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Chair

Mr. Gary Schellenberger

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● (1540)

[*English*]

The Chair (Mr. Gary Schellenberger (Perth—Wellington, CPC)): Welcome to the 27th meeting of the Standing Committee on Canadian Heritage. Today, pursuant to Standing Order 108(2), we have a study on the court challenges program.

Just before we take our witnesses' statements, I would just like to read one little thing about the way we're going to handle some of this:

> As you are aware, some of the matters which we may be examining over the next couple of meetings are the subject of legal actions. As a result, I would like to take this opportunity, before we begin, to remind members of the *sub judice* convention, and to outline how I intend to deal with any issues that might come up.
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> As stated in the *House of Commons Procedure and Practice* on page 534, "The *sub judice* convention is first and foremost a voluntary restraint on the part of the House...." Members of Parliament may therefore decide to exercise a certain degree of restraint when considering matters that are before the courts. While members are free to go about their business freely and without interference, they are also reminded to take into consideration the role of the courts. Accordingly, members and the committee may choose not to do or say things that would prejudice any lawsuit.
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> Witnesses and members may discuss the various policy and program issues that are before us. We are not here to decide or pass our judgment on the merits of any legal action. Witnesses are not here to plead their legal case, nor are members here to try to bolster or undermine one side or the other in any litigation. If I believe that witnesses or we are straying into any lawsuits or legal matters, I will remind participants to return to the parliamentary arena.
>
> If we all remember our purpose here, while recognizing the proper role of the courts, I am certain that I will not have to make any interventions.

I am not here to be an adjudicator, I hope, on those particular points.

Go ahead, Mr. Kotto.

[*Translation*]

Mr. Maka Kotto (Saint-Lambert, BQ): Mr. Chairman, I understood what you were saying in your preamble, but my intervention referred to a reminder that I would like to make with respect to the fact that we need—

[*English*]

The Chair: Just before you do, make them very short comments, because—

[*Translation*]

Mr. Maka Kotto: It is very brief.

[*English*]

The Chair: —our witnesses are finished at 4:30.

[*Translation*]

Mr. Maka Kotto: All that I wanted to remind you of was the fact that we need to set aside a little bit of time at the end of today's meeting to deal with the motions.

[*English*]

The Chair: If we have time at the end of the meeting, we'll do that. If not, on Monday we'll have to ask for an extension of time.

[*Translation*]

Mr. Maka Kotto: I had foreseen that and I simply wanted you to keep that in mind.

[*English*]

The Chair: Thank you.

Go ahead, Mr. Bélanger.

Hon. Mauril Bélanger (Ottawa—Vanier, Lib.): Thank you, Mr. Chairman.

I, too, have taken note of your admonition. However, we should be aware that until the matter is before the courts, the *sub judice* rule does not apply. As far as I understand, one of the groups here might have petitioned the courts, but that petition has not yet been responded to or accepted, so technically it is not even before the courts right now, so the *sub judice* does not apply.

Having said that, I agree that as parliamentarians we should be mindful of our questioning.

The Chair: Thank you.

I welcome our witnesses here today. Because we only have an hour or a little less, please try to keep your presentations to ten minutes or less. A round of questioning will be five minutes, and I'm going to adhere to that today; we'll see if we can get more than one round of questioning in. I don't know who would like to go first—would you, Madame Beaulieu?

[*Translation*]

Ms. Marielle Beaulieu (Executive Director, Fédération des communautés francophones et acadienne du Canada): Members of the committee, Mr. Chairman, you asked us to appear before you today in order to identify the impact of the elimination of the Court Challenges Program. The FCFA would like to thank you for giving us this time to meet with you in order to make you aware of our opinions, our point of view.

My name is Marielle Beaulieu, and I am the Executive Director of the FCFA of Canada. I'm accompanied by my colleague Diane Côté, who also works at the FCFA, and by my colleagues from the CNPF, the Commission nationale des parents francophones. You will have the pleasure of hearing from them later on.

The FCFA has already submitted a short brief highlighting the situation. I believe that the brief was sent to you in time so that it could be translated and distributed to you for consultation.

Today, in the few minutes available to us, I will try to provide you with a brief overview of the issue by identifying, first of all, the main gains achieved as a result of the Court Challenges Program in the area of language rights—that goes without saying—and by, secondly, pinpointing the repercussions that we expect to see as a result of the elimination of the program.

Let's start at the beginning. For all francophone and Acadian communities across Canada, the CCP has been an essential tool enabling us to both clarify and advance language rights for the francophone minority. Moreover, many language cases have been heard and resolved thanks to the support provided by the Court Challenges Program.

Let's refer to some of the cases that have enabled us to obtain, first of all, school management: the Mahé v. Alberta case, the reference regarding the Public Schools Act of Manitoba; the Association des parents francophones de la Colombie-Britannique v. British Columbia, and I could name many others.

Other cases, such as Doucet-Boudreau and Arsenault-Cameron, enabled us to clarify the state's obligation with respect to education rights and schools.

I will not go into great detail about the issue of education since my colleagues from the CNPF will be able to go into this matter in greater detail. But the question that I would ask you here, this afternoon, and I will put it to all the members of this committee, is as follows. Without such a recourse, would we have French-language schools throughout the country today? I will take the liberty of asking you this question but I will also take the liberty of expressing my doubts about the outcome.

The CCP has also enabled us to fund legal recourse for services in French. We should mention, first of all, the famous Montfort case, which you have all heard about, which allowed us to safeguard the only French-language teaching hospital west of Quebec. There was also the Beaulac case, which clarified language rights for the accused while at the same time specifying the principles and the interpretive framework which apply to language rights in Canada.

Other cases funded by the Court Challenges Program enabled us to clarify the obligations of governments to provide services in French. We could, as well, refer you to the lawsuit initiated by the Federation franco-ténoise in 1999, which was heard in 2006, and which led to a Northwest Territories Supreme Court decision recognizing the territorial government's obligation to provide services in French to its citizens. It should be noted that, unfortunately, the government of the Northwest Territories appealed the decision and it will be difficult for the Franco-Ténois community to pay for the costs of this new step in the legal process.

In a nutshell, we would affirm that the Court Challenges Program, which was created in 1978, has done a great deal to promote the development of francophone and anglophone minorities in Canada over the past few years, thereby contributing to the promotion of the full recognition of the use of French and English in Canadian society.

The elimination of the CCP will have a negative impact on the timelessness of the francophone and Acadian communities in Canada. On many occasions our government has told us that it would pass constitutional legislation and respect it.

● (1545)

History has shown us that, a system such as ours, it is up to the courts to interpret the laws. In other words, even if the governments have the best of intentions, it is the courts that have the authority to interpret laws and their constitutionality.

Let us now look into the impact of the elimination of the program. Numerous lawsuits have enabled us to clarify and consolidate the rights of francophone minorities and to advance the communities. However, at the time that the funding of this program was cut, there remained a considerable amount of legal work to be done to ensure that francophones were able to fully avail themselves of their constitutional rights and achieve true equality, as prescribed by the Canadian Constitution—that goes without saying—and the Official Languages Act.

We have already mentioned the case of the Franco-Ténois community versus the Government of the Northwest Territories, which will be appealed. Lawsuits which are currently underway include the Paulin case in New Brunswick, the Caron case in Alberta, and the school surtax case in Nova Scotia. These cases have been listed in the brief that we submitted and they are well identified.

These cases, like the ones before them, could enable us to advance, recognize, and interpret and enforce the language rights of francophones. In other words, this work will not be completed until there is true equality for both French and English and full access to services in French of equal quality. Up until now, although the courts are not our first choice as far as taking action is concerned—and that is a very important aspect—they have and will always be the best authority to ensure that minorities are able to avail themselves of their rights.

