

**Independent Advisory Board for
Supreme Court of Canada
Judicial Appointments**

Report on 2017 Process

January 17, 2018



Independent Advisory Board for
Supreme Court of Canada
Judicial Appointments

Comité consultatif indépendant sur
la nomination des juges de la
Cour suprême du Canada

January 17, 2018

The Right Honourable Justin Trudeau
Prime Minister of Canada
80 Wellington Street
Ottawa, Ontario
K1A 0A2

Dear Prime Minister:

Pursuant to our Terms of Reference, the Independent Advisory Board for Supreme Court of Canada Judicial Appointments submits this report on the 2017 process for providing recommendations for appointment to the Supreme Court of Canada.

We thank you for the opportunity to serve on the Advisory Board and to participate in such an important process.

Respectfully,

The Right Honourable Kim Campbell, C.P., C.C., O.B.C., Q.C.
Chairperson of the Independent Advisory Board for Supreme Court of Canada Judicial Appointments

Advisory Board members:

Lili-Anna Pereša
Stephen Kakfwi
Susan Ursel
Sheila MacPherson
Richard Jamieson Scott
Camille Cameron



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1. Introduction

This report has been prepared by the Independent Advisory Board for Supreme Court of Canada Judicial Appointments (“Advisory Board” or “Board”) pursuant to paragraph 12 of the Terms of Reference (Annex A) which states:

Reporting

12 (1) Within one month after a judge is appointed, the Advisory Board must submit a report, in both official languages, to the Prime Minister that contains information on the carrying out of the mandate, the costs relating to the Advisory Board’s activities and the statistics relating to the applications received.

(2) The report may also contain recommendations for improvements to the process.

(3) The report must be made public.

This report covers all of the above enumerated stipulations, including information on the carrying out of the mandate, the costs related to the Advisory Board’s activities, and the statistics relating to the applications received. At the end of the report, the Advisory Board includes a series of recommendations for improvements to the process.

2. Establishment of the Advisory Board and the 2017 Process

The new process for appointing a Supreme Court of Canada judge, including the creation of an independent and non-partisan Advisory Board, was announced on August 2, 2016. (Annex B). The Board is an independent and non-partisan body whose mandate is to provide non-binding, merit-based recommendations to the Prime Minister on judicial appointments to the Supreme Court of Canada. Its members are appointed for terms of up to five years, which terms may be renewed for one or more further terms. The Board is convened at the discretion and at the request of the Prime Minister.

The composition of the Advisory Board is as follows:

- Three members, at least two of whom are not advocates or barristers in a province or territory, nominated by the Minister of Justice;
- A practising member in good standing of the bar of a province or territory, nominated by the Canadian Bar Association;
- A practising member in good standing of the bar of a province or territory, nominated by the Federation of Law Societies of Canada;
- A retired superior court judge, nominated by the Canadian Judicial Council; and
- A legal scholar, nominated by the Council of Canadian Law Deans.



The Advisory Board was first convened in 2016 to make recommendations for the vacancy which would occur with the retirement of Justice Thomas Cromwell. That process resulted in the appointment of Justice Malcolm Rowe.

The 2017 process was opened by the Prime Minister on July 14, 2017 in order to fill the seat on the SCC that would become vacant on December 15, 2017 with the retirement of the Right Honourable Beverley McLachlin. Chief Justice McLachlin was appointed to the Supreme Court of Canada from the Supreme Court of British Columbia. In recognition of the custom of regional representation, the process was open to all qualified candidates from Western Canada and from Northern Canada. Candidates who wished to be considered were required to complete and submit applications by September 15, 2017. (Annex C)

The appointment of the Advisory Board members was announced on July 17, 2017. (Annex D). Except for the representative of the Federation of Law Societies of Canada, who, at its request is appointed for a one-year term, the other members have been appointed for three-year terms. The members of the Advisory Board are:

The Right Honourable Kim Campbell, Chairperson, nominated by the Minister of Justice;
Lili-Anna Pereša, nominated by the Minister of Justice;
Stephen Kakfwi, nominated by the Minister of Justice;
Susan Ursel, nominated by the Canadian Bar Association;
Sheila MacPherson, nominated by the Federation of Law Societies of Canada;
The Honourable Richard J. Scott, nominated by the Canadian Judicial Council;
Camille Cameron, nominated by the Council of Canadian Law Deans.

Full biographical notes on the members of the Advisory Board can be found at Annex E.

By Mandate Letters to the Chair and to the Members, dated July 28, 2017, the Prime Minister asked that the Board submit and deliver to him “by no later than October 23, 2017, a list of three to five qualified and functionally bilingual candidates from Western Canada (British Columbia, Alberta, Saskatchewan, and Manitoba) and Northern Canada (Northwest Territories, Nunavut and Yukon) for his consideration”. He also indicated that “candidates may demonstrate that they satisfy the geographical requirement by reference to their bar membership, judicial appointment, or other relationship with Western Canada or Northern Canada”. (Annex F)

As noted in the Terms of Reference, the Advisory Board is supported by the Office of the Commissioner for Federal Judicial Affairs Canada (FJA) and its Commissioner, or his or her delegate, acts as the *ex officio* secretary to the Advisory Board. FJA is also responsible for administering the application process, including assessing whether a candidate is functionally bilingual.



Detailed information concerning the process, the mandate of the Advisory Board and instructions on how to apply for appointment to the Supreme Court of Canada was made available on FJA's Website at www.fja-cmf.gc.ca immediately following the opening of the 2017 process.

3. Meetings of the Advisory Board and Application Review Process

The week following their appointment, the members of the Advisory Board met via teleconference to discuss how they would approach their 2017 mandate. General administrative questions were discussed with the Commissioner and the *ex officio* secretary to the Board. The members noted that they had received no negative feedback from candidates during the 2016 process and decided to conduct the 2017 process basically along the same lines. For example, the Advisory Board once again decided that interviews with the candidates would be a useful way to fully assess their experience and qualifications. Also, given the success of their outreach efforts in 2016, they again decided to communicate with a broad range of Canadian legal and judicial organizations, asking them to use their networks and knowledge of the judiciary and legal community in their jurisdictions to identify qualified candidates and urge them to submit an application.

After the conference call, a letter was emailed to: the Canadian Judicial Council; the Federation of Law Societies of Canada; the Canadian Bar Association; the Council of Canadian Law Deans; the Canadian Superior Courts Judges Association; the Canadian Association of Provincial Court Judges; the Canadian Council of Chief Judges; the Indigenous Bar Association; the Roundtable of Diversity Associations (an umbrella organization which includes 17 participating organizations); and the Ukrainian-Canadian Bar Association.

The week following the application deadline, the applications were downloaded onto secure tablets and printed for the Board members. All members performed an individual, thorough review of each application.

The Board convened in person in Ottawa from September 21st to the 24th. Its first order of business was to meet with the Chief Justice of Canada, pursuant to paragraph 8(e) of the Terms of Reference, to hear her views on the needs of the Supreme Court.

The Board members then assembled to discuss their individual evaluations of the applications and, based on their discussions, decided which candidates they would like to interview as well as which references they would like to contact for these candidates. Given the important input the references had provided in the previous year's process, it was decided to contact a considerably greater number this time. Numerous references were contacted for each candidate and the Board members debriefed each other on the reference calls they had made. References were all asked the same set of questions, in order to be fair to the candidates and to allow for comparability amongst them. Any references who could not be reached during that time were scheduled to speak to Board members in the following few days. The candidates to be interviewed were contacted and their interview times were scheduled.



Eight candidates travelled to Ottawa to meet with the Advisory Board for interviews which were held on October 7th, 8th and 9th. The candidates were all asked to answer a set series of questions designed to help the Board assess fully and fairly the qualifications and assessment criteria which had been published with the application instructions. (Annex H). As part of the interview process, simultaneous translation was offered to all candidates.

Immediately following the interviews, FJA language experts conducted a second language proficiency assessment for each candidate using assessment tools and rating grids to determine whether the candidate met the functional bilingualism requirements for reading, listening and speaking. The results were communicated to the Board members. A description of the functional bilingualism process is included as Annex I.

