House of Commons
CANADA

Standing Committee on Canadian Heritage

CHPC • NUMBER 029 • 1st SESSION • 39th PARLIAMENT

EVIDENCE

Wednesday, December 13, 2006

Chair

Mr. Gary Schellenberger

Standing Committee on Canadian Heritage

Wednesday, December 13, 2006

● (1535)

[*English*]

The Chair (Mr. Gary Schellenberger (Perth—Wellington, CPC)): I call to order meeting 29 of the Standing Committee on Canadian Heritage.

Today we do have some witnesses here, but prior to entertaining the witnesses, I've been requested by Mr. Bélanger that we might do just a little committee business first and deal with his motion from December 11 that representatives of the court challenges program be invited to appear before the Standing Committee on Canadian Heritage.

Before we deal with that, there's also been another request from an individual just today to come before this committee. I was wondering if it could be done on the same day. That would be about the only way we could handle this other request. I'm just looking for some direction on this.

Hon. Mauril Bélanger (Ottawa—Vanier, Lib.): Mr. Chairman, I don't know who the other one is, so I'm not prepared to blindly say yea or nay. All the other witnesses were suggestions of members of the committee we had agreed upon. Not knowing who this one is, I find it difficult to ask members to agree. Perhaps notice should be given as to whether it's a member of the committee who is making that recommendation and we can dispose of it.

The Chair: Okay. It's from a Maria York, president, Canadian Council for the Rights of Injured Workers. That's who has made the request through the clerk and myself here today.

Again, how do you want me to handle that?

Hon. Mauril Bélanger: Mr. Chairman, I put a motion forward with due notice. My sense is—and I didn't think we would be getting into a debate here—that it would be important that a meeting be given to the court challenges program. The reason I put forward this motion is there have been a number of things said that I think need to be cleared up, and they, if anyone, would be in a position to answer some of the questions that have arisen. That's why I put the motion forward, so that we can have a full picture.

The Chair: Okay.

Mr. Abbott.

Mr. Jim Abbott (Kootenay—Columbia, CPC): As a point of clarification, are we talking about officials from the department, or are we talking about people who were on the committee?

Hon. Mauril Bélanger: I'm saying representatives of the court challenges program.

Mr. Jim Abbott: But what does that mean?

Hon. Mauril Bélanger: That is not the departmental officials, obviously, because the court challenges program is a stand-alone, arm's-length program with its own board. They will determine who they wish to have as their representatives.

Mr. Jim Abbott: Good.

Thank you, Chair.

The Chair: We will vote on Mr. Bélanger's motion that representatives of the court challenges program be invited to appear before the Standing Committee on Canadian Heritage. That meeting then would be Tuesday, January 30, 2007.

(Motion agreed to on division)

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

The Chair: Welcome to our witnesses here today, and thank you for coming. I don't know who will go first, but I will go by order.

Mr. Kevin Rollason, would you like to make your presentation, sir, please?

● (1540)

Mr. Kevin Rollason (As an Individual): Thank you very much for allowing my daughter and myself to appear before this committee.

I believe it's important for politicians to look into the faces of the people who are affected by the laws this country passes. That's why my family paid for my daughter to come down here. We've since found we may have a little bit of a refund, which is wonderful.

Unlike the other people who have given submissions before you, I'm not the head or representative of a group or organization that has been helped or is being helped by the court challenges of Canada program. I'm simply here as the father of a child, and not just any child; as you can see, I'm the parent of nine-year old Mary Rollason-MacAulay, a child who was born with multiple disabilities and medical issues, a child who's only alive today because of doctors and her own strong will to live. She's a child who has been helped by the court challenges of Canada program.

It is for that reason that both Mary and I have travelled all the way from Winnipeg to Ottawa on behalf of our family and all the families with children with disabilities to ask for your support in continuing to fund and keep in existence the court challenges of Canada program.

When I was denied the bulk of my parental leave benefits in 1998, I was forced to go back to work after only receiving four weeks of benefits through employment insurance. What the court challenges program enabled our family to do was to hire a lawyer to challenge the validity of the federal legislation under section 15 of the Charter of Rights and Freedoms on the basis of age, disability, and family status. The legislated changes to the Unemployment Insurance Act at that time resulted in the loss of the bulk of my parental leave at the time when it was most needed, when Mary came home from hospital.

Instead of receiving my fifteen weeks of benefits when my severely disabled child came home from hospital at ten and a half months of age, the new Employment Insurance Act limited me to taking that time within a year of her birth, resulting in the loss of eleven weeks of benefits. I had, on the advice of medical professionals, waited until Mary got home from the hospital to take my leave because that was when it was deemed to be when Mary would need it the most.

Our constitutional challenge against the employment insurance program was successful, but without the help of funding from the court challenges program, our constitutional challenge against the act would most likely not have been successful. We not only were successful in our challenge on all three grounds of discrimination, but just as important, as a result of the challenge being launched the federal government of the day amended the act prior to the hearing.

Last September, in announcing the plan to slash $1 billion from the federal budget, of which cutting the court challenges program represented $5.6 million of the savings, Treasury Board President John Baird was quoted in the media as saying the program wasn't meeting the priorities of Canadians or providing value for money. As well, in talking specifically about the court challenges program, Mr. Baird said the federal government was no longer interested in funding opposition to legislation it believes is right.

I ask all of you to look at Mary and along with her all of the Marys with disabilities across the country, whether they are children or adults, and I ask you to ask yourselves whether her constitutional rights aren't meeting the priorities of Canadians, whether fighting the discrimination against Mary and others with disabilities is not providing value for money, and above all, whether any of you really believe that there will never be a future law passed that will not discriminate against Mary and others with disabilities across the country.

With our family's situation, it didn't matter that our situation and arguments actually persuaded the federal government to change the law to cover people like us before we had our day in court. Even after the government amended the legislation, because it wasn't retroactive, it still continued to fight our challenge to the very end. That's why Canadians needs the court challenges program.

Do I really think the federal government purposely meant to discriminate against newborns with disabilities? No. Do I think the federal government purposely changed the law to discriminate against newborns with disabilities? No. But do I think it's extremely hard for politicians and bureaucrats to know all of the ramifications that may come from their decisions to amend or create laws? Yes. As the umpire who heard our case said in his decision, and I quote:

> [The commission]...by oversight or otherwise, strayed from its legislative objectives. This, in the circumstances, is not surprising. Legislating in the area of social legislation is both difficult and challenging. Court challenges multiply; pressure groups and social changes place considerable pressure and strain not only on Government but also upon Senior Public Servants who struggle to keep abreast of all developments.

It's not wrong for politicians and bureaucrats to admit mistakes and infringements on constitutional rights. Unfortunately, in our case the government never did admit that what they did was wrong, thus forcing us to proceed with the challenge. What is wrong is not to allow individual Canadians who have had their rights infringed to be able to make and mount a reasonable and meaningful constitutional challenge in a court. That's especially so when many of us are individuals who are still living with the discrimination. We are trying to fight for our constitutional rights, while still carrying on with our lives.

● (1545)

Mary's needs did not end the day she was released from hospital when she was ten and a half months old. They didn't end when she turned two, and they certainly haven't ended now.

If I'd had to continue the constitutional challenge by myself without the lawyer that I was able to hire through funding by the court challenges program, every minute, every day, every week that I would have had to spend to mount that challenge would have been time taken away from my daughter and our fight, literally, to keep her alive. The court challenges program put me on equal footing with the federal government. Whether I was with a lawyer or not, the federal government had a team of lawyers fighting against me, bringing to bear the full resources of the state. What individual without legal training could possibly have made a meaningful defence of the issue?

Even with a lawyer, the legal battles waged so long, as many do. Mary was in elementary school, enrolled in grade one, when the decision was finally made that the government's employment insurance program had discriminated against my daughter and me through her disability. But the length of the legal battle didn't bother us, because it was never our sole purpose to fight for just our family's rights. As we have discovered during our nine years of being intimately involved with disability issues, when an issue affects one person, there are many more who are also affected.

In our family, Mary and I were not the only ones affected by the employment insurance decision. Because I could not be home but had to work, it meant my wife actually bore the brunt of the EI decision. At that time, Mary was connected by a tube to a feeding machine 24 hours a day, seven days a week, and there were numerous times during the day when she could have aspirated into her lungs and she could have died. My wife and I were taught how to do CPR and were given a portable suction machine. Mary could not be left alone any minute of the day or night. Someone had to be awake with her 24 hours a day. Our eventual success and our eventual repayment to compensate me for the benefits lost was still put to good use earlier this year when Mary required more open-heart surgery in Toronto and my wife and I were off work for 11 weeks.

From where we sit, we believe the court challenges program has become a political football, subject to the ideological whims of the political party in government, but the rights of Canadians can be infringed no matter which party is in power. It was actually a Liberal government that changed the unemployment insurance law that had caused my family to be discriminated against. It could just as easily have been a Conservative government, an NDP government, or a motion originated by the Bloc Québécois. To put it bluntly, discrimination can originate anywhere in the political spectrum.

