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• (1005)

[English]

The Chair (Mr. Randeep Sarai (Surrey Centre, Lib.)): I call this meeting to order.

Good morning, everyone. Welcome to meeting number 26 of the House of Commons Standing Committee on Justice and Human Rights. The committee is meeting to discuss the nomination of the Honourable Michelle O'Bonsawin to the Supreme Court of Canada.

Today's meeting is taking place in a hybrid format, pursuant to the House order of June 23, 2022. Members are attending in person in the room and remotely using the Zoom application. The proceedings will be made available via the House of Commons website.

For those on Zoom, you have the choice, at the bottom of your screen, of floor, English or French. I believe Madam Lori Idlout might be speaking in Inuktitut, and there will be translation services made available during her speaking time as well. For those in the room, you can use the earpiece and select the desired channel.

I would like to welcome our witnesses. They are the Honourable David Lametti, Minister of Justice and Attorney General of Canada, and the Honourable Wade MacLauchlan, chairperson of the Independent Advisory Board for Supreme Court of Canada Judicial Appointments.

Gentlemen, the floor is yours.

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

Honourable colleagues, to begin, I would like to acknowledge that I am speaking to you today from the traditional territory of the Algonquin Anishinabe people. I would also like to thank the chair and members of this committee, here and virtually, for convening this special session in late August. I would also like to thank the Honourable Wade MacLauchlan, chair of the Independent Advisory Board for Supreme Court of Canada Judicial Appointments, for joining us today.

It's a great honour for me to speak to you in support of the nomination of the Honourable Justice Michelle O'Bonsawin, a nominee for the Supreme Court of Canada. I am confident that she will serve Canadians exceptionally, upholding the court's highest ideals in guiding the evolution of Canada's laws. I offer my heartfelt congratulations to Justice O'Bonsawin, and I look forward to her appearance before parliamentarians this afternoon.

[Translation]

This is the fifth time our government has followed the process implemented by the Prime Minister in 2016 to appoint justices to the Supreme Court of Canada. This is the third time we are doing it since I took office as Minister of Justice.

Two points come up when I think about this process.

First, the process produces exceptional justices who have brought to the court not only undeniable legal excellence, but also a rich humanity and a deep understanding of diversity in Canada. The appointment of those jurists has broadly been commended by all parties, across the legal community and the general public.

Second, and perhaps even more important, is the confidence that Canadians have placed in the process itself.

As the committee members are well aware, public confidence in our courts and the justice system is a precious commodity, one that must be subject to constant vigilance.

Particular vigilance is required when it comes to the selection of a nation's Supreme Court justices. How that is done can greatly affect public confidence, for better or for worse.

[English]

On this front, we can be proud of a process that incorporates values and elements that the public can trust, a process that is free of partisanship and that relies instead on rigorous assessment by an independent board. Adhering to this process, vacancy after vacancy gives Canadians confidence that the government is clearly committed to the values the process enshrines. This provides stability, which I believe strengthens the court and the public's confidence in it.

In global times of conflict, polarization and the erosion of trust in democratic values, it is more important than ever to commit to processes, such as this one, that are fundamental to strengthening our democratic principles. Processes that are understood and respected by the broad Canadian public allow us to peacefully thrive in our diverse society. In light of this, I want to thank you, the members of this committee, for your contributions and support of the process.

Before describing the process in a bit more detail, I would like to take a moment to express my sincere gratitude, on behalf of all Canadians, to Justice Michael Moldaver, who will be retiring from the Supreme Court next Thursday. His contributions to the criminal law are unparalleled. His wisdom and collegiality have brightened the Supreme Court for almost 11 years.

Justice Moldaver has led a career marked by a deep commitment to justice and fairness and to a justice system that the public can understand and trust. His contributions to the Supreme Court, to our jurisprudence and to our justice system have been monumental.

It is with deep gratitude that I thank Justice Moldaver for his service and wish him much joy in his retirement. I wish him all the best and success in all his future endeavours.

[*Translation*]

I would like to get back to the selection process by noting that candidates must demonstrate not only legal and professional excellence, but also show how their lived experiences have shaped their understanding of Canadian society in all its diversity. The process requires that candidates be assessed against the transparent, merit-based criteria by an independent advisory board of highly qualified individuals.

This board is at the heart of the selection process. I am delighted to be joined today by its chairperson, the Honourable Wade MacLauchlan.

I'm also grateful to the individuals who have worked with Mr. MacLauchlan as members of this independent advisory board.

These members are appointed not only by the government, but also by organizations that are committed to preserving the rule of law and looking after the interests of Canadian society. These organizations are the Canadian Bar Association, the Federation of Law Societies of Canada, the Canadian Judicial Council and the Council of Canadian Law Deans.

• (1010)

[*English*]

Earlier this year, the mandate order in council for the advisory board was amended to expand the independent advisory board to include a member nominated by the Indigenous Bar Association. This change flows from my mandate letter commitment to work with stakeholders to encourage indigenous persons to join the bench. I am grateful to the Indigenous Bar Association for its support in this process.

The composition of the independent advisory board ensures 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.

[*Translation*]

Prime Minister Trudeau launched the current selection process on April 4, 2022. The Independent Advisory Board for Supreme Court of Canada Judicial Appointments has been tasked with recommending three to five candidates who are of the highest possible calibre, functionally bilingual and representative of Canada's diver-

sity. In keeping with the long-standing practice of regional representation on the court, this selection process was open to all qualified candidates from Ontario.

Interested candidates had until May 13, 2022 to submit their applications. The independent advisory board reviewed all applications submitted against public merit criteria.

This review included consultations with the Chief Justice of Canada, references and interested parties, as well as meetings with some candidates. The board conducted its work in a confidential manner, as required by its mandate and confidentiality agreements with each member.

At the end of this review, the independent advisory board provided the Prime Minister with a report on the short-listed candidates.

I was then consulted on the short list to provide my advice to the Prime Minister. 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 of the Standing Senate Committee on Legal and Constitutional Affairs, as well as distinguished members of the bar.

The Prime Minister then made his final selection.

[*English*]

I would now like to turn to Wade MacLauchlan to speak to the process from his perspective. I will then return to say a few words about the nominee.

Wade.

[*Translation*]

Hon. H. Wade MacLauchlan (Chairperson, Independent Advisory Board for Supreme Court of Canada Judicial Appointments): Mr. Chair, members of the committee and Minister, good morning.

It is a great honour to serve as chairperson of the Independent Advisory Board for Supreme Court of Canada Judicial Appointments.

It is also an honour to appear before this committee this morning.

[*English*]

I am here as chair of an impressive and dedicated group of Canadians who served with me as members of the independent advisory board for nominations to the Supreme Court of Canada. The other seven members of the independent advisory board include

[*Translation*]

the Honourable Louise Charron, former justice of the Supreme Court of Canada, nominated by the Canadian Judicial Council, and Jacqueline Horvat, nominated by the Federation of Law Societies of Canada.

[*English*]

I might add that during the course of our advisory board work, Ms. Horvat was elected treasurer of the Law Society of Ontario. That's just a reminder that the board members had other things on their plates as well as this important work.

Dr. Richard Jochelson, dean of the Faculty of Law at the University of Manitoba, was nominated by the Council of Canadian Law Deans.

David Nahwegahbow was nominated by the Indigenous Bar Association. I might add that during the course of our work, Mr. Nahwegahbow was awarded an honorary Doctor of Laws by the Law Society of Ontario during its June 22, 2022, call to the bar ceremony.

Paulette Senior, CEO of the Canadian Women's Foundation, was nominated by the Minister of Justice.

• (1015)

[*Translation*]

Konrad Sioui, former grand chief of the Huron-Wendat nation, was nominated by the Minister of Justice.

