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Chair

Mr. Anthony Housefather

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• (1535)

[*Translation*]

The Chair (Mr. Anthony Housefather (Mount Royal, Lib.)): Good afternoon, everyone. I now call to order the 79th meeting of the Standing Committee on Justice and Human Rights.

Pursuant to Standing Order 108(2), today, we will be considering the nomination of the Honourable Sheilah L. Martin to the Supreme Court of Canada.

[*English*]

It's a great pleasure to have as our witnesses today the Honourable Jody Wilson-Raybould, our Minister of Justice and Attorney General of Canada.

Welcome, Minister.

Also, as the chairman of the Independent Advisory Board for Supreme Court of Canada Judicial Appointments, we have the Right Honourable Kim Campbell.

Welcome to our committee. It's a great pleasure to have you with us.

As all of us in this room know, the government, the advisory board, and certainly the committee and Canadians take very seriously the appointment of a judge to the Supreme Court, and it's a great pleasure to be part of this process. We thank you for being here before us.

Ladies, the floor is yours.

Hon. Jody Wilson-Raybould (Minister of Justice and Attorney General of Canada): Thank you, Mr. Chair, and thank you to the members of the committee for convening this special meeting. I am certainly grateful for the committee's ongoing engagement in the Supreme Court of Canada selection process. Of course, I am pleased to be joined by the Right Honourable Kim Campbell.

The purpose of this meeting is twofold: to discuss the government's selection of the Honourable Sheilah Martin as the government's nominee to become the next member of the Supreme Court of Canada and to describe the process that led to the selection. This will allow Canadians to better understand the process that has been used in nominating Justice Martin, and will allow you, as parliamentarians, to hold the government to account.

Again, I am pleased to be joined by the Right Honourable Kim Campbell, who is for the second time serving as chair of the

Independent Advisory Board for Supreme Court of Canada Judicial Appointments. I cannot say how delighted I am that she agreed to lend her considerable leadership as chair once again.

As you know, the advisory board has been at the heart of the new process our government has introduced for Supreme Court appointments. 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.

I would like to express personally, and on behalf of the Prime Minister and our government, sincere gratitude to each of the advisory board members for their excellent work and commitment. 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 outstanding individuals. Our appreciation also extends to all those who were consulted throughout the selection process, to the commissioner for federal judicial affairs and his office for the excellent secretariat support provided to the board, and to the candidates who applied for appointment.

I will begin with some initial remarks on the developments since the first selection process, as well as on the overall objectives of the present exercise. I will then turn the floor over to Ms. Campbell, who will describe the steps the advisory board took in creating the short list it provided to the Prime Minister on October 23. Finally, I will discuss the merits of Justice Martin's candidacy and how she meets the qualifications and assessment criteria.

In August of 2016, the Prime Minister launched the selection process that culminated in the appointment of Justice Malcolm Rowe to the Supreme Court. The process was designed in response to our government's dual commitments to establish a new process that was open, transparent, accountable, inclusive, consultative, and promoting of diversity, and to only appoint functionally bilingual justices.

Many of the key factors of the new process, including the fact that candidates had to apply, were unprecedented. Our government has been attentive to how Canadians perceived the process, and we have expressed our openness to refining it to ensure that we have the best possible process. We were particularly grateful to receive this committee's observations and recommendations in your February 2017 report.

I will briefly comment on three aspects of the report. First, this committee affirmed the strong link between a clear, open, easily understood selection process and public confidence in our nation's highest court. I wholeheartedly agree. Our government's ultimate objective in introducing a new process is to ensure that the manner in which we select our Supreme Court justices reinforces Canadians' confidence in this fundamental institution.

Second, the committee noted that the independent advisory board was a key element to the success of the process, and recommended that it be made a permanent element of all future appointments to the Supreme Court. The committee went on to recommend that the board retain its composition, whereby a majority of its members were appointed by non-governmental legal organizations. This strong endorsement of the role and composition of the board was reassuring. I could not agree more with the committee's observation that what made the board a success was the fact that its members were a diverse group of qualified individuals who were all non-partisan appointees.

Third, the committee emphasized the importance of regional representation on the court. As you know, the question of how to enhance the diversity of the court while ensuring regional representation was prominent not only in my earlier discussions with this committee but also in debates in Parliament and among the broader Canadian public. Our government has always stressed the importance of maintaining regional representation on the court over time. The Prime Minister noted this in his mandate letter to the advisory board for the first selection process, asking that the short list include Atlantic Canadians. Ultimately, the process resulted in the selection of an outstanding Atlantic Canadian jurist and the first ever Supreme Court justice from Newfoundland and Labrador.

Nonetheless, we have listened to the committee and to Canadians from coast to coast to coast, and agree that regional representation is a fundamental aspect of the court's diversity and is critical to ensuring the public confidence that underpins the legitimacy of the court. As a result, the application process launched this past July to fill the vacancy created by Chief Justice McLachlin's departure was limited to applicants from western Canada—that is, British Columbia, Alberta, Saskatchewan, and Manitoba—as well as from northern Canada, including the Northwest Territories, Nunavut, and the Yukon.

Time does not permit me to go through all the helpful recommendations made by this committee in its report, so I refer you to the government response I provided last June for more information in this regard.

I will turn now to the two-stage process that we're in. I would like to begin by noting the important fact that it is the chief justice of Canada, as we all know, who will be retiring on December 15. As the Prime Minister and I have noted on other occasions, Canadians owe an immense debt of gratitude to Chief Justice McLachlin for her exceptional service, dedication, and outstanding leadership. I'm sure I'm not the only one who has difficulty imagining the court without Chief Justice McLachlin, but her imprint is deep and enduring. More immediately, her departure creates the need not only to restore the court to nine members but also to identify who will be the next chief justice of Canada.

As the government explained at the outset of this process, we are proceeding in two stages. The first stage involves selecting the next member of the court. To do so, the government has employed the same process, as mentioned, that was used to select Justice Rowe, including an open application process and asking the independent advisory board to develop a short list of candidates based on the same set of qualifications and assessment criteria. This stage, which led to the nomination of Justice Martin, is what we are considering today.

