



INDIGENOUS BAR ASSOCIATION MEDIA RELEASE

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INDIGENOUS BAR ASSOCIATION ONCE MORE EXPRESSES ITS DISAPPOINTMENT WITH PRIME MINISTER JUSTIN TRUDEAU'S FAILURE TO NOMINATE AN INDIGENOUS CANDIDATE TO THE SUPREME COURT OF CANADA

Ottawa, ON – On November 29th, 2017, Prime Minister Justin Trudeau announced his nominee, Justice Sheilah Martin, to the Supreme Court of Canada. While not impugning the suitability of Ms. Martin as a candidate, the IBA is profoundly disappointed that the Prime Minister did not nominate an Indigenous jurist to the Supreme Court of Canada. There were qualified Indigenous candidates in the pool and this decision neglects the importance and urgency of including Indigenous lawyers, judges and academics within Canada's judiciary. The IBA is further disappointed given the Prime Ministers affirmation in June 2017, that "no relationship is more important to Canada than the relationship with Indigenous peoples".

Regrettably, this second nomination to the Nation's top court reinforces the questionable sentiment held by some within society that there is a paucity candidates who are qualified to occupy the most esteemed position within Canada's legal framework. In an interview conducted in August of 2016, then Chief Justice Beverley McLachlin stated that "the difficulty we have with... [I]ndigenous people is that we're just beginning this process of getting the judges in place on the trial benches and so on." The notion that Canada's judiciary is a hierarchical system in which Indigenous peoples need to "work their way up the judicial ranks" is inconsistent with a fair and equitable judiciary and significantly undermines the goals of reconciliation.

Canada must shed existing systemic, hierarchical obstacles if it truly wishes to advance reconciliation. First, there are numerous qualified Indigenous candidates who have dedicated years of service to trial level courts in the hopes of tackling front line problems facing Indigenous peoples in Canada. These individuals have invaluable insight into the interaction between Canada's Indigenous peoples and the justice system and have been overlooked by Prime Minister Trudeau for a second time. Second, the approach espoused by the former Chief Justice considerably undermines the ability of Indigenous academics to reshape Canada's legal framework, particularly as the same applies to Indigenous peoples. Again, the robust pool of qualified Indigenous candidates from the legal academic community was left out.

In Canada's 150 years, the Supreme Court of Canada has not had one Indigenous justice sit on the highest court. For those that care about diversity in the legal profession, this is yet another setback. The IBA has advocated the Supreme Court of Canada to acknowledge the significance of Indigenous law with the nomination of an Indigenous jurist. In October 2017, Canada announced the principles respecting the "Government of Canada's relationship with Indigenous peoples, including Indigenous self-government and laws are critical to Canada's future, and that Indigenous perspectives and rights must be incorporated in all aspects of this relationship". One important way for the Government of Canada to put the principles with Indigenous peoples into practice would be to nominate an Indigenous jurist to the highest court in Canada. As Indigenous legal scholar John Borrows has written, "Canada is a juridically pluralistic state,



and draws upon many sources of law to sustain order throughout the land”. Now is the time to demonstrate the true multi-juridical nature of Canada’s make-up on the Supreme Court.

The Indigenous Bar Association calls upon the Government of Canada to uphold the principles of reconciliation with Indigenous people and be inclusive of nominating an Indigenous jurist to reflect the changing relationship with Indigenous peoples in a true nation-to-nation relationship. The IBA is disappointed with another decision made by the Prime Minister that does not reflect the Truth & Reconciliation Commission’s call to transform Canada’s legal system through greater inclusion of Indigenous Peoples:

A commitment to truth and reconciliation demands that Canada’s legal system be transformed. It must ensure that Aboriginal peoples have greater ownership of, participation in, and access to its central driving forces. Canada’s constitution must become truly a constitution for all of Canada. Aboriginal peoples need to become the law’s architects and interpreters... (Vol. 6, p. 51)

The IBA congratulates Justice Sheilah Martin on her nomination, and particularly her work in equality rights for women and Indigenous peoples. We also acknowledge the work she has done with the Indian Residential School Settlement and continuously educating on the *Gladue* principles. We further acknowledge the position she has made in her application for nomination to “incorporate Indigenous perspectives, laws, practices and customs into Canadian jurisprudence.” We expect Justice Sheilah Martin will uphold those principles while on the bench, and we hope her diverse experiences will be reflected in her judgments.

The IBA will continue to advocate for the inclusion of Indigenous candidates at all levels of Court, including the Supreme Court. Indigenous legal traditions have survived in spite of attempts to banish, assimilate and suppress, and we will hold subsequent governments to task on the statement made by Justice Minister Jody Wilson-Raybould that “ultimately we will wind up with an Indigenous justice on the Supreme Court.”

The Indigenous Bar Association is a national association comprised of Indigenous lawyers (practicing and non-practicing), legal academics and scholars, articling clerks and law students, including graduate and post-graduate law students. We are mandated to promote the advancement of legal and social justice for Indigenous peoples in Canada and to reform of laws and policies affecting Indigenous peoples.

For further information contact Scott Robertson, President of the Indigenous Bar Association at srobertson@indigenousbar.ca and 705-325-0520 or visit our website at www.indigenousbar.ca