In our situation, we were fighting for 11 weeks of parental leave. In terms of benefits, I lost about $6,000. On an individual basis, it would have made no sense for us to pay a lawyer more than $70,000 to fight the discrimination, unless we were independently wealthy or crazy, and I can assure you we are neither. But as with many other issues of disability, we knew there were other Marys out there, children who were born with such potentially fatal medical problems that their parents should have the right to choose whether they use the benefits while the child is still in hospital or at home. That's the beauty of the court challenges program: they only take on constitutional challenges that can affect many people across the land. As the umpire who decided our case, who didn't know we had funding through the court challenges program, said:

> [Rollason] brought a deficiency to the attention of Parliament which, while it has since been remedied, he should not have to bear the costs of doing so in order to obtain the benefits to which he was entitled.

Unless this program is reinstated and retained, constitutional challenges will be something only the richest in society can afford. That's wrong. Discrimination cuts across all classes and incomes. I never would have dreamt I'd ever have my rights infringed upon. Our family simply became the victim of discrimination because a child was born and she had disabilities. It's sad to know that the future parents of a disabled child, or anybody with disabilities, may not have the court challenges program to turn to unless you help keep it. Like me, other Canadians could only be the birth of a child away from discrimination. Don't take away the federal program that helped us and all the Canadians who are in our situation, both myself and my daughter Mary and my family.

Thank you for your time and your attention.

I'm assuming you might have copies. There's also a brief from my wife, Gail MacAulay, that should be part of your package. I'd urge you all to read it. It's from mummy's point of view, and she's pretty straight to the point as to just what the brunt was that she faced when I was away.

Thank you.

The Chair: Great. Thank you very much.

Our next presentation is from Louise Aucoin.

● (1550)

[*Translation*]

Ms. Louise Aucoin (President, Federation of Associations of French-speaking Jurists of Common Law): Good morning, Mr. Chairman and members of the committee.

My name is Louise Aucoin and I am the President of the Federation of Associations of French-speaking Jurists of common law, the FAFSJC.

I thank this committee for its invitation to speak to you about the Court Challenges Program of Canada.

The FAFSJC includes seven associations of French-speaking jurists and represents approximately 1,200 jurists. The FAFSJC promotes and defends the language rights of francophone minorities in the area of Canadian justice. The FAFSJC is also a member of the Fédération des communautés francophones et acadienne du Canada, the FCFA.

Firstly, the FAFSJC wishes to make clear that it fully supports the statements made in the written submission tabled last week by the FCFA, and in particular those made on the decisive role that the CCP plays in fostering the development of francophone minorities as well as the full recognition and promotion of the French language in Canadian society. In fact, access to justice in French and judicial bilingualism has progressed significantly, thanks to court challenges supported by the CCP, such as the Beaulac and Donnie Doucet cases. By abolishing CCP funding, we run the risk of stagnating, at best, or losing ground in the area of language rights, at worse. This does not augur well for part VII of the Official Languages Act nor for improving access to justice in French outside Quebec.

The FAFSJC is deeply concerned over the impact abolishing funding will have on the ability of francophone and Acadian communities to defend their constitutional rights. In fact, we are already hearing about certain francophone groups and individuals who no longer have the means to defend their language rights before the courts. Their situation can be summarized as follows: no funding means no access, means no defence of language rights, and less progress made in their respective fields. In fact, the FAFSJC has already fallen victim to the situation, because for financial reasons, we will be unable to even think about intervening in the Paulin case, which will probably be brought before the Supreme Court of Canada in 2007. The case deals with the role of the RCMP in New Brunswick and will most likely lead to discussion on the RCMP's role throughout Canada.

Abolishing the Court Challenges Program also diminishes the benefits of Canadian citizenship, particularly for linguistic minorities in Canada. Why? Because a francophone who chooses to live in a province where he will be a minority may be forced to pay out-of-pocket in order to make sure that his constitutional language rights are respected. In fact, this is already costing many people hundreds of thousands of dollars. A minority francophone may have language rights, on condition that he is willing to pay to have them respected, which may cost hundreds of thousands of dollars, or whatever it costs to have his case heard before the courts.

In addition to giving preference to Quebec francophone groups, these measures do nothing to foster respect for francophone language rights throughout the entire country. On the contrary, the elimination of CCP funding is giving francophone minorities the following message: it's your language, it's your problem, if you want your language rights to be protected you will have to pay for it. The issue is not considered a matter of public interest which is deserving of federal funding.

● (1555)

While the abolition of CCP funding means that some groups or individuals will not be receiving funds, the FAFSJC endorses broadening the mandate of the CCP so long as this action is not detrimental to the disadvantaged and linguistic minorities, as Mr. Rollason said so eloquently. However, it is not by abolishing the disadvantaged and linguistic minorities' access to justice that such a debate will be held.

If abolishing CCP funding is based on the principle that the federal government should not contribute to lawsuits brought against itself, then the tax system, among other things, should also be reformed. For example, the media can claim business expenses and thus reduce their taxes in constitutional cases against the federal government. Therefore, if the federal government is already indirectly subsidizing the protection of the constitutional rights of certain corporations through the tax system, why shouldn't the government also assist Canadian citizens, including francophone minorities, to protect their rights?

The FAFSJC does not believe that the benefits of Canadian citizenship should accrue exclusively to the well-off and to francophone and anglophone majorities.

Thank you. I would be pleased to answer your questions.

[*English*]

The Chair: Thank you.

Ms. Tie is next.

Mrs. Chantal Tie (Member, Law Program Committee, Women's Legal Education and Action Fund): My name is Chantal Tie. Thank you very much for inviting me here today. I am here as a representative of LEAF, the Women's Legal Education and Action Fund. We have historically been a significant beneficiary of the court challenges funds.

I sat for seven years on the national legal committee of LEAF, which determines the litigation, applies for funding, and determines the litigation strategy. I was then nominated by LEAF to run for the board of directors of the court challenges program. I took a leave from the national legal committee and served for seven years on the board of the court challenges program, four of those years as chairman of the board. I am the most recent past chair of the board of directors of the court challenges program, and I am now recently back on the national legal committee of LEAF.

I appeared before House of Commons Standing Committee on Justice and Human Rights about two weeks ago, following a presentation by the Canadian Taxpayers Federation on the court challenges program, and was astonished to hear that group say that eliminating the court challenges program was promoting equality because it levelled the playing field. I'd like to address my comments to that comment, which I must say astounded me.

It astounded me for a number of reasons. Primarily, in essence, it's equality with a vengeance, as the Supreme Court of Canada has said on occasion. It also presumes that treating everyone the same is what equality is all about. That is, quite frankly, an outdated notion, and one that was prevalent in the 1960s. It is a thinking that takes us back forty years, in complete ignorance of the developments in human rights and equality legislation in the past forty years. It is a vision of equality that says that when you treat everyone the same, that's all you need to do. Treating everyone the same is called "formal equality". Unfortunately, everyone is not similarly situated. One must look at the impact of the decisions upon affected people.

That statement by the Canadian Taxpayers Federation, which seemed to find favour with government representatives, left me with two possible conclusions. Either those members who supported that decision or that approach clearly have no understanding of what equality is and have no knowledge of development in equality jurisprudence and thinking in the last forty years, or they do understand the difference and have deliberately engaged in doublespeak to confuse the issues that are before us and, in effect, merely disagree with the vision.

What is the vision? The vision is not some invention of LEAF or the court challenges program, although we do admit that we may have contributed toward the building of that vision. It is the vision that the Supreme Court of Canada has said our charter, which is the law of this land, mandates. It is a substantive equality. If you apply that vision to the elimination of this program, it cannot be justified under any definition of equality.

What does this program do? I think Mr. Rollason's comments were very apt. He thought it was important to show you the face of someone who has benefited from the court challenges program. The court challenges program brings the faces and the voices of disenfranchised, marginalized, and discriminated-against people in this country before the court. Unfortunately, judges labour under the same handicap that parliamentarians may labour under as well, and that is that they do not have the lived experience of disadvantage that needs to come before the courts when the courts are adjudicating rights under the charter.

● (1600)

It is absolutely essential that those voices be heard, and the court challenges program provides extremely modest funding to groups who are identified as disadvantaged in our charter, so that their voices can be heard. Without their voices, we will have a thin and impoverished view of equality. Unfortunately, we may end up with a view of equality from back in the 1960s that says that treating everyone the same is equality.

It's also extremely important that the current structure, or a structure very similar to the current structure of the court challenges program, be maintained. That structure gives the disadvantaged groups themselves significant say in the priorities and the direction and allocation of funds, on a test-case basis, to litigation.

People who suffer disadvantage must play an important and active role in remedying that disadvantage. Eliminating funding to the program does none of those things. It silences voices; it makes our Supreme Court a bastion of the rich and the privileged, not a defender of the rights of the disadvantaged.

That's not what our charter says. Our charter says that we are to have those rights. If we have no access to the courts, we will not enjoy any of those rights.

Thank you.

The Chair: Thank you very much.

Mr. Bélanger.

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

Thank you very much, all of you, for your presentations. *Merci beaucoup*.

I have a very quick question that I've asked of all of our witnesses who have had support from the court challenges program. In determining the choice of your lawyers, once you had funding, was the political affiliation of these lawyers a matter of any consideration?

Mrs. Chantal Tie: I can speak for LEAF. We don't even know the political affiliation of our lawyers. It is completely immaterial.

The way we choose our lawyers, the way we choose our cases, is very much in line with the contribution agreement for the court challenges program itself, which is that the position we take must advance women's equality. That's not an ideological concept; that is, we start out, and our whole process involves consultations with the groups who are affected—academic consultations, subcommittees with academics, people who have the lived experience, and litigators.

