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A good day's work, a valuable lesson in democracy

By JOHN IBBITSON

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Surmounting the theatrics, the confusion, the improvisatory nature of it all, something with genuine potential emerged.

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The new parliamentary committee on judicial review, which held its first, ad hoc meeting yesterday, suffered from the many kinks that need to be worked out before a permanent body is established. But the day was valuable, and future sessions could be more valuable still. Democracy in Canada is stronger as a result.

Justice Minister Irwin Cotler appeared before the committee to defend his government's decision the day before to appoint Rosalie Abella and Louise Charron to the Supreme Court.

With so little time to prepare, opposition MPs decided not to grill the minister on the wisdom of the government's choices, even though some conservative critics are incensed by them. (Judge Abella is a leading advocate of employment equity and both judges have expanded gay rights in their rulings.) The opposition MPs rightly guessed that Mr. Cotler, himself a legal scholar, would have batted down any hastily assembled criticisms. This is why, once the committee is permanently set up, there will need to be a lag time of at least a week between announcing a nominee and convening the panel, to give the parliamentarians time to prepare.

But the opposition MPs castigated Mr. Cotler for refusing to bring the judges before the committee. Conservative MP Vic Toews wanted the judges "to answer for themselves the fundamental question: Why do you believe you are qualified for this eminent position?"

It must be said, Mr. Cotler's answer was compelling: that it would be grossly unfair to subject prospective judges to such a grilling, since, in most cases, they would be unable to answer.

Mr. Toews's question, for example, would be ruled out of order by any competent committee chair, since judges (at least ostensibly) do not apply for their jobs but are selected. Similarly, most judges would be unwilling to answer any questions concerning past rulings, simply referring the questioner to the written judgment.

Nonetheless, judges could be questioned on broader, philosophical matters, within limits clearly established in advance and enforced by the committee chair.

The Justice Minister made a hash of questions concerning the importance of diversity as one factor in the selection process. The judges were chosen on merit alone, he insisted. It is merely coincidence that both are women, one is francophone and the other a child of Holocaust survivors.

Bosh. As Mr. Cotler himself pointed out, there were several able candidates. The nominees' gender and background were clearly factors.

This is why the committee could be potentially important. Imagine a government appointing a native Canadian, or someone who is disabled, or someone with close ties to the ruling party, even though other candidates were of higher judicial calibre.

By close questioning of both the minister and the nominee, the committee might well conclude that the nomination was motivated by concerns other than merit, and recommend against the appointment. It would make for an interesting political crisis, which the prime minister of the day would well deserve, for having chosen so poorly in the first place.

Julian Porter, representing the Law Society of Upper Canada, and Mr. Justice John Richard, representing the Canadian Judicial Council, also sat on the committee. Neither was able to contribute to the debate, and both looked on uncomfortably as Mr. Cotler and Mr. Toews got into a brief yelling match. Unless a role for the bar and the bench can be clearly defined, it might be best to leave them off the committee.

Still, anyone who watched the proceedings knew more about the government's thinking in choosing these judges as a result. We also got a glimpse into the meaningful role that parliamentarians might play in advising the government on the wisdom of its choices.

All in all, a good day's work.

[jibbitson@globeandmail.ca](mailto:jibbitson@globeandmail.ca)

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