

36 BAR ASSOCIATIONS AND LEGAL ORGANIZATIONS ACROSS CANADA CALL FOR GREATER RACIAL REPRESENTATION AMONGST FEDERAL COURT JUDGES

FOR IMMEDIATE RELEASE
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36 bar associations and legal organizations from across the country presented [a letter](#) today to Minister of Justice and Attorney-General of Canada, Hon. David Lametti, urging him to take swift action to rectify the historic and stark racial imbalance among Canada's federal court judges – including the Federal Court, Federal Court of Appeal and Supreme Court of Canada.

Signatories to the letter include the Indigenous Bar Association; Canadian Association of Black Lawyers; the Federation of Canadian Asian Lawyers; the Canadian Association of Muslim Lawyers; the Canadian Hispanic Bar Association; and the Arab Canadian Lawyers Association.

As of 2016, more than 27% of Canadians self-identify as being Black, Indigenous or People of Colour (“BIPOC”).ⁱ Yet, amongst the Federal Court's current roster of 44 regular and supernumerary judges, there are only two non-white judges (both men). This is especially troubling given that 63% of the Federal Court's docket deals with immigration, refugee and Indigenous cases – areas in which almost all applicants identify as BIPOC.

There are no non-white women on the Federal Court.

The Federal Court of Appeal and the Supreme Court of Canada, despite commitments to racial inclusion, continue to be all-white benches.

As the signatories state in their letter: this must change.

Laura Sharp, member of the Board of Directors of the Indigenous Bar Association states:

Simply put, individuals seeking remedies in the federal courts still do not see themselves reflected on the bench. Those courts decide many of the most important cases involving Indigenous Peoples – including Aboriginal rights, treaty rights and land claims. And yet there is only one Indigenous judge on the entire Federal Court and, after Justice Mandamin's recent retirement from the Federal Court of Appeal, none at the appellate level on any court in the country. Ottawa can and must do better in order for the federal courts to adequately serve Indigenous Peoples and the Canadian public at large.

In fact, the number of Indigenous and visible minority judges appointed by the federal government to courts across the country has dropped two years in a row: 2017: 12 judges (out of 74); 2018: 10 judges (out of 79); 2019: 6 judges (out of 86).ⁱⁱ

The signatories propose a simple solution: fill the current six vacancies on the Federal Court with BIPOC identified judges. They also call for reform to the criteria employed by the Federal Judicial Advisory Committees – who assess and rank candidates for the bench – to better value the experiences of BIPOC candidates.

Fareeda Adam, staff lawyer at the Black Legal Action Centre states:

Judges hold significant power and are considered by many to be the gatekeepers of the administration of justice. How a judge interprets the law, the credibility of claimant and considers novel legal arguments, is based on their world-view, experiences and

perspective. When these perspectives come from a specific community, the public and in particular, Black communities are deprived of a diversity of legal outcomes.

Now is the time to take action and start the much needed work of overcoming the trust deficits that our community has with the Canadian judiciary. Until everyone has full confidence in our justice system, it will be impossible for our communities to access justice in a meaningful way.

Their call for action is joined by lawyers' associations whose practice in areas of law that come under the federal courts' jurisdiction, including the Canadian Association of Refugee Lawyers, Canadian Environmental Law Association, and Canadian Prison Law Association.

Anthony Navaneelan, Vice-President of the Canadian Association of Refugee Lawyers states:

Canadians need a judicial bench that reflects the dynamism and diversity of the public that it serves. The Prime Minister included this in his 2019 mandate letter to the Attorney-General. Instead we've been moving in the opposite direction – with Ottawa appointing fewer “Indigenous” and “visible minority” judges to courts across the country in each of the past two years. The Attorney-General must take bold action to stop and reverse this disturbing trend. In a democratic society, Black, Indigenous and People-of-Colour (“BIPOC”) cannot be solely the subjects of the law – they must also have the opportunity to be the authors of it. And this change must start with the Federal Court.

It is also joined by legal clinics whose clients appear in the federal courts, including the Indigenous Community Legal Clinic; Black Legal Action Center; the Chinese & Southeast Asian Legal Clinic; Migrant Workers Centre; and the South Asian Legal Clinics in both Ontario and B.C.

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ⁱ Statistic Canada, *Census Profile, 2016 Census* (22.3% of the population identify as a “visible minority” and 4.9% identify as “Aboriginal”)

ⁱⁱ Commissioner for Federal Judicial Affairs Canada, “Statistics regarding Judicial Appointments and Appointees,” <https://www.fja.gc.ca/appointments-nominations/StatisticsCandidate-StatistiquesCandidat-2019-eng.html>