

UNBLJ FORUM:

THE JUDICIAL APPOINTMENTS PROCESS

EDITORS' PREFACE

Each year, the *University of New Brunswick Law Journal* includes a Forum section that presents diverse perspectives on a subject currently of interest to the Canadian legal community. This issue's Forum addresses Canada's judicial appointments process.

Trade publications routinely turn to the question of judicial appointments, and the matter is one of few legal issues that extend beyond the legal community and into the popular discourse. For example, last spring a *Globe and Mail* poll suggested that a "strong majority" of Canadians support the direct election of judges.¹ Academics, the bar, and perhaps the bench as well may be less amenable to the notion of elected judges, but there remains substantial disagreement on how judges should be appointed and whether Canada's judicial appointment system functions as it should.

In light of the Harper government's recent changes to the appointment process, we thought it was time to solicit the opinions of eminent Canadian scholars on the judicial appointments process. In March, we hosted a symposium at the U.N.B. Faculty of Law where Justice Rothstein, Lorne Sossin, Ian Greene, Ben Alarie, Rory Leishman, Neil McKelvey, and Carissima Mathen gathered to discuss the issues. The papers delivered at the symposium, along with additional contributions from Irwin Cotler, Rainer Knopff, F.C. DeCoste, and Michael Plaxton, now comprise our Forum.

The Forum begins with a Foreword from Neil McKelvey, offering his reflections on the history of the judicial appointments process since the delivery of his influential 1985 *McKelvey Report*. Lorne Sossin argues that the judicial appointments process must evolve to reflect our democratic aspirations. Carissima Mathen's contribution encourages thoughtful dialogue regarding the use of hearings in the judicial appointments process. Benjamin Alarie and Andrew Green provide an innovative empirical reading of the judicial appointments process. Michael Plaxton finds the notion of complete judicial neutrality suspect and calls for a frank use of the appointments process to inquire into the personal politics of nominees' judicial decision-making. Ian Greene reminds us that our judicial selection process must be consonant with our democratic ideals and, to that end, endorses a federal judicial selection process modelled after the Judicial Appointments Advisory Committee in Ontario. Rory Leishman and Rainer Knopff both provide a solid endorsement of the current appointments process, while F.C. DeCoste comments on the constitutional implications of the judicial appointments process by providing a critical analysis of the legal community's reaction to the recently amended process. Finally, our Forum closes with a contribution from Irwin Cotler, Minister of Justice at the time of Justice Rothstein's hearing, outlining the history of the amended appointments process.

¹ Kirk Makin, "Two-thirds back electing judges" *The Globe and Mail* (9 April 2007) A1; see also Lorne Sossin, "Merely politicians in robes" *The Globe and Mail* (11 April 2007) A17.

We hope that this Forum will be a valuable contribution to this topical debate and stimulate further discussion.

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