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**Chair**

**Mr. Pablo Rodriguez**

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## Standing Committee on Official Languages

Wednesday, September 28, 2005

• (1540)

[Translation]

**The Chair (Mr. Pablo Rodriguez (Honoré-Mercier, Lib.)):** Good afternoon, everybody, and welcome back from your parliamentary break. I am glad to see you again. I hope that you had a pleasant adjournment in your respective ridings. I would like to take this opportunity to welcome Ms. Paule Brunelle, Bloc Québécois official languages critic, and Mr. Guy Côté. They are joining the Standing Committee on Official Languages. And once again, welcome to those committee members who were with us during the last parliamentary session.

We are a little behind, but Minister Cotler is even more so, as he is tabling a bill. That is supposed to take place after the tribute to Mr. Cadman, so he should be here in about 15 minutes. Two officials who work with Mr. Cotler are here, Mr. Tremblay and Mr. Francoeur, from the Department of Justice and the Department of Canadian Heritage, respectively, if I am not mistaken.

**Mr. Michel Francoeur (General Counsel and Director, Legal Services, Department of Canadian Heritage):** We are both from the Department of Justice, but I work for Legal Services, Canadian Heritage.

**The Chair:** We have two options: we can either spend the first 15 minutes with these gentlemen or get straight into what was intended for the end of the meeting, i.e. committee business. Then we could take it from there. I will let you think about it for a moment. I myself just learned that Mr. Cotler would be late.

**Mr. Jean-Claude D'Amours (Madawaska—Restigouche, Lib.):** Mr. Chair, if we want to do this in a logical order, we should start with committee business. That way, we will not be breaking up the discussion. When we begin to hear the witnesses, we will proceed from beginning to end.

**The Chair:** I completely agree.

**Mr. Jean-Claude D'Amours:** This would also be out of respect for the witnesses.

**The Chair:** So, we will start with committee business, which was initially planned for the end of the meeting.

**Ms. Paule Brunelle (Trois-Rivières, BQ):** Well, we would prefer to start with the witnesses.

**The Chair:** Okay. Things are off to a good start.

Do you have anything to say about this?

**Mr. Guy Lauzon (Stormont—Dundas—South Glengarry, CPC):** No.

**The Chair:** We do not have much time, that is for sure.

**Hon. Raymond Simard (Saint Boniface, Lib.):** Mr. Chair, under normal circumstances, the minister would make a presentation. Questions are often based on the topic at hand. It would only seem practical to wait for the minister. What's more, I do not see what these gentlemen could contribute before the minister has outlined his stance on the issue. That would only seem logical.

**The Chair:** You appear to agree on this, unless that is a major problem for you.

[English]

Do you agree, Andrew?

**Mr. Andrew Scheer (Regina—Qu'Appelle, CPC):** Yes.

**The Chair:** Guy?

[Translation]

**Mr. Guy Lauzon:** Yes.

**Ms. Paule Brunelle:** You will be indebted to Guy.

**The Chair:** Good. Now, as far as future business is concerned, the committee had decided to make the consideration of Bill S-3 a priority. Before adjourning, we spent a lot of time studying the bill. We heard from about 15 witnesses over the course of several weeks. All parties agreed that it was the issue the committee was to debate. We are also bound by a number of real constraints. We have until October 25 to amend the bill, otherwise it will be referred back to the House as is.

As the clerk said, a 30-day extension may be asked of the House, however, it may refuse to grant such an extension. Regardless, it may be ill-advised to ask for one, given that we all agree that we want this legislation passed before any election campaign. We really do not know what to expect given the current political climate.

To make a long story short, there are four weeks and two days between now and October 25, including parliamentary break week. If you take away that week, this leaves us with three weeks and two days. Now, assuming that the two meetings in the last week are reserved for clause-by-clause consideration, that would leave us with this week and next week to hear from witnesses. That is enough, especially since we agreed on the list of witnesses. We have six witnesses left to hear from should they all agree to appear, which isn't guaranteed. I'm thinking, for example, of Benoit Pelletier, Quebec Minister for Canadian Intergovernmental Affairs.

• (1545)

**The Clerk of the Committee:** He refused.

**The Chair:** That should leave us with a maximum of five witnesses for the next two weeks. We'll move ahead with clause-by-clause consideration after that. Would anyone like to add anything on this? No?

Welcome, Mr. Godin. I'm glad to see you.

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

**The Chair:** Yes, Mr. Boudria?

**Hon. Don Boudria (Glengarry—Prescott—Russell, Lib.):** I'm an alternate member. Can I... ?

**The Chair:** You do have the right to speak.

**Hon. Don Boudria:** Thank you. I would like to make a sincere plea to my colleagues. Of course, I have an interest in having this bill passed. Not a conflict of interest, nor any financial stake, but rather a public interest. I remind you that it has been on the agenda for four years. That's a long time.

Mr. Chair, through you I would ask all my colleagues to vote either for or against this bill. I'd prefer for them to vote for it, of course. If there are enough members who vote for it, this legislation will be passed, but there mustn't be any delays. Indeed, fall is upon us. I'm not only referring to the season, it is also the autumn of this Parliament, in other words, this Parliament is drawing to a close in two, three or four months. Should there be any amendment made to this bill, which personally I don't want to see, it would have to be referred back to the Senate, and it will undoubtedly take some time before it is adopted there. God knows how much time!

So I would ask you not to ask for an extension and to conclude the study of this bill in the prescribed timeframe. Furthermore, if I could be so lucky, and if my powers of persuasion were effective enough, I'd like to see things move along even quicker than that. That way, the bill would be referred back to the House of Commons for its report and third reading stage, and we would be done with it once and for all.

In the meantime, the courts are basically deciding for us how this bill should be interpreted. For practical purposes, they have done so partly in Mr. Godin's riding and are doing so right now in the Penetanguishene region, in the Community Futures Committee's hearings. This is why I think it is time to act.

That was my plea. Thank you.

**The Chair:** Thank you.

Ms. Brunelle.

**Ms. Paule Brunelle:** My colleague said that the committee would be travelling. Is that still the case? If it is, when would that be?

**The Chair:** The committee will still be travelling. However, we had always said that we wanted to travel after consideration of Bill S-3. Any travel would be related to assessing the impact of the Official Languages Action Plan.

We would be travelling out into the field to take a close-up look at the impact of the action plan's impact in the communities. However, we did not want to carry out both studies at the same time, as there may have been overlap, which would be pointless. So, we will finish studying Bill S-3 and then go out in the communities.

**Ms. Paule Brunelle:** Just on a point of clarification. Has the government tabled any amendments? I searched the files on this. I was wondering if any amendments had actually been tabled.

**The Chair:** There were indeed quasi-unofficial amendments tabled during a special meeting during which we all took turns indicating what type of amendments we were interested in bringing forward, without actually tabling them. That is how I saw things at least.

**Ms. Paule Brunelle:** Fine.

**The Chair:** We wanted to discuss all that later. But, for the moment, we will not be carrying out any formal study of any amendments as such. All the same, we have an idea of what direction they will take.

**Ms. Paule Brunelle:** So, these amendments will not be discussed?

**The Chair:** Well, formal amendments will be brought forward during clause-by-clause-consideration. We will also hear from witnesses.

**Ms. Paule Brunelle:** Okay.

**The Chair:** We are still talking about witnesses.

Mr. Godin.

**Mr. Yvon Godin:** Mr. Chairman, the government has proposed a lot of amendments; that is one of the problems. So, I would ask my colleague, the Honourable Don Boudria, to lobby the government to withdraw all of these amendments, which may jeopardize the bill.

**Hon. Don Boudria:** They still have not officially been tabled.

**Mr. Yvon Godin:** No. You have a lot of work to do on this. Why don't they just relax? I am not referring to you, Mr. Boudria.

**Hon. Don Boudria:** I think we understand each other.

**Mr. Yvon Godin:** Good. Thank you very much.

I am sorry to have arrived a little late. Question period went a little overtime.

I also tabled a motion to have the Minister of Canadian Heritage, Ms. Frulla, appear urgently before the committee concerning the CBC Radio Canada lock-out.

Since Mr. Rabinovitch arrived at the helm of Radio Canada six years ago, there have been three lock-outs and two strikes. This is totally unacceptable. We do not need this. That is why I think this issue is so important.

• (1550)

**The Chair:** Mr. Godin, I remind you that a notice of motion must be submitted 48 hours in advance. So, we can discuss this tomorrow.

**Mr. Yvon Godin:** Unless there is...

**The Chair:** Unless there is unanimous consent.

**Mr. Yvon Godin:** Unless there is unanimous consent and everybody agrees. Furthermore, as I said yesterday, I am prepared to work on this at night.