Up until today, Canada has been a model tor the way that it deals with its minorities. In that respect, the CCP has been an incalculable support for facilitating the interpretation of the written and unwritten principles of the charter. Although the rights guaranteed by the charter are a source of pride for Canadians, we still have to ensure that they are in practice, applied and respected on a daily basis.

Without the CCP, communities would have found it difficult to come up with financial resources—this is very clear to us—to remind the federal government and the provincial and territorial governments of their constitutional linguistic obligations and responsibilities. And I would tell you that up until now, the vast majority of language rights cases that have been brought to trial have been against the provincial and territorial governments. Consequently, these cases were about the implementation and application of these rights.

Up until now, the Court Challenges Program has supported groups representing ordinary Canadian citizens who otherwise would not have had the means to ensure that the constitutional rights guaranteed to them under the charter were recognized and respected.

Finally, the abolition of the Court Challenges Program clearly indicates that the federal government has, unfortunately, failed to meet its obligations under the Official Languages Act, particularly part VII, by eliminating, without any consultation, a program that is proving to be essential to the enhancement and development of francophone and anglophone minorities in Canada.

Thank you for listening to us. Thank you, Mr. Chairman. Ms. Côté and I will be pleased to answer your questions.

● (1550)

[*English*]

The Chair: Okay. Thank you.

Does someone else have a brief?

[*Translation*]

Ms. Ghislaine Pilon (President, Commission nationale des parents francophones): Good afternoon. Thank you for this invitation to appear before your committee.

My name is Ghislaine Pilon and I am accompanied by the Director General, Murielle Gagné-Ouellette. I live in Mississauga, Ontario. I am the mother of two teenagers, Nicolas and Mathieu, and it is because of them that I am here.

I am the President of the Commission nationale des parents francophones. The commission's mandate is to support parents' associations in each province and territory in the promotion of a family, educational and community milieu, that encourages the full development of francophone families in a minority setting. Our federations serve nearly 500 local parent committees coast to coast and some 350,000 parents who use preschool and school services.

With respect to early childhood development, the commission is the representative of the federal government and the francophone and Acadian communities. The commission chairs and coordinates the Table nationale sur la petite enfance francophone, which brings together twelve different partners. It is also an active member of the Table nationale en éducation, which is chaired and coordinated by the Fédération nationale des conseils scolaires francophones.

In all, our 20 or so national partners in education and early childhood development work with 31 school boards, more than 1,250 services, institutions and organizations, which include approximately 400 preschool services attended by 30,000 children under the age of 5, as well as 630 primary and secondary schools attended by 146,000 children under the age of 19. The very existence of these networks of individuals, organizations and institutions is attributed in part to the Court Challenges Program. These networks are, in particular, the result of more than 25 years of strategic actions taken by the francophone parents' movement. Our members are visionary and resilient.

The saga of educational rights began shortly after the adoption, in 1982, of the Canadian Charter of Rights and Freedoms. In 1983, parents in Edmonton took the province to court for refusing to give them a French school. In the 1990 Mahé decision, the Supreme court ruled in their favour, not only for the issue of the school, but for governance of this school.

In 1986, Manitoban parents demanded universal recognition of the right to manage French-language schools. In the Manitoban referral of 1993, the Supreme Court recognized their rights.

The following statistics, which were taken from the annual reports of the Court Challenges Program, speak for themselves. Under the school rights provided for in section 23, members and partners have submitted 183 applications since 1994. These figures do not include the activities of the original Court Challenges Program that was established in 1981 and cut in 1992. Over the past 11 years, 143 parent applications have been approved by the program. That is more than half of the programs approved as far as language rights are concerned. You have guessed it, the francophone parent movement is without any doubt the biggest client of the Court Challenges Program.

Here is a breakdown of the approved projects: 83 lawsuits, 30 activities with respect to access and promotion, 21 legal action plans and 9 impact studies. With respect to these lawsuits, in 11 years of legal challenges, 55 went to trial court, 15 to appeal court and 13 to the Supreme Court. The most well-known cases during this period include the Cameron-Arsenault decision of 2000, which dealt with schools in Prince Edward Island, and the Doucet-Boudreau ruling of 2003, which dealt with the secondary school network in Nova Scotia.

Here are a few of the sustainable results of these cases. The French school network consolidated from one end of the country to the other during the 1980s. The network of francophone school boards was established during the 1990s. The school boards established new schools in most jurisdictions. For example, in Prince Edward Island, four new schools were built as a result of the Supreme Court decision. In Nova Scotia, there are now six new schools. Generally speaking, enrolment has ceased to decline and has stabilized.

● (1555)

The quality of education in French has improved tremendously ever since the schools have been governed by the minorities. This improvement pertains to infrastructure, programming and promotion. School boards and their partners prepared, in 2005, an action plan entitled “Section 23”, in order to complete the French language education system in Canada. Francophone communities are being built and they are assuming responsibility for their French schools. For instance, the only Metis school in Canada, which is located in St-Laurent, Manitoba, will finally have its own building in 2008.

The court is our last resort. Every time that we have filed a complaint, it has been because there has been no other recourse, because not to do so what have been intolerable. Every time there have been months if not years of pressure that has been brought to bear, exchanges of documents, meetings and negotiations. We have the fire in our bellies, the program has given us wings.

We did not invent this system that turns us into gladiators facing down the provinces which are—it is useful to remember this—signatories of the charter. The legislator created the arena and provided the weapons, which includes the Court Challenges Program. Is the legislator an innocent spectator? The citizen is always the one who has to pay for the lack of political will. And here I refer to most of the governments that have been in power since the charter was adopted. Why do governments continue resisting the implementation of our rights? It is no doubt a good investment as far as votes are concerned. In a final analysis, the fact remains that parents have never lost their cases before the courts.

The governments have therefore bought time. But what we, the parents, have lost is considerable: time, energy, money and here I am not referring to federal government money. We have also lost respect for many people, even in our communities, and we have lost generations of children. As we speak, only one out of every two francophone children is in our French schools. Is that linguistic duality in Canada?

But just imagine Canada without section 23 and without the Court Challenges Program. Without their school networks and without their school boards, what state will our communities be in? The purpose of the program is to enable minorities, but the big gift of the program is hope. Who can live without hope?

There is added value in this demanding process, which consists of continually going before the courts. This value is to ensure that case law reflects the changing needs and priorities. Our realities are changing, as is our knowledge of these realities. Thanks to these mechanisms which complement each other, Canada is providing us with a framework to ensure that the process has an impact on public policy. While the linguistic majority may not need this framework, this is certainly not the case for minorities. Case law can help society understand the evolution of knowledge and education.

I will give you the example of recent research on brain development in children. When the charter was adopted, we did not know that language learning begins during the sixth month of pregnancy and levels off before the age of one. Back in 1982, we did not know that the highest cognitive functions reach full capacity before the age of two. The learning capacity of a child at this age is much greater than mine or yours. Such knowledge is crucial for the future of our children, particularly for the future of French education in minority settings.

This is why our parents are demanding that preschool learning be acknowledged as part of the rights given under section 23. All this to say that our work is not over yet and that we would like to continue with our mission without having to go through the legal route. Will we have that choice?

To the legislators, I would say that if you were to give us another avenue we would happily give up going to the courts. Meanwhile, don't touch the Court Challenges Program. Our expectation is as follows: that each government of Canada—the federal, provincial and territorial government—respect its constitutional commitments in an enthusiastic and dignified manner. We continue to hope that this will happen. We do not want to protect the past. We want to build the Canada of the future. And the investment that we want to make, the one that has the greatest yield, is an investment in our children. We want them to be healthy, multilingual, pluricultural, curious, respectful, innovative, productive and resilient.

