House of Commons
CANADA

Standing Committee on Official Languages

LANG • NUMBER 035 • 1st SESSION • 38th PARLIAMENT

EVIDENCE

Tuesday, May 31, 2005

Chair

Mr. Pablo Rodriguez

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● (0910)

[*Translation*]

The Chair (Mr. Pablo Rodriguez (Honoré-Mercier, Lib.)): Welcome to you all. We have just come back from a break week, and I see many smiles around the table, it is a beautiful sunny day today. We have a newlywed amongst us, Mr. Lauzon, who has just returned from his honeymoon with a big smile.

We are here to continue our study of Bill S-3, an Act to amend the Official Languages Act. We have the pleasure of welcoming the Minister of Canadian Heritage, the Honourable Liza Frulla, who will begin with a short statement. Afterwards, we will continue with questions and comments from the committee members.

Welcome, Madam Minister. I give you the floor.

Hon. Liza Frulla (Minister of Canadian Heritage): Thank you very much, Mr. Chairman.

Welcome everyone. It is a beautiful day.

With me today are Mr. Hubert Lussier, whom you know, and Mr. Michel Francoeur, who discussed with you all the ins and outs of Bill S-3.

It is my pleasure to speak to Bill S-3, an Act to amend the Official Languages Act. The object of this bill is also to promote French and English. It was originally presented in the Senate by the Honourable Jean-Robert Gauthier. First of all, I would like to commend Mr. Gauthier for his tenacity and commitment to Canada's official language policies. S-3 is the fourth bill proposed by the former senator on this subject.

Bill S-3 targets changing the Official Languages Act in order to impose a legal obligation on federal institutions to guarantee the implementation of the federal commitment described in Part VII of the Act. The government shares the objective of increased accountability that Bill S-3 advocates and I would like, at this time, to remind you of the unequivocal commitment of the Government of Canada to promote our linguistic duality.

First, as noted in the most recent Speeches from the Throne, the government is entirely committed to reaffirming linguistic duality as a fundamental Canadian value and to promoting the vitality of official-language minority communities.

Secondly, I would like to remind you that Cabinet now includes a minister responsible for official languages, tasked with horizontal coordination of the implementation of the official languages policy.

Thirdly, the Government of Canada is working towards full implementation of the Action Plan for Official Languages, at the heart of which are found the policies attached to governing Canada's official languages. I think that it is important therefore that I now define certain dimensions of the plan in that respect.

[*English*]

The action plan is the new road map for Canada's linguistic duality. It contains an accountability and coordination framework as well as an investment strategy, including three axes: education, official language minority community development, and measures to make the public service exemplary. The accountability and coordination framework, which is the linchpin of the action plan, targets all of the act. It reiterates the obligation of each federal institution with respect to parts I to V of the Official Languages Act and specifies the conditions for implementation of part VII, which we are talking about here today.

Its aim is vast and its range is far-reaching. It ensures the official languages dimension is included in the conception and implementation of public policies and government programs. In this way, the new accountability and coordination framework specifies that in order to implement the federal commitment contained in part VII, federal institutions must sensitize their employees of the government's commitment and the concerns of the official language minority, identifying policies and programs that have consequences with respect to the status of our two official languages and the vitality of their official language minority communities, consulting them, and taking their needs into consideration. The accountability and coordination framework also includes a whole series of clauses that reinforce horizontal coordination.

[*Translation*]

In short, the action plan and its accountability and coordination framework are geared towards better collaboration and better results and in this way demonstrate how much the commitment and actions of the government meet those included in Bill S-3: making federal institutions increase accountability and in doing so, increase support for Canada's linguistic duality.

I must, however, tell you about the reservations I have with respect to the current wording contained in the bill. It appears to me that its impact could prove harmful.

Remember that Bill S-3 replaces a non-justiciable policy commitment, which is in great part a commitment based on spending power, with an obligation to take decisions and attain results. S-3 creates this obligation with respect to a very broad objective which is difficult to evaluate - contrary to Parts I, II, IV and V of the Act which target precise situations such as language of laws and regulations, parliamentary debates, services to the public and language of work.

In addition, the obligation to obtain results becomes justiciable, which means that it could be the subject of a court case.

Put this way, the adoption of the bill could cause major repercussions.

[*English*]

First, it could considerably affect the relations between the federal government and the provinces and territories. Currently, many priority areas related to official language minority communities are provincial and territorial jurisdiction, and the government could find it extremely difficult to attain required results without the collaboration of other levels of government.

I would like to remind you that the bill demands, among other things, that the Minister of Canadian Heritage "shall take appropriate measures to advance the equality of status and use of English and French in Canadian society". Under these circumstances, trying to achieve desired results with part VII of the act could cause major pressure on federal-provincial-territorial relations.

Next, Bill S-3 could also have the effect of considerably reducing the government's margin to manoeuvre within its capacity to develop policies and programs and when exercising its spending power. Ministers' decisions could be subjected to revision by the courts, and the courts could rule for amendment or cancellation of government initiatives.

● (0915)

[*Translation*]

I think that the bill should be improved in such a way that, while still maintaining its first objective of increasing the accountability of federal institutions within the implementation of Part VII of the Act, it respects the capacity which the federal government must maintain in its discussions with the provinces and territories, in its choice of policies and programs to be developed, as well as in exercising its spending power.

It is important to preserve the partnership that we have with the provinces and territories in the many areas where we work together.

It seems to me that the best way to proceed towards this end would be to require federal institutions to implement means to fulfill the government's commitment, as opposed to requiring them to attain results to do so. Let us be clear: we are all agreed that it is important to maintain good relations with the provinces and territories. But, at the same time, is it reasonable to ask the federal government to attain results when we know that it would be extremely difficult without the cooperation of the provinces and territories?

I would also like to remind you that, in this regard, the federal commitment found in Part VII of the 1988 Official Languages Act which is declaratory and not justiciable, was written in that way because of serious concerns expressed by the provinces and territories with respect to federal government pressure in areas outside of its jurisdiction.

I want to be sure that you understand what I mean. Putting obligations on measures taken instead of results to be attained does not aim to eliminate federal encroachment in provincial jurisdiction, because it goes without saying that a federal law could not sanction encroachment.

The amendment that I propose aims to reduce the risk of political tension that could arise as a result of a federal institution wanting to obtain results—mandated by the Act—but which depend on other levels of government.

[*English*]

The proposed amendments my colleague submitted to you last week are therefore based on an approach that targets the means as opposed to the results, while at the same time reinforcing the federal government's commitment to the promotion of French and English in Canadian society. With these amendments, federal institutions would be required, when developing policies or programs, to determine whether the policy or program impacts on the implementation of the commitments, consult where appropriate any interested organizations, including organizations representing English and French linguistic minority communities in Canada, and take into consideration the impact of the promotion of French and English as well as results of consultations. The obligations of the Minister of Canadian Heritage would also be subject to similar measures.

[*Translation*]

I would like to repeat the fact that these steps, which would be justiciable, are far from being banal or negligible. The legal obligation to consider the impact of a policy or program on the promotion of English or French would be substantial and would allow federal institutions to respond more appropriately to the needs of the official-language minority communities and the interests of linguistic duality as a whole. It is along this track that the Commissioner of Official Languages made reference in her last annual report (2003-2004). She said, and I quote:

> Institutions subject to the Act must usually consider the needs of official language communities when drawing up policies and programs.