The Advisory Board then deliberated to decide whom it would recommend to the Prime Minister and to write its “shortlist” report to him. A list of three recommended candidates was provided. They were not prioritized but rather listed in alphabetical order. In accordance with the Terms of Reference, the report provided an assessment of how each of the recommended candidates meets the requirements of the *Supreme Court Act* and the extent to which they meet the assessment criteria established by the Prime Minister, as well as any additional reasons in support of their candidacy. Security checks were also conducted. The Report was submitted to the Prime Minister’s Office on October 23, 2017.

The Advisory Board was very pleased that the Prime Minister made the appointment from the list of candidates submitted by the Advisory Board.

4. Communications, Media and Public Affairs

As indicated earlier in this report, the process was opened on July 14, 2017 with a News Release from the Prime Minister.

On the same date, FJA launched a page on its Website that provided information on the Advisory Board, its Terms of Reference, its members, application process, qualifications and assessment criteria, frequently asked questions, and relevant contact persons.

On July 17, 2017, the Prime Minister announced in a News Release the names of the members of the Independent Advisory Board. The Mandate Letters to the Chair and the Members were made public on July 28, 2017.

The creation of the Advisory Board and the launch of the application process generated some media interest (print, online, radio, television), much of it consisting in speculation and opinion on who should be appointed and some comments on the process. The nomination, on November 29, 2017, of the Honourable Sheilah Martin elicited a great deal of media attention.



In the realm of public affairs and government engagement, on December 4, 2017, the Chair of the Advisory Board appeared with the Minister of Justice before the House of Commons Standing Committee on Justice and Human Rights. In addition, a public question and answer session was held with the Prime Minister's nominee on December 5, 2017. These appearances generated considerable media interest.

5. Consultation and Outreach

As discussed above, before beginning its deliberations, the Board met with the Chief Justice of Canada to obtain her views on current challenges and needs of the Supreme Court and its judges.

Early in the process, letters were sent to a wide range of Canadian legal and judicial organizations, asking them to use their networks and knowledge of the judiciary and legal community in their jurisdictions to identify qualified candidates, and urge them to submit an application.

The list of organizations consulted is as follows:

- Canadian Judicial Council;
- Federation of Law Societies of Canada;
- Canadian Bar Association;
- Council of Canadian Law Deans;
- Canadian Superior Courts Judges Association;
- Canadian Association of Provincial Court Judges;
- Canadian Council of Chief Judges;
- Indigenous Bar Association;
- Roundtable of Diversity Associations (RODA), whose participating organizations include:
 - Arab Canadian Lawyers Association,
 - Association of Chinese Canadian Lawyers of Ontario,
 - Canadian Association of Black Lawyers,
 - Canadian Association of South Asian Lawyers,
 - Canadian Hispanic Bar Association,
 - Canadian Italian Advocates Organization,
 - Canadian Muslim Lawyers Association,
 - Federation of Asian Canadian Lawyers,
 - Hellenic Canadian Lawyers Association,
 - Iranian Canadian Legal Professionals,



- Korean Canadian Lawyers Association,
 - Macedonian Canadian Lawyers Association,
 - OBA Equality Committee,
 - Sexual Orientation and Gender Identity Conference,
 - South Asian Bar Association,
 - Toronto Lawyers Association, and
 - Women's Law Association of Ontario.
- Ukrainian-Canadian Bar Association.

When the Board received communications suggesting that an individual be considered, the Advisory Board wrote to these individuals asking them to consider the process and apply directly.

The letter sent to the organizations is included as Annex J. A sample of the letter sent to individuals is included as Annex K.

6. Applications

While the above-noted organizations were consulted and encouraged to share the call for applications with their memberships, individuals seeking appointment to the SCC had to personally complete and submit an application form, which required them to provide their education and employment history as well as list all their publications, judgments and conference participation, as applicable. Candidates were also required to provide answers to a number of essay questions. This information was used to confirm their eligibility for appointment, as well as to help the Advisory Board assess merit, based on the published assessment criteria.

The application period was open from July 14, 2017 to September 15, 2017, a period of 9 weeks. Qualified candidates from Western Canada and from Northern Canada were eligible to apply. The applications were received by email and processed by staff at FJA.

The Committee received 14 applications, 11 of which were representative of Canada's four Western provinces.

In terms of information on diversity, generated from self-identification by applicants on their application forms, the following data was obtained from the 14 applications received:



| Groups | Number of applicants | % |
|-----------------------------------|---------------------------------|----------|
| Women | 6 | 42.85 |
| Men | 8 | 57.14 |
| Groups | Number of applicants | % |
| Anglophone | 12 | 85.71 |
| Francophone | 2 | 14.28 |
| Groups Self-identification | Number of identification | % |
| Ethnic/Cultural or Other | 0 | |
| Visible Minority | 0 | |
| Indigenous | 3 | 21.42 |
| Disabilities | 0 | |
| LGBTQ2 | 0 | |

7. Costs

The costs of the Advisory Board relate primarily to travel and personnel (administrative support). Additional costs were minimized as the process relied heavily on FJA's support and infrastructure.

While some expenses and operational costs are still being received and tabulated, it is estimated that the expenditures related to the Advisory Board for this appointment process will be approximately \$225,000. Expenses relate to travel expenditures and per diems for Advisory Board members; travel costs for shortlisted candidates to attend interviews; and costs incurred by FJA to support the Advisory Board, including costs related to supplementary salaries, professional services, translation, IT, telecommunications and supplies.



8. Recommendations on Improvements to the Appointments Process and Work of the Advisory Board

The Advisory Board offers the following recommendations:

- *Timeframe for Applications Report to the Prime Minister.* Given the length and the complexity of the application form and the amount of information requested, a considerable amount of time and effort is required for candidates to complete and submit their applications. The 9-week period appears to have been sufficient, given the high-quality of the applications received. We would recommend not cutting back on this time for future processes. The time allowed to the Advisory Board to complete its work, that is the time between the closing of the applications date (September 15) and the submission of its short-list report to the Prime Minister (October 23), was relatively short. Given the time required for Board members to carefully review the applications, to coordinate their own schedules so they could meet to deliberate, and to conduct reference calls, the time left for conducting the interviews and for deciding on which candidates to recommend to the Prime Minister was very tight. However, all interviews proceeded according to schedule with the kind cooperation of the interviewees and Board members were able to fully deliberate and write their short-list report. We would caution that, should a future process elicit a greater number of applications, it could prove difficult for the Board to do what is required after the close of the application process in anything less than 5 weeks.
- *Advisory Board Deliberations.* The Board found it extremely helpful to have again met with the Chief Justice *before* commencing its in-depth review of the applications to hear her most recent views on the needs of the Court. We would strongly recommend that this consultation with the Chief Justice always be held early in the process. The Board also found it very useful to revise and update the templates it used to assist it in evaluating the applications, making reference calls and conducting interviews with the candidates. We would recommend this as a best practice.
- The Board notes that this new process for recommending nominees has been used twice in the two years it has been in effect and that the appointment of Justice Martin to the Supreme Court will be the ninth in the last ten years. The executive, administrative and technological assistance provided to the Board by FJA was invaluable and considerable. The Board is very grateful to FJA's employees for the work they undertook on top of their normal workload in support of the process. This new process will likely require dedicated ongoing funding.
- *Format of the application materials/forms.* Feedback was received from candidates that, in order to respect the integrity of the process, they fully and candidly answered all the questions on the application form, including being forthcoming with respect to details about their personal lives. This was especially true when responding to the essay



questions. Concern was expressed about the necessity of making all these details public, should they be chosen as the Prime Minister's nominee. Attention could be paid to this requirement, lest it discourage potential candidates from applying.

9. Confidentiality

Pursuant to paragraph 11(1) of the Terms of Reference, each Advisory Board member signed an undertaking to respect the confidentiality of the process. Similarly, pursuant to paragraph 11 (2) of the Terms of Reference, any “personal information provided to, and deliberations of, the Advisory Board are confidential and must be treated in a manner consistent with the provisions of the *Privacy Act*.” Furthermore, paragraph 11(3) articulates that Advisory Board members “must keep confidential any information brought before them in the performance of their functions.”

Therefore, the Advisory Board will not share any information pertaining to candidates.

10. Conclusion

The Advisory Board greatly appreciates the opportunity to serve the Prime Minister and all Canadians on such an important initiative. The process was illuminating and highlighted the exemplary jurists, academics and lawyers in Canada who applied for consideration under this process.