**The Chair:** I would like to express a personal opinion. If we really want Bill S-3 to be studied, discussed and voted on, regardless of which way the vote goes, I have trouble taking other subjects on board, unless all committee members agree to hold special meetings, outside the normal hours. Obviously, the committee is sovereign; is it up to the committee to decide what it wants to do.

**Mr. Yvon Godin:** If you wish, I can make this proposal when the committee meets in camera, so that I do not take up any more of your time.

**The Chair:** You're not taking up our time. I was advised by the minister when we left the House, that as soon as the tribute to Mr. Cadman was over, he had to table a bill. We weren't advised of this ahead of time. Then he is supposed to run over here or jump in a car.

**Mr. Yvon Godin:** Coming back to my argument, I know that the committee wants to finish studying Bill S-3, and so do I. However, Radio-Canada has become an important issue. Francophones throughout my region have every reason in the world for wanting access to news and culture.

**The Chair:** We all agree with you there.

**Mr. Yvon Godin:** Radio-Canada has a mandate that it is no longer carrying out. We can't ignore that and just wait for both parties to come to an agreement. They need to hear from us before that happens. The situation has become unacceptable.

**The Chair:** Ms. Brunelle.

**Ms. Paule Brunelle:** I think it's a matter of great urgency that we discuss the CBC lock-out. We're hearing a lot said about it, people are getting upset, etc. We really have to deal with it, I think it's a priority for us. One or two meetings aren't going to disturb our schedule.

**Mr. Yvon Godin:** I'm prepared to work in the evening as well.

**The Chair:** Mr. Boudria.

**Hon. Don Boudria:** The Standing Committee on Canadian Heritage is also looking at the issue. I went to the committee to make a similar plea on this issue yesterday.

**Hon. Raymond Simard:** The motion is the same.

**Hon. Don Boudria:** The motion's wording is practically the same as the motion put forward at the Standing Committee on Canadian Heritage. Also, those of you who get e-mails from Radio-Canada can read what I said yesterday in today's text. We debated the matter at the Standing Committee on Canadian Heritage yesterday. The debate still isn't over, because we had to adjourn to attend Her Excellency's swearing-in. The committee is supposed to pick up where it left off on this issue, if I'm not mistaken, this afternoon or tomorrow morning. I was the substitute member yesterday. So there is another committee considering the same issue.

**The Chair:** Mr. Simard.

**Hon. Raymond Simard:** Mr. Chairman, I agree with my colleague. However, I don't disagree with Mr. Godin when he says that we should, at some moment, call on the Minister of Canadian Heritage to appear before the committee to discuss, for example, the three lock-outs that took place over the course of three, five or six years.

**Mr. Yvon Godin:** Five years.

**Hon. Raymond Simard:** This is obviously unacceptable. I think for the moment that if the Standing Committee on Canadian Heritage is dealing with it, we should let them do their job. We, on the other hand, could call on the Minister of Canadian Heritage to discuss Radio-Canada's mandate, as people from my region and yours have no service in French at the moment, which is totally unacceptable. I think that we are all frustrated by the situation and we should all take part in any long-term discussion. However, I'm not sure we should do so over the next couple of days.

**The Chair:** Can we agree that these discussions should take place during a special meeting, ie not during the two scheduled meetings?

**Hon. Raymond Simard:** If we agree to go ahead.

**The Chair:** Yes.

**Mr. Yvon Godin:** That's right, if we agree to go ahead.

**Hon. Raymond Simard:** The Standing Committee on Canadian Heritage has already done so.

**Mr. Yvon Godin:** I thoroughly agree. How many times have we set up subcommittees to discuss various issues? I think that this is a matter of urgency. It's unacceptable for Canadians to be without access to the news. CTV and Global broadcast national news Canada-wide, but francophones currently are without access to any form of news, apart from the state of the roads in Montreal.

**The Chair:** Mr. Godin, I think that everybody is in agreement with you on this. I don't want to get into this debate right away.

**Mr. Yvon Godin:** Mr. Chair..

**The Chair:** We all agree with you. Can I have a yes or no answer as to whether or not we want to hold a special meeting on this matter? That's what we want to discuss. We agree with you.

Does anyone disagree with Mr. Godin? No. We agree with you. Do we want to discuss the matter in a special meeting? This week, we have our meeting today and another one tomorrow. Could we schedule a meeting to discuss this matter early next week?

**Mr. Yvon Godin:** Monday evening, Tuesday evening?

**Hon. Raymond Simard:** First, has his motion been moved in the correct fashion?

**The Chair:** No, it was moved yesterday.

**Mr. Yvon Godin:** We can discuss it tomorrow.

**Hon. Raymond Simard:** We'll discuss it at tomorrow's meeting.

**The Chair:** We can discuss it tomorrow.

● (1555)

**Hon. Raymond Simard:** We will discuss it tomorrow.

**The Chair:** Since everybody was already discussing the issue, I took it that there was consensus around the table to discuss it.

**Mr. Yvon Godin:** If we made up our mind straightaway, we could get the ball rolling and start preparing the meeting, that is if you all agree.

**The Chair:** The bulk of what Mr. Simard wanted to say has been said. Are we in agreement that a meeting on this matter should be held...

**Mr. Yvon Godin:** Yes.

**The Chair:** ... and have Ms. Frulla appear.

**Hon. Raymond Simard:** We need to work out when that will happen.

**Mr. Yvon Godin:** That's right. We can wait till tomorrow to decide that. But if we decided now, they could start getting organized.

**Mr. Guy Lauzon:** She needs to be available.

**The Chair:** We would also need to add an hour to the committee's next meeting. Could we please check on that, Mr. Clerk?

Do you agree?

**Hon. Raymond Simard:** I think there's a danger in having the minister appear at the same time as there are very sensitive negotiations being carried out. I think that it would be better to talk about Radio-Canada's future than to start inviting ministers at a time when very sensitive negotiations are underway. Indeed, I don't think that the employees of Radio-Canada would want us to do such a thing.

**Mr. Yvon Godin:** They're the ones who are asking me for this.

**Hon. Raymond Simard:** Well, that's not the case in my region, at any rate.

**Mr. Yvon Godin:** Well, it is in mine.

**Hon. Raymond Simard:** I think that the negotiations are moving along well; that is what we're hearing. I don't think that we should jeopardize that. I do think that we should talk to the Minister of Canadian Heritage, but about the future of Radio-Canada. We should ask what her plans are to ensure that what is happening now doesn't happen again.

**Mr. Yvon Godin:** I don't agree. With all due respect, I think it is time for Mr. Rabinovitch to face a bit of pressure. It's unacceptable that there have been three lock-outs and three strikes in a crown corporation which belongs to taxpayers. At the moment, we're paying for people who are in a lock-out.

**The Chair:** I don't think that we can continue with this debate now. The minister has arrived and he won't be here for very long at all, as he had already planned on leaving...

**Mr. Yvon Godin:** Will we do it on Monday evening then?

**Mr. Guy Lauzon:** He will be here for one hour.

**The Chair:** He was supposed to spend an hour with us, but he was delayed.

**Mr. Guy Lauzon:** He will stay one hour.

**The Chair:** Can he stay? We will ask him.

Could we bring our discussion to an end quickly?

**Hon. Raymond Simard:** We will discuss this at tomorrow's meeting.

**Mr. Marc Godbout (Ottawa—Orléans, Lib.):** Tomorrow.

**The Chair:** The discussion is postponed to tomorrow's meeting.

**Hon. Raymond Simard:** By then, we will have received the motion in proper form.

**Mr. Marc Godbout:** As well as mine, Mr. Chair, since I have tabled a similar motion.

**The Chair:** Did you table it yesterday or today?

**Mr. Marc Godbout:** Yesterday.

**The Chair:** So we have two motions that are in order for tomorrow. Does that suit everyone?

Very briefly, before we turn the floor over to the minister, I would like to remind you that, as we had agreed, after concluding the hearing of five witnesses on bill S-3, we intend to travel, which this committee has never done, in order to complete our work on the Official Languages Action Plan.

Thank you.

Welcome to our meeting, Mr. Cotler. We are very pleased to welcome you here to discuss Bill S-3 so that you can provide us with a bit of an overview of Justice Canada's vision on this matter. We feel that this bill is very important for communities in minority situations, particularly for the francophone communities outside Quebec.

Before turning the floor over to you, may I ask you how much time you will spend with us today?

**Hon. Irwin Cotler (Minister of Justice and Attorney General of Canada):** When I arrived here, I was told that I would have to attend a cabinet meeting at 4:30.

**The Chair:** All right. So we will not be able to keep you for more than half an hour.

**Hon. Irwin Cotler:** My officials will be here at that point, but I will have to go to the cabinet meeting, particularly since it began at 3:30. I was able to make arrangements to be absent until 4:30, but that is all.

**The Chair:** We will talk quickly.

**Hon. Irwin Cotler:** I also had to table some bills in the House of Commons, where I was before coming here.

**The Chair:** That is great.

Would you like to first of all make a brief presentation on the topic?

