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# **Standing Committee on Justice and Human Rights**

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**EVIDENCE**

**Monday, October 24, 2016**

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**Chair**

**Mr. Anthony Housefather**



## Standing Committee on Justice and Human Rights

Monday, October 24, 2016

• (1530)

[English]

**The Chair (Mr. Anthony Housefather (Mount Royal, Lib.)):**  
Welcome, everyone.

[Translation]

I am very pleased to welcome you all to this meeting of the Standing Committee on Justice and Human Rights.

[English]

We're going to be reviewing the appointment process for Supreme Court justices.

It's an enormous pleasure to have with us today our Minister of Justice and Attorney General of Canada, Jody Wilson-Raybould. Thank you for coming, Minister.

Of course, it is a great honour to have former prime minister the Right Honourable Kim Campbell here with us too. Ms. Campbell is the chairman of the Independent Advisory Board for Supreme Court of Canada Judicial Appointments.

Ladies, the floor is yours.

**Hon. Jody Wilson-Raybould (Minister of Justice):** Thank you, Chair and members of the committee, for convening this special session of the committee. I am really appreciative of everyone for being here and certainly of the lady to my left.

I'm pleased to discuss Mr. Justice Rowe. The purpose of this meeting is twofold: first, to discuss the government's selection of Mr. Justice Malcolm Rowe of the Supreme Court of Newfoundland and Labrador Court of Appeal as the government's nominee to the Supreme Court of Canada; and second, to describe the process that led to that selection. This will allow Canadians to understand the process that has been used in nominating Justice Rowe, and will allow you, as parliamentarians, to hold the government to account.

I know how busy the committee members are, and I greatly appreciate the time that you are devoting to this process.

I am, of course, joined by the Right Honourable Kim Campbell, who served as the chairperson for the Independent Advisory Board for Supreme Court of Canada Judicial Appointments.

As you know, the advisory board has been at the heart of the government's new appointments process for the Supreme Court. Seven distinguished individuals served on the board, including four nominated by independent professional organizations. In addition to the chairperson, the advisory board includes a former judge, three members of the legal profession and two non-lawyers.

The advisory board's work has been integral to creating an independent, transparent and non-partisan selection process for the Supreme Court of Canada. I would like to express personally, and on behalf of the Prime Minister and our government, our sincere gratitude to each of the advisory board members for their outstanding work and dedication to this process.

I would also like to thank the Canadian Judicial Council, the Canadian Bar Association, the Federation of Law Societies of Canada, and the Council of Canadian Law Deans for nominating such excellent individuals for this critical task.

Shortly, Ms. Campbell will describe the steps the advisory board took in creating the short list that it provided to the Prime Minister on September 23. I know that arriving at that short list of exceptional candidates required many hours of painstaking work, carefully reviewing all the detailed applications, and undertaking extensive consultations to assist in assessing each candidate against the published qualifications and assessment criteria. The value of these efforts was reflected in the excellence of the short list that the board produced, and I believe it clearly demonstrates the outstanding qualities of the government's nominee.

Our appreciation also extends to all those who were consulted throughout the selection process. The informed views and insights of those who know the candidates personally, who understand the demands of a judicial role, and who can advise on the institutional needs of the Supreme Court are truly invaluable in reaching the final selection of the nominee.

Special thanks certainly are due to Ms. Campbell for her able leadership in chairing the advisory board. I'm honoured to be appearing with her today. Our connections run deep. Not only did Ms. Campbell serve as a member of Parliament in the heart of Vancouver, but she has also opened many doors for women in the law and beyond and served as Canada's first female minister of justice. I'm proud to be among her successors in that role. She was the perfect choice to chair the advisory board, and I'm delighted she agreed to do so.

The government is also indebted to the Office of the Commissioner for Federal Judicial Affairs for the outstanding secretariat support they provided to the board. Quite simply, this process could not have happened without the professionalism, efficiency, responsiveness, and experience of the commissioner's office. I know that many staff worked long hours tirelessly throughout the summer and the fall to pull this together, and for that I am very grateful.

Last but certainly not least, I would like to extend my heartfelt thanks to all the candidates who applied for the vacancy. It goes without saying that this process could not have succeeded without their willingness to participate, and I recognize that making a decision to apply was not one made lightly or without personal cost.

• (1535)

I said when I appeared before you earlier that I knew it would be a humbling task to make a choice among so many outstanding candidates. That prediction proved truer than I had imagined and I can only say that I feel tremendous pride at the remarkable level of legal excellence in this country.

Let me now briefly review what has brought us here to this stage of the process. Our government made a commitment to establish a new process for the selection of the Supreme Court of Canada justices, one that is open, transparent, accountable, inclusive, consultative, and one that promotes diversity. We also promised that appointees would be functionally bilingual. Through the collective efforts of all those involved in the process, I believe we achieved those objectives.

Canada has an outstanding Supreme Court. It has long been a source of pride for Canadians and a source of inspiration for other countries. We are blessed to have an exceptional cadre of men and women who served on the courts up to the present day. But the process for selecting the court's justices has not always matched the excellence of its jurists. The process was often ad hoc and opaque and did not meet evolving norms of openness, transparency, and accountability. In short, a modern, dynamic, 21st century court needed a modern, dynamic, 21st century selection process, which is what we move towards.

The initial step was key. We opened up the process and established the first application-based approach to identifying qualified candidates for the Supreme Court. Anyone who met the statutory eligibility criteria could apply. This was a significant departure from past practice, which involved either the proverbial tap on the shoulder or in some more recent cases, saw initial long lists of candidates developed by the government itself on the basis of closed consultations.

Applications were invited from anywhere in the country to support our goal of ensuring that our highest court moves towards a better and fuller reflection of the diversity of Canadians. This was also to ensure that the most outstanding jurists in the country regardless of where they live have the opportunity to be considered for vacancies as they arrive and for which they are eligible.

I recognize the concerns expressed by some that this opening up of the process occurred at the expense of ensuring regional diversity on the court. With great respect for the sincerity of those who feel this way, I do not share this view.

The breadth and depth of expertise on Canada's bench and bar in every part of the country is quite remarkable. I am convinced that at any given time there will be outstanding individuals across Canada who will choose to put their names forward for a given vacancy. This will ensure that the Supreme Court's regional character is maintained.

Moreover, and in the context of the current process, the Prime Minister specifically directed the advisory board to include candidates from Atlantic Canada on the short list in recognition of the custom of regional representation and the fact that Justice Cromwell hailed from the region.

Our commitment also included a requirement that the short list only recommend candidates who are functionally bilingual given our country's bilingual character. As we expected, there was a rich pool of outstanding candidates reflective of the diversity of Canadian society who met this requirement and those who potentially aspire to serve on the Supreme Court in the future, are now aware of the expectations.

The process we have adopted has generated widespread public interest and debate, which is itself a positive thing. Canadians care deeply about their Supreme Court and the critical role it plays in our democracy. We believe this process has sufficiently advanced the goals of openness, transparency, accountability, and excellence, and a court that reflects the faces and the voices of Canada.

In light of this experience, it is our intention to follow this process for filling future Supreme Court of Canada vacancies subject, of course, to further refinements that may be suggested by this committee and by the advisory board. We believe our selection process is in keeping with the values of Canadians today and that it will support a modern Supreme Court of Canada that is reflective of and responsive to those values.

I would now like to turn the floor over to Ms. Campbell to allow her to describe the process that the advisory board went through in its mandate and then I'll provide some concluding remarks.

Over to you, Madam Former Prime Minister.

• (1540)

**Right Hon. Kim Campbell (Chairperson, Independent Advisory Board for Supreme Court of Canada Judicial Appointments):**

Thank you very much, Madam Minister.

[*Translation*]

I will perhaps say a few words in French.

It is a great pleasure for me to be here with you and to take part in your activities as a "veteran".

**Some hon. members:** Oh, oh!

**Right Hon. Kim Campbell:** I am happy to see you all and I appreciate the atmosphere here. I respect the work you do for Canadians.

[*English*]

I would like to say on behalf of all of the members of the independent advisory board how honoured and delighted we were to be given this task.

