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Appointing Attorneys-General to the High Court: A Case for Reform

James Bai and Harry Hobbs

Abstract

Throughout 2016, Attorney-General George Brandis QC repeatedly denied he intended to leave the Federal Parliament and take up a position on the High Court of Australia. In this article we explore the experiences of the two most recent politicians-cum-High Court Justices: Garfield Barwick and Lionel Murphy; and note that Australia's current judicial appointment process would have permitted Brandis to make a similar transition. We argue that this process should be revamped to enhance transparency and accountability in the appointments process, to the benefit of our judicial system and its public perception.

Keywords: judicial appointments, politicians, high court, barwick, murphy, brandis

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On 29 November 2016, Attorney-General George Brandis announced that the Governor-General had accepted the advice of the government and would appoint Justice Susan Kiefel Australia's thirteenth Chief Justice of the High Court of Australia, while Justice James Edelman would fill the vacancy created by this appointment. Unsurprisingly, as Justice Kiefel is a fine jurist, and as she will become Australia's first female chief justice, this announcement received considerable and uniformly positive attention. In making this announcement, however, Brandis also put to rest a recurrent rumour in Canberra and across the legal profession: that Brandis himself might move to the Court. Indeed, throughout 2016, Brandis was repeatedly forced to rule out accepting a judicial appointment before the end of his six-year Senate term. As late as September 2016, in response to questions from Senate colleagues, Brandis explained that he couldn't 'help but be flattered', but continued to deny that he had had discussions with the Prime Minister or other members of Cabinet regarding a possible judicial appointment, or that he would accept any potential appointment.¹

¹ See, eg, Commonwealth of Australia, *Parliamentary Debates*, Senate, 15 September 2016, 1077.

Nonetheless, the rumours persisted, and a potential transition to the High Court was intermittently, though frequently, raised by journalists.²

Such an appointment would not be entirely out of the question. Since Federation, six Commonwealth Attorneys-General have served on the Court: Henry Higgins (1906-1929), Isaac Isaacs (1906-1931), HV Evatt (1930-1940), John Latham (1935-1952), Garfield Barwick (1964-1981), and Lionel Murphy (1975-1986). Only Evatt, however, was appointed to the court before moving into federal politics: he would resign from the High Court in 1940 to pursue this later career. Nonetheless, between 1906 and 1986, there was a former Commonwealth Attorney-General on the bench for all but 12 years. Since 1986, however, no Attorney-General has been appointed – a gap of over 30 years. What accounts for this apparent shift?

In an article in the *Alternative Law Journal* in early 2016, Douglas McDonald explored the more general question of appointing former politicians as judges.³ McDonald noted that, while a risk exists that judges without legislative experience may not appreciate the compromises inherent to lawmaking and might therefore fail to appropriately understand legislative intent in statutory interpretation, changes within the legal profession, politics, and public perceptions have ‘fuel[led] ... scepticism’ over the appropriateness of such transitions.⁴ We agree with this assessment, but suggest that any perception of impropriety is compounded when the judicial position in question is on Australia’s highest court. However, while many within the legal profession believe that ‘a significant political career should be a barrier’ to appointment as a High Court judge,⁵ and trends suggest that such appointment ‘may now be a thing of the past’,⁶ the judicial appointment process in Australia leaves open such a decision.

Our essay complements McDonald’s article by taking a deeper look at the experiences of the two most recent politicians-cum-High Court judges: Sir Garfield Barwick and Lionel Murphy. This study will emphasise the central problem when appointing politicians to the High Court: that their partisan or political modes of behaviour, which make them highly

² See, eg, Michael Pelly, ‘A chief justice George Brandis? Another High Court hallucination’, *The Australian* (online), 17 June 2016 <http://www.theaustralian.com.au/business/legal-affairs/a-chief-justice-george-brandis-another-high-court-hallucination/news-story/e0bbb4df2f2c9c6f5f56e9b367f093b1>.

³ Douglas McDonald, ‘Worlds Apart: The appointment of former politicians as judges’ (2016) 41 *Alternative Law Journal* 17.

⁴ *Ibid* 20.

