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on Justice, Human Rights, Public Safety and
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Mr. Richard Marceau

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Monday, November 14, 2005

• (1535)

[Translation]

The Chair (Mr. Richard Marceau (Charlesbourg—Haute-Saint-Charles, BQ)): Good morning and welcome to this eight meeting of the Subcommittee on the Process for Appointment to the Federal Judiciary of the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness. I see that we have a quorum, so we may begin.

It is a pleasure to welcome someone who is well-known and lives part time in the Quebec City region, Ms. Dyane Adam, Commissioner for Official Languages. She's accompanied by Ms. Johane Tremblay, Director, Legal Affairs Branch.

Ms. Adam, you know how this committee works. We plan one hour for this meeting. The floor is yours.

Ms. Dyane Adam (Commissioner of Official Languages, Office of the Commissioner of Official Languages): Thank you, Mr. Chairman. Ladies and gentlemen, members of the House of Commons, I would like to thank you for giving me the opportunity to speak to you today about a very important issue for official language minority communities across the country, namely federal judicial appointments.

I would like to begin by providing a brief history of this issue, and to follow up by suggesting some possible solutions for your consideration. I will be brief, as I want to leave as much time as possible for questions and answers.

[English]

As you are no doubt aware, the shortage of bilingual judges—that is, judges with adequate knowledge of English and French—is one of the main barriers to access to justice for some 2 million citizens who are members of an official language minority community. This problem, which has been identified by my predecessor since the early 1990s, still exists. That is why your initiative to review the judicial appointment process and your recommendations could help to resolve this problem.

In 1995, my predecessor published a study on the equitable use of English and French before the courts in Canada that concluded that the linguistic abilities of provincial superior courts and courts of appeal were unequal and insufficient. The report indicated that the shortage of bilingual judges had an impact on access to justice in our two official languages, in both criminal and civil matters.

At the time, Commissioner Goldbloom made 13 recommendations to bring the federal government to remedy the situation. One of these recommendations called upon the Government of Canada to place appropriate emphasis on language skills in selecting candidates for judicial appointment.

In 2002, the Department of Justice made public a study that also found that members of official language minority communities faced certain barriers that prevented them from being heard in their own language in Superior Court proceedings. Of these barriers, the shortage of bilingual judges remains a recurring problem. Ten years after my predecessor made his recommendations, and several years after the Department of Justice study was published, I am sorry to say that, in practice, progress has been quite modest. While the Federal Court and Federal Court of Appeal now have sufficient bilingual capacity, there is still a shortage of bilingual judges in provincial superior courts and courts of appeal.

In light of the federal government's constitutional and legislative obligations, I strongly encourage you to recommend ways to modify the judicial appointment process in order to ensure the bilingual capacity of our superior courts and courts of appeal.

[Translation]

I recognize the importance of ensuring that judicial candidates are selected based primarily on professional skills and individual merit. However, as the Minister of Justice acknowledged during his appearance last October 25th, merit must be evaluated in light of the court's specific needs—which, in my opinion, implicitly include the need of each court to ensure that it has sufficient bilingual capability.

I believe not only that a candidate's language skills should be given more weight, but also that the current process should be modified to enable the Minister of Justice to easily identify bilingual candidates on the lists of those who have been highly recommended and recommended.

The Honourable Irwin Cotler indicated, during his appearance, that he usually consults with the Chief Justice of the court that has the vacancy, to get a better understanding of the needs of that court. I congratulate the minister for the initiative shown in holding such consultations, but note that this practice is entirely discretionary. I believe that this consultation process should be formally incorporated into the judicial appointment process, to ensure that this practice continues.

Moreover, the Environmental Scan clearly shows that it is up to the federal government to demonstrate leadership in this area by recognizing the needs and shortcomings, with regard to bilingual capacity, of Superior Courts and Courts of Appeal responsible for administering federal laws.

Another way of identifying such needs would be to consult the official language minority community concerned or the lawyers' association that represents the community's interests.

Another aspect of the current process that should be modified is the way in which advisory committees evaluate the language skills of candidates for judicial appointment. A candidate's language skills could be evaluated in a number of different ways. As suggested by some of the individuals who appeared before you as part of this study, I believe the evaluation could, for example, take place during a private interview with the candidate, conducted by the advisory committee.

