



VIA FACSIMILE ONLY  
to 1-613-954-0811

**URGENT**

November 14, 2005

The Honourable Irwin Cotler  
Minister of Justice and Attorney General of Canada  
284 Wellington Street  
Ottawa, ON  
K1A 0H8

Dear Minister Cotler:

***Re: Supreme Court of Canada Appointment Process***

The Indigenous Bar Association (IBA) has recently learned from a number of sources that the short list of candidates to fill the upcoming vacancy on the Supreme Court that you submitted to the Advisory Committee does not contain any Aboriginal names. If so, it is extremely disappointing and must be remedied without delay.

Many organizations in the legal community, including the IBA along with prominent legal scholars, recognize that now is the time to appoint a qualified Aboriginal person to Canada's highest Court. Other organizations and scholars, such as the Canadian Bar Association, the Canadian Association of Law Teachers, Professors Peter Hogg and Peter Russell, agree that it is in Canada's best interests to fill the Supreme Court of Canada vacancy with an Aboriginal jurist. They also acknowledge that there is undoubtedly a choice of qualified Aboriginal candidates who fulfill the merit requirements of such an appointment.

Hence, our shock at learning that not one Aboriginal candidate even managed to make the short list. You speak often about reforming the justice system to better accommodate the constitutionally recognized Aboriginal peoples. Indeed, you announced the Federal Government's new approach to Aboriginal justice, which we find a positive step forward. Among your new approach, one of the seven "R's" includes representation and you specifically noted Aboriginal people are under-represented on the bench of the Courts. The IBA and its wide range of supporters encourage you to act on every aspect of that new strategy, including setting the highest standards by appointing a qualified Aboriginal jurist to Canada's highest Court.

My predecessor wrote to you last month citing the specific reasons and benefits of making such an appointment at this time. The qualifications, experience and merits of the Aboriginal candidates the IBA proposed are beyond reproach. It is reasonable to conclude, therefore, that factors other than merit have been considered in denying Aboriginal candidates a place on the list. It would be unfortunate and disheartening for Canada to miss such an important opportunity for all Canadians to benefit from Aboriginal judicial scholarship at the Supreme Court of Canada.

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The Ad Hoc Advisory Committee's work has not been concluded nor has the Prime Minister made his appointment to replace Justice Major. It remains within your discretion or possibly that of the Ad Hoc Advisory Committee to add an Aboriginal name to the short list to be considered, along with your other recommendations. If more is required to convince you of the merits of appointing an Aboriginal judge to the Supreme Court now, we would be more than willing to meet you. To that end, this letter serves also to request an urgent meeting with you.

I ask you to act quickly to remedy the situation.

Sincerely,

Jeffery Hewitt  
President  
Indigenous Bar Association

cc:

Jose A. Kusugak, President, Inuit Tapiriit Kanatami  
Clement Chartier, President, Metis National Council  
National Chief Phil Fontaine, Assembly of First Nations  
Prime Minister Paul Martin  
Leader of the official Opposition Stephen Harper  
Leader of the Bloc Quebecois Gilles Duceppe  
Leader of the New Democratic Party Jack Layton  
Minister Ethel Blondin Andrew  
Opposition Party Aboriginal Affairs Critics  
Members of the Advisory Committee  
Senator Charlie Watt

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