



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Justice and Human Rights

JUST • NUMBER 160 • 1st SESSION • 42nd PARLIAMENT

EVIDENCE

Thursday, July 25, 2019

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Chair

Mr. Anthony Housefather

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• (1100)

[English]

The Chair (Mr. Anthony Housefather (Mount Royal, Lib.)): Good morning, everyone. Welcome to the special meeting of the Standing Committee on Justice and Human Rights.

[Translation]

We are here to study the nomination of the Honourable Nicholas Kasirer to the Supreme Court of Canada.

This is the third time we have conducted such an exercise.

[English]

We did this for Justice Rowe and Justice Martin when they were nominated.

It is a pleasure to be joined today by the Honourable David Lametti, Minister of Justice and Attorney General of Canada, and the Right Honourable Kim Campbell, our former prime minister.

[Translation]

Ms. Campbell is the chairperson of the Independent Advisory Board for Supreme Court of Canada Judicial Appointments.

[English]

This afternoon, colleagues, we will be joining the Senate's constitutional and legal affairs committee and parliamentarians from non-recognized parties to question the nominee. Before that, we have the opportunity this morning to hear from Minister Lametti and from former prime minister Kim Campbell about the process that led to the nomination of Judge Kasirer and to ask them questions about it.

Minister of Justice and Attorney General David Lametti, I will turn the floor over to you.

[Translation]

Hon. David Lametti (Minister of Justice and Attorney General of Canada): Thank you, Mr. Chair.

I will make a statement, then the Right Honourable Kim Campbell will speak, and then I will speak again. Afterwards, we will answer your questions together.

Mr. Chairman, Right Honourable Kim Campbell, members of the committee and other parliamentarians in the room, good morning. I also note the presence of the Honourable Irwin Cotler, whom I thank for being here.

First and foremost, we recognize that we are on traditional unceded Algonquin lands. It is very important to underline this fact today.

I would like to thank the chair for convening this extraordinary meeting of the committee. I also thank all honourable members for being here today. I recognize, of course, that many of them have changed their summer plans to be with us. I am very grateful to them.

As the chair has just pointed out, this is the third time our government has implemented its reformed process for appointing judges to the Supreme Court of Canada.

[English]

The modifications we introduced in 2016 are designed to ensure greater openness, transparency and accountability in the appointments process. Many of you here today are seasoned participants, having been part of the 2016 and 2017 processes that resulted in the appointments respectively of justices Rowe and Martin. Madam Campbell was the chair of those committees as well.

[Translation]

As you can imagine, I have followed these processes with great interest and attention. It is now a great honour and privilege for me to participate more directly in the process to fill the position that will become vacant on September 15, 2019, following the retirement of Justice Clément Gascon.

I would like to take this opportunity to once again thank Justice Gascon for his contribution and to acknowledge the courage he has shown throughout his career.

• (1105)

[English]

I have the pleasure of appearing today with the Right Honourable Kim Campbell, who joins us via video conference from Vancouver. Ms. Campbell previously served as the chairperson of the Independent Advisory Board for Supreme Court of Canada Judicial Appointments. Ms. Campbell also served as the chairperson of the current advisory board that was adapted to ensure the appointment of a judge properly grounded in the legal experience of Quebec and its legal tradition. Ms. Campbell's extensive experience with the selection process has been an invaluable resource in this process. We are grateful for her continued dedication to serving Canadians in this role and we say thank you.

In a few moments, I will turn things over to Ms. Campbell to describe the specific work the advisory board undertook in order to produce the short list of candidates for the Prime Minister's consideration. Before doing so, however, I would like to briefly outline the unique aspects of the current process to fill this Quebec seat on the court.

[*Translation*]

According to the Supreme Court Act, three seats on the court are reserved for lawyers from Quebec. Under sections 5 and 6 of the act, only judges of the Court of Appeal or the Superior Court of Quebec, or those who have been members in good standing of the Barreau du Québec for at least 10 years, may be appointed.

As specified by the Supreme Court of Canada in the Reference re Supreme Court Act, ss. 5 and 6, these appointment criteria are intended to ensure that Quebec's unique legal traditions are well represented on the court. These criteria make it possible not only to ensure that the court is able to handle civil law cases, but also to ensure its legitimacy in the eyes of the Quebec population.

That is why the qualifications and evaluation criteria stipulate that a "deep knowledge of the civil law tradition is essential for all candidates to the three Quebec seats".

In addition, on May 15, 2019, the Prime Minister announced a memorandum of understanding between our government and that of Quebec. This memorandum of understanding sets out the process for filling the position that will become vacant following Justice Gascon's retirement. As with the process for seats that do not belong to Quebec, this process is based primarily on the work of the independent and impartial advisory board, which is responsible for assessing nominations and developing a short list of three to five names to recommend to the Prime Minister.

The composition of the advisory board has been adjusted to accurately reflect the reality of Quebec, its legal practices and its civil law tradition.

As mentioned, the advisory board was chaired by Ms. Campbell and included another member whom, as Federal Minister of Justice, I had been asked to appoint. The other six members were selected in such a way as to ensure adequate representation with respect to Quebec and civil law. These six other members were appointed by the Quebec Minister of Justice, the Barreau du Québec, the Quebec Division of the Canadian Bar Association, the Canadian Judicial Council and the Deans of the Quebec Law Faculties and the Civil Law Section of the Faculty of Law of the University of Ottawa.

[*English*]

The selected members, all of whom are functionally bilingual, represented a distinguished set of individuals who undertook their important responsibilities with great care and dedication. I would like to thank them, on behalf of the Prime Minister and our government, for their exceptional service throughout this process.

They did a better job than those working the lights today.

Voices: Oh, oh!

Hon. David Lametti: The core mandate of the advisory board was to assess candidates against the published assessment criteria

and to submit to the Prime Minister the names of three to five qualified and functionally bilingual candidates.

[*Translation*]

In accordance with the agreement with the Government of Quebec, after receiving the short list provided by the advisory board, I forwarded it to the Quebec Minister of Justice. We then conducted our own separate confidential consultations on the preselected applications.

For my part, I consulted with the Chief Justice of Canada, a number of my cabinet colleagues, the opposition justice critics, members of your committee and the Standing Senate Committee on Legal and Constitutional Affairs, among others. The Quebec Minister of Justice conducted her own consultations, including with the Chief Justice of Quebec, before reporting her findings to the Premier of Quebec. After the conclusion of this consultation period, the Premier of Quebec and I submitted our respective recommendations to the Prime Minister of Canada to inform his choice as to whom to appoint.

● (1110)

[*English*]

Before turning the floor over to Ms. Campbell, I would like to speak briefly about the importance of confidentiality in this process, given the concerns that have rightly been raised about improper disclosures surrounding the 2017 selection process.

As I have said previously, the disclosure of confidential information regarding candidates for judicial appointments is unacceptable. I want to stress that I took strict measures to ensure that confidentiality was respected. This process has implemented strict confidentiality measures throughout. The terms of reference for the advisory board contain provisions specifically designed to ensure that the privacy interests of all candidates are respected. This includes a requirement that advisory board members sign a confidentiality agreement prior to their appointment. In addition, the agreement with Quebec explicitly states that the sharing of, and consultations on, the short list are to be conducted in a confidential manner.

In terms of next steps in the process, in addition to the advisory board's critical contribution in developing the short list, today's hearing is another important element. It provides an opportunity for all of you, as parliamentarians, to hear from and question the government regarding the selection process and our choice of nominee. Parliamentarians, and Canadians more broadly, will have the opportunity to become acquainted with the nominee through the question and answer session that has been scheduled for this afternoon.

Having provided this context, I would now look to Ms. Campbell to describe the work that the advisory board undertook in fulfilling its mandate. I will then say a few words about the Prime Minister's nominee to the Supreme Court of Canada, the Honourable Nicholas Kasirer.

