Chapter Eleven

Judicial Appointments: The Case for Reform

Hon Bruce Debelle, QC

Although the role of a judge is to be an independent arbiter, not only between citizen and citizen, but also between citizen and government, curiously it is the government that appoints judges. For a long time, there has been little questioning of that process although individual appointments have been subjected to criticism. More recently, the topic has been more frequently agitated. This paper proposes an alternative means of appointment designed to secure appointments on merit.

The current process

The practice by which judges and magistrates are appointed is, in all essential respects, the same throughout the Commonwealth. Appointments made to Federal Courts, that is to say, to the High Court of Australia, Federal Court of Australia, Family Court of Australia and the appointment of federal magistrates are usually made by the Attorney-General recommending to Cabinet a name or series of names of potential appointees. The appointment is made by the Governor-General in Council. A similar practice is adopted for the appointment of judges and magistrates to the courts of the States and Territories. The recommendation of the Attorney-General and the deliberations of Cabinet, like all deliberations of Cabinet, are secret.

In some jurisdictions, the convention is that the Attorney-General in each jurisdiction will consult a number of persons or bodies before making a recommendation to Cabinet. The persons consulted usually include the Chief Justice of that State or Territory, the head of the court to which the appointment is to be made, the President of the Law Society or Law Institute in that State or Territory, and the President of the Bar Association in that State or Territory. However, there is no statutory requirement that the process of consultation should occur. Others might be consulted but, because the process is secret, that cannot be known.

Need for change

The importance of maintaining public confidence in the courts and in the judiciary cannot be questioned. The maintenance of the rule of law depends to a large extent on maintaining that public confidence. It is desirable to ensure that appointments to courts are made from those who have the skills and qualities necessary to discharge the difficult and important task of determining disputes between citizen and citizen and citizen and government. In that way, public confidence in the judiciary can be maintained.

Principle dictates that a protocol should be established that prescribes the procedures to be adopted for the appointment of judges and magistrates.

That principle derives from the separation of powers and, in particular, the constitutional principle that judicial officers are independent of both Parliament and the Executive Government. That is a hard won and fundamental principle of our democratic system.[2] It is integral to maintaining the rule of law. An independent judiciary is a bulwark protecting citizens from an over-weening government. Governments and Ministers and government departments are constantly involved in litigation. In order that justice is not only done but also seen to be done, it is desirable that the appointment of

a judicial officer is not coloured by a perception of political patronage. A statutory protocol will assist governments to avoid unfair criticism based on accusations of cronyism or improper political patronage.

At a more practical level, it is unlikely that an Attorney-General, busy in the hurly-burly of political life, will have a detailed knowledge of all the most suitable persons for appointment. The Attorney will be likely, therefore, to consult with others, but that consultation may not always include those best able to advise. There does not seem to be any settled practice of consultation and enquiry. While the Attorney-General should be free to make use of whatever sources of information are available, there is much to be said for the view that the Attorney should be obliged to consult several obvious sources.[3]

Proposals have been advanced by several Chief Justices of the High Court and by other judges at senior levels for an improved method of appointment. In 1977, Sir Garfield Barwick, then Chief Justice of the High Court of Australia, recommended a form of judicial appointments commission, a proposal that has received some support.[4]

The present process can lead to controversy, in some instances controversy without foundation. While it must be acknowledged that most appointments have been of legal practitioners fit for judicial office, it cannot be denied that some appointments have been made of persons whose character and intellectual or legal capacity have been doubted, and whose appointments have been identified as instances of political patronage.[5] Not all appointments in recent times have been made exclusively on merit or from the field of best available candidates.[6] There is another aspect to the same issue. On occasions, outstanding lawyers, well suited by demonstrated ability and achievement to hold judicial office, and willing to do so, have been passed over in favour of less qualified persons.