The second stage involves the Prime Minister identifying who among nine exceptional individuals—that is, the eight remaining members of the court and the nominee—is best placed to serve as chief justice. Central to this decision is a recognition of the important role the chief justice plays in fostering collegial decision-making on the court, attending to important leadership and administrative responsibilities, and effectively representing the Canadian judiciary at home and abroad. It is a position of profound legal, constitutional, and institutional significance.

Pursuant to his prerogative, the Prime Minister will make his decision following consultations that will include me, the outgoing chief justice, and prospective candidates, among others. The Prime Minister will then publicly announce his selection for Canada's 18th chief justice.

With this context, I would now like to turn the floor over to Ms. Campbell to allow her to describe the process the advisory board went through in pursuing its mandate.

• (1540)

Right Hon. Kim Campbell (Chairperson, Independent Advisory Board for Supreme Court of Canada Judicial Appointments): Thank you very much, Minister.

Good afternoon. It's lovely to be back with you again. Last year we started at square one to describe the process. I want to say how much I appreciate your comments and particularly your support and endorsement of this process. I know all of the members of the committee were very warmed to know that you were supportive of their work.

I will say this about the members of the committee. Each one of them is absolutely honoured to be part of this process and very dedicated to making it the fairest and most insightful but are also responsive to the need of Canadians to feel that every person who applies gets a full review and fair consideration. On their behalf, I want to again say thank you for your positive comments about the process.

This year, of course, we had the advantage of having done it before. We had one new member. Jeff Hirsch, who was the candidate for the Federation of Law Societies last year was replaced by Sheila MacPherson, who actually practices in the Northwest Territories and Iqaluit, and she quickly got up to speed on what we were doing.

One of the things we felt was that having done this before, we had come up with a pretty good working procedure. We had created some templates for our interviews with the references, for our interviews with the candidates themselves, and for ways of doing things that we reviewed but we didn't have to completely revisit. That made our time a little bit more efficient, which was good thing, because unlike last year when we were able to squeeze our work into the weeks before and after the Labour Day weekend, we were a little farther on in the fall, so people had court dates and things that were very difficult to manage. We wound up working across two weekends including the Thanksgiving weekend.

I want to say a particular thank you to the commissioner of judicial affairs and all the staff—Marc Giroux, Louise Meagher who is here, Natalie Duranleau, and the others, who were really wonderful about coming in on weekends and adjusting themselves to this necessity. I'd also like to thank the candidates who came down to Ottawa over the Thanksgiving weekend to be interviewed. That was a little bit stressful. We would like not to have quite that much pressure, but I think the more advance warning we have, the more people can make their dates and set time aside so they are not coming into conflict with pre-existing commitments.

Notwithstanding that, we did very similar work to what we had done before, in that we started by meeting with the chief justice. That was interesting too, because the first year when we met with the chief justice, we really went over in great detail the nature of the work on the Supreme Court of Canada. This time we could ask her what she wanted us to know that maybe she hadn't told us last year. We had a really wonderful conversation with her.

Again, the underlying philosophy of what we do in this committee is to try to find candidates who really can do the work of the court. The Supreme Court of Canada, as you all know very well, is unlike any other court. People not only have to work in two languages but also have to move to Ottawa. The caseload is very heavy.

I was at a symposium a couple of weeks ago, one of the Canada 150 events, about the Supreme Court of Canada. Justice Stephen Breyer of the American Supreme Court was there. If you think about it, they also have nine judges for a much bigger population. He said the secret is that most law in the United States is state law, so far fewer cases are eligible to go to the Supreme Court of the United States, whereas in Canada, our criminal law is a federal jurisdiction. The workload for the court is very heavy, so we want to make sure that those candidates we recommend to the Prime Minister have a clear understanding of that workload and are able to engage in it as effectively as possible.

We did basically what we did last year. I don't want to go over all of the details again, although I'm very happy to respond to your questions. There were 14 candidates. We interviewed eight. As you know, after the interviews, the candidates go and do a French test to assess their functional bilingualism.

One of the things I think are important for you to know is that the regional basis of this particular process was western Canada, and you would be really quite astounded at how many westerners speak French and the extent to which jurists in particular in western Canada have embraced the possibility created through the Canadian Judicial Council and other bodies to learn French. It has become an

integral part of their thinking in British Columbia and Alberta. It's very interesting. Mr. Boissonnault will know that the lawyers, the Association des juristes d'expression française, are very active in Alberta. We were very pleasantly surprised at the quality of French of the people we interviewed and saw.

● (1545)

I don't really want to go into much more detail because I'd rather answer your questions. Again, we were warmed and heartened by the quality of the candidates. The nominee, Justice Martin, is an extraordinary candidate who hits it out of the park on so many different issues. However, each one of the candidates on the short list that we gave the Prime Minister could have served with distinction on the Supreme Court of Canada. It is a very difficult job and a job unlike any other court in the country, but I think the Prime Minister would be very heartened by the quality of the legal minds that are out there and ready to serve in our highest court.

I think that I'll stop there and allow you to ask me questions because, since we've done this before already, I'd like to make sure that I'm addressing things that are new and not clear in your minds.

● (1550)

Hon. Jody Wilson-Raybould: Thank you, Madam Campbell. It is an incredible honour for me to sit here beside you, and thank you so much for your contribution to the Supreme Court process.

Before we turn it over to questions, I would just like to speak to the merits of the exceptional nominee that the Prime Minister has identified, but again, as I've indicated, the quality of the candidates on the short list, and as the Prime Minister has indicated, on the advisory board, was outstanding. It is truly remarkable and a source of national pride to see the quality of jurists who have put their names forward in this process.

My task of reviewing the candidates and arriving at a recommendation for the Prime Minister was certainly an incredible and difficult one. It was also a task I took extremely seriously, recognizing that one of the most important responsibilities that I have as Minister of Justice is to make recommendations to the Prime Minister in this regard.

