

THE LAWYERS WEEKLY

Vol. 30, No. 2

www.lawyersweekly.ca

May 14, 2010



Bill on bilingual SCC judges faces battle

CRISTIN SCHMITZ OTTAWA

A proposed law to require Supreme Court judges to be bilingual will make it politically perilous in future to appoint unilingual jurists — even if the contentious bill dies in the Senate, predicts Independent Senator Jean-Claude Rivest, the bill's co-sponsor in the Red Chamber.

Rivest, a Quebec lawyer appointed to the Senate by former Progressive Conservative Prime Minister Brian Mulroney, says the fate of private member's bill C-232 is uncertain — an assessment echoed by five other parliamentarians contacted by *The Lawyers Weekly*.

"It will be very close, because all the Liberals would be supportive and myself, as an independent, will vote in favour," Rivest said. But "if two or three of the [five] independent senators vote against the bill, it will be very difficult to get the majority."

Rivest argues the effect of the bill has already been significant, however, since it has triggered a



Conservative Senator John Wallace at his office on Parliament Hill. He does not think the time is right for the bill.

vigorous political and public debate over whether Supreme Court nominees should now routinely be functionally bilingual when they are appointed.

Such a requirement would have shut out many eminent jur-

ists — including Chief Justice Beverley McLachlin who hails from Alberta and became functionally bilingual by studying French after she joined the court.

Notwithstanding the many outstanding jurists who have been uni-

lingual, Rivest predicts there will be no more "free passes" in Parliament for governments which name unilingual candidates to the high court (e.g. when Prime Minister Stephen Harper nominated Mani-

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New Quebec immigration regulations will have cross-Canada impact

LUIS MILLAN MONTREAL

More than six years after the federal government cracked down on rogue immigration consultants, the Quebec government is following suit after it recently published draft regulations that will allow only lawyers, notaries and immigration consultants certified by the Canadian Society of Immigration Consultants (CSIC) to represent clients in provincial immigration cases.

But the proposed regulations, though widely lauded for closing a loophole that enabled virtually anyone to pass themselves off as an immigration consultant, have raised concerns among immigration practitioners and the Barreau du Québec.

Under the new regulations, which are expected to be in force

by this June, consultants will have to be members in good standing of the CSIC, function fluently in French, have an office in Quebec, pass an exam on Quebec's immigration rules and have not breached the province's immigration laws in the previous three years. Also, in a bid to thwart so-called unlicensed ghost agents, immigrants will be required to divulge the name of their immigration consultant.

But while members of the Barreau and the Chambre des notaires du Québec are exempted from the new requirements, the draft regulations are silent over the fate of lawyers from outside the province, prompting immigration lawyer Stephen Green to assert that the regulations "as currently worded" may have the unintended effect of "denying applicants their choice of legal counsel."

Toronto immigration lawyer Michael Niren concurs, asserting that the new regulations may lead to "unnecessary hurdles" for experienced licensed immigration lawyers who practise outside of Quebec.

"I don't speak a word in French, don't practise in Quebec — and yet we have successfully helped many, many applicants over the past decade navigate through the Quebec immigration system," said Niren of Niren and Associ-

ates. "The whole idea behind it is done in good faith, it's just that the way they're doing it is a little bit too restrictive."

It appears that lawyers from outside Quebec who are authorized to practise law within Quebec but who are not strictly speaking members of the Barreau, will have to apply for special authorization in order to assist clients wishing to emigrate to the province — even though Quebec signed the National Mobility Agreement in 2002 and Canada's law societies recently signed the Quebec Mobility Agreement to ensure further mobility of lawyers in Quebec and common law jurisdictions.

The Barreau may provide out-of-province lawyers, on a temporary basis, special authorization to practise law in Quebec for a specific case if they meet certain

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Green



Niren

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NEWS

Immigration should fall in the domain of jurists: Barreau

Consultants

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conditions, namely, if they provide a certificate of good standing from the bar of which the lawyer is a member and provide proof of professional liability insurance showing that the lawyer is insured for services provided in Quebec.

