



Module 5: Why are Judicial Independence and Judicial Impartiality so Important?



➤ Case Study: The Protest

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Module 5: Why are Judicial Independence and Judicial Impartiality so Important?

The desired outcome for Module 5 is encapsulated in the following paragraph:

“Well done. Judicial independence has been described as a cornerstone of our system of justice. Now you understand how independent status allows judges to make decisions on the basis of fairness and the rule of law—even decisions that do not please politicians, the media, voters or other judges.”*

(*audio feedback to each student from the judge after the successful completion of the online task at www.tryjudging.ca)

NB: all lettered Sections identified in the overview are referenced within the body of each of the 5 modules, with each module being located directly after each suggested lesson plan(s), and will be found at www.tryjudging.ca.

Module Learning Outcomes: Module 5, Section (A)

Students will:

- Understand why it is important that judges have independent status in our society;
- Explore how judges are chosen and how they are protected from outside influences;
- Examine the institutional structures that enable judges to maintain their independence from government.

Provided Resources for Module 5

I. Resource Materials: Module 5, Section (B)

(Note: information on the first five sections below is in Module 5 (B) of the teacher’s guide and can also be accessed at www.tryjudging.ca. Click on “Teacher Resources”.)

1. The Origins and Importance of Judicial Independence
2. How Judges are Selected
3. Security of Tenure
4. Financial Security

5. Protection from Outside Influences**6. Judicial Accountability**

7. Posed Questions Handout Sheet
(refer to Appendix A: Teacher's copy and Appendix B: students' copy)

8. Handout Sheets
(refer to Appendices C and D)

9. Video: Case Study #5
The Protest
(<3 minutes) available at
www.tryjudging.ca

10. Video
Background and Script available at
www.tryjudging.ca

11. Try Judging
online interactive program for students is available at www.tryjudging.ca

12. Quiz
(embedded within the online interactive student program)

13. Additional Exercises for Classroom Use and Assignments
(these are found in Module 5 (D) of the teacher's guide and at www.tryjudging.ca)

14. Internet Links to More Resources
(these are found in Module 5 (E) of the teacher's guide and at www.tryjudging.ca)

2. Case Study: Module 5, Section (C)

(to be used in conjunction with the video and the online interactive site)

Case Study: *The Protest*

[The case study can be accessed at www.tryjudging.ca. It is designed as an interactive exercise that can be adapted for an in-class activity and/or written assignment. The website, furthermore, provides all resource materials for teachers in PDF format.]

3. Additional Exercises for Classroom Use and Assignments: Module 5, Section (D)

(all the following are elaborated upon at www.tryjudging.ca)

- 1) Selecting Judges: An Exercise
- 2) Elected Judges Versus Appointed Judges: A Class Debate
- 3) Reviewing Judicial Appointees: A Class Exercise
- 4) Public Opinion and the Courts: An In-Class Discussion
- 5) Political Pressure and the Courts: An In-Class Discussion
- 6) Suggested questions for class discussion and/or written assignments

4. Internet Links To More Resources: Module 5, Section (E)

These links, found at www.tryjudging.ca, provide information on the following: how judges are appointed, qualities expected of judges, independence and limitation on judicial power, main features of judicial independence, The Judges Act, etc.



Module 5: Why are Judicial Independence and Judicial Impartiality so Important?

Suggested Lesson Plans

Teaching Objectives and Learning Outcomes

Students will:

- Understand why it is important that judges have independent status in our society;
- Explore how judges are chosen and how they are protected from outside influences;
- Examine the institutional structures that enable judges to maintain their independence from government.

Teacher and Student Learning Materials and Resources

(Note: information on the first six sections below is in Module 5 (B) of the teacher's guide and can also be accessed at www.tryjudging.ca. Click on "Teacher Resources".)

1. The Origins and Importance of Judicial Independence

2. How Judges are Selected

3. Security of Tenure

4. Financial Security

5. Protection from Outside Influences

6. Judicial Accountability

7. Posed Questions Handout Sheet

(refer to Appendix A: Teacher's copy and Appendix B: students' copy)

8. Handout Sheets

(refer to Appendices C and D)

9. Video: Case Study #5: *The Protest*

(<3 minutes) available at www.tryjudging.ca

10. Video Background and Script

available at www.tryjudging.ca

11. *Try Judging*

online interactive program for students is available at www.tryjudging.ca

12. Quiz

(embedded within the online interactive student program)

13. Additional Exercises for Classroom Use and Assignments

(these are found in Module 5 (D) of the teacher's guide and at www.tryjudging.ca)

14. Internet Links to More Resources

(these are found in Module 5 (E) of the teacher's guide and at www.tryjudging.ca)

Teaching Plan and Strategy

I.

