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SUPREME COURT ACT

Bill to Amend—Second Reading of Bill C-232—Debate Adjourned

Speech by:

The Honourable Claudette Tardif

Tuesday, April 20, 2010

THE SENATE

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[*Translation*]

SUPREME COURT ACT

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

Hon. Claudette Tardif (Deputy Leader of the Opposition) moved the second reading of Bill C-232, An Act to amend the Supreme Court Act (understanding the official languages).

She said: Honourable senators, it is with great pleasure that I rise to introduce Bill C-232, An Act to amend the Supreme Court Act (understanding the official languages).

The summary reads as follows: "This enactment amends the Supreme Court Act and introduces a new requirement for judges appointed to the Supreme Court to understand English and French without the assistance of an interpreter."

[*English*]

As stated, the purpose of the bill is to ensure that judges appointed to the Supreme Court of Canada understand English and French without the assistance of an interpreter.

[*Translation*]

First, allow me to acknowledge the work of Member of Parliament Yvon Godin, who introduced this legislation in the other place.

I also stress the valuable contribution of the members of the Standing Committee on Justice and Human Rights, who paid particular attention to the testimony of many experts, and who carefully assessed that testimony. I want to mention the support of eminent legal experts, and of the Association des juristes d'expression française du Canada, the Young Bar Association of Montreal, the Fédération des communautés francophones et acadienne du Canada, the Quebec Community Groups Network, the Commissioner of Official Languages, and the National Assembly of Quebec, among many others.

[*English*]

I underscore for honourable senators that all of the above organizations and associations have expressed their support for the intent of this bill.

[*Translation*]

Moreover, I want to thank all the members of Parliament who spoke to this bill and who supported it.

It is a great honour for me to take part in the debate on Bill C-232 at second reading in the Senate. This legislation is about equity and fairness for all Canadians who choose to express themselves in either official languages of the country.

In Canada, in the federal government, French enjoys equality of status, rights and privileges with English. Therefore, no lawyer who chooses to speak English or French should have to be heard through an interpreter before the country's highest court. As Member of Parliament Yvon Godin put it, at second reading of the bill during the previous session:

> Each party must be able to be heard in conditions that do not put him or her at a disadvantage compared to the opposing party. That is the purpose of my bill.

[*English*]

Bill C-232 will ensure that all Canadians will have the right not only to be heard, but also to be understood in either of Canada's official languages.

I have spoken on this issue in the past. I want to take this opportunity to reiterate my full support for the intent of this bill. On May 15, 2008, I stated in this chamber that

> Bilingualism and equality are at the core of the spirit of the Charter and of Canadian identity and values. Federal judges must have sufficient linguistic ability to understand legal arguments without the need for simultaneous translation, thereby ensuring the right of all citizens to be judged in the official language of their choice.

I remind honourable senators that linguistic duality is an integral part of our Canadian identity and history and that it is protected under the Canadian Charter of Rights and Freedoms. I also highlight the government's commitment to linguistic duality, as stated most recently in the Speech from the Throne on March 3, 2010.

• (1600)

I quote:

> We are a bilingual country. Canada's two official languages are an integral part of our history and position us uniquely in the world. Building on the recognition that the Québécois form a nation within a united Canada, and the Roadmap for Canada's Linguistic Duality, our Government will take steps to strengthen further Canada's francophone identity.

Honourable senators, here is the ideal opportunity for the government to strengthen Canada's francophone identity, by supporting this bill.

Honourable senators, I believe Bill C-232 is an essential piece of legislation that deserves our support. It is supported by many leading experts in the field of judicial and linguistic rights.

Canada today has advanced to the point where it can, and I believe should, take this step. Once passed, this bill will strengthen the rights of all Canadians and, in particular, will ensure justice and equality for all citizens in our country.

I remind honourable senators that one of the key roles of the Senate is to represent minorities. Bill C-232 goes to the heart of this responsibility. Its purpose is to correct an injustice faced by parties whose cases are heard by the highest court in the land.

[*Translation*]

Honourable senators, allow me to present a brief history of linguistic duality. My purpose is not to bore you, but rather to show you that Bill C-232 is part and parcel of the evolution of linguistic duality in our country.

Over the course of three centuries, the foundations of linguistic duality in Canada have evolved and developed, putting an indelible mark on our Canadian identity and the values we all hold dear. The Official Languages Act has celebrated its 40th anniversary.

It was in 1969 that the government of the Right Honourable Pierre-Elliott Trudeau enacted the Official Languages Act, giving English and French the status of official languages of Canada. This act established a legal obligation for the government to serve all Canadians in the official language of their choice.