In terms of consultation—again, I would invite questions with respect to this as well—I consulted with the chief justice of Canada, other chief justices familiar with the candidates' work, various provincial attorneys general, the chair of this committee and of the Standing Senate Committee on Legal and Constitutional Affairs, and with opposition critics. I then presented the results of these consultations and my recommendation to the Prime Minister, and while I obviously cannot reveal the content of these consultations and my advice to the Prime Minister, I can say that I am convinced that Justice Martin would be an outstanding addition to the court and would continue to serve Canadians with great distinction in that role.

What I can say about Justice Martin's qualifications is that she has truly done it all. She has been a leading academic, a law dean at the University of Calgary, a gifted constitutional litigator, a hard-working trial judge, and most recently, an appellate court judge. Two things struck me about Justice Martin's career. First, there is the extraordinary depth and breadth of her experience, and second, her unshakeable commitment to justice and equality for all.

Justice Martin has been described as blazingly brilliant. She has authored and co-authored three books, nine book chapters, six reports and monographs, and 16 peer-reviewed articles. Her background as an educator shines through her judicial writing. Justice Martin knows how to cut through tangled legal issues and lay out her reasoning in clear, accessible language. Her judgments are thorough and compelling.

For more than 30 years, Justice Martin has coupled that intellect with a commitment to public service. As an academic, she fearlessly addressed what were at the time contentious issues critical to women's equality. Her doctoral thesis explored how the charter would impact the laws of sexual assault, contraception, abortion, and emerging reproductive technologies. She continued to publish on equality, gender bias, and reproductive rights throughout her career.

In private practice, Justice Martin's work addressed issues of deep significance to Canadian society. Take her work on compensation for wrongful convictions. Justice Martin was instrumental in putting together David Milgaard's compensation claim after he spent 23 years in prison for a crime he did not commit. Based on this experience, in 2000, the Honourable Peter Cory asked her to provide an expert report for another wrongful conviction case, the Thomas Soponow inquiry.

The question of compensation for almost unimaginable harms arose in another major case Justice Martin worked on. At the invitation of Phil Fontaine, then-national chief of the Assembly of First Nations, Justice Martin joined the team tasked with developing a new approach to redress the harms caused by the forced attendance of indigenous children at residential schools. She helped craft the blueprint for the Indian Residential Schools Settlement Agreement. She described this as "among the most meaningful and challenging work" of her career.

Justice Martin was on the forefront of advocacy for women's rights before the court. She acted pro bono for women's organizations in three sensitive, precedent-setting Supreme Court cases on women's autonomy and sexual assault.

Since her appointment to the Alberta Court of Queen's Bench in 2005, Justice Martin has gained rich judicial experience in many areas of the law. This experience is especially significant when you consider that if confirmed, she will replace Chief Justice McLachlin, someone who has 28 years of experience on the Supreme Court alone.

• (1555)

As a trial judge, Justice Martin also made sure to gain experience outside of Canada's big cities. She heard cases on circuit in small rural communities in Alberta, and as the deputy judge in Yukon, beginning in 2009, she came to understand the distinct challenges of providing justice in northern communities. Justice Martin has proven her ability to handle sensitive, novel questions of law, for instance in *HS*, the first decision in Canada granting an application for physician-assisted death. Without the benefit of any precedent and on very tight timelines, she heard an application from a woman with ALS, who had six months to live. She acknowledged the importance of the open courts principle, but granted a publication ban recognizing the need to protect the woman's privacy and dignity.

Justice Martin's commitment to equality shines through in her work. In a sexual assault case in 2016, she clearly spotted and called out myths and stereotypes about how true victims of sexual assault should behave. She overturned a provincial court decision that illustrated how quickly such myths and stereotypes can be engaged. She described how historically outdated attitudes about sexual violence have led to unbalanced legal rules and prevented fair trials in sexual offence cases. Beyond her legal acumen, those who know her describe Justice Martin as a unifying force, and someone who radiates enthusiasm.

Collegiality is critical on the Supreme Court. Justices must be able to handle disagreements respectfully and build consensus skilfully. This helps the Supreme Court develop unified jurisprudence instead of confusing judgments with many diverging opinions. Justice Martin's ability to bring people together will serve her well on the Supreme Court of Canada. Claire L'Heureux-Dubé, a retired Justice of the Supreme Court of Canada, put it this way, "Sheila Martin is precious to justice in Canada. When you look at her life in the law, she has never missed an opportunity to do the right thing."

Those are the values that I want to see on the Supreme Court of Canada. We are incredibly pleased to be here to answer your questions about the appointments process and about Justice Martin.

Thank you for this opportunity.

The Chair: Thank you very much, Minister Wilson-Raybould and Ms Campbell, for coming before us today.

Although I'm sure you'll hear it from all sides, on behalf of all the members of the committee, I want to thank you for your incredible service, Ms. Campbell, to this country and for what you're doing on an ongoing basis.

To all the members of the advisory board, to the commissioner of federal judicial affairs, and all of the staff who assisted the work of the committee that led to this very excellent nomination, thank you to all involved in the process.

We're going to do two rounds of questions.

We're going to start with Mr. Nicholson.

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

I'll declare a possible conflict of interest inasmuch as I had the privilege of serving in Ms. Campbell's government, and was her parliamentary secretary for three years. It was a great part of my career to be a part of that. I'm very grateful.

Congratulations to the minister and to Ms. Campbell for this process that they've put in place. We're truly looking forward to our opportunity to meet and ask questions of Justice Martin.

I would agree with you, Minister, that she appears to have outstanding qualifications in so many different areas, within the judiciary and litigation and the academic world. It seems very complete, so we're looking forward to that.