Annex A: Terms of Reference for the Advisory Board

Mandate

1 The Independent Advisory Board for Supreme Court of Canada Judicial Appointments (“Advisory Board”) is an independent and non-partisan body whose mandate is to provide non-binding, merit-based recommendations to the Prime Minister on judicial appointments to the Supreme Court of Canada.

Composition of the Advisory Board

2(1) Advisory Board members are appointed during pleasure under paragraph 127.1(1)(c) of the *Public Service Employment Act* as special advisers to the Prime Minister.

(2) The Advisory Board is to consist of

(a) three members, at least two of whom are not advocates or barristers in a province or territory, nominated by the Minister of Justice;

(b) a practising member in good standing of the bar of a province or territory, nominated by the Canadian Bar Association;

(c) a practising member in good standing of the bar of a province or territory, nominated by the Federation of Law Societies of Canada;

(d) a retired superior court judge, nominated by the Canadian Judicial Council; and

(e) a legal scholar, nominated by the Council of Canadian Law Deans.

(3) The Governor in Council is to designate one of the members to be the Chairperson of the Advisory Board.

Length of Terms

3 (1) Advisory Board members are to be appointed for terms of up to five years, which terms may be renewed for one or more further terms.

(2) The Advisory Board is to be convened at the discretion and at the request of the Prime Minister.

Support

4 The Office of the Commissioner for Federal Judicial Affairs is to provide support to the Advisory Board and will be responsible for administering the application process.



5 The Commissioner for Federal Judicial Affairs, or his or her delegate, is to act as an *ex officio* secretary to the Advisory Board.

Recommendations

6 (1) In accordance with this mandate, the Advisory Board must submit to the Prime Minister for his or her consideration, within the time period specified by the Prime Minister on the convening of the Advisory Board, the names of at least three, but up to five, qualified and functionally bilingual candidates for each judicial vacancy for which the Advisory Board is convened.

(2) The Advisory Board must provide an assessment of how each of those candidates meets the requirements of the *Supreme Court Act* and the extent to which they meet the criteria established by the Prime Minister, and any additional reasons in support of their candidacy.

7 The Prime Minister may request that the Advisory Board provide names of additional qualified candidates who are functionally bilingual.

Recommendation Process

8 Advisory Board members must

(a) at all times, observe the highest standards of impartiality, integrity and objectivity in their consideration of all candidates;

(b) review applications received from candidates and actively seek out qualified candidates;

(c) meet as required to assess candidates and engage in deliberations;

(d) be guided by the criteria established by the Prime Minister;

(e) consult with the Chief Justice of Canada and any key stakeholders that the members consider appropriate;

(f) in establishing a list of qualified candidates, seek to support the Government of Canada's intent to achieve a gender-balanced Supreme Court of Canada that also reflects the diversity of members of Canadian society, including Indigenous peoples, persons with disabilities and members of linguistic, ethnic and other minority communities including those whose members' gender identity or sexual orientation differs from that of the majority; and

(g) comply with the *Conflict of Interest Act* and the *Ethical and Political Activity Guidelines for Public Office Holders*.



9 (1) Advisory Board members must declare to the other members any direct or indirect personal interest or professional or business relationship in relation to any candidate, including any gift or other advantage received by the members from the candidate.

(2) If such a declaration is made, the Advisory Board must decide, having regard to the nature of the interest or relationship, whether the member must withdraw from any deliberations about the candidate.

(3) If the Advisory Board decides that the member must withdraw from any deliberations about a candidate, those deliberations are undertaken by the remaining Advisory Board members, provided the number of remaining members is not less than four.

10 Advisory Board members may travel for the purpose of carrying out their mandate.

Confidentiality

11 (1) Advisory Board members must sign a confidentiality agreement as a precondition of their appointment.

(2) Personal information provided to, and deliberations of, the Advisory Board are confidential and must be treated in a manner consistent with the provisions of the *Privacy Act*.

(3) Advisory Board members must keep confidential any information brought before them in the performance of their functions.

Reporting

12 (1) Within one month after a judge is appointed, the Advisory Board must submit a report, in both official languages, to the Prime Minister that contains information on the carrying out of the mandate, the costs relating to the Advisory Board's activities and the statistics relating to the applications received.

(2) The report may also contain recommendations for improvements to the process.

(3) The report must be made public.

Restriction

13 A member of the Advisory Board is not eligible to be considered for a federal judicial appointment for a period of one year after the day on which they cease to be a member of the Advisory Board.



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Annex B: News Release, dated August 2, 2016, from the Office of the Prime Minister of Canada

Prime Minister announces new Supreme Court of Canada judicial appointments process
Ottawa, Ontario - 2 August 2016

Today, the Prime Minister, Justin Trudeau, announced a new process for appointing Supreme Court of Canada Justices that is open, transparent, and sets a higher standard for accountability.

Under the new process, an independent and non-partisan Advisory Board has been given the task of identifying suitable candidates who are jurists of the highest caliber, functionally bilingual, and representative of the diversity of our great country.

For the first time, any qualified Canadian lawyer or judge may apply for appointment to the Supreme Court of Canada through the Office of the Commissioner for Federal Judicial Affairs. The seven-member Advisory Board, chaired by former Prime Minister Kim Campbell, includes four members nominated by independent professional organizations. The Advisory Board will review candidates who apply and will submit a shortlist of three to five individuals for consideration by the Prime Minister.

To enhance transparency, 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.

The Minister of Justice and the chair of the Advisory Board will appear before Parliament to discuss the selection process. A number of Members of Parliament and Senators – from all parties – will also have the opportunity to take part in a Q&A session with the eventual nominee, before she or he is appointed to the Supreme Court of Canada.

Fundamentally, this process will demonstrate a degree of rigor and responsibility that Canadians expect from their government.

Quote

“The Supreme Court of Canada is respected nationally and internationally for its excellence—it is recognized as a model of a strong, independent judicial institution. This is due in no small part to a tradition of appointing only the most exceptional and impressive individuals to the court. We are committed to maintaining this tradition—and improving on it—by introducing an open, transparent and non-partisan process that will help ensure that the best, most well-qualified people reflective of Canadian society are named to Canada’s top court.”

– *Rt. Hon. Justin Trudeau, Prime Minister of Canada*



Quick Facts

- The following members have been named to the Independent Advisory Board for Supreme Court of Canada Judicial Appointments:
 - The Right Honourable Kim Campbell – Chairperson – former Prime Minister of Canada and Canadian Consul General, and currently the Founding Principal of the Peter Lougheed Leadership College at the University of Alberta
 - Camille Cameron – member – Dean of the Schulich School of Law at Dalhousie University, and Chair of the Canadian Council of Law Deans
 - Jeff Hirsch – member – President of the Federation of Law Societies of Canada, and partner with a Winnipeg law firm
 - Stephen Kakfwi – member – former Premier of the Northwest Territories and President of the Dene Nation, and currently working to improve the recognition and realities of Aboriginal peoples within Canada
 - Lili-Anna Pereša – member – President and Executive Director of Centraide of Greater Montreal
 - Richard J. Scott – member – former Chief Justice of the Manitoba Court of Appeal, and current counsel, arbitrator and mediator in a Winnipeg law firm
 - Susan Ursel – member – currently a senior partner with a Toronto firm, and Chair of the Canadian component of the African Legal Research Team which provides legal research support to Envisioning Global LGBT Rights
- The application period ends on Wednesday, August 24.
- Qualified lawyers and persons holding judicial office from across Canada who wish to be considered for the upcoming vacancy must complete and submit an application package no later than 23:59 Pacific daylight time on August 24, 2016.
- Applications are now being accepted for the position that will become vacant in September with the retirement of the Honourable Justice Cromwell.

Related link

- [Backgrounder: New process for judicial appointments to the Supreme Court of Canada](#)

Associated links

- [Biographical notes on members of the Independent Advisory Board for Supreme Court of Canada Judicial Appointments](#)
- [Terms of Reference for the Advisory Board](#)
- [Qualifications and assessment criteria](#)
- [Mandate Letter \(members\) - Independent Advisory Board for Supreme Court of Canada Judicial Appointments](#)
- [Mandate Letter \(Chair\) - Independent Advisory Board for Supreme Court of Canada Judicial Appointments](#)



Annex C: News Release, dated July 14, 2017, from the Office of the Prime Minister of Canada

Prime Minister opens the process to select the next justice of the Supreme Court of Canada
Ottawa, Ontario - July 14, 2017

The Prime Minister, Justin Trudeau, today opened the process to select the next justice of the Supreme Court of Canada, to fill the vacancy created by the upcoming retirement of Chief Justice Beverley McLachlin.

