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Chair: Ms. Iqra Khalid



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• (1000)

[English]

The Chair (Ms. Iqra Khalid (Mississauga—Erin Mills, Lib.)): I call this meeting to order. This is meeting number 41 of the Standing Committee on Justice and Human Rights.

Because there are so many members who are in the room today, I'll just quickly go over our hybrid rules pursuant to the House order of January 25, 2021 for members attending in person in the room and remotely using the Zoom application. Today's proceedings will be made available via the House of Commons website, and the webcast will always show the person who is speaking rather than the entirety of the committee.

Given the ongoing pandemic situation and in light of the recommendations from health authorities as well as the directive of the Board of Internal Economy on January 28, 2021, [*Technical difficulty—Editor*] safe, all those attending the meeting in person are to remain two metres physically distanced, so please make sure you are doing that, and you must wear a non-medical mask when circulating in the room. It is highly recommended that the mask be worn at all times, including when seated. You must retain proper hand hygiene by using the provided hand sanitizer at the room entrance.

As the chair, I'll be enforcing these measures for the duration of the meeting, and I thank members in advance for their co-operation.

To ensure an orderly meeting, I will outline a few rules. Interpretation services for members are available for this meeting. You have the choice at the bottom of your screen, with the globe icon, to select either English or French as the language you would like to listen to. You can speak in any language, and interpretation will follow suit. Just make sure that when you are speaking, you are speaking slowly and clearly so that interpretation is not an issue.

For members who are participating in person, proceed as you normally would with your microphone at your desk.

Before speaking, please wait until I recognize you by name. If you are on the video conference, please click on the microphone icon and unmute yourself. For those in the room, your microphone will be controlled as normally by the proceedings and verification officer. When you are not speaking, your microphone should be on mute.

This is a reminder that all comments by members and witnesses should be addressed through the chair.

With respect to the speaking list, the clerk and I will do our best to maintain it, and I have time cards for members. I have a one-

minute and a 30-second card to help you keep track of your time as our witnesses are making opening remarks and as members proceed with their questions.

Just before we get right into the weeds, I'll welcome Mr. MacGregor back to our committee meeting. He will be replacing Mr. Garrison today.

Welcome, Mr. MacGregor.

At this time I will invite the Right Honourable Kim Campbell and the Honourable David Lametti, who are both here to speak specifically about the nomination process of the Honourable Mahmud Jamal to the Supreme Court of Canada.

I'll just note for members that *House of Commons Procedure and Practice*, third edition, states on page 1,078, "There are no specific rules governing the nature of questions which may be put to witnesses appearing before committees, beyond the general requirement of relevance to the issue before the committee", and that is the Supreme Court nomination.

With that, I welcome our first speaker of the day, the Honourable David Lametti.

Please go ahead. You will have seven and a half minutes to make your remarks.

• (1005)

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

[Translation]

Good morning, honourable colleagues.

To begin, I would like to acknowledge that I'm on the traditional territory of the Algonquin Anishinabe people, in Ottawa.

[English]

I would also like to thank the members of the committee, as well as the chair, for convening this special session. As always, your contribution in helping to shape the character of one of Canada's most important and enduring institutions is deeply valued.

[Translation]

I would also like to thank the Right Honourable Kim Campbell for being with us this morning, but also for her work in the process that I'll highlight later.

[English]

The Supreme Court of Canada is a place close to my heart. It is the place where, years ago, I began my own legal career as a law clerk to a cherished mentor and friend, the late Honourable Peter deCarteret Cory. His example serves to remind me that our great public institutions depend on the dedication and integrity of those who occupy them.

It is my privilege today to speak in support of the Honourable Mahmud Jamal, a nominee who I am confident will honour the highest ideals of the Supreme Court and help to guide the evolution of Canada's laws with wisdom, fairness, humility and a deep understanding of the society he serves.

I offer my heartfelt congratulations to Justice Jamal, and I look forward to his appearance before parliamentarians this afternoon.

I would also be remiss not to take this opportunity to acknowledge the lifetime of contribution and service to Canada, and to the rule of law, of Justice Jamal's predecessor, the Honourable Rosie Silberman Abella. Justice Abella is a trailblazer and a jurist of remarkable intellect and character, and she has left an indelible mark on Canada's legal landscape. She will be deeply missed on our highest court, but I have no doubt that she will continue to make important contributions to our public life in other roles.

[Translation]

Justice Jamal is the fourth person appointed to the Supreme Court by Prime Minister Trudeau as part of the government's modernized judicial selection process that was implemented in 2016. This process prioritizes individual merit, as well as the values of social representativeness and transparency. It requires every person seeking appointment to our highest court to apply by responding to a rigorous and publicly accessible questionnaire. It requires individuals to demonstrate not only legal and professional excellence, but also how their personal experiences have shaped their views and understanding of Canadian society in all its diversity. This process also requires that all candidates be assessed against consistent, transparent and merit-based criteria, first and foremost, by an independent advisory board of highly qualified individuals that reflect the highest standards of communities across Canada.

[English]

The independent advisory board for Supreme Court appointments, or IAB, is the heart of the selection process. I am pleased to be joined today by its chair, the Right Honourable Kim Campbell, who has contributed so much to the success of the Supreme Court appointment process through her stewardship of four nominations, including today's. Ms. Campbell never fails to inform and support this committee with characteristic intelligence and candour, and we owe her a deep debt of gratitude. I am looking forward to hearing her remarks today.

I am also deeply grateful to the individuals who served with Ms. Campbell as members of the IAB. These members are nominated not just by the government, but by organizations committed to the rule of law and to serving Canadians. They include the Canadian Bar Association, the Federation of Law Societies of Canada, the Canadian Judicial Council and the Council of Canadian Law Deans. The thoughtful nominees of these organizations and the

dedicated service of these individuals on the IAB ensure that the judicial selection process mirrors a critical aspiration for the Supreme Court itself: that it truly reflect our society and be a place in which Canadians can see themselves and their life experiences represented.

• (1010)

[Translation]

The current selection process was initiated by Prime Minister Trudeau on February 19, 2021, to fill the position that will soon become vacant when Justice Abella retires.

As publicly stated in its terms of reference, the Independent Advisory Board for Supreme Court of Canada Judicial Appointments, or IAB, has been tasked with recommending candidates of the highest calibre who are functionally bilingual and representative of Canada's diversity.

In keeping with the long-standing regional representation agreement, this selection process was open to all qualified individuals in Ontario. Interested candidates were given six weeks to submit their applications, after which the IAB reviewed them. This review included consultation with the Chief Justice of Canada, references and stakeholders, and personal meetings with some of the candidates. The IAB conducted its work in a confidential manner, as required by its terms of reference, and each member of the IAB signed a confidentiality agreement in advance.

At the end of the process, the IAB provided the Prime Minister with a report containing a shortlist of individuals, all of whom met the publicly announced merit criteria and who were the most distinguished. I then consulted on the shortlisted candidates to provide advice to the Prime Minister.

[English]

I consulted with chief justices, including the Chief Justice of Canada, the Attorney General of Ontario, cabinet colleagues, opposition justice critics, members of this committee and the Standing Senate Committee on Legal and Constitutional Affairs, and senior members of the bar. The Prime Minister then made his final selection.

I wish to stress, again, the confidentiality of this process, which is essential in ensuring that exceptional candidates come forward and speak to their life experiences and skills with honesty and candour. Members of Parliament, senators, and members of the bar were each required to complete a non-disclosure agreement.

All persons involved in conducting the process, including me, the Prime Minister, and members of the IAB, understand the importance of confidentiality in providing candidates with the fair treatment they deserve and the rigorous scrutiny that an appointment to the Supreme Court demands.

I would like to now invite the Right Hon. Kim Campbell to speak to the process from her perspective.

The Chair: Thank you very much, Minister Lametti.

The Right Honourable Kim Campbell, please go ahead with your opening remarks.

Right Hon. Kim Campbell (Chairperson, Independent Advisory Board for Supreme Court of Canada Judicial Appointments): I've only been doing this Zoom for over a year, and I still forget to unmute myself.

