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Chair

Mr. Gary Schellenberger

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● (1530)

[*English*]

The Chair (Mr. Gary Schellenberger (Perth—Wellington, CPC)): I'd like to call this meeting to order, please. This is meeting number 28 of the Standing Committee on Canadian Heritage.

Yes, Mr. Bélanger.

Hon. Mauril Bélanger (Ottawa—Vanier, Lib.): Mr. Chairman, is it appropriate for me to come back to some of the questioning of a preceding meeting and the perhaps inadvertent casting of aspersions on an individual who wasn't here and is not being called? I think we should be very careful. You had to admonish us, Mr. Chairman, and I accepted the admonition.

When Mr. Warkentin was questioning someone, he could have been insinuating that a certain member of the board of the court challenges program might have been in conflict. In the testimony, there was reference made to the fact that there is a conflict of interest guideline in the bylaw. I've obtained it, and I'm sure everybody else could.

Mr. Chairman, we should be very careful about this, and if we're to carry on, I think we should be giving the people we're appointing an opportunity to come and be heard at this committee.

The Chair: Thank you. Point taken.

Before we start with our witness here, there were to be two witnesses today. Earlier, there was an e-mail to the clerk saying that one of our witnesses couldn't be here. I make a suggestion that since we have four witnesses in the second part, we might restrict the first part to three-quarters of an hour. Would that be acceptable around the table?

Mr. Angus.

Mr. Charlie Angus (Timmins—James Bay, NDP): In light of our not having followed up from last week with Mr. Kotto's motion, we're probably going to have to do that on both elements of our discussion today, in order to ensure that we have time. We have a number of issues, which we have to deal with in business, and we said we were going to make sure we do so. So I don't mind doing that in the first part, but we're probably going to have to do it in the second part as well to get this committee business done.

Mr. Jim Abbott (Kootenay—Columbia, CPC): As I understand it, we will go from 3:30 until 4:15, and then from 4:15 to 5:30, which would add the extra quarter-hour to the four witnesses. Then we have from 5:30 to 6 to handle Mr. Kotto's motions.

The Chair: That's my suggestion.

Hon. Mauril Bélanger: So we'll go to 4:20 for 45 minutes?

The Chair: Yes, we can go to 4:20. Then the next session will go until 5:30.

Mr. Charlie Angus: *C'est correct.*

The Chair: Welcome, Margaret, to this meeting today. If you have a presentation, go ahead, please.

Prof. Margaret Denike (National Association of Women and the Law): Thank you.

I'm sorry, I have a voice problem today, so I'll try to project a bit more.

I'm grateful to be welcomed here by the honourable members of this committee on behalf of the National Association of Women and the Law, which is an organization I am here to offer a presentation on behalf of.

My name is Margaret Denike. I am a professor of human rights at Carleton University. I have been a member of the National Association of Women and the Law for several years, as well as a member of the Women's Legal Education and Action Fund. I'm familiar with the court challenges program, I guess, through those capacities, but I am speaking just on behalf of NAWL today.

The National Association of Women and the Law is a non-profit organization that has been working to improve the legal status of women in Canada through legal education, research, and law reform advocacy since 1974. We recognize that the advancement of equality rights for women and for various groups that have been historically disadvantaged due to factors such as race, ability, age, ethnicity, and sexual orientation requires a range of approaches and strategies for law reform. These include, among other things, engaging in dialogue, research, and scholarship to educate ourselves and our local and national communities about the circumstances and needs of others; creating new laws and policies to foster respect among individuals and groups and to protect those who are vulnerable to social and political prejudice; and conducting test case interventions and legal challenges to existing discriminatory laws and policies, particularly those that inadvertently and/or adversely affect already disadvantaged groups by failing to take them into account in the first instance.

In our view, achieving a just and equal society means fostering the ways by which justice and equality are achieved. This entails providing funding to the programs and services that enable that. The court challenges program of Canada is a quintessential model, in our view, of such programs. Its mandate is to support the advancement of constitutional equality rights and language rights that are enshrined within the Canadian Charter of Rights and Freedoms. NAWL, the National Association of Women and the Law, is thus deeply concerned about the impact of the cancelling of the funding for the court challenges program of Canada, particularly on the disadvantaged groups in our society.

An internationally recognized and celebrated feature of Canada's heritage is our expressed commitment to constitutional values and principles of justice. Canada has been acknowledged for its commitment not only to granting rights to substantive equality within an inclusive and participatory democracy, but to putting in place the means to proactively pursue these rights. These values are universally affirmed in customary international human rights norms and laws. Canada's unique approach to making this commitment through the court challenges program has been explicitly acknowledged and applauded by international experts and committees of the United Nations, including the Committee on the Elimination of Discrimination Against Women in 2003 and the Committee on Social, Cultural and Economic Rights in 2006.

A fundamental tenet of constitutionalism—and this is a word about constitutionalism—is that rights enshrined within constitutions be made available to everyone and not only to the more privileged individuals who have the means and the wherewithal to pursue them. Since its establishment in 1978, the court challenges program of Canada has been instrumental in providing access to justice for individuals and groups that would otherwise not have such access and in enabling them to draw on the constitutional guarantees of section 15 of the charter to bring equality arguments before the courts. The program has ensured that the rights set out in the charter are accessible to all members of Canadian society by assisting with funding for those who cannot afford the costly processes of litigation.

● (1535)

As Beverley McLachlin, the current Chief Justice of the Supreme Court of Canada, once stated when she was considering whom the charter is designed to benefit and where such rights should apply:

> The *Charter* is not some holy grail which only judicial initiates of the superior courts may touch. The *Charter* belongs to the people. All law and law-makers that touch the people must conform to it.

I would add that the court challenges program of Canada has worked specifically to ensure the realization of this ideal that all people, particularly those who are disadvantaged or those who represent the interests of the disadvantaged, can make charter claims before the courts.

Part of the inherent logic of our constitutional system or any constitutional system is that funding is required to support some constitutional challenges. Without it, we invariably deny the full range of perspectives on the Constitution to play out, particularly the perspectives of those who are economically disadvantaged. It is a requirement of constitutionalism and the rule of law that government fund those who cannot afford it to ensure their issues can be brought before the courts and to provide the means by which all individuals can aspire to hold government accountable to its constitutional obligations.

In the recent landmark case of Law v. Canada, the Supreme Court of Canada defined and clarified the purpose of equality guarantees set out in section 15 of the charter as involving two specific objectives.

As Justice Iacobucci stated:

> In general terms, the purpose of s. 15(1) is to prevent the violation of essential human dignity and freedom through the imposition of disadvantage, stereotyping, or political or social prejudice, and to promote a society in which all persons enjoy equal recognition at law as human beings or as members of Canadian society, equally capable and equally deserving of concern, respect and consideration.

This second objective of promoting equality and promoting a society that fosters equal recognition of all members of our society clearly anticipates a positive commitment on the part of governments to ensure that these rights and principles are fully realized. The constitutional right to equality cannot be reduced to a notion of negative rights; that is, stopping instances of discrimination when they are about to happen. According to our Supreme Court's vision, it entails a positive and proactive commitment to promoting and advancing these rights.

The court challenges program illustrates this commitment as its very mandate characterizes this two-pronged objective through its role in supporting and enabling scholarship, debate, education, and dialogue on equality issues, as well as by sponsoring conferences, colloquia, and research publications on equality.

Some of the court case interventions supported by the court challenges program have had a profound impact on what substantive equality can and does mean for Canadians, notably, for example, on how courts have addressed the problem of systemic violence against women.

The program has provided funding for women's equality-seeking groups to work collaboratively to furnish analyses of historically entrenched discriminatory provisions of our criminal legal procedures, for example, such as myths and stereotypes about victims of sexual assault. Degrading stereotypes about women's lack of credibility have imbued rape laws and proceedings for centuries, and they have prevented women from reporting assaults and from pursuing criminal charges against the perpetrators.

For instance, through their intervention, women's groups had the opportunity in the 1999 case of Ewanchuk to challenge the reasoning of the Alberta Court of Appeal that how a woman dresses or whether she lives in a common-law relationship impugns a woman's character and credibility enough to support the acquittal of the accused on charges of sexual assault.

The funding has also been crucial in advancing arguments and analyses in the sexual assault case of Bishop Hubert O'Connor and the Mills case. They addressed whether or not and under what circumstances the medical and psychiatric records of rape complainants were to be made available to those accused of sexual assault for the purposes of questioning a complainant's credibility.

● (1540)

Such interventions have challenged long-standing assumptions and practices that concern the safety, security, and freedom of every girl and woman in this country. The ability to provide our courts, through interventions, with informed analyses derived from varying perspectives that lend themselves to a sophisticated and evolving understanding of substantive equality implications in such context is part of the legacy of the court challenges program of Canada. The support provided by this program is essential to ensuring that the courts continue to address violence against women as an equality issue.

As a concluding comment, when we are challenged with questions concerning the rights of minorities, and particularly those that endure the disdain and prejudice of the majority, we must keep in mind the intrinsic irony of constitutionalizing and hence protecting equality rights. As Professor Jennifer Nedelsky has noted:

> ...when we choose to treat a value, such as equality, as a constitutional right, we are in effect saying both that there is a deeply shared consensus about the importance of that value *and* that we think that value is at risk, that the same people who value it are likely to violate it through their ordinary political processes.

This is a fundamental consideration of constitutional equality rights, as they define the entitlements that make it possible for all members of society to flourish and to relate to each other in terms of equality in the face of the fact that we are vastly unequal in our needs, abilities, and status.

Individuals and groups, such as sexual minorities, that are most subjected to social prejudice, disdain, and hatred and who are most likely to be stripped of fundamental human rights are those who are in most urgent need of constitutional equality protections. Such protection must include fostering the services and programs that provide opportunities for dialogue and education about differing needs and circumstances, however much the majority would be loathe to accept them. This is a feature of our heritage—of this program, that is—of which many Canadians are proud. It is about respecting the dignity of all persons, including those we ourselves might question as to entitlement in granting them access to justice and to the protections and benefits of the law.

Thank you for your time.

● (1545)

The Chair: Thank you.

Mr. Bélanger.

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

Professor Denike, thank you for your presentation.

I have first a very simple question that I've been asking the other people who have appeared before us as well.

Have you been involved in some of the cases that have proceeded through the judicial system with some assistance from the court challenges program, peripherally or indirectly?

Prof. Margaret Denike: Peripherally.

Hon. Mauril Bélanger: Thank you.

