

How Judges Are Made.

The Victorian Attorney-General has announced a review of the way in which judges are appointed.

Without discussing the merits of the proposal it is worthwhile understanding the way in which an individual becomes a judge.

In Victoria the middle court is the County Court, the largest trial court in the State made up of over 60 judges and some acting judges. Then we have the Supreme Court which is made up of two divisions, the Trial Division and the Court of Appeal. There are 40 judges and nine associate judges on the Supreme Court, the highest court in the State.

So how does someone become a judge? Each of the courts has a governing act that requires the individual have qualified to practise as a lawyer for a period of at least five years.

Most people appointed to judicial office in Victoria have many, many years of practice behind them as a barrister or a lawyer. The number of years and the level of experience varies from court to court. Appointments to the Supreme Court will generally have 25 to 30 years experience as a lawyer and mostly as a barrister. These individuals have spent years working in the courts. They understand court procedures and, very importantly, the laws of evidence. There are strict rules as to the evidence that is allowed to be given in a case.

Judges are appointed in Victoria by the Executive Council. In practice what this means is that the Attorney-General of the day selects an individual for appointment, makes a recommendation to Cabinet and if approved the appointment is submitted to the Executive Council. Upon appointment, the Governor and the Attorney-General sign a document called a

Commission appointing the judge. This is a very precious document to the new judge.

So how does the Attorney-General decide on the individual to be recommended for appointment?

It is up to the Attorney-General of the day. Consistently in my experience Attorneys-General set about a careful consultation process. They will have a member of their staff or a senior person such as the Solicitor-General of the State approach the Chairman of the Victorian Bar, the President of the Law Institute and members of the legal profession as to who they think should be appointed to a particular court. Attorneys-General want to ensure that the best person is appointed to the position. In the Supreme Court a judge may be responsible to determine whether or not a person should be sentenced to jail for the rest of their life or make legal decisions that could lead to the financial ruin of a person. Judges make decisions about people's lives in very serious ways. The decision of a judge to give a person a second chance rather than sending that person to jail can have a dramatic impact on the person's life and family but importantly the community. On the other hand, deciding to sentence a person to many years in jail is hard and onerous for the individual judge.

It is important that the judge be first and foremost an excellent lawyer.

Hence, Attorneys-General usually set about a demanding consultation process. Some people criticise the process as being too informal, too secretive and taking too long. Delays in the appointment of judges causes delays in the courts being able to hear cases. An important thing the Attorney-General will usually do is consult the head of the court as to their recommendation of individuals for appointment. The head of

the court will advise the Attorney-General as to the profile of judge needed, for example, a criminal specialist, a commercial specialist. When the Attorney-General decides on the name in my experience an approach is made informally as to whether that person would wish to become a judge. For many people, taking on the role of a judge involves giving up a successful career, earning a large income and loss of personal freedom. Notwithstanding the difficulties and disadvantages, the positives far outweigh the negatives and most people feel honoured and privileged to be offered judicial appointment and accept the approach. Most people have a strong sense of duty and a desire to serve the community when approached.

Whilst the general approach of an Attorney-General will vary from minister to minister, this broadly is the way it happens. In my experience the Attorney-General will see the individual and offer the appointment which then goes to Cabinet and the Executive Council in the days shortly afterward.

So that is the process. Is it the best process? In the federal courts you see a different system has been operating for a while of an Appointments Advisory Panel. I understand it works very well indeed. The panels have consisted of an eminent retired judge, such as a High Court judge, the Chief Justice or Head of the particular court and a very senior public servant. The panel is able to make enquiries about individuals, approach prospective candidates and generally provide a great deal of assistance to the Attorney-General. The discussions remain discreet and confidential. Often, the panel will meet, consider potential candidates and sometimes interview them and inform itself as to the field of potential candidates. The panel deliberates and then advises the Attorney-General in writing. I understand, importantly, the process has assisted in the expedition of appointments at a federal level.

I have encouraged the Victorian Attorney-General to examine the federal system for a little while now. It would be one way to ensure the very best people are brought into the spotlight for consideration for appointment as a judge.

To a large extent a variation of this system has applied for some time with the Magistrates Court of Victoria.

Once a person becomes a judge they have many obligations, not just judging cases. They participate in the administration and management of the court and participate in significant educational programs through the Judicial College of Victoria.

The Victorian Attorney-General's review of the judicial appointments process is one, hopefully, that many Victorians will take an interest in. There are interesting ideas such as candidates for appointment undergoing health checks. These are matters to be discussed.