

## APPENDIX 4

### OUTLINE OF OVERSEAS JUDICIAL COMPLAINT HANDLING AND APPOINTMENTS BODIES

#### *England and Wales*

1.2 England and Wales have had 3 major bodies established to deal with aspects of the judiciary including appointments and complaints. They are the Judicial Appointments Commission, the Office for Judicial Complaints and the Judicial Appointments and Conduct Ombudsman.

1.3 Interestingly, there also appears to be an established role for the judiciary to publicly comment on government proposals affecting the judiciary. These comments are accessible on the Judiciary of England and Wales' website *Judicial views and responses* page which notes that 'From time to time, judges will wish to respond to government proposals on issues which have a direct impact on the running of the courts'.<sup>1</sup>

#### *Judicial Appointments Commission*

1.4 The overall aim of the Commission is to select and recommend persons for judicial appointment on merit. With the Lord Chancellor and Lord Chief Justice, the Commission aims to increase the diversity of the judiciary in courts and tribunals at all levels, and to ensure the widest possible choice of candidates and fair and open processes for selection.<sup>2</sup>

1.5 The Commission is an independent body set up by the *Constitutional Reform Act 2005* to select judicial office holders. The Commission selects candidates for judicial office based on merit, through fair and open competition, from the widest range of eligible candidates drawn from a diverse range of backgrounds. The Commission asserts that it was set up in order to maintain and strengthen judicial independence by taking responsibility for selecting candidates for judicial office out of the hands of the Lord Chancellor and making the appointments process clearer and more accountable.<sup>3</sup>

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<sup>1</sup> [http://www.judiciary.gov.uk/publications\\_media/judicial\\_views\\_responses/index.htm](http://www.judiciary.gov.uk/publications_media/judicial_views_responses/index.htm).

<sup>2</sup> England and Wales Judicial Appointments Commission website accessed on 7 May 2009  
<http://www.judicialappointments.gov.uk/about/about.htm>.

<sup>3</sup> England and Wales Judicial Appointments Commission website accessed on 7 May 2009  
<http://www.judicialappointments.gov.uk/about/about.htm>.

### *Office for Judicial Complaints*

1.6 The Office for Judicial Complaints (Complaints Office) supports the Lord Chancellor and the Lord Chief Justice in their joint responsibility for the system of judicial complaints and discipline. It aims to ensure that all judicial disciplinary issues are dealt with consistently, fairly and efficiently.

1.7 The Complaints Office is an associated office of the Ministry of Justice (MoJ). Its status, governance and operational objectives are set out in a Memorandum of Understanding between the Department of Courts Administration, the Judicial Office for England and Wales and the Complaints Office.<sup>4</sup>

1.8 The Complaints Office will look into any complaint about the personal conduct of a judge, member of a small tribunal or coroner. Examples of personal misconduct would be the use of insulting, racist or sexist language.<sup>5</sup>

1.9 While the Complaints Office website claims that judges can be dismissed, the most senior judges – the Heads of Division, Law Lords, Lords Justices of Appeal and High Court Judges - can only be removed by The Queen after an address from both Houses of Parliament, and this has never happened.<sup>6</sup>

1.10 Other judicial office-holders can be removed by the Lord Chief Justice for incapacity or misbehaviour. This is very rare, and the case of a full-time serving judge needing to be removed, has happened just once, in 1983, when a Circuit Judge was removed from office after pleading guilty to several charges of smuggling.<sup>7</sup>

1.11 Fee-paid, or part-time, office-holders, who are usually appointed for at least five years, may not have their contracts renewed on the following grounds: misbehaviour; incapacity; persistent failure to comply with sitting requirements (without good reason); failure to comply with training requirements; sustained failure to observe the standards reasonably expected from a holder of such office; part of a reduction in numbers because of changes in operational requirements; and part of a structural change to enable recruitment of new appointees.<sup>8</sup>

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<sup>4</sup> England and Wales Office of Judicial Complaints website:  
<http://www.judicialcomplaints.gov.uk/about/about.htm> accessed 7 May 2009.

