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Chair

Mr. Art Hanger

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• (1540)

[English]

The Chair (Mr. Art Hanger (Calgary Northeast, CPC)): I would like to call the meeting of the Standing Committee on Justice and Human Rights to order. We are continuing our examination of some of the programs that have been associated with the Department of Justice, specifically through the estimates, in this particular case, the Law Commission.

I apologize to the committee and to the witnesses for my late appearance. I was in the House delivering the report on the last committee conclusion.

I would first ask Nathalie Des Rosiers to present as an individual. We would appreciate your keeping your comments to approximately ten minutes, after which there will be a line of questioning, when all the presenters are finished.

Go ahead, please, Nathalie.

[Translation]

Ms. Nathalie Des Rosiers (Dean, Faculty of Law, Civil Law, Ottawa University, As an Individual): Thank you very much.

I'll make the first part of my remarks in French and the second part in English.

First, I propose to explain why most countries have law reform bodies and what those bodies do. Then I'll talk about the unique character of a law reform institution and, lastly, about the costs and losses associated with the loss of the Law Reform Commission of Canada for very specific people such as youth, seniors, Aboriginal persons and the Canadian population as a whole.

A law reform body exists to advise the government on how to minimize

[English]

the gap between law as lived and law as written.

[Translation]

The role of law reform commissions is to work at three levels: with the citizenry, with the research and expert community and with the decision-makers and people who make public policy.

As regards the citizenry—and this aspect of the work of law reform commissions is very important—the promises of the law often do not materialize in the way in which citizens experience the law or in the way in which citizens are subject to the law. The work of a law reform commission is thus essentially to measure the gap

between what the law states and what it does. It performs this task by consulting the public, by ensuring that the public is engaged in defining the problems of the law and through empirical studies. Anecdote is not a sufficient basis for this; you also have to know how to measure the gap. We're trying to measure the problems of the law in society.

This first evaluation is done in the perspective of identifying the questions that concern Canadians and that must lead us to reflect. We must then ask the research and expert community to examine those questions. In a way, the commission acts as a link between citizens' concerns and the research community. It asks researchers to focus on questions that are at the origin of citizens' concerns. It is by reason of its somewhat prestigious status, as a result of the fact that it's related to Parliament, that it can call on prestigious researchers and approach them.

Law reform bodies have access, to a certain degree, to the best brains and especially to the best research networks. Researchers have not only internal networks, here in Canada, but also external, international networks. A law reform body is able to mobilize these research networks so that they can examine a question that arises from its consultations with citizens. It can therefore offer the Canadian public the benefit of major research networks in order to advance the law in Canada.

It also works with decision-makers. Law reform bodies circulate their research work very freely to citizens, community groups and across Canada. We know that the papers of the Law Reform Commission of Canada, for example, have often been used in many institutions in Canada.

It isn't just all the problems of gaps between the written law and the law as experienced that can be resolved by legislation. Many problems can be solved through changes in institutional methods and through the development of better practices. The commission can play, and has played, a catalyst role, leading various players to develop better practices.

[English]

Law reform bodies work in the long-term justice agenda and they help inform government by presenting the best available research at the time and all the options that are available to government. They also act in a way that helps the citizens participate in their work. The Law Commission in a certain way was able to bridge some traditional divide in Canada between civil law and common law, between French and English and aboriginal culture. It was able to draw on civil law, common law, and aboriginal cultures to bring about and examine the range of solutions that would have been appropriate in a particular response. It then gives its work to different institutions and to Parliament through the Minister of Justice, who then tables it in Parliament, and can act upon it or not.

A law reform body does not replace a research department in the Department of Justice. It acts on different subjects. It acts on the infrastructure of law. It acts on making sure the infrastructure does not become disconnected from the reality of citizens. If you live in a society with a rule of law you don't want the gap between the reality and the law to be too large. That's the essence and that's its mission.

Why is it that the Law Commission is unique institutionally? Why is it useful? Why is it that it cannot be replaced by the two organizations that the minister has suggested could easily do the work?

The Minister of Justice explained the decision to eliminate funding by saying the work could be done by the Department of Justice or the Canadian Bar Association. Almost immediately the Canadian Bar Association said no, we can't do that work. It's very important, and this is a point I'd really like to stress, to note that at times problems of a legal nature cannot be resolved by the Canadian Bar. They are in conflict—they are representing the members. Some of the solutions to legal or social issues cannot be brought about simply by lawyers, and I say that as a lawyer. Law reform does not belong to lawyers only but to every Canadian. The point here is that the Canadian Bar Association, although it does great work, cannot draw upon as much of a multidisciplinary approach and have the credibility when it speaks on law reform.

I think the Department of Justice is also curtailed in this role. The Department of Justice must act on the immediate concerns the minister has. It's obvious at a time—for example, after September 11—when it was drawn into a heavy agenda of responding immediately to the emergency. What the Law Commission can do is to look at some technical, long-range issues that bear upon the efficiency of the legal system and its continuing relevance to the Canadian public.

What has the commission done and what are the things we can measure in terms of laws? I'm going to talk a little about the cost and I'm going to talk about the cost of the abrupt closure of the Law Commission.

It has been said by many, and they were quoted in *The Globe and Mail* and so on, that the closure of the Law Commission is a blemish on Canada's reputation as a leader in the world of law reform. To quote one:

[They are killing] a program that had attention around the world and made Canada look good.

That was true. Canada had a Law Commission that was a leader in its strategy of engaging Canadians in its work. It was a strategy to have people participate in the work of the commission. It had high school contests on legal issues, and a program that was directed at young scholars to discuss issues that were relevant and so on. It had thousands of small meetings throughout Canada—in the Yukon, New Brunswick, Newfoundland—discussing some issues of relevance to the law system.

• (1545)

In addition, and I think this is another part that should be considered here, the Law Commission of Canada Act says the Law Commission must work in partnerships. It established throughout its nine years of existence many partnerships, and all these partnerships, obviously, are now being jeopardized; some partners have some of their work highly jeopardized by the abrupt closure.

The list of partnerships includes the North-South Institute, the C. D. Howe Institute, the Indigenous Bar Association, UBC Press, Les presses de l'Université Laval, CPRN, NALL, the Democratic Reform Group, SSHRC, the Conference Board of Canada, etc.

In its work the commission, because it was a small agency, had to create partnerships to increase its research budget. The way it worked was to go to SSHRC and say: one issue that came from our consultation is that people are preoccupied, for example, with the difference between private security and public security and police—there's an increasing number of private security guards. What does this mean for our legal system? They would ask SSHRC to create a theme, for example, on this increase in security.

It was thus able to translate the needs and worries of Canadians about their legal system into a research agenda through partnerships. It was quite innovative and very efficient in this way.

Of all the organizations that were connected with the Law Commission, and all the partnerships—I haven't mentioned them all, obviously, the student co-ops, elders' law conferences, and so on—there are three groups I want to discuss particularly whose voice is very hard to gather in law reform. The commission did some particularly interesting work, and I think we should take note of how much.

The first one is with youth voices. Over the years the commission had supported a partnership in schools to develop a contest in high school dealing with, for example in one year, the vulnerable workers—working as a teenager. We know there are a lot of accidents when teenagers start to work, because they don't know what the laws are and also are taking undue risks. This contest not only brought a bit of sensitivity to the issue, but also engaged youth in reflecting on how in fact they could improve and diminish the gap between law as promised and law as lived.