Under the new approach launched last year, an independent and non-partisan Advisory Board, the members of which will be announced shortly, will be given the task of identifying suitable candidates who are jurists of the highest caliber, functionally bilingual, and representative of the diversity of our great country.

Chief Justice McLachlin was appointed to the Supreme Court of Canada from the Supreme Court of British Columbia. In recognition of the custom of regional representation, the process will be open to all qualified applicants from Western Canada and Northern Canada. This is the first time that the North is acknowledged in the custom of regional representation.

Quote

“The Supreme Court of Canada is recognized around the world as a strong, independent judicial institution. This strength includes regional representation. The process we are opening up today will recruit potential candidates from Western Canada and Northern Canada and follow the tradition of appointing only the most exceptional and impressive individuals to the court.”

– *Rt. Hon. Justin Trudeau, Prime Minister of Canada*

Quick Facts

- The application period ends on Friday, September 15, 2017.
- Qualifying candidates who wish to be considered for the upcoming vacancy must complete and submit an application package (questionnaire, authorization form, and a background check consent form) no later than 23:59 Pacific daylight saving time on September 15, 2017.
- Those interested in applying are encouraged to first review the statutory requirements set out in the *Supreme Court Act*, as well as the Statement of Qualifications and Assessment Criteria that will guide the Advisory Board in evaluating a candidate’s suitability.
- The applications now being accepted are for the purpose of identifying the next member of the Supreme Court following the December 15, 2017, retirement of Chief Justice Beverley McLachlin.



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- Candidates may demonstrate that they satisfy the geographical requirement by reference to their bar membership, judicial appointment, or other relationship with Western Canada (British Columbia, Alberta, Saskatchewan and Manitoba) and Northern Canada (Yukon, Northwest Territories and Nunavut).
- From the nine justices of the Supreme Court then assembled, the Prime Minister will identify the jurist best placed to serve as the next Chief Justice of Canada.

Associated links

- [Supreme Court of Canada Appointments](#)
- [Qualifications and Assessment Criteria](#)
- [New process for judicial appointments to the Supreme Court of Canada](#)



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Annex D: News Release, dated July 17, 2017, from the Office of the Prime Minister of Canada

Prime Minister announces Advisory Board to select next Supreme Court Justice
Ottawa, Ontario - July 17, 2017

The Government of Canada is committed to ensuring that Supreme Court of Canada Justices are appointed in a way that is transparent, inclusive, and accountable to Canadians.

The Prime Minister, Justin Trudeau, today announced the members of the independent and non-partisan Advisory Board who will help support the search for the next Supreme Court justice, which was launched on July 14, 2017.

The Advisory Board will follow the Government's new Supreme Court of Canada appointments process to identify jurists of the highest caliber who are functionally bilingual and representative of the diversity of our great country. In this instance, any qualified candidate from Western Canada or Northern Canada may apply.

The seven-member Advisory Board, chaired by former Prime Minister Kim Campbell, includes four members nominated by independent professional organizations. The Advisory Board will review candidates who apply, and submit a shortlist of three to five individuals for consideration by the Prime Minister.

The Minister of Justice and the Chair of the Advisory Board will appear before Parliament to discuss the selection process. Members of Parliament and Senators from all parties will also have the opportunity to take part in a question and answer session with the nominee, before she or he is appointed to the Supreme Court of Canada.

Quote

“The new approach launched last year to select Justices of the Supreme Court proved highly successful. I am delighted that the Advisory Board will again be chaired by former Prime Minister Kim Campbell, and I welcome the newest member, Ms. Sheila MacPherson, to this important Board. I look forward to receiving their recommendations, and to naming Canada's next Justice of the Supreme Court.”

– *Rt. Hon. Justin Trudeau, Prime Minister of Canada*



Quick Facts

- The Advisory Board is comprised of the following members:
 - The Right Honourable Kim Campbell (Chairperson) is the former Prime Minister of Canada and Canadian Consul General, and is the Founding Principal of the Peter Lougheed Leadership College at the University of Alberta
 - Camille Cameron is the Dean of the Schulich School of Law at Dalhousie University, and Chair of the Canadian Council of Law Deans
 - Stephen Kakfwi is the former Premier of the Northwest Territories and President of the Dene Nation, and is working to improve the recognition and realities of Indigenous Peoples within Canada
 - Sheila MacPherson is the President-elect of the Federation of Law Societies of Canada, a senior lawyer in Yellowknife and the Law Clerk of the Legislative Assembly of the Northwest Territories
 - Lili-Anna Pereša is the President and Executive Director of Centraide of Greater Montréal
 - Richard J. Scott is the former Chief Justice of the Manitoba Court of Appeal, and is a counsel, arbitrator and mediator in a Winnipeg law firm
 - Susan Ursel is a senior partner with a Toronto firm, and Chair of the Canadian component of the African Legal Research Team, which provides legal research support to Envisioning Global LGBT Rights

- The application period ends on Friday, September 15, 2017.
- Qualifying candidates who wish to be considered to serve as the next member of the Court must complete and submit an application package (questionnaire, authorization form, and a background check consent form) no later than 23:59 Pacific daylight saving time on September 15, 2017.
- The applications now being accepted are for the purpose of identifying the next member of the Supreme Court of Canada, following the December 15, 2017, retirement of Chief Justice Beverley McLachlin.
- Candidates may demonstrate they satisfy the geographical requirement by reference to their bar membership, judicial appointment, or other relationship with Western Canada (British Columbia, Alberta, Saskatchewan and Manitoba) or Northern Canada (Yukon, Northwest Territories and Nunavut).
- From the nine justices of the Supreme Court then assembled, the Prime Minister will identify the jurist best placed to serve as the next Chief Justice of Canada.



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- [Biographical Notes](#)

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- [News release: Prime Minister opens the process to select the next justice of the Supreme Court of Canada](#)
- [News release: Prime Minister announces new Supreme Court of Canada judicial appointments process](#)
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Annex E: Biographical Notes on the Members of the Advisory Board

The Independent Advisory Board for Supreme Court of Canada Judicial Appointments (Advisory Board) is an independent and non-partisan body whose mandate is to provide non-binding merit-based recommendations to the Prime Minister on Supreme Court of Canada appointments.

The Advisory Board consists of the seven following members:

The Right Honourable Kim Campbell, Chairperson

Nominated by the Minister of Justice

The Right Honourable Kim Campbell, P.C., C.C., O.B.C., Q.C., former Prime Minister of Canada and Canadian Consul General, and Founding Principal of the Peter Lougheed Leadership College at the University of Alberta.

Lili-Anna Pereša, Member

Nominated by the Minister of Justice

President and Executive Director of *Centraide of Greater Montreal*.

Stephen Kakfwi, Member

Nominated by the Minister of Justice

Former Premier of the Northwest Territories and President of the Dene Nation Mr. Kakfwi is working to improve the recognition and realities of Indigenous Peoples within Canada.

Susan Ursel, Member

Nominated by the Canadian Bar Association

Senior partner with a Toronto firm, and Chair of the Canadian component of the *African Legal Research Team*, which provides legal research support to *Envisioning Global LGBT Rights*.

Sheila M. MacPherson, Member

Nominated by the Federation of Law Societies of Canada

President-elect of the Federation of Law Societies of Canada, experienced lawyer in Yellowknife and the Law Clerk of the Legislative Assembly of the Northwest Territories.

Richard J. Scott, Member

Nominated by the Canadian Judicial Council

Former Chief Justice of the Manitoba Court of Appeal, and counsel, arbitrator and mediator in a Winnipeg law firm.

Camille Cameron, Member

Nominated by the Council of Canadian Law Deans

Dean of the Schulich School of Law at Dalhousie University, and Chair of the Canadian Council of Law Deans.



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The Right Honourable Kim Campbell, P.C., C.C., O.B.C., Q.C., Chairperson

The Right Honourable Kim Campbell served in 1993 as Canada's nineteenth and first female Prime Minister. Prior to becoming Prime Minister, she held various Cabinet positions, including Minister of State for Indian Affairs and Northern Development, Minister of Justice and Attorney General of Canada, Minister of National Defence, and Minister of Veterans Affairs. She was the first woman to serve as Canada's Minister of Justice and Minister of National Defence, as well as the first to serve as Minister of Defence of a NATO member country.