<sup>5</sup> England and Wales Office for Judicial Complaints website:  
[http://www.judicialcomplaints.gov.uk/complaints/complaints\\_what.htm](http://www.judicialcomplaints.gov.uk/complaints/complaints_what.htm) accessed 7 May 2009.

<sup>6</sup> Judiciary of England and Wales website:  
[http://www.judiciary.gov.uk/learning\\_resources/quiz\\_myth/quiz\\_myth.htm](http://www.judiciary.gov.uk/learning_resources/quiz_myth/quiz_myth.htm) accessed 7 May 2009.

<sup>7</sup> Judiciary of England and Wales website: [http://www.judiciary.gov.uk/faqs/faqs\\_conduct.htm](http://www.judiciary.gov.uk/faqs/faqs_conduct.htm) accessed 7 May 2009.

<sup>8</sup> Judiciary of England and Wales website:  
[http://www.judiciary.gov.uk/learning\\_resources/quiz\\_myth/quiz\\_myth.htm](http://www.judiciary.gov.uk/learning_resources/quiz_myth/quiz_myth.htm) accessed 7 May 2009.

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1.12 Advice to the public through the Complaints Office website outlines its complaint handling process as follows:<sup>9</sup>

- if your complaint is for us, we will consider the issues raised and the quality of the evidence provided. If satisfied that the complaint requires further investigation, we will then send the judge a copy of your complaint and ask for his or her comments. We may ask you or others who may have witnessed the event complained of for further evidence, and may also listen to the tape recording of the hearing and/or obtain information from other people who were present;
- in some cases it may be necessary to ask a senior judge to carry out an investigation into what has happened;
- at all stages we will keep you fully informed of progress;
- if the Lord Chancellor and the Lord Chief Justice uphold your complaint, they will consider what action, if any, is appropriate. The Lord Chancellor and the Lord Chief Justice have the power to agree to advise, warn or remove a judge for misconduct;
- the Lord Chancellor and Lord Chief Justice will not normally pay compensation for losses arising from actions by judges. They may consider making an ex gratia payment, but only in the most exceptional cases;
- we aim to deal with your complaint and provide you with a full response, including any disciplinary action, which may have been taken, within 3 months. However if a judicial investigation is needed the process may take several months longer; and
- in some cases where the Lord Chancellor and the Lord Chief Justice decide to take formal disciplinary action against a judicial office holder, the judicial office holder has a right to request that his or her case be referred to a 'review body'. Where a case has been referred to a review body, the Lord Chancellor and the Lord Chief Justice must accept any findings of fact made by the review body and cannot impose a sanction on the judicial office holder that is more severe than that recommended by the review body. Each review body consists of 4 members, 2 judicial office holders and 2 lay.

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<sup>9</sup> England and Wales Office for Judicial Complaints website:  
<http://www.judicialcomplaints.gov.uk/complaints/complaints.htm> accessed 7 May 2009.

*Judicial Appointments and Conduct Ombudsman*<sup>10</sup>

1.13 The Judicial Appointments and Conduct Ombudsman investigates the *handling* of complaints concerning the judicial appointments process and matters involving judicial discipline or conduct.

1.14 There are two distinct aspects to his work:

- To seek redress in the event of maladministration. 'Maladministration' includes (among other things) delay, rudeness, bias, faulty procedures, offering misleading advice, refusal to answer questions and unfair treatment; and
- Through recommendations and constructive feedback, to improve standards and practices in the authorities or departments concerned.

1.15 The Ombudsman assumed his responsibilities on 3 April 2006 under the Provisions of the *Constitutional Reform Act 2005* and is completely independent of Government and the judiciary.