Ms. Wilson-Raybould, after some discussion from the last time we appointed a justice, if you remember, we were very clear, at least on this side, that we believed that the tradition was, the constitutional convention was, that it would be somebody from Atlantic Canada. Now you've indicated that in fact that wasn't going to be an issue this time, that the individual would be from western Canada. I think we do appreciate that. There is another convention and custom that the chief justice revolves between those with background in the common law and those in the civil law. I know there's been an exception to that, so it's not a perfect record in that area.

Would this be something that you will be advising the Prime Minister on with respect to alternating between a common law and a civil law justice?

• (1600)

Hon. Jody Wilson-Raybould: Thank you for the commentary and thank you for the question.

Of course, we're here today to talk about Justice Martin, but I recognize the second part of this process is the appointment of the chief justice, which, like Justice Martin, is entirely within the prerogative of the Prime Minister. I of course will have the opportunity to advise the Prime Minister and he will be providing his decision with respect to the next chief justice in mid-December. I would not want to say anything further than that. My advice is to the Prime Minister.

Hon. Rob Nicholson: Fair enough.

Ms. Campbell, the applicants had more time this time to get their applications in. I think they only had a few weeks on the first appointment, and this time I think it was about two months they had to put this together.

Did you see any difference in this in terms of the types of applications, the material that you were presented with, or even the numbers? Did you see any difference in that with this timeline?

Right Hon. Kim Campbell: Rob—am I allowed to call you Rob in the committee?

Hon. Rob Nicholson: Please.

Right Hon. Kim Campbell: Yes, not so much in the actual content of the applications, because the people really worked hard last year to do it, but as you may recall the due date was over Labour Day, the end of the summer, and people were at summer cottages, etc.

This year we didn't have anybody complaining about filling in the questionnaire and having to scramble to do it, so your advice to give the candidates more time was a good one. I think that they were more comfortable with the process. I'm not sure that it made a difference in the quality of what we got in the applications, but it certainly made a difference in the comfort level of the applicants and their ability to do it and do it the way they wanted to do it.

Hon. Rob Nicholson: Part of the briefing note we have is that fewer names were forwarded to the justice minister and the Prime Minister's Office this time. I believe you had five candidates, according to the material that we're given, and three candidates this time, again, according to the material we have from the Library of Parliament.

Why was that? Why was there a change?

Right Hon. Kim Campbell: Our terms of reference were to provide a short list of anywhere from three to five candidates. We understand, based on last year's process, that it is an enormous amount of work that begins once we pass our list to the Prime Minister. We wanted to make sure that each name that we passed to the Prime Minister was somebody who we felt could go to the court, and just as it happened with this combination of candidates there were three who we felt really were head and shoulders above the others.

We would have been perfectly happy to add two more, but just to do it for the sake of doing it seems to me to, perhaps, undermine the process because it means that there's even more work that the minister and her staff and the Prime Minister's staff have to do in following it up.

We felt that the selection was good, but the terms of reference are three to five, so we've done both now. We'll see how that works out, but I think we gave the Prime Minister excellent choices.

Hon. Rob Nicholson: Thank you very much.

The Chair: Thank you very much, Mr. Nicholson.

Ms. Khalid.

Ms. Iqra Khalid (Mississauga—Erin Mills, Lib.): Thank you, Chair, and thank you, Ms. Campbell and Minister Wilson-Raybould, for coming in today and really talking about this process. It's great to welcome you back into the committee.

Ms. Campbell, you had mentioned that you had had Chief Justice McLachlin come in before the committee to ask her questions. I wonder what kinds of questions you asked her, if you don't mind sharing that.

Right Hon. Kim Campbell: I would say we didn't have her come before the committee, we went to her. She received us in that lovely sitting room around the table over in the Supreme Court.

Last year, we actually had identified a number of questions that we wanted to ask her, for example, about the role of language, about the workload, a whole lot of things that we thought were important for us to understand. Because we had done that last year, we had a more open-ended conversation this time because it was her last time to be advising our committee. I don't think with the questions that I've identified there's any breach in security in saying that, but mostly it was really to try to get her sense, looking back on all her years on the court, of what she thought it was important for us to know, what she thought would be helpful to the court and would help judges be successful on the court.

Again, you could be an outstanding jurist and very brilliant person and not be the right person for the Supreme Court of Canada, depending on the nature of how you work and how comfortable you are with collegial work and group decisions, etc. It's just a very special...or how comfortable you are picking up stakes and moving to Ottawa.

• (1605)

Ms. Iqra Khalid: Thank you, Ms. Campbell.

Last year, when you came before us, you advised us of the different organizations you had approached in order to seek those very qualified applicants. I think the new appointee is very qualified. Just reading her application, I was mesmerized. She was advocating for the things that I am so passionate about way before I was even born, so I really appreciate that.

Can you please outline some of the organizations you reached out to in seeking candidates for this process?

Right Hon. Kim Campbell: Last year, we identified all the organizations that represent lawyers of particular ethnicities, interests, or whatever, and we approached them again this year. This year, we felt that there was a better general knowledge out in the legal community about the process that was taking place.

As I mentioned last year, we also have people who occasionally write to us and recommend somebody. This is one of the debates about the process—the fact that some people might feel too modest to apply. We urge people, if they think they know somebody who should apply, to encourage them, and then we will write to them and say, “Your name has been forwarded to us as an excellent candidate. If you are interested, please review the materials. We warmly encourage you to apply.”

People know about the process, but I think the next step is working to try to reach out to the legal community to find ways of sharing knowledge about what it means to go to the Supreme Court of Canada, and also how important it is for people to apply to serve at the courts at the provincial level, the trial and appellate courts. I have discussed this with the minister, and if there is a role for our committee to play in this, we would be happy to do it.

At the moment, for example, there are quite a number of retired Supreme Court of Canada justices floating about the country, and now we will have the retired chief justice. It would be really interesting if they could be encouraged to do some round tables around the country to talk to people about the work of the court and what it means to sit on the Supreme Court of Canada, so that one could perhaps overcome some of those...maybe discourage people who ought not to apply, but also encourage people who might otherwise feel that they just don't know enough about it or that it's too strange. I think that making the Supreme Court of Canada something that is better known throughout the legal community is important.

