

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

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**Report on 2019 Process**

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**September 6, 2019**



September 6, 2019

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 for Quebec Seats submits this report on the 2019 process.

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

*Advisory Board members:*

The Honourable Louis LeBel  
Eugénie Brouillet  
Steeves Bujold  
Céline Lévesque  
Lili-Anna Pereša  
Joseph Yvon Thériault  
Han-Ru Zhou



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## 1. Introduction

This report has been prepared by the Independent Advisory Board for Supreme Court of Canada Judicial Appointments for Quebec Seats (“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 2019 Process

The 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 (SCC). The Advisory Board is convened at the discretion and request of the Prime Minister. It was called upon for the first time in 2016, then again in 2017 resulting in the appointments of Justice’s Malcom Rowe and Sheilah Martin.

As required by the *Supreme Court Act*, “[a]t 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.” For this reason, when the new process was launched in 2016, the Government of Canada stated that the composition of the Advisory Board would be adapted to fill these three seats taking into account the province’s civil law tradition. In order to fill the seat left vacant following Justice Clément Gascon’s retirement, who is from Québec, the Government of Canada and the Government of Quebec agreed on a Memorandum of Understanding that creates, amongst other things, the current Advisory Board.

The composition of the Advisory Board is as follows:

- two members, including the Chair of the Advisory Board, nominated by the federal Minister of Justice;
- two members, including at least one who is not a practising lawyer, nominated by Quebec’s Minister of Justice;



- a judge from Quebec who is retired from a superior court of Quebec or from the Supreme Court of Canada, nominated by the Canadian Judicial Council;
- a lawyer who is a member of the Barreau du Québec, nominated by the Barreau du Québec;
- a lawyer who is a member of the Barreau du Québec, nominated by the Canadian Bar Association – Québec Division;
- a legal scholar nominated by the Deans of the Quebec Law Faculties and of the Civil Law Section of the University of Ottawa’s Faculty of Law.

The 2019 process was opened by the Prime Minister on April 18, 2019. Candidates who wished to be considered were required to complete and submit applications by May 17, 2019 (Annex B).

The appointment of the Advisory Board members was announced on May 14, 2019 (Annex C). The members of the Advisory Board are:

The Right Honourable Kim Campbell, Chairperson, nominated by the Minister of Justice;  
The Honourable Louis LeBel, nominated by the Canadian Judicial Council;  
Eugénie Brouillet, nominated by Quebec’s Minister of Justice;  
Steeves Bujold, nominated by the Canadian Bar Association – Québec Division;  
Céline Lévesque, nominated by the Deans of the Quebec Law Faculties and of the Civil Law Section of the University of Ottawa’s Faculty of Law;  
Lili-Anna Pereša, nominated by the Minister of Justice;  
Joseph Yvon Thériault, nominated by Quebec’s Minister of Justice;  
Han-Ru Zhou, nominated by the Barreau du Québec.

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

The Prime Minister asked that the Board submit to him for his consideration, no later than June 10, 2019, the names of at least three, but up to five, qualified and functionally bilingual candidates. Given that Justice Gascon was a Judge of the Quebec Court of Appeal before his appointment to the Supreme Court of Canada, candidates were also required to be selected from among the judges of the Court of Appeal or of the Superior Court of the Province of Quebec or from among its advocates, as specified in the *Supreme Court Act*.

In accordance with its Terms of Reference, the Advisory Board was supported by the Office of the Commissioner for Federal Judicial Affairs Canada (FJA), and its Commissioner, or his or her delegate, acted as the *ex officio* secretary to the Advisory Board. FJA is also responsible for administering the application process, as well as 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](http://www.fja-cmf.gc.ca) immediately following the opening of the 2019 process.

### **3. Meetings of the Advisory Board and Application Review Process**

The day following their appointment, the members of the Advisory Board met via teleconference to discuss how they would approach their mandate. General administrative questions were discussed with the Commissioner and the *ex officio* secretary to the Board. The members decided to conduct the 2019 process along the same lines as the 2016 and 2017 processes. 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 the two previous processes, the Chairperson had already decided to communicate, on April 26, with a broad range of 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.