The first question therefore is, would you know whether, in choosing the lawyers to represent the groups, the political affiliation of these lawyers was of any consideration?

Prof. Margaret Denike: Absolutely not.

Hon. Mauril Bélanger: That's to establish whether or not it has been, because in defending the decision to cancel the court challenges program, the government has indicated that as being one of the reasons. We're just trying to ascertain whether or not that is a fact.

Would you tell us why, in your opinion or belief, the court challenges program was cancelled?

Prof. Margaret Denike: I find it really difficult to speculate. It took me by surprise, I must say, because I thought this program was widely recognized by existing and previous governments as a program that was something about which all of us would be proud.

I say that in consideration of the principles or the approach I have referred to in the comments I just provided. That is—and I think many of us have to come to terms with this at some point in our lives, professionally or personally—that those we believe should be entitled to protection from discrimination because they are historically disadvantaged are those whom we ourselves would be inclined to have discriminatory views against or have issues with, in some capacity.

I think there's something, in other words, about constitutional equality guarantees that this program is designed to protect that rises above what all of our individual impulses happen to be. I assumed there was a wide recognition of that.

I can't really speculate on those reasons.

● (1550)

Hon. Mauril Bélanger: Would you give us, in the couple of minutes I have remaining, some examples of the cases that you may have been involved with peripherally, and the outcome, and the outcome in terms of moving equality closer to reality than what it may have been before the cases?

Prof. Margaret Denike: When I say peripherally, I mean peripherally, and especially in some of the cases I think about in particular.

When I say peripherally, I mean I have been a member of an organization that puts together committees—to different organizations—to tackle specific issues. And those committees are always moving. So on your first question, for example, with respect to the political affiliation of the lawyers who may or may not be hired, the lawyers or legal experts who have been retained, for the most part, are not paid, and we're looking at really just covering some of the minimal costs. They are commissioned or retained on the basis of their expertise on a certain issue.

For us, that is, the National Association of Women and the Law and the Women's Legal Education and Action Fund...it is on their particular understanding, let's say, in criminal law or family law, or whatever area it happens to be, on the equality theory and analysis that is at stake in those issues. So it's always a different committee that is pulled together for the purposes of a particular challenge.

I want to talk to this broadly before specifically. I would like to think that on a moment-to-moment basis, if we look at whether we won this case, if there's a "we" to win it, because as a third-party intervention you don't have that stake in it, I think the record is no, there's been quite a trail of losses. That's because the perception is that organizations are somehow personally invested in the win or the loss. Where the win takes place, and this is my stake, is in the elaboration of the theory and approach to the principles of the law, such as substantive equality.

Canada is internationally recognized for our approach to equality, for our understanding that equality, for example, isn't about treating people the same, but about taking into account the different needs and circumstances and positioning in society. A great example would be the Eldridge case, where a pregnant woman who is hearing impaired goes to a hospital and does not have the benefit of access to medical services that all other women with the ability to hear have.

Getting the courts to participate in the collective and collaborative process of developing a nuanced and sophisticated understanding of equality is where, to me, the wins are, and I've been peripherally involved in cases that have taken a long approach to that struggle.

Hon. Mauril Bélanger: Thank you.

The Chair: Thank you.

Mr. Kotto.

[*Translation*]

Mr. Maka Kotto (Saint-Lambert, BQ): Thank you, Mr. Chairman.

Margaret Denike, welcome.

A French philosopher by the name of Paul Valéry, if I remember correctly...

You can't hear me?

[*English*]

Prof. Margaret Denike: No, just a second.

[*Translation*]

Mr. Maka Kotto: Can you hear me? I think we should stop the clock on my time.

[*English*]

Prof. Margaret Denike: I think I have it. Yes, thank you.

[*Translation*]

Mr. Maka Kotto: Can you hear me? Very well.

Can we restart the clock from this moment on, Mr. Chairman?

[*English*]

The Chair: Yes. Well, whatever—

[*Translation*]

Mr. Maka Kotto: Thank you. A French philosopher by the name of Paul Valéry, if I remember correctly, said that a government's greatness is measured by the way it treats its minorities.

The mandate of the Court Challenges Program was to protect the rights of minorities, preserve democracy and avoid its dismantling. Access to courts in French, and the promotion and defence of the linguistic rights of the francophone and Acadian communities also form part of its mandate. Those are but two examples. We in the Bloc Québécois and on this side of the room believe that it was a crucial and non-negotiable program given what we have seen September 25.

I now come to my question. In the event that this program is abolished—for the time being, this is what is being considered because half the funding was cut and it is just a matter of time before the other half is cut as well—what would be your take on things, how do you see the consequences?

● (1555)

[*English*]

Prof. Margaret Denike: Generally speaking, I think the consequences for us as Canadians would be to endure a tremendous blow to a very principled approach to the very thing you might applaud Valéry for, in recognizing what is the greatness of a government. I've given some thought to this. I'm really trying to think of other ways to understand and appreciate it. I think we often don't get things right, and this is one thing we have got right; that is, despite our impulses and inclinations and those of the majority, we make these kinds of commitments to minorities, despite these costs, because we're committed to an affirmation of diversity and a celebration of equality.

When you remove the means we have to achieve that, we're really just exercising a blow to those commitments, principles, and values. And there is a human cost to that, which is that those who are most disadvantaged cannot actually pursue equality claims. It's to the disadvantaged I think that we need to have the principled commitment.

[*Translation*]

Mr. Maka Kotto: I will ask you a question that I have already asked other witnesses. Do you believe that the Court Challenges Program weakens or, should I say, weakened the powers of the legislative branch and strengthened those of the judiciary?

[*English*]

Prof. Margaret Denike: Not at all. I think that's an interesting question.

First of all, I don't really see it as a power struggle. I think a true democracy has as many decision-makers and influences and voices as possible in the shaping and articulation of our law. I wish I had given a little bit more thought to that particular question, because I realize that's on the minds of many.

Whenever I see considerations, for example, that somehow our courts have too much power, it's often on an occasion where I think it's really just a decision.... I'm not articulating this very clearly, but I often don't see the things the courts are being accused of as actually happening; we're not talking about the making and imposing of laws against a majority, despite the interests of people. We're talking about the interpretation of principles that we have democratically affirmed.

So, no, I don't see it in those terms.

[*Translation*]

Mr. Maka Kotto: Thank you.

[*English*]

The Chair: Mr. Angus.

Mr. Charlie Angus: Thank you very much.

I appreciate you coming here today.

Our discussion on court challenges has been an interesting process for me because it's clarified a number of things. What began as an exercise in so-called accountability—our Treasury Board president said it was getting rid of programs that were wasteful and out of touch—has really become...it's clear there's a Trojan Horse aspect to this with the Conservative Party on an issue of what is the notion of rights. We're getting a very clear picture that what's being argued here now is that in Canada the notion of access, the equality of access, for rights is somehow at odds with individual rights.

I'd like to talk to you about your experience in terms of constitutional law. In our constitutional law we have individual rights, but we also have collective rights: francophone language rights, first nations rights under section 35. When those rights were proclaimed, they were not enacted upon. First nations had no more right to their section 35 rights after they were proclaimed in the Constitution than before; they had to fight for them in court. We had a number of very expensive cases to establish the nature of those rights.

I'd like to ask you, is it correct to say that the general jurisprudence in Canada is that we have a notion of collective rights alongside the notion of individual rights? Has that been the common practice in Canada?

● (1600)

Prof. Margaret Denike: I'm not an expert in that way. I'm speculating, I suppose, but I would say that would be generally consistent with what I understand there is a principled commitment to, and that is collective rights. But I don't think our courts would necessarily agree with that speculation.

Mr. Charlie Angus: Would our courts say that the notion of collective rights supercedes individual rights? How would they balance it? Has there been a sense that the notion of collective rights is somehow a threat to individual rights? Is that a discussion that takes place with the judiciary in Canada?

Prof. Margaret Denike: I couldn't speak to that.

Mr. Charlie Angus: The question then is simply to get back to the question of the notion of equality of access. Are rights really rights if people can't make use of those rights, if they do not have the ability to have those rights enacted?

Secondly, does the enacting of providing access to rights to minority groups to make use of their rights somehow come at the expense of the common good of rights? Does that come away from the majority's rights? That seems to be the argument I'm hearing brought forward. The argument is that if we allow a group to exercise its rights, and they can only access their rights if they have access to law in order to establish their rights, it somehow comes at the expense of the larger majority. Could I have your comments on that?

Prof. Margaret Denike: I don't quite understand your question. Maybe if I say a few words, you can clarify my understanding.

I understand I have human rights generally, and this is what we're talking about when we say rights, which is something we all would affirm. We can take a general litmus test on the Canadian public and ask what they think of equality or what they think of the freedom for mobility. I see that as consistent with the interests of everyone. I don't see necessarily a collision, as you have perhaps characterized it.

Mr. Charlie Angus: I didn't think there was a collision, but that seems to be raised as one of the objections to the court challenges program. The belief is that if you put money aside to allow a minority group to get access to court in order to establish rights, establishing rights for a minority group somehow comes at the expense of the overall majority. That seems to be the argument that's being brought forward, and I would like your comment on it.

Prof. Margaret Denike: I understand.

The comment I was sketching a moment ago is really appropriate then in that case. I see that the commitment to foster and protect the rights of those who least have them, which is what we really need to most concern ourselves with, is in the interests of the majority. That is my comment on that. It will always be in the interest of the majority.

I'm clearly not coming from the same place when I say that, because the majority, to the extent that is the broader Canadian society that we are all members of, will be living in a place where they can be assured that if their son, daughter, or they themselves become disabled, they will not then lose the entitlements and access to justice that they enjoyed when they weren't.

● (1605)

Mr. Charlie Angus: Okay. Thank you.

The Chair: Thank you.

Mr. Fast, please.

Mr. Ed Fast (Abbotsford, CPC): Thank you, Mr. Chair.

By the way, thank you for coming and attending. I appreciate your being here.

I just want to correct one thing to start off with. Mr. Angus somehow indicated that one of the chief objections to this program was that somehow there was a disjunct between access to asserting equality rights and the equality rights themselves. I don't believe that's the primary objection. Access is really like a portal, like a doorway, and the major concern has been that the door has been open for some and it has been closed for others. As I understand it, that's the main argument that opponents of this program have put forward. In addition, as a government, we're looking at focusing on delivering the resources in a more effective way and making sure the money gets to the people who need it.

I'd like to become a little more familiar with your organization. I believe you represent the National Association of Women and the Law. Is that correct?