⁵ Queensland Supreme Court Justice J B Thomas cited in Peter Durack and Amelia Simpson, ‘Attorneys-General’ in Michael Coper, Tony Blackshield and George Williams (eds), *The Oxford Companion to the High Court of Australia* (OUP, 2001)

⁶ Durack and Simpson, above n 5.

effective political creatures, disrupt perceptions of judicial independence and damage the High Court as an institution. While the debates that dogged Barwick, Murphy, and their places on the Court, are perhaps intimately connected to their own idiosyncrasies, in other respects the problems they brought to the bench predate those issues, stemming from their careers as politicians.

Having explored these two cases, we then shift tack, examining the process of judicial appointment to the High Court of Australia, asking whether Brandis or a future Attorney-General *could* appoint themselves to the Court. We note that the extremely limited criteria for, and strict executive control over, appointments, leaves Australia increasingly isolated globally. More significantly however, as was made painfully clear recently in Queensland,⁷ leaving appointment entirely in the hands of the executive carries risks that an appointee may once again shake public faith in the Court.

Sir Garfield Barwick: The course upon which Your Excellency has determined ...

The penultimate Commonwealth Attorney-General appointed to the High Court of Australia was the Honourable Sir Garfield Edward John Barwick,⁸ taking over as Chief Justice on 1 May 1964 following the retirement of Sir Owen Dixon. Having served under Liberal Prime Minister Sir Robert Menzies since 1958, the conservative Barwick reportedly remarked that no current barristers or jurists could replace Dixon, and that “only the two of us, Menzies and myself” might meet the requirement’.⁹ Perhaps the most contentious role he ever played was as Chief Justice, contributing advice on a ‘non-justiciable’ matter to Governor-General Sir John Kerr during ‘the most dramatic event in Australia’s political history ... a monumental train wreck’¹⁰ that remains one of the bitterest dividing lines in Australian public life: the dismissal.

The dismissal of Gough Whitlam’s government on 11 November 1975, and the slow-drip of revelations since, have long fascinated commentators as well as the wider public. Although Kerr’s forewarning to Opposition Leader Malcolm Fraser,¹¹ and the involvement of then-

⁷ See, eg, Andrew Lynch, Gabrielle Appleby and Rebecca Ananian-Welsh, *The Tim Carmody Affair: Australia’s Greatest Judicial Crisis* (NewSouth, 2016).

⁸ Though note that Barwick ceased to serve as Attorney-General several weeks prior to his appointment (while retaining office as Minister for External Affairs until three days prior to taking office).

⁹ Paul Kelly and Troy Bramston, *The Dismissal* (Penguin Australia, 2015) 81.

¹⁰ *Ibid* ix.

¹¹ *Ibid* 18.

Justice Anthony Mason¹² have renewed interest over time, the possibly decisive (not to mention enthusiastic)¹³ involvement of Barwick, who was politically hostile to Whitlam, has never been hidden from the public. At the core of the dismissal was Kerr's belief that he could use the Crown's reserve powers to dismiss a government that was unable to secure supply. Kerr was confirmed in his thinking by the authoritative support of Barwick,¹⁴ first as an informal counsellor and then through written advice that validated 'the course upon which Your Excellency has determined [as] consistent with [the Governor-General's] constitutional authority and duty.'¹⁵ This would ultimately benefit Barwick's former political party who went on to form a new government under Malcolm Fraser.

In the subsequent forty years since these events, Barwick's role casts a long shadow on the thinking and self-identity of the High Court, both as an institution and amongst its constituent justices. Barwick had been a famed advocate with close relations to Menzies, his government and the Liberal Party, able to regularly '[give] advice to lawyers and politicians. Instructing them was his second nature and it had made him rich and famous.'¹⁶ A later Chief Justice, Murray Gleeson, best summarised the unusual quality of Barwick and how his past career affected his time on the bench: '[he] had been a prominent politician [with] political involvement and political associations. The relationship... between Barwick and Menzies, would have been entirely different from any relationship I ever had with a prime minister.'¹⁷ Additionally his personality combined self-assurance (to the point of arrogance)¹⁸ with an argumentative style that could be viewed as wilfully antagonistic.¹⁹ These characteristics made him a very successful barrister, as well as a frontbench parliamentarian who aspired to replace the long-serving Menzies.²⁰ At the same time, such a personality, with its political involvement and disapproval of Whitlam, also made him a perfect foil for Kerr, who recent writers have suggested was manipulating Barwick to be a protective cover for the ensuing scandal.²¹

¹² Sir Anthony Mason, 'Conversations with Sir John Kerr relating to his termination of the commission of the Prime Minister (the Hon E G Whitlam AC QC) on 11 November 1975' (Statement, 23 August 2012).