Use Appendices A and B to introduce this Module's topic. It can be used as a handout for students to complete or for an oral class discussion. Either way, it acts as a diagnostic assessment of the class' understanding of judicial independence and judicial impartiality.

2.

In this major part of the lesson, all of the 6 sub-topics that are presented in Module 5 of the guide, Section (B) should be taught. Pertinent information is provided in Section (B) of the guide and acts as the foundation of knowledge for completion of Appendix C.

Information pertaining to the 6 sub-topics could be presented through a lecture approach, a power point presentation, or even as the result of a student research assignment.

The 6 sub-topics are:

- The Origins and Importance of Judicial Independence
- How Judges are Selected
- Security of Tenure
- Financial Security
- Protection from Outside Influences
- Judicial Accountability

3.

Critical learning materials and resources 9, 10, 11, and 12 will enable students to fully analyse Module 5's Section (C) Case Study: The Protest. The online video (approximately 3 minutes in length), subsequent online interactive exercise, and associated online quiz (all found at www.tryjudging.ca), provide an excellent student-centred learning activity for teachers to use.

4.

Follow-up activities such as those outlined in Module 5 guide's Section (D), referencing the Internet links listed in Section (E) of the Module guide, and using Appendix D, can be considered for further study.

Evaluation/ Assessment

1. Appendix C (see Materials and Resources #8 above), either in part or in totality.
2. Quiz for online interactive program (see Materials and Resources #12 above)
3. Exercises or assignments associated with Module 5, Section (D) and Section (E) (see Materials and Resources #13 and #14 above)

Appendix A For teachers

Judicial Independence and Judicial Impartiality: An Introduction

A judge is asked to rule that the law making it a criminal offence to possess child pornography violates the Charter's guarantee of freedom of expression and must be struck down. The judge upholds the law making it illegal to possess child pornography, but makes an exception for written or visual material created only for personal use, such as diaries. Protestors take to the streets to voice their outrage with the ruling, and some politicians demand that the courts get tough with pedophiles.

Which of the following should a judge take into account when making his or her decision in this case?

- 1) A public opinion poll suggesting that 83 per cent of Canadians favour mandatory jail terms for pedophiles [No]
- 2) Court rulings in other cases of possession of child pornography [Yes]
- 3) The rights set out in the Charter of Rights and Freedoms [Yes]
- 4) A newspaper editorial demanding that judges take immediate action to combat the "scourge" of child pornography [No]
- 5) A politician's demand that the courts do more to protect children [No]
- 6) Whether the child pornography law is a reasonable limit on a person's democratic rights [Yes]

[This exercise is designed to make students think about why judges must make decisions based on the law rather than popular opinion or political considerations.]

Judicial independence ensures that the judge can decide whether the child pornography law is constitutional based on the rule of law, without regard to who will agree or disagree. The judge can make a ruling that does not please the government or politicians knowing it can have no effect on the judge's salary or pension, or how long he or she will serve on the bench. Judges also have the independence needed to make decisions that may be unpopular with members of the public or with the media. Since they do not face election or public review, judges are free to make decisions that are correct in law and based on principles of fairness and justice without regard to public opinion.]

Appendix B

For students

Judicial Independence and Judicial Impartiality: An Introduction

A judge is asked to rule that the law making it a criminal offence to possess child pornography violates the *Charter's* guarantee of freedom of expression and must be struck down. The judge upholds the law making it illegal to possess child pornography, but makes an exception for written or visual material created only for personal use, such as diaries. Protestors take to the streets to voice their outrage with the ruling, and some politicians demand that the courts get tough with pedophiles.

Try Judging: Which of the following should a judge take into account when making his or her decision in this case?

