is also important in a general way if our citizens are to have confidence in our democratic institutions generally.

I view the appointment of judges to be one of the most important of my responsibilities as Minister of Justice. I believe that it is vital that our judicial positions be filled by the most qualified lawyers available for these important tasks. I have made special efforts to broaden my information base, as Minister of Justice, for locating and selecting the best qualified lawyers for judicial appointments. A special adviser was appointed almost two years ago to work in this area of gathering names of and information about prospective appointees. Broad consultations have occurred amongst representatives of bar associations and law societies, members of the Bench itself, prominent lawyers in government, legal aid organizations, lay persons and others.

I have not only sought information about the legal experience and ability of prospective appointees: in addition, I have been concerned about human qualities—qualities of sympathy, generosity, charity, an ability to listen, integrity and a willingness to work and desire to do a job well. Often, these qualities are demonstrated in a variety of ways: general reputation of a practitioner, public service through charitable or service organizations, service to the profession and political involvement at any level.

In my three years as Minister of Justice there have been in excess of 150 appointments under the Judges Act. This unusually high number is in part due to the expansion of a