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Chair

Mr. Ed Fast

Standing Committee on Justice and Human Rights

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• (1535)

[English]

The Clerk of the Committee (Ms. Miriam Burke): Good afternoon, honourable members.

I see a quorum. We can now proceed to the election of the chair. I'm ready to receive motions to that effect.

Monsieur LeBlanc.

Hon. Dominic LeBlanc (Beauséjour, Lib.): Madam Chair, I suggest that Ed Fast continue his work as chair of our committee.

The Clerk: It's been proposed by Mr. LeBlanc that Mr. Fast be elected as chair of the committee.

(Motion agreed to)

The Clerk: Before inviting the chair to take the chair, we'll now proceed to the election of vice-chairs, if the committee wishes.

Mr. Moore.

Mr. Rob Moore (Fundy Royal, CPC): I'd like to nominate Brian Murphy for position of vice-chair.

The Clerk: It's been moved by Mr. Moore that Brian Murphy be elected as first vice-chair of the committee.

[Translation]

Is it the pleasure of the committee to adopt the motion?

[English]

(Motion agreed to)

The Clerk: I'm now prepared to receive motions for a second vice-chair.

Mr. Lemay.

[Translation]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): I move that Mr. Serge Ménard be elected second vice-chair.

The Clerk: It is moved by Mr. Lemay that Mr. Ménard be elected second vice-chair of the committee.

Are there any further motions?

[English]

(Motion agreed to)

The Clerk: I now invite Mr. Fast to take the chair.

The Chair (Mr. Ed Fast (Abbotsford, CPC)): Thank you, Madam Clerk, and thank you, committee, for your confidence.

We're in meeting number 35 of the Standing Committee on Justice and Human Rights. Today is Wednesday, September 30, 2009.

As you have seen, the agenda for today contains only one item, which is the election of the chair and the vice-chairs. In order for us to continue and hear a witness on Bill C-232, we need to have the unanimous consent of the committee. Do I have that unanimous consent? All right. For the record, we have unanimous consent to proceed.

We are proceeding with Bill C-232, An Act to amend the Supreme Court Act (understanding the official languages). It's my pleasure to welcome here to our committee the representative from the Law Society of New Brunswick, Marie-Claude Bélanger-Richard. Welcome here.

I think you've been told that you have 10 minutes to present. Then we're going to open up the floor to questions from our members. Please go ahead.

[Translation]

Mrs. Marie-Claude Bélanger-Richard (Vice-President, Law Society of New Brunswick): Thank you very much, Mr. Chair.

I'm quite pleased, on behalf of the Law Society of New Brunswick, to have accepted the invitation to appear before this committee. I'd like to commend the chairman on his new term within the committee.

I am the Vice-President of the Law Society of New Brunswick. I've been a lawyer for 23 years and in private practice for 17 years, having articulated for approximately 4 years in the administration of justice, more specifically at the New Brunswick Court of Queen's Bench. As you know, New Brunswick is a bilingual province which unequivocally recognizes the legal status of French and English within the justice system. In our province litigants have the right to proceed in the language of their choice, which is very important, to be understood by the trial judge or by a panel of judges hearing the case in the language of the litigant's choice.

We have prepared a brief document to outline the position of New Brunswick. On the first page you'll find a section entitled "Insight from New Brunswick". It includes sections of the New Brunswick Official Languages Act. I would like to point out that under section 18 of the act, no person shall be placed at a disadvantage by reason of the choice he or she has made as to the language used in proceedings. In New Brunswick, that is a very important aspect of the Official Languages Act.

The Law Society of New Brunswick supports Bill C-232. As mentioned by a number of individuals and representatives who have already appeared before your committee, in light of the evolution of this country and of linguistic rights since the advent of the Canadian Charter of Rights and Freedoms, oral and written understanding of legal proceedings through translation or interpretation before the highest court in the land is a legislative anomaly. Even with the best intentions, for the individual trying to understand and for the interpreter, interpretation or translation do not necessarily reflect the essence of a text, the nature of an expression or of a word, the tone or the force of an argument. Moreover, because our laws are bilingual, it goes without saying that an understanding of French and English can open the door to a determination based on subtleties of language or syntax. Thereby the necessity of understanding French and English, in order to arrive at a wise determination of the interpretation of our laws.

Bill C-232 is quite laudable. As I mentioned, the Law Society of New Brunswick supports it. However, there is one concern. Despite the relevance of the problem and its timeliness, Bill C-232 does not immediately rectify the situation. As mentioned by Yvon Godin, member of Parliament, the proposed provision would only apply to any new appointment of justices on the Supreme Court of Canada. Until such time as there are only bilingual judges sitting on the Supreme Court of Canada, the problem of being understood in the language of one's choice by the highest court in the land persists.

What the Law Society of New Brunswick proposes may seem like an interim measure, but in fact, we view this recommendation as a long-term solution to the problem all those who support this bill have attempted to address. Litigants, lawyers and judges all want a fair solution that addresses the needs of litigants. The Law Society of New Brunswick's recommendation is therefore to require that all Supreme Court justices presiding understand the official language of proceedings or both official languages if both are used in proceedings.

Under the Supreme Court Act the quorum for hearings before the Supreme Court of Canada is of five judges. By immediately enacting what we are suggesting as a legislative change, during hearings the understanding of one of the two official languages used in the proceeding would be required. This requirement would not in any way negatively affect the operations of the Supreme Court of Canada and would immediately serve to address the problem. Indeed, it would mean that litigants could immediately be heard and understood by the Supreme Court of Canada.

●(1540)

On page 3 of our brief you will find the proposed amendment. Rather than amending section 5 of the Supreme Court of Canada Act, there would be an amendment to section 28, regarding the inability for judges to sit in some cases, by adding two paragraphs specifying that in order to hear a proceeding, all judges on the Supreme Court of Canada must understand the language of the proceeding.