I can tell you that it was a great honour for me to chair a remarkable group of people. One of them, when I was able to call on Monday to say who the Prime Minister's nominee would be, complimented me as chair. I said it was like conducting the Vienna Philharmonic. They really were a wonderful group of people devoted solely to producing the very best possible list of candidates. As we said, our goal was to create a list that would keep the Prime Minister up at night trying to figure out which one of these excellent people to appoint.

Shortly after our appointment was announced, we convened by conference call. Time was limited. The announcement went out August 2, and the deadline was August 24. We wanted to use that time as expeditiously as possible.

One of the terms of reference was for us to reach out and solicit good candidates for the courts. The first thing we did was to send the materials to all of the organizations represented on the committee and then to reach out further to every other organization of lawyers that we could think of in the country. I said I thought we should err on the side of overkill, so it was every possible kind of organization. I think there were about 19 different organizations in addition to the four: the Canadian Judicial Council, the Canadian Bar Association, the Federation of Law Societies of Canada, and the Council of Canadian Law Deans

We occasionally received, in reply to these missives, letters recommending individual candidates, and we immediately sent material to those individuals. We said that their name had been put forward with a strong recommendation that they would make an excellent judge on the Supreme Court of Canada. We asked them to please review the materials, and if it interested them, we warmly encouraged them to apply. That did in fact encourage some people to apply. This is something that we can talk about later.

One of the interesting transitions of this is that we all know that for many senior jurists or senior members of the profession, the idea of applying is sometimes difficult. Finding ways to encourage people to apply was something we wanted to do.

We were very delighted that there was a good response. We met in Ottawa on August 16 in person to discuss the process that we would pursue and to have a meeting with the Chief Justice. Chief Justice McLachlin was available at that time. That meeting, in which we had a very good conversation with her about what it actually means to serve on the court, what things actually help someone to succeed in that court, what the needs of the court are, was very helpful to us. We were very grateful to her for the time we spent with her. It was a very open conversation among the members of the committee and the Chief Justice.

We received 31 applications. I won the pool—I had guessed 32. I won the envelope of toonies that we had put together. I know you are shocked to hear that there was gambling on that committee.

**Some hon. members:** Oh, oh!

**Right Hon. Kim Campbell:** It was a number that was very reassuring because of the 31 applicants from all across Canada, almost all had some French and met the standards of French. Only a very small number did not have French at all, and most had considerable French. That was very interesting for me to see.

I want again to echo the words of the minister in thanking all of the people who filled the applications. It was a long application form. Interestingly, the more senior you are, almost the harder it is to go back to dig up the material, because you think you're never going to apply for anything again, and there you are having to re-create your life.

People did it. The deadline was August 24 at midnight Vancouver time. For those in eastern Canada, that was a good thing, because some of them, I think, were sending off their applications at 2:00 in the morning their time. Happily we got them.

Afterwards, the Office of the Commissioner for Federal Judicial Affairs did a wonderful job of taking all the applications and loading them onto secure tablets and also printing them out. Each of the members of the committee had binders with the printed version, but we also had secure tablets that were password protected which we could take with us so we could review the materials.

● (1545)

We came to Ottawa on the morning of Monday, August 29, and really began in earnest to do our work. I won't go through all the details, because you will have your own questions, but I do want to give you a little idea of the philosophy, which certainly I had as chair, and which we brought to the exercise.

One of the things that was important from my perspective was that every person who applied would know that he or she was getting a full and fair review. We started off by taking groups of candidates and each of us went off separately to review the applications, so there was no groupthink, there was no influence one over the other. We each looked, knowing what the terms of reference were and knowing what the criteria were, to develop our perspective on the individual candidates. Then we came together to see where there was consensus, where there was disagreement, and where there was disagreement to try to discuss more fully the nature of the candidates.

We also realized that we would need to reduce the number of 31 candidates to a manageable size. The Prime Minister would only appoint one, and the maximum number of names we could send to him was five. We began to work to whittle down the list. We decided that we would interview 10 candidates. I have to say that, again, the commissioner's office was incredibly helpful in setting up appointments for us to talk to references. We spoke broadly to chief justices and senior members of the bar across the country about various candidates and had great co-operation. The candidates themselves were incredibly co-operative about finding time to fit within our schedule, to come to Ottawa for a full interview.

We developed a questionnaire for the referees so that each person got the same questions, although we always included an open-ended question at the end, so there would be comparability. We created a script of questions to ask the applicants, so that again there would be comparability in terms of their responses. I think it was a very good questionnaire. We allowed an hour for the interviews, although I will say Justice Rowe, as you will find, is a man of few words. I thought the interview was going to be over in 10 minutes, but as soon as we asked him to elaborate on some issues, we got a lot more information. Some people are more succinct than others, but all of them had extraordinarily wonderful stories to tell about their own lives, but also had very interesting and often very nuanced understandings of the law and the role of the court.

We interviewed the candidates, and immediately after each interview the candidates went upstairs to do the functional bilingualism test. If they were francophones, it was in English, and if they were anglophones, it was in French. Also during the interviews, they were asked questions in both languages. The candidates themselves were extremely helpful in accommodating their schedules in the summer, in August, when many of them, I think, probably hoped they could stay at their cottages, but interestingly enough they came for the interview, which was wonderful.

Then we worked and deliberated. The hard part was to deliberate and create a short list of five candidates. I'm glad it was hard, because what that reflects was the richness of the applicants. It's very, very difficult, and I think it's important to say that there is certainly no shame in being one of the applicants for the Supreme Court of Canada and not being the one who's appointed. All of the people whose careers we reviewed, and even more so perhaps the people who we interviewed, were really remarkable, any one of whom could have served with distinction.

Our job was to try to find the most promising, the most accomplished, and it was not an easy task. However, it was a very reassuring one. It was a wonderful thing to see. I was actually also very pleasantly surprised at the level of French competence among the applicants. Again, as the Honourable Rob Nicholson will remember in our days many years ago in justice together, the judges and lawyers were learning French. Even out west it was sort of becoming the thing they wanted to do, and I must say this is something Justice Rowe represents, the commitment of anglophone jurists to become part of that national conversation, and I think it was really great.

Let me finish by saying that, from our perspective, the values of the process were, first of all, the open application, the fact that you didn't have to know somebody. I think in the past, prime ministers and their ministers of justice have always tried to find very good people.

- (1550)

All of us who have fought to increase diversity, to increase the representation of non-prototypical people in various fields, know that sometimes people just don't notice those who are not like them or who they don't encounter in their daily lives, so having a process that basically allowed any lawyer in Canada to put himself or herself forward for consideration was really wonderful. It meant that if you

weren't in the gaze of the normal advisers, you still could be considered. Of course, as I say, we felt that our moral obligation was to give each of those candidates the fairest possible review and include them in the process.

Also, our review was an independent and non-partisan review. Our whole focus was to look for competence. The government may have a view about a philosophy or whatever; that was not our view. Our view was to provide to the Prime Minister a list of candidates who were very competent and who brought with them a richness of perspective that would be an adornment to the court.

In terms of the fairness measures, first of all, we considered the candidates by number so that we didn't even get caught up in calling them by name in case that would have created any early stage bias. We just looked at them in terms of their qualities, which they had revealed in great detail in those difficult application forms. We reviewed them individually before we came together to share our perspectives to make sure there was no influence that might keep somebody from standing up for a candidate. That's very important. Sometimes two people will read an application, and they'll see it slightly differently. One person may say "Meh", while another person may say "Ah, but look at this", and you go, "Oh, yes". There was a lot of that to try to maximize the appreciation for the applicants. As I say, there was consistent questioning for their references, consistent questioning in the interviews, so we could create comparability.

Also, each interview was debriefed immediately afterward with a note-taker so that we didn't rely on remembering what had been said or even our own notes. As soon as we had finished an interview, we sat down with a note-taker or went around the table and debriefed in great depth so that those impressions would be vivid when it came time to consider the ultimate challenge of creating a short list.