This requirement would have a much larger impact if its binding nature were clearly established. Indeed, all institutions would have to take a much more searching look at the effect of their policies and programs to ensure that they support the development of the communities involved. The Commissioner concluded by recommending that the government "clarify the legal scope of Part VII through legislation or regulation by defining its compulsory nature as well as how federal institutions should implement it under the terms of section 41 of the Act." It seems to me that the amendments put forward by my colleague are very much in line with this way of thinking.

Thank you, Mr. Chairman, for giving me the opportunity to present my point of view on Bill S-3. The government accords much importance to its commitment with respect to official languages and I hope that the committee can agree on the best way to improve it.

Mr. Chairman, we are in your hands.

● (0920)

The Chair: Thank you, Madam Minister.

As was agreed at our last meeting, our discussions with the minister will take us up to 10:30. Following that, we will sit in camera. I remind you about this because of future business, including the adoption of the operational budget for our study on Bill S-3.

Mr. Lauzon, you have the floor.

Mr. Guy Lauzon (Stormont—Dundas—South Glengarry, CPC): Thank you, Mr. Chairman.

Ms. Frulla, welcome.

In your presentation, you said the following, and I will quote you in English:

[*English*]

> Under these circumstances, trying to achieve desired results within part VII of the Act could cause major pressure on federal-provincial/territorial relations.

[*Translation*]

Could you expand on this?

Hon. Liza Frulla: First, the implementation of the official languages policy as a whole is what is relevant to Part VII of the Act. This refers to agreements between the federal government and the provinces and territories. In this respect, one example would be the memorandum of understanding we signed with the Education ministers across Canada.

In terms of improvements, we would like to make consultations accountable under Part III. The result, be it in the field of education, health services or any other field affected by the government's action plan on official languages, also depend on our relationship with the provinces. Health and education are provincial area of jurisdiction, and we would not want to see the results challenged before the court. Why? Because they are often the fruit of our negotiations with the provinces. It is important to ensure that adequate consultations are carried out with stakeholder organizations in the community as a whole before the process is completed. Moreover, we have to see to it that the negotiations with our partners are not strictly on a bilateral basis: in other words, the federal government must also have done its homework.

If the results were justiciable, that would imply that anyone could argue that the federal and provincial governments are not investing enough into for instance bilingual health care services. The results would be challenged before the court. What would happen then? First, everything would probably be at a stand still for years and then, undue pressure would be brought to bear on the province, which also has a limited ability to pay.

So, we suggest being accountable before the consultations which lead to the results rather than for the results themselves.

Mr. Guy Lauzon: You mentioned the action plan, Ms. Frulla. The fact is, according to Ms. Adam, in the last two years it has not led to satisfactory results. At the moment, it could be said that almost nothing has been done under the action plan. In that regard, it would be inappropriate not to focus on results. We must achieve progress.

● (0925)

Hon. Liza Frulla: First of all, I would like to get back to what Ms. Adam was saying. It is true that over a two year period we carried out the implementation of the action plan, which was not an easy task. It required a new way of doing business. Ms. Adam could not say the same today, because we have a memorandum in the field of education. We are now working with Ontario, but the fact is that in the case of 12 provinces in territories, everything will be signed within the next few days. Moreover, we are working bilaterally with the provinces. In terms of services, things are going relatively well.

When Ms. Adam stated the progress was slow and that there were no results, she was referring to the implementation of the action plan. For that to be acceptable, many consultations were also required. If we only focus on making results justiciable, the overall results will not be the only thing on the line. Amounts invested by both parties to meet needs will be as well. So, the federal government would not be the only one being challenged: our partners, in other words the provinces, would be as well.

Mr. Guy Lauzon: In the end though, there is no point carrying out wide ranging consultations if they do not lead to action. Results must be measurable.

Hon. Liza Frulla: The results are actually measured within the action plan's framework. There is the Official Languages Commissioner, this committee, and, of course, us. However, there is a big difference between measuring action plan results and making those results justiciable. Making those results justiciable means that the court can examine any program that any citizen feels did not get sufficient funds. I do not think the provinces would be very pleased.

I'll give you an example. We have just settled the education issue with the provinces for a period of four years. The funds that are being invested were determined under an agreement. We will then sit down to deal with bilateral issues; I call this the tailor made part. That involves negotiations with each province. We have settled this issue with the provinces.

Any citizen could say that they think the funds are not sufficient and that on those grounds they will take legal action. This is not a simple affair. First, there is the ability to pay on the part of both levels of government and there is also the issue of undue pressure being put on us and our provincial partners, given that we agreed on the amounts that we must and can invest in this together.

Mr. Guy Lauzon: But if all that is done...

The Chair: Your time is up. We can come back to this issue.

We will continue with Mr. André.

Mr. Guy André (Berthier—Maskinongé, BQ): Good morning, Ms. Frulla, Mr. Francoeur and Mr. Lussier.

As you know, the Bloc Québécois' main concern is compliance with language jurisdictions. I'm referring, for example, to Bill 101, the French language charter. We are concerned about Bill S-3 from that point of view. Even though we are not closed to the idea of this bill, we feel that some conditions will have to be met for us to be able to support it. Listening to you, I realize that some of what you are saying deals with those concerns but other points are still a matter of concern for us. This is evolving as the process moves forward.

My first question is about the subject we have been discussing this morning, that is, amendments to Bill S-3. I would like to know how that will actually improve the situation of communities, the public service and education. I thought that the bill had a bit more teeth before. Some members of Parliament have raised this issue, which is a significant concern.

As you know, francophone communities outside Quebec have some substantive demands. We know, and studies have shown this, that the public service has not progressed in the area of bilingualism and bilingual services since 1995. I know that you have undertaken some significant negotiations with respect to community development under the Action Plan for Official Languages. The increase that was agreed on was approximately 19 per cent, which was not satisfactory to some. People have needs.

The same applies to education. In some communities, francophone schools are not nearly as well-equipped as some anglophone schools in the country. These communities had expectations with respect to Bill S-3. From what I understand, the intention is to reduce recourses. How will that help people?

● (0930)

Hon. Liza Frulla: I'll start by making two points. There are several reasons for complying with jurisdictions.

First, when you're dealing with official languages, you don't want to constantly be tying things up in court. Earlier on, we were talking about a standstill. The best way to bring everything to a standstill is to allow everyone in Canada to challenge results. That halts the process. Take the Montfort hospital. How long did it take to settle that dispute? Four years. That's one thing.

How can one be very efficient without paralyzing the system and without creating undue financial pressure, not only at the federal level but also at the provincial level, because provinces will be affected as a consequence? That is why we felt we needed to proceed through consultation. It is true that the education exercise we undertook was very long. Ms. Adam even asked us when we were going to get results. It is true that it was a very long process, but we learned a lot.

We did our consultations ourselves, and we asked the provinces to consult with their school boards, for example. School boards are very important. They will be meeting this weekend. It's important that they be a part of this process but the provinces have to consult them because this is a provincial jurisdiction. If we make these consultations obligatory and we provide a framework, then the result of the negotiations will be much more tailored to the needs of the communities than if we decide what those communities' needs are, here in Ottawa.