I am prepared to entertain your questions.

I thank you for your attention.

[English]

The Chair: Thank you very much.

We'll move to Monsieur LeBlanc for seven minutes.

[Translation]

Hon. Dominic LeBlanc: Thank you, Mr. Chairman.

Thank you very much, Marie-Claude, for your testimony and your suggestion, which I briefly discussed with my colleague Ms. Jennings. To begin with, we find it interesting. I had not considered the option of only allowing judges who understand the official languages used to sit at a hearing. I find it an interesting idea that we could pursue, perhaps as an amendment to this bill.

On this point, I did note that the Law Society of New Brunswick supports the bill and does not object to it being passed, but with an amendment which I find rather interesting. However, what will you say to those who say that because an individual decides to proceed in French, for instance, he or she would not benefit from having nine or seven judges but would only have five. On any case of great moment, heard by the Supreme Court, nine judges will sit and rule.

I understand that legally speaking, a panel of five judges may have exactly the same decision-making power as a larger panel, but would this not in some way lead to a two-tier appeal system? To be realistic, if individuals decide to proceed in English, they will benefit from having nine judges, but those deciding to go ahead in French may only have five or seven judges.

Do you not find this puts those who choose to proceed in one official language rather than the other at a disadvantage?

Mrs. Marie-Claude Bélanger-Richard: I would say that a larger number of judges does not necessarily mean greater intellectual capacity. Conversely, it is not because there are fewer judges that their intellectual capacity would be weakened. I certainly would not dare say such a thing about the members of the Supreme Court of Canada.

I would say that the fact of having judges who understand the language being used or both official languages would in fact lead to a far more active and unhindered debate. If a judge must depend on interpretation or translation, it serves as a crutch. That judge would not have a comprehensive understanding of the debate.

Again, people do their best through translation and interpretation, but at the end of the day, as I mentioned earlier on, meaning can be very specific. It doesn't always happen, but it may happen that a specific tone or meaning behind a word could be lost in translation. Interpretation is very quick, especially when representations are being made. It is very easy therefore to lose the tenor or the force of an argument, especially when one has to make the added effort of interpreting a bilingual text.

So, yes, I do believe there would be fewer judges. Would that mean a decreased intellectual capacity? Absolutely not. On the contrary, I believe the debate would be even more fruitful and productive, because there would be no need to explain to colleagues who did not understand that the translation was not correct, or was in some way lacking. We would have justices who would have fully heard the representations made by counsel.

•(1545)

Hon. Dominic LeBlanc: Thank you.

I have one other question. You represent the law society of the only Canadian province which is officially bilingual. Our Court of Appeal, in New Brunswick, does not have this type of a bill. I'd like to ask you two questions.

Would you be in favour of the Legislative Assembly of New Brunswick, for instance, deciding on the type of measure we are currently considering, so that it might apply to the New Brunswick Court of Appeal?

Also, there have been appointments to our Court of Appeal, over the last few years. Speaking as an individual, are you happy and satisfied with the language representation on our Court of Appeal, as it now stands? I'm referring to the full-time judges on our Court of Appeal, today. And what do you think of the male/female representation on our Court of Appeal?

Mrs. Marie-Claude Bélanger-Richard: At first glance, in New Brunswick, there is obviously no representation-related requirement for the choice and appointment of judges to the Court of Appeal. That said, the choice or selection of a judge is a sensitive question, because we must ensure socio-cultural and socio-linguistic representation. It is true that, up until recently, there were two female judges on the Court of Appeal of New Brunswick. We also had the same number of judges whose mother tongue was French as whose mother tongue was English.

The recent appointments have changed the membership of the Court of Appeal in this respect. The Law Society of New Brunswick is of course concerned: it must ensure that socio-cultural and socio-linguistic representation is maintained, in my opinion, because it is a source of intellectual wealth leading to better legal debate. Therefore, it is a worrisome trend we should clearly keep an eye on.

I believe that the Law Society of New Brunswick will always maintain this position: diverse representation is beneficial to a court, specifically to the Court of Appeal.

Hon. Dominic LeBlanc: Thank you.

Thank you Mr. Chairman.

[English]

The Chair: Thank you.

We'll move on to Monsieur Ménard for seven minutes.

[Translation]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): It is a great pleasure to have you here with us, and so well prepared.

I believe I understand all of the good reasons why Supreme Court justices should be bilingual. And you must have heard the same criticism we have heard on this position in the past, in that we would be depriving ourselves of a pool of expertise. Indeed, brilliant jurists who could have a career on the Supreme Court would not be appointed to it due to this requirement. Moreover, it would be unfair in a way for these brilliant jurists who, having lived far from central Canada and not having had the opportunity to learn French at a young age, would not have become perfectly bilingual.

I'm certain that before you appeared here, you had considered these arguments, at the Law Society of New Brunswick. What do you say in response to this?

•(1550)

Mrs. Marie-Claude Bélanger-Richard: As you know, a recent appointment in Nova Scotia has shown that it was possible to find very qualified bilingual judges, in this case Justice Cromwell. We will try to make a recommendation when the case relating to the selection of judges is heard, imposing a requirement for judges to understand both official languages used during the hearing of a case. It will encourage judges to become bilingual, those who may not otherwise be able to take part in a legal debate at the Supreme Court of Canada.

I believe the judges appointed to the Supreme Court of Canada have intellectual curiosity. These are people who are disciplined, and have irreproachable work ethics. So, the fact of being excluded from debates for a time because of a language problem will arouse the interest of candidates in this language so that they may take part in debates. Instead of immediately proceeding to select bilingual judges or to postpone the selection as Mr. Godin suggested, this recommendation to impose an understanding of both official languages during proceedings would in the meantime urge judges to become bilingual.

Mr. Serge Ménard: Perhaps I was misunderstood.