I want to say first of all, Madam Chair and members of the committee, how nice it is to be with you.

Madam Chair, you and I have met before. Congratulations on chairing the committee. It's a great honour. I'm sure you find it most challenging. It's one of the best committees to be sitting on, as I'm sure you all agree.

I don't want to get into huge details, but I'm happy to answer your questions. If I could, I'll give you a broad brush stroke approach.

A couple of years ago, during the Canada 150 celebrations, I was doing a panel at the Supreme Court of Canada, on the occasion of Canada 150, on the relationship between government and the courts. My co-panellist was the Honourable Bob Rae. Bob Rae and I have disagreed upon a number of subjects over the course of our years. He was premier of Ontario when I was prime minister, and I think I referred to him as behaving like he had a lemon in his mouth when he was meeting with me, but we've gotten on much better over the years.

One of the things he said at the panel on the Supreme Court was that he preferred the old "tap them on the shoulder" approach to appointing Supreme Court of Canada justices. It was this sort of mystique that you became a distinguished jurist in your province, you became distinguished at the bar, and then one day the Minister of Justice or a justice would come along and the Prime Minister would tap you on the shoulder and ask you to go to the Supreme Court of Canada.

However, as many of you will well understand, not all shoulders are equally tappable, and a lot of people who could make extraordinary contributions to the development of the law in our country are not necessarily on the radar screen of those who have traditionally done the tapping.

That was another subject on which I disagreed with the Honourable Bob Rae, but I think that for this process to work well, it has to work well at all of its stages. The first mandate that we have as the independent advisory board is to try to increase the number of candidates, and that is a bit harder than it sounds because, very often, people of distinction at the bar, jurists, are very Canadian, and they don't like to be seen to be putting themselves forward.

Right from the very first process—four processes ago—we worked very hard to try to encourage people who recognized colleagues as outstanding candidates to encourage those colleagues to apply. The system I developed was that when we got a recommendation.... We often would get a recommendation from a judge or from a member of the bar. One recommendation came from a student at the McGill law school. Anyone who is interested in the court can certainly communicate. What we do then is that I write a letter to the person who has been nominated and I say, "Your name

has been forwarded to us as an outstanding candidate for the vacancy on the Supreme Court of Canada. Please review these materials and, if it interests you, we warmly encourage you to apply." What this means is that many people who are otherwise a bit shy about seeming to put themselves forward can then say, "Well, I was asked to apply," and certainly they were.

That is one of the challenges, but also, we have a very long list of organizations of lawyers and jurists across the country that we contact every time there's a vacancy. We ask them to circulate to their own members and to identify members in their own organizations who would make good candidates for the Supreme Court of Canada, because, again, there are very often groups of people who don't necessarily see themselves reflected in the current cast of characters and don't [*Technical difficulty—Editor*]. From the Prime Minister's perspective, the greater the diversity on the court, the greater it is for Canada. People who are from under-represented groups are certainly encouraged to consider themselves and to apply.

That is our purpose: to try to maximize the number of candidates. Even so, for many people—perhaps it's less the case in Ontario—going to the Supreme Court of Canada is a huge decision because, as you know, you have to relocate to the national capital region. It creates a much narrower life in the sense that you have to maintain your independence, so it's very important for the judges that they be able to create a community to provide support. Not all judges find it equally congenial when they go. It's a big personal sacrifice for many to uproot themselves, and many have reservations about it.

• (1015)

I think I mentioned the last time I spoke to you that there is now a considerable number—including a former chief justice—of retired Supreme Court of Canada justices. It would be very valuable if they were to have round table discussions across the country with members of the bar and the judiciary, to talk about what life is like on the court, both to encourage people to apply and to create realistic expectations, because it is a unique judicial appointment.

For those who come from Ontario and live not far from Ottawa or the national capital region, or for that matter, Montreal, it is perhaps less daunting. Certainly, when we were doing the western position, there were some candidates from British Columbia, for example, who were outstanding and bilingual and the works. We had the sense that they hoped we wouldn't nominate them, because it would be such a challenge for them.

Of course nowadays, professionals tend to have spouses who are also professionals, whether it's wives with husbands or husbands with wives. I think it is important to acknowledge what a commitment it is for someone to agree to sit on the Supreme Court of Canada.

One of the first things we do as a committee is meet with the Chief Justice to discuss all these things. We get his—and previously, her—reflections on what the court needs. but also on some of the aspects of the work of a Supreme Court of Canada Justice that could help us identify candidates who would make the best contributions.

The other thing I would say—and some of you will have heard me say this before—is that I am very gratified to be recognized as the chair of this committee, but it really is a committee of seven people. My role, as the chair, was to make sure that each member of the committee could make a contribution. As you know, we have four representatives of legal organizations, as the minister has mentioned, but there are always two members of the community who are not lawyers.

I cannot say enough about how excellent their contribution is. In all four of the procedures that I have been involved in, the non-lawyers were incredibly astute, very thoughtful and often raised very interesting points of view that enriched our discussions. I think there would be unanimous agreement on the formula of ensuring that it isn't just lawyers talking to lawyers, but that there are people who have not been involved in the legal profession, but who are very engaged as citizens, who are often quite astute at understanding what is at stake and how important it is.

In the operation of the committee, we start our work when all of the applications are in and the materials have been circulated. This year we had to work virtually, so the materials were circulated on our secure tablets. We didn't have the written versions that we used to have.

I will say that I missed the personal contact that we had when we worked in Ottawa: the opportunity to have meals together, to fatten ourselves up with cupcakes and to chat. We missed that, but the members were all incredibly supportive and responsive to trying to create a sense of community.

One of the things that's always been important to me is to avoid any suggestion of groupthink or pressure, or one person having more influence on another. Happily, they're all pretty independent people, so that's not so hard to do. I try to make sure they review the materials independently. Then we come together and do our first go-round of “yes”, “no” or “maybe”, to see where there is consensus and where there isn't.

The whole process is designed to try to make sure that seven people work hard to achieve the consensus necessary to create a short list, but also that each person does so feeling free to express fully their views and attitudes.

I'll just conclude, because I've had my warning sign—and I am happy to answer all of your questions—by saying that the candidates are really outstanding. Not only is it a hard job to be on the Supreme Court of Canada, but it's a bit of an effort to apply to be considered for the Supreme Court of Canada. There is a long and difficult questionnaire, and it requires all sorts of issues to be discussed and references to be assembled.

In the four times I have been involved in the process, it has always been very encouraging to see the quality of the people who apply. Some of them are maybe a bit junior but full of promise. There hasn't been a single application that we felt was delusional or whatever. On the contrary, and what we do is try to compare them to a peer group and to the outstanding members of the current court.

• (1020)

We really do have an enormous amount of talent, diverse talent, and interestingly enough, bilingual talent among the members of the legal profession in the country.

I'll stop here, because I think you may want to ask questions.

I just want to say that, from my perspective—and this is the fourth time I've spoken to you about it—I thought the process went well. I felt that it was inspiring but also challenging for the members, who worked very hard to try to achieve our goal of giving the Prime Minister a short list of three to five candidates that will keep him up at night trying to figure out which of these outstanding people to name to the court. I think this year we succeeded in doing that as well.

I'll end here, and I'd be happy to answer your questions.

The Chair: Thank you very much for that.

We'll go into our first round of questions.

Hon. David Lametti: Madam Chair, I thought it was coming back to me so that I could introduce the candidate.

The Chair: Do I have the consent of the committee to give Mr. Lametti a couple of minutes to introduce the candidate?

Some hon. members: Agreed.

The Chair: Go ahead, Mr. Lametti.

Hon. David Lametti: Thank you very much, Madam Chair.

Thank you very much, Madam Campbell.

From this exceptional field described by Madam Campbell, Justice Jamal emerged as the individual best qualified to serve on the highest court in our justice system. I am supremely confident that Justice Jamal, based on his lived experiences and demonstrated commitment to the rule of law, will serve Canada and its peoples with the same verve and commitment as that of his predecessor on the court.