In terms of challenges for the future, I think the process was remarkable. I was pleased that as I went about the country doing other things quite unrelated to the advisory board, members of the legal profession spoke to me of their happiness with this idea, particularly, I think, with the openness of the application and the fact that the review was by a group of people who had no agenda other than to try to find excellence in its many different forms.

The timing of the process was tricky. August is not the optimal month. It's not just in Europe that everything closes down in August. People whose assistants or secretaries were on holiday were really having a hard time putting the story of their life together. But they did it. They were remarkable.

In regard to the length of the process and a possible revision of the applications, it would be to just have more time. I think for some people it was a bit of pressure to do it, although people did it, but if there were more time, that would be great.

Challenges for the future would include outreach and recruitment. I think, having once done this, there is importance in making sure that people know what the process is; that talented, interesting members of the legal profession, whether jurists or members of the bar, know what the process is; and that all members of the legal profession and communities encourage people who they think have wisdom and skill to think about it and perhaps prepare themselves for the process in the future.

Thank you for welcoming us here today. I'm very pleased to have been part of this process, and I very much look forward to your questions.

Thank you.

• (1555)

**Hon. Jody Wilson-Raybould:** Thank you, Ms. Campbell.

Let me now turn to the merits for the considerations that the government put in in terms of the nominee himself.

As I've indicated, the quality of the candidates on the short list from the advisory board was outstanding. My task of reviewing the candidates and arriving at a recommendation to the Prime Minister was an incredibly difficult one, to say the least. I recognize this is one of the most, if not the most, important responsibilities that I perform as the Minister of Justice, and I take my responsibilities incredibly seriously.

In terms of the consultations, I consulted with the Chief Justice of Canada, the applicable provincial and territorial attorneys general, members of this committee and the Senate committee on legal and constitutional affairs, the opposition justice critics, and members of cabinet. I then presented the results of these consultations to the Prime Minister, along with my recommendation. While I obviously cannot reveal the content of these consultations or my advice to the Prime Minister, I can say that I am convinced that Justice Rowe would be an outstanding addition to the court and would continue to serve Canadians with great distinction in that role.

In terms of Justice Rowe's qualifications and why the government chose him as its nominee, Justice Rowe has extensive appellate court experience, having been appointed to the Newfoundland and Labrador Supreme Court in 1999, and then two years later elevated to the Court of Appeal in 2001. He is a jurist of exceptional quality in both the strength of his legal reasoning and the clarity of his writing. His judgments, evidenced by his ability to understand the social context in which legal disputes arise and to appreciate the diversity of views, perspectives, and life experiences are evident.

Born and raised in St. John's, the son of a fisherman, Justice Rowe's varied professional career lends a depth to his decision-making. Before he was appointed in 1999, he had an impressive career as a litigator in Ontario, becoming queen's counsel in 1992. Prior to that, he was a foreign service officer at the department of external affairs. There he worked on critical international disputes with France and the EU concerning Atlantic fisheries alongside such counsel as Ian Binnie, QC. He was then appointed as deputy minister to the premier and the head of the civil service in Newfoundland and Labrador. During this time, he coordinated efforts to achieve a constitutional amendment to create a public non-denominational school system in the province. His wide range of experience in both

public practice and the public service will bring a rich and nuanced perspective to the court.

Furthermore, Justice Rowe has an impeccable reputation, both personally and professionally. A man of integrity, his career exhibits a strong commitment to public service and combines rigorous legal knowledge with open-mindedness and respect for others. This includes his activities with Action Canada, a youth leadership development program where he came to know and mentor future leaders from a range of backgrounds and experiences.

Regional diversity was also an important consideration. Hailing from Newfoundland, Justice Rowe brings a unique perspective that has never been present on the Supreme Court of Canada.

It's for all of these reasons the government chose Justice Rowe as the individual best suited to fill the current vacancy on the court and fill the large shoes left by Justice Cromwell. Let me just add that the government is delighted to have nominated someone who would be the first jurist from Newfoundland and Labrador to sit on the Supreme Court. Justice Rowe would continue in a long line of outstanding jurists from Atlantic Canada serving all Canadians on our highest court.

It is with pleasure that I am able to present before this committee, with Ms. Campbell, and we are very open to answering your questions at this time.

Thank you very much.

**The Chair:** Thank you very much, ladies, for your compelling testimony.

Ms. Campbell, on behalf of, I believe, all of the members of this committee, I want to thank you so much for your service not only to the country before, but for your service to the country since you've been prime minister, including this very daunting task of helping choose a Supreme Court justice. I also want to thank all of the members of your committee, all of the candidates, and all of the people who participated in the process. I know all members of this committee join me in their thanks.

Madam Minister, I want to also thank you for your openness to considering suggestions for this committee for the process going forward. I know, in the same non-partisan way this committee has worked together to deliver other recommendations, we will work together to deliver recommendations related to the process as well.

Thank you so much. We're going to turn to questions.

Mr. Nicholson, our former justice minister, will start.

• (1600)

**Hon. Rob Nicholson (Niagara Falls, CPC):** Thank you very much.

Welcome to you, Minister, and of course, Ms. Campbell. Thank you for appearing before the committee, and for all your efforts in this regard.

I had to think, Minister, as you were saying that Ms. Campbell has promoted women throughout the legal profession, there were some exceptions, including me. For the record, I was very honoured to be her parliamentary secretary for about three and a half years, and to serve in cabinet with her. I've been very grateful for those promotions and that opportunity.

Ms. Campbell, I'm very pleased that you're here today. I, too, was going to say basically the same things that the chairman did, that your service to this country is continuing right up and to including this. I don't have to tell you how important this whole process is. We are grateful that you've taken time to do this.

I was very interested in the way you handled this. You answered one of the questions that I had, which was whether there were any personal interviews. You seemed to cut a good number there. You have 31 to 32 people, and you don't want to interview all of them. In many ways, that's unfair to them if they're not going to be on that short list. However, to have the 10 there, I think is an excellent idea, so you get that opportunity to see that interaction. I was pleased to hear that.

One of the interesting things as well that you said was that it's difficult in August sometimes to get something done. When I heard this was being done in August, I actually thought that was a good time because a lot of the courts don't sit in July and August. I thought you might be able to do it.

Is there a better time to do it, do you think? It will be up to the minister, of course, but what do you think? Is there a better time of year to do this—maybe in January?

**Right Hon. Kim Campbell:** I think probably Christmas is not a great time.

You make a good point, that it's good for some and not good for others. More lead time would be great. In the future, I'm sure that will be possible, and having done the process once, people know what to expect.

We know, for example, that the Chief Justice will be retiring in 2018. Barring any other early retirements, that gives a certain lead time for people who are interested in being considered for the court to think about it and prepare themselves. The first time is always perhaps a bit more difficult, but you make an interesting point about the courts not sitting. Unfortunately, some of the judges went off to the boonies to their summer cottages, so coming back was a challenge.

**Hon. Rob Nicholson:** You didn't have any shortage of people, though, who presumably wanted to have this. Were they from across the country, or were they mainly concentrated in Atlantic Canada?

**Right Hon. Kim Campbell:** Yes, they were from across the country.

**Hon. Rob Nicholson:** What will happen with these applications now? Are they individuals who thought they would like to have their names considered for future appointments, or is that something that would have to be started again?

**Right Hon. Kim Campbell:** From the perspective of the committee, the applications were received in confidence. However, it might be something that the minister would like to do, certainly if people agree to have their names put forward. There were a lot of

wonderful people, and we thought, "Oh boy, talk about farm team for judicial appointments in the country."

That might be something your committee might want to think about as well. When people have gone to this trouble, one doesn't want to sort of shred the applications. I think the minister will pursue....

It's just that you want to make sure that people agree to have things put forward. All you have to do is ask them, and if they say yes, you can do that.

**Hon. Rob Nicholson:** I have a question for you, Minister.

There have been a number of ways that Supreme Court justices have been appointed in the past. For the most part, the Prime Minister chooses somebody and that's it. He or she can get advice from whoever he or she wants to, and then that person is appointed.