You must have heard people, in one part of Canada, saying that this provision would limit the pool of competencies when it comes to the Supreme Court. I am certain you must have heard that and that you've discussed it at the Law Society of New Brunswick.

What do you say in response to these people?

Mrs. Marie-Claude Bélanger-Richard: Are you really limiting the pool? Do we want justices on the Supreme Court of Canada who are open-minded and knowledgeable about Canadian values? Is knowing the language or having an interest in learning the language not precisely one of these essential values we must promote?

Among the pool of qualified candidates, the fact that an individual shows intellectual curiosity about the other official language or both official languages is a sign of a competency which is perhaps even more important than others, when the time comes to choose.

Mr. Serge Ménard: I believe you're fully bilingual. Is that correct?

Mrs. Marie-Claude Bélanger-Richard: Yes.

Mr. Serge Ménard: Over the course of your career, you must certainly have had the opportunity to speak French when you had access to simultaneous translation. I sometimes attempt to instantly translate certain things in my own mind to practise my bilingualism. Even with extraordinary skills, it is a difficult task is it not?

Mrs. Marie-Claude Bélanger-Richard: Absolutely. And there are good and bad days.

Mr. Serge Ménard: Have you ever had the impression of having been misunderstood?

Mrs. Marie-Claude Bélanger-Richard: I would say that even in our own language, it seems as though sometimes some judges do not understand our arguments, but I do not think it is necessarily a matter of translation.

In New Brunswick, the question is moot. I have always practised with bilingual judges. If it was known that a case was proceeding in French, in English or in both languages, the judge hearing the case was bilingual. I've never had to resort to interpretation for a judge to understand me. I've sometimes had simultaneous interpretation of witnesses' comments, because it was available to the parties who could not understand the other official language.

In New Brunswick, colleagues are very tolerant when we are presenting our arguments. However, take a case where the judge and myself are bilingual and my colleague is unilingual. Generally, the interpreter will whisper into my colleague's ear so that the flow of my arguments is not interrupted by interpretation. People are very tolerant and respectful, in New Brunswick.

•(1555)

Mr. Serge Ménard: So, it is a difficult task.

Mrs. Marie-Claude Bélanger-Richard: Absolutely.

Mr. Serge Ménard: It is difficult to accomplish 100%.

Mrs. Marie-Claude Bélanger-Richard: Absolutely.

Mr. Serge Ménard: Ideally an individual would be at least passively bilingual, in other words they would have a very good understanding of the other language, even if they were unable to write in the other language with that same level of ease.

Mrs. Marie-Claude Bélanger-Richard: Absolutely. We are referring to both written and oral understanding. One has to be able to read the documents to understand their tenor, as well as speak and understand.

[English]

The Chair: *Merci.*

We'll move on to Mr. Comartin for seven minutes.

[Translation]

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Thank you for being here, Ms. Bélanger-Richard: I enjoyed your presentation, and I have no questions to ask.

[English]

I'm interested in the amendment, as is Mr. LeBlanc, but I'm just a bit concerned about whether it's in order. In advance of when this comes back for clause-by-clause, could we have a ruling? I don't know Mr. Godin's position on whether we could do it by unanimous consent, and I don't know how the other parties feel about this, but at the very least, perhaps we could have a ruling on whether it's in order. If it's not, we could pursue other alternatives.

That's all. Thank you.

The Chair: Thank you, Mr. Comartin.

The clerk has made a note of your request, and we'll provide that opinion.

We'll move on now to Monsieur Petit for seven minutes.

[Translation]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): Thank you.

Good day, Ms. Richard. I'm from the province of Quebec. I'm a lawyer and, like yourself, I'm still practising, but less often, given that I am a member of the House Commons.

I'll give you a brief overview of my background. Mr. Ménard was my Minister of Justice in the Parti Québécois government. That party enacted Bill 101 in 1976 or 1977. The act requires the use of French everywhere, especially in the universities. I studied at the primary school level in French. At the time, that wasn't so bad. I went to high school only in French, and my law degree at Laval University was in French only, because Bill 101 had been enacted. So, today I'm a unilingual francophone and functionally bilingual.

Except that when I go before the courts, at least in Quebec, I will get a judge based on the language requested by the lawyer or the client. Several of them are unilingual anglophones or unilingual francophones, whereas other are bilingual. I come from Quebec City, which is mainly unilingual. My former Minister of Justice, Mr. Bédard—who knows Mr. Ménard very well—comes from the Lac-Saint-Jean area, where all proceedings are in French. Mr. Bédard is an excellent lawyer. He and other lawyers have won cases.

I would be struck from the list of potential judges because during my entire career, I never practised in the other language. There are 23,000 lawyers in Quebec and approximately 18,000 of them could not go to the Supreme Court without an interpreter. I accept the need to be bilingual, but that would be without interpreters. There are lawyers here from Alberta and New Brunswick and even my former Minister of Justice, Mr. Ménard. If we were to argue before the Supreme Court, we may have some difficulty, without an interpreter, in other words we would not be eligible. Does the fact of being unilingual make us incompetent?

The bill states clearly "without the assistance of an interpreter". I'd like you to tell me whether I would be eligible.

Mrs. Marie-Claude Bélanger-Richard: Before I answer that question I will also give you some of my history. I'm originally from Quebec. I did all my primary and secondary schooling in Quebec. I was unilingual. I started my civil law degree at the University of Laval strictly in French. I moved to New Brunswick because I wanted to study common law in French. At the law faculty where I was studying, everything was in French.

I started working for the Court of Queen's Bench. At the time, no one understood my English: I was barely bilingual. It gave me an opportunity to learn English. The desire to practise in the province helped me learn English and speak it increasingly. So I understand the dilemma it causes. A sensitivity to language, even though it is not mentioned in legislation remains an asset in the choice of a Supreme Court justice. We shouldn't delude ourselves. Mentioning this criterion could be an incentive for individuals aspiring to be Supreme Court justices, it would urge people to broaden their horizons and learn the other language.

