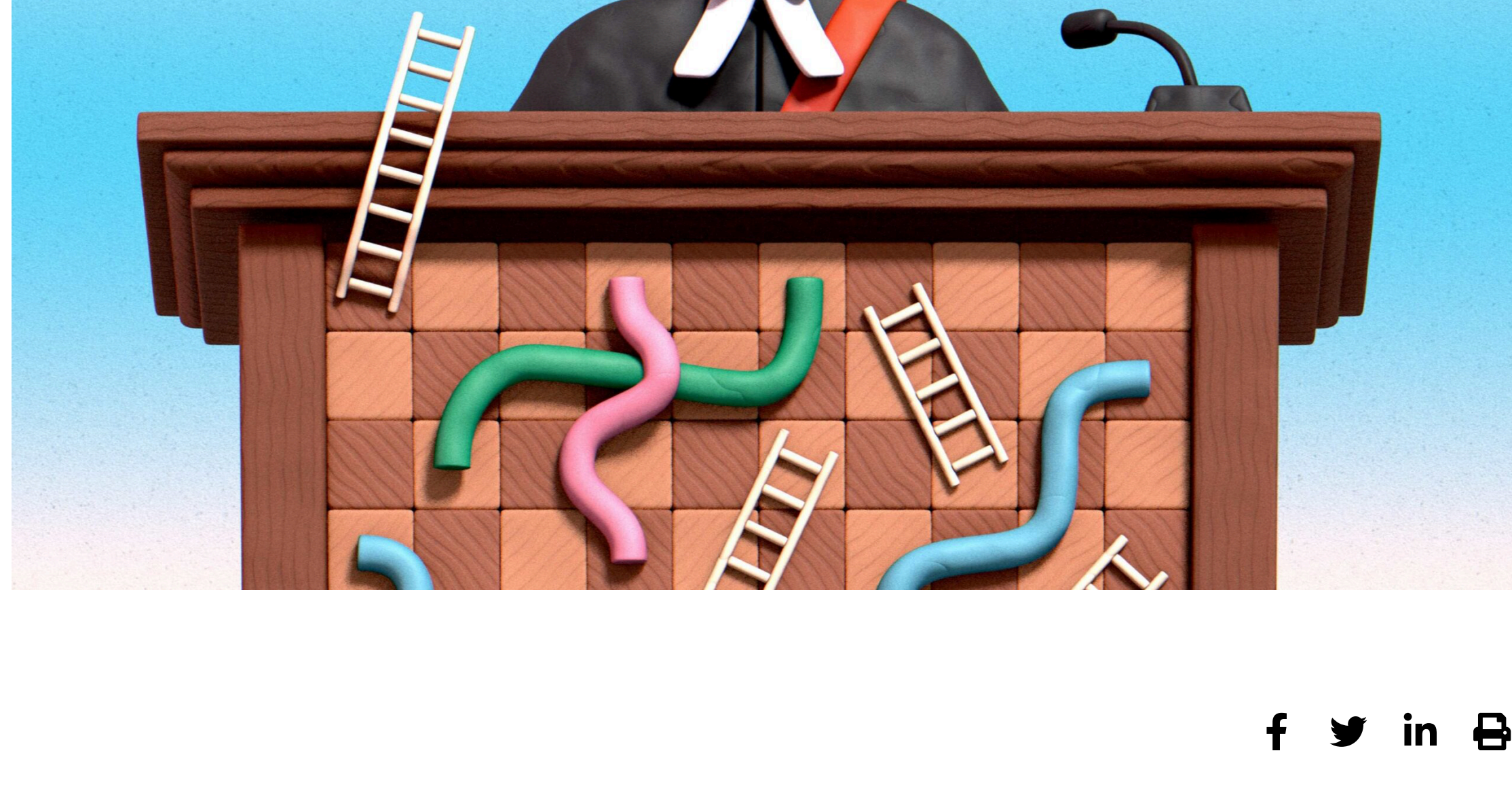


How to become a judge

Honest advice that you won't find on any government website

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The path to the judiciary once had much less to do with merit than with one's proximity to power. For the bulk of Canadian history, according to [a detailed paper on the subject](#), "the process of judicial appointment was dominated by patronage." Armed with near-total discretion over who to admit to the bench, provincial and federal governments lavished appointments on staunch allies and longtime donors. A track record of legal excellence was optional.

