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 (1545)

[English]



The Chair (Mr. Ed Fast (Abbotsford, CPC)):

I call to order meeting number 32 of the Standing Committee on Justice and Human Rights for today, Wednesday, June 17, 2009.

Members, you have before you the agenda for today. We're continuing our review of Bill C-232, An Act to amend the Supreme Court Act (understanding the official languages). We'll be hearing from two separate panels of witnesses.

For the first hour, I'm pleased to welcome retired Justice John Major. Thank you for being here and welcome to our committee. I think you know the process. You have 10 minutes to present, and then we'll open up the floor to questions from members.



Mr. John Major (Retired, Puisne Judge of the Supreme Court of Canada, As an Individual):

My presentation won't be too profound, as I was only invited to this unexpected party, as it were, last Friday. However, I understand the nature of this amendment to the Supreme Court Act requiring that any new nominee understand French and English without the help of an interpreter.

I would begin by saying there is no question of the right of the litigant to have his case heard in his language of choice in Canadian courts. Certainly, in the section 96 courts, that is his right.

The basic concept here has to be properly decided, and the judge has to have a complete understanding of the case. The ideal, of course, would be to have a judge who was perfectly bilingual. But there are very few of those in the country. Of recent memory was the late Chief Justice Lamer, who was fluent both in the spoken and written language.

It is vital that the case is properly understood, and the system must be fair to all parties. But I am absolutely adamant in my view that the test for the appointment of a judge should

be competency. That has to be the priority, and anything else that comes with it is a bonus. It would be a mistake to substitute anything in place of competency. Particularly in the Supreme Court, cases have to be as near correct as humanly possible, because they have a national impact on the whole of the country.

Any inadequacies in the language of an appointee are presently handled by way of translation. I was unilingual for all intents and purposes, and I was on the court for 14 years and made use of the translation, which I found to be very good. There was no case from Quebec or elsewhere argued in French in which I did not feel I had a complete grasp of the facts and the positions of the parties.

It's interesting that the United Nations operates the same way, except that they have multi-translations because of the nature of the establishment.

I guess I'm going to sound like a broken record on the subject, but competency is the cloud that sits over top of this.

Sometimes the matter comes up in a different way. As you know, in Canada we have geographic requirements for six of the judges on the Supreme Court; that is, they have to come from different areas of the country. Quebec has constitutional right to three judges. I've heard the question raised—in fact, in Rothstein's appearance—how do the common law judges feel about deciding civil law cases? The answer is that they feel very comfortable, just as the three civil law judges from Quebec feel quite comfortable in deciding common law cases from the nine other provinces. So I don't think the question of understanding a case by virtue of translation is a serious problem.

  (1550)

I think it would be a serious problem for the country as a whole if anything less than competency were the first requirement for appointment to that court. Over the years, there have been no complaints from litigants—at least, not any made to the court during my tenure there. The Canadian Bar Association has not raised this as an issue.

I suppose by way of concluding remarks I would ask, does anyone suffer by this proposed amendment? I would say the litigants suffer if the test of the judge is less than that of competency.

Thank you, Mr. Chairman. Those are the few remarks I have.

The Chair:

Thank you so much.

We'll open up the floor to questions. Who will be going first?

Monsieur D'Amours, for seven minutes.

[*Translation*]

Mr. Jean-Claude D'Amours (Madawaska—Restigouche, Lib.):

Thank you, Mr. Chairman.

Thank you for coming this afternoon, Mr. Major. I would like to ask you a few questions.

Would you say that the Supreme Court is the final court or final recourse that citizens can turn to?

[*English*]

Mr. John Major:

As I said at the beginning, I'm unilingual. I was saying how good the translation was.

The Chair:

We'll make sure you have your earpiece available. We'll wait a moment until you have your earpiece in place.

[Translation]



Mr. Jean-Claude D'Amours:

Thank you, Mr. Chairman.