• (1540)

[*English*]

Finally, allow me to suggest another possible solution to the problem of the bilingual capacity of the federal judiciary. I would ask this committee to recommend at the very least that the Department of Justice adopt a policy committing the minister to replace all bilingual judges who leave their positions with judges who are also bilingual.

The importance of adopting such a policy is illustrated in situations that are unfortunately all too common. Cases in Welland and Windsor, Ontario, are but two recent examples. In each of these cases, a bilingual Superior Court judge retired and was replaced by a unilingual anglophone. In effect, these appointments resulted in the loss of the court's bilingual capacity and a decline in access to justice for members of the franco-Ontarian community in these regions.

[*Translation*]

Access to justice is the cornerstone of our judicial system. The insufficient bilingual capacity of provincial superior courts and courts of appeal means that a significant segment of the Canadian population is being denied the right of access to justice in the official language of their choice. The changes to the judicial appointment process that I submit for your consideration today are key to ensuring equal access to justice in both official languages.

I would therefore urge you to consider the amendments we are proposing and which you will find at the very end of the document which has been circulated to you. We have five concrete suggestions to truly enhance the appointment process and, of course, ensure Canadian citizens equal access to justice in both official languages.

I thank you and I would be pleased to answer any questions you may have.

The Chair: Thank you, Madam Commissioner. Clearly, you are used to making this type of presentation, because you are right on time.

We'll start with Mr. Moore. You have seven minutes.

[*English*]

Mr. Rob Moore (Fundy Royal, CPC): Thank you for your presentation. I have a couple of questions.

We're obviously looking at ways in which we can make the appointment of judges in Canada better, and this is certainly helpful. My question is about proficiency. When it comes to a judge, judges are called upon to have an understanding of their subject matter at the highest possible levels when it comes to interpretation, the minutiae, and the different ways a language can be used. So they have to be extremely proficient. I'm wondering what your definition is of when someone would be eligible to be called bilingual—not bilingual by any standard of being able to go in and perform certain tasks, but bilingual in terms of being able to have material put before them, and it doesn't matter whether it's in one or the other official language, but they're still able to judge a case.

I'm trying to imagine someone with that kind of capability in both languages when the requirement is to be at the highest level of understanding. It's their job to interpret law, to apply law, to hear evidence. I would think that would be at the very highest level for these individuals.

Ms. Dyane Adam: I would agree, and the legislation and the right of citizens to be heard in front of courts in Canada is not only the right to be heard, but to be understood. So the onus is on the judge to be able to fully understand the case in front of him or her.

So yes, and this is why I think the current system is really lacking. We have no means of assessing that level. Anyone could say yes, I tick off bilingual, but in a way it's almost a leap of faith.

• (1545)

Mr. Rob Moore: I guess that's my question on this. So many factors go into selecting a judge, and some of them are ones we want to limit. We want to downplay political affiliation and so on and look at people on the basis of merit. Who is going to judge the capability of the judge?

Say you have a minister of justice who is speaking to this judge, or speaking to someone who knows the judge and says he or she can speak both official languages. What does that have to do with the ability to interpret the law, or even slang, or even ways that...? I would think it takes a lifetime of being immersed in one language or another to know all the nuances of someone who is going to come in off the street and give testimony on a witness stand, or of someone who is going to stand before you with a complicated business transaction, regarding a matter you're not completely familiar with but about which you have to bring yourself up to speed.

How do you see a ranking when it comes specifically to the issue of language, so that it can be factored in? When you say we should replace one bilingual judge with another, how do we know? Who judges that?

Ms. Dyane Adam: I gather that most of your candidates to become judges are people who are already practising. So you have to look at what they did in the past in terms of case management. I think you'd have a good idea of whether they were practising in bilingual cases or were involved in francophone or anglophone courts. This would certainly give you a good indication.

Also, in interviews run by the advisory committee, you have lawyers there who have mastered both official languages. That would certainly be a good means. It's one of them, although I know it's not the sole one. In New Brunswick, they do use the interview as a means to evaluate the capacity of the potential judges.

So these are means that should definitely be considered.

Mr. Rob Moore: That's been my background in New Brunswick, where we're in a unique scenario.

The other question I have is, when it comes to this linguistic proficiency, and when we look at a court and the number of people on that court, is it your concern that the person judging them be bilingual or is able to hear them in the official language of their choice? Is it enough for a court to have, say, sufficient unilingual judges—English or French—or do we need to have bilingual judges?

