Supreme Court nominee tells her story

By MARSHA MCLEOD

Staff

Even as a little girl, Michelle O'Bonsawin knew she wanted to be a lawyer. In high school, she was told that perhaps law wasn't the right path for a francophone girl from Northern Ontario. "Okay, you just watch me," she recalled thinking.

Three decades later, Ms. O'Bonsawin is set to become the first Indigenous judge to sit on the Supreme Court of Canada in its nearly 150-year history.

Ms. O'Bonsawin told the story of her childhood ambitions during a two-hour hearing in Ottawa on Wednesday, where she blended the personal - as a Franco-Ontarian, mother, and Abenaki member of the Odanak First Nation - with the professional.

"I hope to be described as a judge who is well-prepared, listens attentively, is sympathetic, and makes judgments that are clear and solid," said Ms. O'Bonsawin, speaking in French, as she did often throughout the hearing.

Parliamentarians from both the Senate and House asked questions of Ms. O'Bonsawin during the afternoon session.

Ms. O'Bonsawin is set to replace Justice Michael Moldaver, who is retiring on Sept. 1, after 11 years on the bench. (Mr. Moldaver turns 75 later this year, which is the mandatory retirement age for Supreme Court judges.) That means Ms. O'Bonsawin, who is 48, could sit on the court for nearly three decades.

Ms. O'Bonsawin's nomination began with the Independent Advisory Board for Supreme Court of Canada Judicial Appointments, which was made up of eight non-partisan members, who created a short list of candidates for Prime Minister Justin Trudeau to consider. Mr. Trudeau announced Ms. O'Bonsawin's nomination last week.

Answering questions Wednesday, Ms. O'Bonsawin came off as approachable and accessible, drawing laughs at times. She shared her path as a lawyer, her judicial appointment in 2017 to the Ontario Superior Court of Justice in Ottawa, and her doctoral work at the University of Ottawa.

Ms. O'Bonsawin described acting as legal counsel for Canada Post, and later, as counsel for the Royal Ottawa Health Care Group, which focuses on mental health care.

In a questionnaire as part of her application, she described appearing before a variety of boards and courts in mental-health matters - experience that Ms. O'Bonsawin described as something "different" she could bring to the Supreme Court.

Naomi Sayers, an Indigenous feminist and lawyer who practises mental-health law, described it as "a highly specialized area" that intersects with criminal law, constitutional law and administrative law. The area involves individuals who are "hyper-marginalized and vulnerable," she said, and includes those who have been deemed not criminally responsible, as well as those detained at psychiatric hospitals, but not as the result of a crime.

"Principles around arrest/detention, right to counsel on detention/arrest, liberty interests, and fairness - and many more - all impact mental health law,"
Ms. Sayers said in an e-mail.

Last December, Ms. O'Bonsawin successfully defended her PhD thesis, which she said focused on the possible use of Gladue principles in the forensic mental-health context. (Gladue principles require that judges consider the background of an Indigenous defendant when making sentencing decisions.)

Asked by Conservative MP Kerry-Lynne Findlay why her thesis is under embargo, and whether that's unusual, Ms. O'Bonsawin replied that it was unusual - but only because "my understanding is not many judges actually go through the PhD process while they're still sitting [as a judge]."

Ms. Findlay’s question was one of few pointed inquiries on Wednesday, with parliamentarians largely praising Ms. O'Bonsawin's nomination - and speaking to its historic nature.

At one point, Liberal MP Jaime Battiste, who is the country's first Mi'kmaw MP, asked the judge whether she would share the Indigenous teachings that have shaped her.

"I think being humble," she said. "No matter where we are in society, no matter how far we move up, we always have to remember where we come from."

Ms. O'Bonsawin also cited honesty, adding, "I'm a 'tell it as it is' person."

She displayed that frankness when relaying an instance when, in court, she overheard a lawyer refer to her as "our Pocahontas of the north." Ms. O'Bonsawin said that she put the comment into the court record and then, at home, discussed the importance of speaking up about discriminatory comments with her sons.

Ms. O'Bonsawin grew up in Hanmer, Ont., a small francophone town about 25 kilometres north of Sudbury, where her father worked as a machinist and a mother as a teacher. She is now married, with two sons, and said that they have "three dogs, ... eight chickens, and a gecko named Lizzie."

In brief closing remarks, which Ms. O'Bonsawin repeated in Abenaki, English and French, the judge said, "I'm grateful to my ancestors for giving me wisdom today. I thank everyone who took the time to listen to me."

Earlier in the day, federal Justice Minister David Lametti, and Wade MacLauchlan, the chair of the Independent Advisory Board, fielded questions from the House standing committee on justice and human rights about Ms. O'Bonsawin's nomination and the appointment process.

Mr. Lametti repeatedly spoke to the importance of trust, noting that the current nomination process was created in 2016, with the goal to avoid "something that happens occasionally south of the border, where it becomes hyperpolitical and hyperpartisan in terms of the nomination."

Conservative MPs Larry Brock and Ms. Findlay questioned whether Ms. O'Bonsawin's experience in criminal law is equivalent to Mr. Moldaver's, who is considered an expert in that area.

Mr. Lametti said that Ms. O'Bonsawin does bring significant criminal experience, but also emphasized that it's the court's "total responsibility" - not just that of one judge - to have that expertise, which it already has.