

Screening Committee Members

by Rebecca Durcan
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Self-regulators do not have much of a say in which professional members are elected to their Boards and Councils. Regulators can have a say, however, on who serves on which committees. The case of Justice Robin Camp illustrates the need to do so.

Justice Camp is awaiting the outcome of his discipline hearing before the Canadian Judicial Council. He will learn whether he will be removed from the Bench as a result of admittedly sexist statements he made during a criminal sexual assault trial that reflected stereotypical thinking. Justice Camp took remedial education and counselling in the dynamics of sexual assault which he argues enables him to return to adjudications.

One interesting fact that emerged in the publicity surrounding the discipline hearing is that before Justice Camp was appointed to the Bench he served on the Equity Committee of the Law Society of Alberta. The Equity Committee would have considered ways in which to address individual and systemic discrimination within the legal profession, including gender discrimination. Upon learning this, many asked how could Mr. Camp (as he then was) have been appointed to this committee when he was oblivious to basic concepts of gender equality (as he now acknowledges).

This raises the general question of how do regulators screen their committee members? Many regulators simply have their Boards appoint (by motion or election) committee members based on whatever

information they might already have about those seeking the position. Regulators should consider a more rigorous process. Committee members can have an enormous impact on the regulator's work or the regulator's reputation (sometimes long after they stop serving, as demonstrated in the case of Justice Camp).

Some of the techniques used when hiring employees could be considered. A complete resumé should be provided by candidates, along with references. Candidates should be put through a screening process, perhaps through review by a Nomination Committee or by independent consultants. The screening process could include matching the candidate's past work and volunteer experience against the skills needed in the proposed position, checking references, following up with past employers / partners / volunteer coordinators who are not listed as references and a structured interview that will test the candidate's knowledge, skills and attitudes related to the proposed committee.

As just noted, in addition to suitability, the screening process should look at knowledge, skills and attitudes as well as commitment. For significant committee positions consideration should be given to requiring candidates to go through a "boot camp". Appointees will go through an orientation process, so why not conduct at least part of it as a precondition to appointment in the first place?

Such an orientation day would likely begin with providing information about the position so that the candidate is fully aware of the nature of the position and what will be involved. Some candidates may select themselves out of the process once they learn of the commitment that it will take. The session could then teach some of the basic skills needed for the

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position (e.g., adjudication, policy analysis, committee meeting dynamics). The session should use adult learning techniques (e.g., small group discussion of scenarios, role playing). Those conducting the session could provide an evaluation of each attendee that could be used by the screening group in making its recommendations.

If a committee candidate is not willing to attend the “boot camp”, they are probably not appropriate for the position. And those who attend the session but are not selected may:

- still be seen as suitable for another committee,
- be seen as suitable for the original position in the future after gaining more experience,
- themselves see that day as an opportunity to develop their own skills for their career, and
- be eligible for collateral benefits (such as CPD hours).

In the past there have been concerns about training members of adjudication committees in “values”. The concern is that such training could be viewed as undermining the adjudicator’s need to be neutral and impartial and not leaning towards a particular perspective on issues that might come before them. However, in the Justice Camp case, another issue that arose is that provincial justices do not receive as much training as federally appointed ones, including in the area of how to approach sexual abuse cases.

In addition, the recent Sexual Abuse Task Force report in Ontario explicitly recommended that adjudicators of sexual abuse cases be selected on the basis of an awareness of the dynamics and impact of sexual abuse. There is a recognition today that adjudicators do need to reflect the basic values of the

society in which they operate to be effective. For example, many decades ago there were court decisions that said that whether a victim of sexual assault was “of previously chaste character” was relevant to whether the alleged perpetrator thought there was consent to the sexual activity. Today an adjudicator whose decision articulated that belief would be reversed on appeal.

Some of these screening techniques could be used for candidates for elected Board or Council positions. Having a Nomination Committee make recommendations to the profession is not inconsistent with a democratic electoral process. Even if that were not done, regulators could require candidates, in order to be eligible for election, to attend a “boot camp” so that they were fully aware of what to expect if elected.

Regulators need to ensure that they have high quality individuals, who understand the role of the regulator, serving on their committees in order to protect the public. Having suitable and skilled committee members can also help avoid serious reputational harm to both the organization and the individual.