In that respect, a letter was sent to the Canadian Judicial Council; the Barreau du Québec, as well as all Quebec legal associations recognized on its website, including the Lord Reading Law Society, the Hellenic Jurists Association of Québec, the Association of Italian-Canadian Jurists of Québec, and the Fraternelle des Avocats, Notaires Sénégalais et sympathisants du Québec; the Federation of Law Societies of Canada; Canadian Bar Association; Council of Canadian Law Deans; Canadian Superior Courts Judges Association; Indigenous Bar Association; Roundtable of Diversity Associations (an umbrella organization which includes 17 participating organizations), the Ukrainian-Canadian Bar Association; and the Canadian Muslim Lawyers Association.

Immediately 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 members convened in person in Ottawa on May 21. The 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 his views on the needs of the Supreme Court.

The Board members then assembled the week of May 27 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. 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. The candidates to be interviewed were contacted and their interview times were scheduled.



Five candidates travelled to Ottawa to meet with the Advisory Board for interviews, held on June 1 and 2. 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 that had been published with the application instructions (Annex F). As part of the interview process, simultaneous translation was offered to all candidates. None of the candidates used this service.

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 G.

The Advisory Board then deliberated to decide whom it would recommend to the Prime Minister. 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 June 10, 2019.

The Advisory Board was very pleased that the Prime Minister chose a candidate from the shortlist.

#### **4. Communications, Media and Public Affairs**

As indicated above, the process was opened on April 18, 2019, through a News Release from the Prime Minister. In his news release, the Prime Minister also stated that the Board would again be chaired by the Right Honourable Kim Campbell.

At the same time, FJA launched a page on its website with information on the Advisory Board, its Terms of Reference, the application process, the qualifications and assessment criteria, frequently asked questions, and relevant contact persons.

On May 14, 2019, the Prime Minister announced in a News Release the names of the members of the Independent Advisory Board. He also announced a Memorandum of Understanding with the Government of Quebec. The protocol provides for the formation of this Advisory Board to better reflect the province's unique legal tradition and ensure greater participation by the Government of Quebec in the selection of judges from that province to the Supreme Court.

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 to the Supreme Court of Canada. The nomination, on July 10, 2019, of the Honourable Nicholas Kasirer elicited a great deal of media attention.



In the realm of public affairs and government engagement, on July 25, 2019, the Chairperson 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 Justice Kasirer the same day. These appearances generated considerable media interest.

## 5. Consultation and Outreach

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

Shortly following the launching of the process and before meeting with the Chief Justice of Canada, letters were sent to a wide range of 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;
- Barreau du Québec;
- Lord Reading Law Society;
- Hellenic Jurists Association of Québec;
- Association of Italian-Canadian Jurists of Québec;
- Fraternelle des Avocats, Notaires Sénégalais et sympathisants du Québec;
- Federation of Law Societies of Canada;
- Canadian Bar Association;
- Council of Canadian Law Deans;
- Canadian Superior Courts Judges Association;
- Indigenous Bar Association;
- Roundtable of Diversity Associations (RODA), including the following participating organizations:
  - 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,
- Ontario Bar Association 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;
- Canadian Muslim Lawyers Association.

The letter sent to the organizations is included as Annex H.

## 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 complete and submit an application form, which required them to provide their education and employment history as well as a 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 April 18 to May 17, 2019, a period of four weeks. In accordance with the requirements of the *Supreme Court Act*, qualified applicants “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” were eligible to apply. The applications were received by electronically and processed by staff at FJA.

The Board received 12 applications.

In terms of information on diversity, generated from self-identification by applicants on their application forms, the following data was obtained from the 12 applications received:



<b>Groups</b>	<b>Number of applicants</b>	<b>%</b>
Women	1	8.3
Men	11	91.7
<b>Groups</b>	<b>Number of applicants</b>	<b>%</b>
Anglophones	2*	16.6
Francophones	8*	66.6
* Two candidates indicated having no preferred language of communication.		
<b>Group self-identification</b>	<b>Number of applicants</b>	<b>%</b>
Ethnic/Cultural or Other	2	<b>16.7</b>
Visible Minority	0	
Indigenous	0	
Persons with 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 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 \$200,000. This amount includes 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, simultaneous interpretation, IT, telecommunications and office supplies.