● (1600)

Are you on our side? That is the challenge that we are putting to you today.

Thank you.

[*English*]

The Chair: Thank you very much.

Mr. Bélanger.

[*Translation*]

Hon. Mauril Bélanger: Thank you, Mr. Chairman.

In answer to your last question, Ms. Pilon, we, in the official opposition, are on your side. We have demonstrated this on two occasions, first of all when we created the program, and secondly, when we re-established it. We may find ourselves in a situation where we will have to create it for the third time. I believe that we would not hesitate to do so, because my colleagues and I share the convictions that you expressed today about the need for such a program.

I would like to ask you a few short questions of a technical nature in order to clarify certain things that have been said about the elimination of the program and the reasons which prompted the government to do this. First of all, were you consulted before the decision or the announcement that was made by the government to eliminate this program?

● (1605)

Ms. Marielle Beaulieu: Absolutely not.

Hon. Mauril Bélanger: Could you quickly describe—because we have only five minutes—how you went about choosing a lawyer once you had obtained a favourable decision from the program to provide financial assistance?

Ms. Marielle Beaulieu: Obviously, it all depended on the people who applied for legal recourse. We always have a list of lawyers who can meet our needs and who, generally speaking, have some knowledge of language rights. It's a bit like the tendering process, in the sense that we ask qualified people to submit proposals that meet our requirements.

I would point out to you, Mr. Bélanger—and I know that you know this already—that the Court Challenges Program has clearly-defined mechanisms enabling everyone, including organizations seeking recourse and lawyers who would be participating in or facilitating the work, to operate properly. Committees have been set up. Some people ensure that we meet the standards and requirements of the government with respect to accountability, etc.

Hon. Mauril Bélanger: In the past, has the political allegiance or non-allegiance of these lawyers been a factor, either negative or positive, in the community's selection of lawyers?

Ms. Marielle Beaulieu: Absolutely not.

Hon. Mauril Bélanger: Now I would like to talk to you about the future. As I was saying, I share your opinion that exemplary work has been done up until now in terms of establishing educational rights. Work remains to be done as far as day care centres are concerned. The agreements that had been signed with the provinces contained language clauses, but they will be eliminated as of next March. Under these circumstances, were you planning to go the legal route in order to ensure that the language community's needs were going to be respected and served as regards early childhood education and the real implementation of the new provisions of the Official Languages Act, which came into effect when Bill S-3 was adopted during the 38th Parliament?

Ms. Murielle Gagné-Ouellette (Director General, Commission nationale des parents francophones): I will answer you on that issue, but I will let Ms. Beaulieu discuss Bill S-3.

With respect to legal recourse for day care centres or early childhood and family centres—an area that is much broader than day care centres, as far as francophones are concerned—our requirements are even more specific for young children aged zero to six. Of course, we are hoping that our school boards will be able to obtain adequate funding to provide, at the very least, pre-school education starting at age 3, within the current system.

So we are certainly trying to continue in this direction, if the provinces should decide not to provide us with this funding. We always hope that we will obtain the funding through negotiations. Some provinces have already met some requirements for pre-school education. We are hoping that this trend will continue.

Ms. Marielle Beaulieu: As far as Bill S-3 is concerned, which now strengthens part VII of the Official Languages Act, it is clear, in my opinion, that these provisions demonstrate the role of the government to really encourage the development of our communities.

If Bill S-3 did not result in the adoption of positive measures from the government—and that's the term that was used—to promote the development of communities, it is clear that we would think about legal recourse, regardless of whether we had a Liberal, Conservative or any other government in power.

● (1610)

[*English*]

Hon. Mauril Bélanger: Thank you, Mr. Chairman.

The Chair: Thank you very much.

Mr. Malo.

[*Translation*]

Mr. Luc Malo (Verchères—Les Patriotes, BQ): Thank you, Mr. Chairman.

Ms. Beaulieu, you said earlier, in your presentation, that as far as you were concerned the courts were the best authority for defending the rights of francophone minorities.

Ms. Pilon, you said more or less the same thing when you stated that, in your case, the courts were your last recourse and that the parents had never lost their cases. Several hundreds of cases have therefore been won before the courts.

When the Conservative government decided to abolish the Court Challenges Program, it justified its action by saying that it should no longer fund lawsuits that went against the government and that, at any rate, it would never introduce unconstitutional legislation, in this case legislation that would hurt minorities.

As far as this affirmation is concerned, do you trust the government?

Ms. Marielle Beaulieu: We feel that the government, any government, always has good intentions. History has indeed shown us that intentions have always been good and that the laws were, generally speaking, constitutional. However, it is the way that these laws were interpreted and enforced that often causes the problem.

Many of the legal proceedings instituted by the parents for school management or schools were actions taken against the provincial or even territorial governments. In the case of the Northwest Territory government, the issue concerned services in French. This was not about constitutionality per se, but about enforcement.

Mr. Luc Malo: Since this announcement was made, how are minorities doing in Canada? What has the reaction been? How was this situation experienced in the field?

Ms. Marielle Beaulieu: I would say that the announcement bode ill for the communities. It is clear that the Court Challenges Program helps communities progress significantly. Eliminating the program was akin to cutting both our arms off: we are no longer able to claim our rights before the courts.

History has shown us that if we do not claim our rights before the courts, we are unable to make progress. This afternoon, we could have talked about what the governments of Manitoba, Alberta and Ontario did at certain points in time to adopt laws against French-language schools, so on and so forth. For us, the Court Challenges Program is a big piece of the pie. To the eyes of the entire community, the program's abolition is seen as a major setback to their development.

Mr. Luc Malo: Talk to me about the cases that will not proceed because the program no longer exists.

Ms. Marielle Beaulieu: I will ask Ms. Côté to answer that question.

Ms. Diane Côté (Director, Community and Government Liaison, Fédération des communautés francophones et acadienne du Canada): There are several cases. I believe that Ms. Beaulieu mentioned a few of them. Details concerning those cases can be found in our brief. Nonetheless, the case of the Fédération Franco-Ténoise is important. The Supreme Court ruled in favour of the federation, but the authorities of the Northwest Territories appealed the decision. The case will now be abandoned, because the community definitely no longer has the means to build another case.

This is one of the problems that communities confront. In legal cases involving governments, we come face to face with procedural arguments, which are very costly for us. In fact, it is a strategy governments often use to discourage us. To some extent, the program provided leverage for us.

As regards services in French in Alberta, there is the Caron case. In New Brunswick, there is the Paulin case which is a very important and interesting case, bearing on the conflicting obligations of the RCMP when it serves as a provincial police force remains a federal body with specific linguistic obligations to fulfil. Several other cases are currently being heard.

The program allows us to carry out studies or legal assessments which help us entertain other issues. I believe this is a very important element. Indeed, in the past, the program has allowed us to define our linguistic rights policies and to think about how these rights are perceived and legally assessed for the future.

● (1615)

[*English*]

The Chair: Thank you very much.

Mr. Angus.

[*Translation*]

Mr. Charlie Angus (Timmins—James Bay, NDP): Thank you, Mr. Chair.

I represent a region where the Franco-Ontarian population is quite significant. As an anglophone, I am fully aware that minority rights were not created by the majority. The right to services in one's language and to French-language schools was obtained by minorities, and these minorities based their arguments on their convictions and faith in equality. In my region, the debate is still ongoing.

[*English*]

When Mr. Harper decided to cut the program he said he didn't want to pay money to Liberal lawyers. Of all the programs that were cut at that time, this one was seen to have been singled out. It was described as a frivolous program, partisan.

How do you feel, and how would you respond to that kind of denigration of the work that this program has done?