In the previous couple of Parliaments, there was a slightly different process. Members of the justice committee came together and made recommendations with respect to the candidates. I have to tell you, I was quite impressed with it at the time. I was a justice minister for a number of these applications, and I thought it was a good way to involve people who are here as representatives of the people, of Parliament, and members of this committee.

You said that you believe that process was opaque. I'm not sure whether you're referring to that exactly, or what. Give me your thoughts. Did you have problems with the process that was in place for a number of the justices of the Supreme Court by having members of this committee look at those applications?

● (1605)

**Hon. Jody Wilson-Raybould:** Thank you for the question. Perhaps I could come back and just address something you asked Ms. Campbell with respect to what happens to the applications that didn't move forward.

In terms of the open and transparent process that the Prime Minister introduced, reaching out and seeking applications in a public way so individuals can bring their names forward, I feel it invited substantive jurists from across the country. I recognize and acknowledge the important work that this committee does, and I valued being able to engage with the committee in early August to seek input in terms of the process and the applications. Again today I value having input from committee members in terms of the process. That doesn't necessarily have to stop today. I would invite you to provide feedback on how the process unfolded.

I envision that continuing. Furthermore, I think that providing the committee tomorrow, at the University of Ottawa, the opportunity to get to know Mr. Justice Rowe, have him introduce himself, and then ask him questions is a further opening up of the process. We put a process in place where there wasn't that public process that people could understand, or read about, or download from a website, as an example. In no way has that process taken away or undermined the quality of the appointments and the judges who have sat on the Supreme Court of Canada.



In terms of the other 30 applications that have been put forward, as Ms. Campbell indicated, the next scheduled retirement will be in 2018, with Madam Chief Justice McLachlin's mandatory retirement. There will be the same process, with amendments potentially, that we intend to follow. Those applicants who are interested in applying will have to do so again.

We recognize, as was stated, the substantive quality of the individuals who put their names forward. There's some merit in pursuing those individuals in another capacity, perhaps, and I certainly recognize that.

**Hon. Rob Nicholson:** I'll come back, if there's a chance. Thank you.

**The Chair:** Thank you. That's perfect.

Go ahead, Mr. McKinnon.

**Mr. Ron McKinnon (Coquitlam—Port Coquitlam, Lib.):** Welcome, Minister Wilson-Raybould and Ms. Campbell. Welcome back to the committee, Minister, and welcome back to the Hill, Ms. Campbell.

Ms. Campbell, as chair of the advisory board, you spoke about this in your remarks, and gave us some indication of the challenges, such as time, deadlines, and so forth. I wonder if you could share with us any lessons learned, things you might do differently as the process unfolds another time.

**Right Hon. Kim Campbell:** Well, I think the process of the board itself went remarkably well. If there were many more applications, I think you would need more time; there's no question about that. We worked as expeditiously as possible. I think we felt we had sufficient time, but I was glad that I won the pool because some people were guessing 54, and somebody even guessed 100. That would have been a number of applicants that would have been more difficult to deal with, so one possibility is having more elastic time to do this, to make sure that, depending on the number of applicants who apply, the committee could deal with them fairly. Again, I go back to this notion that, if individuals respond to a solicitation for applications and go to the trouble of filling in a very daunting form, they need to feel that's going to be treated with respect and seriously reviewed, and that would take time.

**Mr. Ron McKinnon:** Is there anything you'd do differently?

**Right Hon. Kim Campbell:** Well, you know, it's always dangerous to say no because invariably somebody will say, "Well, what about this?" No, I think we actually came up with a pretty good way of implementing our mandate. Again, if we'd had more time, we might have been able to reach out even more. We did recognize, when we first came together on our first conference call, that part of our terms of reference was to seek out good candidates. Given the nature of how much time there was before the deadline, we went to different groups, although we responded to individual nominees. I think that, had there been more time, we might have been able to actually consult. If there were two months or something between the beginning of the process and the deadline, we might have actually been able to consult more personally with some organizations or some groups, or go out to answer questions, and perhaps encourage even more to apply.

I think we got a really remarkable group of candidates. Could we have found more? Could we have encouraged more people to apply? That is quite possible. That would be something that time would make possible. But I think we did, as I said, err on the side of overkill when it came to just getting the information out to as many groups of lawyers as possible.

• (1610)

**Mr. Ron McKinnon:** Thank you.

Minister, your perspective on the operation of this committee is of course different. I wonder if you have any lessons learned that you would like to share with us or any ideas about where you think the process could be improved.

**Hon. Jody Wilson-Raybould:** I appreciate the question and am very mindful of the comments Ms. Campbell just made. This speaks to the question from Mr. Nicholson as well.

I believe that the heart of this appointments process, beyond the public application forms for individuals across the country, was this independent non-partisan advisory board, which was a board that was reflective of the diversity of the country, I would say. The thoroughness with which they undertook their task resulted in a substantive short list that was provided to the Prime Minister, from which he nominated Justice Rowe.

I would echo the comments that we have, barring anything else happening, an opportunity to take advantage of the time between now and 2018, with the retirement of Madam Chief Justice McLachlin, to encourage all of those individuals out there who meet the statutory requirements to start to consider putting their names forward and to brush up on their French if they are wanting to apply to be the next Supreme Court justice.

Having said that, and recognizing that more time can be good to have more applicants putting their names forward, I think I can safely say that the lack of time did not diminish the quality of the individual applicants on the short list we had the opportunity to review, nor, I would suspect, of the 31 applicants whose names went before the advisory board.

**Mr. Ron McKinnon:** Thank you. Those were my questions.

**The Chair:** Thank you, Mr. McKinnon.

Mr. Rankin.

**Mr. Murray Rankin (Victoria, NDP):** Minister, I would like to welcome you as well and thank you for coming to the Standing Committee on Justice and Human Rights. I would particularly like to thank you, Ms. Campbell, for your service in this important role.

Minister, in your opening remarks you referenced two purposes. The first was about the candidate, and the second, of course, was about the process. I'd like to talk about the process that led to the selection of Justice Rowe as the nominee for the Supreme Court of Canada.

You said that the process would allow us "as parliamentarians, to hold the government to account". I understand that under the administrations of both former prime minister Harper and former prime minister Martin, opposition members were involved in an advisory committee that created a short list of possible candidates.

Minister, you are well aware of the difference between consultation and mere notification. Do you believe MPs should have a role in the creation of the list as well as in the selection of the person to serve as a justice of the Supreme Court, particularly given the increasingly important role the Supreme Court plays in the lives of Canadians? Do you think that members of Parliament, as the elected representatives of Canadians, should be involved in the substance of the appointment decision now and for future appointments?

**Hon. Jody Wilson-Raybould:** Thank you, Mr. Rankin, for the question.

I certainly appreciate and recognize the importance of ensuring that members of Parliament have involvement in the selection process. I do believe, as I said earlier, that the heart of this new nomination process for Supreme Court of Canada justices is the independent and non-partisan advisory board, which is, in this case, and I imagine in future cases, comprised of exceptional individuals who are from the legal community and are non-lawyers who have been able to provide a short list of candidates, having had extensive review. So I think that continuing...and I know that we will continue with that independent advisory board process.

Having said that, I believe that members of Parliament have been engaged and will continue to be engaged in the selection process in terms of having the Minister of Justice come before the committee to speak about the process in advance and being able to come back before the committee, as we are today, to talk about the nominee and the selection process to identify that nominee, and furthermore, in an unprecedented way, to have publicly available the opportunity for not only members of Parliament, including this committee, to meet Justice Rowe tomorrow, but also to have members of the public able to listen to Justice Rowe introduce himself and then ask him some questions.

• (1615)

**Mr. Murray Rankin:** You would agree that having what I understand and agree was a non-partisan and independent process is a very different thing from involving members of Parliament as representatives of Canadians early on in the process, rather than their simply being given a name and having the opportunity to meet that person in an informal gathering off the Hill. It's very different from the kind of role MPs have played in the past, under previous administrations, when they were involved in the creation of the short list and in the substance of the decision-making.

