



May 24, 2023

Via email: Justin.trudeau@parl.gc.ca

The Right Honourable Justin Trudeau, P.C., M.P.
Prime Minister of Canada
Office of the Prime Minister and Privy Council
80 Wellington Street
Ottawa, ON K1A 0A2

Dear Prime Minister,

Re: Canadian Bar Association concerns regarding Judicial Vacancies

We write on behalf of the Canadian Bar Association and its Judicial Issues Subcommittee (CBA Subcommittee) to reiterate our serious concerns about judicial vacancies amongst federally appointed courts in our country. The CBA wholeheartedly agrees with the concerns expressed by Chief Justice Wagner.

THE ISSUE

Some courts in Canada are operating with as much as 10 to 15 percent of their judicial positions vacant. The latest report of the Commissioner for Federal Judicial Affairs shows 88 unfilled vacancies affecting all provinces and one territory. The CBA has frequently stated that the shortage of judges seriously undermined public confidence in our justice system. As early as 2016, Chief Justice McLachlin expressed concerns that civil justice delays drive users with means to private dispute resolution, while adding further strain and indignity to those who have no option but to suffer unnecessarily prolonged proceedings.¹ The CBA president wrote to the Minister of Justice in December 2016, recommending urgent action to deal with judicial vacancies. He described the situation as “an acute access to justice problem” and stated “(w)e remain deeply concerned that current efforts are insufficient to address urgent needs across the country.”² He offered a variety of measures to address the critical need for judicial vacancies to be filled. Sadly, we have seen little progress in remedying this situation.

¹ Remarks to the Council of the Canadian Bar Association at the Canadian Legal Conference (SCC Ottawa, 2016): [online](#)

² Shortage of Judges (CBA Ottawa, 2016): [online](#)

The Chief Justice points out that criminal trials are at particular risk due to unfilled judicial positions. The problem goes much further. Family matters cannot be adjudicated with speed. Plaintiffs and defendants wait years to have their day in court in a civil case. Business disputes remain unresolved. Public interest issues, which may affect many Canadians, are not decided in a timely way. According to former Chief Justice Bauman from British Columbia: “The fallout from so many vacancies includes last-minute trial cancellations, consequent wasted time, energy and expense for litigants, long delays for court hearings and increased pressure on the short-staffed benches.”³

CBA RECOMMENDATIONS

We acknowledge and applaud that more than 600 judges have been appointed to federal office since 2015. However, this has not solved the gap in judicial complements. Not only are judicial positions left vacant, but the Judicial Advisory Committees (JAC) that screen and recommend candidates for office are not operating at full capacity. Six JACs are not filled at present. The JAC for Yukon expired more than a year ago (April 2022), while the JACs for Nova Scotia and P.E.I expired more than seven months ago (September 2022). On April 30, 2023, the JACs for the Greater Toronto Area and for British Columbia — which screen applicants for two of Canada’s biggest, busiest and backlogged superior trial courts — became defunct, as did the specialized JAC for the Tax Court of Canada.

There is no shortage of well qualified candidates for judicial office. This deep pool of talent should allow the gap in judicial vacancies to be remedied in a timely fashion.

The CBA remains available to discuss with you or the Minister of Justice some practical solutions, including changes to the appointment process and various pieces of legislation, which would allow the justice system to function more smoothly, and judicial appointments made more quickly, while maintaining the quality of our Bench.

We look forward to a meeting at your earliest convenience to discuss these practical solutions.

Sincerely,

(original letter signed by Julie Terrien for Jacqueline King)

Jacqueline King
Chair, Judicial Issues Subcommittee

cc. The Honourable David Lametti
Minister of Justice and Attorney General of Canada: mcu@justice.gc.ca

³ Top judges decry Ottawa’s appointment delays; application vetting defunct in B.C., Toronto, N.S. (Law 360 Canada, Toronto): [online](#).