I think earlier on you mentioned a number of organizations you were also affiliated with.

Prof. Margaret Denike: Yes.

Mr. Ed Fast: Those have slipped my memory. Could you just repeat those?

Prof. Margaret Denike: There is just one other, and that is the Women's Legal Education and Action Fund, and I believe the justice committee has already had a presentation from a representative of that organization.

Mr. Ed Fast: Okay, so we've got LEAF and we've got NAWL.

Has NAWL ever received funding under the court challenges program?

Prof. Margaret Denike: Yes, though NAWL is not unlike LEAF in the business of court case interventions for the most part. In fact, as I explain to my students who are interested in kind of a quick answer to the question, "What are the national women's legal organizations?", I think of the two organizations as concerning themselves with the two ways in which laws are generally introduced or expanded and reformed in this country, and that is through legislatures and through the courts. LEAF concerns itself with court litigation.

Mr. Ed Fast: I understand.

But NAWL has received some funding. Is that right?

Prof. Margaret Denike: Yes, it has, for consultations—three consultations—

Mr. Ed Fast: All right, so there have been three different occasions.

Prof. Margaret Denike: —and one intervention. It's engaged in only one court case intervention that has received funding.

Mr. Ed Fast: So there have been three consultations and one intervention. Is that correct?

Prof. Margaret Denike: Yes.

Mr. Ed Fast: And what about LEAF?

Prof. Margaret Denike: Almost exclusively, LEAF has been involved in test case interventions, because its mandate is really to advance equality arguments, to advance equality arguments before the courts.

Mr. Ed Fast: Do you know how many?

Prof. Margaret Denike: I can't speak to that, no.

Mr. Ed Fast: But there has been more than one?

Prof. Margaret Denike: Yes.

Mr. Ed Fast: All right.

Does NAWL or does LEAF also have some representation on the court challenges program as it then was, either on the board or on the panels or advisory committees or subcommittees?

Prof. Margaret Denike: NAWL does now, and I think I'd feel most comfortable—only because this is what I've agreed to do—to speak for NAWL.

First of all, the only body, as I understand it, of the court challenges program that has representatives is the advisory committee, unless I'm wrong. But I think I understand the program enough to say that the panel, for example, and those decisions, and the board or the groups that would make decisions with respect to the distribution of funding, don't have representation from organizations.

I'm not entirely clear what the mandate of the advisory committee is, but I understand that it comprises representatives from anti-poverty organizations, gay and lesbian organizations, women's organizations—this kind of thing—and there is also an advisory committee for language rights. Though I can't speak to its mandate, I understand that its task and the work that it does concern bringing perspectives on equality from all of these organizations that represent disenfranchised groups.

Mr. Ed Fast: It's safe to say that some of the organizations that may benefit from receiving funding under the program are represented either on the board or on the advisory panel or—

● (1610)

Prof. Margaret Denike: As I said, an advisory committee is removed from any decision. It has no budget and no decision-making authority with respect to the distribution of funds or the selection of cases. It is the only one that has representational capacity.

Mr. Ed Fast: But it does advise the CCP on various issues relating to the delivery of the program. Is that correct?

Prof. Margaret Denike: I'd be interested in seeing what the terms of that advisory committee would be. I'd be speculating to say this is the mandate of that committee.

Mr. Ed Fast: I have one more question. Thank you, Mr. Chair.

The nub of the problem has been that there are those who are concerned that the program has been delivered in an inequitable way. We've heard a lot of talk about equality, but it's that in fact it's been delivered to specific groups and not to others, who perhaps were also deserving of funding.

I'll quote to you from the summative evaluation of the court challenges program from 2003:

> The administrative file review and key informant interviews with representatives from the Corporation administering the CCP both indicate that 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.

The report goes on to restate a number of times that it seems that the word "disadvantaged groups" has been defined in a very narrow way to perhaps reflect a certain ideology rather than fairness.

Could you comment?

The Chair: Make it a short comment.

Prof. Margaret Denike: I think that's a really important question, because it gets to the heart of what I think this program is about in many ways, but also what our courts and legislatures have been grappling with for a really long time, the extent to which it has a commitment to equality.

I recognize that some people don't, that some people think equality is just not what they're into, and that's a different matter. But to the extent that we make that commitment, we recognize—and it's interesting in legal history watching the progressive recognition of what it takes, or what equality might mean, or what we might want it to mean—and to the extent that it's about just treating everybody the same....

No, I shouldn't start the sentence that way.

I think certainly our courts, or our Supreme Court of Canada, at least, has recognized that this is quite an impoverished understanding of equality. When we say that the program is about advancing some rights, I think then it's about advancing equality rights, and equality rights particularly as they are recognized as constitutional equality rights, not only in our country but internationally.

If I am permitted.... Okay, I won't go to that anecdote then.

What that commitment actually entails isn't just giving everybody the same thing, because nothing will change in our society to the extent that we do that. If we have half a table here that doesn't have access and wheelchairs in another half that do, and we give the exact same treatment, that half will still not be able to go to the next floor if we don't commit to getting elevators, for example.

That is what equality is really about; that is, making a commitment to those who are disadvantaged, not just to everybody. Of course, what that means is saying that there are some groups who are more deserving of certain resources, because what we want at the end of the day is for them to be able to get to the second floor, or be able to have access to health care benefits. That might mean providing more funds to those who happen to be hearing impaired, for example, or bound to wheelchairs, when they seek medical services.

There are many who would say, “But that's not fair. Why does that group get these resources”—let's say an interpreter—“and we don't?” That's where I think we have to step back from our own interests and say, that's because we're actually committed to what we call substantive equality now, and that is equality, at the end of the day, where those resources are actually available to everybody, not just what you give and what you distribute, but what's available, and what opportunities are there at the end of the day.

● (1615)

The Chair: Thank you.

Mr. Simms, we only have five minutes, so you're going to have the last questions.

Mr. Scott Simms (Bonavista—Gander—Grand Falls—Windsor, Lib.): Thank you, Madam, for your presentation. I want to touch very briefly—we don't have enough time, obviously—on the term you mentioned, “economically disadvantaged”, which seems to be, I would assume, the common thread in the challenge for people wanting to do a section 15 challenge, for instance, under the charter.

Can you give us a picture of just how intensive financially something like this would be, to make a challenge under, say, section 15 for any identifiable group or individual?

Prof. Margaret Denike: It depends on what the objective is. If it's for conducting a consultation on the relation...for example, you're right, you're not looking at litigation fees. A case before a human rights tribunal is generally recognized to be a lot cheaper than one that might require a long list of transcripts because the case has been appealed several times and is before the Supreme Court of Canada. The court challenges program, I understand, provides a maximum of $30,000 for cases that would widely be recognized as costing, depending on the nature of the claim and what's involved and whether or not you need to see all the transcripts, and those kinds of thing, tens of thousands, if not hundreds of thousands, of dollars.

I'm personally not a lawyer, so I've only heard this anecdotally.

Mr. Scott Simms: I guess I'm just relying on your peripheral knowledge of recent cases.

Prof. Margaret Denike: I know for many of the interventions, particularly those before the Supreme Court of Canada, the funding provided by the court challenges program typically only covers what are called disbursement fees. Those are the fees to acquire the materials, to redistribute or circulate them, to bring the teams together, to have the phone calls.

At least for any of the organizations I've had anything to do with, it's not about anybody having any kind of profit. Right?

Mr. Scott Simms: Understood.

Prof. Margaret Denike: I can only imagine that for larger firms that are in the business of profit, it would be prohibitive. I wouldn't be able to fathom how much it would cost.

Mr. Scott Simms: You used the term “substantive equality”. How diminished, in your eyes, is substantive equality in the absence of the court challenges program?

Prof. Margaret Denike: To cut such a program would be a huge blow to substantive equality, because substantive equality is the difference between formal equality, that is, treating everybody the same, which is the standard distinction, and.... I grew up with that, thinking that's what equality means, but substantive equality is a consideration of the different circumstances and situations that people are in, and accommodating those differences or rising to the occasion of those differences.

So the elimination of this program would be the elimination of substantive equality to the extent there is the possibility of government support and commitment to funding the realization of equality as an ideal—and not even as an ideal, but in practice when it comes to concrete issues.

Mr. Scott Simms: Has your group ever been approached by government in the past—former governments or the current government—to get your feedback on this particular program?

Prof. Margaret Denike: Not that I'm aware of, but I'm not a member of the staff; I'm just a volunteer.

Mr. Scott Simms: Thank you.

The Chair: Thank you, and I think that ends our questions and answers for this segment of the session.

I must thank you, Ms. Denike. I apologize for calling you Margaret only the first time. Thank you very much for your answers.

I thank the committee for your questions.

Prof. Margaret Denike: Thank you for your time.

The Chair: Thank you.

We'll have a five-minute break until we get our new witnesses here.

● _____ (Pause) _____

●

● (1625)

The Chair: I call this segment of the meeting to order.

We welcome our witnesses. We've realigned everyone to go in order.

We'll just let each one of you introduce yourselves and the group you're representing.

The meeting will be over at 5:30, so we'll try to make our comments as short as we can and our answers as short as we can. We'll be sticking to five minutes for questions afterwards.

We will start off with Ms. Landolt, please.

Ms. Gwendolyn Landolt (National Vice-President, REAL Women of Canada): Thank you, Mr. Chairman. It's our pleasure to be here.

REAL Women has been involved with the court challenges problem, or I would say uninvolved, because we have been excluded totally from it. We have tried for years to get some sort of funding and some sort of recognition. Because we're not ideologically in tune with the court challenges program, we have always been denied funding.

We have grave concerns about the operation of the organization. To us, it is an example of government corruption and taxpayer abuse. The program does not report to Parliament, nor does the Access to Information Act apply to it. The consequence of this is that the administrators of the program have been able to do whatever they like, whenever they like.

For example, the mandate says it must be for disadvantaged groups, it must be on legal merit, and it must be for equality. Those were never defined, so the administrators of the program have quite happily defined it to suit their own private interests. I can give you an example. I understand you have a copy of our brief. Page 2 gives you some examples of the funding. For example, in 1992, a Toronto Bay Street lawyer, Elizabeth Symes, who was one of the founders of the feminist legal arm called LEAF, received funding so she could get a tax deduction for her nanny. It's who you are and your connection to the feminist movement and other special interest groups that determines whether you get funding.