The year 1982 marked an important milestone, with the repatriation of the Constitution. Language provisions were enshrined in the Canadian Charter of Rights and Freedom. The enactment of sections 16 to 20 of the Charter in 1982 entrenched in the Constitution the equality of English and French in the institutions of the Parliament and Government of Canada.

In 1988, a revised version of the Official Languages Act was passed. The new act had a much wider scope and introduced a right of recourse allowing any complainant to apply to the Federal Court to have his or her language rights enforced.

In the early 2000s, the Liberal federal government initiated an extensive consultation process that resulted in the introduction of the Official Languages Action Plan in 2003. With this plan, the government set out for itself a vision of linguistic duality and a consistent mode of governance.

In November 2005, a major step forward was taken when Parliament adopted Bill S-3, thanks to the unflagging work of Senator Jean-Robert Gauthier. This bill clarified the scope of Part VII of the Official Languages Act. The legislation was amended to strengthen the rights of communities, so that the federal government would have a legal obligation to take positive measures to enhance the vitality of official language minority communities. In June 2008, the Conservative federal government announced the *Roadmap for Canada's Linguistic Duality 2008—2013: Acting for the Future*, designed to support official language communities in five sectors: health, justice, immigration, economic development, and arts and culture.

And that, honourable senators, is a quick overview of the fundamentals and foundation of Canada's linguistic duality. Now, I want to take a closer look at how the courts have been called upon to help with the constitutional interpretation of language rights in Canada.

Since 1982, numerous cases have helped clarify the scope of language rights. For example, the *Mahé* case in 1990 confirmed the constitutional right of parents living in official language minority communities to manage and control their own schools. There was also the *Reference re Secession of Quebec* in 1998, which led to recognition of the principle of protecting minorities' rights. According to the Supreme Court, this is an underlying principle or constitutional value that must be taken into consideration when exercising constitutional or political power.

Over the past few years, the Supreme Court of Canada has given a more generous interpretation of language rights. This interpretation has had a significant impact on official language minority communities. One example is the decision in the *Beaulac* case of 1999 where the Supreme Court introduced the idea of substantive equality of the two official languages.

Beaulac radically changed the general view on language rights in Canada by moving away from a restrictive interpretation of language rights. In this case, the Supreme Court told the federal, provincial and territorial governments that language rights were to always be interpreted, within the context of their objective, in a way that would help maintain and strengthen official language communities in Canada and according to the substantive equality principle.

According to former Supreme Court of Canada Justice Bastarache:

> . . . in the context of institutional bilingualism, an application for service in the language of the official minority language group must not be treated as though there was one primary official language and a duty to accommodate with regard to the use of the other official language. The governing principle is that of the equality of both official languages.

• (1610)

In the *Beaulac* case in 1999, the Supreme Court of Canada made the following statement:

> This Court has recognized that substantive equality is the correct norm to apply in Canadian law. Where institutional bilingualism in the courts is provided for, it refers to equal access to services of equal quality for members of both official language communities in Canada.

[*English*]

According to a Supreme Court's ruling, supported by then-Justice Major: "Where institutional bilingualism in the courts is provided for, it refers to equal access to services of equal quality for members of both official language communities in Canada."

[*Translation*]

> This principle of substantive equality has meaning. It provides in particular that language rights that are institutionally based require government action for their implementation and therefore create obligations for the State. It also means that the exercise of language rights must not be considered exceptional, or as something in the nature of a request for an accommodation.

The recent Supreme Court ruling in *DesRochers v. Canada (Industry)*, 2009, also confirms the importance of the guiding principle of substantive equality.

[*English*]

One of the reasons cited in support of the need to ensure that Supreme Court judges understand Canada's two official languages is the constitutional obligation set out in the Canadian Charter of Rights and Freedoms. Constitutional experts have noted that there is a trend towards a broader and more generous interpretation of language rights, suggesting that

section 19 of the Charter guarantees not only the right to use one's preferred language before the federal court, but also the right to be understood directly in that language by all judges of the court.

[*Translation*]

That point of view gains tremendous significance in light of the fact that the Supreme Court also stated in the 1999 *Beaulac* ruling that section 16 of the Charter, which provides for the equal status and use of both official languages, confirms the substantive equality of language rights, including those guaranteed in section 19. As such, the court clarified that the equality of existing rights is a substantive equality. Parliament made a constitutional commitment when it included this obligation in section 16 of the Canadian Charter of Rights and Freedoms in 1982, thereby ensuring that both official languages are equal in terms of status and rights.