I think we had very good communication encouraging people to apply, but from my perspective, that's the next step we could address, now that we've developed a process that we think works with the applicants we receive.

Ms. Iqra Khalid: I have one last question.

Out of the 14 applicants, how many were women? I know I asked this last year as well, but I have to ask again this year.

Right Hon. Kim Campbell: Sure, I'll have to look.

Hon. Jody Wilson-Raybould: As with last time, the independent advisory board is going to release a report one month hence, which will give the breakdown of the 14 candidates.

Ms. Iqra Khalid: Thank you.

Right Hon. Kim Campbell: I can tell you, six women.

The Chair: Thank you very much, Ms. Khalid.

Mr. MacGregor, go ahead.

Mr. Alistair MacGregor (Cowichan—Malahat—Langford, NDP): Minister and Ms. Campbell, I want to thank you both for appearing before the committee today. It certainly means a lot to us.

Minister, if I may, I'd like to start with you just talking about the process. In your opening remarks, you referred to the recommendations this committee made in February of this year, and we appreciated receiving your response.

I want to talk to you about recommendation number 4 that we made, regarding expanding parliamentary privilege to make the interview with the nominee a duly constructed committee of Parliament. When we made the recommendation that parliamentary privilege be extended for the nominee, you responded, “It is the Government's view that holding this session in a public setting such as a university provided tangible means to connect the Supreme Court and its appointees to Canadians.”

Speaker Milliken, in 2003, made a ruling and said, “We have parliamentary privilege to ensure that the other branches of government, the executive and the judicial, respect the independence of the legislative branch of government, which is this House and the other place. This independence cannot be sustained if either of the other branches is able to define or reduce these privileges.”

I know that a lot of discussion went into making that recommendation. I was just wondering if you would care to elaborate a little further on why tomorrow's meeting is not going to be under parliamentary privilege.

• (1610)

Hon. Jody Wilson-Raybould: Thank you for the question, and for the recommendations from the committee.

We look forward to the open discussion with Justice Martin tomorrow, which is going to be held within the parliamentary precinct. We have heard the committee's recommendation to expand the ability to ask questions and have every individual member ask questions, and we have extended the time frame to two and a half hours. I know that was a recommendation in terms of extending parliamentary privilege. There is an opportunity for members of this committee and those in the other place to ask probing and robust questions without butting up against the extent of defamation. I look forward to hearing the questions. I understand many members have been thinking about their questions for Justice Martin since it was announced.

One of the other reasons for having it away from but close to Parliament Hill is to ensure that we get to engage with law students from across the country to introduce this Supreme Court nominee to Canadians. It's going to be accessible. Again, to the former prime minister's point, the idea is to make the Supreme Court of Canada more tangible to people and enable them to watch for the last questions.

Mr. Alistair MacGregor: Thank you.

Ms. Campbell, earlier this year there was an editorial in the *Toronto Star*. Its basic thesis was that it's time for an indigenous person to be raised to the ranks of the Supreme Court. When I was at Canada 150 celebrations in my riding, a lot of what I talked about was reconciliation. We have quite a checkered history in this country, but it's about the next 150 years. I have a very large indigenous population in my riding. It's home to the Cowichan people, the Coast Salish.

I'm just wondering, with all respect to Ms. Martin and her elevation to the Supreme Court, what your feelings are about the search for an indigenous candidate. Will we one day get to that point? Did this process involve potential indigenous candidates this time around?

Right Hon. Kim Campbell: I have absolutely no doubt that there will be an indigenous judge on the Supreme Court of Canada—an outstanding indigenous judge who will not require any compromise in the standards that are applied. The pool of indigenous lawyers in Canada is still very small. When I was the first female Minister of Justice, of the members of the bar who were eligible for appointment to Superior Court, only 12.5% were women; 25% of my appointments were women. The minister has a very small pool of eligible indigenous lawyers who have been at the bar long enough to be appointed to superior courts. Five per cent of her appointments have been indigenous appointees.

We have talked about this, and our committee is very concerned about creating this body of people who can go to the Supreme Court. One of the members of our committee—Stephen Kakfwi—is an indigenous person himself, so we are very committed to doing this.

In addition, and not in substitute, we look among other, non-indigenous candidates for a familiarity and an understanding of the realities of our indigenous communities in Canada. That's an incredibly important thing.

I am absolutely confident. It's interesting that things are kept confidential and you can't talk about them, but I have no doubt that this will happen, maybe in the next couple of rounds. It just depends on where we are and where the next appointments are. I see them coming, and I see them speaking French. They'll take their place with great dignity and respect, and Canadians will be very excited at the quality they'll bring to the court.

The Chair: You have about 10 seconds. You'll have another chance next round.

Mr. Alistair MacGregor: Thank you.

The Chair: Mr. Fraser.

Mr. Colin Fraser (West Nova, Lib.): Thank you very much, both Ms. Campbell and Minister, for appearing. It's good to see you again for the second round of appointments through this new process.

I want to thank you again, first of all, Ms. Campbell, for your work and your leadership on the advisory board, and to thank all the members of the advisory board for the great work they do. It is a model for how appointments should be made.

I also want to echo the comments about departing Chief Justice McLachlin, who served an incredible tenure as a justice of the

Supreme Court of Canada and did an excellent job as chief justice, one that all Canadians should be very proud of. She has big shoes to fill, of course.

As a member of this committee, we did work hard on taking the methods that were used in the last appointment and made thoughtful recommendations, and it's very much appreciated that some of those recommendations were taken very seriously, obviously, and changed the method of how the nomination process works, including the fact that regional representation is now considered a fundamental aspect. I appreciate that very much, being an Atlantic Canadian. It was extremely important to me the last time, and the committee made that recommendation.