Ms. Campbell was the Canadian Consul General in Los Angeles from 1996 to 2000, and later taught at the Harvard Kennedy School of Government from 2001 to 2004. She was also Chair of the Council of Women World Leaders, and past President of the International Women's Forum. From 2004 to 2006, Ms. Campbell was Secretary General of the Club de Madrid, an organization of former presidents and prime ministers of which she is a founding member.

Since 2014, Ms. Campbell has devoted much of her time to serving as the Founding Principal of the new Peter Lougheed Leadership College at the University of Alberta. Ms. Campbell continues to speak on a wide variety of topics through her participation in the American Program Bureau and the National Speakers Bureau. She is a trustee of the International Centre for the Study of Radicalisation and Political Violence at King's College London, and serves on several corporate and non-profit boards, and advisory committees, including Equal Voice, a Canadian organization devoted to achieving gender parity in the Canadian House of Commons.

Lili-Anna Pereša, Member

Born in Montréal, Lili-Anna Pereša is an engineer by training and graduated from the École Polytechnique de Montréal in 1987. Ms. Pereša also holds a graduate degree in management from McGill University, and a master's degree in political science from the Sorbonne in Paris. She has been President and Executive Director of Centraide of Greater Montreal since 2013.

Ms. Pereša first became a volunteer aid worker at the age of 25 when she accepted an assignment from World University Service of Canada to teach in Malawi. She later worked for Oxfam-Québec as a management consultant to Burkina Secours in Burkina Faso and, in 1994, she joined CARE Austria and worked in Croatia and Bosnia-Herzegovina.

Ms. Pereša directed several community and humanitarian organizations, including les petits frères des Pauvres, the YWCA of Montreal, and Amnesty International France, before serving as Executive Director of ONE DROP from 2009 to 2012.

She is a member of the Ordre des ingénieurs du Québec, the International Women's Forum, the Amies d'affaires, and the Advisory Committee for the 2017 Summit of the Mallet Institute. She is also a member of the National Executive Committee of the 2017 Governor General's Canadian Leadership Conference, a board member of the Domaine Forget, and the Mobile Giving



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Foundation Canada. She was also involved on the board of several organizations, including École Polytechnique de Montréal and its retirement committee.

Ms. Pereša's involvement in humanitarian aid has earned her numerous distinctions, including the Mercure Leadership Germaine-Gibara Award at the 2016 Mercuriades, the Meritorious Service Award for Community Service from the Canadian Council of Professional Engineers, an honorary doctorate from the Université de Montréal, and being named a Fellow of Engineers Canada.

Stephen Kakfwi, Member

Stephen Kakfwi is a former Premier of the Northwest Territories (NWT) and former President of the Dene Nation. Originally from Fort Good Hope, NWT, he represented the Sahtu riding in the NWT Legislative Assembly from 1987 until his retirement in 2003, serving the entire time as an elected member of the NWT Executive Council. He is the longest-serving Cabinet Minister in the territory's history.

Mr. Kakfwi is a popular public speaker known for his personal and moving insights on the residential school experience, and the importance of meaningful reconciliation. He founded Canadians for a New Partnership in 2014, a coalition of distinguished Canadians committed to strengthening the country through the creation of a new partnership between First Peoples and others in Canada. Mr. Kakfwi maintains a successful independent consulting practice advising on conservation, indigenous affairs, and resource and governance negotiations. Originally trained as a teacher, he currently serves as a mentor and advisor to the organization Dene Nahjo, and as an advisor with the Indigenous Leadership Initiative.

Mr. Kakfwi is a recipient of the Governor General's Northern Medal, and the National Aboriginal Achievement Award for public service. He is a celebrated singer-songwriter, and has been nominated for National Aboriginal Music Awards. Mr. Kakfwi lives in Yellowknife, NWT, with his wife. They have three children and four grandchildren.

Susan Ursel, Member

Susan Ursel received her Bachelor of Laws from Osgoode Hall Law School in 1984. She received an award in civil litigation during the Bar Admission course, and was called to the Bar in 1986. She currently works as a senior partner with the Toronto law firm of Ursel Phillips Fellows Hopkinson LLP, and most recently served as Chair of the Canadian component of the African Legal Research Team which provides legal research support to the multi-disciplinary project Envisioning Global LGBT Rights.

An experienced litigator, Ms. Ursel's work includes both arbitration/trial level work, and appellate advocacy. She practices in the areas of labour, employment, pay equity, employment equity, human rights, pensions, and benefits law. She has practiced at all court levels, including



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the Supreme Court of Canada, as well as extensively before labour boards, human rights tribunals, and arbitration boards.

Ms. Ursel is a member of the Ontario Bar Association, the Canadian Association of Labour Lawyers, and the Association of Human Rights Lawyers. She has also been a founding member or director of various groups and organizations, including the Coalition for the Reform of the Ontario Human Rights Commission, the Association of Human Rights Lawyers, the Foundation for Equal Families, the Feminist Legal Analysis Committee, the Gay and Lesbian Issues and Rights Committee of the Canadian Bar Association: Ontario (now the SOGIC of the Ontario Bar Association), and Pro Bono Law Ontario.

Ms. Ursel has received the Lifetime Achievement Award from Pro Bono Ontario in 2016, the Canadian Bar Association's Young Lawyer's Pro Bono Service Award in 1998, and the Canadian Bar Association's Sexual Orientation and Gender Identity Conference Hero Award in 2011.

Sheila M. MacPherson, Member

Sheila MacPherson received her Bachelor of Laws from Dalhousie University in 1987 and was called to the Northwest Territories bar in 1988 and the Nunavut bar in 1999. She has experience in all levels of court in the Northwest Territories and Nunavut and has appeared before a number of boards and tribunals. She currently is the most senior civil litigator in Lawson Lundell LLP's Yellowknife office. She is also the Law Clerk of the Legislative Assembly of the Northwest Territories.

Ms. MacPherson has considerable experience in the area of parliamentary privilege, legislative drafting and interpretation and constitutional law, much of that arising out of her experience with the Legislative Assembly stemming back to 1988.

Ms. MacPherson is a member of the Canadian Bar Association and an active member of the Law Society of Northwest Territories, serving at various times as President (1997, 2010 to 2011), member of the Executive and members of committees (including Discipline Committee and Admissions Committee). She is also currently a part-time Commissioner for the Canadian Human Rights Commission. She is the Vice-President of the Federation of Law Societies of Canada and will assume the office of President in November 2017.

An active member of her community, Ms. MacPherson has served on the Stanton Territorial Hospital Foundation, the Legal Services Board of the Northwest Territories and the Yellowknife Day Care Society.

Ms. MacPherson has received a number of awards and recognition, including the 2017 Lexpert Zenith Award for the advancement of women in the legal profession; recognition in the area of Family and Personal Injury Litigation law in *2017 Best Lawyers in Canada* and recognition in *Chambers Canada 2017* in the General Business Law Canadian North and Article (Canada) category. She is also a Fellow of the Litigation Counsel of America.



The Honourable Richard Jamieson Scott, Member

Richard Jamieson Scott graduated from the University of Manitoba and was called to the Manitoba Bar in 1963. He practiced law from 1963 to 1985 with the Winnipeg law firm Thompson Dorfman Sweatman, was chairperson of the Civil Litigation Subsection of the Manitoba and Canadian Bar Associations from 1975 to 1978, and a member of the board of directors for Legal Aid Manitoba from 1976 to 1982. He was a Bencher of the Law Society of Manitoba from 1980 to 1984, and President from 1983 to 1984.

In 1985, Mr. Scott was appointed as a judge to the Court of Queen's Bench of Manitoba and, later that year, as Associate Chief Justice of the Court of Queen's Bench of Manitoba. In 1990, he was appointed Chief Justice of the Manitoba Court of Appeal.

Mr. Scott was an active member with the Canadian Judicial Council from the time of his appointment in 1985 until the time of his retirement. He was Chairperson of various committees (including the Judicial Independent Committee, the Special Working Committee on the Preparation of Ethical Principles for Judges, and the Judicial Conduct Committee) and served as the Council's First Vice-Chairperson.

