



CANADA

Debates of the Senate

3rd SESSION

• 40th PARLIAMENT

• VOLUME 147

• NUMBER 27

SUPREME COURT ACT

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

Question by:

The Honourable Claudette Tardif

Tuesday, May 11, 2010

THE SENATE

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[Translation]

SUPREME COURT ACT

BILL TO AMEND—SECOND READING—
DEBATE CONTINUED

Hon. Claudette Tardif (Deputy Leader of the Opposition): Will the honourable senator take a question?

Hon. Claude Carignan: Of course.

Senator Tardif: You referred to section 133 many times in your remarks. Now, section 133 of the Constitution simply states that either English or French may be used in courts established by the authority of the Act. Bill C-232 therefore does not prevent Supreme Court justices from using the language of their choice when addressing lawyers. Bill C-232 is about understanding both official languages without the help of an interpreter. Judges will not lose the right to use the language of their choice.

That being said, you did refer to section 133 frequently, and those arguments were very strong 20 or 25 years ago. They do not take into account the changes made in 1988 to the Official Languages Act or the Canadian Charter of Rights and Freedoms, which enshrines language rights in sections 16 to 23.

Also, when you spoke about this, you did not mention, for example, Chief Justice Dickson's ruling, in which he stated that there is another interpretation of section 133 of the Constitution Act, 1867 and of section 19 of the Canadian Charter of Rights

and Freedoms. According to his interpretation, section 19 gives rise to a much broader interpretation. While section 133 gives rights to an individual, section 19 gives rights to individuals with regard to the state. That is the important part: the rights of individuals with regard to the state.

The *Beaulac* ruling spoke of real equality. Do you believe that real equality is respected when one official language group is subject to the filter of an interpreter and the other is not?

Senator Carignan: I would like to thank the honourable senator for her question. First, it is important to distinguish between the Official Languages Act, which is a quasi-constitutional statute, and section 133 of the British North America Act, which is constitutional law.

Second, in the Constitution Act, 1982, section 21 states that the 1982 act does not affect rights and privileges previously recognized in other provisions of the Constitution Act, including section 133. Therefore, the 1982 Act does not diminish the importance of the rights in section 133.

Unfortunately, I do not have enough time to — I will not say plead — refer to the numerous Supreme Court and appeal court rulings with their various nuances. Understandably, 45 minutes is not enough time to argue the constitutionality of a law. That would normally take a lawyer four or five hours in front of a judge speaking the language of his choice.

(On motion of Senator Mitchell, debate adjourned.)
