



DEBATES OF THE SENATE

2nd SESSION • 41st PARLIAMENT • VOLUME 149 • NUMBER 4

JUSTICE

Supreme Court—Nomination of Judges

Questions by:

The Honourable Maria Chaput
The Honourable Claudette Tardif

Wednesday, October 23, 2013

THE SENATE

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[Translation]

JUSTICE

SUPREME COURT—NOMINATION OF JUDGES

Hon. Maria Chaput: Honourable senators, my question is for the Leader of the Government in the Senate and concerns the appointment of justices to the Supreme Court.

The Minister of Justice announced declaratory provisions to the Supreme Court Act. The government also added two clauses to the Economic Action Plan 2013 Act, No. 2, regarding the rules for appointing judges. Of course, it was the circumstances surrounding the disputed appointment of Justice Nadon that led to these measures. The controversy surrounding Justice Nadon's appointment demonstrates that Canadians want a Supreme Court that is competent and truly representative. Having sufficient knowledge of civil law is not all that is needed to serve on the Supreme Court. Without question, knowledge of both official languages should also be mandatory for all judges, since they are all called upon to rule on Canada's bilingual legislation.

I wrote a letter to the Minister of Justice, Peter MacKay to ask him the same question I am about to ask you here today. Since the debate has been reopened, and since the government has shown today that it is willing to amend the Supreme Court Act, why does it not also use this opportunity to specify, also by declaratory provisions, that knowledge of both official languages is henceforth an essential condition for the appointment of judges to the Supreme Court of Canada?

Hon. Claude Carignan (Leader of the Government): Our government has always been clear on this matter, even when I occupied another position in this chamber. Honourable members must certainly recall one of my speeches on the issue of bilingual judges. We will continue to be guided by the principles of merit and judicial excellence in the selection and appointment of all our judges. All of our appointments to the judiciary so far have reflected those principles.

Hon. Claudette Tardif: Mr. Leader, the government seems to have clearly anticipated that this appointment would be controversial in terms of the criteria for appointments to the Supreme Court, as it requested a legal opinion in advance for support.

The Supreme Court of Canada is key to Canadian democracy. If the government wishes to review the rules for appointing judges rather than moving expeditiously to avoid debate, why does it not do so in a serious manner, taking into account the recommendations of French-speaking Canadians across the country — including experts — who have demanded that bilingualism be included as part of the appointment criteria?

Senator Carignan: As I have already said to Senator Chaput, the principles of merit and judicial excellence will continue to guide us as a government in selecting and appointing judges.

You mentioned the process. I asked for an outline of the process for appointing a judge to the Supreme Court. I can tell you about an important part of this process.

A pool of qualified candidates for appointment is established. The Minister of Justice and Attorney General of Canada consults with the Attorney General of Quebec, the Chief Justice of Quebec, the Chief Justice of the Quebec Superior Court, the Chief Justice of the Federal Court of Appeal, the Chief Justice of the Federal Court, as well as representatives of other associations, other prominent legal organizations including, in the case of Justice Nadon for example, the Barreau du Québec and the Canadian Bar Association.

A long-list of qualified candidates is reviewed by an all-party selection panel composed of five members of Parliament, including three members from the government caucus and one member from each of the recognized opposition parties, as selected by their respective party leaders. The all-party Supreme Court of Canada Appointments Selection Panel evaluates the long-listed candidates and recommends an unranked list of three qualified candidates to the Prime Minister of Canada and the Department of Justice for their consideration. The nominee selected from the three-candidate list then appears at a public hearing of an ad hoc committee of parliamentarians to answer questions from members of all recognized parties in the House of Commons.

I would like to remind honourable senators that this process was established for the first time when Justice Marshall Rothstein was appointed in 2006. The process was then repeated, making it possible to select extremely competent Canadians.

Senator Tardif: Senator Chaput's question and my own pertained to the changes that the government wants to make to the Supreme Court of Canada Act. The question was about the opportunity that the government has to add a bilingualism requirement. Right now, under the act, litigants have the right to be heard but not necessarily understood when a case is heard in French.

What value does the government place on equal rights, on equal access to justice in French and on our country's two official languages?

Senator Carignan: As honourable senators know, under the Supreme Court of Canada Act, three judges must be appointed from Quebec, from the Barreau du Québec or with court experience. One of those three positions needed to be filled. The selection process, as I mentioned, is clear and is based on the candidates' merit and the principle of judicial excellence in order to ensure that we have the most competent judges possible. All of the appointments that have been made to date reflect these principles of merit and skill.