

How to ruin the Supreme Court

National Post Editorial

If Bill C-232--a private member's bill that passed in the House of Commons last month -- is approved by the Senate, future seats on the Supreme Court of Canada will be reserved only for judges who are fluently bilingual. Judges who speak only French or only English will be barred. This puts the linguistic cart before the judicial horse and makes language skills more important than legal acumen. It also ensures that in the future our top court will be dominated by judges from Quebec and small pockets of bilingualism in Ottawa and New Brunswick.

Yvon Godin, the former union activist and New Brunswick New Democrat who introduced the bill, insists if "we have 33 million people in our country and we cannot find nine judges who are bilingual -- I think we are in trouble." But he misses the point. In the era of the Charter, the Supreme Court has so much power and passes judgment on so many critical issues that the only criterion for selecting its members should be superior legal reasoning. It would do Canada and Canadians a disservice to insist that the ability to hear a case in either official language without translation was more important than a lifetime of legal scholarship. That's a parlour trick compared to the ability to understand and synthesize complex legal arguments.

The bill would not require mere conversational fluency in English and French, either. It would make it necessary that future justices be fluent in the often arcane concepts and terminologies of both legal languages. All three opposition parties voted for Mr. Godin's symbolism-over-substance amendment to the Supreme Court Act; only the Conservative government opposed it.

If Mr. Godin's bill were already the law of the land, only two of the current sitting justices would have qualified for their current posts; none of the English-speaking judges would have. Chief Justice Beverley McLachlin, for instance, would not have made it, despite being one of the most competent chief justices in recent history. Are she and the other half dozen unilingual French or English judges unfit as a result of their unilingual ability? Is the need for judges to have arguments translated really threatening justice at our highest court?

In addition to placing far too much emphasis on language skills, the bill would also threaten national unity. Outside of a strip from Ottawa to Montreal, Quebec City and Moncton, few jurists are fluent in both official legal languages. Most speak one or the other. If there is little hope of any of our top judges coming from the vast country beyond this tiny strip, the court's decisions will soon be seen by a majority of Canadians as emanating from some distant land foreign to their daily existence.

According to the last census, 42% of francophones claim fluency in both official languages, while just under 10% of anglophones do. But only tiny fractions of both

bilingual populations would ever be fluent enough to make it to the court. Should Mr. Godin's bill pass the Senate, the Supreme Court would become so unreflective of this country's people it would rapidly lose credibility as a national institution.