[*English*]

Charlene Theodore, formerly president of the Ontario Bar Association, was nominated by the Canadian Bar Association.

The members of the independent advisory board all brought to our work a background of professional accomplishment and a vast array of experience. What's more, they brought a profound commitment to the rule of law, the institutional significance of the Supreme Court of Canada and the best interests of our country and all Canadians. We worked diligently, with considerable commitment of priority and time in working and studying and deliberating together. I might add that we enjoyed working together.

[*Translation*]

The mandate of the independent advisory board is to propose suitable candidates for appointment to the Supreme Court of Canada. Those candidates are jurists of high calibre who are functionally bilingual and representative of Canada's diversity. The process that just concluded was open to candidates from the province of Ontario.

The ultimate task of the independent advisory board was to submit to the Prime Minister a report containing a short list of three to five highly qualified individuals.

[*English*]

The advisory board was the beneficiary of some very helpful guidance and wisdom. The Right Honourable Kim Campbell, who served as chair of the advisory board for the previous four Supreme Court nominations, was most helpful and encouraging from the earliest stages of the process, offering wisdom and insights based on her experience. The Right Honourable Richard Wagner, Chief Justice of Canada, met with our advisory board early in the process to discuss the institutional needs of the court and the role and demands of a Supreme Court justice. Throughout our work, the advisory

board was supported by the Commissioner for Federal Judicial Affairs and his accomplished and dedicated staff.

When it comes to filling a position on the Supreme Court of Canada, the first task is to get the word out. On the face of things, that seems rather obvious. Some might wonder why it would be necessary. Justice Michael Moldaver announced in late February that he would retire on September 1, after 11 years on the Supreme Court of Canada and a total of 32 years as a judge. Most interested observers would have known that Justice Moldaver will turn 75 in December.

The point about getting the word out is not so much to give notice but to set in motion networks of encouragement. Lawyers and jurists who are highly qualified in a way that makes them contenders for appointment to the Supreme Court of Canada are not in the habit of applying for a job. They may need an encouraging nudge from colleagues. They will need to talk it over at home to weigh family considerations, including what it means to move and to relocate to Ottawa.

They are required to complete an elaborate application, as you will have seen from studying the file of Madam O'Bonsawin. It delves deeply into their professional track record and experience as well as personal skills and qualities. They may be members of traditionally under-represented groups.

[*Translation*]

In the days following my appointment as chair of the independent advisory board and after the Prime Minister announced the launch of the selection process for the next Supreme Court justice, I wrote and sent letters to a wide variety of legal organizations and interest groups in the legal field.

I also wrote to the chief justices of the Ontario Court of Appeal, the Superior Court of Justice, the Federal Court of Appeal, the Federal Court and the Ontario Court of Justice.

I also followed up with phone calls to chief justices. These calls and letters were intended to create a culture of encouragement, not to seek out candidates or discuss specific candidates.

[*English*]

The deadline for submissions of applications was May 13. The other seven members of the independent advisory board were confirmed at about the same time. We had our first in-person meetings in Ottawa on May 19 and 20. Our report to the Prime Minister was completed on June 22.

This is an intensive process calling for much discernment and humanity in addition to dedicated preparation and time commitment. Of course, this is the case for the candidates who put their names forward as well as for independent advisory board members.

There were 12 applications. The independent advisory board opted to interview six highly qualified individuals. The interviews were extensive, giving candidates upwards of an hour to respond to questions about their experience, views and commitment to serving on the Supreme Court of Canada. The independent advisory board was especially interested to explore candidates' approach to collegiality, the workload of the court and issues of integrity, diversity and judgment. Our checklist of criteria for assessment included superior knowledge of the law, superior analytical skills, ability to solve complex legal problems, ability to work under significant time pressures requiring diligent review of voluminous materials in any areas of the law, and commitment to public service.

The personal qualities assessed included irreproachable personal and professional integrity; respect and consideration for others; ability to appreciate a diversity of views, perspectives and life experiences, including of groups historically disadvantaged in Canadian society; moral courage; discretion; and open-mindedness.

All candidates interviewed were functionally bilingual. The interviews were conducted in both official languages. Immediately following the interview, each candidate participated in an assessment conducted by the Office of the Commissioner for Federal Judicial Affairs to ascertain the candidate's understanding of written and oral arguments as well as to determine the candidate's ability to speak in both official languages. A report, including each candidate's assessment score, was provided to the independent advisory board.

The independent advisory board pursued references for each candidate interviewed as well as discussions with chief justices. The interviews were conducted by IAB members who spoke directly to referees following a consistent format. The ultimate task of the advisory board is to draft and finalize a consolidated report.

From the beginning of this process to the end, there has been total respect for the need for confidentiality. A further commitment of the independent advisory board has been to treat every candidate who submitted an application with fairness, dignity and good grace.

• (1020)

[*Translation*]

The process involves considerable study, judgment and detailed consideration of the candidates in a space of just under six weeks. Without the total dedication of the members of the independent advisory board, including flexibility in their schedules, and the expert support of the Office of the Commissioner for Federal Judicial Affairs, this would have been exceptionally difficult. Despite this tight time frame, the independent advisory board fulfilled its mandate with the diligence, cooperation and judgment that this important process requires.

That said, anything that can be done to add a week or even two weeks to the time frame offered would be beneficial in future Supreme Court appointment processes.

[*English*]

In previous appearances before this committee, the Right Honourable Kim Campbell spoke about the desirability of having what she referred to as a broader conversation among people in the pro-

fession and the community about what is required to be a Supreme Court justice so that there's a greater knowledge of what is actually entailed.

In her 2019 appearance, Madam Campbell spoke about this in the context of building an environment that might encourage even more people to apply. She said:

I think, particularly for women, if they have families and are likely to have spouses who also have careers, this might be something that could overcome some reservations.

She also said:

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

I concur with these comments and note that both Chief Justice Wagner and former chief justice Beverley McLachlin have taken significant steps to enhance the profile of the Supreme Court of Canada. In September of this year, the Supreme Court will sit in Quebec City, following the model of its first out-of-Ottawa hearings in Winnipeg in September 2019. All members of the court participate generously through speaking engagements and other public activities, such as the feature television interview given in June by Justice Jamal on the one-year anniversary of his appointment to the court.

Still, there is what I call an episodic quality to the appointment of a Supreme Court justice. Given the ages and stages of the current justices, it could be a number of years before the next vacancy. That in itself is not a bad thing. There has been considerable change in the membership of the Supreme Court over the past decade. The coming period could be a window of opportunity to enhance these networks of encouragement that I spoke about earlier in my remarks so that lawyers and judges have more time to consider what might be involved in being a candidate for a Supreme Court appointment when the opportunity arises.

The transparency and independence of this nomination process can only add to that environment of encouragement.

I will conclude with two remarks.

First, this process has resulted in the nomination of Justice Michelle O'Bonsawin, a highly qualified jurist who brings many gifts and talents to the Supreme Court of Canada, including as the first indigenous person to serve as a member of the court. This in itself is convincing proof that we are making progress in building an environment of encouragement and inclusion with impact extending well beyond the work of the Supreme Court of Canada.

My final remark is to say that it has been a truly uplifting experience to serve as chair of the independent advisory board. It has been an opportunity of a lifetime to work with the seven other members of the advisory board and our supporting team. We would all say that we treasure the collaboration, diligence and humanity that we have shared. It has been uplifting to get to know all of the candidates who came forward for this position.

We are extremely fortunate in this country to have a widely shared respect for the rule of law and for the Supreme Court of Canada as an institution. We are fortunate to have people of exceptional calibre who contribute in so many ways and in so many capacities to ensuring that this is the case and continues to be so, and ultimately, to serve Canadians.

