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Comment

Why Quebec but not Indigenous appointments to the Supreme Court?

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Last week's Supreme Court of Canada decision nullifying the appointment of Justice Nadon to the Court is of importance to Indigenous people seeking justice through the Canadian court system.

Since 1875 there has been a requirement that a certain number of seats on the Supreme Court be reserved for Quebec. There is no equivalent requirement that any seats on the Court be reserved for Indigenous people.

The majority of the Supreme Court in the Nadon decision concluded that Justice Nadon was ineligible for one of the Quebec seats because at the time of his appointment he was not a member of the Quebec bench or the Quebec bar.

Importantly, the Court held that one of the purposes for Quebec seats on the Court was to “ensure that Quebec’s distinct legal traditions and social values are represented on the Court, thereby enhancing the confidence of the people of Quebec in the Supreme Court as the final arbiter of their rights.”

The Court's reasoning in the Nadon decision lends support to calls for Indigenous appointments to the Supreme Court.

The composition of the Supreme Court rightly recognizes Quebec's special place in confederation. There is no historical, legal or principled justification for not also recognizing the special place of Indigenous people.

Respect for the distinct legal traditions and social values of Indigenous people has been enshrined through section 35 of the *Constitution*. Persistent government denial of Indigenous rights has forced Indigenous people into the Canadian court system in search of justice with the Supreme Court as the final arbiter of their rights.

To enhance Indigenous people's confidence in the Canadian legal system and to ensure the recognition of the distinct legal traditions and social values of Indigenous people, qualified Indigenous people should be appointed to the Supreme Court.

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