The process is, therefore, prone to controversy. It is likely to remain controversial because it is not possible to ascertain by what process an appointment has been made. This unnecessary controversy has a real capacity to undermine public confidence in the judiciary. It is desirable, therefore, that a statutory protocol be put in place for appointment on merit that will assure the community that the candidates for appointment are persons who have the qualities and skills to discharge the duties required of the office. The protocol will result in an improvement in the quality of those appointed. It will avoid suggestions of political patronage or criticism that the appointment has been made for reasons other than merit.

In this way, the community will have greater confidence in the system of appointment, thereby instilling additional confidence in the courts.

The job description

Persons appointed as judges and magistrates should, so far as lies within human control, be persons who have demonstrated merit to discharge the duties of a judge or magistrate. The goal is to ensure that the appointments are made from the best field of candidates suitable for the court to which the appointment is to be made. The community deserves no less.

An understanding of the work performed by judges and magistrates and the skills and qualities required by them will inform discussion as to an alternative method of appointment.

Broadly speaking, the work performed by judicial officers can be divided into trial work and appellate work.

Trial work involves criminal or civil trials. Judges in Supreme Courts and in District or County Courts conduct both criminal and civil trials. Broadly speaking, the trial work in the Supreme Court is of greater substance and complexity than that in District or County Courts. Judges in the Federal Court of Australia and in the Family Court of Australia conduct civil trials. Magistrates also conduct both criminal and civil trials. As a general rule, magistrates hear cases of lesser substance and complexity than in the other courts that have been mentioned, but the importance of their contribution must not be underestimated.

An important aspect of the work of judicial officers conducting trials at all levels is deciding difficult questions of procedure and of evidence and of law. Often questions of evidence and procedure have to be determined promptly in the course of the trial but without interrupting the continuity of the trial. That task requires not only a depth of legal knowledge, but also trial experience that assists in determining if the point has substance and, if so, the making of an appropriate and prompt ruling. The skills and abilities to make prompt and correct rulings is especially important in jury trials and, in particular, jury trials of criminal cases. Generally speaking, the differing nature of the work at the different levels in the hierarchy of courts requires a higher degree of competence at the higher levels in that hierarchy. However, it cannot be denied that both magistrates as well as judges in District Courts and County Courts often have to deal promptly in the course of a trial with difficult questions of evidence and procedure.

The qualities of a judicial officer are, of course, not confined to a sound knowledge of the law and legal practice and a capacity for quick and correct decisions. Judges, especially trial judges, are dealing with members of the public, either as parties or as witnesses. They must be alert to the stress upon the parties to the action as well as be sensitive to the proper concerns of witnesses, some of whom are giving evidence under compulsion. They also have to deal with legal practitioners of varying ability. On occasions, a self-represented litigant will be appearing before the court. It is obvious that a judge must also have the qualities of courtesy, patience and the ability to listen. In short, the judge must have a suitable temperament for the task.

Another important aspect of the work of the trial judge is to deliver well-reasoned judgments without delay after the hearing. In this respect also, the judge requires a sound knowledge of the law as well as a secure grasp of legal principle. The judge must weigh the evidence and make findings to determine the facts in relation to which the judge will apply relevant legal principle and determine the dispute between the parties. The need to deliver judgments promptly requires conscientiousness and diligence and hard work as well as a sound judgment and decisiveness.

Appellate judges, like trial judges, must also be able to deliver well-reasoned judgments without delay. The task of the appellate judge differs in that appellate judges usually sit as a court of three. The High Court usually comprises five or more judges according to the requirements of each case. Appellate judges do not try cases. Appellate courts are courts of review; that is to say, they review the case on appeal and determine whether it has been decided according to law. A wide range of questions come before appellate courts. Judges in those courts must, therefore, have a profound knowledge of the law and the underlying principles of law in order to resolve the question before them.

It is manifest from this brief outline of the task of judicial officers that an essential requirement of any judicial officer is a sound knowledge of the law. That is one reason why the legislation regulating the persons who may be appointed to judicial office prescribes a minimum period of practice before a person becomes eligible for appointment as a judge or magistrate.