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

The Advisory Board offers recommendations on the following subjects:

- *Timeframe for submission of applications.* Despite the high-quality of the applications received, and the fact that an early retirement led to this vacancy, candidates had a short timeframe within which to submit their completed applications (four weeks), especially given the length and complexity of the application form and the amount of information requested. As such, we recommend a minimum timeframe of six weeks be provided to submit completed applications. The Board recognizes nonetheless the exceptional circumstances of the current process, which included an early retirement as well as the need of the Court to have a full complement as of September 16, 2019, despite an imminent electoral period.



- *Timeframe for applications report to the Prime Minister.* The time allowed to the Advisory Board to complete its work, that is, the time between the application closing date (May 17) and the submission of its shortlist to the Prime Minister (June 10), was very short, even more so than in 2016 and 2017. Given the time required for Board members to carefully review the applications, coordinate their own schedules so they could meet, 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 tight. While all interviews proceeded according to schedule with the kind cooperation of the interviewees, and Board members were able to fully deliberate and prepare their shortlist report, had the process elicited a greater number of applications, it would have proven difficult for the Board to do what is required after the close of the application process. As such, we recommend that a timeframe of nine weeks be provided to the Advisory Board, as was the case in the 2017 process. Again, as previously indicated, the Advisory Board recognizes nonetheless the exceptional nature of this particular process.
- *Lack of diversity among applicants.* The Board is preoccupied by the very limited number of women, as well as members of ethnic or cultural groups, visible minorities, Indigenous peoples, persons with disabilities, and LGBTQ2 applications for this process. The Advisory Board recognizes that it is impossible to predict an early retirement. Likewise, the timeframe within which to submit applications was particularly short for this process. Despite these factors, the Advisory Board recommends that thought be given in this regard in order to encourage and improve the level of diversity in the applications. The Advisory Board already writes, at the beginning of these processes, to numerous legal and judicial organizations in order to attract a wide variety of candidacies. That being said, the Government or parliamentarians could consider, for example, a sustained discussion with members of the judiciary and imminent jurists regarding the best candidates for the Court, as well as the realities of sitting on the Supreme Court of Canada in order to overcome the reluctance of some to apply.
- *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 his 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.
- *Required funding for support to the Advisory Board.* The Board notes that this new process for recommending nominees to the Supreme Court of Canada has been used three times since it was introduced in 2016 and that the appointment of Justice Kasirer to the Supreme Court will be the ninth since 2011. 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. Given these factors, stable and permanent funding for the assistance required by the Advisory Board would be appropriate.

## **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. Staff members of FJA as well as all other persons called upon to assist with the process were also signed a confidentiality undertaking. 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 judges, academics and lawyers 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 for Quebec Seats (Advisory Board) is an independent and non-partisan body whose mandate is to provide non-binding, merit-based recommendations to the Prime Minister on appointments to the Supreme Court of Canada in relation to the three seats that must be filled by persons who are 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, as provided for in section 6 of the *Supreme Court Act*.

### **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)** the Chair of the Independent Advisory Board for Supreme Court of Canada Judicial Appointments;

**(b)** a member nominated by Canada's Minister of Justice;

**(c)** two members, at least one of whom is not an advocate or barrister, nominated by Quebec's Minister of Justice;

**(d)** a practising member in good standing of the Barreau du Québec, nominated by the Barreau du Québec;

**(e)** a practising member in good standing of the Barreau du Québec, nominated by the Quebec Branch of the Canadian Bar Association;

**(f)** a retired Quebec judge of a Quebec superior court or of the Supreme Court of Canada, nominated by the Canadian Judicial Council; and

**(g)** a legal scholar nominated by the deans of the law schools of Quebec and of the Faculty of Law, Civil Law Section, of the University of Ottawa.

**(3)** All nominees to and members of the Advisory Board must be functionally bilingual.

**(4)** The Chair of the Independent Advisory Board for Supreme Court of Canada Judicial Appointments is also the Chair of the Advisory Board.



(5) Any of the other members of the Independent Advisory Board for Supreme Court of Canada Judicial Appointments may be appointed as a member of the Advisory Board if he or she meets the requirements of any of paragraphs (2)(b) to (g) and of subsection (3).

