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Chair

Mr. Anthony Housefather

Standing Committee on Justice and Human Rights

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• (1400)

[English]

The Chair (Mr. Anthony Housefather (Mount Royal, Lib.)):
Ladies and gentlemen, I call this meeting of the Standing Committee on Justice and Human Rights to order.

[Translation]

We are delighted to have you all here today. I would just like to acknowledge that Mr. Schmale is stepping in for Mr. Falk, Mr. Mulcair for Mr. Rankin, and Ms. Vandenbeld for Mr. Hussen.

It's a real pleasure to have you all on our committee. Welcome.

[English]

I look forward to your questions later.

It also gives me great pleasure to welcome the Honourable Jody Wilson-Raybould, Minister of Justice and Attorney General of Canada, who is now testifying before this committee for I believe the fourth time.

As always, Madam Minister, it's an incredible pleasure to have you. We'll be talking today about the process for appointing justices to the Supreme Court of Canada.

Madam Minister, the floor is yours.

Hon. Jody Wilson-Raybould (Minister of Justice and Attorney General of Canada): Thank you, Mr. Chair.

Thank you to the members of the committee, many of whom look a bit tanned. I appreciate that it's summer. I'd like to thank everyone for convening today in August. I recognize that it's summer and that this means you're being pulled away from your ridings and perhaps some personal plans, but I greatly appreciate the opportunity to be able to speak with all of you about the government's approach to the Supreme Court of Canada appointment process, the new selection process that we outlined on August 2.

As you know, the Honourable Justice Thomas Cromwell will be retiring on September 1, 2016, creating a vacancy that we are aiming to fill in this court's fall session. As stated in my mandate letter, the Government of Canada is committed to a Supreme Court of Canada appointments process that is transparent, inclusive, and accountable to Canadians, includes engagements with all parties of the House of Commons as well as consultation with all relevant stakeholders, and ensures that those appointed to the court are functionally bilingual.

My aim today is twofold: first, to outline the new process to you, detailing how it encompasses these and other fundamental values;

and second, to hopefully hear the committee's views and perspectives, given your experience and expertise.

Before continuing, I want to emphasize the great sense of responsibility with which our government approaches the Supreme Court of Canada appointment process. This committee knows well that the Supreme Court is an essential pillar of Canada's constitutional architecture. As the final court of appeal on all legal questions, including constitutional questions, the Supreme Court plays a pivotal role in promoting respect for fundamental rights and the rule of law. The way we select judges to the Supreme Court is therefore of the utmost importance. Enhancing the credibility of the appointment process will bolster Canadians' confidence in this fundamental institution.

The appointment of a Supreme Court of Canada justice is one of the most important decisions the Prime Minister makes. The top court's decisions affect us all. They influence our economy, our cultural mores, and our definition of individual and collective rights and responsibilities. Throughout our history, we have most often found and been served by the very best within our legal community, but the process used to appoint Supreme Court justices is opaque, outdated, and in need of an overhaul. We believe Canadians deserve consistent, rigorous processes that are transparent and inclusive and that set a high standard for accountability.

I wish now to briefly describe how these three important values—transparency, inclusiveness, and accountability—play out in the new selection process. I will then note two other factors that are equally crucial, namely, the need to safeguard judicial independence and the desire to identify jurists of the highest calibre who represent the diversity of our country.

A transparent process is one that is clear, open, and easily understood. This requires a clear public explanation of how the process is to operate. We have therefore provided not just a detailed description of the various steps in the process but also information, such as the criteria used to assess candidates and the identity of those doing the assessment. Last week we posted this information online so that Canadians can know and understand how and on what basis the next justice will be selected. My appearance before you today is another important part of this effort to publicly explain the process and to ensure that it is clear to all.

Transparency is also a prerequisite to accountability. If the process and the criteria for decision-making are not publicly known, it is difficult to hold decision-makers to account for the exercise of their responsibilities. As such, this process is designed to be open, transparent, and based on established and publicly available criteria. As I will make clear later in my remarks, you, as members of the justice and human rights committee, will play a crucial role in holding the government to account, both for its selected nominee and for its adherence to an established process.

● (1405)

An inclusive process is one that ensures that the widest range of candidates from the broadest variety of backgrounds is available for selection. It is a process characterized by outreach and engagement. The goal of inclusivity must be reflected in matters such as the manner in which the initial list of candidates is generated. Further, an inclusive process avoids criteria or procedures that can hinder individuals from traditionally under-represented groups from receiving fair and equal consideration in the process.

A further value is the need to safeguard judicial independence, a requirement flowing from the Constitution itself. Judges must be, and be seen to be, fair, impartial, and open-minded, and not beholden to any particular group or interest. Supreme Court justices must in no way be seen to be indebted to or dependent on those who selected or appointed them. The role of an independent, non-partisan advisory board, which I will describe shortly, advances this principle.

Further, the selection process must safeguard the integrity of the Supreme Court and the judiciary in general in order to maintain public confidence. Care must be taken to avoid a process that inadvertently undermines the judiciary as an institution or the reputation of individual judges. This requires, for example, that the confidentiality of applicants be respected and preserved by all those involved in the process. The selection process must be designed to identify individuals with the highest degree of professional excellence and personal suitability. Assessments of candidates must be based on objective criteria that set out the professional capabilities and personal qualities needed to serve effectively as a justice of the Supreme Court of Canada. To this end, consultations and decisions at all stages of the selection process will be guided by assessment criteria that have been published on the website of the Office of the Commissioner for Federal Judicial Affairs, criteria that I will review later in my remarks.

Canadian society is rich in diversity, and this has important consequences for the selection process. Justices of the Supreme Court of Canada must be able to adjudicate complex legal questions affecting those with a wide variety of experiences, backgrounds, and perspectives. For this reason, one of the assessment criteria is the ability to appreciate a diversity of views, perspectives, and life experiences, including those related to groups historically disadvantaged in Canadian society.

Diversity within the Supreme Court itself is important for two main reasons: first, bringing together individuals with various perspectives and life experiences enriches the collegial decision-making process of the court; second, a Supreme Court that reflects the diversity of the society it serves enhances public confidence in the court. The assessment criteria therefore require that candidates be

considered with a view towards ensuring that members of the Supreme Court are reasonably reflective of the diversity of Canadian society.

The selection process that I will now describe is designed to concretely embody these values and objectives.

At the heart of the process is an independent, non-partisan advisory board tasked with identifying suitable candidates for appointment.

The seven-member board is chaired by former Prime Minister Kim Campbell, also a former justice minister and Canadian consul general, and currently the founding principal of the Peter Lougheed college at the University of Alberta.

The board also includes four members nominated by independent professional organizations. These are Richard J. Scott, former chief justice of the Manitoba Court of Appeal and currently counsel in a Winnipeg law firm, nominated by the Canadian Judicial Council; Susan Ursel, a senior partner with a Toronto law firm, who also provides legal research support to Envisioning Global LGBT Human Rights, nominated by the Canadian Bar Association; Jeff Hirsch, president of the Federation of Law Societies of Canada and partner in a Winnipeg law firm, nominated by the Federation of Law Societies; and Camille Cameron, dean of the Schulich School of Law at Dalhousie University and president of the Canadian Council of Law Deans, nominated by the Canadian Council of Law Deans.