Obviously, the qualities of a judicial officer are not confined to legal ability. He or she must have personal qualities to deal patiently and courteously with the parties to litigation and the witnesses. Other personal qualities are integrity, impartiality and a strong sense of fairness.[7] The goal is the appointment of a skilled, impartial and courteous arbiter. The primary consideration should be merit.

Candidates for judicial office must, therefore, have professional qualities and personal qualities appropriate to the kind of judicial work he or she will have to discharge. A distinction should be drawn between professional and personal qualities.[8] The failure to distinguish between them tends to conceal the self-evident fact that professional qualities can be assessed only by professional persons. The professional qualities for appointment are uncontroversial. They are:

- legal knowledge and relevant experience;
- intellectual and analytical ability;

- sound judgment and impartiality;
- commitment, industry, conscientiousness and diligence.

The personal qualities are:

- integrity;
- independence;
- a strong sense of fairness; and
- a willingness to listen both courteously and patiently as well as to understand the views of others.

It might not be possible to reach ready agreement as to the individual components of the list of desired personal qualities but, when considered as a whole, they are uncontroversial. In other words, while reasonable individuals might reasonably disagree as to the required personal qualities, when viewed as a whole, the goal is the same, namely, a fair, impartial and courteous arbiter. As one former judge has noted, unsurprisingly, personal criteria are expressed in a variety of ways by different people but there is little material difference between them.[9]

Absent from these criteria is the requirement that the judicial officers should be a representative of any section of the community. Also absent is any requirement that judicial officers should reflect the division in the community between the sexes. Judges and magistrates are not appointed to represent interest groups in the community. They do not have a platform. Judges and magistrates have but one task. It is summarised in the Judicial Oath. It is to do justice according to law without fear or favour, affection or ill will. There is a risk that the community will perceive that a person appointed to represent an interest group might not be acting with complete impartiality when hearing any issue affecting that interest group. It is essential to the proper administration of the law that a fair-minded lay observer does not reasonably apprehend that the judge or magistrate might not bring an impartial mind to the resolution of the question to be decided.[10] As the former Chief Justice of the High Court of Australia, Chief Justice Gleeson, said in January 2008:[11]

> "The citizens of a modern democracy demand not only that judicial power be exercised independently and according to law, but also that judicial decision-making be demonstrably rational and fair".

Judges are not appointed to decide cases in accordance with a political or other agenda. Judges are not meant to court popularity. Sectional interests are represented by politicians in the Parliaments, not by a judge in the Courts. Impartial justice is the antithesis of representative justice.[12]

Nothing in these last paragraphs is intended to suggest that judges should not come from a broad community base if that can be achieved in a manner that is consistent with the appointment of judges applying the criterion of merit.

In recent years the number of women appointed as judges and magistrates has significantly increased. That increase has resulted from the increase in numbers of women studying law and entering the legal profession, and especially the increase in the number of women practising as barristers. In recent years, the percentage of female judicial officers has continued to increase, and there is nothing to suggest that that trend will not continue. It is undesirable that there should be any prescription as to the number of women who should hold judicial office. Such a prescription would be demeaning both to female lawyers and to judicial office.

Reference has already been made to the professional qualities required of trial judges, namely, to decide questions of procedure, evidence and law, questions that are often difficult, and to decide them promptly during the course of the trial without interrupting the continuity of the trial. A former judge has described these skills in these terms:[13]

> "In order to perform these tasks to an acceptable standard a person must have a thorough knowledge of the laws of evidence and the capacity to apply them, on the spot, in practice; a thorough knowledge of the rules of procedure and a capacity to apply them, also on the spot; and a capacity to decide difficult legal and factual questions correctly and promptly. It can be seen that it is the capacity to apply specific kinds of legal knowledge correctly and quickly which is of the essence of each of these. Assuming the necessary intellectual capacity and legal knowledge, the only satisfactory way, of which I am aware, of acquiring this essential capacity is by having to practise it over a sustained period".