Madam Campbell.

[Translation]

Right Hon. Kim Campbell (Chairperson, Independent Advisory Board for Supreme Court of Canada Judicial Appointments): Thank you.

[English]

First of all, good afternoon. This is old home week, in a sense, for me and this committee. This is the third time we've had the opportunity to discuss this very important process. I do regret that I'm not there personally to give you all a valedictory handshake and perhaps a hug, since I'm sure this will be the last meeting during this mandate. I do want to say how much I've appreciated the opportunity to speak with you and hear your points of view on the work of the committee.

To the chair, Mr. Anthony Housefather; the vice-chairs, the Honourable Lisa Raitt and Ms. Tracey Ramsey; and the members of the committee, it is my pleasure to be before you. It was my honour to chair the committee.

I might say that the difference between the work of this committee and the two others is that

[Translation]

we almost always worked in French. You will find this surprising when you hear me speak French. Even though I speak French like a Vancouver native, it was very important to do so to reflect the reality: we were in the process of choosing candidates from the province of Quebec.

[English]

I will speak more French, except I'm very tired—I just arrived yesterday from Africa—and I don't really want to

[Translation]

massacre Molière's language in reporting to you.

[English]

We did, in fact, do most of our work in French. That was the difference from the other exercises.

I also want to say, as I said to you before about the other two iterations, that every time somebody says to me, "Thank you for your good work as the chair", I say that the members of the committee made my work quite easy. I think you would be very proud and happy to know what incredible professionalism and dedication to serving Canadians across the country, not just Canadians in Quebec, the members brought to their work. My goal has always been, in these exercises, to ensure that each member of the committee has an opportunity to speak freely for himself or herself so that we get a genuine exchange of ideas and avoid groupthink and any other dynamics that can undermine the quality of decisions. I must say that this was an outstanding group of Canadians who really took their responsibility very seriously. As I said, it made my job easy. I was very proud to serve with them. I can say nothing but the finest things about them in terms of their competence and their character.

Incidentally, as I saw in the other two examples, the two members of the committee who are not lawyers often bring a very important

dimension and a very clear understanding of what the court means to the legal life of our country. I admire them very much.

The 2019 process was opened on April 18 to fill the seat. Candidates were required to submit their applications by midnight Pacific time on Friday, May 17. That was a period of four weeks. I think we'll come back and discuss this a little. One of the challenges we face is the timing of this.

Of the three examples or three iterations of this committee's work, two were done to replace judges who took early retirement. For replacing the chief justice, we had more time, because her retirement was anticipated. She retired close to her retirement age. I think one challenge, which I want to come back and make some suggestions about, is that when justices of the Supreme Court of Canada take early retirement, this changes the time frame in which it's sometimes most convenient or appropriate to engage in the search process, particularly if we want to ensure that the court is up to full complement at the beginning of a new season of its work.

The remaining advisory board members were announced only on May 15, but as soon as the process was launched and I was confirmed to be the new chair, I set about making contact with all of the organizations that we contacted in the past iterations, to ask them to communicate with their members about the new opening and to encourage them to consider whether they would like to be considered as candidates for the new seat on the court. I didn't wait for the other committee members to be appointed but began right away to communicate. Again, I have some other comments I'd like to make about that process.

You know, of course, that I'm not going to repeat the requirements of the Supreme Court Act to have three civil law trained judges from Quebec. The quality of candidates was really outstanding. There were 12 candidates, which was perhaps about right. We had, I think, 12 or 14 candidates for the western seat.

●(1115)

The first seat we considered had many more candidates, because that was originally meant to be—and it was—a national competition. I will say that only one of the candidates was a woman. Again, that is something that the committee members were disappointed about. There were no indigenous applicants in this process. I think we want to talk about how we can encourage a broader range of Canadians to apply. I will give you some of my reflections on why we have encountered those issues.

The board members, first of all, convened via teleconference. We then met in Ottawa between May 27 and June 7 to discuss our evaluations and to proceed with our methodology of identifying and looking at candidates individually before we came together again—to avoid groupthink, to avoid too much influence before each of us had the opportunity to independently review.

Before that, though, we came on May 21 to meet with the chief justice. As you know, it's been our tradition to meet with the chief justice before setting out on our business. This was our first opportunity, obviously, to meet with the new chief justice, Chief Justice Wagner. As in the other two cases, we found that our meeting with the chief justice really helped to set us up for our work by reminding us of the reality of life on the Supreme Court of Canada, of what is required and what some of the things are we should be looking for as we interact with our candidates.

I think what was interesting for us in talking to Chief Justice Wagner—those are confidential conversations, but I don't think he said anything that he hasn't said to Canadians more broadly—was that, as with the other meetings we had with Chief Justice McLachlin, there was an emphasis on the importance of collegiality. Again, one wants justices who have strong views and who are capable of expressing themselves, but collegiality on the Supreme Court of Canada is not groupthink. It is the ability to try, as much as possible, to create clarity and judgments that become the architecture of Canadian law and that are so important for lower courts and practitioners. This ability to work toward the clearest possible elaboration of the court's views on issues is a very important part of the temperament of a constructive Supreme Court justice.

The other thing that was very interesting was when Chief Justice Wagner talked to us about the uniqueness of the Supreme Court of Canada as both bilingual and bijuridical. Now, we knew, of course, that for our judges, one of the requirements for our candidates has been that they be functionally bilingual. The Supreme Court Act requires that there be three civil law trained judges on the court from Quebec, although Justice Martin is also a civil law trained judge, so the strength of civil law capacity on the court is certainly well established. He made a very interesting comment about how unique this makes our Supreme Court and how, in terms of the way other courts around the world look at our judgments, we have a very special set of competences among our justices. I know that certainly many common law judges enjoy the opportunity to study the civil law because it's a different route, often, to getting to the same answer.

That really put our work in a different context in the sense that we weren't just looking to fulfill the requirements of the Supreme Court Act. We were working on an exercise that helped define our court more broadly in the world as uniquely extremely broad in its juridical competence. I think we felt quite inspired by that notion. Of course, the candidates we interviewed were quite outstanding in that regard.

After meeting with the chief justice and doing our work, we presented our short list to the Prime Minister.

I'm very happy to answer your questions, but I would just like to conclude with this comment. I notice that since 2011 there have been nine nominations, including Justice Kasirer, to the Supreme Court. I remember the first meeting we had with Chief Justice McLachlin. She felt that the ability to commit, say, 10 years to the work on the court was highly valuable for a Supreme Court justice simply because it takes time to ramp up, to get up and running, and to find your feet, but also because continuity and a lack of disruption are very important.

•(1120)

However, clearly, there are reasons for judges to not necessarily serve their full time on the court.

In terms of getting the quickest response from strong candidates to the opportunity to be considered as a candidate for the court when retirements come, or early retirements come, we have talked about a process—and I would be very interested in the views of members of the committee on how this might be approached—as a way of starting an ongoing conversation with members of the Canadian judiciary in all of the provinces and senior members of the profession, about what it means to serve on the Supreme Court of Canada. What are some of the nuances, what are some of the requirements? I say this because it's a very difficult job.

It isn't just that one has to be an outstanding legal thinker, but that one also has to move to the national capital region, to Ottawa, and often at a stage in life when a spouse's career may be at its most active and prominent stage of development, when family obligations make it difficult.

I think that having a broader conversation with people in the profession about what is required to be on the court so that there is greater knowledge of what it actually means might, first of all, enable us to encourage even more people to apply. I think, particularly for women, if they have families and are likely to have spouses who also have careers, this might be something that could overcome some reservations.

If this were an ongoing conversation, as opposed to something that we scramble to do just in the face of an imminent departure from the court and the need to recruit a new candidate, I think it might be something that could broaden the scope of the candidates.