● (1410)

The advisory board also includes two government-appointed non-lawyers chosen for their outstanding community leadership and involvement: Stephen Kakfwi, former premier of the Northwest Territories and president of the Dene Nation, currently working to improve the recognition and realities of aboriginal peoples within Canada; and Lili-Anna Pereša, president and executive director of Centraide of Greater Montreal.

We believe that the involvement of respected stakeholder organizations is important to ensuring the objectivity and independence of the process. Representation from the legal community on the advisory board provides critical input into assessing the professional qualifications of candidates. The lay members provide valuable input and help bring diversity of views to the advisory board's deliberations.

Unlike earlier processes, the advisory board will not take as its starting point an initial list of candidates proposed by the government, but it will consider individuals who have submitted their candidacies through an open application process. The open nature of this process is unprecedented. To ensure as broad and diverse a pool of candidates as possible, the advisory board may also proactively encourage outstanding candidates to apply. For the public who may be watching, I encourage you to identify qualified candidates and encourage them to put their names forward. I will continue to repeat that message in all different forums.

The application process will be open to Canadians from across the country. The government is mindful of the important custom of regional representation, and it values the importance of regional diversity on the court. The Prime Minister has specifically asked the advisory board to provide a list of three to five qualified and functionally bilingual candidates, and that includes candidates from Atlantic Canada. In making that selection, he has asked that the board consider the custom of regional representation on the court.

In assessing candidates, the advisory board will be guided by assessment criteria that have been made public and by our government's commitment to ensure that the Supreme Court nominees are functionally bilingual. As part of the assessment process, the advisory board will consult with the Chief Justice of Canada and any key stakeholders that the members consider appropriate. I expect the board's consultations to be wide and all-encompassing.

While the objectives of openness and transparency will inform all steps of the process, current aspects of the process, such as the deliberations of the advisory board, will remain confidential. This protects the privacy interests of candidates and allows for full and frank discussion of all candidates.

To promote transparency, the advisory board will provide a report to the Prime Minister within one month of a vacancy being filled, outlining information about the process, including statistics related to applications received, the manner in which the board executed its mandate, and the costs associated with the process. This report, which must be made public, may also contain recommendations to improve the process.

Upon concluding its assessment, the advisory board will submit a short list of three to five candidates for the Prime Minister's consideration and will include an explanation as to how these individuals meet the statutory requirements and the assessment criteria. All candidates on the short list must be functionally bilingual, as confirmed through an objective assessment administered by the Office of the Commissioner for Federal Judicial Affairs.

I will then consult on the short list of candidates with the Chief Justice of Canada, relevant provincial and territorial Attorneys General, cabinet colleagues, and opposition critics, as well as members of this committee and the Standing Senate Committee on Legal and Constitutional Affairs. The purposes of my consultations on this short list will be to develop my recommendation to the Prime Minister as to who the government's choice should be. The Prime Minister and I anticipate that choosing from a list of eminently qualified jurists will be a difficult and humbling task, and we will greatly value your views.

● (1415)

After the Prime Minister announces the government's nominee, I will appear with the chairperson of the advisory board before this committee to explain how the process unfolded and how our nominee meets the assessment criteria. The main purpose will be to allow you, as parliamentarians, to hold the government to account for the manner in which the nominee has been selected. There will be a week between the announcement of the nominee and the hearing in order to give committee members time to prepare.

In addition to this hearing, the nominee will take part in a question-and-answer session moderated by a law professor, with members of this committee, the Standing Senate Committee on Legal and Constitutional Affairs, and representatives from the Bloc Québécois and the Green Party. The Prime Minister will review and consider any views of the committee prior to making his final selection.

Before concluding, I would like to briefly discuss the assessment criteria that will guide all decisions throughout this process.

The assessment criteria relate to the skills, experience, and qualities candidates need to excel. The criteria also relate to the institutional needs of the Supreme Court. As I noted earlier, these criteria have been published on the website of the Office of the Commissioner for Federal Judicial Affairs. I encourage you to visit this website, given that the document in which the criteria are set out sets out the rationale for why each criterion has been included.

Candidates will be assessed based on the following personal skills and experience: demonstrated superior knowledge of the law; superior analytical skills; ability to resolve complex legal problems; awareness of, and the ability to synthesize information about, the social context in which legal disputes arise; clarity of thought, particularly as demonstrated through written expression; the ability to work under significant time pressures requiring diligent review of voluminous materials in any area of law; and a commitment to public service.

Applicants will also be assessed on the following personal qualities: irreproachable personal and professional integrity; respect and consideration for others; the ability to appreciate a diversity of views, perspectives, and life experiences, including those relating to historically disadvantaged groups in Canadian society; moral courage; discretion; and open-mindedness.

Finally, in carrying out their assessments, the advisory board will consider the following institutional needs of the court: ensuring a reasonable balance between public and private law enterprise, bearing in mind the historic patterns of distribution between those areas in Supreme Court appeals; expertise in any specific subject matter that regularly features in appeals and is currently under-represented on the court; and ensuring that members of the Supreme Court are reasonably reflective of the diversity of Canadian society.

The government is confident that in the application process, these assessment criteria will lead to the identification of outstanding candidates for our highest court.

In conclusion, I wish to again thank you for coming here and convening today on this matter that is of the utmost importance to Canadians. I look forward to appearing before you again on the same matter. Certainly, Mr. Chair, I would be happy to take questions, and further to that I would be happy to hear any perspectives or contributions that the members care to provide.

Thank you.

● (1420)

The Chair: Thank you very much, Madam Minister, for that very detailed presentation. We very much appreciate your availability to come before us.

Now we're going to move to the question period. Members of the committee, we're going to do two rounds of questions. For the information of those who are new to the committee, we're going to start with six minutes for the Conservatives, six for the Liberals, six for the NDP, and six for the Liberals. The second round will be six minutes for the Liberals, six for the Conservatives, six for the Liberals, five for the Conservatives, and three for the NDP. However, I tend to be flexible with the time for questions. If you're trying to get through a thought process and your questions are not designed for long-winded answers, then of course if I see that your time is being eaten up by the answer, I tend to be more flexible.

We're going to start with Mr. Nicholson.

Mr. Nicholson, welcome. The floor is yours, sir.

Hon. Rob Nicholson (Niagara Falls, CPC): Thank you very much, Mr. Chairman.

Thank you, Minister, for appearing here today.

I think I join with all members of the committee in giving our best wishes to the retiring judge, Justice Thomas Cromwell. We wish him all the best and thank him for his service to the courts of this country.

Minister, you talked about the list that will be considered and you indicated that there would be a judge on there, or judges, from Atlantic Canada. You referred to the process by which judges from Atlantic Canada or from different parts of the country have been submitted and considered in the past. You referred to it as a custom. Wouldn't you say that something that's been in place since 1875 is more than just a custom, and that it could be more properly characterized as a constitutional convention that Atlantic Canada will have one member on the Supreme Court of Canada, as allotted across the country? Wouldn't you say that's a constitutional convention?

Hon. Jody Wilson-Raybould: Thank you for the question, and I would certainly echo your comments with respect to the Honourable Justice Cromwell and his service.

It's fair to say that it is a convention. I recognize that regional representation has existed for over a hundred years. There was a point where that convention diverged, but I recognize that regional representation has been reflected for over a hundred years.

