



March 8, 2004

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

Re: Appointment of Supreme Court of Canada Justices

Dear Prime Minister,

Further to my letter addressed to you this morning, I am pleased to offer this suggestion of the Canadian Bar Association regarding the appointment of Supreme Court of Canada justices. You may wish to consider this proposal in light of your deliberations on this matter.

The Proposal

You would appoint a Special Advisory Committee each time a vacancy occurs on the Supreme Court of Canada (SCC). The Committee would be structured similarly to the existing federal judicial appointments advisory committees, drawing from the legal community and the public. It would be composed of representatives of the federal Minister of Justice, and of the Attorney General, Chief Justice and law society in the jurisdiction or jurisdictions from which the candidate would be selected. The national President of the Canadian Bar Association would also be a member. The Committee structure would differ from the existing model by the inclusion of four Parliamentarians, elected from and by the membership of the House of Commons Standing Committee on Justice and Human Rights. The Special Advisory Committee would make recommendations to you. It would be bound by the confidentiality of the current advisory committee process that has served Canada well and must be preserved.

The Rationale

The importance of increased transparency should lie with the process by which Supreme Court of Canada judges are appointed, not with the individual candidates themselves. The potential risk to judicial independence lies with the probing of an individual judge's views and background, not with the process or criteria by which they are considered. The focus should be on how and by what standards candidates are considered. Increasing the public's knowledge of the system so that the method and criteria for appointment are clearly known would go a long way to remedying the current malaise.

In addition, to respond to your commitment to reducing the democratic deficit in the area of SCC appointments, there is a need to include Parliamentarians in the process.

This proposal:

- Responds to your goal of involving Parliamentarians in the SCC appointment process.
- Reflects the unique nature of the SCC as Canada's court of last resort. While all judges in Canada make law and have the potential to be activist or not, the lower court judges, including those of the courts of appeal, are bound by precedent differently than is the SCC. Their scope for law-making is therefore more restricted than is the SCC's, and their decisions are subject to appeal to the SCC in any case. The public interest in Parliamentary involvement in the judicial appointment process is therefore most effectively placed at the SCC level.
- Adds Parliamentary involvement in the process without losing or compromising the integrity of the current system that works well, has resulted in excellent appointments and is held out as a model internationally.
- Complements full transparency regarding the criteria and process for SCC appointments.

I am cognizant that this proposed model may not be the one that you ultimately chose. Please accept the offer of the Canadian Bar Association to assist in the development of this most important decision.

Yours sincerely,

A handwritten signature in black ink, appearing to read "F. William Johnson". The signature is written in a cursive, flowing style with a long, sweeping tail.

F. William Johnson, QC