You will now be able to hear the simultaneous interpretation. Perhaps you'll understand my concerns. Do you think that the Supreme Court is the final place Canadian citizens can turn to to have their rights respected?



[English]



Mr. John Major:

It raises an interesting question. Not to be too philosophical about it, Parliament remains the final court of appeal, but in the judicial system it's the Supreme Court.

[Translation]



Mr. Jean-Claude D'Amours:

So it is the final court. I asked the question but I expected the answer. As you know, in the lower courts there are bilingual judges. The fact that they are bilingual means that francophones can automatically exercise their rights in their own language. It also means that anglophones can exercise their rights in their language. It means that when there is a need to speak, one can do it in one's language. The judge who is sitting will be able to understand the importance of the arguments and ensure their rights are respected. I'm talking about the lower courts.

Given that you stated earlier that the Supreme Court is the final court Canadian citizens can turn to to exercise their rights, it is fortunate that being before the Supreme Court does not involve life or death issues. However, one can't go any further than that.

Do you feel that people should feel comfortable and certain that they are at no risk, with respect to the Supreme Court's final rulings, because of their language?

In the lower courts, these individuals are guaranteed that they can speak in their own language and that the person before them will be able to speak to them in their own language and understand their language. One can go no further, I'll repeat this, one can turn to no other court, one has no other recourse, it's the end. Earlier, you couldn't hear the interpretation. Therefore you were not able to understand me, and I respect that, but imagine the situation where the interpretation was even further from what I am saying right now. If people cannot be well understood because of the interpretation, do you think that the citizens or the lawyers representing them will be able to present their arguments and fully exercise the rights of their clients?

[English]



Mr. John Major:

From my experience there and seeing the litigants argue in French, I never had the impression that they did not feel they were being fully understood. There will always be, of course, the three Quebec judges, but the environment and the translation is such that it never occurred in my 14 years. The translation is very good. The parties argue in French and seem quite comfortable with the questions asked, and in many cases the lawyer understands English, so he answers; in other cases, it's translated for him.

[Translation]



Mr. Jean-Claude D'Amours:

Mr. Major, imagine an individual who wants to exercise his rights, an individual who wants to say absolutely everything he or she has to say before the Supreme Court and be sure that the judges will be able to understand his arguments and the direction that he is going in. Are you certain that the judges have no problems? It can't just be a feeling, it has to be a certainty.

I have been speaking somewhat faster and I am convinced that it automatically becomes more difficult for the interpreters to follow me. Imagine a flamboyant lawyer who's getting carried away and who is speaking even faster than I am. At some point in time the judge will probably experience problems in understanding everything that lawyer is saying. The interpreter will also experience problems in following what they are saying.

If the interpreter is having a problem in following me, will you, as a judge at the Supreme Court, be able to fully understand my arguments?

[English]



Mr. John Major:

I understand what you're saying, but from my experience, if the lawyer was speaking rapidly, you would ask him to slow down. The translation always seemed to be accurate; the lawyers appeared quite comfortable. Now, I can't speak for what may be their hidden thoughts, but I never had the impression that the francophone lawyer did not feel his case was understood.

 (1600)

[Translation]



Mr. Jean-Claude D'Amours:

You'll understand that on the other hand, the speed I am speaking at would not be a problem for a judge who understood my language. I could speak at whatever speed I wanted to, and the judge would be able to understand me.

[English]



Mr. John Major:

No, don't assume that, because many lawyers speak very rapidly and they're asked to repeat. You have to hear what's being said if you're a judge. Some lawyers get excited, speak rapidly, and the court will say, "You're speaking too quickly." So you have to adjust to who you have in front of you.

[Translation]



Mr. Jean-Claude D'Amours:

I understand your point of you, but clearly if the judge before me understands my mother tongue—even if I come from New Brunswick my mother tongue is French—then regardless of the speed at which I'm speaking, they will have no problem in understanding me. It's the translation that may suffer some distortion or delay.