The opportunity to appear before this committee today reinforces those values.

As I close, I'm going to refer to a note I got, one of the very first when I took on this task, from a former member of this committee, the Honourable Murray Rankin, who now serves in the Government of British Columbia. I've known Murray for many years.

He writes, "Dear Wade, I was delighted to learn of your new role in SCC judges selection. You're perfect for this vital role." That's not why I'm reading it. He writes, "I was the NDP Justice critic for three appointments and I must say how proud I was as a Canadian of this process."

I think that's a sentiment, Mr. Chair and committee members, on which I will close my opening comments this morning.

I look forward to an exchange through questions.

• (1025)

[*Translation*]

Thank you.

[*English*]

The Chair: Thank you.

Hon. David Lametti: Thank you, Wade.

In the brief time I have, I cannot possibly paint a full picture of the professional and personal experiences and accomplishments of Justice Michelle O'Bonsawin. I instead offer a brief sketch of her background.

[*Translation*]

Judge O'Bonsawin grew up in Hanmer, a small francophone village near Sudbury, Ontario. As a first nations woman growing up in northern Ontario, she became aware of the need for dedicated individuals to give a voice to those who could not speak for themselves.

That inspired her and she decided to become a lawyer. She obtained a bachelor of arts degree from Laurentian University and a bachelor of law degree from the University of Ottawa and was called to the Ontario Bar.

She began her legal career with the Royal Canadian Mounted Police Legal Services and later acted as counsel for Canada Post,

where she specialized in labour and employment law, human rights and privacy law.

She then became general counsel with the Royal Ottawa Healthcare Group, where she developed a thorough understanding of legal issues related to mental health and the application of the Gladue principles in the forensic mental health system. She has appeared before a variety of administrative tribunals and various levels of courts.

While in this position, she earned a master's degree in law from Osgoode Hall Law School, with a specialty related to mental health rights.

In 2017, she was appointed to the Ontario Superior Court of Justice, and in 2021, she received her doctorate of law degree from the University of Ottawa, specializing in indigenous issues and mental health rights.

• (1030)

[*English*]

Both her legal and academic backgrounds provide significant grounding in important areas of criminal law, namely mental health law, as well as the implementation of Gladue principles.

At all stages of her career, Justice O'Bonsawin has volunteered with numerous organizations devoted to improving our justice system and our society more broadly. She has been actively involved as an educator, providing continuing education courses to members of the judiciary and teaching at the University of Ottawa.

Throughout her career, she has remained rooted in her Abenaki First Nation of Odanak. This includes participating in ceremonies, being supported by elders and taking courses in the Abenaki language.

I could go on, but I believe that even this brief sketch speaks to the professional and legal excellence of this fluently bilingual and accomplished jurist. Let there be no doubt that there are qualified indigenous candidates who speak both official languages.

Let me end by noting one aspect of Justice O'Bonsawin that stood out for me: her commitment to putting her talents, knowledge and experience to the service of others. She is dedicated to continually sharpening her skills and broadening her knowledge so that she can be of better service to others in their vast diversity of needs and backgrounds.

I need only point to the fact that despite being a member of the judiciary, she persisted in completing her research and defending her thesis for her doctorate degree while continuing to sit as a full-time judge. As someone who has completed a Ph.D., I must admit that I find it hard to imagine doing so while having a full-time job as demanding as that of a superior court judge. Justice O'Bonsawin has shown extraordinary commitment in her legal career.

As the first indigenous justice of the Supreme Court of Canada, Justice O'Bonsawin will bring an invaluable perspective and deep wisdom to the court. This is a historic moment not only for the indigenous peoples of Canada but also for all Canadians. The court's decisions are enriched and strengthened when justices bring diverse perspectives. The court's legitimacy is enhanced when Canadians see themselves represented on the court.

Thank you, Mr. Chair. I look forward to answering your questions and those of committee members.

The Chair: Thank you, Mr. Lametti and Mr. MacLauchlan.

I will now go to our first round of questions. We'll have them at six minutes to begin.

We'll begin with Mr. Moore for six minutes.

Hon. Rob Moore (Fundy Royal, CPC): Thank you, Mr. Chair. It's good to see you again.

Minister, as well as Wade MacLauchlan, it's good to see both of you. I hope you're doing well. Thank you for your contributions to this process, which has resulted in the nomination of Justice O'Bonsawin.

Minister, I want to echo your remarks around the retirement of Justice Moldaver. I wish him well in his retirement.

Wade MacLaughlan mentioned the various individuals involved in the process, some of whom are former judges, former premiers, former prime ministers, individuals who have "honourable" or "right honourable" in front of their names. It's important to have the views of individuals with deep experience in the process.

I was listening to the remarks by Justice O'Bonsawin about having access to justice and Canadians feeling that they are a part of our system. I think it's important, too, that everyday Canadians have the ability to give input through this process. One of the ways they do that is through us, members of the House of Commons. It's our job to represent the views of everyday Canadians, our constituents. Later today we have been invited to what is called an informal moderated Q and A session. It's not an actual committee of the House of Commons or the Senate, but a Q and A session moderated by someone who is not a parliamentarian.

I want to ask, Minister, for your thoughts. I have faith that our chair of the justice committee could have easily conducted this meeting and had a more formalized parliamentary committee rather than an informal chat, while still respecting the individual, the nomination and the process. I have every bit of faith that he and our committee members could have done that and maintained that stronger link, I feel, back to our constituents by doing our role as members of Parliament, not by an informal Q and A session.

I want to get your thoughts on that. That's something that struck me when the invitation came out.

• (1035)

Hon. David Lametti: Thanks very much, Mr. Moore. It's always good to see you, if only at a distance. I hope your summer has gone well.

You've just asked a very important question in terms of the process.

Let me say, first of all, that I think this is a good process that balances the ability of parliamentarians. I share the view that parliamentarians have to have a role in this, and that's why we're here today. That's why you and others were consulted in my phase of consulting on the short list of candidates, and you and our other colleagues are here today asking questions as well, so I share that.

It was a process that was long sought after. Prior to 2016, there wasn't really a formal process for the selection of judges. A number of people weighed in. My predecessor, my former professor, Irwin Cotler, weighed in with suggestions, as did other experts. Professor Martin Friedland at the University of Toronto weighed in with suggestions on how to create a process that allowed for independent evaluation of a dossier, as well as parliamentary input, but did not turn into something that happens occasionally south of the border where it becomes hyper-political and hyper-partisan in terms of the nomination process for Supreme Court judges.

I think this represents a good balance. I think there is a strong role, as you are playing right now, for parliamentarians to participate in this process. Obviously, I'm always willing to entertain suggestions on how to make it better.

Hon. Rob Moore: Thank you, Minister. I thought that is what you would say.

I don't share the concern around hyper-partisanship. I have every bit of faith, having worked with members on our justice committee, that they would be able to engage in this process in a parliamentary committee. I participated in the one on the appointment of Justice Rothstein, an ad hoc parliamentary committee. They would be able to conduct themselves in a way that respects the gravity of the process. We are all well aware of the impact of decisions that come from our Supreme Court, the weight of the types of decisions that are being contemplated as well as the very real impact they have on our day-to-day lives.

I heard from Justice O'Bonsawin a commentary around access to justice. This is an important appointment. A vacancy was created and your government is acting to fill it, as it should, and I would be remiss if I did not take this opportunity while you're here at our justice committee to remind you, as I've done over the months, of the vacancy in the Office of the Federal Ombudsman for Victims of Crime, and ask that every effort be made to have that position filled as quickly as possible.