Hon. Rob Nicholson: Are you saying that the person will not necessarily be from Atlantic Canada? Is that what you're saying to the committee?

Hon. Jody Wilson-Raybould: The next appointment to the Supreme Court of Canada will not necessarily be a person from Atlantic Canada. That said, we recognize the importance of regional representation.

Hon. Rob Nicholson: Just for the record, Mr. Chairman, I think that is a mistake. Again, these constitutional conventions have worked very well over the years. However, that said, you've made yourself very clear in that regard.

You indicated that the process that is in place now is outdated. The process that was developed in previous parliaments, which is to have members of Parliament have a look at this, is not really that old. Wouldn't you say, Madam Justice Minister, that having elected members of Parliament look at it means there is a connection to the public of this country, that it's a fair way to do it, and that to turn this over to a committee that is not directly responsible to the public and not directly elected is less accountable than the process that has been in place?

Hon. Jody Wilson-Raybould: With the process the Prime Minister announced on August 2, the intent is to modernize and put in place a process that ensures that we are open and transparent and that there are many levels of accountability in the process that we as a government will employ to appoint the next Supreme Court of Canada justice.

Central to that, or the nucleus of this new appointment process, is an independent advisory board. Our intent is to depoliticize the process and to provide eminent Canadians, the seven whom I mentioned in my comments, with the ability to take an unprecedented step, with the opening up of the application process to qualified jurists from across the country who are functionally bilingual and reflect the diversity, and have the opportunity to put forward their applications for this most esteemed position. There are many steps—if we want to call them “steps”—in this process that will enable members of Parliament to be fundamentally involved as the process unfolds. That process will ensure that members will be able to provide their input not only on the process but on the eventual nominee.

● (1425)

Hon. Rob Nicholson: I don't know how they can fundamentally be part of the process if they're not part of the process of selecting and coming up with the lists of judges.

You say it will increase accountability if we take this away from members of Parliament, but who is more accountable than members of Parliament? This is a responsibility of Parliament and, in particular, the Prime Minister, who is the first minister within Parliament, to appoint judges to the Supreme Court. However, if we take that ability away from members of Parliament to have a say in this—and again, this was a system that I think was widely well received among all political parties—how could it be possible that a group that does not have accountability to any of the electorate of this country would be more accountable than members of Parliament?

Hon. Jody Wilson-Raybould: I would say that as appointments have been made over the last 10 to 11 years, there wasn't any consistency between and among appointments made by previous governments with respect to the Supreme Court of Canada. I recognize that back in 2004, with former minister Cotler under Prime Minister Martin, there was an attempt to move forward and quite successfully open up the process to provide further explanations about it and how candidates were selected as nominees for the Supreme Court.

Having an independent advisory board takes away the politics and ensures that we can have an open and transparent process that encourages qualified jurists from right across the country to put their names forward, to ensure that we have the best among us across the country as candidates to be selected.

As for members of Parliament being involved, I'm indeed having a discussion with them today, and there will be further discussions when I appear with the chair of the advisory board, as well as discussions with the nominee when he or she, as it may be, is named by the Prime Minister. Ultimately, the way that members of Parliament and all Canadians can have a role in this process is to ensure that if you know of a jurist who meets the qualifications, to go out, seek, and encourage them to put their names forward. That's the ultimate role that all of us as members of Parliament can play to ensure there is a substantive list of qualified jurists.

Hon. Rob Nicholson: It would be somewhat difficult, if we believed that Atlantic Canada should have the next appointment to the Supreme Court, to know to whom we would give that advice. Perhaps you could tell us what sort of response you got when you contacted the Attorneys General in Atlantic Canada with this new system, these new criteria, and the fact that the next justice of the Supreme Court may not come from Atlantic Canada. Were they supportive, were they indifferent, or did they express some concerns?

Hon. Jody Wilson-Raybould: I have had an opportunity on one or more occasions to speak with the Attorneys General of the Atlantic region. While I would like most of those conversations to remain between the Attorneys General and me, broadly speaking there was a recognition that an appointment from Atlantic Canada was a convention, as we've talked about, but there was a general positive reception to opening up the process, ensuring that there's clarity around how the process will unfold, and an appreciation of having conversations. Again, I encourage the Attorneys General to bring forward and encourage candidates that they know of within their jurisdictions to apply for this esteemed position.

• (1430)

The Chair: Thank you very much.

Mr. Fraser is next.

Mr. Colin Fraser (West Nova, Lib.): I'd like to join my colleagues in thanking Mr. Justice Cromwell for his exemplary service on the Supreme Court of Canada.

[Translation]

Thank you, Minister, for being with us today. I believe this is your fourth appearance before the committee.

I would certainly like to thank you for all your work on the new appointment process we are discussing today.

[English]

I'd also like to commend the new process for the independent advisory board. I agree with you that making the process more open and transparent and basing it on criteria that are known by the public will serve Canadians well. That said, as a lawyer from Nova Scotia, and knowing the importance of regional representation on the Supreme Court of Canada and how that has played out in our past, I believe that the custom of regional representation has served us well

as a country. I do have some concerns regarding what has already been discussed here today, namely, there not being certainty that the next appointment will be an Atlantic Canadian.

I wonder, then, given the fact that the seat is being vacated by Justice Cromwell and that it is a long-standing custom that an Atlantic Canadian holds one seat—there are two from the west, three from Ontario, and three from Quebec, by the Constitution—what preferential weight will be given in the selection criteria for the next representative to be an Atlantic Canadian.

Hon. Jody Wilson-Raybould: I understand the importance of regional representation on the Supreme Court. In this process we have made it very clear that regional representation is something fundamental that the advisory board should consider in assessing candidates.

Likewise, in terms of our government commitments, the next Supreme Court justice, and all members of the short list that's put together by the board, must be functionally bilingual. We also want to ensure—and this is in the assessment criteria—that there is a reflection of diversity in terms of the candidates that are brought forward. The mandate letter that the Prime Minister wrote to former Prime Minister Kim Campbell states very clearly that on the short list of three to five candidates, there will be candidates from Atlantic Canada.

Again, I recognize that regional representation is important. So too is diversity. So too is ensuring that we have the most qualified jurist to fill the vacancy of Justice Cromwell. I have every expectation that there will be a significant number of qualified jurists from Atlantic Canada who will put their names forward.

Mr. Colin Fraser: I certainly concur that there are excellent jurists in Atlantic Canada, and no doubt we'll be well served by having their names on the short list for consideration. I certainly encourage those people to submit their application to the new process so they can be considered.

With regard to the Atlantic Canadian seat, if you will, on the Supreme Court of Canada, that representation from Atlantic Canada is considered, I think, in the mandate letter as one factor to be considered. I'm wondering if there will be different weight apportioned to the different factors. How do you see that playing out when making the decision on who the next Supreme Court nominee will be?

Hon. Jody Wilson-Raybould: As you quite rightly state, there are different criteria or factors for the advisory board to take into account, which I certainly will take into account in my review of the short list in the consultations, as will the Prime Minister upon making his recommendation to the Governor in Council to officially appoint the next Supreme Court justice. As we've discussed, regional representation is important and is a consideration, as is ensuring that we have a diversity of candidates brought forward who are reflective of Canadian society. Another important criterion that we have put in place and are committed to is having a functionally bilingual next justice of the Supreme Court.

