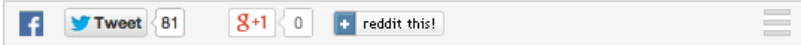


Opinion / Commentary

## Lack of women, minority judges not due to baby-making

Peter MacKay doesn't get it. Women and minorities don't apply to be federal court judges because they rightly see the appointment process as corrupt and overly secretive.



SEAN KILPATRICK / THE CANADIAN PRESS

Justice Minister Peter MacKay's recent comments about the lack of women and minority judges should infuriate all decent thinking people for many reasons, writes Breese Davies.

**By: Breese Davies** Published on Tue Jun 24 2014

As Justice Minister Peter MacKay heads off on Parliament's summer hiatus, he might want to schedule some time to chat with female lawyers about how women in the 21st century balance parenthood and career aspiration.

He might also want to schedule some time to meet with lawyers from minority communities to understand the barriers they face to advancing in the legal profession.

Any insights he gleans would be a distinct bonus, since he has proved himself woefully ignorant of why too few women and other minorities are being selected to sit on federally appointed courts.

MacKay's recent comments about the lack of women and minority judges should infuriate all decent thinking people for many reasons. But the main reason to be enraged is that his comments deliberately hide a sinister truth — that his government can appoint anyone it wants to be a judge who meets the minimum qualifications, by keeping the process secret.

MacKay's **insistence** that women are so in the grip of maternal instincts that they do not aspire to the apex of the legal apparatus shows a complete lack of understanding of the obstacles — real and perceived — that lie in their path.

Legal organizations, academics and law societies have been studying the vexing exodus of women lawyers from their profession for two decades and the structural impediments that work to keep women and visible minority lawyers off the bench. What they are finding is that stubborn institutional biases favour white, male candidates; and that the inherent secrecy of the appointment system acts as a deterrent for many "outsiders."

Far and away, the dominant feature of the federal judicial appointment process is its opaque nature and insular culture. Committees set up to vet candidates operate out of sight and send sprawling lists of "qualified" candidates to the minister of justice. The prime minister and minister of justice reach their clandestine decisions using criteria known only to them.

The vast majority of those who are selected are white male lawyers with strong political connections and legal establishment credentials. MacKay says women and racial minorities actually are not putting their names forward. In the ultra-secret world of federal judicial appointments, we have only MacKay's word to rely on for that.

Even if his claim is true, it's a small wonder that candidates lacking traditional political attributes steer clear of the entire, dispiriting charade. While the present system suits Stephen Harper and MacKay, themselves powerful white males, it leaves the rest of us feeling sidelined.

What troubles me most is that MacKay's recent utterances convey a complete lack of interest in why women and members of minority communities are not seeking judicial appointments in large numbers and what can be done to rectify the problem. He seems content to cast blame and chide minorities for not being more ambitious.

MacKay's comments highlight the urgent need for a judicial nomination process that is transparent and values merit and diversity. For models, one need look no further than the [appointment process](#) the Ontario government has used for a generation to supplant patronage and promote diversity on the Ontario Court of Justice. It features a broad-based committee that advertises judicial vacancies, interviews candidates and forwards a short list of those who are best qualified to the attorney general. The result has been a steady stream of applicants to a bench that is increasingly well-respected.

Statistically, 66.7 per cent of appointees to the OCJ were women and 7 per cent were from visible minorities in 2010.

The federal story is quite different. In 2010, just 26 per cent of appointees were women. The following year, it dropped to 16 per cent. And just 2.3 per cent were members of visible minorities.

It's not clear if MacKay really does think that female lawyers are too worried about fixing dinner for their families to apply to be judges. Regardless, the fact remains that until the top echelons of the government relinquish outdated stereotypes and reform the judicial appointment process, the country will continue to be deprived of a judiciary that reflects the diversity of the communities they are called upon to serve.

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