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**Chair**

**Mr. Pablo Rodriguez**

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Tuesday, June 14, 2005

• (0905)

[Translation]

**The Chair (Mr. Pablo Rodriguez (Honoré-Mercier, Lib.)):**  
Good morning everybody; it is time to get started.

As you can tell from the orders of the day, there are two parts to this meeting. Firstly, we shall be hearing from Mr. Perreault from *Impératif français*. Mr. Perreault, I would ask that you introduce us to your colleagues who are here with you today.

The second part of our meeting will start at around 10:00 a.m., and we will hear from Mr. Foucher, who is a law professor.

Let us get the meeting under way without any further ado. Other members will be joining us later on. I would like to welcome you to our committee and thank you for having agreed to provide testimony.

Mr. Perreault, you have a few moments to make your presentation, and following that we shall move on to a brief question and answer period with members of the committee.

• (0920)

Rather than speaking faster, and forcing undue hardship upon the interpreters, you could perhaps skip some sections of your brief. You could perhaps go straight to the conclusion in order that we have more time for dialogue.

• (0925)

**Mr. Jean-Paul Perreault (President, *Impératif français*):**  
*Impératif français* therefore submits that by requiring bilingualism of thousands of Quebec workers and requiring francophone public servants to use English as a language of work in Quebec, the federal government is counteracting the objective of the Charter of the French Language, which is to make French the language of work within Quebec.

The federal government is also involved in activities in Quebec under the present version of part VII. For example, it has recently entered into an agreement with the government of Quebec for \$11.5 million over five years, with a goal of increasing access to health services for anglophones. That agreement was denounced by *Impératif français* because its effect is to require that workers at Info-Santé be bilingual, in violation of the right to work in French in Quebec.

We would also note that under part VII of the act, the Office of the Commissioner publishes studies concerning the implementation of that part of the act. The most recent study, which was published in May, deals with community future development corporations,

SFDCs, and made 18 recommendations to the minister responsible for them with a goal of ensuring that 20 of them, located in Quebec, expand their level of bilingual signage and of direct services in English to the public.

The SFDCs are not-for-profit organizations with which the federal government has entered into an agreement for services. That information provides an idea of the scope of federal action in relation to languages in Quebec.

It should also be noted that the federal government practises symmetry in Quebec in relation to signage, although the Charter of the French Language provides for asymmetry, a practice that has been approved by the Supreme Court.

*Impératif français* is very concerned about the consequences in Quebec of enacting S-3. If sections 41, 42 and 43 were to become enforceable, in accordance with the schedule proposed by the minister in the amendments, Bill S-3 would apply first to some thirty federal agencies operating in the areas of economic, cultural and legal development, immigration, research and development, and tourism. All of those departments and agencies distribute billions of dollars in transfer payments.

In very concrete terms, if Bill S-3 were enacted, would it enable anglophone representatives in Quebec to go to court to have the federal government compelled to reopen the immigration agreement, to promote anglophone immigration to Quebec, as the Quebec Community Groups Network asked of this committee when it last appeared, in order to ensure the development of the anglophone community in Quebec?

If Bill S-3 becomes enforceable, could a Brent Tyler ask the court to add broader language clauses to federal-provincial agreements relating to child care centres, cities, health care or labour force training to further advance the anglicization of Quebec?

If Bill S-3 becomes enforceable, what would prevent the federal government from promoting English as a language of work in Quebec businesses—or risk being slapped with a lawsuit—in particular those that fall within its jurisdiction, such as communication undertakings and banks?

In her testimony, the Minister of Canadian Heritage offered us no guarantee against this kind of loss of ground, other than her credibility. Impératif français regrets to say that it considers that guarantee to be insufficient. Impératif français strongly objects to Bill S-3, as it stands or as amended, being applied in Quebec. We conclude that any federal action undertaken to promote English in Quebec will exacerbate the imbalance between the languages in Canada, to the benefit of English.

In the submission of Impératif français, logic requires that federal language policy as a whole be reviewed, based on the premise that, in Canada, in order for the official languages to achieve equality of status and use, massive action must be undertaken to promote French, and not English, everywhere in the country.

In addition, Impératif français is of the opinion that the situation of the francophone communities of Canada is precarious and calls for immediate and draconian action.

Lastly, with respect to Quebec, Impératif français would remind the committee that 10 years ago, the House of Commons recognized the distinctiveness of Quebec in a resolution that was adopted by majority vote. That resolution is applicable here: the federal government must conclude that it is required to support the government of Quebec in its objective of francizing Quebec society in order to achieve its own objective, which is to advance the equality of the status and use of both official languages in Canadian society. In addition, it must acknowledge the legislative, financial and other efforts made by the government of Quebec to support the anglophone communities in Quebec, and offer it unconditional compensation for all of those initiatives.

● (0930)

It would be unfair for the federal government to fund the initiatives put in place in the English provinces to support francophones in Canada but not to compensate Quebec adequately for the range of services that the province already funds for its minority community.

Accordingly, Impératif français proposes:

That the House of Commons reject Bill S-3 in its current form because the bill is an inadequate tool for the francophone communities of Canada, and dangerous for Quebec.

That the committee quickly do a comprehensive evaluation of federal language policy based on asymmetry between the situation of French and of English in Canadian society, and propose measures to support the francophone and Acadian communities, and advance the equality of status and use of English and French.

That the committee propose that the federal government recognize the efforts and monies expended by the government of Quebec for its anglophone minority community by offering the government of Quebec unconditional compensation in that regard—otherwise known as a right to withdraw with compensation.

If the francophone communities insist on Bill S-3, however, and we understand that they are defending that right tooth and nail, and the committee decides to support them, then, in our opinion, the committee will also have to propose amendments to limit the effect of the bill in Quebec.

That is not opposing bilingualism, or being against the anglophone community in Quebec; what it is, in fact, is ensuring that French in Quebec, Canada and North America is viable in the long term.

I will end on that note, Mr. Chairman. I would be delighted to attempt to answer any questions that members may have.

**The Chair:** Thank you very much, Mr. Perreault. Thank you for your detailed presentation.

I remind committee members that we decided last week to take five-minute turns, given that the meeting will be divided into two parts.

You have five minutes, Mr. Lauzon.

**Mr. Guy Lauzon (Stormont—Dundas—South Glengarry, CPC):** Thank you, Mr. Chairman. Welcome to Mr. Perreault and to his staff.

There are many points I would like some explanations on.

You said in your statement: “If the federal government wanted to truly play a leadership role in support of the communities, it would not need legislation to do so. It would simply act.”

Could you explain what you mean by that statement?

**Mr. Jean-Paul Perreault:** If the federal government really wishes to intervene—as it has done in other areas—to right the wrongs done to the francophone community, to which it has contributed, it could act responsibly, and could in particular recognize that the minority official language across Canada is French and undertake responsible initiatives for all Canadian francophones. Nowhere in the Official Languages Act is the asymmetrical language situation in Canada recognized.