I personally lived in New Brunswick and was living in a bilingual environment, in Moncton, where 40% of the population is francophone. My parents lived in the city for a few years and were never able to learn English; they lived in French the entire time. It's a matter of will and of knowing that it is a prerequisite. For instance, in New Brunswick, bilingualism was not formally mentioned as a requirement, but because we didn't know the language of our clients, bilingualism was necessary. So, I learned English.

• (1600)

Mr. Daniel Petit: You are currently in New Brunswick, a bilingual province, whereas I stayed in Quebec, where Bill 101 is the law that applies. The truth of the matter is that Bill 101 applies before the courts and the same thing is true for universities, even today, 40 years later. Having practised in Montreal, I know that bilingualism in that city is much closer to that of New Brunswick. We can refer to the two statutes, in English, in French, etc.

Is there not a risk that this legislation will only result in lawyers from the provinces, like myself, being excluded, whereas lawyers from Montreal who, like you, have had the opportunity to regularly practise in both languages, would be accepted? On the other hand, if they are less intelligent than myself, I am the one who would be penalized. If there is no interpreter, that is what will happen. I could not sit on the Supreme Court, even if I am more intelligent than another person who is bilingual.

Mrs. Marie-Claude Bélanger-Richard: Mr. Petit, if the opportunity presented itself, would you wish to be bilingual? I do not believe that intentionally or on principle, you would wish to remain shackled by unilingualism. As you were saying, an environment exists and this resulted in your not learning to speak English. I understand you because I was in that situation. In Quebec, we did not learn to speak English. Even my Grade 6 teacher, who had an English course to teach, refused to do so. That was the reality at that time.

However, if you had the opportunity to become bilingual, you would do so and you would give that same opportunity to your children, who may some day wish to become lawyers or judges. On the face of it, we seem to be ruling out some people, but I believe that anyone who has intellectual curiosity and wants to broaden their horizons will take the necessary means to do so.

I lived in Quebec and I also lived in Rivière-du-Loup. I was in no way in bilingual environments. I did not live in Montreal, but I took English immersion classes in Fredericton and in Ontario during my adolescent years because I wanted to be bilingual. The fact remains that it was living in New Brunswick that really allowed me to become bilingual.

• (1605)

[English]

The Chair: Thank you.

Ms. Jennings, you have up to five minutes.

[Translation]

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): Thank you, Ms. Bélanger-Richard. I greatly appreciated your presentation and the suggestion that you have made to the committee, that is to consider another way of ensuring there is

bilingualism within the Supreme Court of Canada. I would like to make a few comments and hear your reaction to them afterwards.

In the past—I believe it was toward the end of the 1950s—the vast majority of universities in Canada and the United States, as well as England, required anyone wishing to obtain a bachelor of arts degree to learn another language. A great many unilingual young people enrolled in bachelor's programs and made the effort to take classes to learn a second language, in order to get their law degree.

Do you believe that it is relevant that at the Supreme Court of Canada, we require aspiring judges to be bilingual?

Mrs. Marie-Claude Bélanger-Richard: If I understand you correctly, you are suggesting that we start at the beginning, in the law schools.

Hon. Marlene Jennings: No. What I was trying to say is that in the past, people were aware of the situation. When their children wanted to go to university, their parents often encouraged them to learn a language other than their mother tongue, in high school, so that they would have a competitive edge over others when they got to university. For example, if my daughter decided to become a lawyer, and she was unilingual, but was considering the possibility of potentially being appointed to the court, she might wish to learn another language.

Mrs. Marie-Claude Bélanger-Richard: That is more or less what I was trying to say in my answer to Mr. Petit. Knowing that it is a criterion for selection and appointment to the Supreme Court of Canada, it would necessarily be an incentive for lawyers to learn the other official language. I would add that I have the greatest respect for the lawyers who are appointed to the Supreme Court of Canada. I know that they have intellectual curiosity. Therefore, every person appointed will attempt to take the necessary steps to learn the other official language.

The federal government has had language training programs for judges for several years now. I work in administration and I know that several New Brunswick judges who wanted to learn the other language went and took language training courses. The courses offered to judges are excellent.

Hon. Marlene Jennings: Thank you very much.

[English]

The Chair: Thank you.

Monsieur Lemay, *cinq minutes*.

[Translation]

Mr. Marc Lemay: Good afternoon, counsellor.

I must admit that, having appeared before the Supreme Court, I have some difficulty accepting that we would limit... You stated that five judges constitute a quorum; that is in section 25 of the Supreme Court Act. However, if I understood your recommendation correctly, when the case will be argued in French before the Supreme Court, there could still be a quorum of nine justices, but it would be one of the five who understand French who would be the lead judge in the case.

Is that what you are recommending?

Mrs. Marie-Claude Bélanger-Richard: No. The quorum is the panel. The Supreme Court of Canada currently has eight bilingual judges. Therefore, if the case is being argued in French, in order to have a panel constituted of an odd number of judges, in all likelihood there would be a panel of seven judges that would hear the case. Therefore, it's somewhat like the point raised by Mr. LeBlanc: if there is a reduced panel, do we have a two-tiered justice system?

Mr. Marc Lemay: That is where I agree with Mr. LeBlanc: I am also afraid that the Supreme Court may practise a somewhat two-tiered justice system.

I find your proposal interesting, it is a good debate. However, I do not agree with Mr. Petit, obviously, because I have a great deal of respect for judges who come from other provinces and bring a different perspective. How will we oblige a judge to do something? I do not believe that a judge, once he has been appointed to the Supreme Court, will learn to speak French if he does not already do so. Unless you can give me an example. Honestly, I know Supreme Court judges who have made efforts, but going from that to being able to follow a discussion... You know the Honourable Justice Lebel. When he turns to you and starts talking, some people are not able to follow what he is saying. Furthermore, Honourable Justice McLachlin asked us to slow down.