It's equally as important, to underscore the realities and highlight the assessment criteria that are articulated publicly, that we have the most qualified, meritorious candidates. There are a lot of different categories in the breakdown of what merit actually means in terms of the next justice of the Supreme Court. There are a number of different criteria, as you rightly point out, all of which will be considered by the advisory board.

● (1435)

Mr. Colin Fraser: Mr. Chair, I will ask one more question.

[Translation]

I'll switch languages for this question.

Minister, you explained the new process for judicial appointments to the Supreme Court of Canada. Could you speak to how the new process compares with the one that was used to fill the Supreme Court vacancy the last time around? I'd like you to compare the two processes for us.

[English]

Hon. Jody Wilson-Raybould: The previous processes have been different for every appointment made to the Supreme Court of Canada. I can speak very confidently of the process that we're instituting as a government. The process that we are putting in place will ensure that there's openness, that there's transparency, and that there are many levels of accountability built into it to ensure that Canadians are provided with insight on how the process will unfold and that they will have a better understanding of how Supreme Court justices are appointed.

Further, we want to depoliticize the process by providing an independent advisory board with the ability to, for the first time, open up the process to candidates' putting their names forward. We are also ensuring that the advisory board will have the ability to headhunt, if you will, or to seek people who would be qualified jurists.

One of the reasons, or the major reason, we're putting forward a new process is to ensure that it's publicly known. Previous processes were not articulated in this manner, so that's a pretty stark difference between what we're doing now and what happened in the past.

I want to underscore that this is not to say that we do not have eminently qualified jurists of the highest calibre and integrity on the Supreme Court of Canada, an institution that I'm sure we are all very proud of for its integrity and the decisions it renders.

[Translation]

The Chair: Thank you, Mr. Fraser.

It is now over to you, Mr. Mulcair.

Hon. Thomas Mulcair (Outremont, NDP): Thank you, Mr. Chair.

I'd like to welcome the minister to the committee and thank her for being here today.

I'd like to begin by setting the backdrop, if I may, with a quick recap of the summer all of us parliamentarians have been experiencing. I think we're witnessing a fundamental shift in the executive branch's attitude towards the legislative branch, and, as we are seeing, it's becoming quite the problem. Allow me to explain.

We have the government's decision to deploy troops to Latvia without the least bit of discussion in Parliament, despite the fact that, when they were part of the opposition, the Liberals were very vocal about the need to consult Parliament on any decision to send our troops abroad. Then, we have the talks that took place in the Prime Minister's very own office with the parliamentary budget officer—not the Prime Minister's budget officer, I would point out, but indeed the parliamentary budget officer. No matter what example we use, we've seen this strong trend building yet again. In this case, a mere letter was sent out, not to every newspaper simultaneously, but to just two of them, *The Globe and Mail*, which published the letter in its print edition, and *La Presse*, which obviously no longer puts out a print edition on weekdays.

I tried to understand the legal nature of what we have before us today. I searched high and low to see what the law says about statutory instruments, but to no avail. I found a reference to publication in the *Canada Gazette*, but there's no mention of publication in the Gazette. We are trying, unsuccessfully, to figure out whether this involves a substantive change, as the Supreme Court indicated in *Nadon*. In its decision, the court deemed such a substantive change *ultra vires* of Parliament itself. The *ultra vires* finding is even more applicable when you have the executive branch making substantive changes of this nature. As my Conservative colleague, a former attorney general, pointed out, the century-old convention of appointing judges from regions of the country such as Atlantic Canada cannot simply be flouted as though it were business as usual. What we're dealing with here is completely short-lived.

My first question for the minister has to do with one of the first criteria she talked about today, that is, that a judge be able to understand and read both official languages. On that point, I want to thank the former member for Acadie—Bathurst, Yvon Godin, who fought so persistently to make bilingualism a requirement for the appointment of judges to the Supreme Court.

I have been in Parliament for nine years, and this is at least the third completely different set of criteria for judicial appointments to the Supreme Court I have seen in that time. If the minister is indeed sincere when she says she wants judges to be bilingual, why has she still done nothing about it? The Liberals have been in power for nearly a year. We've known since March that Justice Cromwell was retiring, and yet this is all being done in haste. It's a completely short-lived solution. There is absolutely nothing permanent about the process being announced today.

If the minister feels so strongly about making bilingualism a condition of judicial appointments to the Supreme Court, why, then, was she content to have the Prime Minister submit a simple letter to two newspapers? Given her party's majority in the House of Commons, why did she not use her authority to enshrine the process in law? Why be satisfied with such a short-lived solution?

● (1440)

[English]

Hon. Jody Wilson-Raybould: Thank you for the comments and your question. I think the question is with respect to bilingualism and the disclosure of that criterion.

We as a government require in this process—the first time a process has been clearly articulated in advance of the appointment or the identification of a nominee—that a Supreme Court of Canada justice be functionally bilingual. This government will ensure that the next appointee is functionally bilingual, as distinct from being bilingual. There is a distinction between those.

I believe what Mr. Mulcair is referring to is the letter that the Prime Minister wrote and provided to newspapers in highlighting the new process. I was very pleased that day to be able to further answer questions on the new process and to be available to all media to further describe the process that the Prime Minister articulated in those two articles that, I believe, my friend is referring to.

Certainly, I underscore that this process is meant to be open and transparent and accountable, and that is the commitment we will continue to maintain.

Hon. Thomas Mulcair: Thank you. I know that those are the government's lines, but we do have other questions, Mr. Chairman.

I want to refer to an article by Sean Fine that appeared in *The Globe and Mail*. Sean Fine is a very respected person who writes on the Supreme Court. He explained there was a committee of ministers, including both the minister here with us today and the government House leader, and that they were in the process of developing their own list. I took good note of a sentence that the minister used in her opening remarks. She said that “the advisory board will not take as its starting point an initial list...by the government”.

However, would it be fair to say that the government already has a pretty clear idea of what the ending point of this process should be? I want to ask the minister to take this opportunity to explain exactly what this other process was that was taking place simultaneously, prior to this unilateral announcement, without involving Parliament.

Hon. Jody Wilson-Raybould: One of the things I've learned as a new member of Parliament as of October of 2015 is not to believe everything one reads in the newspaper. I will state it clearly: there is no alternative process. There is no committee of ministers composed of myself and the House leader or otherwise. This process, and the start of a list, has been handed over to an independent advisory board. This is the process that we're moving forward with. Openness, transparency, and accountability are not talking points; they are the fundamental basis upon which this process must proceed and will proceed.

• (1445)

The Chair: You may have one more short question, Mr. Mulcair.

Hon. Thomas Mulcair: Mr. Chair, in our parliamentary system of government, openness and transparency start with a discussion with duly elected representatives of the public. The minister contends herself, as she just said, that she is talking to us now, but she is talking to us after they've already announced the result. There's no consultation with Parliament. Let's be clear on that. This was decided *in vacuo* by members of cabinet, and a letter was simply sent to two chosen newspapers.

With regard to not believing everything that you read in the newspaper, that was in *The Globe and Mail*, and *The Globe and Mail* was indeed one of the only two newspapers to have received the

Prime Minister's letter. One would have thought that was an indication that the minister thought it was a worthwhile place to put that letter.