It's out of that process that we decide what is in the economic interests of women, what is in their physical security interests. We don't start with a preconceived notion of what equality is or what position we should take. We look at the facts and ask what best helps women get economic security and physical security.

And when we choose our lawyers, the funding that the court challenges program provides is modest.

● (1605)

Hon. Mauril Bélanger: I only have five minutes.

Mrs. Chantal Tie: Oh, sorry.

Hon. Mauril Bélanger: I'm sorry. I kept my question very short. Perhaps the answers could be succinct as well.

Madame Aucoin.

[*Translation*]

Ms. Louise Aucoin: Quite frankly, there are not many practising jurists who specialize in linguistic rights. Lawyers who work in this field do so because they are passionate about the issue. I have no idea of their political affiliation.

[*English*]

Hon. Mauril Bélanger: Merci.

Mr. Rollason.

Mr. Kevin Rollason: As an individual, because it was a charter challenge, we were just referred to a person who specializes in charter challenges. I have absolutely no idea.

Hon. Mauril Bélanger: Thank you.

The reason I ask the question is that in defending the cuts, the Prime Minister used, as one of the reasons, that the government didn't want to be funding Liberal lawyers. I wanted to know whether or not that was a consideration for the people who had received funding. So thank you for your answer.

Mr. Rollason, on Monday we heard four witnesses who had supported the cancellation of the court challenges program and maintained that if there is a challenge to be made, it should be funded by the community or by the groups themselves. Would that be a reasonable proposition in your case, sir?

Mr. Kevin Rollason: Coming from a standpoint of disability, we're members of several disability organizations in Winnipeg and Manitoba. None of these groups that we're part of could in any way, shape, or form hire a lawyer for us and take on a challenge like this. They barely have enough money for programs they themselves run. To have a legal challenge is above and beyond what they could possibly afford.

It's the same for us as an individual family. There is no way we could have afforded something like that.

Hon. Mauril Bélanger: Thank you.

Go ahead, Madam Tie.

Mrs. Chantal Tie: Yes, that is absolutely the case. One of the unifying and defining features of many forms of disadvantage is poverty. That's what defines it in our society: people who are marginalized and don't have access to resources, power, and political power are defined by poverty. That's very true of most of the disadvantaged groups.

Most of the lawyers we have actually act pro bono, because even with the court challenges program money, it's not enough.

Hon. Mauril Bélanger: Thank you.

[*Translation*]

Ms. Louise Aucoin: Generally speaking, it would be extremely difficult for minority groups or francophones living in a minority setting to fund something similar.

Hon. Mauril Bélanger: Ms. Aucoin, earlier you raised a very interesting point. You said that if the program is to be cancelled, we should also look into reforming the corporate tax system, which allows for corporations to deduct legal costs from their revenues.

Are non-profit associations able to issue tax receipts in order to pay for legal fees?

Ms. Louise Aucoin: No, this is not possible.

Hon. Mauril Bélanger: Thank you.

[*English*]

Thank you, Mr. Chairman.

The Chair: Thank you.

Go ahead, Monsieur Malo.

[*Translation*]

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

The definition of equality you provided earlier is very interesting. I would like you to elaborate further on this. Are you able to define and lay the foundations of what justice is?

[*English*]

Mrs. Chantal Tie: What's justice? I'd say justice is a very broad concept, but in this case access to justice is what's most important; when you deny people access to the courts, you have no access to justice, even though we may have a Charter of Rights and Freedoms. Justice includes, in this country, charter rights: freedom from discrimination, equality rights, and section 7 rights on security of the person. Justice is a very important part of this, and it's the ability to both defend against injustice and to assert positive rights.

[*Translation*]

Mr. Luc Malo: Ms. Aucoin, earlier you said that some groups are already encountering serious problems in defending their rights.

Can you tell us which cases now risk not being heard before the courts and which may cause great harm to individuals?

● (1610)

Ms. Louise Aucoin: I talked about the Paulin case which will somewhat define the RCMP's role in Canada. The RCMP has detachments throughout all provinces except for Ontario and Quebec.

The Paulin case deals with the RCMP presence in New Brunswick, but since New Brunswick is the only officially bilingual province where language rights are entrenched in the Constitution, it is an entirely different story for the other provinces. Therefore, it is extremely important that the other provinces go before the Supreme Court. There are probably many cases. There's also the ongoing—

Mr. Luc Malo: What will happen if the Paulin case is not concluded?

Ms. Louise Aucoin: Rights vary from one province to another. When we think in terms of a unified Canada, it is not a good thing to be well served in one province and not well served in another, particularly when it comes to as powerful a system as a police service.

Mr. Luc Malo: Do you believe that the Court Challenges Program weakens the powers of law-makers to the benefit of the legal system?

Ms. Louise Aucoin: No.

[*English*]

Mrs. Chantal Tie: We have a democratic government. We believe in democracy, but our democracy is a democracy that includes majority rule with protection for minority rights. The role of the court is the protection of minority rights within majority rule. That's the court's role; that's what the Constitution says. The court challenges program hasn't invented that. The court challenges program merely provides the means for the protection of minority rights. That's the role; the court challenges program didn't invent it.

[*Translation*]

Ms. Louise Aucoin: A friend once told me that having access to the courts is what it truly comes down to. The courts must be accessible if we want important rights to be respected.

Mr. Luc Malo: If I understand you correctly, you are saying that the Court Challenges Program fosters democracy.

Mrs. Chantal Tie: Absolutely.

Mr. Luc Malo: Thank you, Mr. Chairman.

Thank you, ladies.

[*English*]

The Chair: Mr. Julian.

Mr. Peter Julian (Burnaby—New Westminster, NDP): Thank you very much, Mr. Chair.

Thank you very much for coming today, as well.

I'll start with Mr. Rollason. You mentioned in your brief that you had some support from the court challenges program, but that the federal government, which was actually fighting to take away rights that you should have readily been accorded, had a full team of lawyers. Could you give me any estimate of what taxpayers paid to fund the federal government's actually not trying to support the rights you had a right to?

Mr. Kevin Rollason: I can only guesstimate, as a parent. But in the courtroom they had two federal government lawyers at the table. They had an assistant. They had somebody sitting in the audience as well. The team had flown from Ottawa. This was a Winnipeg-based lawyer. There were *x* number of court days. We were in court for two days. And who knows how much money they spent to get to that point. It would have been in the tens of thousands of dollars, at least, for that.

Mr. Peter Julian: So the federal government paid tens of thousands of dollars to try to stop you and Mary—your family—from having rights that normally should have been accorded to you.

In a real sense, this debate isn't about subsidizing people through the court challenges program; it's about trying to have a level playing field so that the huge subsidies the federal government already applies—the federal government in this case being Conservative—to try to squash rights are actually counter-balanced by some ability of individuals, of Canadians, to fight back.

Mr. Kevin Rollason: Yes. As I said, they had the resources that stayed with them. We were only individual parents who were trying to get on an equal footing.

As I said, I did challenge it before the tribunal, the board of review. For one thing, they couldn't hear constitutional issues. For another thing—yes, I got squashed, to put it bluntly. The vast majority of parents across the land would not be able to come up with the constitutional challenge. We believe—we're middle-class people—that there are an awful lot of people with children with disabilities and adults with disabilities who are nowhere near the poverty line. They're lower than we are. Think of them. If they had to come forward as we are doing to mount a challenge, there'd be absolutely no way.

● (1615)

Mr. Peter Julian: You could not have done it without the court challenges program. So with the elimination of this program in a few months, other parents in similar situations will simply have to bow to the government, no matter how mean-spirited and how—

Mr. Kevin Rollason: Yes.

The parents will have to do what we did. Initially, we went to our local MP. Then we went beyond that. We went to Human Rights. We were told that actually the change of the policy was okay, that it made it more equal for us. We still disagreed. So we finally found a lawyer who was willing to apply for court challenges program funding, and went forward. But until we had that, every step of the way we were either denied or we lost. It was only once we got the court challenges program funding and a lawyer, and went through that process, that things finally started happening.

We actually found, during our challenge, that when we made the freedom of information request, we got back documents from the federal government here in Ottawa that were our documents that we'd had beforehand, with our names blacked out. That showed us that the only time we actually started making some progress was when we had the lawyer funded by court challenges; there wasn't any before that.

Mr. Peter Julian: Thank you for that.

Now coming to Ms. Tie, we have a situation, really, in which that ability to fight for equality rights is being taken away. Is it your sense that we're moving toward an American-style justice system, in which, essentially, unless people have money and financial resources, they're not going to have that access to equality that we should be maintaining and enhancing in this country?

Mrs. Chantal Tie: I certainly agree with you that if you eliminate the program.... We've had a devastating parallel cut in legal aid in this country, as well. So it's kind of like a double whammy.

The difference, I think, between Canada and the United States is that litigation does proceed in the United States on many constitutional and test case issues. But they have a much more highly developed—what do you call it—foundation, money-giving organ in the United States, which is able to pick up the slack when the government does not give money in a way that.... It's just not that developed in Canada in terms of non-profit foundations' giving money out for litigation in the same way.

Mr. Peter Julian: In a real sense, because the American system is far from perfect, and in fact there are a lot of concerns about the lack of accessibility to the court system in the U.S., what you are saying is we'll be even worse.