Changes to Part VII of the Official Languages Act in 2005 required the government to take positive steps to ensure the implementation of language rights and support the development of official language communities. This is an opportunity for the government to take positive steps by guaranteeing the appointment of Supreme Court judges who understand both official languages without the help of an interpreter, and to apply the principle of the substantive equality of both official languages.

A number of legal decisions have confirmed and reinforced minority rights. However, we must look beyond legal recourse to resolve situations and to assert one's rights. Legal cases take time, energy and financial resources, and at the end of the day, they do not push governments to take action. Legal action cannot solve every problem. The government must step in and take the necessary measures.

In her remarks on *The Impact of the Supreme Court of Canada on Bilingualism and Biculturalism*, the Right Honourable Beverley McLachlin, Chief Justice of the Supreme Court of Canada, said, and I quote:

> In a constitutional democracy such as Canada, the protection of language rights, like other constitutional rights, is a responsibility shared by governments and the courts.

This comment makes it clear that governments must commit to advancing official language rights for all Canadians. Political action must not be ruled out. Our parliamentarians must demonstrate sustained leadership through their concrete actions. This is an opportunity for us, honourable senators, to show our leadership and commitment by supporting this bill.

It is important to me that we require Supreme Court judges to understand our country's two official languages without the assistance of an interpreter. We must put ourselves in the place of a citizen who appeared before the Supreme Court and who suffered an injustice because he was not properly understood, because the interpretation did not allow a judge to understand the nuances of the defence. Imagine the consequences.

[*English*]

The Supreme Court of Canada is the final court of appeal. It is therefore critical for Supreme Court judges to fully understand the subtleties and nuances of counsels' arguments. Simultaneous interpretation of arguments made before the Supreme Court has its limits and gaps can occur. It is crucial for judges to be able to connect all the points at issue when arguments are being presented. Interpretation produces a greater margin of error, and a counsel's case could be significantly damaged.

Why should French-speaking citizens be obliged to take such a risk when their cases are presented before the highest court in the land? If the shoe were on the other foot, would our English-speaking citizens accept having their cases presented with interpretation before unilingual francophone judges?

Based on his own personal experience at the Supreme Court, attorney Michel Doucet, the Faculty of Law at the University of Moncton, testified before the Official Languages Committee in the other place, on May 8, 2008. He stated:

> When you win a case by a nine to zero decision, that's far from being a dramatic situation, but when you lose a case in a five to four decision, as happened to me at one point, and you've pleaded that case in French, you then go home and listen to the English interpretation that was made of your argument before the court in which three judges didn't understand French. As the judges had to listen to the argument through the English interpretation on CPAC, you wonder about what they understood.
>
> I listened to the English interpretation of my argument, and I understood none of it.

• (1620)

[*Translation*]

I have to say that I have great respect for the work done by interpreters and translators. I recognize the complexity of their tasks and the difficult conditions in which these are sometimes performed. I do, however, admit that mistakes can be made in interpretation or in the translation of documents. Personally, when I review the remarks I made in the Senate or documents I sent out to be translated, I often notice inconsistencies between the two versions, and that is often due to a lack of knowledge of the context or of linguistic or cultural nuances.

Delivery also comes into play when we are passionately putting a point across. I can think, for instance, of Senator Segal and his eloquent and passionate speech on Senator Cowan's inquiry concerning parliamentary reform. He had to be asked to slow down, because the interpreters could not keep up with him.

Here are a few humorous examples. Members of the other place gave examples from personal experience during an election campaign. For instance, the phrase "Please post in window" in English was translated as something like "Please fencepost in the window."

[*English*]

If that did not translate well in English, I will attempt to explain the translation error. "Please post in your window" was translated into French as "please fencepost in your window." "Fencepost" is one of the possible French translations for the English word "post."

[*Translation*]

There is also the example of a lawyer who was pleading a case before the Supreme Court and mentioned a Mr. Saint-Coeur — "Coeur" spelled C-O-E-U-R — which the interpreter rendered as "Mr. Five O'Clock." These are just a few examples of the kinds of mistakes that can be made and how interpreters can misunderstand things. So what can happen when someone goes before the highest court in the country to seek justice?

Can we claim there is real equality when francophones who appear before the highest court in the country have to go through the filter of interpretation to be understood by unilingual English judges, who may not grasp the nuances and legal subtleties of arguments made in French? Can we talk about equality when pleadings are heard through the filter of interpretation, as good as it may be? Or when unilingual judges cannot sit when the other language is being used, depriving litigants of access to the whole bench?