Second, you mentioned compliance with jurisdictions. This has been an important factor. You know that I am quite concerned about that aspect. The Supreme Court, in its latest rulings, has consistently taken into account the various communities' unique characteristics, including those of Quebec, being fully aware that francophones are a majority in Quebec but a minority in the rest of America. It has always taken into account Bill 101. Under our Constitution, our statutes cannot encroach upon provincial legislation, and the Supreme Court, in its rulings, has made sure that it is taking into account the uniqueness of each community. In this case, we're talking about Quebec.

Therefore, I am not concerned about this. I was concerned about something else however. The federal government can end up infringing through its spending authority. The federal government does not infringe on jurisdictions through its statutes but rather through its spending authority. If that spending authority is made justiciable and pressure is exerted on us, then this pressure will also inevitably be felt by our financial partners who are the provinces and the territories.

When one is talking about the public service or about bilingualism in our statutes, one is not talking about part VII, but rather about parts I, II, III, IV and V, which makes it much easier to justify the bilingual requirement or lack of. Part VII is much less easier to quantify. That is why in 1988, the focus was rather goodwill and good understanding. In order to ensure that there is no undue pressure on our partners or on ourselves—because the issue is the ability to pay—in order to not paralyze the system, we will oblige ourselves to consult people. If those consultations are insufficient, then we will have recourse to the courts and we will be able to tell people that they have not done their homework.

● (0935)

Mr. Guy André: Do I still have some time, Mr. Rodriguez?

The Chair: Go ahead.

Mr. Guy André: At that point you consulted groups. There was a consultation exercise and you say that that consultation entails accountability.

Hon. Liza Frulla: Yes.

Mr. Guy André: Then you have to take into account the recommendations.

Hon. Liza Frulla: Absolutely.

Mr. Guy André: Not necessarily.

Hon. Liza Frulla: Yes, absolutely. If there are groups who think that they have not been adequately consulted, if they do not see themselves in the results, then they can take us to court. That is the goal.

The Chair: Thank you very much, Mr. André. That is all the time you had.

We will continue with Mr. Godin.

Mr. Yvon Godin (Acadie—Bathurst, NDP): Thank you, Mr. Chairman.

Thank you, Minister, and thank you to your advisors.

I would like to thank Mr. Gauthier for Bill S-3. As you said in your opening statement, Minister, he had to table four bills. I think it is shameful that a senator has had to go before Parliament four times in order to get it to understand that part VII needs more teeth to ensure that both official languages in Canada are respected, and that he was turned down several times. Let's hope that this time will be the last and that there will be results. However it cannot be diluted to the extent that it would end up running counter to what we have at this point in time. I am a little concerned.

Unless I have misunderstood—and I will express this in my own words—, you said, Minister, that we must not end up in a position where we could be taken at any time to court, as this would cost the government money: the court could rule and that might be quite costly for the government; you do not want to end up in that position.

We've already heard that. Bill S-3 is not welcome and the government is against it because if the legislation is binding rather than declaratory, then people will go to court to defend themselves. That's like saying you don't want a policeman to give a ticket to someone driving at 120 kilometres an hour because they might go to court to say that they aren't guilty. Therefore tickets won't be given to people who are speeding.

We have not been able to settle the bilingualism issue in Canada for years. You raised the Montfort Hospital example, that took four years to settle in court. That is shameful but it is because the law did not have enough teeth to say frankly that it was useless to go to court because quite clearly Montfort Hospital could not be closed. As a francophone living outside Quebec, I am proud of the Montfort Hospital and I am proud that they fought for four years and won their case. Mr. Gauthier and everyone on my committee said that the law did not have enough teeth to have strength

We finally have this bill. We're not going to tell New Brunswick or Quebec how to manage their provinces under the Constitution. However in this case were talking about federal jurisdiction, federal responsibility. Let's have binding legislation and stop playing around with the law. Stop giving us candy. We want solid legislation. We want people, organizers and ministers to look at this legislation and understand that they cannot play around with the law because it will be right there before them. The government is currently playing with the legislation: because it's only declaratory, it does not have to move ahead, it does what it has to do and waits to see if people will go to court. Poor communities, poor municipalities have to use their money to go to the Court of Appeal, to the Supreme Court, and they spend all their money, which is the government's money. It simply snowballs.

I would like to see what Bill S-3, with the government's amendments, will do for minorities. My fear is that it will be worse than what we had before.

● (0940)

Hon. Liza Frulla: No, that cannot happen.

Mr. Yvon Godin: Then explain why, Minister.

Hon. Liza Frulla: I will explain why and then I will give the floor to Michel who was very involved in the Montfort Hospital case.

We are required to "determine whether the policy or program impacts on the implementation of the commitments". We are required to do that, otherwise we may end up in court, and that applies to everything: to Crown corporations and to the whole of the government.

We are also required to "consult any interested organizations, including organizations representing English and French linguistic minority communities in Canada" and to "take into consideration the conclusions drawn from the application of paragraph (a) as well as the results of consultations carried out within the application of paragraph (b)."

In other words, we must comply with all of that and that applies to the whole government: Crown corporations and all organizations.

I will now give the floor to Michel, because the Montfort Hospital's story is an interesting one.

Mr. Yvon Godin: How long does it take in Canada—or in provinces—for the government to forget and to do what it wants after its consultations? We're consulted, people are consulted all over the place. But what are the results? What kind of legislation is born from consultations? You can consult: people say what they want and the government replies that it is not going in that direction. The government can consult people, comply with the law, consult them a second time, and then a third time to make sure they're covered under the law. But what are the results?

Hon. Liza Frulla: All right. We are required to take into consideration the conclusions drawn under paragraph (a) and the results of consultations undertaken under paragraph (b)." That means that we aren't just consulting. We are required to take the results of those consultations into account. However, do we want to end up in court over and over again over the years, for each decision made? Is that good for the promotion of linguistic duality in Canada? We have an interesting precedent and that is the Montfort Hospital.

Michel.

Mr. Michel Francoeur (General Counsel and Director, Legal Services, Department of Canadian Heritage): You raised the example of Montfort Hospital, which is actually a very important precedent in the history of minority communities and language rights in Canada. Perhaps you will recall that when we last appeared, approximately two weeks ago, my colleague Marc Tremblay spoke about the Ontario Court of Appeal's ruling on the Montfort Hospital issue in order to point out that in this case, which was a big victory for minority communities, the Ontario Court of Appeal did not overturn the Ontario government's decision nor that of the Ontario Health Services Restructuring Commission, but rather the process that the Ontario Health Services Restructuring Commission used to reach its decision to reduce the Montfort Hospital's services.

In this case, the Court of Appeal concluded that the Ontario Health Services Restructuring Commission did not take into consideration the impact of that decision on the minority community, that it had not adequately consulted those communities and that, as a result, given that the commission no longer existed when that ruling was handed down, the Government of Ontario would have to do its homework again, that is to say begin the process all over again, undertake better consultations with the community and further consider the impact of reducing the Montfort Hospital's services on the francophone community, specifically the community in the Ottawa region.