**Hon. Irwin Cotler:** Fine.

Thank you, Mr. Chairman and members of the committee. I am pleased to be back here once again. I would like to begin by first of all thanking the committee for inviting me to speak on Bill S-3, the Act amending the Official Languages Act (promotion of French and English).

I had the opportunity to underscore the complete admiration that I have for the Honourable Jean-Robert Gauthier, who demonstrated, throughout his career, great determination and courage. I met with him several times before he tabled his bill and afterwards.

I would also like to point out that the government supports the general objectives that prompted the author to table this bill. Linguistic duality is an essential element of the understanding on which the Canadian nation was built.

One could say that your committee is dealing with the most fundamental rights found in section 133 of the Constitution; constitutionalized in the Charter of Rights and Freedoms; enshrined in the Official Languages Act, which gives voice to a fundamental principle regarding minority rights; established and furthered for official languages; examined and protected by parliamentary reviews.

For example, this is the fourth time I have appeared before a parliamentary committee. I appeared before the Senate committee, and it is the second time that I have been here; you will recall that I was here last April.

• (1600)

[English]

As Minister of Justice, one of my responsibilities is the promotion and protection of the Charter of Rights and Freedoms, and the promotion of language rights, of minority language rights, was one of the fundamental inspirations for the enactment of the Charter of Rights itself. Indeed, our charter now embodies a principle of equality of the two official languages of Canada. The Supreme Court of Canada affirmed in the *cause célèbre* of R. v. Beaulac:

Equality does not have a lesser meaning in matters of language. With regard to existing rights, equality must be given true meaning. ...it refers to equal access to services of equal quality for members of both official language communities in Canada.

As well, the Supreme Court reaffirmed that:

Language rights must in all cases be interpreted purposively, in a manner consistent with the preservation and development of official language communities in Canada.

[Translation]

Mr. Chairman, the judiciary must be respected for the significant role that it plays in protecting our rights, for the promotion and protection of our Constitution.

[English]

But we need also to appreciate that the precise scope and meaning of language rights can still be the object of legitimate debate, legal and political, both inside and outside the courts, in Parliament, and in the public sphere, and that the adjudicative model resolution by the courts is not the only way to resolve the problems. We also may have a participatory model that includes a cooperative federalism, the involvement of civil society.

[Translation]

And here I am thinking of the corporations, unions and organizations that protect human rights.

As you know, a debate of this type is underway with respect to the scope of part VII of the Official Languages Act. In 2004, in the case of the Forum of Mayors from the Acadian Peninsula, the Federal Court of Appeal ruled that section 41 of part VII of the Official Languages Act was declaratory, meaning that it did not create rights and that this provision was not justiciable, meaning that it could not be brought before the courts by any procedure whatsoever.

The Supreme Court of Canada agreed to hear the appeal filed by the Forum of Mayors from the Acadian Peninsula. The Attorney

General of Canada's brief was tabled in court in August, and our position is contained therein.

You will nevertheless understand that given the respect owed to the court and its procedures, I will not be able to discuss this file today. As I said, this matter is now before the court.

What is most important—and from time to time we forget to mention this—is that we become engaged. The existence of this legal debate does not diminish in any way the commitment of the Government of Canada to enhance the vitality of official languages communities in Canada or to promote the full recognition and the use of French and English in Canadian society, further to part VII of the act.

Moreover, the accountability framework adopted by the government in 2003 as an integral part of the Official Languages Action Plan clearly outlined the responsibilities of ministers and officials with respect to part VII of the Official Languages Act, and strengthened the already established mechanisms for fulfilling the commitment of the Government of Canada with respect to linguistic duality.

The achievements of the government in implementing the Action Plan for Official Languages testifies to the seriousness of our commitment. For example, in the field of justice, my department has supported more than 50 projects designed to enhance access to justice in both official languages, and the results that we will be able to report in the near future illustrate the progress achieved.

• (1605)

[English]

Indeed, when I last appeared before you, I identified some six initiatives that we have taken in this matter that reflect our commitments in this regard.

Bill S-3 proposes to amend 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.

My colleague the Minister of Canadian Heritage appeared before you last spring and expressed her reservations with the wording proposed in the bill. I share some of those concerns, and I would like to briefly reiterate them before you.

[Translation]

Essentially, Bill S-3 replaces an obligation of means with an obligation of result; it replaces an obligation of process with an obligation to guarantee; it replaces a non-justiciable policy commitment with a mandatory legal commitment. As regards the very broad and difficult to assess objectives, in other words the quality of French and English in Canadian society and the vitality of linguistic minorities, the wording of this bill does not essentially correspond to the wording of part VII, which talks about vitality, aspirations, but not clearly about a legal obligation.

Meeting these notable objectives would not be possible without the cooperation of the provinces and territories, as well as the other stakeholders in civil society that I mentioned: businesses, unions, volunteer organizations, just to name a few. We must also bear in mind that the priority areas identified by the linguistic minorities themselves affect areas of provincial or shared jurisdiction: health, education, early childhood services, justice, immigration, and so on.

Therefore, it is difficult to conceive how the federal government could accept sole legal responsibility for insuring and guaranteeing specific results, when it is not solely responsible for the means to do so. As several witnesses before this committee explained, the problem is not so much that the bill in its current form may contravene the sharing of jurisdictions.

In fact, the bill imposes obligations on federal institutions alone. Consequently, the solution put forward by some to clarify that the implementation of part VII will respect the division of powers is a solution to a problem that we are not facing.

I am clearly not calling into question the fact that the courts can play an important and effective role in ensuring that linguistic rights are respected as is the right of the legislator to confer such linguistic rights. The purpose of part VII of the act, however, is first and foremost to guide federal government action in the promotion of official languages.

In this regard, it may helpful if I share with you some comments by the courts that will enable us to gain a better understanding of section 16(3) of the Charter. I am referring to this section because, as you know, this provision of the Charter and part VII of the act have a lot in common. Section 16(3) of the Charter states that:

Nothing in this Charter limits the authority of Parliament or a legislature to advance [...]

We are talking about “promoting”, “advancing”, and “vitality”. Those are the words used. They are not a legal obligation. We are talking here about an obligation of means. I will continue:

[...] to advance to equality of status or use of English and French.

In its decision on the Hôpital Montfort, the Ontario Court of Appeal explained the origin and purpose of section 16(3) as follows, and I quote:

Section 16(3) is not a rights-conferring provision. It is, rather, a provision designed to shield from attack government action that would otherwise contravene Section 15 or exceed legislative authority.

Part VII of the Official Languages Act appears to me to have been conceived in the same spirit. In fact, like section 16(3) of the Charter, part VII of the Official Languages Act does not confer rights.

●(1610)

Moreover, like section 16(3) of the Canadian Charter of Rights and Freedoms, the true purpose of part VII of the Official Languages Act is to shelter policies and programs on language promotion—and the words are very important, they are written in the act—among arguments of discrimination based on section 15 of the Charter.

[English]

Bill S-3, therefore, appears to be moving away to a rather considerable degree from the original conception, intent, and purpose pursued by the legislator in enacting part VII of the Official

Languages Act in 1988. What is at issue here is not whether or not the federal government should continue to strive to achieve greater equality for both official languages, but whether or not to try to achieve greater development of our official language minority communities in the spirit of both subsection 16(3) of the Canadian Charter of Rights and Freedoms and part VII of the Official Languages Act. That is clear. That is a given. That is the aspiration. That is the objective. That is the commitment.

[Translation]

That is our commitment, it is our goal.

[English]

What is at issue is whether the constitutional equilibrium and the underlying principles of federalism should be modified by imposing new duties on federal institutions and providing a greater role to the court. What is at issue is whether we are speaking about an obligation of means that we are trying to convert to an obligation of result, whether we are speaking about an obligation regarding process that we are trying to convert to an obligation regarding outcome, whether we are speaking to a non-justiciable hortatory call that appears clear in the plain reading and the language used in the legislation, in section 41 of part VII, and we want to convert that to a justiciable obligatory requirement that is not reflected or intended, as can be found in the language to be used.

These are critical questions, *monsieur le président*, and Parliament needs to appreciate the extent of the change that is being proposed, whose purposes we share but whose means of implementation is what is at issue. We have no quarrel with the principal undertakings of the legislation, no quarrel with the philosophic aspirations and intentions. The question is really, can we move from an obligation of means to an obligation of result, with all the attending concerns, including that it is at variance with the nature, the intent, and the purpose of the original legislation, as expressed in part VII of the legislation itself?

If we enact Bill S-3, the power to set the official languages agenda and to determine priorities would be removed away from the realm of federal-provincial discussions and negotiations and, perhaps no less important, away from the wilful participation of all sectors of Canadian society in the pursuit of very worthy objectives to which we are committed and into the realm of court-imposed priorities and solutions.