Again, as I've said, we do reach out to a broad range of organizations of lawyers and judges in Canada, but I think that in finding people who are perhaps members of groups that are under-represented, having an ongoing process of making candidacy for the Supreme Court of Canada less daunting and more appealing, or certainly to at least allow for a greater, more informed view, so that people do not come to the court and find that it really is difficult for them to serve and that their expectations are not the reality, is something that we need to think about. I say this because we, again, have an outstanding court and a court that, in the context of world courts, is unique and whose work is highly regarded. We want to ensure that no person—no man or woman or member of any ethnic group or identification in Canada—is ever discouraged from presenting themselves as a candidate because of either a lack of confidence in what it might mean or a lack of knowledge.

I will stop here and will be very happy to answer your questions. I appreciate you, Mr. Chairman, and your committee for accommodating me to be able to speak to you from Vancouver because I sure needed my sleep last night.

Thank you.

•(1125)

The Chair: Thank you.

Mr. Lametti.

[*Translation*]

Hon. David Lametti: Thank you very much, Ms. Campbell.

I will take the floor for a few moments again to talk to you about the Honourable Nicholas Kasirer.

Born in 1960 and originally from Montreal, Mr. Justice Kasirer was called to the Quebec Bar in 1987, after graduating with distinction from the University of Toronto in 1981 with a Bachelor of Arts degree in Economics and Political Science and a Bachelor of Civil Law and Common Law degree from McGill University in 1985. He also studied at the University of Paris 1 Panthéon-Sorbonne, where he obtained an advanced degree in international public law in 1986.

[*English*]

Following his admission to the Barreau du Québec, Justice Kasirer clerked for the Hon. Jean Beetz at the Supreme Court of Canada.

He then served as professor at his and my alma mater, McGill University, from 1989 to 2009, and he was the dean of the faculty of law at McGill from 2003 to 2009, when he was appointed to the Court of Appeal of Quebec.

Prior to his career at McGill, from 1996 to 2003, he was the director of the Quebec Research Centre of Private and Comparative Law, as well as a part-time instructor at the Barreau du Québec and a guest professor at the Université de Paris.

[*Translation*]

Judge Kasirer is perfectly bilingual. As you will have the pleasure to see this afternoon, he speaks both Molière and Shakespeare's language equally well.

A prolific author, he has participated in the writing of nearly two dozen books, as author or contributor, and has written numerous legal publications, mainly devoted to the law of obligations, property law, family law and the law of wills and estates, both in civil law and in common law.

Known for his generosity and great collegiality, Judge Kasirer has had, as the Prime Minister said, an exceptional career as a judge and professor, and has earned the esteem of his peers in Canada and around the world. There is no doubt that he will be an asset to the Supreme Court of Canada.

[*English*]

I would like to conclude by reiterating my sincere thanks, on behalf of the government, to the Right Honourable Kim Campbell, each member of the advisory committee, each person who was consulted and each candidate who applied in this process. You have helped to ensure the strength of one of Canada's most treasured institutions, a Supreme Court that is respected and admired throughout the world. We are very grateful for your contribution.

[*Translation*]

I would also like to thank the Commissioner for Federal Judicial Affairs and his staff, who provided exceptional and professional administrative support throughout the process.

Finally, I thank my colleagues in Parliament for helping to place the values of democracy, transparency and accountability at the heart of the selection of judges for our final court of appeal.

Ways to involve parliamentarians in the process of appointing judges to the Supreme Court of Canada have been sought for at least 20 years. I believe this is a crucial role, and members of the 42nd Parliament can be proud to have made progress toward consultation and inclusion.

Thanks to this continued support for the core values of transparency, inclusion and accountability, the selection process for judges of the Supreme Court of Canada will continue to strengthen the confidence of Canadians in this fundamental institution, as will the appointment of outstanding jurists who reflect the diversity and bilingual and bijural character of our country.

Thank you.

•(1130)

[*English*]

The Chair: Thank you very much, Ms. Campbell, and thank you very much, Mr. Lametti. We tried very hard to get the lighting right for you throughout that entire presentation.

Just for everybody's edification, the issue is building-wide, not just in this room. Public Works is trying to resolve it. Please don't blame the staff here for the lighting issue. They're not the ones doing it.

We'll do two rounds of questions now.

[*Translation*]

We'll start with the Conservative Party.

Ms. Raitt, you have the floor.

[*English*]

Hon. Lisa Raitt (Milton, CPC): Thank you very much, Mr. Chair. We would never blame the staff for that; it's fine.

Minister, thank you very much for being here.

Ms. Campbell, thank you very much for all the work you have done for Canadians. I want to thank you on behalf of the Conservative Party of Canada for the three times you chaired this committee.

Minister Lametti, as you may have noted, today in *The Globe and Mail*, and indeed many times this week, there were discussions about SNC-Lavalin. I'd like to know whether or not you've taken any steps to award a deferred prosecution agreement prior to SNC-Lavalin appearing before court on September 20 of this year.

Hon. David Lametti: As you know and as I've said many times in the House of Commons and in other public fora, including in front of the press, I make no comment on anything with respect to that file. Anything that I can or might say might have an impact on ongoing litigation. Therefore, I'm very careful in that regard. Thank you.

Hon. Lisa Raitt: Okay. Thank you very much.

Ms. Campbell, I want to ask about your process with respect to the advisory committee. I'll tell you that it's with the background of trying to understand how to deal with a leak. As you know, a leak occurred in the last process that you chaired.

When did you learn about the leak from the last process that you chaired?

Right Hon. Kim Campbell: Let me say that the leak was not from our process. After we present our short list to the Prime Minister, the Prime Minister, in partnership with the Minister of Justice and all the other interlocutors, including, I think, critics, has an ongoing series of conversations. One thing our advisory board is not mandated to do is to select candidates based on their philosophy. Now, if there were candidates who had views that might be considered more extreme in some way, or unconventional, we might certainly mention this, but it is up to the Prime Minister and his post-short list process to determine some compatibility or philosophical views. There is a process that goes on after our committee.

There has never been a leak from our committee, and nor, I think, would there be.

Hon. Lisa Raitt: That's very good to know.

Minister Lametti just indicated, though, in his opening remarks that he took strict measures in dealing with this unacceptable disclosure by talking about making changes to the advisory committee's mandate. If the advisory committee wasn't the source of the leak, why would Minister Lametti feel the need to talk to the advisory committee about the previous leak?

Right Hon. Kim Campbell: I don't know. I think he addressed that, but we have a very strict commitment to confidentiality, including not identifying who any of the candidates are. There has never been any suggestion that any of the members of the three committees have ever breached that confidentiality, nor would they.

Hon. Lisa Raitt: The retired justice of the Supreme Court of Canada Louis LeBel sat on your committee this time and commented regarding the leak from the advisory process the last time, saying it was very serious because the process is a very delicate matter.

Did he bring up any concerns about confidentiality during this process?

Right Hon. Kim Campbell: Not particularly, because we were obviously so devoted to it and so very careful to maintain that confidentiality.

Hon. Lisa Raitt: Did you take any steps to determine and ensure that there was no leak of confidentiality from your advisory committee? I know you said there wasn't, but I'm just wondering if you called anybody. Did you talk to the minister? Did you talk to PCO?

Right Hon. Kim Campbell: I don't think it was necessary. We worked with the commissioner for federal judicial affairs. We

worked on our documents on secure tablets—very carefully controlled. We always left our documents in the meeting room and the clear commitment.... We signed an undertaking to maintaining confidentiality, so the process was well established. I just want to repeat that there has been no indication of any leak ever coming from a member of the committee.