¹³ Sir Garfield Barwick, *Sir John Did his Duty* (Serendip Publications, 1983) 94.

¹⁴ David Marr, *Barwick* (George Allen & Unwin, 1980) 266–76; Kelly and Bramston, above n 9, 38–9.

¹⁵ Formal advice from Chief Justice Sir Garfield Barwick to Governor-General Sir John Kerr, 10 November 1975 in *Kerr Papers* (National Archives of Australia) 1.

¹⁶ Kelly and Bramston, above n 9, 41.

¹⁷ *Ibid* 40.

¹⁸ Garfield Barwick, *A Radical Tory* (Federation Press, 1995) 96–7.

¹⁹ Kelly and Bramston, above n 9, 80.

²⁰ Marr, above n 14, 204.

²¹ Kelly and Bramston, above n 9, 41.

Indeed, the substantial partisan backlash against Kerr is surprisingly more unified in criticising Barwick,²² and generates ongoing discomfort for the separation of powers. One of the best accusations levelled at Barwick himself is by then-Justice Lionel Murphy, who feared that his actions tarred the High Court with an ‘extreme degree of political partisanship’ because it was ‘seriously prejudicial to one side in the political controversy.’²³ Barwick however was unrepentant, defensive and consistent: he would dismiss the political aspects of his role up until his death.²⁴ As a result, it is unsurprising Barwick’s ‘more recent successors have asserted that any comparable event is inconceivable or at least most unlikely’,²⁵ adopting an informal post-Barwick rule of impartiality that enjoys support even today.²⁶ In a eulogy for Barwick on 5 August 1997, then-Chief Justice Sir Gerald Brennan articulated this rule by stating that Barwick’s behaviour ‘was, and remains, a controversial matter but, if only on that account, will not happen again.’²⁷

While a constitutional crisis similar to the dismissal may never again occur thanks to this policy, informal rules may not be sufficient to preclude another partisan from dragging the High Court back into the disrepute of polarising politics. The possibility of another Attorney-General being appointed to the High Court remains entirely viable, and the potential for that appointee to conflict on contentious matters the ruling government is perhaps heightened in our current political culture where political leadership is prone to unprecedented turnover. Despite the argument that our judicial and political cultures are now substantially different to the 1970s, a sufficiently motivated government, under public pressure or requiring an expedient reshuffle, may find it useful to readopt this kind of appointment and subject the High Court to a comparable controversy once more. Of course, appointing a politician (or Attorney-General) is not *prima facie* problematic but better oversight mechanisms are required. Particularly, given that Barwick is defended to this day, a future justice with both a similar legal pedigree and party connections could reasonably point to his behaviour as their own precedent to justify controversy.

Lionel Murphy and his ‘little mate’

²² Marr, above n 14, 271, 289.

²³ Letter from Justice Lionel Murphy to Chief Justice Sir Garfield Barwick, 13 November 1975.

²⁴ See Barwick, above n 13 and above n 18.

²⁵ Kelly and Bramston, above n 9, 38.

²⁶ *Ibid* 39.

²⁷ Chief Justice Sir Gerard Brennan, ‘The Late Sir Garfield Barwick’ (Eulogy of Sir Garfield Barwick, 5 August 1997).

The most recent Attorney-General to join Australia's highest Bench was Senator the Honourable Lionel Keith Murphy. Murphy left the Whitlam Government on 10 February 1975, with his appointment catalysing a Senate, and then parliamentary, deadlock leading to the dismissal. To this day, Murphy continues to be regarded, rightly or wrongly, as 'the most divisive figure in the history of the Senate.'²⁸ From his start as a successful industrial barrister, Murphy was an unashamedly progressive,²⁹ partisan³⁰ and reform-minded³¹ public figure. Murphy entered the Senate in August 1962, leading Labor's caucus there from February 1967, and joining the Cabinet as Attorney-General following Whitlam's 1972 entrance into office. Throughout his political life, Murphy's eloquence, intellect, decisiveness and disregard for caution resulted in many legislative achievements, but also resentment and political miscalculations that hurt his personal reputation and the Labor Government he served.³² From the announcement of his appointment to the High Court, Murphy was attacked and accused of being unsuitable for office: the media,³³ the Melbourne bar³⁴ and Chief Justice Barwick³⁵ in particular all made little effort to hide their displeasure.