Youth voices, I think, is a particularly big loss here.

Concerning older adults, the commission had developed a program that involved older adults in defining some issues for them.

And in terms of aboriginal voices they had a longstanding partnership with the Indigenous Bar Association and many projects with respect to aboriginal issues. I think this is a real loss, because it was a matter of trust to establish it initially and to help them be involved in this project.

I will conclude.

●(1550)

[*Translation*]

Groups and organizations are not the only ones that have suffered from the elimination of funding for the commission. You must also consider all the volunteers and all the people who have taken part in the forums organized by the commission in the past nine years. The price that must be paid is the price of confidence in government.

These people who have taken part in various forums in the past nine years are now facing the sudden disappearance, without any consultation, of the Law Reform Commission of Canada. This closing has not been done in a very transparent manner. It wasn't preceded by a consultation or evaluation, unlike its implementation, which was preceded by two years of consultations of a very large number of groups and constituents. It's a major loss for all those who took the risk of expressing their views and who took part with all their soul in the law reform effort in Canada.

[*English*]

The Chair: Thank you.

Mr. Le Bouthillier.

[*Translation*]

Mr. Yves Le Bouthillier (President, Law Commission of Canada): Thank you, Mr. Chair. I'll make the first part of my presentation in French, the second part in English, and the conclusion in French.

I would like to thank the members of this Committee for inviting me to testify about the abolition of the Law Commission of Canada, a de facto abolition, since the commission, lacking funds, will close its doors December 15, 2006. As for the de jure abolition, it will have to wait for the revocation of the act creating the Law Commission.

Moreover, I want to note at the outset that I would obviously have preferred that such a discussion with the members of the committee and other actors had taken place before the decision to eliminate the funding of the Law Commission, and this for reasons of transparency and out of respect for the Canadians, who, until the government's announcement September 25, 2006, were actively engaged in several Law Commission projects.

As president, it is my duty to inform you of the impact the closure of the commission has on current projects. Before I comment on these projects, allow me to address, in a general manner, the impact of the closure.

The loss of the Law Commission will deprive the government, Parliament and the judiciary of independent advice from an entity that drew on the ideas of some of the best experts of various disciplines. More importantly, it will deprive Canadians of a non-partisan forum in which they are invited to debate fundamental

questions of our society. Diverse points of view were expressed in a climate of confidence due to the independent nature of the commission. The commission, through its studies and reports, conveyed these points of view to Parliament. The commission has no walls surrounding it. Law reform discussions were transparent, open to all people from all walks of life. I am not aware of any other legal fora of this kind at the national level.

In addition, as I indicated to the Minister of Justice on September 25, following the government's decision to eliminate all funding to the Law Commission, Canada will now have the peculiar distinction to have eliminated a federal law reform agency for a second time in 15 years. The impact of this decision is that Canada is distancing itself from the model adopted by other countries such as the United Kingdom, Australia, New Zealand, Ireland and some 30 others. I believe it is important to question the reasons for our difference.

●(1555)

[*English*]

Having made these general comments, allow me to deal with the consequences of the closing of the commission in a very concrete way. I will only deal, given the limited amount of time, with three of the projects that were to lead to reports to Parliament. The commission was also working on other topics, including what's a crime, age and law, and financing on the reserves. Some of these were in an advanced state of completion. Also, we tabled a report on policing in July of this year.

The first project was on globalization. Canada has felt the impact of globalization on all the various facets that shape its society. One example is the growing influence of international law on domestic law, a recent phenomenon that deserves further study.

In March 2006, the Law Commission released its discussion paper on globalization, which I have here. In the paper the commission asked what should be the role of various domestic actors, such as the federal executive, parliamentarians, Parliament, provinces, judges, and non-governmental organizations with regard to the negotiation, acceptance, implementation, and application of international law instruments, and how these could be rendered more transparent, participatory, and accountable.

The commission also examined the issue of when legislation should have a reach outside Canada. To pursue this question, the commission recently funded research on extraterritoriality. A contract was awarded to four scholars from Dalhousie University who, for \$10,000, prepared a 100-page study on this issue that is now available on our website in both official languages. We have also funded research by the Conference Board of Canada to determine the business perspective on international corporate social responsibility.

We were planning a host of activities this fall and early winter, including discussions with current and former parliamentarians and the federal government and ongoing discussion with provincial governments. As a consequence of the closing of the commission, these will not happen.

The work of the commission could have proven valuable in further exploring the role of Parliament with respect to these issues, a role that was alluded to in the Speech from the Throne, which indicated: “Significant international treaties will be submitted for votes in Parliament.”

The second project is indigenous legal traditions. Starting with the recognition that indigenous peoples were the earliest practitioners of law in what is now Canada, the Law Commission set out to explore how the regeneration of these traditions might be supported and how greater space might be made for them in the Canadian legal landscape. The commission produced an innovative consultation package consisting of a discussion paper, which I have here, a 30-minute video documentary, which is on a CD here, and an in-depth research paper by a leading scholar—in fact, a 200-page paper.

We are all aware of the critical importance of addressing the situation of aboriginal peoples in Canada, of reconciling the relationship between aboriginals and non-aboriginals, and of improving the economic, social, and political health of aboriginal communities. The research conducted by and for the Law Commission provides clear support for the conclusion that the development of successful aboriginal communities is directly linked to real control by aboriginal peoples over decision-making, including decisions on the enactment and enforcement of laws.

Our research also highlighted, however, real challenges to greater recognition of indigenous legal traditions, the challenges faced by communities trying to regenerate their tradition, issues of applicability, issues of equality, issues of accountability.

The consultation package was delivered to the commission just days following the government announcement that it was closing the commission, and it has just been released. I want to thank my fellow commissioner, Mark Stevenson, who, at his own cost, attended a meeting of the Indigenous Bar Association two weeks ago, where the consultation package was released.

Obviously, the closing of the commission cuts this important work short. The release of the package was to have been followed by a comprehensive set of consultations. Perhaps most importantly, the elimination of the Law Commission removes an important neutral voice from a highly politically charged debate.

The third and last project I'll go into detail on concerns vulnerable workers. This is a project that looks at ways in which Canada's work laws are out of sync with the reality of the labour market today. Our research revealed that almost a third of Canadian workers today work in non-standard arrangements: contract, part time, self-employment, etc. As a result, increasing numbers of workers in Canada do not benefit from such legislated rights and protections as employment insurance, the right to refuse unsafe work, overtime compensation, and the right to bargain collectively.

• (1600)

These same workers do not often have access to employment-related benefits such as extended medical, pension, and dental plans. The Law Commission discussion paper released in January 2005 looked at this trend and considered what should be done.

Earlier this year we commissioned research from a team that included two of the leading scholars in the international labour law

community—Brian Langille from the University of Toronto, and Guy Davidov of Haifa University—to explore practical but creative solutions to the problems identified in the discussion paper. This innovative research, which was well under way when the government announced the closure of the commission, was being performed at a cost of \$40,000. It would have formed the backbone of our final report to Parliament. The opportunity to present innovative recommendations to address a complex and pressing social issue affecting millions of Canadian workers has been lost as a result of the closing of the commission.

[Translation]

In conclusion, overall, the commission accomplished a great deal in the past nine years with a \$3.2 million annual budget, which has remained the same since its creation in 1997, and with limited staff. The commission was able to leverage more than \$200,000 in partnership money annually. On several occasions, it obtained and benefited from eminent scholars' and civil society's impact at no cost and pursued an ambitious law reform research program at little cost to taxpayers.