• (1135)

Hon. Lisa Raitt: So the Privacy Commissioner—

Right Hon. Kim Campbell: If anything, we were sort of tiptoeing around and were often afraid, even among ourselves. When we ate dinner together we went someplace where people wouldn't even realize who we were and what we were doing.

Hon. Lisa Raitt: That's tough for you to do, I would imagine, Ms. Campbell.

The reason I ask is that, of course, we are concerned about the leak and the way it happened. The Privacy Commissioner is concerned as well and is investigating the leak. His officials can't interview the minister's office or the Prime Minister's Office.

I'm wondering if he had a conversation with you to understand the confidentiality around the advisory committee.

Right Hon. Kim Campbell: Well, no, because there's never been any suggestion that this confidentiality has been breached.

I'm delighted—this is good for your committee obviously to be concerned about, but the nature of the leak, such as it was, is that it very clearly was not from the committee process.

Hon. Lisa Raitt: Thank you very much.

Minister Lametti, you gave an interview to *The Lawyer's Daily* in April in which you indicated that you were very confident that the leak did not come from the Department of Justice or from officials in the Prime Minister's Office.

Ms. Campbell is now saying that it didn't come from her advisory committee. Where did the leak come from?

Hon. David Lametti: I don't know. The Privacy Commissioner has stated that he has opened an investigation into the matter, and I'm not going to comment on his ongoing investigation. I will say that federal departments will co-operate fully with the Office of the Privacy Commissioner and that I took steps in this current process both in terms of limiting the number of people who had access to the process within my department, as well as segregating the server and doing everything securely that we needed to do to make sure that there was no breach of privacy from my department.

Hon. Lisa Raitt: You did indicate—

The Chair: Sorry, but we're out of time.

Ms. Khalid.

Ms. Iqra Khalid (Mississauga—Erin Mills, Lib.): Thank you, Chair.

Thank you to the Right Honourable Kim Campbell and to Minister Lametti for coming in today and advising us of the process that took place.

I will start my questions with the Right Honourable Kim Campbell.

Ms. Campbell, in 2017 when you appeared before the committee, you talked about some of the barriers we faced with respect to appointing or having candidates who were women or minorities or indigenous. You outlined today that out of the 12 candidates, one was a woman and there were no indigenous candidates.

Were any minorities part of the candidates?

Right Hon. Kim Campbell: I don't think there were any who self-identified in that way, and it is a self-identification.

The committee was concerned, because we are, of course, limited to evaluating those who apply.

Ms. Iqra Khalid: Right.

In 2016 there were 22 days to submit an application. Then in 2017 there were 63 days. This time around there were 30 days.

You talked about some of the processes in which you reached out to various organizations in Quebec. Do you think this time frame was sufficient to get the quality of candidates for the Supreme Court we were looking for?

Right Hon. Kim Campbell: I would say that the quality of candidates was outstanding in all three processes. I think our committee members come away very encouraged by the quality of people who do apply, but one of the things is that people have to apply. In the past, when we would get a nomination where, for example, somebody would write to us and say, "I nominate so-and-so to be a candidate", I would immediately contact that person and say, "Your name has been forwarded to us as an outstanding candidate for the Supreme Court of Canada. Would you please review these materials? If you are interested in being considered, I warmly encourage you to apply." That was the best we could do. In many cases, people feel shy about applying: "Am I being too arrogant?" It's nice for them to be able to say that they were asked to apply.

It's something that maybe even the members of your committee might want to think about. If you think there are people you know in the areas where the seats are vacant, there would be nothing wrong with a member of Parliament writing to say, "I'd like to have so-and-so considered." Then I or a subsequent chair might write to that person, tell them their name was forwarded—we wouldn't say who forwarded it—as an outstanding candidate, and warmly encourage them to apply.

I think the more ways we can overcome people's reluctance to apply, the better. It might well be something that members of your committee, who are very engaged with this issue, might want to address as a committee or just do as interested members of the committee.

• (1140)

Ms. Iqra Khalid: Thank you.

You also spoke in your remarks about the diversity of opinion on the benches as well. When we're talking specifically about provinces and the allotment from our Constitution with respect to members from certain provinces on the benches, how do the provincial laws

and policies—in Quebec, I will refer specifically to Bill 21 and its long-term effects—impact the diversity of Supreme Court nominees who are being appointed to the bench? How does that impact the overall laws and the shaping of laws within Canada?

Right Hon. Kim Campbell: That's a question I can't really answer. You have to follow the cases that go through. I would say that on the basis of the candidates who were presented to us, we felt there was a strong commitment to serve not just Quebec but to serve Canada, and consistent with the existing law of the charter. I think these are issues that are certainly beyond my purview to answer.

Ms. Iqra Khalid: Thank you.

We talked about diversity. What was the main or the primary objective? Was there any consideration given to who the current members of the Supreme Court are and to collegiality, to avoid things like groupthink, as you mentioned? What were some of the considerations that were taken in choosing the right candidates to be shortlisted, to ensure the diversity of opinion on the bench?

Right Hon. Kim Campbell: In the three processes we had different mixes of candidates, including different types of diversity, but we don't simply leave it at that. One issue we explore when we are interviewing candidates is to draw them out on their experience, knowledge and understanding of the diversity of Canadian life. Somebody might not be the member of a self-identified group that we think of, broadly, as diverse. What we want to know is, in their life, in their experience and in their work, how familiar they are with the challenges faced by the many communities in Canada who may be less represented in the administration of justice. That kind of cultural and diversity literacy is for us a very important part of the outlook we would like to find in candidates who would be playing such an important role on the final court of the land.

Ideally, we will have more candidates who will represent these communities themselves, but that is not sufficient. We don't just ignore it from somebody who is not from a diverse community. We really do want to know how much they understand of the realities of the lives that Canadians lead.

Ms. Iqra Khalid: Thank you.

[Translation]

The Chair: Thank you very much.

Ms. Moore now has the floor.

Ms. Christine Moore (Abitibi—Témiscamingue, NDP): Thank you very much, Mr. Chair.

I would like to go back briefly to the short list submitted to the Prime Minister.

According to media reports, the person selected for this appointment was the first choice of the Government of Quebec, but no one can confirm or deny this information.

Do you think it would be preferable, while of course keeping the names of the other candidates confidential, that the Government of Quebec or the advisory board have permission to confirm whether the candidate selected by the Prime Minister was their first choice?

From what I understand, we make recommendations. So the Prime Minister could very well, even if this is very rarely the case, choose someone who is not on the list of recommendations, or not choose the first choice of the advisory board, but rather the second or third person on the list.

Would it be better if the Prime Minister could confirm that he opted for the first choice on the list? This would give us the assurance that he respects the non-partisan will of the various people who submitted recommendations.

• (1145)

Hon. David Lametti: The question is clearly intended for me.

I do not agree with this proposal. According to the Supreme Court Act, this decision belongs to the Prime Minister, i.e. the governor in council. We do not want to weaken the Prime Minister's ability to make the best choice, in his opinion. He accepts the recommendations, of course, but it is up to him to decide.

I made recommendations based on the consultations I had conducted here in Ottawa. If I had disclosed my recommendations and my Quebec counterpart had done the same, it would have given an idea of the short list submitted to the Prime Minister and thus reduced the confidentiality of the process. We want to protect the privacy of the candidates who applied, especially those on the short list.

Ms. Christine Moore: I understand that we must be careful about what information we are allowed to disclose or not. However, should we not at least know whether the Prime Minister followed the recommendations of the advisory board or whether he decided to move in his own direction? Would that not be transparency?

Hon. David Lametti: The problem is that if I make a recommendation that is not included in the final decision, journalists and you, my parliamentary colleagues around the table, will ask me who I recommended. It would become too difficult to protect the confidentiality of the process. It is also necessary to protect, with all due respect, the ability of the Prime Minister to make his own choice.

