

# Lawyers' Rights Watch Canada

*NGO in Special Consultative Status with the Economic and Social Council of the United Nations*  
Promoting human rights by protecting those who defend them

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## **Lawyers' Rights Watch Canada calls on Prime Minister and Minister of Justice to respect and ensure the independence of judiciary in Canada**

Lawyers Rights Watch Canada (LRWC) is a committee of lawyers who promote human rights and the rule of law internationally. LRWC is deeply troubled by recent, unwarranted attacks on Chief Justice Beverley McLachlin of the Supreme Court of Canada (SCC).

Prime Minister Stephen Harper and Minister of Justice Peter MacKay have refused to respond to numerous calls that they apologize for or correct false and misleading innuendos that impugn the integrity of the Chief Justice. The attacks of the Prime Minister and Minister of Justice demonstrate a serious failure to understand and respect the relationship of independence between the executive and judicial branches of government, and risk undermining the independence of and public confidence in the judiciary.

On May 1, 2014, the Prime Minister's Office (PMO) made a statement implying that the Chief Justice, as a "sitting judge", improperly communicated with the PMO about a case before the Court. Such implications are entirely false.

The Chief Justice's acknowledged communication with the PMO in July, 2013, did not relate to any case on which she was a sitting judge. Rather, she was engaged in a different and proper function of her office as Chief Justice, that of consulting with the executive branch about appointments to the Court.

Neither the Prime Minister nor the Minister of Justice have refuted the Chief Justice's statement that she was flagging a potential constitutional issue concerning the "eligibility of a judge of the a Federal Court to fill a Quebec seat on the on the Supreme Court" or that her communication did not express any opinion as to the merits of the issue. As the Chief Justice has stated: "It is customary for chief justices to be consulted during the appointment process and there is nothing inappropriate in raising a potential issue affecting a future appointment." At the time of her communication, the Government had not yet appointed Justice Nadon and there were no court proceedings underway requiring the SCC to apply the constitutional rule to the particular facts of his case.

The Prime Minister and Minister of Justice have made charges of the most serious nature in a country that is dedicated to the rule of law and independence of the judiciary. Not only is their attack on the Court unprecedented, but it also undermines a universally recognized principle of the rule of law, namely, the fundamental importance of respect for the independence of the judiciary.

The *Universal Declaration of Human Rights* guarantees the cornerstone principle of an independent judiciary. The *United Nations Basic Principles on the Independence of the Judiciary*, approved by consensus of the General Assembly in 1985, elaborates on this principle by affirming in Article 1 that:

The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.

Further, the Basic Principles state in Article 17 that:

A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.

The public innuendo and controversy fostered by the Prime Minister and Minister of Justice fail to meet these international standards. There is no indication that they have attempted to utilize the appropriate procedure for raising complaints about judges of the SCC, namely, filing a complaint to the Canadian Judicial Council.

Public respect for the judiciary is crucial for the proper functioning of our constitutional democracy. The statements of the Prime Minister and the Minister of Justice appear to undermine that respect. They have conveyed a false impression of both the facts and the law in such a way as to wrongly imply improper behaviour on the part of the Chief Justice. This use of the public office and the public purse to attack the Chief Justice is a shocking departure from responsible behaviour.

LRWC urges the Prime Minister and Minister of Justice to withdraw the statements made against the Chief Justice, and issue a formal apology falsely impugning her integrity and the independence of the SCC.