The asymmetrical linguistic situation in Canada is not recognized anywhere in Bill S-3, as drafted. This means that if Bill S-3 is adopted, any measures, however necessary for francophones outside Quebec, will be counterbalanced by measures taken within Quebec, which are unnecessary, that is to say the strengthening of the forces of anglicization within Quebec.

We are saying to the federal government that if it wishes to pass Bill S-3, it must first of all recognize the asymmetry of the linguistic situation across Canada, and Quebec would then be exempted from the application of this legislation. When the federal government wishes to intervene in certain areas, it does so. It does not always need laws. When it wants to intervene with municipalities or with day cares, it does so.

We are talking about equality of status and usage. The financial means and necessary resources must be granted to ensure this equality of usage. Currently, some legislation is in effect; one act, the Official Languages Act, has been in force for 30 years. To my knowledge, according to the statistics we cited during the reading of our brief, the situation of the French language has not improved. It continues to deteriorate across the country, including in Quebec. Look at the statistics on the use of language, on French as the language of use on French as a mother tongue. We can clearly see that the legislation, although it is necessary, is quite insufficient to bolster the Canadian francophonie as a whole, and to improve the situation of French within Canadian society, and more particularly outside Quebec.

Passing laws is one thing, but it is far from being enough. Look at the worsening situation over the last 30 years, the marked tendencies towards a weakening, a minorization of francophones within Canadian society. You will agree with us that *Impératif français* cannot believe that the answer resides solely in the passing of legislation. There will have to be a real political will within the entire federal government, in all of its agencies and federal institutions. There will have to be serious leadership and it will have to be truly recognized that the official language within Canadian society that needs additional resources is not English—not even in Quebec, sir—but it is French. That, I believe, is where we must act, where the federal government will have to give clear political direction to all of its institutions.

• (0935)

**Mr. Guy Lauzon:** You talked about the wrongs done to the French language by the government. Can you explain to us what you mean?

**Mr. Jean-Paul Perreault:** You heard the statistics that we referred to. These statistics point to the situation that the French language finds itself in in Canadian society.

**Mr. Guy Lauzon:** Is that because of the government?

**Mr. Jean-Paul Perreault:** I referred earlier to the 55 per cent reduction in the relative number of francophones in Canadian society outside Quebec over a 50-year period and of 30 per cent...

**Mr. Guy Lauzon:** Do you think that is the government's fault?

**Mr. Jean-Paul Perreault:** I think that the federal government bears a lot of responsibility in this matter. The statistics are given to us every five years by Statistics Canada, which is a federal institution. The Canadian government has existed for a long time. The statistics on the reduced relative number of francophones and their assimilation into Canadian society also go back a long time.

Which government does bear the responsibility to take action in this area across Canada, if not the federal government? Has it taken action? Has it taken the necessary steps to reverse the general trend which has led to a relative reduction in the number of francophones and Quebecers in Canadian society? Has the government done enough to put a stop to the general trend of assimilation and the demise of francophone communities outside Quebec? In my opinion, sir, the answer is clear, and it is: no.

We are not here today to tell you that the government has done enough in this area nor are we here to say that Bill S-3 has what it takes to halt these general trends, absolutely not.

**The Chair:** However, it is important to make a subtle distinction: the fact that the government has not done enough does not mean that it has harmed francophone communities.

Furthermore, your statistics on young immigrants surprise me. From what I can see in Quebec, young immigrants are increasingly using French as their main language. Let me use myself as an example here: until I was eight, I didn't speak French or English.

**Mr. Luc Bouvier (Professor, *Impératif français*):** I am glad that is the impression that you get; but all I can say is that these are the statistics. There's nothing I can add. You would have to ask Statistics Canada if its data is incorrect. These statistics come from 1971 to 2001: 55 per cent use English and 45 per cent, French. In Montreal, it is 65 per cent and 35 per cent. There is nothing I can say, but those are the numbers.

**The Chair:** Mr. André.

**Mr. Guy André (Berthier—Maskinongé, BQ):** Good morning, Mr. Perreault, Ms. Chartrand, and Mr. Bouvier. Thank you for having accepted our invitation to appear before the committee today.

Obviously, the Bloc Québécois agrees with much of what you have said. You stated that recognizing the status of languages and the development of francophone and anglophone communities by that measure, and acknowledging equality of status of both languages under Bill S-3, will actually have the effect of weakening the Canadian francophone community on the whole. I'd like to hear you elaborate on that.

• (0940)

**Mr. Jean-Paul Perreault:** This premise is not recognized in either the Official Languages Act nor in Bill S-3. Nowhere is there any recognition of the asymmetrical situation of the linguistic minorities in the Canadian federation. Nowhere is there any recognition that the official language of Canada that needs more support, political will and resources is the French language. The proposed bill is a symmetrical approach to a situation which is very asymmetrical. It would allow the Government of Canada to work against the political will of the Government of Quebec to make French the common language throughout Quebec. The Canadian government would be promoting English, the majority language in Canada and on the continent, in the only home of the French language, a language which needs protecting, even there, in Quebec.

If you turn on a television set in Montreal, Quebec City, Chicoutimi, Rimouski, Trois-Rivières or Sherbrooke, and if you have cable or satellite service, you will get three times as many English-language television stations as French. It is particularly indecent and absolutely unacceptable that the federal government uses the income tax paid by Quebecers and other Canadians to promote the anglicization of Quebec society which is doing its best to try to ensure that French survives in North America, at least in Quebec.

Bill S-3, by making the act justiciable, will give incredible tools to certain organizations whose names I will not mention, and to individuals who would be the first ones to use this bill to destabilize the Canadian francophone community, more specifically in Quebec. Moreover, there's a discussion underway at UNESCO at the moment to protect world cultural diversity from anglicization, or if you prefer from americanization. The struggle of the Canadian francophone community and of Quebec to protect its identity and uniqueness within North America and within Canadian society are very much part of these discussions that are going on at UNESCO. Bill S-3, as it affects Quebec, runs completely counter to the work and debate going on at the moment at UNESCO.

**Mr. Guy André:** Do you think Quebec should opt out of the bill?

**Mr. Jean-Paul Perreault:** I can tell you that if the bill is passed in its present form, it will definitely have to opt out. The federal government would have to exclude Quebec from the provisions of Bill S-3. Quebec is not isolated. It accounts for 23 per cent of the population of Canada. The statistics, including those on Quebec, show that there has been a 21 per cent drop in less than 50 years in the relative representation of francophones in Canadian society and most of these francophones live in Quebec. Do you think that this trend would be slowed down by enforcing Bill S-3 in Quebec? Come on, let us be serious! It is clear when we read Bill S-3 and even the Official Languages Act in its present form, that there is no recognition of the asymmetrical situation that exists.