Therefore, what we would be doing, in effect, is substituting a wholly adjudicative model for a participatory model, a model that can also involve the courts but does not only involve the courts. We would be imposing an obligation, as I said, of results for what, from both a constitutional federalist policy and principle point of view, was intended to be an obligation of means.

To conclude, Mr. Chairman, I understand as well that my colleague the Minister of Official Languages will appear before your committee shortly and, in that context, will be in a better position than I am to discuss the government's position on this important bill. I appear here as a legal adviser to the government, and for my part, I need to reiterate that my role as Attorney General limits the scope of the answers I can provide in respect of matters such as those that are before the Supreme Court of Canada.

But having said that, and otherwise than that, I'm pleased to answer any questions you may have. I thank the committee for giving me an opportunity to share these views with you.

• (1615)

**The Chair:** Thank you very much, Minister.

We have maybe another 12 or 14 minutes with you, so it's going to be only one round.

[Translation]

Perhaps you can each have three minutes before the minister leaves. Afterwards, we will hear from Mr. Tremblay and Mr. Francoeur.

We can have a quick round of two or three-minute questions each. I will be very strict in making sure that the time allotted to each and every one of you is respected.

**Mr. Guy Lauzon:** Welcome, Minister Cotler.

Do you believe that there will be problems concerning areas of provincial jurisdiction if Bill S-3 comes into effect?

**Hon. Irwin Cotler:** The legislation currently focuses on subjects and projects which fall under our jurisdiction. For example, health care, education, immigration and justice are of provincial or shared jurisdiction. Therefore, the legislation can deal with the notion of enhancing vitality in areas that fall under federal jurisdiction. With respect to other issues, which are of either shared jurisdiction or provincial or territorial jurisdiction, it is necessary to adopt a non-directive and participative model, as this may pose a problem.

**The Chair:** Mr. Poilievre.

**Mr. Pierre Poilievre (Nepean—Carleton, CPC):** Earlier, Mr. Boudria told us that this bill has been discussed for the last four years. I would like to know why the government has not brought it into effect. With respect to promoting bilingualism, this government has not succeeded. For example, the Conservative government spent twice the amount of money the current Liberal government has on bilingualism. The Liberal government has made cutbacks to francophone schools and immersion schools across the country.

My question is clear. First, does the Liberal government believe that it is vulnerable to being taken to court, and second, roughly speaking, how much would such legal action, including lawyers' fees, cost taxpayers?

**The Chair:** Please answer in 30 seconds.

**Hon. Irwin Cotler:** I do not believe that we would be vulnerable. Our intention is to adopt bills that fall under our jurisdiction, and to collaborate with the provinces and territories. I'm talking about projects and subjects that fall under provincial or shared jurisdiction. I do not foresee any problems in that regard.

• (1620)

**The Chair:** Ms. Brunelle.

**Ms. Paule Brunelle:** Good afternoon, Mr. Cotler.

This bill deals with an issue of great concern for Quebecers, the issue of court remedies. Considering what occurred with the Charter of the French Language, which is that many cases were brought before the courts, and this legislation designed to protect our

language was subsequently butchered, I am concerned by the lack of specific criteria. You already touched upon this issue briefly.

This bill requires that the federal government achieve results, without any specific criteria. In my view, this bill contains flaws. We are worried about the possibility that anglophones in Quebec may contest the Charter of the French Language. Is our concern well founded?

**Hon. Irwin Cotler:** No, I do not believe there is any reason for concern regarding the Charter of the French Language, nor do I see any contradiction between the two texts.

The way in which Part VII of the Official Languages Act is worded is very noteworthy. Section 41 stipulates the following:

41. The Government of Canada is committed to enhancing the vitality of the English and French linguistic minority communities in Canada and supporting and assisting their development; and fostering the full recognition and use of both English and French in Canadian society.

The legislation speaks of being “committed to enhancing the vitality”, “supporting”, “assisting”. It entails an obligation of means, as opposed to an obligation of result.

As to why the federal government is reticent about undertaking a binding commitment to meet a specific result, it is because, as I have already said, Part VII of the Official Languages Act has far-reaching objectives. It is aiming for French and English to have equal status not only within federal institutions, a case which can easily be argued, but across Canadian society as a whole, and in all the areas that I mentioned.

Another objective of Part VII is to foster the development and vitality of linguistic minority communities; in other words, as you yourself said, we are in the realm of concepts which are not easily measured or evaluated. The involvement and cooperation of provincial, territorial and municipal governments is required if we are to meet these wide-ranging objectives. We will need all Canadians to be involved. That is why I said that we should envisage an approach that is not entirely judicial in nature.

While it would be possible to go before the courts on certain matters, we also require an inclusive model, in other words, one which enables all levels of governments and all Canadians to be involved.

**The Chair:** Thank you.

Thank you, Ms. Brunelle.

Monsieur Godin, you have three minutes.

**Mr. Yvon Godin:** Thank you. It is a shame that we are only given three minutes to ask questions on such an important bill.

If the legislation is only declaratory, and creates no executory obligation, why does the government not change its way of working? We could start working in French. We could draw up documents in French and have them translated by these new automatic translation tools.

Time permitting, I would like to read from an article published in *Le Droit* on September 20:

The federal government "Job Bank", the Internet site which advertises more than 700,000 jobs per year, is rife with translations which, to put it politely, could be described as make-do.

"Workers have demanded for to choose controls, perform packaging activities and other warehousing activities. Self-cleaning environments, safety deposit box and professionally working day shift", reads an announcement advertising for positions for "packaging labourers".

The federal government's Web Page "www.jobbank.gc.ca", is advertising two jobs in Ontario for the welders amongst you. The company is question is seeking "candidates with a Plat Flux Heart or MIG, preference given". Interested candidates must "be a flexible shift, although the company has no alternating shifts". More importantly still, candidates must be able to show "a good understanding of symbolic sodium hydroxide, a big attitude and the will to learn."

It is a disgrace! It is offensive!

• (1625)

**Ms. Françoise Boivin (Gatineau, Lib.):** We have already said that it is a disgrace.

**Mr. Yvon Godin:** That is why we require legislation that will make the government take this matter seriously. Yet, the bill only speaks of what shall be fostered. Are we going to be fostering things for the next 400 years? It is not good enough!

I would like the government to advertise positions in French and to have the English translation done by computers. We will see what the English-speaking community has to say about it. Were we to do that, I think that legislation would be adopted swiftly.

**Hon. Irwin Cotler:** So, Mr. Godin, you are not just referring to legislation governing books and publications, you are also referring to legislation governing our everyday activities. I agree with you. That is why I have argued that it is obligation of means and not the obligation of result that comes into play when we are talking about the importance of legislation concerning our everyday activities. Specifically, it is a matter of objectives, of attaining objectives which are explicitly stated in...

**Mr. Yvon Godin:** Is that the objective?

**Hon. Irwin Cotler:** The issue at hand here is that you cannot have a government bound by an obligation of results. When various levels of government are involved, when communities are involved...

**Mr. Yvon Godin:** Mr. Minister...

**The Chair:** We are out of time, Mr. Godin. Thank you.

**Mr. Yvon Godin:** Unbelievable!

**The Chair:** Mr. Cotler, I have to cut you off as well.

We will finish with Mr. Godbout.

**Hon. Irwin Cotler:** As I said at the beginning, the problem is that I have to be at a cabinet meeting at 4:30. My officials are here. They have the advantage of working with the communities on a daily basis. They are better placed than I am to answer the questions that you have asked, and any others that you may have.

**The Chair:** Can we move on to our last speaker so that we finish this round?

You have three minutes, Mr. Godbout.

**Mr. Marc Godbout:** Mr. Cotler, I agree with you when you say that the best solution clearly lies in a collaborative approach. However, our communities have been waiting long enough for solutions to problems in several areas. The collaborative approach has never been applied.

New Brunswick went as far as to enshrine these guarantees in the Canadian Constitution. That is not, however, what we are seeking to do here at the moment. To my mind, we are not asking for much. We are asking that the law be made binding, not so as to spend more time in court, but, rather, because we feel that if the legislation is binding, government departments will be a little more stringent in implementing their proactive approach to helping French-language and Acadian communities. Our communities are running on empty at the moment. They cannot always be having to go to court. The Supreme Court accepted the appeal because it has merit. Were it crystal clear that part VII is merely declaratory, the Supreme Court would not have accepted the appeal. We will wait to see the outcome.

I am confident that our government will take the necessary measures. However, governments change and that is why our communities want guarantees. For example, had section 23 of the Charter not created an executory obligation regarding school management, we would not have the situation in our schools that we have today. Unfortunately, it was the court that had to make section 23 binding.

