



Appointment of Judge Advocate Instrument 2020

I, ANGUS J. CAMPBELL, Chief of the Defence Force, make the following notifiable instrument for the purpose of section 196(6)(a) and (b) of the *Defence Force Discipline Act 1982*.

Dated 25 Aug 2020

Signed by

ANGUS J. CAMPBELL, AO, DSC
Chief of the Defence Force

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1 Name

This instrument is the *Appointment of Judge Advocate Instrument 2020*.

2 Commencement

This instrument commences on 25 August 2020.

3 Selection Criteria

By this instrument I determine that the following criteria will apply to the selection of a person for appointment under s 196(2) of the *Defence Force Discipline Act 1982* to the Judge Advocates' panel (the panel) upon the nomination of the Judge Advocate General. To be successful in this role a candidate will need to meet the following selection criteria.

1. **Legal Knowledge and Experience.** A successful candidate will have:
 - a. Substantial trial and preferably appellate advocacy experience, appearing before higher courts in serious and complex criminal casework (or judicial or other experience giving equivalent competence in the conduct of challenging criminal trials).
 - b. Attained a high level of professional achievement and effectiveness in military law, criminal law, the law of evidence and the application of the *Defence Force Discipline Act 1982*, particularly the law and rules of procedure governing the conduct of courts martial and Defence Force magistrate (DFM) trials.
 - c. Sound experience, knowledge and understanding of the law and its application in these fields, including sentencing principles, to a standard that befits a judicial officer discharging functions and duties equivalent to those of a County or District Court judge and a demonstrated ability to understand and apply standard trial directions.
 - d. Demonstrated Service knowledge and an understanding of the requirement for maintaining discipline in the ADF.
2. **Skills and Abilities of a Judicial Officer.** A successful candidate will have demonstrated standards that befit a judicial officer discharging functions and duties equivalent to those of a County or District Court judge including:
 - a. Intellectual and Analytical Ability.
 - The ability to concentrate for long periods, and to understand and assimilate facts and arguments, and the ability to recall evidence and information speedily and accurately.
 - The ability to identify the issues in question and analyse the facts relevant to those issues.
 - The ability to apply legal principles to particular facts and to determine from a large body of information those issues and facts which are relevant and legally important and those which are not.

- The ability by intellectual analysis of the matters in issue to reduce unnecessary contests and to deploy case management techniques to reduce delay in the conduct of trials.
- b. Sound judgement.
- The ability to exercise judicial discretion effectively.
 - The ability to apply his or her knowledge and common sense to make decisions which are consistent with the evidence and in compliance with the law.
 - The ability to consider competing arguments and to reason logically to a correct and balanced conclusion.
- c. Decisiveness.
- The ability to reach firm conclusions (often quickly), to think, decide and act independently of others, and to rely on his/her own judgement.
- d. Communication Skills.
- The ability to communicate effectively, giving instructions and explaining complex issues and setting out legally sound reasons for reaching decisions clearly and concisely, both orally and, where necessary, in writing.
 - The ability to direct a court martial correctly on the legal issues arising for determination and to relate these issues to an accurate summary of the facts.
 - When sitting as a DFM to give clear reasons for findings, and, where relevant for sentence.
 - The ability to clearly explain sentencing principles to a court martial and to relate these to the facts and the sentences available for the court's consideration.
- e. Authority.
- The ability to command the respect of court users and to maintain fair minded discipline in court and chambers, with appropriate bearing and composure.
 - The ability to promote and effect the expeditious dispatch of business.
- f. Information Technology.
- The ability to use, or familiarity with, modern information technology or the capacity to attain the same.
- g. Judicial Education.
- The willingness to participate in and lead ongoing judicial education.
3. **Personal Qualities.** A successful candidate for the position will possess the following personal qualities:

- a. Integrity.
 - A demonstrated history of honesty and discretion in their personal and professional life, so as to protect both their reputation as a judicial officer and that of the judiciary within the ADF.
 - Independence of mind and moral courage and a willingness to take, maintain and enforce unpopular or unpleasant decisions when necessary, so as to enhance respect for the judiciary within the ADF.
 - They will have generated the trust, confidence and respect of others.
- b. Fairness and Impartiality.
 - They will be open minded and objective, having the ability to recognise and deal appropriately with any matter that has the capacity to interfere with the proper observance of the judicial oath to act without fear or favour, affection or ill will.
 - They will deal impartially with all matters which come before him/her and will seek to ensure that all who appear before him/her have an opportunity for their case to be clearly presented and that it is then considered as fully and dispassionately as possible, so as to maintain public confidence in the administration of justice within the ADF.
- c. Understanding the Requirements of Discipline in a Disciplined Force.
 - They will have knowledge and understanding of, and respect for men and women from all ranks of the ADF.
 - They will understand the Service environment and the requirements of discipline in a disciplined force.
- d. Maturity and Sound Temperament.
 - They will display a maturity of attitude and approach to the conduct of in-court duties and out-of-court administration.
 - They will when required be firm and decisive while remaining patient, tolerant, good humoured and even tempered.
- e. Courtesy and Humanity.
 - They will be courteous and considerate to all court users and court staff.
- f. Commitment.
 - They will be committed to the proper and efficient administration of justice, which they will pursue conscientiously with energy and diligence.