Justice Jamal makes history as the first person of colour to be appointed to our highest court and the first person of the Baha'i faith. His story is not only one of excellence in the legal profession, in scholarship and in voluntary service to his community, but also one of navigating the role of difference in our society, often leveraging the role of counsellor and advocate to bridge the inequalities that too often attach to our differences.

• (1025)

[*Translation*]

Justice Jamal has been involved as a lawyer in some of the most important constitutional cases of the last few decades, so the Supreme Court is obviously no stranger to him. He has regularly volunteered his skills and dedication to people and organizations of modest means. He has studied the laws of our country extensively, taught and written numerous publications on the subject, demonstrating great intellectual stature and a commitment to supporting the evolution of Canada's legal institutions and traditions. Throughout his career, he has enthusiastically embraced opportunities to work in both French and English, including as an appellate judge. In that capacity, he has served the Ontario Court of Appeal admirably as a fair and thoughtful judge with a keen sense of analysis.

I'm proud of his appointment, and I'm confident that all Canadians will be, too.

[*English*]

Before I conclude, Madam Chair, I would like, on a somewhat lighter note, to refer to a hockey analogy that was once used to highlight Justice Jamal's strong reputation. I feel that such an analogy is very timely, given that my hometown team, the Montreal Canadiens, is battling for a berth in the Stanley Cup final. It was a description of a lawyer's reaction when she discovered that Justice Jamal, who was then a member of the bar, would be the lawyer on the other side. It was said that opposing counsel must know what it feels like "to show up for a game of shinny and find Wayne Gretzky facing off against her". Madam Chair, I believe this analogy aptly reflects, in classic Canadian fashion, Justice Jamal's exceptional legal skills.

I thank the Right Honourable Kim Campbell and her colleagues on the IAB.

I look forward to your questions.

The Chair: Thank you very much, Minister Lametti.

That was a great reference. If you know our committee, we are very much into hockey and are all rooting for the Habs, except for me. I was very much into the Leafs and was quite devastated when they lost.

We'll go into our first round of questions, starting with Mr. Cooper.

Mr. Cooper, you will have six minutes. Please go ahead.

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

Thank you, Minister Lametti and Ms. Campbell.

I want to first of all take this opportunity, Ms. Campbell, to acknowledge your work as chair, as well as that of your committee, which has resulted in the appointment of someone highly distinguished and eminently qualified to serve on the Supreme Court, Justice Jamal. I look forward to the opportunity to ask him questions later this afternoon.

Minister Lametti, I'll direct my questions to you. In a June 10 CBC report, federal sources said that the Liberal Party's private

database, Liberalist, which tracks Liberal Party members, supporters, volunteers and donors, was no longer being used to vet judicial appointments. On what date did the use of Liberalist to vet candidates cease?

Mr. Arif Virani (Parkdale—High Park, Lib.): Madam Chair, on a point of order, I wonder if you could establish the relevance of Mr. Cooper's line of questioning.

We're not talking about the general appointments process. We're talking about a very specific appointments process that relates to the independent advisory board, the role of Madam Campbell on that board, and how that produced an appointment of the calibre of Justice Jamal.

Could you make a determination as to whether this line of questioning is relevant to that process?

The Chair: Thank you, Mr. Virani.

• (1030)

Mr. Michael Cooper: Madam Chair, on the same point of order, as you noted in your opening remarks, there is a fair bit of leeway afforded to committee members to ask witnesses questions. I would submit that having regard for that, the question is pertinent to the judicial appointment process more broadly.

I would say that in light of these substantiated allegations of political interference by the PMO, including the use of Liberalist, the perception that the integrity of the appointment process has been undermined is real. It is important—

Mr. James Maloney (Etobicoke—Lakeshore, Lib.): I have a point of order, Madam Chair. I want to echo Mr. Virani's comments.

Mr. Cooper, using the language that these have been substantiated, with all due respect, is not accurate. They're allegations—baseless allegations, in my opinion. They have no place in the discussion today.

Mr. Cooper started his questioning by acknowledging the high calibre of the appointment of Justice Jamal, and I think this discussion takes away from that. We should move on and focus on the issues at hand.

The Chair: Thank you, Mr. Maloney.

Is it on the same point of order, Mr. Moore?

Hon. Rob Moore (Fundy Royal, CPC): It is, Madam Chair. I'd like us to get going.

On that point of order, Mr. Cooper barely got his question out. Minister Lametti is a seasoned pro. He knows how to answer questions. He's used to difficult questions. Let's allow Mr. Cooper the ability to ask his questions. He has only five minutes, and then the other members get to ask their questions. They can ask whatever lob ball they would wish of the minister.

I'm hoping that we can get on with the meeting.

The Chair: I do, too. Thank you, Mr. Moore.

Mr. Clerk, I see your hand raised. Is that a point of order from Monsieur Fortin?

Please go ahead, Monsieur Fortin, briefly, on the same point of order.

[*Translation*]

Mr. Rhéal Fortin (Rivière-du-Nord, BQ): Thank you, Madam Chair.

I rise on exactly the same point of order, Madam chair.

First, I'd like to point out to my colleagues that I have no doubt about Justice Jamal's competence. I do not dispute his competence at all. We'll meet with him later, and we will be able to ask many questions on a number of topics. That's great. I thank the committee and the minister for that opportunity.

However, we are currently meeting with the Minister of Justice and the chairperson of the Independent Advisory Board for Supreme Court of Canada Judicial Appointments, the IAB. The subject of the meeting is the appointment process. That's what Mr. Lametti and Ms. Campbell have told us about. We need to ask questions about the appointment process.

We may or may not like Mr. Cooper's question. I remind you that I'm not a member of the Conservative Party, but we're talking about the appointment process. If any of us don't want to hear about it, we can move to another committee. Right now we're talking about the IAB appointment process. I think it's relevant, and I, too, have questions about this process. If our questions aren't about that, I don't know what we're doing here.

[*English*]

The Chair: Wonderful. Thank you very much, Mr. Fortin.

Members, please keep your questions around the Supreme Court nomination process. We're not talking about the general appointment process for all of our judiciary. We're here specifically to deal with the Supreme Court nomination.

Mr. Cooper, please go ahead, and if you could, reframe your question to that scope that we're discussing today.

You have two minutes left. No, you are two minutes into the clock.

Mr. Michael Cooper: I'm two minutes into the clock.

Well, I will just invite the minister to answer the question that I posed to him. I think Canadians deserve an answer to it.

The Chair: Go ahead, Minister Lametti.

Hon. David Lametti: Thank you very much, Madam Chair.

Thank you, Mr. Cooper, for your question. It's always good to see you again.

I have answered that question many times publicly, Madam Chair. In my evaluation of ordinary judicial appointments or elevations, I do not use Liberalist in the evaluation of candidates and in putting those names forward. I can't speak to the source or the nature of the article to which he referred.

I can say with respect to this Supreme Court nomination process, the IAB, and in terms of my deliberations with the people I've mentioned to find out what people thought of the shortlisted candidates, Liberalist was nowhere near that process. [*Technical difficulty—Ed-*

itor] that both the ordinary judicial appointment process and this process are of the highest quality. They are transparent and serve the needs of Canadians.

If you look at both the recommended appointment today and the appointments I have made since becoming minister, they are of the very highest quality—people of all political stripes and people from all walks of life, with the highest amount of diversity in Canadian history.

• (1035)

Mr. Michael Cooper: Minister, are you denying that Liberalist has been used?

Hon. David Lametti: As I have said publicly on a number of different occasions, Mr. Cooper, once I have made my recommendation, we do a number of due diligence inquiries, if you will. One is looking at political donations. Another is looking at all the sorts of media that a person may have been involved with, just to get a sense of, really, managing information. However, I have said—

Mr. Michael Cooper: Minister, my time is short and I want to be respectful of you. I have a lot of respect for you, but I did ask a very simple question on the very simple—

Hon. David Lametti: I want to be respectful and finish your answer, Mr. Cooper, which is that—

Mr. Michael Cooper: Minister, I'm asking you, are you denying, yes or no, that Liberalist has been used?