I'll give you an example. We talk about someone being able to be heard in the language of their choice, but how do we deal with a situation where there are different participants in a case, some of whom speak one language and some of whom speak another, and ensure that they're able to understand what's going on? In the ideal situation, everyone is able to understand, but how do we balance that?

Ms. Dyane Adam: There are two questions. The first one deals with whether a judge could be unilingual, let's say francophone, in a province where the majority is English-speaking and where it could create a difficulty. This is your second point, where you would have witnesses, or other intervenors, providing testimony or documents in the other official language.

Right now, I gather that in all of our provinces there's no unilingual judge in the language of the minority. We've been able to recruit judges that have both the professional capacity and the linguistic capacity.

What you have now I think in front of you in this review is to think of ways where you can at least guarantee that in the nomination process, each tribunal and each court will identify, let's say, one judge—or maybe two judges, depending on the need in different parts of the country—to ensure that bilingual capacity, so that it's not left almost to hazard whether or not you have a bilingual judge. It has to be institutionalized.

You do have the bilingual competency in Canada. Why? Because we do have common law schools now—New Brunswick is one, and Ottawa U is another, as is McGill—that are bilingual. So you do have those now, though maybe 20 or 25 years ago that wasn't the case.

So now I think the question of potential candidates is there. These candidates have been functioning in both official languages across Canada. So it's a question now of ensuring that these candidates are really given the chance to not only serve with their professional credentials, but also with those linguistic competencies.

• (1550)

[*Translation*]

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

Mr. Lemay.

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Thank you, Mr. Chairman. Thank you to Ms. Adam and Ms. Tremblay for their presence here today.

I've been a lawyer for 30 years and I live in the Abitibi—Témiscamingue region. To give you an idea...

Ms. Dyane Adam: I have lived in Rouyn-Noranda.

Mr. Marc Lemay: I thank you for reminding me of the fact that you once lived in my beautiful region. I knew that.

I'd like to draw your attention to what is happening on the other side of the border. It isn't that far away, it's in Northeastern Ontario, Timmins, Hearst, Kapuskasing, Kirkland Lake, Cobalt, Virginia-town, etc.

I read your document and I was surprised to hear that this wonderful government, in office since 1995, has done practically nothing. On page 1 you say “In the five years following the publication of this study, the efforts of the Department of Justice focused on studies...”

Then, there is the expression “when the number so warrants”, or something to that effect. But that is more so in Quebec than elsewhere. The problem I see at the federal level—I don't know if you agree with me—is the manner in which it is decided where there need to be bilingual judges.

Take this example. Oddly enough, in Quebec, it is clear. I don't know one Superior Judge in Quebec who isn't bilingual or is unilingual francophone. I have appeared before all jurisdictions in Quebec, in Superior Court, the Court of Appeal, the Federal Court of Appeal, and I don't know of one unilingual francophone judge. They are all, men and women alike, obviously, perfectly bilingual.

Why is this so complicated? We know where there need to be bilingual judges. Northeastern Ontario is an excellent example; part of New Brunswick and Saint-Boniface are other good examples. Instead of making recommendations—they've been making them for 10 years—wouldn't it be a good idea to do more to denounce this good government?

You say that language skills of candidates for judicial appointment are not evaluated at all. They are not.

How does one know whether there's a need for a bilingual judge in Windsor, London or in Victoria B.C.? I see this problem as being limited to Superior Court. At the Federal Court of Appeal and the Federal Court, we are asked whether we want to argue the case in French or in English. If it's English, an anglophone judge will be asked to preside. In Federal Court, if we want a francophone judge or quorum—that is the expression used in Federal Court—a judge or a quorum will be assigned that is perfectly bilingual.

But in this case, we're talking about the Superior Court. This lengthy preamble leads to my question. What can be done? I've read your recommendations. One of them is as follows “The Minister of Justice should commit to replace all bilingual judges who leave their post with judges who are also bilingual”.

Take the City of Windsor. Is it supposed to be a “sensitive” area that requires a bilingual judge because there are francophone communities there?

• (1555)

Ms. Dyane Adam: When it comes to providing services to people in the language of their choice, it is important to identify where there is a concentration of francophones outside Quebec and anglophones in Quebec. You mentioned regions in the country where there are indeed these concentrations. I know some provinces are attempting to find other ways to serve citizens in their language—francophone citizens live throughout the country—even if they're not living in regions that have been identified as such.