[*English*]

In a letter published in the *Ottawa Citizen* on April 15, 2010, Graham Fraser, Commissioner of Official Languages, stated:

> Court interpreters sometimes miss nuance and tone. And even a single unilingual judge means conversations in camera have to take place in English only, even when the pleadings, the factums and the precedents were in French.

[*Translation*]

In 1986, nearly 25 years ago, Justice Wilson, who represented a more liberal, egalitarian movement within the Supreme Court, said in *Société des Acadiens du Nouveau-Brunswick* that the inequality of status of a litigant who must present his or her case to a bench where some judges speak only the other official language must eventually give way to the escalating standard of equal language rights. She added:

> At a certain point, for example, the steps taken to upgrade the bilingual capabilities of the federal judiciary will lead the public to expect access to a bilingually competent court. Those expectations would then be not only legitimate but also the subject of constitutional protection under ss. 16 and 19.

Justice Wilson's visionary interpretation is highly relevant to the debate we are engaged in.

Some could still argue that in French-language cases, unilingual anglophone judges should simply refrain from sitting to comply with the Charter. But can we claim there is real equality when litigants who speak one official language cannot benefit from the combined wisdom of the nine Supreme Court judges to decide their cases?

We must remember that all Canadians have the right to due process. In the previous session, at second reading of the bill, MP Yvon Godin stated:

> For example, when the Supreme Court was established — or any other court or institution for that matter — it was created for citizens, for Canadians as well as for Quebecers.

The Supreme Court was not established to meet the needs of judges, but to serve citizens. Therefore, service provided to citizens should be in French or in English, our two official languages.

The statutes of Canada are drafted bilingually with neither language taking precedence over the other. In order to understand the subtleties of the law and to apply it justly, the judge must be capable of hearing the parties without the assistance of an interpreter in order to make decisions independently and impartially. Legislation and regulations are drafted in both official languages. Neither version is a translation of the other. Consequently, a judge who understands both official languages will have the necessary and requisite abilities to understand the nuances of the English and French versions.

This is what the Commissioner of Official Languages, Graham Fraser, told the members of the Justice and Human Rights Committee on June 17, 2009:

> Given the complexity and the extreme importance of the cases heard by this court, judges should be able to hear arguments presented to them without using an interpreter to understand nuanced and complex legal arguments.

On May 21, 2008, the National Assembly of Quebec unanimously adopted the following motion:

> That the National Assembly of Quebec affirm that French language proficiency is a prerequisite and essential condition for the appointment of Supreme Court of Canada judges.

In his speech before the vote on this motion, Jean Charest, Premier of Quebec, stated his position and emphasized the following:

> Our laws are a consolidation of who we are in all aspects of our lives in terms of our culture, our values and our choice of society. They also reflect our history. The law is a synthesis, in a way, of what we are. We have to make a connection between law and language. And knowledge of language is more than just knowing a few words. Rather, it is more like knowing . . . an interpretation or a translation. To know a language is to know a culture, a reality. Those who are called upon to interpret that reality and to make decisions that will have a very significant impact on our lives must know that reality through our language. That is what creates very good judges right from the outset, more than their knowledge of the law, the sections of the Criminal Code or the articles of the Civil Code. That is what we expect of those who sit on that bench and make decisions that will have a very significant impact on our lives.

• (1630)

[*English*]

Retired Supreme Court Judge John Major is on record opposing the bill, expressing his concern that "you would sacrifice competency" by requiring that a judge be bilingual. With all respect, honourable senators, I must tell you that I believe that this argument is ill-founded. This bill is very clear. Judges would continue to be selected based on merit, legal excellence and personal suitability. The bill would simply add an additional requirement that the judge understand both official

languages without the assistance of an interpreter. This is the bill's fundamental intent, which is supported by most witnesses and jurists who testified in committee in the other place. They have indicated that the capacity to understand both official languages without interpretation should, in fact, be an essential competency for the position of Supreme Court judge. A judge at this level should be able to understand the language in which the case is pleaded.

According to Professor Webber, lecturer in law at the London School of Economics and Political Science:

> Major's contrast between language and competence suggests a stark disconnect between the legal competency of a judge and his or her linguistic abilities . . . understanding a case directly, unaided by interpretation, is part of the legal competency we expect of a judge. We understand that legal arguments by citizens and counsel include the ability to convince, to present, to employ rhetoric, and that part of the legal competency of a judge is to listen and to comprehend.

Bill C-232 does not exclude potential candidates for appointment to the Supreme Court of Canada. The concern that there is an insufficient number of qualified candidates is unfounded. In fact, more and more qualified bilingual lawyers aspire to be appointed to the bench.