This illustrates that even when it is the means or the process, and not the results, that are justiciable, courts have the power to intervene and that can make a difference. The Montfort Hospital is the best example of that, because the Ontario Court of Appeal told the government that it would have to go back and do its homework because the process had been inadequate. We all know what followed. After four years of legal proceedings, two rulings, one from the Ontario Divisional Court and one from the Ontario Court of Appeal, the government decided to end its proceedings.

● (0945)

The Chair: Mr. Godin, you can come back on the next round.

We will carry on with Mr. Godbout.

Mr. Marc Godbout (Ottawa—Orléans, Lib.): Good morning, Madam Minister.

I am partially sympathetic to the position of your department which wants to avoid fights with the provinces. I believe that we agree on the fact that could pose a problem. However, I would like to come back to a point raised by Mr. Godin, which is the fact of limiting the federal government's justiciability to consultation. I must admit that I have some problems in that respect. We undertake consultations from time to time and we do not always interpret the results of those consultations the same way.

One of the amendments being suggested by your department says that the Canadian government "shall take appropriate measures to advance the quality of status and use of English and French in Canadian society and may take measures too".

For a Franco-Ontarian, the word "may" is about the worst legislative word in existence. We have seen all kinds of things throughout our history. The government has served up many interpretations of the word "may". In the original text, that word was not there. It simply said:

Then we revert to the present clause 43 of the legislation.

I know that your lawyers are here and that they are giving some sort of legalistic interpretation to all that, but this is a bill and it is rather important. What justifies adding the word "may"? That worries me to the utmost.

Hon. Liza Frulla: I will let Michel answer because we are talking about legal niceties here.

Mr. Michel Francoeur: First, let us talk about results. I would like to say a few words about that for a moment because it seems appropriate to your question.

Obligations of results concern us and here is why. If we consider that the other parts of the legislation containing justiciable obligations—in other words—something that can give rise to recourse—you will see that the obligation of results is very clear and that the result is easily identifiable. I will give you a few examples: that legislation be passed in French and in English, that regulations be adopted, printed and published in French and in English, that the members in the House of Commons may speak French or English, that there will be simultaneous interpretation services provided during the sittings of the House of Commons, that the services offered by federal institutions at their counters be available in French and in English, that the documents prepared by the different federal institutions and made available to the public be available in French and in English.

The same thing goes for the language of work. Employees are entitled to have the tools for their work, their guidelines, their policies, available in French and in English. In all the "bilingual" regions, employees are entitled to have a supervisor who addresses them in their official language.

So these are results that can be easily defined. The government must simply ensure that the measures, means or resources be available in order to arrive at a clear and easily identifiable result.

As for part VII, the results being proposed by Bill S-3—for example, ensuring equality of status and use of French and English in Canadian society or the commitment of the Government of Canada towards the vitality and development of minority communities—are far less easy to define. We are all in favour of the full development of minorities. The legislation provides for that and that is encouraging.

However, how does one define the vitality of a minority community? How does one define the equality of status and use of French and English in Canadian society taking into account the fact that the minister must ensure that there is an improvement?

Mr. Marc Godbout: You are using up some of my time.

Here's my question: are all the measures that must be taken going to be taken, yes or no? Why put in the word "may"? if that word is used, people won't want to do what they don't want to do. That's a concern to me. It also says "measures". I find the use of that term questionable, up to a point. We're talking about process.

As for the results, I can't say that I totally agree with you. However, I'm not the one who's the most concerned. Using the word "may", means that the government has no further obligation, in my opinion.

● (0950)

Mr. Michel Francoeur: Quite sincerely, one of the reasons it is used is because in the English version of Bill S-3 you have the words "*may take measures*". The word "*may*"...

Mr. Marc Godbout: I don't like the word "*may*" any better than the word "*peut*". I would far prefer the word "*shall*".

Mr. Michel Francoeur: We tried to reconcile the two versions, the English version and the French version. Now, the English version uses the word "*may*". That's why we proposed the term "*peut*" as the French equivalent.

Hon. Liza Frulla: When you look at all the obligations, you can see they apply to several clauses, for example clauses 41, 42, 43, 44 and so on. If you read all of part VII, you can see that these obligations are, to my mind, real and verifiable. We shouldn't forget that we absolutely must have significant means to check up on how the communities are flourishing. We must also consult the stakeholder groups. We must consider the impact on the communities and on the results. If it's a justiciable obligation, everything must be documented because, at the end of the day, we could be brought to court.

Those obligations are rather significant.

Mr. Marc Godbout: I agree with you, but we could very well use the expression "*shall*" rather than "*peut*". If the word "*peut*" had been used for clause 23...

The Chair: Thank you very much, Mr. Godbout.

We'll now begin our second round. This time, as you know, the members have five minutes each.

We'll continue with Mr. Scheer.

[*English*]

Mr. Andrew Scheer (Regina—Qu'Appelle, CPC): Thank you.

Welcome, and thank you for coming today.

I have a couple of quick questions.

In your opening statement you mentioned that Bill S-3 as it is currently worded could reduce the government's margin to manoeuvre within its capacities to develop policies and programs and when exercising its spending power. Do you foresee that court decisions could be made that would alter the government's spending in a particular area on a particular program? Could there be a court ruling that would require more funding or a reallocation in a particular area?

Hon. Liza Frulla: Yes, Bill S-3 puts pressure not only on the federal government. The spending in a lot of domains is usually a partnership federally and provincially. In its current status, that's what Bill S-3 does, as far as a result.

We had a discussion with Senator Gauthier. He said this was not really what he wanted. He wanted to make sure that we're efficient, that there is consultation, and that the results of those consultations are taken into account.

That's why we brought an amendment saying we are going to make it obligatory for the whole of government and crown corporations to consult and to take into account the consultations within our plans and negotiations. The result of this is that it then cannot be brought into court because the procedures are justiciable.

Mr. Andrew Scheer: As long as the departments and the government agencies are trying, that's good enough.

● (0955)

Hon. Liza Frulla: No, it's not only that. It's an obligation to verify the incidents within the communities to any policies, any decisions made, and any application of the plan. It's also the obligation to consult all interested groups and to take into account the incidents within the communities of these results. We have to document everything, and we have to make it official. If we're brought to court, we then have official documents to be able to discuss it in court.

It's quite a constraint. This will put more financial obligations on the government and within the machinery because we're increasing the obligation of the government to do that. It's applicable to the federal government. It's our decision to put our money where our mouths are. This pertains to the federal government. It's on our shoulders.

At the end, I'm sure the result will be much better than what we've seen before, because it's obligatory not only for the Minister of Heritage but also for our crown corporations and the entire federal government.

Mr. Andrew Scheer: Most of the wording I've seen in Bill S-3 applies to federal institutions. If that's what's justiciable, how would it apply to provincial-federal agreements? Those are all areas of provincial responsibility. Those aren't federal institutions.

Hon. Liza Frulla: Well, that's it. If you're talking about the measures, then it's our responsibility. We put it upon ourselves and our crown corporations to consult. If it's justiciable for the result, then the result is based on a partnership between both.