Do you believe, if we do not oblige justices of the Supreme Court to be bilingual, that they will still learn French?

• (1610)

Mrs. Marie-Claude Bélanger-Richard: I would be greatly tempted to answer yes.

We are talking about the language ability of judges. At the time of selection, they are not subjected to the language ability test. Lawyers fill out a form and it is up to that same person to say, yes or no, if they consider themselves to be sufficiently bilingual. There is not even a discussion of whether or not they are functional in the language. It is French and English and that is all.

On the contrary, I would say that if we insist on the ability to understand both official languages, afterwards, at the time of the hearing, it would be a much greater incentive for the person who was perhaps more or less bilingual at the time of their appointment to continue their language training specifically to be able to hear all of the cases that come before the Supreme Court of Canada. Once the choice is made, the candidates say that yes, they are bilingual, but their language ability is never really challenged afterwards, if they can make use of translation and interpretation.

Mr. Marc Lemay: How does that work in New Brunswick?

At the Court of Quebec, when we interview the candidates... I was running a competition in order to recruit judges for the Far North of Quebec—Kuujuaq, Sagluq, etc.—and we were speaking in English, because everything was happening in English.

In New Brunswick, how does this work?

Mrs. Marie-Claude Bélanger-Richard: There are no interviews for Supreme Court justices, unless it is an exception. To my knowledge, only two or three people have had interviews with the committee. For the others, a form was filled out by the candidates, who checked the appropriate boxes.

Mr. Marc Lemay: At the Supreme Court, it is even worse. These are appointments, nominations, and the judges who sit on the Supreme Court are rising stars. Therefore, I have only one question. It makes me nervous. I swear to you, I am a bit reluctant and I agree with Mr. LeBlanc. I fear we will have two-tiered decisions, I'm afraid there will be two-tiered hearings at the Supreme Court, which is the highest court and the final court of appeal. Often, judges who perhaps do not understand French may have a focus that allows them to express or to explain the position of the person appearing before them.

Mrs. Marie-Claude Bélanger-Richard: I agree. As in all things, nothing is perfect. Therefore, there may be times where indeed a unilingual judge would shed some very relevant light on a debate before the Supreme Court of Canada. On the other hand, in other situations, the unilingual judge would in fact distort the debate because he did not properly understand the arguments. And so, unfortunately, we have these two situations.

What should we do? I think we must consider what it is we are trying to correct here. We are trying to ensure that the person before the court, represented by their lawyer, will be understood by the tribunal.

Mr. Marc Lemay: It is the nine judges. In my opinion, it concerns the nine judges.

Mrs. Marie-Claude Bélanger-Richard: Yes, but the legislation provides that the quorum is five judges.

Mr. Marc Lemay: Yes, but they are often nine. For significant cases, for example abortion, it was a full quorum.

Mrs. Marie-Claude Bélanger-Richard: In that case, I come back once again to the choice of judges. As a lawyer, I believe that the choices that have been made have always been made in light of the fact that the person had a professional ethic that was beyond reproach, a good work discipline and intellectual curiosity.

Therefore, I tell myself that I have to count on the fact that the appointed people will indeed be open to learning the other language and that they will not limit themselves by saying they are unilingual and that they do not wish to know anything about the other language or the other culture. In my opinion, that is the very antithesis of the justices appointed to the Supreme Court of Canada. That is not at all what we are looking for in candidates. Let us set aside the issue of language. We are looking for a candidate with an open mind, a candidate who is curious and who has an ability to analyze as well as a good mind.

• (1615)

[English]

The Chair: Thank you.

We'll move on to Mr. Rathgeber. You have five minutes.

Mr. Brent Rathgeber (Edmonton—St. Albert, CPC): Thank you very much, Mr. Chair.

Thank you for your presentation and your brief.

Like Mr. Lemay, I have some concerns about your proposal and this bill, but I'm perhaps concerned for very different reasons than is my friend Mr. Lemay.

I come from Alberta. Alberta currently does not have a justice on the Supreme Court of Canada. The last incumbent from my great province, Justice Major, appeared before this committee and spoke passionately against this private member's bill. He, as I'm sure you know, is a unilingual anglophone, as am I. Under the proposed bill, but perhaps not under your proposed amendment, he would have been deemed incompetent for appointment to the Supreme Court, and I would argue that would have been a blow to Canadian jurisprudence and the Supreme Court.

I don't disagree with your answer to Mr. Petit, that he ought not straitjacket himself with his unilingualism. I appreciate that advice. But my suggestion to you is that those of us who come from western Canada do not have the opportunities to become bilingual as those of you who are fortunate enough to grow up in New Brunswick or Quebec do. So what am I to say to my constituents who are very concerned about the prospects of not having another Supreme Court appointment if either the bill, as Mr. Godin wrote it, or your proposal were to become the law?

Mrs. Marie-Claude Bélanger-Richard: First of all, when I was at the faculty of law at the University of Moncton, I remember there were a couple of students who came from Alberta. The program was in French, so they had to be able to communicate and write in French. It's possible. I know it's not easy.

You mention New Brunswick. I would say it is similar to Quebec City. Yes, New Brunswick is bilingual, more in the south of the province, but if you go up north it's very unilingual francophone. Maybe they are more exposed to the other language, but it's still very unilingual francophone.

Once again, the only thing we can say is that it's a matter of opportunities. Knowing the requirement is there to be bilingual if you want to achieve that level, you have to take measures. There are French immersion programs all over Canada, I know, because when I was in the province of Quebec, I took an English immersion program in Ontario, and after that in New Brunswick. So it's possible.

