

**Coalition for the International Criminal Court (CICC)  
Questionnaire to ICC Deputy Prosecutor (Prosecution) Candidates  
2012 Elections**

4 October 2012

*Conscious of the critical importance of the ICC Deputy Prosecutor (Prosecution) role, we have prepared the following as a Questionnaire for candidates for this position.*

<p>Name: <b>James K. Stewart</b></p> <p>Nationality: <b>Canadian</b></p>
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**Background:**

1. *Why do you wish to be elected Deputy Prosecutor (Prosecution) of the International Criminal Court?*

The determination of the Prosecutor, Fatou Bensouda, to investigate, prosecute, and prevent massive crimes is one I support and share. I work well within the multi-cultural, multi-disciplinary environment of international criminal prosecutions. It would be a privilege to commit any skill, knowledge, and experience I have to the Prosecutor's service as her Deputy.

2. *What do you think would be the biggest challenges you would face in your capacity as ICC Deputy Prosecutor (Prosecution) were you elected as such?*

The initial challenge will be to establish myself quickly as an effective leader of the Prosecution Division, a challenge I feel equipped to meet based on my experience as counsel and senior legal manager at the international level.

The further challenge will be to assist the Prosecutor to build upon what has already been accomplished by the Court and to ensure that the Prosecution Division continues to conduct fair and effective prosecutions before the Chambers with skill and efficiency.

In the above regard, it will be important to make certain that the right people are in place to do this exacting work.

3. *What do you believe are some of the major challenges currently facing the Court? What do you believe will be some of the major challenges in the coming years?*

Both now and in future, the Court must continue to produce results that have integrity and credibility, and it must match human and material resources to the demands of international justice.

The Court will also have to continue to exhibit the flexibility to respond competently to widely diverse situations.

In all of its operations, the Court will need the cooperation and active support of the member States of the Assembly of States Parties as well as of the broad international community. In this regard, the compliance of States Parties with Court orders and process is especially important.

4. *What do you see as the most appropriate means through which the ICC can fulfil its mandate to end impunity for the most serious crimes of concern to the international community and contribute to the prevention of such crimes?*

The respect which the Court commands is essential to its effectiveness at the summit of the administration of international criminal justice. To sustain its fight against impunity, it also requires the support of the international community. Thus, the Prosecutor will make a vital contribution to the Court's ability to fulfil its mandate, if her Office continues to prepare cases for the Chambers that are well conceived, competently investigated, and presented in a fair and persuasive manner that is respectful of the rights of the defence and sensitive to the plight of victims.

#### **Legal System and Language Abilities:**

5. *What is the primary legal system of your country? Do you have knowledge or experience working in other legal systems?*

In Canada, both common law and civil law traditions are represented within the legal system. The *Criminal Code of Canada*, a federal law with application across the country, codifies Canadian criminal law, which is administered on the adversarial model of criminal justice. However, having worked for more than eight years in the blended procedural and evidentiary regime of the UN international criminal tribunals, I am also familiar with the inquisitorial model of criminal justice.

6. *The Rome Statute requires the Prosecutor to have an excellent knowledge of and be fluent in English or French.*

a) *What is your knowledge and fluency in English, if it is not your native language? Do you have experience working in this language?*

I am a native speaker of English and speak, read, and write it fluently. I work primarily in English.

*b) What is your knowledge and fluency in French, if it is not your native language? Do you have experience working in this language?*

I am a non-native speaker of French, but speak, read, and write it fluently. I handle criminal appeals in French and have conducted trials in French, including before the ICTR Trial Chambers in Arusha.

*c) Do you have a working knowledge of any other languages?*

No, not beyond limited conversational skills.

### **Expertise and Experience:**

*7. The Rome Statute requires the Deputy Prosecutor to be a person “of high moral character, be highly competent in and have extensive practical experience in the prosecution or trial of criminal cases.” Please describe your qualifications for this position.*

In Canada, I have thrived in a criminal justice system that values the rule of law and depends on the competence and integrity of counsel. With that background, I adapted well to the challenges of international prosecutions work. In sum, with over thirty years of experience as a criminal trial and appellate advocate and senior legal manager, including over eight years working at the international level, I would bring to the post of Deputy Prosecutor the skill, knowledge, and judgment thus gained.

*8. Please describe any previous experience you have relevant to being Deputy Prosecutor (Prosecution), including extensive practical experience in the prosecution or trial of criminal cases?*

My strength may be in my ability to build consensus and motivate others to achieve common goals. Success at the international level, I learned, is not the product of “I”, but the result of the collective effort of “we”. I have also learned not to avoid difficult decisions, especially in relation to personnel matters, in order to maintain a high level of morale and motivation. Thus, while the ICC is a different institution facing unique challenges, my international experience should help me to be an effective Deputy Prosecutor (Prosecution).