**Hon. Jody Wilson-Raybould:** Again, I believe that having that independent, non-partisan advisory board providing the short list is an important aspect of this new selection process. I would encourage members of this committee, and beyond this committee, to recommend or to encourage individuals to put their names forward for the next appointment. I understand the important role that the institutions of our democracy play in wanting to ensure there is a recognition of the independence of the judiciary, a recognition that bringing in seven esteemed individuals beyond partisan politics to identify a list is an important aspect of this open and transparent process.

**Mr. Murray Rankin:** Minister, you spoke about diversity in your search for nominees. I appreciate and respect the commitment that both you and Ms. Campbell have to a greater diversity on the

Supreme Court so that judges can better reflect the Canadians they serve.

I understood Ms. Campbell to say that there was a regional diversity quota for the short list. Was this the only one? Were there, for example, requirements about gender balance, ethnic diversity, or indigenous representation?

Can you point to anything in the current process that would demonstrate that the goal of diversity was achieved? Are there lessons for future processes, or are you satisfied that this process has achieved the goal of diversity?

**Right Hon. Kim Campbell:** Perhaps I could say a bit about the process of how we did it.

Our terms of reference made a particular point of recognizing the diversity of Canadians, and that identified a number of characteristics where individuals are often under-represented or not represented in the judicial community. One of our candidates made a very interesting comment and said that diversity isn't so much reflected in decisions, but in what you bring to the conference. I think those of us who have worked for the advancement of women recognize this. It's not so much that a woman would decide this and a man would decide that, but that you bring a different reality and different questions perhaps to the broad discussion of issues.

I think this commitment to diversity played out, and as the minister has said, our terms of reference also included finding qualified candidates—that's plural—from Atlantic Canada. We assumed that meant at least two candidates from Atlantic Canada. There were a lot of Atlantic Canadian applicants, obviously, so that was not difficult, but there was a broad diversity in the candidates. I think the terms of reference sent a message to people who were thinking of applying that they should not be discouraged from applying if they are members of an unrepresented social category. The fact of the matter is that, particularly in the legal profession, there is a lot of lack of diversity in many aspects of it.

The terms of reference were a clear message to the Canadian legal community, and that was reflected in the applications. Our goal was to find candidates of great competence. Many of them represented what you might call checking off the box, but it's a broader thing. The names that we provided to the Prime Minister provided some very interesting choices. Even in the case, for example, of Justice Rowe—who doesn't check off any of those boxes, except that no one from Newfoundland has ever been there—what was also important for us was the breadth of his understanding of the country. We asked candidates to tell us about their understanding of the diversity of Canadian society. It wasn't just are they from a category that they would check on the application, but what is their lived experience of the reality of Canadian society? That was a very interesting question to hear people answer, whether this had touched them in a way, and whether they had dealt with it. Justice Rowe's experience, particularly in the work he's done through Action Canada, has taken him to indigenous governments, Haida Gwaii, and the governments in the north, etc.

He spoke in great...well, you can ask him about it tomorrow, but that was important to us. When we were talking about what you bring to the conference, or when the members of the Supreme Court are sitting and talking about an issue, are there things that are not being said because nobody knows about them? I think of when Bertha Wilson came to the court, and about the decisions on property, for example, in common-law couples. These were really important things that came from a particular person's recognition that there was an issue. I think that is really important. I don't for a nanosecond say that it is the only thing, but I think what was communicated was the welcome to candidates of many different backgrounds to apply.

We're committed to confidentiality of the candidates, so we can't give you all of the list, but there was a really wonderful richness. I think that is the most important thing. Only one person can be appointed, but that person has to reflect that respect, appreciation, and knowledge of the diversity of Canadian society. The candidates were a very interesting group, and as I say, remarkably proficient in French, much to my delight.

•(1620)

**Mr. Murray Rankin:** Thank you.

**Hon. Jody Wilson-Raybould:** To add to that, it's a really important question, in acknowledging the comments of Ms. Campbell. It is for that reason, the need or the desire to achieve that diversity, that we were very thoughtful in developing the process, the qualifications, and the assessment criteria. We've made that publicly available, and it's reflected in the publicly available application that Justice Rowe put forward when asking specifically about your reflections on diversity and your experiences with respect to diversity.

**The Chair:** Thank you very much.

Go ahead, Mr. Fraser.

[Translation]

**Mr. Colin Fraser (West Nova, Lib.):** Thank you very much, Mr. Chair.

[English]

Thank you very much, Minister, for being here today. Ms. Campbell, thank you so much for being here and for all of your good work leading the advisory panel. I think it has led to an excellent choice for the Supreme Court of Canada. I commend you and all of the members of the advisory board for the great work that you did in the service to Canada.

I think it reflects very well on the process to have somebody of Justice Rowe's calibre to be selected and will serve Canada well in the future to learn lessons of what perhaps could be improved.

I'm from Atlantic Canada. I'm a lawyer from Nova Scotia, and I know that my colleagues and I were watching with interest to see what would happen with regard to the custom of regional representation. We believed that that was an important aspect, and it was part of the process.

Ms. Campbell, how did the advisory panel view the regional representation with respect to getting at least, as you said, two names on the short list? How did that happen? Was it viewed in isolation

from the rest of the candidates, for example, or was there some other way that the conversation happened regarding the importance of regional representation?

•(1625)

**Right Hon. Kim Campbell:** Again, the terms of reference were clear. At no time was that a difficult thing to fulfill. Atlantic Canada sent us outstanding candidates. It wasn't something where we sat around saying, "Oh my gosh, we'd better rustle up a couple of Atlantic Canadians to put on our list." *Au contraire*. It was, "Good grief, not another wonderful Atlantic Canadian." They were well represented, and as one of the committee members said one day, "Atlantic Canada has sent us its best."

At some point some day, one might have to answer such a question. It was not an issue. There was no difficulty in going for the most excellent candidates. I can say when Justice Rowe came in, we immediately thought, "This guy's a superstar," and he wasn't alone.

**Mr. Colin Fraser:** Very good.

With regard to the terms of reference, I know that the advisory board members must, under paragraph 8, review applications received from candidates and actively seek out qualified candidates. I take it from what you said that there wasn't a specific emphasis necessarily placed on a certain region because there were so many good candidates from across the country, and in particular from Atlantic Canada. Is that fair to say?

**Right Hon. Kim Campbell:** The groups that we asked to solicit their members and to make sure they got the information were groups from across Canada, the Canadian Bar, and all the law societies. I think there's a list of about 19. There are many groups, many ethnic groups of lawyers or lawyers with particular interests, all of whom, I think, have members in Atlantic Canada. Because of the terms of reference in which the application was open to all Canadians, we blanketed the whole country in asking organizations to assist us.

Down the line, if there is more time, one could even do more perhaps to seek people out. When individuals were recommended to us, we immediately sent them the information and said, "Your name has been forwarded to us. Please review this, and we warmly encourage you, if you're interested, to apply." We thought that was the appropriate way of doing it as opposed to singling individuals out.

This committee might have some interesting advice about the optimal way to maximize the number of good people who will apply. Often members of Parliament may know of people in their own constituencies who have promise. I'm sure we already try to encourage them to get vetted for the section 96 courts and the trial and appellate levels, but again, it's feeding the pipeline.

**Mr. Colin Fraser:** Now that we know how the process works, and it's being better understood, I suppose that will help in formulating people to encourage others to make the application.

**Right Hon. Kim Campbell:** Yes.

**Mr. Colin Fraser:** With regard to paragraph 8 of the terms of reference that I mentioned, it was mentioned that you should consult with the Chief Justice of Canada and key stakeholders who the members consider appropriate. You mentioned that you had a meeting with the Chief Justice of Canada. I wonder if you could speak about key stakeholders, who those might have been, and at what point in the process those meetings took place.

**Right Hon. Kim Campbell:** We spoke to chief justices; we spoke to at least two former justices of the Supreme Court of Canada, and most of those consultations came as a result of their being references for other candidates, but we also knew there would be a process of consultation by the Minister of Justice afterwards. The consultations took place and whether they could have been broader is another interesting question. We certainly consulted as broadly as we thought we needed to, but I think that a committee with a longer time horizon might want to rethink, and perhaps the timing of it could even be changed.