Given the already large and growing number of highly skilled and capable bilingual lawyers across the country, regional representation will continue to be respected and considered in the selection of Supreme Court judges.

The Canadian Bar Association has a new provision in its code of conduct requiring lawyers to respect the official language of their clients, which is encouraging private law firms to hire a greater number of bilingual lawyers. In fact, many capable students with the ability to understand both official languages are entering law faculties.

It is becoming increasingly easy for our Canadian citizens to learn French. French immersion programs have proven extremely popular with Canadians across the country, and more and more of our English-speaking citizens, as well as those who have neither English nor French as their mother tongue, are very competent in both official languages. In my province of Alberta, for example, there are currently more than 33,000 students in French immersion; and in British Columbia, some 40,000 students. According to statistics provided by the national organization Canadian Parents for French, more than 300,000 students are presently enrolled in French immersion programs in Canada.

Honourable senators, these numbers have been increasing every year. That is the new reality in Canadian society. We saw it during the Olympic and Paralympic Games, where so many of our athletes and coaches could express themselves with great ease in both official languages.

An Hon. Senator: It is a long speech.

Senator Tardif: It is a long speech, but there is a lot to say, honourable senators.

[*Translation*]

According to Louise Aucoin, president of the Fédération des associations de juristes d'expression française de common law inc., there are associations of French-speaking jurists in the four western provinces, Ontario, New Brunswick and Nova Scotia.

She said that over the past two years, a number of cases have been heard without interpretation, including the *Halotier* case before the Yukon Court of Appeal, the *Rémillard* case before the Manitoba Court of Appeal, the *Fédération franco-ténoise* case in the Northwest Territories, and the *Caron* case in Alberta. All these cases were heard in French without interpretation.

The merit of this bill is that it will send judges the message that knowledge of both official languages is an integral part of the terms of appointment. In other words, if they are aiming for the bench of a federally-appointed court or tribunal, they will be aware that knowledge of both official languages will be required.

Passing this bill would send a clear message to the faculties of law across the country: good comprehension of French and English is a prerequisite for eligibility for the most important positions in Canada's judiciary.

[*English*]

The University of Toronto told the committee in the other place studying this bill that they are willing to adjust and to do whatever is necessary to better prepare the next generation of lawyers. The University of Ottawa, the University of Moncton and McGill University already offer law students the opportunity to study in both French and English. The University of Western Ontario offers a special course for lawyers wishing to master the technicalities of legal vocabulary in French.

This is how far Canadian society has now come. The argument that there are insufficient candidates is based on an outdated description of the past and not on the realities of today and tomorrow.

[*Translation*]

Parliament has recognized the need for any federal court, including the Tax Court of Canada, the Federal Court and the Federal Court of Appeal, to be able to conduct proceedings in French as well as in English by appointing judges who understand both official languages without the need for an interpreter. Ironically, there is only one exception: the Supreme Court.

On May 8 2008, Graham Fraser, the Commissioner of Official Languages, expressed his opinion before the House of Commons Standing Committee on Official Languages:

> . . . it seems to me that knowledge of both official languages should be one of the qualifications sought for judges of Canada's highest court. Setting such a standard would prove to all Canadians that the Government of Canada is committed to linguistic duality. I find it essential that an institution as important as the Supreme Court of Canada . . .

Would honourable senators agree to give me five more minutes?

Hon. Percy Mockler (The Hon. the Acting Speaker): Is leave granted, honourable senators?

Some Hon. Senators: Agreed.

Senator Tardif: I find it essential that an institution as important as the Supreme Court of Canada not only be composed of judges with exceptional legal skills, but also reflect our values and our Canadian identity as a bijural and bilingual country.

• (1640)

Understanding both official languages is already mandatory for some judges in several Canadian courts, and bilingualism is required for some 72,000 jobs within the federal administration. Why should the bar be set any lower for Supreme Court judges? We expect our prime minister to be bilingual, so I have a hard time understanding why we do not expect the judges of this country's highest court to at least understand both official languages. I would also point out that eight of the nine judges that currently make up the Supreme Court of Canada meet that criterion. Furthermore, the Chief of the Defence Staff, General Natynczyk, originally from Manitoba, his predecessor, General Rick Hillier, originally from Newfoundland, and the Chief Justice of the Supreme Court, the Right Honourable Beverley McLachlin, originally from Alberta, all understand both official languages.

According to Michel Doucet, in the current context:

> . . . the Canadian context today is ripe enough with regard to bilingualism for an amendment to be made to the Official Languages Act to eliminate the exception made for the Supreme Court of Canada.