In 1995, the CCP gave $5,000 to a social worker in Saskatoon to see whether she could build a case to remove section 43 from the Criminal Code. Section 43 allows parents and teachers to discipline their children if it's reasonable under the circumstances. After she did her research for $5,000, the CCP then gave money for another special interest group to go through three levels of courts to try to remove section 43. REAL Women was without any funding. In order to protect parents, we had to go through the three courts without a penny from any other group.

A so-called disadvantaged group is CUPE, the Canadian Union of Public Employees. They're very wealthy, because of course they have compulsory union dues. They received money for two cases on which REAL Women had to intervene out of their own pockets, both of them dealing with homosexual benefits and rights. We were protecting traditional family, and of course we were ignored by the court challenges program.

We were particularly displeased by the fact that the court challenges program, since it began, has been funding a feminist group, LEAF, Legal and Education Action Fund, on the grounds that they were going to argue for the equality of women. Let me tell you, LEAF does not represent women; it represents a special interest group of feminists only. The point is that nobody can represent women. We're as diverse as men. Yet they have been funded by the CCP for over 140 cases. It's always allegedly on behalf of “women”, but in fact it's on behalf of a feminist ideology only.

I might say that NAWL, the former speaker, also does not represent women. For some of the cases she outlined...there's no way a majority of Canadian women will support their arguments before the court—one or two, yes, but the vast majority were extremist, feminist, ideological cases. It was using judicial fiat to get around Parliament, which should be dealing with the decisions. Instead, with CCP funding, radical feminists were in fact funded to do an end run around Parliament on many, many issues.

● (1630)

We've found there's no equality of access whatever to the CCP, and we're prime examples of it. For example, to call LEAF, which has 140 cases funded, a disadvantaged group is amazing. We've found under the Access to Information Act that between 1985 and 1989, LEAF received over $800,000 from the Status of Women. It received $1 million from Ian Scott, the then Attorney General of Ontario. It received over $900,000 between 1992 and 2002. Yet our organization, which is funded only by our members and donations, has a grand total budget of $120,000 a year. We are certainly disadvantaged, but we've never been able to break through the court challenges program because we're not ideologically in keeping with those administering the program.

The CCP is very discriminatory. In fact, it's so ironic that an organization that is supposed to support fairness and equality in Canada is truly one of the most discriminatory, unequal, and unfair agencies we have in the Canadian government today. Our organization is a prime example of one that has experienced straight-on discrimination from the CCP. On page 6 of our brief we give you examples of three cases where we applied and they told us our views did not support equality. But we have equality in our objects of incorporation. We have it in our name. REAL Women stands for realistic, equal, and active for life. We all believe in equality as women, but we don't have the feminists' interpretation of equality; therefore, we've suffered very bitterly from discrimination at the hands of this court challenges program.

Every time we've applied for grants we've been told that we don't support equality. It's always LEAF and other feminist organizations that get the funding because only they apparently understand equality. But other women, who are the vast majority, are totally ignored because we obviously are not informed.

I am a lawyer and I've been to court many times. REAL Women has intervened in the Supreme Court of Canada over the years approximately 12 times, funded out of our own pockets, on issues for which LEAF, NAWL, and the homosexual organizations have all been funded.

It is a concern to us that the court challenges program has been used as a way to change the social values of this country by funding only one side of an issue, and there is no broad openness to others. To have other groups, such as the woman who just spoke from NAWL, talk about equality of access is truly very offensive to those of us who have had to go to court and pay out of our own pockets.

The homosexual activists in Canada, Egale, said in their own newspaper on October 19, “No group has benefited more from Court Challenges funding than the queer community”, which the column thanks. It said that money from the court challenges program helped Egale win equal marriage rights through the courts in B.C., Ontario, and Quebec.

They have been funded, whereas REAL Women, struggling to protect the traditional understanding of mother, father, and children, have had to pay through the courts again. We've tried to protect traditional values. We've tried to protect the laws that Parliament and the legislatures have passed. These groups that do not agree with them have used the money to usurp the laws and have their own objectives and ideology take over our system of government.

● (1635)

It's significant to us that the traditional definition of family—defined as mother, father, and children—has been severely impacted by these cases, funded by the court challenges program. It is now beyond dispute that children thrive best in opposite-sex family environments, where they learn gender identity and sexual expectations from the biological parents. These children thrive best academically, financially, emotionally, psychologically, and behaviourally, and we've documented all that.

But instead, what has happened is that these extremist groups have used the courts with court challenge money to usurp what is a concern for children.

For example, France's National Assembly said in January 2006 that they cannot accept same-sex marriage because of the effect on children. In July 2006, the New York State Court of Appeals and the Supreme Court in Washington, D.C., also rejected same-sex marriage.

But instead, you have the courts taking the lead in trying to tell us that it's adults' rights to totally ignore the rights of children. The question to be addressed is why does the Canadian court challenges program have a bias for feminists and homosexual cases? The answer is, and we've researched it very carefully, that members of the homosexual group Egale sit both on the board of directors and on the advisory board of the organization.

The Chair: Could we come to a conclusion?

Ms. Gwendolyn Landolt: Yes, thank you, Mr. Chairman.

But you have a conflict of interest. For example, the current executive director of the National Association of Women and the Law is a former executive director of the court challenges program. They're all intertwined and interlocked, administering funds to go only to their own groups. Again, on page 11 of our brief we give you a few examples of the intertwining that's going on between the advisory board, the board of directors, and also in the whole administration of the program.

In summary, the CPP, which is funded by the Canadian taxpayer, has been established to support unfairness and also discrimination in Canada. With a few exceptions, it has not advanced the rights of minorities and disadvantaged groups, but in fact it has advanced the interests of special interest groups, which are clearly not, with the enormous funding they receive from the government.

For example, in 2004-05, Egale received a grant from the Canadian heritage department for $21,000. What was that for? That was in addition to CPP funding.

The LEAF group has had hundreds of thousands of dollars, and NAWL receives $200,000 to $300,000 every year from the Status of Women. They're scarcely disadvantaged.

They go to court, and the courts are not prepared to handle these moral issues. As a lawyer, I know they do not. They do not have access to the research; they do not have access to all the social facts of a case. They hear only one side and they're not ready; it's either win or lose. They cannot compromise like Parliament can do. What has occurred with the court challenges program is simply wrong in principle and in result.

Thank you, Mr. Chairman.

● (1640)

The Chair: Thank you.

We'll have to try to keep things close, because we're done at 5:30.

Mr. Carpay.

[*Translation*]

Mr. John Carpay (Executive Directeur, Canadian Constitution Foundation): Thank you, Mr. Chairman.

Good afternoon, my name is John Carpay and I am the Executive Director of the Canadian Constitution Foundation. I learned French in Quebec, at Laval University, where I did my BA in political science. I also have a law degree from the University of Calgary.

Our organization has an interest in the Court Challenges Program because a man in British Columbia, whose name is James Robinson and who is the Chief of the Nisga'a band in northwestern BC, wanted to make use of this program. As members of Parliament, I am sure you know that in 2000, the Nisga'a Final Agreement Act was passed. It established a new government and a new constitution, as well as a new citizenship for the first nations peoples in northwestern British Columbia. With the assistance of our organization, James Robinson applied for funding, because he felt the agreement violated the equality rights set out in section 15 of the Canadian Charter of Rights and Freedoms.

In 2003, the response from the Court Challenges Program was that it would not provide financial assistance to Mr. Robinson, because the program did not agree with Mr. Robinson's objective. In other words, the program did not share his vision of equality. I see here today a number of members of Parliament representing various parties. There are four parties in the House of Commons—in other words there are four visions of justice. Each party has its own definition of justice.

As you know, this is a subject that has been debated since Plato wrote *The Republic*. How do we define justice? What are the aspects of justice? The same is true of equality. There are a number of definitions of equality, not just a single vision of it.

Under the Court Challenges Program, taxpayers' money was paid to the feminist group LEAF, the Legal Education and Action Fund, which, in its definition of equality, advocates the constitutional right to social assistance, abortion, and a different definition of marriage. That is its right. We enjoy freedom of expression and the freedom to go to the courts to seek change, so as to take part in the political process. All that is well and good. However, is it fair that taxpayers' money is used to promote a single group's view of equality and that the same program rejects all other visions of equality? There are a number of different visions of justice and equality.

In a democracy, there are debates, including debates before the courts involving individuals who are equal. However, when the state provides taxpayers' money to help out just one group or just a few groups that share a single vision of equality, that is not fair. That is why I am hoping the government will stand by its decision not to use taxpayers' money to advocate and promote a single vision of equality.

Thank you.

[*English*]

The Chair: Thank you.

Mr. McVety.

Dr. Charles McVety (President, Canada Christian College): Mr. Chairman, members of the committee, I thank you for allowing me to speak today.

I'm the president of Canada Christian College. We're a 40-year-old institution training workers for the church in the city of Toronto. We have approximately 1,200 students. We've graduated over 4,500 over the last 40 years, most of whom are serving congregations right across the country of Canada.

Some 80% of our students are visible minorities, while 90% of our students are actual minorities. These new Canadians who are part of our great country of Canada have somehow been excluded from the court challenges program. What is their sin that has caused them to lose their status in this program? The sin is that they are pro-family, that they are pro-religion, and that they just simply do not fit the ideology of the court challenges program. This program appears to say that all Canadians are equal; however, some are more equal than others. Some are worthy of funding, some are not worthy of funding. Somehow, our people have been found to be less equal, and this has been decided purely upon ideological lines.

This court challenges program was founded for the purpose of clarifying equality rights in this country of Canada. It was not founded for the purpose of advancement of special interest groups in this country. However, according to the review, the report of the program directors themselves, the report that they put forward in the year 2003 states that it is for the advancement of equality of rights. We do not believe this is the purpose for the court challenges program. Therefore, it should not be funded by a government that is committed to equality.

We, of course, as Canadians, and as religious Canadians, are committed to fairness. We're committed to equality. We are committed to fair treatment right across the board—not that some are more equal than others, not that some people are attempting to restrict rights and some are attempting to advance rights. This court challenges program is saying exactly that. Furthermore, it's doing so with great conflict of interest.

Think of this. The government pays Canadian citizens to sue the government. We are the only country on earth that pays our citizens to sue ourselves. This is a tremendous conflict of interest, and it should therefore not be funded.

