

JUDICIAL APPOINTMENTS PROTOCOL

FOREWORD BY THE ATTORNEY-GENERAL

Our democracy, operating under the rule of law, requires an effective, independent judiciary. Making recommendations to the Governor-General for the appointment of Judges is one of the most important responsibilities I have as the Senior Law Officer.

We have had, since 2013, a published process for appointments of judges to the senior courts. Transparency of process is also critical to our democratic values as a country. By making the process transparent, people can be confident that the selection of our judiciary is both merit-based and apolitical. The process will deliver a judiciary that will be independent in exercising its functions, which will decide issues according to the law, and which will be aware of, and sensitive to, the broad dimensions of our society.

This protocol explains the process which applies to judicial appointments to High Court, the Court of Appeal and the Supreme Court.

The guiding principles for the procedures are as follows:

- (i) Clear and publicly identified processes for selection, assessment and appointment;
- (ii) Clear and publicly identified opportunities for expressing an interest in appointment;
- (iii) A commitment to actively promoting a breadth of experience of our communities, without compromising the principle of merit selection;
- (iv) Advertising for expressions of interest, recognising that selection should not always be limited to those who have expressed interest;
- (v) Maintaining, on a confidential database, a register of persons interested in appointment.

I am confident that New Zealand continues to be well-served by the judiciary and to ensure transparency in the processes.

Hon Judith Collins KC
Attorney-General

November 2025

INTRODUCTION

This protocol sets out the process for making appointments of Judges of the senior courts. It is intended, principally, to provide information and guidance to those interested in appointment.

To provide some context for the process brief reference is made to New Zealand's constitutional arrangements as they affect the role of the judiciary and to aspects of judicial appointment processes in general.

NEW ZEALAND'S CONSTITUTION

The separation of powers between the legislature, executive, and judiciary is a fundamental principle of democratic governments such as that of New Zealand. Each branch of government has a role in balancing the power of the other two branches.

The role of the judiciary

The constitutional importance of appointments to the judiciary reflects the critical functions of the Supreme Court, the Court of Appeal and the High Court, namely, to apply the criminal law, to determine disputes among citizens and those they have with the State, and in doing so, to clarify and declare the law of New Zealand.

The independence of the judiciary is a fundamental element of New Zealand's constitutional arrangements. The essential element of the principle of judicial independence is that Judges should be able to decide matters according to law free of all inappropriate pressures. This constitutional principle is reflected for Supreme Court, Court of Appeal and High Court Judges in the Constitution Act 1986, and has general application in other laws and conventions.

The structure of the courts

New Zealand has a hierarchy of courts. The Supreme Court is the most senior court, followed by the Court of Appeal, the High Court, and finally the District Court which has some specialist divisions. The Employment Court is a separate, specialist court.

The Supreme Court

The Supreme Court consists of the Chief Justice and four to five other Judges. Judges of the Supreme Court are also Judges of the High Court. Retired judges of the Court of Appeal and Supreme Court who have not yet reached the age of 75 years may be appointed as acting judges. Appointments to the Supreme Court are made under the Senior Courts Act 2016.

The Court of Appeal

The Court of Appeal consists of a President and five to nine other Judges. Judges of the Court of Appeal are also Judges of the High Court. Additional High Court Judges may be nominated to sit on divisions of the Court of Appeal. Appointments to the Court of Appeal are made under the Senior Courts Act 2016.

The High Court

The High Court consists of the Chief Justice and the Judges appointed, up to a maximum number set out in the Senior Courts Act 2016. (This number includes the Judges of the Court of Appeal and Supreme Court.) The Chief High Court Judge is responsible for the conduct of the High Court's business. Former High Court Judges may be appointed as Acting Judges if necessary to cover vacancies or periods of absence on the part of any Judge. There are also Associate Judges who can exercise certain powers specified in the High Court Rules 2016. High Court Judges and Associate Judges are appointed under the Senior Courts Act 2016.

APPOINTMENT PROCESS

Appointments to most judicial positions are made by the Governor-General on the recommendation of the Attorney-General. Appointments to the Māori Land Court and the Māori Appellate Court are made by the Governor-General on the recommendation of the Minister of Māori Affairs. Community Magistrates are appointed on the recommendation of the Minister of Justice.