I don't know how you explain the difference between Sean Fine's article and what the minister just said to us today, but I will say, Mr. Chair, that right now we're looking at substantive changes. If you go back to the Supreme Court's decision in the Nadon case, you will see that this type of substantive change is not something the executive branch of government can foist on parliamentarians, who represent the legislative branch of government. That's a serious problem, but it's also a consistent tendency of this new government, whether it was with motion No. 6 in trying to take away all powers of the opposition or whether it was on the Latvian deployment without any discussion in Parliament, despite the fact that the Liberals used to bemoan the Conservatives trying to do that—albeit they finally consulted Parliament—or direct talks between the PMO and the Parliamentary Budget Officer. Indeed, it's not the Prime Minister's budget officer; it's Parliament's budget officer. Parliament has always had a word to say.

I'm concerned about the way we're trying to proceed because we're being put before a *fait accompli*. This has already been decided in a vacuum by a small group of people, and the conclusions, as far as I'm concerned and from what I've heard, are preordained.

Thank you, Mr. Chair.

The Chair: Madam Minister, I think you might want to respond.

Hon. Jody Wilson-Raybould: I obviously disagree with what has been put forward. This process is not preordained. To say it in a different way, there are not any predeterminations. What we have sought to do is to describe in great detail how this process is going to unfold.

In terms of having members of Parliament involved in the process, I articulated my points in both my speaking points and in answers to other questions. Not only is there an opportunity today for members of Parliament to be involved, but there will also be other opportunities for them to do so in this process.

I will say in closing that there was no process last time. What we have sought to do is to clearly provide members with an understanding of the process and how the Supreme Court of Canada justices will be appointed through it. This is, in my view, a good-news story. It invites Canadians to have discussions, as Minister Cotler did in 2004, about this fundamental institution of our democracy and to have an understanding of the people who fill these seats.

The Chair: Thank you very much.

Mr. Bittle is next.

Mr. Chris Bittle (St. Catharines, Lib.): Minister, I want to thank you for the opportunity to discuss these issues.

The honourable member for Outremont suggests that this is a fundamental change to the way Supreme Court justices are selected, but at the end of the day it will be the Prime Minister who makes the selection going forward, as has been the case. Wouldn't you agree, though, that this is just a matter of opening up an opaque process that has existed for far too long and continuing with our commitment to openness and transparency?

Hon. Jody Wilson-Raybould: I agree with that proposition and, again, I would be very happy to further explain parts of the process, to hear feedback on the process, and recognize that within the process there's the opportunity for this committee to provide feedback on it, on the nominee, and other matters in terms of their selection.

What we have described in the process is not a formal change by way of legislation or the Constitution. This is a matter of policy and a priority that our government is putting forward, whether it be around functional bilingualism or around the recognition that diversity is important to the Supreme Court of Canada.

I'm really pleased to be here to talk about this process and would invite you, Mr. Bittle, and others to comment on it.

• (1450)

Mr. Chris Bittle: Thank you so much, Minister.

It's a structural issue, but the pool of judges that the panel will be able to select from will predominantly be white and male, given that only about 30% to 35% of judges in Canada are women. Does the requirement that judges be bilingual limit the ability to appoint more women, minorities, and indigenous people to the top court?

Hon. Jody Wilson-Raybould: On your initial comment, I'm not sure if you intended it this way, but the eligibility criteria articulated in section 5 of the Supreme Court Act—leaving aside the Province of Quebec—enable current sitting justices or former justices or jurists who have been called to the bar of their jurisdiction for over 10 years. It's not just limited to judges, but to jurists of the highest quality.

I have been asked that question on whether or not the requirement of a functionally bilingual candidate would limit the pool. I have every confidence that there are eminently qualified jurists across the country, whether they are indigenous or a visible minority or persons with disabilities, who have the ability to put their names forward.

Mr. Chris Bittle: Would the government be prepared to appoint an exceptional candidate, such as an indigenous judge or a person with a disability or an individual of a visible minority, on the condition that they learn English or French and become functionally bilingual?

Hon. Jody Wilson-Raybould: Our commitment as a government is to ensure that the appointment of the next justice to the Supreme Court is functionally bilingual. There have been discussions in the past with respect to previous appointees and their learning French or English, as the case may be, but in this case our commitment is to ensure that there is a functionally bilingual justice appointed to the Supreme Court. Again, if we're talking about the indigenous population, I recognize that there are eminent scholars and lawyers, as well as judges, who have an equal ability to put their names forward.

Mr. Chris Bittle: I think we can all agree that Supreme Court judges should be persons of exemplary character. Even though there are lawyers who have been appointed in our history—I believe there have been three, though I could be wrong on that point—it's typically been judges, and it can be difficult to determine a judge's character, because as judges they have to separate themselves from their community.

Is the committee going to look beyond a judge's decisions? Will they look to what these individuals did as lawyers as part of their community and the work they did within their community?

Hon. Jody Wilson-Raybould: I think that's a great question. I recognize that judges are human beings, and as human beings they bring a wealth of experience and background to the positions they hold, or potentially could hold. The main reason the qualifications and the assessment criteria we've set out are made publicly available is so that individual Canadians, members of Parliament or otherwise, have the ability to understand the basis upon which candidates will be assessed by the advisory board.

Certainly there is a recognition of having a firm understanding of the law and significant analytical abilities, as I said in my remarks, but there is also a recognition that personal qualities are paramount to the assessment criteria, and that diversity and what the individuals did in their previous capacities will be looked at.

I think central to the assessment criteria or the work of the advisory board will be the questionnaire that we have compiled, which is also available online. It asks a significant number of questions of potential jurists who want to put their names forward. That will provide insight into the individuals and their thought process, potentially, not only for the advisory board, but also will make available specifically questions with respect to the nominee that will be announced.

• (1455)

The Chair: Thank you very much.

We'll now go into the second round of questions. I'll just remind everyone that this round goes Liberal, Conservative, Liberal, Conservative, NDP.

This round will be started by Ms. Vandenbeld.

Ms. Anita Vandenbeld (Ottawa West—Nepean, Lib.): Thank you very much, Mr. Chair. I will be sharing my time with Mr. McKinnon.

Thank you, Minister, for being here today and for listening to the views of parliamentarians. It's a tremendous pleasure for me to be able to be part of this conversation.

I'd like to talk a little bit about the appointment of women to the court. We know, and there has been ample evidence, that when a deliberative body has both women and men on it, you see better decision-making. If you look at the jurisprudence of the Supreme Court and at the opinions that have been given by the female justices, you see some of that change in discourse, particularly around section 15 of the charter.

My question to you is this. You've spoken quite a bit about the diversity of backgrounds and life experiences. I agree that the definition of merit also ensures that the person can understand the societal implications and the diverse experiences that will bring people before the court.

[Translation]

Minister, more and more Canadian women are becoming lawyers, and more and more of them are becoming judges. But the situation is a bit different as far as the Supreme Court goes. The number of female justices rose initially and then dropped before going up again. Four women now sit on the Supreme Court.

How can we make sure that the new process guarantees gender equality on the Supreme Court?

[English]

Hon. Jody Wilson-Raybould: Thank you for the question and for being part of this committee. I without question recognize the importance of gender parity. If we go back to the early 1980s, to 1982 and the appointment of Justice Bertha Wilson as the first woman to the Supreme Court of Canada, a lot has changed since then. As you quite rightly point out, with the retirement of the Honourable Justice Cromwell, there will be four women and four men on the court, the chief justice obviously being Madam Justice McLachlin.