Hon. David Lametti: Mr. Cooper, please let me answer the question. I have told you that I do not use Liberalist in the evaluation—

Mr. Michael Cooper: You have not—

Hon. David Lametti: —or identification of candidates.

Mr. James Maloney: There is a point of order, Madam Chair.

Mr. Arif Virani: Madam Chair, on a point of order, could the witness be allowed to answer the question? We're not here to badger the witnesses, let alone the Minister of Justice. Could the minister be allowed to answer the question put by Mr. Cooper?

Thank you, Madam Chair.

The Chair: Thank you, Mr. Virani. I was just about to cut in myself.

Mr. Cooper, I've stopped your clock so that we're able to have this conversation. I think the way we've been able to function as a committee is that a member asks a question and a witness answers that question. Keep that respectful dialogue going, if that's okay.

Please, Minister Lametti, go ahead with your answer.

Hon. David Lametti: I have only one other thing to add, Madam Chair. Never has a candidate that I have submitted been refused in any way, shape or form. The process is an excellent process. It's based on quality. It's based on the recommendations of an independent judicial appointment committee in the various provinces across Canada. Some provinces have more than one. I look at the quality of the candidates. I look at the needs of the courts. I consult with chief justices on the needs of the court. We consult with various members of the legal profession, who are placed to give opinions.

I think we have put together an outstanding set of quality and diverse candidates—

Mr. Michael Cooper: Minister, with respect, I've given you some leeway to answer a very simple question: Has Liberalism been used, yes or no, in the vetting of judicial appointments, not necessarily just by you?

Hon. David Lametti: I can [*Technical difficulty—Editor*] my role in the process. My role in the process is, as I have pointed out, Mr. Cooper, the main role in the process. It is taking candidates that are recommended by the judicial appointment committee and deciding, from amongst those highly recommended and occasionally recommended candidates, which candidates will move forward.

The Chair: You have 10 seconds left on the clock, Mr. Cooper.

Mr. Michael Cooper: Well, I guess my time has expired. Unfortunately, I didn't get an answer from the minister.

The Chair: Thank you, Mr. Cooper.

Hopefully, the next round will go a little more smoothly.

Madame Brière, you have six minutes. Please go ahead.

Mrs. Élisabeth Brière (Sherbrooke, Lib.): Thank you, Madam Chair. I'll share my time with my colleague Randeep Sarai.

Good morning to our witnesses.

[*Translation*]

As a francophone Quebecker and defender of the French language, I was delighted to see that the candidate chosen was bilingual.

Can you tell us more about the importance of the bilingualism criterion in the selection process?

Hon. David Lametti: Thank you for your question.

From my experience as a Supreme Court law clerk, I can tell you that I have realized the importance of bilingualism in both the preparation of briefs and oral argument. Each word and sentence is weighed. Sometimes there are idiomatic phrases and concepts, which are very difficult to translate.

So it's very important that the judge be able to understand the language of argument and the language of the brief, especially when the length of arguments or the number of pages of briefs are limited. It's essential that the meaning of the arguments are conveyed. I think it's crucial.

Perhaps Ms. Campbell would like to add some comments.

• (1040)

Right Hon. Kim Campbell: I'll add a few words.

In discussions with the Chief Justice, he stressed the importance of bilingualism in the Supreme Court of Canada.

[*English*]

One of the things that's important also, and that maybe many Canadians do not realize, is that the workload of the Supreme Court of Canada is actually heavier than the workload of the Supreme Court of the United States, because many cases come to our court. Because of the fact that pleadings will come in both languages, and counsel will appear in both languages, the more the justices themselves are competent in the two languages, the more effective is their use of time. I think over the years, the court [*Technical difficulty—Editor*] of translation.

Even the judges.... For example, former chief justice Beverly McLachlin has said that she continued to work on her French all the time she was on the court. The more the court can function comfortably in both languages, I think the easier it is for them to manage the quite difficult workload that they have.

Quite aside from our constitutional representational concerns in both official languages, I think for the nature of our court, anything that makes it possible for the judges to communicate one with another, but also with the counsel and the participants who are pleading before them, comfortably, fully and clearly, is a very, very important value. With our committee, it was one of our terms of reference that was non-negotiable. I think we all quite understood the functional importance of it.

Mrs. Élisabeth Brière: Thank you, both of you, for your time and your expertise.

The Chair: Mr. Sarai, please go ahead.

Mr. Randeep Sarai (Surrey Centre, Lib.): Thank you for being with us today, Minister Lametti and the Right Honourable Kim Campbell. This is a historic nomination for the country. Ms. Campbell, having been the first female prime minister of this country, knows what history is like. This is a historic day that the first person of colour is being nominated to the Supreme Court of Canada.

I understand that it's up to the candidate to self-identify as a minority, and that during the process that led to the appointment of our most recent Supreme Court justice, there were no self-identified minorities. Besides the nominee that we have here today, Mr. Justice Jamal, were there many other self-identified minorities amongst the candidates?

That's for the Right Honourable Kim Campbell.

Right Hon. Kim Campbell: In the group there were 18 candidates. Seven self-identified as visible minorities. Three identified as ethnic, cultural or other minorities. Five identified as indigenous. Zero identified as having disabilities. One identified as LGBTQ.

I should just say, on the importance of expanding the representation of the court, that as the first woman minister of justice and attorney general of Canada, in 1992 I appointed Rosalie Abella to the Court of Appeal of Ontario. I was very aware at that time of the importance of expanding the number of voices. We've continued on this committee to be very gratified at the diversity of candidates that we've been able to vet.

Mr. Randeep Sarai: Thank you, Ms. Campbell. Is there a criterion for adding different endeavours and perspectives to the Supreme Court, and how much is the background of the current judges taken into consideration when looking at nominee candidates?

• (1045)

Right Hon. Kim Campbell: Well, I would suggest that the final decision is the Prime Minister's. The Prime Minister's terms of reference have been that he puts a very high premium on expanding the diversity of the lived experience and perspectives of the judges on the highest court of the land. As a committee we looked to try to make that possible for the Prime Minister.

There is no compromise made with respect to quality. The notion that if you go for diversity, you're not going to have quality is a load of rubbish. In today's legal community in Canada we have outstanding jurists and lawyers from all different backgrounds and characteristics. That is not an issue at all. Certainly we know that the Prime Minister will want to make choices, and we're very happy that we have been able to provide him with outstanding candidates who give him a choice and who, as we say, hopefully keep him up at night worrying about which excellent person to support.

The diversity of experience is part of the terms of reference of the whole process. When we are reaching out for candidates we emphasize that point as well, encouraging people who may not be part of a represented group currently on the court to see themselves as being a candidate of interest if they seek to be considered.

Mr. Randeep Sarai: Thank you, Madam Chair.

The Chair: Thank you, Mr. Sarai. That concludes your time.

I will now go to Mr. Fortin for six minutes. Please go ahead.

[*Translation*]

Mr. Rhéal Fortin: Thank you, Madam Chair.

I'd like to begin by thanking you, Ms. Campbell and Mr. Lametti, for being with us this morning to address these important questions.

You're both eminent jurists, well recognized as such, and I'm convinced that your contribution to the justice system is of major importance. That said, I have some questions for Ms. Campbell, but I'd like to start with Mr. Lametti.

Please, Mr. Minister, I don't want to argue with you. I just want to make sure I understand. I'll pick up on my colleague Mr. Cooper's question about using "Liberalist" or any other partisan information.

I thought I understood from your answer, but I may have been mistaken that, in Justice Jamal's case, you didn't check his political affiliations. You didn't consult the "Liberalist" or anything else in any way. Did I understand you correctly or not, Mr. Minister?

If you prefer not to answer, that's your absolute right. Just tell me you won't answer, but please don't waste the precious few minutes we have to question you both.

If I understood your response correctly, you didn't use the "Liberalist" or any other process to verify Justice Jamal's political affiliations.

Hon. David Lametti: For the Supreme Court appointment, the short answer is "no".

Mr. Rhéal Fortin: Thank you, Mr. Minister.

