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Chair

Mr. Pablo Rodriguez

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● (1545)

[*Translation*]

The Chair (Mr. Pablo Rodriguez (Honoré-Mercier, Lib.)): Good afternoon, everyone, and welcome to this meeting, which was convened shortly after our meeting yesterday morning. Thank you for answering the call.

We'll have a special working session today. It will concern Bill S-3. We have with us representatives from the Department of Canadian Heritage. They are prepared to explain certain aspects of the bill as well as the government's amendments. I believe a number of you have amendments to propose. You must understand that this is taking place in a context in which an election may be called this week. So it's possible the bill won't go any further. However, we can start discussing it, in view of its importance. If we can't conclude this study today, we can only observe that we'll have to continue our proceedings later, if there isn't an election. If an election is called, we'll act accordingly.

Mr. Bergeron.

Mr. Stéphane Bergeron (Verchères—Les Patriotes, BQ): Mr. Chairman, I believe you can see that we've had some minor discussions before the committee's proceedings began. I'd just like to have some clarification from you. I see that the clause-by-clause consideration of Bill S-3 is on the agenda.

However, it appears there's a general concern among committee members, who don't want to proceed hastily with the clause-by-clause consideration of this bill for the simple reason that, in the past two weeks, we've sent invitations to a certain number of groups across Canada to hear their views on the question. Those views will definitely be invaluable to us; they'll help us form an idea of the position we should adopt on this bill. I wouldn't want us to precipitate passage of the bill without even hearing from our witnesses.

So how are we going to proceed in view of that, Mr. Chairman?

The Chair: Thank you.

I in fact share your view, and I believe there's a consensus here on this. Despite what's stated in the notice of meeting, the committee is obviously master of its own agenda. We can decide not to conduct the clause-by-clause consideration of the bill today. So I suggest we begin the discussion in both an informal and formal way. We could table the amendments to determine their admissibility. Then we could discuss them to see whether there's a consensus or potential solutions.

As I mentioned earlier, if there's no election, we'll then proceed with the hearing of witnesses and the clause-by-clause consideration at the appropriate time.

All right?

Mr. Stéphane Bergeron: That's fine with me, Mr. Chairman.

The Chair: Mr. Godin.

Mr. Yvon Godin (Acadie—Bathurst, NDP): Mr. Chairman, as my colleague Mr. Bergeron said, there is a consensus on this. I would simply like to express my fear of acting too quickly. It will be recalled that, when Senator Gauthier appeared before us, he said that the bill wasn't perfect and that he hoped we would study it. Since I'm not an expert in the matter, I'd like people to come and testify before our committee because we can't afford to pass a bill that the minority communities condemn because it would weaken the rights they have acquired as a result of the cases they have won in the courts.

I'd like to hear from people like Professor Michel Doucet, of the University of Moncton, who has fought and won many cases in the courts of New Brunswick. I'd like the committee to be able to benefit from his expertise. I have a great deal of sympathy for Mr. Boudria, who would have liked the bill to go through all the stages quickly, but, at the same time, it's not a good thing to buy a pig in a poke. We're not here to do that. So I'd like us to consider the bill first.

The Chair: Thank you, Mr. Godin.

I believe that's consistent with what was previously said. So we won't proceed any faster than necessary; we won't get ahead of ourselves. We'll very definitely hear witnesses, if there isn't an election, and we'll conduct a clause-by-clause study at the appropriate time, even if there's a risk that an election will be called tomorrow or the next day. In that case, Bill S-3 will die on the Order Paper.

So there's a consensus on the way to proceed.

I'm going to turn the floor over to Mr. Simard. We can start discussing the amendments. Obviously, each of you has read the bill, which is very simple in itself: its purpose is to add two subsections to a section and to make two minor amendments in two other places.

I turn the floor over to Mr. Simard, who can tell you briefly about the amendments.

Hon. Raymond Simard (Saint Boniface, Lib.): Mr. Chairman, things are changing from one minute to the next.

We indeed came here to see whether there was a chance of referring the bill back to the Senate tomorrow. One of our colleagues encouraged us to do so. Obviously, it appears there are concerns among the members of all parties. We're afraid that, if we rush, we'll pass a somewhat diluted bill, a spoiled bill, that might not be approved of by the communities. Indeed, if we must do something, it seems to me we should do it on the basis of a consensus or with the approval of the communities we represent.

In view of new developments, I wonder whether it would be appropriate to request the consent of the other committee members to adjourn the meeting. We've already distributed the proposed amendments to the other committee members.

We normally meet with witnesses before moving amendments. We wanted to move quickly; we wanted to move the matter forward. Now everything's changing. So I think we should really consider what is happening. It might not be logical to move amendments publicly at this time then subsequently to send for witnesses because they would already know the proposed amendments.

I don't know what my colleagues from the other parties think.

● (1550)

The Chair: Mr. Godin.

Mr. Yvon Godin: Mr. Chairman, I think that if there are any amendments to come, it might be a good idea for experts to see them. They could thus tell us whether they're good amendments.

This isn't a war to determine who'll move amendments and who won't. Some people have ideas to submit. That would enable us to know what's on the table. Normally it's true that amendments are not proposed in advance because we listen to our experts, but, since some people have already prepared amendments, we could ask ourselves the question whether, for example, the Bloc Québecois amendment is really what we need in the bill to satisfy the Bloc. Experts will have the opportunity to see that. That's not a problem for me.

The Chair: Mr. Lauzon.

Mr. Guy Lauzon (Stormont—Dundas—South Glengarry, CPC): That doesn't happen very often, but I agree with Mr. Godin.

The Chair: That's a new alliance.

Mr. Guy Lauzon: I believe the Bloc Québecois has one or two amendments to move. We too have a few minor amendments.

Do you have any other amendments?

Hon. Raymond Simard: We don't have them yet.

Mr. Guy Lauzon: It would be good to study them all together. That way, perhaps we could make a better bill.

The Chair: Although it wouldn't facilitate matters for the Chair, I propose we hold a formal and informal discussion on the amendments. Some are already tabled; others will be as well. Then we can see whether there's consensus or a way of agreeing. Perhaps that will be very easy. We wouldn't necessarily make any changes today, and we would definitely not adopt it, because we should hear from witnesses before moving on to a more elaborate process of thinking and analysis.

I take the liberty of making that suggestion. I'm going to request your cooperation, of course, because otherwise I won't have any parameters to chair the meeting. Usually a meeting is either informal or formal. The distinction is not necessarily clear either. I think we can proceed in this manner in a collegial spirit, as we did moreover when we decided to meet today and to speed up the meeting. The fact that we're meeting already demonstrates at the outset the importance we attach to Bill S-3 and the minority communities.

Mr. Simard, do you want to add something?

Hon. Raymond Simard: The committee is master of its own agenda. If you promise to move forward, I'm ready to do that. However, you have to consider the fact that Bill S-3 is very important for the government and for the Standing Committee on Official Languages, which has always done a good job of cooperating. I think this bill is important for everyone here.

The question is more whether the witnesses will have an impact on the amendments. That's a point that should be considered. If we table amendments, we'll be acting a bit in reverse, but if people are ready to move forward, we can table the amendments.

The Chair: I don't think there's any reason to discuss the letter of the amendments, but rather their spirit.

In view of the situation in which we find ourselves, perhaps you could speak to the spirit of your amendments. We won't get hung up on words because they may change depending on one testimony or another, of course. However, perhaps we could agree on certain principles, certain directions, which would then enable us — if there isn't an election — to work more easily and to speed up the process once we've heard from the witnesses.

Ms. Boivin.

Ms. Françoise Boivin (Gatineau, Lib.): If I understand correctly, you'd like those who've moved amendments to explain them to you briefly, without going into all the details. Then we could continue preparing the witness list. That's what I understand.

The Chair: Yes, you're right, because there won't be any adoption today or any subamendments, because we won't vote on either one if we want to be consistent with what we said a little earlier. However, if each of us or if each party explains the spirit and scope of their amendments and the direction they intend to go, each of us will then be able to better understand the objectives of the others. That will subsequently facilitate the work.

Mr. Lauzon, does that suit you?

Mr. Guy Lauzon: Yes.