[*Translation*]

Ms. Marielle Beaulieu: I believe that ideological questions are at issue. In addition, and this cannot be denied, the program has two components, a language rights component and an access to equality component. I will not elaborate on access to equality: it is not my topic. As regards the abolition of the Court Challenges Program, I believe the rights that francophone communities fought for and the importance of the program for communities is not widely recognized. There's a lack of sensitivity regarding language rights. In fact, assessments of the program have proven this many times.

First and foremost, the program was very well managed. In addition, the program was inexpensive. Even if we include the access to equality component, the program cost about $5 million, which is a pittance. You're talking about a program which has allowed the country to define itself, but above all a program whose goal was to provide access to democracy. One must understand that those who benefited from the program were generally mothers, parents, and the marginalized, who, without the program, wouldn't have been able to mount a case before the courts.

Was the substance of the program properly understood? Was the program abolished for partisan reasons? Everybody has, at one time or another, been witness to this type of elimination. Mr. Bélanger talked about this earlier. For us, this is a significant loss. In terms of language rights, we feel truly wronged, even more so since the current government passed Bill S-3, which purports to strengthen part VII of the Official Languages Act. We would be remiss to not point out the Conservative Party's lack of consistency.

● (1620)

Mr. Charlie Angus: In my riding, francophone Catholic schools and public schools are two separate systems. In the north of the province, this has given rise to a generation of leaders. I'm referring to the Renaissance and Jean-Vanier schools. This has also been the case for anglophones.

[*English*]

I would think most people in my region—anglophones as well—would recognize the power of having such a strong francophone school system. It has benefited our community to a great extent.

I would like to get a sense of what it's like in regions where you don't have access to that. I don't know how our region...I can't see it anymore. The francophones fought for years to build both systems. What is it like in regions where you don't have access to such schools?

[*Translation*]

Ms. Ghislaine Pilon: Parents who want access to such schools must fight for this right. As I have shown you, it takes seven years before a case is heard before the Supreme Court, where we can claim our rights. The Court Challenges Program gave us the wings we needed to claim what we are entitled to. As parents, we were not able to have these rights recognized for an entire generation of children. When we needed a high school, and the province refused to build one for us, we had a lot of work to do. Ultimately, we went before the courts, but during this entire time, our children graduated from English schools without attending classes in French.

What resulted from this situation is that many children who attended English school now have difficulty speaking and writing French. For us, it is very important to continue fighting to acquire what should automatically be granted to us, since this is built into the law. We shouldn't even have to resort to the Court Challenges Program. Nonetheless, this has never been the case. We had to fight.

As I was telling you, it took us seven years to obtain two schools in Manitoba and Alberta. The same occurred in British Columbia. I have lived in all three provinces, and I went through all the steps. I can assure you that I have no idea as to whether or not my lawyers were Liberals, Conservatives, or New Democrats. I hired them on the basis that they were well versed in constitutional matters and that they had defended other cases.

We talk about linguistic duality, but where are we going to find bilingual people?

Ms. Murielle Gagné-Ouellette: When my children were younger, there was no French-language high school in the surrounding area. They had to commute for one and a quarter hour or one and a half hour to go to school. This was in the town of Saint-Boniface, in the Saint Vital region of Manitoba.

Yet, just around the corner there happened to be a brand-new English school that offered French immersion. As francophone parents, we have to be determined to send our children to our own schools and to make sure that linguistic continuity is maintained.

[*English*]

The Chair: Thank you very much.

Mr. Fast.

Mr. Ed Fast (Abbotsford, CPC): Thank you, Mr. Chair, and thank you to all four of you for attending today.

I certainly sense that you have a passion for protecting your language, and I want to say I commend you for that.

I'm also bilingual; however, I don't speak French. I actually speak German as well as English, so I won't be able to converse with you in French. My apologies for that. But I'm working on it.

First of all, I'd like to just get a little bit of information from you about your organizations so that I understand them a little better. How many members does each of your organizations have?

I'll ask Ms. Beaulieu, and then perhaps Ms. Pilon.

[*Translation*]

Ms. Marielle Beaulieu: The FCFA of Canada is the spokesgroup for francophone and acadian communities. For each province and territory outside Quebec, there are, it goes without saying, similar associations. Those organizations are similar to ours and carry out similar work in each of these respective provinces.

In addition, we group ten national organizations dedicated to development of a specific sector. The Commission nationale des parents francophones [national commission of francophone parents] is one of our members, in addition to other associations that focus on health, justice, literacy, and so on and so forth. In other words, we currently regroup 21 organizations, which in turn regroup other associations working within the province and territory where francophones live. In the membership of our organizations, there are many francophiles, people like you who are interested in living in French and in some cases receiving services in French.

Currently, outside Quebec, 2.4 million people speak French and approximately one million people have French as their mother tongue. We are talking about French-language schools for entitled persons, those who had French as a first language, those who want access to a French-language school even if they currently speak English—

● (1625)

[*English*]

Mr. Ed Fast: If I could just interrupt for a moment, what I'd really like to know is just how many individuals your organizations would represent—approximately.

Ms. Diane Côté: Our organization is a federation, so we don't have individual memberships. We have associations that are members. Our provincial associations have different set-ups. Some of them are also federations, and some of them have individual membership. It depends on the way they're organized.

Mr. Ed Fast: But it's safe to say that you represent thousands of Canadians in the work that you do. Is that correct?

Ms. Diane Côté: Exactly.

Mr. Ed Fast: I suppose for me the struggle is not the protection of official language rights. I strongly believe in that and in the enhancement of those, making sure that future generations of Canadians actually have facility in both languages. My struggle is more with respect to the best way of achieving it. Is it to deliver tax money to allow individual organizations to sue the federal government on issues relating to minority language rights, or is there a better way of addressing the concerns and aspirations that you have for your language?

One of the things I went back to look at was the mandate of the CCP, because it covers not only official minority language rights but also equality rights under the charter. I'll just quote from the Summative Evaluation of the CCP:

> The main purpose of the Program is to clarify certain constitutional provisions relating to equality and language rights.

It refers to clarification, and one of the main criticisms that's been levelled at the program is, and again I quote:

> ...the Program, as currently delivered, will only support cases that protect and advance rights covered by the Program. In other words, a group or individual that would present legal arguments calling for a restrictive application of these rights would not receive CCP funding.

That applies to both official and minority language rights as well as equality rights.

If you had a preference to either use taxpayers' dollars to help you with lawsuits to try to establish those rights or, on the other side, you had programs and initiatives that actually did a better job of doing what you wanted to do without having to resort to the courts, which would you choose?

Ms. Marielle Beaulieu: I think we need both.

[*Translation*]

Ms. Ghislaine Pilon: There are federal policies which provide protection and are in effect, but the provinces do not comply with them. It is difficult to have anything better than a policy that is already accepted, in effect and signed by all the other provinces.

Do you understand what I am saying? It is already in effect. The reason why we have to turn to the Court Challenges Program is because those concerned do not want to give us the school and services we need. They ask us to wait three weeks, three years, or even 30 years. Yet, the fact remains nonetheless that we have these rights since 1982.

● (1630)

[*English*]

Mr. Ed Fast: I have a quick follow-up question.

One of the main complaints is that the program has been too restrictive. For those who would seek to have true clarification of rights, it may involve a restriction or an expansion of rights, but those who would seek a restrictive application of charter rights and language rights have been excluded.

In fact, Mr. Bélanger knows very well that in certain circumstances those who have tried to use the CCP to, for example, protect English language rights have been excluded. He had personal involvement in one case, the Quigley case, which really drove home that point.

For both organizations, do you believe there should be some balance in how the CCP delivers its funding to the various groups that want clarification of the charter?