By the 1990s, the era of brazen cronyism had largely come to an end. Today, merit matters a great deal. Before we talk about how to shine as a judicial applicant, however, it's crucial to understand the basics of the current appointment process. To seek out a spot on the Ontario or federal bench, aspiring judges have to submit an application to a non-partisan panel—called a judicial advisory committee—that vets each candidate's fitness for the role. In both jurisdictions, a committee assigns a rating to each applicant. The options include "highly recommended," "recommended" and either "not recommended" (in Ontario) or "unable to recommend" (in the federal system). Anyone deemed "highly recommended" or "recommended" goes into a pool of top candidates. In Ontario, when a judicial vacancy arises, the attorney general has two options: appoint someone from the provincial pool or issue a call for new applications. Canada's minister of justice is not technically required to appoint from the federal pool, but, as [a recent paper](#) points out, "this is the norm." It remains possible to select party loyalists, but the advisory committees have made it nearly impossible for either level of government to pack the bench with *unqualified* loyalists.

To become a judge, then, it's vital to build up the sort of career that will impress a committee. Broadly speaking, applicants have to demonstrate a history of first-rate legal work and community leadership. The vetting process also involves a robust reference check. One might imagine that the "recommended" pool is saturated with high-profile lawyers who sit on the board of renowned charities and pal around with other legal heavyweights. Is that true, though?

In close to a dozen on-background interviews with judicial experts, I've looked into how the Ontario and federal appointment processes unfold in real life. The truth is, there's only one rigid requirement: an applicant must have 10 years of post-call legal experience. Beyond that, the advisory committees try not to unthinkingly assess each candidate against a rigid checklist. A top partner at a prestigious firm might seem like an ideal applicant—but if that person has a reputation for treating opposing counsel with disdain, a committee will happily withhold its endorsement. A family lawyer who has never volunteered might seem like a weak applicant—but if that person is a single parent who has very little time to spend on community work, a committee will take that into account. It's tricky, in other words, to reduce what I've learned to a series of fixed guidelines on how to become a judge. But it is possible to lay out a series of general guidelines. That's what I've done below.

The ideal applicant

Admittedly, advisory committees tend to prefer a certain species of lawyer: expert litigators who feel at home in court. There's a simple logic to that bias. On the bench, judges have to issue snap rulings—on whether a submission flouts the rules of evidence, to take one example—with speed and precision. An intimate familiarity with the courtroom is tremendously helpful.

Yet litigators have no monopoly on judicial appointments. New judges receive training on courtroom procedures, so committees can comfortably assume that all applicants will acquire some of that knowledge on the job. If you lead a solicitor-side practice, you'll *strengthen* your candidacy if you've spent a bit of time in court, even in a supporting role to a litigation colleague. But as long as you can prove expertise in your field, through complex casework or published writing, you have an honest shot.

Steadfast community involvement is another asset. That's part of the formal criteria, in large measure, on the theory that judges with a wide view of society will arrive at better verdicts. You might decide to serve on the board of a non-profit or teach a law-school seminar. Importantly, the caveat I mentioned above still stands: if a specific life circumstance—parenthood, illness—keeps you from volunteering, that's no reason to abandon your dream of an appointment. You'll be at a disadvantage, to be sure. But if you thoughtfully explain the situation in your application, you can win a recommendation.

The character test

Both the Ontario and federal applications call for a list of professional references. Your odds of an endorsement will surely rise if you can count on the support of distinguished colleagues in high places. Is it possible, though, to proactively foster a network of the industry's elite? There is a strategy. First, join a flagship legal organization like the Ontario Bar Association or the Canadian Bar Association. Then make it a priority to attend events, sit on committees and enroll in the section that lines up with your area of practice. The senior lawyers who take part in those activities—plenty of them do—will start to appreciate your legal knowledge and notice how well you collaborate in meetings. Eventually, you can ask at least one of them to support your bid for the judiciary.

In addition to speaking with your formal references, advisory committees will arrange clandestine interviews—known as discreet inquiries—with all manner of people you've dealt with over your career. Potential informants include past coworkers, lawyers you've battled on a file, judges you've appeared before in court and board members of the charity you volunteer with on the weekend. There's no way to predict who may hop on the phone to talk about you behind your back.

The point of those discussions, in part, is to confirm that you have a reputation as a capable legal talent. But you can also expect a committee to ask: How does the applicant treat others, from fellow lawyers to court staff? Is the applicant arrogant, the type of person who looks down on those with less power? How does the applicant respond to tense disagreements with colleagues? The objective of *those* questions is to assess your character.

It's not hard to imagine which lawyers would flunk such a civility test. Think of the partners who leave irate voicemails with associates and send hostile emails to opposing counsel.

