



Independent Advisory Board for  
Supreme Court of Canada  
Judicial Appointments

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

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# Report on the 2023 Process



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**November 29, 2023**

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sur la nomination des juges de la  
Cour suprême du Canada

November 29, 2023

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

Dear Prime Minister:

Pursuant to our Terms of Reference, the Independent Advisory Board for Supreme Court of Canada Judicial Appointments submits this report on the 2023 process, including information on the mandate and the costs of the Advisory Board's activities, statistics relating to the applications received, and recommendations for improvements to the process.

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

Respectfully,

The Honourable H. Wade MacLauchlan, C.M., O.P.E.I.  
Chairperson, Independent Advisory Board for Supreme Court of Canada Judicial Appointments

*Advisory Board members:*

Carol Anne Lee  
Georgina (Gina) M. Nagano  
Bianca Kratt, K.C.  
Erin M. S. Kleisinger, K.C.  
The Honourable Richard J. Chartier  
Reem A. Bahdi  
Jean Teillet



## Table of Contents

1.	Introduction.....	1
2.	Establishment of the Advisory Board and the 2023 Process.....	1
3.	Meetings of the Advisory Board and Application Review Process.....	3
4.	Communications, Media and Public Affairs.....	4
5.	Consultation and Outreach.....	4
6.	Applications.....	7
7.	Costs.....	8
8.	Recommendations for Improvements to the Appointments Process and Work of the Advisory Board .....	9
9.	Confidentiality .....	10
10.	Conclusion .....	10
	Annex A: Terms of Reference for the Advisory Board.....	11
	Annex B: News Release, dated June 20, 2023, from the Office of the Prime Minister of Canada.....	14
	Annex C: News Release, dated August 11, 2023, from the Office of the Prime Minister of Canada.....	16
	Annex D: Biographical Notes on the Members of the Advisory Board.....	18
	Annex E: Qualifications and Assessment Criteria .....	22
	Annex F: Functional Bilingualism and the Supreme Court of Canada Judicial Appointments Process .....	28
	Annex G: Outreach letter sent to Organizations .....	30

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## 1. Introduction

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

### *Reporting*

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

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

**(3)** The report must be made public.

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

## 2. Establishment of the Advisory Board and the 2023 Process

The Advisory Board is an independent and non-partisan body whose mandate is to provide non-binding, merit-based recommendations to the Prime Minister on judicial appointments to the Supreme Court of Canada (SCC). The Advisory Board is convened at the discretion and request of the Prime Minister. The Board was previously called upon in 2016, 2017, 2019, 2021, and 2022, resulting in the appointments of Justices Malcolm Rowe, Sheilah Martin, Nicholas Kasirer, Mahmud Jamal, and Michelle O’Bonsawin.

The composition of the Advisory Board is as follows:

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



The composition of the Advisory Board was amended for the 2022 process to include a practising member in good standing of the bar of a province or territory nominated by the Indigenous Bar Association.

The 2023 process was launched by the Prime Minister on June 20, 2023, in order to fill the seat on the SCC created by the resignation of Russell Brown. Justice Brown was appointed to the Supreme Court of Canada from the Court of Appeal of Alberta. In recognition of the convention of regional representation, the process was open to all qualified candidates from Western Canada and Northern Canada. Candidates who wished to be considered were required to complete and submit applications by July 21, 2023 ([Annex B](#)).

The appointment of the Advisory Board members was announced on August 11, 2023 ([Annex C](#)). The members of the Advisory Board are:

- The Honourable H. Wade MacLauchlan, C.M., O.P.E.I., Chairperson, nominated by the Minister of Justice;
- Carol Anne Lee, O.B.C., nominated by the Minister of Justice;
- Georgina (Gina) M. Nagano, nominated by the Minister of Justice;
- Bianca Kratt, K.C., nominated by the Canadian Bar Association;
- Erin M.S. Kleisinger, K.C., nominated by the Federation of Law Societies of Canada;
- The Honourable Richard J. Chartier, nominated by the Canadian Judicial Council;
- Reem A. Bahdi, nominated by the Council of Canadian Law Deans; and,
- Jean Teillet, M.S.C., nominated by the Indigenous Bar Association.

Full biographical notes on the members of the Advisory Board can be found at [Annex D](#).

The Prime Minister asked that the Advisory Board submit for his consideration a short list of qualified and functionally bilingual candidates. Candidates were required to demonstrate that they satisfy the geographical requirement by reference to their bar membership, judicial appointment, or other relationship with Western Canada or Northern Canada.