I think that our government ought to review the question and decide, once and for all, whether Bill S-3 can be adopted; after all, it is in line with our stated views on the subject. The time has perhaps come to take measures in order to show the French-language and Acadian communities that the beliefs which we profess to hold get put into practice.

**The Chair:** Thank you.

Mr. Cotler.

**Hon. Irwin Cotler:** Part VII of the Official Languages Act clearly recognizes the community's needs. As I have already explained, the act sets out obligations, but they do not necessarily create a legal obligation. There is, however, an obligation to support and assist French and English-language minority communities.

By way of a more specific response to your question, I would say that the government has shown no hesitation in introducing an obligation of results on matters which fall entirely under its area of jurisdiction, and no hesitation in granting final oversight of such matters to the court. As I have already said, when we enter the realm of areas which are "entirely of its jurisdiction", there is a place for a judicial model. I am referring, for example, to publications issued and services provided by federal institutions—I think that this was one of the subjects that Mr. Godin raised—as well as workplace language for federal public servants.

The federal government has difficulty in understanding how it could be held accountable for meeting results in fields such as health, immigration and education, which, under the Constitution, do not fall exclusively under its jurisdiction. The problem arises when we come to levels of responsibility. In 1988, these concerns resulted in the legislator deciding to confer a special status to part VII and to speak of a commitment to minority language communities, be it through federal undertakings or by encouraging the provinces and territories, as well as other Canadian institutions, to become involved in fostering linguistic duality. The federal government is motivated by the same concerns today.

As I have already said, there are areas of federal jurisdiction where it is appropriate to implement an obligation of result, and there are others where it is more appropriate to have an obligation of means for the reasons that I have explained.

• (1630)

**The Chair:** Thank you.

**Hon. Irwin Cotler:** I would like to thank the committee.

**The Chair:** The minister has provided us with an extensive and detailed overview of his department's position; I do not think, therefore, that we need to hear presentations from our other witnesses. If you are in agreement, I would suggest that we instead move on to the question and answer period. Would that be all right with you? We do not require any further introductory remarks.

We have one hour left, so we would each have five minutes for our questions.

[*English*]

Is that okay? So five minutes each until 4:30.

Mr. Scheer.

**Mr. Andrew Scheer:** I just have a simple question to ask the officials here. We've heard the presentation by Madam Frulla and today the Minister of Justice, and it seems that the senior department officials in both Heritage and Justice are raising some grave concerns with Bill S-3. Would it be your recommendation to cabinet or to your minister to vote against Bill S-3 if it comes to the floor, as it's worded right now?

**Mr. Michel Francoeur:** Our advice and our recommendations to the ministers or to cabinet, as you know, are confidential. The legal advice we provide to them is also protected by solicitor-client privilege. What we can say is that in an informal way, motions of amendment were tabled with this committee in May—May 17, I believe—and those motions of amendment were tabled by Mr. Simard. Those are the motions at this point that have been debated, in a way defended, by government officials.

To answer your question, in terms of our recommendation and advice, I think we have to stick to the point that that would be confidential.

[*Translation*]

**The Chair:** Mr. Lauzon.

**Mr. Guy Lauzon:** Thank you.

Are you aware of the amendments that Ms. Frulla proposed?

[*English*]

You're aware of the amendments that Mrs. Frulla suggested?

[*Translation*]

Do you believe that these amendments reduce the scope of Bill S-3?

**Mr. Michel Francoeur:** The objective of the amendments in question is to ensure that were part VII to be amended, it would be done in such a way that those commitments and responsibilities deemed justiciable, in other words those which could be enforced by the court, be subject to an obligation of means rather than an obligation of results.

On the first two occasions that we appeared before the committee—I believe it was on the 17th and the 30th or the 31th of May—we clearly explained that one of the government's concerns was the notion of obligation of result which exists in Bill S-3 in its current form. As the Attorney General, Mr. Cotler, explained earlier, we consider this to be a perfectly legitimate concern as the objectives set out in part VII are both very imprecise and very broad. Part VII speaks of supporting the vitality and development of minority language communities as well as promoting official languages at all levels of Canadian society, while the objectives of parts I, II, II, IV and V of the act, for example, are far more precise and far easier to pinpoint. They deal with services provided to the public, workplace instruments available to public service, the language of laws and regulations, and the language of institutions which find themselves before federal courts.

In our view, it would therefore be preferable, indeed desirable, that in those instances where federal institutions have justiciable obligations pertaining to objectives as far-reaching as the vitality and development of communities, particularly in matters of shared or provincial jurisdiction, the responsibilities incumbent upon the federal institutions be obligations of means and not an obligation of results.

• (1635)

**The Chair:** Thank you.

Mr. D'Amours.

**Mr. Jean-Claude D'Amours:** Thank you, Mr. Chairman.

I do not want to return to what the minister said earlier, because I am certain that you will say that you do not wish to comment on it. However, the minister did say that were the legislation executive, problems could arise when the federal government becomes involved in matters of health, education and immigration. I imagine that we would also meet with even more opposition from our friends in the Bloc Québécois. However, as regards matters that fall entirely under federal jurisdiction...

I understand that the problem is with areas that are not of our jurisdiction. Obviously, it is difficult to enforce something in an area which is not of our jurisdiction. It would be like attempting to force something upon other jurisdictions. That is not what we want to do. We are not seeking to force something on other jurisdictions; we want to ensure that minority communities—and here I am referring as much to the French-speaking minority communities outside of Quebec as the English-speaking minority communities in Quebec—have the same opportunities that are available to other citizens in their respective provinces.

Does that mean it would be acceptable for the act to be binding in areas which are of exclusive federal jurisdiction? That is what I understand from all of this.

**Mr. Michel Francoeur:** In areas such as health and education, which are primarily areas of provincial jurisdiction, the division of powers set out in the Constitution stipulates that the federal government can exercise its spending authority. It can do so in all areas. That means that while Parliament cannot regulate education, it can, as provided by the Constitution, exercise its spending authority. Furthermore, that is what has been done for several decades; the federal government makes transfer payments to the provinces for education. We all agree that regulating education is a matter of provincial jurisdiction; nevertheless, the federal government retains the authority to make transfer payments to the provinces for education.

Furthermore, as it stands today, part VII of the current act largely regulates this spending authority that the federal government has in relation to the provinces, municipalities, businesses, not-for-profit organizations, and unions. This means that it is entirely legitimate for the federal government to exercise this spending authority, and by that I mean to discuss with the provinces and other organizations proposed transfers of funds, subsidies, contributions, and transfer payments. It is nothing new, and does not in itself constitute a problem.

• (1640)

**Mr. Jean-Claude D'Amours:** I understand that, but from what I can gather from what the minister said earlier, the situation is a little more problematic when we are dealing with areas such as education, for example, which do not fall exclusively under federal jurisdiction.

Would there be any problem in making the act binding in relation to areas which are exclusively of federal jurisdiction? That would allow us to keep our own house in order, as they say, without encroaching on matters which fall under the jurisdiction of others.

**Mr. Michel Francoeur:** Thank you for that clarification.

When a given matter falls under federal jurisdiction, there is obviously no obligation to collaborate with the provinces or other levels of government. That being said, the current version of Bill S-3 stipulates, for example, that the Minister of Canadian Heritage must ensure the advancement of French and English in Canadian society. Even in areas which are exclusively of federal jurisdiction, even when the provinces are not involved, Canadians can seek a remedy from the courts against the Minister of Canadian Heritage or the federal government. This is true even if the obligation incumbent upon the Minister of Canadian Heritage pertains to an objective or result as poorly defined or as vast as the vitality and the development of minority language communities or the advancement of French and English. It would certainly be less difficult to seek a remedy in this instance than it would be were the matter one of shared or primarily provincial jurisdiction.

However, the obligation of result provided by Bill S-3 remains problematic. Be it strictly a matter of federal jurisdiction, or be it a matter of shared or primarily provincial jurisdiction, it remains difficult to achieve results because fostering the vitality and development of minority language communities is not in itself a precise and easily defined objective. It differs, for example, from other parts of the law such as the language of work of public servants in federal institutions and services provided to the public by federal institutions, which fall exclusively under federal jurisdiction. The

objectives and obligations of result in these parts of the act are clear and easy to identify. The general public has to have access to service in French.

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

We will move on to Mr. Côté.

**Mr. Guy Côté (Portneuf—Jacques-Cartier):** Thank you very much. I am new to this committee today, and I hope that I will not repeat too many arguments and observations that have already been made in previous meetings.

One has to recognize that this bill was born of good intentions, but it raises several problems. In our opinion, it is unlikely that Bill S-3 will have a uniform effect across Canada, because to suggest that the linguistic situation of English-speakers in Quebec is similar to that of French-speakers outside of Quebec is to deny what is really happening. The situation is radically different.