**The Chair:** Thank you, Mr. André. Your time is up.

Mr. Godbout.

**Mr. Marc Godbout (Ottawa—Orléans, Lib.):** Good morning, Mr. Perreault. A few years have gone by since we last met, in different circumstances.

I would like to come back to Mr. Lauzon's comment. You say that if the federal wants to act, it needs no legislation to do so. Of course, we are a legislative assembly and thus, we must deal with legislation. We might draw a parallel. If the Quebec government had wanted to intervene in favour of the French language, it could have done so without Bill 101. If human rights were always respected, we would not need a Charter of Rights. I find it rather odd that you criticize others, such as the francophone communities outside Quebec, for seeking guarantees to ensure that the federal government be obliged to act and to enforce part VII of the Official Languages Act.

As we do not know which political party will be in power in 50 years from now, it is quite fitting to have legislation that would improve the legislative, and even constitutional guarantees for francophone communities outside Quebec. I thought that you would support this measure, instead of saying, somewhat naively, that governments do not need legislation in order to act. I find this a bit surprising.

• (0945)

**Mr. Jean-Paul Perreault:** Mr. Godbout, that is not what we really said. We said that the bill was unacceptable as it stands. Also, in our brief, we clearly showed how important it is to make a greater contribution, to stop the current trend and even to foster a growth of francophone communities outside Quebec. I think that we were very clear about this. We said that, as it stands, with regard to Quebec, Bill S-3 is clearly unacceptable to us.

God knows how acutely aware *Impératif français* is of the fragile and precarious situation that these communities are in. We recognize that incredible injustice has been historically done to francophones outside Quebec. *Impératif français* abounds in the same sense. It even asks the federal government to adopt remedial measures for francophone communities. And *Impératif français* further says that in Canada and North America, Bill S-3, as far as Quebec is concerned, is not favourable to equalizing the status and use of French and English. As French is the minority official language, it needs federal support, even in Quebec. Quebec is a minority within Canada as a whole. This legislation would give greater resources to English in Quebec, although it is the majority language in Canada as a whole.

**Mr. Marc Godbout:** I find that your last paragraph is a bit more conciliatory. You say that if Bill S-3 is adopted, "the committee will also have to propose amendments to limit the effect of the bill in Quebec".

Mr. Perreault, what amendments would you propose to Bill S-3 regarding your concern about the imbalance? What improvements to Bill S-3 would you propose to the committee?

**Mr. Jean-Paul Perreault:** I don't have much experience in legislative drafting, so I will leave that to those who have the skill for it.

I must tell you, though, that my first reaction was to ask you to exclude Quebec from the application of Bill S-3 as it stands. This bill is necessary, but insufficient, Mr. Godbout. More years will be spent in court. It is a necessary measure, but clearly insufficient. It can never replace political will, which the federal government lacks.

I think that the talk should keep pace with the legislation and that the politicians should take a very clear stand on protecting and promoting an important part of Canadian Heritage: the Francophonie, especially outside Quebec.

As for Quebec, we are asking for it to be excluded from the bill as it stands. If, however, the committee wanted to recommend to the federal government that it go ahead with this bill, I think it would have to be quite clear in the legislation that the asymmetry of the linguistic situation was being recognized and that steps would be taken mostly outside Quebec. If steps are taken to protect the Canadian Francophonie, that should not be done so as to promote the anglicization or current dominance of English in Quebec society. Look at language transfers, the number of television channels, the three English-language universities, and the list goes on and on. Surely money should not be spent to increase the dominance of the English language in language transfers and in Quebec society.

If the federal government wants to act responsibly toward the French language, it has to act throughout Canada, including Quebec. Quebec is a francophone minority society within the Canadian federation and a minority within North America. UNESCO had reason to consider, as a matter of fact...

• (0950)

**The Chair:** Thank you, Mr. Perreault. I have to interrupt you.

**Mr. Jean-Paul Perreault:** Fine.

[English]

**The Chair:** We'll now go for a second round of five minutes each.

Mr. Vellacott, please.

**Mr. Maurice Vellacott (Saskatoon—Wanuskewin, CPC):** I have a question. You use some strong language on page four and in some other places, in terms of the measures that should be—

[Translation]

**Mr. Stéphane Bergeron (Verchères—Les Patriotes, BQ):** I have a point of order, Mr. Chairman.

I'm sorry, Mr. Vellacott. Excuse me.

Given that there are only 10 minutes left, could we limit the second-round interventions to two minutes each?

**The Chair:** If you wish. However, since Mr. Godin is not here, there are only three questions.

**Mr. Stéphane Bergeron:** Okay.

**The Chair:** So we may go over by four minutes.

[English]

**Mr. Maurice Vellacott:** You talk about draconian or very extreme kinds of measures to promote French everywhere in Canada, including Quebec. What do you mean by that? That's strong language.

[Translation]

**Mr. Jean-Paul Perreault:** I don't know what you see as strong language in inviting the Government of Canada to intervene on behalf of the Francophonie, on behalf of the French language in Canada. The statistics we mentioned at the beginning of our presentation are rather clear. Everywhere in Canada...

[English]

**Mr. Maurice Vellacott:** You say everywhere in Canada.

[Translation]

**Mr. Jean-Paul Perreault:** Everywhere in Canada, including Quebec. In Quebec, the anglophone community makes up 8.3 per cent of the population, with English as their mother tongue. However, it goes up to around 11 per cent for the language spoken at home.

In Quebec, the community that attracts the most speakers choosing a language other than their mother tongue is still the anglophone community. Beyond their number, the anglophone community is not strictly speaking a minority. It is part of the vast Anglo-Saxon majority in North America and benefits from all of the resources of the anglophonie in North America. If you isolate the Quebec situation in your analysis, you are making a mistake, a very serious mistake. Quebec society in North America is part of North America, and unless proven otherwise, 95 per cent of the population of North America is anglophone.

The anglophone community of Montreal, of Quebec, has incredible resources. In that sense, when we ask the federal

government to also come to the assistance of the francophonie inside Quebec, that is based on demographic, linguistic and cultural realities that must be taken into account. I see nothing strong about that. It's completely understandable.

Francophones in Canada and Quebec have gone from 29 per cent in 1951 to 23 per cent in 2001. That is a 6 per cent decrease in under 50 years. The francophone population in Canada represents roughly 23 per cent of the total population. If the language is strong, it's because the situation is dramatic.

We are not here to tell one another stories. If it wants to act consistently with UNESCO, the federal government is going to have to take on its responsibilities, show some leadership and act responsibly toward the Francophonie in its entirety, including the Francophonie inside Quebec.

You can be sure that the only way to achieve equality of status and use is to reinforce the French character of Quebec. Making Quebec society more bilingual or anglicized is certainly not what is going to strengthen the situation of the French language in Canada, believe me. That would only import into Quebec a situation that remains dramatic outside Quebec.