It's not easy. I would agree that in some regions it might not be as easy. Also, it's not easy for everyone to become bilingual. I have a strong French accent when I speak English and I'm not able to get rid of it; it's there. This is the way I speak English, but I continue to try to improve. I think it's a continuous process to be bilingual.

Mr. Brent Rathgeber: It is challenging when you come from the west.

My second question is very simple. At the end of day, which in your view is more important, competency in the law or competency in language?

Mrs. Marie-Claude Bélanger-Richard: Competency in law involves more than the pure legal principles. If you want to be a good jurist, you have to know the law; you have to know the application of the law, but also have some sense of equity and justice. Principles of law are very general. They become tangible in their application, so you have to have good common sense and good judgment. It's more than just knowledge of the law.

If I go along with that idea of the sense of justice and knowing your society and people's values, all of that is important in the

interpretation and the application of the law, because principles of law are very dry. They become alive when they are applied in a particular context. So it's a bigger knowledge of the law that you have to have.

• (1620)

Mr. Brent Rathgeber: Do I have more time?

The Chair: No. Your time has expired.

We will move on to Mr. Dosanjh, for five minutes.

Hon. Ujjal Dosanjh (Vancouver South, Lib.): Thank you.

Coming from the west and being less than even unilingual, because English is not my first language and I don't know French, I have some sympathy for what Mr. Rathgeber just said. But I can also tell you as a member of the bar in British Columbia, having practised there for many years, that working through interpreters is less than satisfactory. My clients, either as witnesses or litigants or accused, were at the receiving end of some unfairness because sometimes the interpreters didn't do a proper job and the judge didn't get the full story. When you challenged it, the judge thought you were simply quibbling because you weren't getting your point of view in the mind of the judge.

With respect to your proposal, I wonder whether that proposal would not give the government of the day an option to appoint judges who were less than absolutely proficiently bilingual, because they would know that there is an opportunity to have somebody not on the panel if the person doesn't understand the language of the litigant. Would it not lead to a diminution of the objective of this amendment?

The purpose of this amendment is to have absolutely fluently bilingual people appointed to the court. If there is an opportunity for some judges to not sit on a particular case, then that requirement could be eased or somewhat ignored at some times in our future history.

Mrs. Marie-Claude Bélanger-Richard: This is why I started by saying that the Law Society of New Brunswick supports the bill. I think both the bill and what we recommend could go along together in the sense that what we suggest will immediately provide at least some relief to the problem, I would say, because at least we would have someone being understood by the court. It doesn't mean we should not also maybe put into effect what is being proposed in this bill. You can have both of them, but at least you correct the problem or you're trying to bring a solution to the problem of their being understood without interpreters before the Supreme Court of Canada by at least insisting that they have to understand both official languages when they hear a case.

Hon. Ujjal Dosanjh: So are you saying that until all the judges are absolutely fluently bilingual, this arrangement could fill the gap?

Mrs. Marie-Claude Bélanger-Richard: Yes.

Hon. Ujjal Dosanjh: But in my view, it shouldn't be forever—that's my concern.

Mrs. Marie-Claude Bélanger-Richard: It could be forever, because coming back to what I pointed out earlier, when you select a judge, the fact that you say you're bilingual is just a check mark by the person. What I'm saying is that if you have these two dispositions, the one saying judges at the Supreme Court of Canada should be bilingual, or shall be bilingual when appointed to the Supreme Court of Canada, it's there. In the meantime, yes, you have the other requirement that any hearings involving both official languages have to be before judges who understand the two languages. But even after you have a full bilingual court, you can still have this as a measure. In any case, if at some point in time there was maybe an issue with a judge who might have been functionally bilingual and his linguistic capacity decreased over time, for whatever reason, at some point you'll have the protection that this person should not be qualified to hear the matter in the other language.

I don't think the two dispositions are really against one another. They can work together.

• (1625)

Hon. Ujjal Dosanjh: With respect, they're a contradiction in terms. They're contradictory to each other in that as an interim measure it's a complementary measure, but as an ongoing measure it's contradictory to the intention of the objective of the original amendment.

The Chair: Thank you.

We'll move on to Mr. Moore, for five minutes.

Mr. Rob Moore: Thank you, Mr. Chair.

Thank you for being here as a witness today. I think you've had some valuable input, certainly. Greetings from a fellow New Brunswicker.

I have a couple of points. I think there has been a very good discussion. As we've stated as a government, our overriding priority when making judicial appointments, including those to the Supreme Court, has been overall competency. Certainly someone's ability to speak both official languages is a great boost, as you mentioned, to their overall ability, and I agree with that.

But we do have problems with this bill. Your suggestion of an amendment is rather novel. Even your suggestion, though, I take as an acknowledgement that as a country we're not there yet in all areas. In New Brunswick there is great opportunity to become proficient in both languages, but in many other areas there isn't. Also—and I had made this point to a previous witness—not everyone at a very early age knows that eventually they want to be on the Supreme Court of Canada. Some people may, but many don't, and many, while they may excel in many other areas and may have greatness in judicial competency, may not have taken on a second language.

I will refer again to what Justice Major said. He said, "The ideal, of course, would be to have a judge who was perfectly bilingual. But there are very few of those in the country." He made the point that even those on the Supreme Court who most would consider functionally and fully bilingual would still, if hearing something that wasn't their original language, avail themselves of the use of interpretive devices. They would still want to have the benefit of an interpreter. Even those who we would hold up as an example of

probably being okay under this bill—they're bilingual, they call themselves bilingual—might still not be bilingual enough to fulfill the requirement of this bill, which would be basically the ability to hear English or French equally and to not need the help of an interpreter. When dealing with very technical issues the interpreter is used, even for those who are bilingual.

What do you think about that?

Mrs. Marie-Claude Bélanger-Richard: I agree with Justice Major that there are not a lot of people who are perfectly bilingual, who can reach that level.