[*Translation*]

Ms. Murielle Gagné-Ouellette: There are committees established under the Court Challenges Program which appraise these cases. For our part, we do not know which applications are rejected by the committees. We always hope that we can advance language rights, that our case is one of the best, that it will help us make progress and that our efforts to advance our rights will not be curtailed.

We always try to bring forward the best cases. In fact, as was said earlier, the total budget of the Court Challenges Program is only $5 million, which does not allow all cases to go forward. The program deals strictly with cases involving language rights and matters of equality.

Anglophones in this country make up the majority, and we still have a lot more to do than they do.

[*English*]

Mr. Ed Fast: Thank you, Mr. Chair.

The Chair: Thank you.

I thank our witnesses. I wish we had a longer time, but we do have more witnesses, and we've set this up to be one hour.

I'm sorry we were a little late; we had the vote after our question period.

Thank you very much for your answers and your presentations.

We'll take a two-minute break. Thank you.

● _____ (Pause) _____ ●

● (1635)

The Chair: We'll call this next session of this meeting to order. I welcome our witnesses here today.

For anyone who might be questioning, please realize that Mr. Simser speaks with sign language. So if your questions are asked, it might take just a minute for a response, because his signer will have to take—especially in French—the translation first.

Again, thank you so much for coming here today. Who would like to go first with the presentation?

Thank you, Ms. Frost.

Ms. Debbie Frost (President, National Anti-Poverty Organization): Thank you.

We didn't have a chance to get a briefing out to the committee, but we do have a package here; we brought 25 of them that can be passed around. It also includes my speaking notes.

First, I would like to thank you for the opportunity to participate in this hearing to discuss the court challenges program. My name is Debbie Frost. I'm the president of the National Anti-Poverty Organization. With me is Rob Rainer, our executive director.

NAPO is a non-profit, non-partisan organization that represents the interests of low-income people across Canada. NAPO has been working for 35 years to give low-income people in Canada a powerful voice to speak up on social and economic policies and decisions that affect them and future generations. A unique aspect of our group is that all of our board members are individuals now living in or who have once lived in low-income circumstances.

We are here to express our concern over the loss of the funding to the court challenges program. This program was the only way most people, particularly the poor, could access courts to protect their rights under the Canadian Charter of Rights and Freedoms. The only way we have of ensuring that our constitutional rights are protected is through the courts. We need funding to do this, and funding through this program. Without funding to access the courts, we have thus lost a measure of our access to democracy. Today, the only people who have the ability to fully realize their democratic and constitutional rights are those with the money to purchase such rights.

Over the last few months, the people of Canada have been wrongly informed about the court challenges program. It has been stated that the non-profit body governing the program has been secretive with cases it funds. However, the only time this body could not release information on cases being funded was when there was a client-lawyer privilege. This is no different from any other legal situation where there is a client-lawyer privilege—for example, that associated with legal aid. Once a court challenges case goes to court, it is on public record, and then the court challenges program will also release the information. Court challenges annual reports have been available to the government and to the public, and NAPO has also made them available through their website.

Over the years, the court challenges program has funded many cases that have benefited not only many low-income people but also disabled, women, visible minorities, aboriginal people, gays and lesbians, children, and single parents. The court challenges program funds equality litigation for low-income people, but it also provides litigation funding for linguistic rights. Without this funding we can no longer protect equality and linguistic rights in this country.

The Charter of Rights and Freedoms was a guaranteed protection against policies, regulations, and laws that violated our constitutional rights. By taking away the funding from this program, it takes away protection for the people of Canada. This leaves the Canadian Charter of Rights and Freedoms a weak document with little or no value to the people of Canada.

A new three-year funding contribution agreement had been signed for the court challenges program, which would have taken the program to 2009. At that time, the program would have been subject to another renewed funding agreement. We question the security of any program when the government cannot keep its word. How can the government enter into an agreement, renege on it, and then wonder why there is lack of public trust in government? What organization would trust government after this, with no communication to the court challenges group prior to reneging on the funding? It's pretty sad that any non-profit has to find out through a national announcement, rather than through a private conversation, that their funding has been cut.

Within groups trying to address poverty in Canada, there is a lot of talk about how government bashes the poor. The cancellation of the court challenges program, in our view, is another example of poor-bashing.

Our recommendation to this committee is that NAPO recommends that the funding for the court challenges program be restored as soon as possible, according to the signed contribution agreement previously mentioned. We also recommend that the structure of the non-profit body administering the program remain the same so that the program can continue to function efficiently and effectively, as it has in the past.

Thank you. We look forward to the discussion.

● (1645)

The Chair: Thank you.

Is there going to be a presentation by Mr. Simser?

Mr. Scott Simser (Barrister and Solicitor, Simser Consulting, Canadian Association of the Deaf): Yes, that's correct. Did you want me to present now?

The Chair: Yes, please.

Mr. Scott Simser: Good afternoon. I represent the Canadian Association of the Deaf, having acted for it in its successful case against the Government of Canada, whereby we won the right to have sign language interpreters when accessing government. This case was in the media all across the country. It was on the front page of the *The Globe and Mail* and was the leading news item on national news for part of the day as well. This meant deaf and hard-of-hearing Canadians were no longer being treated like second-class citizens.

That case was funded by the court challenges program, so you can see how important the court challenges program is to people with disabilities. Hence, we feel the court challenges program is useful and, contrary to media reports, not only for special interest groups. How could one consider people with disabilities as a special interest group? People with disabilities are among the most unemployed, most poor, and most disadvantaged people in Canada. Moreover, people with disabilities didn't ask to be disabled. All we're trying to do is overcome our barriers. In the special case of deaf persons, we feel we are a community with a unique language. If the court challenges program returns in its present form, I do have some comments on how to improve the program, and they are as follows.

First, increase the maximum funding allocated from $60,000 to $100,000. Since the cases funded by court challenges inevitably involve the charter, these cases can often be complex and cannot be litigated effectively for under $60,000. Remember that a large chunk of the money often goes to expert witness fees or photocopying fees for huge volumes of court documents. If others feel the court challenges program gets enough money as it is, fine. Then reduce the number of cases funded. But I strongly recommend that once a case is approved, it should not be severally curtailed by a lack of funding.

Secondly, reduce the holdback from 25% to 10%. It is often hard for the lawyer to keep litigating once he reaches the 25% holdback, and it is demoralizing. The lawyer may end up not getting paid for a year or two, while attempting to ensure that the case ends in a trial. The court challenges program should trust that the lawyer and the client are dedicated to finishing the case and should not impose such a punitive holdback. Why is the court challenges program holding back 25% if the government standard is 10%? Examples would be Industry Canada's contributions program for non-profit consumer and voluntary organizations; Social Development's contributions program for early learning projects; Canadian Heritage's contributions program to promote RESPs; and Human Resources Development's contributions program called the opportunities fund for persons with disabilities.

Thirdly, speed up payments and make them much quicker. It takes six to eight weeks for the court challenges program to write a cheque to the lawyer after being presented with an invoice. Surely there should not be so much bureaucracy that they cannot write a simple cheque in less than three weeks. I do agree with accountability, but accountability does not have to take forever to accomplish.

Fourthly, increase the number of meetings every year held by the panel of lawyers who approve new projects. Currently the panel meets only every three months on average. Thus, people who suddenly have an urgent court case may find themselves waiting three months to find out if they can fund a lawyer for an important case. For example, many court cases must be started within thirty days after a certain event occurs, such as rejection of a government benefit to a taxpayer. I would recommend that the panel meet every month. This would also speed up the bureaucracy that exists.

Thank you very much.

● (1650)

The Chair: Thank you.

Mr. Bélanger or Mr. Simms.