Mrs. Chantal Tie: Yes, it will be worse here because there isn't even the fallback of donor foundations that might give money for these kinds of things. It's just a very different tradition in this country. When you eliminate the access to justice through public funding here, it leaves a far bigger hole than it would in the United States.

[*Translation*]

Mr. Peter Julian: My last question is for Ms. Aucoin.

[*English*]

The Chair: Your time is up.

Mr. Fast.

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

Thank you to all three of you for appearing before us today.

First of all, I have a question for Ms. Tie. You mentioned that you sat on the board of CCP for seven years. Is that correct?

Mrs. Chantal Tie: That's correct.

Mr. Ed Fast: Have any other members of your organization in the past sat on either a panel or the board or an advisory committee of the CCP?

Mrs. Chantal Tie: The CCP is structured such that the people who have positions on the board are the membership. For instance, there's an equality side and a language side—

Mr. Ed Fast: I understand that.

Just so you know, I've researched the structure, and I understand who sits on it. My question was have there been other members of your organization who have also been involved in CCP, either on a committee or a panel or on the board?

Mrs. Chantal Tie: Yes.

Mr. Ed Fast: You see, that's one of the major criticisms of the program by Canadians, that it's almost incestuous, because the very people who receive the funding are also involved in the decision-making process and the governance of the court challenges program.

● (1620)

Mrs. Chantal Tie: No, they're not.

Mr. Ed Fast: I just wanted to make a comment—

Mrs. Chantal Tie: No, they're not.

Mr. Ed Fast: —on some of your earlier comments.

You had made the statement that you believed that the CTF, the Canadian Taxpayers Foundation, was way off base, and then you went on to attack the current Conservative government. I found it actually profoundly presumptuous that you would suggest that those of us on the government side either have a gross ignorance of the law or that somehow we're involved in some level of doublespeak.

I can tell you that I have a pretty good understanding of the law, coming from a legal background myself, so it's not a matter of legal ignorance—

The Chair: Mr. Julian.

Mr. Peter Julian: On a point of order, Mr. Chair, Mr. Fast hasn't asked a question. I believe that's the intention of having witnesses. It's not to make speeches, but indeed to ask a question. Could you direct him to do so, please?

The Chair: I'm sure there's a question forthcoming.

Mr. Ed Fast: There is a question forthcoming, and I also remind the chair that Mr. Julian many times has waxed eloquent in his introductions to questions and in prefacing questions.

I'll go on to say that I find it of great concern that you would infer motives that you have no proof of to either an organization like the CTF or this government.

I did want to ask a question of Mr. Rollason.

The Chair: Your question, please.

Mr. Ed Fast: Mr. Rollason, I want to assure you that certainly the members on the government side of this table have a great deal of empathy for you, and I'm glad that you were successful in the process of asserting the rights that your daughter has for assistance.

I just want to clarify. The quashing of your daughter's rights took place not under a Conservative government, as perhaps Mr. Julian wanted to suggest. That occurred under the previous Liberal government. Is that correct?

Mr. Kevin Rollason: Yes.

Mr. Ed Fast: All right. Your concern is that this might reoccur if there isn't a challenge of those kinds of actions.

Mr. Kevin Rollason: It doesn't matter what stripe the government is—

Mr. Ed Fast: Exactly.

Mr. Kevin Rollason: No matter what you do around this table, whatever other committees do around the table, mistakes can be made. People might just not dream of the possible ramifications that could be out there.

Mr. Ed Fast: What I did want to do was ask you as well if you are aware of the announcement that Finance Minister Flaherty made this past week about a study that was done regarding the disabled.

Mr. Kevin Rollason: Yes.

Mr. Ed Fast: All right. Today he actually commented on that in question period in the House of Commons.

Mr. Kevin Rollason: Yes.

Mr. Ed Fast: In his response he stated that the government must better enable parents to set aside funds to financially support a child with a severe disability when they are no longer able to provide support. He said he looked forward to reviewing the panel's advice on how this objective could be achieved.

Have you had a chance to review that?

The Chair: It's pretty well to the other—

Mr. Ed Fast: I just asked the question. Thank you.

The Chair: Yes.

Hon. Mauril Bélanger: On a point of order, Mr. Chairman, we on this side have been rather respectful of the proceedings of this committee in terms of questioning of witnesses and so forth. I'd invite the members of the government side to be as respectful of the proceedings.

Mr. Ed Fast: With due respect, Mr. Chair, I do recall that that very member has, on occasion, taken members or witnesses to task for statements they've made. I've taken the opportunity to do the same thing. I've asked a question of Mr. Rollason. I would appreciate it if the member, Mr. Bélanger, would not interrupt when I'm questioning the witness. I haven't interrupted him.

So, again, Mr. Rollason, the question is—

The Chair: Bring your question quickly.

Mr. Ed Fast: —whether you believe that moving forward with some of the recommendations of that expert panel would be helpful with respect to the kinds of challenges your daughter faces.

Mr. Kevin Rollason: They would be helpful. I'd say there may be some things I don't know about. Certainly, from what I understand, it's like an RESP program, which means any money that goes into it is after tax. It might be, from my point of view, better if it were like an RRSP program. On the other hand, we have incomes, so we're able to put money into it. Other people who don't have income might not be able to put money into it.

In terms of us, I can't forecast, in two or three years, if this were to become policy, what another family that may be just like mine might find in the program. With the change from UI to EI, maybe there's something else that would come out of that that might not help a family out there. I just can't say for sure.

Mr. Ed Fast: Well, hopefully our government won't put any others in that position.

Thank you.

The Chair: We'll go to Mr. Scarpaleggia.

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

I just want to say that I'm a supporter of the program. I would like to make that statement at the beginning.

It's my understanding that the impetus for the creation of the program in 1983 or 1982 was to give official language minorities in Canada the power to ensure that their rights, as clearly stated in the charter, would be respected.

As a Liberal, I believe.... I guess the only point of ideology I have is that no institution is perfect. By definition, I will never accept that an institution is perfect and can't be reformed and made better to adapt to the changing times or whatever.

My question, I guess, revolves around some of the criticisms of the program, namely that some of its decisions may be arbitrary, that certain people's applications are rejected while others are accepted. I don't have a real strong opinion on that, but do you believe, Ms. Tie, that there's any way the program could be improved? I'm not at all in favour of abolishing it; I'm in favour of improving it. Do you see any need for reform?

For example, and it's been brought up before, there is this idea that there might be some kind of revolving door. I don't know. That's why we're having the program officials come. I commend Mr. Bélanger for making that request. There might be a revolving door between the board and some of the groups that benefit from the program. You, yourself, have gone from one to the other. Perhaps we should have a board that is made up of former justices, as we do with immigration judges, where we have people who are members of the Order of Canada who bring a certain impartiality.

Do you acknowledge any of the criticisms of the program, that perhaps in some cases the program has a bias or that its decisions have been arbitrary? In other words, can you step out of your particular interests and see a need for some kind of reform?

● (1625)

Mrs. Chantal Tie: I'd like to say two things. First, the expert panel that doles out the money is appointed. The board has absolutely no say in how that money is disbursed. There is no overlap. I never had anything to say in all the years I was on the program about what cases were going to be funded.

Second, many cases are turned down. I fundamentally think, however, that the people whose interests are affected should control the organization that decides what litigation's going to be done. That is the program's strength, not its weakness.

Mr. Francis Scarpaleggia: I understand that. Your point is well taken, but we live in a world where there's a certain vagueness as to whose interests should be served, and so on. I'm just saying it's an imperfect world, and it's not science to say that my interests or somebody else's interests are the primary ones and therefore should be represented.

Thank you for your clarification about the expert board and the difference between the board and the expert committee. I appreciate that. That's essentially the point I wanted to make and the question I wanted to ask.

Mrs. Chantal Tie: I think your idea is interesting, but it would be quite challenging in this country to find a panel of perhaps ex-judges who were representative. We'd need to find former aboriginal judges, former judges of colour, women judges, and judges with disabilities who have the necessary qualifications to actually adjudicate. That would probably be quite challenging, and that's unfortunate. It might be worth considering for the program in an advisory capacity; I don't know.

Mr. Francis Scarpaleggia: Going back to my original question, do you see any need for reform of the current program? I think it might be in your best interest and in the country's best interest if we could come up with an agenda for reform that could save the program. That's basically the point I'm trying to make.

Mrs. Chantal Tie: As I said, I'm no longer on the board and I don't speak for the program. But we just went through a Heritage Canada review of the program, which made some suggestions for improvements that we quite happily initiated. I was quite comfortable with how the program came through the review. The Heritage Canada review said we get value for money for this program and it's serving a very important Canadian government purpose. So it's working well.

● (1630)

Mr. Francis Scarpaleggia: I understand and agree with that. But were there recommendations for reform?

Mrs. Chantal Tie: I don't have any right now.

Mr. Francis Scarpaleggia: In the review were there recommendations?

Mrs. Chantal Tie: No.

Which one are you referring to?

Hon. Mauril Bélanger: The Heritage Canada one.

The Chair: I think that brings an end to our questioning for this section.

I thank our witnesses very much for coming today and bringing their viewpoints to the committee.

We'll take a break and wait for our next witnesses.

Thank you.

● _____ (Pause) _____ ●

● (1635)

The Chair: I call the second part of this meeting to order and welcome our witnesses.

