

# Judge selection too political, ex-justice says

OTTAWA | Best candidates too often overlooked, commons committee told

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CanWest News Service CREDIT: Canadian Press Files

Anne McLellan, as justice minister, tried to 'manipulate' choice of judge.



OTTAWA -- A former chief justice has implored Parliament to "please take the politics out of appointing judges."

Constance Glube was Nova Scotia's top judge until her retirement last year after 22 years heading both the appeal and trial courts of her province. She told a Commons subcommittee this week successive federal regimes almost invariably ignored her advice when aides to the federal justice minister called over the years to ask which lawyers on short lists were best suited for appointment to the federal bench.

"Are the best people being appointed? Unfortunately, I think not in a number of cases," Glube told MPs who are examining how to prevent the powerful \$219,400-per-year judgeships from being used as political rewards.

"I almost never got the names that I suggested were the top people for the place," Glube candidly testified, the first senior Canadian jurist to publicly state what other chief justices have complained about in private for years. "I was never prepared to say it when I was a judge, but I can say it now because I'm not a judge any more. I felt that we

were not always getting the top people. The people I thought were the best qualified were not getting the appointments."

Instead less-qualified friends of the government too often get the nod, said Glube.

"What we have had is people that we know have close association with politicians who are getting the appointments. They're not former politicians. And they're not necessarily the top candidates. But you know sometimes who's going to get appointed when you hear the list."

Without naming names, Glube alluded to a tempest in Nova Scotia legal circles in 1998 when former justice minister Anne McLellan appointed Liberal fundraiser and party organizer Heather Robertson to the Nova Scotia Supreme Court.

The provincial judicial appointments advisory committee, which vets lawyers' qualifications for the justice minister, had initially determined it was "unable to recommend" Robertson for the bench, but reversed itself when asked to reconsider.

The move sparked the resignation of the committee's judicial member, along with a stiff letter of protest from the Canadian Bar Association admonishing McLellan that attempts "to manipulate the committee to achieve a desired political outcome must not be permitted."

Glube called it a "very serious incident."

She added it is discouraging for the members of the non-partisan vetting committees for federal judges in each province, who do their work for free and with little recognition, to see politics taint appointments. "It's wrong. It's very hard on them. They've put a lot of effort to come up with the lists they think are the best."

Glube recalled the example of two superb Nova Scotia lawyers with no political ties. "They never got appointed, and they were the top lawyers in our community," Glube said, adding she was aware lawyers without Liberal ties often won't even apply for the bench.

The current chair of the ad hoc federal advisory committee that will help pick the replacement for retiring Supreme Court of Canada Justice John Major conceded "we've had some people from other parties be appointed. But it's rare. It's very, very rare."

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