Hon. David Lametti: At the time, when I appointed him to the Court of Appeal for Ontario at the beginning of my term, I used the process itself. I have followed his merits and qualities, which are quite obvious. After I came to the conclusion that I should appoint him to the Ontario Court of Appeal, coming directly from the practice of law, we used, as I just described to our colleague Mr. Cooper, several tools to get to know the candidate better.

Mr. Rhéal Fortin: There were probably other candidates on the short list. Did you check the political affiliations of the other candidates or not, Mr. Minister?

Hon. David Lametti: With all due respect, you're mixing two things up.

My role in the Supreme Court appointment process was to take the list of preselected individuals, or the short list, if you will—

Mr. Rhéal Fortin: I just want to know—

Hon. David Lametti: —and hold consultations. As I said, we didn't use anything for the process.

Mr. Rhéal Fortin: You didn't for any of the candidates?

Hon. David Lametti: Exactly.

Mr. Rhéal Fortin: Thank you, Mr. Minister.

Is it possible to know quickly when you stopped using the "Liberalist"?

Hon. David Lametti: As I told our colleague Mr. Cooper, it was an ad in a newspaper—

Mr. Rhéal Fortin: So you're not confirming that.

Hon. David Lametti: —and I don't remember the source.

Mr. Rhéal Fortin: You're not confirming it. So you can continue to use it, as I understand. Is that correct?

Hon. David Lametti: I have no opinion on the source of the article.

Mr. Rhéal Fortin: Forget the source. Are you confirming this news or not?

Hon. David Lametti: There is no news. I've described the process.

• (1050)

Mr. Rhéal Fortin: The news is that you stopped using the "Liberalist" quite recently. I understand that it's not [*Inaudible—Editor*].

Hon. David Lametti: I've described the process to you and Mr. Cooper.

I'm not confirming the news because it didn't come from my office.

Mr. Rhéal Fortin: Okay. Thank you, Mr. Minister.

Ms. Campbell, if I may, I have one or two questions for you.

I think Justice Jamal's appointment, from what I know without knowing him personally, is excellent. He strikes me as a competent jurist with a diverse human experience who will surely be able to bring important insights to the Supreme Court.

That said, in the selection process, can you confirm whether you have at any time checked the political affiliations of any of the candidates?

[English]

Right Hon. Kim Campbell: I can say absolutely not. We have access to the judgments that they think are among the most important, or if they are not members of the judiciary, articles or things so we can see their philosophy, and some of the questions on the questionnaire give them a chance to talk a bit about their philosophy and how they see the role of the judge, but we're not the least bit interested in that.

I actually think it's kind of a mug's game because the notion that the way that somebody votes in their civilian life will reflect the way they decide cases is actually not a very empirically well-established thing, so we don't interest ourselves in that at all, no.

[Translation]

Mr. Rhéal Fortin: Thank you, Ms. Campbell.

I understand from your testimony that it wouldn't be a good idea for someone to be appointed based on their political ideas or political leanings. Have I understood correctly?

[English]

Right Hon. Kim Campbell: I think [Technical difficulty—Editor] out in some extreme area of judicial thinking you might not want to appoint them, but I think the biggest concern I had when I was minister of justice.... As I said, I was the minister in Mr. Mulroney's government, but I don't know what Rosalie Abella's partisan view was. I appointed a lot of interesting people and had no idea what their partisan view was, or if they even had one.

The important things are competence and character, the willingness to do the job and the suitability of temperament, and Justice Jamal is a superstar. He is recognized by people right, left and centre as a superstar as a legal thinker, but also as having personal qualities of extreme collegiality. I understand that on the Ontario Court of Appeal, where the judges sit in panels, other judges are delighted to be appointed to be sitting with him on a panel.

These things are really important for the functioning of the court—this ability to work with others and to find consensus. It's a [Technical difficulty—Editor].

[Translation]

Mr. Rhéal Fortin: We can't hear you anymore, Ms. Campbell. We can't hear your testimony.

[English]

The Chair: Thank you.

Right Hon. Kim Campbell: I think it's important. How they vote is irrelevant.

The Chair: Thank you. I'm sorry, Monsieur Fortin.

Mr. Fortin, you're out of time.

[Translation]

Mr. Rhéal Fortin: I know, but I would like to raise a point of order, Mr. Chair.

[English]

The Chair: Yes.

[Translation]

Mr. Rhéal Fortin: From the beginning, the sound often cuts off when witnesses respond. Their answers are really interesting and important, and I'm glad to be here today to talk to them.

Is there any way to ensure that witnesses have the necessary equipment before the meeting starts and to do sound tests?

I lost some of Ms. Campbell's answers, and the same thing happened with Mr. Lametti. We all agree here that it is important to hear those answers.

I would like this validated right away. Perhaps someone from IT could check with them. We need to make sure we have decent communications, Madam Chair.

[English]

The Chair: Thank you very much, Monsieur Fortin. I'll confer with the clerk and make sure we are staying on top of the equipment for our witnesses. I see that both of our witnesses have proper equipment.

We will move on to Mr. MacGregor.

Please go ahead, sir. You have six minutes.

Mr. Alistair MacGregor (Cowichan—Malahat—Langford, NDP): Thank you so much, Madam Chair.

I'd like to welcome Minister Lametti and Ms. Campbell to the committee.

We really appreciate having you both here to discuss this nomination process.

Minister Lametti, maybe I'll start with you. I'll just offer congratulations on Bill C-15 having received royal assent yesterday. I had the honour of serving with Romeo Saganash in the previous Parliament, so this has deep, personal meaning to me, as well as to many indigenous people across this country.

The preamble of Bill C-15 talks about how the declaration emphasizes the urgent need to respect the legal systems that indigenous peoples have. Clause 5 of that bill requires that the government take all measures necessary to ensure that the laws of Canada are consistent with the declaration.

Within the qualifications and assessment criteria, number one, under “Demonstrated superior knowledge of the law”, says that “knowledge of indigenous legal traditions may also be considered”.

Ms. Campbell, you might want to chime in on this. With respect to qualifications and assessment criteria, under number one, “knowledge of indigenous legal traditions”, can you expand on that a little? I want to know how much that figured into your consideration of applicants given the context we're now operating under in Canada, in which indigenous rights and title are becoming much more prevalent in Canadian society and will certainly be a big part of legal decisions going forward, especially with the passage of Bill C-15.

● (1055)

Hon. David Lametti: Thank you, Mr. MacGregor.

Just before I turn it over to Ms. Campbell, I'd like to thank you for the compliments on Bill C-15. Thank you. I certainly have saluted the leadership of Romeo Saganash throughout this whole process. He deserves a great deal of credit for the passage of Bill C-15. He did a lot of advocacy for it in the meantime, as well as for his own private member's bill.

We, as a government, recognize—and I, as the Minister of Justice, recognize—that we need to work hard at improving the justice system in all of its forms. That means, as per the UN declaration, helping the reflowering, if you will, of indigenous normative systems. I have just recently announced, in response to call to action number 50, \$10 million for funding across Canada for 21 projects aimed at reviving specific indigenous justice systems.

That's part of it. Part of it is encouraging better access to justice. Part of it is encouraging a better and more participatory justice system. Part of it is having more indigenous justices—and I've done that too, by appointing indigenous justices to the Superior Court and elevating currently sitting Superior Court justices in the Courts of Appeal. It's a priority for us, as well, to make sure that representation, at the earliest possible point, also extends to the Supreme Court of Canada.

With that, I'll turn it over to Ms. Campbell.

Right Hon. Kim Campbell: I would just say that the committee was very keen, if possible, to find an indigenous candidate. There's still the challenge of language; there is bilingual functional ability among indigenous people, sometimes with lawyers who are still junior.

I said the last time that I believe that within the next four or five years we will see an indigenous candidate for the Supreme Court of Canada. I also think that there has been a very significant recognition of the importance of non-indigenous justices on the court being literate in these issues. For example, the Honourable Malcolm Rowe comes from Newfoundland and Labrador, where that is not an area of the law that is necessarily well developed. Through his

own involvement in an organization called Action Canada, which had taken him across the country, he had gotten to know the indigenous leaders in Haida Gwaii, Nunavut and other places. He was very curious and very interested and very cognizant of the importance. Justice Sheilah Martin is hugely respected by indigenous communities and has taken that area of the law as something very important to her.