It is not fair to litigants that this capacity be acquired by practice "on-the-job" as a judge. Experienced barristers have, by dint of their own experience, an extensive familiarity with such questions. The proper representation of their clients' interests requires that they must be alert to ensure that the trial proceeds according to law, to object to the improper presentation of evidence, or to be able to argue in support of evidence to be led on behalf of that individual client. They must, therefore, have a sound knowledge of the law. At the same time, that knowledge must be tempered with a sound judgment as to whether it is appropriate to take the objection or make the submission. In this way, capable barristers hone their professional skills.

Other aspects of an experienced barrister's practice equip him or her for judicial work. The competent barrister will present submissions at the close of a case in a way that will serve the interests of the client and is consistent with the evidence and legal principle. Barristers who have demonstrated to their peers that they possess a sound knowledge of the law and legal principle will be asked to give opinions in writing on difficult legal issues, a task similar to the task of writing a reasoned judgment. Personal qualities such as soundness of judgment, diligence and integrity are as important to the attainment of success as legal skills and competence.

Success at the bar is, therefore, the result not only of a sound knowledge of the law and legal principle, but is also the result of sound judgment and skill in applying that knowledge. One distinct advantage of a legal profession divided between barristers and solicitors is that professional peers assess the professional and other qualities of the barrister. It is solicitors who advise the client as to the most suitable barrister to present the case on hand or to give an opinion on the question in issue. While no doubt other factors might influence the choice of barrister, it is essentially the result of the judgment of the peers of that barrister. Barristers and solicitors alike are aware of the comparative abilities of particular barristers. This process of informal peer review is not confined to the professional qualities of an individual barrister. Barristers and solicitors also assess the personal qualities or lack of them of any individual barrister. In addition, judges quickly come to distinguish between those who have the required professional skills and personal qualities and those who lack them. A skilled advocate will not necessarily possess the qualities desired in a judge. Leaders of the profession and judges are able to make that judgment.

In this way, it becomes quite apparent to judges and the profession which barristers are fit for judicial appointment. This phenomenon is not confined to barristers. Some solicitors and academic lawyers also demonstrate the qualities required for judicial office. For example, an academic lawyer or solicitor experienced in corporate law and corporate litigation may demonstrate qualities that equip that person to sit in a specialist commercial court. In that sense, it can be said that some individuals, and especially barristers, select themselves for appointment because they have demonstrated the professional and personal qualities required for judicial office. However, not all barristers, solicitors or academics wish to take judicial office. Regard must be had to that fact when considering a protocol for judicial appointment.

A Judicial Commission

One proposal to improve the procedure for appointing judicial officers has been the establishment of what has been called a Judicial Commission, a process recently implemented in England. The Commission would be a body comprising lawyers and lay members. Shortly stated, the function of the Commission would include inviting applications from qualified candidates, assessing the merit of those who apply and recommending a short list of candidates suitable for appointment. Government will have the option of inviting the Commission to re-consider, and ultimately to make its own appointment notwithstanding the Commission's recommendations. If the government decides to take this course, the Attorney-General should be required to table a statement in Parliament giving reasons for selecting a candidate not supported by the Commission.

The establishment of a national Judicial Commission is not a realistic proposal for this country. One factor weighing heavily against the proposal is the federal structure of our constitutional arrangements. Appointments are made by the separate governments of the Commonwealth, the States and the Territories. A single Judicial Appointments Commission for all jurisdictions throughout Australia will be very difficult to achieve and is not necessarily the ideal. The establishment of such a Commission would need the support of the Commonwealth and all State and Territory governments. All governments would have to share the cost of running the Commission. It would need offices presumably in Sydney, Melbourne or Canberra. Its geographical remoteness from some of the States and Territories could lead to inefficiencies and difficulties in decision-making with respect to appointments in those distant States and Territories. It is unlikely to attract either the necessary support or financial assistance from all of the States and Territories.