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

Detailed information concerning the process, the mandate of the Advisory Board and instructions on how to apply for appointment to the Supreme Court of Canada was made available on FJA's website at [www.fja-cmf.gc.ca](http://www.fja-cmf.gc.ca) immediately following the opening of the 2023 process.



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

On August 15 and 16, 2023, the Advisory Board convened in person in Ottawa, along with the Commissioner and the *ex officio* secretary to the Board, to determine how to approach their mandate, discuss general administrative questions, and commence the review of the applications received.

At that time, the Advisory Board also met with the Chief Justice of Canada to hear his views on the needs of the Supreme Court.

Based on their initial review of the applications and discussions as to who met the established criteria and qualifications, the Advisory Board decided which candidates they would like to interview, as well as which references they would like to contact for these candidates. Over the following week, references were contacted for each of these candidates and the Advisory Board members debriefed each other on the reference calls they had made. References were asked the same set of questions, in order to be fair to candidates and to allow for comparability between them. The candidates to be interviewed were contacted, and interview times were scheduled.

Interviews were held on August 26, 2023. The candidates were engaged in a comprehensive discussion in response to a set series of questions designed to help the Advisory Board assess fully and fairly the candidates' qualifications in relation to the assessment criteria which had been published with the application instructions. ([Annex E](#)).

Immediately following the interviews, FJA language experts conducted a second language proficiency assessment for each candidate, using assessment tools and rating grids to determine whether candidates met the functional bilingualism requirements for reading, listening and speaking. Results were communicated to the Advisory Board members. All interviewed candidates met the second language proficiency requirements. A description of the functional bilingualism process is included in [Annex F](#).

The Advisory Board then deliberated to decide which candidates it would recommend to the Prime Minister, and to write its “shortlist” report to him. The Advisory Board ultimately submitted to the Prime Minister a list of 2 exceptional candidates, who were so absolutely outstanding in that they exemplified all of the professional and personal qualities of an appointee to the Supreme Court of Canada, and whose experience and expertise met all of the Court’s institutional needs. The recommended candidates were not prioritized and were listed in alphabetical order. The report provided an assessment of how each of the recommended candidates meets the requirements of the *Supreme Court Act*, and the extent to which they meet the assessment criteria established by the Prime Minister, as well as any additional reasons in support of their candidacy. Security checks were also conducted.



The Report was submitted to the Prime Minister's Office on September 8, 2023. The Advisory Board was very pleased that the Prime Minister made the appointment from the list of candidates it submitted to him.

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

As indicated above, the process was launched on June 20, 2023, with a News Release from the Prime Minister.

On the same date, FJA published on its website information on the Advisory Board's Terms of Reference, the application process, qualifications and assessment criteria, frequently asked questions, and relevant contact persons.

On August 11, 2023, the Prime Minister announced the appointment of the Advisory Board chaired by the Honourable H. Wade MacLauchlan.

The creation of the Advisory Board and the launch of the application process generated some media interest (print, online, radio, television), much of it consisting in speculation and opinion on who should be appointed and some comments on the process. The nomination on October 26, 2023, of the Honourable Mary T. Moreau elicited a great deal of media attention.

In the realm of public affairs and government engagement, the Chair of the Advisory Board appeared with the Minister of Justice before the House of Commons Standing Committee on Justice and Human Rights on November 2, 2023. In addition, a public question and answer session was held with the Honourable Mary T. Moreau on the same day. These appearances generated considerable media interest.

#### **5. Consultation and Outreach**

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

On behalf of the Advisory Board, in accordance with its mandate to conduct outreach efforts and prior to the appointment of its members, the Commissioner communicated on June 28, 2023, with 73 Canadian legal and judicial organizations, asking them to use their networks and knowledge of the judiciary and legal community in their jurisdictions in order to identify qualified candidates and encourage them to submit an application.

The list of organizations consulted is as follows:



- Akitsiraq Law School
- Alberta Bar Association
- Arab Canadian Lawyers Association (part of RODA\*)
- Association des Francophones du Nunavut
- Association des juristes d'expression française de la Colombie-Britannique
- Association des juristes d'expression française de la Saskatchewan
- Association des juristes d'expression française de l'Alberta
- Association des juristes d'expression française du Manitoba
- Association Franco-Yukonnaise
- Association of Justice Counsel
- Avocats sans frontières Canada
- Black Females Lawyer Network
- Black Law Students Association of Canada
- British Columbia Bar Association
- Canadian Association of Black Lawyers (part of RODA\*)
- Canadian Association of Crown Counsel
- Canadian Association of Law Teachers
- Canadian Association of Provincial Court Judges
- Canadian Association of Refugee Lawyers
- Canadian Association of South Asian Lawyers
- Canadian Bar Association
- Canadian Bar Association – Equality Committee
- Canadian Council of Criminal Defence Lawyers
- Canadian Criminal Lawyers Association
- Canadian Environmental Law Association
- Canadian Hispanic Bar Association (part of RODA\*)
- Canadian Italian Advocates Organization (part of RODA\*)
- Canadian Judicial Council
- Canadian Muslim Lawyers Association (part of RODA\*)