It's less an issue in Quebec, because the issues are not so well developed in the law there, but certainly in western Canada and Ontario and Atlantic Canada it is. I think what we're seeing is a growth of indigenous people as lawyers but also a growing recognition on the part of non-indigenous lawyers and jurists that this is an area that they must engage in. For example, when I was the minister of justice, I convened a national symposium on aboriginal justice with the Minister of Justice of the Yukon. The thinking has changed dramatically since then, such that we are looking at not just understanding aboriginal rights as they are in the constitution, but also this whole indigenization of our legal thinking.

These are exciting and challenging times, and we have people in the country who can make great contributions to this. I firmly believe that this will be seen in the Supreme Court of Canada, but the Supreme Court is not the only place where these skills and talents are very valuable in terms of the development of our legal system and culture.

● (1100)

Mr. Alistair MacGregor: Thank you to both of you for that.

The Chair: Thank you very much, Mr. MacGregor. You are right on time.

We will now go to our second round of questions, starting with five minutes for Mr. Moore.

Please, go ahead.

Hon. Rob Moore: Thank you, Madam Chair.

Thank you to both of you for being here today on what is a very important process.

Minister Lametti, maybe for the benefit of those watching... How many provinces have a guaranteed number of seats on the Supreme Court?

Hon. David Lametti: Only one does in terms of the Constitution, which is Quebec. It has three in recognition of the unique nature of the civil law component, which is different from the other nine provinces' and three territories' legal systems.

That being said, there is a tradition that three judges come from Ontario, two judges come from western provinces and one judge comes from the eastern provinces. That has been softened from time to time historically, but for the most part, it has worked in that fashion.

Hon. Rob Moore: Thank you, Minister.

I understand that. Why then did you mention that in your search there would be a search conducted only from potential candidates from Ontario?

Hon. David Lametti: The idea was just respecting that tradition. Obviously, other candidates could have applied. There was nothing barring them, but it was listed as a criterion.

Hon. Rob Moore: That makes sense to me 100%.

My question is about why, when Justice Cromwell retired—who was an Atlantic Canadian member of the Supreme Court of Canada—your government put no such search restriction that the replacement for Justice Cromwell be an Atlantic Canadian. That concerns me, as an Atlantic Canadian, because since Confederation, Atlantic Canada has always had a member on the Supreme Court of Canada.

Why is it that when there was a vacancy in Ontario, you searched only for Ontario applicants? I think you have done a wonderful job of finding a very qualified one, but why is it that when there was a vacancy in Atlantic Canada, the search was nationwide rather than just limited to Atlantic Canada?

Hon. David Lametti: I wasn't the minister at that point. I can't actually speak to the process. That was one of our earlier processes. What I can say is that the result of that process was Justice Rowe, who was appointed from the province of Newfoundland.

Again, I can't speak to the way in which the criteria were formulated there, because I didn't take part in those discussions.

Hon. Rob Moore: Thank you, Minister.

I think it's important for us to recognize the diversity of our country and that Atlantic Canada plays an important role. Future vacancies in Atlantic Canada on this most important institution should be filled by Atlantic Canadians.

Madam Chair, how much time do I have?

The Chair: You have two minutes remaining.

Hon. Rob Moore: Minister, we are a committee of parliamentarians. The justice committee, as the Right Honourable Kim Campbell mentioned, is an important committee, and none of us take for granted the privilege it is to be a member of this committee.

There was a recommendation a couple of years ago by the justice committee that the committee that looks at the new nominee for the Supreme Court of Canada be a true committee of Parliament, chaired by a member of Parliament. I think, for example, our chair of this justice committee, when we meet with Justice Jamal later today... That should be a parliamentary committee that has the same rights that we do and the same ability to question. It should not be chaired by someone from outside of Parliament. That doesn't make sense to many people.

Do you have a comment on why that recommendation hasn't been implemented yet?

• (1105)

Hon. David Lametti: Thank you, Mr. Moore. I'm aware of that recommendation.

Right now, it's a true parliamentary committee and therefore we're subject to the usual rules of parliamentary committees, including [*Technical difficulty—Editor*] rules. That's perfectly fine, and I answer questions in that vein. My understanding of the nature

of the session this afternoon is that it's a “get to know the candidate better” session.

The Supreme Court appointment process is in the hands of the Prime Minister. Madam Campbell and her committee, and ultimately I, as Minister of Justice, in conducting consultations on the short list, are only making recommendations to the Prime Minister.

My understanding—and this was the preferred view of that session—is that the opportunity you will have this afternoon with the proposed candidate is to ask the candidate questions and to get to know him or her better. It was felt that this should not be a normal parliamentary committee.

I've been through two processes thus far as Minister of Justice. This is my second one. I certainly thought the process went extremely well the last time around, with Justice Kasirer, and from what I could see as a member of Parliament, it went quite well with Justice Rowe and Justice Martin.

These are unprecedented... They work very well. It gives transparency to the committee. I think it works quite well to involve the general public in that, including a leading law dean, as we're having this afternoon.

The Chair: Thank you, Minister Lametti. Thank you, Mr. Moore.

We'll now go to Mr. Maloney for five minutes.

Go ahead, sir.

Mr. James Maloney: Thank you, Madam Chair.

I appreciate this opportunity. It's a very unique opportunity, in fact.

Minister Lametti, it's always very appreciated when you appear before the committee, and today is a special occasion. Thank you.

To the Right Honourable Kim Campbell, this is a unique opportunity for me to ask questions of a former prime minister. Let me start by saying that it was music to my ears when you uttered the words, “There has been no compromise on quality.” This process, and the process we're going through this afternoon, is important.

You started by referencing your disagreement with Bob Rae about the “tap on the shoulder” approach. Really what we're talking about is a method of appointment. I've been a member of this profession for over 20 years. I think everybody will agree that every appointment we have made to the Supreme Court of Canada, regardless of the approach, has been of the highest caliber.

Back in your day, when you were minister of justice and and later prime minister, I believe there were three appointments made to the Supreme Court of Canada, using a former process. In 2006, we introduced a new process. The government of the day created the body that we're going to see in action this afternoon. In 2016, our current Prime Minister implemented the new process, which you are heading, and I thank you for that.

Unfortunately what we've seen is a political climate that has become more polarized. These processes sometimes open the door for that polarization to rear its head. We've seen that today, and we've seen it before.

Some people preface their questions by saying, "They're all excellent candidates, including the one we're here today to talk about", and then they proceed to undermine the process. The purpose of this committee hearing and the meeting this afternoon is to show Canadians that we have a strong court and a strong process, and that we're always striving to make it better.

My question to you is—and we haven't really discussed the process that's going to take place this afternoon—what is your view on the evolution of the approach, from the tap on the shoulder approach, as you characterized it, to the process that we have now?

I would love to hear your views on how it has progressed and improved.

Right Hon. Kim Campbell: Well, I would say very briefly that as a member of the group that often didn't have shoulders that were seen as very tappable and was under-represented.... When I was minister of justice, 25% of my judicial appointments were women, but the percentage of people at the bar who were tenure-called who were women was only 12.5%, so I actually appointed women disproportionately to begin to create a body of people who could mature and become candidates for higher appointments.

However, I think what we're seeing with this approach, and again, there are many different ways to do this.... What I see in the approach that the Prime Minister asked me to chair is a reflection of what has already been taking place in the provinces.

When I was justice minister, people could apply to be considered for the court. There were local judicial review committees that consisted of people from the legal profession, from law enforcement, from a variety of different groups appointed by the province and appointed by the federal government to try to make them not *parti pris* to any one particular group but to vet candidates and determine whether they were fit to serve. Then the minister [*Technical difficulty—Editor*].

There was a time in this country when they didn't have any of that, when it really was much more a question of, perhaps, patronage. It didn't mean that a lot of good people were not appointed, but a lot of good people were also excluded from consideration. I see this, in many ways, as a reflection of what goes on with the appointments of the superior courts in all of the provinces and an opportunity for people who are knowledgeable about the law.

