Justice Minister announces controversial reforms for appointing federal judges

On November 8th, 2006, Justice Minister Vic Toews announced plans to give police officers a role in choosing Canada's judges.

Since 1988, a seven member panel in each province called a Judicial Advisory Committee, interviews all potential candidates and forwards recommendations to the Justice Minister; the candidates are then reviewed and appointed by the Prime Minister and the federal government. The current panels are comprised of seven members: a judge who acts as a chair, two lawyers, a member representing the provincial government, and three members representing the federal Justice Minister.

Toews' proposal calls for the inclusion of a police officer as the eighth member on the panel, making the judicial representative a non-voting member. In addition, the procedure for recommendations will be simplified to a pass/fail rating of candidates. Toews explains these reforms as necessary to reduce inconsistencies between provinces and encourage efficiency and accountability within the judicial appointment system. The changes have also been touted as a mechanism to balance out the highly criticized tradition of patronage appointments in Canada

On the contrary, critics slam Toews' plan as an attempt to politicize the judiciary to advance the Conservative agenda. With four members representing the federal government's interests, this "stacking of the deck" is seen as a critical threat to judicial independence in Canada. Likewise, critics argue that police officers are a special interest group, jeopardizing the objectivity and impartiality of the Committee.

Consequently, some experts warn that Toews' proposal is not constitutionally sound. Entrenched in the Preamble to Canada's Constitution is the unwritten principle of judicial independence. This was validated by the Supreme Court of Canada in 1997 by the Provincial Judges Reference, which determined judges at all levels must have impartiality and independence to carry out their proper functions in the legal system. Similarly, section 11(d) of the Canadian Charter of Rights and Freedoms guarantees a public hearing by an independent and impartial tribunal. As such, it is possible that Toew's proposal may be struck down as violating judicial independence if challenged in the courts.

Sources

- Mark Quinlan, Press Secretary, "Minister Toews pleased to announce changes to Judicial Advisory Committees" Office of the Minister of Justice, Ottawa (10 November 2006)

- Janice Tibbetts, “Toews blasted for plan to give police a say in selecting judges” CanWest News Service (10 November 2006)
- Jim Brown, “Toews under fire for plan to let police play role in vetting judges” Yahoo News Canada (18 November 2006)

Further Reading

- Judicial Independence