

Source name

The Star (Toronto, ON) (web site)

Source type

Press • Online Press

Periodicity

Continuously

Geographical coverage

Regional

Origin

Toronto, Ontario, Canada

Mahmud Jamal becomes the first person of colour appointed to the Supreme Court of Canada

Tonda MacCharles

OTTAWA — Justice Mahmud Jamal, the first person of colour named to the Supreme Court of Canada, underlined very clearly one perspective he brings to the job of top judge: the experience of confronting racial discrimination “as a fact of daily life” growing up.

“As a child and youth, I was taunted and harassed because of my name, religion, or the colour of my skin,” Jamal wrote in his application to move from the Ontario Court of Appeal to the country’s top court.

Prime Minister Justin Trudeau announced Jamal’s nomination Thursday to the high court to replace the retiring Rosalie Silberman Abella, the first refugee and first Jewish woman to sit on the court.

Jamal’s appointment breaks new judicial ground. His is a historic first for Canadians of colour who have never seen themselves represented on the Supreme Court of Canada but one that nonetheless reduces the number of female judges on the top court bench.

“I know that Justice Jamal, with his exceptional legal and academic experience and dedication to serving others, will be a valuable asset to our country’s highest court,” Trudeau said.

Ontario Court of Appeals Justice Mahmud Jamal was named to the Supreme Court of Canada by Prime Minister Justin Trudeau on June 17, 2021.

Born in Nairobi, Kenya to an Ismaili Muslim family originally from India, Jamal’s parents immigrated to England when he was two, where he attended Anglican schools.

“I was raised at school as a Christian, reciting the Lord’s Prayer and absorbing the values of the Church of England, and at home as a Muslim, memorizing Arabic prayers from the Quran and living as part of the Ismaili community,” he wrote in an essay as part of a questionnaire he filled out for the Supreme Court job.

“Like many others, I experienced discrimination as a fact of daily life.”

In a lengthy questionnaire that outlines a stellar career spanning 25 years, mostly as lawyer and legal scholar and for the past two years as a judge, Jamal sets out his qualifications, his life experience as a racialized person, his views on the role of a judge and what he brings to it — a litany that law professor Gerard Kennedy, a friend and former junior lawyer to Jamal, quipped “induces impostor syndrome” in anyone who reads it.

Trudeau made the announcement just an

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news-20210617-TTAW-93b15703-94d4-41bb-a013-f8909e476658

hour after Chief Justice Richard Wagner said it was important to see greater diversity on Canada's courts, and that he hoped the gender balance would be maintained in the coming years.

Wagner later said he was very happy about Jamal's appointment and noted another seat may become vacant with the pending retirement of Justice Michael Moldaver.

Jamal's nomination was immediately hailed across the country by those who know him and call him a friend and mentor, by those who worked with him, or simply know about his accomplished career — one that spanned more than two decades in private practice at the Toronto firm of Osler, Hoskin and Harcourt before Trudeau named him to the Ontario appeal court in 2019.

Jamal's family uprooted from England in 1981 when he was a young teenager, moving to Edmonton where he finished high school. "Our first few years here were hard. My parents struggled to make ends meet."

He was the first in his family to go to university, attending the London School of Economics for a year before obtaining an economics degree from the University of Toronto. He earned a degree in common law and Quebec civil law at McGill University and a masters in law from Yale Law School.

It was while a student that Jamal says he took up what became a lifelong practice — unpaid work to help advance underprivileged individuals, frequently those experiencing discrimination, writing that he came to view it as a chance to "assist clients, to help shape the law, and perhaps to change societal attitudes. Over time, I represented clients that ad-

vanced the equality rights of Aboriginal Peoples, the civil liberties of all Canadians, and the rights of children."

Jamal and his wife have two teenage sons. His wife Goleta arrived in Canada as a teenage refugee from Iran, from where her family fled the persecution of the Baha'i religious minority during the 1979 revolution. Jamal said she spent several years in the Philippines before her family settled in Innisfail, Alberta.