Why was the commission able to accomplish this? I believe the Law Commission of Canada could accomplish this because of its reputation for neutrality, for thoughtful work and for its ability to provide a voice to those who would not or could not otherwise participate in law reform.

Thank you.

[English]

The Chair: Thank you, Mr. Le Bouthillier.

Mr. Carpay.

[Translation]

Mr. John Carpay (Executive Directeur, Canadian Constitution Foundation): Good afternoon. Thank you for inviting me to come and testify today.

[English]

John Carpay is my name. I'm the executive director of the Canadian Constitution Foundation. We are four and a half years old, as a foundation. We arose in support of the litigation in British Columbia launched by a gentleman named James Robinson, also known as Nisga'a Indian Chief Mountain, or in Nisga'a, *Sga'nisim Sim'augit*. Our foundation has more recently decided to expand its mandate and take on other cases and research projects.

Doing my research on the Law Commission of Canada, and looking at the website, I note that the mission of the Law Commission of Canada is to engage Canadians in the renewal of the law to ensure that it is relevant, responsive, effective, equally accessible to all, and just. I've always thought this was the mission of Parliament. Again from the website, the Law Commission is mandated to systematically review the laws of Canada to determine whether they continue to meet the needs of society. I put it to you that this is also your job as MPs—to systematically review the laws of Canada to determine whether they continue to meet the needs of society.

As for engaging Canadians in the renewal of the law, that too is something that you do every day when you listen to your constituents—hear from them by e-mail, phone, fax, personal contact, and so on. To judge by their mission, there is no need for this organization or for it to be funded, because this mission is already being fulfilled by you who are seated here today.

Some might point out, correctly, that Parliament needs help. With that I would agree. But Parliament is able to get help from numerous sources. For example, we have the universities, the law faculties. We have law professors, who, when not busy teaching, are paid to work full time in reviewing, studying, and analyzing the law. There are dozens, perhaps hundreds, of law professors who are doing this work every day. We have public policy research institutes. We have the Institute for Research Public Policy, in Montreal. We have the Canadian Centre for Policy Alternatives. We have the Frontier Centre for Public Policy, the Montreal Economic Institute, the Atlantic Institute for Market Studies. All of these research groups, these think tanks, have researched on legal topics, and there's nothing that stops them from doing so.

We also have advocacy groups. There are women's groups of various kinds—feminist groups, traditionalist groups. We have environmentalist groups. There are all kinds of advocacy groups that are more than happy to provide the government with legal research upon request.

Last, but not least, we have all the government departments. All of them—not just the justice department—have their legal components.

Everything that the Law Commission is providing is already done elsewhere. There is also a difference in accountability. If you have the Frontier Centre for Public Policy doing research, it is accountable to its supporters and its donors. If it's not producing quality research, then the donors are not going to keep giving it money. For this program, however, there is no accountability. The same goes for advocacy groups. There are various advocacy groups that regularly produce legal research and recommendations on the reform of the law.

Another part of the mission of this group is to recommend improvements in the law. Who could be against that? Nobody. But not everybody is agreed on what constitutes an improvement. Not everybody has a similar vision, a similar perspective.

● (1605)

[Translation]

Today, I see before me representatives of the four political parties. There are at least four very different visions of what constitutes an improvement, of what is justice. There are different perspectives and there is no unity on the subject.

[English]

It's very easy to say that the Law Commission recommends improvements, but not everybody will agree on what constitutes an improvement. Looking at some of the previous recommendations of the Law Commission and its predecessor, not everybody would agree that a law to allow abortion on demand is an improvement. Some would think it is, some would think it's not. Not everybody would agree that eliminating incest as a crime is an improvement. Some would think it is, some would not. Lowering the age of

consent from 18 down to 14, decriminalizing prostitution, replacement marriage with registration, and changing the definition of marriage are all things that some people would regard as improvements, while other people would not.

The question I have is whether it's fair to compel all taxpayers to contribute to recommendations that might be non-partisan in the sense that they're not necessarily strictly limited to one political party, but they're certainly not neutral, independent, objective recommendations. They're recommendations based on the views of the authors who prepared the research.

For these reasons, I think it's a very wise move to end the funding for the Law Commission of Canada, hopefully followed in the future by the repeal of the legislation that brings it into force, because it duplicates and replicates what is already available elsewhere, starting first and foremost with the very description of the mission of the Law Commission. That mission is pretty much akin to the job that Parliament is supposed to be doing, and if Parliament wants further input, it is available from many different sources—from the law professors, from the public policy research institutes, from the advocacy groups, and from the government's own departments.

Whether the commission made Canada look good around the globe, I don't know. If I were working for the commission, I suppose I might be inclined to say that myself. But small meetings take place all across the country, and they will continue to take place without the Law Commission.

I find it interesting to hear the Law Commission described as small. It has close to a dozen staff. I would be thrilled if I had a dozen staff working at our foundation. We could get a lot more work done. A budget of more than \$3 million per year would also be a great thing to have. But if we ever do have that some day in the future, it will be because Canadians voluntarily contributed to our foundation and to our mission, which is to promote the constitutional freedom of Canadians through education, communication, and litigation.

In conclusion, nobody is suffering from the termination of funding, except for those individuals who agree with the recommendations that the commission has come out with or might continue to come out with in the future.

I welcome your questions.

Merci.

● (1610)

The Chair: Thank you, Mr. Carpay. You had some interesting comments indeed.

I noted that Mr. Le Bouthillier had some restraint in holding back comments in reference to some things you said. I'm going to give him an opportunity to respond before I get into the questions.

[Translation]

Mr. Yves Le Bouthillier: I'll make four comments. First, it's said that the commission

[English]

is not accountable.

[Translation]

I think that's an insult to Parliament. Section 6 states, in referring to the commission:

[English]

We are accountable to Parliament through the Minister of Justice. We have appeared in front of this committee over the years many times. We always file our annual report. We have filed a performance report and a report on plan and priorities. If you look at the last report of the Public Service Commission, which was issued right after the closing of the commission, in terms of staffing procedures, the commission is one of the top-rated agencies in the government.

So I find that insulting to Parliament.

[Translation]

Second, with all due respect, I find that Mr. Carpay is using the logic of the absurd. He says that Parliament can take on our mandate and that the commission is therefore unnecessary.

He says there's actor A, actor B, professors and actor C. So his logic is that of the absurd. We could eliminate everyone, and Parliament could do everything. In fact, you could decide that one day it's the commission and the next it's Parliament. That's not very constructive.

[English]

Thirdly, on duplication of work, for law professors the record is clear. Law professors work with the commission. Many centres have worked with the commission. You can look at many statements since this announcement, and certainly they felt that our work was useful. When I think about electoral reform, in terms of the duplication of work that report has been used over and over again. I would not say that this was a duplication of existing work, just as one example. Certainly in relation to the abuse of children by public institutions, the first report, which was a reference by the government, was not duplication.

The last thing I would say is that you mentioned a lot of our recommendations. I think my colleague here was shaking her head, because we don't recognize these recommendations of the Law Commission of Canada. When we're talking about an increased budget, I would hope that it would help to improve the information that is given publicly here today as to what the commission has recommended in the past. I think we have to set the record straight on that.

Thank you very much.

• (1615)

The Chair: Are there other comments? Mr. Carpay, do you wish to comment?