The Chair: Unfortunately, Mr. Moore, we're out of time for that round, and I'll ask Mr. Lametti if, hopefully, he can answer that in a subsequent response.

Hon. David Lametti: That is in process, as I've said. That departure was unexpected and we hope to have something to announce relatively shortly.

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

I'll next go to Mr. Battiste.

Welcome to our committee today.

Mr. Jaime Battiste (Sydney—Victoria, Lib.): Thank you.

I'm deeply honoured to be here today on this very exciting and historic day. In my language, the Mi'kmaq language, we would say *gelu'lg na'gweg*, meaning this is a "great day". It's a great day for many reasons.

As someone who has been a member of the Indigenous Bar Association for more than 20 years, as a student and then coming back as an indigenous parliamentarian, I have often heard the advocacy and the dream that some day we would see an indigenous nominee to the Supreme Court of Canada. In fact, this is an important thing that the Indigenous Bar Association and the Canadian Bar Association have called for since 2005 when they said it was integral to Canada for us to advance indigenous law through these appointments. It's even more so with the TRC calls to action. Almost a quarter of the calls to action call for justice and equity for indigenous people within the legal system.

Minister Lametti, you spoke to the importance of having a justice system that reflects the Canadian public and how having indigenous laws enrich our Canadian justice system. I'm wondering if you could speak to the gravity of the historic moment that we're at today, where for so many years indigenous people have looked to Canadian laws, despite having their own indigenous laws, and saying they would trust these systems that have been created.

What do you think it means for the justice system today to have this historic day finally upon us?

• (1040)

Hon. David Lametti: Thank you for that question.

I recognize the historical moment this is. I recognize the importance of this. I recognize your passion and emotion, so in answering the question, I understand how important this is not just to you but to indigenous peoples across Canada, and hopefully to non-indigenous Canadians as well.

It is extremely important that indigenous people are able to see themselves in what are, quite frankly, colonial institutions, see their participation as a way of making those institutions better and see

this as a way of making Canadian law better by improving the substance of legal decisions. It is incredibly important to have that diversity reflected within the deliberations of those nine justices of the Supreme Court.

However, it's also critically important for everyone else throughout the system to know that this is possible. We have made progress on diversity in appointments. In recent months, I have elevated two people of indigenous background to courts of appeal: Justice Len Marchand in British Columbia and Justice Jonathon George in Ontario.

It is critically important for other indigenous jurists and indigenous people to see that they will be treated seriously in applying to whatever level of bench they apply and that they will be treated seriously in the practice. It also gives a boost to indigenous laws themselves and the revitalization of indigenous legal systems, because it adds to the legitimacy of the revitalization projects that are critically important as we move forward in making Canada a truly pluralistic legal system and in recognizing pluralistic legal systems within Canada and legal systems, normative systems, that have been here since time immemorial.

It's important on so many levels. I'm proud to be here.

Hon. H. Wade MacLauchlan: If I may, I'd like to add to what the minister said.

I totally agree with it. I appreciate the question from Mr. Battiste and I'll expand on it to say that in addition to the perspective, experience and commitment that Justice O'Bonsawin will bring to the court, the element of diversity will add to the deliberation of the court on all of the matters it's dealing with and will add to the appreciation that Canadians have for the capabilities, reputation and integrity of the court itself.

This is an important piece of our path to reconciliation and it's an important element of how we continue to build a country of diversity, where we're always learning, where we're always growing and where the Supreme Court of Canada, as a court of general jurisdiction, will show leadership, as it has. Canadians can continue to benefit from having a court that is fully representative of the country as we continue to learn, grow and reconcile. It is indeed a historic thing.

• (1045)

Mr. Jaime Battiste: I'd like to thank you both for those comments.

The Chair: Thank you, Mr. Battiste.

Now we'll go to Monsieur Fortin.

[Translation]

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

Minister and Chairperson of the independent advisory committee, thank you for joining us today.

I could not begin without also acknowledging the importance of diversity on the Supreme Court of Canada. This is an issue to which the Bloc Québécois has always been very sensitive. This nomination is part of that approach to diversity, and we are very pleased.

Although I have not yet had the pleasure of meeting Justice O'Bonsawin, I have read about her. I'm really pleased with her skills. It will be a pleasure to have a little chat with her this afternoon.

That said, Minister, you are also aware of the great sensitivity of the Bloc Québécois with respect to the impartiality of nominations. You and I have had an opportunity to discuss this on a few occasions.

Before we get into other matters, I would just like you to confirm whether or not the Liberalist was consulted, or looked at, before Justice O'Bonsawin was recommended.

Hon. David Lametti: No, she was not consulted.

Mr. Rhéal Fortin: She was not consulted before or after the independent advisory board's process.

Is that right?

Hon. David Lametti: To be honest, I consulted her yesterday, as I knew you would ask me this. I had not consulted her prior to that.

Mr. Rhéal Fortin: Thank you, Minister.

I would now like to put a question to Chairperson MacLauchlan.

Mr. MacLauchlan, as I said at the outset, we appreciate the importance of taking diversity into account. However, I wonder how you go about it. You want to see people from diverse cultures and racial groups appointed to the Supreme Court, and we all do. Today, we are pleased to welcome Justice O'Bonsawin.

Of course, you have to assess the qualifications of the candidates, which I think is the ultimate criterion. We want to have competent judges. I am sure that both the minister and everyone else want the same thing.

Do you proceed by using a list? For instance, it could be lists that include white men, white women, black men and indigenous people.

How do you go about considering diversity while evaluating the best candidates?

Hon. H. Wade MacLauchlan: Basically, the issue of diversity comes into play when individuals submit their applications. Once the independent advisory board receives the nominations, it assesses the qualifications of the candidates, their professional skills, their character, as well as their experience before various courts.

You will have had an opportunity to look at the candidate questionnaire that Justice O'Bonsawin submitted to the independent advisory board. The other candidates also submitted a candidate questionnaire. That document covers important questions.

Finally, our board assesses the quality of the nominations and the skills and character of the candidates.

• (1050)

Mr. Rhéal Fortin: If I understand correctly, you recommend three to five candidates to the Prime Minister's Office.

When evaluating candidates, if the top five candidates are not from a diverse background, do you still recommend them to the Prime Minister or do you give an advantage to the sixth, seventh or eighth candidate who is from a diverse background?

Hon. H. Wade MacLauchlan: The independent advisory board prepares a detailed report for the Prime Minister proposing three to five highly qualified individuals.

Our board also explains the reasoning behind the selection of candidates. We give ministers and the Prime Minister time to review this report and conduct consultations. We do not rank any of the nominations in the report.

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

If there are 20 people, for example, who are highly qualified, how do you select a certain number of them?

Basically, my last question is the following. Shouldn't the decision to select candidates based on diversity rest with the Prime Minister? Couldn't the independent advisory board simply assess the qualifications of the candidates, without regard to the racial or cultural group from which they come?

Hon. H. Wade MacLauchlan: The purpose of the board is to assess the qualifications of the candidates and make a report that leaves the choice of appointment to the Prime Minister.

With respect to diversity, after receiving nominations, our board has a serious task ahead. It must conduct a detailed study, in a collaborative manner, before arriving at a consensus decision on which candidates are qualified for inclusion in the report to the Prime Minister.

Concerning the 12 nominations that were submitted to us, I can say that I was highly impressed with the professional qualities, character and convictions of the nominees, as well as the work they put into submitting their applications.

Mr. Rhéal Fortin: Thank you very much.

[English]

The Chair: Thank you, Monsieur Fortin.

Next I want to welcome Madam Idlout.

We'll go to you, Madam Idlout, for six minutes.