Thus, in 1997-8, the prosecution team I served as Senior Trial Attorney successfully handled the first cases of genocide, crimes against humanity, and war crimes heard by the ICTR Trial Chambers. In 1999-2001, I was part of senior management of the ICTY OTP as first Chief of Prosecutions, managing a complex Division responsible for the conduct of all proceedings before the ICTY Trial Chambers. In 2004-7, working with a team of

talented lawyers, I built up the capacity of the ICTR Prosecutor's office to deal effectively with appeals.

9. *The Court's current criminal trials are taking place in The Hague where they are geographically distant from where the alleged crimes occurred. Can you describe any experience you might have that would assist you in meeting any challenges that this might raise?*

At ICTR in Arusha and ICTY in The Hague we worked at a distance from where the crimes were committed, which should assist me to meet the special challenges in this respect that the Court faces. I also have experience bridging the cultural and linguistic distances that can separate counsel from victims and witnesses.

10. *Please describe the aspects of your career, experience or expertise outside of your professional competence that you consider especially relevant to the work of the ICC Deputy Prosecutor (Prosecution).*

Wide travel and cross-cultural experiences should be of value to me in my work as Deputy Prosecutor.

11. *Historically, many of the grave abuses suffered by women in situations of armed conflict have been marginalized or overlooked. What experiences have you had dealing with crimes of sexual and/or gender-based violence? Please describe any specific legal expertise you may have on the issue of violence against women or children.*

As a prosecutor I have dealt with women who have been the victims of violence.

At the international level, I sought through an appeal before the ICTR Appeals Chamber to remove lack of consent on the victim's part/knowledge of such absence of consent on the perpetrator's part as an essential element of sexual violence that the prosecution is required to prove. The Appeals Chamber was not prepared to depart from previous decisions defining the essential elements of sexual violence, but did decide that the victim's lack of consent and the perpetrator's knowledge of this should be assumed from the circumstances and so did not normally need further proof.

Also at the international level, I have worked with experts on gender violence within the scope of my responsibilities as counsel and legal manager.

12. *Do you have legal expertise in other relevant areas such as the crimes over which the Court has jurisdiction; the management of complex criminal and mass crimes cases; or the disclosure of evidence?*

Yes. I have prosecuted cases or handled appeals involving genocide, crimes against humanity, and war crimes, and managed divisions responsible for the conduct of such cases at the trial or appellate level. I have experience with complex cases both

domestically and internationally, and experience dealing with mass crimes at the international level. As a vital prosecution responsibility affecting the fairness of both trials and appeals, disclosure of evidence has always been part of my duties.

*13. Under Article 68(3) of the Rome Statute, victims are entitled to present their views and concerns and have them considered at stages of the proceedings to be determined by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Please describe any experience you have that would make you particularly sensitive/understanding to the participation of victims in the courtroom.*

Dealing over the years with victims of crime has made me sensitive to the importance of ensuring that their voices are heard in the criminal justice system. As Crown counsel, we are trained and are expected to be sensitive to victims' interests in our work.

My experience at the ICTR dealing with genocide survivors as witnesses made a deep impression on me. We endeavoured to empower them to relate their evidence clearly and without fear. We always visited our witnesses at the safe house after they testified, to thank them and speak with them about their experience.

This background should help me to deal compassionately and constructively at the ICC with victims as active participants with their own counsel in trial proceedings.

*14. Victims have a recognised right to reparations under Article 75 of the Rome Statute. Please describe any experience that you have which would be relevant to this provision.*

In Canada, victims have certain rights to compensation or restitution orders, and to other protections, but usually seek financial compensation for harm suffered from a criminal injuries compensation board. Thus reparations of the sort contemplated under the ICC Statute will be a relatively new area for me.

*15. Article 67 of the Rome Statute enumerates the rights of accused persons before the ICC. Please describe your experiences in ensuring the rights of the accused to due process and a fair and impartial trial.*

As Crown counsel I must respect rights of the defence that are constitutionally guaranteed. At both domestic and international levels, I have always been aware of my obligations as a prosecutor to ensure that the rights of accused persons are respected. As an advocate, I am entitled to press my case vigorously on behalf of the public interest, but must do so fairly and with due respect for the rights of the accused. To paraphrase the words of Judge Shahabuddeen, the prosecutor is a party, never partisan.

*16. Do you have any experience serving in a large, multifaceted institution and working with other departments or entities to achieve a common goal?*

Yes: as Senior Trial Attorney in the OTP at ICTR (1997-8); Chief of the Prosecutions Division at ICTY (1999-2001); and Senior Appeals Counsel and then Chief of the Appeals and Legal Advisory Division in the OTP at ICTR (2004-7).