Think of the litigators who, in the midst of contentious settlement negotiations, cling to unreasonable positions. Think of the counsel who outright lie, inserting blatant falsehoods into legal submissions. In conversation with a committee, most people will condemn those lawyers without hesitation.

Though it takes place in the shadows, the discreet-inquiry process is deceptively democratic: it asks people to vote for—or against—you in secret. It's still valuable, of course, to accumulate prominent allies who can serve as formal references. But you also need the wider community to vouch for you as someone who acts with integrity, stays calm in nervy situations and maintains a professional attitude at all times. You can start modelling that behaviour today.

The decision to apply

On the 10-year anniversary of your call-to-the-bar ceremony, you can apply to the bench. That doesn't mean, however, that you're truly ready to become a judge. Perhaps you've built a thriving litigation practice. Each case affords you an opportunity to forge a deep relationship with the client, map out a legal line of attack and test your professional mettle in court. It's a thrill. Now picture your life on the bench. You arrive at work each day to preside over whatever dispute happens to fall on your docket. It's a vital role, one that allows you to serve the community and influence the direction of caselaw. But you have no client. No personal stake in the outcome. No occasion to take part in courtroom combat. Will you come to miss your old job in high-octane litigation? If so, your best option is likely to [stay put](#). The judiciary can wait until you're hungry for a meaningful career pivot.

Another consideration is your capacity to mete out impartial decisions. Before you pursue the power to confine people to prison, deny parents custody of their children or cast asylum-seekers out of the country, it's wise to conduct a kind of ethical self-audit to determine if you hold any partisan views that could taint your judgment. Maybe you feel a disproportionate allegiance to a particular segment of the bar, whether it's defence counsel, the Crown or senior partners on Bay Street. An awareness of such prejudice can keep it in check. There's also, if needed, a more drastic solution: intentionally take on work that will divide your professional loyalties. If you're a hard-line defence lawyer, you might handle a few cases at a regulatory tribunal as the *prosecutor*. The idea is to cultivate a new appreciation for the counsel you typically argue against in court. Above all, only apply to the judiciary once you're confident that you can perform the job with objectivity.

The common mistakes

As you draft your application, a devious thought may cross your mind: to subtly inflate your accomplishments. Perhaps you conducted a precedent-setting trial as second chair. All of a sudden, that strikes you as rather mediocre. And so you imply that you led it.

Let's attend to the foremost flaw in that plan. When an advisory committee, through its discreet inquiries, speaks to the lawyer who *did* lead the trial, your subordinate role will come to light. What you saw as a clever embellishment will, once discovered, undermine the credibility of your entire application.

There's an additional reason to stick to the truth: it's likely impressive on its own. In the application, you have the space to describe what it takes to second-chair a major trial.

Recount how you researched the matter, drafted submissions and examined witnesses. A competent committee will recognize the value of those contributions. No dishonesty required.

Both applications also include essay-style questions that test your writing skills and sensitivity to the power that judges wield. In the federal form, for instance, you'll find this prompt: "Describe how judicial decision-making impacts society in a constitutional democracy." Clearly, you should answer with care. But don't expect a brilliant reply to compensate for a lacklustre career. Your insight into constitutional democracy—

penetrating as it might be—is no substitute for first-rate legal work or a reputation for ethical conduct. A well-written application is necessary, but not sufficient to secure the endorsement of a committee.

The black box

Once an Ontario or federal advisory committee completes its review of your candidacy, that assessment lasts for a three-year period. Painfully, though, no committee will disclose whether it placed you in its pool of recommended applicants. The ideal outcome is that, with no advance warning, the province's attorney general or the country's minister of justice calls you on a sunny afternoon. "I'm delighted to let you know," the voice declares, "that I've appointed you to the bench." The less-ideal outcome is that those three years pass in anxious silence.

Which leads to a delicate question: if you don't secure an appointment in that three-year window, is it worth the effort to reapply? There's no obvious answer. The central problem is that you can't pinpoint what, precisely, kept you out of the judiciary. Perhaps the committee balked at your ordinary legal skill set and rated you poorly. Perhaps you dazzled the committee, but your eligibility lapsed before a suitable vacancy arose. You'll never know.

Several experts, however, told me stories of terrific candidates who had to send in at least two applications before—at long last—sailing onto the bench. If you've built up an admirable career, a history of community leadership and a pristine reputation, you should almost certainly toss your name back into the bureaucratic abyss. You still have a legitimate chance at an appointment. And the country, in turn, still has the chance to benefit from the wisdom of a superb judge.

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Illustration by [Hudson Christie](#).