You say that a lawyer can be asked to speak more slowly but I would just point out that this is also a way to exercise one's rights. They say what they want to say and it comes from the heart. Lawyers are there to ensure that their client, who is a Canadian citizen, gets full

justice. This is the final court in the land. I understand that lawyers can be asked to slow down, but this is their way of expressing themselves.

If judges understand both French and English does that not allow lawyers then to express themselves at the speed they wish to? If this is how they exercise the rights of their clients then at least they can do so fully. When citizens hear the ruling, whether it is in their favour or not, at least they will know that they were fully understood. At least they will be able to tell themselves that the proceedings were held in their language and that nobody will have been able to say that they didn't understand what was said fully.

[English]



Mr. John Major:

You made some assumptions that I don't agree with.

What we're talking about is a trade-off. In the ideal world, all nine judges would be bilingual. In a practical sense, it's going to be very difficult to find judges from B.C. and Alberta who have had the same opportunity to be bilingual. So the test is this. Will you sacrifice the competency of a judge in order that he has an understanding, without the help of an interpreter, to hear the case? In my opinion, to sacrifice competency in order that all the judges.... They may not be bilingual in accordance with the amendment; they just understand with an interpreter. I think it's a bad trade-off for the litigant. I would prefer to have a competent judge who needs the help of translation than someone not as competent who does not.



The Chair:

Thank you.

We'll move on to Mr. Ménard.

[Translation]



Mr. Réal Ménard (Hochelaga, BQ):

Thank you for coming this afternoon.

I would say with the greatest of respect that I was very disappointed by your testimony. I hope that your opinions aren't shared by most legal experts.

First, I refuse to disassociate competency and bilingualism.

[English]



The Chair:

On a point of order, Mr. Storseth.



Mr. Brian Storseth (Westlock—St. Paul, CPC):

Thank you, Mr. Chair.

I'd like to point out that Mr. Ménard represents a riding in Quebec and he represents the Bloc Québécois, but he does not represent the majority of lawyers in this country and shouldn't speak on behalf of them.



The Chair:

Thank you, Mr. Storseth. I don't believe that's a point of order, it's a point of debate.



Mr. Réal Ménard:

This is not a point of order, and you will ask your question at your turn. Now it's my turn.



The Chair:

Monsieur Ménard, please continue.

[Translation]



Mr. Réal Ménard:

As I was saying, sir, I'm disappointed in your opinion and I hope that it is not shared by most legal experts. I refuse to accept that there's no connection between competency and knowledge, on the one hand, and bilingualism, on the other. Mr. Godin pointed out in his testimony that the requirement to be bilingual applied to courts within federal jurisdiction. Therefore if this requirement applies to judges in federal courts that are lower than the Supreme Court, I would think that as parliamentarians we are justified in thinking that it should also apply to Supreme Court judges.

I do not know why you haven't learned French and I don't judge that, but as parliamentarians, it is our duty to say that if Mr. Godin's bill is passed, then all those in the legal profession in Canada who want to be accepted on the bench and be given higher levels of responsibility, in the Supreme Court, for example, will have to learn French, whether they come from Alberta, Prince Edward Island, Saskatchewan or elsewhere. If, in your case, that requirement had existed, then maybe you would have made the effort to learn French.

I think that Mr. Godin's bill sends a very clear message to the next generation of people of the legal profession. I do not question at all your legal knowledge and I do not doubt that you have served the Supreme Court well, but if that message had been clearer when you were studying law, then perhaps you would have made the effort to learn French.

I would like to hear your opinion on that.



[English]



Mr. John Major:

You've asked me about 15 questions, but let me try to answer some of them.

First, this amendment would not have the support of the majority of lawyers in Canada. I doubt it would have the support of the majority of lawyers in Quebec. That's point number one.

Point number two is that in my own case I did not aspire to be a judge; I was invited to be a judge when I was in my late fifties. So your premise that you start off wanting to be a judge and as a result you'll learn French is not practical, because I don't believe most lawyers start out wanting to be a judge. You can't be a judge by choice; you have to be selected. You can't write an exam and be a judge.