Mr. Yvon Godin (Acadie—Bathurst, NDP): I have a point of order. Looking at the schedule, I don't think we have much time. When we bring witnesses in, we want to raise questions. I hope that members of all parties have a chance to raise questions, because the way we're going, we're just going to have witnesses arguing among each other. I don't think that's the purpose of a meeting.

The Chair: No. The purpose of the meeting is to learn as much as we possibly can.

Mr. Yvon Godin: Yes, but we should be able to raise questions.

The Chair: There will be an opportunity for you to ask questions, sir.

Mr. Carpay is next.

Mr. John Carpay: In terms of duplicating the work, if the commission is no longer in existence, these law professors will continue to do that work. It's not going to make a difference.

Electoral reform is another example of duplication. Numerous organizations in Canada have for many years been studying electoral reform and different voting systems. I can think of the Citizens for Public Justice. I don't know if it still exists, but for a long time it was advocating a change to proportional representation. The Canadian Taxpayers Federation has done a lot of work on voting reform and studying different models of doing that. The think tanks have done it. The Fraser Institute and other public policy research groups have done a lot of work on voting reform and electoral reform. That's a further example of duplication and why this body should not be funded.

The Chair: Mr. Bagnell is next.

Hon. Larry Bagnell (Yukon, Lib.): Thank you.

Before I start, I just want to pay tribute to Heather McFadgen in my riding for her tremendous support and work in the Law Commission. As I said in Parliament, I think it's reprehensible that you were cut, especially since it falls into a pattern of cutting services to the most vulnerable in this country.

I thank you for your presentations, Nathalie and Yves, on a number of valuable projects you've done that are not duplicated elsewhere, not replicated elsewhere, and for being accountable to us. Members of three parties in Parliament have really supported your work. I don't want you to comment on this, but you were created by an act of Parliament on April 21, 1997, so why close your doors? They can't close your doors. Use those volunteers you're talking about and keep it open so you can talk.

I have one major question. This is only for Yves Le Bouthillier and Nathalie Des Rosiers. It's on two areas. I'm a bit disappointed we don't have enough witnesses on aboriginal issues and anti-poverty issues. You've covered some aboriginal aspects already, but I'd like each of you to comment with something you haven't said yet on any way that you have or can help in the aboriginal field or in the anti-poverty field—obviously, again, the most vulnerable who can't represent themselves.

Finally, my riding is the farthest one from Ottawa and has one-thousandth of the population. Who's likely to have what kind of input on law in Canada? Have you reached that far, being the great institution in Canada that you are?

Ms. Nathalie Des Rosiers: I'll start, then, and mention a couple of projects.

The first project of the commission was the response to institutional abuse, the response to the residential schools. The project actually reached out to constituencies that don't speak to government, that were scared, and we had an aboriginal advisory council to that project that included a representative from people in the Yukon, among others across Canada.

That's one of the roles it can play that others cannot play. It can bring people around the table who sometimes don't agree and ask them what they're afraid of in this change. Sometimes there is consensus that develops that allows government to eventually move, and this is what happened in that project. It took seven years, obviously. We tabled a report in 2000. It took six years for things to move, but certainly I think it was instrumental in moving people closer to agreement on what could be a possible solution to a very complex and difficult issue.

For aboriginal treaty-making, there was consultation and a working group in B.C. trying to get them to organize around the complex issues of treaty-making and reconciling the different viewpoints on this. The fiduciary role of government toward aboriginal people, what is the future of this? Is it going to work? People are disappointed. There are several meetings across Canada trying, again, to bring people closer together, and aboriginal legal traditions that Monsieur Le Bouthillier discussed.

One of the big reports of the commission was on restorative justice. There's a big movement for restorative justice and mediation. Where's it going, and what will be the impact on the Canadian legal system? It has been recognized in the Quebec Bar now. So that's one of the issues. That's how it works.

• (1620)

Mr. Yves Le Bouthillier: I'll give three short examples of what we have done, too.

Last February we organized a very important and by invitation forum on Crown-Métis relationships. There were a lot of people from Justice Canada and there were a lot of Métis experts, experts from all over. It was held in Winnipeg, and at the forum we looked at very important issues. One, for example, was whether the Métis fall under the jurisdiction of the federal government, the provincial government, or do they fall under section 91 of the Constitution under federal government jurisdiction. So that was an important discussion, and we are going to publish, in both languages, the proceedings of that two-day discussion.

As a second example, one of the issues we were working on that would have led to a report to Parliament was financing on reserves. As you know, under sections 89 and 90 of the Indian Act you cannot have security on real or personal property on a reserve. It therefore makes it difficult for aboriginal individual members and bands to get financing in many circumstances. We have talked with the leading experts in Canada on this issue, and one of our commissioners, Rod Wood, from the University of Alberta, who is one of the top security experts in Canada, was the person who was leading us to write our final report on this.

The third example I want to mention, because I know you are from the Yukon, is that we went to the Yukon on a number of occasions. We had your citizens call us, one about electoral reform, because they looked at our work and were inspired by it. But we also

met the members of the Carcross Tagish First Nation and also the members of the Teslin Tlingit Council. If you look at the video that we have, you will see that the elders there and members of the community expressed their voices. They do very important work, innovative work, in terms of regenerating indigenous legal traditions. I invite all members to look at this DVD.

Those two groups gave us a contribution that was invaluable, and I think that will be a lasting contribution to the Law Commission of Canada. I am confident of that.

Thank you.

Mr. John Carpay: Mr. Chairman, I'd like an opportunity to also address aboriginal issues raised by the member.

Hon. Larry Bagnell: Mr. Chair, it's my time, and I ask specifically that he not respond to my question. Thank you.

Is there anything on any poverty groups or any other vulnerable groups that you're not duplicated in covering?

Ms. Nathalie Des Rosiers: I'll talk about the range of projects to give you a list of the complexity and the issues that were developed.

The first report was institutional abuse. The second report was on how to look at income tax in light of changing family forms. The third was about restorative justice and mediation, the impact it has when people are vulnerable when they have to negotiate with a mediator. We had the vulnerable worker as a project that recognizes the gaps in the ways our system moves.

On private security and public security, one of the big issues was that private security is not subject to the same level of scrutiny as public police. And they act with the homeless. They also act in shopping malls, and so on, and there was a big concern that democratic policing was not being done.

Concerning age, there was a large amount of concern about the financial security of older adults, and so on.

We had the other side as well. We had a project on the economic financing of intellectual property. So we have projects that responded to a large number of sectors in need of reform.

Mr. Yves Le Bouthillier: Let me give you another example.

• (1625)

The Chair: Thank you, sir, but Mr. Bagnell's time is up.

I'm going to move to Mr. Lemay.

[Translation]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): I'm going to try to contain myself and to be delicate. Mr. Chair, pardon me, but that will be difficult.

It seems to me implausible to have seen and heard what I've seen and heard in the past few minutes. That an institution as important as the Law Reform Commission of Canada should have to justify itself and justify its work for the development of law in Canada seems to me a heresy. I find that implausible.

You want to speak, Mr. Carpay, you're going to speak. My first question is this: who asked you to come here today, and at whose request are you here today?

Mr. John Carpay: I'm here at the committee's request. I received an e-mail on my computer in Calgary.

Mr. Marc Lemay: That's good.

Are the documents on your site in English and French, and can we have copies of them?

Mr. John Carpay: I don't have any documents to distribute today. Pardon me, I received the invitation on October 30. So I didn't have much time to prepare.