**Mr. Maurice Vellacott:** Thank you.

**The Chair:** The global context must also be taken into account, i. e., the phenomenon of globalization, whereby English is dominant everywhere. You mentioned North America. Allow me to add Mexico. The Mexicans also feel very threatened by English, which is totally understandable.

I'm not comparing that situation to Quebec. That's not what I mean. I mean that the current global context is such that English dominates in many countries. That worries the neighbours of the United States most, us and Mexico.

Mr. Simard.

• (0955)

**Hon. Raymond Simard (Saint Boniface, Lib.):** Thank you very much, Mr. Chairman. Welcome, gentlemen and madam.

You have given us a lot of statistics. I come from the province of Manitoba, where francophones make up 5 per cent of the population. Francophones in western Canada are not statistics; they are people who live in very dynamic communities. I don't know whether you have ever been to French Manitoba, but you should come. You are invited.

I see that as an asset for you, not a threat. In French Manitoba, there are 45,000 francophones, but there are in fact 110,000 people who speak French. In British Columbia, there are 85,000 francophones, but there are 207,000 people who speak French thanks to immersion programs, etc. We currently have 360,000 people enrolled in immersion schools in Canada. These statistics can also support the cause of the Francophonie.

I would like to know whether *Impératif français* considers the Francophonie outside Quebec to be an asset. We are all in North America, in a sea of 300 million anglophones. There are nine or ten million people who speak French in Canada. Our population of francophones adds perhaps 25 to 30 per cent to the francophonie of Quebec. Do you see that as an asset? If so, Bill S-3 is important to us. For francophones outside Quebec, it is essential to have a bill that makes part VII of the Official Languages Act justiciable.

We have something to add to your objective, to your mandate. That is the question. I see that as an asset, not a threat. Do you have anything to say about that?

**Mr. Jean-Paul Perreault:** We have exactly the same view, Mr. Simard. Have no doubt about that. We could not call ourselves *Impératif français* and not support the efforts of francophones throughout the world, including those who live in Manitoba, New Brunswick, Alberta and Ontario.

I would emphasize that for us, Bill S-3 is necessary for francophones outside Quebec. However, in its present form, it is unacceptable for francophones in Quebec, who are another important part of the francophone community, because it does not recognize the asymmetrical situation regarding language in Canada.

Unfortunately, too often we are put into a situation in which francophones outside Quebec and Quebecers are put on opposing sides, not to say into a confrontational situation. Between you and me, I find that harmful. Bill S-3 establishes this same unproductive dynamic between francophones. Yes, it is necessary for the francophone communities outside Quebec, but it is inadequate. A number of bills have been passed, but the statistics on linguistic assimilation and the erosion of French remain extremely disturbing. Therefore, we say yes to Bill S-3 but it is clearly inadequate. It will never replace political will.

You will agree that Quebec is a minority within all of Canada, and within North America as well. You will agree that there is no counterpart to that, because Bill S-3 and the Official Languages Act are based somewhat on a myth. The myth on which this bill and this act are based is a myth of equality. There is no equality in the situation. There is no recognition that the situation is asymmetrical. If the asymmetry were recognized, we would not be acting in this way. It seems to me that if the federal government were responsible, it would devote all its resources to protecting the French language and the francophone community, because it is the one that is really struggling within Canada, as the statistics from Statistics Canada confirm. We did not invent them. They include Quebec.

**Mr. Luc Bouvier:** I would like to add something. At the moment, there is something *Impératif français* finds disturbing when it looks at what was done with the Official Languages Act. One of the key components of the act is the offer of service in French. That is the technical requirement, but in reality, there is a tremendous inequality, and it is in favour of English. There is not a single English-speaking province in Canada with 60 per cent bilingual positions for 8.3 per cent of francophones. We have seen this in New Brunswick, Ontario, and so on. The number of bilingual positions must be multiplied by five or six. That means that the Official Languages Act is being enforced in an unequal way so as to anglicize Quebec, not so as to ensure services in French to francophones outside Quebec.

*Impératif français* wants the opposite. It wants Bill S-3 and the Official Languages Act to be favourable to francophones and it wants francophones outside Quebec to be entitled to the same percentage of bilingual services.

Have a look at the studies done by the Commissioner of Official Languages. This is not what is happening. These francophones have problems; they do not have service in French. Finally, francophones outside Quebec are so tired of complaining, that they have stopped doing so, and people get the impression that everything is fine.

• (1000)

**The Chair:** Thank you.

Mr. Bergeron has one last comment.

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

Thank you for being with us today and for your comments on Bill S-3.

I think we have to do a little reality check, if I may use that expression. It is virtually certain that this committee and the House of Commons will pass Bill S-3, despite the fact that you are opposed to it. To date, we have made several attempts to try to get what you seem to be requesting as well. My colleague put forward an amendment that would exempt Quebec from the enforcement of part VII of the Official Languages Act. This does not seem to have received the approval of our colleagues. People here are a little allergic to the idea of treating one province differently, because, according to Canadian mythology, all the provinces are equal. Consequently, there can be no difference among them.

My colleagues in the Conservative Party have tried to introduce the concept of respect for provincial jurisdiction. That also causes some of our colleagues to break out in hives, because the sacro-saint Constitution provides for a sharing of powers between the federal government and the provincial governments. According to the bigwigs in the federal government, the federal laws must respect the basic law of the country, and therefore must respect the distribution of powers.

You stress an important point—namely that the Official Languages Act seeks to ensure that French and English have equal status. Professor André Braën, of the University of Ottawa, who appeared before us last week, was saying that in his view, the Official Languages Act was there to offer much more protection to francophone and Acadian communities. However, that is not what the act states. The very wording of the act states that its purpose is to ensure equality of status of the two languages.

Professor Michel Doucet of the Université de Moncton introduced an interesting concept that is recognized by the courts, but not by the current act. In order to avoid throwing out the baby with the bathwater, he suggested we introduced the concept of linguistic reality into the act, and to ensure that we took this into account, as the courts have been doing for a number of years now.

I'm going to pick up on Mr. Godbout's question and ask you how you would react if we were to introduce the concept of linguistic reality into the Official Languages Act. If we cannot exclude Quebec and take into account provincial and territorial jurisdiction, how would you react to the idea of taking the linguistic reality into account?

•(1005)

**Mr. Jean-Paul Perreault:** It would have to be stated very clearly that this could really be taken into account and that it would have a genuine impact on the way in which the act is interpreted. Recognizing the linguistic asymmetry in support of reality, could not help but improve the situation of French. Throughout the country, the language that requires more resources is not English, but rather French.