The Chair: Mr. André?

Mr. Guy André (Berthier—Maskinongé, BQ): Yes, that's fine.

The Chair: Mr. Simard?

Hon. Raymond Simard: Yes, that's all right.

May I speak?

The Chair: Go ahead.

Hon. Raymond Simard: I've asked a few representatives of the Department of Canadian Heritage and the Privy Council Office to accompany us and to clarify certain things.

The amendments are very recent. I read them a few hours ago.

Mr. Stéphane Bergeron: Lucky man!

Hon. Raymond Simard: Very lucky. Don't hesitate to ask questions if you want clarification.

Perhaps our witnesses could introduce themselves, Mr. Chairman.

The Chair: Absolutely.

Hon. Raymond Simard: Mr. Tremblay.

The Chair: Please go ahead.

Mr. Marc Tremblay (General Counsel and Director, Official Languages Law Group, Department of Justice): My name is Marc Tremblay, General Counsel and Director of the Official Languages Law Group at the Department of Justice Canada.

● (1555)

Mr. Michel Francoeur (General Counsel and Director, Legal Services, Department of Canadian Heritage): My name is Michel Francoeur, General Counsel and Director of Legal Services at the Department of Canadian Heritage.

Mr. Hubert Lussier (Director General, Official Languages Support Programs, Department of Canadian Heritage): My name is Hubert Lussier, Director General of the Official Languages Support Programs at the Department of Canadian Heritage.

The Chair: Thank you. Welcome.

Mr. Simard.

Hon. Raymond Simard: Thank you very much, Mr. Chairman.

The purpose of our first amendment is to delete subsections 2 and 3 proposed in the first clause of the bill, which amends section 41 of the Official Languages Act, and to replace them.

As proposed, those subsections constitute an obligation of result. We prefer an obligation of process. We prefer to have a process in place under which the government would be responsible for meeting certain terms and conditions to achieve results.

One of the processes in place would be to determine the impact of each policy and program on implementation of the commitment.

We'll also have to consult the organizations concerned, in particular those representing the Francophone and Anglophone minorities of Canada, if they see fit, and to take into account the determination made under paragraph (a) and the results of any consultation conducted under paragraph (b).

The idea is essentially to change the obligation of result, which is very hard to defend. If we have agreements with the provinces, we're concerned about having to ask the provinces to provide us with results. We think that a process engages the provinces to a lesser degree. In fact, it virtually doesn't engage them at all.

The early childhood agreements are an example of this. In Manitoba, for example, we've signed an agreement with the province under which the provincial government has agreed that funds would be allocated to the Francophone communities. In other provinces, this is less strong.

These are really agreements. This is the process we followed for the funding for early childhood, day care centres, under which the provinces have individual agreements. We're committed at various levels.

However, we're concerned about what's being proposed in Senator Gauthier's Bill S-3. It would require us to show results, and we find that a bit much. The idea would be to replace results with a process.

The Chair: All right. So it would be an obligation to really try.

Hon. Raymond Simard: I'll give you an example where that would apply. I've already spoken here in committee about a project back home in which the Francophone communities got organized to obtain broadband services. However, people weren't consulted at all.

Under the process proposed here, the minority communities would have to be consulted to determine the impact of Industry Canada allocating funds to communities without considering what's going on in the Francophone communities.

I feel that forces the government to follow a process. I think this is important. The idea isn't just to consult the organizations appropriately; it's also to consider consultation findings. We nevertheless feel this is very powerful, that it's very strong and that it could solve the problem of results that have to be achieved with the provinces.

The Chair: All right.

Does one of the witnesses have a comment to add?

Hon. Raymond Simard: I think it's quite clear.

The Chair: It's quite clear.

Could we have an informal discussion on this point?

Mr. André.

Mr. Guy André: I have a brief comment in reaction to Mr. Simard's argument.

Bill S-3 was introduced for certain Francophone communities. I've heard that they had big expectations with regard to remedies and access to more services offered by their province.

If we set aside the issue of obligation of result, will that somewhat narrow the scope, the communities' right to remedy?

Hon. Raymond Simard: I think it's one way of replacing a system that might be too hard to implement. We're talking about provincial jurisdictions. That's a concern for us because we know it was a major concern for you during the debates. All right?

We think this is a compromise. We think it would be difficult if it were based on results, if, when signing agreements with the provinces, we also had to ask them to meet the commitments to the minority communities and to provide us with the results. We don't think that will be possible.

In our mind, this is a compromise in order to give due regard to the legal jurisdiction of the provinces and the federal government.

● (1600)

The Chair: Do you have an example to illustrate that?

Mr. Michel Francoeur: Mr. Simard is comparing the obligations of result with the obligations of process. Subsection (2) proposed under clause 1 of Bill S-3 reads:

(2) Within the scope of their functions, duties and powers, federal institutions shall ensure that positive measures are taken for the ongoing and effective advancement and implementation of the Government of Canada's commitments under subsection (1).

The obligation to take measures to ensure implementation of the commitment is the first amendment.

A bit further on, clause 2 of Bill S-3 proposes an amendment, and the word “appropriate” is underscored. The sentence reads:

43.(1) The Minister of Canadian Heritage shall take appropriate measures to advance the equality of status and use of English and French in Canadian society [...]

Instead of the saying “shall take appropriate measures”, subsection 43 of the current version of the Official Languages Act states “shall take such measures”. That's more discretionary, less restrictive language.

This creates the following problem: the obligation the Minister of Canadian Heritage will have to ensure advancement toward equality of English and French in Canadian society will be extremely hard to meet and achieve without the cooperation of the other levels of government, that is the provincial, territorial and municipal governments, because equality of status and use of English and French in Canadian society covers Canadian society as a whole.

We think the Minister of Canadian Heritage is unlikely to be able to achieve this result without the provinces, territories, municipalities, businesses and various associations that have contribution agreements with the government, that is without these third parties agreeing to and cooperating under language clauses, the language requirements in the agreements between the Minister of Canadian Heritage, other federal institutions and other levels of government.

In other words, without language clauses or official language advancement mechanisms in the agreements between the federal and other levels of government, without airtight clauses, the federal institutions would likely find themselves in a situation in which they wouldn't be able to sign such agreements. Thus, in a legal action based on Bill S-3 and, more particularly, section 77 of the Official Languages Act, a court of law might find that the federal institution or the Minister of Canadian Heritage is in violation of that obligation to ensure the advancement of French and English in Canadian society.

The Chair: That would create some tension with the provinces.

Mr. Lauzon.

Mr. Guy Lauzon: Have you received our amendment?

Hon. Raymond Simard: No, unless we've received it today.

Mr. Guy Lauzon: Perhaps it would solve the section 41 problem. You don't have it?

Hon. Raymond Simard: No.

Mr. Guy Lauzon: It's in the batch of documents. It's on the first page. Would it solve this problem?

● (1605)

Hon. Raymond Simard: As regards process, Mr. Chairman, I'm not sure we want to start moving forward. Mr. Lauzon's motion reads as follows: 41.(1) With due regard to the powers conferred on the provinces, the Government of Canada is committed to [...]

This is the objective of Bill S-3. However, I think that if we keep it as it was introduced by Senator Gauthier, it will be very hard to have due regard to the powers of the provinces. I don't know whether my Bloc Québecois colleagues agree with that.

Mr. Guy Lauzon: We state in the first sentence: “With due regard to the powers conferred on the provinces”. That resolves the matter.

Hon. Raymond Simard: It seems to me matters are more complicated. As Mr. Francoeur said earlier, getting involved in enhancing the vitality of the Francophone communities is really going very far.

Mr. Guy Lauzon: It does have to go quite far.

Mr. Stéphane Bergeron: You replaced the word “such” with the word “appropriate”.

Mr. Guy André: The fact is that in this way, we're not taking appropriate measures. The demand from the Francophone communities was the demand from the Francophone communities.

Mr. Guy Lauzon: Can it be stated?

The Chair: All right.

Mr. Francoeur.

Mr. Michel Francoeur: It is important to state that the enforceability of Part VII of the act proposed under Bill S-3 is not altered by the amendments introduced by Mr. Simard. Clause 3 of Bill S-3, which provides for an amendment to subsection 77(1) of the existing act, reads as follows: 77.(1) Any person who has made a complaint to the Commissioner in respect of a right or duty under sections 4 to 7, sections 10 to 13 or Parts IV, V or VII [...]

