



OFFICE OF THE PRESIDENT
CABINET DU PRÉSIDENT

March 8, 2004

The Right Honourable Paul Martin, P.C., M.P.
Prime Minister of Canada
80 Wellington Street
Ottawa ON K1A 0A2

Dear Prime Minister,

I write on behalf of the Canadian Bar Association, on the issue of the appointment process for the Supreme Court of Canada. The CBA represents over 38,000 lawyers and other jurists across Canada and is dedicated to the improvement of the law and the administration of justice,

The CBA is greatly concerned that Parliamentary reviews of candidates to become Supreme Court of Canada Judges would pose an unacceptable threat to the independence of our judiciary. We are strongly opposed to the adoption of U.S.-style hearings, which inevitably become heavily politicized. We are strongly opposed to any system which would expose judges to Parliamentary criticism of their judgments, or cross-examination on their beliefs or preferences or judicial opinions, or any measure which would give to Canadians the mistaken impression that the judicial branch answers to the legislative branch. Canada is blessed with perhaps the best and most independent judiciary in the world and that nothing must jeopardize this independence.

The CBA has long been in the forefront of a review of the judicial appointment process. In 1986, the CBA called for the creation of non-partisan advisory committees, with representatives from the public, the legal profession, the judiciary and governments. These committees are now in place for federal appointments to courts throughout Canada. Any system can be improved, and the CBA continues to urge greater transparency in the process by which judges are chosen. In particular, as you have stated on several occasions, the public's need to understand the appointment process must guide the federal government in the finding the best process for nominating Judges of the Supreme Court of Canada.

Today, we continue to urge that appointments to the Supreme Court be made following an established, well-known and understood advisory process in order to facilitate selection of the best candidate. When Canadians understand how Supreme Court judges are appointed, their confidence in the system will be that much higher.

Canadians expect, and are entitled to have, judges who are well qualified, independent, and perceived to be independent of political influence. The identification and assessment of candidates for superior and appellate courts has been greatly improved with more formalized review by advisory committees in each province and territory. In our view, this process could usefully be brought to bear on appointments to the Supreme Court of Canada.

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The CBA is ready to assist your government in developing and adopting a process that is transparent and guarantees real and perceived independence of the Canadian judiciary. We would like to meet with you at your earliest convenience to discuss this in greater detail.

Yours truly,



F. William Johnson, Q.C.

cc: The Hon. Reginald Alcock, P.C., M.P. The Hon. David Anderson, P.C., M.P.
The Hon. Jean Augustine, P.C., M.P.
The Hon. Jacob Austin, P.C., Senator
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