The result is similar to what I did with education. We sat down with the provinces and asked them what they would need in this case. We said we'll put in 40% and they'll put in 60%. We'll put 70% here and they'll put 30% there.

If we base it only on the result, this would be justiciable. It means that if people think the financial means are not enough, in one case or another, they can always say they're going to court, but they can't sue only us because of the result. The result is the combined effort of the provinces and the federal government. They're suing every one of us.

I think if we want to make this project a federal project to make us really act better towards this duality, then let's put the responsibility on our shoulders. This is a big responsibility. Again, it's going to cost, but it's a federal cost and it's not putting pressure on the provincial governments.

The Chair: Mr. Scheer, thank you very much.

[*Translation*]

That's all the time we had available.

We'll continue with Ms. Boivin.

Ms. Françoise Boivin (Gatineau, Lib.): Thank you.

Good morning, Minister and gentlemen.

I accepted to support this bill when Mr. Boudria introduced it because I liked its simplicity. There wasn't anything complicated in there. We are adding teeth to the legislation as many have already pointed out and we were putting an end to the eternal debate as to whether part VII is declatory or enforceable and whether it can be used to go to court. Henceforth, it will be possible to take those matters to court and we won't have to discuss this part before every undertaking. It will have already been decided upon.

I think that everyone here, including yourself, is realistic and understands that it doesn't mean that there won't be any court cases. There are always some in any case. In my ideal world, we wouldn't even have to ask those questions and we'd be able to live in a perfectly bilingual Canadian society. That seems extremely complicated.

I admit that the terms suggested in the amendments worry me some. We've been hearing debates all around the table since the beginning. I spend my life reading and re-reading each sentence and every time I re-read the texts, I always get different interpretations. That makes lawyers happy. I'm a lawyer and I can already see people licking their chops. In any case, there is a gang that's going to be making a lot of money in a little while. You can bank on that.

● (1000)

Mr. Stéphane Bergeron (Verchères—Les Patriotes, BQ): Not yet!

Ms. Françoise Boivin: Yes, unfortunately, Stéphane.

It raises concern. People are always saying that politicians make laws so complex that they make lawyers very happy. To my mind, our responsibility is to try and simplify the bill as much as possible.

We must take into account Senator Gauthier's main message, and I congratulate him. Without his patience and perseverance, we would not be here. Francophones throughout Canada owe him a great deal. I am concerned about the discussions and the battles of words that we will have here very shortly. Is there not a way of dealing strictly with one of the irritants, making part VII justiciable, in other words amending just that aspect without changing anything else?

Are we doing okay with the current wording? Despite all of the comments we are hearing, government responsibilities do exist under section 41 as it currently stands. To date, you do seem to be assuming the responsibilities under section 41, even if the outcomes are not always satisfactory for francophones and sometimes anglophones. They may never be, as you say.

Wouldn't my proposal be a solution? If not, to resolve the Bloc Québécois's problem with Bill S-3, could we not propose, in the text drafted by Senator Gauthier and now tabled in the House, that this be done while respecting provincial jurisdiction?

Hon. Liza Frulla: First of all, we certainly do not want to complicate matters. We are simply saying that we are taking the very essence of Bill S-3. Having had discussions, even with the senator, we are saying that the purpose of this bill is to give the Official Languages Act more teeth and to apply it to the entire federal government, without interfering in areas of provincial jurisdiction, because the provinces are our partners and we need them. Without them, we would not meet any of the objectives we have set. The Lord only knows if we negotiate with the communities, for example, in the case of the education agreements. Since Canadian Heritage does most of the negotiating, we know what we are talking about. The provinces have been our partners for more than 30 years, as I pointed out earlier.

Our conclusion, after having worked on the Official Languages Act, is that the process must be made justiciable. The objectives are the same. However, to meet these objectives and respect provincial jurisdiction, because experience tells us that that is what must be done, we must make the process, in other words what applies to us, justiciable. In the end, with these obligations, we will be able to better serve our community. That is all we are saying.

In my opinion, we are not complicating the act. On the contrary, we want to make the measures to be taken justiciable instead of the outcome. That is a major constraint. Bear in mind that everything we are currently doing, as we are seeing in our negotiations, is a major constraint, but I think it is necessary. We are prepared to rise to the challenge.

The Chair: Thank you, Ms. Boivin.

We will continue with Mr. Bergeron.

Mr. Stéphane Bergeron: Thank you, Mr. Chairman.

Madam Minister, gentlemen, I could say a great deal about the distinction that you are making between what you call the obligation of process and what the francophone and Acadian communities would have liked to have seen implemented, the obligation of result.

Having said that, I would like to go back to the last point that Ms. Boivin raised regarding the issue of jurisdiction and provincial legislation. What concerns me personally as a member of the Bloc, of course, but also as a Quebec member of Parliament, and I know that the concern is shared by all Quebec members around this table, is the fact that part VII of the Official Languages Act does not apply solely to federal institutions, but goes much farther. The implementation of the act can cause a problem, because no specific implementation has been set out for Quebec.

I know, Minister, that in a previous life, you were part of a government that defended Quebec's specificity and jurisdiction tooth and nail. I know that for a fact, because I was working at the National Assembly at the time. So I had an opportunity to see you in action then. As you said yourself in your opening remarks, and as Minister Stéphane Dion and the Commissioner of Official Languages, Ms. Adam, have also said, Quebec's situation in North America is quite unique. Although it is made up of a francophone majority, the society is a minority in North America. Therefore, it needs specific protection. Mention was even made of a symmetrical application of part VII of the Official Languages Act. Ms. Adam and Mr. Dion spoke directly or indirectly about a symmetrical application.

Moreover, when Mr. Boudria came to see us, and we talked to Minister Bélanger, there was talk about our amending the Official Languages Act to remove the possible irritants. However, the amendments that you have submitted do not in any way remove these potential irritants. They are still there. At our last meeting, I asked Mr. Francoeur if the Government of Canada was willing to remove these irritants, and I was told at the time that there were no plans for any further amendments apart from the ones you had submitted.

So we submitted one to have Quebec excluded from the implementation of part VII of the Official Languages Act. Some members, including my NDP colleague, Mr. Godin, suggested that it would be better to use the jurisdiction and provincial legislation angle, and I am fully prepared to live with that. However, there must absolutely be something from you or on the part of committee members, since, for example, section 43(1)(f) still... Madam Minister, you said yourself earlier that it was necessary to control the federal government's spending power. But there are provisions that, in my opinion, are very worrisome. For example, it says that the federal government must take measures to:

> (f) encourage and cooperate with the business community, labour organizations, voluntary organizations and other organizations or institutions to provide services in both English and French and to foster the recognition and use of those languages;

That runs counter to the Quebec Charter of the French Language. Is the federal government going to distribute money to the business community, labour organizations, voluntary organizations to encourage the use of English, in blatant violation of the Charter of the French Language? That provision appears to be an irritant to me. Are we going to leave it there? Will it be amended? Will this committee not decide to compel the federal government to respect provincial and territorial jurisdiction and legislation, as I pointed out, part VII of the Official Languages Act applies not only to federal institutions, but goes much farther?