I would be in favour of this recognition of the asymmetrical linguistic situation if it meant that the federal government would earmark more resources, for Quebec as well, for promoting and defending French, which is in trouble, and to culture and cultural production generally, which needs resources, and to the educational system, and finally to the health care system. If the idea were that departments and governments would provide some really substantial additional support along these lines, I would agree, but of course we would have to see the exact wording. If the wording were such that we would constantly be taking cases to court, 20 years and 4 censuses will go by once again. At the moment, the trends are very disturbing. We have gone from 100 per cent to 20 per cent.

I can understand that we would insist on this one when that is all there is left. However, we need much more than simple justiciable measures : we need political will. We must have some assurance under the act that there is a genuine political will backed up by resources. The Canadian linguistic reality must no longer be based on a false premise, namely that the two languages are equal. They are not in an equal situation. I am not talking about equality of status, but about the reality. One of these two languages needs more resources and legislation than the other, and must be given priority by the government. The other language is in a preferential situation because it is clearly the majority language in the Canadian, North American and world context.

So that is why the premise is false. This is why the Official Languages Act has done nothing to solve the problem. You need only look at these statistics that have come out since the act was passed to realize this. The disturbing trend showing a reduction in the relative weight of francophones outside Quebec is an ongoing fact. In addition, the number of francophones throughout the country is declining constantly. The same is true of Quebec's importance within the Canadian federation. The act is based on a premise whereby the majority language within North America, English, is being promoted in the heart of the francophone community. We are anglicizing our young people.

With respect to the percentage of young people, the Dion Plan wants it to increase to 80 per cent. We must point out that 50 per cent of Quebec young people are bilingual and yet they represent 25 per cent of the Canadian population. But within Canadian society, do you think the Dion Plan will be used mainly to make young people more bilingual or to anglicize them? At the moment, already 50 per

cent of Quebec's young people have been anglicized, and they account for 25 per cent of the population of Canada.

**The Chair:** Our time is up. Out of respect for our next witness, we will have to stop here. I would like to thank Mr. Perreault, Mr. Bouvier and Ms. Chartrand.

We will take a short break, of about one minute. Then, we will continue with our second witness.

•(1005)

(Pause)

•(1010)

**The Chair:** I would ask our witnesses to come forward. We will continue our proceedings.

For this second part of our meeting, it is our pleasure to have with us Pierre Foucher, a law professor.

Welcome, Mr. Foucher. Thank you for being with us today.

We will begin with a brief presentation, followed by a time for questions and discussion with committee members.

The floor is yours.

**Mr. Pierre Foucher (Law Professor, University of Moncton):** Thank you, Mr. Chairman.

Good morning, gentlemen. Thank you for your invitation.

Clearly, the advantage of testifying later in the process is that I can use the comments of the previous witnesses and hear your concerns. The disadvantage is that my remarks may be a little repetitive.

Nevertheless, I am going to take the plunge by giving you a brief outline of the historical context. I will say a few words about Bill S-3, about what it does not do, in my opinion, and about what it does. Then I will answer your questions.

In 1969, as you know, the Parliament of Canada passed the Official Languages Act. The bill was embryonic, it was imperfect, but we had to start somewhere. In the 1970s and 1980s, linguistic matters took on more importance. Finally, in 1982, the Constitution was amended to include linguistic rights in the Charter in federal areas of jurisdiction and in New Brunswick.

The Charter was innovative in a number of respects. It made it possible for Parliament and the provinces to promote progress toward linguistic equality. It also enshrined linguistic equality as a constitutional principle. An earlier witness talked about a myth. I would say rather that this is a legal principle that has never been achieved. However, we are still moving toward equality.

Obviously, after the introduction of the Charter, the former federal act became too slight. It was therefore updated. One of the innovations of the new act was part VII and the famous section 41.

In interpreting this set of linguistic rights, the courts said that there was a purpose to these rights: to maintain and enhance the communities. That is how these rights are to be interpreted. That is how part VII is to be interpreted in its present form and in its possibly amended form.

Parliament wanted to establish a legal remedy to the Federal Court regarding the implementation of the Official Languages Act, but did not see fit to include part VII in the arsenal of legal remedies. There was another omission: Parliament did not state that the government could specify the details regarding the obligation set out in part VII in the regulations. We know that there are very detailed, and sometimes even confusing, regulations about service to the public, which say how, in concrete terms, the government will comply with its obligation to provide service. There is no similar provision for part VII.

Of course, part VII created a great deal of hope among francophone communities outside Quebec, as was the case with section 23 of the Charter. It is interesting to track the parallel course followed. Earlier, we were talking about school rights and trials. Look what happened in the case of section 23. The same was true for part VII. What was the initial attitude on the part of the communities? They sat down and negotiated with the provinces. They tried to see how much headway they could make politically. When they saw that this was not working the way they wanted, they went to the courts. For part VII, the situation was somewhat the same. The first step involved political pressure. When the groups saw that political pressure was not advancing things quickly enough, they went to the courts. And this is how, of course, the Federal Court of Appeal recently held that section 41 of the act was merely declaratory. This case is now before the Supreme Court.

That is the context in which Senator Gauthier tried to intervene. He wanted to correct the weaknesses, the flaws or omissions of part VII.

Bill S-3, in its initial form, is very clear. It does three things.

First, it creates a genuine obligation, and not a statement of general policy. That may be superfluous, because the act does not contain provisions that are meaningless. It may very well be that section 41, in its current form, is already binding. The Supreme Court will decide that.

Second, Bill S-3 leaves room for regulatory authority. The practical details could be set out in regulations passed by the Governor in Council. This would include evaluation of the impact of programs, consultations and consideration of the results. We could also identify the obligations of the Privy Council Office and of the minister responsible for the official languages, the accountability mechanisms, the reports, and so on. All that could be done through the regulations.

•(1015)

Thirdly, Bill S-3 clearly opens the way for legal remedy based on the Official Languages Act. However, the concerns that have been expressed over the course of these hearings, and the various amendments which have been proposed, seek to move away from such an objective, and would seem to water down the bill to the point that it is no longer recognizable.

In response to the main concerns that you have raised, I would first like to set out what, in my opinion, S-3 does not make possible. It does not allow the federal government to contravene provincial legislation; it does not provide for the federal government to act beyond the jurisdiction granted to it by the Canadian Constitution;

nor does it create linguistic rights where none currently exist. Furthermore, it binds neither provincial nor federal government to achieving concrete results; and does not allow for the federal government to be held liable for damages should it not manage to curb assimilation.

Allow me now to address what I believe Bill S-3 can do. Should a federal institution fail to take into account the impact that a program, policy or decision could have on communities, the courts can call it to order. Should a federal institution introduce a program, policy or decision which actively undermines the development of communities, the court can call it to order. The institution in question would be called before a tribunal to explain its actions, as would happen in the event of any administrative decision which did not respect the intent of the act.

I also teach administrative law. In administrative law, we teach our students that, in exercising its discretionary powers, a government cannot contravene the intention of an act. This is not a new or revolutionary idea, and there is no reason for people to be worried of it.