In the lower courts, as you mentioned, they are entitled to have their cases heard in the language of their choice, and in virtually all those courts.... In Alberta, for instance, you have 90 judges, and of the 90 judges there are some who are bilingual and can hear the case in French. So at the lower courts it's not a problem. There are enough bilingual judges in both languages. I'm sure the same is true in Quebec. You can have your case heard in English. A Supreme Court decision says you can do that in French or English. But we come back to this question: if you have the most competent judge possible available but he needs to use translation, are you prepared to say to the people of Canada, we're not going to give you the best judge; we're going to give you the best judge who can understand your language without translation?

[Translation]



Mr. Réal Ménard:

I am not sure what leads you to think that the majority of lawyers would not agree with the requirement under this bill. I would like you to tell me what you base your statement on.

Furthermore, I will say again with all due respect, that I refuse to support your logic, which I think is flawed. You can't disconnect knowledge and bilingualism. Competency can be strengthened and increased by bilingualism. I refuse to think that it has to be a choice. How many bilingual judges currently sit on the Supreme Court? We've been told there are 8 bilingual judges. With the exception of Judge Rothstein, the other judges are bilingual. There is no disassociation. We don't have to choose between bilingualism and competency. We have to send a message to all lawyers in training that competency includes bilingualism. There is no disconnect between the two.

[English]



Mr. John Major:

First of all, you ask the lawyers this question: do you want the most competent judge, or do you want the most competent judge with some knowledge of the other language?

It is incorrect to say you have eight bilingual judges in the Supreme Court at the moment. You have eight judges who probably meet the requirement of the amendment, in that they have some knowledge of the other language, but to me--and I speak from the knowledge of my own spouse and members of the family--being able to converse is not being bilingual. Being bilingual, understanding the other language fully, is quite a chore. You can have somebody who has a very acute legal mind but is not very good at languages.

I'm just repeating that if the test is the most competent versus the most competent who is somewhat bilingual, my own opinion is that I want the most competent judge. It's same as surgery: I want the best doctor; I don't want the linguist.

 (1610)



The Chair:

We'll move on to Mr. Comartin. You have seven minutes.



Mr. Joe Comartin (Windsor—Tecumseh, NDP):

Thank you, Mr. Chair. Thank you, Justice Major, for being here.

I don't want this to seem offensive, but I've sat--

Mr. John Major: I don't think you have to worry about offending me.

Mr. Joe Comartin: Okay. Thank you. That's actually what I'm getting at.

I've sat through the last four appointments to the Supreme Court. They all employed different methodologies, but I certainly got a real sense of not only the ultimate candidates but of all the candidates who were eligible. Because that's all confidential, I cannot go into any more detail than that, but I can say to you, Justice Major, that in all those cases they were in fact solid candidates who were fluently bilingual. I will add that if they were coming from the appeal level, they had conducted trials and hearings, as they would have to do at the Supreme Court level.

I think what I'm doing at this point is challenging your assertion that those candidates do not exist. This is the final point I'll make: they not only exist now, they are in fact growing in number. As the years go by, more and more competent lawyers and judges will be candidates for the Supreme Court.



Mr. John Major:

I don't think the fact that they're bilingual is going to be held against them. I said at the beginning that it's desirable. I would agree that it would be the perfect world; if you can get a talented judge who is also conversant with the language, that's the best of both worlds.

What we have to do is come down to the tough decision, the ultimate decision--and it may not happen--in which you have a most competent judge who doesn't meet the requirements of the present amendment versus a judge who, though not as competent, does meet those requirements. If you get to that hypothetical position, then I say that in the interests of justice for the whole country, you should pick the most competent judge. After

all, it's a judge you're looking for. I agree that chances are you'll be able to find both, but I don't think it should be a statutory requirement because of that possibility of not getting the most competent.