We have two people here as individuals: Gisèle Lalonde and Mr. Caza. We'll work our way along the line, so each individual or representative of an organization can give their viewpoint.

Ms. Lalonde.

● (1640)

[*Translation*]

Ms. Gisèle Lalonde (Former President of SOS Montfort, As an Individual): Mr. Chairman, we come before you today to raise our concerns about a government decision whose consequences are so disturbing, that we find it hard to believe that the decision-makers gave any serious thought to its impact before making it.

The Harper government decision to abolish the Court Challenges Program has a direct negative impact on Canada's linguistic duality, a direct impact on the assimilation of minority francophones and, assuredly, over time, an impact on national unity.

It would be irresponsible and foolish to believe that the Government of Canada can disrespect linguistic minorities in such a way without undermining the very foundation of this country. The media tells us that this brilliant idea is owed to Prime Minister Harper's chief of staff. If this is true, what we have before us is a government of ideologues, not to say demagogues. Such a state of affairs is extremely troubling to Canadians.

Narrow-minded ideology, unrestrained demagogy, have never contributed to building today's Canada, and in fact are the ideal recipe for its eventual dissolution. We are told that this demagogy is taken from a certain text published by the said chief of staff of the Prime Minister, a book in which he maintains that it is ridiculous for the government to give money to those Canadians who want to bring it to court. Such warped logic is such a distortion of reality that it is scary.

First of all, when a minority decides to bring the government before the courts, it does so because it is convinced that this government is breaking the law, usually the Constitution of Canada or the Canadian Charter of Rights and Freedoms. This means that the direct effect of the Harper government's action is to give itself the power to break the Constitution of the country without anybody being able to contest it legally, the financial burden being too great.

[*English*]

Second, when a minority decides to seek the help of the courts it is always as a solution of last resort, which means it has tried to make the government understand through every other legitimate means.

Third, if by chance a minority manages to raise enough money to dare go before the courts, the government defends itself with our money. How many millions did Ontario taxpayers pay to cover the Harris government's legal costs, and all this to bite the dust miserably twice?

The Franco-Ontarian community and the Montfort Hospital did not waste taxpayers' money in legal costs. We upheld the law of the land. But the Harris government did exactly that, and any government in the country will do precisely the same thing without any hesitation or obstacle the next time it happens.

[*Translation*]

What the Harper government is asking us to accept, however, exceeds in its deceit what any other government may have done in the past. They are telling Canadians that they have a monopoly on all power, on all truth, and on all rights. Let ordinary people fend for themselves.

This is not just a matter of cutting expenses. The Harper government is depriving the most vulnerable in our society of access to justice system. The forsaken of society are beaten down even lower in the social order. This is not the Canadian way to do things. It is not just shameful, it is a scandal. It goes against everything Canadians believe in, starting with access to justice for all.

I cannot remain silent on the role played by Treasury Board President, Mr. John Baird, in this affair. If anybody should know the impact, not to say the illegality, of depriving the francophone minority of such an essential tool, it must be him. He happened to be the Minister of Francophone Affairs in Ontario, in the Mike Harris government, during the worst days of the Montfort crisis. In addition, it was only at the very end of this five-year struggle that he finally sided with the Franco-Ontarian minority.

Allow us to doubt his sincerity, then and now. I will tell you about an exchange I had with Mr. Baird back then. I have never spoken about it publicly before. And I regret having to do so today, but he leaves me no choice.

The day before the Harris government was to announce it would not seek leave to appeal before the Supreme Court of Canada, Mr. Baird called me at home. During that brief conversation he kept saying "Gisèle, we have to turn the page" on the events of the previous five years. He repeated that phrase several times. The action he took today as President of the Treasury Board shows that he turned the page, but he certainly does not have the same book I have. The only conclusion we can draw from Mr. Baird's actions is that if he can't get the francophone minority one way, he will find another way to do so. There are many ways to kill a people!

It would be rather surprising to learn that this decision was imposed on Mr. Baird, judging by the ferocious defence he mounted for it in the House of Commons. The most deplorable aspect of his involvement is that once again, he is part of a government that seeks to score points with the electorate by attacking the most vulnerable in our society.

I dare say, however, that his government has radically misread the Canadian electorate. This is particularly true of Quebec voters. We suspect strongly that, in its cold calculations, the Harper government concluded that francophone Quebeckers would not oppose his decision since the Court Challenges Program protects its anglophone minority.

But Quebeckers see clearly. They understood right away that the real targets of this decision were their minority francophone brothers and sisters. And, as they rose thunderously to support Montfort, they will not forget this further injustice when the time comes to settle the score.

One thing is sure. We Franco-Ontarians will not let them forget it. We will work relentlessly in every riding, including Quebec, where the vote of francophones can make a difference. We will ask them to reject the government whose indifference is but veiled intolerance. An intolerance against the weakest. Mr. Harper governs by one rule only: might makes right. This requires no courage.

Mr. Chairman, members of the committee, we came to share the indignation of minority francophones in the face of this government's decision. We fully intend to fight this decision by all legitimate means possible. We ask that you wage this battle with us, and continue to speak out as eloquently as you have done in the House of Commons. We ask that you sensitize your voters to the true consequences of the Harper government decision, and that you do so until voting day.

Let me say a few words to those members of the party in power. Most of you, if not all of you, were probably not consulted by your government on this measure. We thank you for consulting us today.

We remind you that you are not powerless in this matter. You have influence within your caucus. And when the government is in the wrong, it is your duty, behind closed doors, to bring it back on course.

● (1645)

We hope that you will understand the true extent of the damage done to the francophone minority and to your own party, and that you will act in the best interest of linguistic duality, in the best interest of all Canadians and in accordance with Canada's Constitution.

Thank you. Thank you, Mr. Chairman.

[*English*]

The Chair: Mr. Caza.

Mr. Ronald Caza (Lawyer, As an Individual): *Monsieur le président*, I'll speak English in my presentation, because I want to make sure everybody can understand directly the message I'm bringing to you today and not with the aid of interpretation.

The reality is that when you are a member of a minority you need to have recourse to the courts because the protectors of minorities are not the majority. It's not because they're acting in bad faith; it's because they don't understand the needs of the minority. For the last two hundred years, minorities have had to have recourse to the courts to make sure their interests were protected. One of the courts' main responsibilities is protecting minorities. To have access to the courts, especially in issues of constitutional law, you need to have a lawyer.

What's special or different about linguistic rights is that the people who are going to court to have those rights defended usually have a very small personal interest. It's a community right. When they bring that right forward, they do not get any money in return. All they get is the respect of a right, which is why when they need to get access as the only way to get their rights respected, they have to proceed by way of the courts and they need to get financial assistance.

The reality is that when you're dealing with linguistic rights, the consequence of people not coming forward to make sure their rights are respected affects everyone in Canada. It's important to understand what a minority does and how a minority lives. The reason minorities go to court to have their linguistic rights protected is that when you're a member of a linguistic minority, especially the francophone minority outside of Quebec, every time you wake up in the morning you decide you're going to continue making efforts to live in French that day, but when you stop making those efforts that's when you have assimilation. Assimilation of francophones is simply francophones who stop making the efforts they have to make to continue living in French. It's an essential characteristic of Canada that linguistic minorities throughout the country be able to continue living in one of the two official languages.

When members of the linguistic minority—and they can be in Prince Edward Island, Vancouver, Kapuskasing, Sudbury, North Bay, Windsor—go before the courts they're saying there's a government decision or a law telling us we should not be making the effort to continue living in French. That's why we go before the courts. When that law or decision continues to stand, every day members of the francophone minority stop living in French. The result is we have weaker and weaker linguistic minorities throughout Canada.

The Supreme Court of Canada has stated that linguistic minorities are an essential feature of Canada, that the survival of linguistic minorities in Canada is essential to the survival of Canada as a country. When the court challenges program is cut what they cut is the access to the judicial system of very ordinary people to have those rights respected. The consequence—and it's a direct consequence of having cut the court challenges program—is that the assimilation rate of francophones throughout Canada outside of Quebec is going to increase. That is an irreparable harm to the community. It's an irreparable harm to the country. That's why the court challenges program is essential for Canada and must be reinstated.

Thank you.

● (1650)

The Chair: Thank you.

Ms. St-Amand.

[*Translation*]

Ms. Gisèle St-Amand (Director General, Commission scolaire de langue française de l'Ile-du-Prince-Édouard): Good afternoon, Mr. Chair. Good afternoon, ladies and gentlemen.

My name is Gisèle St-Amand and I'm the Director General of the Commission scolaire de langue française de l'Île-du-Prince-Édouard. I have been working in education for 43 years, including 20 years as director general or as a senior administrator.

I am telling you what I do because I want you to know that I'm not here as a lawyer or a journalist or as a political partisan but rather as a francophone who currently lives in a minority community and who spent 20 years in Quebec. My two children are anglophones entitled to English-language education in Quebec and francophones entitled to French-language education in the rest of Canada.

So, I am here to plead in favour of restoring the Court Challenges Program, because the battle is not over, not all the goods in section 23 of the Charter have been delivered, and I am not the first to tell you this.

I want to thank you very much for allowing me to speak. Initially, I sent a brief, which I am certainly not going to read or repeat. I think that you received it, because I was told that it would be translated into English.

I am here today because, as an educator, my mission is always the same, it is to build a better world. That is why I am here today.