Mr. Marc Lemay: What does the Canadian Constitution Foundation do? Who pays to support it? How does it live? Who feeds it?

Mr. John Carpay: It's paid for and fed by Canadians who support our work, who voluntarily give their money. We sometimes receive donations of \$25, \$100 or \$1,000. That's the way it is. There are tens of people in the country who support us. No one is forced to give us any money. That's not the same thing for the commission, because everyone, through their taxes, is obliged to support its work. That's a big difference.

Mr. Marc Lemay: There you go. So you consider that \$3.2 million a year for the work that's done by the Law Reform Commission of Canada is too much?

Mr. John Carpay: I admit that the sum of \$3.2 million isn't a large amount in view of the size of the overall federal budget. However, paying this amount for work which is already available elsewhere is waste.

Mr. Marc Lemay: That's fine.

I'm going to ask you a question, sir. Are you a lawyer?

Mr. John Carpay: Yes, and you?

Mr. Marc Lemay: I've been practising for 25 years, sir, and, with all due respect, I'm the one asking the questions. Since I'm the one who's asking them, I'm going to expect answers. Have you consulted the Web site of the Law Reform Commission of Canada, and, if so, how many times?

Mr. John Carpay: I've consulted its Web site, yes.

Mr. Marc Lemay: When?

Mr. John Carpay: Between the moment I received the invitation and today. I did my best.

Mr. Marc Lemay: You've been a lawyer for how many years, Mr. Carpay?

Mr. John Carpay: I don't understand how that question is relevant. The answer is six years, but I don't see what you're getting at?

Mr. Marc Lemay: Mr. Carpay, you're appearing before us to criticize the Law Reform Commission of Canada, which has been doing an essential job for nine years, and you're telling us that this is a needless expense. Is that what you're telling us?

Mr. John Carpay: That's it, precisely.

Mr. Marc Lemay: What would you replace it with? With the extreme right?

Mr. John Carpay: I've already mentioned other possibilities, such as professors of faculties of law or, for example, the Canadian Centre for Policy Alternatives. Perhaps you think that's on the extreme right wing.

Mr. Marc Lemay: Do you believe there should be a neutral place in Canada? Law professors are law professors. Essential research and studies have been conducted by the Law Reform Commission of Canada, if only for causes linked to the First Nations. I sit on the Standing Committee of Indian and Northern Affairs. I can also have you appear before that committee, if you wish.

Do you mean that the work done on Aboriginal issues by the Law Reform Commission of Canada was useless? Is that what you're telling us?

• (1630)

Mr. John Carpay: No, I'm saying that there are various opinions on Aboriginal affairs, on the law pertaining to Aboriginal persons.

[English]

There are differing views about aboriginal policy, aboriginal laws, and I think it's not wise for a group to declare itself to be the neutral expert. I don't share your view on neutral agencies. You and I and everybody in this room all have opinions and biases, and to pretend that one is neutral and in this high position to be able to deliver this neutral, sage wisdom doesn't wash. I don't believe in neutral agencies.

Take a controversial issue, such as the definition of marriage. The Law Commission, on its website, says that marriage should be replaced by registration and that the definition should be changed. Some people agree with that and some people disagree with that, but to pretend that you're neutral is silly.

[Translation]

Mr. Marc Lemay: So you claim that they aren't neutral. Is that what you're claiming?

Mr. John Carpay: I'm not neutral, they aren't either, and you aren't either. In fact no one in this room today is neutral.

Mr. Marc Lemay: Is a judge neutral?

Mr. John Carpay: A judge does his best to be neutral, but he's a human being.

Mr. Marc Lemay: Have you read any opinions issued by the Law Reform Commission of Canada? Have you taken the trouble to read them or to read a few since Monday?

Mr. John Carpay: It's not my fault that I received the invitation so late. The answer is yes, since I read what I read. I did my research as best I could in the circumstances. It's beyond my control if I receive an invitation on Monday.

I would add on this subject that I received the invitation concerning what we're going to discuss at 4:30, the Court Challenges Program, last week. So I know that subject better.

As regards what we're considering right now, the moment when I receive an invitation is beyond my control.

[English]

The Chair: Thank you, Mr. Lemay. Your time is up.

Mr. Godin.

[Translation]

Mr. Yvon Godin: Thank you, Mr. Chair. I'd like to welcome our guests.

First of all, so you don't waste any time asking me whether I'm a lawyer, I'll tell you that I'm not a lawyer.

[English]

of common law. It's just that I work on common sense. Common sense prevails.

[Translation]

I'd like to ask a question. Appendix A contains the letter that was sent to Justice Minister Toews. I don't want to waste too much time with the other witness. I believe he's on the side of the Conservatives, who want to abolish all the programs, abolish the Court Challenges Program—we'll talk about that a little later—and abolish the women's rights promotion programs. That makes me think of the American system. I'm so glad to live in Canada, when I think of the great system we had until quite recently and that I wouldn't want to lose for good.

Let's see the people who signed. If I'm not mistaken, 238 people signed a letter to tell the minister that they thought he was headed in the wrong direction. Even Simon Fraser University supports you. Even the university professors signed the letter, and yet Mr. Carpay says he has the support of all the universities we're talking about.

If I understand your mandate correctly, you've been given the objective of gathering all that together. I can't imagine a professor at the University of Ottawa going to Manitoba to consult people and see what they need. I can't imagine a professor from the University of Moncton going to Newfoundland or Fredericton. That's not his mandate. His mandate is to be at the university teaching our young people. That's his mandate.

What did the governments give your commission? They gave you the power to go and see citizens. In a democracy, a minority government can't pass laws and regulations and take things away from us without people having a right to say something. Democracy isn't that.

I've travelled in other countries. Some governments even asked us how to go about doing things. Even the government of South Africa asked us last month what it could do to reach the people, to involve the people. When I was elected member, it was to represent the people. If we don't want to listen to the people anymore, if the government no longer wants anyone to help it listen to the people, I think it's making a fundamental mistake and that, at that point, we're headed toward dictatorship. If we don't have a counterweight somewhere, if we can't discuss differences, opposing views in public so that we are able to get the best, I think we're making a mistake and that this government is mistaken. It should remember that it's a minority. It doesn't represent the majority of Canadians.

If we were to vote today, what would the majority in Parliament think of all this? You wouldn't be leaving. You'd be here to represent Canadians. I'd like to have your opinion on my view of the matter.

• (1635)

Mr. Yves Le Bouthillier: I'll simply say that I'm a university law professor. That was my career until I joined the commission. I must say that the commission has been a marvellous experience for me, in that we are in a world of specialization where the commission is an open entity. First, it studies various subjects; second, it's open to various disciplines; and, third, as was said, it goes across the country and does so within its limits. It must be said that it tries to involve as many people as possible, in view of its resources.

Since this committee confirmed my appointment a year and a half ago, I've acquired experience that I couldn't have as a law professor at a university. That's clear. In that respect, is this an instrument for reaching people? That was the mandate that parliamentarians gave the commission in 1996 and that it wanted to carry out to the best of its ability.

[English]

The Chair: Thank you, Mr. Godin. Your time is up.

The hour is about at an end as well, but I'm going to give the Conservatives an opportunity to speak or ask questions.

I'm going to direct the time to Mr. Moore.

Mr. Rob Moore (Fundy Royal, CPC): Thank you, Mr. Chair, and thank you to everyone for being here.