Mr. Joe Comartin:

It precludes the possibility of the unusual or rare case, given the number of competent lawyers and judges we have at the lower levels, as a candidate. That's your position?



Mr. John Major:

Yes, that's right. It's essentially my position. I want to make it clear. Somebody inferred that I might have said that because a person's bilingual he's therefore not competent. I don't know how that could have been misinterpreted. I'm not saying that. Usually you find people who are bilingual very competent as judges. I have no problem with that. It's an added feature. It's something that elevates them a step higher than another. But we're not talking about those people. We're talking about the tough case, where you have to make a choice—if it ever comes to that—between the most competent but inadequate in this requirement and somebody not as competent.

To me, it would be a mistake to sacrifice competency. If you don't have to sacrifice competency, then it's not a question.



Mr. Joe Comartin:

Let me flip that to the other side, because I think that if there were criticism of your position, this is where it would come from. What I see and I think most of us who are supporting this motion see is that the competency issue includes giving someone credit for being fluently bilingual.



Mr. John Major:

Well, you see, that's a mistake. Competency in the law and competency in language—some people may be gifted in both, but a linguist may not be a good lawyer. There are lots of them who are very good lawyers, and they can speak two or maybe more languages. It's not an impediment to be a linguist.

However, come back to the essential question. You've asked the tough question: are we going to pick competence over the ability to understand the other language? Don't cloud the issue by saying that you have a lot of both. If you have a lot of both, you don't need the amendment and you don't come down to the question of what the main quality is for serving on the court, which is legal competency. It must be legal competency. At least, that's my opinion.



Mr. Joe Comartin:

Just so we're clear, if two candidates are of equal competency but one is fluently bilingual, we pick the fluently bilingual candidate.



Mr. John Major:

Yes, I think that's fine. I think then you have equal competency plus, and the plus goes to the person who is bilingual or who understands sufficient, according to the amendment, to qualify.



The Chair:

You have one minute.



Mr. Joe Comartin:

In terms of the points you made earlier in your presentation, we did have a law professor and lawyer here on Monday who indicated that he, in fact, felt that on at least one occasion

he did not get a full hearing and a full understanding from the bench because of the translation.



Mr. John Major:

Did he lose?



Mr. Joe Comartin:

He lost on a five-to-four vote.



Mr. John Major:

Frequently the ones who lose have that opinion. I'd like the professor to come. I'd like to challenge him on that. I don't believe it. I know a lot of lawyers who are disappointed. If they're English and they go before an English judge and lose, they walk out and say, "He didn't understand a word I said." It's so natural for a lawyer to shift the blame that I'm not impressed by the professor who came with that story. I don't believe it.



The Chair:

Thank you.

We'll move on to Mr. Storseth. You have seven minutes.



Mr. Brian Storseth:

Thank you very much, Justice Major, for coming. I know it can be very weathering to sit before the committee, so if you need a drink of water or anything, please feel free.



Mr. John Major:

If water's the only resource, I guess so.

Some hon. members: Oh! Oh!



Mr. Brian Storseth:

We appreciate your time today. Truly, somebody who has the experience you have within this field is an eminent resource for us.

I want to start by thanking you for the lifetime of dedication you have provided our country, most recently by leading the investigation into the Air India bombing. You've done great work for our country. I know that everybody around this table appreciates that.

To go on to this issue, I have to admit that I'm not a lawyer, but it does bring some compelling thoughts to my mind. I don't understand how we can say that somebody like Justice Rothstein or you shouldn't have been appointed, even though you may have been the most competent legal mind, simply because you didn't have the requirement of being functionally bilingual. I think it's important that we recognize the words "functionally bilingual". I'll get to that in a second.

We've had some litigants here that.... I'd like to give you a chance to reiterate your position that you feel the test of competency should be the most important test for a judge, and competency within the law and the legal field, not competency within any language barriers.



Mr. John Major:

Or a musician or anything else.



Mr. Brian Storseth:

That's a good point.