In the process for appointment to the federal judiciary in Canada, it is important to determine the number of bilingual vacancies and the bilingual capacity required by a province to ensure fair access to the law in both official languages. We know full well that there was a bilingual judge in Windsor, and when he left, he was not replaced by another bilingual judge. So, overnight, citizens lost that right.

We recommend focusing on a criterion which isn't there at the moment, that of official languages. At this point, it isn't even the last criterion. And by the way, it isn't only official languages, but a candidate's ability to speak languages. That could mean languages other than French and English.

In the current context, the process has failed when it comes to the obligation to serve Canadians in the language of their choice in legal matters.

Mr. Marc Lemay: Your second recommendation states:

2 - the advisory committee should be required to evaluate the bilingual capability of candidates who have identified themselves as such, in an interview, for example.

If we were to recommend an interview with candidates, would you agree to having one of the criteria be their bilingual capability?

For instance, in Saskatchewan, where there are no francophones, there should still be a list of places where there need to be bilingual judges. You don't want all judges to be bilingual, do you?

Ms. Dyane Adam: Absolutely not. We're talking about the court's bilingual capacity. That does not mean that all positions or all judges must be bilingual. It does mean that there should be a sufficient capacity to meet the needs of the public requiring the service. So, in Saskatchewan, there are francophones. There are francophones everywhere in this country. So, we are referring to all provinces and territories.

Johane, you wanted to add something?

Mrs. Johane Tremblay (Director, Legal Affairs Branch, Office of the Commissioner of Official Languages): In criminal matters, the accused have the right to be heard in the official language of their choice. It doesn't depend on whether there is a significant request for it or whether the numbers warrant it. That is why we must ensure that all superior courts throughout the country have this bilingual capacity allowing the accused to exercise their rights.

Mr. Marc Lemay: Ms. Tremblay, we should be cautious, because there are varying interpretations of the words "superior court". I am referring to Quebec Superior Court. In fact, that is where the real problem lies.

Mrs. Johane Tremblay: Yes. At this point, there is no problem with respect to the Federal Court's bilingual capacity.

Mr. Marc Lemay: We agree on that.

Thank you.

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

Mr. Comartin, you have the floor.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Do the courts of appeal in each province currently have bilingual capacity?

• (1600)

Ms. Dyane Adam: We don't know.

Mr. Joe Comartin: In your second recommendation, you suggest that advisory committee members do the evaluation themselves. Some committees may not have that capacity.

Would there be another way to determine whether a person can do it?

Ms. Dyane Adam: There are in fact advisory committees in several provinces. There are three in Ontario, two in Quebec. Let's assume there are three in Ontario, one in northern Ontario, one in central Ontario and one in southern Ontario. These are already three regions identified as having a significant francophone population. It would be practically abnormal for the advisory committee not to have at least one person in each...

Mr. Joe Comartin: That wasn't my question. I was saying that committees themselves didn't have the capacity to assess candidates.

Ms. Dyane Adam: There should be at least one.

You say they don't have that capacity at the moment?

Mr. Joe Comartin: There are people who sit on committees that are not bilingual at all.

Ms. Dyane Adam: If the onus was on them to assess language ability—at the moment, they're not being asked to do so—there could be a change to the makeup of a committee or the membership of the committee could include enough people with the capacity to assess language ability.

That's what I have proposed, but there may be other ways of going about doing this.

Mr. Joe Comartin: Like what?

Ms. Dyane Adam: The fact that a candidate has practised in both official languages would probably be the most reliable criterion.

Mr. Joe Comartin: Mr. Chairman, in Windsor, two judges were appointed following the departure of a bilingual judge. Most recently, a woman was appointed. She's the first woman judge to have been appointed to Windsor Superior Court. I don't believe there's ever been a woman appointed to this position throughout the province. This is why there is no bilingual judge. In actual fact, there was at least one bilingual candidate.

So, what kind of choice is there if we want to appoint a bilingual judge who is also a woman?

Ms. Dyane Adam: As a woman, I would answer that the law is clear on this point. There's a fundamental right in Canada, and that is to be heard and understood in one's own language. Right?

The Chair: Mr. McGuinty.

Mr. David McGuinty (Ottawa South, Lib.): Hello Ms. Adam.

Do we know precisely how many bilingual lawyers there are in Canada currently?

