The Supreme Court rules: Sorry, Your Honour N.B. Lieutenant Governor. You must speak French!

June 12, 2026

On June 12, 2026, the Supreme Court of Canada issued its decision in *Société de l'Acadie du Nouveau-Brunswick v. Canada (Prime Minister)*, 2026 SCC 22, confirming that the Lieutenant Governor of New Brunswick must be functionally bilingual.

In this decision, the Court interpreted subsection 16(2) of the *Canadian Charter of Rights and Freedoms*, which provides that English and French are the official languages of New Brunswick and have equality of status and equal rights and privileges as to their use in all institutions of the legislature and government of New Brunswick. The majority of the Court concluded that subsection 16(2) enshrines substantive equality for the two official languages within New Brunswick's institutions, and that the position of Lieutenant Governor is a unipersonal and highly symbolic institution. The appointment of a unilingual English-speaker to this position relegates French to a secondary status and, on a symbolic level, undermines the rights of the province's Francophones. It sends the message that their language and identity are not fully recognized and revives a sense of exclusion that the Constitution seeks to remedy. The appointment of a unilingual English-speaker to the position of Lieutenant Governor in New Brunswick therefore violates subsection 16(2) of the *Charter*.

Furthermore, although the case concerns the regime of language rights in New Brunswick, this interpretation could give rise to a constitutional obligation for other federal public offices holders to be bilingual.

Background

In 2019, the Governor in Council appointed Brenda Murphy to the position of Lieutenant Governor of New Brunswick. Ms. Murphy was not bilingual at the time of her appointment and did not become bilingual during her term. The Société de l'Acadie du Nouveau-Brunswick (SANB) challenged this appointment, arguing that the appointment of a unilingual English-speaker to the position of Lieutenant Governor violated the language requirements set forth in the *Charter*.

Judicial history

At trial, the New Brunswick Court of Queen's Bench found that the appointment violated the *Charter*. The trial judge held that, given the Lieutenant Governor's special role as the province's head of state, substantive equality between linguistic communities required that the Lieutenant Governor be able to perform their duties in both official languages.

The New Brunswick Court of Appeal reversed that decision and concluded that, though it is desirable for a Lieutenant Governor to be bilingual, the *Charter* does not require it.

The Supreme Court of Canada allowed the appeal.

Majority decision: The appointment of a unilingual Lieutenant Governor in New Brunswick violates the *Charter*

Writing for the majority, Chief Justice Wagner noted that language rights must be interpreted broadly and liberally, with a view to ensuring they are fully realized. Language rights must always be interpreted in a manner consistent with the preservation and development of official language communities, a principle that is now well established in case law and reaffirmed by the Supreme Court in this decision.

Subsection 16(2) of the *Charter* confers equal status on English and French as to their use in all institutions of the legislature and government of New Brunswick. According to the Court, this is not merely a statement of principle, but rather a mandatory guarantee with its own independent scope. The Court therefore called for substantive equality between French and English in New Brunswick's government institutions.

The majority of the Court concluded that this institutional equality has two dimensions:

- a functional dimension ensuring access to public services of equal quality in both languages; and
- a symbolic dimension ensuring that no hierarchy exists between the languages within an institution and in the provision of services.

The majority also highlighted section 16.1, which protects the development of linguistic communities in light of New Brunswick's unique historical context.

The majority therefore concluded that the appointment of a unilingual Lieutenant Governor is inconsistent with *Charter* requirements. Although New Brunswick's language regime is based on the bilingualism of its institutions rather than individuals, this distinction does not apply when the institution consists of a single person and is inseparable from that person, as is the case with the Lieutenant Governor. In such a situation, the equality of status of the official languages requires that the office holder be able to understand and express themselves in both official languages.

The majority emphasized that appointing a unilingual person to the office of Lieutenant Governor has the effect of relegating one of the official languages to a secondary

status. Due to the office's symbolic dimension, this effect undermines Francophones' rights.

Despite this finding, the majority chose not to invalidate the appointment. Rather, it chose to issue a declaratory judgment, which it deemed to be an appropriate remedy to clarify the law without interfering with a critical constitutional institution.

Dissenting opinion

According to Justices Karakatsanis, Rowe, and Jamal, nothing in the *Charter* requires the Lieutenant Governor of New Brunswick to be personally bilingual. They argued that subsection 16(2) serves a declaratory and interpretive function and cannot be used to create new, independent constitutional obligations.

The dissenting justices noted that interpreting subsection 16(2) of the *Charter* as requiring the Lieutenant Governor of New Brunswick to be personally bilingual could have far-reaching implications that might extend to federal public offices holders, including the Governor General of Canada, the Prime Minister of Canada, and federal Cabinet ministers. They emphasized that this could clash with the conventions of responsible government and the structure of parliamentary democracy.

Furthermore, they argued that the proposed interpretation would be challenging to apply in practice due to the lack of clear criteria for defining the level of bilingualism required to achieve the intended objectives, such as personifying the equality of English and French and fostering the Francophone minority's sense of belonging to New Brunswick society. This interpretation could also subject the personal language proficiency of public officials to judicial scrutiny. Such a question exceeds the institutional competence and role of the courts.

Conclusion

This decision marks an important milestone for language rights in New Brunswick. It highlights a conception of language rights that is both institutional and symbolic, with the Court emphasizing that equality extends beyond access to services and also requires genuine recognition of both languages within institutions. The decision is also consistent with the Supreme Court's pattern of interpreting language rights broadly and liberally.

The majority noted that the scope of this decision is limited to the appointment of the Lieutenant Governor of New Brunswick. As the dissenting justices pointed out, however, the decision could have implications outside of New Brunswick. It will be interesting to see how this decision is interpreted and applied at the federal level, and whether it gives rise to a constitutional obligation for other federal public offices holders to be bilingual. Another consideration is to what extent the personal characteristics of an individual within an institution impact language status, and whether this will affect language rights in other contexts.

For those interested in the standard of review, the Court adopted the correctness standard as submitted by the parties. That said, the Court seemed to suggest it would have been possible to file a petition for judicial review, which may have given rise to the reasonableness standard and the Doré framework.

The Supreme Court will have the opportunity to revisit the topic of language rights in *Forum des maires de la Péninsule acadienne Inc. v. Ministry of Justice and Public Security*, for which leave to appeal was granted on May 28, 2026.

By

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