It's quite a lot of work. If a committee took this on, it would have an awful lot of work to do, because it takes a long time to review all of the applications, etc., but it is the idea of taking it out of the partisan process.

I don't see any reason why there can't be other ways of doing it, but I think that what this process does is say to people in the legal profession that anyone may be asked to be considered. That's pretty new, because there was a time when many people thought that to be asked to be considered would be considered laughable. You know, "Who are you? Who do you think you are?" Well, if you are a per-

son who meets these criteria, you bloody well have a right to be considered, and you know what? We will give you the fairest review possible, and we will work very hard to try to make sure that every person has a chance to get a fair hearing and a fair evaluation, recognizing that we can't send all of the names to the Prime Minister and that there will be a separating out of people.

I see the evolution as one that is really consistent with the appointments to the courts, the superior courts in the provinces, and I think that changing the process to make sure there's more time for people to apply—we've done that, reaching out broadly to beat the bushes for people to think of themselves as possible candidates in this—is appropriate.

I'm not setting the terms of reference for the committee, but I believe that the Prime Minister, the minister and others would be very open to other suggestions to make it [*Technical difficulty—Editor*]. There's also the question that it is the Prime Minister's prerogative to make these appointments, and I think, to the extent that prime ministers are willing to not necessarily fetter their discretion—I don't think they should do that—but open up the process and ask others' advice.... I mean, they've always asked others' advice, but to have people really seriously focused on candidates, many of whom are self-selected and turn out to be terrific is, I think, a step forward.

You're thoughtful, and I think that many of you may have thoughtful approaches for how to make it better, but as with the superior court appointments in the provinces, I think that taking that out of a purely partisan forum gives it credibility and makes it more open to people who are not part of any kind of partisan power group.

• (1110)

The Chair: Thank you.

That concludes your time, Mr. Maloney.

Mr. James Maloney: Thank you.

The Chair: I will now go to Monsieur Fortin for two and a half minutes.

[*Translation*]

Mr. Rhéal Fortin: Thank you, Madam Chair.

My question is for Ms. Campbell.

It's not every day that the Standing Committee on Justice and Human Rights has the opportunity to welcome the chairperson of the Independent Advisory Board for Supreme Court of Canada Judicial Appointments. It's a great honour for us, Ms. Campbell, to have you with us today.

We deal with many important issues in committee and in the House. However, there is one issue we're very concerned about. I began to address it earlier, and Mr. Cooper did as well. It's the issue of the appointment process.

As chairperson of the advisory board, with your experience, both political and legal, and considering the fact that you have, I am sure, excellent judgment, I'd like to know what you think about the issue of checking the political affiliations of judicial candidates.

I understood that Minister Lametti didn't do any checks in this case because he had already done them when he appointed Justice Jamal to the Ontario Court of Appeal. I understand that it would have helped in some ways. However, generally speaking, what do you think about that?

Do you think it's important to check political affiliations for all kinds of valid or invalid reasons? Is it important to do this before making appointments, or should this step of checking before appointing someone be completely eliminated?

• (1115)

[English]

Right Hon. Kim Campbell: I don't think it should be part of our process. We don't interest ourselves in it. We interest ourselves in competence and philosophy, and particularly as this is reflected in the way candidates have engaged outside of the legal profession. We're interested in what they've done in their communities and whether they have contributed to their communities. Of course, those who have been judges for a long time are more constrained in doing that.

In terms of their philosophies and their exposure to the diversity of Canadian society, these things interest us. However, we raise no issues that would relate to partisanship at all. It doesn't interest us; we don't pursue it, and we would consider it not appropriate for our deliberations.

[Translation]

Mr. Rhéal Fortin: In your opinion, can this be further verified on the short list, once the advisory board has done its work? Should it never be checked?

[English]

Right Hon. Kim Campbell: Well, what happens with the short list is a prime ministerial mystery, and it is the Prime Minister's prerogative. However, I can tell you that every person who is on that short list is a person of distinction, high character and great quality, who could make an excellent contribution to the Supreme Court of Canada.

I would be surprised if partisanship played any role. If it did, it would be something quite aside from the already established, outstanding evaluation of somebody in terms of their legal ability, their character and their integrity.

[Translation]

Mr. Rhéal Fortin: Thank you very much, Ms. Campbell.

[English]

The Chair: Thank you, Monsieur Fortin.

We'll now go to Mr. MacGregor for two and a half minutes. Please go ahead.

Mr. Alistair MacGregor: Thank you, Chair.

Ms. Campbell, maybe I'll front-load this with two questions and then allow you to answer both.

I take to heart your previous comment about indigenous candidates and the fact that there is increasing representation throughout our court system in Canada.

I guess what I wanted to know, first of all, is whether, in the last several nominations that have happened over the last number of years, including this one, you have seen an improvement in the available pool of qualified indigenous candidates for the Supreme Court who match all of the requirements. Is there an improvement happening in the number of people who could be qualified for that position?

Secondly, every single time we go through this process there's a time for reflection on what worked and what didn't, and you've done a number of these now. Do you have any comments about any improvements that can still be added to this process based on your most recent experience in this nomination?

Thank you.

Right Hon. Kim Campbell: In answer to your second question, I don't really have any, except to simply constantly work to try to cast the net as broadly as possible to ensure that no one who could make a contribution is missed. Some of that is also, perhaps, a function of things like universal design to make sure that questionnaires are designed in such a way that people get a chance to put their own case forward as well as possible, rather than simply being limited.

We sometimes think that the way we frame a question works for everybody. It may not, so there's that case.

In terms, also, of indigenous representation, yes, we are seeing a growing number of people. Also, in a previous process I remember having a discussion with Phil Fontaine of the Assembly of First Nations, thinking that there should be, perhaps, an interesting discussion about whether there should be a seat on the Supreme Court of Canada for an indigenous person. Of course, we have to remember that the indigenous communities are very varied also. We have first nations, Métis and Inuit people. How do we get that reflection? I think we will have members of those communities on the court, but I think it is also important that anyone who's on the court has the capacity to encompass those new ways of thinking about old obligations in our law.

We have a lot of interesting things to think about in terms of the role of our court. I'm not somebody who's interested in change for change's sake, but I also live in a Canada that is very different from what it was when I was a young woman. Many things....

Incidentally, I was thinking just the other day about how Parliament led in the changes in things like LGBTQ rights. These were not changes that were led by the court, so I think Parliament still has a very important role, as you showed yesterday in the bill that was signed. I think that leadership comes from there, as well. That also has an impact on the court.

I'm giving you a long answer to a short question, which is simply to say I am optimistic, but I also think that it's a time when so much is happening with respect to indigenous developments in Canada, for instance, the creation of an indigenous law program in western Canada, that we are so much more open now in the same way that we're much more open to LGBTQ rights than we were when I was young. All of a sudden, sometimes, a lid gets taken off and we say, boy, have we been stupid about this. We'd better catch up to create justice in this area, as well.

The reflection of indigenization, indigenous values, in our legal system is something that we need to think about. Is it enough just to have judges with indigenous life experience, or should there be a more formal approach to it? I don't know the answer, but I'm really pleased that people are asking this question. At least, I'm asking it.

● (1120)

Mr. Alistair MacGregor: Thank you.

The Chair: Thank you to both of you.

Now, with the time remaining, we'll complete our second round. We'll go to Madame Findlay next, for five minutes.

Please go ahead.

Hon. Kerry-Lynne Findlay (South Surrey—White Rock, CPC): Thank you very much for being with us today. It's good to see you again, Right Honourable Kim Campbell.

I believe the last time we saw each other in person I was moderating a panel in front of several hundred women lawyers in Vancouver, and the panel consisted of you and Justice Abella, so it was a great venue and a good time to celebrate being a woman in law.

With that, I would also thank you for outlining an appreciation with some insights into the challenges of life as a Supreme Court of Canada judge and the sacrifices, especially for those who would have to leave B.C. I have to say that as well, as a B.C. member.