Ms. Dyane Adam: Not to my knowledge.

Mr. David McGuinty: Are we referring here to lawyers who are simply bilingual, or to lawyers who received training in English and in French? Or is it a combination of both?

Ms. Dyane Adam: If you'll allow me, I'll ask you the question. In the case of judicial appointments, we are looking for the level of bilingualism which would allow candidates to fulfil their duties as judges.

Whether candidates became bilingual at school, in university or out in the field, at the end of the day, we are interested in results. This is why we must be vigilant in the manner in which we assess levels of bilingualism. If, under the criteria, we want someone who was trained in both official languages, we run the risk of eliminating candidates who learned these languages otherwise.

• (1605)

Mr. David McGuinty: So, we don't know how many bilingual lawyers there are in the country. Do we then have an idea of the number of bilingual lawyers who graduate each year?

Ms. Dyane Adam: Yes. Law schools would have access to these statistics. Also, in provinces which are mainly anglophone, French-language jurists' associations would be able to give us a relatively accurate idea of the number of bilingual jurists. There are associations, for instance in Ontario, where jurists are both anglophone and francophone. In general, they define themselves as being bilingual jurists. There are a number of them. I must admit however that I haven't checked the statistics.

Mr. David McGuinty: Are there more bilingual lawyers in Quebec than in any other provinces?

Ms. Dyane Adam: If we rely on statistics regarding rates of bilingualism per province in Canada and if we extrapolate from that in looking at the legal profession, I would say that the level of bilingualism is most probably higher in Quebec.

Mr. David McGuinty: Does that mean more bilingual jurists are appointed to the Superior Court in Quebec than in other provinces?

Ms. Dyane Adam: See how unfortunate this is! If such statistics were compiled, you would have access to them, and I would be able to answer. However, because this criterion is not even being considered by the Canadian Judicial Council we are somewhat in the dark. We can only make assumptions.

Mr. David McGuinty: Speaking of assumptions, do you think it makes sense that there are more bilingual lawyers and jurists from Quebec than from other provinces appointed to the Supreme Court?

Someone just said that all judges at the Federal or Superior Court levels he had appeared before were bilingual. Does it not follow that the majority of these judges or jurists come from Quebec?

Ms. Dyane Adam: I don't have the information I need to make such a statement.

Mr. David McGuinty: So, we don't have the data we need to know how many bilingual lawyers or jurists there are in Canada. We don't have an exact ratio of bilingual graduates each year. Moreover, we don't know where in Canada bilingual jurists come from. In fact, it would seem that we have no statistics whatsoever.

Ms. Dyane Adam: In most anglophone provinces, there are francophone lawyers associations. These organizations could give you a good indication of these figures. In Saskatchewan, for instance, these lawyers know one another, because there are so few of them. There are lawyers there that are identified as being bilingual, and the same applies to the other provinces. It would be possible to get these statistics from the lawyers. You could also get them from institutions such as McGill University, the University of Ottawa or the University of Moncton. However, you could get them elsewhere. When I was at York University, at Osgoode Hall, there were bilingual jurists. So we are not strictly referring to universities which offer training in both languages.

Unfortunately, we don't have an accurate picture of the situation. I can, however, tell you that there are bilingual jurists in practically all provinces and territories.

Mr. David McGuinty: Thank you very much.

The Chair: Thank you very much.

Mr. Warawa.

[English]

Mr. Mark Warawa (Langley, CPC): Thank you, Mr. Chairman.

I'm hoping the questions I ask have not already been addressed. I don't think so.

You've mentioned that there are shortages in bilingual judges in the provincial superior courts and courts of appeal. I'm from the province of British Columbia. The two official languages are French and English in Canada. In British Columbia there are, I would suggest, different needs. Your point was on the fundamental right to be heard and understood in the language of your choice—your language. In British Columbia, Mandarin would be a language, Punjabi would be a language that is needed, and there are other languages in British Columbia. That's a very important need.

So what we're talking about today, in your recommendations, is exclusively French and English. Is that correct?

• (1610)

Ms. Dyane Adam: It's exclusive to our two official languages. What you're talking about are other languages that do not have the same status in Canada.

Mr. Mark Warawa: So your recommendation is regarding the two official languages?

Ms. Dyane Adam: Solely.

Mr. Mark Warawa: Okay. You said in your presentation that there are shortages in provincial superior courts and courts of appeal. Are there shortages in British Columbia?