### **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;
  - (g) comply with the *Conflict of Interest Act* and the *Ethical and Political Activity Guidelines for Public Office Holders*; and
  - (h) perform their work in either official language of Canada, while respecting the official language of choice of candidates or any other person that the Advisory Board members interact with in relation to the recommendation process.
- 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 to the Prime Minister, in both official languages, 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 he or she ceases to be a member of the Advisory Board.





## **Annex B: News Release, dated April 18, 2019, from the Office of the Prime Minister of Canada**

*Prime Minister opens process to select the next justice of the Supreme Court of Canada*  
Ottawa, Ontario - April 18, 2019

The Prime Minister, Justin Trudeau, today opened the process to select the next justice of the Supreme Court of Canada who will fill the vacancy created by the upcoming retirement of Justice Clément Gascon.

Under the approach launched in 2016, an independent and non-partisan advisory board will identify suitable candidates who are jurists of the highest caliber, functionally bilingual, and representative of the diversity of our country. Former Prime Minister Kim Campbell will again chair the advisory board, and additional members will be announced shortly.

Justice Gascon was appointed to the Supreme Court of Canada from the Quebec Court of Appeal. Under the requirements of the *Supreme Court Act*, the process is open only to qualified applicants trained in civil law and from Quebec.

### **Quote**

“On behalf of all Canadians, I thank Justice Gascon for his service on our country’s highest court, which is recognized around the world as a strong, independent judicial institution. The process we are launching today will follow the tradition of appointing only the most exceptional legal minds to the court, while reflecting Quebec’s historic representation on the court and its civil law tradition.”

—The Rt. Hon. Justin Trudeau, Prime Minister of Canada

### **Quick Facts**

- Qualifying candidates who wish to be considered for the upcoming vacancy must submit an application package (questionnaire, authorization form, and a background check consent form) no later than 23:59 Pacific time on May 17, 2019.
- Those interested in applying are encouraged to first review the statutory requirements set out in section 6 of 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.
- Justice Gascon will retire from the Supreme Court effective September 15, 2019.



Independent Advisory Board for  
Supreme Court of Canada  
Judicial Appointments for Quebec Seats

Comité consultatif indépendant sur les  
nominations aux sièges du Québec  
à la Cour suprême du Canada

## Associated Links

- [Statement from the Minister of Justice and Attorney General of Canada on the retirement of Supreme Court Justice Clément Gascon](#)
- [Supreme Court of Canada Appointments](#)
- [Qualifications and Assessment Criteria](#)
- [New process for judicial appointments to the Supreme Court of Canada](#)



## **Annex C: News Release, dated May 14, 2019, from the Office of the Prime Minister of Canada**

*Prime Minister announces advisory board to select the next Supreme Court justice*  
Ottawa, Ontario - May 14, 2019

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

That is why, in 2016, the Government of Canada launched a new process that tasked an independent and non-partisan Advisory Board with identifying suitable candidates who are jurists of the highest caliber, functionally bilingual, and representative of the diversity of Canada.

Under Canada's Constitution, at least three of the Supreme Court judges are to be appointed from among the judges of the Quebec Court of Appeal or Superior Court, or among advocates of the province. As such, the Government of Canada indicated at the time of launching the new process in 2016 that the composition of the Advisory Board would be adapted in filling these three seats to take into account the province's civil law tradition.

The Government of Canada and the Government of Quebec have now agreed on a Memorandum of Understanding that creates an Advisory Board for Quebec that reflects its unique legal tradition and ensures greater participation by its government in the selection process of judges from the province.

The Prime Minister, Justin Trudeau, also announced the members of the Advisory Board for Quebec, who will recommend candidates to fill the vacancy created by the upcoming retirement of Justice Clément Gascon.

The Advisory Board for Quebec will review applications and submit a shortlist of highly qualified candidates for consideration by the Prime Minister.

### **Quote**

“The Supreme Court of Canada is recognized internationally as a strong, independent judicial institution. I am confident that the Advisory Board will recommend only the most exceptional individuals – who reflect Quebec's historic representation on the court and its civil law tradition – to hold the honour of being named to Canada's top court.”