4 The Selection Process

By this instrument I determine the following process will apply to the selection of a person for appointment to the panel under s 196 (2) of the *Defence Force Discipline Act 1982*.

1. Calls for Applications for the Position

- a. The process for selecting a person for appointment to the panel will commence with the distribution by the Office of the Judge Advocate General of an information pack calling for candidates to make application to the Office of the Judge Advocate General.
- b. The information pack will be distributed by such means as are reasonably expected to bring the proposal to appoint a person to the panel to the attention of all permanent and reserve ADF legal officers, who are likely to be eligible to serve on the panel.
- c. A call for applications for appointment to the panel must provide a period of notice that allows a reasonable opportunity for potential applicants to consider the call, to consult if desired and to respond to the requirements of the call for applications.
- d. The information pack calling for applications for appointment may: identify defence leadership behaviours expected of a person serving on the panel; set out a duty statement; identify the selection criteria for appointment; request a response to the specified selection criteria for appointment; identify considerations of diversity and inclusion; and otherwise will include such matters, as may be required by law and as the Judge Advocate General may direct.

2. The Selection Panel

- a. To assist the Judge Advocate General in nominating a person or persons for appointment under s 196(2) the Judge Advocate General will convene a panel of at least three persons (the selection panel). The selection panel will consist of: the Judge Advocate General, the Chief Judge Advocate, and at least one other member at the discretion of the Judge Advocate General.
- b. In appointing persons to the selection panel the Judge Advocate General will have regard to the desirability of reflecting a diversity of expertise experience and gender among the members of the selection panel.
- c. The selection panel will assist the Judge Advocate General in (a) recognising from the applications received the candidates who are suitable for appointment to the panel, and (b) judging the relative ranking against the selection criteria of those candidates who are suitable for appointment to the panel.

3. The Selection

- a. Upon receipt of applications for appointment, the selection panel will consider the applications, make any necessary further enquiries (inside or outside the ADF) about candidates, and may if required settle a short list of candidates for interview and then interview those candidates. The selection panel may agree to deal with the applications on the papers without interview.
- b. In considering the applications and making any nomination to the CDF (or service chief as the case may be) the Judge Advocate General must

have regard to the obligation upon CDF or a service chief expressed in s196 (2AA):

in making an appointment, the Chief of the Defence Force or the service chief (as the case may be) must have regard to the desirability of reflecting a diversity of expertise, experience and gender among the members of the judge advocates' panel.

- c. If with the assistance of the selection panel the Judge Advocate General determines that one or more candidates are suitable for appointment to the panel and that the candidate or candidates should be nominated for appointment, then the Judge Advocate General will nominate the candidate(s) to the CDF or service chief for appointment to the panel.
- d. The Judge Advocate General's nomination of a candidate to the CDF for appointment will be subject to verification that the candidate complies with all single service policies and prerequisites that are applicable to the candidate. A failure of an otherwise successful candidate to achieve compliance with all applicable single service policies and prerequisites may result in a cancellation of the Judge Advocate General's nomination of the candidate to the CDF or a service chief for appointment to the panel.
- e. The Judge Advocate General may nominate to the CDF or a service chief for appointment to the panel any candidate who has been found suitable for such appointment during the previous two years by a selection panel in accordance with the process described in this instrument.
- f. Without the need for further compliance with the process described in this instrument, the Judge Advocate General may nominate to the CDF for appointment to the judge advocates' panel a person who has been considered by a selection panel for appointment to the position of Chief Judge Advocate or Deputy Chief Judge Advocate in accordance with the notifiable instruments applicable to those positions and who has been found by such selection panel to be suitable for nomination to the panel.

5 Service Exigencies

In the event the exigencies of service require an urgent appointment to the panel, the Judge Advocate General may nominate a person to the CDF and the CDF may make an appointment of the person outside the process described in this notifiable instrument.