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Client Memorandum

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From: Pauline Downing, Law Librarian
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Judicial appointment, termination and retirement age in like countries

You asked about the judicial appointments, termination processes and compulsory retirement ages of judges in like countries.

United Kingdom

Appointments

According to the Judicial Appointments Commission¹ website:

In 2003 the government announced its intention to change the system for making appointments to judicial offices in England and Wales. The reform was a central plank of the drive to officially enshrine judicial independence in law and to enhance accountability, public confidence and effectiveness.

Lord Falconer, then Secretary of State for Constitutional Affairs, asserted that it was no longer acceptable for judicial appointments to be entirely in the hands of a Government Minister.

Accordingly he announced the Government's intention to establish an independent Judicial Appointments Commission (JAC) to recommend candidates for judicial appointments on a more transparent basis.

1. <http://www.judicialappointments.gov.uk/about/history.htm> accessed 8 April 2009.

The [Constitutional Reform Act 2005](#) (c.5) (UK) sets out the selection processes for judicial appointments (see section 25) such as the number of judges that can be appointed to the Supreme Court and what type of person can be appointed as a judge to the Supreme Court.

It also:

Makes provision for a Judicial Appointments Commission to be responsible for recruiting and selecting judges for the Courts of England and Wales and members of certain tribunals, and makes special arrangements for the appointment of the Lord Chief Justice and other Heads of Division and of the Lords Justices of Appeal. It provides for the Commission to report to the Lord Chancellor on who has been selected, and for the Lord Chancellor to make the appointment or the recommendation for appointment to The Queen. It also makes provision for a Judicial Appointments and Conduct Ombudsman, and for judicial discipline.²

Tenure

According to s.33 of the [Constitution Reform Act](#):

A judge of the Supreme Court holds that office during good behaviour, but may be removed from it on the address of both Houses of Parliament.

Retirement Age

Section 26(1) of the [Judges Pensions and Retirement Act 1993](#) (UK) c.8 states that, subject to certain provisions, the retiring age is 70.

Canada

Appointment

According to the [Supreme Court Act](#) (Canada) (R.S., 1985, c.S-26):

s.4(2) The judges shall be appointed by the Governor in Council by letters patent under the Great Seal.

s. 5. Any person may be appointed a judge who is or has been a judge of a superior court of a province or a barrister or advocate of at least ten years standing at the bar of a province

s. 6. At least three of the judges shall be appointed from among the judges of the Court of Appeal or of the Superior Court of the Province of Quebec or from among the advocates of that Province.

Tenure

According to the [Supreme Court Act](#) (Canada) (R.S., 1985, c.S-26):

s.9. (1) Subject to subsection (2), the judges hold office during good behaviour, but are removable by the Governor General on address of the Senate and House of Commons

2. http://www.opsi.gov.uk/acts/acts2005/en/ukpgaen_20050004_en_1.htm accessed 9 April 2009.

Removal from Office

The [Canadian Judicial Council's](#) website states that:

A judge can be removed from office only if an independent investigation shows that they have not met the high standard of personal conduct required of judges, both in court and in public, and that the Canadian Judicial Council recommends to Parliament (through the Minister of Justice) that the judge be removed from office³.

According to the [Supreme Court of Canada](#) website the grounds for removal are incapacity or misconduct in office.

Retirement Age

According to the [Supreme Court Act](#) (R.S., 1985, c.S-26):

s.9(2) A judge shall cease to hold office on attaining the age of seventy-five years

New Zealand

Appointment

According to the official website of the [Courts of New Zealand](#) :

Judicial appointments are made by the Governor-General on the recommendation of the Attorney-General.

For appointments to the Supreme Court, Court of Appeal and High Court, the Governor-General is advised by the Attorney-General who, by convention, receives advice from the Chief Justice and the Solicitor-General. For appointments to district courts, the Governor-General is advised by the Attorney-General who receives advice from the Chief District Court Judge and the Secretary for Justice.

Although judicial appointments are made by the Executive, it is a strong constitutional convention in New Zealand that, in deciding who is to be appointed, the Attorney-General acts independently of party political considerations. Judges are appointed according to their qualifications, personal qualities, and relevant experience.

Successive Attorneys-General have announced new systems designed to widen the search for potential candidates and increase the opportunity for input. Within the past 10 years the systems adopted by Attorneys-General have resulted in a more diversified judiciary. Judges have been appointed whose career paths have not been those of the conventional court advocate.

The convention is that the Attorney-General mentions appointments at Cabinet after they have been determined. The appointments are not discussed or approved by Cabinet. The appointment process followed by the Attorney-General is not prescribed by any statute or regulation. From time to time it has been suggested that a more formal method for appointment of judges should be adopted but that course has not been followed. There is no suggestion that the present procedure has not served the country well.

All superior court judges (Supreme Court, Court of Appeal and High Court) are High Court judges. Section 6 of the [Judicature Act 1908](#) provides that no person shall be appointed a judge unless he or she has had a practising certificate as a barrister or solicitor for at least seven years. This is the bare minimum for appointment as a High Court judge. Judges also require much more than just experience in practice. They must be of good character, have a sound knowledge of the law and of its practice, and have a real sense of what justice means and requires in present-day New Zealand. They must have the discipline, capacity and insight to act impartially, independently and fairly.

3. http://cjc-ccm.gc.ca/english/resource_en.asp?selMenu=resource_judges_en.asp accessed 8 April 2009.

Removal from Office

The [*Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004*](#) (NZ) provides a way for people to complain about the conduct of a Judge and to have those complaints assessed. 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
- Conducts a preliminary examination of the complaint
- Takes one of the following steps:
 - Dismisses the complaint (section 16);
 - Refers the complaint to the Head of Bench (section 17); or
 - Recommends that the Attorney-General appoint a Judicial Conduct Panel to enquire into the matter (section 18).

The [*Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004*](#) act also allows for the removal from office of a judge:

s.33. Attorney-General has discretion to initiate removal of Judge on receipt of report

- (1) If a Judicial Conduct Panel concludes that consideration of the removal of a Judge is justified, the Attorney-General must determine, at his or her absolute discretion, whether to take steps to initiate the removal of that Judge from office.
- (2) A Judge must not be removed from office unless a Judicial Conduct Panel has reported to the Attorney-General that it is of the opinion that consideration of the removal of the Judge is justified.

However, s.34 provides for the direct action on the part of the Attorney-General if the judge is convicted of a serious offence:

s.34. Attorney-General's power to take steps independently of this Act if Judge convicted of serious offence

- (1) This section applies if a Judge is convicted of a criminal offence punishable by imprisonment for 2 or more years.
- (2) If this section applies,—
 - (a) the Attorney-General may, but is not required to, refer the matter to the Commissioner under section 12(2);
 - (b) the Attorney-General may take steps independently of this Act to initiate the removal of the Judge from office.
- (3) If this section applies and the Attorney-General takes steps independently of this Act to initiate the removal of the Judge from office, the provisions of sections 7 to 33 cease to apply in relation to the matter.
- (4) The Commissioner and a Judicial Conduct Panel have jurisdiction under this Act in relation to a matter to which this section applies only if the Attorney-General refers the matter to the Commissioner under section 12(2).

For Judges of the Supreme Court, High Court and Court of Appeal (and Employment Court) [Schedule 1](#) of the act indicates that there has to be a 'motion in Parliament for address to the Attorney-General to seek removal' before the Attorney-General can remove a Judge from office.

Retirement Age

According to s.13 of the retiring age is 70 years.

I hope this information has been helpful and please do not hesitate to contact me for further assistance if the above does not meet your needs or you require clarification.