Ms. Christine Moore: The same thing is happening right now. Everyone is trying to find out if Mr. Kasirer was the first choice and is asking questions along these lines. We are still trying to guess whether Mr. Kasirer was the first choice and whether it was respected.

Hon. David Lametti: It is easier to close the door from the beginning. Otherwise, we could go down a slippery slope.

The Chair: I think Ms. Campbell would like to comment on this.

Ms. Christine Moore: Very well.

[*English*]

Right Hon. Kim Campbell: I wonder if I could just add the following, Mr. Chairman, to clarify this for the honourable member. The short list is not given with any order. In fact, the names are given alphabetically. In the short list, we do not distinguish among them. I

have often said that our goal is to present the Prime Minister with a short list of candidates that will keep him up at night trying to figure out which one of these excellent candidates to select. On the committee we may have our personal favourites, but we do not make any indication of an order among the candidates who are presented on the short list.

[*Translation*]

Ms. Christine Moore: Fine.

I would now like to know how language abilities are assessed. Do candidates take written language tests or do they do a self-assessment of their language skills?

[*English*]

Right Hon. Kim Campbell: The judicial commissioner has developed a series of tests. For example, with the anglophone candidates, they do a test, and I think the criteria are that you have to be able to understand and respond to oral argument and to be able to read without translation, etc. In the first two iterations, we actually lost some outstanding candidates who did not meet the standard of functional bilingualism.

I must say that with the Quebec process, we didn't lose anybody because bilingualism is perhaps better established in the Quebec French-language legal profession.

However, there is a test and I'm sure they'd be pleased to share it with you. It is performed, so that after candidates are reviewed, they must undergo this test as the final barrier to being considered a shortlisted candidate.

[*Translation*]

The Chair: Thank you very much. Your time is up, Ms. Moore.

Mr. Fraser, you have the floor.

Mr. Colin Fraser (West Nova, Lib.): Thank you, Mr. Chair.

[*English*]

Thank you very much, Ms. Campbell and Mr. Lametti, for being with us today.

I want to thank you, Ms. Campbell, as you've already done this twice before. This is the third time and I want to sincerely thank you on behalf of all Canadians for the work you and your committee members have done in all three different iterations of these committee processes. Once again it has led to an excellent nomination, of Mr. Kasirer, so thank you for that work.

I'd like to talk a bit more about the timing of the application phase for people who want to be considered for the position. I know that after the first one, which produced Justice Rowe, there was some discussion about the process being too short—I think it was only 22 days—and then for Justice Martin's appointment in 2017, I think it was 63 days.

You've talked a little about some recommendations that you think could be made to encourage more people to be ready to apply when the time comes. This time around there were 30 days. Do you think that was sufficient?

Are there any other recommendations you would like to give the committee so that we could perhaps recommend to the government, going forward, a process in which there is enough time for the people who may wish to be considered to get their applications together?

• (1150)

Right Hon. Kim Campbell: I think you've put your finger on what is the most challenging issue we face. We would welcome recommendations of other approaches.

I was neither aware of nor had a sense of anyone not applying as a result of the tightness of the application time.

The first time, as you may recall, the applications were until the end of the summer, which was very difficult because people were coming in from their summer cottages and trying to get hold of their assistants to help them put together dossiers of their cases, etc.

I think this time around it was much more mainstream, being in the middle of the work year, and people were around. I think it was a little easier to do.

At the end of the day, we're not going to be able to rule out early retirements from the court. To assist the court in its business, you want to make sure that it would start a new season fully equipped and that the person who is chosen to make this important commitment has the opportunity to organize his or her private life. I think that's where there is the possibility of creating a greater preparedness among people who would be good candidates—and that would go even to members of the committee. If there are people who you think would be excellent candidates, make them aware and get them thinking about the process.

Of course, it depends on whether there are going to be retirements, but as we've seen, we can't predict the actuarial retirements and that people sometimes retire early.

The answer to your question is that we can do it better. I am not aware that it was a major barrier, but I don't know that for sure and I would hate to think it was.

Mr. Colin Fraser: Okay. Thank you very much for that.

I know this time around it was a bit of a unique process, given the fact that it was filling one of the Quebec seats, so there was an advisory board set up for Quebec. As you mentioned, the Supreme Court Act recognizes that there are to be at least three seats from Quebec, given the uniqueness of the civil law jurisdiction.

Were there any differences in the criteria in the minds of the members of the committee in putting forward names for the Quebec seat, and were there any different questions in the questionnaire this time, as opposed to the previous two that you did?

Right Hon. Kim Campbell: There were no differences in the questionnaire. Actually, as the process unfolded, it was very much like the others in terms of the kinds of things we wanted to know from people. Again, going back to the earlier questions about diversity, etc., we looked for the same kind of breadth in people.

I think the candidates were conscious of the fact that being selected for a Quebec seat brought with it a particular kind of

responsibility in terms of the role of civil law and Quebec values, but I think it was actually remarkably similar.

I have to say that the committee members were quite outstanding. They made the point that, yes, there is a particular set of criteria because of Quebec and its language and juridical uniqueness, but that it was a seat that would serve the whole of Canada. That breadth of knowledge and understanding was important.

Mr. Colin Fraser: Thank you.

Minister Lametti, I want to ask you the following, because you touched on the qualifications of Mr. Kasirer. I agree with you that he's an excellent appointment.

You talked about collegiality and temperament, and obviously in reviewing Mr. Kasirer's application it's clear that he has the legal mind and ability to do this job and has been widely regarded as an excellent choice. His collegiality will also be an asset that he'll bring to the bench. Can you talk a little about why it is so important for a justice of the Supreme Court of Canada to have that collegiality and the temperament that is appropriate, along with the legal skill and mind that he has?

• (1155)

Hon. David Lametti: As Ms. Campbell pointed out, on a court you have a dynamic when cases are heard and there's interaction amongst the judges both in the hearing as well as in the preparation prior to the hearing, and then in the decision-making phase afterwards, where there will be back and forth between and amongst judges to make better decisions. That doesn't mean unanimity. There will be dissenting and concurring judgments in which a judge may feel strongly about a point or the decisions and outcome generally, but you'll get better decisions.

I had the good fortune of hearing Guido Calabresi speak two weeks ago about the American Supreme Court. He clerked under the Warren court and he felt it was an outstanding court because the judges, specifically, spoke to each other. They all brought different kinds of expertise to the court and were quite collegial, and he felt that the kinds of judgments they came up with were better because of their collaboration and collegiality, and we would hope for the same kind of thing here.

The Chair: Thank you very much.

[*Translation*]

We will now move on to the second round of questions. This round will be a little different; it will be six minutes for the Liberal Party, six minutes for the Conservative Party, six minutes for the Liberal Party, five minutes for the Conservative Party and three minutes for the NDP.

We will start with Mr. Ehsassi.

[*English*]

Mr. Ali Ehsassi (Willowdale, Lib.): Thank you, Mr. Chair, and Minister Lametti and Madam Campbell for once again making yourselves available and explaining the intricate process involved in selecting Supreme Court justices.

The first question I have is for Ms. Campbell. I'm returning to something that other members of this committee touched on, the issue of collegiality. You kindly highlighted how significant that is. For me the question remains, how do you quantify or try to measure whether a candidate does actually appear to be collegial? Is it a process of speaking to their peers, people they have previously worked for, or as you, I think, were attempting to highlight, is it reading their previous judgments or jurisprudence in trying to get a sense that they come up with clear decisions?

Right Hon. Kim Campbell: That is an important question. All of the candidates do have references that we consult. One of the things we ask about is how collegial they are in working together.