In England, a relatively large number of appointments is made in each year by one government to courts and other tribunals throughout the land. In contrast, in Australia appointments are made by the Commonwealth government as well as by the governments of the States and Territories. In addition, the number of appointments in any one year in each of the jurisdictions is considerably less than in England. That is especially so in the smaller States and Territories, where the number of appointments in any one year will be quite small. The number of appointments made in each jurisdiction is unlikely to justify the cost of establishing a Commission in each jurisdiction. A separate Commission in each jurisdiction does not seem realistic.

Another important reason why I do not support a Judicial Commission is that it is unelected and unaccountable. It is also open to the objection that the emphasis shifts from the appointment of judges and magistrates to the appointment of the members of the Commission.

For these reasons, an alternative process is to be preferred.

The proposal

Instead of a Judicial Commission, I propose a protocol which is based upon and recognises the utility of the existing practice of Attorneys-General consulting with the Chief Justice and leaders of the legal profession. Any proposal for reform should not unduly circumscribe the power of the Executive government to make judicial appointments. Instead, it is desirable to put forward a process that recognises that power, and at the same time enhances its performance by a process designed to enable governments to appoint the most suitable person to judicial office.

While differences exist between the States and Territories as to the number of courts, those differences do not materially affect the kind of protocol which should exist for appointments to State and Territorial courts. Each State (other than Tasmania) has a Supreme Court, a District Court or County Court, and a Magistrates Court (or Local Court as it is called in New South Wales). In Tasmania, as well as in the Australian Capital Territory and in the Northern Territory, there is a Supreme Court and Magistrates Court. Some States have other specialist courts such as Industrial Courts and Land and Environment Courts.

The suggested protocol would require government to make its appointment from a short list of three or four persons named by a panel. The precise number on the list may vary according to the Court to which the appointment is to be made. While the composition of that panel will vary according to the Court to which the appointment is to be made, the panel will comprise, as a minimum:

- the head of the court to which the appointment is to be made;
- the Chief Justice, if he or she is not the head of the court to which the appointment is to be made;
- the President of the Law Society or the Law Institute in that jurisdiction; and
- the President of the Bar Association in that jurisdiction.

If the President of either of the professional bodies is a potential candidate, each professional body could nominate an alternate. That panel can also include an academic lawyer nominated by the Deans of the Law School or the Law Schools in each State or Territory.

One advantage of this panel, therefore, is that it comprises a judicial officer who will provide a degree of continuity, balanced by the changing membership of the Presidents of the two professional bodies. The advantages of this proposal also include the fact that the President of each of the professional bodies holds office as a result of election by his or her peers. The President can consult with the relevant professional body. The presidency of the professional bodies is a position held for one or two years, depending on the rules of the particular body. The fact that Presidents of the professional organisations change annually or bi-annually, will result in fresh views being continually brought to the panel.

An important question is whether the panel should also include lay members. One view is that it is not necessary. First, for the reasons already expressed, the professional and personal qualities of the candidates will, in all likelihood, be known to the members of the panel or, if not, to a majority of the members. Importantly, the knowledge of the individual members of the panel will have been gained over a period of years. A lay person could not acquire that depth of knowledge. Secondly, the view of the community as to the person most suitable for appointment is a view that is expressed by the fact that it is the elected government who determines the person to be appointed; that is to say, it is the government as the elected representative of the community which makes the decision to appoint. Finally, the best assessment of the merit of a candidate for judicial office is to be made by his peers. The most suitable persons to appoint a surgeon to perform difficult surgery are other medical practitioners, especially surgeons. The same reasoning applies to appointment of judges and magistrates.

On the other hand, lay members may offer a wider perspective unaffected by the professional standing of each candidate. The inclusion of lay members may help to allay concerns about the narrowness of the background from which judicial officers are chosen.[14] On balance, I do not believe it necessary to include lay members.

Advertising the post

Generally speaking, governments have not by advertisement or otherwise called for applications for appointment to judicial office in Supreme Courts or in District or County Courts.[15] However, in most jurisdictions in Australia, it has become established practice to advertise for applications for appointment as magistrates.