After retiring as Chief Justice of Manitoba in 2013, Mr. Scott served as the Independent Chairperson of the Discipline Committee of the Manitoba Law Society, and as a counsel/arbitrator/mediator with the Winnipeg civil litigation firm of Hill Sokalski Walsh Olson. He has also been active with several charities, including the Legal Help Centre, the Manitoba Heart and Stroke Foundation, the Winnipeg Foundation, and Winnipeg Harvest.

Camille Cameron, Member

Camille Cameron is Dean of the Schulich School of Law at Dalhousie University, and Chair of the Canadian Council of Law Deans. Prior to joining Dalhousie University, she was the Dean of Windsor Law School, and a professor at the University of Melbourne in Australia where she also served a term as Associate Dean and was Director of the law school's Civil Justice Research Group. Before beginning her academic career, Ms. Cameron worked in private practice for 10 years, specializing in civil litigation.

In 1996, Ms. Cameron worked in Cambodia with a human rights group training lay criminal defenders and judges, and she has since been a consultant on similar judicial training projects in various countries, including Vietnam, Laos, Mongolia, China, Thailand, the Maldives, and Indonesia.

Ms. Cameron's research interests focus on class actions, tobacco litigation, litigation funding, access to justice and the administration of civil justice. She has presented on these and related topics at national and international conferences. She is a member of an international research collaborative group that has written a book on comparative class actions in common law and



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civil law systems. She has worked with the Federal Court of Australia to advise the Indonesian judiciary on that country's class action legislation.

Ms. Cameron has served as the Chair of the Board of Governors of Legal Aid Windsor, the Windsor Advisory Board of Community Legal Aid, and the Ontario Law Deans. She has also been a member of the Board of the Law Commission of Ontario, and a member of the Board of Directors of Hiatus House, a shelter for women and children in Windsor. She is currently a member of the Sexual Violence Prevention Committee, a committee established by Nova Scotia's Minister of Labour and Advanced Education in consultation with the province's university presidents, and the Access to Justice Consultative Committee, which is jointly chaired by Nova Scotia's Minister of Justice and Chief Justice.



Annex F: Mandate Letter (Chair) - Independent Advisory Board for Supreme Court of Canada Judicial Appointments

Ottawa, Ontario
July 28, 2017

Dear Madam:

I am writing to congratulate you on your re-appointment to the Independent Advisory Board for Supreme Court of Canada Judicial Appointments and to thank you for again agreeing to be the Chairperson of the Advisory Board. I am also writing to initiate the process that will culminate with the Independent Advisory Board providing me with advice on the selection of a potential candidate for the vacancy that will result from Chief Justice McLachlin's impending retirement. Your term is for a period of three years. I am enclosing the Mandate of the Independent Advisory Board for Supreme Court of Canada Judicial Appointments and Terms and Conditions of Appointment of Members, which were annexed to the Order in Council establishing the Advisory Board (PC Number: 2016-0693).

The Advisory Board is composed of seven members: three members, at least two of whom are non-lawyers, nominated by the Minister of Justice; two practising members of the bar in good standing nominated by the Canadian Bar Association and the Federation of Law Societies of Canada, respectively; a legal scholar nominated by the Canadian Council of Law Deans; and a retired superior court judge nominated by the Canadian Judicial Council.

I ask that the Advisory Board develop and submit to me, by no later than October 23, 2017, a list of three to five qualified and functionally bilingual candidates from Western Canada (British Columbia, Alberta, Saskatchewan, and Manitoba) and Northern Canada (Northwest Territories, Nunavut, and Yukon), for my consideration for this position. Candidates may demonstrate that they satisfy the geographical requirement by reference to their bar membership, judicial appointment, or other relationship with Western Canada or Northern Canada. In compiling this list, I ask that you observe the highest standards of impartiality, integrity and objectivity in your consideration of all candidates.

In evaluating all candidates, the Advisory Board will be guided by the qualifications set out in the *Supreme Court Act* as well as assessment criteria which I am enclosing with this letter.

The question of whether a candidate is functionally bilingual will be assessed by the Office of the Commissioner for Federal Judicial Affairs in accordance with established and objective criteria. The Office of the Commissioner of Federal Judicial Affairs will contact you in the coming days to confirm next steps.



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As you will appreciate, this process is sensitive and I expect that all information received in relation to candidates and in relation to the Independent Advisory Board discussions and proceedings will be kept strictly confidential during the process and after the Board has concluded its work.

Thank you for agreeing to be part of the Independent Advisory Board for Supreme Court of Canada Judicial Appointments. I look forward to receiving your recommendations.

Sincerely,

Justin Trudeau



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Annex G: Mandate Letter (Members) - Independent Advisory Board for Supreme Court of Canada Judicial Appointments

Ottawa, Ontario
July 28, 2017

Dear Sir or Madam:

I am writing to congratulate you on your re-appointment to the Independent Advisory Board for Supreme Court of Canada Judicial Appointments and to initiate the process that will culminate with the Advisory Board providing me with advice on the selection of a potential candidate for the Court's upcoming vacancy resulting from Chief Justice McLachlin's impending retirement. Your term is for a period of three years. I am enclosing the Mandate of the Independent Advisory Board for Supreme Court of Canada Judicial Appointments and Terms and Conditions of Appointment of Members, which were annexed to the Order in Council establishing the Advisory Board (PC Number: 2016-0693).

The Advisory Board is composed of seven members: three members, at least two of whom are non-lawyers, nominated by the Minister of Justice; two practising members of the bar in good standing nominated by the Canadian Bar Association and the Federation of Law Societies of Canada, respectively; a legal scholar nominated by the Canadian Council of Law Deans; and a retired superior court judge nominated by the Canadian Judicial Council. The Right Honourable Kim Campbell is the Chairperson of the Advisory Board.

I ask that the Advisory Board develop and submit to me, by no later than October 23, 2017, a list of three to five qualified and functionally bilingual candidates from Western Canada (British Columbia, Alberta, Saskatchewan, and Manitoba) and Northern Canada (Northwest Territories, Nunavut, and Yukon), for my consideration for this position. Candidates may demonstrate that they satisfy the geographical requirement by reference to their bar membership, judicial appointment, or other relationship with Western Canada or Northern Canada. In compiling this list, I ask that you observe the highest standards of impartiality, integrity and objectivity in your consideration of all candidates.

In evaluating all candidates, the Advisory Board will be guided by the qualifications set out in the *Supreme Court Act* as well as assessment criteria which I am enclosing with this letter.

The question of whether a candidate is functionally bilingual will be assessed by the Office of the Commissioner for Federal Judicial Affairs in accordance with established and objective criteria. The Office of the Commissioner of Federal Judicial Affairs will contact you in the coming days to confirm next steps.



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As you will appreciate, this process is sensitive and I expect that all information received in relation to candidates and in relation to Advisory Board discussions and proceedings will be kept strictly confidential during the process and after the Board has concluded its work.

Thank you for agreeing to be part of the Independent Advisory Board for Supreme Court of Canada Judicial Appointments. I look forward to receiving your recommendations.

Sincerely,

Justin Trudeau



Annex H: Qualifications and Assessment Criteria

Qualifications

The qualifications for appointment to the Supreme Court of Canada are set out in the *Supreme Court Act*, R.S.C. 1985, c. S 26. Section 5 provides that “Any person may be appointed a judge who is or has been a judge of a superior court of a province or a barrister or advocate of at least ten years standing at the bar of a province.”

In order to be eligible for appointment to the Supreme Court of Canada, a candidate must be:

- (1) a current judge of a superior court of a province, including courts of appeal;
- (2) a former judge of such a court;
- (3) a current barrister or advocate of at least 10 years standing at the bar of a province; or
- (4) a former barrister or advocate of at least 10 years standing.

There are special rules for appointment of three judges from Quebec. Section 6 provides that “At least three of the judges shall be appointed from among the judges of the Court of Appeal or of the Superior Court of the Province of Quebec or from among the advocates of that Province.” In the *Reference re Supreme Court Act, ss 5 and 6*, the Supreme Court stated that only current superior court judges (i.e. judges of the Court of Appeal of Quebec and the Superior Court of Quebec) and current members of the Quebec bar of at least 10 years standing are eligible for appointment to one of the three Quebec positions on the Supreme Court.

All judges of the Supreme Court must live in the National Capital Region or within 40 kilometres thereof. Candidates must either currently meet this qualification or undertake to move their residence, if appointed to the Supreme Court, in order to meet it.