*a) If yes, what were the challenges in doing so?*

The key challenge was to maintain open, clear communications within the Office of the Prosecutor and with the other Tribunal organs, with the objective of coordinating efforts and expertise to achieve a common goal, namely, the successful accomplishment of the Tribunals' mandates.

Also, within my area of responsibility, personnel issues occasionally arose that were challenging to deal with.

*b) How were these challenges overcome?*

Challenges were met through the cultivation of respectful relations with individuals having responsible roles within each organ; understanding the other's perspective; regular communication through meetings, e-mail, and telephone; and the establishment of useful procedures and methods of operation. In the end, mutual support in a common cause ensures success.

Personnel issues were resolved or managed successfully through timely intervention and fair handling.

As a general approach in management, I believe that fostering an institutional culture that embraces a clear vision of purpose and is based on open communication, shared values, and teamwork is the best guarantee of success.

*17. Do you have any experience as a manager or carrying out management functions? If yes, please describe your experience delegating to, directing and supervising staff.*

Yes. Please see my answer to question 16 above.

I have always been a mentor to younger counsel and staff under my supervision. As a Senior Trial Attorney, I assigned significant individual responsibilities in the conduct of our cases to the members of my prosecution trial team, always being available to support them. As head of appeals at ICTR, I relaxed the tight quality control I initially maintained to give the members of the Appeals and Legal Advisory Division a great deal of independence in their work. With responsibility, of course, comes accountability.

*18. Given the broad geographical reach of the jurisdiction as well as the staff composition of the ICC, please describe any experience you have working in a culturally*

*diverse environment or interacting with people with backgrounds that differ from your own.*

I have enjoyed many cross-cultural experiences in my life. The environments in which I worked in Kigali and Arusha and in The Hague were culturally diverse; I enjoyed excellent work and social relationships with colleagues of many backgrounds. In Toronto, I live in one of the most cosmopolitan cities in the world. My friendships and family reflect this diversity.

19. *a) Please provide us with a list of your writings and other material relevant to evaluating your experience.*

While I have spoken at courses, conferences, and symposia; have been involved in the design and delivery of training programs; and do much of my work in writing, I have published little. My focus has been upon courtroom work and legal management. (I am not the scholarly James G. Stewart, formerly of ICTY, and currently a professor of law at the University of British Columbia.)

Respecting the above, please see the listing in my CV published at the Assembly of States Parties location on the ICC Web site.

*b) Please provide us with a document containing a list of links to your writings and other material relevant to evaluating your experience.*

As noted, please see my CV on the ICC Web site.

### **Character and Independence:**

20. *Have you ever resigned from a position as a member of the bar of any country or been disciplined or censured by any bar association of which you may have been a member? If yes, please describe the circumstances.*

No, never.

21. *Have you ever been found by a governmental, legal or professional body to have discriminated against or harassed an individual on any grounds including because of actual or perceived age, race, creed, colour, gender, sexual orientation, religion, national origin, disability, marital status, socioeconomic status, alienage or citizenship status? If yes, please describe the circumstances.*

No, never.

22. *Do you have any experience where you have had to balance your independence in dealing with judicial matters with a complex political landscape? If yes, could you please describe how you were able to manage these competing concerns?*

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As Crown counsel, my colleagues and I enjoy a tradition of freedom from political considerations in our work. This was also my experience as counsel and manager at the international level. I appreciate that the ICC Prosecutor has diplomatic responsibilities and may have to exercise her prosecutorial discretion in the context of “a complex political landscape”, but expect she will do so independently and impartially as a function of the evidence in the case and what is right in the public interest she upholds.

*23. The Rome Statute requires the Office of the Prosecutor to act independently as a separate organ of the Court. A member of the Office, including the Deputy Prosecutor (Prosecution), shall not seek or act on instructions from any external source. In addition, the Deputy Prosecutor may not engage in any activity which is likely to interfere with his or her prosecutorial functions or to affect confidence in his or her independence. Do you expect to have any difficulties in your taking a position independent of, and possibly contrary to, your government with respect to an investigation or prosecution?*

No. The requirements detailed in the paragraph above are familiar to me, are what I would expect, and present me with no difficulty.

*24. Do you know of any factors that would adversely affect your ability to competently serve as Deputy Prosecutor (Prosecution), to comply with applicable ethical responsibilities, or to complete the day-to-day responsibilities that the Deputy Prosecutor (Prosecution) is required to assume? If yes, please explain.*

No, none.

*25. Is there any information that you would like to add that is relevant to your candidacy? If yes, please detail it below.*

No – beyond mentioning that I am married and have three children: having an active home life balances the demands of work in a healthy way.

**Thank you.**