Ms. Lori Idlout (Nunavut, NDP): [*Member spoke in Inuktitut*]

Mr. Jaime Battiste: I have a point of order. I'm sorry, but we're not getting the translation. I see that she's speaking it, so it's probably a technical problem. I hear her translating but we don't get it in the earpiece.

The Chair: I'm going to have the clerk check on that. It may take a few seconds because I think it's being translated into English and then into French.

Ms. Lori Idlout: [*Member spoke in Inuktitut*]

• (1055)

[*Translation*]

Mr. Rhéal Fortin: Mr. Chair, we are not getting the French interpretation of my colleague's comments.

If there is interpretation this afternoon, it is not working. We should be able to hear it.

[*English*]

The Chair: Ms. Idlout, maybe start from the beginning and we'll reset your time. Hopefully this will work.

Ms. Lori Idlout: [*Member spoke in Inuktitut*]

Mr. Larry Brock (Brantford—Brant, CPC): There's no translation, Mr. Clerk.

[*Translation*]

Mr. Rhéal Fortin: We are not hearing the French interpretation.

[*English*]

The Chair: We're going to pause for a minute.

Mr. Clerk, I believe on our floor mikes, for English it's channel three that's working, the auxiliary channel, but I don't know how that's going to work on Zoom and for French. It should be translating into French.

Ms. Lori Idlout: [*Member spoke in Inuktitut, interpreted as follows:*]

[*Technical difficulty—Editor*]

If you wish, I will speak now so we can look into this technical issue while I speak.

While I speak, it will be translated into English, then it will be relayed into French. Is that my understanding?

The Chair: I'm going to suspend for a minute to resolve these technical difficulties.

• (1055)

_____ (Pause) _____

• (1100)

The Chair: We'll resume.

I believe the technical difficulties have been resolved.

Ms. Idlout.

Ms. Lori Idlout: [*Member spoke in Inuktitut, interpreted as follows:*]

Thank you. Shall we start again?

First of all, I am extremely happy to be here. I thank you for allowing me to be part of this, and that I can speak to you in my own language. I am very grateful for that.

I know, we all know, that Canada is multicultural, but it was also indigenous before there were other arrivals. We've always had our

own traditional legal processes and systems. We still use our legal systems today. Sadly, they are no longer recognized in the court system, although we will try to apply traditional knowledge on legal issues within the court system. It should be recognized and promoted.

I am happy that I am able to sit here and say to you that when I went to the University of Ottawa, I took legal studies. I enjoyed my instructor, Tracey Lindberg. She has worked with aboriginal students and has studied aboriginal legal issues and systems, and I learned a lot from her.

Minister David Lametti, this morning, I enjoyed it when you said that the court system has to look at all the legal systems, not only in English or French, but it should also include indigenous legal systems and processes that work.

With Ms. O'Bonsawin now nominated, that is very hopeful and it will help us to introduce a third legal system, which will be indigenous. Whether she's the first person appointed or not, I look forward to the day when we will do more to include indigenous traditional legal systems.

We have many issues whereby we cannot run for many positions. Not being able to speak French is one. Will you look into that as a barrier for us? If more indigenous lawyers are to be involved in policy in government, we need to consider bilingualism in other ways.

• (1105)

Hon. David Lametti: *Nakurmiik*, Ms. Idlout. It's good that you are here today on this historic day.

Let me say first of all that under call to action 50 of the Truth and Reconciliation Commission's calls to action, one of the things that I am charged with as Minister of Justice is to encourage the revitalization of indigenous legal systems, and there are many. There are hundreds of different kinds of legal systems, all of the Inuit, Métis and first nations legal systems, so there are a number of different projects that I am supporting to help revitalize those traditions. They are being led by indigenous leaders, elders, and I'm going to say "lawyers" in quotation marks, because they're indigenous experts in their own normative systems.

Those projects are being led, and I'm supportive of that. I think that in and of itself will help on the day-to-day revitalization of self-government and self-determination. It will also have an impact on the common law and the civil law and the structures that exist in the Canadian legal system. There will be a better appreciation simply because of that.

The question of bilingualism is an important one. To Canada it's very important, and it is important on the Supreme Court that we have bilingualism as a criterion. I think Justice O'Bonsawin has proven today, and there are others in the system I know of, that as an apex court, the top court in Canada, you have a whole career to prepare for it. Bilingualism as a criterion for that court I firmly believe shouldn't stand in the way of good indigenous and non-indigenous candidates.

Other courts don't require that each and every judge be bilingual. There are unilingual anglophones and francophones on various courts across Canada. It is an obligation for a whole court to be able to offer services in both French and English, but that will often mean sending a francophone judge to northern Ontario or an anglophone judge to a part of New Brunswick or Quebec, as the case may be. That requirement of institutional bilingualism isn't an impediment either, so—

Ms. Lori Idlout: If I may interrupt you—

Hon. David Lametti: Please do.

Ms. Lori Idlout: —I think there was a misunderstanding about my question.

• (1110)

The Chair: Ms. Idlout, we're out of time on this round. Hopefully you'll be able to be in the subsequent round.

Ms. Lori Idlout: My question wasn't interpreted properly, and he ended up giving a different kind of response.

Hon. David Lametti: I'm sorry if I misunderstood.

Ms. Lori Idlout: Could I...?

The Chair: Unfortunately—

Ms. Lori Idlout: Could I ask the committee—

The Chair: I believe you'll have another round in a few minutes.

Ms. Lori Idlout: —if I could ask my question?

The Chair: As chair, I can't enforce the answers. I can enforce only the time. I apologize.

We'll go over to Mr. Brock for five minutes.

Mr. Larry Brock: Thank you, Mr. Chair.

It's good to see you again, Minister Lametti, and welcome, Justice MacLauchlan. I'm very, very appreciative of your attendance today and your input.

I have a couple of areas I want to follow up on with respect to my colleague Rob Moore's questioning.

I've done a little bit of research with respect to some of the information that's available on the website of the Office of the Commissioner for Federal Judicial Affairs Canada.

I understand, Minister Lametti, that once the short list is finalized, you are required to consult with a number of stakeholders—obviously, the Chief justice of Canada, which you've alluded to; relevant provincial and territorial attorneys general, which you've alluded to; relevant cabinet ministers, which you've alluded to; and opposition justice critics. What I haven't heard and what is clearly spelled out on the website is that you're also to consult with mem-

bers of both the House of Commons Standing Committee on Justice and Human Rights and the equivalent standing Senate committee.

My question for you, Minister Lametti, is this: Who in particular on the justice committee did you consult with?

Hon. David Lametti: Thank you for the question, Mr. Brock.

I don't have the report in front of me, but I will get that to you. We did in fact consult with members of both the House and Senate committees.

Mr. Larry Brock: I can put it on the record right now that I was not consulted. I know that our justice critic, Rob Moore, was, but as far as the other standing members of the committee are concerned, I don't think anyone was consulted, so please look into that and advise us accordingly.

I know that there are big shoes to fill with the pending retirement of Justice Moldaver. Justice Moldaver has had a very distinguished legal career, not only as a leading expert when he was in private practice but also in serving as a leading expert on the bench with the Court of Appeal for Ontario and the Supreme Court with respect to his impeccable knowledge of criminal law matters.

Minister Lametti and Justice MacLauchlan, as you know, the Supreme Court of Canada, this year alone, pronounced two significant decisions with respect to life sentences and the extreme intoxication defences, which have received considerable commentary not only in the press but across Canada as well as discussions in the House of Commons.

What attributes and what specific experience level would Justice O'Bonsawin have to replace that considerable expertise of Justice Moldaver?

Hon. David Lametti: Obviously, criminal law is critically important to the docket of the Supreme Court and an expertise in criminal law is also extremely important to the docket of that court. I recall that when I was a clerk many years ago, it was like jumping in feet first to a pool of criminal law water, and I appreciated that experience very much.