Functional bilingualism

The Government has committed to only appoint judges who are functionally bilingual.

The Supreme Court hears appeals in both English and French. Written materials may be submitted in either official language and counsel may present oral argument in the official language of their choice. Judges may ask questions in English or French. It is expected that a Supreme Court judge can read materials and understand oral argument without the need for translation or interpretation in French and English. Ideally, the judge can converse with counsel during oral argument and with other judges of the Court in French or English.



Assessment Criteria

Judges of the Supreme Court of Canada face multiple, complex and occasionally competing expectations. In keeping with Canada's evolution into a mature constitutional democracy, the role of the courts and the Supreme Court in particular, has become ever more important. The criteria for appointment to the Court must reflect both the needs of any court of final appeal, and the particular circumstances, history and context of Canadian society and its legal system. The criteria must facilitate the Court's ability to: resolve disputes between and among all manner of parties, communicate its decisions effectively to the Canadian public, uphold the constitution, and protect the rule of law.

Criteria for assessment may be grouped along two axes, one individual and the other institutional. Individual criteria relate to the skills, experience and qualities of candidates themselves. Particulars of legal training, of non-legal professional experience and of community involvement will vary greatly from individual to individual, but must be assessed to arrive at an evaluation of the candidate's potential for excellence in the judicial function. There are also numerous personal qualities that will bear on whether a candidate has the appropriate judicial temperament. Institutional criteria will overlap to some degree with individual ones. But as the Court's composition shifts over time, particular needs may emerge as more necessary to enable the Court to perform its general and final appellate function in all legal areas.

Part of the selection process will involve determining the ways and degree to which particular candidates embody the skills, experience and qualities that best meet the Court's needs at a particular point in time. The selection process must retain an appropriate degree of flexibility.

Personal Skills and Experience

1. Demonstrated superior knowledge of the law

The chief consideration for any appointment is a person's ability to perform, and achieve excellence in, judging. At the Supreme Court, cases and references can arise in any legal area including public, private and international law. Judges must interpret and apply the governing statute and rules of the Supreme Court in a variety of proceedings relating to hearings, motions and appeals. Candidates for the Court must therefore possess deep knowledge of the law, in particular Canadian law. Knowledge of indigenous legal traditions may also be considered. This depth of skill may be acquired in a variety of ways: specialized legal training and study, professional practice, authoritative or scholarly legal writing and/or prior judicial experience.

The Supreme Court hears cases from matters under federal jurisdiction as well as from all provinces and territories, including Quebec, which follows a civil law tradition for most private law matters. Familiarity with the civil law tradition, therefore, is a strength for any candidate.



2. Superior analytical skills

A jurist must synthesize, distinguish, compare and contrast a variety of legal sources. They must efficiently determine which of the vast possible materials that constitute “the law” are most relevant to a specific legal question; and understand, weigh and resolve conflicts among those materials. An appellate judge must also review lower court decisions, determine appropriate grounds of appeal, distinguish between questions of fact and law and apply the suitable level of deference or correction. All of these are analytical functions requiring an exceptionally high degree of skill and discernment.

3. Ability to resolve complex legal problems

The core function of the Supreme Court is to adjudicate legal disputes and to provide reasons explaining its decisions. As an adjudicator, a judge is not just required to hear a case, but to give an answer: to bring the matter to a legal conclusion. In appellate cases, resolution may be elusive as the issues tend to feature reasonably competing arguments. Nonetheless, a judge must be able to arrive at a sound decision, to support that decision with reasons and to provide the requisite certainty so that the instant dispute is resolved, and so that lower courts receive sufficient guidance to decide similar cases in the future.

Therefore, prior experience in adjudication is relevant though not essential. Adjudication can occur in many contexts, including administrative tribunals, arbitration bodies, and trial and appellate courts. As the Supreme Court is itself an appellate court, prior appellate judicial experience may be especially relevant but, again, is not essential for appointment.

4. Awareness of, and ability to synthesize information about, the social context in which legal disputes arise

A judge should demonstrate a general awareness of and an interest in knowing about the social problems that give rise to cases coming before the courts. They should be sensitive to changes in social values relating to the subject matter of cases before the Supreme Court. Many of the cases that the Supreme Court hears are not solely focused on technical questions of law. Instead, they involve complex interactions between law and fact, particularly social facts that help to explain a law’s purpose, the way that it tends to function and its effects on people or society as a whole. This interaction between law and social fact is most prominent in constitutional cases, but is not limited to them. A judge must therefore be able to receive evidence and argument about these social facts, or context, and use them to appropriately resolve the specific questions posed.

5. Clarity of thought, particularly as demonstrated through written expression

In most cases, the Supreme Court is expected to, and does, issue written reasons for its decisions. Decisions are the Court’s most important method of communicating with parties, with courts, with other branches of government, and with the Canadian public. Reasons help to explain the basis for deciding complex legal issues one way versus another. Reasons also satisfy the Court’s duty to provide guidance to the lower courts which are expected to apply those decisions in future cases. Excellence in written expression is thus essential to the Court’s work,



and a candidate's prior writing must be reviewed. Such writing can take a number of forms: judicial decisions, reports, memoranda of legal arguments, books, treatises and scholarly articles. The writing may be reviewed for, among other things, clarity, precision, command of the law, persuasiveness and balance. It is expected that the materials reviewed will primarily be legal in nature, though non-legal written expression may provide some assistance.

6. Ability to work under significant time pressures requiring diligent review of voluminous materials in any area of law

The Supreme Court hears appeals in all areas of law. Its nine members share a variety of adjudicative tasks. Cases at the Supreme Court often contain hundreds of pages of materials, and judges work on multiple cases at the same time. Judges must review materials in preparation for cases, review materials for decisions they are writing and review drafts and memos from their colleagues. The workload is heavy and constant. The job therefore requires significant stamina, industry and learning ability.

7. Commitment to public service

Judges are part of the community and fulfill an essential service to the public in addition to their constitutional role as impartial dispute arbiters. A demonstrated commitment to community engagement through involvement in community and volunteer organizations is a strength.

Personal Qualities

1. Irreproachable personal and professional integrity

The Supreme Court has noted: "The judge is the pillar of the entire justice system and of the rights and freedoms which that system is designed to promote and protect". Judges must themselves embody the ideals upon which the rule of law depends.

Canadians, thus, rightfully expect the highest level of ethical conduct from judges. As the Chief Justice of Canada has stated, "The ability of Canada's legal system to function effectively and to deliver the kind of justice that Canadians need and deserve depends in large part on the ethical standards of our judges." As noted by the Canadian Judicial Council's Ethical Principles for Judges, "Public confidence in and respect for the judiciary are essential to an effective judicial system and, ultimately, to democracy founded on the rule of law."

2. Respect and consideration for others

The Supreme Court is a collegial court which is composed of nine judges who work and sit together day in and day out. Its judges deal with issues of the highest national importance. Their decisions are final and not subject to appeal to any other court in Canada. It is critical that each judge is able to work collaboratively with his or her colleagues and debate issues in a respectful and constructive manner. In addition, judges must be sensitive when dealing with persons in subordinate positions. It is expected that they will model the highest standards of professionalism, respect and courtesy.



3. Ability to appreciate a diversity of views, perspectives and life experiences, including those relating to groups historically disadvantaged in Canadian society

Along with legal expertise, a judge will invariably draw on common sense and experience. It is, therefore, crucial that their perspective is neither too narrow nor resistant to change. A judge must have the capacity to empathize with persons who come from backgrounds that are very different from her own.

4. Moral courage

Judicial independence has been recognized as an unwritten constitutional principle under Canada's Constitution. It exists in order to protect the ability of judges to decide cases impartially, free of any external influence or coercion. Canadian judges enjoy a high degree of independence that is respected around the world. Nevertheless, Supreme Court judges sometimes face extremely challenging issues. They may be faced with making a decision that is at odds with the stated wishes of the government, with public opinion or with the views of their colleagues. This requires a measure of fortitude.

5. Discretion

Judges deal with sensitive and personal information. Their discussions are subject to deliberative secrecy and cannot be revealed. It is critical therefore that judges conduct themselves in a discreet fashion.

6. Open-mindedness

One of the most important qualities of a judge is the ability to maintain an open mind about any case that comes before him or her. To be clear, judges are not expected to operate as blank slates. The fact that a candidate has expressed an opinion on some issue that may one day come before the Court is not disqualifying. But a judge must be seen as able to weigh the evidence and argument in a particular case fairly and impartially, and to set aside any prior personal opinions when rendering a decision.