We thought the consultation with the Chief Justice was the most important because it related to what the successful candidate would have to do, and it is a demanding job. Work on nights and weekends is the norm. There's the fact that a justice on the Supreme Court of Canada has to live in the national capital region. That's not always easy for people from far afield. The nature of the job, the isolation sometimes, and then the collegiality, all these kinds of things, I think, are very important, and the Chief Justice could tell us about them, and even talk realistically about how French works in the court. You can talk about it, but we needed to know how it really works for an anglophone working in French or a francophone working in English. That gave us a better sense of what that meant.

She was extremely helpful in terms of the individual candidates we considered as we were trying to narrow our list.

• (1630)

**Mr. Colin Fraser:** With regard to the open process, I note as well that the application of Justice Rowe is online and it's very helpful to be able to read that and understand the quality of this person and why he should serve on the Supreme Court of Canada.

**The Chair:** Thank you very much, Mr. Fraser.

We'll now move to the second round of questions, which starts with Mr. Hussen.

**Mr. Ahmed Hussen (York South—Weston, Lib.):** Mr. Chair, I'd like to begin by asking if I can share my time with Ms. Khalid.

I'd also like to thank Minister Wilson-Raybould for coming back to the committee, and Ms. Campbell especially for not only heading the advisory board, but also for coming before us today.

**Right Hon. Kim Campbell:** It's a pleasure.

**Mr. Ahmed Hussen:** Thank you.

I'm encouraged by what Minister Wilson-Raybould said, that the process is open to further refinements down the road. That's encouraging because we can always improve the processes we have. I'm also very thankful to hear, Ms. Campbell, that you used numbers instead of names in the initial process. That removes any subliminal bias there may be about people's names.

Going back to the refinements, do you think if you had a longer timeline, you would have had more of an opportunity to meet with some of the under-represented groups across the country, and that would have allowed you to fulfill your terms of reference better?

**Right Hon. Kim Campbell:** Do you mean in increasing the number of people who would have applied from some of those groups?

**Mr. Ahmed Hussen:** Yes, but also in reaching out to groups that are normally under-represented in the judicial system, so they would know more about the process and what they would need to apply.

**Right Hon. Kim Campbell:** I'm not sure whether that would have increased the number of candidates, and there were representatives of under-represented groups on the committee as well. This was not a uniform, homogeneous group of people. But I think, yes, down the line the opportunity to... judges from the Supreme Court of Canada meet the public. The Chief Justice talks, and I think they understand that there are certain things they should talk about, such as what it means to sit on the Supreme Court of Canada. It would be great if under-represented groups could see themselves as part of the justice system, not just on the Supreme Court of Canada but sitting on benches at all levels. It's one of the most important things we do in the rule of law.

I think it would be very interesting. We were appointed for six months, but another committee could, I think, be appointed for a longer term under the legislation, in which case they could perhaps have an outreach program where they could meet with different groups in different parts of the country to talk about what it means to go to the Supreme Court of Canada, what kinds of things a committee looks for, and how they might prepare themselves or encourage people they know to do it. I think that would be great. I think we got a very interesting, diverse group this first go-round. Could it be better? Could it be bigger? Sure, and I think what we want for Canadians...not only would you keep the Prime Minister up at night trying to figure out which of the short list to appoint, but you'd keep the committee up at night trying to figure out how to get to a short list.

That's a problem we'd like to have.

**Mr. Ahmed Hussen:** Honourable Jody Wilson-Raybould, would the government be open to putting extra time and effort into outreach to under-represented groups to inform them about this new process or educate them more? I think part of the challenge is education about the process, not necessarily a lack of applicants. Maybe with more education you will have more applicants, and then you will have more of a challenge to pick the right people.

•(1635)

**Hon. Jody Wilson-Raybould:** The short answer is, yes. Certainly, it would be in advance of the next appointments process that we would go through. We have an incredible opportunity, all of us, including myself, to do that necessary outreach, to explain the process and encourage people to apply through that process. I think it's important, not only for the Supreme Court of Canada, but also for appointments to superior courts across the country. With the Prime Minister introducing this process in terms of the Supreme Court of Canada, we've had the opportunity to amend and introduce a new process for superior court appointments that will speak to and encourage a diversification of individuals appointed as judges to the superior court. This is an opportunity for all of us. I am open to all the recommendations, not just those from this committee, and I certainly look forward to reading the independent advisory board's report with respect to the process in this regard.

**Mr. Ahmed Hussien:** I don't have any further questions. I just have one comment.

**The Chair:** I understand, but if Ms. Khalid is going to ask her question, you're almost out of time.

Ms. Khalid.

**Ms. Iqra Khalid (Mississauga—Erin Mills, Lib.):** Thank you.

Thank you, Ms. Campbell and Honourable Jody Wilson-Raybould for your time today. It is very much appreciated. I will ask a couple of short questions, if that's okay.

In light of the two wonderfully accomplished women sitting before us today, I am curious about something. Out of the 31 applications, how many of them were women? Do we know?

**Right Hon. Kim Campbell:** We're trying to discuss how specific we can be to protect the identity of candidates...their confidentiality.

**Ms. Iqra Khalid:** Let me rephrase then.

**Right Hon. Kim Campbell:** It's slightly fewer than half. I'm not sure what the proportion of women in the profession now is eligible to go to the courts. When I was justice minister, it was 12.5%, and 25% of my appointments were women. I don't know if women are up to 50% in the eligible group of lawyers with 10-year calls. I think the proportion was probably close to the proportion in the eligible group. That's another category of people who need to be encouraged. There is no question about it at all levels.

**Ms. Iqra Khalid:** Other than the eligibility criteria and working on the grassroots on that end, what more do you think can be done to encourage women? Is there more that can be done to compel women to apply? From my personal experience, I always find that women have a hard time trying to reach for those positions.

**Right Hon. Kim Campbell:** Well, the minister will speak to her own role in appointing women to the farm team of other benches, but you know perfectly well that trying to get women to run for Parliament.... This is a very large country, and in the Supreme Court of Canada, people do have to uproot themselves to come to Ottawa. I think that's difficult, and sometimes women are less mobile than men, but not always—it is changing. It can be a challenge, so I think we need to get out to those communities. I think that a lot has happened at the trial and appellate level to make women part of that landscape. However, under-represented groups need to have

champions. They need to be encouraged. We did have excellent candidates, so it's not that there weren't any, but it wasn't greater than the proportion in the eligible group. Maybe that's how it should be.

**The Chair:** Mr. Cooper.

**Mr. Michael Cooper (St. Albert—Edmonton, CPC):** Thank you, Madam Minister and Ms. Campbell, for being here.

I want to first of all ask you, Madam Minister, a couple of questions about process.

In the Prime Minister's August 2 op-ed piece published in *The Globe and Mail*, he states that "once the shortlist of candidates has been compiled by the advisory board," that you, as the minister, would consult with a number of different persons, including members of the justice and human rights committee.

I just want to confirm that you would acknowledge that that didn't take place.

•(1640)

**Hon. Jody Wilson-Raybould:** Well, in fact it did take place. I took very seriously the necessity to consult with members of this committee. In fact, I consulted with both critics, Mr. Nicholson and Mr. Rankin, and I had the opportunity to consult with the chair of the committee, Mr. Housefather.

**Mr. Michael Cooper:** I would note, Madam Minister, that the Prime Minister in *The Globe and Mail* referred to the members of the House justice and human rights committee, and he went on to add opposition justice critics. According to the criteria set out by the Prime Minister, it wasn't just justice critics that were in this process to be consulted. It was also members of the justice committee.

Again, I would ask if you would acknowledge that this didn't happen.

**Hon. Jody Wilson-Raybould:** Thank you for the question. I think we'll have to agree to disagree, Mr. Cooper. I consulted with members of the justice committee, including Mr. Housefather.

**Mr. Michael Cooper:** I would also note that not only did you not consult, but you in fact disinvited certain members from having the opportunity to engage in that process, including the vice-chair of the committee, who was advised seven minutes before the nominee was to be announced by the Prime Minister. I recognize that the Prime Minister is under no obligation to consult members of Parliament in this process, but when you make a commitment, it's about keeping the commitment.