I benefited from all the epic battles waged to obtain the right, pleasure and joy of speaking French and of sharing the same pleasure and joy with my children. Consequently, I am working to ensure that all other children of francophones with French-language education rights will have this right.

Too much energy has been deployed and work done to remain quiet today, to not accept an invitation to come and tell you just how much we condemn what the government has done by taking away our means of going before the courts. Not everyone has this right: this right belongs to those with money. That is why this funding program allowed everyone to be treated like everyone else.

I have come here to plead on my own behalf, naturally, but let me say it from the start, I have come here to talk to you about the children of Prince Edward Island, the children who are now in school.

You are sitting on very comfortable chairs. I have students in Prince Edward Island today who don't have the same comfortable chairs we do, who didn't have a comfortable school bus this morning and who today don't have a comfortable school in the generally recognized sense.

For example, there is a school—and we have already filed a statement of claim with the lower courts to ensure that the Government of Prince Edward Island will respect our constitutional rights—that is located in a building along with a bar.

You will see in my brief that on Thursday and Friday evenings people start coming to the bar around 3:00 p.m. So, the following morning, when I arrive at school with my children, the building does not smell like a school. There are cigarette butts in front of the building that also don't belong to the school children.

So, I am making my case on behalf of the Arsenault-Cameron decision, for example, which stated that the francophone minority in Prince Edward Island was entitled to three inalienable and non-negotiable things: a high-quality education, equality of education and management for and by francophones.

I just told you about a school where we do not have the right to hire a caretaker. I just told you about a school we do not have the right to use in the evening without first making a reservation, and ensuring that no one else is using the building, before we can use it. We do not have a voice, nor the right to make decisions, nor certainly a veto right, in that school.

We have already filed a statement of claim before the court; we want the same rights in that school as those applicable to majority schools in Prince Edward Island.

I want to take a few more minutes to tell you about our funding, in Prince Edward Island. The Commission scolaire de langue française de l'Île-du-Prince-Édouard, my current employer, is responsible for an area that goes from east to West.

● (1655)

We rise with the sun and we go to bed under the same star in the evening. As a result, at the Commission scolaire de langue française de l'Île-du-Prince-Édouard, all our schools are quite distant from one another. I have come to tell you today that our funding does not and will not allow us, no matter how creative we are, to provide the high-quality education mentioned in the Arsenault-Cameron decision.

For the students of Prince Edward Island, I want—and I think the government of my country, a country I am extremely proud of—wants the same thing: an education equivalent to that received by the majority. I can tell you right away that three of our six schools in Prince Edward Island were won because we were able to fight thanks to the Court Challenges Program. You should also know that, without that assistance, I fear that charter rights will be a thing of the past for some francophone communities in Prince Edward Island. We don't have the means to go before the courts, because our funding is public, meaning that a school board is funded by the government.

In conclusion, we have parents who were prepared to go before the courts to ensure that their constitutional rights were respected. These parents, who live in Rustico, on the north shore of Prince Edward Island, truly hoped to see their constitutional rights respected, to ensure that they could give their children what you give yours.

The Commission scolaire de langue française de l'Île-du-Prince-Édouard, although it sits at the same table as the two English school boards in Prince Edward Island, receives funding calculated according to the formula for the majority, meaning that none—and I repeat none—of the realities our school board faces are taken into consideration during the funding allocation. So there are a lot of services that anglophone students receive that we cannot provide our students. So, put yourself in the shoes of these children's parents: if you had the choice, which school would you send your kids to?

Like my colleagues who preceded me said, I fear that we cannot provide the quality mentioned in the Arsenault-Cameron decision, or the equivalency mentioned by Judge McQuaid, speaking for the P.E.I. Superior Court, when he said that an educational system of lower quality than that made available to the majority would be incompatible with the tenor of section 23. A judge of the P.E.I. Superior Court said that. I have no idea what political party he supports. I ask you to believe that I have come here as an educator, purely and simply to defend the future of francophone children on Prince Edward Island.

It is often said—and I always like hearing this—that Canada is the world's conscience. Each time I hear that, I feel proud. I must immediately tell you that we are suffering from a crisis of conscience and that we must examine our conscience in Canada. I am pleading my case before the government members here. I want the program that used to exist to be restored or I want the program to exist in another form. However, I beg you, on behalf of the children and the francophones of Prince Edward Island, give us the chance to go before the courts each time—and it happens often—our constitutional rights are not respected.

Our country, the Canada of tomorrow, will resemble the children we raise. Let's raise the best children. Let's raise children who are entitled to a strong, proud Canada, filled with the values that I instilled in my children, in other words, a Canada that is open and that respects all groups, as they are, no matter who they are.

Thank you, Mr. Chair.

● (1700)

[*English*]

The Chair: Thank you very much.

Mr. Tabachnick.

Mr. Marcus Tabachnick (President, Quebec English School Boards Association): Thank you, and good afternoon.

I'm Marcus Tabachnick, president of the Quebec English School Boards Association. I'm accompanied by David Birnbaum, who is our executive director.

Mr. Chairman, members of the standing committee, the Quebec English School Boards Association thanks you for this opportunity to present its views in support of the reinstatement of the court challenges program of Canada.

Our association is the public voice of Quebec's nine English school boards serving some 115,000 students across the province. The English public school network of Quebec offers a portrait of Canada's English-speaking minority community in all its diversity. There are one-room school houses on Entry Island on the Îles de la Madeleine and in Vaudreuil, just 45 minutes from Montreal; big-city high schools; regional adult education centres; and every variation in between. For many of our students the daily trip to an English school is an hour and a half each morning. There are big challenges, but I would tell you that our system is addressing them with ingenuity and determination. It was in our schools that French immersion was born and perfected. Today, we pride ourselves on producing graduates who are building their futures in Canada's two official languages.

[*Translation*]

Our schools, like those of francophone communities in the rest of Canada, are the glue that holds our minority-language communities together. Of the 340 schools in our system, more than half serve 200 students or less. The future of those schools and the future of the minority-language communities they serve is inextricably linked. Consequently, our school network, and our association which speaks for it, are vitally concerned by the subject before the committee today. That is because there is also a link that connects us to the future of the Court Challenges Program.

● (1705)

[*English*]

QESBA represents a universally elected level of government, the only level of government that answers directly and exclusively to the members of Canada's English-speaking minority community. This level of government, elected school boards, has the right to control and manage schools serving the minority-language community of Quebec. School boards exercise that right by virtue of decisions rendered in landmark cases made possible by the court challenges program of Canada. The right of students to attend minority-language schools is also a question that the court challenges program was created to help answer.

In Quebec, access is limited by the charter of the French language but nevertheless protected within those limits under section 23 of the Charter of Rights and Freedoms. If individuals are to test the extent of those constitutional protections against the formidable resources of government, they must have the right to do so. The court challenges program is a meaningful and reasonable way to ensure that right. The charter, at section 24(1) says:

> Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

For many individuals and communities in Canada, that recourse is only real if financial support is made available. For many individuals and communities, that resource will only be available if the court challenges program is reinstated.

[*Translation*]

Subsection 24(1) of the charter states:

> 24(1) Anyone whose rights or freedoms, as guaranteed by this charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

[*English*]

Rights evolve. Circumstances affecting minorities change. The Charter of Rights and Freedoms must be tested by those changing circumstances if its full breadth is to be clear and meaningful to all Canadians.

In the seminal Mahe case on the extent of control and management of schooling afforded to minority-language communities in Canada, the Supreme Court said that continued recourse to the courts would likely be required if the application of the charter was to be fully effective and equitable. The judgment said:

> ...imposing a specific form of educational system in the multitude of different circumstances which exist across Canada would be unrealistic and self-defeating.

The same judgment continues: “Section 23 is a new type of legal right in Canada, and thus requires new responses from the courts.”

The future of the court challenges program has been falsely framed in some quarters as a question about special interests, as an infringement upon the supremacy of Parliament, as a cash cow for big-city lawyers. Those suggestions, as facile as they are disingenuous, were pretty much summed up by a senior member of the current cabinet. In defending the cancellation of the program, he was quoted as saying: “I just don't think it makes sense for the government to subsidize lawyers to challenge the government's own laws in court.”

It is often said that a democratic society is rightly judged by how it treats its minorities. These are not partisan questions about challenging the government of the day; they are matters that go to the heart of who we are and how we define the fundamental rights and freedoms that unite us. The court challenges program isn't about subsidizing lawyers; it's about ensuring equality before the law and guaranteeing equality of access to the law.

[*Translation*]

Quebeckers, whatever language they speak, are perhaps particularly exposed and sensitive to minority-language matters.

[*English*]

Consequently, the cancellation of the court challenges program has been greeted by much opposition in my home province. The chief editorialist of *La Presse* newspaper, in Montreal, noted:

[*Translation*]

> Without the government's financial assistance, which groups or persons will be in a position to spend the hundreds of thousands of dollars needed to pursue a case right up to the Supreme Court? Given the unlimited government resources, citizens who believe that their rights have been violated will feel helpless. Consequently, what is the value of a charter of rights if citizens do not have the means to ensure that it is upheld?

● (1710)

[*English*]

Are there questions relating to the operations and procedures of the court challenges program that legitimately warrant additional scrutiny? Quite possibly. It is not for QESBA to judge, but as Monsieur Pratte concluded: "Ottawa has decided to cure the cold by killing the patient!"