Ms. Dyane Adam: Yes. The different studies that were done, both by the commissioner's office as well as by the Department of Justice—the last one, the Department of Justice, dates to 2002—revealed that there were problems in terms of shortages of bilingual judges in all provinces except Quebec and New Brunswick, I believe.

Mr. Mark Warawa: So there were examples where people did not have the opportunity to be before a bilingual judge, in both official languages, in British Columbia.

Ms. Dyane Adam: There are. In fact, in your own province there's a famous case, the Beaulac case, that went to the Supreme Court. On this issue, Beaulac did not have access to justice in the language of his choice. I think the judgment was cancelled, based on that.

Mr. Mark Warawa: In the assessment process, you made the comment in your brief that you'd like to see the assessment process include the language skills of an applicant. You also recommended that if it is a bilingual judge who is being replaced, then a bilingual replacement should also be part of a policy.

If somebody goes through the assessment and they're recommended and they are approved—they may be highly recommended or recommended, and I'm hoping personally for just highly recommended, but you've included both—if this person now is bilingual and there is not a shortage, the previous appointments have now met that need, so there's no longer an appointment, you would still like to see that this would be part of the process. You'd still like to see that in the process, so that eventually we may not have a shortage, but an abundance of bilingual judges. Is that what could happen?

Ms. Dyane Adam: Well, if they are highly recommended, why not? Maybe in 10 years' time or 20 years' time, when the young people are more bilingual, you may be facing a situation where there will be candidates who will be more bilingual than there were 20 years ago, etc. But at this point today we're not in that context. We still do not have sufficient bilingual capacity to ensure that citizens have access to justice in the language of their choice in many provinces.

Mr. Mark Warawa: So you're recommending that for the assessment process as we look at the applicants, the ideal person should be bilingual in both official languages, someone who can understand and speak.

Ms. Dyane Adam: There are two things. You have to determine what bilingual capacity you need, but for the candidate, on what basis will you determine that the candidate has a bilingual capacity? You have to assess it; an interview is maybe one means, and there are others we mentioned earlier.

I think what you have to consider is that in some positions there have to be individuals who are bilingual. If you are unilingual, you won't be of any service to citizens who want to be heard in the other official language. You may be the greatest judge in the world, but you will be of no service to a person who wants to be heard in the other official language.

We have the responsibility to ensure that citizens, whether they be French-speaking or English-speaking, have equal access to justice in their own language. It is the responsibility of the Minister of Justice to set adequate processes that will ensure that.

•(1615)

Mrs. Johane Tremblay: In addition to that answer, I just want to clarify one thing. The recommendation is not that only highly recommended or recommended bilingual candidates be on the list; the recommendation is that the list would also identify, in addition to the reference to being highly recommended or recommended, whether that candidate is bilingual or not.

Suppose in a given case there is an opening. The recommendation we make is that the Minister of Justice should first consult with the chief justice of that tribunal just to know what the bilingual capacity is and what the needs are in terms of appointments of bilingual judges. They should also consult the official language community, and if there's an association of jurists—there's one in B.C.—we recommend that they do consult that association to know the real needs. After that, the minister will determine whether that particular position needs to be filled by a highly recommended and bilingual candidate or not, depending on the needs of the tribunal.

Mr. Mark Warawa: I appreciate that clarification. Thank you.

[Translation]

The Chair: Mr. Tremblay and Mr. Warawa, your time is up.

Mr. Lemay.

Mr. Marc Lemay: I listened to the debate, and I am somewhat surprised by Mr. McGuinty's comments. I am going to respond to him immediately. As president of the Abitibi-Timiskaming Bar, I saw the way it worked at the Barreau du Québec.

When lawyers take their oath, there is a form on which they must indicate their area of specialization and whether or not they are in a position to exercise their duties in both languages, in other words to read and write English and French. I think the same thing exists at the Ontario Bar Association. In fact, we looked into the situation to ensure that there were legal aid lawyers who were able to practice on both sides of the border. We did the same thing for New Brunswick. So if the political will is there, it is very easy to establish a list of candidates. It exists.

Moreover, you are absolutely right when you say that the Association des juristes de langue française is present throughout Canada and that there are lists of candidates.