Mr. Rob Moore: I'll let you get right back to it, but my reading of the bill is that this is almost what it's calling for, for someone to be nearly perfectly bilingual, because they would not need or avail themselves of the use of translation, of an interpreter. I agree, that type of individual is a rare individual.

Go ahead.

• (1630)

Mrs. Marie-Claude Bélanger-Richard: Now, I wouldn't say that. Once again, the thing you don't have with the bill is any testing of linguistic capacity. That's for sure, and I don't think that would be part of any regulation.

Still, you're talking about someone who recognizes that the person can, first of all, read documents in French or in English and can understand oral arguments, because that's what you have before the Supreme Court of Canada. You don't have witnesses.

I would say that for bilingual people, and especially for a judge, or anybody who learns another language, usually it's when you have lay witnesses, who usually are more difficult to understand because they have accents and some different languages. But when you're talking about a legal argument, you're not going to assess or test the judges of the Supreme Court of Canada on their linguistic capacity. They are there. They know their responsibility. They are the court of last resort, so they know that they have to understand the arguments, the facts, and the law being presented to them.

My concern is that we have to be perfectly bilingual. I don't think it would be possible, once again, to test or assess this linguistic capacity. Once again, we can have someone who would say yes, I can understand, but it's not true. Well, a judge will not expose himself or herself to a complaint. Don't forget about that. You can be at this level, and if someone, a lawyer making arguments, can see that a judge doesn't understand, he or she could be exposed to a complaint.

You are talking about very intelligent professional people being appointed to the Supreme Court of Canada. I'm sure they know they have to be functionally bilingual to understand these kinds of arguments. They're going to make the decision to participate or not in this appeal.

The Chair: Thank you.

Mr. Rob Moore: Oh, am I out of time already? All right. Thank you, Chair.

The Chair: Are there any other government members who want to ask questions?

Go ahead, Mr. Norlock.

Mr. Rick Norlock (Northumberland—Quinte West, CPC): I have a short, quick question.

At one of our committee meetings here, there was a little test that one of my friends across the way gave to our interpreters. He spoke very fast to try to make the point, to go along with Mr. Dosanjh, that on occasion interpreters may not be able to adequately express—

The Chair: Excuse me just for a moment. Whoever has a BlackBerry on the desk, could you remove it? Thank you.

Mr. Rick Norlock: Maybe it's me. Yes, I'll punish myself later.

The result of this was that the interpreter did a very good job. We're dealing with the Supreme Court, and you just said it's the court of last resort. I get this picture that a lawyer must by mid-career decide whether or not he or she wants to be a Supreme Court judge. Many of us here, like me, never thought we'd be members of Parliament until later in life.

I believe we will mature into a bilingual country as time goes by, but we're still a very young country. Some legally gifted people who previously had no desire, compulsion, or thought to become a Supreme Court judge might one day be called upon to serve the country in this capacity—by the Prime Minister, a professor, or a group of people in their law society. The person would be told that he or she was needed at this point in the nation's history. The person would want to accept but would be prevented from doing so by a law restricting service of this kind to people who are functionally bilingual. I think what we need is to encourage good people, not restrict them.

We're politicians. We know we're supposed to care about our country. We need to put the political party things aside at times. We need to ask ourselves whether we're really doing ourselves a favour by locking in these kinds of requirements for service in one of the most precious institutions in this country, the Supreme Court. Do we really, for whatever political gain, want to do this at this time, or do we want to encourage more and more of our sons and daughters to become good lawyers so that someday maybe they will be able to serve their country in the Supreme Court? Do you not see that this could happen?

If I were at a mid-level court in this country and I thought my case was jeopardized by an incompetent interpreter, I would appeal it. I understand that this would be very difficult to do at the Supreme Court, because it's the top court.

These arguments are okay, but they're really not germane to this issue. Do all lawyers, when they go to law school, think of themselves as potential Supreme Court justices? Is it something that could happen later on in someone's career?

• (1635)

Mrs. Marie-Claude Bélanger-Richard: As you pointed out, it's a young country. The values have changed in the last 20 years. When we were talking about bilingualism many years ago, it was kind of cute. Now it's becoming known that it's a plus to be bilingual. It is known that if you come here as a politician, it's a plus to be bilingual.

Even as a senior jurist, you don't think of becoming a judge of the Supreme Court of Canada. At the same time, we have come a long

way. We're getting new generations. With the technology, they talk to one another—the distance has no relevance for them at all. They're open to this new way. Bilingualism is now more common. The younger generations accept that it's a plus, that one should be bilingual.

The Chair: Thank you.

Mr. Woodworth.

Mr. Stephen Woodworth (Kitchener Centre, CPC): I have no questions, thank you.

The Chair: Great. I'm going to leave a little bit of room for additional questions.

Are there any over here, or from the Bloc?

Mr. Petit, and then Mr. Norlock.

[*Translation*]

Mr. Daniel Petit: Ms. Richard, I have a brief question for you.

I have been listening to you for some time. No one is against virtue, we can agree on that. We recognize that bilingualism has existed since 1968, 40 years now, and that it is enshrined in the Charter. Despite that, you will have noticed that even in Quebec, we study in French for as long as possible.

I understand that your experience is different. I am not targeting you, I'm taking a broad perspective. The problem I have is that this bill, despite its good intentions, excludes all lawyers, be they from Alberta, Saskatchewan, Nunavut, or certain regions of Quebec who have not had the opportunity to perfect their English as they might have done in major cities like Montreal. It is not just an issue of becoming functionally bilingual, but functionally bilingual on the subject of the law. That is quite a different thing. This bill will exclude many people. Do not try and tell me that is not true, because I will assure you it will be very difficult to convince me, as Mr. Norlock was saying earlier on...

Do you think I want to become a Supreme Court justice? No. Perhaps I do not yet have that desire. After having argued cases for 25 or 30 years, perhaps I will. However, I am not bilingual.