Ms. Campbell, if I can start with you, the way the applications were reviewed, we see the applications from the successful candidate. That was put forward and made public so that the public can understand the quality of Justice Sheilah Martin. I'm wondering if you can talk a little about how the committee received the application and whether additional information was provided to the advisory board members beyond the application itself, and whether independent research was done by the advisory board members for example on case law or the writings of Justice Sheilah Martin or any of the other candidates who were considered.

● (1615)

Right Hon. Kim Campbell: Thanks. That's a great question.

First of all, each of us looked at all the applications individually without communicating with one another, so there was no group-think in our discussions. We each looked at the candidates because different people might respond to a different aspect of a candidate. We tried to give them the fairest possible consideration, and sometimes we would get into arguments where one person would ask, "What about this?" We really did try to give the fullest possible review.

Also each of the candidates had references, and we talked to a great many of them to try to supplement what we understood about them.

Second, we did read their case law, their judgments. We read them from the point of view of clarity of expression, knowledge of the law, etc. We felt that the philosophy of their views was really more something for the government to consider and that is why, after we had done our role, the minister and her staff and the Prime Minister's staff looked very closely at the judicial profiles of the candidates, but, yes, we did look at this.

Of course, one of the reasons why filling out the application is so onerous is that they have to give us a list of all the cases they have been involved in and have written about. Yes, we go beyond the application.

Mr. Colin Fraser: Thank you very much.

With regard to the process itself, now that we've been through two of these nominations with you as the chair of the advisory board, I'm wondering if after the second one you now have any further suggestions about how the process could be improved upon even more.

Right Hon. Kim Campbell: I'd like to make sure we had a little more time. It's been great that there's been more time for the candidates. I don't think we rushed the work in a negative way, but it was sometimes hard for us to be able to find the time when we could all be together and do justice to the process.

As I mentioned before, we would like to be helpful in helping to generate the pipelines of interested lawyers and jurists to make the process more understood, and if there is a role for us to do that, we would be happy to do it but it may be better conducted by others.

It's interesting. I did a panel at the Supreme Court of Canada Symposium where Bob Ray spoke favourably about the old "tap them on the shoulder" system of finding Supreme Court of Canada justices. I think the fact that it is open, that people apply who would not necessarily be tapped on the shoulder or seen by senior people in the legal community... While some of those candidates were not necessarily ready to go to the Supreme Court of Canada, they were certainly interesting to see and perhaps refer to the minister as people who might be elevated in courts or given more opportunity to show what they're doing. It's been a wonderful way of seeing the richness out there, even of those who are not quite ready for the top court but who have great skills. Finding ways of making sure that gets communicated to the minister is another part we can pursue.

• (1620)

Mr. Colin Fraser: Thank you.

Do I have more time?

The Chair: You have 20 seconds.

Mr. Colin Fraser: That's fine. Thank you very much.

[Translation]

The Chair: Thank you.

We will now begin our second round with Mr. Ehsassi.

[English]

Mr. Ali Ehsassi (Willowdale, Lib.): I, in turn, would like to join my colleagues in thanking you for coming before this committee. It has certainly been very helpful listening to all your explanations, and I have no doubt that you have put in place an incredibly robust approach to this issue.

The one question I had, which I find quite fascinating, is, obviously, that some of the qualities we're looking for in Supreme Court justices are collegiality and collaboration.

Given that you were going through this difficult process, how would you measure those particular attributes in the people who applied?

Right Hon. Kim Campbell: That's a good question.

Sometimes it comes out in the things that other people write about them, or things their references say, but also we ask them. We ask about their experience working collaboratively. Those who sit on appellate courts have that experience. Those who have sat on trial courts... A trial court judge is God in the courtroom, so it's a whole different culture.

We come out and ask them, get their points of view, and ask them for their experience, because it's a very important issue.

Mr. Ali Ehsassi: Absolutely.

My second question was, obviously, Judge Martin was very much concerned with the residential schools case, which is very significant. It goes to the issue of the breadth and depth of incredible experience that she brings to the task at hand.

In your opinion, how can judicial decision-making assist after the TRC? What are the things we're looking for to make sure we follow up on those recommendations?

Right Hon. Kim Campbell: In terms of the courts, issues have to come before the courts as cases. What the understanding of judges brings is a sense of the lived experience of those who are the litigants, and that, I think, is crucial. I think much of the follow-up of the TRC will not involve the courts. It will involve governments, and governments are going to have to address those issues. The courts will occasionally find themselves as referees.

Mr. Ali Ehsassi: Excellent.

Those are the only two questions I have.

The Chair: We will then move to Mr. Cooper.

Mr. Michael Cooper (St. Albert—Edmonton, CPC): Thank you, Mr. Chair.

Thank you, Madam Minister. Thank you, Ms. Campbell, for your presentations, for your work, and the work of the advisory board in finding a very qualified individual for appointment to the Supreme Court.

Ms. Campbell, you talked a little bit about the timeline and the need for more time. The first go-around was about a 22-day period. It involved, at the end of the day, about 31 applicants. This time was about twice that in terms of the length of the process, but only 14 applicants.

What do you attribute to the fact that, in the second round, we saw roughly about half of the number of applicants who had applied in the first round? Was it the fact that it was simply limited to western Canada as opposed to a Canada-wide search, or were there broader factors?

Right Hon. Kim Campbell: It was almost three times as long because it was 63 days, so it was a much longer process. I think a lot of it had to do with the fact that it was limited geographically and in a region that's very far from Ottawa. It's something we have to take into account.

The Supreme Court Act requires the justices on the Supreme Court of Canada to live in the national capital region. There are a lot of really distinguished members of the legal community in Canada for whom that is just not possible, either because they have family challenges or they just really do not want to leave their family and friends. I think it is important for us to understand the commitment. I don't think the judges think they are making a sacrifice, but they are certainly making a significant change in uprooting themselves.

I'm from Vancouver. Who wants to leave Vancouver? I say that, but we have friends from Edmonton, so Edmonton is pretty nice, too. The point is that it's a big deal. If you're that far away and the locus of your life is there, it's a more significant thing. I think that is discouraging, which is why I think having people learn more about life on the court.... They may still be discouraged, but they might find that perhaps it's not as worrisome as they think.