Ultimately, however, Murphy's judicial career would be undermined not by his adversaries, but by an old political friend. The convoluted scandal, involving illegal wiretaps, two Senate committee investigations, back-and-forth criminal proceedings and a seemingly-unending series of accusations, flowed from Murphy's interaction with, and interventions on behalf of, Morgan Ryan, a Sydney solicitor with strong ties to NSW Labor and facing a string of criminal charges.³⁶ This controversy, the last in a string that characterised Murphy's career, dominated his final years between February 1984 and his death from cancer on 21 October 1986. It asked whether Murphy had ever engaged in any 'proved misbehaviour' that, under section 72 of the Constitution, would provide parliament the grounds for his removal as a judge. The subsequent constitutional crisis that arose was a direct result of Murphy's refusal to leave the bench, even as evidence was adduced that suggested he had tried to influence multiple decisions that might have harmed Ryan.³⁷ One of the best descriptions of this period

²⁸ Geoffrey Browne, *MURPHY, Lionel Keith (1922-1986)* (18 October 2016) The Biographical Dictionary of the Australian Senate <http://biography.senate.gov.au/index.php/murphy-lionel-keith/>.

²⁹ VG Venturini, 'Introduction' in VG Venturini (ed), *Five Voices for Lionel* (Federation Press, 1994) xi, xiv.

³⁰ The Hon Clyde Cameron AO, 'He lost consciousness before he lost hope' (Speech delivered at the Third Annual Lionel Murphy Memorial Lecture, Morwell Civic Centre Kernot Hall, 19 October 1989).

³¹ Brian Galligan, 'Murphy, Lionel Keith (1922-1986)' in Melanie Nolan (ed), *Australian Dictionary of Biography* (Melbourne University Publishing, 2012) vol 18.

³² Browne, above n 28.

³³ 'A Clear Case of Justice Not Being Seen to be Done', *The Sydney Morning Herald* (Sydney) 11 February 1975, 6; Peter Samuel, 'The Final Murphy Time-Bomb', *The Bulletin* (Sydney) 15 February 1975, 16.

³⁴ Jenny Hocking, *Lionel Murphy: A Political Biography* (Cambridge University Press, 2000) 226.

³⁵ *Ibid* 231.

³⁶ Frank Bongiorno, *The Eighties: The Decade That Transformed Australia* (Black Inc, 2015) 100–1.

³⁷ See Hocking, above n 34, 297 (for allegations by Chief Stipendiary Magistrate Clarrie Briese), 299 (for allegations by Justice Paul Flannery), 325–6 (allegations by Senator Jim McClelland); also Browne, above n 28

is that it represents ‘the Labor Party’s contribution to official corruption’ in the 1980s,³⁸ a decade often characterised by excess and amorality.

The two-year affair divided the High Court, the Hawke government of the time, and the wider public, because it crystallised misgivings over the ‘mutual back-scratching’ of ‘mates’ within politics and the law.³⁹ Murphy’s own use of the term (‘And now, what about my little mate?’)⁴⁰ seemed to exemplify a culture whose

critics ... associated it with the exclusion and oppression of women, gay men, Aboriginal Australians and ethnic minorities, and a blind loyalty between men that was careless of ethics and the law.⁴¹

Murphy’s defensiveness and refusal to be questioned highlighted a seeming indifference to the independence expected of High Court justices, instead confirming a clear belief that meddling on behalf of ‘the old mates’ network would override any considerations of propriety.⁴² As further activity was revealed and the political drama continued, serious questions were raised about the separation of powers, public confidence and even the everyday functioning of the High Court. As late as July 1986, Chief Justice Sir Harry Gibbs excluded Murphy from the High Court and refused to let him sit as a justice.⁴³ Murphy’s humiliation was eventually wound up with no clear resolution once his cancer diagnosis became widely known,⁴⁴ allowing him to return to the bench for one week and have his final judgments handed down an hour before his death.

The notorious coda of Murphy’s life would have likely been celebrated had he remained a career politician, where the accusations could be better characterised as a political witch-hunt. Instead, his final insistence on remaining a High Court justice so long as he had ‘the security of tenure which section 72 of the Constitution is supposed to ensure’ corroded the High Court’s public standing through a ‘cumulative ... aura of impropriety’⁴⁵ and led leaders

(allegations that Murphy attempted to bribe a police officer in 1979 and allegations by the Stewart Royal Commission into Drug Trafficking).