There's a further conflict of interest, and you've heard it come up several times already today. The advisory group is made up of people who receive the funding. These people who gain access to millions of dollars are the very people advising the court challenges program of where to put the money—organizations like Women's Legal and Education Action Fund, with over 140 cases themselves; organizations like Egale and others that you've heard of. They are funding challenges to our legal system so that people like Robin Sharpe can put forward the idea of equality, in that he should be equal in this country as a child pornographer who creates child pornography. How disgusting it is that our government would fund such a challenge? Yet for those of us who are pro-family, when we go and say we do not want these rights to be given to Robin Sharpe, it is then declared that we are restricting rights and we are therefore not allowed to have any funding to intervene on behalf of Canadians across this country.

Who pays this bill? Not you, not Parliament, but the taxpayers of this country. They pay the bill of the millions of dollars every year that go to this program. But that is the tip of the iceberg. After the millions of dollars are seeded into the program, court challenges begin, many of them frivolous, and then the government has to put forward millions of dollars to lawyers to defend the government's position against these challenges that it's paying for.

● (1645)

The reality is that people like me—clergy members, teachers, parents, and children—do not have equality of rights in the court challenges program. However, people who want to attack the rights of those like us in this country appear to be more equal than others. This court challenges program has nothing to do with rights, but everything to do with advancing an ideological agenda in which we, as parents, somehow are not included.

We are people of fairness. We do believe in equality. We do believe in rights. But somehow the court challenges program does not believe in our rights. Therefore, we ask that the Government of Canada cancel the funding to this program.

Thank you very much.

● (1650)

The Chair: Thank you.

Mr. Rushfeldt.

Mr. Brian Rushfeldt (Executive Director, Canada Family Action Coalition): Mr. Chairman, members of Parliament, thank you for the opportunity to bring forward for the record Canada Family Action Coalition's concerns and position about funding a program such as the court challenges program.

Let me first state that we agree with the position the government has taken in suspending the program. We'd ask to have it not reinstated. I'll provide some reasons why we'd like to see that.

There are three principles on which we believe a program such as CCP should not be funded with tax dollars. First, the very principle of section 15 of our charter, equality before the law and under the law, should and would require that all citizens in Canada be provided equal funding. A program that gives government funds, in fact tax dollars, to a non-profit organization so that the non-profit organization can then pick and choose who they wish to fund violates the very principle of equality. Funding for only some people or some groups creates an inequality of access to the law. Section 15 of the Canadian Charter of Rights and Freedoms in part reads, “equal benefit of the law without discrimination”. I would read that as equal benefit of the law without discrimination.

The CCP website states that one of its goals is to help disadvantaged groups prepare cases and file court actions against the government. So in essence, when in someone's opinion there appears to be a violation of some right, they will fund. The principle that they espouse to be one of the fundamental reasons for existing is equality, which they functionally do not deliver, I believe.

Some scholars have said that the dialogue in a court action is a dialogue between courts and the public. But when certain groups are funded, the dialogue really is not between courts and the public; it's between specific individuals and the courts.

Using tax dollars to create an advantage for a select few is a violation, in my estimation, of the charter. It's also an inappropriate way of resolving perceived disparities in the Constitution. We've seen a number of cases where government money has been spent for various reasons that I believe even the Auditor General has questioned.

Second, we do have concerns about how society resolves disparities, or perceived disparities, in the Constitution. If you review the cases that were funded by tax dollars, you will see that in most of those cases, I believe, those issues should have been resolved through dialogue with our elected Parliament, not with the power of one court imposing its unilateral view on all of us.

We are calling for an end to tax-sponsored court resolutions that prevent democratic function through Parliament. I would ask you to think about the stringent safeguards built into our Constitution for changing the Constitution. Why are they so stringent? To protect against a few people, elected or non-elected, from altering the law at the whim of someone or some group wanting some change. The amending formula holds that citizens—many of them, and in fact a majority—must be from various provinces, and they are people who are required to amend the Constitution. Yet some of the government's funding has encouraged certain groups to take actions and lobby through courts so that we can have that Constitution altered through court cases.

The third point I make is that if this or a similar program were to be reinstated, we would then ask this: who is qualified to determine the “disadvantaged” groups, as the CCP calls them? I see no great authority in the list of names on the CCP website. Does one of them or all of them have special qualifications to determine who meets the criteria for disadvantaged persons or groups? The equality advisory committee lists certain people, but from a very limited number of segments of society. Are these people duly qualified to decide which group gets taxpayers' dollars?

As I mentioned earlier, funding one side of a case but not another side of the same challenge creates, not resolves, inequality. I can name numerous disadvantaged people from my perspective: seniors, the handicapped, children, religious groups, left-handed people like me who can't find left-handed scissors, Ford owners, even citizens who are in Canada illegally. Would all of these people get funding for their challenges? Who decides who's disadvantaged?

The government has made the right and proper decision to stop funding the creation of inequality through this program. No one has a charter right or a guarantee to taxpayers' dollars. In fact, the attitude of entitlement to tax dollars has to be stopped.

● (1655)

As the Canada Family Action Coalition, we respectfully ask that you, the committee, recommend in your report that no funding of inequality-producing programs be given any longer.

Thank you.

The Chair: Thank you.

First question, Ms. Keeper.

Ms. Tina Keeper (Churchill, Lib.): We only have five minutes, I believe. My first questions will be to all of the panellists.

I thank you for your presentations. It was interesting.

I would like a yes or no answer. Do you believe in the Canadian Charter of Rights and Freedoms?

Ms. Gwendolyn Landolt: It depends on how it's interpreted, obviously, and you only get one side arguing for it—

Ms. Tina Keeper: So it depends. Could we just keep our answers short, please?

Ms. Gwendolyn Landolt: It can't be answered. Are you still beating your husband? It's the same kind of question.

Ms. Tina Keeper: So it depends. Is that your answer?

Ms. Gwendolyn Landolt: It's a matter of how it's interpreted, indeed, yes. Many of the interpretations, because of the court challenges program, have given a wrong interpretation.

Ms. Tina Keeper: I'm not talking about the court challenges program; I'm asking about the Canadian Charter of Rights and Freedoms. Do you believe in that?

Ms. Gwendolyn Landolt: I believe it depends on how it's interpreted. That's my only response. I can't say it's perfect, because it depends on how they interpret the very vague words.

Ms. Tina Keeper: Thank you.

Mr. Carpay.

Mr. John Carpay: We all know that the charter has the force of law. I don't think it's something you can believe in or disbelieve in; it's a reality that the charter is present with us.

Ms. Tina Keeper: Thank you. I'm sorry, but we just have five minutes.

Dr. Charles McVety: I absolutely believe in the Charter of Rights and Freedoms. It is a great document; however, it is a living document and it is how you interpret it from one day to the next. As a clergyman, I am very upset with the issue that this fundamental freedom of religion has been really interpreted as freedom from religion, rather than freedom of religion, and that's one element I object to in its interpretation.

Ms. Tina Keeper: Thank you, Mr. McVety.

Mr. Rushfeldt.

Mr. Brian Rushfeldt: I would agree that I think we need the Charter of Rights and Freedoms and I do agree with the majority of it. I believe it has some holes, as we see when various things go to the courts and sometimes come back to Parliament, even. I don't know that we will ever have a perfect charter, but we certainly need a charter.

Ms. Tina Keeper: Thank you very much.

My second question is—and again, I'm sorry, but perhaps we could keep the answers short—do you believe in the concept of a court challenges program?

Ms. Gwendolyn Landolt: Absolutely not. It's not fair. You can't make it fair.

Ms. Tina Keeper: So you believe it couldn't be made fair.

Ms. Gwendolyn Landolt: It cannot.

Ms. Tina Keeper: Even though you've applied to the court challenges program, you don't believe in the concept of it?

Ms. Gwendolyn Landolt: No. The concept is wrong because you can't fund one side of a constitutional issue or one side of a moral value. The concept is totally impractical, and built into it inherently... it's discriminatory.

Ms. Tina Keeper: Can I ask why you applied to the program then?

Ms. Gwendolyn Landolt: Because we wanted to be on an equal playing field with LEAF, which has all the money, or with the homosexual groups. We had to get our voice heard. How else are we going to get—

Ms. Tina Keeper: So did you feel this program was the opportunity to have your voice heard?

Ms. Gwendolyn Landolt: No, we did not. We thought if they're going to fund one side, they should fund our side. We didn't think it was fair at all, but we wanted to show, by our application, that this was a discriminatory organization. Certainly, the documentation and all the letters we had back, which we have on record—and we have put some of it into this brief—indicate totally that it was a discriminatory organization. By our applying, we produced proof of the fact that this is a discriminatory organization.

● (1700)

Ms. Tina Keeper: Thank you.

Mr. John Carpay: Should this program exist at all? Is that the—?

Ms. Tina Keeper: Do you believe in the concept of the court challenges program?

Mr. John Carpay: No. As I've stated, there are many visions of equality, and it's wrong for the government to be making decisions about handing out tax dollars to promote some and not others.

I will add, because it's highly relevant, that Chief Mountain's challenge has succeeded in the absence of litigation funding because it's been supported by voluntary contributions from Canadians who believe in his cause, and that's the way it should be. He's more disadvantaged than any of these groups that have received CCP funding. He's a carpenter, he has no funds, and it's been going ahead because Canadians have contributed voluntarily.

Ms. Tina Keeper: Thank you.

Dr. Charles McVety: I do not believe in it. I think it's nonsensical for the government to pay people to sue itself.

Ms. Tina Keeper: Thank you.

Mr. Brian Rushfeldt: I would disagree with the concept in principle as well, because I don't believe we should be paying with tax dollars to encourage people to actually use the court process to resolve issues when we have a democratic Parliament to do that.

Ms. Tina Keeper: Could I ask one last question?

The Chair: You may ask one short one.

Ms. Tina Keeper: Maybe I'll ask this to Ms. Landolt.

We've heard about substantive equality today, and we've also heard about restrictive application of rights. Do you believe the work you've been doing falls within this category of restrictive application of rights?

Ms. Gwendolyn Landolt: Do I believe it has been what?

Ms. Tina Keeper: Do you believe it falls within the category of restrictive application of rights under the charter?

Ms. Gwendolyn Landolt: No, not at all. We've been very broad, and we're very inclusive. It's the radical feminists and the homosexuals who are being very exclusive. We've been just absolutely the opposite. We want to expand rights to families. We want to expand them for children. We want to expand rights.

Ms. Tina Keeper: And you also believe that the—

The Chair: This is your last question.

Ms. Tina Keeper: This is the last one.

You also believe that the legislation should remain in the realm of parliamentarians, yet you've called for a disbanding of the status of women committee. Could you explain that?