As with the recognition of the need for diversity in terms of unrepresented communities, there is a need to look and ensure representation of men and women. Given that the composition of the Supreme Court is nine justices, we won't have parity ever at the Supreme Court of Canada, at least under this current time, but I think your point about ensuring recognition of the need for gender parity is well taken.

Ms. Anita Vandenbeld: So it is your expectation that the short list will include multiple women.

Hon. Jody Wilson-Raybould: Well, as with having candidates from Atlantic Canada, I suspect and know that the number of eminent jurists that are of the female persuasion are equal to the number who are men.

Ms. Anita Vandenbeld: Thank you very much.

The Chair: Mr. McKinnon, do you want to finish the time on this round?

Mr. Ron McKinnon (Coquitlam—Port Coquitlam, Lib.): Okay.

Minister, the process you've outlined attempts to strike a balance between parliamentary involvement and the involvement of external, non-partisan inputs in the process. I'd like to delve a little further into the role that this committee will play in that process. I would like to thank you as well for being here as part of that involvement.

My understanding is that the external committee will basically filter through the list of applicants and come up with a short list of candidates based on the application of the criteria. What, then, will this committee do when you consult with this committee? Do we further shortlist that list? Perhaps you could just expound on that a bit.

● (1500)

Hon. Jody Wilson-Raybould: Sorry, just for clarification, when I consult with this committee...?

Mr. Ron McKinnon: Yes.

Hon. Jody Wilson-Raybould: Okay. In terms of the independent advisory board, you quite rightly point out that they will intake, through an open application process, qualified candidates and they have the ability to seek out other qualified candidates to put their names forward.

What the Prime Minister has done in the mandate letter and the terms of reference is task the board with looking at the assessment criteria that have been articulated and coming up with a short list of three to five names. Once the committee has come up with a short list of three to five names, that is the point at which I will take the list and engage in a series of consultations.

Certainly, as I stated, I will consult with Chief Justice McLachlin of the Supreme Court. I will consult and have discussions with the relevant Attorneys General on the short list. I will have conversations with justice critics. I will have discussions with members of this committee and the senate committee on constitutional and legal affairs. I will ensure, based on discussions, that I am able to recognize the balance that needs to be drawn between transparency and the necessary realities of privacy and the protection of privacy in terms of individuals who will be on that short list. I look forward to having those extensive discussions and ensuring that the recommendations that I make to the Prime Minister are based on those discussions in terms of the short list.

The Chair: Thank you very much.

Mr. Cooper is next.

Mr. Michael Cooper (St. Albert—Edmonton, CPC): Thank you, Mr. Chair.

Thank you, Madam Minister, for being here and for your presentation.

Before I ask some questions about the process that your government has unveiled with respect to Supreme Court appointments, I have one question that I want to ask in light of the comments that were made by Chief Justice McLachlin, as reported in the *Ottawa Citizen*, about the fact that we have in Canada 44 judicial vacancies, and the negative impact this is having on the administration of justice across Canada. It's on whether you have appointed, as of today, a judicial affairs adviser.

The Chair: I think this question may be slightly out of the scope of the nature of the presentation by the minister. I'm just wondering, Mr. Cooper, if that is the only question that you're going to have that's going to go outside the scope.

Mr. Michael Cooper: That's correct.

The Chair: Okay. Madam Minister, it's up to you if you want to respond.

Hon. Jody Wilson-Raybould: I'm happy to respond to the question, and certainly thank Mr. Cooper for the question and his diligence in raising the issue of judicial appointments on an ongoing basis.

As I've indicated previously and will continue to do, we have made, as you point out, appointments. We recognize the vacancies that exist and we are working diligently to fill those vacancies based on a new process much the same as what has been articulated here in terms of the Supreme Court, a process that will embrace diversity and again will ensure that the justices reflect the diversity of the country.

In terms of your specific question on a judicial affairs adviser, we, in my office, are supported by a significant number of individuals who have assisted in the previous appointments. It is my intention to have a judicial affairs adviser in place in due course.

Mr. Michael Cooper: Thank you, Madam Minister, for that answer.

Turning to the substance of why you are here today, in terms of the process that your government has unveiled, I have to admit I have some concerns with it. One of these is with respect to the fact that the process does not respect the long-standing constitutional convention of ensuring that Atlantic Canada has at least one seat on the Supreme Court, a convention that dates back more than a hundred years.

I was wondering if you might be able to comment on what authority the executive has to overturn a constitutional convention—the effect of which will change the composition of the court—unilaterally, without the consent of Parliament and without the consent of the provinces, as provided for in paragraph 41(d) of the Constitution Act of 1982.

● (1505)

Hon. Jody Wilson-Raybould: Thank you for the question.

Again, focusing on regional representation, I will underscore that regional representation is an important consideration criterion for this process. We recognize, as I said earlier, that this appointment process does not preclude an appointment from Atlantic Canada. The Prime Minister has, based on the policies and the approach, ensured that other criteria are present, such as diversity, such as ensuring we have a deep pool of qualified jurists for consideration of the advisory board.

That is not to say that regional representation is not important, and we recognize there will be candidates from the Atlantic on the short list that is provided to the Prime Minister.

Mr. Michael Cooper: Thank you, Minister. I certainly agree that diversity and all of those things are important. I also acknowledge what you said—that Atlantic Canada would not necessarily be precluded—but you've also said that the government may appoint someone other than an Atlantic Canadian, and I want to get back to the question of what authority the executive of the government has to do that unilaterally.

To that end, I would just draw your attention to paragraph 74 of the Nadon decision. I'll read it. It says, and I quote:

Parliament cannot unilaterally change

—so in this case, it's not even Parliament; it's the executive—

the composition of the Supreme Court of Canada. Essential features of the Court are constitutionally protected under Part V of the Constitution Act, 1982. Changes to the composition of the Court can only be made under the procedure provided for in s. 41...

—which, again, requires the consent of Parliament and the consent of all 10 provinces.

Could you perhaps clarify, in light of the clear pronouncement of the Supreme Court in Nadon, what authority the executive has to unilaterally overturn this constitutional convention related to the composition of the court?

Hon. Jody Wilson-Raybould: I appreciate your reading out that excerpt from the Nadon decision and I recognize that the amending formula to change the composition of the Supreme Court of Canada is unilateral.

In terms of regional representation, again I will underscore that we are not precluding having an Atlantic candidate as the next Supreme Court of Canada justice. It is not without precedent to diverge from the regional appointments. That said, regional representation, functional bilingualism, and diversity—diversity in particular—are very important criteria, and ensuring that we have qualified jurists who put their names forward so that we can make the appointment based on a significant pool of candidates is the approach, the policy, that this government is moving forward with.

The Chair: Thank you very much.

Ms. Khalid is next.

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

Thank you, Madam Minister, for coming in today to speak to us about this very important process that the government has unveiled.

I just want to bring to light that we have, I think for the first time in the history of Canada, the most diverse government or group of parliamentarians in general. I am currently the only visible minority in the room, and in general I'm the only woman who sits on this Standing Committee of Justice, so I understand how difficult it is to truly reflect diversity.