1.16 The Ombudsman can:

- set aside a decision made by the Office for Judicial Complaints, Tribunal President or Magistrates' Advisory Committee and direct that they look at a complaint again;
- recommend that an investigation or determination should be reviewed by a Review Body;
- ask the Office for Judicial Complaints, Tribunal President or Magistrates' Advisory Committee to write to you and apologise for what went wrong;
- recommend that changes are made in the way the Office for Judicial Complaints, tribunal Presidents or Advisory Committees work in future to prevent the same things happening again; and/or
- suggest payment of compensation for loss which appears to the Ombudsman to have been suffered as a direct result of the poor handling of your complaint.

1.17 The Ombudsman cannot:

- reprimand a judge;
- re-open a case;

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<sup>10</sup> Material from this section was obtained from the England and Wales Judicial Appointments and Conduct Ombudsman website <http://www.judicialombudsman.gov.uk/index.htm> accessed on 7 May 2009.

- remove a judge from office; or
- enforce payment of compensation.<sup>11</sup>

## *Canada*

1.18 At the federal level in Canada there are two key judicial organisations: the Office of the Commissioner for Federal Judicial Affairs (which oversees judicial advisory committees) and the Canadian Judicial Council (which has a mandate to promote judicial efficiency, uniformity, and accountability and that includes a complaint handling function).

### *Office of the Commissioner for Federal Judicial Affairs*

1.19 Independent judicial advisory committees constitute the heart of the judicial appointments process in Canada. The committees are responsible for assessing the qualifications for appointment of the lawyers who apply. There is at least one committee in each province and territory. Each committee consists of eight members representing the bench, the bar, the law enforcement community and the general public, and 1 ex-officio non-voting member: either the Commissioner for Federal Judicial Affairs or the Executive Director, Judicial Appointments.<sup>12</sup>

1.20 The role of the Office is to safeguard the independence of the judiciary and put federally appointed judges at arm's length from the Department of Justice. Its mandate extends to promoting better administration of justice and providing support for the federal judiciary.<sup>13</sup>

1.21 The Supreme Court consists of the Chief Justice of Canada and eight Judges appointed by the Governor in Council from among superior court judges or from among barristers of at least ten years' standing at the Bar of a province or territory. A Judge holds office during good behaviour, until he or she retires or attains the age of 75 years, but is removable for incapacity or misconduct in office before that time by the Governor General on address of the Senate and House of Commons. Of the nine judges making up the Supreme Court, the *Supreme Court Act* requires that three be appointed from Quebec. Traditionally, the federal government appoints three Judges from Ontario, two from the West, and one from Atlantic Canada.<sup>14</sup>

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<sup>11</sup> England and Wales Judicial Appointments and Conduct Ombudsman, *Conduct booklet*, p. 9.

<sup>12</sup> Canadian Office of the Commissioner for Federal Judicial Affairs website: <http://www.fja.gc.ca/fja-cmf/ja-am/com/mem-eng.html> accessed 6 May 2009.

<sup>13</sup> Canadian Office of the Commissioner for Federal Judicial Affairs, various website information accessed via: <http://www.fja.gc.ca/fja-cmf/ja-am/com/mem-eng.html> on 6 May 2009.

<sup>14</sup> Supreme Court of Canada website accessed 6 May 2009: <http://www.scc-csc.gc.ca/faq/faq/index-eng.asp#f13> .

*Canadian Judicial Council*

1.22 Parliament created the Canadian Judicial Council in 1971. The objectives of the Council, as mandated by the Judges Act, are to promote efficiency, uniformity, and accountability, and to improve the quality of judicial service in all superior courts of Canada.<sup>15</sup> The Council has authority over the work of more than 1,070 federally appointed judges.

1.23 The Council's main purpose is to set policies and provide tools that help the judicial system remain efficient, uniform, and accountable. The Council's powers are set out in Part II of the Judges Act.