Ms. Gwendolyn Landolt: Yes, because the status of women committee funds, again, only an ideology that clearly and unequivocally does not represent women, because many of us women are not at all suffering discrimination. Some are. But they are funding an ideology, and that should be eliminated because it's totally and profoundly unfair and discriminatory.

The Chair: Okay. Thank you.

Mr. Kotto.

[*Translation*]

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

The violation of the basic rights of minorities by the majority is not part of Quebec's democratic vision. This is not in keeping with our values. Consequently, Mr. Chairman, we will simply say that the witnesses' statements speak for themselves. We have no questions, we will pass. Thank you.

[*English*]

The Chair: Mr. Angus.

Mr. Charlie Angus: Thank you, Mr. Chair.

Thank you for coming today. As I said to our earlier witness, there's been an interesting process over the last few days, because we are starting to talk about various visions of rights.

I've heard from the group basically two arguments. One, from Ms. Landolt, is that the program is ideological and corrupt and run with a homosexual agenda—which is her viewpoint, but I'm not interested —

Ms. Gwendolyn Landolt: And by feminists.

Mr. Charlie Angus: And feminists, sorry. I forgot the feminists.

I'm more interested in following up with the gentlemen here—and I don't want to be seen as anti-feminist—because the gentlemen have spoken more on the issue of rights and how we pursue rights in a democratic society. I'm going to just go through a bit of a process here and ask you a question about it, because I think it is a very interesting question.

Mr. Carpay, you said that equality between various groups can only be accomplished at the expense of true equality before the law for individuals. I studied the briefs in detail beforehand, because I've thought a lot about this.

In my region, I have a very large francophone population. Now francophone language rights and school rights—minority rights—are guaranteed by the courts, but those rights were never enacted unless people.... I mean, the francophone community continually had to go to court. They always had to go to court. I've often heard the argument that these rights are coming at the expense of everybody else. No offence. I'm not trying to imply anything here, but the people who would say that to me were anti-French. They didn't mind French rights as long as they spoke French at home, but they certainly didn't want to have the French getting rights in court or in the schools or anywhere else. So these rights had to be fought for.

The other issue, in terms of giving one group rights that other groups don't have.... I was a Catholic school board trustee, and we in Ontario fought for the right to maintain Catholic school board rights. Those were minority guarantees, and it was not up to the democratic will of Parliament—in this case, Queen's Park—to take those rights away from us. Those were guaranteed, historic rights. We were willing to fight for them in court, time and time again, because we accepted that notion.

Now last week we had a delegate from a deaf organization who came before us. I've heard this program portrayed as frivolous and as undermining other rights, but if we follow the logic I'm hearing.... Mr. Rushfeldt, you basically asked why we don't fund people with left-handed scissors or who drive Ford cars. This man was fighting for the right to access basic rights as a deaf person that he would never be able to get anywhere, and he had to go to court because they would not give him those rights. So the question that he is somehow above everybody else is an issue that I think is really interesting.

The question I would see here is about having a program that gives government financial assistance to selected applicants. I myself have a deaf child. Taking this on the broad scale, we had to fight for special funding for our deaf child to have access. I remember one time when the teacher said he wasn't going to accommodate her, that it interrupted his teaching. He asked my daughter why she didn't look beyond herself. What about the 26 hearing kids? Didn't she ever think about them? I remember thinking at that time that his concept of rights.... Well, sure, she was one student who was interfering with classroom teaching, because the teacher didn't want to accommodate her. As long as a 14-year-old deaf child has to accommodate a $60,000-a-year teacher, how is she ever going to be on the same playing field as those other students?

I'm taking the issue of court challenges to the broader issue, which we're discussing, of individual rights, because all individual rights are not equal, because some people can't access those rights.

The viewpoint I'm hearing is certainly not a viewpoint I support or that the New Democratic Party would support. I'm sure you would already have figured that out. I don't know if my colleagues support it, but it definitely is a viewpoint that the Conservative Party seems to support, the notion of individual rights versus collective rights.

So my question is quite simple, having done this long roundabout. Would you feel that you have a much better ear for your viewpoint under the leadership of Stephen Harper, who is a former head of the National Citizens' Coalition, than you would from a party like ours or the Bloc Québécois or the Liberals?

● (1705)

Dr. Charles McVety: First of all, I take offence to this sort of arrogance that states that the New Democrats or the Liberals or you, as opposed to us, somehow have a lock on the understanding of human rights—

Mr. Charlie Angus: I wasn't being arrogant. I said that I—

Dr. Charles McVety: —and that we're the only ones who do not care.

Mr. Charlie Angus: I said that I disagree.

The Chair: Let him answer.

Mr. Charlie Angus: I said I disagree, which I don't think is a problem for you. I'm asking if you would feel more comfortable with the Conservative viewpoint.

Dr. Charles McVety: No. We agree with human rights, and what we're arguing for is equality, not that all are equal but some are more equal than others. We are not arguing against the courts. We're not arguing against a process. That's why we have a political process whereby we stand up and fight for the rights of people. But we must be equal in this application, and that's what this court challenges program is not: equal.

It's ironic that something that proposes to act for people fighting for rights is so discriminatory at its core, and that's why we are against it.

Mr. Brian Rushfeldt: I think one of the things you mentioned was individual rights. Do we talk group rights, collective rights? If we get down to individual rights, then I honestly believe that there must be a much better way of resolving individual rights issues than by having a federal court challenges program funded by tax dollars and administered by a particular group of people.

I don't have the perfect solution to that, but certainly looking at how the court challenges program has worked since it was instituted, I would suggest that it is not a proper and right way to resolve such challenges as your daughter's trying to get a teacher to teach. Should that have to end up before a court challenges program funded by taxpayers? I don't believe so. I believe there have to be a lot better ways of doing it than that, and in fact I don't think we should be having a body stuck out there somewhere, whether it's at arm's length or has no connection, using tax dollars to take things like this to courts.

● (1710)

Mr. John Carpay: Regarding your question, would we feel better or have a better ear.... I don't understand your question, but I will comment on some of the...because it sounds as though you're asking us which way we vote in the federal election, which really—

Mr. Charlie Angus: No, no. I think I might have to clarify. Certainly from my Conservative colleagues, I hear a viewpoint that says that the exercise of creating access to specific rights for people who would be considered disadvantaged somehow comes at the expense of the majority. That, I think it would be fair to say, is a view that the New Democratic Party does not hold. And generally what I'm hearing before me—

The Chair: We have to speed up.

Mr. Charlie Angus: I'm asking if you believe that with this viewpoint, which, as Ms. Landolt would say, has not had much support politically, you feel that you are better heard by the present government. I don't think it's how you vote; I'm asking whether you feel that this is a government that's listening to your point of view. I think it's fairly straightforward.

Mr. John Carpay: I'm here today. I was invited to testify about whether or not the court challenges program should be funded, and I've given reasons why it should not be. I think your question falls outside of why I've been invited here today.

Regarding some of your examples on francophone minority rights and so on, Chief Mountain in British Columbia is a disadvantaged individual, and he was denied funding because he was told, the court challenges program said, he did not fit their vision of equality. The point is that there are different visions of equality; there are different visions of how we can best accommodate minority rights. I think it's far better if it's done without recourse to the courts, but even if it is done with recourse to the courts, there are different perspectives on exactly how courts should decide on minority rights issues. Even among judges, a lot of the Supreme Court of Canada decisions are split. They're split 5:4, 3:6, 8:1, what have you. So there are differing opinions.

Mr. Charlie Angus: You're not saying the same thing you said in your presentation.

The Chair: We have to end the questioning here, Mr. Angus, right now. You've had an extensive time.

Ms. Boucher.

Mr. Charlie Angus: You're A-1 in my books.

The Chair: Go ahead.

[*Translation*]

Mrs. Sylvie Boucher (Beauport—Limoilou, CPC): Good afternoon. Thank you for appearing before us today.

Our committee is trying to find solutions. I read your brief on the Court Challenges Program. You say that you think it is discriminatory for the various reasons you set out in your paper.

What solutions would you suggest to our committee, Mr. Carpay, that would help us standardize the principle of equality? What would be the best way of proceeding?

Everyone knows that the Court Challenges Program has been set aside, but if some day one government or another wanted to establish a particular system, how should it go about it in order to standardize the issue of equality, so that all those with issues to raise have an equal opportunity to do so?

Mr. John Carpay: That would be very difficult. One of the main problems with the Court Challenges Program was that it provided money to defend a single viewpoint, a single perspective. However, in many cases there are more than simply one or two points of view, there are several, particularly when the dispute involves education, the definition of marriage or the health care system. In the area of health care, I could mention the decision in the Chaouli case, which was quite complicated.

In my opinion, it is impossible to develop a government program that would provide funding equitably to defend various points of view. In addition, in each case, a decision would have to be made as to whether or not taxpayers' money would be provided to defend two, three or four different points of view and to how many people the money would be given.

It cannot be done. The government's decision to cut off the funding for this program was the best solution, because the program was intrinsically unfair.

● (1715)

[*English*]

The Chair: Mr. Fast.

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

Just to follow up on something Mr. Angus articulated, he made the statement that the difference between him and perhaps members of the Conservative Party was that the Conservative Party did not believe in providing access to the disadvantaged if that access excluded the majority. I believe that was the gist of what he said. I don't believe that's the argument I've heard today, and I don't think it's the argument I've heard elsewhere regarding the court challenges program. As I understand it, the concern is that if we're going to provide access to the courts to the disadvantaged, it should be with equality of access to all the disadvantaged.

My colleague just asked the question to Mr. Carpay, is there something that can be done to improve that? Let me ask each one of you a twofold question. Is it your position that there should be exclusion of access to the courts by the disadvantaged in our community? If not, are you supportive of developing other means, whether through a CCP program or some other means, of ensuring that the voices of the disadvantaged are heard and that the disadvantaged have equal access to the court system?

Ms. Gwendolyn Landolt: I would say the same thing we've had to.... We've had to dig into our own pockets. Because we have support from other people across the country, we've had to pay for it. If you have support from grassroots people, why can't you go to court? It's the same thing with Mr. Carpay on the aboriginal issue. They raised the money from the grassroots.

Why do we have to have government handouts when there isn't really the support of the public? And if you have the support of the public, you can go to court, as we've done for over 12 interventions, simply because we've asked our members for the money and they've produced it and we've done it—at great cost to us, but we've done it. Why can't other groups do it?

Mr. Angus, why can't people who are deaf do it? Why don't they access...? People with children with autism have gone to court. Why do we have to have the taxpayers handing out money to people?