The words “or VII” are underlined. Consequently, what Bill S-3 adds is that Part VII will henceforth be clearly and unambiguously enforceable. In other words, it will be possible to file suit in Federal Court. This amendment proposed under Bill S-3 is in no way affected by the proposals made by Mr. Simard.

Accordingly, even though it is proposed that the obligations of result under Bill S-3 be transformed into obligations of process, the latter are still enforceable. In other words, the new vocabulary proposed in the context of Mr. Simard's amendment motions would be enforceable. The communities would be able to file suit in Federal Court against a federal institution on the ground that that institution has not met the obligations of process newly provided for under the act, that is under subsection 41(2), or subsection 43(1) in the case of the Minister of Canadian Heritage.

The Chair: Mr. Bergeron.

Mr. Stéphane Bergeron: Mr. Chairman, I'm not a lawyer. So it's possible that certain notions may escape me. I admit that my remarks are more those of a layman. Nevertheless, regardless of whether the terms are legal or political, everyone here knows what an obligation of result means. However, I don't follow you at all when you refer to an obligation of process. It seems to me there are a lot of processes in the federal public service. Do we have to implement new ones? Explain to me clearly what this is about.

In addition to asking you what an obligation of process means and what it eats in winter, I'd like to know whether results are related to that obligation of process. I get the impression that, with this notion of process, we're completely discarding the concept of result.

Will we be implementing processes simply for the sake of doing so, regardless of the results that follow. I'd like there to be results. I think the communities expect results. They don't just want processes. This is like saying we're going to solve a problem by establishing a committee to study it.

The Chair: Before you answer that question, can we replace the word “process” with the word “means”?

Mr. Michel Francoeur: Yes.

● (1610)

The Chair: It's equivalent?

Mr. Michel Francoeur: Absolutely.

The Chair: All right. Over to you.

Mr. Michel Francoeur: Obligation of means and obligation of process are the same idea.

As regards obligations of means, if you prefer, they are expressly provided for in the amendments — I had said motions in amendment, but these are amendments — presented by Mr. Simard. On the first page of the amendments moved by Mr. Simard, you'll find the new text that would replace the subsection 41(2) proposed in Bill S-3. It would read as follows:

> (2) In order to implement the commitments under subsection (1), [...]

These are obviously the commitments already provided for under section 41 of the Official Languages Act.

> [...] every federal institution set out in the schedule [...]

We can come back in a moment to the question of the institutions set out in the schedule.

> [...] shall ensure that measures are taken in the development and review of any of its policies and programs to
>
> (a) determine whether the policy or program impacts on the implementation of the commitments;
>
> (b) consult any interested organizations, including organizations representing English and French linguistic minority communities in Canada, if the federal institution considers it appropriate in the circumstances; and
>
> (c) consider the determination made under paragraph (a) [...]

In other words, the determination of impact.

> [...] and the results of any consultation undertaken under paragraph (b).

These are means measures that would be included in the act and that every federal institution would have an obligation to take. Where these means measures were not taken, the communities, citizens and individuals would be entitled to file suit in Federal Court for what the court finds is fair and appropriate remedy for the violation of or failure to meet these obligations of means or process.

The Chair: Thank you.

Mr. Lauzon.

Mr. Guy Lauzon: I'd like to ask Mr. Francoeur whether he thinks my amendment can address the situation raised by Mr. Simard.

Mr. Michel Francoeur: I unfortunately don't have a copy of the amendment you're moving.

The Chair: Can someone give him a copy, please?

In fact, it reads as follows:

> 41.(1) With due regard to the powers conferred on the provinces, the Government of Quebec is committed to

I believe the important element for you is “With due regard to the powers conferred on the provinces”.

Mr. Guy Lauzon: As you said, that's consistent with the spirit of what we're trying to do. The spirit of what we're trying to do for the minority communities must be apparent.

The Chair: Mr. Francoeur.

Mr. Michel Francoeur: Thank you very much.

Ms. Françoise Boivin: I need some clarification. I'm not sure I understand. Am I to understand that the purpose of amendment CPC-1 is strictly to add the expression “With due regard to the powers conferred on the provinces” to section 41?

Mr. Stéphane Bergeron: I have a point of order, Mr. Chairman.

Before moving on to the amendment from our Conservative colleague, couldn't we come to a final understanding of the one we were talking about a few seconds ago?

The Chair: That's not a problem for me, but, as I told you at the start of the meeting, it's quite hard to abide by the rules today, because the meeting is neither formal nor informal.

Mr. Stéphane Bergeron: I get the impression we're moving on to another question, whereas I would like to ask Mr. Francoeur for clarification with regard to the one I just asked him.

Mr. Guy Lauzon: Mr. Bergeron, the discussion is focusing somewhat on both amendments. As the Chair said, this is consistent with what we're trying to do. Perhaps we'll take a bit from both amendments, if Mr. Francoeur can take the best of both.

The Chair: I believe Mr. Francoeur has that power.

Mr. Stéphane Bergeron: I believe Mr. Francoeur will take what...

Mr. Guy Lauzon: Yes.

The Chair: Wait. We're going to settle this question, then he'll talk about the spirit of your amendment.

Mr. Francoeur.

Mr. Michel Francoeur: May I continue my answer to the member's question? Very well.

First, there is this amendment to subsection 43(1), which states the measures of means that the federal institutions must take in the context of the development of each of their programs and policies. That concerns all federal institutions. Every time a federal institution is in a program or policy development or review process, it must, in all cases, determine whether that program or policy impacts on the government's commitments to enhance the vitality of the communities, assist their development and advance official languages.

Second, in developing and reviewing its programs and policies, every federal institution shall consult any interested organizations, including organizations representing the minority communities, if the federal institution considers it appropriate.

Third, once again, every federal institution, in developing and reviewing its programs and policies, shall consider the impacts determined under paragraph (a) and the results of the consultations regarding the project or program developed or reviewed.

Then, if you turn to the second page, at the very end of amendment G-2, in the last paragraph, you'll see: "Subsection 43(2) of the Act is replaced by the following:" I don't know whether each of you has a copy of the Official Languages Act. That may help in understanding the proposed amendment. I therefore invite you to look at subsection 43(2), which follows subsection 43(1). The latter reads as follows:

> 43.(1) The Minister of Canadian Heritage shall take such measures as that Minister considers appropriate to advance [...]

There you'll find a list of measures that may be taken by the Minister of Canadian Heritage to: "(a) enhance the vitality [...]; (b) encourage and support the learning of English and French [...]", etc.

Then, subsection (2) of the present act provides:

> (2) The Minister of Canadian Heritage shall take such measures as that Minister considers appropriate to ensure public consultation in the development of policies and review of programs relating to the advancement and the equality of status and use of English and French in Canadian society.

What is proposed in the motions introduced by Mr. Simard is that this subsection be amended so that it has virtually the same meaning as the amendments proposed to subsection 41(2).

So I'll take the liberty of reading the second motion, which appears on page 2. You'll see that the text is very similar to the present subsection 43(2) in the Official Languages Act. At the start of the sentence, at the start of the subsection, there is added: "In order to perform the duty under subsection (1)", referring here to the obligation of the Minister of Canadian Heritage to take measures to ensure "the advancement and the equality of status and use of English and French in Canadian society". That obligation is enforceable, which is to say that it may be the subject of an action in Federal Court, if the bill is passed as it stands. In order to meet that obligation, the Minister of Canadian Heritage takes measures that the minister considers appropriate to ensure, first, that the public is consulted on the development and review of policies and programs relating to the advancement of English and French and, second, that the results of those consultations are considered.

So we find ourselves amending subsection 43(2) to make it clearer. To improve it, we're adding an obligation to consider the consultations conducted in the development of the programs and policies of the Minister of Canadian Heritage. However, we're aware of the fact that the Minister of Canadian Heritage has a very particular mandate under this part. The minister is specifically responsible under subsection 43(1) for ensuring the advancement of English and French. The act contains a list of proposed measures.

