



The Law Society of Newfoundland and Labrador

P.O. Box 1028 St. John's, NL A1C 5M3

16 August 2016

Jeff Hirsh
President
Federation of Law Societies
World Exchange Plaza
1810-45 rue O'Conner Street
Ottawa, Ontario K1P 1A4

Dear Sir,

Re: Consultations: Judicial Discipline and Superior Court Appointment Processes

Thank you for your email of August 11 asking for comment about the recent federal government consultation regarding potential reform to the Canadian Judicial Council's judicial discipline process and the appointment process for federally appointed superior court judges.

The Law Society of Newfoundland and Labrador (the "LSNL") does not have any comment about the potential reform of the Canadian Judicial Council's judicial discipline process.

With respect to the recently announced appointment process for federally appointed judges, while LSNL is generally pleased with the open and transparent nature, LSNL does have significant concerns about two aspects of the appointment process for Supreme Court of Canada Justices; the possible departure from the appointment of a Justice from Atlantic Canada, and the requirement that nominees to the Court must be fluently bilingual. I acknowledge that the Federation's influence as a member of the Supreme Court of Canada Advisory Board is limited by the terms of its mandate letter which states in part:

I ask that the Advisory Board develop and submit to me, by no later than September 23, 2016, a list of three to five qualified and functionally bilingual

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candidates that includes candidates from Atlantic Canada, for my consideration for this position. In making your selection, I would ask that you consider the custom of regional representation on the Court as being one of the factors to be taken into consideration. In compiling this list, I ask that you observe the highest standards of impartiality, integrity and objectivity in your consideration of all candidates.

Ultimately, the decision to appoint a particular nominee rests with the Prime Minister, but we urge the Federation to promote flexibility with respect to the linguistic requirement of the selection process. With the advances made in translation technology and the ability of more judges and lawyers to speak and read some French, though not functionally bilingual, a pragmatic approach to the application of this criteria to the selection process is not only possible, but desirable.

The LSNL is also concerned about the potential for the next appointee to the Supreme Court of Canada to be selected from a region other than Atlantic Canada. As lawyers, we understand that Supreme Court Justices determine issues on their merit, as opposed to the region from which they arise, but the Supreme Court of Canada is also an important symbol of our democracy and the promise of inclusivity. To break with the constitutional convention of appointing a candidate from Atlantic Canada would have the potential of lessening the importance of this institute in the eyes of an entire region of this Country.

I understand that as a member of the Advisory Board you are constrained by its mandate, but I trust that you understand the concerns of the LSNL and will, wherever possible, consider them in your deliberations.

Thank you again for the opportunity for input and good luck with this challenging undertaking.

Yours truly,



Barry G Fleming, QC
President