I can give you an example from the very first iteration. When we asked the successful candidate, who is now Justice Malcolm Rowe, how do you do this, what is your approach, he made a very interesting comment—and I hope I'm not breaching confidentiality when I say this because he's already there. He said he could put a lot of water into his wine and had no pride of authorship. I thought that was a very specific and powerful way of explaining his approach when he wants to get to some place. The important thing is what the fundamental idea is that you want to see in the decision, and then you see how much water you need to put in your wine or perhaps allow someone else to have the honour of writing the opinion, if it's the opinion that you agree is good enough. He was basically saying that he was not an egomaniac and that he understood what's important and what isn't.

When we ask candidates about their approach, they are often very revealing, and I hope Justice Rowe isn't cranky at me for saying that. That's the kind of thing we look for: What has been your experience and how have you approached it? For many of them, they have a lot of experience in this area, which is one of the reasons why judges who have already served on an appellate court have a clear understanding of what that question means.

Mr. Ali Ehsassi: Thank you very much for that.

Another thing you touched on was your concern that only one candidate was a woman and there were no indigenous candidates. You touched on the need for ongoing consultations—and this is in-between what the advisory committee does.

Who, in your opinion, has the obligation to reach out to people to familiarize themselves and various lawyers and jurists with what serving on the Supreme Court is like?

• (1200)

Right Hon. Kim Campbell: I'm not actually sure whose responsibility it is. I think it might be something that could be done in partnership with a number of different groups—law societies, bar associations. That might be something your committee could look at as well, what the ideal situation is.

One thing we have, as a result of nine new appointments since 2011, including Justice Kasirer, is that there are quite a few retired Supreme Court of Canada justices lurking about who might be available to give some honest views about what it really means to serve on that court. Some of them have [*Technical difficulty—Editor*] 75. Others took early retirement.

I think [*Technical difficulty—Editor*] and I think it was in Saskatoon, that talked about this, where in fact some of the people who attended were surprised at what some of the benefits and attractions of working at that level were but hadn't really thought about them. It's not just to warn people about how hard the work is, but to talk honestly and openly about what it means to serve on Canada's highest court and perhaps to sow the seed of desire in some person to be considered for such a seat if the times align correctly.

Mr. Ali Ehsassi: Thank you very much for that.

If I could turn to Minister Lametti for my last question, as you know, Minister, the Senate Standing Committee on Official Languages recommended that changes be made to formalize within the Official Languages Act the requirement that Supreme Court justices who are appointed are functionally bilingual. Is that something you would favour, going forward?

Hon. David Lametti: First of all, we have done this in practice. We have enshrined a practice that puts such a high premium on functional bilingualism that it practically is a bar in being selected. We haven't done that formally.

I'm not sure it's a good idea, formally, because there may be other needs of the court at some point—for example, to appoint an indigenous person—where we may have to soften that requirement down the road. I think we're at a nice compromise right now, where, in effect, there is a requirement of functional bilingualism through the process without having to worry about either the constitutionality of such a provision or amending an act formally.

Mr. Ali Ehsassi: Thank you.

[*Translation*]

The Chair: Thank you very much.

Mr. Deltell now has the floor.

Mr. Gérard Deltell (Louis-Saint-Laurent, CPC): Thank you very much, Mr. Chair.

Dear colleagues, I am very happy to see you again today.

Former Prime Minister Campbell, may I extend my best regards. I would like to congratulate you on the quality of your French. The next time you leave Africa, I invite you to stop in Ottawa, which is on the way, rather than going to the other end of the country.

First of all, I would like to say that I am very honoured to participate in this meeting of the committee today. As stipulated in article 10 of the MOU, the minister must consult with the opposition parties. My colleague Lisa Raitt invited me to represent her during these consultations, an honour that I accepted with great humility. That is where my comments end on this subject, since we cannot say where, with whom or how things went. Indeed, all this must remain confidential.

Mr. Minister, in your opening statement earlier, you mentioned the importance of respecting confidentiality and ensuring that there are no leaks of any kind.

As you know, there was a leak involving an aspiring Supreme Court judge in the previous year. On April 11, this committee met on this subject. However, the parliamentary group of which you are a member refused to allow the committee to examine the matter and to hold an inquiry.

How do you think Canadians can be reassured if your parliamentary committee refuses to allow an investigation to be conducted on such a sensitive subject as a leak concerning the appointment of a judge to the Supreme Court?

Hon. David Lametti: First of all, thank you for conducting this consultation during the process. It was very valuable. Your comments were very important.

Yes, it was important. We have acted accordingly, especially for this process. We made sure there would be no leaks. We have taken steps in this direction.

There is also an officer of Parliament, the Privacy Commissioner, who addresses these issues. We will collaborate with him during his investigations.

As a government, we took the leaks very seriously. We made sure it wouldn't happen again.

• (1205)

Mr. Gérard Deltell: So why did you refuse to allow an inquiry by the Standing Committee on Justice and Human Rights? It is our job as parliamentarians to investigate such incidents.

Hon. David Lametti: The Privacy Commissioner has the authority to conduct an investigation. We believe it is a good non-partisan process. There will be an investigation and I hope there will be suggestions.

Mr. Gérard Deltell: Mr. Lametti, a little over six months ago, you were appointed to the very important and prestigious position of Minister of Justice and Attorney General of Canada. The least we can say is that for the past six months, your term of office has been anything but a long, quiet river. I had the opportunity to tell you in private.

One of the events that occurred over the past six months has been the SNC-Lavalin scandal, which has literally undermined the confidence of Canadians in their justice system. For two months, this situation monopolized the attention of Canadians, for negative reasons. However, last week we learned that one of the architects of this scandal was back in the Canadian Prime Minister's entourage.

How do you think Mr. Butts' return will create a sense of trust among Canadians in their justice system?

Hon. David Lametti: As I said earlier to your colleague and to my colleague, I am not commenting on anything that concerns the SNC-Lavalin case, because trials are ongoing in the courts and everything I say could be interpreted or misinterpreted. So I won't comment on that.

Mr. Gérard Deltell: In fact, Mr. Lametti, there must be justice, but, as the saying goes, there must also be the appearance of justice. Now the architect of the SNC-Lavalin scandal, the one who undermined Canadians' confidence in the judicial system, is returning to the office of the Prime Minister to play a key role in

the next election campaign. In the face of this return, how can you remain neutral, as Minister of Justice?

Hon. David Lametti: Unfortunately, the answer is the same. I'm not going to comment on that, for the reasons I just gave.

Mr. Gérard Deltell: It is unfortunate for Canadians, Minister.

Hon. David Lametti: As Minister of Justice and Attorney General of Canada, I must respect the justice system. I must be careful not to have any influence on the ongoing trials.

Mr. Gérard Deltell: This is precisely what caused the SNC-Lavalin scandal, sir; the infiltration of partisan politics into the judicial process.

Hon. David Lametti: In my case, it's not a matter of politics. I do so out of respect for the courts as Minister of Justice. Not wanting to have an influence on trials is a form of privilege. It is very important for me, in my role, to protect the judicial system.

Mr. Gérard Deltell: Unfortunately, this was not the case during the SNC-Lavalin scandal.

Hon. David Lametti: I did what I had to do as Minister of Justice and Attorney General of Canada to protect the justice system and respect the role of the courts.

Mr. Gérard Deltell: Do you think the justice system has grown out of this scandal?

Hon. David Lametti: I am very proud of our justice system in Canada.

Mr. Gérard Deltell: In this particular case, Minister?

Hon. David Lametti: We have several institutions that did their job...

Mr. Gérard Deltell: In this case?

Hon. David Lametti: ... everywhere in the system.

Mr. Gérard Deltell: In this particular case?

Hon. David Lametti: As I just said, I am very proud of the way the system worked.

The Chair: Unfortunately, your time is up, Mr. Deltell.

[English]

I just want to remind everyone that we are here today to talk about the nomination of the Supreme Court justice and the process that led up to that. I've been very flexible so far in permitting questions, and the minister has been very kind in answering those questions, but that is what we're here to talk about.