● (1615)

Consequently, in the development and review of policies and programs, the minister must not only consult, but also take those consultations into consideration. If that is not done, if the communities or individuals feel that obligation has not been met, that the measures of means, the measures of process have not been taken, a citizen may seek remedy against the federal institution.

The Chair: Thank you.

Ms. Boivin.

Mr. Stéphane Bergeron: May I finally speak?

The Chair: If you wish, yes.

Ms. Françoise Boivin: That was further to your remarks earlier.

Mr. Marc Godbout (Ottawa—Orléans, Lib.): I thought that was over.

Mr. Stéphane Bergeron: I had raised my hand. I was put down after Mr. Francoeur.

● (1620)

The Chair: I thought your name had been struck out. Sorry.

Mr. Stéphane Bergeron: I may have two questions on that. If I correctly understood your explanation, your presentation, what would become enforceable under the amendment — in fact, all of Part VII would be, but I'll stick to your first amendment — are the paragraphs under subclause 1(2) proposed in the amendment.

Mr. Michel Francoeur: They are paragraphs 1(2)(a), (b) and (c).

Mr. Stéphane Bergeron: That's it.

Mr. Michel Francoeur: In fact, all the sections of Part VII, from 41 to 45, would be enforceable. As for the measures of means or process that are proposed, they're the ones stated in paragraphs (a), (b) and (c).

Mr. Stéphane Bergeron: Now, I'm putting myself in the shoes of a community such as the Francophone community of British Columbia, which complains that the Official Languages Act is not being enforced in a particular department. Could it come up against an argument like the following?

"We have determined the impact of each policy. Consequently, we are complying with the provisions of the act. We have met our obligations and the obligation is not one of result, but rather an obligation to put a process in place. So we've also followed the process. We have determined the impact of each policy or program on the implementation of the commitment. Consequently, we can't be found guilty, since we have in fact put the process in place. In accordance with paragraph (a), we have determined the impact of each policy and program on implementation of the commitment."

Could that kind of argument be made against a community?

Mr. Marc Tremblay: I'm going to let my colleague swallow a mouthful of water and give you an example — in response to an earlier request — of a situation that shows that this kind of legal regime is far from unusual. In fact, it may be found in all federal and provincial legislation and regulations.

We're talking about administrative law, about the principles that are applicable to it. To illustrate that law in linguistic terms, we can refer to a case cited by everyone as an example of a major victory for the Canadian Francophone community, the Montfort Hospital case.

What happened in that case? The provincial government made a decision without meeting the procedural and consideration requirements contained in its legislation. The fact that those requirements were included in the provincial legislation enabled the minority to gain access to the courts and to have the decision, which had been made without appropriate consultation of the interests of the Francophone minority, referred back to the government for it to consider the elements it should have considered in the first place. It may be said that this is merely procedure, that it's not a very strong measure, but history proves the contrary. This remedy, that is to say appropriate consideration and this oversight role of the courts, is a very effective tool. Moreover, Montfort Hospital is still open.

Similarly, in its judgment in Arsenault-Cameron, a copy of which we have here, the Supreme Court of Canada found that the provincial decision-maker had made a discretionary decision that the act permitted it to make. The Minister of Education had certain discretionary powers to ensure minority language instruction was offered in Prince Edward Island. He had done so in good faith, thinking he was doing the right thing for his linguistic minority, but he had not consulted it and therefore might have misunderstood its true needs. The Supreme Court applied the principles of administrative law and found that the minister's decision was vitiated by the fact that he had not followed the processes imposed on him by his own act. To say that the creation of a so-called obligation of means or process, to which is attached a judicial power of intervention, is merely that is thus to reduce the effectiveness that such a measure can have in practice.

● (1625)

Mr. Stéphane Bergeron: Let's return to the example of Montfort Hospital. If the province had in fact made the determination provided for under paragraph (d), could it have argued against the community that it had in fact put the determination processes in place? It may not have produced the expected results, but the work was done. What you're telling me is that the province didn't comply with the processes provided for in the act. But, if by chance the province had followed those processes, could the community ultimately have found itself back at square one?

Mr. Marc Tremblay: The bill and the proposed amendments promise a compromise. Apart from the obligation of result to which you refer and which may have significant impact — we're already talked about that — on federal-provincial relations, this middle position makes it possible to put relevant considerations on the table and doesn't dictate a single result in all cases. Moreover — and we can talk about this later, if other questions are raised on this point — the Supreme Court itself states that what is necessary for one linguistic minority in a given situation won't necessarily be necessary for another linguistic minority. The assumption that what's required is all cases is easily measurable has not proven to be verifiable.

So, rather than an obligation of result, which would be clear and precise, but would make legislative promises that would be hard to keep and thus might lead to court challenges, we're proposing a process including parliamentary oversight. Your committee would continue to have the role it has under the act. When an issue is ready, when the federal departments and agencies are required to make considerations public and to hold consultations, there won't be any institutions where the minorities have simply been forgotten, where this will go unseen and where there will be no appropriate consideration of the matter. Ultimately, if the process described is followed, if the minority community has been consulted and its position has been considered, but the dissatisfaction remains, apart from the courts, there will still be the political role, the role of the Parliament of Canada, that can intervene.

Mr. Stéphane Bergeron: You're talking about consultation and consideration, but “consultation” is the only word written here. Ah, and “consideration”, in paragraph (c). All right.

Mr. Marc Tremblay: There are also the other provisions — which are still in the Official Languages Act — regarding the parliamentary role and the annual report, to which that information is transmitted to you. You would have more information to conduct your own assessment of the performance of federal institutions and to determine whether they are achieving expected results.

The Chair: Thank you, Mr. Bergeron.

Ms. Boivin.

Ms. Françoise Boivin: I very briefly read the texts without analyzing them from a legal point of view, and I still don't like subtleties like “measures as the minister considers appropriate” and others because, as Mr. Bergeron said, they leave a single person a lot of discretionary room, and that makes the lawyers happy.

One of the elements that will be addressed here is due regard to the powers of the provinces, whether it's through the Conservatives' proposal or because the Bloc Québecois simply wants to remove Quebec from all that.

I'm trying to understand how a federal bill concerning federal institutions can have an impact on a provincial power. I find it hard to understand that, but perhaps it's been a long time since I took any constitutional law courses. In view of that problem, I also find it hard to understand why we're trying to weaken the strongest part of Senator Gauthier's bill. I heard your arguments. I find them interesting, but I get the impression they're more political than legal. That will be another debate.

I find it hard to reconcile all that. If you answer the first part of my question, perhaps I'll understand why we want to use the word “favoriser” instead of “assurer” in the French text and perhaps I can reconcile that with all the rest, but I'm definitely going to take some time to think about it.

● (1630)

Mr. Marc Tremblay: I can start, then my colleague can take over.

Mr. Stéphane Bergeron: He's had his mouthful of water.

Mr. Marc Tremblay: Let's consider the areas of federal intervention regarding the implementation of Part VII of the Official Languages Act. I'm going to consider the example of an area that I know better, that of access to justice in both official languages. This is an area of shared jurisdiction. The provinces have their own powers and use them fully. The federal government also has its own powers. In a number of respects, one party can't work without the other.

Through the Criminal Code, the federal legislation dictates the conduct of the attorneys general of the provinces. If we want to move things forward, we can do so through federal legislation in certain areas that are purely ours, in the area of the federal courts, for example. If we want to achieve the objective set by section 41 — that is to say the equality of status and use of English and French in the courts of the provinces — the Department of Justice can't guarantee that result will be achieved without the express consent of the provinces, which will honour the rights of litigants.

For 30 years now, we've been trying to achieve this objective by signing agreements with the provinces. We negotiate, we coax, we fund, we encourage, we sensitize and we inform, but, ultimately, we act with due regard to the powers of the provinces. Our area of influence is limited. We feel the obligation of result poses a problem because we would be legally accountable for achieving those results — guaranteeing the quality of access to the courts in both official languages in a court of the Province of British Columbia and, in Quebec, in a court of Quebec — whereas we don't have the means to deliver the goods.

Ms. Françoise Boivin: Have you analyzed the impact of the French-language charter on this bill? I get the impression that the French-language Charter takes precedence and that, consequently, the French-language Charter guarantees protection for French in Quebec. What's your opinion on that?