When a federal institution introduces a new program or initiative, it should take measures to ensure that it can be adapted to meet the linguistic needs of the various communities. Should the institution fail to do so, it will be called upon to explain itself. When a federal institution makes decisions which affect our communities, it should first hold consultations with them. Any decision made should reflect the views of the community in question and, where this is not the case, an explanation should be provided. Federal institutions should take measures to help communities to prosper and, should they fail to do so, shall be called upon to explain themselves. If the government is so terribly afraid of courts and lawsuits, it will be sure to live up to its responsibilities.

Finally, if a community is seeking provincial or municipal services, or if a given association is seeking assistance, provided the province is prepared to cooperate, the federal government can intervene and offer financial assistance to help the province provide these services.

To conclude, allow me to quote the most important instruction that the wise physician Hippocrates gave to his medical students: "First, do no harm". In other words, we should strive to move forward, not backwards.

That brings me to the end of my presentation, I am sure that I will have the opportunity to further share my ideas on the various issues at hand during the question period. Thank you very much.

•(1020)

**The Chair:** Thank you very much, Mr. Foucher.

[*English*]

We'll start with Mr. Casey.

**Mr. Bill Casey (Cumberland—Colchester—Musquodoboit Valley, CPC):** Thank you very much.

I appreciate this opportunity. Before I ask questions I'd like to just describe my riding. I also want to thank the University of Moncton for their assistance in a project in my riding.

My riding is just inside Nova Scotia and just across the border from New Brunswick. It's about 100% anglophone now. It was 100% francophone at one time. A few years ago we discovered the exact location of a francophone village called Bourgeoisville that was established in the 1650s and burnt down in the 1750s, as the Acadians moved across the border to your side and Fort Beauséjour. A lot of the original descendants from that town of Bourgeoisville still live in my riding. The Bourgeois are there, the Cormiers, the LeBlancs, and the Langilles.

There's great interest in the francophone heritage and language in my riding, but it's 100% anglophone. The only impact of federal government policy is that 20% of the employees at the correctional institute in Springhill are required to be francophone. There is no encouragement for people to acquire French skills and learn about the French history and our francophone heritage. There's a great deal of interest because of this natural heritage. I don't know what it would be, but probably 20% or 30% of the people in my riding have roots from that original Acadian village of Bourgeoisville.

It seems to me this legislation uses the stick approach rather than the carrot approach, if I can use that analogy. There is no encouragement for people in a riding like mine or an area of Nova Scotia like mine to build on their French roots and become bilingual. It seems to me there are only rules in this bill to force people to do things, rather than to encourage them to take up their interest and follow it. It seems to me the federal government should have a bigger role in this.

When we were doing the research on this Acadian village, we found an aerial photograph that showed the 40 foundations of these houses that were burnt down in 1650. The University of Moncton was able to get a list for us of all the inhabitants of that village of Bourgeoisville—as the village was burnt down the priest wrote down all of their names.

The anglophone people in my riding raised the money and created a stone monument with all the names of the francophone people who were forced out of their homes across the border into Fort Beauséjour at the time. The University of Moncton helped us a great deal in convincing the Department of Heritage and the Government of Canada to buy that property last year. Hopefully some day it will be restored to what it should be, and will reflect that incredible piece of history.

Getting back to my question, don't you think the Government of Canada should have a role in a riding like mine, which is all English but has an interest in accessing bilingual services and bilingual history, instead of just determining how many jobs must be bilingual or not?

• (1025)

**Mr. Pierre Foucher:** I would not want to be as specific as that. I will just get back to your stick-and-carrot analogy. I would say that part VII is the carrot, really. It is there especially for the government to encourage, foster, and promote, etc. The stick would be against the federal government itself if it does not live up to its obligation.

As to exactly what interventions should be required in all the circumstances, maybe in your riding it could be a project that would interest the federal government and foster that development. I don't know all the specifics of it. We are talking here about the framework

under which the federal government would work. Under that framework the federal government should be able to encourage, promote, and foster, and if it doesn't, there's always the stick of the court.

**Mr. Bill Casey:** It just always strikes me that the federal government does not have the carrots they should have when a sincere interest is there—certainly in my riding recently because of the discovery of the exact location of this village. They did an archeological dig and were amazed at the artifacts they found. So it has created a lot of interest, but there are no services available for us to build on that interest.

The University of Moncton is very close to my riding. I wonder if there's any part the University of Moncton could play in this in my riding.

**Mr. Pierre Foucher:** That should be asked of the university, I guess.

**Mr. Bill Casey:** That's right.

[*Translation*]

**The Chair:** Thank you.

Mr. André.

**Mr. Guy André:** Good morning, Mr. Foucher. You stated that if a province wanted more services to be provided by municipalities or institutions, it could negotiate with the federal government to allow Ottawa to provide services in areas of provincial jurisdiction.

In Quebec, as we have mentioned on several occasions, our concerns pertain to paragraph 43(1)(d) and 43(1)(f) of the Official Languages Act, which state that the federal government could act in areas that are of exclusive provincial jurisdiction, such as municipal institutions, unions and so forth. This is of concern to us.

Do you believe that Bill S-3 entitles the federal government to interfere in areas of Quebec provincial jurisdiction? Is there a risk that once again we might be forced to go to court to have debate on these matters, despite the decisions that were handed down in the Casimir and Gosselin cases? In our view, the government should not allow for more anglicization in Quebec. Both the French language and minorities should be protected. What are your views on this subject?

**Mr. Pierre Foucher:** Thank you for your question. Actually, I was expecting it.

First of all, you must understand very clearly that the federal government cannot encourage associations, businesses and other organizations to violate the Canadian Constitution or contravene Bill 101. I cannot imagine that the federal government would encourage a company to post external signs in English, knowing full well that that is illegal. We have to completely eliminate that idea. It cannot be done and it will not be done.

Now, if English-language communities in the Gaspé, Eastern Townships or North Shore have problems and need federal government assistance, and the provincial government has no major objection, then I believe the federal government could help them without any problem.

Then, as you know, in law, the use of spending power does not constitute an interference into areas of provincial jurisdiction. It does have an influence, but it does not constitute interference. Spending power is currently exercised within the framework of federal-provincial agreements. So provincial consent is needed to sign agreements. As they say, it takes two to tango. So if a province does not want to dance...

• (1030)

**Mr. Stéphane Bergeron:** Sometimes, you can dance the tango on your own.

**Mr. Pierre Foucher:** No, it will not happen.

I am not concerned or worried. I would be concerned or worried by a provision that would prevent the federal government to use its spending power, since for French-language communities outside Quebec, spending power, in addition to constitutional guarantees, is a significant lever for community promotion and development. Given the current jurisprudence, the courts are now aware of the asymmetry and would incorporate it into their case law interpretation in the event of lawsuits or litigation.