1.24 The Council asserts that Canadians 'need judges who are independent and able to give judgments in court without fear of retaliation or punishment.' To help achieve this goal, the Canadian Judicial Council was granted power under the *Judges Act* to investigate complaints made by members of the public and the Attorney General about the conduct (as opposed to the decisions) of federally appointed judges. After its investigation of a complaint, the Council can make recommendations, including removing a judge from office. If necessary, an Inquiry Committee may be appointed to hold a public hearing, after which the matter goes on for discussion by the full Council. After considering the report of an Inquiry Committee, the Council may recommend to Parliament (through the Minister of Justice) that the judge be removed from office. The Council's only power is to recommend to Parliament that a judge be removed from office. Where appropriate, the Council may express concerns about a judge's conduct where the matter is not serious enough to recommend that the judge be removed.<sup>16</sup>

1.25 According to the Council's website, since its inception in 1971, the Council has referred eight complaints to an Inquiry Committee for formal investigation. The Council asserts that judicial independence is central to its processes and it does not believe that its role undermines the objective of judicial independence.<sup>17</sup>

1.26 As part of its functions, the Council has issued a publication outlining *Ethical Principles for Judges*. It includes guidance under the headings judicial independence, integrity, diligence, equality and impartiality.<sup>18</sup>

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<sup>15</sup> Canadian Judicial Council website accessed on 6 May 2009: [www.cjc-ccm.gc.ca/english/about\\_en.asp?selMenu=about\\_mp\\_judgesact\\_en.asp](http://www.cjc-ccm.gc.ca/english/about_en.asp?selMenu=about_mp_judgesact_en.asp). See also [www.cjc-ccm.gc.ca/english/resource\\_en.asp?selMenu=resource\\_courtsystem\\_en.asp#ptc](http://www.cjc-ccm.gc.ca/english/resource_en.asp?selMenu=resource_courtsystem_en.asp#ptc).