I wouldn't want my Anglophone minority to feel completely excluded or cast aside if we say that this doesn't apply and that we won't make any effort in that direction. However, I also want French to be protected in Quebec because we live in an Anglophone world.

Mr. Michel Francoeur: That's a very important question. I'd like to remind committee members of some of the linguistic lessons of the Supreme Court of Canada, particularly as regards cases concerning Quebec and other provinces as well. Some judgments have been rendered, in particular on minority language education and instruction — English in Quebec — as well as in commercial signage in Quebec. In both cases, the French-language Charter was involved, as were certain provisions of the Constitution of Canada. Through its judgments, the Supreme Court of Canada has clearly stated that, where applicable in Canada as a whole, language rights and provisions must be applied and interpreted in accordance with the circumstances, specific characteristics and context of each province.

The Supreme Court of Canada rendered two judgments on the rights of Quebec's Anglophone minority, in the Casimir and Gosselin affairs, about a month and a half ago. In them, the Supreme Court reiterated what some would call the principle of "asymmetry", recalling what it had held in other judgments: even though they don't refer to any kind of asymmetry, language rights provisions must be interpreted and applied in accordance with the specific context of each province because the linguistic dynamic is different in each of the provinces. We know that Quebec's dynamic is particularly different, since the majority in that province is the minority in the other provinces, and vice versa. That notion is already part of the jurisprudence of the Supreme Court of Canada, which is applicable to provisions concerning the country as a whole.

● (1635)

The Chair: Mr. Godbout.

Mr. Marc Godbout: Yes.

I'm not yet completely endorsing the word "favoriser", but if it had been stated that the Canadian government was committed to taking measures to advance, that would have shown a somewhat stronger commitment.

That's my first comment.

Further on, the French version states: "[...] du français et de l'anglais dans la société canadienne, et peut notamment prendre toute mesure". The word "peut" always scares a Francophone from outside Quebec because our provincial legislation has used that word "may", which may result in an absence of obligation. Why doesn't it simply state: "et notamment prendra toute mesure", instead of "peut prendre toute mesure".

Mr. Gauthier's original text states: "prend des mesures pour assurer [...] et, notamment, toute mesure" but the word "peut" isn't used. You've added the word "peut" to the word "notamment", which troubles me. It's the word "peut" that troubles me a bit.

Mr. Stéphane Bergeron: It's a bit troubling.

Mr. Marc Godbout: Yes, it's troubling.

My third comment concerns subsection 43(2). It refers to the "prise en compte des résultats de toute consultation", but the English version states:

[*English*]

"to ensure that the results of those consultations are considered".

[*Translation*]

I'm not a translator, but it seems to me that doesn't have the same force as the French version. That should be looked at. In French, it states: "d'autre part, la prise en compte des résultats de toute consultation".

The word "considérer" would make it possible to answer that they have been considered, that nothing's been done, but that we've met our obligation.

Those are my three comments. You only saw the amendments a very little while ago. In my opinion, "s'engage à favoriser" is stronger than "prendre les mesures pour favoriser".

Mr. Michel Francoeur: With your permission, I'm going to try to respond to your three comments in order. In the case of the first, if I understood you clearly, you suggest that, instead of stating, "Il incombe aux institutions fédérales de veiller à ce que soient prises des mesures", section 2 should read: "Les institutions fédérales s'engagent à prendre des mesures". Is that correct?

Mr. Marc Godbout: Yes.

Mr. Michel Francoeur: We must clearly understand the same thing and study the terms used in French. “Il income aux institutions fédérales de veiller.” These are the terms used elsewhere in the act, in the already enforceable parts that create obligations.

Consider, for example, Part IV of the Official Languages Act, which concerns communications with and services to the public. Section 21 and following clearly create obligations and rights that are already provided for elsewhere and protected by subsection 20(1) of the Canadian Charter. Section 22 of Part IV of the Official Languages Act states, in reference to rights and obligations in the strict sense: “Il incombe aux institutions fédérales de veiller à ce que le public puisse communiquer [...]” This is directive, compelling language.

● (1640)

Mr. Marc Godbout: We can replace “Il s'engage” with “Il incombe” without a problem. However, I'm talking about subsection 43(1), where it states “Il incombe”.

Mr. Michel Francoeur: You're talking about the Minister of Canadian Heritage.

Mr. Marc Godbout: Indeed.

Mr. Michel Francoeur: You're proposing that it state: “Le ministre du Patrimoine canadien...”

Mr. Marc Godbout: Or “Il incombe au ministre du Patrimoine canadien de prendre les mesures pour favoriser...”

Mr. Michel Francoeur: It must be clearly understood that the present tense is used in the French version. “Le ministre prend les mesures...”, this is an imperative tense. In the English version, it's:

[*English*]

“The Minister of Canadian Heritage shall take such measures....” The word is “shall”.

[*Translation*]

In the legislative drafting of Parliament and the Department of Justice, which is responsible for drafting bills, the present tense of verbs is an imperative tense. It is the equivalent of the “shall” that is used in English. So it is a directive, imperative, mandatory tense.

Mr. Marc Godbout: I'm willing to believe it.

The Chair: Pardon me for interrupting you. As I was saying, I don't want the discussion to focus specifically on certain words: it is exploratory in nature. We won't come to any conclusion or vote on anything today.

After Mr. Godbout, Messrs. Bergeron and Godin will have the floor. On that point, I'm going to close the discussion so as to afford the other parties the opportunity to speak briefly to their amendments. Once again, this is a discussion concerning the spirit of the amendments. We'll conduct a more detailed analysis after hearing witnesses, if there is no election.

Mr. Godbout.

Mr. Marc Godbout: Thank you, Mr. Chairman.

I'd like to point out that subsection 41(2) of the French version states, “Il incombe”, whereas the English version reads, “shall ensure”.

Subsection 43(1) would still read “Il incombe” in French and “shall take appropriate measures” in English. Those two paragraphs aren't consistent. I don't want to make a big deal about this, but that should be checked.

The Chair: Could you have that done?

Mr. Michel Francoeur: We could ask our Francophone and Anglophone drafters to check the concordance of those two texts.

The Chair: Thank you.

Mr. Bergeron, over to you. Then it will be Mr. Godin's turn.

Mr. Stéphane Bergeron: Mr. Chairman, I'd like to go back to part of Ms. Boivin's argument. I believe that's the heart of the matter for us. As Bill Graham said when he was Chairman of the Foreign Affairs Committee, “There's the rub.”

My concern is to ensure that no provision of Bill S-3, in the context of relations with all these people, will enable the federal government to substitute itself for the Government of Quebec. Paragraph 43(1)(f), for example, refers to encouraging and cooperating with the business community, labour organizations, voluntary organizations and so on. The French-language Charter contains clear and precise provisions regarding the attitude that should be adopted by the business community, labour organizations, voluntary organizations and so on.

Yesterday, Mr. Boudria told me that the Government of Canada was entirely prepared to withdraw from Bill S-3 every provision that would enable the federal government to intervene elsewhere than in its own areas of jurisdiction, in areas of shared or provincial jurisdiction, for example, or from short-circuiting legislative action by provincial governments in their own province.

I'm somewhat stunned and concerned to see that, contrary to what Mr. Boudria told us yesterday, the initial provisions of the bill that are a subject of concern for us have not in any way been suspended. For example, in amending section 43, no decision was made to suspend the application of paragraph (f).

Referring to Ms. Boivin's question in part, I'd like to know whether that was one of your concerns when drafting the amendments, or whether you thought we would implement it first, then see what would happen. Perhaps you thought there would be legal intervention and that we'd then see what would prevail: the Official Languages Act as amended by Bill S-3 or the French Language Charter.

As far as I'm concerned, I don't want us to go through another 10 or 15 years of legal guerilla warfare or political disputes between the federal and provincial governments in Quebec over this issue. Isn't there some way of avoiding this kind of situation, by suspending the provisions or paragraphs that might cause a problem in Quebec, violate the French Language Charter or short-circuit its application?

● (1645)

Mr. Michel Francoeur: There are a number of parts to your question. I'm going to try to respond to them logically and chronologically.