The Attorney-General places great importance on maintaining the quality and integrity of the judiciary. Appointments are made on the basis of merit with a commitment to a life of service to the community and the law. Putting the responsibility for all these appointments in the hands of the Attorney-General recognises that when making recommendations for judicial appointment the Attorney-General is carrying out a Law Officer function which is not influenced by partisan political considerations. In the case of appointments to the Supreme Court, Court of Appeal and the High Court (Judges and Associate Judges), the administrative process is carried out under the direction of the Solicitor-General. For appointments to the District Court, Family Court, Environment Court and Employment Court, the process is carried out under the direction of the Secretary for Justice.

With the objective of ensuring a greater transparency in the process, advertising for expressions of interest in judicial positions is to be carried out at all levels except the Court of Appeal and Supreme Court.

THE APPOINTMENT PROCESS FOR HIGH COURT JUDGES

Criteria for appointment

Section 94 of the Senior Courts Act 2016 specifies that no person shall be appointed a High Court Judge unless he or she has held a New Zealand practising certificate as a barrister or solicitor for at least seven years.

The constitutional importance of the judicial role, including the fact that Judges must make decisions which significantly affect the liberties and rights of citizens, make it vital that those who become Judges are suitable to hold that office. The suitability of prospective candidates is assessed by reference to a range of clearly defined, transparent and publicly announced criteria. The criteria cover legal ability, qualities of character, personal and technical skills and reflection of society.

- *Legal Ability:* Legal ability includes a sound knowledge of the law and experience of its application. Legal knowledge, in particular, is indicative of intellectual capacity

and intelligence. Requisite applied experience is often derived from practice of law before the courts which is experience of direct relevance to being a Judge. But application of legal knowledge in other branches of legal practice, such as in an academic environment, public service or as a member of a legal tribunal may all qualify. At appellate level, legal ability includes the capacity to discern general principles of law and in doing so to weigh competing policies and values. More important than where legal knowledge and experience in application is derived from, is the overall excellence of a person as a lawyer demonstrated in a relevant legal occupation.

- *Qualities of character:* Personal qualities of character include honesty and integrity, open mindedness and impartiality, courtesy, patience and social sensitivity, good judgement and common sense, the ability to work hard, to listen and concentrate, collegiality, breadth of vision, independence, and acceptance of public scrutiny.
- *Personal technical skills:* An appropriate temperament is critical. Patience, courtesy and an even temper are important. Effective communication (oral and in writing) with a range of people - lay people as well as lawyers - is necessary. So too is the ability to absorb and analyse complex and competing factual and legal material, along with delivering quality work under pressure in a range of settings. Mental agility, administrative and organisational skills are valuable as is the capacity to be forceful when necessary and to maintain charge and control of a court. Judges often have to work at speed and under pressure. Accordingly, the ability to organise time effectively and produce clear reasoned judgments expeditiously is necessary.
- *Commitment to community and the law:* This is the quality of being a person who is aware of, and sensitive to, the diversity of modern New Zealand society. *The Report of the Royal Commission on the Courts* in 1978 put the point as the need for “a good knowledge, acquired by experience, of New Zealand’s life, customs and values” (p 199). New Zealand judges should be seen as reflecting the values and realities of modern New Zealand and should have an understanding that all need to be treated with respect by the Courts and of the reality of the lives of people appearing before them.

The steps in the process

The steps in the appointment process for a High Court Judge are as follows:

