



September 14, 2020

Via email: justin.trudeau@parl.gc.ca; David.Lametti@parl.gc.ca; mcu@justice.gc.ca

The Right Honourable Justin Trudeau, P.C., M.P.
Prime Minister of Canada
Office of the Prime Minister and Privy Council
80 Wellington Street
Ottawa, ON K1A 0A2

The Honourable David Lametti, P.C., M.P.
Minister of Justice and Attorney General of Canada
284 Wellington Street
Ottawa, ON K1A 0H8

Dear Prime Minister and Minister Lametti:

Re: Appointing BIPOC Candidates to the Federal Judiciary

We are writing on behalf of the Canadian Bar Association to urge you to appoint Black, Indigenous and People of Colour (BIPOC) candidates to the Supreme Court of Canada and other federal judicial positions. We have long called on the Government of Canada to make judicial appointments that reflect the diversity of the Canadian population, and to consider membership in equality-seeking racial groups one of the many factors in the assessment of judicial candidates.¹ We request a meeting with you to discuss how we can work together to achieve this goal.

The CBA is a national association of 36,000 lawyers, law students, notaries and academics, from every jurisdiction of Canada, with a mandate that includes seeking improvements in the law and administration of justice, and access to justice.

We were pleased with your government's commitments to make "transparent, merit-based appointments, to help ensure gender parity and that Indigenous Canadians and minority groups are better reflected in positions of leadership."² We appreciate that your government modified the federal judicial appointment system in 2016 to increase the diversity of judicial appointments, including by gathering self-identification data and requiring Judicial Advisory Committee members to receive unconscious bias training. However, we are concerned that these commitments and changes have not resulted in an appreciably more diverse judiciary to date. Between 2016 and 2019, only three percent of federal judicial appointees self-identified as Indigenous. With no race-disaggregated data we do not know how many federal judicial appointees identified as Black, but

¹ See for example CBA Resolution, [Equality in Judicial Appointments](#) (2013) and [Merit and Diversity on the Bench](#) (2012), [Recognition of Legal Pluralism in Judicial Appointments](#) (2005).

² [Minister of Justice and Attorney General of Canada Mandate Letter](#) (November 2015). [Minister of Justice and Attorney General of Canada Mandate Letter](#) (January 2019)

only eight percent identified as visible minorities.³ Not collecting this data speaks to the difficulty of making substantive change. It is disconcerting that in 2020 there has never been a BIPOC individual appointed to the Supreme Court of Canada, given the diversity of the legal talent across the country.

Legal decisions affecting BIPOC communities are made by an overwhelmingly white judiciary with no first-hand experience of the racism and systemic challenges these communities face. BIPOC judges would offer perspectives grounded in lived experience. A federal judiciary that reflects the Canadian population would also have greater credibility among members of equality-seeking communities. As Chief Justice Wagner has stated: “[j]ustice should not make a person feel like an outsider or an ‘other’ when they confront it.”⁴

We urge the federal government to review and revise criteria that create barriers to the appointment of BIPOC candidates. For example, critics have noted that requiring Supreme Court of Canada appointees to be functionally bilingual disproportionately excludes Indigenous candidates, who face systemic barriers to attaining this level of proficiency in both official languages.⁵ While institutional bilingualism is an important principle, a candidate’s inability to read materials in English and French and to understand oral arguments without an interpreter at the time of appointment should not be a bar to their serving on the Supreme Court of Canada.⁶ The criteria for judicial appointments should give equal weight to the experiences and perspectives offered by candidates from BIPOC communities as it does to bilingualism. Overlooking BIPOC candidates who speak other languages or are unilingual deprives our judiciary of these critical viewpoints.⁷

We urge you to select qualified members of BIPOC communities for the current vacancies on the Federal Court, Superior Courts and Courts of Appeal, and the two vacancies that will open at the Supreme Court when Justice Abella and Justice Moldaver retire. For our part, the CBA and its branches will continue working to encourage BIPOC candidates to apply for federal judicial positions, through example and programing. We would welcome a meeting at your earliest convenience to discuss in greater detail how we can work together in this regard.

Sincerely,

(original letter signed by Bradley D. Regehr and Vivene Salmon)

Bradley D. Regehr
President

Vivene Salmon
Past President

cc. François Giroux, Judicial Affairs Advisor Francois.Giroux@justice.gc.ca
Marc Giroux, Commissioner of Federal Judicial Affairs Marc.giroux@fja-cmf.gc.ca

³ [Office of the Commissioner for Federal Judicial Affairs Canada](#), Statistics regarding Judicial Appointments and Appointees,

⁴ [Opening statement on the occasion of the Chief Justice of Canada’s annual press conference](#), Canadian Judicial Council, June 2020

⁵ Alexandra Nasager, The Supreme [Court, Functional Bilingualism and the Indigenous Candidate: Reconciling the Bench](#), Alberta Law Review (2020) [Indigenous Bar Association Calls upon the Government of Canada to Reconsider its Requirement of “Functional Bilingualism” As It Applies to Indigenous Candidates for Appointment to the Supreme Court](#) (2016)

⁶ [Institutional Bilingualism at the Supreme Court of Canada](#), CBA Resolution (2010)

⁷ Beg, Samreen and Lorne Sossin. “Diversity, Transparency & Inclusion in Canada’s Judiciary” in *Debating Judicial Appointments in an Age of Diversity* (December 2016).