- 1) A public opinion poll suggesting that 83 per cent of Canadians favour mandatory jail terms for pedophiles
- 2) Court rulings in other cases of possession of child pornography
- 3) The rights set out in the Charter of Rights and Freedoms
- 4) A newspaper editorial demanding that judges take immediate action to combat the “scourge” of child pornography
- 5) A politician’s demand that the courts do more to protect children
- 6) Whether the child pornography law is a reasonable limit on a person’s democratic rights

Appendix C

Origins and Importance of Judicial Independence

1. Before 1701, why were judges not considered to be independent in England?
2. How did this change in 1701?
3. How is the independence and impartiality of the judiciary guaranteed?
4. What are three reasons why the independence of the judiciary is important?

How Judges are Selected

1. How are judges selected?
2. How are judges to the Supreme Court selected?
3. What are the requirements which the selection committee would use to select judges?
4. Why did Canada choose not to use the American model when selecting judges?

Security of Tenure

1. What is the age of retirement for judges?
2. What is a supernumerary?
3. What are three reasons why a judge may be removed from the bench?
4. Who has the right to remove a judge?

Financial Security

1. How often are the salaries of judges reviewed?
2. Why is it necessary for the wages of judges to be high?
3. Why is it necessary for the pensions of judges to be high?

Protection From Outside Influences

1. Who oversees the administrative matters of the courts?
2. Why is it important that judges are free from being sued for what they do?
3. Why is public opinion not important to judges when they make a decision?

Judicial Accountability

1. How does the court of public opinion maintain its rights when dealing with the decisions of the courts?
2. How are lower courts held accountable?
3. What is the role of the Canadian Judicial Council?
4. What is the composition of the Canadian Judicial Council?

Appendix D

Additional Exercises for Classroom Use and Assignments

D) Selecting Judges: An Exercise

Break the class into small groups and ask each group to devise a method for selecting judges. Each group must explain their choices and what they would do to ensure their selection process protects judicial independence. Will their judges be appointed or elected? If they are appointed, who will decide who is chosen? Will there be a screening committee, and will there be private interviews or public hearings to assess candidates? If judges are elected, will they be permitted to make campaign speeches, advertise and accept donations? What qualifications will a person need to be eligible to become a judge? Will their judges be appointed or elected for life, or for a fixed term?

Modify this exercise as a written assignment, asking students to devise a selection process and to explain what they would do to ensure their process protects judicial independence.

2) Elected Judges Versus Appointed Judges: A Class Debate

By a show of hands, poll the class to find out which students think judges should be appointed and which think they should be elected. Divide students into two groups based on their vote and ask each group to discuss and write down the arguments in favour of its position. What are the advantages of electing judges versus appointing them? What are the drawbacks and how would each group deal with them to ensure judges are independent and impartial?

3) Reviewing Judicial Appointees: A Class Exercise

Select three students to take the role of lawyers nominated to serve as judges. Have them sit at the front of the classroom and cast the remainder of the class in the role of a Parliamentary committee set up to review their suitability. Ask students on the “committee” to devise questions they think Canadians should know about these new judges—their qualifications, their accomplishments, their reputations, the skills they would bring to the job. Students may be interested in discovering other information, such as how these appointees see the role of the judge or their opinions on issues such as gay marriage or youth crime. As students pose questions and the appointees answer (using their imagination to discuss their careers, qualifications and opinions), the teacher acts as a moderator and asks the class to consider whether each question is appropriate or could undermine judicial independence or the judge’s appearance of impartiality. For instance, asking the appointee to outline his or her legal career would pose no threat to judicial independence. If an appointee responded to a question about whether he or she believes abortions should be illegal, on the other hand, it could undermine the appointee’s impartiality if that issue came before the court. At the end of the session, assign students to make a list of appropriate and inappropriate questions based on the discussion.

4) Public Opinion and the Courts: An In-Class Discussion

The day before a man is sentenced for impaired driving causing the death of a pedestrian, members of the victim’s family are interviewed on the local television station. The victim’s parents make an emotional appeal to the judge to impose the maximum sentence – life in prison. Anything less, they say, will mean that there is no justice. The reporter does man-in-the-street interviews about the case with five people, and all agree that the driver should get the maximum sentence.

Use this scenario as the starting point for an in-class discussion. Should the judge take the parents' wishes into consideration? Why or why not? Should judges be concerned about what people might think of their decisions? Should they try to please victims of crime? What would happen if judges were influenced by public opinion—would they still be acting fairly and impartially? Would they be able to uphold the rule of law? Ask students to put themselves in the position of the driver, and ask if they think it would be fair to have their sentence decided by a judge who is concerned about pleasing the victim's family and members of the public.

