



The Advocates' Society La Société des plaideurs

December 12, 2022

VIA EMAIL

The Honourable David Lametti, P.C., M.P.
Minister of Justice and Attorney General of Canada
House of Commons
Ottawa, Ontario K1A 0A6

Dear Minister:

RE: Judicial Vacancies and Access to Justice in Canada

Established in 1963, The Advocates' Society is a not-for-profit organization representing approximately 5,500 diverse lawyers and students across the country—unified in their calling as advocates. As the leading national association of litigation counsel in Canada, The Advocates' Society and its members are dedicated to promoting a fair and accessible system of justice, excellence in advocacy, and a strong, independent, and courageous bar. A core part of our mission is to provide policymakers with the views of legal advocates on matters that affect access to justice, the administration of justice, the independence of the bar and the judiciary, the practice of law by advocates, and equity, diversity, inclusion, and reconciliation with Indigenous peoples in the justice system and legal profession.

As courtroom advocates, The Advocates' Society's members have a particular interest in the effective and timely judicial resolution of legal disputes, to ensure matters are resolved justly and to maintain public confidence in the administration of justice. Having a sufficient number of judges available to adjudicate cases in reasonable timeframes is essential to these ends.

Delays in scheduling and hearing matters before the courts have been an issue for many years, with recent delays having reached critical proportions in many jurisdictions. While a number of factors contribute to these delays, they are most certainly caused in part by judicial vacancies. As recently as September 2022, there were 91 vacancies on superior courts across Canada, which represented an approximately 10% vacancy rate. These vacancies severely impair the ability of our courts to function properly and dispense justice to Canadians without undue delay.

The failure to fill judicial vacancies on superior courts and courts of appeal in a timely manner has been a recurring issue of serious concern to The Advocates' Society. We previously raised this issue with the federal government in 2018, specifically in connection with the high rate of judicial vacancies in Alberta.

The Advocates' Society believes that access to justice would be considerably improved by filling the judicial vacancies that currently exist in the superior courts in Canada.¹ We recognize and appreciate the number of judicial appointments your Government has made in recent weeks and months, including

¹ Office of the Commissioner for Federal Judicial Affairs Canada, "Number of Federally Appointed Judges as of December 1, 2022", online: <<https://www.fja.gc.ca/appointments-nominations/judges-juges-eng.aspx>>.

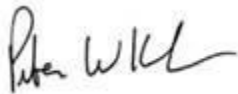
appointments to fill new judicial positions authorized in your Government's 2021 and 2022 budgets. That said, The Advocates' Society strongly recommends filling the current vacancies on an urgent basis.

In addition, The Advocates' Society recommends that the Government establish a policy mandating that judicial vacancies be consistently filled within a reasonably brief period of time after they arise. To that end, we recommend that the Government plan in advance for upcoming mandatory retirements to be ready to appoint a replacement when the vacancy takes effect. We further recommend that the Government take immediate steps to be ready to fill upcoming vacancies upon being notified of supernumerary elections or early retirements, rather than waiting for the vacancy to occur. Greater coordination efforts between your office, the Office of the Commissioner for Federal Judicial Affairs, and the Judicial Advisory Committees should aim to factor judges' retirements, resignations, and supernumerary elections into the appointments process at an earlier stage.

We encourage the Government to make a meaningful commitment to making timely judicial appointments as an important aspect of the Government's role in ensuring the healthy functioning of the Canadian justice system.

The Advocates' Society strongly urges the Government to prioritize access to justice and restore public confidence in the justice system by filling the current vacancies in Canada's superior courts, and making judicial appointments on a prompt and timely basis in the future. We thank you for your attention to this important issue and would be pleased to discuss this with you or your officials at your convenience.

Yours sincerely,



Peter W. Kryworuk
President

CC: Marc A. Giroux, Commissioner for Federal Judicial Affairs
François Giroux, Judicial Affairs Advisor, Office of the Minister of Justice and Attorney General of
Canada
Vicki White, Chief Executive Officer, The Advocates' Society

The Advocates Society's Task Force on Judicial Vacancies

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