- Canadian Prison Law Association
- Canadian Superior Courts Judges Association
- Council of Canadian Law Deans
- EcoJustice
- Family Lawyers' Association
- Fédération des associations de juristes d'expression française de common law inc.
- Federation of Asian Canadian Lawyers (part of RODA\*)
- Federation of Asian Canadian Lawyers (British Columbia) Society
- Federation of Law Societies of Canada
- Hellenic Canadian Lawyers Association (part of RODA\*)
- Indigenous Bar Association
- Indigenous Community Legal Clinic (British Columbia)
- Iranian Canadian Legal Professionals (part of RODA\*)
- Korean Canadian Lawyers Association (part of RODA\*)
- Lakehead University, Bora Laskin Faculty of Law
- Law Society of Alberta
- Law Society of British Columbia
- Law Society of Manitoba
- Law Society of Nunavut
- Law Society of Saskatchewan
- Law Society of the Northwest Territories
- Law Society of Yukon
- Legal Aid Manitoba
- Legal Leaders for Diversity
- Macedonian Canadian Lawyers Association (part of RODA\*)
- Manitoba Bar Association
- Northwest Territories Bar Association
- Nunavut Bar Association
- OBA Equality Committee (part of RODA\*)



- Pro Bono Canada
- Saskatchewan Bar Association
- South Asian Bar Association (part of RODA\*)
- South Asian Legal Clinic of BC (British Columbia)
- The Advocates' Society
- Thompson Rivers University, Faculty of Law
- Ukrainian-Canadian Bar Association
- University of Alberta, Faculty of Law
- University of British Columbia, Peter A. Allard School of Law
- University of Calgary, Faculty of Law
- University of Manitoba - Robson Hall Faculty of Law
- University of Saskatchewan, Faculty of Law
- University of Victoria, Faculty of Law
- Women's Legal Education and Action Fund
- Yukon Bar Association

\* *Roundtable of Diversity Associations (RODA)*

Given that the process was open to candidates from Western Canada and Northern Canada, letters were also sent to the chief justices of the courts of those provinces and territories as well as those of the Federal Court of Appeal and the Federal Court.

The letter sent to the organizations is included in [Annex G](#).

## 6. Applications

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



The application period was open from June 20, 2023, to July 21, 2023, a period of 5 weeks. Qualified candidates from Western Canada and Northern Canada were eligible to apply. The applications were received by email and processed by staff in the Office of the Commissioner.

The Advisory Board received 13 applications.

In terms of information on diversity, generated from self-identification by applicants on their application forms, the following data was obtained from the 13 applications received:

<b>Gender</b>	<b>Number of applicants</b>	<b>%</b>
Women	6	46
Men	7	54
Other Gender	0	0
<b>Official Language</b>	<b>Number of applicants</b>	<b>%</b>
Anglophone	9	69
Francophone	1	8
No preference*	3	23
<b>Self-identification regarding diversity**</b>	<b>Number of identification</b>	<b>%</b>
Indigenous Individual	2	15
Racialized Individual	1	8
Ethnic/Cultural Group or Other	0	0
Individual with a Disability	0	0
2SLGBTQI+ Individual	0	0
Woman	6	46

\*3 applicants did not indicate a preferred language of communication.

\*\*Some applicants identified in more than one category.

## 7. Costs

While some expenses and operational costs are still being received and tabulated, it is estimated that the expenditures related to the Advisory Board for this appointment process will be approximately \$200,000. Expenses relate to per diems for Advisory Board members, and costs incurred by FJA to support the Advisory Board, including costs related to supplementary salaries, professional services, translation, IT, telecommunications and supplies.