Hon. Mauril Bélanger: If I may, Mr. Simms, there was a matter raised in the last session, Mr. Chairman, about the Quigley matter. For the benefit of the people at the table and those who may be listening, it's important that we understand the references.

The Quigley matter was a case involving the House of Commons. Mr. Quigley is a resident of Riverside–Albert, near Moncton. He could not listen to the debates in his own language, English, but wanted to. Basically, the case ended up demonstrating that the House had an obligation, under the Official Languages Act, to make sure its communications were in both languages. That was the outcome.

Mr. Quigley did seek support and could not get it for internal reasons, but he was not seeking a restrictive interpretation of the law. *Au contraire*, he was looking for a more generous interpretation of the law, which I gladly supported. And if anybody wants to contribute any money to help pay some of his legal bills, they're not all paid yet.

The Chair: Thank you, Mr. Bélanger.

Mr. Simms.

Mr. Scott Simms (Bonavista—Gander—Grand Falls—Windsor, Lib.): Thank you, Mr. Chair.

I want to thank our special guests, indeed, for coming.

I'm going to start the questioning in the way it was done in the last round, with a question on consultations. To what extent were consultations made with your group, and yours as well, Mr. Simser, about the cuts we have just witnessed?

Ms. Debbie Frost: To what extent were consultations made with our group?

Mr. Scott Simms: I would judge by the expression on your face that it was not to a great extent.

Ms. Debbie Frost: No.

Mr. Scott Simms: All right.

Was there any contact made regarding to the evaluation of the program before the cuts were made or any information required from you by the current government?

Ms. Debbie Frost: There was none that I'm aware of. It just seemed that all of a sudden there was an announcement that all these cuts were being made.

Mr. Scott Simms: Mr. Simser.

Mr. Scott Simser: There was a similar situation. The cuts were made before the deaf community was made aware.

Mr. Scott Simms: I want to talk about the poverty situation now. Mr. Simser made a good presentation of it, a good illustration of how the program was a benefit to them. I need a good illustration of how a poverty group would access the resources provided by the court challenges program. Perhaps you know of an example, Mr. Rainer.

Mr. Rob Rainer (Executive Director, National Anti-Poverty Organization): Just for clarification, I've only joined NAPO in the past month, so I'm on a steep learning curve on this issue and on other things.

One thing I have found out is that there is a current case that has not yet gone to trial, which challenges the clawback of the national child benefit supplement, which is a federal benefit given to families with children. My understanding is that all jurisdictions, save one or two, are clawing back the same amount that is given to the recipients of that benefit. So if I'm a parent and I'm receiving $100 now from the federal government in terms of the national child benefit supplement, that amount can be taken off other payments I may receive from, for example, the Province of British Columbia.

So where you have a situation of one or two jurisdictions not clawing back the supplement when others are clawing it back, right away you have a pretty serious situation of inequality.

Mr. Scott Simms: Other federal payments would be clawed back as well—is that correct?—and not just, say, from a particular province or jurisdiction?

Mr. Rob Rainer: I'm not sure. What I do know is that one or two jurisdictions—I'm not sure which ones—have elected not to claw back the supplement that is given to families. So this is setting up a situation of inequality, and there is a challenge on that that has not yet gone to trial. I think that's a good example of a situation of inequality that needs to be heard out. There needs to be a ruling, and this program ostensibly has supported that particular case that hasn't come to trial yet.

I just want to add, in response to a previous question we heard—I think it was your question—that I understand in May 2006 the current government appeared before a UN committee in Geneva to defend its commitment to human rights in Canada, and it actually described the court challenges program as evidence of this commitment at the time. It indicates that the government wrote to the UN committee—and I'm just quoting here:

> The Court Challenges Program (CCP) provides funding for test cases of national significance in order to clarify the understanding of the rights of official language minority communities and the equality rights of disadvantaged groups—
>
> It is not possible for the government to support all court challenges, but this uniquely Canadian program has been successful in supporting a number of important court cases that have had direct impacts on the implementation of linguistic and equality rights in Canada. A recent evaluation

—and there have been three, I understand, since 1994—

> found that there remain dimensions of the constitutional provisions currently covered by the CCP that still require clarification and the current program was extended to March 2009.

So if that letter was in fact written in May 2006 and the announcement for the cancellation of the program was a few months later, it would seem there was a very narrow window indeed in which to consult with the groups that might be affected by it.

● (1655)

Mr. Scott Simms: Thank you. That's a very interesting point, Mr. Rainer. Are you finished with that point?

Mr. Rob Rainer: Yes.

Mr. Scott Simms: Okay.

I have just a quick question to both groups. When it comes to the challenges program and how you've utilized it in the past, for the record, I'm assuming that any political affiliation did not factor in when you decided to choose a lawyer for a particular type of challenge.

Ms. Debbie Frost: From my perspective and from the perspective of the groups I work with, coming from the low-income sector, there would be no lawyers. If we wanted to access the courts, the court challenges program would be the only way we could do it, especially if it was a federal issue like child tax or legal civil services.

There is no lawyer in Saskatchewan that we would find who would help us pro bono, and we only have legal aid services there that do family and criminal cases. We have nothing for civil services. If we want to make any challenges or take anything to court, the only way we could do that is to apply to the court challenges program. That doesn't necessarily mean that our application is going to be accepted either, but having that right and knowing that we have access to that if we should need it is a self-confidence issue for poor people.

And now that it has been pulled away, if something should happen and we need to access that, where do we go? Who is going to help us? It's not there any more. There is nothing left for us.

Mr. Scott Simms: We'll go to Mr. Simser.

Mr. Scott Simser: Well, the government doesn't give money to non-profit organizations for political purposes, so when you go to court it's for a political purpose. Therefore, the government says that you cannot use their money. Their moneys would be used only to administer that program. So in that sense, we're stuck, and we don't really have a lot of options or choices when we do want to litigate something.

The Chair: Thank you.

Mr. Kotto.

[*Translation*]

Mr. Maka Kotto: Thank you, Mr. Chair.

Thank you for being here and sharing with us your touching testimonies. I am not going to ask you the usual questions, rather I will approach the topic holistically.

Many people who observe what is going on on Parliament Hill have noticed that the Conservative government has abolished the Canadian Volunteerism Initiative, as well as the Court Challenges Program, and has changed the States of Women program so that it can no longer fund groups that defend rights and act as advocates.

Do you share the impression that the Conservative government wishes to muzzle all those who hold a vision different from their own?

● (1700)

[*English*]

Mr. Rob Rainer: If I could answer perhaps on behalf of NAPO, I think it's a difficult question to answer without really giving it some very careful thought. Every government in power certainly has its own philosophy of how to approach issues and what may work best to solve a particular social or economic challenge. I think, though, that the principles of access to justice, access to the courts, particularly in our circumstances, with people who don't have the means otherwise, is a fundamental principle that needs to be upheld.

And sticking strictly to this particular issue at hand, I think the fundamental issue here is that there are times in the course of a year or in the course of history when disadvantaged groups need to be able to access resources to challenge a court decision. If a funding program is not available for them to do that, they're fundamentally disadvantaged relative to others who would have the resources to mount a challenge.

I'm not sure if I'm answering your question, but I do want to remind everyone of fundamental principles relative to this particular case.

[*Translation*]

Mr. Maka Kotto: In your circle, you surely must have heard comments regarding this bad piece of news. In esssence, what was said?

[*English*]

Ms. Debbie Frost: I'm going to talk about the people I work with in my community and about the people from NAPO at the local, provincial, and national levels. The concern about all of these cuts is that poverty is at an all-time high right now. All these cuts are being made to social development programs, programs that poor people can access, programs that help people build self-esteem and self-confidence and move forward. The concern is that now with all these programs being cut, where are these people going to go? It's going to increase the depths of poverty. We're going to find more and more people living on the streets and in poverty now because all the resources are being taken away. That's the concern I'm hearing from the people I work with.