English-speakers in Montreal—they are concentrated in Montreal, but the same is true of English-speakers elsewhere in Quebec—have access to the vast majority of services available in their language. Cultural mediums, be it television or radio, are also available to them; they can live their life in their language, something which is, unfortunately, far more difficult for minority communities elsewhere in Canada.

I have listened to what you and the minister have had to say, Mr. Francoeur, and I must respond to certain points. You cited the example of the Department of Canadian Heritage, which speaks of ensuring that both French and English gain ground in those provinces where they are the minority language.

Do you not think that, to a certain degree, fostering the development of English in Quebec would undermine Canada's other linguistic group? In a Canadian and North American context, English-speakers in Quebec cannot really be considered to be in a minority situation. They have the tools that they require to ensure that their language continues to flourish. There is no comparison between the two situations.

The minister remarked earlier that, clearly, more was needed than a purely judicial approach, and that all Canadians should be involved in the advancement of French and English. I have difficulty in understanding how the federal government will avoid encroaching upon areas of Quebec and provincial jurisdiction whilst exercising, amongst other powers, its spending authority. I have not as yet found a fully satisfactory answer to that, and it remains an issue of great concern to us.

The minister also said that it was probably not necessary to clearly state in the bill that the federal government was not seeking to encroach upon areas of Quebec and provincial jurisdiction. He believes that it is not necessary because, in his view, the bill is sufficiently clear on the matter. If the bill is indeed so clear on this point, why not take a precautionary measure? Why not inform the legal clerks straightaway that this is not the objective of the bill and that the bill must therefore not encroach upon areas of provincial jurisdiction? In doing so, you could avoid possible legal challenges. Why not address the issue? Why not take a precautionary measure?

These are the issues that this meeting has raised in my mind. Perhaps you could provide me with some clarification.

•(1645)

**Mr. Marc Tremblay (General Counsel and Director, Official Languages Law Group, Department of Justice):** I will provide some initial comments and my colleague will add to them.

Firstly, as the minister stated, both the current bill and the amended bill impose obligations upon federal institutions. Therefore, based on a legal understanding of the term “area of jurisdiction”, there is no infringement of provincial jurisdiction.

A priori, it is a matter of federal jurisdiction because it imposes obligations only upon federal institutions. As to whether there could be an indirect or secondary effect on areas of shared or provincial jurisdiction, such as education, etc., the answer is yes, depending on the government's perception.

That is why it is important not to commit to achieving specific results in the bill, but, rather, if indeed it is to be adopted, to continue amending it in order to establish obligation of means, as was proposed in previous discussions. This brings us back to discussions which have been ongoing, in particular with Quebec, since the Official Languages Act came into force in 1988.

I have been working in the field of language legislation for the past 10 years, and I can honestly say that I have not heard much talk about a conflict between the objectives of part VII and the objectives protected and promoted by the Government of Quebec by means of the Charter of the French Language. As long as this discretionary authority remains, I think that problems of jurisdictional infringement, not in the legal sense but in the “you are telling us what to do and interfering on our turf” sense, will be reduced.

In other words, is there any need for there to be a specific statement in a federal act or legal text addressing this reality? We are of the opinion that there is not. That is the second point that I would like to address.

The courts have clearly told us that when applying provisions intended to be national in scope, it may well be necessary to show discretion and take into consideration the social, demographic, cultural and linguistic realities of minority communities.

In two very recent cases, the Supreme Court of Canada echoed the position proposed by the Attorney General of Canada and concluded that when interpreting section 23 of the Canadian Charter of Rights and Freedoms, the Supreme Court and other courts should take into consideration the very different realities experienced by French-speaking minorities outside of Quebec and the English-speaking minority in Quebec. There is, therefore, no need to underline this in each and every piece of legislation.

Let us now turn our attention to federal programs. You have heard the Minister of Canadian Heritage speak on this subject. Obviously, the minister will not introduce the same measures for English-speakers in Quebec, where, in broadcasting for example, there is a choice of networks and access to English-language television, as she may decide to introduce for French-speakers outside of Quebec. This is because the needs are different...

•(1650)

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

**Mr. Marc Tremblay:** ...and the law allows for it.

**The Chair:** I will have to cut you off and hand the floor to Mr. Godin.

**Mr. Yvon Godin:** Thank you very much, Mr. Chairman. One must hope that, if bill S-3 is adopted, it will be a bill for all of Canada, and not just Ottawa. It would be useful too for helping to change attitudes in many places, without encroaching upon provincial jurisdiction. There is no doubt about it. You have already said as much, but I have no problem with saying it again.

However, the texts which I found on a Web page, and which I read to the minister earlier, are a disgrace and an insult. The federal government is responsible for advancing French and English, but this is no example of progress being made. It is the most ridiculous situation imaginable, and yet it is what is being done by the Department of Public Works and Government Services Canada. As for Human Resources and Skills Development Canada, it has just started doing the same thing. It is unbelievable!

Furthermore, I think that the federal government's decision to publish its list of jobs available in Canada on its French-language website in a computer-generated language makes no sense, and constitutes an insult to Quebec. There is even one article, which I do not have with me, in which the translation refers to a pig, although no mention was made of a pig in the original version.

Could Bill S-3 not help us to bring an end to such things? I am no longer seeing any signs of promotion. I've reached the point where I no longer believe in promotion. There comes a time when decisions have to be made, and I think we have reached that time. Are we going to have legislation to recognize Canada's two official languages? It is Parliament that will make this decision through a legislative process, and not the Justice Minister. Will the bill not offer us better protection?

I am talking about federal institutions. I am not talking about encroaching on areas of provincial jurisdiction. I am talking about the way in which we are treated in federal institutions.

**Mr. Marc Tremblay:** I think that your question touches upon policy direction, and as a public servant, I am not the right person to answer it.

**Mr. Yvon Godin:** I'm sorry, but you have to explain that to me. I do not understand in what way my question is political. It is simply a matter of common sense.

**Mr. Marc Tremblay:** Yes, and it is perhaps common sense that I should address. In fact, I would like to clarify the context of your question for you. The matter to which you allude is already addressed by the Official Languages Act, although not by part VII. There are, however, obligations stemming from part IV of the act, and for which legal remedy is available. Firstly, it is possible to file complaints. Obviously, it is also possible to appeal—

**Mr. Yvon Godin:** Rest assured that that will be done.

**Mr. Marc Tremblay:** —to newspapers, appeal to parliamentary committees and create circumstances to ensure that those federal institutions which have failed to live up to their responsibilities under the act introduce the necessary corrective measures. This is an example of an area where the obligations are clearly defined. The question that must be answered is whether this specific obligation has been respected.

You'll understand that I am not going to answer this question today as the department in question should first be given the opportunity to respond, and I think that it would be important—

**Mr. Yvon Godin:** If the department does answer, I hope it will not reply in English and have its answer translated by an automated system.

**Mr. Marc Tremblay:** You are certainly free to ask the question.

Secondly, I believe that that highlights the role of a committee.

**Mr. Yvon Godin:** However, communities are asking that this part of the act be binding, in order both to provide them with support and, above all, to avoid having to go to court. Communities have started turning to the courts, winning cases, and gaining the sympathy of judges.

**Mr. Marc Tremblay:** Yes.

I think that this shows—and this is less of a legal comment; we are, after all, government legal counsel, as you know—that it is one thing to have a text and set out obligations, but it is another thing to actually carry them out. The minister made an allusion to that.

So it raises the question, if we look at our clear and specific obligations and those that Parliament is being asked to choose to fulfil, of whether this is something that can be done in areas that are so big and broad, touching the social, cultural, economic and other spheres of activity, over which no government has full control.

It is sometimes difficult to carry out such clear and specific obligations as it is to communicate with the public in both official languages. And that is difficult, as we know. Every year, there are some 1,000 to 2,000 complaints made to the Office of the Commissioner of Official Languages dealing with the very clear and specific obligations that we are talking about.

• (1655)

**Mr. Yvon Godin:** There is a problem, isn't there? How many are there in English, and how many in French?

**Mr. Marc Tremblay:** I could not give you the exact numbers, but a significant majority of the complaints deal with the use of French. It is the minority language and that is where the difficulties arise.

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

We will start a new round now. Mr. Poilievre.

**Mr. Pierre Poilievre:** Thank you.

I think that taxpayers should have the right to know exactly how much it would cost to implement bills that we are considering. I see in this legislation that people can take the government to court if they are not satisfied with the existing level of promotion.

So if, for example, part VII became executory, would the government have to develop a program to provide financial support for these cases, along the lines of the Court Challenges Program?

**Mr. Michel Francoeur:** Your question is whether the government should set up a program similar to the Court Challenges Program. Is that right?