Mr. D'Amours brought up the point of somebody speaking rapidly in their native tongue, whether it be English or French. As an anglophone Supreme Court justice or a judge in your prior lifetime, have you ever had a case where an English lawyer has presented in front of you and you've asked him to slow down?



Mr. John Major:

It's a very common reaction, particularly at the Supreme Court, whether the lawyer is French-speaking or English-speaking. If it's their first appearance, they're generally nervous. When a person is nervous, they frequently speak a lot faster than they intend to. It would happen very frequently that you would ask the lawyer to slow down. We use the excuse that the translators need time to translate, or the clerk needs time, to try to relax them. Sometimes they hyperventilate. We call an adjournment and let them get a drink of water.

Your first trip to the Supreme Court is a very trying experience, so French or English makes no difference. People will frequently start to speak so rapidly, and there are usually more English provinces' cases just by virtue of the number, so it's more frequent that the advice is given to an English-speaking lawyer.



Mr. Brian Storseth:

Is it your experience that this hasn't hurt their opportunities in front of the court?



Mr. John Major:

I should tell you that the oral hearing is the last step in the appeal. Before the appeal is heard, you get the written arguments. You get the judgments from the two courts below. You read that material. You read the argument. You know the case pretty well before you go in. In the hour that the lawyer has, he should pick his strongest point and argue it. But the judges don't learn much about the case in the courtroom. They should know about the case before they get in the courtroom. That's usually the way it is: you do know the case before you get in.

Now, cases don't always go the way you think they might, because a lawyer raises a new point, or a judge raises a point, there's an argument around it, and people change their minds, but in 95% of the cases that does not happen.



Mr. Brian Storseth:

One thing that has been brought up and said time and time again is that eight of the nine current justices are functionally bilingual. This is where the opposition kind of contradicts themselves, because we've heard witnesses come before us and say that these legal proceedings are tremendously technical and that being in any way functionally bilingual would not be enough or wouldn't replace the ability of a translator who has a Ph.D. in translation, who would be far more competent in relaying what they're actually trying to say through their oral argument, rather than their being functionally bilingual.

Would you have any experience of this being the case, where even some Supreme Court justices who are functionally bilingual still rely on the translation?



Mr. John Major:

I think it happens quite frequently, because if you're not that sure of yourself, you get reassurance from listening to the translator. You may get it right, but that's a backup for you.

As for being functionally bilingual, I take it more as being conversational. Legal arguments are not conversational. They're quite different, as you know, so the translation acts as a backup. I don't think being functionally bilingual would be a great deal of help. Being completely bilingual is a different thing. Completely bilingual in both languages--well, that's a requirement that certainly would elevate the court if you had competency and bilingual ability both.



Mr. Brian Storseth:

I think you make a great point there. I'd also like to make one other point, that we do have other bilingual countries in the world that have final courts of appeal, countries like Belgium, and they all rely on translators and allow for unilingual judges in those.



Mr. John Major:

UNESCO relies on translation. War Crimes relies on translation. I mean, those are different circumstances, but as I said in the few opening remarks, the United Nations relies on translations. Translators are not a dime a dozen. A skilled translator is a very skilled person.

  (1625)

Mr. Brian Storseth:

I would just ask one final question of you, Justice Major. In your 14 years on the Supreme Court, did you have problems with the translation? Did you ever have any doubts with the translation as to whether or not they were giving you an accurate definition of the argument that was before you?

Mr. John Major:

No. And following the case, we always had a conference immediately. If anything like that had happened, it just would have been so apparent.

Mr. Brian Storseth:

Thank you very much for your time.

The Chair:

Thank you.

We'll go to the next round.

Monsieur Lemay, you have five minutes.

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ):

Good afternoon, Your Honour.

Let me to share my personal experience. I went to the Supreme Court of Canada. I was not presenting arguments but I was accompanying a colleague who was presenting arguments under the Young Offenders Act.

