

Minister of Justice
and Attorney General of Canada



Ministre de la Justice
et procureur général du Canada

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The Honourable / L'honorable Jody Wilson-Raybould, P.C., Q.C., M.P. / c.p., c.r., députée
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Mr. Anthony Housefather
Chair
Standing Committee on Justice and Human Rights
Ottawa, Ontario
K1A 0A6

Dear Mr. Chair,

Pursuant to Standing Order 109 of the House of Commons, and on behalf of the Government of Canada, I am pleased to present the Government's response to the Report (the Report) of the Standing Committee on Justice and Human Rights (the Committee) on the New Process for Appointments to the Supreme Court of Canada.

As the Committee notes in the Report, Canada has benefitted from the exceptional quality of appointments made to the Supreme Court of Canada. The Supreme Court has long been a source of pride for Canadians and a source of inspiration for other countries. Taking steps to strengthen the appointments process serves to bolster Canadians' confidence in this fundamental institution.

The new process, which led to the appointment of the Honourable Justice Malcolm Rowe, was designed to meet the Government's commitment to a Supreme Court of Canada appointments process that is open, transparent, accountable, inclusive and consultative, and that promotes diversity and ensures appointees are functionally bilingual. I am very proud of both the new process the Government instituted and the outstanding nominee that resulted. I would like to thank the Committee for the vital role it played in this process.

Many aspects of this process were unprecedented, and the Government has continued to signal its openness to further refinements. I am very grateful in this regard for the observations and recommendations provided in the Report. As indicated below, the

Government shares the Committee's overall vision of a nomination process that is clear, open and easily understood by Canadians. The Response categorizes the Committee's seven recommendations into four categories that generally follow the nomination process chronologically.

Application and assessment phase: timeframe and scope

The Government shares the Committee's view that the timelines for the process that led to the nomination of Justice Rowe were tight, and that longer timeframes would be better. As the Committee notes, not only would this give applicants sufficient time to prepare their application packages, it would give the Independent Advisory Board for Supreme Court of Canada Judicial Appointments ("Independent Advisory Board") more time to seek out applications from across the country, thereby enhancing the diversity of the pool of applicants. This aligns with recommendations made by the Independent Advisory Board in its November 25, 2016 report to the Prime Minister, which emphasized the importance of longer timeframes for outreach, application submission and candidate assessment. The Government therefore commits, absent exceptional circumstances demanding faster action, to provide longer timeframes for the application and assessment phase of future processes. The Government also commits to reviewing the application form, as proposed by the Independent Advisory Board, with a view to ensuring the application process is both user-friendly and effective.

The Government agrees with the Committee about the importance of regional representation on the Supreme Court of Canada, and commits to clarifying the qualifications and assessment criteria to emphasize the importance of maintaining regional representation over time.

The Government also takes this opportunity to reaffirm its commitment, as noted in the qualifications and assessment criteria, to only appoint functionally bilingual candidates to the Supreme Court. The Government believes that being functionally bilingual is an important skill that qualified candidates for appointment to the Supreme Court of Canada should have in order to undertake the work of the Court. This will ensure that Canadians of both official language communities have full access to the nation's highest Court in the language of their choice.

Independent Advisory Board: role and composition

The Independent Advisory Board is the heart of the new nomination process. For this reason, I am encouraged by the Committee's support for its role and composition as a qualified, credible and non-partisan body tasked with developing a shortlist of exceptional candidates. The Government commits to having the Independent Advisory Board play the same role in future processes.

The Government also shares the Committee's view on the importance of diversity in the membership of the Independent Advisory Board itself. It agrees with the Committee's recommendation to continue with the approach of ensuring that those entities and individuals nominating and selecting Advisory Board members take into account the diversity of Canada.

Role of Standing Committee on Justice and Human Rights

The Government views Parliamentarians, and this Committee in particular, as playing an essential role in the nomination process. First and most importantly, this Committee holds the Government to account both for its selected nominee and its adherence to the established process. For this reason, once a nominee has been selected, the Government will continue the practice of having the Minister of Justice appear before the Committee with the Independent Advisory Board Chair. As recommended in the Report, the Chair and the Minister will provide details on how the process unfolded and explain why the nominee was selected and how he or she meets the published criteria.

The Prime Minister and I greatly valued the input provided by those, including members of this Committee, who were consulted on the shortlist of candidates. At the same time, the Government remains concerned about protecting the privacy and reputational interests of those individuals included on the shortlist but not ultimately selected. The Government will consider the Committee's recommendations on the scope of consultations as it continues to study how best to achieve an appropriate balance between transparency and confidentiality.

Question-and-answer session with nominee

The question-and-answer session with Justice Rowe advanced the openness and inclusivity of the new appointments process. The Government shares the Committee's characterization of the session as an opportunity to allow Parliamentarians and Canadians to become better acquainted with the nominee, thereby enhancing transparency and educating Canadians about their highest court.

It is the Government's view that holding this session in a public setting such as a university provided a tangible means to connect the Supreme Court and its appointees to Canadians. That said, the Government appreciates the Committee's observations on this aspect of the process and will consider them when determining the most appropriate open and inclusive setting for future question-and-answer sessions.

The Government is grateful for the active engagement of members of this Committee in the session, and is reassured to hear that Committee members received sufficient advance notice to prepare. As recommended by the Committee, the Government commits to providing appropriate advance notice to allow for meaningful exchange in future question-and-answer sessions.

On behalf of the Government of Canada, I would like to thank you and the other members of the Committee for your valuable participation in the appointments process and for your thoughtful observations and recommendations.

Respectfully,

The Honourable Jody Wilson-Raybould, P.C., Q.C., M.P.
Minister of Justice and Attorney General of Canada