**Mr. Pierre Poilievre:** I would like to know as well whether the existing program would apply.

**Mr. Michel Francoeur:** The current program is designed for court cases dealing with linguistic rights protected by Canada's Constitution and various constitutional laws. It also applies where equality rights are concerned. However, even the court remedies that currently exist in the Official Languages Act, which are set out in subsection 77(1) and do not currently apply to part VII, are not eligible for funding under the Court Challenges Program.

If the court remedy were to be applied to part VII as a result of the legislation being amended, the Court Challenges Program could not provide assistance to people wanting to take the government to court. As to whether the government might at some point look at broadening the scope of the Court Challenges Program, I am not in a position to say right now.

**Mr. Pierre Poilievre:** So the current program would not apply?

**Mr. Michel Francoeur:** It does not apply to the Official Languages Act as a whole. The court remedy under subsection 77 (1) is not covered by the Court Challenges Program.

[English]

**Mr. Pierre Poilievre:** In general, do you have any idea how much it would cost, though? Is there any way of predicting or anticipating how much litigation the Government of Canada might face and, extrapolating from that, how much taxpayers would be expected to pay in litigation costs?

[Translation]

**Mr. Michel Francoeur:** We have no answer to give you on that at this point. We cannot give an estimate of the cost that could arise if Bill S-3 is passed in its current form. This part of the act is currently not subject to court remedies, but it is clear that if that were to change, if court remedies become an option, there will be additional costs, at least for judicial costs, lawyers' fees and all the costs associated with going to court.

• (1700)

[English]

**Mr. Pierre Poilievre:** So we don't have any estimation at all, then, to make it simple.

[Translation]

**Mr. Michel Francoeur:** We do not have any dollar estimates—

[English]

**Mr. Pierre Poilievre:** Okay. That's my question, and you've answered it. I would just make the obvious point that possibly we could be embarking on a path that sees us spending a lot of money on litigation that could otherwise be spent on returning funding levels to their previous level under the Conservative government in, for example, French-language education and other forms of support for the promotion of the French language and bilingualism across the country as opposed to spending it on lawyers and litigation.

That's just a general comment, and I'm not asking for your editorial opinion.

**Mr. Michel Francoeur:** And I won't give it.

[Translation]

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

Ms. Brunelle.

**Ms. Paule Brunelle:** On the question of whether Bill S-3 represents a gain or a loss for the francophone majority in Quebec, it is clear to me that it can be seen as a loss. I would even call it a worrisome loss, in that I can imagine groups like Alliance Québec regaining strength and going before the courts. We know that these groups all received huge funding from the federal government in the past. This whole process of allowing for court remedies regarding the results is of great concern to me. I wonder whether Bill S-3 is not a bit like using a cannon to kill a mosquito.

We will end up in an absolutely intolerable situation. The courts will be used systematically whenever someone's language rights are not respected. So we will essentially be taking the decision-making power away from politicians and giving it to the courts. I think that this power belongs to Parliament. Preserving language and strengthening French is a political decision, in my opinion. Regardless, it seems to me that this could give rise to court challenges that may overwhelm us.

In the language file, is this bill likely to lead to a large number of court cases?

**Mr. Michel Francoeur:** If part VII were to become subject to court remedies, there would certainly be more court cases, as I was saying earlier. Since it would be clearly subject to such challenges, the court remedies under paragraph 77(1) could be used by individuals who felt that a federal institution had not fulfilled its responsibilities under part VII.

I do not know whether you would like more specifics, but it seems clear to us that the number of court cases would increase.

**Ms. Paule Brunelle:** It is certainly difficult for you to predict, but it seems to me that we are opening a can of worms here and that all court remedies are continually an option. As the minister said, the obligations concern results that often come under another jurisdiction. That being the case, the criticism can be endless. That aspect of the bill is of great concern to me.

**Mr. Michel Francoeur:** Was that a comment rather than a question?

**Ms. Paule Brunelle:** Yes.

**Mr. Michel Francoeur:** Thank you.

**The Chair:** Perhaps you would like to respond by a comment?

Thank you, Ms. Brunelle.

We will go now to Ms. Boivin, who will share her time with Mr. Simard.

**Ms. Françoise Boivin:** I will try to be brief. At least, I will try to find a question in my comment, since we will have to come up with our recommendations in a few weeks on a bill that seems to me to be extremely important.

It feels like I am back in my old career as a lawyer, because there is a lot of legal talk and playing with terminology, it seems to me.

We need to come back to the objective of Bill S-3. On the Conservative side, people always bring up the financial issue; in my view, however, the question is not how much the rights of Canada's linguistic minorities are going to cost us. This is a fundamental principle that I support.

Whether we are talking about francophones outside Quebec or anglophones inside Quebec, our linguistic minorities have rights. I am very reluctant to endorse the idea of excluding a whole minority just because of what I hear my Bloc colleague saying, for example.

I understand some of the concerns being expressed. They do not seem to me to be well-founded, since there is linguistic peace in Quebec. That peace will not be destroyed by Bill S-3, for heaven's sake! I do not agree that we should avoid giving rights or improving a bill because we are afraid that a few yahoos would come out of the woodwork and launch a court case. We need to take Bill S-3 for what it is. It is part of something larger called the Official Languages Act.

Let us look at the different parts of the act: "Legislative and other instruments", "Administration of justice", "Communications with and services to the public."

Mr. Godin gave us a wonderful example of communication in the area of service delivery in the federal government: it is absolutely extraordinary! Is that not something we can be proud of?

And it continues: "Language of work", "Participation of English-speaking and French-speaking Canadians." And then we come to part VII: "Advancement of English and French."

Perhaps this committee should be less "wishy-washy; we need to stand up for ourselves and understand that there is something missing and that if we do not add it ourselves, the court will do it for us. We should be a little bit more proactive and support the fact that there is nothing wrong with making part VII executory.

There are two problems, in fact. Gentlemen, you are lawyers and you talk about the fine legal points; we could do it on our side as well. But this is an amendment to try to give part VII a bit more teeth. That is how I see the amendment proposed by Senator Gauthier. Moreover, the will is there to make part VII executory, like other parts of the legislation.

For those who are concerned that it will be difficult, I would say that regardless of the language we use, there will always be a place for lawyers and court cases to try to establish what is meant by this or that.

What we want, through Bill S-3, is to give more weight to the federal government's action to advance the two languages. The languages need to be promoted in minority communities and part VII needs to be made executory. The last point poses no major problem except for the one raised by the Conservatives. It will need to be budgeted for. If that what it takes so that we no longer hear horror stories like the ones Mr. Godin read to us, then let us be more proactive here. Before getting to service, we need to work on promotion.

I may already have asked you this when you were here last time, but I want to ask you again the only question I have, since it seems to me that we are going round in circles. Am I right in saying that the Quebec Charter of the French language takes precedence over the Official Languages Act in areas under Quebec's jurisdiction?

• (1705)

**Mr. Michel Francoeur:** To answer your question regarding Bill 101, as my colleague said earlier, for constitutional laws and legislation applied nationally, the courts, the Supreme Court of Canada first and foremost, have clearly indicated that the situation in each province and territory has to be taken into account.

**Ms. Françoise Boivin:** Let us take a specific example, since I see that my colleagues on the other side are concerned about this. Suppose that we pass this bill and an anglophone in, say, Gatineau, decides that all municipal debates should take place in English. So he lays a complaint under Bill S-3. It would have absolutely no foundation.

**Mr. Michel Francoeur:** No, you are right. It could not go forward, since Bill S-3, which would amend the Official Languages Act and all its parts, would not apply and would impose responsibilities only on federal institutions. Bill S-3, as it is currently drafted, despite any concerns that the federal government may have about it, does not put any obligations on the provinces, municipalities or any institutions other than federal ones.

To answer your question specifically, I agree with you.

**Ms. Françoise Boivin:** Fine.

**The Chair:** Thank you. That is all the time we have. We will end with you, Mr. Godin.

Would you like to have another round of questions afterwards, or would you like to conclude after Mr. Godin speaks?

**Hon. Raymond Simard:** I would like us to have another round.

**Ms. Françoise Boivin:** Yes, I would like another round. I feel cheap.

**The Chair:** We will have another round of questions. So you will have about two minutes.

• (1710)

**Mr. Yvon Godin:** After my turn, I will have asked enough questions. So if Raymond would like to ask a question, I do not mind giving him a chance to do so.

**The Chair:** Is that all right with you?

**Mr. Yvon Godin:** Questions and answers do not bother me.

**The Chair:** Excellent.

**Mr. Yvon Godin:** I want to come back to the answer you gave to Ms. Boivin. Here is the issue: we are talking about federal institutions.

Ms. Brunelle said that in Quebec, for example, where the majority is francophone, they did not want to see anglophones go into court because of laws, etc. But this is about federal institutions.

But you have to realize that for us, the francophone minority outside Quebec, this has been going on for a number of years. We cannot get anything, we receive nothing! So Bill S-3 will help us protect minorities in Canada. As you know, francophones are the real minority. That is where Bill S-3 comes in.

