

Position of the Canadian Judicial Council on the Appointment of Federally-Appointed Judges to Commissions of Inquiry

Approved at its March 1998 mid-year meeting

1. Every request that a judge perform a task referred to in section 56 of the [Judges Act](#) should in the first instance be made to the chief justice, chief judge, senior judge or other judge having administrative responsibility for the court (hereinafter referred to as the "chief justice") to which the judge belongs.
2. Such request should be accompanied by a reference to the authority for such an appointment.
3. The request should be accompanied by the proposed terms of reference for the inquiry and an indication as to the time limit, if any, to be imposed on the work of the commission. It is expected that a government, in estimating a time limit, will not overlook the period necessary for organization of the work of the commission including arrangements for premises, staff, identification of those with standing, etc., all of which are required before the hearings or other business of the commission can begin.
4. A sufficient time should be allowed for the chief justice to discuss fully the request with the judge whose services are requested.
5. The chief justice, in consultation with the judge in question, should consider whether the absence of the judge for these purposes would significantly impair the work of the court. In this respect they should consider, in respect of the duration of the proposed commission of inquiry:
 - a) If no reporting date is fixed for the inquiry, is the probable duration unreasonable having regard to the needs of the court?
 - b) If a reporting date is proposed, is the date reasonable in relation to the terms of reference? An assessment should be made to the best of the ability of the chief justice and the judge as to whether such period is realistic. If it is not realistic the proposed appointment should not be accepted.

If the appointment is accepted and a prolonged absence of the appointed judge is contemplated, the chief justice may consider requesting the creation of an additional position for the court.

6. Apart from the consideration referred to in 5, the chief justice and judge will wish to consider whether the acceptance of the appointment to the commission of inquiry could impair the future work of the judge as a member of the court. In this respect they may consider:
 - a) Does the subject-matter of the inquiry either essentially require advice on public policy or involve issues of an essentially partisan nature?
 - b) Does it essentially involve an investigation into the conduct of agencies of the appointing government?
 - c) Is the inquiry essentially an investigation of whether particular individuals have committed a crime or a civil wrong?
 - d) Who is to select commission counsel and staff?
 - e) Is the proposed judge through particular knowledge or experience specially required for this inquiry? Or would a retired judge or a supernumerary judge be as suitable?
 - f) If the inquiry requires a legally-trained commissioner, should the court feel obliged to provide a judge or could a senior lawyer perform this function equally well?

Endnote: *In the absence of extraordinary circumstances, it is the position of the Canadian Judicial Council that no federally-appointed judge should accept appointments as referred to in section 56 of the Judges Act until the chief justice and the judge in question have had sufficient opportunity to consider all these matters and are satisfied that such acceptance will not significantly impair either the work of the court or the future judicial work of the judge.*