With respect to the Supreme Court, I understand that this one seat that is to be filled can't really accommodate all the diversity that we are looking for, but I would like to know how we are going to go about ensuring that people are represented through this election process—not just this time, but also going forward.

● (1510)

Hon. Jody Wilson-Raybould: Thank you for the comments and the question.

Again, diversity is an important criterion. What we have sought to do in terms of this selection process is make our assessment criteria public with regard to this appointment and future appointments to the Supreme Court of Canada. The next appointment, barring any other circumstances, will be in 2018, when the chief justice is set to retire at age 75. It's the intention to ensure that this process is followed for this appointment and future appointments and to recognize that built into this process is the ability for members of Parliament, the advisory board, and others to contribute and provide comments about how we can improve the process.

We talked earlier about the first woman who was appointed to the Supreme Court of Canada. The social realities of our country and what it means to be Canadian are a dynamic process, and I believe that a public recognition of the need for diversity on the Supreme Court of Canada is a substantive start to the process. It's an acknowledgement of the need to ensure, as we move forward, that the highest court in our land reflects the diversity that exists in the country.

Who the appointment will be is yet to be determined, as I've said. I don't think that you're the only visible minority around this table. I too come from a visible minority and I am very proud of that. I know that among the visible minorities in this country there are substantive jurists who can put their names forward this time and in the future. Moving toward a more diverse bench not only at the Supreme Court but at other courts in the country as well will not only provide differing perspectives and backgrounds and considerations in terms of legal concepts and cases and factual circumstances but will also provide an increased sense of confidence in the judiciary, in that people who appear before the justices will have the confidence that comes from seeing their reflections in those justices.

Ms. Iqra Khalid: Thank you for that.

We've talked a lot about functional bilingualism today, and I just want to point out that 13 out of the 15 of our past appointments have been functionally bilingual, even though it has not been a requirement, so we've had a very good process.

I want to talk a little bit about Quebec. The process that has been announced says that it will be varied somewhat for one of the three seats that are reserved for Quebec.

Can you provide some more precise information on how the process will be varied for that one Quebec appointment?

The Chair: I think you mean the three seats reserved for Quebec on the civil law appointments.

Hon. Jody Wilson-Raybould: Constitutionally, there is a requirement for three jurists on the Supreme Court of Canada to be from Quebec, given its unique legal traditions in civil law.

I'll say this: of the three Quebec justices on the Supreme Court of Canada, the next one, according to the timeline, will be up for retirement in 2032, so there is some time to consider appointments, although we recognize that circumstances might make that sooner.

However, in terms of the appointment process and what considerations would be made regarding the composition of the advisory board, again, there's the recognition that there is a unique legal tradition in Quebec, and while there is no specific determination of the composition for the appointment of a Quebec justice to the Supreme Court of Canada, it would be in recognition of that unique tradition and potentially additional members who would be on the advisory board from the province of Quebec. This is something that is to be determined in a substantive way, but I think that in terms of this process, the recognition that there needs to be a distinction regarding appointments from Quebec in terms of Quebec's unique constitutional realities and its legal system is important.

• (1515)

The Chair: You have time for one more short question.

Ms. Iqra Khalid: Thank you.

It's great to see that the proposed nomination process has received widespread approval from editorial boards such as that of the *Montreal Gazette* and from columnists and professors across the political spectrum, who have judged it to be an improvement and more transparent than the previous process.

How did the government select its three nominees on the advisory panel, and will this panel remain in place for future appointments as well?

Hon. Jody Wilson-Raybould: Thank you for the question.

In terms of the three government appointees to the advisory board, it's in the mandate letter from the Prime Minister to the chair and the members that their terms will be for six months. The order in council says that terms will be for up to five years.

In terms of how the government identified its candidates, I think without reservation that former prime minister Kim Campbell's contributions as the prime minister and in holding down various portfolios as a minister of the crown and her contributions to our country in her post-public life are well known. We very much appreciate seeing the positive responses to her appointment and we hold her in the highest regard.

In terms of the other two government members, both of whom are non-lawyers, and specifically so, these are eminent Canadians who in their own right have contributed to the fabric of our country in substantive ways. One is a former premier of the Northwest Territories. He has contributed to his nation and to the reconciliation with indigenous peoples, and he brings that perspective. The other has done a substantive amount of work in her community. That work, and the work of Stephen, is reflective of the commitment we have to diversity, and the recognition that non-legal members are important to provide perspective in terms of their various backgrounds and can contribute to discussions around assessment criteria.

The Chair: Thank you very much.

Now Mr. Nicholson and Mr. Schmale will share this time.

Go ahead, Mr. Nicholson.

Hon. Rob Nicholson: Thank you very much.

Thank you for your comments, Minister, with respect to Atlantic Canada and the importance of this being part of the consideration.

I have one question about that. If it is important and it's important to the Prime Minister and it's important to you, why wouldn't it have been listed as one of the criteria? You have a list of criteria that are important: functionally bilingual, of course, and representing the diversity of the country. Why wouldn't the importance of the person coming from Atlantic Canada have been mentioned in the criteria at this point in time?

Hon. Jody Wilson-Raybould: In the mandate letter from the Prime Minister to the advisory board is the recognition and the need to have candidates from Atlantic Canada on the short list of three to five.

Hon. Rob Nicholson: Let me ask you this. You said you're going to replicate the system that you're putting in place for the Supreme Court nominees across Canada for superior court judges. Did I get that right?

Hon. Jody Wilson-Raybould: What I meant—and I may have misspoken—is that we are intending, in terms of the question that was asked about appointments to superior courts, to reconstitute the process by which superior court justices are appointed. When I said replicating, I meant ensuring there is diversity in terms of the appointments and that there's an ability to reach out into the legal community to identify jurists who potentially would not normally be identified, to ensure that, for example, under-represented persons would have the ability to sit as superior court justices to transform the look of the bench.

Hon. Rob Nicholson: How soon do you think this process is going to be put in place? You must be concerned by the delays in getting appointments done. You must be considerably concerned by the comments of the Chief Justice of the Supreme Court that with respect to over 40 judicial appointments.... You've been in office about 10 months, and it seems to me that some process has to be put in place. What is the problem with going forward on this? Are you as concerned, as I'm sure I guess you would be, to hear from the Chief Justice about the challenges they're facing with all these vacancies?

• (1520)

Hon. Jody Wilson-Raybould: I appreciate the question.

I know this is beyond the scope of the Supreme Court of Canada appointments, but I'm happy to respond. I always take seriously comments made by the Supreme Court of Canada Chief Justice. I take seriously as well comments that are made around this table and in Parliament.

We are moving forward. We have appointed a number of justices, and we are moving forward with renovating the process by which justices will be identified. In doing so, we'll recognize that we need to fill vacancies. We are endeavouring to do that in a thoughtful, comprehensive way that achieves the objective that we have publicly stated in terms of appointments of justices that reflect the diversity of the country.

The Chair: Mr. Schmale is next.

Mr. Jamie Schmale (Haliburton—Kawartha Lakes—Brock, CPC): Thank you, Mr. Chair.

Thank you, Minister, for being here today.

My time is short, so I do apologize.