— The 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 for the Quebec seat:



- The Right Honourable Kim Campbell – Chairperson – former Prime Minister of Canada, Canadian Consul General, and the Founding Principal of the Peter Lougheed Leadership College at the University of Alberta from 2014 to 2018.
- The Honourable Louis LeBel – Member – retired justice of the Supreme Court of Canada and resident judge at the Faculty of Law at Laval University.
- Eugénie Brouillet – Member – law professor and Vice Rector of Research, Creation and Innovation at Laval University and a former member of the Board of Directors of the Barreau de Québec.
- Steeves Bujold – Member – partner at McCarthy Tétrault in Montréal and a member of the Executive Committee of SOGIC (Sexual Orientation and Gender Identity Community) of the Canadian Bar Association – Quebec Branch.
- Céline Lévesque – Member – Dean of the Faculty of Law, Civil Law Section at the University of Ottawa.
- Lili-Anna Pereša – Member – President and Executive Director of Centraide of Greater Montréal.
- Joseph Yvon Thériault – Member – Professor of Sociology at the Université du Québec à Montréal and former Canada Research Chair in Globalization, Citizenship and Democracy.
- Han-Ru Zhou – Member – Associate Professor of Public Law at the Université de Montréal Faculty of Law.
- Under the Memorandum of Understanding between the governments of Canada and Quebec, the independent and non-partisan Advisory Board for this process is composed of eight members, all of whom must be functionally bilingual. These are:
  - two members, including the Chair of the Advisory Board, nominated by the federal Minister of Justice;
  - two members, including at least one who is not a practising lawyer, nominated by Quebec’s Minister of Justice;
  - a judge from Quebec who is retired from a superior court of Quebec or from the Supreme Court of Canada, nominated by the Canadian Judicial Council;
  - a lawyer who is a member of the Barreau du Québec, nominated by the Barreau du Québec;



- a lawyer who is a member of the Barreau du Québec, nominated by the Canadian Bar Association – Québec Division;
- a legal scholar nominated by the Deans of the Quebec Law Faculties and of the Civil Law Section of the University of Ottawa’s Faculty of Law.

### **Related products**

- Biographical notes
- Memorandum of Understanding

### **Associated Links**

- [Statement from the Minister of Justice and Attorney General of Canada on the retirement of Supreme Court Justice Clément Gascon](#)
- [Prime Minister opens process to select the next justice of the Supreme Court of Canada](#)
- [Supreme Court of Canada appointments process](#)
- [Qualifications and assessment criteria](#)
- [New process for judicial appointments to the Supreme Court of Canada](#)



## **Annex D: News Release, dated August 7, 2019, from the Office of the Prime Minister of Canada**

*Prime Minister announces appointment of the Honourable Nicholas Kasirer to the Supreme Court of Canada*

Ottawa, Ontario - August 7, 2019

The Prime Minister, Justin Trudeau, today announced the appointment of the Honourable Nicholas Kasirer to the Supreme Court of Canada, effective September 16, 2019.

Justice Kasirer has led an exceptional career as a judge and professor, earning the esteem of his peers in Canada and around the world.

He served for a decade as a judge on the Court of Appeal of Quebec, to which he was appointed in 2009. Prior to that, he spent twenty years as a professor of law at McGill University, where he also served as Dean of Law from 2003 to 2009. A former law clerk for the Honourable Jean Beetz of the Supreme Court of Canada, Justice Kasirer is perfectly bilingual.

This appointment is the third under the Supreme Court appointment process launched by the Government of Canada in 2016. Through this process, an independent and non-partisan advisory board is tasked with identifying candidates.

Justice Kasirer will fill the vacancy created by the upcoming retirement of Justice Clément Gascon. In the case of Quebec seats, an advisory board is created that reflects Quebec's unique legal tradition and ensures greater participation by its government in the selection process for judges from the province.