Now, this is with respect to another thing the Prime Minister said in his *Globe and Mail* op-ed piece. He talked about the fact that members of Parliament would have a direct opportunity to engage with the nominee. Further in that op-ed piece, he referred to a Q and A session in which members of both the justice committee and the Senate legal and constitutional affairs committee would have an opportunity to take part in a Q and A session with the nominee.

That, of course, is happening tomorrow at the University of Ottawa. When you look at both committees, there are, I believe, 12 members on the Senate committee and 10 members on our House committee, and yet there will only be an opportunity for 14 rounds. It appears there might be an opportunity to ask a one-minute question. Would you not see merit in having an opportunity for members of this committee and the Senate committee to engage with the nominee by having the nominee come to Parliament Hill in addition to this Q and A session that has been set up for tomorrow? Wouldn't that provide a better opportunity for real meaningful engagement?

**Hon. Jody Wilson-Raybould:** There are two parts to the question, and I appreciate the two parts.

In terms of the consultations, as I said, I took very seriously my obligation to consult. Certainly the consultations that I undertook informed to a great degree my recommendation to the Prime Minister. One can appreciate, with the sensitivity around a short list and the need for confidentiality in advance of those consultations, that I sought to gain a signed non-disclosure agreement among the individuals I consulted with, particularly with respect to those who were consulted on the entirety of the short list. I'm very pleased I was able to consult with three members of this committee.

In terms of the opportunity to engage with Mr. Justice Rowe tomorrow at the University of Ottawa, I am very pleased that members of this committee, members of the House, and a whole host of law students will be there to be introduced to Mr. Justice Rowe. Members of this committee and the Senate will be able to ask him questions.

I want to underscore that this is unprecedented. This is historic. It provides an opportunity to invite Canadians into a process wherein they will have the opportunity to get to know the next Supreme Court of Canada justice. I very much look forward to seeing how the discussions unfold, and I'm entirely encouraged that there is a substantive number of questions that this committee and others will be able to ask Mr. Justice Rowe.

**Mr. Michael Cooper:** Thank you, Madam Minister.

Ms. Campbell, one of the very positive things I heard today was when you talked about the fact that of the 31 applicants, almost all of them met the qualifications in terms of being functionally bilingual. While I appreciate that you may not be able to get into some of the specifics, would you be able to comment on the regional breakdown of the number of applicants who applied? It certainly is encouraging to hear of that high degree of proficiency.

•(1645)

**Right Hon. Kim Campbell:** I'm not sure I said they were all functionally bilingual; I said they all had some French, and very few had no French at all, and that was right across the country. There was a French test given to ensure functional bilingualism, and not all candidates passed it. Most of them did who took it. It was actually a pleasant surprise to me. If you see the application form—Justice Rowe's is on the Internet, so it's easy to see—there were four boxes. The first two boxes represented what we would call functional bilingualism, to be able to read and understand and understand arguments in French, and then the other two were refinements of that. I think it's a reflection of an interest in learning French that has

me going back to my own days as minister where one saw this growing.

Again, the Supreme Court of Canada is a unique court, but it's interesting that even in some of the regions.... For example, I am doing a project now for the University of Alberta, and in another totally different context related to that project, I met with a francophone lawyer who is the head of the Association des juristes d'expression française de l'Alberta. Many people may not know it but the University of Alberta has a francophone campus.

The interesting thing that this lawyer said was that translation isn't adequate. He said that he actually thinks he lost a case because a judge missed the nuance of an argument. He's actually had judges say to him, "I'll rely on your translation because the translator isn't very good." I'm sure that as legal translators go, the Supreme Court of Canada has very good ones. But I think that relying on that when there is a possibility of having judges who have some functional understanding is perhaps not serving our francophone citizens the best, and they don't all come from Quebec or New Brunswick. That's what has been very interesting for me.

Lawyers have been taking on the challenge and it's quite wonderful, and, as I said, Justice Rowe is a very excellent example of that. He comes from Newfoundland. They don't have a French-speaking population, not like in New Brunswick or even in Nova Scotia where there are French-speaking communities. I think it was very encouraging for me to see that.

**The Chair:** Thank you very much.

Mr. Bittle.

**Mr. Chris Bittle (St. Catharines, Lib.):** I practised law and litigation for approximately 10 years and occasionally came across judges who we jokingly referred to as having "judgitis", an arrogance or pomposity. How did you find candidates who were not only—and just to be clear none of them were from Niagara, in case I ever have to go back, that's a possibility—excellent jurists but also good people who had a sense of empathy along with an appreciation and ability to apply the law?

**Right Hon. Kim Campbell:** There are two things. One, with the references who we spoke to we really pursued those kinds of issues, but also in the interviews that we did, they were long enough and I think the kinds of questions we asked tried to get at that.

We looked at things like their views on collegiality, which is very important for the court. We looked at what their references said about how they were regarded in their communities by the profession and more broadly.

I suppose, again with more time, one could do more of that, but we certainly cared about that. One of the things about the Supreme Court of Canada is if you can't work with other people, it's very destructive. It's not that you want groupthink—you want people who bring a strong point of view—but if in a decision there are a lot of different judgments, that's chaos for the courts and the people below, as you well know, who have to rely on that. This is the architecture of the law, so that ability....

One of the things I would say about Justice Rowe is when we asked him this question, he gave a very interesting answer. He serves on an appellate court, so of course, his experience is very real. He said, and I hope I am allowed to say this because he'll probably repeat it if you ask him, "I know what the issue is. It's important to me and I am prepared to put a lot of water in my wine, and I have no pride of authorship." I thought that's a very interesting and constructive philosophy for an appellate court judge who has to sit with others to have.... It bodes well for the ability to help to create the kinds of judgments that will give security and clarity to those of you who are practising and need to know what the law is.

● (1650)

**Mr. Chris Bittle:** Were you able to identify any particular experience, training, education, and/or community involvement that really elevated the best candidates for consideration? If so, perhaps that's a good thing to identify to future candidates not only for the Supreme Court but for the new application process for other courts as well.

**Right Hon. Kim Campbell:** We looked for all of the above. You know, it's interesting. Judges who serve in very small communities often find that when they go to the bench, they are advised not to be too involved in the community organizations, as many of them were before they were elevated to the bench, because it creates the possibility of conflict of interest in small communities. You see the judges move back and forth because they have a lot of conflicts. It's very situational.

What we found with the candidates with whom we felt most confident was that there was an interest in the world outside their own role as judges, that they cared about the community, that they cared about issues that might be on an international level often before they went to the bench. Many of them were people—Justice Rowe is one of them—who came from quite modest backgrounds, often very poor backgrounds, but who just had that wonderful remarkable intelligence and resilience making them great Canadian success stories. It was wonderful to see their humanity.

We looked for that kind of humanity in people, because it's not an abstract exercise. Real people are affected. We very much looked for evidence of that. It came in many different ways, depending on the nature of where they lived and what they were able to do.

**Mr. Chris Bittle:** You mentioned that the process went well. Perhaps I'll ask a bit more of a specific question. Would you recommend any changes to the questionnaire?

**Right Hon. Kim Campbell:** I'd have to go back and look at it. I know that, from the point of view of the applicants, shorter would be better. It was quite daunting. I'd have to go back and look at it again and say, "We didn't need this, or we didn't need that, or that may have been a duplication."

On the other hand, in terms of transparency, the fact that you can all read the application of the successful candidate means that you have this clear sense, as we did when we first met him in the process, of what kind of person he is. You might ask yourself, if you were reviewing this and were given this application, what you would think of this person. The nice thing about it is that it's the person telling you about his or her life in the law. Then there's more that we find from other people as well.

I think we might be able to make it more succinct. We might be able to reduce the misery of putting in every case that you were involved in, etc., although nowadays with electronic.... However for trial court judges and some jurisdictions everything isn't published, so it's not so easy.

