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Via Email (Jody.Wilson-Raybould@parl.gc.ca)

June 21, 2016

House of Commons
Ottawa, Ontario
Canada
K1A 0A6

Attention: The Honourable Jody Wilson-Raybould, PC, MP

Dear Minister Wilson-Raybould:

Re: Judicial Appointments Process

The South Asian Bar Association of Toronto (**SABA Toronto**) is a voluntary bar organization and the local Toronto chapter of SABA North America. SABA Toronto provides professional growth and advancement for South Asian lawyers in the Greater Toronto Area and seeks to protect the rights and liberties of the South Asian community across Ontario.

As we understand, one of the government's priorities is to reform the judicial appointment process to make it more transparent, inclusive and accountable. As you may know, the Prime Minister was the keynote speaker at SABA Toronto's annual Gala in November 2014, and echoed these same priorities. Though we commend the recent judicial appointments for reflecting the gender diversity of Canada and seeking to redress the gender imbalance on our federal-appointed courts, SABA Toronto believes that a more inclusive judicial process, with an emphasis on racial diversity, is still necessary.

As highlighted by Andrew Griffith in his article "Diversity among federal and provincial judges" (*Policy Options*, May 4, 2016), there are *no* racialized or Aboriginal judges on the Supreme Court of Canada or the Federal Court of Appeal, no racialized judges on the Federal Court and no Aboriginal judges on the Tax Court.

The superior courts are also not representative of either our communities or our political institutions. In the Greater Toronto Area, where over 800,000 South Asians live and work (according to the 2011 National Household Survey), there is exactly one South Asian trial judge and one South Asian appellate judge. There are *no* South Asian judges in Brampton—where over 57.8% of the total population is South Asian. Yet, all five Brampton Members of Parliament and all three Brampton Members of Provincial Parliament are South Asian.

To be clear, SABA Toronto *does not* support diversity quotas or specific targets for judicial appointments. Nonetheless, we believe that our bench should be more reflective of our communities. As part of your review of the judicial appointment process, SABA Toronto makes the following recommendations:

- **Better statistics:** The Office of the Commissioner for Federal Judicial Affairs should include information on the ethnic origin or race of both judges and applicants for judicial appointments. Researchers such as Mr. Griffith and Rosemary Cairns Way are forced to rely on photos and biographies to identify racialized judges, which is increasingly imprecise in a multi-ethnic and interracial community.
- **Accountability on diversity:** The Office of the Commissioner for Federal Judicial Affairs should create a diversity taskforce that reports annually on the diversity of judicial applicants and appointments and makes recommendations to increase judicial diversity.
- **More transparency:** Like in Ontario, federal judicial appointments should be announced and advertised and there should be outreach to diverse bar associations and community groups to encourage applications. Again, like in Ontario, the Federal Judicial Advisory Committees should interview candidates after assessing their qualifications and before making recommendations to the Attorney General. In addition, candidates for judicial appointments should have access to feedback.
- **Reforming the JACs:** The nominations to the JACs should reflect the diversity of both Canada and the legal profession. The provincial law societies and the Canadian Bar Association should be strongly encouraged to nominate lawyers from equity-seeking groups to the JACs and nominees should be sought from diverse bar associations or the Roundtable of Diversity Associations.
- **Establishing more inclusive criteria:** The JACs should have to consider professional excellence, community awareness, personal characteristics, and demographics when assessing applicants.
- **Appoint younger judges:** The stereotype for an ideal judicial appointment is a lawyer in his or her mid-50s. But racialized individuals are, in general, younger than the general population and racialized lawyers are also likely to be younger.

To create a pool of racialized judges for appointment to the appeals courts and Supreme Court of Canada, the federal government should strongly consider appointing lawyers in their 40s as judges. Further, the federal government should make more direct appointments to the courts of appeal from diverse communities, thereby creating a pool of candidates for appointment to the Supreme Court.

- **Education and mentoring:** The current approach is focused on individual judicial appointments as a “reward” for a long and successful career as a lawyer. This approach ignores the challenges faced by racialized lawyers in succeeding as lawyers due to unconscious biases and stereotyping. Instead, the judicial appointment process should develop policies and processes that support diversity throughout a judicial career from the time an individual may first consider becoming a judge to the most senior levels. For example, members of the JACs should engage with lawyers and law students to explain both the formal and informal process for pursuing a judicial career. Judges should act as a bridge between the judiciary and diversity communities to provide personal profiles of their judicial career paths (thus assisting lawyers in identifying role models and mentors) and step-by-step guidance on how to make an effective application

Finally, regarding the upcoming vacancy at the Supreme Court of Canada, SABA Toronto strongly encourages the Prime Minister to appoint an Aboriginal judge. In a year of truth and reconciliation, there would be no stronger statement on Canada’s desire to answer the unique needs and circumstances of Canada’s Aboriginal peoples than to elevate an Aboriginal lawyer or judge to the Supreme Court. If there is no suitable Aboriginal candidate from Atlantic Canada (acknowledging there may be a convention that at least one Supreme Court justice be from Atlantic Canada) and suitable Aboriginal candidates from other regions, SABA Toronto believes that the convention should be ignored (as in 1978, with Justice McIntyre’s appointment) for this appointment.

Though we appreciate that some of these recommendations require coordination amongst the bar associations, the law societies and the judiciary, we believe that leadership by the federal government is key to success on this issue. We would welcome the opportunity to meet with you to discuss these recommendations.

Sincerely,

SOUTH ASIAN BAR ASSOCIATION OF TORONTO



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