● (1005)

Hon. Liza Frulla: I worked at the National Assembly, as you said, I also worked with Mr. Ryan to restore peace where language was concerned. We established measures that are still in force and were complied with by the Parti Québécois government. We did the work we had to do. I assure you that, if I had the least doubt that this legislation threatened Bill 101 or the other protective measures that Quebec needs to have in place, I would not be here before you trying to convince you that it does not threaten Quebec's priorities.

As for excluding Quebec from the implementation of part VII, I do not believe that Quebec would agree, to be honest. Why not? Because it would also mean excluding Quebec's anglophone minority from the discussion. I don't think that anyone, yourself included, would wish that to happen.

That said, federal statutes—as I said earlier—include the obligation to take this into account. In our system, the majority of provincial legislation is always taken into account when it comes to respecting minority rights or protecting minorities in any area. This means that Bill 101, which applies to Quebec and protects French in that province, and also protects the French-language community in the Americas, will always be taken into account. Should it come to a challenge before the courts, Bill 101 will be taken into account by the Supreme Court, because the Supreme Court has always done so.

So it would be redundant to specify that this legislation must not infringe upon areas of provincial jurisdiction. You can discuss the issue, but the requisite provision is already in place.

That said, when we say “may take”, we mean there is an obligation to consult, and the first parties that should be consulted are the provinces. We cannot achieve anything if the provinces are not full partners in the enforcement agreements. If Quebec had not been a front-line partner at this stage, among other things in education agreements, we would not be here signing the protocol, particularly since Quebec's Minister of Education is president of the Council of Ministers of Education, Canada.

We cannot do anything if the provinces are not our partners. That has to be taken into account, and that is something we all have to apply to ourselves. The process, not the result, must be justiciable, because if the result is justiciable, then we come back to spending power.

● (1010)

The Chair: Thank you, Minister. I have to interrupt you.

We will continue with Mr. Godin.

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

I will stress consultation because I have seen a great deal of it. New Brunswick held a series of consultations on health, and four French-language hospitals were closed in northeastern New Brunswick. We saved one which has six beds, and an emergency department open until midnight. That is where consultation gets us.

Minister, I would like some explanations. If I understand correctly, you say that you don't wish to create a situation that would make it possible for citizens to go to court, because that would cost the government a great deal of money, money that it cannot afford. In that case, what is the point of consultation?

I'm trying to make my questions as simple as possible. I could talk for 10 minutes, and waste all my time. It's very simple. Where does consultation get us? As far as I'm concerned, consultation...

Hon. Liza Frulla: I understand, Yvon, and I will try to keep my answer as simple as possible.

If the people were not consulted enough, if the impact has been prejudicial to communities, going to court is still a possibility. Then, the court will rule, and will, as it did with the Montfort Hospital case, overturn the decision.

Mr. Yvon Godin: In that case, there had been a lack of consultation.

I'm talking about lots of consultation. There's lots of consultation, we meet with everyone, we even meet with everyone four times. The entire province was consulted, and at the end of those consultations, the government did not take the results into account because the results did not agree with what it wanted to do.

Hon. Liza Frulla: Yvon, that is lack of consultation. There is a lack of consultation generally, but the impact on communities can be justiciable. Communities can take the government to court if the impact on them is prejudicial after they have been consulted and after everything they have said.

Mr. Yvon Godin: What I have a problem with is the way the federal government acts. When the community goes before a trial court and wins, as it did in the case of the Acadie—Bathurst electoral boundary, the government then challenges the court's ruling. When the Forum des maires de la Péninsule acadienne won against the Canadian Food Inspection Agency in the case of food inspectors transferred from Shippagan to Shediac, the federal government challenged that ruling in court. It wants to go all the way to the Supreme Court to fight francophone communities and tell them that this issue does not belong to them.

We hear two different messages. We want to help communities and give them tools to help them, but as soon as they use those tools, we drag them to court because we want to know whether what they are doing is really what the legislation permits, when we are the ones who made that legislation in the first place. You cannot argue against me in this. In all the cases I have mentioned, the federal government is going to the Supreme Court—the highest court in the land—to fight francophone communities who have finally won something.

● (1015)

Hon. Liza Frulla: Then, let's close our books. We do not need the Official Languages Act anymore.

Mr. Yvon Godin: Given the way things are being done, I would have no problem with that, Minister. Let's close our books.

Hon. Liza Frulla: That's not the problem. At that point, we would no longer need the Official Languages Act. Regardless of whether it is the measures or the results that are justiciable, the problem begins as soon as we go to court. Do we agree on that?

Mr. Yvon Godin: Minister, the purpose of Bill S-3 was to give some teeth to part VII of the OLA, so that people stop going to court, so that people understand that the OLA has enough strength, and that the courts are no longer needed. Stop breaching the OLA. Comply with the OLA, and we will stop going to court.

Hon. Liza Frulla: The result is justiciable. Do we believe there will be no more challenges in court because the result is justiciable?

Mr. Yvon Godin: There will be challenges in court as long as the government fails to comply with the act. However, if it complies with the act...

Hon. Liza Frulla: The federal [*Inaudible*], because the provinces can say that additional pressure is being put on them and they did not ask for it.

Mr. Yvon Godin: We are discussing this here, and I believe we are ready to ensure that there is no infringement on...

Hon. Liza Frulla: We have no choice, because the result is obviously the culmination of federal-provincial negotiations. When we sat down with the provinces and presented a four-year memorandum of understanding on education, they accepted it. I will now undertake bilateral negotiations with the provinces. We will go to Manitoba and see what that province's needs are. Yesterday, I had a conversation with Mr. Selinger, the minister from Manitoba, and we looked at the overall needs. We will come to an agreement. I'm not building schools because that is not within my jurisdiction, but I will help him with the community centre, and with the Collège de Saint-Boniface—we will put those things in together. The result of the process may be justiciable.

Mr. Yvon Godin: But the legislation was clear. They had to build schools in Prince Edward Island and in Manitoba. That is what the Constitution says.

The Chair: Thank you very much, Mr. Godin.

[*English*]

We will now go for a third and last round.

Mr. Vellacott.

Mr. Maurice Vellacott (Saskatoon—Wanuskewin, CPC): I'd like to ask the minister about some articles that have been running in the paper over the last couple of days, today in particular, on Alliance funding in Quebec—the anglo group there. It's been reported that their funding has been sliced from $900,000 to $539,000 per year, and it is recommended that it be gutted down to $300,000.

Under the bill before us, would there be some opportunity in a court to approach that? I understand it's your department, Madam, that has cut the funding so significantly, because they have embarrassed the federal government at points, with respect to some discrimination that's occurred in terms of anglophones and hiring.

Hon. Liza Frulla: In the case of Alliance Quebec, that is not true. It's wrong, with all due respect.

Mr. Maurice Vellacott: What is not true?

Hon. Liza Frulla: That they embarrass.... It's really wrong. You have to understand, but I know it's out of order.

[*Translation*]

The Chair: I want to make sure that this debate regarding Alliance Québec is relevant to Bill S-3. With your permission, I want to ensure that we do not stray from our topic and that we focus on discussing Bill S-3. If that is the intent of your question, I accept. Otherwise, I would encourage you to...

Hon. Liza Frulla: Mr. Chairman, people who live in Quebec know very well that such statements are unacceptable.