That's a pretty dismissive way for our national government to discharge its solemn role as custodian of our Canadian Charter of Rights and Freedoms.

For the English-speaking parent in the Gaspé, for the English school board member in the Saguenay, not to mention a francophone community leader in Alberta, this program is their doorway to Canada's Charter of Rights and Freedoms, and that charter remains the penultimate guarantor of their future.

The Quebec English School Board Association calls upon this committee and this government to do the right thing. We call upon you to reinstate the court challenges program.

Thank you.

The Chair: Thank you very much.

Mr. Bélanger.

Hon. Mauril Bélanger: Thank you, sir.

People know by now my usual first question.

Madame Lalonde, Madame St-Amand, and to you, Mr. Tabachnick, on the occasions when you may have had support from the court challenges program and could hire legal representatives, lawyers, was the political affiliation of these lawyers a matter of consequence in your choosing them?

Ms. Gisèle Lalonde: Do you mean to say, at Montfort, if we had chosen someone who was close to the government or—?

[*Translation*]

Hon. Mauril Bélanger: No. Was the political affiliation of lawyers a factor in their decision?

Ms. Gisèle Lalonde: Not at all.

Hon. Mauril Bélanger: Thank you.

Ms. St-Amand.

Ms. Gisèle St-Amand: Based on my information, not at all.

Hon. Mauril Bélanger: Mr. Tabachnick.

[*English*]

Mr. Marcus Tabachnick: No, what we were looking for was the lawyer who was best able to represent us, and that's the only criterion by which we judged.

Hon. Mauril Bélanger: Thank you.

Also, in justifying their decision to cancel this program,

[*Translation*]

The government said that it intended to introduce only constitutional bills. This is always the intent of any government, despite the fact that it is up to legislators and the courts to determine whether bills are constitutional or not.

This is the point I want to make. With regard to the scope of the Court Challenges Program, I know that I am right in believing—but I'd like you to confirm this—that it extends beyond bills introduced in Parliament. In fact, it goes beyond existing legislation and legislation that provincial governments may introduce and enact. It also goes beyond what provincial governments do or don't do, such as Prince Edward Island's refusal to build schools. This is an example of a decision by a government not to take action.

In your opinion, does the scope of the Court Challenges Program go beyond bills that a government may introduce in the Canadian Parliament?

Ms. Gisèle Lalonde: Mr. Bélanger, I believe that, in fact, the federal government does not have power over everything. The provincial governments have power over some things. Minorities need, above all, social services, education and health care services.

The federal government can be the best government in the world, and yet have a provincial government that fails to respect the francophones in its province, as in our case.

As a result, we are waiting for the federal government to help us, first, because it is responsible for minorities, particularly the Senate, through the Court Challenges Program. We also expect the government to try mediation or correspondence of some kind through an exchange of letters with people in the province in question.

I think that the current federal government under Mr. Harper takes it for granted that everyone will act like it and will always be careful not to wrong the minority. However, we are seeing the opposite happen. In fact, there are not enough French schools in Prince Edward Island and Alberta. We do not even have benches, there is nothing. The situation was discussed the other day on a Radio Canada broadcast. What is happening there makes no sense. The Government of Alberta is responsible for the situation. The federal government has the responsibility to point to the situation and to help it. If the provincial government does not respond, at the very least, those who oppose this government must be helped.

I do not want to hear that it is their money; it is really our money. And the money they spend is also our money. It is illogical to say that, because, when you fight the central government, its representatives arrive with a whole bunch of lawyers.

● (1715)

[*English*]

They don't have only one lawyer; they come with three or four or five lawyers when they come to court, and they have lots of money. We had 12 lawyers who really work together, and we chose Mr. Caza here to defend our cause. We didn't have all of the money to pay him, but this program helped us.

We cannot think of another cause. We are in the capital of Canada. In Ontario we have the greatest majority of francophones outside Quebec; we have half of this group in the region of Ottawa, and we were lucky to get some money out of those people—but it's not everyone: there's one in Penetanguishene right now, and they don't have any money. They have won in court, but still the government—this is the Government of Canada, by the way, the Department of Industry—doesn't give them the money they need. They never had a project for the francophones over there.

These injustices are created sometimes by the federal government, but most of the time by the provincial governments. We need to have help. This is your responsibility. This is your role.

The Chair: If anyone else is going to answer on that, please be very brief, because we have only 15 minutes left.

Mr. Ronald Caza: Mr. Chair, may I answer briefly?

The Mike Harris government never thought they were acting illegally or unconstitutionally. In fact, if you look at all the legislation that has been set aside as a result of the court challenges program, never was there a government that purposely set out to violate linguistic rights. None of them did. They all felt that what they were doing was legal—but it wasn't, and it was up to the courts to make that determination.

[*Translation*]

Ms. Gisèle St-Amand: Mr. Chairman, I would add that the Court Challenges Program has the visible impact of seeing us go before the courts. However, it also acts as an incentive to encourage respect in our country, because our government is responsible for respecting our constitutional rights, the rights it conferred on us by implementing the charter.

[*English*]

Mr. David Birnbaum (Executive Director, Quebec English School Boards Association): First of all, the basic suggestion that a government will not adopt unconstitutional legislation is an absurdity. Is that to question that the judiciary is no longer a legitimate and vital branch of democracy? That leaves us rather speechless.

Secondly, if you look at the importance of this program and its potential importance to Canada's English-speaking linguistic minority, there hasn't been occasion yet—and we hope there won't be—to test section 23 in its full breadth with respect to the existence of English-speaking communities on the mainland and the school boards that support them. There are endless examples in Canada that show that those communities will not exist if their schools are not there. That program is important to us for something we may have to have recourse to many years from now or next year.

It's impossible to separate the charter from this program if this government is to suggest that the charter is, of course, a legitimate part of our legal and political fabric and its role is to defend that charter. The charter only exists if one has recourse to it; thus the program is essential.

The Chair: Thank you very much.

Mr. Kotto—and we have to try to keep some of this brief, because we only have about ten minutes left.

[*Translation*]

Mr. Maka Kotto (Saint-Lambert, BQ): Right.

Ladies and gentlemen, welcome.

As did we, you noted that the Conservative government abolished the Canada Volunteerism Initiative. It amended the Women's Program to prevent the funding of advocacy rights groups and lobby groups. Furthermore, it abolished the Court Challenges Program.

In our opinion, ideology is pushing us into a world where, socially, culturally and economically, Darwinism prevails.

Does this not concern you?

I am asking this question because I fear that the Conservative government will not restore this program, unless the government does something in the future to contradict us.

That said, what do you intend to do?

● (1720)

Ms. Gisèle Lalonde: Sir, we have fought for five years to save an institution. From 1912 to 1947, we fought against regulation 17 before it was withdrawn in its entirety. We also fought from 1970 to 1979-1980 for French schools.

Quite often, governments try to wear us down right to the bitter end. I am convinced that, for five years, the Government of Ontario truly believed that we would give up. It is indeed very difficult to keep up the momentum, when we take part in these battles. We will persevere and we will use the means we have.

I hope that the government will reflect and will rethink what it has done, because it is not logical. Mr. Harper speaks French quite well. When he wants to, he understands us clearly. So, why now are we having to fight this fight: women, children and all the most vulnerable members of our society? I have difficulty understanding how a government that is not right-wing can do such things.

Mr. Ronald Caza: I would briefly like to add that the message sent to anglophone and francophone minority communities is simple: cancelling the Court Challenges Program means that it's not worth continuing to try to live in the minority language. That is the message being sent.

You are wondering what the impact will be. The impact will be increased assimilation in Canada. That is a direct impact starting now. In fact, the government is sending all those small communities where people are fighting to preserve their own language the message that it's not worth doing it anymore.

Ms. Gisèle St-Amand: I don't think we have anything to add, except to say that the first mandate of a French-language school is to serve as a means for renewal of our communities. The future of the francophonie is intrinsically tied to access to and the success of education in French.

Mr. Kotto, I may be an eternal optimist, but I cannot believe that my government will be the cause of my undoing. In 1755, we were hard hit: we were deported. Today, we are being abandoned. You have to fix this.

[*English*]

Mr. Marcus Tabachnick: I would agree with what Mr. Caza has said. I think it's not so much what we'll do. We're going to keep moving forward. Every association will. Every community will do what it can to protect its future. But I think it's the message that comes out of this, and the message to minorities, the English community in Quebec. This attacks the very heart of what this country is about, and that's protecting the people who need the ability to be protected.

And this is the court of last resort. It's not something that anybody runs to in the first instance. It is a last chance opportunity to protect the rights that you have as a minority within your community.

What we're being told is it's too bad, you don't need that.

The Chair: Thank you.

Very, very briefly, Mr. Kotto.

[*Translation*]

Mr. Maka Kotto: You referred correctly to section 23 of the Canadian Charter of Rights and Freedoms. Some of those opposed to the restoration of the program are citing section 15, on equality rights, to justify the fact that this program is in violation of that section.

Do you have any comment on this?

● (1725)

Mr. Ronald Caza: Why? There's a contradiction between section 15 and section 23?

Mr. Maka Kotto: No. Well, that is what some people think. They use section 15 to "demonize" the Court Challenges Program, because they feel it is not egalitarian. Groups are challenging the program's credibility on that basis.

