

Editorial ? PM facing two tough decisions

The stage has been set for two of the most important judicial decisions to be made in Canada this century, and they will be made by a politician, not a judge.

Last week's announcement by Chief Justice Beverley McLachlin that she plans to retire next December leaves Prime Minister Justin Trudeau facing a replacement decision that neither Steven Harper or Paul Martin had to make.

And even Jean Chrétien didn't face much of a challenge in 2000 when it came to selecting McLachlin to become the first woman to hold the top judicial post in the land. Having served on the top court since her appointment by Brian Mulroney 11 years earlier, she was obviously an ideal candidate, having been on British Columbia's Supreme Court and Court of Appeal before being appointed to the Supreme Court.

Accordingly, the task facing Trudeau is to select not only a new chief justice but also the best candidate for the court from B.C.'s legal community. (McLachlin may well have had this pair of tough calls in mind in opting to announce her retirement six months in advance.

Just how tough those calls will be can be pointed out fairly easily.

As for the position of chief justice, tradition once called for the position to be occupied alternately by an anglophone and a francophone. However, none other than Pierre Trudeau broke with that tradition in 1984 when he picked Manitoban Brian Dickson to succeed Ontario's Bora Laskin.

However, the linguistic skills of the next appointee may be the least of the Prime Minister's challenges. All the current Supreme Court judges are bilingual, and the three Quebec representatives ? Justices Suzanne Côté, Clement Gascon and Richard Wagner ? are the right ages (late 50s or early 60s) and might have only one problem: all were appointed by Stephen Harper.

However, the fact is that of the nine judges on the court, only the Chief Justice and Justice Rosalie Abella were named to the court by Harper's Liberal predecessors, Abella having been a Chrétien appointee in 2004.

At first blush, Abella might be seen as a logical pick for a prime minister who sees himself as a feminist, but she's well out in left wing (see Claire Hoy's comment last week) and will reach the compulsory retirement age of 75 Canada Day 2020.

All things considered, it's a fairly safe bet that the next chief justice will be one of the three Quebecers, with Côté perhaps having a ?gender edge.? However, she happens to have had far less judicial experience than others on the court, since before her appointment in December 2014 she was a partner at Osler, Hoskin and Harcourt LLP.

But then there's also the considerable challenge in finding the right new representative on the court from B.C.

Theoretically, the best candidate would be female and indigenous. After all, B.C. has many First Nations residents and there has long been a clamoring for the court to have some representation from the Aboriginal community as well as someone who is from a visible minority.

However, tradition has tended to call for appointments to the high court to be made from provincial courts of appeal (as was the case with McLachlin) or at least a provincial superior court.

Although all current female members of the B.C. Court of Appeal have ?anglo? names, one of them may have recently impressed Trudeau.

Justice Nicole Garson wrote a judgment overturning a Superior Court ruling that barred a lawsuit by Guatemalan protesters who say they were shot at by Tahoe Resources' private security guards. She agreed with the appellants that Canada was an appropriate venue for the case because of the risk of an unfair trial in Guatemala.