[*English*]

In the case of Alliance Quebec, it went from $900,000. If you live in Quebec, you know that 20 years ago Alliance Quebec was the *porte-parole* of the anglophone community. Today there is QCGM, which is a community network of 24 organizations, including Alliance Quebec. On Friday we increased their funding by 19%. Alliance Quebec is also eligible for the funding. But the one principle is good governance. No matter what you do, you have grants, contributions, rules, and regulations, and there's good governance. That is the case of Alliance Quebec.

If Alliance Quebec, under Bill S-3—

● (1020)

Mr. Maurice Vellacott: With due respect, Madam, and it's my question and opportunity here, some have suggested that the other group, Quebec Community Groups Network...you're financing a fairly obedient group here, with an annual budget of $3 million and lots of Liberals on the payroll. Alliance Quebec was the only organization with the track record in the province of Quebec of fighting and researching abuses against those who speak Canada's other official language. That's the group that's doing it. And you can prop up other groups there and straw men, if you will.

Hon. Liza Frulla: No, they're not the only ones. When you live in Quebec you know that they're not the only ones doing advocacy. And there is one principle that you have to observe when you have grants and contributions, and that is the rules and regulations attached to the grants and contributions. We have the Auditor General we have to speak for. So this is a problem for Alliance Quebec.

Living in Quebec, I have also dealt for years with Alliance Quebec. It's an organization that I do respect, but now there is a problem with governance and—

Mr. Maurice Vellacott: In what way?

Hon. Liza Frulla: There's a problem with governance.

Mr. Maurice Vellacott: What problems?

Hon. Liza Frulla: We have had 21 meetings. We already have a 22nd meeting planned. We working very closely with them.

I have to tell you this. It is not true that the QCGN and the 23 or 24 organizations representing English in the English townships, in Gaspésie and all over, are funded because there is partisanship in funding this. You have to be in Quebec to know and to understand what I mean. I do not accept this, sir.

Mr. Maurice Vellacott: In terms of the organization and the governance there, you're saying, Madam Minister, that there are problems. There was an audit done—we're aware of that—and at the end of the day, after some perceived it as a bit of a harassment, it actually showed there were things to tweak here and there, but nothing significantly wrong and things were okay. So for you to now say there are governance issues...I'm wondering what your basis is for that because the facts do not support that. The audit does not even support that.

Hon. Liza Frulla: There is a governance issue.

Mr. Maurice Vellacott: We can say what we want, but give me some documentation to that effect.

Hon. Liza Frulla: Listen, there is a governance issue. We cannot erase a debt and we're not authorized to erase a debt. We have had meetings and we are going to continue to have meetings. The last one was Friday morning. We'll have a 22nd meeting. We're working with Alliance Quebec as we're working with other groups, and I'm very pleased to say that we're increasing the support for the English community—

Mr. Maurice Vellacott: So under this particular bill then, Madam, my question is, is there, yes or no, an opportunity for—

The Chair: To both of you, that's all the time we have. Thank you very much.

I encourage all members to stay on the subject, which is Bill S-3.

[*Translation*]

Let us continue with Mr. André.

Mr. Guy André: Good morning.

At the outset, when I discussed Bill S-3 with my colleagues, one of our first reactions was to wonder, given the current content of the Official Languages Act, whether we really needed this bill. Actually, we agreed that what was really needed was not so much a change in the government's attitude towards Canada's minorities, as a change in legislation. We thought that the current Official Languages Act contained sections which, as you know, state that the government must advance the status of minorities everywhere in Canada. That was our first reaction.

I am looking at all the amendments to Bill S-3 that you have put forward and the fact that you say that you want more consultation with communities to help them better exercise their rights so that their recommendations are heard. Well, in another incarnation, as a community organizer in a CLSC, I organized consultations. Consultation with groups has its limits, because their needs are often of a financial nature. As things stand now, the development of services and programs in francophone communities often goes hand in hand with providing the funds.

I wonder how we will proceed. We will consult groups and they will make recommendations to us, which will certainly have to do with funding. Under this legislation, groups will be able to have more recourse and to ask whether their recommendations were followed. Then, the government can reply that it does not have enough funds to cover all the needs of the communities. This is how I think things may turn out once the amendments to Bill S-3 are implemented.

How do you think that this amendment could better meet the community needs? Is this bill of any further use and does it really grant more powers? In my opinion, the Official Languages Act already provides for consultation.

● (1025)

Hon. Liza Frulla: In fact, there is such a provision, but it depends on the government's goodwill. With our amendments, it becomes an obligation and no longer a matter of goodwill. It is a justiciable obligation and therefore it must be documented. Thus, the results of consultations must be taken into account. In other words, we cannot declare what the community needs are. You have to sit down and work with them.

If you were still working for a CLSC, they would have to consult you, and they would also have a justiciable obligation to take your statements into account. It would not be a matter of goodwill.

Mr. Guy André: In today's society, before implementing any program, cooperation and consultation are paramount.

Mr. Michel Francoeur: With your permission, I would like to add something.

Earlier, we discussed the Montfort Hospital case. Now, this is exactly what went wrong with the process followed by the Ontario government. We know what the results were.

Earlier, Mr. Godin mentioned the Raîche case within the context of the new electoral map in northern New Brunswick. In this case, The Federal Court concluded that the Electoral Boundaries Commission, even though it had looked at the impact of the new electoral map on the region's francophone community, it had nonetheless failed to look at this impact closely enough. As in the Montfort Hospital case, the court reminded the commission of its duties.

Now, Canada's Attorney General did not appeal this case. Further, the Canadian government proceeded to review this riding's boundaries by taking community interests into account. Clearly, this kind of measures do yield substantial results.

The Chair: Thank you, Mr. André.

Mr. Yvon Godin: Mr. Chairman, I have a point of order. Let me just remind you that...

The Chair: There is no point of order here. You will have the opportunity to bring this up later on.

Mr. Yvon Godin: Let me simply add that the government did not appeal the case because it was right in the middle of a federal election.

The Chair: You will have an opportunity to raise this again in five minutes.

Now I give the floor to Mr. Simard.

Hon. Raymond Simard (Saint Boniface, Lib.): Thank you very much, Mr. Chairman. Welcome, Minister.

This is the fourth time that we have tried to move forward with a bill like Bill S-3. No doubt, you have noticed that this time there was a will to succeed. We want to move ahead and pass Bill S-3. No doubt, you also saw that the members of this committee, and the communities as well, are concerned with the fact that this bill may be toothless if it is not aimed at obtaining results. We are very worried about this.

I also know that results are very subjective. Something that the government finds quite adequate may be totally inadequate for communities. This could result in many court cases. I am very worried about this.

In your presentation, you said that measures to implement means would be justiciable. Normally, consultations result in recommendations. If the government did not accept the recommendations or did not implement them vigorously, it would be a justiciable matter. Is my understanding correct? Therefore, this is a very powerful tool for the communities.

● (1030)

Hon. Liza Frulla: Exactly. We must take them into account. If the groups that were consulted found that we did not sufficiently take their consultations and recommendations into account in the context of our negotiations, we could actually be taken to court.