I am certain that what you answered earlier to Mr. Storseth's first question was perfectly valid but I simply want you to know how a lawyer feels when they go to the Supreme Court of Canada. It's not every day that one goes to the Supreme Court of Canada and when you do go, it's because you are pleading a very important case.

For my point of view, it's not only being heard that is important, it is being understood. From that perspective, I have some difficulty with respect to judges who cannot follow what is being said in French, for example. It could be during exchanges with Justice Lamer or any other attending judge. You know how these things work because you have considerable experience, which I don't deny. It's about what is important for us.

The reality is often different. Our clients wonder why the judge does not understand what is being said, why they need interpretation, when we've always presented our arguments in courts where it was possible to present them before perfectly bilingual judges.

You understand that it is important for many groups to have the feeling that they're being heard and understood. Being heard is different from being understood. The distinction is important to us. Judges on the Supreme Court of Canada, the highest court, must be able to understand us in the French language, the language we express ourselves in, whether the case is being heard at the first, second or highest level.

[*English*]

Mr. John Major:

Well, all I can say is that I felt completely comfortable relying on the translator.

I'm here to answer questions, not to ask them, but I'd like you to think of a client you might have had where you asked them, "Look, we have our choice of judges, A and B. Judge A speaks both languages pretty well, but he's not as good a judge as Judge B. If you go with Judge B, you're going to have to rely on the translator. Which judge will you take?"

[Translation]



Mr. Marc Lemay:

With all due respect, Your Honour, that is not what I meant by my question.

I have a few years of experience. Of course I do not deny your own experience. However I think that when a judge is appointed to the Supreme Court of Canada—I'm thinking of Justice Lebel, for example, and all the judges who are there—they are appointed because they are very competent. I do not know any judges who have been appointed to the Supreme Court of Canada who are not competent. Perhaps you know some, but I personally could not know of any as I have only being there once. Even though I am aware of all the rulings.

Competency is the first criteria. That is true. But on top of that requirement, we're also asking to be understood by the judges who listen to us. Furthermore, the issue is not the same for my client. My client has no choice. Perhaps the situation is different in the lower courts. However, at the Supreme Court of Canada, everyone is competent, I think, with no exception. I therefore think that the ability to speak the French language or to understand the French language is a requirement that should be included.



[English]



Mr. John Major:

You're free to have your opinion, obviously. I come back to my opinion that competency overrides every other consideration.

He wants my opinion, and I can't do better than that.

[Translation]



Mr. Marc Lemay:

I respect that. Thank you.

[English]



The Chair:

Mr. Moore, I'll give you five minutes.



Mr. Rob Moore (Fundy Royal, CPC):

Thank you, Chair.

Thank you, Justice Major, for your appearance here today. We do appreciate your appearing here as a witness.

A couple of the points you did make really stood out to me. First, there is no question of the right of a litigant to be heard in their own official language. Also, you made the point about the translation obviously being probably very good at the Supreme Court of Canada. On the point about competency being the overriding goal, as a government, when we make our selections for the Supreme Court, I happen to agree with you that competency must be the overriding goal.

A point was made that at some point in a person's life they would decide that when they grew up they would want to be a Supreme Court of Canada judge, and then they would begin taking lessons in order to make themselves bilingual no matter where they were from in the country. I don't see that as realistic in any way. I don't think that's how most people's lives or careers unfold.

I wonder if you could comment on that. I know there is no typical path to the court, but maybe you could comment on why that would be an unrealistic premise.



Mr. John Major:

If you had somebody who had that ambition, he might live in an area where it was impossible to learn the other language. If you're in Prince George, off the top of my head, and you're 12 years old, I don't know that you can learn French. I don't know what the situation is in the Saguenay if you want to learn English.

Not everybody has an equal opportunity to learn both languages from the time they begin school. I have a personal opinion that the judges' training, where they become mildly familiar with the other language, does not elevate that much beyond conversation. I know a lot of judges who went to study French and judges who went to study English. They get some knowledge of the language, but if you take a 55-year-old and try to teach him a new language so that he or she is bilingual, I think that's a very daunting task and an unusual 55-year-old who could learn it.