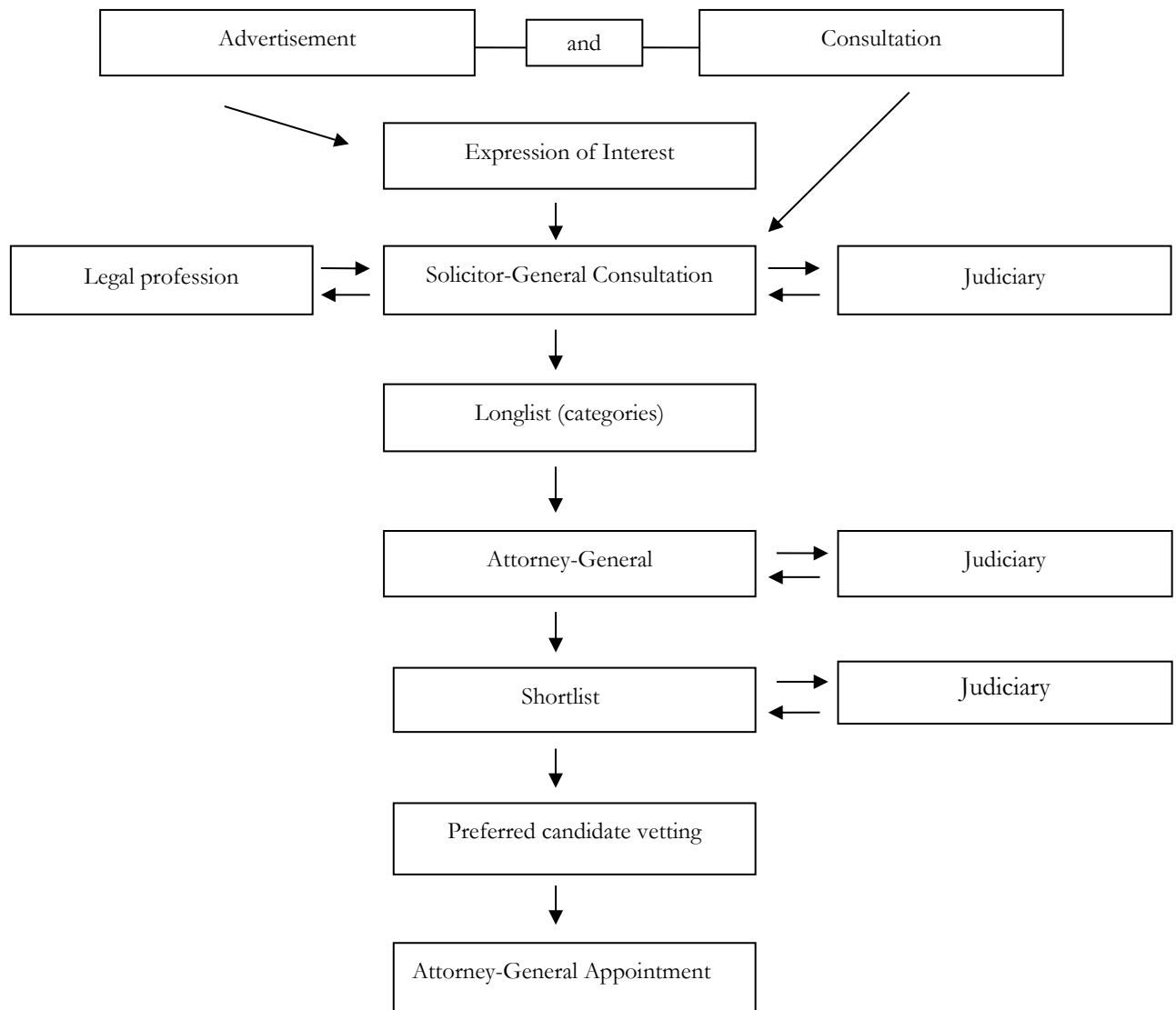
1. Approximately every three years (or more frequently if necessary), expressions of interest are called for by public advertisement and by direct request to a range of people and groups that cover a range of community interests.
2. The list of people who may be contacted to be consulted as to who they consider suitable people to be appointed into the High Court includes the Chief Justice, the President of the Court of Appeal, the Chief High Court Judge, Heads of Bench for the District, Environment, Employment and Māori Land Courts, the Secretary for Justice, the President of the Law Commission, the President of the New Zealand Bar Association, the President of the New Zealand Law Society and other organisations or groups representative of lawyers who the Attorney-General

believes can contribute names of suitable persons. Such groups may include the Criminal Bar Association, Te Hunga Rōia o Aotearoa/the Māori Law Society, and women lawyers' associations. Consultation also occurs with the Minister of Justice, the Minister for Women and the Minister for Māori Development and Māori-Crown Relations. Consultation may also occur with the Chair of the Justice Select Committee and the Opposition Spokesperson for the Attorney-General portfolio.

