

# Bill would require top judges to be bilingual

## Former Supreme Court justice, lawyers critical of private bill

Halifax Chronicle Herald

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Sun. Apr 25 - 4:53 AM

OTTAWA — A fluently bilingual Supreme Court of Canada is an ideal worth pursuing, critics say, but a proposed law that would enforce only bilingual appointments to the top bench is a "very, very bad idea."

An NDP private member's bill to that effect quietly passed final reading in the House of Commons late last month and was introduced this week in the Senate, where it is finally generating some public debate.

Reviews from the legal community are scathing.

"Stupid," "scary," "ill-conceived" and "pandering" are just some of the adjectives used to describe New Brunswick MP Yvon Godin's proposal — and those come from lawyers and jurists who believe the bill is actually well-intentioned.

"I think it's a bad idea; a very, very bad idea," said David Scott, a pre-eminent Ottawa lawyer who has represented federal commissions of inquiry, the Government of Canada and former prime minister Jean Chretien.

His concern, and that of many others, is that a new bilingual prerequisite layered on top of existing regional representation rules will dramatically shrink the pool of eligible jurists — particularly in Western Canada — and lead to trade-offs between legal competence and linguistic duality.

Scott applauds the notion of a bilingual court and says Canada is steadily moving that way. "To me this should be achieved not by legislation, but over time by organic change. ... It's the precipitousness of it that's offensive."

Senator Claudette Tardif, the deputy Liberal leader in the Senate, sponsored the NDP bill in the upper chamber and says such concerns are "ill-founded."

In an interview, she questioned what is motivating the legal critics.

"We have to remember the Supreme Court, as a federal institution, has the mandate to serve the citizens of the land and not those aspiring to sit on the Supreme Court bench."

Tardif, a bilingual Edmontonian who is the former dean at the University of Alberta's French-language faculty, said she believes the number of young bilingual lawyers and jurists is increasing, although she has no statistical evidence to back her claim.

"The important part here is that if this bill was passed it would send an important signal to different universities and faculties of law and they would certainly prepare the students accordingly," Tardif said.

She says court interpreters may be good, but they can never be perfect, and litigators have the right to be heard and understood in their mother tongue.

"The stakes are too high when you're at the highest level of the land, your last court of appeal," said Tardif.

"That is an injustice that some citizens have to put up with, that others don't."

But the high stakes of Supreme Court rulings are exactly why critics say the bilingualism prerequisite is so misguided.

"There's a great risk of loss of public confidence in the institution if we end up with people whose principle quality is that they understand French," said Scott, a unilingual lawyer who at age 74 is certainly not angling for an appointment to the Supreme Court himself.

The Canadian Bar Association has not taken an official position on the legislation. Nor has its Quebec division, according to Quebec director general Veronique Saulnier. However the Quebec Bar Association came out in favour of mandatory bilingualism for Supreme Court judges two years ago.

Retired Supreme Court justice John Major, a unilingual anglophone who served 14 years on the top court, has been unstinting in his criticism of the bill.

"The requirement should be competency, to the exclusion of almost everything else," Major said in an interview from his Calgary law office at Bennett Jones LLP. Major noted appointments to the top court are already constrained by regional requirements, which he calls a "necessary evil."

"If they make (bilingualism) a requirement, I don't know where you're going to find both competency and fluency in places like Vancouver and Calgary and Edmonton. . . . So much of this is just pandering."

Of the nine justices on the top court, eight are deemed to be bilingual. But Major argues only a handful can actually hear complex legal arguments without some translation help.

Recently retired justice Michel Bastarache, a lifelong champion of bilingualism, appeared to confirm this when he was asked by The Canadian Press to comment on the legislation.

"Mr. Bastarache is afraid anything he would say would be interpreted as an evaluation of the capabilities of his former colleagues; he has therefore decided not to comment on this bill," his office said in an email.

Major says the oral argument angle is vastly over-played, regardless, since litigants have the right to be tried in the language of their choice at lower courts where factors such as witness credibility come into play. By the time cases hit the Supreme Court, Major says 90 per cent of the material is in writing.

"Suppose you were there facing internment, imprisonment, loss of property or loss of rights. Would you be more interested in the diction of the judge or the knowledge of the judge?"

asked Major. "If I was having a tumour removed, I wouldn't much care about the linguistics of the surgeon. I'd want his competency."

That issue of court competency is what leaves some observers scratching their heads.

Lawrence Greenspon, a leading criminal lawyer in Ottawa who is also multilingual and speaks impeccable French, questions why the new bill is necessary.

"Is there any suggestion that it's not working or somehow resulting in less than quality justice being dispensed?" he said.

"Because the price you pay for that (bilingual prerequisite) is that many good people, who would otherwise be eligible for the Supreme Court of Canada, won't be eligible.