³⁸ Bongiorno, above n 36, 100.

³⁹ Ibid 102.

⁴⁰ Wendy Bacon, ‘Behind the Murphy Affair’, *National Times* (Sydney), 31 August – 6 September 2016, 6.

⁴¹ Bongiorno, above n 36, 102.

⁴² Gillian Appleton, *Diamond Cuts: An Affectionate Memoir of Jim McClelland* (MacMillan, 2000) 221–5.

⁴³ Gareth Evans, *Inside the Hawke-Keating Government: A Cabinet Diary* (Melbourne University Press, 2015) 317–18.

⁴⁴ AR Blackshield, ‘The “Murphy Affair”’ in Jocelyne Scutt (ed), *Lionel Murphy: A Radical Judge* (McCulloch Publishing, 1987) 230, 256.

⁴⁵ Ibid.

in his own party to scorn him as ‘a professional martyr’.⁴⁶ Murphy’s combative and outspoken nature, as well as his close-knit circle of ‘mates’, had made him a powerful factional warlord in politics, but the kinds of behaviour that supported that kind of success should not have accompanied him in his transition to the Judiciary. His example clearly serves as a warning to others, and may have even attracted its own informal rule of executive appointment and/or judicial activity,⁴⁷ but as with the Barwick case, that is all it is: unspoken and unenforceable. As far as Australia’s separated institutions are concerned, the potential damage of another drawn-out controversy remain – so long as contentious, or overtly political, figures can be placed into that least political arm of Australia’s government.

The judicial appointment process

While Barwick and Murphy’s time on the Bench may have led to a political calculation that Commonwealth Attorneys-General should no longer make a similar transition, there is no explicit prohibition. In fact, the eligibility criteria for Justices of the High Court of Australia are minimal, leaving significant scope for executive choice and, at times (as seen above), allegations of political patronage. Section 72 of the *Constitution* sets out a single qualification requirement – a person must be younger than 70 years of age. The *High Court of Australia Act 1979* (Cth) fills in a few more details: section 7 provides that a person must not be appointed unless she or he is or has been a Judge of a federal, state or territory Court, or has been on the rolls of the High Court, or of the Supreme Court of a state or territory for not less than five years, and section 10 prevents a justice from accepting or holding any other office of profit within Australia.

The procedure of appointment is set out only in skeletal form under statute. Section 5 provides that the Justices are ‘appointed by the Governor-General’, though the decision is in fact made by Cabinet on the recommendation of the Attorney-General. Under section 6, the Attorney-General is required to ‘consult’ with their state counterparts in relation to the appointment. Even in circumstances where the position of Attorney-General is held by an individual who does not rely on a ‘fanciful definition’ of this word,⁴⁸ there is no requirement

⁴⁶ Hocking, above n 34, 293.

⁴⁷ Brendan Lim believes that absent some major shifts in constitutional culture, we will not see another controversial politician appointed to the Court: Brendan Lim, *Australia’s Constitution After Whitlam* (Cambridge University Press, 2017) 126.

⁴⁸ Senate Legal and Constitutional Affairs Committee, *Nature and Scope of the Consultations Prior to the Making of the Legal Services Amendment (Solicitor-General Opinions) Direction 2016* (Commonwealth of Australia, November 2016) 27 [4.12].

that the Attorney-General listen to their state counterparts, and there is no statement of criteria against which to assess candidates.

Reflecting on the limited statutory constraints, Gabrielle Appleby has noted that it is 'inevitable' that politics will infiltrate the appointment process.⁴⁹ To some degree this is positive. As James Allen has remarked, the executive's wide scope ensures some minimal level of democratic accountability is maintained over judicial appointments.⁵⁰ However, in light of the dangers of partisanship, and developments internationally, the extremely broad discretionary powers granted to Australian federal Attorneys General in the appointment of judges, is difficult to maintain.⁵¹ Indeed, Australia appears increasingly isolated.