The Chair:

Please continue, Mr. Moore.



Mr. Rob Moore:

I guess that brings me to my second question. Could you possibly comment on new Canadians? Obviously, Canada is a place where we welcome new Canadians, we welcome them into every aspect of Canadian life. What about someone who has perhaps come from another Commonwealth country, where they obviously don't have the same opportunities to learn both of our languages? Or what about someone who may have English or French as a second language, but had no realistic prospect, growing up, of learning both of Canada's official languages? We have to remember that both English and French are official languages in our country.

How limiting would this be to someone in that scenario? And what message would it send to someone from another country who wants to become a Canadian about their ability to participate?



Mr. John Major:

The French language and English language are the official languages, but you have interpreters. If someone comes from Asia or Eastern Europe and they don't speak English, the trial does not proceed unless there's an interpreter. The interpreter interprets. That's true through all the courts. It's most important, however, at the trial court, where the evidence is presented and he may want to testify and so on and so forth.

When you get to appeal courts, you're generally dealing with some question of law. Frequently, the accused person or the parties to the lawsuit don't bother to show up. The lawyers are there, but not the parties.

There's nobody in a Canadian court who stands trial and who is not entitled to an interpreter.

 (1635)



Mr. Rob Moore:

You mentioned that Justice Lamer is bilingual. For those who are watching or listening, what level of competency in both languages...? There is what we think of as being bilingual, and that would be the ability to talk to someone in both official languages. But what level of

competency would someone have to have--in the pool that we select from to be appointed to the Supreme Court of Canada--to never avail themselves of the use of translation services?



Mr. John Major:

My wife is completely bilingual. French is her first language. When I consider her French compared to that of some of our friends, which is sufficient to meet this test, there's a huge difference. I'm sure my friends here whose first language is French would find the same thing.

Conversational bilingualism is inadequate to hear a court proceeding. I spoke of Justice Lamer. Lamer was one of the few judges who was completely bilingual. Someone who's living is Charles Gonthier. He was also able to write competently and fluently in English and French. He could understand the nuances of the language in both languages. He was truly bilingual, and he was competent. It's not impossible for people to be gifted in languages and competent in law. All I'm saying is that when you take all the straw away and you come down to the one question of whether it is competency or the ability to get along without a translator, I'd say the test has to be competency. The marginal benefit of being familiar enough with the other language so as to carry on a conversation but being unable to write or read fluently in French or English—I don't see that as being much above the translation.



The Chair:

Thank you.

Before we let you go, I have a couple of quick questions. In your 14 years of service on the bench of the Supreme Court of Canada, how many complaints did you actually receive about the translation services that were available? I'm not talking about people who may have been dissatisfied with the result, but were there any specific complaints about the level or quality of the translation that was available in those proceedings?



Mr. John Major:

The only complaint would be on the volume, mechanical, that the translation's not working. That's not what you're asking. Otherwise, there was never a complaint.



The Chair:

Second, during your experience on the bench, of the judges you would sit with, how many of them do you believe were bilingual to the level that would be required by the bill before us?



Mr. John Major:

I'd say quite a few. It's hard to say in numbers, but I would say.... Are you talking about the Supreme Court?



The Chair:

Yes.



Mr. John Major:

I'd say at least half, maybe a little more, would meet this test.



The Chair:

And the remainder would require translation services and presumably use an earpiece?



Mr. John Major:

There might be two or three, maybe, who really need translation services. I think that sometimes people whose knowledge of French is not that great should use the translation,

but vanity being what it is, they may like to give the impression that they understand fully. I'd give them the translator because of later conversations.



The Chair:

Thank you so much. Your testimony has certainly been helpful, and we'll take it under advisement as we move forward with this bill.

We'll suspend for five minutes.