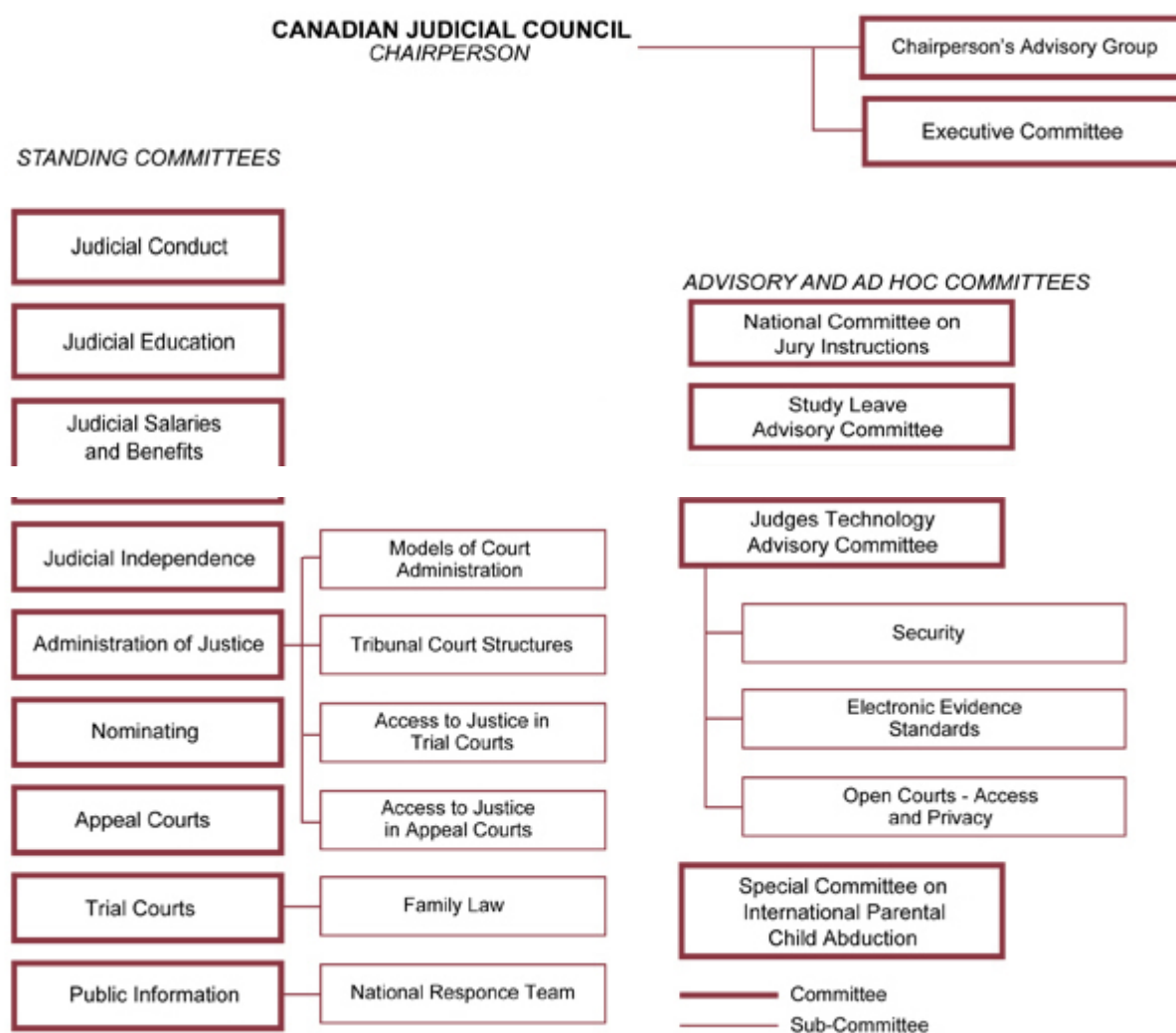
<sup>16</sup> Canadian Judicial Council website accessed on 6 May 2009: [http://www.cjc-ccm.gc.ca/english/about\\_en.asp?selMenu=about\\_mandate\\_en.asp](http://www.cjc-ccm.gc.ca/english/about_en.asp?selMenu=about_mandate_en.asp) and [http://www.cjc-ccm.gc.ca/english/conduct\\_en.asp?selMenu=conduct\\_complaint\\_en.asp#wkcc](http://www.cjc-ccm.gc.ca/english/conduct_en.asp?selMenu=conduct_complaint_en.asp#wkcc).

<sup>17</sup> Canadian Judicial Council website accessed on 6 May 2009: [http://www.cjc-ccm.gc.ca/english/conduct\\_en.asp?selMenu=conduct\\_inquiry\\_en.asp](http://www.cjc-ccm.gc.ca/english/conduct_en.asp?selMenu=conduct_inquiry_en.asp).

<sup>18</sup> Canadian Judicial Council, publications, 1998 accessible at: [http://www.cjc-ccm.gc.ca/cmslib/general/news\\_pub\\_judicialconduct\\_Principles\\_1998\\_en.pdf](http://www.cjc-ccm.gc.ca/cmslib/general/news_pub_judicialconduct_Principles_1998_en.pdf).

1.27 The Council undertakes its work through a committee system. Most committees conduct research and deliver tools for enhancing the quality, uniformity, and efficiency of the Canadian judicial system. They often work in consultation with experts and partners in the legal, private, and media sectors. The result of their research is presented to the Council at its two annual meetings for consideration and approval, and often takes the form of studies, guidelines, model policy, and other key documents that are distributed to the wider justice community and, in most cases, to the general public.<sup>19</sup>

1.28 The structure of the Council's committees are set out in a chart:<sup>20</sup>



<sup>19</sup> Canadian Judicial Council website accessed on 6 May 2009: [http://www.cjc-ccm.gc.ca/english/about\\_en.asp?selMenu=about\\_committees\\_en.asp](http://www.cjc-ccm.gc.ca/english/about_en.asp?selMenu=about_committees_en.asp).