Minister Lametti, as a parliamentarian, I have participated in past Supreme Court recommendation processes and been part of interviews with the then Supreme Court of Canada chief justice and other senior jurists to vet applicants. The composition of the new independent advisory board effectively takes elected parliamentarians out of the equation until the stage we find ourselves in today. It replaces parliamentarians with seven non-partisan members, three of whom are chosen by the Minister of Justice at the time. That is you right now.

Could you please explain to us why you believe this is the best way to pick a Supreme Court justice?

The Chair: Who was that question for, Madam Findlay?

Hon. Kerry-Lynne Findlay: I said Minister Lametti.

The Chair: Minister Lametti, please go ahead.

Hon. David Lametti: There is one other element of the process where parliamentarians are consulted, and that's on the short list. I undertake to speak with my critics both in the House of Commons and in the Senate, and also with members of the committee from a particular region or province. I did that in the two processes I participated in. One focused on Quebec; this last one focused on Ontario.

There is a non-disclosure agreement that is signed by people in these particular circumstances, but parliamentarians are consulted there.

I think the merits of this process are...I don't want to say obvious, but I do want to say evident. First of all is a set of criteria that are published in advance, which frame the work of the advisory board and allow our colleague, Mr. MacGregor, to ask the precise question he did at the beginning as to how the interaction of a certain criterion was applied by the independent advisory board. It also frames the decision that the Prime Minister ultimately has to make. It allows for diversity of thought and representativity at the level of the board. It allows for parliamentarians to be consulted and then allows for the process we're going through now and the process you will go through this afternoon.

There's a very good balance here of identifying and evaluating good candidates, maintaining confidentiality, always searching for integrity, capacity, intellect and merit, and fostering diversity.

I think we have managed in a very transparent way to put together a very good process.

● (1125)

Hon. Kerry-Lynne Findlay: Thank you for that.

I'm curious about your selection process, Minister Lametti, for the three members you appoint to the independent advisory board.

How were they selected?

Hon. David Lametti: Again, we're looking to represent various voices in the community, knowing full well that other legal bodies will also present people. It's also very important for us to get non-legal representation on that board [*Technical difficulty—Editor*].

Hon. Kerry-Lynne Findlay: My question was how you chose them, sir. How did you choose those people?

Hon. David Lametti: They were selected on the criteria of representativity, diversity and merit.

Hon. Kerry-Lynne Findlay: Are either of you concerned that the appointment of Justice Jamal—and obviously he's an excellent jurist—will reduce the number of women serving on the Supreme Court as we lose Justice Abella?

The Chair: Answer very briefly, please.

Hon. David Lametti: Just before I turn it over to Ms. Campbell, yes; it's one of the criteria. We do want to achieve gender parity on that court, and it remains an overarching priority.

Right Hon. Kim Campbell: Absolutely. There is another Ontario seat that will be up in 2022, when Justice Moldaver retires.

These are difficult choices. There is no question that this was a consideration. At the end of the day, the Prime Minister made a choice to have a new, hitherto unrepresented or not present form of representation on the court. Those are difficult choices, but I think there's no question about it that this is a concern and—

The Chair: Thank you very much.

We will now go to our last questioner for this panel.

Mr. Virani, please go ahead.

Mr. Arif Virani: I want to say thank you to the minister and thank you to the Right Honourable Kim Campbell for being here with us. It is a distinct pleasure to have you and to have your wisdom shared with the committee.

To the Right Honourable Kim Campbell, I want to ask you about this tapping reference you made right at the outset, because I really think it encapsulates a lot of the barriers for under-represented communities coming forward or being asked to come forward. As you aptly put it, those shoulders are not traditionally the ones that are tapped.

Can you talk about your analysis and how you get at the foundations of those kinds of concerns, because when you work on diversifying the bench, something we have committed to as a government, you find sometimes that there isn't the applicant pool. Where do you think it needs to start? Do we need to start at the law school level, encouraging people from under-represented groups to apply to become lawyers so that they one day become puisne judges and so one day they get to the point of becoming potential candidates for a Supreme Court appointment such as the one that is being proposed for Justice Jamal?

Ms. Campbell, can you refer to that?

Right Hon. Kim Campbell: I think it's all of the above. All of those things are important.

I sometimes say that when I became prime minister, nobody who looked or sounded like me had ever done that job before. It was the same thing when I became minister of justice. What you want to do is to create a sense of the ordinariness of a whole different variety of people who do certain jobs. When we interviewed Justice Jamal in the course of our proceedings, one of the things he said was how touched he was by the number of racialized lawyers and judges who looked to him when he went to the Ontario court of appeal. He hadn't expected that.

It was very [*Technical difficulty—Editor*]. In all of these things, the more people you get, the greater the diversity of faces, views, backgrounds and realities, the more others see themselves reflected. It starts at the bottom and it goes all the way up. It means making sure that you're not just tapping the shoulders of those who are the most familiar to you.

• (1130)

Mr. Arif Virani: Can I follow up briefly on one other point? Traditionally, we also find, when recruiting members to the bench, that there are some traditional barriers. Some people might feel awkward, that maybe it's not for them. There might be financial barriers. You might think about Bay Street lawyers coming from a

firm like Justice Jamal's. Having practised in Toronto, I understand sometimes that's a very real concern.

What kinds of obstacles are you encountering, even in this recruitment process? I understand that an elevation to the Supreme Court of Canada should be the absolute top career achievement for virtually any lawyer. Could you provide us with some insights about some barriers that you're still encountering from those who might be erstwhile candidates?

Right Hon. Kim Campbell: Geographical barriers have been very significant, because of the requirement to live in the national capital region. I can't speak for the financial one. There was once a case in Vancouver where a very distinguished lawyer got named to the court, and his wife asked if he had any idea how much a judge made. He had to scramble to try to get himself unappointed when he realized that he wasn't prepared for that salary cut.

Most of the people who apply, obviously, are aware of what it will mean. If they've been earning a lot of money, they're quite prepared not to. If they're going to get an increase, that's good too.

I think it's the geographical barrier, and the fear of the loneliness of it. Many of these candidates, these successful judges, are very sociable people. They're in the law because they care about people and they see the law as a way of making people's lives better. The constraints on a Supreme Court of Canada judge in terms of how they socialize—sitting around the bar, chewing the fat with people—is also a concern for some, and how that will affect them.

One thing we find—and we ask the candidates how they anticipate making the transition—is that most of them have had serious discussions with their families and with their children. They're quite realistic about what it will be. I've suggested that it would be great if we could get some retired justices from the Supreme Court to go out and do public events around the country and talk about that life, to try to answer people's questions and address their doubts.

At the end of the day, for some people, it is a significant sacrifice. Some are willing to do it and some are not, just like many lawyers want to be judges and others don't.

It's a matter of making sure that nobody who could make a contribution, or who would want to, is deterred from putting themselves forward. That's the key, I think.

The Chair: Thank you very much.

Thank you, Mr. Virani. That concludes your time.

At this time, I'll thank Minister Lametti and the Right Honourable Kim Campbell.

Ms. Campbell, you have blazed trails that people like me walk along now. I can't begin to tell you how much we appreciate all your hard work and your dedication to service to our country.

Thank you so much, on behalf of all committee members and me, for being here today.

Right Hon. Kim Campbell: The rule of law is the most important thing in a democracy, so thank you all for being a part of that process.

Hon. Rob Moore: Madam Chair, on a point of order, I don't want to disappoint our guests, particularly Minister Lametti, but I thought we were meeting for two hours on this topic, and then going into committee for half an hour for the study that we're dealing with.

The Chair: You are [*Technical difficulty—Editor*] in that the meeting itself is two hours long. We have to go in camera now. We have to take into account the 15 minutes that it takes to suspend and then to go and log into the in camera meeting. I hope you will indulge.

I'm really looking forward to completing this report today. I know there are a number of things that we need to discuss specifically with regard to that report.

With members' permission, we'll go ahead and suspend.

Your Zoom link should be in the email that you received for the link for this meeting as well.

Thank you very much, Ms. Campbell.

The meeting is now suspended.

[*Proceedings continue in camera*]

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