



October 16, 2012

Via email: [NichoR@parl.gc.ca](mailto:NichoR@parl.gc.ca)

The Honourable Robert Nicholson, Q.C., P.C., M.P.  
Minister of Justice and Attorney General of Canada  
284 Wellington Street  
Ottawa, ON K1A 0H8

Dear Minister:

**Re: Merit and Diversity on the Bench**

I write on behalf of the Canadian Bar Association to stress the importance of recognizing the contributions made by members of historically marginalized groups including women, members of racial minorities, and indigenous people, when assessing the merit of prospective judges. In assessing applications to the Bench based on merit, the CBA suggests that action should be taken to ensure due consideration is given to the applications of members of historically marginalized groups.

The CBA is a national association representing 37,000 jurists, including lawyers, notaries, law teachers and students across Canada. The Association's primary objectives include promoting equality in the legal profession and in the justice system. The independence of the judiciary, of which a merit-based appointment process is an integral component, is a crucial dimension to the rule of law. The CBA has consistently maintained, from its 1985 McKelvey Report, that merit criteria for judicial appointments is of great public importance. Taking positive steps to give due consideration to those from historically marginalized groups ensures that merit is evaluated fairly. The Inquiry Commission on the Process for Appointing Judges, presided by former Justice Bastarache, discussed the representation of women and members of minorities in the judiciary and made a specific recommendation in this regard:

**Recommendation 10**

I recommend that the members of the standing selection committee be made aware of the importance of increasing access of women and members of minorities to the judiciary.<sup>1</sup>

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<sup>1</sup> Summary – Commission on the Process of Appointing Judges of the Court of Quebec and Municipal Courts and Members of the Tribunal Administratif de Québec/La Commission d'enquête sur le processus de nomination des juges du Québec, page 29: <http://www.cepnj.gouv.qc.ca/rapport.html>

The CBA Task Force on Gender Equality, in its 1993 report, *Touchstones for Change: Equality Diversity and Accountability* (the Wilson report), recommended the CBA develop and publicize objective criteria for judicial appointments. It also recommended the Minister of Justice adopt a policy for positive action to be taken for the appointment of women and minority groups to the judiciary.

Judges of the highest calibre play an integral part in maintaining the rule of law in Canada. New judicial appointments need to continue this tradition. Appointment on the basis of merit will be best achieved if particular attention is paid to the applications of deserving candidates from historically marginalized groups including women, indigenous people, and members of racial minorities.

The CBA would be pleased to work with you to determine how best to recognize the contributions of members of historically marginalized groups when assessing the merit of prospective judges. I would welcome a meeting to discuss this and other issues in greater detail.

Yours truly,

*(original signed by Robert C. Brun)*

Robert C. Brun, Q.C.