Adapt this exercise to create a written assignment by asking students to discuss questions selected from those listed above.

5) Political Pressure and the Courts: An In-Class Discussion

A politician reacts with outrage after a judge imposes a sentence of house arrest on a doctor convicted of sexually assaulting two young patients. Calling the sentence “a slap on the wrist,” the politician suggests the judge should be fired or transferred to a remote area of the province for failing to send the doctor to jail. At the very least, she says, the judge should have his salary cut and be barred from hearing sexual assault cases.

Use this scenario as the starting point for an in-class discussion. Is the politician's criticism valid? Is she correct in advocating punishment for the judge? What is the proper process for deciding whether a judge's ruling is correct? Should politicians be able to fire judges, or have control over their salaries, where they work and the cases they hear? What would happen if politicians and government officials had this kind of power? Would

judges be able to make decisions independently and impartially? Would judges and the courts appear to be independent and impartial if government had this kind of control over them? What would be the impact on public perception of the courts and their independence?

Adapt this exercise to create a written assignment by asking students to discuss questions selected from those listed above.

Suggested questions for class discussion and/or written assignments

- a) Identify three practices that protect judicial independence and explain why each is important
- b) List some of the qualities and qualifications that make someone a good candidate for becoming a judge.
- c) If judges can ignore public opinion, how are they accountable for their decisions?
- d) Why must judges be free from government control?



Module 5: Why are Judicial Independence and Judicial Impartiality so Important?



Case Study: The Protest

Contents

A. Learning Outcomes

B. Resource Materials

1. The Origins and Importance of Judicial Independence
2. How Judges are Selected
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5. Protection from Outside Influences
6. Judicial Accountability

C. Case Study: The Protest

D. Additional Exercises for Classroom Use and Assignments

E. Internet Links to More Resources



A. Learning Outcomes

Students will:

- ⊕ Understand why it is important that judges have independent status in our society;
- ⊕ Explore how judges are chosen and how they are protected from outside influences;
- ⊕ Examine the institutional structures that enable judges to maintain their independence from government.



B. Resource Materials

I. The Origins and Importance of Judicial Independence

Three centuries ago, British judges were not independent. In the words of Francis Bacon, an attorney general of the 17th century, judges were “lions under the throne” who served at the pleasure of the ruling monarch and could be dismissed for any reason. It was even common practice to replace all judges when a new king or queen ascended to the throne. *The Act of Settlement of 1701* established fixed salaries for judges, who could only be removed from office for misbehavior and then only after a vote of both houses of Parliament. By the 1830s these principles of judicial independence had been extended to judges in Britain’s North American colonies, and were later enshrined in the British North America Act – the forerunner of our constitution – in 1867. The *Charter of Rights and Freedoms* guarantees every Canadian charged with a crime the right to receive a fair trial before a court that is “independent and impartial.”

The independence of the judiciary is a cornerstone of Canadian democracy. As an institution the judiciary is independent from all other branches of government, and individual judges are independent not only from government but from each other. The government prosecutes crimes and often appears as a litigant in the civil courts, so any appearance of impartiality would vanish if government could fire a judge on a whim or slash a judge’s salary as punishment for ruling against its position. Independence ensures judges are free to assess the evidence, apply the law and decide the outcome of cases without regard for who will be pleased

or displeased with the result. Judges have a duty to uphold the rule of law, and independence ensures they can fulfil that duty free from outside influences. Judicial independence ensures cases are dealt with fairly and impartially, and citizens can be confident in the integrity of the results.

“Judicial independence is critical to the public’s perception of impartiality,” the Supreme Court of Canada noted in a 1991 ruling. “Independence is the cornerstone, a necessary prerequisite for judicial impartiality.”

2. How Judges are Selected

While judges are appointed by government, they are not government employees. The federal government appoints judges to the superior courts and the Supreme Court of Canada, while provincial and territorial governments choose judges for provincial-level courts. The process is the same at all levels – the minister of justice recommends candidates to the cabinet, which makes the final decision. Appointments to the Supreme Court of Canada are an exception – the prime minister recommends candidates to the federal cabinet for approval.