Advertising for expressions of interest in appointment has the advantage of broadening the field of potential candidates, in that it alerts the panel to those prepared to make themselves available for appointment.[16] At the same time, the procedure does not necessarily result in good candidates

applying.[17] It is well known that meritorious candidates will be unwilling, for a variety of reasons, to submit their names for consideration. The confidentiality of the process cannot be assured. A barrister will be reluctant to submit his or her name because of an apprehension that disclosure of the application will adversely affect his or her practice. Such a concern is justifiable.

On balance, I favour the process of calling for applications, as that procedure will encourage the community to be confident that all suitable persons have been considered. Nevertheless, because those suitable for appointment might not apply, the panel will be at liberty to consider and nominate for appointment persons who have not applied for appointment.

Those who express interest in appointment are entitled to confidentiality lest disclosure of that fact should affect their practice. The list of those who express interest should not be available for public inspection.

Interviewing candidates

Interviewing candidates has been part of the process of appointing magistrates in most Australian jurisdictions.[18] However, as a general rule, that has not been the practice in the case of appointments to other judicial office. While the practice of interviewing candidates for the Magistracy should continue, it is not a suitable practice in the case of appointment to higher courts lest it become a means of seeking to ascertain the views of candidates on contentious issues.

A statutory protocol

Legislation should be enacted by the Commonwealth Parliament and by the Parliaments of the States and Territories to establish a panel for the appointment of judges and magistrates. The precise composition of the panel may vary from jurisdiction to jurisdiction and according to the court to which the appointment is to be made. The panel in each instance will put forward a list of three or four names for consideration by the Executive government. The government must appoint from those nominated or ask the panel to reconsider the nominations. The panel may nominate the same persons or new persons. In either event, the government must then appoint from those nominated for appointment.

The panel should comprise at least:

- the head of the court to which the appointment is to be made;
- the Chief Justice if he or she is not the head of the court to which the appointment is to be made;
- the President of the Law Society or the Law Institute of that jurisdiction; and
- the President of the Bar Association of that jurisdiction.

Each of those persons could be represented by an alternate. There is no ideal size for the panel. It may also include a legal academic and a representative of the community appointed by the Attorney-General.

Before applications are considered, the Attorney-General will by public advertisement call for expressions of interest by those willing to be appointed a judge or magistrate. All expressions of interest will be confidential and not available for public inspection. The panel will be at liberty to nominate for appointment a person or persons who have not responded to the advertisement.

In the case of the appointment of magistrates, the panel may interview such number of the candidates as it thinks necessary. Interviews will not be held in the case of appointment to courts other than Magistrates Courts.

In the case of appointments to the Federal Court of Australia, the Family Court of Australia, or the Federal Magistrates Court, the panel would comprise at least:

- the head of the court to which the appointment is to be made;
- the President of the Australian Bar Association; and
- the President of the Law Council of Australia.

Consideration might be given to including on the panel the Chief Justice of the State or Territory in which the appointee will be permanently sitting. In each case, each of those persons may be represented by an alternate. The two professional bodies would be required to consult with the professional bodies in the State or Territory in which the appointee will be predominantly sitting.

Section 6 of the *High Court of Australia Act* 1979 requires the Attorney-General of the Commonwealth to consult the Attorneys-General of the States before making an appointment to fill a vacancy in the High Court. Given the unique position of the High Court of Australia as the ultimate Court of Appeal, s. 6 of the *High Court of Australia Act* 1979 should be amended so that the process of consultation be extended to include at least:

- the Chief Justice of the High Court;
- the President of the Australian Bar Association; and
- the President of the Law Council of Australia.

Each of those persons is likely to be aware of persons suitable for appointment to the High Court. All three would be at liberty to consult others. The Presidents of the two professional bodies would be at liberty to consult with their respective constituent bodies.