3. Prospective candidates respond to the request for expressions of interest. Prospective candidates are provided with an Expression of Interest form for completion. Alternatively, as a result of the consultation process, prospective candidates may be invited to express their interest and to enter the process.
4. The names of those who meet the statutory criteria for appointment are held on a confidential register maintained by the Attorney-General's Appointments Unit within the Ministry of Justice (the Appointments Unit). Persons expressing interest are advised when their names have been registered.
5. The Appointments Unit uses the register to identify all those who have indicated an interest in appointment to the High Court. The Solicitor-General reviews the names and consults the Attorney-General, the Chief Justice, the President of the Court of Appeal, the Chief High Court Judge and the Secretary for Justice. The purpose of this consultation is to ascertain whether additional names should be considered and added to the list.
6. The Solicitor-General seeks comments about those on the list from a range of key people and organisations. Those consulted are listed below. The Chief Justice or her nominee may speak to any referees put forward by the person interested in appointment.
7. The Solicitor-General asks the Chief Justice, the President of the Court of Appeal, and the Chief High Court Judge to indicate which candidates may be considered suitable for immediate appointment, those possibly suitable in two to three years, and those in neither category (the longlist).
8. The Solicitor-General presents the longlist to the Attorney-General. The Solicitor-General's advice includes the results of his or her consultation process.
9. In respect of the long list, the Solicitor-General may confer regularly with the Chief Justice, Chief High Court Judge, President of the Court of Appeal and Presidents of the Law Society and Bar Association, to ensure the long list remains current and relevant.
10. In respect of any upcoming vacancy in, or appointment to, the High Court, the Attorney-General, after such consultation as he or she believes necessary, and with the agreement of the Chief Justice (who will consult as appropriate with other judges), will determine a shortlist of possible appointees. The shortlist will contain no more than three names.

11. The Attorney-General may decide to seek an interview with, or arrange for an interview by the Solicitor-General, the Chief Justice or nominee, any person interested in appointment to the High Court.
12. The Solicitor-General undertakes checks on the reputation of those on the shortlist. Other checks may be undertaken on any public (including social media) comments made by those on the shortlist.
13. The Attorney-General will select from the shortlist the preferred candidate whom he or she wishes to recommend to the Governor-General for appointment. The Solicitor-General also asks the preferred candidate to complete a declaration intended to confirm there are no matters in their background of a sort that might cause difficulties after appointment. The response to the declaration is signed, along with an undertaking that, if appointed, the preferred candidate will not resume practice before the courts on retirement or earlier termination of his or her appointment.
14. Once the Attorney-General is satisfied as to the suitability of the preferred candidate, and his or her willingness to accept the appointment, the Attorney-General mentions the appointment in Cabinet. Finally, the Attorney tenders formal advice to the Governor-General to make the appointment.
15. The short-listing process is repeated in respect of each upcoming High Court vacancy or appointment.

The process is described in the following diagram:



Consultation

A range of groups and people are contacted at various stages in the appointment process. Consultation is strictly confidential and all persons consulted are expected to observe this confidence. The Attorney-General regards the knowledge, experience and judgment of the professional legal community as a very good source of informed opinion on the relative merits of prospective candidates. Accordingly, considerable consultation is conducted with members of the legal community. The intention is to ensure a sufficiently broad perspective is obtained as to prospective candidates' suitability for appointment.

In seeking comment on prospective candidates, the Solicitor-General will consult the Chief Justice, the President of the Court of Appeal, the Chief High Court Judge, the New Zealand Law Society, the New Zealand Bar Association and others as appropriate.

After consultation with the people and organisations the Attorney-General considers appropriate, the Attorney-General will make his or her own decision on who to recommend for appointment from the shortlist.

Information sought

People interested in appointment as a High Court Judge, whether or not currently holding judicial office, are asked to complete an Expression of Interest form and to provide curriculum vitae. At the short-listing stage, prospective candidates are also asked to complete a declaration.

