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Quebec to contest selection of new Supreme Court judge

Eligibility questions about Justice Marc Nadon means top court is currently one judge short

The Canadian Press Posted: Oct 17, 2013 6:43 PM ET | Last Updated: Oct 17, 2013 6:44 PM ET



The appointment of Justice Marc Nadon to the Supreme Court of Canada is being challenged by a Toronto lawyer on the grounds Nadon doesn't meet the eligibility requirements. (Reuters)

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The Quebec government has announced that it will contest the latest nomination to the Supreme Court of Canada, adding a new layer of controversy to the process.

The provincial government says it's weighing different options to block the Harper government's appointment of Marc Nadon, which is already under attack.

The dispute, which is unusual in the naming of a Canadian Supreme Court justice, has already sidelined Nadon from hearing cases and left the high court short one judge.

A Toronto lawyer fighting a legal challenge against the appointment argues that Nadon does not meet the requirements to fill one of the three spots reserved for Quebec on the nation's high court.

Now the provincial government is saying it might join that case, launched by Toronto lawyer Rocco Galati, or will contest the nomination through other means.

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Alexandre Cloutier, the intergovernmental affairs minister for the Parti Quebecois government, said the Marois government could join the Galati case, table a motion in the provincial legislature, or file a motion with the province's Court of Appeal.

"Multiple scenarios are currently being considered," Cloutier told a news conference Thursday.

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conference Thursday.

"I can't tell you which one we'll prefer. Obviously a decision will have to be made very soon."

Galati argues that Nadon — formerly a Federal Court of Appeal judge — does not qualify for the Quebec spot. He says only judges from Quebec's appeals or superior courts, or lawyers who have belonged to the province's bar for at least 10 years, can be appointed to the Supreme Court.

The provincial minister is also raising concerns about Nadon's residential status. Cloutier cited a report that the judge lives in Ontario, and he told reporters at a news conference: "I'm inviting our journalist friends to answer this question, to find out, for how long has he been living in Ontario?"

Cloutier added: "We have a right to three judges and we'll insist on it. It's clear that we'll make sure Quebec's voice is heard in the Supreme Court."

Legal guarantee

The three Quebec seats are guaranteed under the law, in the Supreme Court Act. The statute states that at least three of the nine judges should be named from Quebec's "Court of Appeal or of the Superior Court of the Province of Quebec or from among the advocates of that Province."

An expert in maritime law, Nadon was born in Quebec and practiced at Fasken Martineau in its Montreal and London, UK, offices.

He was named to the Federal Court in 1993, and has since served on the Federal Court of Appeal, the Competition Tribunal, and the Court Martial Appeal Court of Canada.

The federal government has defended the appointment. A spokeswoman for Justice Minister Peter MacKay has said it meets the required criteria.

"Justice Nadon is qualified and we are certain he will serve the court with distinction," Paloma Aguilar wrote in an emailed statement last week.

"Constitutional experts agree that the Supreme Court Act allows for a sitting Federal Court judge to be appointed to the Supreme Court of Canada — this includes the opinion of former Supreme Court Justice Ian Binnie."

The opposition calls the Harper government's handling of the appointment unacceptable. The Liberals want it immediately referred for the Supreme Court's opinion, as suggested by the Quebec bar association.

"It makes no sense, for Quebec and for all of Canada, that one of our Supreme Court judges can't sit for months and maybe years to come," Liberal MP Stephane Dion told the House of Commons on Thursday.

"Canada needs all its judges at a time when the court is preoccupied with important cases."

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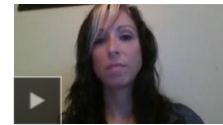
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"or lawyers who have belonged to the province's bar for at least 10 years, can be appointed to the Supreme Court."<<<< That means any lawyer that has belonged to the Quebec bar for at least 10 years, not 10 years recently, and not 10 years consecutively, it means for 10 years in total at some point in his/her life time, period. Furthermore the word is "or", not "and", which means this criteria is sufficient on its own.

Nadon has been a member of the Quebec bar for over 19 years.

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If he works as a lawyer in Montreal, which bar association is he a member of if not that of Quebec?
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**Londoner99**

Yet *another* bad appointment by Mr. Harper?

(Do the names Duffy, Wallin and Brazeau ring any bells?)
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**Airforce one**

I wish Quebec would separate. Then, may be, when they are on their own, they'll leave the rest of Canada alone. We don't need them for anything. Once they're gone we can go back to an English only country.
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**Neville Quickenberry**

It's time to kick Quebec out of Canada.
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**widman**

Good!
We've got some strong evidence Mr. Harper makes weak choices when it comes to appointments. It's good we have some safeguards, and some means of making sure his future appointments, whether to the Civil Service, the Senate or the Courts, are legal, good, and worthwhile.
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Yet **another** bad appointment by Mr. Harper?

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Chris.S.PE

This is standard operating procedure for Harper.. Just look at the Senator for PEI, from Ontario, Mike Duffy.

He finds some ambiguity in the language or ignores the spirit of the law to get what he wants. What he wanted this time was a Judge with a history of being on the minority (losing and often conservative) side of decisions.

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