In conclusion, honourable senators, given that Bill C-232 seeks to make the understanding of French and English without the assistance of an interpreter a requirement for judges appointed to the Supreme Court; given that the Official Languages Act provides for equality of status and use of English and French; given that the English and French versions of statutes are of equal weight at the federal level, and one is not the translation of the other; given that it is the right of any citizen to use French or English before Canada's courts, based on fundamental linguistic rights and the Official Languages Act, which already recognizes the importance of being understood without the assistance of an interpreter before federal tribunals; and given that problems with simultaneous interpretation can affect one's ability to understand the critical nuances of the respective languages, we should all support this bill.

Passing Bill C-232 would constitute a profoundly significant gesture for all Canadians, francophones and anglophones alike. This is a unique opportunity to send a clear message that we are acting on our commitments under the Charter of Rights and Freedoms.

Since respecting these rights is a reality, Parliament has a duty to enforce them.

We can be proud of the reputation of the Canadian legal system, which serves as a model around the world. By appointing judges who understand both official languages to the highest court in the country, we would be ensuring that decisions are as fair and just as possible.

This is directed in particular to the honourable senators from Acadia and Quebec who sit on the government side. I am appealing to your sense of justice, to your sense of belonging to our country where linguistic duality has been a fixture for a long time. I urge you to vote in favour of this bill.

Last week we paid tribute to the remarkable contribution that the Honourable Jean-Robert Gauthier made to our linguistic duality. Bill C-232 is the next logical step in recognizing the equality of French and English.

[*English*]

I call upon all honourable senators' sense of justice and fairness. All Canadians, whether they are an English speaker from Quebec or a French speaker from the Yukon, should have the right to know that, if they find themselves before the highest court of our land, their case will be heard and decided absolutely on its merits, that they will be able to plead their case in either official language, and that their counsel is being heard and understood by the judges viva voce rather than by a interpreter's representation of counsel.

Honourable senators, I urge you to correct the inequity that presently exists by supporting Bill C-232.

[*Translation*]

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I would like to make a comment before I move adjournment.

The Honourable Senator Tardif told us that as Acadians and Quebecers, if we want to be fair and just, we absolutely must support this bill.

I do not need a lecture on linguistic duality and on the equality of Canada's two official languages. And I do not need to be told that we must approve this bill in order to support linguistic duality in Canada.

As an Acadian, I will make my comments when the time comes. Furthermore, Yvon Godin has nothing to teach me about the protection of minority language rights in Canada.

That said, I move adjournment of the debate.

The Hon. the Acting Speaker: It is moved by the Honourable Senator Comeau, seconded by the Honourable Senator —

Hon. Fernand Robichaud: Your Honour, when a senator wishes to speak to a bill, he or she is given the opportunity to do so instead of moving adjournment, because adjournment puts an end to the debate for the day. In this case, if the Honourable Senator Rivest wants to speak—

Senator Comeau: I agree with Senator Robichaud. If Senator Rivest wants to participate in the debate now, I do not object, and I am willing to postpone my adjournment motion.

Hon. Jean-Claude Rivest: Honourable senators, I would like to begin by congratulating our colleague, Senator Tardif, on her remarkable speech, which conveyed her commitment and that of all parliamentarians in both the Senate and the House, as well as that of all Canadians, to protecting and promoting linguistic duality.

Honourable senators, I think it is very important for senators from across the country to participate in this debate. I think that Quebec senators should make a special effort, a clear and determined effort, to support linguistic duality and its expression in the bill currently before us on ensuring that Supreme Court justices understand both official languages.

People in French-speaking Quebec benefit from a somewhat more comfortable linguistic environment than that of our francophone compatriots in other parts of Canada. But I think that it is very important for all Quebecers, be they francophone or anglophone, to enthusiastically support any initiative that helps strengthen Canada's linguistic duality.

Naturally, as Quebecers, we have an interest in this bill, but we also have an interest in it as Canadians, because as Canadians, we must all live under the Supreme Court's jurisdiction.

• (1650)

We fully share the legitimate conviction of all Canadians that, in its makeup and in the people who work within it, the court must translate and display this linguistic duality that we hold dear and that is one of the fundamental characteristics of our country.

Honourable senators, we are talking about linguistic duality and the Supreme Court of Canada, and we have to be very careful because it is such an important institution. But I would find it hard to understand, precisely because it is one of our country's most important institutions, if linguistic duality were not fully realized there. It would be ridiculous, or at least peculiar, if we said that the Supreme Court of Canada is such an important institution that there is no need for those seated on its bench to know both of the country's official languages. This would be complete nonsense.