"After we married, I became a Baha'i, attracted by the faith's message of the spiritual unity of humankind, and we raised our two children in Toronto's multi-ethnic Baha'i community," he wrote.

When Jamal joined Osler, Hoskin and Harcourt, he was the only racialized person in the litigation department of the large national law firm, he wrote. And later, he was only one of four racialized judges on the Ontario appeal bench — experiences that he wrote have shaped him and his perspective on life and the law.

"These experiences exposed me to some of the challenges and aspirations of immigrants, religious minorities, and racialized persons," he wrote. "This is inevitably part of the identity and lived experience I bring to the bench."

Lawyer Sujit Choudhry has known Jamal since they were students at McGill, when Choudhry was an undergraduate and Jamal was in law school.

"He is a litigator's litigator," said Choudhry. "He's brilliant. He's kind. He's bilingual. And you couldn't ask for a better representative of the new face of Canada."

"Justice Jamal has a rock star legal mind. He is brilliant. He is personable. He is super qualified," said Brad Regehr, a Cree lawyer who heads the Canadian Bar Association and is its first Indigenous president.

The CBA had written the Trudeau government and argued for a BIPOC candidate to be chosen. On Thursday, Regehr said Jamal is "an intelligent, thoughtful and charming person who will be a credit to the court."

In an interview, he said Jamal often argued in cases before the high court on behalf of the CBA on a pro-bono basis, and the profession has benefited from his work and analysis of solicitor-client privilege.

"My gut reaction was it is high time that we had a person of colour appointed to the highest court in our land," he said, adding he did not want to "take anything away from his appointment," but said he will continue to press for more Indigenous judges to all federal courts, including the Supreme Court.

"I think there will be some people who are disappointed that the first person appointed who was not Caucasian was not Indigenous," said Regehr. "My view is we can't take the foot off the gas pedal."

As a litigator, Jamal argued 35 appeals before the Supreme Court of Canada on civil, constitutional, criminal and regulatory issues. He has taught constitutional law at McGill University and administrative law at Osgoode Hall Law School.

Martha Jackman, a professor of constitutional law at the University of Ottawa and chair of the National Association of Women and the Law that had lobbied for

a diverse appointment, said it's clear Jamal is "highly qualified as a jurist, as a scholar" and his appointment "brings a level of diversity to the court that was long overdue."

"Our preoccupation isn't straight gender balance," said Jackman, noting that Justice Suzanne Côté was named by Stephen Harper from the Quebec bar with no deep understanding of equality law and, with colleagues Justices Russell Brown and Malcolm Rowe, the trio has come down on the "wrong side on the equality cases that have come before her."

"So we are way more interested in a jurist who understands systemic equality and systemic inequality," she said. "I don't know if Justice Jamal is a feminist. I hope he is. I don't think anyone who understands the Canadian Charter and, and vows to uphold it can be anything but."

Kennedy, who teaches law at the University of Manitoba, said Jamal had been a mentor at Osler, Hoskin and Harcourt who looked out for what was best for the people working for him.

He is "an exceptionally fair person, incredibly intellectually curious, a fantastic writer, and a great legal mind."

Kennedy said Jamal knows "every ruling the Supreme Court has ever written on the Charter."

Sonia Bjorkquist, a partner at Osler, Hoskin and Harcourt who worked with him for more than 20 years, said his former colleagues are "extremely proud" of Jamal, whom she described as "modest" and "a very private person."

Her first thought when the news broke

was how hard he's worked on issues he holds dear, like constitutional law and Aboriginal law issues and how his appointment "is a very important opportunity for him, but also very good for the country."

"He is a consummate intellect and legal scholar."

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This article appeared in The Star (Toronto, ON) (web site)

<https://www.thestar.com/politics/federal/2021/06/17/mahmud-jamal-becomes-the-first-person-of-colour-appointed-to-the-supreme-court-of-canada.html>