[*Translation*]

Mr. Maka Kotto: Can we have Mr. Simser's opinion on the matter?

[*English*]

Mr. Scott Simser: My comment is that when deaf people have more access to programs they are more productive. Therefore, they pay more taxes towards the government and contribute more to the Canadian economy. That's from my perception. The court challenges program is dependent on who uses the program. It's a way for people to use their freedom of expression and to ensure the values they stand for get heard.

[*Translation*]

Mr. Maka Kotto: In your opinion, was this program democratic or anti-democratic? Can you please provide us with some details on this aspect?

[*English*]

Mr. Rob Rainer: Can you elaborate a bit on your question? What do you mean by that, just for clarification so I can try to respond?

[*Translation*]

Mr. Maka Kotto: Was the program democratic in nature? Did it allow the poor to have equal access to justice, like the rich? In your case, did it provide equal opportunity for all to access justice?

[*English*]

Mr. Rob Rainer: I think the best way to answer that is looking at the—

[*Translation*]

Mr. Maka Kotto: I asked whether or not it was anti-democratic.

[*English*]

Mr. Rob Rainer: My sense is, it's very much a democratic program, and many different groups have made use of it and received support from it. I think that's a good testimonial to its democratic effect. It hasn't been just one or two so-called special interest groups—a phrase I don't like—but many different types of groups have been able to access the programs.

● (1705)

Mr. Scott Simser: As I said before, the program was open to anybody who would be able to use it. If a free and willing group would need to use it, they could go ahead and use that program. It was very democratic, to answer your question.

The Chair: Mr. Angus.

Mr. Charlie Angus: Thank you very much for coming today.

Mr. Simser, I am very appreciative of the fight that goes on every day for deaf rights. My oldest daughter is severely handicapped in hearing and has had to fight her whole life for every right she's ever received in school. Needless to say, she's a very strong woman and is excelling.

I'm interested in the success you've had with this landmark decision to access services. I remember when I heard the decision, I had a question then, and it's a question I have now. You won these rights. Do you expect the government to actually enact these rights, or will you have to continue to fight to make those rights a reality?

Mr. Scott Simser: I'm very happy to answer that question.

What happened on August 22 of this year was the Canadian Association of the Deaf had the result of that case published on the front page of *The Globe and Mail*. Also, the same day we had an e-mail from a client, a woman who was deaf. She didn't know about the news story, but she told me in her e-mail that her husband wanted an interview with Immigration Canada. He was trying to enter Canada. He was American and was planning on becoming Canadian, and he had an interview with Immigration Canada. However, when they asked for an interpreter to facilitate that interview, Immigration Canada said no. That was on the very same day that the decision was published and made news across Canada.

Mr. Charlie Angus: Thank you.

I'm not sure which one of you mentioned it, but the term was "fundamental principle". I think that is what we're talking about here.

There seems to be a bit of an ideological discussion between one side of the table and the other in terms of the role of rights. There has been an opinion floated at this table, and I think with the Conservative Party in general, that it's really not fair if the majority can't access rights to limit rights of a minority. If it's a minority program, it should be open to the majority to go after minority rights.

I'd like both your perspectives on that. As groups who represent minorities, do you feel you've somehow unfairly disadvantaged the respective majorities?

Mr. Rob Rainer: I could answer that on behalf of NAPO.

Fundamentally, the program exists to provide assistance to people or groups who otherwise wouldn't have the means to launch these court challenges. I would think the majority of Canadians would find it very difficult as individuals to launch their own court challenges in cases like this. It's not just those who are in the lower-income brackets. I would certainly put myself in the middle-income bracket, and I don't think I'd have the means to launch a court challenge of a case that might affect me. The example that was just given I think is a good example. That could be a middle-income, or even a higher-income individual.

I don't see this program as something that's serving minorities per se. I think we have to be careful of that.

I'll stop there.

Mr. Scott Simser: I don't have anything really to add, except that the deaf community is a minority group. One out of 1,000 people in Canada use sign language. It's a very small group. So you are correct in saying they are a minority.

Mr. Charlie Angus: Mr. Rainer, you quoted from a May 2006 letter from the Government of Canada to the United Nations that was boasting about this program and its uniquely Canadian character.

From that period of May to three or four months later, we've seen a major change in the government's stated position on this challenge. They seemed to take a very partisan line. It wasn't just a program that needed to be cut because of financial reasons; there seemed to be a definite desire to get rid of it for particular reasons. Mr. Baird said he didn't think it was in the interest of government to fund minority groups to challenge government.

What do you think happened in that four-month period to turn the government from being so rosy and positive about this program to being so negative?

● (1710)

Mr. Rob Rainer: I can't speculate, and I wouldn't want to speculate.

But it's interesting in looking at this issue that in fact history is repeating itself. This program was cut in 1992 by the government of the day, and there was quite a hue and outcry. I'm sure you folks are aware of this. The program was restored a short time later. The Conservative Party and the Liberal Party both promised in their election campaigns to restore funding to the court challenges program. That's in fact what happened. So history seems to be repeating itself.

I will just quote from the report that was issued from the Standing Committee on Human Rights and the Status of Disabled Persons in 1992. This is what they said about the program and the response to the cutting of it:

> The observations made to the committee since the Program was cancelled have shown us the importance placed by the people of Canada on the principle of access to the courts. At no time during the 34th session of Parliament has the standing committee received so many briefs on a single subject.
>
> The committee concluded:
>
> —that the program played an essential role in giving Canadians access to the courts, and that it had become indispensable to the development of constitutional case law.

In the committee's view, "a lack of access to justice was too high a price to pay when compared to the modest cost of the program".

Finally, the committee decided unanimously that the program should be retained and restructured so that it would be protected from "the vagaries of the fiscal and financial imperatives of any government in the future".

I guess, maybe to speculate, perhaps the cost of this program seemed to outweigh the benefits, but that would seem to contradict what a similar committee concluded 14 years ago.

The Chair: Thank you very much.

Mr. Warkentin.

Mr. Chris Warkentin (Peace River, CPC): Thank you, Mr. Chairman.

Thank you very much for coming, all three of you, and contributing your testimonies to this committee. We appreciate your time.

I should begin by trying to dispel some of what the previous member, Mr. Angus, was talking about. I don't believe there's an ideological gap. I don't believe there's any intent, as far as the government is concerned, to attack those who are vulnerable. In fact, you know from many of the policies and programs that we've set in place that the previous statement is completely inaccurate. Certainly, there are some concerns with the court challenges program, and the government has identified some of them. I think we'll just talk a little bit about that.

Ms. Frost, in your testimony, in your the last sentence, you said the administration should remain the same so that the program can continue to do the same type of work. Is that an accurate statement of your final sentence that you read?

Ms. Debbie Frost: Yes. It's my understanding.... I'll admit that until we were invited to do this presentation I didn't know a lot about the court challenges program. I did work with a lady from Regina who chaired the court challenges program. With a lot of assistance from her, we were able to put this together.

When we talked about this piece of the presentation, my understanding is that there is a panel that does the selection process when applications are submitted for court challenges. That's what we mean about the effectiveness of—

Mr. Chris Warkentin: Who is this lady you were mentioning?

Ms. Debbie Frost: Her name was Bonnie Morton.

Mr. Chris Warkentin: Okay. Thank you for that.

Your organization, obviously, has received funding in the past for court challenges. Could you guess how many times you've received funding?