I think that the bill introduced by our colleague, Senator Tardif, will help to enhance the authority of the Supreme Court over all Canadians.

This gesture is even more meaningful because, like many others — and probably honourable senators from other provinces have felt it even more — I have notices a certain weakening of political leadership with respect to the country's linguistic duality. This does not show ill will, but it is always a very sensitive issue and, from every political party and viewpoint, whether we are anglophone or francophone and no matter what region we come from, we must not stop demanding that our political leaders strengthen their determination and take action on this issue. There must be no weakening of the will of Canada and the Canadian government in defending and promoting linguistic duality.

This initiative comes at a good time, I believe, because it gives the Parliament of Canada and all Canadians an opportunity to realize the importance of linguistic duality for everyone in our country.

As we know, this linguistic duality is fragile on the French side. We must constantly nurture it and try to strengthen it. This duality is fragile because of demographic changes in our country. When the Official Languages Act was passed, Canada was made up of francophones, anglophones and people from other origins. We were aware of the existence of two founding nations, as we used to call them. But Canada is changing: a very large number of Canadians come from other parts the world. It is said that in Toronto about 60 per cent of the population was not born francophone or anglophone; these people come from everywhere. Therefore, we must constantly remind these new Canadians that Canada is a bicultural and bilingual country, and that French and English have historic and inalienable rights. So, any action that strengthens Canada's linguistic duality has not only a political and administrative value, but also an educational value regarding the reality of our country which, incidentally, is envied by many others.

Thus, to some extent, the bill reaffirms, expands and strengthens the country's linguistic duality. Come to think of it, we can only be very receptive to this initiative and support it.

As Senator Tardif mentioned, this bill only adds one condition to the existing Supreme Court Act, one additional condition for those people who, some day, may be called to sit on the highest court in the country. The bill does nothing more. In a country that was founded on this duality, that lives it, that defends it, that believes in it and whose people are attached to it, it seems eminently reasonable to ask those who sit on the bench of the Supreme Court to understand both languages without the help of an interpreter. It is not unreasonable to make that demand, particularly considering that those who are likely to be appointed to the Supreme Court of Canada are talented and have an intellectual breadth that allows them to know one, two or even three languages. To know both languages is not an obstacle or a challenge that cannot be overcome by someone thinking of one day sitting on the bench of the Supreme Court of Canada. That requirement is not the end of the world. There are many citizens in Canada and elsewhere who agree to learn other languages. It is a form of personal enrichment and it can have a very positive impact on the professional lives of people who, as jurists, want to make it to the Supreme Court.

Incidentally, in Canada — as Senator Tardif pointed out — this requirement exists in many areas. For example, can we imagine the Governor General of Canada not understanding both official languages? No. We have always tried to appoint people who know both languages, and this requirement has not diminished the quality of Governors General of Canada.

Senator Tardif mentioned the Chief of the Defence Staff. Has the fact that the leader of the Canadian Forces speaks both languages diminished the quality of that position in any way? That is totally ridiculous. We could extend that line of thinking to the Governor of the Bank of Canada or the Auditor General.

In Canada, for extremely important positions in the Canadian administration, understanding both official languages is already a requirement. Why would that not be the case for the Supreme Court of Canada? I think this is basic logic.

What is more, we know that in Canadian politics no one can be the leader of one of our major political parties without knowing both languages. Mr. Harper is a fine example of this, like Mr. Ignatieff and Mr. Layton. They are people who want to serve their parties and the ideals of their parties, and they express their attachment to their country and to linguistic duality by expressing themselves in both official languages. The same is true for some provincial premiers, for example in New Brunswick and Ontario.

So it is not an unreasonable requirement. It is a requirement, I admit, but it is not unreasonable in Canada to require that Supreme Court judges have a knowledge of both official languages.

Basically, it just enshrines the practice that already exists in so many other fields that involve a great deal of responsibility for Canadians, where members of a profession are expected to understand both official languages. Why should the requirements for Supreme Court judges be any different?

People will say that this could make it more difficult to recruit judges in some parts of Canada, and I understand that. We are talking about nine people. Why could we not manage to find one eminent lawyer in each region of Canada who has knowledge of French? We can find bilingual politicians and administrators, so why would we be unable to find bilingual judges, especially since we are not talking about people lacking in intelligence, but rather about people of superior intellect who can easily learn a second language?