I always think it's interesting that when the opposition finds someone they disagree with, or who doesn't particularly subscribe to their world view, they give them a thorough cross-examination. I would hope that we—

Mr. Marc Lemay: I like it.

Mr. Rob Moore: You're entitled to it. They're your questions.

First, for Mr. Carpay, you've suggested that the work of the Law Commission could be done by other sources, universities and so on. Could you describe that a bit? Why do you think the work of the Law Commission is done?

I tend to agree with you that we all have our biases. I think everyone in this room has their own world view, and you've said your organization does too. So how do you see this idea, already mentioned, of a neutral way of addressing law reform? In my view, if we have any recommendations to change the law, we're making some value judgment on whether we like it, whether it goes too far, or whether it doesn't go far enough. The Law Commission, in its recommendations, would draw some conclusions. I'm wondering how you see that role being filled by other organizations.

Mr. John Carpay: Not only could it be fulfilled, but it is being fulfilled every day.

We've heard Mr. Bagnell's question about aboriginal policy. There are numerous public policy research institutes that have been publishing articles and doing research on aboriginal policy. The Centre for Aboriginal Policy Change, based in Calgary, is one example. There are numerous examples.

Labour law, as far as I understand, is primarily provincial jurisdiction. But even if it is federal jurisdiction, different unions put forth their perspectives and management groups put forth theirs.

• (1640)

Mr. Rob Moore: Okay, thanks.

Ms. Des Rosiers and Mr. Le Bouthillier, your suggestion is that this can't be done by outside groups. Mr. Carpay has mentioned that his group receives donations, and we know there are all kinds of groups out there. And the Law Commission, of course, receives public money; this was part of a spending review by the government. What do you feel perhaps is unique about it and can't be fulfilled by others?

Ms. Nathalie Des Rosiers: I think its value is the attempt to bring together the range of groups. That's the way the commission was formulated, that it should do partnership, that it should engage Canadians in defining the agenda, and that it should bring these forward in a report to Parliament and say that at this point in time, here is the range of views in Canada. And the report would say this is one possibility and these are the dangers of going this way—because their mandate is to evaluate the consequences of going one way or the other. The five commissioners are appointed by orders in council, and having read or done the consultations, they consider what is the best policy option at the current point. Certainly the government can decide yes, no, or in five years or in ten years. The point is to join in.

I think it's fabulous that there are groups throughout Canada, and we know this. In fact we supported them, supported their exchanges in bringing them together.

Mr. Rob Moore: What do you say about—

Ms. Nathalie Des Rosiers: I'll give you just two examples.

On restorative justice, the points of view are polarized. So we did sessions where people could express why they were afraid of restorative justice and how they would measure whether in fact their fears were real or not. If somebody moves on a restorative justice agenda, we ask them what guarantees they would like to see, with things like private and public security.

The very fact that we started this work brought, for example, the chief of police of Quebec to invite the CEO of a private security firm in Montreal so that they could talk together and see the difficulties and the way in which each of them could cooperate. That doesn't require a change of statute, but it was a hole that we were able to spot and to bring together all the players, the actors, to try to bring about a bit of a consensus.

There are some more charged issues, obviously, in public policy, where there are some more technical ones. In the report on federal security in intellectual property, for example, which is a more technical area, we were able to bring the commercial lawyers and small business.... We had the Ivey School of Business helping us—

The Chair: Thank you, Ms. Des Rosiers.

One more question, Mr. Moore.

Mr. Rob Moore: At the end of the day, the commission does make recommendations in their reports. Mr. Carpay, I don't know what the exact facts were, but I think it's important. I noticed at the

beginning that you made some comment about recommendations for legalizing incest or something like that. And then I saw you both shaking your heads.

Mr. John Carpay: I mentioned its predecessor as well. I said specifically that it was the Law Commission and its predecessor. I apologize if that was missed or if I didn't articulate that clearly.

Mr. Rob Moore: If that's in fact the case, I'd like to know, and if it's not the case, I'd like to know.

Ms. Nathalie Des Rosiers: It's not the case. The Law Commission did not have a project on incest, and it did not make that recommendation.

Mr. Yves Le Bouthillier: None of what I heard is from this.... I thought we were here to talk about the Law Commission.

Mr. John Carpay: Well, yes. This was printed off the website today. It has the date on it and what not:

Registration Instead of Marriage: A registration scheme could be used to replace marriage as a legal institution.Accordingly, the Report recommends that Parliament and provincial/territorial legislatures move toward repealing legislative restrictions on marriages between persons of the same sex.

It's on their website today.

I don't know if it's silly or arrogant or misguided to declare yourself to be this neutral body worthy of tax dollars when you're coming out with very specific recommendations from a particular perspective and world view.

• (1645)

The Chair: Thank you.

Ladies and gentlemen, this is the end of the first session.

Mr. Myron Thompson (Wild Rose, CPC): May I make a quick point?

I would like to thank the people for coming. They did very well in their presentations. I want to especially thank the commission. You really did remind me, and I hope the rest of us, that we have a job to do. You have been doing a lot of work that we need to be doing. I'm going to improve on that myself, and I hope the rest of us will.

The Chair: Thank you, Mr. Thompson.

I would like to thank the witnesses for appearing.

I invite the next set of witnesses to come to the table. I know you're going to be among them, Mr. Carpay.

Thank you.

I will suspend the meeting.

• (1645)

_____ (Pause) _____

• (1650)

The Chair: I call the meeting to order.

I would like to set out some new ground rules. The question period will be limited to five minutes per person so that more people can get involved in the line of questioning. Secondly, since there are four organizations presenting, I would ask that only one person present for each organization.

Yes, Mr. Murphy, go ahead.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): Mr. Chairman, on a scheduling point of order, if you like, we did start ten minutes late, and I know we have a vote. Would there be agreement to sit until twenty minutes to six?

The Chair: Cut it as tight as we can, is that what you're suggesting?

Mr. Brian Murphy: Past 5:30 is what I'm suggesting.

The Chair: Is everyone in agreement?

Mr. Réal Ménard (Hochelaga, BQ): *Oui*. And don't forget my motion.

The Chair: So be it.

We have Mr. Ménard's motion as well, at the end of this committee meeting. We'll have to deal with it quickly.

I will call upon each witness to testify according to the....

Mr. Godin.

Mr. Yvon Godin: Point of order. There should be a rule, and I don't know what the rule is at this committee, that there should be no argument between.... It should come directly to us to raise questions.

The Chair: I don't see any argument. I see a point of clarification that Mr. Le Bouthillier wanted to correct as Mr. Carpay presented, and he's entitled to do that.

Mr. Yvon Godin: I have never seen that before.

The Chair: Mr. Godin, stick around for a while, and you might see a few new things.

Mr. Yvon Godin: Yes, maybe under your leadership, but I don't think it's right.

Mr. Myron Thompson: It was a good debate.

The Chair: Yes, we had a good sound debate.

I would ask Mr. John Williamson to be the first to present. I might ask for the presenters to keep their comments as tight as possible, five to six minutes, seven minutes at the maximum, if you would.

Mr. John Williamson (Federal Director, Canadian Taxpayers Federation): Thank you. I'll get right to my remarks. And I appreciate being here today.

My name is John Williamson. I'm with the Canadian Taxpayers Federation.

Abolishing the court challenges program is good news, not only for taxpayers but for equality.

Mr. Derek Lee (Scarborough—Rouge River, Lib.): Excuse me, on a point of order.