First, it must be kept in mind that the vocabulary used in the various paragraphs of subsection 43(1) would remain the same. It uses verbs such as “foster”, “encourage”, “support” and “assist”. This is not imperative language.

Mr. Stéphane Bergeron: Pardon me for interrupting you, Mr. Francoeur. The French Language Charter states that a business employing a given number of employees must operate in French. What will the federal government do? Will it spend money to encourage the business to operate in another language than French?

Mr. Michel Francoeur: In fact, the purpose of Bill S-3 is not to stymie provincial legislation. The only institutions contemplated by the obligations set out in the Official Languages Act and, more particularly, Part VII of the Official Languages Act, whether it be section 41, 42, 43, 44 or 45, are the federal institutions.

Mr. Stéphane Bergeron: Yes, but the act refers to the business community, labour organizations and voluntary organizations that are going to be encouraged to use the other official language. That simply short-circuits Quebec's Charter of the French Language. You're well aware of that.

Mr. Michel Francoeur: We're especially aware of the fact that the language used here, in our view, does not in any way enable or require the federal institutions to force non-federal organizations...

Mr. Stéphane Bergeron: But they're going to be encouraged. How are they going to be encouraged? Will money be invested for people who speak a language other than French in businesses, thus short-circuiting the provisions of the French Language Charter?

Mr. Michel Francoeur: Whether it's on the basis of the provisions of Bill S-3 or any other provision, it is not lawful for a federal institution to encourage an organization not to comply, for example, with the provincial legislation applicable to that organization. Thus the provisions contained in Bill S-3 — this is our comment — would not have the effect of enabling or requiring federal institutions to assist or encourage businesses not to comply with Quebec's Charter of the French Language. If that's the interpretation you fear...

Mr. Stéphane Bergeron: Are you ready eventually to prepare other amendments to avoid this kind of concern?

Mr. Michel Francoeur: Sincerely, as we speak, the concern you raise with regard to your interpretation is not a concern for us.

The Chair: Mr. Tremblay.

● (1650)

Mr. Marc Tremblay: I'd like to add that the provisions of section 43 that you mention and that illustrate various ways of implementing the federal government's commitment have been in effect since 1988.

The constitutional experts who have considered this question have concluded that there is no encroachment on provincial jurisdictions to the extent that those provisions are enabling, not mandatory provisions. In practice, to a large degree, we act through federal-provincial agreements.

In all cases, as my colleague said, that's done in a manner consistent with applicable provincial legislation. The areas of jurisdiction are not being amended. The Official Languages Act cannot have the legal effect of amending the application of provincial legislation.

The Chair: We're going to conclude on this point, Mr. Bergeron.

Mr. Godin, I turn the floor over to your for a final comment before moving on to another subject.

Mr. Godin.

Mr. Yvon Godin: Thank you, Mr. Chairman.

The Conservatives' amendment...

The Chair: We weren't talking about Mr. Simard's amendment.

Mr. Yvon Godin: No, I just mentioned that this is about the Conservatives' amendment.

The Chair: That confirms what I said. Perhaps we could discuss what Mr. Lauzon has raised.

Once again, we're not trying to shape a consensus. In fact, we're saying the same thing, Mr. Godin.

Mr. Yvon Godin: If we're saying the same thing, let me continue.

The Chair: With pleasure.

Mr. Yvon Godin: I want to ask a question. Mr. Francoeur, we were talking about provincial powers earlier. For example, let's analyze Mr. Lauzon's amendment to Bill S-3:

> 41.(1) With due regard to the powers conferred on the provinces, the Government of Canada is committed to [...]

In the area of education, which is a provincial jurisdiction, the Francophones of Prince Edward Island who wanted French-language schools won their court case. The same thing happened in Manitoba.

Wouldn't the language used in Bill S-3 handicap the minority communities of the regions that would like to obtain minority language education?

Mr. Michel Francoeur: You want to know whether the language used in Mr. Lauzon's amendment, that is to say the terms “with due regard to the powers conferred on the provinces”, would reduce the minority communities' ability to assert their minority language education rights?

I think the simple answer is no. In the specific case you refer to, the right of the minority communities, in Prince Edward Island as in all other provinces, is protected by section 23 of the Canadian Charter of Rights and Freedoms. The right to schools and school boards, where numbers warrant, is a right guaranteed in the Constitution.

No provision of the Official Languages Act, whether it be in Part VII or section 41 or elsewhere in the act, can have the effect of reducing the scope of section 23 of the Charter or the minority communities' right to education in their own language or to governance of their educational institutions.

That said, if I may take the liberty of making a comment on this amendment, adding that the federal government would be committed "with due regard to the powers conferred on the provinces" is an amendment that we feel is not appropriate because all federal statutes and all actions taken or put in place by the federal institutions must be taken with due regard to the powers of the provinces, because the Constitution of Canada so provides. The federal government has its areas of jurisdiction, the provinces theirs.

At various times in the judicial history of this country, the courts have recalled those areas of jurisdiction or clarified their scope and extent. Every federal statute and every measure, every obligation under a federal statute must therefore necessarily have due regard to the powers conferred on the provinces.

The problem, if you state it in an act such as this one, is that it makes one question the content of all other acts passed by Parliament that don't have a section such as this or that make no mention of due regard to the powers of the provinces.

Does that mean that, in the application of other statutes that do not refer to due regard for powers, regard for the powers of the provinces is less present, less important, less relevant?

The answer is simple, and, once again, it is no. Due regard to the provinces' areas of jurisdiction is always there and must always be respected by federal institutions. The federal statutes must always be implemented with due regard to the powers of the provinces.

That's why we think these words add nothing to the legal reality which is that of all federal institutions in the application of all federal statutes, including the Official Languages Act, including implementation of Bill S-3, if it is passed in one way or another.

● (1655)

Mr. Yvon Godin: The same problem will occur in the case of the Bloc Québecois motion, which states that the Province of Quebec is exempt from application of this act.

The Chair: Mr. Lauzon, I simply want to know whether you have something to add on the subject.

Mr. Guy Lauzon: Mr. Francoeur thinks this shouldn't be included in the bill. Is it a problem if we leave it? If we include it, it's simply to tell the provinces that we have due regard for them. That's what we're trying to do. We don't want the provinces to imagine that we're insisting they obey the rules. We want to have regard to the statutes and powers of the provinces. That's what I'm trying to do. I want to do this with due regard to the provinces.

Mr. Michel Francoeur: That's a highly laudable intention.

With your permission, I'll give you a few examples. There are already a number of federal statutes that touch on provincial areas of jurisdiction without however interfering in a non-constitutional manner. Consider the Canada Health Act. Health is a provincial jurisdiction.

Some federal statutes concern postsecondary education. Education generally is a provincial jurisdiction.

However, some federal statutes provide that the federal government shall make transfer payments to the provinces in those areas of provincial jurisdiction. The provinces obviously remain masters of their own activities in those areas of jurisdiction, and they have the power to accept or reject funds transferred by the federal government. In the context of the implementation of those statutes, it goes without saying that there must be due regard to the provinces' areas of jurisdiction.

And yet those statutes do not say so: they don't state that it all must be done in a manner consistent with the powers conferred on the federal government and the provinces under the Constitution of Canada. That's a legal reality, a well-known legal principle, if you will: federal statutes, even where they concern areas of provincial jurisdiction, must be implemented with due regard to provincial areas of jurisdiction, as is the case when the federal government wants to assist, encourage, fund and support the provinces in their areas of jurisdiction, whether it be in health, manpower training, early childhood, postsecondary education or the advancement of official languages.

Mr. Guy Lauzon: If we want the cooperation of the provinces, we have to try to work with them.

Mr. Michel Francoeur: Yes.

The Chair: Mr. Bergeron.

Mr. Stéphane Bergeron: There are three aspects to what's just been said.

First, health is a good example to show how we have to beware of federal government intervention.

When the federal government intervened in health, it said it was going to pay 50 percent of costs because the provinces said they couldn't afford to provide services as the government wanted. However, with 50 percent of funding, the provinces were prepared to agree. So the provinces agreed with the federal government and accepted 50 percent of the funding, as well as the standards imposed by the federal government. The federal government has since withdrawn, again and again, and now only contributes to 17 percent of health care spending, while continuing to impose its standards. If the provinces want to retain that 17 percent the federal government gives so that services are offered, they have to meet the imposed standards.