Do you agree that Bill S-3 would help protect the two official languages in minority communities, in institutions?

We had Mr. Doucet, from the University of Moncton. He was very clear on this point. He was certainly not in favour of the amendments proposed by the government. He even said that he was worried and that he hoped that the Supreme Court would be more generous with us than the amended legislation will be.

Then you said to Ms. Boivin that the bill dealt only with federal institutions and that Bill 101, the Quebec Charter of the French Language, etc., will be taken into consideration. That comes under sections 41, 42 and 43.

**Hon. Raymond Simard:** What is your question exactly?

**Mr. Yvon Godin:** Would Bill S-3 not help protect the minority language in French institutions across Canada? Could it not only protect the French language, but also promote it and ultimately give it equal status?

That is what we need. Basically, we have two peoples that are officially recognized in this country. We are recognized, but there is no action being taken right now. We are losing ground. Minister Dion gave \$700 million for promotion, and since then we have been getting things like this.

**Mr. Michel Francoeur:** To answer your question on whether Bill S-3 would help minority communities, it is clear that those communities would have court remedies that do not exist at present. In any case, if they exist, they are not clearly defined. That is clear from the fact that this issue is before the Supreme Court of Canada.

You know the Attorney General's position on this. As legal advisors, we can obviously give comments on the legal scope of part VII and say that there is indeed an additional legal recourse and that we feel that there is a good chance that Bill S-3, as it currently stands, will create obligations regarding results that we feel will be problematic.

**Mr. Yvon Godin:** It is as if you are in agreement with me, but you do not have a mandate to say so. I appreciate that. Thank you.

**Mr. Michel Francoeur:** That is your interpretation.

**Mr. Yvon Godin:** Thank you.

**The Chair:** Thank you, Mr. Godin. You used up only three minutes.

Mr. Simard, you can use a little more time on this.

**Hon. Raymond Simard:** Thank you, Mr. Godin.

To begin with, since I was raised and have spent all my life in a minority environment, I simply want to clarify that those communities certainly do not want to see a return to power of the Conservatives. That should be clarified right off the top.

**Mr. Yvon Godin:** That may help.

**Hon. Raymond Simard:** Mr. Francoeur, I do not think that we can take it for granted that if Bill S-3 were in force, there would be a large number of court cases. There are already a number of cases. I do not know why you think that there would be more court cases. Perhaps the various departments would actually take their responsibilities and obligations a bit more seriously.

You indicated that you expected the government to go to court more often than usual. Could you explain why that would be, please?

**Mr. Michel Francoeur:** As things stand, and this has been the case since 1988, a number of people or organizations—including the Attorney General of Canada, the Government of Canada and others—were and are still of the opinion that part VII cannot be challenged in court. As a result, a number of organizations, people and individuals believe that if there are difficulties implementing part VII, people have recourse not to court remedies but to administrative ones: they can go to the Commissioner of Official Languages. They can also go to Parliament. They can come before your committee, which has jurisdiction under the Official Languages Act. So the courts do not have a role to play here.

A number of people and organizations are of the view that the courts do not have a role to play in the implementation of part VII. However, from the moment that it is clear that court remedies exist, individuals and organizations have new avenues to pursue regarding part VII. It is clear in that case that they have access not only to administrative remedies through the Commissioner of Official Languages, not only do they have access to a clear forum—your committee—but they can also use a third type of recourse, the Federal Court.

To see whether the past can indicate the future, let us look at the Official Languages Act. The legal remedies have been clearly set out in the act since 1988. We are not saying that it is not legitimate for court cases to be launched, since the act provides for court remedies and people can go before the Federal Court to deal with issues concerning certain parts of the act. If we compare the number of court cases since these remedies have been clearly laid out in the act with the number for the period between 1969 and 1988—1969 being the year in which the first Official Languages Act came into force—it is clear that there were a lot fewer cases in that initial period. In fact, I believe that one of the reasons is that these remedies were not clearly stated in the act. There were remedies, but Parliament had not clearly stated that the Federal Court was one of the forums that could be used to express and advance citizens' demands regarding implementation of the act.

• (1715)

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

**Hon. Don Boudria:** Mr. Chairman, before we vote, I would like to know whether my colleagues would give me two or three minutes so I could ask a question, even though I acknowledge that I am an outside participant. I do not want to prevent the other members from speaking, but I could ask my question at the end, for example.

**The Chair:** There will not be a vote today.

**Hon. Don Boudria:** The vote in the House...

**The Chair:** We have just about finished our work, according to the time we decided on earlier. So if my colleagues agree...

**Hon. Don Boudria:** I would not want to interfere with anyone.

**The Chair:** It is now or never, if they agree, of course, because we have completed our study.

**Mr. Yvon Godin:** We agree.

**Hon. Raymond Simard:** I have no objection.

**Hon. Don Boudria:** Thank, Mr. Chairman.

The way this issue is being dealt with bothers me a bit. I would invite you to react to my comments.

To begin with, subclause 41.2 mentions only federal institutions. Its reads as follows: "Federal institutions shall ensure [...]" It is only talking about federal institutions. I will come back to clause 43 in a few minutes.

You talked about ensuring results. The wording in the bill is as follows: "[...] that positive measures are taken for the ongoing and effective advancement and implementation of the government of Canada commitments." It says nothing about any particular results that will be achieved by that commitment. I think that people are extrapolating a bit. What is being talked about here is our commitment and positive measures that are to be taken.

Subclause 43.1 again talks about what the government of Canada would do. There is no question of this being imposed on a provincial government, because there is not even any mention of that. Moreover, only the Department of Canadian Heritage is singled out, and the other departments are not even mentioned.

I have tried to be clear, but I would like to know whether I understand your positions correctly. Are you saying that the word "ensure" in subclause 41(2) should be taken out, along with the entire subclause 43(1)?

**Mr. Michel Francoeur:** In the case of section 43, Bill S-3 adds the word "to ensure" to 43(1). If you look at what was proposed in the amendment motions put forward informally at the beginning of the committee's work, you will see that the idea was to remove the word "ensure" and replace it with the term that is already in Subsection 43(1) of the act, that is, "promote."

**Hon. Don Boudria:** That would amount to eliminating the amendment to section 43.

**Mr. Michel Francoeur:** That is correct.

**Hon. Don Boudria:** And the same for section 41.

**Mr. Michel Francoeur:** Yes. The problem, both in subclause 41(2) and subclause 43(1) is the word "ensure."

**Hon. Don Boudria:** Even if it is only within federal jurisdictions?

**Mr. Michel Francoeur:** As I mentioned earlier in response to a question by Mr. D'Amours, the achievement of results is more of a problem when we are dealing with an area of shared jurisdiction or mainly provincial jurisdiction. However, the problem remains, even when it is an area of strictly federal jurisdiction. Whether we are talking about subsection 43(1) or some other provision, enhancing the vitality and assisting the development of communities and promoting official languages, even in an area where we are not working with the provinces or other organizations, are objectives that are very difficult to achieve.

• (1720)

**Hon. Don Boudria:** The result that we are trying to achieve is to enhance vitality, which means that more must be done. It does not mean that the result will be that 143,000 more people will be bilingual. It is not quantitative. It is only about broadening the scope, it is only federal, and yet you are still opposed to it!

**Mr. Michel Francoeur:** How is the enhancement of the vitality or the development of a minority community measured? This is precisely where our difficulty lies. From the moment a case is brought before a court of justice, everyone will have a different way of determining whether or not the enhancement of the vitality or the development of a given community was achieved in the given circumstances. Was the community enhanced, did it develop? That is the concern the government wishes to express before this committee.

I will refer to the example given by Mr. Godin. How are public services measured? It is clear: services are either provided in both French and English, or they are not. In the case of legislation being

passed and published in both French and English, that is also clear. Either the legislation is in both English and French, or it is not. The same goes for regulations, or for a judge who is obliged to speak in French or English in compliance with a linguistic provision.

However, when it comes time to determine in a specific and clear way whether a community's development has been enhanced, we face a considerable difficulty. How are the results achieved to be measured, knowing, as the courts have said so well, that each community or province has its own social, cultural, and linguistic dynamics? There are no two identical minority communities. The level of vitality and development of each community varies tremendously according to circumstances, available resources, and its historical context.

**The Chair:** Thank you.

**Hon. Don Boudria:** Mr. Chair, if we had always treaded so lightly, we would never have had the Charter.

**The Chair:** Thank you to each and every one of you. Thank you for being here.

Thank you to the members of the committee. I will remind you that we are meeting tomorrow morning, from 9:00 to 11:00 a.m. We will be hearing from two witnesses, Professor Linda Cardinal and a representative from Statistics Canada, as requested by the committee.

Good afternoon.

The meeting is adjourned.

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