Mr. Ed Fast: Mr. Carpay, Mr. McVety, and also Mr. Rushfeldt, if you could answer that quickly—

Mr. John Carpay: A very short answer is that I trust in the wisdom of Canadians and I trust in the compassion of Canadians to contribute to worthwhile court cases. Canadians know justice when they see it. What the court challenges program is—or hopefully was—is an affront, a statement of disbelief and distrust in the wisdom and compassion of Canadians to give voluntarily to a just cause.

Dr. Charles McVety: A colleague of my grandmother, Nellie McClung, fought for equality in this country of Canada in the persons case, for the equality of women to vote, for the equality for women to be persons, and she did it without a court challenges program. She did it without going to the Supreme Court. She did it by marching in the streets and appealing for equality to the members of this Parliament in this building. That is the level playing field; that is why this building exists. If we exercise that, then we have equality, instead of this selective equality put forward by an incestuous board deciding to give its own colleagues funding for their own pet projects.

Mr. Brian Rushfeldt: I would argue that there are no people excluded from accessing the courts right now. As we've heard from other witnesses, money can be raised. So I don't think tax money is the solution to it. There is no exclusion to anybody going to court for any reason at this stage, in my argument.

We have to at least debate the potential of moving away from using the courts to resolve the very things that we elect folks like you to do.

● (1720)

The Chair: Thank you.

Mr. Bélanger.

[*Translation*]

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

[*English*]

When the motion was put forward from the government to expand the list of people to hear from, I supported it. I believe it is worthwhile to listen to people who have different points of view. Because of that and similar things I've heard today and last Wednesday, I've given you notice, Mr. Chairman, that it would be very important for us to also hear from the court challenges program representatives themselves.

There have been many things said here today, questions asked, and some innuendo put on the table, so I'd like to hear from them. I'm giving notice that the motion is there so people are aware of it. If we're going to look into it, as we have with the presentations today, we should be willing to hear from them as well.

[*Translation*]

I am going to be talking about language rights. Mr. Angus raised the issue earlier, but I didn't hear the panellists' comments.

I am part of a linguistic minority in this country: I am a francophone who lives in Ontario. That has nothing to do with the Government of Canada or the fact that I am a member of Parliament. The Constitution recognizes linguistic rights, the right to education in one's mother tongue throughout the country, when numbers warrant, although it has happened that this right does not exist even where numbers do warrant, if we refer to section 133 of the Constitution Act.

Does your argument about equality also apply to the linguistic rights of the official language minorities in this country?

Mr. John Carpay: Yes. Those who want to take a case to the courts can ask others to support them voluntarily. I trust Canadians: they will give of their time voluntarily to defend a cause they feel is just.

I do understand your view, because I too am part of a linguistic minority: I was born in the Netherlands, and my mother tongue is Dutch. I have to fight much more than francophones do to teach my son Dutch. I am responsible—

Hon. Mauril Bélanger: With all due respect, Dutch is not one of this country's two official languages.

Mr. John Carpay: That is where the discrimination comes in!

Hon. Mauril Bélanger: You may call that discriminatory, but I must confess that we might not agree with you.

May I get an answer from the other panellists? Do you apply your approach to equality to linguistic rights as well?

[*English*]

Ms. Gwendolyn Landolt: I don't know why people cannot raise their own money for language rights. I totally support bilingualism, but I don't see why the government is paying out money when people themselves can raise the money. Why is the government into this court business anyway? It's not appropriate. Whether it's for language or equality rights, taxpayers' money can be put to better uses.

Dr. Charles McVety: I have a colleague who is originally from Korea. Should he have the same language rights in this country? This is where we get into the process where everyone is equal but some are more equal than others.

When we have a court challenges program like this making arbitrary decisions on who is going to get funding.... I don't see funding for Koreans to have equal access to language in this country. We have an organization that does not treat Canadians equally in their funding, therefore we should go back to a level playing field and allow all Canadians to put forward their particular language rights.

● (1725)

Mr. Brian Rushfeldt: My response is really a question. You're talking about language rights, your language rights specifically being denied in Ontario. If that is so, is it the Government of Canada that's denying those, or should the court action actually be taken against the people who are actually denying those rights?

Language is no different from any other right, in my opinion. If we're going to go to individual rights, then we have to cover all of the rights. But I'm not so sure we have a program that actually would address your Ontario language rights at the federal level. I'm not sure we should be going to a federal level.

Hon. Mauril Bélanger: It's called section 23 of the Charter of Rights and Freedoms, sir.

Mr. Brian Rushfeldt: I understand that, but I don't think it's necessarily the Government of Canada and certainly not the taxpayers of Canada who are denying your rights.

Hon. Mauril Bélanger: Okay. Have I a bit more time? A short one?

The Chair: Yes, short.

Hon. Mauril Bélanger: On the matter of judicial interventions or perhaps the judicial having too much authority, may I have a reaction to the concept that the courts in our country are essentially doing what Parliament has asked them to do when it established in the early 1980s the Charter of Rights and Freedoms and expected the courts, right up to the Supreme Court, to interpret these, and kept the ability to have the final say with the notwithstanding clause.

I heard comments that indeed we have judicial activism here and they're taking over the authority of Parliament. My sense is that as a legislator I don't feel threatened by the courts, knowing that if the courts do something that as a legislator I could not support, I have the ability to invoke the notwithstanding clause. Would you have some reactions to that view of the judicial versus the legislature?

Ms. Gwendolyn Landolt: Yes. What's happened since the charter came in, actually the equality section in 1985 and the charter in 1982, is that the court has taken more and more authority and widened its jurisdiction. It was never intended to be what it has turned out to be, and it's usurping the role of Parliament.

Parliament was to represent and reflect the views of the people. You have nine appointed people on the Supreme Court of Canada who are..... I can tell you about the Schachter case, for example. I can give you a whole bunch of cases that indicate the court has accrued to itself far more jurisdiction than the wording of the charter actually conveyed to them.

I think we are threatened as a democracy, that all these very profound issues are being decided according to—I'm afraid to say it, but I'll say it—the ideology and the philosophy of nine appointed individuals, when it should be for Parliament to speak. Parliament is set up to speak for people. It has the access to the research, I've said before. It has access to all the social facts, which is never available to the court. Also, Parliament can make—

The Chair: It's a short answer, please.

Ms. Gwendolyn Landolt: —compromises, which the court can't do. It's black or white.

So I think it has usurped it. I think the cases right from 1985 on, when the equality section came into effect, have gradually given more and more power to the court by their own decisions and widened their jurisdiction, which was never the intention at the time the charter was brought in, in 1982.

Dr. Charles McVety: I think everyone respects the position of the court to interpret the law, and that must be respected in our country. However, we do not respect the issue of the courts writing the laws. They are not hired to write laws; they are hired to interpret laws. Unfortunately, in some of these instances, the courts have over-stepped their mandates.

Mr. John Carpay: To the question, are the courts doing what Parliament asked them to do, I would say, generally, yes, and because of that courts have become very powerful, far more so than pre-1982, and the court challenges program, through its biased funding, has distorted the legal process.

Mr. Brian Rushfeldt: I would pretty much agree with that. I think the distortion of the process itself...and maybe there needs to be some dialogue between legislators and courts to bring the perspective back to who actually does make the decisions and how do the discrepancies unfold.

● (1730)

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

The Chair: Thank you.

I must say thank you very much for appearing today and answering the questions as you have.

We'll take a short break, and then we have to come back to deal with some motions.

● _____ (Pause) _____

●

● (1735)

The Chair: We'll call the meeting to order again, if we could, please. We'll carry on with our committee business.

We have before us four notices of motion from Maka Kotto, if we can move them.

Hon. Mauril Bélanger: We may have to deal with it on Wednesday—

The Chair: I think we're going to have to deal with it on Wednesday.

Hon. Mauril Bélanger: —unless there's willingness to deal with it today.

The Chair: I don't know whether we'll have time.

To start with, how do you want to proceed with these?

[*Translation*]

Mr. Maka Kotto: If possible, I would like to give priority to the third and first, and cover the rest subsequently.

[*English*]

The Chair: So we're going to deal with, first:

> Whereas it should be possible to develop film production everywhere;
>
> Whereas all the decision-making for the television industry in Quebec is centred in Montréal;
>
> Whereas only 3% of television production in Quebec takes place outside Montréal;
>
> Whereas there is a shortage of regional development;
>
> Pursuant to Standing Order 108(2), the Standing Committee on Canadian Heritage recommends that the government, as a matter of urgency, take adequate measures to stimulate regional film and television production, in Quebec and Canada, and to ensure that an enhanced tax credit is granted for film production outside the major centres; and that the Chair report to the House.

That is the motion before us.

Mr. Kotto, do you want to speak to the motion first, or Mr. Bélanger?

Mr. Bélanger.

[*Translation*]

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

I suppose the motion refers to television or film production in French, but that is not stated.

Mr. Maka Kotto: It refers to production generally. It is true that no reference is made to language.

Hon. Mauril Bélanger: If that is the case, the motion is inaccurate.

Mr. Maka Kotto: The motion states: "Whereas it should be possible to develop film production everywhere." The motion refers to production in Quebec. It is not necessary to state whether it is in English or in French.

Hon. Mauril Bélanger: The point I'm trying to make here is that the same criticism could be made with respect to the two other major urban centres in Canada—Toronto and Vancouver. The same phenomenon exists there. Outside of Montreal, Vancouver, or Toronto, that is not the case. Halifax is an exception. I had understood that the motion referred to television productions in French here. Otherwise, we would have to rework the motion.

I have no basic objection to the motion before us, Mr. Chairman. However, we need to know exactly to what it refers.

Mr. Maka Kotto: In this motion, we are taking into consideration the fact that the decision-making centres are in Montreal. The projects developed in Montreal are the priority projects for the financial backers. However, if the idea is to stimulate production in the regions, we could suggest incentives for people who have to deal with the fact that in order to exist as producers, they must work in Montreal.

● (1740)

Hon. Mauril Bélanger: But then we are talking about productions in French. Otherwise, with all due respect, we cannot say that only 3% of television productions are made outside Montreal. That is not correct.

Mr. Maka Kotto: I'm referring to production generally. It could happen that an anglophone producer in Sherbrooke might set up a production company and benefit from the incentives offered by Telefilm Canada. My intention is not to create a linguistic divide. I am simply talking about production here.