Two criticisms

Two criticisms are levelled at any interference with the present process. The first is that either a Judicial Appointments Commission or a protocol of the kind suggested in this paper will result in the self-perpetuating process depriving courts of what the Honourable Michael Kirby calls the "light and shade that comes from the present system".[19] In the same vein, Professor Crawford has asked if Sir Ninian Stephen or John Bray would have been appointed by a Judicial Appointments Commission.[20] Whatever might result from a Judicial Appointments Commission, I have every confidence that the proposal advanced in this paper would readily result in appointments of judges of the quality of those mentioned, since the ability of both was well known to their peers.

The second criticism is that a Judicial Appointments Commission or a panel is not politically accountable. The plain fact is that governments themselves are not accountable for the appointments they make. They are usually out of office by the time an appointee has demonstrated unfitness for office. When has a government been called to account for an appointment of a judicial officer?

Neither criticism counters the advantage of a process designed to identify the most suitable persons for appointment.

Conclusion

Both the general public and the legal profession ought to be assured that the appointment has been made of a person of merit with the qualities, professional and personal, for the court to which the appointment is to be made. The present process does not provide that assurance. The process suggested in this paper is more likely to do so.

Endnotes:

1. In forming my views, I gratefully acknowledge the valuable assistance of Justice Richard Chesterman of the Court of Appeal in Queensland and Justice Hasluck of the Supreme Court of Western Australia. The responsibility for error is mine alone.

2. While Parliament was curtailing the powers of the Monarch in the constitutional struggles in England in the 17th Century, the courts were defining their independence from both Parliament and the Monarch. That independence was recognised by the *Act of Settlement*, 1689.

3. AM Gleeson, QC (as he then was), *Judging the Judges* (1979) 53 ALJ 338 at 339.

4. Sir Garfield Barwick's *State of the Judicature Address* (1977) 51 ALJ 480 at 494.

5. Evans and Williams, *Appointing Australian Judges*, *A New Model* at p. 3. The concern as to patronage is not confined to Australia. It was a cause for election of judges in the early States of the United States of America. For Canada, see the report of the Canadian Bar Association, *The Appointment of Judges in Canada* (1985), at p. 9.

6. Sackville, *The Judicial Appointments Process in Australia: Towards Independence and Accountability* (2007) 16 JJA 125 at 128.

7. In 2004 the Lord Chancellor in England published criteria for judicial appointment. They were:
    - legal knowledge and experience;
    - intellectual and analytical ability;
    - sound judgment;
    - decisiveness;
    - communication and listening skills;
    - authority and case management skills;
    - integrity and independence;
    - fairness and impartiality;
    - understanding of people and society;
    - maturity and sound temperament;
    - courtesy; and
    - commitment, conscientiousness and diligence.

    Those criteria do not distinguish between professional and personal qualities required of a judicial officer.

8. GL Davies, QC, *Appointment of Judges*, p. 6.

9. GL Davies, QC, *op cit*.

10. *Johnson v. Johnson* (2001) 201 CLR 488 at [11].

11. Chief Justice Gleeson, *The Role of a Judge in a Representative Democracy*, speech to Judiciary of the Commonwealth of Bahamas, 4 January 2008.

12. Chief Justice Doyle, *The Eighth Robert Harris Oration: The Judiciary and the Community*, 18 Australian Bar Review 95 at 100.

13. GL Davies, QC, *op. cit.*, at 9.

14. GL Davies, QC, *Why We Should Have a Judicial Appointment Commission*, at p. 8.

15. In recent times, advertisements have been published for appointment to fill a vacancy in the Family Court of Australia and for the Chief Justice of Victoria.

16. Sackville, *op. cit.*, at 140.

17. Advertisements for the office of the Chief Justice of Victoria attracted a host of applicants from the gaol at Darwin.

18. Sackville, *op. cit.*, *passim*.

19. Justice Michael Kirby (as he then was), *The Judges* (Boyer lectures, 1983).

20. J Crawford, *Australian Courts of Law* (1982), p. 53.