Mr. Ronald Caza: I can add that section 15 does not apply to section 23. This section seeks to protect the minority. So, it is clear that the minority is being given rights that the majority does not need.

Mr. Maka Kotto: You don't need to convince me, I'm just playing devil's advocate. Thank you.

Ms. Gisèle St-Amand: The court also said that there is nothing more unequal than ensuring equal treatment for people who are different.

Mr. Marcus Tabachnick: That is the answer.

[*English*]

The Chair: Thank you.

Mr. Julian.

Mr. Peter Julian: Thank you very much to the witnesses for coming today. You've been very eloquent. I just wish half the Conservatives on this committee weren't missing, because I'm sure they would have learned from your testimony today.

I'd like to go to Mr. Tabachnick and Mr. Birnbaum to start, because in a very real sense what you're talking about is the choice available to parents. I think Mr. Rollason spoke to that earlier, that the parents who are in a dilemma where the government is refusing to give them the choices and the rights they need to have for their children, essentially by eliminating this program, those parents collectively won't have an opportunity to fight for those choices for their children.

Would that be an accurate assessment, that this takes away from parents actually being able to choose what's best for their kids through assuming their rights and reinforcing their rights?

Mr. Marcus Tabachnick: I would agree with your statement.

I don't know how many of you have ever tried to close a school in somebody's neighbourhood. I can tell you that I have lots of experience in doing that. Parents and communities will do a tremendous amount to try to save their schools. They have recourse against a level of government, which school boards are, to the courts, and they make use of it—trust me, I can attest to it.

However, what you're saying, then, on the bigger scale, is that that ability isn't available to the community as a whole, as it is affected as a whole. That's not acceptable, that one level of government is not allowed to be questioned on whatever program, for whatever reason, it has decided to put into place in law. We need the ability to challenge ourselves in order to ensure that what we're doing is best for everybody.

[*Translation*]

Mr. Peter Julian: Thank you for your testimony.

I'd like to come back to the issue that Ms. St-Amand, Ms. Lalonde and Mr. Caza raised about francophone groups.

Francophones pay taxes and fund the federal government. The latter may then use those resources to crush these minorities, if it wants, and that seems to be the road it intends to follow. Francophone minorities will not have the opportunity to oppose having their rights trampled on, because they won't have the resources to do so.

Do you feel that this decision by the Conservative government is truly being made at the expense of francophone communities and the other linguistic minority, that is, the anglophone community in Quebec?

Ms. Gisèle Lalonde: Whenever francophones want to raise any funds for any purpose—for instance, I am currently co-chair of the hospital foundation—it is very difficult for us to do because we do not have major corporations outside of Quebec. In Quebec everyone knows that there is the Hôpital Sainte-Justine, other major hospitals, etc.

However here, we face fierce opposition from anglophones. For instance there are major hospitals like the Ottawa Hospital and its Civic Campus, the University of Ottawa Heart Institute and the Children's Hospital of Eastern Ontario. And then there is the Hôpital Montfort which is a small francophone hospital trying to obtain some money. It's very difficult.

It is hard not having the same sources of funding. We even went so far as to travel throughout Canada to try to find some support. It makes no sense. It is unimaginable that a minority group could prevail over a strong government like that of Ontario, Alberta or elsewhere.

Mr. David Birnbaum: I would like us to get over the idea that we are advocating for programs which only matter to minorities. A few years ago, in Quebec, a poll asked the following question: Should the anglophone linguistic minority have access to essential health services in its languages?

A vast majority of Quebeckers irrespective of the language they spoke said yes. I find that it is very important to clearly state that we are referring to a program which matters to all Canadians, regardless of whether or not they are members of a majority.

● (1730)

[*English*]

Just as a second point, I think the groups here would want noted for the record, from our non-partisan point of view, our observation about the lack of participation from the government side today.

Thank you.

The Chair: Thank you.

Mr. Fast.

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

First of all, thanks to all of you for attending today.

I note that there appear to be two approaches among you. All of you are defenders of language minorities in Canada, but a couple of you have clearly taken a partisan position; certainly the first speaker has.

I also note, Ms. St-Amand and Mr. Tabachnick, that both of you referred to this as a non-partisan issue, as did Mr. Birnbaum. I do appreciate that, because this is not a party-against-party issue, and it shouldn't be. It should be an issue of policy that we can discuss and debate.

Are any of you aware of language minorities that have actually sought to assert their rights in the courts without CCP funding? Are there organizations that defend minority language rights that have done so without accessing the public purse?

Mr. Marcus Tabachnick: We're an association that defends that right, but we don't have the means to fight, in front of the highest court of the land, to get a definitive final decision on the applicability of any particular law.

Mr. Ed Fast: But I'm wondering, are there some individuals who have moved forward and have actually been able to do it from their own resources? That's a legitimate question to ask.

Mr. Marcus Tabachnick: And it's happened.

Mr. Ed Fast: Mr. Caza.

Mr. Ronald Caza: I must say, I think it's very rare. To give you one example of when it would happen, if a union, say, was involved in a file, they may have the financial means to be able to litigate. That would be an example.

However, if you look at all the case law—and we rely on that case law when we go to court—I can't think of any in which there was no involvement at all from the court challenges program. People have had to go beyond it on some occasions.

So I'd have to think back on it, but I'm not aware of—

Mr. Ed Fast: What about the Quigley case, Mr. Caza, which I think you were involved with? I think Mr. Bélanger is very much aware of it as well. I believe that was a situation where an English minority applicant applied to the court challenges program and was not successful in obtaining funding. That individual did pursue the matter through the courts, through the help of other individuals.

Is that not correct?

Mr. Ronald Caza: I may be wrong here—I'd have to go back and look at the Quigley decision—but I think the lawyer acting on behalf of Mr. Quigley was his son. I could be wrong on that, but I think he took the case.

There were issues of legal fees, but again, I'd have to look back on what happened at the end of the day.

Mr. Ed Fast: I understand, Mr. Caza, that there were legal fees in excess of $100,000 that were incurred, which were borne by a number of individuals. So it is possible—

Mr. Ronald Caza: I have to tell you that if somebody out there is willing to spend their own resources for whatever reason, and they have those resources to spend, I think the issue is that they may have access to the court. That's exactly what we've been saying.

A voice: No.

Mr. Ronald Caza: Yes, it is.

Access to the court cannot just be by people who have money. People who access the court challenges program, for the most part, are either organizations or individuals that don't have the money to go to court. That's why they apply. If they do have the funds—and some people may have the funds, there may be people who have the financial means to be able to litigate a linguistic right—they'll have access to the courts. The situation is that most of the members of the community and people who have in fact brought these cases forward do not have the financial means. That's why they're accessing the court challenges program.

Mr. Ed Fast: Perhaps I could just close with one question. This is perhaps a more encouraging, positive question.

Rather than having a general program defending not only minority language rights but also equality rights and some of the other rights under the charter, if our government were able to come up with a plan that would focus on minority language rights specifically, is that something you would welcome?

● (1735)

Mr. David Birnbaum: We would greatly welcome it, with the proviso that like any law adopted by a government it would be subject to the full scrutiny of the courts and complete access to those courts. Otherwise we would have difficulties understanding the full value of that law, no matter how well it was written.

Mr. Ed Fast: Understood. I'm making the assumption that it would do that.

The Chair: Could you keep your response very short?

Ms. Gisèle Lalonde: Could I answer the gentleman?

He accused us of being a little partisan. Well, I can tell you that I was a Conservative once, and I even ran in Ottawa—Vanier for the Conservatives.

The bad experiences we've had are that it has twice been taken out at the federal level, both times by Conservative governments.

Mr. Ed Fast: Mr. Chair, I—

Ms. Gisèle Lalonde: I'm sorry, but I would like to speak to you. You accused me, and I would like to answer you.

Mr. Ed Fast: I'd like to have that question answered by Ms. St-Amand.

Ms. Gisèle St-Amand: To answer the question you asked, I would have to say that I would welcome any law or program that would help me and the community I represent here today fight for our linguistic rights, but I have a hard time in saying that I don't want other people's rights to be respected as well. In this program we had means to help women and various other groups to learn the alphabet, and I would want all these groups to be represented under the charter—I really would—although I would represent what I am fighting for today, linguistic rights.

Mr. Marcus Tabachnick: We all would have appreciated if that had been the process from the beginning—put the hypothesis in front of us and give us a chance to respond—rather than fighting from the other side.

The Chair: Thank you very much to our witnesses.

Mr. Bélanger.

Hon. Mauril Bélanger: Mr. Chair, if I may, I believe this will be the last meeting we have before we adjourn for the festive season, so on behalf of my colleagues, I wish you and all of our colleagues, the witnesses, and anyone who may be listening,

[*Translation*]

a Merry Christmas and a very Happy New Year.

[*English*]

I look forward to resuming this discussion in the new year.

The Chair: Great. Thank you very much. You took the words right out of my mouth. You pre-empted me.

Hon. Mauril Bélanger: I'm sorry.

You're the chair, and you let me.

The Chair: I'm the chair and you're the vice-chair, and the vice-chair pre-empted me.

Merry Christmas to everyone.

Thank you.

The meeting is adjourned.

Published under the authority of the Speaker of the House of Commons

Publié en conformité de l'autorité du Président de la Chambre des communes

Also available on the Parliament of Canada Web Site at the following address:
Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante :
http://www.parl.gc.ca