I would like to submit a problem to you. When doing business in the petroleum industry, for example, where there are major legal issues, we do not have too much trouble finding a lawyer and a judge who understand our language. That is not a problem. The problem, to my mind—and the Beaulac case is a very good example—is the fact there are more and more people working outside of where they live. Unfortunately, sometimes these people commit offences: there are francophones who commit offences in Calgary and Vancouver. The opposite is also true: there are anglophone who commit offences in Jonquière, Alma, Lac-Saint-Jean, and in my very francophone area, Abitibi-Témiscamingue.

In Quebec, all of the judges appointed to the Superior Court are bilingual. We checked. I find that strange. I do not know any Quebec Superior Court judge who cannot right a decision in English and French. They are all bilingual. I still do not understand why bilingual judges and candidates cannot be identified in Calgary or Vancouver, when we know that francophones work there.

Mr. Tremblay, you were right to point out that this is a glaring problem. There are no judges who can hear a case in French at the assize court in Vancouver. At any way, I haven't seen any recently. It is also a problem in Northeastern Ontario.

Perhaps you want to know what my question is.

The Chair: I was going to ask you

Mr. Marc Lemay: I was not looking at you, Mr. Chairman, because I knew that you were going to remind me.

Even if we were to make a recommendation for judges to have the linguistic capacity to preside in one of the two languages or the other, do you think that the minister would agree? What more can we do than what your predecessor and you have done for ten years? Should we continue to insist on that?

• (1620)

Ms. Dyane Adam: It is true that we have been making recommendations for years, for decades. However, you have an opportunity to recommend that Parliament bring pressure to bear in order to amend the process. In fact, that is perhaps the best guarantee that some of our recommendations which are based on repeated studies by the Department of Justice will come to life. We hope that your committee and the Standing Committee on Official Languages will take over some of our recommendations.

Mr. Marc Lemay: Oh, yes! Thank you.

The Chair: Mr. McGuinty.

[English]

Mr. David McGuinty: This is a question I've put to most witnesses who have appeared before this committee. You have looked, Madame Adam, and your team has looked at the question of bilingual judges. In any of your research, have you looked at in any way, do you have any evidence of, or have you addressed in any way the potential for a linkage between a political party and appointments to the bench? Is there any causal connection between the appointment of bilingual lawyers and their linkage to a particular political party?

Ms. Dyane Adam: I never looked at that.

Mr. David McGuinty: You never looked at it and you've never seen it. There's no evidence of any kind?

Ms. Dyane Adam: I must say that none of the studies we have done have ever focused on this issue, so I cannot comment.

Mr. David McGuinty: Just to recap, Mr. Chairman, we have no evidence of the number of bilingual lawyers in the country. We have no numbers, no studies, no statistics.

Mrs. Johane Tremblay: I believe the University of Ottawa is conducting a funded research project to get statistics about bilingual lawyers and students who complete their schooling, in order to get those data you're looking for. We could come back with a more specific answer to that question.

Ms. Dyane Adam: Mr. McGuinty, I'd like to say that the government has a responsibility to ensure that citizens have access to justice in the two official languages. In a way, if there are no such studies that exist, the government should be doing them.

Mr. David McGuinty: It just seems to be a pattern, Madame Adam, that there have been a succession of witnesses who can't bring forward any evidence on the issues that they are usually addressing, particularly those witnesses who continue to refer to two newspaper articles about explicit causal connection linkages between the Liberal Party of Canada and appointments to the bench. It's deeply frustrating for members of Parliament and the Canadian public, who are expecting this subcommittee to actually come up

with robust advice on how to improve the situation, when we have no evidence forthcoming.

Ms. Dyane Adam: But you understand that I am not at all addressing this issue today.

• (1625)

Mr. David McGuinty: Understood.

Ms. Dyane Adam: There are sufficient studies done on the bilingual capacity—or I should say the insufficient bilingual capacity—of courts in Canada. I can provide all the sources. We do have studies and evidence on that, on the numbers. But even if there were thousands, if they are not recruited, it won't solve the problem.

Mr. David McGuinty: Do we have basic statistics on the number of bilingual judges now in the country? No? So we don't know whether the preponderance of bilingual judges is forthcoming from the province of Quebec either, for example, on the Federal Court.

Ms. Dyane Adam: What I'm saying is that maybe you do have those statistics. They exist in the sense that they may not be compiled, but if you were to go province by province, you could probably get those statistics. To ask me, as a witness, to provide them to you...there are studies being done.