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

The Advisory Board offers the following recommendations:

- *Consultation and Outreach.* As indicated in previous recommendations, a broader conversation with people in the profession about what is required to be on the Court prior to any future vacancies might result in wider ranging and diverse applications. To this end, thought should be given to amending the Terms of Reference in order to allow outreach to begin prior to the launch of a selection process.
- In carrying out its mandate, the Advisory Board was governed by criteria which included that the Supreme Court reflect the diversity of members of Canadian society, including gender-balance, Indigenous peoples, persons with disabilities and members of linguistic, ethnic and other minority communities including those whose members' gender identity or sexual orientation differs from that of the majority. The Advisory Board strongly recommends that these continue to be operative principles for future selection boards.
- *Appointment of Advisory Board members.* The Advisory Board was appointed on August 11, 2023, three weeks following the close of the application period. It conducted its work efficiently, submitting its short-list report to the Prime Minister four weeks after its appointment. As indicated in previous processes, the Advisory Board recommends that its members be appointed earlier and as soon as possible in order to avoid any delays in appointments to the Supreme Court of Canada.
- The Advisory Board notes that this process for recommending nominees has been used six times since 2016 and that the appointment of the Honourable Mary T. Moreau to the Supreme Court is the twelfth in the last 12 years. The executive, administrative and technological assistance provided to the Advisory Board by the Office of the Commissioner for Federal Judicial Affairs was invaluable and considerable, and the Advisory Board is very grateful to the employees for the work they undertook.
- *Appointment of Advisory Board Chair.* For this process, the appointment of the Chair was announced on August 11, 2023. This is the first time since 2016 that the Chair of the Independent Advisory Board was not known or announced at the beginning of the process. It is strongly recommended that the Chair of the Independent Advisory Board be appointed and announced at the beginning of the process in the future.



## **9. Confidentiality**

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

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

## **10. Conclusion**

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



## **Annex A: Terms of Reference for the Advisory Board**

### **Mandate**

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

### **Composition of the Advisory Board**

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

**(2)** The Advisory Board is to consist of

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

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

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

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

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

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

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

### **Length of Terms**

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

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



## Support

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

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

## Recommendations

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

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

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

## Recommendation Process

**8** Advisory Board members must

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

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

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

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

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

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



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

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

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

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

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

### **Confidentiality**

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

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

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

### **Reporting**

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

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

(3) The report must be made public.

### **Restriction**

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



## **Annex B: News Release, dated June 20, 2023, from the Office of the Prime Minister of Canada**

**Prime Minister opens the process to select the next justice of the Supreme Court of Canada**  
Ottawa, Ontario  
June 20, 2023

The Prime Minister, Justin Trudeau, today opened the process to select the next justice of the Supreme Court of Canada, to fill the vacancy created by the retirement of Justice Russell Brown. Applications from qualified candidates will be accepted until Friday, July 21, 2023.

A non-partisan Independent Advisory Board for Supreme Court of Canada Judicial Appointments will be given the task of identifying suitable candidates who are jurists of the highest calibre, functionally bilingual, and representative of the diversity of our country.

After the application period closes, the Advisory Board will review applications and submit a shortlist of highly qualified candidates to the Prime Minister for consideration.

Justice Russell Brown was appointed to the Supreme Court of Canada in 2015. In recognition of the custom of regional representation, the process will be open to all qualified applicants from Western Canada and Northern Canada.

### **Quote**

“The Supreme Court of Canada is the backbone of our country’s judicial system. Through our open, transparent, and independent appointment process, we are committed to ensuring the highest standards for Canada’s highest court.”

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

### **Quick Facts**

- Qualified candidates who wish to be considered for the upcoming vacancy must submit an application package no later than 23:59 Pacific Time on Friday, July 21, 2023.
- Those interested in applying are encouraged to first review the statutory requirements set out in the Supreme Court Act, and the qualifications and assessment criteria that will guide the Advisory Board in evaluating a candidate’s suitability.
- Candidates may demonstrate they satisfy the geographical requirement by reference to their bar membership, judicial appointment, or other relationship with Western Canada (British Columbia, Alberta, Saskatchewan, and Manitoba) or Northern Canada (Yukon, Northwest Territories, and Nunavut).
- The Supreme Court of Canada consists of nine judges, including a Chief Justice. They are all appointed by the Governor in Council and must have been either a judge of a superior court or a member of at least 10 years’ standing of the bar of a province or territory.



- In 2016, the Government of Canada announced a new process for Supreme Court of Canada judicial appointments. It included the creation of an independent and non-partisan advisory board to identify qualified and suitable candidates for appointment to the Supreme Court of Canada.
- The Chair and members of the Advisory Board will be announced in the coming weeks.
- The Advisory Board was previously chaired by the Right Honourable Kim Campbell, former Prime Minister of Canada, in 2016, 2017, 2019, and 2021, and by the Honourable H. Wade MacLauchlan, former Premier of Prince Edward Island, in 2022.
- The Advisory Board includes a member nominated by the Indigenous Bar Association to advance the Minister of Justice’s mandate letter commitment to work with stakeholders to encourage more Indigenous Peoples to join the bench.