"We commend the Quebec government for trying to regulate immigration consultants, but the difficulty is that the regulation, perhaps in error, seems to exclude lawyers outside of Quebec who are not licensed to practise in Quebec," said Green, chair of the national citizenship and immigration law section of the Canadian Bar Association (CBA). "To obtain special authorization is cumbersome and could lead to unfairness with respect to immigration practitioners."

In a written submission on behalf of the Canadian Bar Association (CBA) to the Quebec Minister of Immigration and Cultural Communities, Green points out

that the regulation, if left unchanged, would "conflict" with accords such as the National Mobility Agreement, the Quebec Mobility Agreement and the Agreement on Internal Trade that are attempting to eliminate competition and trade barriers among all legal professionals across Canada. The CBA proposes that the regulation be amended to exclude not only Quebec lawyers and notaries, but also members in good standing of the law society of a Canadian province or territory who is authorized to provide legal services in Quebec.

The Barreau du Québec has heard the concerns emanating from lawyers outside the province, and will shortly convene to discuss the matter, said Gilles Ouimet, the Barreau's vice-president. While at first glance the CBA's recommendation appears to be sensible, Ouimet said the Barreau will wait until its executive committee convenes before taking an official stance.

"Up until this question arose,

we never gave it thought," admitted Ouimet, who is going to become the Barreau's new batonnier this June. "But now that we have been alerted to the problems facing out-of-province lawyers, we are going to deliberate over the issue. The Barreau recently signed a mobility agreement, and we resolutely intend to respect it."

Though wholly supportive of the initiative and for the most part satisfied with the drafting of the new regulations, the Barreau made a series of recommendations urging the Minister to tighten up the regulations. Besides beefing up the language requirements and clearly spelling out the minimum professional liability insurance requirements, the Barreau recommends that the regulations clearly outline the penalties consultants will face if they transgress the rules.

Notably absent, however, from the recommendations was the Barreau's long-standing position that only jurists should be authorized to provide legal representation to persons in immigration

matters, partly on the basis that the regulation of professions falls under the exclusive constitutional jurisdiction of the provinces.

"We've asked the government for years now to introduce new regulations to put a bit of order in a sector that unfortunately has been plagued with problems, with a clientele that is particularly vulnerable," said Ouimet. "The Barreau's position has always been that this should be a sector that should fall exclusively in the domain of jurists, be it a notary or a lawyer from Quebec or the rest of Canada."

That is a position that has taken John Ryan chairman and acting chief executive officer of CSIC, by surprise, particularly since the two



Ryan

organizations recently held a face-to-face meeting a couple of months ago.

Alluding to *Law Society of British Columbia v. Mangat*,

[2001] 3 S.C.R. 113, a Supreme Court of Canada decision that held that a foreign national can choose counsel of their choice, even a non-lawyer, in matters relating to immigration, Ryan said that "at the end of the day, be it the Barreau, law societies across Canada, or us, our mandate is to protect the public. I'm certainly looking forward to working with the Barreau to try and narrow the issues we have seen in Quebec."

Established in 2004, CSIC is a professional regulatory body for immigration consultants in Canada whose mandate is to protect consumers of immigration consulting services.

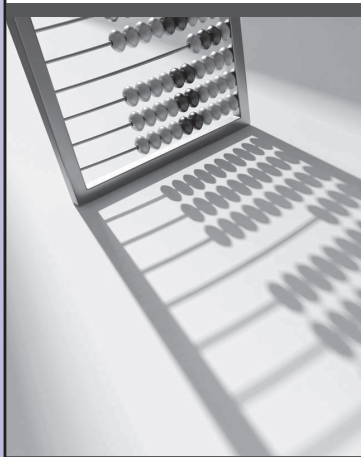
Noting that well over 1,900 ghost agents operate in Canada, in flagrant contravention of s. 13.1(1) of the *Immigration And Refugee Protection Act*, Ryan says that the new Quebec regulations are a "long time coming." ■

Quotes of Gilles Ouimet were translated from French by the author.

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