Justice O'Bonsawin brings with her a knowledge of critically important parts of the criminal justice system, specifically mental health law, which is, and we understand to be, an increasingly important part of criminal justice, as well as an expertise on the application of Gladue principles, which is also extremely important to the sentencing portions of criminal justice. She also brings with her experience as a superior court justice in which she has had exposure to criminal law cases.

I would add though that it's the court's total responsibility, and not simply of one judge or one justice, to be an expert in criminal law. I'd point out that that court has an accumulated expertise in criminal law. As well, Justice Kasirer, who was a recent appointment, wrote and taught in the early stages of his teaching career in criminal law matters. I believe he wrote one of the decisions to which you just referred from this past summer.

There is an accumulated expertise on the court, and Justice O'Bonsawin is going to add to that expertise in criminal law.

• (1115)

Mr. Larry Brock: Thank you, sir.

I also consulted with a number of victims groups across this country with respect to the vacancy in the position for the ombudsman for victims of crime. What specifically will you tell those organizations as to when this vacancy will be filled? The position has been vacant for approximately 11 months. The vacancy with respect to the Supreme Court was filled in less than two or three months, and that one is now 11 months.

What do you say about that, Justice Lametti?

Hon. David Lametti: First of all, the office continues to function and has continued to function over these 11 months. It isn't a case that victims have not been supported. It is only a case of a vacancy of the presidency, the chair.

I appreciate that it is an important vacancy. I know that. As I alluded to in a previous question, I was expecting a renewal of that position. We were proceeding on that and then there was a change in that position. We have proceeded diligently with that process to replace that person. As I said, I hope that the announcement will be able to be made soon.

I can say that the office has remained open throughout this time and victims have been served throughout this time and the office has been very ably run by the number two person in that office. It hasn't been a case that victims have not been served. But I agree. We have pushed as hard as we can to fill that position as quickly as possible and it is proceeding.

Mr. Larry Brock: Thank you.

The Chair: Thank you, Mr. Brock.

Thank you, Mr. Lametti.

We'll now go over to Madam Brière.

[*Translation*]

Mrs. Élisabeth Brière (Sherbrooke, Lib.): Thank you, Mr. Chair.

Minister, Chairperson of the independent advisory board, thank you for the work that has been done in the nomination process.

We have a number of reasons to be pleased today with this nomination. First, this is a woman, bringing the number of women on the Supreme Court to four. Second, this is the first indigenous woman to be appointed to the highest court in the land. She is also a Franco-Ontarian and fully bilingual. Finally, she is a legal expert in mental health rights.

As Parliamentary Secretary to the Minister of Mental Health and Addictions, I am pleased to note that the judge has a master's degree and a PhD, and that she has extensive knowledge and expertise in mental health rights.

Mr. MacLauchlan, you mentioned during your remarks that the chief justice was giving you guidance or direction as to what expertise is needed in court.

What is the weight of a candidate's legal and parallel skills?

Hon. H. Wade MacLauchlan: It is indeed a combination of factors. Personal skills, experience and professional qualifications must be considered. It is important to understand that the Supreme Court of Canada is a court with general jurisdiction. One should always look for judges who are able to exercise expertise in a variety of areas.

You are absolutely right to point to Justice O'Bonsawin's expertise and experience in the field of mental health, especially with respect to the principles the Supreme Court outlined in the Gladue decision. This is a very important aspect of everything we need to consider for the country, as well as for criminal law.

Justice O'Bonsawin also has experience in the areas of labour and employment law, human rights and privacy law. She brings a range of experience to the court. All of that must be considered.

I believe you have done so yourself, but I encourage all Canadians who have not already done so to review the nominations that have been submitted, which are in the public domain, so that they can see what candidates who aspire to be Supreme Court justices must submit and what criteria they must meet.

• (1120)

Mrs. Élisabeth Brière: Thank you.

Minister, do you wish to add anything?

Hon. David Lametti: As Mr. MacLauchlan just said, a set of criteria is considered. A court always has needs, requirements, that must be considered. But you also have to look at a candidate's other assets. You really have to look at the big picture.

You have to look at how the person could contribute to the functioning of the court, as well as to the development of case law, and come to make good decisions, based on case law.

Mrs. Élisabeth Brière: We also know that the three levels of courts have similarities, but also important differences.

How does the current selection process, which has been implemented over the past few years, assess the skills and abilities required to serve as a judge on the nation's highest court?

Hon. David Lametti: I will say the following before I yield the floor to Mr. MacLauchlan.

We look for sound judgment in a person. The Supreme Court sits to resolve, in some cases, conflicts between appellate courts on questions of law. It must set standards based on decisions that serve as precedents.

I think a person's judgment and wisdom are very important. In my opinion, they are the most important priorities.

Hon. H. Wade MacLauchlan: If I may, I would like to underline or add a point.

[*English*]

The Chair: Mr. MacLauchlan, unfortunately we're out of time in this round.

[*Translation*]

Mrs. Élisabeth Brière: Thank you.

[*English*]

The Chair: Thank you, Madam Brière.

Next we'll go to Monsieur Fortin.

You have two and a half minutes.

[*Translation*]

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

Minister, you said earlier that you consulted the Liberalist yesterday in anticipation of the questions I would ask.

What did you find out about Justice O'Bonsawin?

Hon. David Lametti: I first want to clarify that I did not consult the Liberalist. I went to the Elections Canada website, which is in the public domain and where people's contributions are made public.

A small amount of donations, particularly in terms of dollars, were made to the Liberal Party in 2011 and 2012 by the candidate. Neither I nor the board knew that. We did not consider that during the selection process.

Honestly, it wasn't until yesterday when I saw your name on the list of participants that I knew I should have the answer to this question.

Mr. Rhéal Fortin: I am wondering what kind of a reputation I am getting.

If I understand correctly, Ms. O'Bonsawin's name is not on the list of volunteers for the Liberal Party.

Hon. David Lametti: I did not look at the list of volunteers during the process. So I don't have an answer to that question.

Mr. Rhéal Fortin: You don't know.

Is that right?

Hon. David Lametti: As I said, I consulted the Elections Canada website.

Mr. Rhéal Fortin: Thank you, Minister.

I will change the subject.

Earlier, my NDP colleague Ms. Idlout asked you a question about bilingualism. I saw that she was concerned about the fact that

some indigenous candidates do not speak French. Yet we know that, in Canada, bilingualism is based on French and English. I understand her concern.

I would like to hear your thoughts on this issue.

Is it still necessary to speak English and French to hold a seat on the highest court in the country or do you think that French could give way to an indigenous language?

Hon. David Lametti: As you know, I clerked for Justice Cory at the Supreme Court in 1989 and 1990.

I have also been involved in writing Supreme Court briefs and arguments. I know that every word is chosen with great care, in French and in English. In my opinion, it is very important that a Supreme Court justice be able to understand the spoken or written language without translation. So I think—

• (1125)

Mr. Rhéal Fortin: I'm sorry for being impolite by cutting you off, but I have only two and a half minutes.

Hon. David Lametti: —that it is essential.

Mr. Rhéal Fortin: It is essential.

My colleague put a question to you earlier, but I'm not sure you understood it.

[*English*]

The Chair: Thank you, Monsieur Fortin. We're over time now.

[*Translation*]

Mr. Rhéal Fortin: I am not sure you have understood mine either.

Will French give way to an indigenous language?

Hon. David Lametti: No. It is essential.

Mr. Rhéal Fortin: Thank you, Minister.

[*English*]

The Chair: Next we'll go again to Madam Idlout, please, for two and a half minutes.