#### **Associated links**

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



## **Annex C: News Release, dated August 11, 2023, from the Office of the Prime Minister of Canada**

### **Prime Minister announces Independent Advisory Board to help select the next Supreme Court Justice**

Ottawa, Ontario  
August 11, 2023

The Prime Minister, Justin Trudeau, today announced the Chair and members of the Independent Advisory Board who will identify candidates to become the next Supreme Court Justice.

The Independent Advisory Board includes:

- **The Honourable H. Wade MacLauchlan, C.M., O.P.E.I.**, former Premier of Prince Edward Island (Chair)
- **Reem A. Bahdi**, dean of the Faculty of Law at the University of Windsor
- **The Honourable Richard J. Chartier**, former Chief Justice of Manitoba
- **Erin M. S. Kleisinger, K.C.**, partner at the law firm McDougall Gauley LLP
- **Bianca Kratt, K.C.**, partner at the law firm Parlee McLaws LLP
- **Carol Anne Lee, O.B.C.**, co-founder and Chair of the Vancouver Chinatown Foundation
- **Georgina (Gina) M. Nagano**, founder and President of consultancy firm House of Wolf & Associates Inc.
- **Jean Teillet, M.S.C.**, Senior Counsel with the law firm Pape Salter Teillet LLP

Chaired by the Honourable H. Wade MacLauchlan, the Independent Advisory Board will consider applications received through the Office of the Commissioner for Federal Judicial Affairs and identify candidates who are jurists of the highest calibre, functionally bilingual, and representative of the diversity of our country. The Independent Advisory Board will submit a shortlist of highly qualified candidates to the Prime Minister for consideration.

This process aims to fill the vacancy created by the retirement of Justice Russell Brown. The application period for qualified candidates to the Supreme Court of Canada was open to all qualified applicants from Western Canada and Northern Canada, in recognition of the convention of regional representation.

### **Quote**

“The Supreme Court of Canada is the backbone of our country’s judicial system and plays a critical role in our democracy. This is due in no small part to a long tradition of appointing only the most exceptional and deserving individuals to the court. I am confident that the respected minds sitting on the Independent Advisory Board will help continue this tradition and maintain the highest standards for Canada’s highest court.”

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



## Quick Facts

- Justice Brown was appointed to the Supreme Court of Canada in 2015. He retired on June 12, 2023.
- In 2016, the Government of Canada announced a new process for Supreme Court of Canada judicial appointments. It included the creation of an independent and non-partisan advisory board to identify qualified and suitable candidates for appointment to the Supreme Court of Canada.
- Since 2022, the Independent Advisory Board has included a member nominated by the Indigenous Bar Association (IBA). This year's IBA nominee is Jean Teillet.
- The Independent Advisory Board was previously chaired by the Honourable H. Wade MacLauchlan in 2022.
- The Supreme Court of Canada consists of nine judges, including a Chief Justice. They are all appointed by the Governor in Council, and must have been either a judge of a superior court or a member of at least 10 years' standing of the bar of a province or territory.

## Related Products

- [The Honourable H. Wade MacLauchlan, C.M., O.P.E.I.](#)
- [Independent Advisory Board members](#)

## Associated Links

- [Prime Minister opens the process to select the next justice of the Supreme Court of Canada](#)
- [Supreme Court of Canada](#)
- [Supreme Court of Canada appointment process](#)
- [New process for judicial appointments to the Supreme Court of Canada](#)



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

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

The Advisory Board consists of the eight following members:

### **The Honourable H. Wade MacLauchlan, C.M., O.P.E.I., Chairperson**

Nominated by the Minister of Justice

The Honourable H. Wade MacLauchlan, former lawyer and renowned legal scholar, and the 32nd Premier of Prince Edward Island

### **Carol Anne Lee, O.B.C., Member**

Nominated by the Minister of Justice

Co-founder and chair of the Vancouver Chinatown Foundation

### **Georgina (Gina) M. Nagano, Member**

Nominated by the Minister of Justice

President and founder of the consultancy firm House of Wolf & Associates, Inc.

### **Bianca Kratt, Member**

Nominated by the Canadian Bar Association

Partner at Parlee McLaws LLP

### **Erin M. S. Kleisinger, Member**

Nominated by the Federation of Law Societies of Canada

Partner at McDougall Gauley LLP

### **The Honourable Richard J. Chartier, Member**

Nominated by the Canadian Judicial Council

Former Chief Justice of Manitoba

### **Reem A. Bahdi, Member**

Nominated by the Council of Canadian Law Deans

Dean of Law at the Faculty of Law of the University of Windsor

### **Jean Teillet, M.S.C., Member**

Nominated by the Indigenous Bar Association

Senior Counsel with Pape Salter Teillet LLP



## **The Honourable H. Wade MacLauchlan, C.M., O.P.E.I.**

### **Chairperson**

The Honourable H. Wade MacLauchlan was the 32nd Premier of Prince Edward Island (2015-19) and served as PEI's Attorney General as well as Minister of Aboriginal Affairs, Intergovernmental Affairs, Justice and Public Safety, and, for a period, Finance. He served terms as Chair of the Council of the Federation, the Council of Atlantic Premiers, and the New England Governors and Eastern Canadian Premiers.