You really have to beware when the federal government proposes to help by giving money in exchange for intervention in the provinces' areas of jurisdiction. It can be very disturbing.

Now let's consider the argument that we can't include this in the bill because it renders the rest of Canada's statutes somewhat inoperative, since, if you say in this act that there has to be due regard to the provinces, that may mean that there is no regard to the provinces under the other statutes, since that's not specifically stated.

But this is already the case, Mr. Chairman. In the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness, we amended the recently passed Public Safety Act of 2002, which created a department. With the Conservative Party and the NDP, we amended the act to include the notion of due regard to provincial powers. All Canadian statutes did not crumble the next morning because we had decided to include the notion of due respect to the powers of the provinces in the 2002 Public Safety Act. No one lost any sleep over that, and no one today is overly upset about it.

The idea of including the notion of due respect to the powers of the provinces in the bill isn't a problem for me because it's absolutely fundamental.

Beyond the due respect for provincial jurisdictions which, according to Mr. Francoeur, is expressly provided for by the Constitution of Canada — we know how the federal government abides by its own constitution — there's also due regard to all the statutes of the provinces.

Coming back to my hobbyhorse, I cited paragraph 43(1)(f) as an example. What I would like to see is not only due regard to the powers of the provinces, but also due regard to their legislation.

That goes much further than the mere issue of due regard to provincial powers, which we think goes without saying because the Constitution provides for it.

● (1700)

Mr. Michel Francoeur: There are three parts to your question.

Mr. Stéphane Bergeron: That's what I said.

Mr. Michel Francoeur: I'm going to start with the first.

I think that the Health Act example that you cited — in fact, I cited it, but you...

Mr. Stéphane Bergeron: ...took it further.

Mr. Michel Francoeur: You took it further.

I think that good example shows why it seems more appropriate to create obligations of means, not an obligation of result in Part VII. The Canada Health Act imposes standards and obligations of result. If the provinces accept federal funds for health — they aren't required to do so — they undertake to meet five health services standards, which are standards of results: free service, access, universality, etc. Those are results.

Mr. Yvon Godin: That's good.

Mr. Michel Francoeur: Thank you for that example, because it shows exactly why we think it's preferable that subsection 41(2), as proposed in Bill S-3, and subsections 43(1) and (2) of the Official Languages Act be amended to specify that the federal institutions' obligation is not to ensure equality of English and French in Canadian society as a whole. Their obligation instead is to take measures, to acquire means and to adopt consultation processes, determining the results of those consultations and the impact that policies and programs can have on the advancement of official languages and the minority communities.

Let's talk about the second part of your question, due regard to powers. A very long time ago, one federal statute was the subject of an amendment that expressly addressed due regard to provincial powers. That set a precedent.

I'll merely say that the advisors of the Department of Justice who came and testified before the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness advanced the same arguments as us, that is to say that these are precedents. They are references that we think are not desirable because, the more there are, the more they lead the readers of bills, lawyers and courts, to question their scope and meaning.

We know that Parliament is deemed not to speak to no purpose. If it states in an act that everything shall be done with due regard to the powers of the provinces, what is the meaning of that statement? Is it purely redundant? Does it add an element that is absent from other acts?

To the extent that it is clear from a legal standpoint that the federal institutions must always act with due regard to the powers of the provinces, we think it is always desirable for federal statutes not to refer expressly to that legal reality. In fact, if Parliament decides to do so, should it perhaps do so in all federal statutes?

● (1705)

Mr. Stéphane Bergeron: I quite agree with you.

The Chair: Thank you.

Mr. Michel Francoeur: That's not our proposal, but it serves to illustrate our remarks.

The Chair: Thank you, Mr. Francoeur.

Mr. Stéphane Bergeron: When we take power.

The Chair: Mr. Lauzon, do you have anything to add to your amendment? Is that fine with you?

Mr. Guy Lauzon: I think you're respecting the spirit of what we're trying to do.

The Chair: That's perfect.

Perhaps we can move on to yours, Mr. Bergeron.

Mr. Stéphane Bergeron: No, that's not mine.

The Chair: Pardon me. It's Mr. André's amendment.

Mr. Guy André: Good afternoon. My colleague's remarks have given you an idea of the content of our amendments. The idea, in the context of Bill S-3, is of course to protect Quebec's areas of jurisdiction. Why?

As you know, Mr. Francoeur, we are a minority within an Anglophone majority, but we are treated like a majority in the context of official languages legislation. In that context, Anglophones are the minority. Referring a bit back to my colleague's remarks, I'd say you don't reassure me when you say there's no reason to include measures designed to protect areas of jurisdiction in federal statutes. As you know, there has been considerable interference in Quebec's jurisdictions over the years.

For us to be in favour of passing this bill, we would of course have to be reassured on these matters. As you say, and as colleagues also say, this legislation theoretically doesn't interfere in provincial areas of jurisdiction. As Mr. Bergeron said, an amendment could be included in the bill. I don't see in what way that wouldn't be feasible. It's particularly important for us not to start another language debate in Quebec. For the moment, there is peace in that area. I believe our Anglophone minority and our Francophone majority live in mutual respect. Institutions offer services in both languages. Consequently, for us, it's essential to include a clause in this bill designed to protect the provinces' areas of jurisdiction and, thus, those of Quebec.

The Chair: I think there's a distinction between protecting the provinces' areas of jurisdiction and excluding Quebec. I'm trying to understand.

If you were reassured that the bill would have due regard to the powers of the provinces, would you withdraw your amendment?

Mr. Guy André: We'd have to see. As I told you, we in Quebec have experienced considerable federal interference in certain sectors in the past. Including a clause designed to protect our language powers would undeniably be an advantage.

The Chair: I know this isn't your intention, but wouldn't the fact that, under the act, some minority Canadians, in this case Francophones outside Quebec, would have access to this system constitute a form of discrimination against Anglophones who are in the minority in Quebec? It's only in Quebec that they form the minority.

● (1710)

Mr. Stéphane Bergeron: Can you let me speak? You don't mind?

Mr. Guy André: No.

Mr. Stéphane Bergeron: I would simply say two things about this, Mr. Chairman. First, my colleague has very clearly pointed out that there is in Quebec — you're in a good position to know this, being a Quebecker yourself — a relative linguistic peace, which is very fragile and as a result of which the Anglophone community has its institutions. The Government of Quebec actively supports the Anglophone community's institutions, in health, social services and education.

It's important to note one other point. I'm going to take the liberty of paraphrasing both the Commissioner of Official Languages and the former minister responsible for implementation of the Official Languages Act, Stéphane Dion, who said that the situation in Quebec could not in any way be compared to that in any other province whatever, for the simple reason that, as my colleague noted a little earlier, Quebec's Francophone majority constitutes the minority in North America. The Anglophone minority has to have protection, and I believe it does at both the federal and provincial levels. However, it's not the Anglophone minority that really needs protection in North America; it's the Francophone minority.

Quebec's Francophone majority constitutes a minority, even though it is a majority. That's why the Commissioner of Official Languages and Minister Stéphane Dion were prepared to consider an asymmetrical implementation for Quebec. However, if that's not just rhetoric, it should be possible to reflect that one way or another in a bill.

My colleague has drafted his amendment motion — which is designed to enable Quebec to opt out even without full financial compensation — based on the logic that led the Commissioner of Official Languages and Minister Stéphane Dion to say there should be asymmetry. We don't want this legislation to apply to Quebec, at least not as regards the provisions of Part VII.

The Chair: There's a distinction between asymmetrical implementation and full exemption. If Quebec is exempt from these provisions, they don't apply to Quebec and there's therefore no asymmetrical implementation.

Mr. Stéphane Bergeron: The Official Languages Act applies to Quebec. However, Part VII wouldn't apply.

The Chair: I mean that, if it doesn't apply, there's no asymmetrical implementation of this component.

Mr. Marc Godbout: That would create an imbalance.

The Chair: We're thinking...