Ms. Lori Idlout: Thank you so much. I will be speaking in English and hope my intervention can be interpreted into Inuktitut.

As I was saying, Canada is founded on indigenous lands, the lands of the first nations, Métis and Inuit, who had their own lives before colonialism. Justice O'Bonsawin's appointment really opens up the opportunity for a pluralistic legal system to be established and recognized.

I'm wondering if you could respond to this question. What next steps can be taken to ensure that this is not a one-time appointment of an indigenous judge so we can make sure there's actual reconciliation with indigenous peoples, whose lands have been stolen in Canada and whose lives need to be revitalized, as you've said?

Hon. David Lametti: *Qujannamiik*, Ms. Idlout, for the question. I apologize if I mischaracterized or misunderstood your previous question. I truly apologize.

The idea of reconciliation through the justice system has to happen at many levels. First of all, with respect to the current legal system of superior courts, provincial courts, territorial courts, courts of appeal and the Supreme Court of Canada, we need to continue to appoint diverse people, including indigenous people. I have done this since I was named minister in 2019. I have done a great deal of outreach to try to encourage candidates to apply and to help candidates understand that they have something to bring to the bench. It's very important that their experiences be brought to the bench. In a way, that makes interpretation of the common law and the civil law much more diverse and much more pluralistic in and of itself.

I'm proud of the diversity in our appointments. I'm also proud of the fact that there are a number of very good indigenous jurists who are now sitting on superior courts and courts of appeal. As we say in French, *la relève* is strong. I think this will continue to improve, and an appointment such as today's will help to inspire others and build confidence so they will apply, whether it's for an elevation to a court of appeal or possibly the Supreme Court, or whether it's to a superior court or a provincial or territorial court to begin with. I think all of that is good and important. It's hard work. It is incremental. It's hard to see the progress and sometimes I get very frustrated, but it is moving in the right direction.

Also, as I mentioned, we have an obligation, and I have an obligation as minister, to help revitalize indigenous normative systems, legal systems. They have always been there and have always played a role, particularly in the day to day. It is important to recognize that but also to support it. It goes along with the revitalization of indigenous languages and the protection of indigenous languages, because the two often go hand in hand. I will continue to look for ways to do that, but there I'm really following the leadership of indigenous nations, people and experts in terms of how we make that happen.

The Chair: Thank you, Madam Idlout.

Next we'll go to Ms. Findlay.

Thank you, Ms. Findlay, for joining us today. You have five minutes.

Hon. Kerry-Lynne Findlay (South Surrey—White Rock, CPC): Thank you very much, Mr. Chair.

Thank you to Minister Lametti and to Chairperson MacLauchlan.

I'm following up on the questions of my colleague, Mr. Fortin, and other colleagues. I would like to ask each of you to confirm whether you or anyone on your behalf or part of your committee consulted, not just Liberalist, but anything as to the political affiliations of the candidates you vetted.

• (1130)

Hon. David Lametti: I can confirm that I did not and nobody did on my behalf until, as I said, I anticipated the question of Mr. Fortin today.

Hon. H. Wade MacLauchlan: The committee absolutely did not. No.

Hon. Kerry-Lynne Findlay: Thank you.

I think a lot of us in the legal profession have a great deal of respect for Justice Moldaver and are sorry to see him go. He was both

learned and congenial in the way he approached his important position. It has been mentioned before that he was a leading specialist in criminal law, and although mental health absolutely is an aspect of criminal law, my understanding is that criminal cases constituted 55% of the cases that the Supreme Court of Canada heard in 2021.

Given the importance of criminal law in the court, I'm interested, Minister Lametti, on how this gap of knowledge and skill set with Justice Moldaver's retirement was taken into consideration in appointing a nominee.

Hon. David Lametti: Thank you.

I believe that Mr. MacLauchlan will answer that directly in a moment, but it certainly was something raised by the chief justice in his consultation with Mr. MacLauchlan and the committee.

What I can say is what I said before. I understand the percentage of the court's docket that is criminal law, and I understand how important that is. I certainly understand, as Minister of Justice, the precedential value of those decisions that come from the Supreme Court. You've seen that in recent weeks and months when we were sitting.

As I've said before, there is other latent expertise on the bench to begin with. There are other justices who have experience in criminal law as well as their accumulated experience as judges at the superior court, the court of appeal and now Supreme Court levels. Justice O'Bonsawin brings that with her as a former sitting superior court judge, but also with an expertise in dimensions of criminal law that are increasingly important.

I'm confident that she will add to the criminal law capabilities of the court, and I'm confident generally in the criminal law capabilities of the court.

Hon. H. Wade MacLauchlan: Let me accept the point of the question insofar as it recognizes the very significant contributions over time of Justice Michael Moldaver at the Supreme Court of Canada, as well as in his earlier judicial appointments, which go back to 1990. Justice Moldaver has been a leader in the criminal law field, including in the professional education—

Hon. Kerry-Lynne Findlay: With respect, Mr. Chair, we only have so much time. We don't need to go over the past justice's credentials. I've already acknowledged—

Hon. H. Wade MacLauchlan: That was the premise of the question, but let me definitely recognize the point that the minister has made and indeed that the chief justice made when we met with him, that judges throughout Canada, whether they're on the superior courts, on the courts of appeal or on the Supreme Court of Canada, are in fact dealing with roughly half of their docket in the criminal law field.

The other eight justices now currently on the Supreme Court of Canada, as we've seen in their work over even the past 12 months, are very deeply involved in the criminal law field. With this appointment, we should, with confidence here in this committee and as Canadians, appreciate that the Supreme Court of Canada has a lot of strength in its current membership, and that Justice O'Bonsawin will add to that strength.

Hon. Kerry-Lynne Findlay: All right. Thank you.

Am I correct, Minister Lametti—

The Chair: Ms. Findlay, you had only two seconds left. Your time is now up. I apologize.

Hon. Kerry-Lynne Findlay: Thank you.

The Chair: I'll go over to Madam Diab for five minutes.

[*Translation*]

Ms. Lena Metlege Diab (Halifax West, Lib.): Thank you very much, Mr. Chair.

Good morning, Minister and Chairperson of the independent advisory board.

Mr. MacLauchlan, let me first thank you, and all the members of the independent advisory board, for the work you are doing regarding the appointment of justices to the Supreme Court of Canada.

Today is truly a historic day.

• (1135)

[*English*]

I want to turn my question, though, to the future. You spoke about the nomination process being, to use your word, an “episodic” appointment—English isn't my first language, but I like it—and that at the moment we probably have some time, until next time. You also spoke about the Honourable Kim Campbell as well as others talking about how it would be great to broaden it, so that lawyers and judges have more time to consider, but also give them, members of the public, parliamentarians and everybody more information on the role of the Supreme Court justice. You touched on that today in your opening remarks but also during questions from everybody around the table in terms of what the qualities are: professional, personal, the ability to communicate, bilingualism, etc.

I guess what I want to ask you about is the importance as well of the process of encouraging and including diverse candidates to be able to even consider themselves applying to this position. It is the highest court in the land. It would be similar to women or minorities or anybody applying to be members of Parliament. These are very respected positions that many people don't see themselves reflected in. I want to congratulate you today, because the more we can have a Supreme Court of Canada that reflects the population of Canadians, that is what we need to aim for.

Mr. MacLauchlan, in whatever time we have remaining, can you tell us what you anticipate that we could do? What are your recommendations?

Then, if we have time, Minister, what can you as the minister do, and what can we as parliamentarians do to help you?

Hon. H. Wade MacLauchlan: I would encourage members of this committee or Canadians who are following this to watch, if they haven't done so, the feature interview with Justice Mahmud Jamal in late June that was on CTV. I expect it's easy to find on the Internet.