### **Biographical Notes**

- The Honourable Nicholas Kasirer

### **Associated Links**

- [Candidate questionnaire filled out by Nicholas Kasirer](#)
- [Prime Minister announces the nomination of the Honourable Nicholas Kasirer to the Supreme Court of Canada](#)
- [Prime Minister announces advisory board to select the next Supreme Court justice](#)
- [Supreme Court of Canada appointments](#)
- [Frequently Asked Questions](#)
- [Qualifications and assessment criteria](#)



Independent Advisory Board for  
Supreme Court of Canada  
Judicial Appointments for Quebec Seats

Comité consultatif indépendant sur les  
nominations aux sièges du Québec  
à la Cour suprême du Canada

- [Arrangement concerning the appointment process to fill the seat that will be left vacant on the Supreme Court of Canada following the departure of Justice Clément Gascon \(Memorandum of Understanding\)](#)



## **Annex E: Biographical Notes on the Members of the Advisory Board**

The Independent Advisory Board for Supreme Court of Canada Judicial Appointments for Quebec Seats (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 following members:

### **The Right Honourable Kim Campbell, Chairperson**

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.

### **The Honourable Louis LeBel, Member**

Retired justice of the Supreme Court of Canada and resident judge at the Faculty of Law at Laval University.

### **Eugénie Brouillet, Member**

Law professor and Vice Rector of Research, Creation and Innovation at Laval University and a former member of the Board of Directors of the Barreau de Québec.

### **Steeves Bujold, Member**

Partner at McCarthy Tétrault in Montréal and a member of the Executive Committee of SOGIC (Sexual Orientation and Gender Identity Community) of the Canadian Bar Association – Quebec Branch.

### **Céline Lévesque, Member**

Dean of the Faculty of Law, Civil Law Section at the University of Ottawa.

### **Lili-Anna Pereša, Member**

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

### **Joseph Yvon Thériault, Member**

Professor of Sociology at the Université du Québec à Montréal and former Canada Research Chair in Globalization, Citizenship and Democracy.





### **Han-Ru Zhou, Member**

Associate Professor of Public Law at the Université de Montréal Faculty of Law.

### **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.

From 2014 to 2018, Ms. Campbell served 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.

Ms. Campbell previously served as Chair of the Independent Advisory Board for Supreme Court of Canada Judicial Appointments in 2016 and 2017.

### **The Honourable Louis LeBel, C.C., Member**

A retired justice of the Supreme Court of Canada, on which he sat from 2000 to 2014, the Honourable Louis LeBel was admitted to the Quebec Bar in 1962. He obtained an undergraduate degree in law from Laval University in 1965 and a Master of Laws degree from the University of Toronto in 1966. He first practised law in Quebec City as an associate of the firm LeBel, Letarte, Bilodeau, Boily from 1963 to 1964 and then at Désilets, Grondin, LeBel & Associés from 1964 to 1971. He subsequently became a partner at the firm Grondin, LeBel, Poudrier, Isabel, Morin & Gagnon, where he practised from 1971 to 1984.

Mr. LeBel is the author of various legal articles and monographs, and co-author of the labour law treatise entitled *Le droit du travail en vigueur au Québec*, published by Presses de l'Université Laval. Mr. LeBel has also sat on various committees of the Quebec City Bar and the Quebec Bar, including the editorial committee of the *Revue du Barreau* from 1976 to 1982, which he chaired from 1979 to 1982.



Mr. LeBel was a member of the board of directors of legal-aid organization Corporation du Centre communautaire juridique de Québec from 1973 to 1975, prior to which he sat on the Quebec City Bar's legal aid committee. In addition, he was vice president of the Quebec Bar from 1982 to 1983, and the Quebec Bar's president from 1983 to 1984. He has also been a guest lecturer at the University of Ottawa and Laval University.

Mr. LeBel was appointed to the Quebec Court of Appeal on June 28, 1984, and then to the Supreme Court of Canada on January 7, 2000. He received an honorary doctorate of laws degree from Laval University in 2001 and from the University of Ottawa in 2010. He has also been awarded both the Medal of the Quebec City Bar and the Medal of the Quebec Bar. He has been an honorary member of the American College of Trial Lawyers since 2004. He was named a Companion of the Order of Canada in December 2017.

Mr. LeBel acts as legal counsel at Langlois law firm in Quebec and Montréal since May 2015 and as resident judge at the Faculty of Law at Laval University. He is a frequent conference speaker and has authored several publications in various areas of the law.

