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Dear Friends:

I am writing about recent statements in the House of Commons and news reports that have mischaracterized the Canadian Bar Association's position on judicial appointments.

The CBA has long supported an open and transparent process for appointing judges, based solely on merit and ultimately representative of Canadian society, that would result in a fairly chosen and independent judiciary. An independent judiciary is a keystone of Canadian democracy.

The CBA recognizes the worthiness of the current judicial appointment system:

- 1) Changes to the judicial appointments process in 2016 made it more transparent and less susceptible to political interference.
- 2) The Judicial Advisory Committees (JACs) – including representatives of the Courts, provincial or territorial Attorneys General, the public (appointed by the federal government) and the legal profession – are well placed to assess the qualifications of the lawyers who apply.
- 3) The JACs conduct their work in confidence, to protect the reputation and privacy of candidates.
- 4) The JACs rate the candidates (recommended, highly recommended or unable to recommend) based on published criteria, with careful evaluation of comprehensive applications and references, not partisan considerations.
- 5) The government has undertaken to consider only recommended or highly recommended candidates for appointment.
- 6) Political engagement is an indicator of commitment to public service. Public service is a personal characteristic we seek in judges.
- 7) The independent JACs have identified meritorious candidates for the Bench. There has been no suggestion that any recent appointee is not qualified on merit.
- 8) The final decision about judicial appointments is properly the role of government.

The CBA does believe the appointment process can be improved in two fundamental ways.

We remain concerned about delays in filling vacancies on the Courts. This starts with delays in appointing the JACs. We encourage the government to appoint JACs quickly when terms expire, so they can operate effectively and recommend candidates in a timely manner. We then encourage the government to move quickly to fill vacancies, and to consider any business case outlining the need for more judges.

The assessment of judicial candidates must be kept confidential. The vetting process rightly goes on behind closed doors, which respects the privacy of applicants and guards against interference. The CBA is extremely concerned about breaches of confidentiality in releasing names and commenting on the suitability of applicants who may or may not be appointed. This demeans the selection process and unfairly taints those who hold the office of judge. Moreover, worthy candidates may be discouraged from applying from holding judicial office, to the detriment of all Canadians.

In sum, the CBA has not accused the government of interfering in the process by appointing its friends, nor has it suggested that the process has resulted in the appointment of unworthy candidates. We do reiterate that merit must determine the best candidates, who also reflect the diversity of Canada's populations. Political interference, the appearance of it, or unfounded speculation of it all risk eroding public confidence in the independence and fairness of the justice system.

Sincerely,

(original letter signed by Bradley D. Regehr)

Bradley D. Regehr