Mr. Rob Rainer: As far as I can determine, we've been involved in two cases. One, I think, was five or six years ago, concerning third-party spending limits during elections. The second case, which was in the application round this fall, concerned a constitutional right to civil legal aid in British Columbia. That case was not brought forward because it wasn't funded due to the cancellation of the program.

● (1715)

Mr. Chris Warkentin: Part of the hearings that we'll be engaged in here in the coming days will examine other organizations that, like you, are trying to do good work and that haven't been able to receive funding. Specifically, there's one case out of Alberta where some people were trying to work to advocate for aboriginal women's rights; they've been turned down for funding. We're going to look into possible reasons for that, and we're hoping to get some answers down the way.

Obviously, that brings up the concern as to whether it was truly a democratic, open, and transparent program. We're going to investigate that and look into those issues.

You did bring up the name of Bonnie Morton, and I know she's been quite involved in your organization. Is that correct?

Ms. Debbie Frost: Yes.

Mr. Chris Warkentin: I understand that Bonnie Morton also plays another important role, and it's actually with the court challenges program. She sits on the board and was directly involved in some of the funding applications for organizations like your own. Is that your understanding as well?

Ms. Debbie Frost: Yes. I've worked with Bonnie for six years.

Mr. Chris Warkentin: Yes, absolutely.

Having not met Bonnie, I wouldn't want to bring suspicion, but I would certainly ask you if, deriving from all of this information that we're now learning, it's possible that people from the outside might consider that because your organization has a person who sits on the board that administers the funds, there possibly was some additional benefit that your organization had, whereas some of these other organizations, not having a representative on the board, weren't receiving any funds?

Mr. Rob Rainer: My understanding is that the court challenges program of Canada is an arm's-length, not-for-profit organization. I'm assuming, and I'm confident, that there are conflict of interest guidelines built into its charter, and that any person sitting on the board would need to declare whatever conflict of interest they'd have relative to cases coming before it. This could well be an example.

Mr. Chris Warkentin: And that may be, but we're not sure of that. We've heard from a number of people who testified that there are some concerns about these apparent conflicts of interest, and certainly there is some concern with that. That leads us to the whole discussion of, if all court cases can't be funded through this program —all to do good work and all to bring important cases to the table— how democratic is it? Are we ensuring that some people have more access to the courts than other people? Obviously we wouldn't want that to be the case. Can you see that some people would take some issue with that?

Mr. Rob Rainer: That's a good question. Going back, if I can find it in my notes here, the original premise was that cases funded by the program had to be of substantial importance, have legal merit, and affect more than one person. I suppose one could add to this that they need to be in some way setting a precedent because you can't hear every single possible case. Otherwise it would be a multi-billion-dollar program.

Mr. Chris Warkentin: Absolutely, but even in these precedent-setting applications, they haven't necessarily received funding in those circumstances.

Mr. Rob Rainer: I think it just begs the question then of why not increase the funding for the program? I don't know what the overall budget is, but presumably if it's not sufficient to do justice to the cases that should be heard, then I think it points to a funding priority decision of the government.

The Chair: Mr. Warkentin, you've gone over time here.

Mr. Scarpaleggia.

Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.): Thank you, Mr. Chair.

There have been insinuations that somehow this program benefits Liberal lawyers. It came up in the previous hour with other witnesses. The question was posed to them, were there lawyers who were being funded through the program who were Liberals? They said no, that they didn't know what their political stripe was. Do you have Liberal lawyers working with you to fight the government?

Mr. Rob Rainer: We have no lawyers who work with us. We don't have sufficient funding to cover off steady legal counsel. In fact, we're actually looking for pro bono legal access.

● (1720)

Mr. Francis Scarpaleggia: When you've been funded in the past, have you used lawyers?

Mr. Rob Rainer: Yes, a lawyer would have been retained through whatever funding.

Mr. Francis Scarpaleggia: But you don't know if they were Liberal, NDP?

Mr. Rob Rainer: I have no idea.

Mr. Francis Scarpaleggia: In one of the cases you mentioned, did you not beat Stephen Harper at the Supreme Court when he was head of the National Citizens Coalition?

Mr. Rob Rainer: I believe that case was successful, yes.

Mr. Francis Scarpaleggia: Thank you.

Mr. Simser, you mentioned that $60,000 was not a sufficient sum to help you with your legal cases to defend your rights, and you mentioned that if the envelope can't be increased, then perhaps the upper limit should be $100,000 and the program could fund fewer cases. Wouldn't that involve turning requests down? Obviously it would. Would that not involve somehow denying somebody somewhere the ability to defend their rights?

Mr. Scott Simser: Just to correct the record, I said earlier that one out of 1,000 people use sign language. It's actually one out of 100 people who use sign language. I just want to clear that up.

To answer your question, depending on individual cases, there should be that flexibility to increase it to $100,000 to ensure that the support is there, but they would have to be significantly important cases. Cases that are too weak and wouldn't be able to go forward wouldn't be able to get that funding. I think it would be better to have, for example, eight strong cases that go forward instead of 20 cases that are weak and wouldn't be able to go forward. My point is, don't spread the funding thin.

Mr. Francis Scarpaleggia: My next question relates to a point that Mr. Warkentin raised, which is that some groups are turned down because they don't meet the criteria, therefore suggesting that we should abolish the program.

You obviously are familiar with the criteria. Would it be possible that if indeed this were the case, if the criteria for some reason weren't inclusive enough, that perhaps they could be changed and the problem could be rectified very easily and very quickly without throwing the baby out with the bathwater, as they say?

Mr. Scott Simser: Well, the structure of CCP could be changed in the way the board selects their applicants and how the panel selects those, maybe with professors from law school. Maybe a change in that structure would be a way to improve that.

We don't want to throw the baby out with the bathwater, certainly not. Perhaps a change in the structure would be the way to go.

Mr. Francis Scarpaleggia: Thank you very much.

The Chair: Thank you very much.

This brings our testimony to an end. We're going to try to deal with—not today. We don't have consensus today to carry on with any more.

We can't do another full round, so I thank you very much for your testimony here today, and the best to you. Thank you.

We don't have a consensus to go on. Anyway, we'll have to deal with your motion on Monday.

Yes, Mr. Kotto.

[*Translation*]

Mr. Maka Kotto: I looked at Monday's order of the day very carefully. It pretty much looks the same. Therefore, it is possible that the House may rise without dealing with these motions. Mr. Chair, I had made the effort to warn you. In fact, at the beginning of the meeting, I was worried that this would happen. In fact, I had reminded you to set aside some time to debate the motion.

I don't know who is opposed to the idea of advancing this matter. If this is an effort to filibuster, I would like to know. If it is because these motions are not agreeable to the government, one must be clear on the subject, so that we can all be forewarned to next time.

● (1725)

[*English*]

The Chair: Okay.

Go ahead, Mr. Bélanger.

[*Translation*]

Hon. Mauril Bélanger: Mr. Chair, I wish to have you as well as my colleague Mr. Kotto know that I am the one who preferred not to open the issue today. To show my goodwill and to prove that I'm not filibustering, I suggest that we add a solid half hour to Monday's meeting, and that we have it end at 6:00 P.M. rather than 5:30 P.M., so that we can deal with the motions that we have received.

This is not a delaying tactic, but some of us, including myself, have a schedule to follow. I have commitments today, but if we set aside an extra half hour on Monday, I would be pleased to be here.

[*English*]

The Chair: So we'll go on Monday. Would it be the pleasure of the committee that on Monday we meet until 6 o'clock? We'll add half an hour—so it'll be from 3:30 until 6—to deal with Mr. Kotto's motion.

Is that agreed?

Some hon. members: Agreed.

The Chair: The meeting will be two and a half hours on Monday.

Thank you very much. The meeting is adjourned.

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