I think the western appointment one would assume you would have the maximum number of people who, for life reasons, would not want to apply, because it's the farthest region from the capital.

• (1625)

Mr. Michael Cooper: Thank you for that.

You mentioned Bob Rae. Of course, he has made some well-publicized criticisms of the process. In particular, he has called into question the suitability or the appropriateness of having to apply. He suggests that it might discourage people—who would otherwise be qualified—from putting their names forward because they might not be comfortable or they might feel embarrassed in the event that they are not selected.

Do you see any benefit, in addition to accepting applications for the advisory board, to go beyond those who have applied and to search out other individuals who are jurists, distinguished academics, or others of the region? Would that be of some benefit?

Right Hon. Kim Campbell: Already people in the legal community are taking it upon themselves to encourage people to apply. Last year, I remember a number of candidates saying, “I wasn't going to apply, but my colleagues said I ought to.” That makes it a lot easier.

I understand that modesty, and it's not false modesty. It is the appreciation of how significant it is. That's one of the reasons why the confidentiality of the process is so important. It is in some ways an incredibly transparent process. You know how we deal with the applications, and you see the nominees' applications and details.

One of the reasons confidentiality is so important is that some people are shy about having their colleagues know that they have applied. I can tell you one thing; there is certainly no shame in having applied for this process and not been appointed, because all of the candidates were in remarkably good company in terms of being outstanding Canadian figures in the law. That issue is important. That is why we would like to make sure....

I don't think—because there are chief justices and attorneys general out there rustling in the underbrush and trying to convince people to apply—that there's some great star that's been left behind. There may be some people for whom it is just a difficult and uncomfortable process, and they need encouragement.

Mr. Michael Cooper: Ms. Campbell, you mentioned that it was your impression that a large number of qualified jurists and others were learning French, could speak French. Of the 14 applicants, how many were functionally bilingual?

Right Hon. Kim Campbell: Only those who were interviewed did that test, and more were than weren't. When we put out our report, I think there'll be some indications of the results of the test.

Mr. Michael Cooper: Lastly, just in terms of the consultations that your advisory board had, did the advisory board also consult provincial attorneys general and chief justices of the court? I saw in the terms of reference that your advisory board was required to consult with the chief justice, but there was no mention about provincial attorneys general, or—

Right Hon. Kim Campbell: The minister talked to the attorneys general, yes.

Mr. Michael Cooper: The minister did it after. Okay, thank you.

The Chair: Thank you very much.

Mr. Boissonnault.

Mr. Randy Boissonnault (Edmonton Centre, Lib.): Minister, thank you for this opportunity.

Ms. Campbell, I remember the day you became Prime Minister. I was in student government at the time, and I remember that it was a moment in time for Canada. I was proud of you then, and I'm proud of you now.

Right Hon. Kim Campbell: Thank you.

Mr. Randy Boissonnault: It's an honour to represent you in this place as your member of Parliament for Edmonton Centre.

Right Hon. Kim Campbell: Yes, you do.

Mr. Randy Boissonnault: It's a great honour.

As a member of the Liberal indigenous caucus, I really appreciate both your answers on that future moment in time when we will see an indigenous justice on the Supreme Court.

You and I in other forums have had the opportunity to talk about leadership in its many variations, and your work at the Peter Lougheed Leadership College is one of those current manifestations of leadership. I'm interested in how leadership on minority rights—whether it be gender, women's rights, sexual minority rights, the rights of persons with different gender expressions, gender identities—and these issues of minority populations, including visible minorities, that sense of having a voice for minority populations, came into your considerations for choosing a short list.

• (1630)

Right Hon. Kim Campbell: It was part of our terms of reference. The Prime Minister's marching orders to us were to try to maximize the diversity of the court and to look for candidates who represented all those qualities. One of our committee members is a member of the LGBTQ community and very active. We have an indigenous person on the committee, but also, when we are dealing with the candidates, we ask them to talk to us about their experience of the diversity of Canadian society, and of course, they do it confidentially. Some of them have very interesting experiences of themselves, of their families, whatever.

What we are trying to do is to make sure that the lived reality of Canadians in all of its diversity is understood by people on the courts. Justice Martin has done so many things and has lived so many different types of tensions and dualities in Canadian society that I think that really enriches her humanity and her ability to understand society.

The short answer is that we make it a centrepiece of our inquiries.

Mr. Randy Boissonnault: I appreciate that because, as you know, without the Supreme Court, it would have taken a lot longer for sexual orientation to become part of the Canadian human rights legislation in all the provinces and the federal government.

[Translation]

As you know, I am a proud Franco-Albertan.

[English]

In my work in the francophone community in Alberta and across the country, I found that growing up in a minority-language community arms you, equips you with a particular lens on society.

I'm interested if, in Justice Martin's case, her experience growing up in the English-language minority of Quebec might have factored in to any of your recommendations for her to be on the short list.

Right Hon. Kim Campbell: It was simply part of this diversity of experience that she has had, her understanding of what it means to be a minority, what it means to have to struggle for your rights. Earlier today I used the expression that there was a patina of humanity on her because of all the things that she has seen and experienced.

Of course, many people do not realize there is a large franco-Albertan community or that the University of Alberta has a francophone campus, which Randy Boissonnault graduated from. These are not just Quebec issues. They are issues of French-language communities across the country, and I think that she is remarkably exposed to the reality of those tensions in Canadian societies in a very humane way.

Mr. Randy Boissonnault: One of the interesting things about being from Edmonton—and there was some interesting research done on this—is that as far north as we are, sharing a latitude with Moscow, we Edmontonians don't consider ourselves to be northern. You actually have to go to the real north to experience the north.

How much did Justice Martin's experience with the justice system in the north and with indigenous communities in the north add to that patina of Canadian humanity on her application and her membership on the short list?