Mr. MacLauchlan previously served as Chair of the Independent Advisory Board for Supreme Court of Canada Judicial Appointments in 2022.

Mr. MacLauchlan is President Emeritus of the University of Prince Edward Island, where he served as President from 1999 to 2011. He was previously Dean of Law at the University of New Brunswick (UNB) and founding Director of the UNB Centre for Property Studies. Prior to that, he was Associate Professor and Director of the Civil Law / Common Law Exchange Program at Dalhousie Law School. He served as law clerk in the Supreme Court of Canada in 1981-82 and was Administrative Law Editor of the Supreme Court Law Review from 1990 to 1993.

Mr. MacLauchlan is an honorary member of the Law Society of Prince Edward Island, and served on the Council of the Law Society of New Brunswick (1991-96) and as Chair of its Sesquicentennial Committee. He was an active member of the Council of Canadian Law Deans and the Canadian Association of Law Teachers (CALT), including as Chair of the CALT Special Advisory Committee on Equality in Legal Education.

Mr. MacLauchlan has played leadership roles in national and regional organizations, including as a director of the Public Policy Forum, the Canadian Institute for the Administration of Justice, the Association of Atlantic Universities, CANARIE Inc., the Atlantic Provinces Economic Council, the Federation of PEI Municipalities, Dalhousie Legal Aid, the Muriel McQueen Fergusson Centre for Family Violence Research, the Windsor Foundation, and the Medavie Health Foundation. He was a director of the Association of Universities and Colleges of Canada (AUCC) and Chair of the AUCC Standing Advisory Committee on International Relations.

Mr. MacLauchlan has been recognized through membership in the Order of Canada (2008) and the Order of Prince Edward Island (2014). In 2010, he was awarded the Institute of Public Administration of Canada (IPAC)'s Lieutenant-Governor's Medal for Public Service Leadership and, in 2013, he was an inaugural recipient of the Frank McKenna Award for outstanding contributions to public policy by Atlantic Canadians conferred by the Public Policy Forum. In July 2023, Mr. MacLauchlan was appointed Chancellor of the University of New Brunswick.

Mr. MacLauchlan holds a Bachelor's Degree in Business Administration from the University of Prince Edward Island, a Bachelor of Laws from the University of New Brunswick, and a Master of Laws from Yale University. He lives in West Covehead, PEI with his partner Duncan McIntosh.



### **Carol Anne Lee O.B.C., Member**

Carol Anne Lee, O.B.C., is the co-founder and Chair of the Vancouver Chinatown Foundation, which is committed to revitalizing one of Canada's most iconic neighborhoods through initiatives focused on affordable housing and cultural and economic development. She is acting co-Chair of the University of British Columbia (UBC) Properties Trust and sits on several community boards, including the Faculty Advisory Board of UBC Sauder Business School and the John McArthur Distinguished Fellowship. Her community work has led to a number of awards, including the Queen Elizabeth II Diamond Jubilee Medal in 2018, an Honorary Doctorate of Laws from UBC in 2019, an Honorary Doctorate of Technology from the British Columbia Institute of Technology in 2020, the Order of British Columbia in 2021, and the YMCA Icon Award in 2022.

### **Georgina (Gina) M. Nagano, Member**

Georgina (Gina) M. Nagano is a Tr'ondëk Hwëch'in First Nation Beneficiary and Citizen of the Wolf Clan from Dawson City, Yukon. She is the founder and President of consultancy firm House of Wolf & Associates, Inc., which has designed, developed, and implemented community safety officer programs in various communities across the Yukon. These programs focused on crime prevention through education, primary intervention, and sustainable community involvement. She has also gained extensive experience in this area through a career that included roles working within various First Nations, at Correctional Services Canada, and for Justice Canada. Ms. Nagano also worked with the Royal Canadian Mounted Police for over 20 years.

