

SEVEN: THE EXTRAORDINARY ENTANGLEMENT OF MR. PUPKIN

DEEPER UNDERSTANDING

“WHEN A LIBERAL GOT IN IT MADE HIM MAD, AND HE SAID SO”: JUDGES AND POLITICAL CONNECTIONS

Judges are appointed to their jobs by the government of the day. This has led some people to suggest that judges are given their jobs because of political connections. This was a major concern in the past, especially in Leacock’s time. Then, the judges who were appointed almost always held a record of service to the ruling political party. However, in 1989 the federal government overhauled the judicial appointment system to help ensure that judges were appointed because of merit and not because of political leanings. The process continues to receive periodical reforms, including further improvements in 2016.

When there is an opening for a judge in a federal court of Canada, interested lawyers and judges can apply for the position. The applications are vetted by special committees made up of lawyers, judges, and the general public. The committees decide whether or not the applicant should be considered for the job. The names of the candidates that the committee deems qualified for the position are forwarded to the Minister of Justice. The Minister of Justice consults further and then makes final recommendations to the Cabinet. The Cabinet will then advise the Governor General of their decision on who should be given the position. The Governor General will act on the advice of the cabinet and appoint the judge.

The process for choosing judges for other courts is similar. For the Supreme Court, it is the Prime Minister—not the Minister of Justice—who makes the recommendation to the Governor General. As well, nominees to the Supreme Court must appear before a parliamentary committee to respond to questions. When provincial governments choose judges for provincial courts, they follow a process similar to how the federal government chooses federal court judges. The appointment is made by the Lieutenant Governor, upon the advice of the provincial Minister of Justice.

Judges remain in their positions until the age of 70 or 75 depending on the court, unless they retire early or are removed from office due to disciplinary reasons.

When a judge is sworn into office, their job is not to uphold the will of the political party who put them in power. Instead, they take an oath to “do right to all manner of people after the laws and usages of this realm, without fear or favour, affection or ill will.” This oath means that judges must make rulings based strictly on what the law says. There is ample evidence that judges follow this oath. For example, many laws created by Stephen Harper’s Conservative government were ruled to be unconstitutional by Supreme Court justices appointed by Stephen Harper’s government. These high-level rulings against the government demonstrate how the judicial appointment process in Canada has integrity: judges act to uphold the law, not party politics.

1. Why is it vital that for justice to be served, judges must come to conclusions on cases strictly based on what the law says and what the facts of the case are?
2. Would you have faith in a court run by Judge Pepperleigh?