• (1700)

It seems to me that it is not too much to ask an eminent lawyer from any region of Canada to learn French if he or she wants to sit on the Supreme Court of Canada.

I do not agree with the argument that we cannot do this because it would prevent some regions from being represented on the Supreme Court of Canada. That is absolute nonsense. The position of Governor General has been held by people from all regions including the West, Quebec and the Maritimes. All these people had a knowledge of French. There are a number of other senior government positions that have been filled with people from all regions of Canada.

Senator Tardif made a very salient point about the Olympic athletes who sent a very strong message, young French Canadians who spoke both official languages.

Tens of thousands of Canadians in every region of the country do not aspire to the Supreme Court of Canada, but they are in immersion programs and learning the other language. And yet some people say that, because the individuals who want to sit on the Supreme Court of Canada are great minds, we should not require them to learn both the country's official languages. It seems completely nonsensical to me.

More specifically for Quebecers, I wanted to close by saying very simply to Quebec that French is not in danger, because we have sufficient numbers to ensure our linguistic security, which is of course relative. Over the years we have introduced enforcement measures to protect the French language and culture that we hold so dear.

We Quebecers ask the impoverished immigrants who arrive in Quebec to preserve their mother tongue. We also ask them to learn English, because they have come to Canada and North America to work. And we also ask these immigrants to learn French, which is crucial for the development and preservation of our French society.

And yet we refuse to ask the same thing of judges — eminent lawyers who want to become Supreme Court justices — that we demand of the poor immigrants who arrive here? This argument makes no sense, honourable senators.

The bill introduced by Yvon Godin in the House of Commons and presented here by Senator Tardif should be supported by all parliamentarians. And this is especially true here in the Senate chamber, because the Senate has different duties and responsibilities in our parliamentary system from those of the House of Commons. We must protect and be particularly concerned about matters of individual rights and freedoms.

The Hon. the Speaker: Honourable senators, I regret to inform Senator Rivest that his time is up. Do you seek leave to continue for five additional minutes?

Senator Comeau: Honourable senators, traditionally the second person to speak on the matter has 45 minutes. However, we wish to reserve the 45 minute period for this side of the chamber.

Nevertheless, we are willing to grant an additional five minutes to the honourable senator.

The Hon. the Speaker: It is quite normal for a 45-minute period to be reserved for the government.

Senator Robichaud: Honourable senators, we could have established who was to have the 45-minute period at the beginning of Senator Rivest's speech. Given that he was the second speaker, perhaps Senator Rivest was ready to speak for 45 minutes.

I will not object, though, because I believe that in order to have agreement and a debate that allows everyone to have their say, the government should be entitled to its 45-minute period.

The Hon. the Speaker: Is it your pleasure, honourable senators, to grant Senator Rivest five additional minutes?

Hon. Senators: Agreed.

Senator Rivest: Honourable senators, I wanted to conclude my speech on this bill by thanking and congratulating Yvon Godin of the House of Commons and Senator Tardif. What they have brought before the Parliament of Canada is in keeping with the history, the values and the virtues of Canada.

[*English*]

Hon. Tommy Banks: Honourable senators, I wish also to thank and congratulate Senator Tardif on her clear and heartfelt introduction of Bill C-232 in this place. We should acknowledge that the author of the bill, Mr. Yvon Godin, is here below the bar.

As our colleague Senator Grafstein used to say, I will not presume to opine on this bill until I have heard further debate on it. However, I cannot help but point out — and I hope I do not cause offence in this respect — that we have to be careful when we are making law here that the law say what we mean it to say.

Despite the admonition of Senator Tardif that in Canadian law, neither is a translation of the other, I am afraid that I must point out to the committee to which I presume this bill will be sent for further study that their attention should be directed to the English version of the bill, which I fear is a flat-out, word-for-word translation and certainly not an interpretation of the French, if I understand it correctly.

From what Senator Tardif said, I take it to mean that clause 1(2) of the bill means to say:

> In addition, any person referred to in subsection (1), and who understands French and English without the assistance of an interpreter, may be appointed a judge.

However, in the English version of the bill presently before us — and I hope that a real authority, not I, will be consulted in this — the syntax and grammar of this sentence, which I will read so we know what it says, is simply left-footed or backwards. It says:

> In addition, any person referred to in subsection (1) may be appointed a judge who understands French and English without the assistance of an interpreter.

You can appoint me 20 times and, with apologies, I will not understand both languages without the assistance of an interpreter. The bill, as presently before us, does not say what the author of the bill intended it to say. I hope that the committee will recommend an amendment to us that will correct that.

(On motion of Senator Comeau, debate adjourned.)