I certainly support the chair in his remarks, but there's a flip side to this coin. If we ask you to go too quickly, the translators will ask to please slow it down.

Mr. John Williamson: Thank you, I appreciate that.

In the past twenty years, millions of tax dollars have been given to special interest groups to advance their politically correct causes through the courts. Groups like EGALE or LEAF have received hundreds of thousands of tax dollars to advocate.

Not all tax dollars flowed through the CCP, but these were some of the interests they advocated for: that people are entitled to collect welfare, regardless of the income earned by their common-law spouse residing in the same house, and by that I mean you get a welfare cheque even if you're living with someone who's earning a decent income; that non-citizens should acquire the opportunity to avoid deportation by giving birth to children in Canada; that a pregnant woman has the right to continue harming her unborn child by sniffing glue; that more tax dollars should be spent on legal aid and on health services for non-citizens; that physical fitness standards for firefighters should be lowered to accommodate women; that freedom of political speech should be restricted in the name of equality and Canadian values; that employment insurance benefits should be extended to people who have worked fewer than 700 hours in the preceding one-year qualifying period; that the state should prohibit prayer and peaceful protest near abortion clinics; that legally owned guns play a significant role in perpetrating violence against women and children; that the term spouse need not refer to a member of the opposite sex.

Through their tax dollars, all Canadians pay to advance LEAF's public policy agenda, whether they agree with it or not. Eliminating the CCP puts all groups on an equal footing, at liberty to raise funds for their own purposes through their own supporters.

In addition to LEAF, other groups have also received tax dollars through the court challenges program to argue that prisoners convicted of serious crimes should have the right to vote; that receiving welfare payments is a constitutional right; in support of the Canada Elections Act restricting us on citizen's advocacy that is independent of political parties—that is our infamous Harper versus Canada; that it should be a criminal offence for parents to spank their children; that a person convicted of importing large quantities of cocaine into Canada should receive a lighter sentence if they are black single mothers; that sexual orientation is akin to race, gender, and religion and should be added to human rights legislation; that a Guatemalan citizen with a criminal record deemed to be a danger to the public should have an automatic right to appeal a deportation decision; that marriage should be redefined to include same-sex couples.

Some Canadians will certainly agree with some of these public policies, but is it right that all Canadians, including those who disagree, are required to pay for this type of advocacy? How would LEAF supporters feel if their tax dollars were used for court challenges to recognize the rights of unborn children? How would a member of the Canadian Labour Congress, a recipient of tax dollars through the CCP, feel if tax dollars paid for court advocacy against compulsory union membership? Individuals and organizations have every right to use the courts to press for public policy change, but requiring people to pay for advocacy with which they disagree does nothing to a person's conscience.

Equality demands that government refrain from spending tax dollars to favour one side on any controversial issue. Ending the court challenges program creates a fair and level playing field for all Canadians, whatever their views might be.

I thank you, Mr. Chairman.

●(1655)

The Chair: Thank you, Mr. Williamson.

Next, from the the Canadian Constitution Foundation, we have Mr. John Carpay.

[*Translation*]

Mr. John Carpay: Good afternoon, Mr. Chair, ladies and gentlemen members. I was informed, roughly a week or 10 days ago, that I was going to speak on this subject today. I would have liked to have a little more time to prepare what I'm going to say today.

[*English*]

As I mentioned previously, our foundation arose in 2002 in support of constitutional litigation launched by James Robinson in British Columbia, who challenged and continues to challenge the Nisga'a agreement as violating his equality rights and other constitutional rights as a Canadian. You might be interested, or perhaps surprised, to learn that our foundation actually applied to the court challenges program for funding in 2003. That was before I came on board as executive director. I don't know if I would have made the same decision or not, but that's irrelevant. In 2003 we applied for funding. We said we'd like some money to support this court challenge of Nisga'a Indian Chief Robinson, Sga-inisim Simaugit, to pursue his section 15 equality rights. We were denied funding by the court challenges program because our particular litigation did not fit the particular ideology and particular vision of the court challenges program.

In spite of that denial, we were still able to raise money from Canadians who support Chief Mountain's challenge, and this litigation is still ongoing because Canadians have been persuaded of the justice of Chief Mountain's cause, and they have voluntarily contributed toward that lawsuit. I've heard the argument that the court challenges program should receive tax dollars because it promotes justice by assisting groups and individuals in pursuing justice in the courts. This argument would hold water if everybody agreed on what justice is.

[*Translation*]

However, that's not the case. Various visions of justice are being expressed here today. I see representatives of the four political parties. Each political party has its own vision of justice. We don't all agree on what justice is. In fact, we know that this question was debated at the time of Plato and at the time his work *The Republic* first appeared.

Since there's no consensus on what justice is, it isn't accurate to say that this program helps people defend justice. That's simply not true. It is used to help people defend a certain vision of justice. After listening to Mr. Williamson's list, some people in this room and outside of it could agree with some, most or all the cases that were mentioned. However, there are people in this room and elsewhere in the country who do not at all share that vision of justice.

●(1700)

[*English*]

For example, if you consider the notion of equality, for some people equality means equality of opportunity or equality before the law, with the differing outcomes, different results, that will occur. For other people, equality means not equality of opportunity but equality of condition or substantive equality, which I take to be the position of the court challenges program, although I don't purport to speak for them. This is an example. There can be very sincerely held and different views as to what equality is, and so my central point is that the court challenges program does not fund justice. It funds one particular vision of justice. The court challenges program does not fund equality. It funds one particular vision of equality. The court challenges program doesn't fund language rights. It funds one particular vision of how language rights should be implemented. It is wrong, morally, politically, and ethically for the federal government to force all Canadians to pay with their tax dollars for the promotion of one particular view of justice that some people agree with and others do not.

Chief Mountain has persisted and persevered in his litigation without any funding from the court challenges program since the statement of claim was filed in 2000 and since 2003, when we were denied funding. Other individuals and groups should do likewise.

The Chair: Wrap up, Mr. Carpay.

Mr. John Carpay: Other individuals and groups should do likewise and raise their money from Canadians who agree with their particular vision of justice.

Thank you.

The Chair: Thank you, Mr. Carpay.

From the Women's Legal Education and Action Fund, we have Ms. Chantal Tie.

Mrs. Chantal Tie (Member, National Legal Committee, Women's Legal Education and Action Fund): Thank you very much.

I first need to come clean that I am also the most recent past chair of the court challenges program. I was nominated to the court challenges program board by LEAF, served for seven years, and am now the immediate past chair. I need to tell you that before I start, because I actually have quite an intimate knowledge of the court challenges program and I'm currently on the national legal committee of LEAF.

I think it's important to make a fundamental point before I start. What is this shared vision that we have? I've just heard two people talk about differing visions of equality, differing visions of justice. We have a vision that this government has adopted. It's called the charter. That is the common vision. When I listen to my friends who have just spoken, what I hear is a disagreement about the vision and an attack on it by attacking the court challenges program.

The charter talks about rights. It doesn't talk about privileges, which can be withdrawn and granted at the will of Parliament. Our charter tells us that an essential part of our democracy is to ensure that the will of the majority will be always attentive to minority rights. This is our common vision of what justice is. In this way, the courts, through the charter, play an important role in balancing majority rule with minority rights.

Majority rule that violates fundamental minority rights is not part of our shared democratic vision, nor does LEAF believe it should be. The charter recognizes that minority rights are not always protected by the majority. In the minority community, which I come from, we have come to understand that true democracy is not simply majority rule; it means protection of the minority within a system of democratic majority rule. It's a fundamental principle that I think is worth restating.

