

## Supreme Court for bilingual judges only?



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"What galls me," says retired Supreme Court justice John Major, "is that people like Bob Rae and Ignatieff vote for it."

It's shocking for a former justice of Canada's highest court to make such a direct statement about current politicians but Major is clearly annoyed at the passage of Bill C-232 in the House of Commons. The private members bill from the NDP's Yvon Godin passed third reading in the House on March 31<sup>st</sup> with very little media attention and is now up for debate in the Senate. The bill would require every judge appointed to Canada's high court to be able to understand English and French without an interpreter.

On the face of it, that is a mild bill and many would say not a terribly taxing demand to make of a judge that will hear cases in both official languages. That view however takes the bill at face value and does not consider how official Ottawa implements things like language laws.

Justices on the Supreme Court hear very complex legal cases from both the common law and civil code systems, the impact of this bill is that it would require all judges to be able to hear cases at the highest level with no interpretation or translation assistance. According to Justice Major, that would eliminate most of the current court, "In the present court, there's a fair number who can carry on a conversation in French," says Major. "But there are only three completely bilingual judges."

Major's count of three is not the three judges that must be appointed from Quebec because he says at least one of the Quebec justices needs help going from English into French. Also among those that would not meet the test to be appointed is Chief Justice Beverly McLachlin who when she was appointed in 1989 was not bilingual but has since improved her French.

Justice Major argues that legal competency and not linguistic competency should be the standard for appointing judges, it's an argument backed by the government but rejected by all three opposition parties, including the Liberals which is why Major is critiquing Rae and Ignatieff directly. "Bob Rae is a trained lawyer, he was a Rhodes Scholar, he's an intelligent man, he knows the pros and cons of all this and he should have known better. And Ignatieff is the leader of the opposition who supposedly has the interest of the whole country but he's pandering to this New Brunswick motion." The pandering in Major's view is that there will be very few completely bilingual judges or lawyers west of Manitoba.

That's an argument the supporters of the bill expected and both Liberal MP Mauril Belanger and Bloc Quebecois MP Nicole Demers point to the requirement that anyone who wants to be prime minister needs to be bilingual. True, but not the point. Politics is a career one aspires to and works toward by ticking off a number of achievements along the way, do we really want people essentially campaigning for a spot on the Supreme Court based on something other than their legal mind.

There is plenty of animosity to official bilingualism across Canada and I have spent plenty of time explaining to family and friends in southern Ontario that there is a real French fact in the eastern part of our province, some of them remain unconvinced. On the flip-side of that equation, there are plenty of people in Ottawa and Montreal that have trouble believing that it is so hard to learn both languages. Yet in much of the country Italian, Chinese or Polish would be easier to learn than French because unlike French, you actually meet people that speak those other languages in your daily life. French outside of certain parts of Canada must be sought out, it is not easy to find.

Don't get me wrong, bilingualism is an asset that should be strongly considered and encouraged but why should a brilliant legal mind, say a Francophone from the Saugenay or an Anglophone from Red Deer, be denied a spot on the nation's top court due to language. When Justice McLachlin came to the court in 1989 she was able to improve her French through studying the language and living in the language.

All three of the fully bilingual judges, LeBel, Fish and Charron were able to live and work in bilingual environments before being appointed to the court, an opportunity few people from British Columbia, the Prairies or certain parts of Quebec might have. The simple fact of the matter is that our court has a regional system that requires one judge from British Columbia and one from the Prairies two places where French is scarce. And despite what your trip to the Montreal Jazz Festival last year might have convinced you, not everyone in Quebec is bilingual.

For all of these reasons and probably some more, this bill deserves some sober second thought in the Senate even if, irony of ironies, it requires the Conservatives to beg some of those unelected Liberal Senators to help deliver it.

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