### **Bianca Kratt, Member**

Bianca Kratt, K.C., is currently a partner at Parlee McLaws LLP. Originally from Quebec, she is a bilingual lawyer with extensive experience in commercial, banking, and real estate law, and a member of the Huron-Wendat First Nation. In addition to managing a diverse practice, Ms. Kratt has served as an Executive Member of the Canadian Bar Association, Alberta Branch since 2019, and she was previously President of this branch. She is heavily involved in community projects, dedicating her time to community volunteering with the Association of French Speaking Lawyers of Alberta (AJEFA), that she chaired from 2016 to 2018 and where she promoted access to justice in French. She has also been involved with the International Association of Women Judges, Canadian Chapter, to raise awareness of inequalities women face in the legal profession and to empower women in leadership roles. She was awarded the King's Counsel designation in 2022 and is an active member of the Alberta bar and the Quebec bar.

### **Erin M. S. Kleisinger, Member**

Erin M. S. Kleisinger, K.C., is currently a partner at McDougall Gauley LLP. She is a former Bencher and past President of the Law Society of Saskatchewan, sits on a number of Law Society committees, and is currently on the executive of the Federation of Law Societies of Canada as Second Vice-President. Ms. Kleisinger is a member of the Board of Directors and past Chair of Group Medical Services and GMS Insurance Inc., a national individual health and group benefits insurance



company. She was awarded the King’s Counsel designation in 2015 for her distinguished service and leadership in the legal profession and was selected three times by her peers to be part of the Best Lawyers in Canada, the oldest and most respected peer-review publication company in the legal profession.

### **The Honourable Richard J. Chartier, Member**

The Honourable Richard J. Chartier served as Chief Justice of Manitoba from 2013 until his retirement in 2022. He had previously been appointed to the Provincial Court of Manitoba in 1993 and to the Manitoba Court of Appeal in 2006. During his career, Mr. Chartier notably reviewed Manitoba’s French language services and chaired numerous commissions and committees, including the Manitoba Electoral Division Boundaries Commission, the Judicial Education Committee of the Canadian Judicial Council, and the St. Boniface Health Access Centre board. His 1998 report on French language services within the Government of Manitoba, titled *Above All, Common Sense*, was tabled in Manitoba’s legislative assembly and has since been fully implemented. In 2005, he was a member of a team that received the Gold Medal for Innovative Management from the Canadian Institute of Public Administrators for a project focused on domestic violence.

### **Reem A. Bahdi, Member**

Reem A. Bahdi has been serving as law dean at the University of Windsor since 2021. She is the first Arab woman and the first Palestinian to be appointed as a law dean in Canada. Ms. Bahdi joined Windsor Law as a faculty member in 2002 and was associate dean from 2012 to 2015. She has dedicated herself to access-to-justice efforts, for which she received the Law Foundation of Ontario’s Guthrie Medal. She is also an elected member of the Royal Society of Canada’s College of New Scholars, Artists, and Scientists and a recipient of the Outstanding Arab Canadian Achievement Award from the Canada Arab Business Council.

### **Jean Teillet, M.S.C., Member**

Jean Teillet, M.S.C., is Senior Counsel with Pape Salter Teillet LLP and specializes in Indigenous rights law. Ms. Teillet has long been engaged in negotiations and litigation with provincial and federal governments concerning Métis and First Nation land rights, harvesting rights, and self-government. She served as counsel before all levels of court, including lead counsel for the landmark case *R. v. Powley*, in which the Supreme Court of Canada affirmed constitutional protection of Métis harvesting rights. She has been awarded two national honours for her contributions to Canada: the Queen Elizabeth II Diamond Jubilee Medal and the Meritorious Service Cross. She has been made an honorary lifetime member of the Association of Ontario Midwives for her contributions to Ontario midwifery. Ms. Teillet was also awarded the Indigenous Peoples’ Council Award by the Indigenous Bar Association and the Law Society of Upper Canada’s first-ever Lincoln Alexander Award for community service. She received honorary doctorates from the University of Guelph, the Law Society of Ontario, and Windsor University.



## **Annex E: Qualifications and Assessment Criteria**

### ***Qualifications***

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

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

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

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

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

### **Functional bilingualism**

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

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

### **Assessment Criteria**

Judges of the Supreme Court of Canada face multiple, complex and occasionally competing expectations. In keeping with Canada’s evolution into a mature constitutional democracy, the role of the courts, and the Supreme Court in particular, has become ever more important. The criteria for appointment to the Court must reflect both the needs of any court of final appeal, and the particular circumstances, history and context of Canadian society and its legal system. The criteria



must facilitate the Court's ability to: resolve disputes between and among all manner of parties, communicate its decisions effectively to the Canadian public, uphold the constitution, and protect the rule of law.