In other words, we should also take into account the fact that some productions where most of the creative artistic work is francophone are developed in English and then dubbed into French for the French-language market, because there are often more resources for anglophone productions than francophone productions.

[*English*]

The Chair: Mr. Angus.

Mr. Charlie Angus: I definitely, in principle, support this.

I have two questions. One is, I think we need to clarify that this is a situation similar to what exists in other parts of the country. We have a few large urban centres where production is centred, and regional development isn't happening. That could be amended at “Whereas all the decision-making for the television industry in Quebec is centred in Montréal” by adding “and a similar situation exists in other urban and rural regions of Canada”. That would include that.

I have a question on the final paragraph. We know that the heritage ministry has the film report. I wonder whether it would be better to revise to say:

> Pursuant to Standing Order 108(2), the Standing Committee on Canadian Heritage recommends that the government, as a matter of urgency, look at a strategy that would provide adequate measures to stimulate regional film and television production, in regions outside the large urban centres, including looking at enhanced tax credits for film production....

My only concern is that we were waiting to hear back from them. They were still looking at the tax credit issue. I'd like to say that we're asking them to look at the issue of tax credits as a way of developing rural filmmaking, as opposed to saying that we're “insisting”.

It would be a friendly amendment.

The Chair: Mr. Kotto.

[*Translation*]

Mr. Maka Kotto: Mr. Chairman, to provide grist for Mr. Angus' mill, I would say that such a provision exists in Quebec. Where it does not exist is at Telefilm Canada, thus at the Department of Canadian Heritage.

[*English*]

The Chair: Okay.

Mr. Warkentin.

Mr. Chris Warkentin (Peace River, CPC): I don't think there's any question of the importance of a television industry in Quebec and throughout Canada.

My only question would be to the committee, that without some type of additional consultation, I'm wondering whether we're putting forward an idea that would see us distribute the resources we currently have in a way that would effectively diminish the capacity of this industry to continue in any ways that it's already been able to develop. I'm quite concerned that we ensure that we have a strong and competitive industry that is established. I think we're taking baby steps in that direction, but I'm concerned that if we start to push it out of the major centres, we might be spreading it too thin.

I won't speak on behalf of the minister, but I know she's met with a number of organizations and is working in that direction, and she hopes we might be able to have a stronger industry, both in the major centres and throughout Canada as well.

I'd just ask the question, are we moving in a direction that would see the resources we currently have spread too thinly and would diminish the effectiveness we currently have? I don't know the answer, but I'm wondering whether we as a committee want to consider that.

The Chair: Mr. Simms.

Mr. Scott Simms: I'll make my comments very quickly, because I think Mr. Angus covered a lot of my points.

On that note, a lot of this was addressed in the film study we did in the last session. If you look to it, you'll see that tax credits really are some sort of vanguard that was originally developed to help do development outside the major centres. We have a film industry in my province, but it's intrinsically tied primarily to Toronto. So the word “Montreal” in there is of some concern, because, really, Montreal is a very small portion of it.

As far as tax credits go, if there is some way, as Mr. Angus pointed out, to refer back to that study, it does deal with them, in the hearings we had in Toronto and around the table. They talked about some of the concerns Mr. Warkentin had.

● (1745)

The Chair: Yes, I understand that. I was part of that study also. Sometimes it's hard to take some of the infrastructure that is already there out of some of the centres.

Hon. Mauril Bélanger: Could I possibly ask Mr. Kotto whether he would be willing to rework this one a bit, in consultation with some members—because I think there is a general sense around the table that we shouldn't be discouraging regional development outside the larger centres—taking into account some of the comments made by Mr. Warkentin and Mr. Angus? Would he be prepared to rework it a bit? I was hoping that perhaps Mr. Kotto would—

The Chair: Mr. Angus.

Mr. Charlie Angus: Give me 30 seconds here, colleagues, and maybe we can get this dealt with. I think it's close.

The Chair: While you're working on it, Mr. Angus, we'll move to motion number one, another motion by Mr. Kotto:

> Whereas the resounding success of feature films in Quebec will not continue unless new sources of funding are injected into French-language film productions;
>
> Whereas there has been a permanent $2 million cut in the Feature Film Fund and Telefilm Canada’s capacity to invest has been reduced by the impact of inflation;
>
> Whereas the cost of production has increased incessantly, as have the funding applications to Telefilm;
>
> Pursuant to Standing Order 108(2), the Standing Committee on Canadian Heritage recommends that the government, as a matter of urgency, allocate a recurring amount of $50 million to the Feature Film Fund, as called for by the industry; and that the chair report to the House.

Go ahead, Mr. Bélanger.

[*Translation*]

Hon. Mauril Bélanger: I would like to move an amendment, Mr. Chairman.

[*English*]

In English, I would move that it read:

> Pursuant to Standing Order 108(2), the Standing Committee on Canadian Heritage recommends that the government, as a matter of urgency, allocate an adequate recurring amount to the Feature Film Fund....

In other words, it would strike out the reference to the exact $50 million.

I would move that as an amendment to the motion, Mr. Chairman.

The Chair: Go ahead, Mr. Abbott.

Mr. Jim Abbott: Thank you, Mr. Chairman.

The government members have absolutely no intention of putting a stick in the spokes of the committee on this or any other motion, but if it is passed by the committee, I think we would want it to be clear that the government members did not vote in favour of any of these motions. In other words, if the motion is passed by the committee, so be it; if it's reported to the House, so be it. But I don't want it to be inferred that the government members were unanimous with the other committee members.

The Chair: Okay, that being said—

Hon. Mauril Bélanger: I wonder if this as solid as the last time we had a statement that members would not be sitting here if we had audiences or hearings on the court challenges program.

The Chair: Mr. Kotto, please go ahead.

[*Translation*]

Mr. Maka Kotto: Mr. Bélanger has moved an amendment to the motion, but no one asked me my opinion on that. Nevertheless, I will give it to you. I agree with his amendment 100%.

[*English*]

The Chair: Go ahead.

[*Translation*]

Mr. Maka Kotto: That is all I wanted to say.

[*English*]

The Chair: Okay. Thank you.

Mr. Angus, have you completed your other one?

Mr. Charlie Angus: I'm—

Hon. Mauril Bélanger: Is this adopted?

● (1750)

The Chair: On the friendly amendment, I would call for a vote, then—

[*Translation*]

Mr. Luc Malo (Verchères—Les Patriotes, BQ): I would ask for a recorded vote, Mr. Chairman.

[*English*]

The Chair: Do you mean you would like a recorded vote?

[*Translation*]

Mr. Luc Malo: Please.

[*English*]

Hon. Mauril Bélanger: It would be on the motion as amended. It's a friendly amendment.

The Chair: I won't read the whole thing. The last paragraph of the friendly amendment now reads:

> Pursuant to Standing Order 108(2), the Standing Committee on Canadian Heritage recommends that the government, as a matter of urgency, allocate an adequate recurring amount to the Feature Film Fund, as called for by the industry; and that the Chair report to the House.

This is a recorded vote.

(Motion agreed to: yeas 7; nays 4)

The Chair: Mr. Angus, are you going to read your friendly amendment into the record?

Mr. Charlie Angus: Yes. My friendly amendment—as opposed to friendly fire—reads that:

> Whereas it should be possible to develop film production everywhere;
>
> Whereas all the decision-making for the television industry in Quebec is centred in Montréal and a similar situation exists in other regions of Canada;

—and I'm not sure if we should go with the next line or not, since the previous line has already dealt with it—

> Whereas there is a shortage of regional development;
>
> Pursuant to Standing Order 108(2), the Standing Committee on Canadian Heritage, as a matter of urgency, advise the government of the need to develop a strategy that would provide adequate measures to stimulate regional production outside the large urban centres, including looking at the use of enhanced tax credits for film production outside the urban centres.

The Chair: Are you okay with that, Mr. Kotto?

Mr. Maka Kotto: Yes.

The Chair: We'll vote on the amended motion.

Do you want another recorded vote?

Some hon. members: Yes.

(Motion agreed to: yeas 7; nays 4)

The Chair: Now we'll go to motion two, that:

> Whereas Telefilm Canada must react more quickly to the new realities of the new media market;
>
> Whereas the growth of the Canada New Media Fund is crucial for the future of Canadian content in this field;
>
> Pursuant to Standing Order 108(2), the Standing Committee on Canadian Heritage recommends that the government, as a matter of urgency, provide adequate financial support in this sector, in an effort to see it attain its full potential, and also take adequate legislative measures to allow Telefilm Canada to operate with more flexibility; and that the Chair report to the House.

You've heard the motion. Any dialogue?

(Motion agreed to: yeas 7; nays 4)

● (1755)

The Chair: Now we'll move to motion four.

Mr. Kotto.

[*Translation*]

Mr. Maka Kotto: Mr. Chairman, Mr. Bélanger has suggested that representatives from the Court Challenges Program appear next Wednesday. This motion could wait until then, and in the meantime, we could debate the motion about inviting these individuals to appear before the committee.

[*English*]

The Chair: Unless we have unanimous consent to bring this motion forward—the motion was just put forward today—I suggest we deal with it on Wednesday. It's almost 6 o'clock now.

We already have our witnesses for our Wednesday meeting, and provided that the House is still sitting on Wednesday, we will have those witnesses here.

[*Translation*]

Hon. Mauril Bélanger: Mr. Chairman, I appreciate that Mr. Kotto has offered to postpone his fourth motion, and I will have some other comments when we get to that matter. I know that you do not have unanimous consent to deal with the motion I put forward today about inviting representatives from the Court Challenges Program.

Our witnesses have already been invited and have confirmed that they will be here. Can we agree to meet on Wednesday afternoon, whether or not Parliament is sitting?

[*English*]

The Chair: Has anybody else anything to say on that?

Personally, I don't have a problem because they are already coming, and we held our last meeting in the last session after the House was recessed. So I see no reason why we can't for this particular thing.

Mr. Chris Warkentin: We're just talking about Wednesday, is that correct?

The Chair: That's Wednesday, yes.

Hon. Mauril Bélanger: Then we will deal with that motion on Wednesday.

The Chair: Yes.

[*Translation*]

Hon. Mauril Bélanger: Mr. Chairman, I am going to give the clerk a copy of the policy on conflicts of interest for the Court Challenges Program and a copy of the commitment that all participants must sign. I would ask the clerk to distribute these documents to committee members. I think it would be useful for all members to take a look at these documents in preparation for a possible appearance before the committee by people representing this program.

Thank you.

[*English*]

The Chair: Thank you.

With that, the meeting is adjourned.

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