Superior court judges are selected after wide consultation with the judiciary and the legal community. Lawyers who have at least 10 years’ experience in practicing law can apply to arms’ length screen-

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ing committees of judges, lawyers, government officials and members of the public who interview and screen candidates and recommend those who are qualified. The provinces and territories have similar screening processes for their courts, but in some jurisdictions lawyers need only five years' experience before being considered for appointment. The prime minister selects Supreme Court of Canada judges after wide consultation, but there is no screening committee for these appointments. As of 2004 the federal government was considering proposals to allow a Parliamentary committee to hold hearings to review the qualifications of those chosen for the country's highest court.

Candidates for judicial office are assessed on their legal knowledge and accomplishments, their volunteer work for legal organizations and the wider community, the soundness of their judgment, their decision-making abilities, and whether they can deal with issues and people in a fair and impartial manner. It is common for judges who have served with distinction on lower courts to be promoted to a superior court or court of appeal, but judges do not apply for these posts and they are not put through a screening process for a second time.

Another model for selecting judges, followed in some American states, is to allow citizens to elect judges in the same way they vote for politicians. While this process may appear more democratic, it has serious implications for the independence of judges and their appearance of impartiality. To win office or to be re-elected, candidates and incumbent judges must appeal for the support of voters. If that means campaigning on a tough law-and-order platform or ensuring that the public gets the harsh sentences it demands, impartiality and the rule of

Candidates for judicial office are assessed on their legal knowledge and accomplishments, their volunteer work for legal organizations and the wider community, the soundness of their judgment, their decision-making abilities, and whether they can deal with issues and people in a fair and impartial manner.

law may be seriously undermined. As well, judges and candidates would not appear to be impartial if they sought donations from law firms and corporations to finance their election campaigns.

3. Security of Tenure

Once a judge has been appointed, governments have no control over how long he or she will serve on the bench. Under the constitution, superior court judges can remain in office until reaching 75, the mandatory retirement age. For provincial-level courts, the age for mandatory retirement varies and is usually 65 or 70. Judges who have reached a threshold age and have a certain number of years of experience on the bench may choose to become supernumeraries. A replacement judge will be appointed but the supernumerary judge will continue to work part-time, at the same salary, providing the courts with experienced judges to deal with long trials or to help clear up backlogs of cases.

Under the federal *Judges Act*, superior court judges can be removed from office for misconduct, due to advanced age or infirmity, or if they fail to properly exercise the powers of judicial office. Only Parliament has the power to remove a superior court judge from office on such grounds. A joint motion of the House of Commons and the Senate is required, but this procedure has never been used. At the provincial and territorial level, the cabinet or legislature has the power to remove a judge for misconduct.

4. Financial Security

To ensure government has no influence over the financial security of judges, independent commissions are established at regular intervals to review the salaries of judges. At the federal level a commission is struck every four years to undertake the review and recommend any increase to Parliament. Salaries are set at a high level to attract the best candidates and to ensure judges are unlikely to run into financial trouble or to be tempted if

offered a bribe. To further ensure financial security, the pensions of superior court judges are pegged by law at two-thirds of their salary.

5. Protection from Outside Influences

Courts operate in a manner that shields judges from outside influences. While governments cover the cost of running the justice system – providing courthouses and facilities and paying support staff – they have no control over how judges do their jobs or who hears a particular case. The courts establish policies, set dates for hearings and assign judges. The chief justice or chief judge of the court oversees these administrative matters, but cannot tell a judge what ruling to make because judges have complete independence from each other.

Independence enables judges to make rulings that may be unpopular. Justice is not a popularity contest and the courts must be able to uphold the legitimate rights of individuals and minority groups regardless of the views of the majority of citizens.

Judges cannot be sued for anything they do while carrying out their judicial duties. This immunity is crucial if judges are to fulfil their duty to assess the evidence and apply the law – if judges could be sued for defaming someone’s character, for instance, it may prevent them from stating whether a witness is telling the truth.

Judges provide reasons for their decisions, often in writing, but do not have to justify or explain their decisions to the public or to anyone in government. Independence enables judges to make rulings that may be unpopular. Justice is not a popularity contest and the courts must be able to uphold the legitimate rights of individuals and minority groups regardless of the views of the majority of citizens. Judges may make rulings that outrage victims of crime, the police, politicians or lobby groups, or force governments to change policies or amend the law. It is the role of the courts to do justice and uphold the rule of law, not to please everyone. Each

case will have a winner and a loser and, no matter what the outcome, judicial independence assures that both sides will receive a fair and impartial hearing.

