

Edmonton, June 11th 2010

Regroupement des étudiants en common law français
University of Ottawa
Ottawa, ON

The Honourable Alison Redford
Minister of Justice and Attorney General
Alberta Justice, 3rd Floor, Bowker Building
9833 - 109 Street
Edmonton, Alberta
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Dear Ms. Redford,

We write to you in regards to your letter published in the *Calgary Herald* on June 5th 2010, and the *Edmonton Journal* on June 10th 2010, encouraging Albertans to campaign against Bill C-232. Many of the students studying in the French Common Law program at the University of Ottawa are Albertan and Western Canadian and intend to practice law in Alberta after completing their studies. We would like to clarify several points that you take issue with and express our concern with the position you have chosen for our province.

First, Bill C-232 does not require all Supreme Court Justices in Canada to be fluently bilingual, as you have erroneously stated in your letter. The Bill would require all future members of the Supreme Court to be able to understand French and English without the assistance of an interpreter. Senator Maria Chaput emphasized this during the second reading debate of the Bill:

“Let us be very clear: the bill we are discussing does not aim to impose on our future Supreme Court justices a requirement that they speak both official languages fluently. Perfect bilingualism is not the criteria. What is demanded is the ability to understand the other language without an interpreter. This is a distinction worth making.” (Canada, Parliament, Senate, Debates, 40th Parl., 3rd sess., vol 147, Issue 21, 2010.)

A major concern addressed in your letter is the possibility of language proficiencies rather than legal competency and personal merit becoming the determining factor in the selection of judges. When addressing this concern, we must remind ourselves that all of Canada's federal laws are adopted in both official languages and that they are equally authoritative in accordance with subsection 18(1) of the Canadian Charter of Rights and Freedoms. Understanding the law in both French and English is a more complete and effective understanding of the law, thus increasing one's legal competency. Therefore, we must necessarily conclude that to be "legally qualified" at the Supreme Court of Canada, a judge must have at least a basic understanding of both French and English. In this light we can consider the knowledge of a second language as an acquirable qualification, rather than an obstacle for aspiring Supreme Court judges.

Another particular concern stated in your letter was the risk of establishing an inflexible linguistic requirement that could for all practical purposes, prevent the vast majority of the current legal bar in Western Canada from being considered for selection to serve on the Supreme Court. While this is a legitimate concern by the many jurists who have devoted their careers to serving the Canadian public, we must not forget that the public's needs and concerns outweigh the needs and concerns of those called to serve. In Senator Claudette Tardif speech concerning this issue, she pointed out that the Supreme Court was not established to meet the needs of judges, but to serve the citizens of this country.

For the French speaking population of our country, including that of our province of Alberta, it is enjoying the equality of status, rights and privileges with the English speaking population that is most important and protected by subsection 16(1) of our Charter of Rights and Freedoms. To achieve this equality, each party must be able to be heard in conditions that do not put him or her at a disadvantage to the opposing party, such as being heard through an interpreter, where errors are known to be made. Such errors pose a great risk to the confidence that Canadians place in their justice system.

We also believe that your views on the possibility of eliminating the vast majority of western legal talent from the Supreme Court nomination process may be quite exaggerated. Again, let us be reminded that fluent bilingualism is not what is demanded. Therefore, the training needed to become qualified under this new legislation is not as

extensive as many may believe. Additionally, when considering the years of education and the hours of training already pursued and acquired by a judge, it is quite evident that the acquisition of a basic knowledge of French will not be an obstacle for these talented individuals.

We can also look to the Quebec, Acadian and Ontarian francophones who sit or have sat on the Supreme Court's bench and have learned English well enough to understand the language without an interpreter. Furthermore, many jurists such as Alberta-born chief Justice Beverly McLachlin have overcome the "difficulty" of learning the French language and Canadians from far and wide are better served because of it.

Further examination of Alberta's linguistic landscape also shows that we are better prepared for this Bill than your letter states. The Commissioner of Official Languages counts 222 885 Albertans that have knowledge of Canada's two official languages. This is a very remarkable number and it is increasing. Moreover, compelling statistics are found in the Canada-wide analysis of the official training needs in the area of justice conducted in 2009 by Prairie Research Associates at the request of Justice Canada. Their data indicates that in Alberta, 75 judges and 1,280 lawyers have confirmed knowledge of both official languages.

Our province also boasts excellent programs that will surely continue to equip our future jurists. The itinerant French Court Program, spearheaded by the Honorable L. J. Wenden, trains judges to become fluent enough to hear trials in either official language. The level of competency that these judges have gained in French sufficiently enables them to understand the language without the use of a translator. Alberta is also home to the Campus Saint-Jean of the University of Alberta, one of the most important and recognizable francophone educational institutions in western Canada. Many of our western lawyers and judges are alumni of Saint-Jean and have made significant contributions to our province.

In the closing argument of your letter, you also proposed that Bill C-232 poses a serious risk in the confidence that Canadians place in the justice system because the Supreme Court's legitimacy comes from its ability to be representative of all regions of our

country. While regional representation does play an important role in the reflection of the many interests, concerns and diversity of our country, we would contend that the role of representation is more appropriately played by the elected members of Parliament. We must ensure independence of the Court as an institution within the framework of sound public administration. Canadians must not look to the court to represent them, but instead to adjudicate in an unbiased fashion in order to preserve the integrity of our justice system and by extension, preserve the confidence of Canadians.

In closing, linguistic duality is an integral part of our Canadian identity, heritage and history and it is protected under the Canadian Charter of Rights and Freedoms. In *Reference re Secession of Quebec*, the Supreme Court declared that one of the principles of our constitution is the protection of our minorities. It cannot be stated strongly enough that the francophone minority of Canada stretches from coast to coast, has historically contributed to this country's development in innumerable ways and wishes to continue to do. Having judges at the Supreme Court who can understand the official languages without the need of an interpreter allows for Canadians across the country to be served without prejudice in the official language of their choice.

It is also worth noting that in the Speech from the Throne on March 3, 2010, the Federal Government, under the leadership of the Honorable Stephen Harper, made a commitment to linguistic duality. This Bill will move us forward in that direction and be in accordance with subsection 16(3) of the Charter that states "nothing in this Charter limits the authority of Parliament or a legislature to advance the equality of status or use of English and French"

Sincerely,

Albert Nolette
Vice-President
Regroupement des étudiants en common law français/French common law student group