**Mr. Guy André:** You are saying that the courts recognize the asymmetry present in linguistic needs. In your view, why does the federal government hesitate to include in this bill a provision recognizing the differences in status between French and English in Canada? Why does it not want to recognize that asymmetry and include it in Bill S-3? What is it afraid of? Why does it hesitate?

**Mr. Pierre Foucher:** That is a question to ask the federal government. I will tell you why I do not believe such a provision should be included.

In my view, if we were to start putting into legislation provisions that exclude one province or another, rather than putting them in agreements or in Orders in Council or regulations, we would create a precedent that could spread very easily. For example, Alberta or British Columbia might ask to be exempted from their obligations to provide education in French outside Quebec. I think that we should not be creating such precedent. We have to trust the courts, which are on the right track at the present. We have judicial powers that serve us well. The harm done would be greater than the advantages gained.

**The Chair:** Thank you.

Mr. Godbout.

**Mr. Marc Godbout:** Welcome, Mr. Foucher. I always enjoy hearing you speak on legal issues.

Mr. Doucet recommended that we focus on section 77 and ensure that all of part VII is fully justiciable, rather than focusing on the proposed amendments. Do you agree with that recommendation?

**Mr. Pierre Foucher:** If one thing were to emerge from the work of this committee on Bill S-3, it should be that. That would be the priority.

**The Chair:** You mean including the proposed subsection 77(1) in the bill?

**Mr. Pierre Foucher:** I mean there should be some recourse once the Office of the Commissioner for Official Languages concludes its work, hears complaints and writes its report. At present, there is some doubt as to whether part VII of the Act is justiciable or not, and

on how it should be applied if it is justiciable. The issue is not clear, and is currently before the Supreme Court. First of all, can legal proceedings be instituted under part VII of the act? If so, what is the procedure? It is not the procedure set forth in the Official Languages Act, but a different procedure, set forth in the Federal Courts Act. I do not want to go into the technical details.

The issue has to be clarified, and we must extend the recourse provided for in section 77 of the Official Languages Act to include part VII. This would give communities the tools they need to force the federal government to assume its responsibilities.

• (1035)

**Mr. Marc Godbout:** The proposed amendments focus primarily on process as opposed to the obligation of result. Are you of the view that these amendments risk weakening the current Official Languages Act, or do you feel that the obligation to follow the process, as a minimum standard, is better than nothing?

**Mr. Pierre Foucher:** I agree that proposed amendments weaken the legislation; and I warned you that they would contain a lot of repetitions. I was left scratching my head and I frowned when I read the amendments.

Firstly, there are a lot of loopholes and clauses along the lines of "as it sees fit", "where deemed appropriate", etc. Secondly as I have already explained, the technical details should be set out in the governor in council regulations, not in the act itself. Legislation should define principles and responsibilities, while regulations set out details. The act is there to establish principles and obligations.

As to whether the bill introduces an obligation of the means or an obligation of the results, I am of the view that neither section 41 of the current act, nor the unamended version of the bill tabled by Senator Gauthier, provide for an obligation of results. I would reiterate what I said during my presentation: the federal government will not be held accountable if the trend toward assimilation continues.

The act can achieve certain things, but cannot do everything. Although the act stipulates that French language schools must be provided, it cannot actually give them life and make them part of the French heritage. While the Official Languages Act can stipulate that the federal government should encourage, facilitate and promote the use of the French language, no piece of legislation can guarantee what will happen in society.

Some say that the proposed section 41(1) imposes an obligation of results, etc. But I believe this to be an unfounded concern. There is an obligation of means, or as the commissioner of official languages so put it, there is an obligation to act. The government has a responsibility to take action, and will be held accountable if it fails to do so.

**Mr. Marc Godbout:** I am not sure whether I have any time left.

**The Chair:** You still have 50 seconds.

**Mr. Marc Godbout:** Correct me if I am wrong, but, to my mind, it is important to distinguish between process, means and results, especially with regard to a consultation process. You seem to be saying that there is no obligation of result, and that even without introducing such an obligation it is possible to assure that the necessary means are employed.

**Mr. Pierre Foucher:** Continuing on the same tract, I would add that processes are not to be defined in the body of the act.

**Mr. Marc Godbout:** But the means are, are they not?

**Mr. Pierre Foucher:** The legislation does indeed impose an obligation to employ certain means and do certain things; it does not, however, hold the government to achieving such results in a given time frame.

**Mr. Marc Godbout:** Thank you, now I understand.

**The Chair:** Thank you.

[English]

We can now go to the second round.

Mr. Vellacott.

**Mr. Maurice Vellacott:** Thank you very much, Pierre, for being here today.

I take it from what you said in your presentation and your subsequent remarks that you disagree with some of those amendments. In effect, they come from Minister Frulla. So what would you propose, if anything? Would you propose any other amendments concretely, specifically, as an alternate to those?

**Mr. Pierre Foucher:** When I saw Bill S-3 as it was, I was satisfied with it. I have not heard anything in these discussions so far that has made me change my mind. I think I have tried to address the preoccupations of all the members. There are answers to those legitimate preoccupations, without modifying Bill S-3 as it is.

• (1040)

**Mr. Maurice Vellacott:** Were you sitting and listening to the previous presenter this morning as well? Were you here for part of that time?

**Mr. Pierre Foucher:** Yes.

**Mr. Maurice Vellacott:** On some of what was shared in that particular session by our presenter on Bill S-3 and general comments, were there points on which you found a lot of agreement with him? Where did you disagree with him on some of the sentiment he expressed?

**Mr. Pierre Foucher:** First of all, I can neither agree nor disagree with the statistics. I have not researched them myself, so I take them for what they are. They stopped in 2001. He forgot to say there are French schools all over the country right now. There are French school boards. There are new ways to deliver federal services. Given some time, I am confident the system that was put in place will produce some results.

He talked about the myth of equality of languages. I would not qualify it as a myth; I would qualify it as a legal principle. Equality, as we know, is a relative notion. It has to be adapted to the circumstances. It has to be adapted to the group that is disadvantaged with regard to the majority. That is how the courts have interpreted it. So that is another point of disagreement between the other witness and me.

[Translation]

**Mr. Maurice Vellacott:** Thank you.

**The Chair:** Thank you, Mr. Vellacott.

We will continue with Mr. Simard.

**Hon. Raymond Simard:** Thank you very much, Mr. Chairman. Welcome to the committee, Mr. Foucher.

I would like to come back to the matter of the obligation to follow the processes, which, as I am sure you can imagine, is a question of importance for the government. I think that by introducing such an obligation, we would provide our communities with a very powerful tool. We could implement a clearly defined, precise and rigorous consultation process which would, in fact, be binding. We would have to define what is meant by consultations; but this is perhaps an area with which you are more familiar than I am. In the case of the Haida and the Taku, I believe that the Supreme Court of Canada stated that the consultation process should be both very rigorous and extensive.

