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There's no justice at the Supreme Court when good linguists beat good judges

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English Canada's six seats on the Supreme Court will be closed to unilingual anglophones if the Senate passes Bill C-232.

Introduced in the House of Commons by bilingual New Democrat Yvon Godin of New Brunswick, this bill makes fluency in French and English mandatory for all future Supreme Court justices. The Bloc Québécois joined the Liberals and the NDP to create majority support for the bill, which passed the House in March.

Nobody disputes that fluency in French is valuable, enabling direct communication with unilingual francophones in Canada and abroad, and providing cultural and intellectual enrichment. But, while bilingualism is beneficial on a personal level, it can turn ugly when imposed as a job requirement for reasons of symbolism rather than necessity.

In supporting the bill, Bloc MP Nicole Demers argued that judges don't really understand a file unless they've read it in its original language. Yet, nobody has provided an iota of evidence that the Supreme Court's translation services are deficient or inadequate.

The same Bloc MP argued that everyone has a right to be heard and understood directly by judges, without an interpreter. This may well hold true at the trial level, when judges need to understand the cultural and other nuances of oral testimony in order to assess the credibility of witnesses. But appellate courts are asked to apply relevant legal principles, not reassess and reweigh the evidence.

When the Supreme Court hears a case, the lower court rulings and the written and oral arguments of the litigants are made available in both languages to all nine justices (three from Quebec, six from English Canada). Symbolism and sentimentality aside, there's no practical need for any justice to be bilingual to render judgments. Nobody has explained what harm has been suffered by clients or their lawyers because Supreme Court justices relied on translators and interpreters. Lawyers appearing before the Supreme Court are constitutionally entitled to present their arguments in the official language of their choice; unilingual justices don't deprive litigants (or their lawyers) of this opportunity.

Those fluent in two or more languages understand that there exist ever-higher degrees of mastery of a language. Few people ever achieve complete competence (beyond mere fluency) in more than one language. The complexity and subtleties of the Supreme Court's cases are such that even fluently bilingual judges probably will do their reading, thinking and judging in their strongest language.

In short, Mr. Godin's bill confuses the benefit of personal bilingualism with the benefit of government services (including court services) being available in both official languages. The latter does not require that each and every government employee possess the former.

Competent lawyers and judges who grew up without the opportunity to acquire fluency in French will be automatically excluded. Bear in mind that, aside from Quebec and some regions of Ontario and New Brunswick, it's difficult – if not impossible – for English Canadians to master French to the point of fluency. This bill will result in good linguists being chosen over good judges.

Fluency in a second (or third or fourth) language should be encouraged because of the benefits it confers on the individual who acquires it. But the Supreme Court is already providing its services in both French and English, without needing to reduce the talent pool for six of its nine seats to a small minority of bilingual anglophones.

For a position as important and influential as that held by a Supreme Court justice, the stakes are too high to drain the talent pool of most of its water for the sake of symbolism and sentimentality.

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