Next, Ms. Vandenbeld and Ms. Fortier will be sharing their time.

Ms. Anita Vandenbeld (Ottawa West—Nepean, Lib.): Thank you very much, Mr. Chair, and thank you, Minister Lametti.

Ms. Campbell, my question follows up on something you said in an earlier response about looking at diversity and cultural literacy. I also share the disappointment that only one of the 12 candidates who put themselves forward was a woman.

I notice that in addition to professional qualifications and legal skills, the criteria also include a number of individual qualifications, such as discretion, judgment, integrity, respect and the ability to empathize. With regard to gender equality and with regard to sensitivity on gender issues, perhaps you could elaborate a little bit on how your committee was able to make sure, when you were looking at the different candidates....

What kinds of criteria and what kinds of questions did you ask regarding the various candidates' gender sensitivity?

• (1210)

Right Hon. Kim Campbell: This was in the broader questions of their own experience with respect to diversity. We would have an ongoing conversation, but there is no question that there were opportunities for the candidates to discuss this in their own questionnaires—and their references were asked about this. It was kind of a fundamental value, this sensitivity to gender issues and issues beyond, because these are all issues that come before the court.

I'm sorry, because if I went back and looked at the question more specifically, I could give you a more specific answer, but I think there was certainly a consensus.

Incidentally, I think half of our committee members were women and very distinguished women. There was strong institutional support for recognizing openness to the equality and equal treatment of women under the law as part of our whole mandate.

Ms. Anita Vandenberg: Thank you very much.

I'll turn my time over to Ms. Fortier.

[Translation]

Mrs. Mona Fortier (Ottawa—Vanier, Lib.): Ms. Campbell and Mr. Lametti, thank you very much for being here today to talk to us about the process.

I'd like to go back to the issue of official languages. The ability of the Supreme Court of Canada to represent citizens in both official languages is a concern not only for me, but also for all Canadians.

We have heard a little bit about it, but I would like to know how important official languages are in the selection process. Next, I would like to know how the successful candidate meets these language requirements.

[English]

Right Hon. Kim Campbell: Not only does the candidate meet it, but the francophones on the committee in fact spoke about his *français recherché*. He speaks beautiful French. I think you will find that Justice Kasirer feels that his work in the civil law and in French really defines him and his connection to Quebec. It was actually quite remarkable to see that he is a man who loves the language and loves to use it in a most refined, excellent and precise way.

That is actually the whipped cream and cherry on the top of his qualifications. He's not just profoundly bilingual and profoundly competent in both languages, but also relishes the use of both languages, particularly French. I think he speaks his preferred language of expression, French, in a way that really elevates its importance.

The notion of official languages has been a criterion that has been fundamental to all three of the processes. There were some candidates who had very fine qualities who did not pass the functional bilingualism test and, therefore, were not considered for the short list. It is a principle that has been adhered to over the last three searches quite fastidiously.

It's not just that people argue in French. I think the idea is to make it possible for judges to communicate with each other and to have that capacity to reason together in either language. That is the underlying principle behind functional bilingualism.

[Translation]

Mrs. Mona Fortier: Mr. Lametti, do you want to make any comments?

Hon. David Lametti: I would just like to support what Ms. Campbell just said. The quality of Judge Kasirer's French is exceptional. This is a very important aspect of the process. I think the linguistic criterion has clearly been met.

Mrs. Mona Fortier: My guess is that he also meets the criteria for English.

Hon. David Lametti: Yes, Judge Kasirer is an anglophone, but he speaks French perfectly.

Mrs. Mona Fortier: Thank you for clarifying this.

The Chair: Thank you very much.

Ms. Raitt, you have the floor.

[English]

Hon. Lisa Raitt: Thank you very much, Mr. Chair.

Ms. Campbell, I want to ask you about the terms of reference, where there's a provision that if there is a declared person of interest, or if a member of the advisory committee has a business or a personal relationship with somebody who has been nominated, they recuse themselves from the discussion. Did that happen in your process this time?

• (1215)

Right Hon. Kim Campbell: Yes, it did. One of our committee members had served in a firm. I don't want to go into too much detail, but he recused himself from the conversations about that person.

Hon. Lisa Raitt: Would that be something you'll publish in your report that follows?

Right Hon. Kim Campbell: I think that is perfectly appropriate to mention. Again, I want to go back to the point that the committee members were very conscious of their responsibility and desired to conduct themselves in a way that was beyond reproach.

Hon. Lisa Raitt: I appreciate that he recused himself and followed the rule of law on that.

Minister Lametti, let's be very precise here because you're a lawyer, I'm a lawyer and precision is important when it comes to this.

Ms. Campbell has indicated that there is no way the advisory committee was the source of the leak of the information regarding the former proposed candidate, Mr. Justice Joyal. You have indicated to the media that you're convinced that it did not come from the Prime Minister's Office or your office. The Privacy Commissioner is conducting an investigation that you said people are co-operating with, but is it not the truth, Minister, that the reality is that the Prime Minister, you and any member of your staff or his staff are exempt from the Privacy Commissioner's powers and will not be part of this investigation?

Hon. David Lametti: I have said from the outset that my department will co-operate, and as I said, I am confident that the leak did not come from the very few people in my ministry—

Hon. Lisa Raitt: Minister, your department will co-operate because the Privacy Commissioner has the power to summon anybody in the department. However, the Privacy Commissioner does not have the power to summon you, the Prime Minister or anybody who works on the political side of your department or the Prime Minister's Office.

Are you telling me they are going to voluntarily speak to the Privacy Commissioner in order to make this a fulsome investigation?

Hon. David Lametti: I'm going to let the Privacy Commissioner do his work.

Hon. Lisa Raitt: He is working within his own mandate, but what I'm pointing out is that, contrary to what you're hoping to say here, that everything is being covered, the reality is that there are some significant witnesses to this who are not being investigated, and we are left relying upon your word and the word of the Prime Minister.

I think that's a fair statement.

Hon. David Lametti: I'm not going to comment on anything that's an ongoing investigation by the Privacy Commissioner, other than to say, as I've already said, that there will be co-operation.

Hon. Lisa Raitt: Minister Lametti, the advisory committee chair has indicated that there was no leak from her committee. You have indicated that it did not happen from the Prime Minister's Office, it did not happen from the Department of Justice and it did not happen from your office either. However, you did say that you could ask another department in government to investigate, "but again the prime minister's been quite clear that he doesn't feel that it's come from PMO. And I believe him."

Have you investigated beyond the Prime Minister's feelings?

Hon. David Lametti: I'm letting the Privacy Commissioner conduct his investigation, as I've stated publicly on a number of occasions and as you have rightfully pointed out.

Hon. Lisa Raitt: Minister, you actually indicated to a publication that you felt the leak came from people who had been consulted after the advisory committee, through your own consultations. Can you provide a list of the people who were consulted post-advisory committee in the last round of the process so that we can get to the bottom of where the leak really came from?

Hon. David Lametti: I was not the minister at the time, so I wasn't privy to all of those consultations.

Hon. Lisa Raitt: You are not going to ask the department to provide a list of those who were consulted in order to help us figure out who leaked the personal information of Mr. Justice Joyal?

Hon. David Lametti: Once again, those conversations would come under the purview of the Privacy Commissioner. Therefore, I'm going to let the Privacy Commissioner do his work. He's an officer of Parliament. We have respect for officers of Parliament. I'm going to let him do his work unrestricted by—

Hon. Lisa Raitt: Mr. Lametti, you're splitting the hair and it's not fair because you know the difference between what a member of your political staff is subject to and what your department is subject to.

Mr. Chair, given the comments by the Right Honourable Kim Campbell that the leak of information related to Justice Glenn Joyal is an important issue for this committee to study, I move that the committee immediately begin to study this matter.