Institutional Needs of the Court

1. Ensuring a reasonable balance between public and private law expertise, bearing in mind the historic patterns of distribution between those areas in Supreme Court appeals

The Supreme Court of Canada is a general court of appeal for Canada which hears appeals in all subject areas from provincial and territorial courts of appeal, from the Federal Court of Appeal and from the Court Martial Appeal Court of Canada. According to the most recent statistics, approximately one quarter of the cases heard by the Supreme Court are criminal non-Charter cases, almost another fifth are criminal Charter cases, and another fifth are non-criminal constitutional/Charter cases. The Court hears other types of cases but the subject-areas just noted represent the most significant areas of the Court's workload.



2. Expertise in any specific subject matter that regularly features in appeals and is currently underrepresented on the Court

Because of its diverse caseload, the Court must have judges with a diversity of expertise in order to address particular subject matters that will arise. A vacancy on the Court may give rise to a need for expertise in a particular subject matter: e.g. criminal, administrative, federal or commercial law.

3. Ensuring that the members of the Supreme Court are reasonably reflective of the diversity of Canadian society

Canada is one of the world's most diverse societies, but that diversity is not fully reflected in its institutions. The Supreme Court is the most important and recognizable symbol of the justice system. Having a Court that is reasonably reflective of Canadian diversity helps to ensure that, in any particular case, the Court can benefit from a range of viewpoints and perspectives. A reasonably reflective Court also promotes public confidence in the administration of justice as well as in the appointment process.



Annex I: Functional Bilingualism and the Supreme Court of Canada Judicial Appointments Process – 2017

Functional Bilingualism

The Qualifications and Assessment Criteria with respect to the functional bilingualism language requirement are as follows:

The Government has committed to only appoint judges who are functionally bilingual.

The Supreme Court hears appeals in both English and French. Written materials may be submitted in either official language and counsel may present oral argument in the official language of their choice. Judges may ask questions in English or French. It is expected that a Supreme Court judge can read materials and understand oral argument without the need for translation or interpretation in French and English. Ideally, the judge can converse with counsel during oral argument and with other judges of the Court in French or English.

The Office of the Commissioner for Federal Judicial Affairs Canada

The Office of the Commissioner for Federal Judicial Affairs (OCFJA) has been tasked with determining whether candidates for judicial appointment to the Supreme Court of Canada meet this requirement.

Language Requirement

The language requirement is composed of three parts:

1. Whether candidates can read materials without the need for translation or interpretation in English and French;
2. Whether candidates can understand oral argument without the need for translation or interpretation in English and French;
3. Ideally, whether the candidates can converse with counsel during oral argument and with other judges of the Court in French and English.

Assessment Tools and Rating

The OCFJA developed a three-part evaluation process to be used for assessing each component of the language requirement based on its expertise in language training for federally appointed judges. A scale of competencies and measurable performance indicators and corresponding rating guides were set for each of the three abilities.



The entire assessment was timed to last 1 hour per candidate.

The first segment involved the reading of a legal text followed by comprehension questions put to the candidate in the second official language. This first part lasted 20 minutes.

The second part of the assessment consisted of a legal pleading read to each candidate, followed by comprehension questions put to the candidate. This second part lasted 20 minutes.

The third part of the assessment sought to determine whether each candidate was able to converse and interact fluently on diverse subjects, including legal issues, in the second language. A guided conversation using set criteria formed the basis of this segment which also lasted 20 minutes.

A minimum score of 3 out of 5 on each part was required for candidates to meet the *functionally bilingual* criteria.



Annex J: Letters Sent to Organizations

Dear Madam/Sir,

RE: Supreme Court of Canada Appointment Process – 2017

On July 14, 2017, the Prime Minister of Canada opened the process to select the next justice of the Supreme Court of Canada to fill the vacancy which will be created by the retirement, on December 15, 2017, of Chief Justice Beverley McLachlin. The process is to fill the ninth position on the Supreme Court. From the nine members then assembled, the Prime Minister will identify the next chief justice. (View Prime Minister's news release)

Under the process, used for the first time in 2016, an independent and non-partisan Advisory Board has been given the task of reviewing all applicants and identifying suitable candidates for consideration by the Prime Minister. The members of the Advisory Board were announced on July 17, 2017. (View Prime Minister's news release)

In his Mandate Letter to the Advisory Board members, the Prime Minister asked that they develop and submit to him, by no later than October 23, 2017, a list of three to five qualified and functionally bilingual candidates from Western Canada (British Columbia, Alberta, Saskatchewan, and Manitoba) and Northern Canada (Northwest Territories, Nunavut, and Yukon). Candidates may demonstrate that they satisfy the geographical requirement by reference to their bar membership, judicial appointment or other relationship with Western Canada or Northern Canada. The question of whether a candidate is functionally bilingual will be assessed by the Office of the Commissioner for Federal Judicial Affairs in accordance with established and objective criteria.

The Board's Terms of Reference (View Terms of Reference) stipulate that in establishing a list of qualified candidates, members must seek to support the Government of Canada's intent to achieve a gender-balanced Supreme Court of Canada that also reflects the diversity of members of Canadian society, including Indigenous peoples, persons with disabilities and members of ethnic, linguistic and other minority communities, including those whose members' gender identity or sexual orientation differs from that of the majority.

As the Board's Chairperson, I encourage you to use your networks and knowledge of the judiciary and legal community in your jurisdictions to identify qualified candidates, and urge them to submit an application through the Office of the Commissioner for Federal Judicial Affairs at the following address: <http://www.fja-cmf.gc.ca/scc-csc/form-formulaire-eng.html>. Your early attention to this matter is much appreciated as the deadline to file an application for an appointment to the Supreme Court of Canada is September 15, 2017, at 23:59 PDT.

Yours truly,

The Right Honourable Kim Campbell, P.C., C.C., O.B.C., Q.C.
Chairperson, Independent Advisory Board for Supreme Court of Canada Judicial Appointments



Annex K: Letters sent to Individuals Identified by Organizations

Dear Madam/Sir:

RE: Supreme Court of Canada Appointment Process – 2017

The Independent Advisory Board for Supreme Court of Canada Judicial Appointments has recently received recommendations naming you as a highly qualified candidate to fill the vacancy which will be created by the retirement, on December 15, 2017 of Chief Justice Beverley McLachlin. The process is to fill the ninth position on the Court. From the nine members then assembled, the Prime Minister will identify the next chief justice.

Under the process, used for the first time in 2016, an independent and non-partisan Advisory Board has been given the task of reviewing all applicants and identifying suitable candidates for consideration by the Prime Minister. The members of the Advisory Board were announced on July 17, 2017.

The Prime Minister's Mandate Letter to the Advisory Board members asked that they develop and submit to him, by no later than October 23, 2017, a list of three to five qualified and functionally bilingual candidates from Western Canada (British Columbia, Alberta, Saskatchewan, and Manitoba) and Northern Canada (Northwest Territories, Nunavut, and Yukon). Candidates may demonstrate that they satisfy the geographical requirement by reference to their bar membership, judicial appointment or other relationship with Western Canada or Northern Canada. The question of whether a candidate is functionally bilingual will be assessed by the Office of the Commissioner for Federal Judicial Affairs in accordance with established and objective criteria.

As you may know, it is part of the mandate of the Advisory Board to actively seek out qualified candidates. In order to avoid any appearance of bias or conflict, the Advisory Board decided to reach out to a variety of groups and associations representing judges and lawyers rather than solicit applications on an individual basis. Furthermore, the Supreme Court of Canada appointment process also requires candidates to file an application in order to be considered to fill the vacancy.

This being said, given that you were strongly recommended as an excellent candidate, the Advisory Board encourages you to give thought to this process and to file an application if it interests you. Please note that the deadline for doing so is September 15, 2017. To this end, please refer to the website of the Office of the Commissioner for Federal Judicial Affairs where the Supreme Court of Canada appointments process is described (<http://www.fja-cmf.gc.ca/scc-csc/index-eng.html>).

Yours truly,

The Right Honourable Kim Campbell, P.C., C.C., O.B.C., Q.C.,
Chairperson, Independent Advisory Board for Supreme Court of Canada Judicial Appointments