6. Judicial Accountability

Judges are independent but remain accountable for their actions. Court proceedings are open to the public – private hearings are rare and only held to protect a person’s privacy or other important interest – and journalists and citizens are free to debate and criticize a judge’s decision. Judges are accountable to the higher courts for all their decisions – a party who is unsuccessful in court has the right to appeal and, if a higher court finds a legal error has been made, the ruling will be altered or reversed. The Canadian Judicial Council investigates formal complaints about the conduct of federally appointed judges (it does not, however, review judges’ rulings). The council – made up of the chief justice of Canada and the chief justice and associate chief justice of each superior court – has the power to counsel or reprimand a judge and, in cases of serious misconduct, can recommend that Parliament be asked to remove a judge from office. The provinces and territories have judicial councils to review complaints about the conduct of judges serving on their courts.



C. Case Study: The Protest

The following case study will be created at www.tryjudging.ca as an interactive exercise that can be adapted for an in-class activity or a written assignment. The website will provide teachers with all resource materials in PDF format as well as worksheets that can be downloaded and distributed to students. These worksheets will list the questions posed below and ask students to supply the answers based on their exploration of the website.

Scenario

A judge is asked to rule that the law making it a criminal offence to possess child pornography violates the Charter's guarantee of freedom of expression and must be struck down. The judge upholds the law making it illegal to possess child pornography, but makes an exception for written or visual material created only for personal use, such as diaries. Protestors take to the streets to voice their outrage with the ruling, and some politicians demand that the courts get tough with pedophiles.

Try Judging: Which of the following should a judge take into account when making his or her decision in this case?

- 1) A public opinion poll suggesting that 83 per cent of Canadians favour mandatory jail terms for pedophiles [No]
- 2) Court rulings in other cases of possession of child pornography [Yes]
- 3) The rights set out in the *Charter of Rights and Freedoms* [Yes]
- 4) A newspaper editorial demanding that judges take immediate action to combat the “scourge” of child pornography [No]
- 5) A politician's demand that the courts do more to protect children [No]
- 6) Whether the child pornography law is a reasonable limit on a person's democratic rights [Yes]

This exercise is designed to make students think about why judges must make decisions based on the law rather than popular opinion or political considerations.

Judicial independence ensures that the judge can decide whether the child pornography law is constitutional based on the rule of law, without regard to who will agree or disagree. The judge can make a ruling that does not please the government or politicians knowing it can have no effect on the judge's salary or pension, or how long he or she will serve on the bench. Judges also have the independence needed to make decisions that may be unpopular with members of the public or with the media. Since they do not face election or public review, judges are free to make decisions that are correct in law and based on principles of fairness and justice without regard to public opinion.]



D. Additional Exercises for Classroom Use and Assignments

I. Selecting Judges: An Exercise

Break the class into small groups and ask each group to devise a method for selecting judges. Each group must explain their choices and what they would do to ensure their selection process protects judicial independence. Will their judges be appointed or elected? If they are appointed, who will decide who is chosen? Will there be a screening committee, and will there be private interviews or public hearings to assess candidates? If judges are elected, will they be permitted to make campaign speeches, advertise and accept donations? What qualifications will a person need to be eligible to become a judge? Will their judges be appointed or elected for life, or for a fixed term?

Modify this exercise as a written assignment, asking students to devise a selection process and to explain what they would do to ensure their process protects judicial independence.

2. Elected Judges Versus Appointed Judges: A Class Debate

By a show of hands, poll the class to find out which students think judges should be appointed and which think they should be elected. Divide students into two groups based on their vote and ask each group to discuss and write down the arguments in favour of its position. What are the advantages of electing judges versus appointing them? What are the drawbacks and how would each group deal with them to ensure judges are independent and impartial?