The Chair: There was a motion moved.

Do you have it in writing, Ms. Raitt?

• (1220)

Hon. Lisa Raitt: I have it in scribble.

The Chair: You have it in scribble. Okay, what we will do is this. I am going to give the floor to Ms. Moore, and then we will come back to tell you whether the motion is receivable or not after I've consulted with the clerks.

Ms. Moore.

[*Translation*]

Ms. Christine Moore: Thank you very much, Mr. Chair.

There are currently two major justice review projects in Quebec.

The first area of reflection concerns family law reform, including the rights and obligations of common-law spouses, stepparents and grandparents. The reflection also focuses on the impact of the use of assisted reproduction techniques on family law and inheritance.

Another major area of reflection is how the justice system treats and judges sexual offences, particularly in cases where multiple charges have been laid, but only a small number have been retained for trial or court proceedings.

Among the candidates for the position of Quebec judge on the Supreme Court of Canada, have we sought expertise in these two particular areas where major reforms are being considered?

Hon. David Lametti: Obviously, knowledge of civil law is a criterion. Much of what you have just described is a matter of civil law. Another part belongs to the criminal law, which is under federal jurisdiction. These are questions that have been assessed by the advisory board.

Ms. Christine Moore: Fine.

You mentioned Judge Kasirer's publications on family law, but I would like to know if he has any specific knowledge of family law and the reforms that will take place in Quebec.

Hon. David Lametti: I would say so. I know that, as his record shows, he has published texts in this field and has taught family law for years, especially family property law, property law. He has also taught criminal law courses during his career.

Ms. Campbell may add some additional information on this subject, but on paper, Judge Kasirer's file clearly indicates that he has exceptional knowledge in this area.

Ms. Christine Moore: Very well.

The fact remains that some sexual offences are referred to civil courts, although they are criminal in nature. This is currently the case in Quebec.

Hon. David Lametti: I must refer to Judge Kasirer's background. That said, we must also consider his experience as a judge since 2009. He has been seized of several cases and has handed down several judgments.

Ms. Christine Moore: Ms. Campbell, do you have anything to add?

[English]

Right Hon. Kim Campbell: No, it's simply to say that, as the author of the revision of the rape shield provisions in the Criminal Code back in the early 1990s, it's been a source of great frustration to me that many of those principles often do not seem to be applied in the courts. That's a challenge that I think you, as legislators, are going to continue to be addressing, aside from the culture of the courts.

I think our view of Justice Kasirer was that he was very knowledgeable and I think very equipped to uphold those principles, which are in fact based on legislation.

[Translation]

Ms. Christine Moore: Very well, thank you.

[English]

The Chair: Before I get to the motion by Ms. Raitt, I want to thank the Right Honourable Kim Campbell for her continued service to this country and for the incredible work she continues to do in this and many other regards. Thank you so much on behalf of the committee and all Canadians. I know that all members of all parties would join with me in that.

Thank you so much, Minister Lametti, for being here today and giving us very frank answers to our questions.

I will excuse the witnesses because I think they don't need to sit there the entire time as we go through the motion, but you're welcome to stay, of course, to the extent you would like.

I am going to suspend for a second to let the minister and Ms. Campbell leave, and then I'll come back to the motion.

•(1220) _____ (Pause) _____

•(1235)

The Chair: I am now resuming the meeting. I wanted to look at all of the issues surrounding the motion. There are some small issues in terms of rewriting it, but I think Ms. Raitt is comfortable providing slightly revised wording. Therefore, I'm not going to get into that issue.

The issue I was trying to look at was that we had met on April 11, and Mr. Cooper had presented the following motion:

That the Committee sit additional hours to study the leak of information surrounding the Supreme Court of Canada selection process, particularly as it pertains to the leak of information surrounding the Chief Justice of the Manitoba Court of Queen's Bench; and that the Committee report its findings to the House no later than Friday, May 31, 2019.

I was concerned that this was an issue that the committee had already visited and defeated, which would make it not receivable. However, in the last three and a half years I have always erred in favour of the receivability of motions. I can say that the motion was worded based on something that Ms. Campbell said today. In principle, I think it's better to allow the motion to come forward and to have a discussion on it, and the committee can treat it how it wishes.

I'd ask Ms. Raitt to simply reread the motion as the clerk has redrafted it.

Hon. Lisa Raitt: Thank you, I will.

The motion, as it reads, Mr. Chair, is as follows:

That the Committee immediately begin a study into the leak of information related to the possible appointment of Justice Glenn Joyal.

The Chair: Thank you very much.

I'll give the floor to whoever...

Ms. Raitt.

Hon. Lisa Raitt: Thank you very much, Mr. Chair.

Thank you very much for ruling this admissible. Through the questioning today something has become quite apparent to me, and it has been confirmed for me as well in the discussion I had with Ms. Campbell. It is that this is truly an important issue for us to study. The chair of the advisory committee for the Supreme Court of Canada nomination process has indicated that this is something she thinks MPs would be interested in getting to the bottom of. I agree with her and I appreciate that piece of advice.

I am also concerned that there seems to be a miscommunication, deliberate or not, with respect to what is actually being investigated now and who is being investigated. I understand that part of the defence, I guess, in saying no to a justice committee inquiry was that the Privacy Commissioner was doing his job.

As you may have noticed today, I brought up the fact that section 50 of the Privacy Act exempts any political staff or ministers or prime ministers from an investigation. Simply put, the Prime Minister will not be interviewed by the Privacy Commissioner. Minister Lametti will not be interviewed by the Privacy Commissioner. The cabinet ministers who were consulted as part of the previous process will not be interviewed by the Privacy Commissioner. Elder Marques will not be interviewed by the Privacy Commissioner. Mathieu Bouchard will not be interviewed by the Privacy Commissioner, and neither will Ben Chin be interviewed by the Privacy Commissioner.

The reason I'm concerned is that in response to my questions, the minister was very careful when I asked whether or not his political staff were going to be interviewed. He responded by saying that his department would co-operate. That, I believe, is a deliberate attempt to split a hair. As a former minister, I don't appreciate it because I don't think it's being fair to Canadians, as it does not allow them to understand exactly what is being investigated now.

As a result, I'm proposing this motion so that there will be no gap in any investigation regarding this incredibly egregious leak of the personal information of Mr. Justice Glenn Joyal to the press, with the purpose, quite frankly, of delegitimizing whether or not Jody Wilson-Raybould was in favour of the charter. That's what it all comes back to.

As a result, I look forward to the comments by my colleagues around the table regarding the matter.

I would point out one last thing with respect to what Minister Lametti testified today. When I put it to Ms. Campbell whether or not she discussed the matter of the leak with Minister Lametti, she indicated that she had not discussed it with Minister Lametti as he went forward in the new process. That to me, as well, is of concern. At the very least, I think Minister Lametti should return to answer questions on the topic and, as I indicated before, anybody else who was involved in it.

This committee has the ability to call everybody. The Privacy Commissioner is barred by statute from calling the key people who politically had the information on a discussion between the former

minister of justice, Jody Wilson-Raybould, and the Prime Minister of Canada. We're not going to get to the bottom of anything unless we have those people come forward and tell us what happened.

Thank you.

● (1240)

The Chair: Thank you.

Does anyone on this side wish to intervene?

[*Translation*]

Since there are no other speakers, we will proceed to the vote.

[*English*]

Hon. Lisa Raitt: I'd like a recorded vote.

(Motion negatived: nays 5; yeas 4)

[*Translation*]

The Chair: Do the members of the committee have any other comments?

[*English*]

Not seeing any, I want to thank everybody for being with us today.

I imagine this is perhaps our last meeting before the election, so I wish everybody a very nice summer and a good campaign.

The meeting is adjourned.

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