### **Eugénie Brouillet, Member**

A law professor and Dean of the Faculty of Law from 2012 to 2017, Eugénie Brouillet is the Vice Rector of Research, Creation and Innovation at Laval University. She is a member and researcher of the Interdisciplinary Research Centre on Diversity and Democracy and the Research Group on Plurinational Societies. She is a member of the Board of Directors of Centraide (United Way) Québec et Chaudière-Appalaches, the Quebec Artificial Intelligence Institute (MILA), the CHU de Québec-Université Laval. She is a former member of the Board of Directors of the Fondation Jean-Charles-Bonenfant and the Quebec Bar.

Ms. Brouillet's research focuses on Quebec, Canadian and comparative federalism and on legal issues around human rights and freedoms. She has published numerous studies and scientific articles and co-edited a number of collective works on these topics in French, English, and Spanish. She has also presented papers at over forty conferences as an invited speaker in Canada, France, Belgium, Spain, Venezuela, the US, and the UK.

Ms. Brouillet holds an Honours Bachelor of Law Degree, a Master's in Constitutional Law, and a Doctorate in Constitutional Law, all from the Faculty of Law at Laval University, as well a Diploma from the Institute of Federalism at University of Fribourg in Switzerland. She was called to the Quebec Bar in 1996.

### **Steeves Bujold, Member**

Steeves Bujold is a partner at McCarthy Tétrault in Montréal and leader of the firm's Litigation Group for the Québec region. His strong, diversified litigation practice encompasses class actions. He also has specific expertise in health law, namely in the pharmaceutical and medical



liability areas. Mr. Bujold frequently appears in proceedings before trial and appeal courts, as well as administrative tribunals.

Actively involved with Pro Bono Québec since its inception, Mr. Bujold has been a member of the Board of Directors and Approval Committee for applications for free legal services of this organization dedicated to improving access to justice. He also leads the firm's pro bono initiatives in the Quebec region and is a member of the National Pro Bono Committee. Mr. Bujold is in charge of McCarthy Tétrault's partnership with Lawyers Without Borders Canada, and has been a member of the Executive Committee of the Health Law Section of the Canadian Bar Association – Quebec Branch.

Mr. Bujold was awarded the Queen Elizabeth II Diamond Jubilee Medal for his exceptional volunteer contribution to Jeunesses Musicales of Canada and, since January 2015, he is Governor of the Fondation du Barreau du Québec.

Mr. Bujold received his Bachelor of Civil Law from Université Laval in 1998. He was called to the Québec Bar in 1999.

### **Céline Lévesque, Member**

Céline Lévesque has been a professor at the University of Ottawa for over 20 years and has held the position of Dean of the Faculty of Law, Civil Law Section, since July 2014. She is an expert in International Economic Law, more particularly in International Investment Law. She teaches courses in these fields, as well as in Public International Law. Ms. Lévesque was a visiting professor at University Paris 1 Panthéon-Sorbonne and at Xi'an Jiaotong University, in China. She has also given lectures and conferences in a dozen countries. She is a Senior Fellow at the Centre for International Governance Innovation (CIGI).

Dean Lévesque currently serves as an arbitrator in a NAFTA Chapter 11 case and was appointed in 2018 to the roster of candidates to serve on panels established under NAFTA Chapter 19.

In 2008-2009, Ms. Lévesque was a Scholar-in-Residence at the Trade Law Bureau of the Canadian Department of Foreign Affairs and International Trade. In that capacity, she participated in NAFTA Chapter 11 proceedings and in bilateral investment treaty negotiations.

Prior to joining the University of Ottawa, Ms. Lévesque worked at the World Bank in Washington, DC, in a group specialized in private participation in infrastructure. She was involved in projects dealing with public-private partnerships in the water and electricity sectors and participated in missions to the Ivory Coast, Guinea (Conakry), Mauritania, and Senegal.

### **Lili-Anna Pereša, Member**

Born in Montréal, Lili-Anna Pereša graduated with a degree in electrical engineering 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, pursuing its mission of fighting poverty and social exclusion.

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 as its head of mission in Croatia and Bosnia-Herzegovina during the armed conflict there.

Ms. Pereša directed several community and humanitarian organizations, including Little Brothers, 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 and the Amies d'affaires. She is a member of the National Executive Committee of the 2012, 2017, and 2020 Governor General's Canadian Leadership Conference. Since 2016, she is a board member of the Domaine Forget. She was also involved on the board of several organizations, including École Polytechnique de Montréal and Mobile Giving Foundation Canada.