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

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

### **Personal Skills and Experience**

#### **1. Demonstrated superior knowledge of the law.**

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

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

#### **2. Superior analytical skills.**

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



### 3. Ability to resolve complex legal problems

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

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

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

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

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

*In most cases, the Supreme Court is expected to, and does, issue written reasons for its decisions. Decisions are the Court's most important method of communicating with parties, with courts, with other branches of government, and with the Canadian public. Reasons help to explain the basis for deciding complex legal issues one way versus another. Reasons also satisfy the Court's duty to provide guidance to the lower courts which are expected to apply those decisions in future cases. Excellence in written expression is thus essential to the Court's work, and a candidate's prior writing must be reviewed. Such writing can take a number of forms: judicial decisions, reports, memoranda of legal arguments, books, treatises and scholarly articles. The writing may be reviewed for, among other things, clarity, precision, command of the law, persuasiveness and balance. It is expected that the materials reviewed will primarily be legal in nature, though non-legal written expression may provide some assistance.*

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

*The Supreme Court hears appeals in all areas of law. Its nine members share a variety of adjudicative tasks. Cases at the Supreme Court often contain hundreds of pages of materials, and*



*judges work on multiple cases at the same time. Judges must review materials in preparation for cases, review materials for decisions they are writing and review drafts and memos from their colleagues. The workload is heavy and constant. The job therefore requires significant stamina, industry and learning ability.*

#### 7. Commitment to public service

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

### **Personal Qualities**

#### 1. Irreproachable personal and professional integrity.

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

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

#### 2. Respect and consideration for others.

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

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

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

#### 4. Moral courage

*Judicial independence has been recognized as an unwritten constitutional principle under Canada's Constitution. It exists in order to protect the ability of judges to decide cases impartially, free of any external influence or coercion. Canadian judges enjoy a high degree of independence*



*that is respected around the world. Nevertheless, Supreme Court judges sometimes face extremely challenging issues. They may be faced with making a decision that is at odds with the stated wishes of the government, with public opinion or with the views of their colleagues. This requires a measure of fortitude.*

#### 5. Discretion

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

#### 6. Open-mindedness

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

### **Institutional Needs of the Court**

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

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

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

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

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

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



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sur la nomination des juges de la  
Cour suprême du Canada

*reasonably reflective Court also promotes public confidence in the administration of justice as well as in the appointment process.*



## **Annex F: Functional Bilingualism and the Supreme Court of Canada Judicial Appointments Process**

### **Functional Bilingualism**

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

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

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

### **The Office of the Commissioner for Federal Judicial Affairs Canada**

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

### **Language Requirement**

The language requirement is composed of three parts:

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

### **Assessment Tools and Rating**

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



The entire assessment was timed to last 45 minutes per candidate.

The first segment involved the reading of a legal text by the candidate, followed by comprehension questions put to the candidate in the official language of their choice. This first part lasted 15 minutes.

The second part of the assessment consisted of a legal pleading each candidate had to listen to, followed by comprehension questions put to the candidate in the language being evaluated. This second part lasted 15 minutes.

The third part of the assessment sought to determine whether each candidate was able to converse and interact fluently on diverse subjects, including legal issues, in their second official language. A guided conversation using set criteria formed the basis of this segment which also lasted 15 minutes.

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



## **Annex G: Outreach letter sent to Organizations**

Ottawa, June 28, 2023

Dear Madam/Sir,

### **RE: Supreme Court of Canada Appointment Process - 2023**

On June 20, 2023, the Prime Minister of Canada opened the process to select the next justice of the Supreme Court of Canada, and fill the vacancy created by the retirement of Russell Brown on June 12, 2023. ([View Prime Minister's news release](#))

Under the process, used for the first time in 2016, an independent and non-partisan Advisory Board will again be given the task of reviewing all applications, and identifying functionally bilingual candidates who are of the highest caliber for the Prime Minister's consideration.

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

In recognition of the convention of regional representation, this process is open to candidates from Western Canada and Northern Canada, that is British Columbia, Alberta, Saskatchewan Manitoba, and Nunavut, Yukon and the Northwest Territories. Candidates may demonstrate that they satisfy the geographical requirement by reference to their bar membership, judicial appointment or other relationship with Western Canada or Northern Canada. The question of whether a candidate is functionally bilingual will be assessed by the Office of the Commissioner for Federal Judicial Affairs, in accordance with established and objective criteria.

On behalf of the Advisory Board, I encourage you to use your networks and knowledge of the judiciary and legal community in your jurisdictions to identify qualified candidates, and urge them to submit an application through my Office at the following address: <https://www.fja.gc.ca/scc-csc/2023/form-formulaire-eng.html>. Your early attention to this matter is much appreciated as the deadline to file an application for appointment to the Supreme Court of Canada is July 21, 2023, at 23:59 PDT.

Yours truly,

Marc A. Giroux  
Commissioner for Federal Judicial Affairs