Hon. Raymond Simard: Could you give us an example of circumstances where provinces could be in a difficult position if we did not amend the bill as it stands? We are very concerned about this.

Hon. Liza Frulla: Michel.

Mr. Michel Francoeur: If the bill was passed without amendment and federal institutions were obliged to show results, that is, to ensure that French and English progress within Canadian society, that communities develop and flourish, and if there was a federal-provincial agreement on health, a sector which is mainly a provincial jurisdiction, it could place the federal government in a situation...

Allow me to take a step back. If the agreement signed between the federal government and a given province did not include enough money to provide services in French and English, according to a given minority community or according to the Commissioner for Official Languages, or if the agreement did not include a mechanism enabling the province to provide services to the community in English and in French, if the money was transferred but there was no language clause stating that the services must be offered in French and English in certain circumstances, a citizen could appeal the agreement on the grounds that it is inadequate and does not include the appropriate mechanism to promote French and English and help communities which fall under the agreement to develop. This might place the federal government in a difficult situation. Because the agreement does not contain this type of language mechanism, or does not provide for sufficient resources, the federal government may have no choice but to refuse to sign it.

Even though under the act, be it under the current act or the act as amended if Bill S-3 is passed with or without amendments, provincial institutions, provincial governments and other third parties which are not federal institutions cannot be directly prosecuted, it is clear that this will have important repercussions on federal-provincial relations. Given its obligation to show results, the federal government could refuse to sign the agreement if a province refused to include a language mechanism or clause in the agreement. But if it did sign, it could potentially be violating its obligation to show results, its obligation to promote the growth and development of communities, and the progression of French and English in Canadian society. Ultimately, it's the province which would be affected, since, if it wants to receive federal funding, it would have to agree to a language mechanism, otherwise the government could refuse to sign the agreement. That's where the problem lies as far as Bill S-3 and the obligation to show results on behalf of federal institutions are concerned. It would ultimately affect federal-provincial relations, because they could end up finding themselves in a sort of catch-22 situation.

The Chair: Thank you, Mr. Simard.

Mr. Godin, you have the last word.

Mr. Yvon Godin: No, that's not necessary.

● (1035)

The Chair: Fine, thank you.

Mr. Yvon Godin: I'm closing the books!

The Chair: Excuse me? You're closing the books?

Mr. Yvon Godin: Honestly, the real problem when the government becomes intransigent, refuses to invest money and is afraid of going to court is that it really does not want to solve the problem of bilingualism and services in Canada.

Hon. Liza Frulla: Yvon, as a friend, I'd like to respond to that.

You say that the government does not want to invest money, but just look at the agreements...

Mr. Yvon Godin: In any case, it's our money. We are the ones who pay taxes. That money belongs to all of us.

Hon. Liza Frulla: I know, it's our money too.

To say that the federal government does not want to invest your and our money seems like an exaggeration to me. First, you have to consider the increase to education and the $740 million invested in the action plan. We are working closely with the communities and making huge efforts on their behalf; it cannot be said that we are not investing.

Bill S-3, as introduced and amended, is going to require significant financial resources from the federal government, whether you like it or not, and that is all well and good. Except that, ultimately, the required results...

What bothers me the most with respect to Quebec is the last thing Michel mentioned. We have to be careful not to jeopardize our relations with our main partners, in spite of our good intentions. We depend on them to achieve the goal that we are all aiming for. We depend on the provinces wherever provincial jurisdiction comes into play and wherever they are our partners.

If, as Michel explained, we don't sign an agreement and the province is obliged to... When the result is justiciable, we encroach on provincial jurisdiction with our spending power. That is why we are proposing to take on the whole obligation. But it is a heavy obligation! It's not insignificant! It is a matter of negotiation and sensitivity. The communities may say that we haven't been sufficiently sensitive to their recommendations and then take us to court. No one wants to go to court. We want to succeed. So we must make sure that we are sensitive to the recommendations.

Mr. Yvon Godin: Minister, we wanted to succeed in our communities. The food inspectors and the francophone communities wanted to succeed. It's the Government of Canada that decided to take it to the Supreme Court. We wanted to succeed.

As I said very briefly before, with all due respect, the electoral boundaries affair took place in June, during an election. The government had the choice whether or not to take the community to court. I had a strong feeling that if there had been no election, it would have gone to court. People know that. Mr. Boudria, you can nod your head, because you clearly remember the battle that was waged to find out whether or not it would go to court. There was an election, and it might have looked bad. That part was left out.

I'm talking about the people where we live, the francophone communities where we live, the SSANB. Each time we win something, we have to go to court, and it's the federal government that takes us there.

Hon. Liza Frulla: I understand, Yvon, but the obligation to be sensitive to the recommendations knowing full well that we can be taken to court if we don't do our job properly is quite a straightjacket that forces us to do what it takes to make it work.

Honestly, I don't think there's any government anywhere that enjoys going to court, is there? So we have to do what it takes to make it work, and we are setting the necessary parameters. It seems to me that that is a step in the right direction and is quite positive.

It's for you to discuss, but I am confident that this legislation respects provincial jurisdiction. Moreover, we are the ones it imposes obligations on, not our partners.

The Chair: Mr. Godin has one minute left, if he sees fit.

Mr. Yvon Godin: I have nothing to say.

The Chair: You are packing it in at four minutes.

Mr. Michel Francoeur: May I make a comment?

The Chair: Go ahead.

Mr. Michel Francoeur: I simply want to reply to the comments made by Mr. Godin with respect to the case before the Supreme Court of Canada and which is commonly known as the Forum des maires de la Péninsule acadienne versus the Canadian Food Inspection Agency case.

Firstly, the Forum des maires de la Péninsule acadienne filed a suit which brought the government before the trial section of Federal Court of Canada. In its ruling, the court concluded that part VII of the Official Languages Act, as it stands, is justiciable. Yet, we're all here today to amend the Official Languages Act by making it justiciable. In its ruling, which deals with different matters, the court stated that part VII was already justiciable.

Obviously, for the Attorney General of Canada, this was a fundamental principle. The court made a statement that was going against the position of the Attorney General of Canada as well as our current understanding of the statute. It is for this reason that the Attorney General of Canada brought the case before the Federal Appeal Court. You will recall that the Federal Appeal Court ruled in favour of the Attorney General of Canada arguing that part VII, in its current wording, was not justiciable. If Parliament wanted to make part VII justiciable, it could do so by amending it. At the time the ruling was handed down, the act was not justiciable.

Ultimately, it was the Forum des maires de la Péninsule acadienne, namely the mayors representing those citizens, that brought the case before the Supreme Court of Canada, and not the contrary. It was the Forum des maires de la Péninsule acadienne which had requested that the case be heard by the Supreme Court.

● (1040)

Mr. Yvon Godin: Now, we have a bill before us, and you want to amend it to be able to win again.

The Chair: Thank you, Mr. Godin.

That is all the time we had.

Thank you very much for being here, Madam Minister, Mr. Francoeur and Mr. Lussier. We will suspend the sitting for two minutes, and then we will reconvene in camera to discuss the committee business.

Thank you.

[*Proceedings continue in camera*]

Published under the authority of the Speaker of the House of Commons

Publié en conformité de l'autorité du Président de la Chambre des communes

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