In August 2016, Canada revamped its federal judicial appointment process by establishing an independent and non-partisan advisory appointments board, tasked with identifying suitable candidates, and increasing transparency around nominations. Most significantly, instead of relying on the 'judicial whisper',⁵² candidates seeking a federal judicial appointment must submit an application, which is then considered by the Advisory Board. The Advisory Board is composed of seven members, four of whom are nominated by independent professional organisations. These seven members review the candidate applications and submit a shortlist of three to five individuals for consideration by the Prime Minister. This new process is designed to enhance the integrity of the Supreme Court by increasing transparency in the appointments process. As such:

the assessment criteria guiding the Advisory Board, the questionnaire that all applicants must answer, and certain answers provided to the questionnaire by the Prime Minister's eventual nominee, will all be made public.⁵³

⁴⁹ Gabrielle Appleby, 'Appointing Australia's highest judges deserves proper scrutiny', *The Conversation*, 9 December 2014 <https://theconversation.com/appointing-australias-highest-judges-deserves-proper-scrutiny-35039>.

⁵⁰ James Allen, 'Is Talk of the Quality of Judging Sometimes Strained, Feigned or not Sustained?' in Jonathan Crowe and Rebecca Ananian-Welsh (eds), *Judicial Independence in Australia: Contemporary Challenges, Future Directions* (Federation Press, 2016) 64, 72.

⁵¹ Harry Hobbs, 'Finding a fair reflection on the High Court of Australia' (2015) 40 *Alternative Law Journal* 13, 16.

⁵² Elizabeth Handsley, "'The Judicial Whisper Goes Around": Appointment of Judicial Officers in Australia' in Kate Malleson and Peter Russell (eds), *Appointing Judges in an Age of Judicial Power* (University of Toronto Press, 2006) 123.

⁵³ Prime Minister of Canada, 'Prime Minister announces new Supreme Court of Canada judicial appointments process', 2 August 2016 <http://pm.gc.ca/eng/news/2016/08/02/prime-minister-announces-new-supreme-court-canada-judicial-appointments-process>.

Additionally, members of Parliament are able to take part in a question and answer session with the nominee, before she or he is appointed. On 2 December 2016, Justice Malcolm Rowe became the first person appointed to the Court under this new procedure. Significantly, Justice Rowe's professional career includes time as head of the Newfoundland and Labrador civil service of Newfoundland under a provincial Liberal government,⁵⁴ demonstrating that formalising appointment processes need not reduce professional diversity, or individuals with knowledge of government. Parts of Justice Rowe's application are available online,⁵⁵ giving a revealing insight into his judicial philosophy.

In the UK, the Judicial Appointments Commission has existed since 2006. This independent body, rather than the Lord Chancellor, is responsible for the selection of candidates for judicial office. All positions are advertised against open and accessible selection criteria, and candidates are required to apply for consideration.⁵⁶ The same process occurs in South Africa, where the Judicial Services Commission, an independent body constituted by the South African Constitution, recommends people for appointment. The Commission calls for nominations and holds public interviews, before drawing up a list of nominees (the list must have at least three more names than the number of vacancies). From this list, the President, after consultation with the Chief Justice and the leaders of political parties represented in the National Assembly, chooses a judge.⁵⁷

Conclusion

The processes in Canada, the UK and South Africa all maintain the same minimum level of democratic accountability that exists under our arrangement. They also all ensure that the final decision is made by the government of the day. What distinguishes them, however, is the emphasis on transparency and accountability. These processes do not prevent a politician, or in Justice Rowe's case – an individual who has benefited from the patronage of one particular party – from being appointed to the bench, but in providing a layer of scrutiny and transparency that does not exist in Australia they ensure that the independence of the Court is less likely to be called into question. While the experiences of Barwick and Murphy

⁵⁴ Tonda Maccharles, 'Trudeau names Malcolm Rowe as first Newfoundland judge on Supreme Court of Canada', *The Star*, 17 October 2016 <https://www.thestar.com/news/canada/2016/10/17/trudeau-names-malcolm-rowe-as-the-first-newfoundland-judge-to-the-supreme-court-of-canada.html>.

⁵⁵ Office of the Commissioner for Federal Judicial Affairs Canada, 'The Honourable Malcom Rowe's questionnaire', 16 December 2016 <http://www.fja-cmf.gc.ca/scc-csc/nominee-candidat-eng.html>.

⁵⁶ *Constitutional Reform Act 2005* (UK) (c4) ss 63.

⁵⁷ *Constitution of the Republic of South Africa Act 1996* (South Africa) ss 174–8.

mean that it is unlikely that a future government will appoint a Commonwealth Attorney-General to the High Court, it remains possible. This would be a delicate exercise without a new, transparent and accountable judicial appointments process.

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