As you said that three out of five of the potential candidates for the Supreme Court nomination would be from Atlantic Canada, who may or may not be chosen by the Prime Minister at the end of the day, are you okay if that vacancy goes to someone in Quebec or Ontario or other parts of the country and gives, say, Ontario four of those seats, and with not having anyone from Atlantic Canada represented?

Hon. Jody Wilson-Raybould: Well, just to clarify, I didn't say that three of the five candidates would be from Atlantic Canada. What I did say, and what the letter from the Prime Minister articulates, is that there will be candidates on the short list from Atlantic Canada.

Mr. Jamie Schmale: Okay. I apologize if I wrote my notes down wrong.

Again, if the seat does go to someone from Quebec or Ontario, are you okay with nobody from Atlantic Canada being represented on the Supreme Court?

Hon. Jody Wilson-Raybould: I'm looking forward to our process unfolding. I'm certainly looking forward to the assessments that the independent advisory board will make with respect to the candidates who put their names forward. As part of this process I will have the opportunity, as I indicated, to consult on the short list, and that includes with Attorneys General of the relevant jurisdictions.

I know and am confident that the short list that is presented will reflect substantive jurists of the highest quality who are functionally bilingual and, to the extent possible, reflect diversity. I look forward to seeing that short list and doing the work that is required in this really important process.

Mr. Jamie Schmale: I thank you, Minister. I think we all agree that diversity and showing inclusiveness across the country is very important on the Supreme Court.

A point was brought up earlier by Mr. Bittle, and I would like to ask you again about it. Are you worried about the condition that the candidate be fully bilingual? Do you think that may hurt a potential candidate from Newfoundland and Labrador or possibly Prince Edward Island from being nominated or at least making it through the selection process?

Mr. Bittle did ask whether it could be adjusted to say that it would be a qualification that the candidate—he or she—could take the courses necessary, so that you don't rule out a section of the population.

Hon. Jody Wilson-Raybould: I appreciate the follow-up on the question. To restate, it's our commitment that the next justice who's appointed to the Supreme Court of Canada will be functionally bilingual, and when I say “functionally bilingual”, it means having the ability to understand oral and written arguments. That's not to say the candidate will have to be able to engage counsel in both languages, although that's a positive attribute that a candidate can bring forward.

With regard to limiting the pool of candidates in terms of the appointment process, I am confident there are jurists across the country in every jurisdiction who will meet the criteria as described in our public process, and I encourage all of those individuals to apply.

• (1525)

The Chair: Thank you very much.

Go ahead, Mr. Mulcair.

[Translation]

Hon. Thomas Mulcair: Mr. Chair, that's an excellent segue into my next set of questions. I'd like to know what "functionally bilingual" actually means.

We can see from the documentation that one of the qualifications for becoming a Supreme Court judge is that the individual must be "functionally bilingual".

My fellow member, Mr. Schmale, just said that candidates had to be fully bilingual as one of the conditions of appointment. The minister said, however, that that wasn't the case. She said appointees had to be able to understand oral and written arguments, not necessarily be able to speak the other language.

In an attempt to ascertain exactly what that means and in going over the various statements made by government members that day, I came across a comment by Joël Lightbound that was quoted in the media. In reference to the issue, he talked about candidates even having to pass a test.

Does the minister agree that candidates must demonstrate that they are functionally bilingual, no matter what that means in reality, even if it's having to pass a test? Is that part of the plan, or is Mr. Lightbound merely speaking for himself?

[English]

Hon. Jody Wilson-Raybould: Thank you for the question.

I haven't seen the article to which you refer, but it will be the responsibility of the office of federal judicial affairs to determine the assessment of bilingualism in terms of the nominee who is announced.

Hon. Thomas Mulcair: Mr. Chair, it's been a long time since we've been pushing for the criterion to be there that you have to be bilingual. Yvon Godin worked very hard on this. One of the reasons was—and she's an extraordinary chief justice—that Chief Justice McLachlin, looking down at a lawyer who had pleading in French, asked him to slow down because one of the judges—and she named him—didn't understand any French. Since we both know that everything's timed in the Supreme Court, what that means is that there's an objective disadvantage when someone is told to slow down so that the translation can catch up.

Mr. Schmale's question and mine are similar, and I don't think we have an answer yet. I'd like to be able to answer people when they ask me that question: what does it mean to be functionally bilingual? The documents that have been put out by the government say it would be an asset, just as we used to see "bilingualism an asset", which usually meant it didn't really matter. Now the minister just used the term "positive attribute" to mean that it would be a positive attribute if you can actually speak the language. It's hard to understand how somebody can be functionally bilingual if they can't speak the language.

Maybe the minister could help us understand what that criterion is. I've worked in this area for decades now. I can tell you the criteria for members of professional orders under the Charter of the French Language, but I don't know what "functionally bilingual" means. Maybe the minister can tell us what it means to be "functionally

bilingual" and what it is that might be tested, because one of our MPs just said that there might be a test associated with it.

Hon. Jody Wilson-Raybould: In terms of functional bilingualism, it is a requirement for a justice to be able to understand oral and written arguments without the aid of an interpreter. As I mentioned earlier, the ability of the justice to engage in conversations with counsel is not required, but it would be certainly a beneficial attribute of an individual wanting to put their name forward.

[Translation]

Hon. Thomas Mulcair: I just want to make sure that we're all on the same page here, that we all understand the same thing.

The minister has just told us that a candidate can meet the condition of being functionally bilingual even if they can't actually speak the other language. That's what she's just told us. In a nutshell, then, as long as the person supposedly has some reading and comprehension capability in the other language, according to the criteria, they are considered functionally bilingual even if they can't speak the language.

I have to tell you that when I saw the word "functionally", that was a first for me—the first time I'd come across a requirement of "functionally bilingual". But, here we have it from the minister's own mouth. Even if the person can't speak the other language, they will be deemed to be "functionally bilingual".

[English]

Hon. Jody Wilson-Raybould: I've articulated what "functionally bilingual" means, and the assessment will be developed in the office of federal judicial affairs.

The Chair: You may have one more question, Mr. Mulcair.

Hon. Thomas Mulcair: What does that mean, "the assessment will be developed in the office of federal judicial affairs"? What does that mean?

• (1530)

Hon. Jody Wilson-Raybould: In terms of the—

Hon. Thomas Mulcair: It's going to be a test?

Hon. Jody Wilson-Raybould: Sorry?

Hon. Thomas Mulcair: Is there going to be a test?

Hon. Jody Wilson-Raybould: That will be something for the office to determine, to be conclusive that the candidate that is being brought forward is functionally bilingual, meaning that the justice has the ability to understand oral and written arguments without the aid of an interpreter.

The Chair: You may have one last question, Mr. Mulcair.

Hon. Thomas Mulcair: It's a remark, and it's a compliment to the minister and the government on one specific point. Insistence on representation of the broad diversity of Canadian society is something with which we're in full agreement and for which we applaud the government.

The Chair: Thank you very much, Mr. Mulcair, and thank you very much to all the members of the committee for your profound and incisive questions.

Thank you very much, Minister, for your clear presentation and for taking so much time with the committee to answer our questions. Thank you very much.

Hon. Jody Wilson-Raybould: Thank you.

The Chair: Ladies and gentlemen of the committee, I don't have anything else on the agenda today. Does anyone else want to raise anything before we adjourn?

If not, thank you very much, everybody. The meeting is adjourned.

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