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NEWS

Canadian Judge Says Government Has 'Failed' Canadians by Leaving Dozens of Judicial Vacancies Unfilled

A Federal Court judge has called on Prime Minister Justin Trudeau's government to take action to reduce the number of unfilled seats on superior court benches.

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Civil Rights



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In a scathing decision, a Federal Court of Canada judge has chastised the country's Prime Minister and Justice Minister for having "failed" Canadians and the justice system by not filling the "significant and unacceptably large" number of vacancies on the country's superior courts.

"With the greatest respect, the Court finds the Prime Minister and Minister of Justice are simply treading water," wrote Justice Henry Brown in the decision, which has hit a nerve with lawyers across the country.

Last May, Supreme Court of Canada Justice Richard Wagner and the Canadian Judicial Council sent a letter to Prime Minister Justin Trudeau expressing concern over the "untenable" situation of judicial vacancies that the letter suggested "will result in a crisis for our justice system" and put the country's democratic institutions at risk.

At the time, there were 85 vacancies, out of about 1,000 full-time seats on the bench. Since then the number has dropped to 75, Brown noted.

"It is imperative for the Prime Minister's Office to give this issue the importance it deserves and for appointments to be made in a timely manner ...The government's inertia regarding vacancies and the absence of satisfactory explanations for these delays are disconcerting," Brown wrote.

Justice Minister Arif Virani said the government is reviewing the decision, adding his government is "making judicial appointments at the fastest pace in history."

The need for more judges, a federal responsibility, and more court staff, a provincial responsibility, is widely known, with reports of violent criminals walking free due to delays and civil cases taking years before even initial hearings can be scheduled.

Judicial vacancies and under-resourcing are problems across the country affecting criminal and civil courts as well as the individuals and businesses they serve, said Canadian Bar Association President John Stefaniuk.

“Reduced access and delay erode public confidence in the judicial system and the administration of justice and undermine a fundamental pillar of our democratic system of government,” he said in a statement.

Joan Young, who leads the litigation and dispute resolution team in British Columbia for the national law firm McMillan, said she is “really tired” of having to explain delays to clients.

“The reason we have a civil society is that people can resolve disputes civilly in front of a judge rather than taking matters into their own hands. When that is not possible, we have lost something very important,” wrote on LinkedIn.

The case was brought forward by human rights lawyer Yavar Hameed, who told the Globe and Mail newspaper that the lack of judges is a “palpable barrier” for people wanting to access the justice system. He wanted, and now has, a precedent that judicial vacancies are having a negative impact on the system.

While Justice Brown did not order the government to comply, he made it clear the vacancies should be “filled within a reasonable time” and be reduced to a range in the mid-40s. He said the parties, including Chief Justice Wagner, can come back to the court in the future if they believe the government is not complying with the spirit of the ruling.

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