Expression of Interest form

The Expression of Interest form is a formal document. It must be completed by all persons wishing to be considered for appointment as a High Court Judge, whether or not they currently hold judicial office. It seeks a variety of personal and professional information such as a brief description of the person's legal experience, career highlights and any publications. It also seeks the person's consent to the information being conveyed as necessary to those consulted during the appointment process. Information contained in the Expression of Interest form is intended to supplement material in the curriculum vitae. The form is also intended to provide an opportunity to highlight experience which is considered to be of particular relevance to the criteria on which appointments will be made. The substance of the form is contained in Appendix 1 to this protocol.

Curriculum vitae

Persons interested in appointment are also asked to provide a curriculum vitae so that more details about their legal career, including a full work history, is available together with any relevant experience outside the law.

Applicant's declaration

Prospective candidates who are selected for the shortlist (as set out in the process above) are asked to complete a separate declaration intended to confirm that there are no matters in their background of a sort that might cause difficulties after appointment. They are asked to sign the declaration and to undertake that if appointed, they will not resume practice before the courts on retirement or earlier termination of their appointment. The substance of the declaration is contained in Appendix 2 to this protocol.

THE APPOINTMENT PROCESS FOR APPELLATE COURT JUDGES

Appointments to the Supreme Court and Court of Appeal require a different appointment process to that followed in respect of the High Court. Appointments to the appellate courts are usually made from the serving judiciary in the High Court and, as such, potential candidates will be known to the Attorney-General. The Appointments Unit does not therefore place public notices calling for expressions of interest.

Rather, the Attorney-General consults with interested people and bodies seeking their views on suitable candidates. The Attorney-General will then, with the agreement of the Chief Justice, who, in the case of appointments to the Court of Appeal, will confer with the President and, in the case of appointments to the Supreme Court, will confer with the other Judges of that Court, settle a shortlist of not more than three possible appointees. The Attorney-General may ask the Solicitor-General to confidentially consult relevant persons or bodies on his or her behalf.

The Attorney-General then considers those on the shortlist. In addition to the criteria by which all judges are selected, the Attorney-General will consider the overall make-up of the court, including the range of experience and expertise of the current judges. The appellate courts should consist of judges who collectively represent a range of expertise, skills, experience, qualities and perspectives.

Once the Attorney-General has chosen the most suitable candidate from the shortlist, he or she will mention the decision in Cabinet and then recommend the appointment to the Governor-General.

STORAGE OF INFORMATION

Storage of information: prior to appointment

Details of all prospective candidates who meet the statutory requirement for appointment are placed on the register.

Information is held on the register, unless prospective candidates request otherwise. Prospective candidates can ask for their names to be removed from the register at any time. At regular intervals prospective candidates will be contacted and asked to update their personal information. If there is no response to this request, the relevant records will be removed from the register.

All information is treated confidentially and held securely in the Appointments Unit. Every attempt is made to ensure any data held is complete and correct. In accordance with information privacy principles, the purposes for which the information is collected and used is made clear to prospective candidates at the time the information is collected.

The information held on the register is kept confidential and access is available only to those directly involved in the relevant appointment process. Prospective candidates may request to see the information held about them on the register at any time. However, comments made by other people on the prospective candidate's suitability may not be available, if the comments were subject to an obligation of confidentiality as will often be the case. Information on the register may be available under the Official Information Act 1982 but only if special public interest considerations apply.

Storage of information: after an appointment is made

When an appointment is made, the information on the register is deleted. Such papers or files as are required for judicial administrative purposes are transferred to the Chief Justice.

THE ATTORNEY-GENERAL'S JUDICIAL APPOINTMENTS UNIT

The Appointments Unit was set up specifically to handle expressions of interest in judicial appointments with the highest degree of confidentiality and security. The Appointments Unit is attached to the Ministry of Justice, but its records are held separately from those of the Ministry. The Appointments Unit has its own telephone and facsimile numbers and postal address.

The role of the Appointments Unit is to provide administrative assistance throughout the appointments process.

Contact details for the Unit are:

The Judicial Appointments Officer

The Attorney-General's Judicial Appointments Unit

DX SX10088

WELLINGTON

Telephone: 04 918 8800

Email: judicialappointments@justice.govt.nz