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. In 2018, she was named a knight of the Ordre National du Québec.

In August 2016, Ms. Pereša was appointed member of the Independent Advisory Board for Supreme Court of Canada Judicial Appointments.

### **Joseph Yvon Thériault, Member**

Joseph Yvon Thériault is the founding Director of the Centre for Interdisciplinary Research on Citizenship and Minorities at the University of Ottawa where he holds the Chair in Identity and Francophonie. Since 2008, has been a full Professor of Sociology at the Université du Québec à Montréal, where he holds the Canada Research Chair in Globalization, Citizenship and Democracy. He was full Professor in the Department of Sociology and Anthropology at the University of Ottawa (1978-2008), where he held the Research Chair in Identity and Francophonie and was the Founding Director of the Centre for Interdisciplinary Research on Citizenship and Minorities.

Mr. Thériault's research centres on the relationship between collective identities and democracy or citizenship. It is conducted from the perspective of the history of ideas and comparative analysis of small societies and national minorities, with particular emphasis on the context of Quebec, Acadian and Canadian francophone minority societies. He has published widely on these issues, most notably: *La société civile ou la chimère insaisissable*(1985); *L'identité à l'épreuve de la modernité*, a book for which he received the Prix France-Acadie (1996); *Critique*



de l'américanité, mémoire et démocratie au Québec, which won the Prix Richard Arès and the Prix de la présidence de l'assemblée nationale du Québec 2003; and Faire société, société civile et espaces francophones (2007). He has directed several research groups, collective publications and specialized journals related to the issues at the focus of his research.

Mr. Thériault is a respected academic involved in both the university community and society at large. He has played a key role in creating research networks to study both the Canadian and international French-speaking societies, as well as organizing research networks on small societies for the Association internationale des sociologies de langue française.

Mr. Thériault received his Ph.D. from the École des hautes études en sciences sociales (Paris) in 1981 and his M.A. from the University of Ottawa in 1973. He was elected a Fellow of the Royal Society of Canada in 2004.

### **Han-Ru Zhou, Member**

Han-Ru Zhou is an Associate Professor of Public Law at the Université de Montréal Faculty of Law, and a past Sproul Research Fellow at the University of California, Berkeley and Boulton Fellow at McGill University. Before joining the Law Faculty, he served as a Law Clerk to The Honourable Madam Justice Marie Deschamps at the Supreme Court of Canada. A member of the Quebec Bar, Mr. Zhou also practised as a corporate lawyer at a Canadian law firm.

Han-Ru Zhou received his legal education at Montréal, Harvard and Oxford Universities. He also studied classical piano at the Conservatoire de musique de Montréal. Professor Zhou is the Co-Editor-in-Chief of the Review of Constitutional Studies, Canada Correspondent of the British journal Public Law, and is the author of the second edition of *Droit constitutionnel: principes fondamentaux – notes et jurisprudence*. He teaches, conducts research, and acts as a consultant in the areas of constitutional law and human rights.



## **Annex F: 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. As such, deep knowledge of the common law tradition is essential for all candidates to the six non-Quebec seats, while deep knowledge of the civil law tradition is essential for all candidates to the three Quebec seats. Familiarity with Canada's other legal tradition is also 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 focussed 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 G: Functional Bilingualism and the Supreme Court of Canada Judicial Appointments Process – 2019**

### **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 H: Letters Sent to Organizations**

Dear Madam/Sir,

### **RE: Supreme Court of Canada Appointment Process - 2019**

On April 18, 2019, 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 September 15, 2019, of the Honourable Clément Gascon. (View Prime Minister's news release)

Under the process used for the first time in 2016 and then again in 2017, 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 Advisory Board will develop and submit to the Prime Minister a list of three to five qualified and functionally bilingual candidates from Québec. As required by the *Supreme Court Act*, "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." When applying through the Office of the Commissioner for Federal Judicial Affairs, candidates should make reference to their judicial appointment or bar membership in the Province of Quebec. The question of whether a candidate is functionally bilingual will be assessed by the Office of the Commissioner as well.

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/2019/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 May 17, 2019, 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