Anyway, I think that is certainly something that one could look at from a humanitarian perspective. But it's certainly a wonderful document. I don't think we've ever had such a document about anyone who has gone to the Supreme Court of Canada. We know lots about them, but to have in one place the story of their life in the law is really I think...and their childhood and their upbringing, it's all in there.

**Mr. Ted Falk (Provencher, CPC):** Thank you, Ms. Campbell and Minister Wilson-Raybould, for your testimony here at committee.

You outlined the process a little bit, Ms. Campbell, about receiving the applications, 31 of them, distributing them to the seven committee members for evaluation, and then submitting the results. I'm assuming they ranked the results. I'd be curious to know a little bit about the criteria that you were weighing. Was it qualifications? Was it characteristics? Was it achievements? Was it competencies? Tell me a little bit more about the things you were looking for and how you weighted those things.

● (1655)

**Right Hon. Kim Campbell:** Actually, we didn't rank them. In the first go-round we just said, "yes", "no", "maybe". That was the first thing. In other words, we said yes, to go to the next stage, and no, if we thought, for whatever reason, this candidate.... It was usually, perhaps, because the person had not had a lot of experience compared to the others, didn't have that kind of ability, and then maybe it was, "Oh, this is a tough one", and that's where we had the very interesting conversations.

The assessment criteria are actually in the terms of reference, and I think were very much what we looked at: personal skills and experience, so superior knowledge of the law—we looked for knowledge of the law and legal judgment; analytical skills and the ability to resolve complex legal questions; the ability to work under time pressures, clearly; a commitment to public service. It's in the terms of reference.

Then there were personal qualities. An irreproachable personal and professional integrity. This we explored quite forcefully with the different references to whom we spoke about the people: "What can you tell us about this person? In your view, is there anything that would come back to haunt, etc.?" We looked for respect and consideration for others; I think that's important. We questioned on an ability to appreciate a diversity of views, perspectives, and life experiences, including those relating to groups historically disadvantaged in Canadian society. Again, it was very interesting to see how those answers unfolded, often through personal experience, often through their lifetime experience. That was important to us. What is that texture? How has Canadian life, in all of its diversity, impacted on this individual in his or her understanding? We also looked at moral courage, discretion, open-mindedness. Those were the personal qualities we looked at.

Then there were the institutional needs of the court: ensuring a reasonable balance between public and private law expertise, bearing in mind the historic patterns of distribution between these areas in the Supreme Court; expertise in any specific subject matter that regularly features in appeals and is currently under-represented on the court; and ensuring that the members of the Supreme Court are reasonably reflective of the diversity of Canadian society.

One of the things that interested me very much about Justice Rowe was his experience in government, both as head of the civil service in Newfoundland and then his work as a foreign service officer. There will be, probably, interesting cases with respect to jurisdictional disputes, etc., the balancing of federal-provincial relations in all sorts of areas of policy and with indigenous issues, environmental policy, etc. I thought that experience, plus his broad experience in the country, positioned him well to be a constructive participant in the law in that area.

At the very beginning we joked and said, well, if we could deconstruct all these people and take part of this and part of this, but that's not how it works. People are full-fledged human beings and you have to see them in their entirety. It's actually very reassuring. I think you would enjoy it very much to appreciate how a person can be wonderful in many different ways and can bring a kind of humanity and wisdom from many different sources. At the end of the day, that person, if he or she goes to the Supreme Court of Canada, has to be a legal thinker, has to be a jurist, has to be able to write, has to be able to collaborate effectively with other judges on the court. The wonderfulness that would make somebody effective on the court can take many different forms, and that was why, for us, it's not like you're comparing apples and oranges, it's like you're comparing many different wonderful types of apple. I love McIntosh and I like to cook with the Bramley. In other words, they were all quite splendid, but how they got there was unique to each one of them. It was a great privilege and hard work to look at these people and say, what can we give to the Prime Minister that will give him some choice, but no matter which candidate he chooses, he can't go wrong, that person will be an adornment to the court?

**The Chair:** Mr. Falk has some other questions.

**Mr. Ted Falk:** I should have made myself more clear: the weighting, what you put priority on, which qualifications or characteristics. Maybe you can answer it on somebody else's time.

I'd like to ask the minister a question. Minister, you provided the Prime Minister with a short list of five. My question is, did you rank those individuals and did he go with your ranking?

My second question is, would you commit to a hybrid process for this next year where members of Parliament, especially members of this committee, would be more engaged?

• (1700)

**Hon. Jody Wilson-Raybould:** The short list certainly was provided to the Prime Minister. I was provided that list from the Prime Minister and undertook to do extensive consultations, reviewed the jurisprudence of every single individual who was on that list, which in the case of Justice Rowe was quite large. I did not rank candidates for the Prime Minister. I was pleased to have gone through the thorough consultation, to have reviewed all the jurisprudence and other professional and academic writings. I was

happy to fulfill my role as the Minister of Justice and be able to provide a recommendation to the Prime Minister.

In terms of your question about a hybrid process, as I said earlier, I'm very open to hearing feedback from members of this committee. Once that feedback and the feedback of the advisory board is provided, I will take it into consideration.

**The Chair:** Thank you very much.

Go ahead, Mr. Rankin.

**Mr. Murray Rankin:** To build on that, I'm glad that you're open to refinement in the process. I would encourage you to provide a more robust role for MPs, as I've said earlier. Specifically, the hybrid idea that Mr. Falk suggested I think makes a lot of sense.

The process tomorrow is a process that has no legal standing. It's by invitation only and it's not a committee of Parliament. I would really urge that this committee of Parliament be offered the opportunity to add to the independent and non-partisan role that Ms. Campbell's committee played, so we could discharge our responsibility. I'm glad that I think I heard you say that you may be open to that. I wouldn't mind clarification of a role for this committee, perhaps earlier in the process, so we could do our job.

**Hon. Jody Wilson-Raybould:** I appreciate the question.

I appreciate much more the engagement of the committee. I said that I am open to feedback from the committee on any part of this process and how it can be improved. I suspect I will be getting some recommendations in that regard with respect to the role for the MPs.

I wanted to underscore my comments earlier about the process that the Prime Minister has introduced. I feel that it provides a substantive ability for members of Parliament, not only members in the House of Commons, but members of the Senate as well, to be engaged, as evidenced by tomorrow's meeting, where they will be able to ask questions of Justice Rowe.

**The Chair:** Basically, if you ladies would agree, we do these short snappers, which are where a member of the committee gets a very short question, and you have a short answer. We only have a couple of minutes left.

Mr. Nicholson has had his hand up to ask a question for quite a while.

Go ahead, Mr. Nicholson.

**Hon. Rob Nicholson:** Thank you very much.

On that question on our involvement tomorrow, as Mr. Cooper pointed out, you have 22 members of Parliament there. We the Conservatives had been told that the three of us will get two questions. How excited or engaged do you think we are, if we have a 66% chance of asking one question tomorrow? It was suggested that it would be a one-minute question to give the judge three minutes to respond.



How significant do you think that involvement is? Wouldn't it be a better idea to have the justice appear before this committee here and have a committee meeting of the Standing Committee on Justice and Human Rights? What do you think?

**The Chair:** I want to clarify that it's a five-minute back and forth with the justice. We listened to the feedback offered by members of the committee and that process was changed to allow for a more fulsome process tomorrow. It is a five-minute back and forth with the questioner.

Let me pass it off to the minister.

**Hon. Jody Wilson-Raybould:** I guess I would underscore that tomorrow is a substantive process to be able to engage. It is historic. It enables the public to be invited into the process. It enables not only members of the House of Commons, but members of the Senate to ask questions.

Again, I think that this is an incredible opportunity for individuals not only around this table but beyond to be introduced to the nominee for the Supreme Court of Canada.

**The Chair:** Thank you.

I believe, Mr. Rankin, you were okay.

Liberals, are you okay?

I think we would all want to take this opportunity to thank you very much for appearing before the committee. Again, we really appreciate the work that you have done.

Finally, as you mentioned, Madam Minister, we will deliver a report with our recommendations and feedback in the very near future.

Thank you so much to both of you.

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