Consultations with the communities will lead to recommendations being made. Were the government to respond to these recommendations, which would be justiciable, the communities would have a very powerful tool available to them. I would like to hear your views on this matter.

**Mr. Pierre Foucher:** First of all, the amendments say that the government will hold consultations if it thinks this is necessary. That is a problem, because it will often think the consultations are not necessary. So the government will not hold consultations because it is too complicated, it costs too much and it takes too long.

• (1045)

**Hon. Raymond Simard:** Let us assume that no such amendment exists.

**Mr. Pierre Foucher:** Even if we assume that, as I said earlier, legislation must not describe a process: it must establish principles. Processes are the details, the nuts and bolts, and they are set out in the regulations. Legislation is not meant to go into this type of detail.

Third, I do not think there will be adequate consultation to achieve the objectives stated in part VII of the current act. The spirit, the objective, the purpose of part VII is to achieve the second objective of the Official Languages Act, which is to advance the equality and development of the communities; in fact, this is very much in keeping with the caselaw.

Merely holding consultations and taking results into account seems to me to water down this objective. Of course, it is a good thing, but it is not enough. I think the spirit of part VII goes further. It touches on the development plans that the 31 departments have drafted under the auspices of Canadian Heritage, for example. That is what part VII is about. What concrete measures are being taken for the communities. When programs such as the fibre optics program is developed throughout the country, do we just apply it across the boards, or do we take into account the francophone minority communities and the benefit they could draw from fibre optics and the Internet? Is that taken into account? Was this taken into consideration in this policy? It goes beyond consultation.

I think that is the spirit of part VII at the moment. All Senator Gauthier wanted to do, was to clarify things and allow the communities to take action if the federal government does not comply with this obligation.

As regards processes, I think mandatory consultations are commendable, but, once again, they should be in their rightful place, namely in the regulations.

**Hon. Raymond Simard:** You know that this is the fourth time that a bill of this type has been presented in Parliament, and that this is the first time it has reached the committee stage. I am in full agreement with you: we want to move forward, not backward. We all have the same objective.

I am sure you have followed the recent cases. I believe one of these bills died in the Senate. There are some political realities we have to deal with. The objective, therefore, is that Bill S-3 be passed into law by the fall, if possible. Do you have any recommendations for us?

**Mr. Pierre Foucher:** My first recommendation is that Bill S-3 remain in its present form. If that is not possible, then there is section 77.

**Hon. Raymond Simard:** You do not think there are any other options?

**Mr. Pierre Foucher:** A third possibility would perhaps be amendments to the bill, but that is really far down on my list of priorities.

**The Chair:** Thank you, Mr. Simard.

The final question will be asked by Mr. Bergeron.

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

I'd like to engage in an exercise of reality check, somewhat as I did earlier with the previous witness.

In all likelihood we will adopt Bill S-3. But in all likelihood, we will do so with some amendments.

Earlier, you referred to a number of principles which relate to concerns that some of my colleagues have around this table. Whatever you may think, these concerns remain. Indeed, when you say, for example, that Bill S-3 will not enable the federal government to infringe upon provincial areas of jurisdiction, I would like to be able to defer to this authoritative argument which seems to be entirely valid and legitimate. However there are other authoritative arguments, that are just as valid and legitimate, which have been made before this committee and suggest that Bill S-3 may indeed enable the federal government, through its spending power, to infringe upon provincial areas of jurisdiction.

Earlier you used an old adage. Now it's my turn to use one: "once bitten twice shy."

It goes without saying, based on past experience, that we would want to guard against such unwelcome intrusions on the part of the federal government by way of its spending power.

However, under part VII of the Official Languages Act, things go much further. It goes beyond federal institutions alone, thereby encroaching on areas of jurisdiction which in no way come under the purview of the federal government nor, for that matter of any federal institutions.

They're talking about encouraging corporations, management and union organizations, volunteer organizations and so on to provide

their services in both French and English. There's no reference to signage, but rather to using the other official language in the workplace and so on. That clearly goes against the Charter of French Language in Quebec.

You've acknowledged that courts are expected to take into account the linguistic reality, and you seem to say that it isn't desirable to exclude a particular province, which is an opinion that many other interested parties share. If it is not desirable, in your opinion to legislate on an obligation to respect provincial areas of jurisdiction, then what would you say to your colleague's suggestion from the University of Moncton. He said that a principle which is already adopted, or at the very least applied by the courts, should be written into law, and that is to take into account the linguistic reality.

**Mr. Pierre Foucher:** That's an idea. Once again, that's what codifies case law and what could, in effect, enable a court, confronted with such a quandary, to bear in mind this principle, just as it does the objectives of a law which are the expression of the legislator's definition of the set objectives.

**Mr. Stéphane Bergeron:** Thank you.

**Mr. Pierre Foucher:** I must correct what you said. The federal government could not stand in the way of a corporation subject to francization. The government could not encourage a corporation to adopt English as the working language if the organization was governed by a francization certificate under Act 101.

I understand the adage "once bitten twice shy" and that it reflects a number of very major concerns. However, both constitutional and legal principles apply. And one of these principles is that the provincial legislator, which is sovereign in its area of jurisdiction, may enforce laws, which the federal legislator cannot contravene; paragraphs 43(1)(d) and 43(1)(f) of the Official Languages Act which are a problem for you already must be enforced given the provincial legislation.

● (1050)

**Mr. Stéphane Bergeron:** Notwithstanding the legislative sovereignty of provincial governments, the federal government has often breached provincial laws, with taxpayers' money.

The Quebec Referendum Act, during the 1995 referendum, comes to mind. There is currently a commission looking at this issue. The federal government made substantial use of taxpayers' money, including that of Quebec taxpayers', to breach the provisions of the Quebec Referendum Act.

As I said earlier, "once bitten twice shy". If we are able to agree on a solution — that is to take a linguistic reality into consideration, for example — which would reassure those that have been once bitten and are now twice shy, and which would not breach the legal principles you described, well then I think we would have satisfied everybody.

**Mr. Pierre Foucher:** That is definitely possible.

**The Chair:** Is it not the expression in French for once bitten twice shy "a scalded cat fears hot water"?

**Mr. Stéphane Bergeron:** No. The cat is afraid of even cold water because it fears that it may be hot.

**The Chair:** Are you sure?

**Mr. Stéphane Bergeron:** Yes. The cat does not know, when it sees the water, whether it is hot or cold.

**The Chair:** Could you please check that, sir?

Thank you for having taken the time to share your point of view with us. I found your testimony to be particularly clear. I would like to thank you for that.

**Mr. Pierre Foucher:** Thank you very much.

**The Chair:** Thank you to everybody. We will see each other again the day after tomorrow.

This meeting is adjourned.

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