Right Hon. Kim Campbell: If you've travelled in the northern communities, you know they have their own particular challenges and their own diversity. Again, it was part of our terms of reference because this search led to the north. One of our members, Sheila MacPherson, who represents the Federation of Law Societies of Canada, practises in Yellowknife and Iqaluit, and is very aware of what it means to have experience working in the courts there.

It's really wonderful because the Supreme Court is not a court where people go... It's not a learning experience. Yes, you learn a lot, but you have to be able to hit the ground running, and the more experience, the more wisdom, the more understanding of the richness and diversity of Canadian lived experience that a judge

takes to the court, the better prepared they are to really do justice in the cases they hear.

• (1635)

Mr. Randy Boissonnault: I am particularly interested to know if there was anything in Justice Martin's jurisprudence, since you're a woman of so many firsts, that particularly led you personally to want to see her name on the short list?

Right Hon. Kim Campbell: All of the above...?

It's been interesting that since I am the author of the “rape-shield” provisions in the Criminal Code, that they're back in fashion in terms of popular discussion. Of course, her own jurisprudence on that issue, I think, is dear to my heart because of my own work in crafting the law.

Mr. Randy Boissonnault: Thank you, Ms. Campbell.

The Chair: Thank you very much.

Mr. Liepert, and then Mr. MacGregor, and then the round is over.

Mr. Liepert.

Mr. Ron Liepert (Calgary Signal Hill, CPC): Thanks to both of you for being here, as everyone has mentioned.

The area of law is not one that I feel I have much expertise in, yet I'm surrounded by a number of people who do. What I do is that I go to those who do have expertise, ask them for their opinion, and then voice their opinion. I can tell you that I communicated with a number of people in the legal profession in Alberta, and I would say that all of them would be significantly more conservative than I am. I'd like to read for you a couple of comments that I got back from them regarding the appointment.

The first one is “The appointment of Sheilah Martin to the Supreme Court of Canada is brilliant. Sheilah will be a wonderful addition to the court. She's really smart, loaded with common sense, and most importantly, not a left-wing ideologue.”

The second one is “I can say that I'm a fan of Justice Martin. She is very intelligent, hard-working, thoughtful, and respectful of the law. She is courteous of witnesses, parties, the litigation, and their council and my experience with her, while not frequent, has always been positive.”

I guess as an Alberta MP I really don't have any questions, other than to pass on to both of you some of the comments that came back to me.

They're happy. I'm happy.

Right Hon. Kim Campbell: Could I just make a comment, though?

I think the law should not belong just to lawyers. One of the great gifts that Justice Martin has is as a communicator. She has a great belief in the importance of the public understanding the law. The law should not be mysterious to those who don't practice it or haven't studied it.

I must say that the comments of your friends.... I can't imagine any judge who would not be honoured and thrilled to be thought of in those terms, and they do represent the highest aspiration that anyone would have for a justice in an independent, democratic justice system, so thank you for that.

Mr. Ron Liepert: While the comments came from the legal community, I think they were expressing views of the new appointment that were not necessarily just legal views.

Right Hon. Kim Campbell: Yes. They were wonderful comments.

The Chair: Thank you, Mr. Liepert.

I want to highlight the point that the contributions of the four non-lawyers on the committee are highly appreciated by the six of us who are lawyers.

Voices: Oh, oh!

The Chair: That comment, which as chair I want to highlight, reminds me of how important past governments and the current government have been to this non-partisan process of appointments of Supreme Court judges, whereby people from all parties can be confident in the nomination of a justice. Look at what happens south of the border any time somebody is nominated to the Supreme Court. As a Canadian, I am very proud of this kind of non-partisan process that past justice ministers and the current justice minister have brought to us.

Mr. MacGregor.

Mr. Alistair MacGregor: Thank you, Chair.

As a proud Vancouver Islander, I appreciate the recognition earlier of British Columbians' travel woes. It is a big deal for justices who live in our sunny climes to come to this city. That's a big recognition that we have to give to this process.

I was very pleased to hear that you personally found that the level of French is rising and is reaching that standard of excellence, because earlier this year I attended an interesting conference on judicial bilingualism. It's incredibly complex in terms of having to wrap your mind around these very complex legal notions in both languages and, of course, around the two different legal systems that we have in this country.

You talked about functional bilingualism. You said that you had 14 candidates. Eight were interviewed and then went on to their

French lessons. When you talk about functional bilingualism, does the test relate to their ability to understand complex legal themes in both languages? Can you give us a bit of an overview? It is a big debate in western Canada, but also it's very important to my Quebec colleagues. I am certainly one of those who feels that the highest court of our land should be bilingual. Could you give us some of your thoughts on that?

● (1640)

Right Hon. Kim Campbell: There is a structured test that has been developed by the federal commissioner on judicial affairs. It involves the ability to understand oral arguments in French, the ability to read arguments in French, and the ability to engage in conversation in French. When we met with the chief justice last year, she said that she continues to work on her French.

I don't think they ever stop thinking about it, working on it, and trying to keep it as good as it can be. There are opportunities for translation services, but I think a judge who cannot navigate the files and understand is really at a loss in the court and in the arguments. I'm quite sure that the commissioner of judicial affairs would be happy to show you the test or even give you the test if you wanted to take it to see what it is. It is not so rigorous as to be only passable by the most expert person in the language, but it is rigorous enough that it's meaningful in terms of the ability to function as a judge in French.

Mr. Alistair MacGregor: I'll conclude by thanking you for your presentation today. I appreciate it.

[*Translation*]

Right Hon. Kim Campbell: The pleasure is all mine.

The Chair: It was a pleasure to have you here, Mr. MacGregor. I can see you've been working on your French, as have several committee members.

As the only member from Quebec, I want to say how pleased I am that we are considering the nomination of a bilingual judge from western Canada who has a degree in civil law.

[*English*]

Ladies, your testimony here today was appreciated incredibly by the committee. It's a real pleasure to be part of this process. I want to thank you again, both of you, for being here today.

The meeting is adjourned.

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