3. Reviewing Judicial Appointees: A Class Exercise

Select three students to take the role of lawyers nominated to serve as judges. Have them sit at the front of the classroom and cast the remainder of the class in the role of a Parliamentary committee set up to review their suitability. Ask students on the “committee” to devise questions they think Canadians should know about these new judges – their qualifications, their accomplishments, their reputations, the skills they would bring to the job. Students may be interested in discovering other information, such as how these appointees see the role of the judge or their opinions on issues such as gay marriage or youth crime. As students pose questions and the appointees answer (using their imagination to discuss their careers, qualifications and opinions), the teacher acts as a moderator and asks the class to consider whether each question is appropriate or could undermine judicial independence or the judge’s appearance of impartiality. For instance, asking the appointee to outline his or her legal career would pose no threat to judicial independence. If an appointee responded to a question about whether he or she believes abortions should be illegal, on the other hand, it could undermine the appointee’s impartiality if that issue came before the court. At the end of the session, assign students to make a list of appropriate and inappropriate questions based on the discussion.

4. Public Opinion and the Courts: An In-Class Discussion

The day before a man is sentenced for impaired driving causing the death of a pedestrian, members of the victim's family are interviewed on the local television station. The victim's parents make an emotional appeal to the judge to impose the maximum sentence – life in prison. Anything less, they say, will mean that there is no justice. The reporter does man-in-the-street interviews about the case with five people, and all agree that the driver should get the maximum sentence.

Use this scenario as the starting point for an in-class discussion. Should the judge take the parents' wishes into consideration? Why or why not? Should judges be concerned about what people might think of their decisions? Should they try to please victims of crime? What would happen if judges were influenced by public opinion – would they still be acting fairly and impartially? Would they be able to uphold the rule of law? Ask students to put themselves in the position of the driver, and ask if they think it would be fair to have their sentence decided by a judge who is concerned about pleasing the victim's family and members of the public.

Adapt this exercise to create a written assignment by asking students to discuss questions selected from those listed above.

5. Political Pressure and the Courts: An In-Class Discussion

A politician reacts with outrage after a judge imposes a sentence of house arrest on a doctor convicted of sexually assaulting two young patients. Calling the sentence “a slap on the wrist,” the politician suggests the judge should be fired or transferred to a remote area of the province for failing to send the doctor to jail. At the very least, she says, the judge should have his salary cut and be barred from hearing sexual assault cases.

Use this scenario as the starting point for an in-class discussion. Is the politician's criticism valid? Is she correct in advocating punishment for the judge? What is the proper process for deciding whether a judge's ruling is correct? Should politicians be able to fire judges, or have control over their salaries, where they work and the cases they hear? What would happen if politicians and government officials had this kind of power? Would judges be able to make decisions independently and impartially? Would judges and the courts appear to be independent and impartial if government had this kind of control over them? What would be the impact on public perception of the courts and their independence?

Adapt this exercise to create a written assignment by asking students to discuss questions selected from those listed above.

Suggested questions for class discussion and/or written assignments

- a) Identify three practices that protect judicial independence and explain why each is important
- b) List some of the qualities and qualifications that make someone a good candidate for becoming a judge.
- c) If judges can ignore public opinion, how are they accountable for their decisions?
- d) Why must judges be free from government control?



E. Internet Links to More Resources

A Compendium of Law and Judges:

Chapter 3: How are Judges Appointed?;

Chapter 4: The Qualities Expected of a Judge;

Chapter 5: Who Has Been Appointed to the Superior Courts?;

Chapter 6: Judicial Independence and Limitations On the Exercise of Judicial Power.

http://www.courts.gov.bc.ca/legal_compendium/

From the Bench: Judicial Independence.

This paper offers an accessible and detailed look at the main features of judicial independence and its importance. Available on the Courts of Nova Scotia website.

<http://www.courts.ns.ca/bench/independence.htm>

Canada's Court System: Judicial

Independence. A brief overview of judicial independence available on the Justice Canada website: <http://canada.justice.gc.ca/en/dept/pub/trib/page4.html>

Judicial Independence. Another overview of the main features of judicial independence, available on the British Columbia Provincial Courts' website:

<http://www.provincialcourt.bc.ca/aboutthecourt/judicialindependence.html>

The *Judges Act* sets out the qualifications for appointees to superior courts. An electronic version is available online:

<http://laws.justice.gc.ca/en/C-46/index.html>

Ethical Principles for Judges. Available online, in PDF format, through the website of the Canadian Judicial Council:

http://www.cjc-ccm.gc.ca/english/publications/ethic_e.pdf