<sup>20</sup> Canadian Judicial Council website accessed on 6 May 2009: [http://www.cjc-ccm.gc.ca/english/about\\_en.asp?selMenu=about\\_committees\\_en.asp](http://www.cjc-ccm.gc.ca/english/about_en.asp?selMenu=about_committees_en.asp).

### *United States of America*

1.29 Supreme Court justices, court of appeals judges, and district court judges are nominated by the President and confirmed by the United States Senate, as stated in the Constitution. The names of potential nominees often are recommended by senators or sometimes members of the House who are of the President's political party. The Senate Judiciary Committee typically conducts confirmation hearings for each nominee. Article III of the Constitution states that these judicial officers are appointed for a life term. The federal Judiciary, the Judicial Conference of the United States, and the Administrative Office of the U.S. Courts play no role in the nomination and confirmation process.<sup>21</sup>

1.30 The Constitution sets forth no specific requirements for qualifications for becoming a judge. However, members of Congress, who typically recommend potential nominees, and the Department of Justice, which reviews nominees' qualifications, have developed their own informal criteria.

1.31 The complaint process (created by Congress) is not intended to address complaints related to the merits of a case or a court's decision. Any person alleging that a judge of the United States has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts, or that such officer cannot discharge all the duties of the office because of physical or mental disability, may file a complaint with the clerk of the court of appeals for that circuit or applicable national court. The statute governing this complaint mechanism is set out at Title 28, U.S. Code, Section 351(a).

### *New Zealand*<sup>22</sup>

1.32 New Zealand has a Judicial Conduct Commissioner, but does not have a judicial appointments body. Appointments to most of the judicial positions are made by the Governor-General on the recommendation of the Attorney-General. Present exceptions are Environment Court Judges and Community Magistrates. Until amendments to legislation are made, these appointments will continue to be made on the recommendation of the Minister of Justice. In making appointments to the Environment Court, the Minister of Justice must consult with the Minister for the Environment and the Minister of Māori Affairs. Appointments to the Māori Land Court and the Māori Appellate Court are made by the Governor-General on the recommendation of the Minister of Māori Affairs.

1.33 In the case of appointments to the Court of Appeal and the High Court (Judges and Masters), the administrative process is carried out under the direction of

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<sup>21</sup> The material for this section was obtained from the United States of America Courts website: <http://www.uscourts.gov/faq.html> accessed 7 May 2009.

<sup>22</sup> The material for this section was obtained from the New Zealand Ministry of Justice website accessed 7 May 2009: <http://www.justice.govt.nz/pubs/other/pamphlets/2003/judicial-appointments/high-court-judge.html>.



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.

1.34 With the objective of ensuring greater transparency in the process, advertising for expressions of interest in judicial positions is carried out at all levels except the Court of Appeal.

#### *The appointment process for New Zealand High Court Judges*

1.35 Section 6 of the *Judicature Act 1908* specifies that no person shall be appointed a High Court Judge unless he or she has held a practising certificate as a barrister or solicitor for at least seven years.

1.36 The New Zealand Ministry of Justice states that 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 criteria:<sup>23</sup>

- *Legal Ability*: Legal ability includes a sound knowledge of the law and experience of its application. Requisite applied experience is often derived from practice of law before the courts which is experience of direct relevance to being a Judge. However, application of legal knowledge in other branches of legal practice, such as in an academic environment, public service or as a member of a legal tribunal may all qualify. At appellate level, legal ability includes the capacity to discern general principles of law and in doing so to weigh competing policies and values. More important than where legal knowledge and experience in application is derived from, is the overall excellence of a person as a lawyer demonstrated in a relevant legal occupation.
- *Qualities of character*: Personal qualities of character include personal honesty and integrity, open mindedness and impartiality, courtesy, patience and social sensitivity, good judgement and common sense, the ability to work hard, to listen and concentrate, collegiality, breadth of vision, independence, and acceptance of public scrutiny.
- *Personal technical skills*: There are certain personal skills that are important, including skills of effective oral communication with lay people as well as lawyers. The ability to absorb and analyse complex and competing factual and legal material is necessary. Mental agility, administrative and organisational skills are valuable as is the capacity to be forceful when necessary and to maintain charge and control of a court.