• (1640)

Mrs. Marie-Claude Bélanger-Richard: Mr. Petit, do you not believe that in Quebec, non-bilingual judges have been excluded from the selection of judges for the Supreme Court of Canada for years? The judges chosen from Quebec are always bilingual to a certain degree. I do not believe this changes anything. It was not necessarily in the legislation, but in the end, it was an unwritten principle.

[*English*]

The Chair: Mr. Norlock.

Mr. Rick Norlock: Thank you very much.

Just to complete the last round, I don't like to play lawyer with a lawyer, because I'm not one and I know I'll lose. But I guess I have to ask if there are any reported cases or any discussions in senior legal circles—because you mentioned you were a senior jurist—where the Supreme Court has rendered a judgment that because of interpretation or issues surrounding interpretation, that judgment was questioned? You don't need to be specific, because that might cause some problems, but are aware of any such cases?

Mrs. Marie-Claude Bélanger-Richard: No, I'm not aware. However, I would like to remind you that I read the proceedings of this committee when Michel Doucet from New Brunswick appeared, and he mentioned to you that in one of his appeals before the Supreme Court of Canada, he had lost five to four. After he presented his arguments before the court, he went to CPAC to listen to the translation that had been done at the time he was making his arguments. I am just repeating what I read in the proceedings. He said he could barely understand the translation of his own remarks. He suggested to this committee that he had lost five to four, and although it might have been the same result in any case, he had a question in his mind that maybe some of the judges who were there and had listened to his arguments through interpretation maybe did not get the full sense or meaning of his arguments.

I just give you that example, because I read it. But no, I don't have any knowledge of any cases. Once again, you have to go through the trouble of listening to the translation after the fact—

Mr. Rick Norlock: No, I'm not asking about a specific case, because I think that would put you in an unfortunate situation or it might not be something you want to talk about. I'm just talking about discussions in legal circles that certain cases, other than this particular one, may have been....

Mrs. Marie-Claude Bélanger-Richard: On what we discussed, it's always, as was pointed out by your colleague, the fact that we don't want to do arguments through interpretation, that's for sure. For me as a lawyer, that would be the worst.

That's why I mentioned that in New Brunswick my unilingual colleagues are very tolerant, in the sense that when it comes time for arguments the interpreter will sit next to my colleague and will just murmur my arguments in their ear as opposed to our being interrupted all the time by consecutive translation, which would be terrible in an argument.

That's what I'm saying. Making arguments at the Supreme Court of Canada, knowing that you are at the last level and they are getting your arguments through interpretation, that seems terrible to me.

The Chair: Thank you.

I have just one follow-up question. Like Mr. Rathgeber, I'm from the west, from British Columbia, also with a legal background, and I'm certainly working hard—

Mrs. Marie-Claude Bélanger-Richard: I'm sorry, but could you speak up a bit?

The Chair: Yes.

I also have a legal background and I'm also trying to learn French here as a member of Parliament.

I'm thinking of the experience in British Columbia, if I'm someone born and raised in British Columbia and I make law my career, with my goal being to invest in my province. Yet somewhere along the line, someone tells me about the only way I could ever aspire to the highest court in the land. They tell me that not only am I going to have to get my schooling outside British Columbia, but I'm also going to have to immerse myself in a legal setting outside British Columbia, because we don't have a French environment in British Columbia. So inordinate periods of time will be spent outside my province, the one that I'm committed to serving.

As you know, the reason we have judges from across Canada is to reflect the regions, yet I won't be able to reflect my region on the highest court in the land because I'm going to have to spend so much time outside my province to get to that language capacity I require, which is an incredibly high one, based on my reading of Bill C-232. You can see the struggle I have.

It's not a matter of supporting bilingualism or not. The level of language capacity required under this bill is incredibly high because it involves technical legal matters. Especially in British Columbia and Alberta, the pool from which Supreme Court judges could be selected is very small. We have bilingual lawyers in British Columbia, but at the level that's required under this bill, it's a very, very small pool.

• (1645)

Mrs. Marie-Claude Bélanger-Richard: The only answer I have is that so far we've still been able to get eight bilingual judges on the Supreme Court of Canada. It shows that despite what is called this limitation, it's quite something that we still have eight bilingual judges.

I think it's possible. I think the resources are there. It's not easy. I would agree with you that it's easier for some people to become bilingual than it is for others. That's true.

I have a colleague in my firm who went to France for six months, but still, beyond "*Comment ça va?*", he's not able to speak French. He doesn't have the capacity for another language. He came to realize that and now, for sure, he's not doing anything else.

I agree with you, but at the same time, once again, it's a matter of knowledge of the law and knowledge of the society, the values, and the culture we have in Canada, which we want to have at the Supreme Court of Canada.

The Chair: Does anybody else have a question?

Monsieur Ménard.

Mr. Serge Ménard: With your permission, *monsieur le président*, I have an answer that I can give you in English.

It has been that level of expertise, of knowledge, and of familiarity that has been required of all francophone justices on the Supreme Court.

The Chair: Well, I don't think I'm going to get into a debate with another member here.

Mr. Comartin.

Mr. Joe Comartin: I had better put this on the record. I sat through the last four appointments to the Supreme Court. The last two rounds have been the prairie provinces and then the Maritimes.

We're sworn to secrecy in sitting on those panels, but the reality is that there were more than enough candidates—I don't think I'm disclosing any surprises here—from both of those jurisdictions to meet that high test of bilingualism. I don't think I can say anything more than that without going into the specifics of their credentials, but there was not a problem with having a significant number of qualified candidates.

The Chair: Thank you.

Does anybody else wish to speak?

Hearing nobody, I am going to thank you, Ms. Richard, for appearing before us.

We will now proceed with committee business.

[Proceedings continue in camera]

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