It has been put forward to the government for the past ten years that there was a problem in the bilingual capacity of the courts—and I'm not talking here about the administrative tribunals of the federal government, which also have that problem. This is an issue that we are concerned about, and, yes, there is evidence. You may not have precise statistics, but there's sufficient evidence to say there is an issue here.

[Translation]

The Chair: Thank you.

If my colleagues allow me, I have a few questions for you. On page 3 of your statement, you say:

[...] in my view, the current process should be modified to enable the Minister of Justice to easily identify bilingual candidates on the lists of those who have been highly recommended and recommended.

Let's imagine that the committee suggests using a short list, rather than continuing to use the categories "highly recommended" and "recommended". In appointing judges, for example, we would no longer use a wide pool of lawyers. In view of the suggestions you have made, one might imagine that, with a short list, more weight would be given to linguistic skills.

If the list included three or five names, what would that greater weight consist of? Would you be able to express that as in a percentage, or in terms of points? Would there be a point system?

You state: "the advisory committee should be required to evaluate the bilingual capability of candidates who have identified themselves as such, in an interview, for example." In my view, this would not be feasible.

You also state that the list of candidates submitted to the Minister "should indicate candidates with sufficient knowledge of English and French."

In my view, this would be feasible if the list were short. I come back to your first suggestion—in practical terms, how do we proceed if we have a short list instead of a broader pool? What is the greater weight that should be given to linguistic capacity?

Ms. Dyane Adam: In my view, what's important is that, if we need a bilingual judge in a region where there is none — like Windsor — bilingualism should be one of the essential criteria. I find this obvious. It is essential, otherwise you cannot serve citizens properly and respect their rights.

If it had already been established that bilingual capability is adequate, and that your highly recommended candidates are in fact bilingual, that would be great. However, we are talking about situations where that's not the case, and that's when bilingualism must be considered an essential hiring condition.

The Chair: I want to understand this properly. Let's say that St. City-the-back- of-beyond needs a bilingual judge, in that case, no unilingual candidates could be on the short list. Is that what you mean?

Let's take a concrete example, like a specific place, a riding, a judicial district where the residents of a minority language community cannot be served in their language. You suggest that no judge and no candidates who cannot function in the minority language be recommended, or be on the short list to be submitted by the advisory committee. Do I understand it properly?

Ms. Dyane Adam: That is correct in the case you describe, because bilingualism would be an essential hiring condition.

The Chair: I see. Thank you.

Are there any other questions?

Mr. Warawa.

[*English*]

Mr. Mark Warawa: I have one short one. To follow up on the question that's just been answered—the source for bilingual applicants who would be reviewed by the assessment committee—where was that source going to come from?

And to get back to British Columbia, would the source of applicants primarily be coming out of areas that have the environment that would encourage bilingual growth, whereby you're

familiar with the languages, both English and French, whereby you understand and you speak them, you understand the slang so that you can properly represent? If it's going to be, if you are not bilingual then you do not apply, which is what you've just said, would this then mean that eventually the goal would be to have all the justice applicants coming from that source, that pool? Am I hearing that? Is that what you're saying? You understand my concern that the judges in British Columbia would not be coming from British Columbia, they would be coming from central Canada.

• (1630)

Ms. Dyane Adam: We are always talking about the bilingual capacity of a court, and as far as I'm concerned, you have many judges as part of a court. Some are unilingual. Some are in specific areas of justice; others are more in criminal. You have a variety. What I'm saying is that among this group some need to be identified to be the judges to serve in the language of the minority. If you start from zero, it means you really need to recruit, because that court, that particular group of judges, cannot meet the fundamental rights of the citizens to be heard in their own language.

Mr. Mark Warawa: But did you not just answer the chairman that to be able to apply for the position, to go to the assessment board to be able to apply to be a justice, you would have to first be bilingual? Did I misunderstand that?

Ms. Dyane Adam: This is where I said in that specific example, in that particular case, because he was saying one position in that particular area where there was no capacity. That is why you have to watch the generalizations here, going from one specific to the overall court.

Mr. Mark Warawa: Thank you.

[*Translation*]

The Chair: Ms. Diane, Mr. Tremblay, thank you very much for being with us today.

Earlier, you mentioned a study you conducted on bilingual judges. We would very much appreciate your forwarding it to us through our clerk, Ms. Hayes.

Thank you for taking the time to meet with us.

The meeting is adjourned.

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