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<sup>23</sup> The material from this section was drawn from publications discussing the appointment process for the Office of High Court Judges, Office of Associate Judges of the High Court and Office of District Court Judges, all accessible from the website accessed on 7 May 2009:  
<http://www.justice.govt.nz/publications/justice-system/judicial-appointments>.

- *Reflection of society*: This is the quality of being a person who is aware of, and sensitive to, the diversity of modern New Zealand society. It is very important that the judiciary comprise those with experience of the community of which the court is part and who clearly demonstrate their social awareness.

1.37 The steps in the appointment process for New Zealand High Court Judges are as follows:<sup>24</sup>

1. Expressions of interest are called for by public advertisement. While each vacancy is not advertised, general advertisements for High Court Judges appear from time to time.
2. Prospective candidates respond to the request for expressions of interest. 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 Expression of Interest form for completion.
3. The names of those who meet the statutory criterion for appointment are held on a confidential register maintained by the Attorney-General's Appointments Unit (the Appointments Unit). Persons expressing interest are advised when their names have been registered.
4. As and when required, the Appointments Unit uses the register to identify all those who have indicated an interest in appointment to the High Court. The Solicitor-General reviews the names and consults the Attorney-General, the President of the Court of Appeal, the Minister of Justice, the Minister of Women's Affairs, the Minister of Māori Affairs, the Chief Justice and the Secretary for Justice. The purpose of this consultation is to ascertain whether additional names should be considered and added to the list.
5. The Solicitor-General seeks comments about those on the list from a range of key people and organisations. The consultation process is described below.
6. The Solicitor-General asks the Chief Justice and the President of the Court of Appeal to give all prospective candidates a rating. The outcome of this process is an indication of those considered suitable for immediate appointment, those possibly suitable in two to three years, and those in neither category (the longlist).
7. The Solicitor-General presents the longlist to the Attorney-General. The Solicitor-General's advice includes the results of his or her consultation process.
8. The Attorney-General, after such consultation as he or she believes necessary, decides who should be on the shortlist for appointment and who heads it. The shortlist may contain 12 to 15 names. The Attorney-General may decide to seek an interview

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<sup>24</sup> The material from this section was drawn from publications discussing the appointment process for the Office of High Court Judges, Office of Associate Judges of the High Court and Office of District Court Judges, all accessible from the website accessed on 7 May 2009: <http://www.justice.govt.nz/publications/justice-system/judicial-appointments>.

with, or arrange for an interview by the Solicitor-General of, a person interested in appointment to the High Court.

9. The Solicitor-General undertakes checks on the personal reputation of those on the shortlist. The Solicitor-General also asks prospective candidates to complete a questionnaire intended to confirm that there are no matters in their background of a sort that might cause difficulties after appointment. The response to the questionnaire is signed, along with an undertaking that, if appointed, the prospective candidate will not resume practice before the courts on retirement or earlier termination of his or her appointment.

10. Once the Attorney-General is satisfied as to the suitability of the preferred candidate, and his or her willingness to accept the appointment the Attorney-General mentions the appointment in Cabinet. Finally the Attorney tenders formal advice to the Governor-General to make the appointment.

1.38 A range of groups and people are contacted at various stages in the appointment process. 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.