Beyond the formal steps that we identify, such as the Supreme Court of Canada sitting, as it will in mid-September in Quebec City, to get out more, I think every one of us here today might, between now and the end of September, pick up the phone and call someone who might someday be thinking about this or be ready to start thinking. Go for a walk on the beach or have a cup of coffee or go for a walk in the snow. That's exactly what is involved in building the culture of encouragement that I spoke about.

I think it's very similar to the encouragement that many of you go through to become members of Parliament. You have to think a little bit ahead, what's involved, how you get the people around you prepared, and actually how you start looking at what's involved in filling out the application, which is no small piece of work.

Hon. David Lametti: In my outreach across a variety of different communities since 2019, one of the single most important factors that I and other people have identified is mentorship. It's people within society, within the profession, particularly senior people within the profession, saying to somebody younger, “You should be thinking about this. You should be thinking about applying to the bench.” If you're on the bench, it could be a mentor saying, “You should think about applying for an elevation, or applying to the Supreme Court.” We all have a responsibility to do that in whatever walk of life we are in.

We put together a good process, I think, with this current process. We put together a different process with Quebec. We extended an offer to Quebec in the last round, which the Government of Quebec accepted, to have a much more interactive process that reflected the kinds of discussions that have been had over the past 20 years with Quebec. I'm proud of all of that, but I'm also open to making the processes themselves better, whether it's more time or better timing or other ideas as well.

• (1140)

Ms. Lena Metlege Diab: Thank you to both of you.

The Chair: Thank you, Madam Diab.

I'm going to condense interventions to four minutes.

We'll go to Mr. Caputo for four minutes, and then we'll go to Mr. Maloney and close.

Mr. Frank Caputo (Kamloops—Thompson—Cariboo, CPC): Thank you very much, Chair, and thank you as well to Mr. MacLauchlan and Minister Lametti. It's good to see you all, and I hope that you've had a good and restful summer.

I want to first take this time to thank Justice Moldaver for his service. He was, in my view, a pioneer in an area that I focused a lot on in my legal career, and that was with respect to bringing awareness in relation to sexual offences against children and Internet luring. He wrote some very critical decisions when on the Ontario Court of Appeal that still resonate today. I'm thinking of the Woodward decision, for instance.

Thank you, Minister, as well. You mentioned Justice Marchand as a recent appointee to the British Columbia Court of Appeal. He's of indigenous heritage. I had the honour of appearing before him when he was a provincial court judge, a Supreme Court judge, and now he's on the court of appeal. I recognize the work that has been done with these appointments, and obviously I want [*Technical difficulty—Editor*] selection.

In Kamloops—Thompson—Cariboo where I reside and where I practised law prior to becoming a parliamentarian, the decisions of the Supreme Court of Canada were significant, particularly as they did relate to criminal law where I focused.

My question is for both of you.

We've had decisions like the Jordan decision, the Zora decision and the Antic decision, and they really do have an impact on how courts operate, particularly in smaller centres. For instance, Clearwater is in my riding, and it may only sit one time every two months. What experience, in your view, does Justice O'Bonsawin bring that will assist with the administration of justice in smaller and rural communities?

Hon. David Lametti: Thank you for that question, Mr. Caputo. It's an important one, and I'm pleased that, based on your experience, you asked that question.

She comes from a small town in northern Ontario, and she comes from two overlapping minority communities, and so I think she brings that experience with her when it comes to the administration of justice, when it comes to making sure that courts respect or are in a position to respect time delays. For example, you mentioned Jordan.

There is that life experience that's going to be critically important to the way she handles those issues. That in turn will help the rest of us as elected parliamentarians when we're thinking about resource questions or others, whether they be human or financial, or other issues. They will help us do our part to make sure that we address those issues in the administration of justice.

Hon. H. Wade MacLauchlan: I might add to that point that Justice O'Bonsawin had administrative responsibility as the judge for the court in L'Orignal, a small community to the southeast of Ottawa. In one of the cases that was included in her application, she refers to a decision where she, on appeal, dealt with, in effect, a child situation where the Jordan's principle had been applied, and she overruled the decision on appeal.

I note also that at various stages in her career she has assisted with the legal aid clinics, including to serve indigenous persons.

Mr. Frank Caputo: I believe my time is already up here.

The Chair: I appreciate that. Thank you, Mr. Caputo.

Last, I want to welcome Mr. Maloney to this committee today.

Mr. Maloney, you have the floor for four minutes.

● (1145)

Mr. James Maloney (Etobicoke—Lakeshore, Lib.): Thank you, Chair, and thank you, members, for allowing me to participate on this landmark occasion. It really is a significant day with this appointment, and I'm honoured to be here.

I want to add my thanks to the list of people who have mentioned Justice Moldaver, because he's a remarkable jurist, a great intellect, but he's also an exceptional individual.

My first question is for Mr. MacLauchlan.

You've mentioned these networks of encouragement. In my experience, the legal community has an eye on when these appointments or vacancies become open, but they know less about the board that you chair.

Has there been any process or any thought given to broadening these networks of encouragement to getting people to participate in the board? I'll premise that by saying that the board has been different for each of the five appointments that have been made over the last number of years.

Hon. H. Wade MacLauchlan: In terms of how the board has evolved or changed for different appointments, I expect that may also reflect the jurisdictional or regional representation that is attached to the openings as they arise.

This is my first opportunity, as you know, to be involved. Let me say, I was very impressed by not only the calibre, the experience and lively commitment of each of the board members, but also how we came together—most of us not knowing each other—and actually had a very successful collaboration and a lot of fun getting to the result that we have today.

I take your point well. In terms of appointing Supreme Court judges and encouraging people to think about when an opening might arise when they should be ready to become a candidate, this process is part of making that more visible, known and public, including this appearance and discussion we are having today and that will take place this afternoon.

We're making headway. It is now six years since this started in Canada, and as one who's been involved this time for the first time, I've been very impressed in how people have responded, including the deliberations that we're having here today.

Mr. James Maloney: Thank you for that.

I have a minute left, so I have a quick question.

Minister Lametti, you mentioned the importance at the beginning of, to use your words, giving Canadians confidence and trust in the process. That is critically important. As you know, I practised before the courts in Ontario for over 20 years before going into politics, and I continue to be of the view that we have one of the greatest judicial systems in the world and anything that is done or said that insinuates that we don't, I take great offence to. There have been some questions even today nibbling around the edges about some of the process involved. Have any of the steps taken or any of the processes implemented in any way, shape or form jeopardized that reputation or the integrity of our courts?

Hon. David Lametti: I share your belief that we have the best court system in the world. I really believe that. It can be improved, but I believe we're starting from a pretty good place.

No, there was nothing in the process that I believe taints in any way the reputation of our courts. It's a non-partisan process, it's transparent, there were very high-quality people who applied and who were evaluated through the system, and the evaluators were outstanding. I am pleased with this process that we're currently undergoing as well.

Mr. James Maloney: As am I.

Thank you very much, Mr. Chair.

The Chair: Thank you, Mr. Maloney.

I want to thank all my colleagues and I want to thank Mr. Lametti and Mr. MacLauchlan for being here for this historic meeting.

We will—

Sorry. Mr. Anandasangaree has a point of order.

Mr. Gary Anandasangaree (Scarborough—Rouge Park, Lib.): Mr. Chair, I'd like to take a moment to thank our clerk. I understand he will be leaving us as of September, so I wanted to thank him for his incredible service to this committee.

The Chair: Thank you.

We once again get to thank Jean-François.

Thank you, Clerk.

That concludes this meeting.

We'll see many of you shortly, at two o'clock.

Thank you.

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