Mr. Guy André: You recognize fiscal imbalance, Mr. Godbout. That's good.

The Chair: I wouldn't want to tell you your remarks are out of order, but that's nearly the case.

Mr. Godin, over to you.

Mr. Yvon Godin: As regards federal powers and federal institutions, I believe Quebec must be treated like any other province. The federal government is undertaking to have due regard to the powers of the provinces. All provinces are treated in the same way. It should not be forgotten that Quebec is a province of Canada.

Mr. Stéphane Bergeron: Would you be in favour of that?

Mr. Guy André: Are you talking about powers and legislation?

Mr. Yvon Godin: However, we could add the expression — and I'd like to hear what Mr. Francoeur has to say on the subject — "as provided for in the Constitution of Canada". A little earlier, you said we shouldn't include it since it's already in the Constitution. If we state that the federal government undertakes to have due regard to the powers of the provinces, as stated in the Constitution of Canada, this merely constitutes a reminder. We're not straying from it. We're recalling that the Constitution of Canada exists. Perhaps that will allay your concerns.

In fact, I'm afraid that, if we start mentioning this too often to make people feel better, there's a risk it will no longer apply. I believe this clause is there to remind the government that it must have due regard to the provinces. I think that's why members want to include it in the bill. If we stated "the powers of the provinces as set out in the Constitution", that would confirm that the Constitution exists, which does not prevent the others...

● (1715)

Mr. Michel Francoeur: In all sincerity, I don't really have any further comment on this point, apart from those I made earlier. In our view, referring to the powers of the provinces by stating or not stating that they're contained in the Constitution amounts to the same thing. When you talk about the powers of the provinces or about federal powers, you're referring to the powers set out in the Constitution of Canada, whether you specifically state that or not. In both cases, it's a reference we think is not appropriate.

Mr. Stéphane Bergeron: Don't worry, he doesn't agree.

Thank you.

The Chair: Do you want to speak, Mr. Simard?

Hon. Raymond Simard: The purpose of today's meeting was for us to share our amendments in order to see where there was a consensus and where there was less of a consensus. I believe we have understood our Bloc Québecois colleagues' concern from the outset. We're quite convinced that this doesn't intervene at the provincial level. So we should discuss the matter to determine whether there's a way of amending this.

Very little time is left. We still have two amendments. I would need about five minutes to explain them. Then we would be leaving with an idea of the government's position on the subject.

The Chair: There was still Mr. Bergeron.

Mr. Stéphane Bergeron: I'll be very brief, Mr. Chairman, because I agree with Mr. Simard. Perhaps we could try to come up with something that would be consistent with what you said. I don't see any problem in wanting to include asymmetrical implementation, but we'd have to find admissible wording. I think we should be called upon to assist in that.

On that point, Mr. Simard, I'd like to note that this concern expressed earlier was expressed not only by the two Bloc Québecois members, but also by Ms. Boivin and in the Chairman's question. I think it's generally a concern of the Quebec members.

Hon. Raymond Simard: So we should determine whether the amendment we've proposed...

The Chair: I believe we can conclude by allowing Mr. Simard to introduce his amendments briefly.

Hon. Raymond Simard: If you're willing, I'll speak to the other amendments in general terms.

One of the amendments is that the 33 departments now subject to the Official Languages Act would all be required to comply with Bill S-3 immediately. In all, we have nearly 200 federal departments and agencies that will be required to comply with the regulations of Bill S-3, but within a one-year time period. I think that's entirely reasonable. We've already discussed that. So that's stated in the amendments.

Mr. Yvon Godin: Which ones?

Hon. Raymond Simard: Wait a minute.

The Chair: You have the list at the end, I believe.

Mr. Stéphane Bergeron: You cited a figure of 200. There aren't 200 at the end.

Mr. Yvon Godin: I was asking what amendment was being referred to.

The Chair: What Mr. Simard says is that this now applies to the 33 departments and agencies already subject to the Official Languages Act.

Mr. Stéphane Bergeron: Those departments and agencies are in the schedule.

Hon. Raymond Simard: I'm talking about the first amendment, G-1, which concerns section 41. That's the page we considered at the start.

Mr. Stéphane Bergeron: You said we were moving on to the last two amendments.

Hon. Raymond Simard: They're included in that.

The government's first amendment, on the first page, reads as follows:

> (2) In order to implement the commitments under subsection (1), every federal institution set out in the schedule shall ensure that measures are taken [...]

In the schedule, there is a list of 33 departments and agencies to which Bill S-3 would apply immediately.

Further down the same page, it states that within a period of one year:

> (2) In order to implement the commitments under subsection (1), every federal institution, other than the Senate, House of Commons, Library of Parliament, office of the Senate Ethics Officer and the office of the Ethics Commissioner, shall ensure that measures are taken in the development and review of any of its policies and programs to

So the other federal departments and agencies would be asked to comply with the regulations of Bill S-3 within a one-year period.

I have another point to clarify. It's merely a detail, but amendment G-4 states that “Department of Human Resources Development” would be replaced by “Department of Social Development”.

Lastly, we propose an addition, section 43.1.

● (1720)

Mr. Guy André: Where's that? In amendment G-3?

Hon. Raymond Simard: Indeed.

Mr. Marc Godbout: It would be a good idea for it to be paginated.

Hon. Raymond Simard: It reads as follows:

> 43.1 The Governor in Council may make regulations respecting the manner of taking the measures required under subsections [...]

If I understand clearly, this merely concerns a process enabling the government to define the new obligations. I don't know whether you want to add anything on the subject.

Mr. Michel Francoeur: I think you've clearly summarized the idea that the Governor in Council could — we're indeed talking about a power — set the terms and conditions of implementation or performance of the new obligations of means that would be created under the amendments moved by Mr. Simard.

Hon. Raymond Simard: We think this essentially boils down to that.

Mr. Lauzon, you're only introducing one amendment?

Mr. Guy Lauzon: I'm introducing two.

Mr. Yvon Godin: Mr. Chairman?

The Chair: Yes, Mr. Godin.

Mr. Yvon Godin: The version I have of the Conservative Party's second amendment is in English only.

Mr. Guy Lauzon: We won't change the French version, which is well written. However, the English version is poorly written, and that's why we're moving an amendment.

Mr. Yvon Godin: There's no translation.

Mr. Guy Lauzon: I don't know why things were done that way.

The Chair: There's no change to the French text: it's simply a matter of concordance between the English and the French.

Mr. Godin, since our objective for today's meeting is merely to address the subject and to discuss it amongst ourselves, I assume you'll accept the fact that it's only in English.

Mr. Lauzon.

Mr. Guy Lauzon: I don't know how that can be explained.

The Chair: It's yours.

Mr. Guy Lauzon: The aim was just for it to be well done in English. However, it isn't consistent with the French translation.

Mr. Marc Tremblay: That's how you proceed when you only want to amend one of the versions of a federal statute, either the English or the French version, to correct some kind of deficiency. You inform the reader of the English version by stating the amendment as is usually done, and, in the other column, you inform the reader of the French version that only the English version is being amended. That's an appropriate technique.

The Chair: So it's correctly done. Do we understand? The words changed in English haven't been underlined.

Mr. Guy Lauzon: Mr. Gauthier's original version states at the end of the subsection “may take measures to”. I want the word “shall” to be used.

● (1725)

The Chair: All right. Even without debating the meaning of the words, I believe we clearly understand the spirit of this amendment.

I invite you to close the discussion as of now, which will let us finish five minutes earlier. As you know, we have to vote. It is 5:25 p.m. Given the time, we can't address a new subject.

I want to thank our witnesses for taking part and for the collegial spirit of the entire meeting. We'll meet again tomorrow morning. Our researcher informs me he has made all the required changes. Everything has been sent for translation and will be ready tomorrow morning for discussion purposes. Thank you.

Mr. Guy Lauzon: Mr. Chairman, can you emphasize the fact that I agreed with Mr. Godin?

The Chair: For once, indeed. Mr. Lauzon agreed with Mr. Godin. That's a rarity.

Hon. Raymond Simard: The purpose of tomorrow's meeting was indeed to discuss the report on the public service?

The Chair: Yes. Thank you and see you tomorrow.

(The meeting is adjourned.)

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