1.39 At the nomination stage, the list of parties who may be contacted includes the Chief Justice, the President of the Court of Appeal, the Secretary for Justice, the President of the Law Commission, the New Zealand Bar Association, 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 Women's Consultative Group of the New Zealand Law Society, the District Law Societies, the New Zealand Bar Association, the Criminal Bar Association, the Māori Law Society and women lawyers' associations. Nominations may also be sought from the Minister of Justice, the Chair of the Justice and Law Reform Select Committee and the Opposition Spokespersons for the Attorney-General portfolio.

1.40 In seeking comment on prospective candidates, the Solicitor-General will consult the Chief Justice, the President of the Court of Appeal, the New Zealand Law Society, the New Zealand Bar Association and others as appropriate.

#### *Office of the Judicial Conduct Commissioner*<sup>25</sup>

1.41 The Office of the Judicial Conduct Commissioner was established in August 2005 to deal with complaints about the conduct of Judges. An independent Judicial Commissioner receives complaints, conducts preliminary investigations and decides what further actions, if any, are to be taken. The Judicial Conduct Commissioner:

- receives written complaints;

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<sup>25</sup> Office of the Judicial Conduct Commissioner, New Zealand, website accessed 7 May 2009: [http://www.jcc.govt.nz/template.asp?folder=COMPLAINT\\_PROCESS](http://www.jcc.govt.nz/template.asp?folder=COMPLAINT_PROCESS).

- conducts a preliminary examination of the complaint; and
- takes one of the following steps:
  - dismisses the complaint;
  - refers the complaint to the Head of Bench; or
  - recommends that the Attorney-General appoint a Judicial Conduct Panel to enquire into the matter.

1.42 The Commissioner may recommend to the Attorney-General that a Judicial Conduct Panel be appointed to inquire further into the complaint. The Commissioner will recommend a Panel be appointed if the conduct complained of may warrant consideration of removal of the Judge. The Panel may recommend that the Judge be removed from office.

1.43 The Commissioner has to write to the complainant and the Judge with reasons for the recommendation that a Panel be convened.

1.44 The Attorney-General then consults the Chief Justice about choosing the three members of the Panel, which must include at least one Judge or retired Judge, and one lay person. The Panel may also include a senior barrister or solicitor.

1.45 The job of the Panel is to inquire further into the conduct of the Judge. The Panel has the same powers as a Commission of Inquiry and is required to act according to the principles of natural justice.

1.46 The Panel will typically hold hearings in public, although part or all of a hearing may be held in private to protect the privacy of the complainant, or Judge, or if it is in the public interest to do so. The Panel also has the power to restrict publication of any documents that are part of the hearing, or any information about the hearing.

1.47 The Attorney-General will appoint a special counsel to present the case against the Judge. The Judge being complained about may appear at the hearing and be represented by a lawyer. The Panel may also give permission for other people to appear at the hearing and be represented by a lawyer.

1.48 Once the hearing is over, the Panel reports to the Attorney-General on the Panel's:

- findings of fact;
- opinion as to whether conduct justifies consideration of removal; and
- reasons for its conclusion.

1.49 Should the Panel recommend removal of the Judge, the Attorney-General must decide whether to agree or disagree with the recommendation. If the Attorney-General agrees that the Judge should be removed, then one of two processes occurs, depending on the type of Judge being complained about:

- For Judges of the Supreme Court, Court of Appeal, High Court, and Employment Court, the Attorney-General must address Parliament to propose that it recommend to the Governor-General that the Judge is removed. If Parliament makes that recommendation the Governor-General will then remove the Judge from office.
- For Associate Judges and all other Judges, the Attorney-General advises the Governor-General who can then formally remove the Judge from office.<sup>26</sup>

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<sup>26</sup> Office of the Judicial Complaints Commission, New Zealand, website accessed 7 May 2009: [http://www.jcc.govt.nz/template.asp?folder=RECOMMENDING\\_A\\_PANEL&lev1=4&lev2=1&no=4](http://www.jcc.govt.nz/template.asp?folder=RECOMMENDING_A_PANEL&lev1=4&lev2=1&no=4).