The government, therefore, has an essential role in the proper functioning of our democracy, which means the government has to ensure that minority rights are protected. What value do those rights in our charter have if they cannot be enforced? What value is our Constitution if it has no effect? Ensuring the protection of minority rights is all about protecting and promoting our democracy, not about subverting it.

Access to the courts is essential for equality-seeking groups precisely because they are often members of disadvantaged and minority groups that are subject to the sometimes discriminatory effects of majority rule, whether intentional or unintentional.

The Supreme Court has affirmed its longstanding commitment to the ideal that it is the government's responsibility to govern, and governments are obligated to govern in accordance with the Charter of Rights and Freedoms. Government action that violates the charter must be measured against principles and values of substantive democracy.

Unfortunately, one of the unifying and defining features of many forms of disadvantage and discrimination is poverty. It's axiomatic that the disadvantaged and marginalized groups that the charter seeks to protect do not have the financial resources to mount court challenges, nor the political power to influence the majority. This is precisely why we have the charter and why we need the court challenges program: to redress the fiscal and power imbalance that exists and to ensure minority rights are respected.

The court challenges program permits the conduct of litigation to mediate disputes about equality and discrimination in a civilized and highly controlled manner before the courts. I suggest that it's naive to think the underlying disputes will disappear if the program is eliminated. The disputes will continue. It's just that they will be resolved in a different manner by a more desperate and more marginalized group, perhaps in a manner that is less civilized and less controlled.

Eliminating the court challenges program is removing the ability of disadvantaged groups to participate in the court process to resolve their disputes. I suggest that is not a good idea.

● (1705)

The government needs to think realistically about the waste of taxpayers' money that arises when disputes are not channelled into civilized and highly controlled courses, such as before the courts. Either way, the taxpayer is going to spend money. We believe the process and the promotion of constructive resolution of disputes through the courts is a preferred approach.

LEAF also believes that working together to create an equitable society contributes significantly to real national security.

The Chair: Conclude, please, Ms. Tie.

Mrs. Chantal Tie: Why should the government spend money on the court challenges program? Because, quite simply, the program is all about protecting minority rights and preserving democracy, not destroying it.

The Chair: Thank you, Ms. Tie.

Presenting for the federation, Monsieur Rémillard.

[*Translation*]

Mr. Rénauld Rémillard (Executive Director, Fédération des associations de juristes d'expression française de Common Law Inc.): Thank you, Mr. Chair.

The mandate of the Fédération des associations de juristes d'expression française de common law is to work in favour of access to justice in French and to promote and defend the language rights of the Francophone and Acadian communities.

It represents seven associations of legal practitioners in various provinces. The only provinces where there are no associations of French-speaking common law practitioners are Prince Edward Island, Newfoundland and Labrador and Quebec, obviously, because we really serve the Francophone and Acadian communities.

The FAJEFCL promotes access to justice in Canada's both official languages. I think that's the key element here. Earlier reference was made to the concept of justice. Here we're really talking about access to justice, and that's the key point.

I'd like to talk a little about language rights. What language rights are protected and are the subject of funding by the Court Challenges Program? First, there's our children's right to an education in their language across the country, that is to say to be fully Canadian and to enjoy the benefits they should have as Canadian Francophones.

Language rights in the schools and schools management are matters we have been able to secure through highly controversial court challenges. If you are familiar with the history of Francophones in this country, you are aware of their epic struggle to acquire their education rights.

A second, very important point concerns language rights in the legal field, that is to say access to the courts. One of the key factors in access to justice is to be able to communicate in the language of one's choice with stakeholders in the justice administration system, that is to say with judges, attorneys, and to be able to file one's documents and to have access to the rules of procedure and so on in one's language. That's another very important language right. There have been court challenges on this point and major gains have been made in the past few years.

As regards legislative bilingualism, as you know, at the federal level, in Manitoba, New Brunswick and Quebec, all laws and regulations must be passed in both official languages. That's a right enjoyed by Francophones in Canada and Anglophones in Quebec.

As regards the language of work, language of service and the language of communication, this is mainly protected at the federal government level and in New Brunswick. Here again, this is a language right protected by the Constitution of Canada and that is the subject of court challenges.

The language of service is the subject of far fewer challenges. Here I'm talking about section 20 of the Canadian Charter of Rights and Freedoms. This is an area that remains to be explored, and there are still a lot of questions for which there have not been any answers.

There is also the unwritten constitutional principle of minority protection. You are probably all aware of Montfort Hospital and the principle of advancement towards equality. These are two important concepts for the country's linguistic minorities, whether they be Francophone or Anglophone.

Over the years, most of the unwritten constitutional principles, in particular the principle of advancement toward equality, have stemmed from numerous court challenges, largely funded by the Canada Court Challenges Program. And let's not forget Montfort Hospital here in Ontario. Over the years, the Court Challenges Program has received very good evaluations. You can read the reports, which are published annually on the Web site or in paper format.

Limited or reduced access to justice is the main consequence of the cuts to the Court Challenges Program. Some people may not like the content of justice, but I think everyone understands what access to justice is. You may be able to appear before the courts or you may not because you don't have the financial means to appear, defend and promote your interests. Access to justice must not be confused with the content of justice.

Access to justice is being very significantly reduced for the Francophone and Acadian communities, whether it be in education or with regard to the courts or services.

What individual, what parent in Prince Edward Island can afford to spend \$500,000 to defend, before the Supreme Court of Canada, his right to an education in French for his children? That's access to justice. To all intents and purposes, that means that, since Francophone parents in Prince Edward Island aren't in the majority in the region where they live, they may have to pay \$500,000 out of their own pockets to gain access to education in French. That's what we're saying.

• (1710)

As Canadian citizens, we have to have Canadian standards. There are Francophones in the country living in regions where they are not part of a Francophone majority, and those Francophones should not be penalized and have to pay \$400,000 or \$500,000 to have access to education in their language.

[English]

The Chair: Thank you. Mr. Rémillard, your time is up. There is some questioning here that we will engage in now, so please conclude.

[Translation]

Mr. Rémond Rémillard: Without the Court Challenges Program, there won't be any progress because there will be fewer court challenges. At that point, there'll be a real chance of regressing.

New statutes are passed, and some statutes can interfere with certain rights or force a regression. Ultimately, without the Court Challenges Program, the Francophone and Acadian communities will be distinctly more vulnerable with regard to their rights.

That completes my remarks.

[English]

The Chair: Thank you, Mr. Rémillard.

I now would like to turn to Mr. Murphy.

Mr. Brian Murphy: Thank you, Mr. Chairman.

The Chair: Mr. Murphy, given the time, I may be cutting that time down to about four minutes.

Mr. Brian Murphy: It's not because you don't like what I'm about to say?

The Chair: No, I don't know what you're going to say, Mr. Murphy.

Mr. Brian Murphy: I'll speak very quick then. I apologize to the translation people.

The bottom line is there is a good debate going on here, Mr. Thompson said it right, but the debate is really one of whether we're going to have, to put it plainly, any government funding in policy development and advocacy groups. We saw with the women's groups cuts and the cuts to come that the government doesn't feel it should be involved in funding advocacy groups or think tanks, and all of this "thinking"—and I'll use that term liberally—should be done by the private sector. And with that respect, I respect the points of view, but I do not agree with the points of view of Mr. Carpay and Mr. Williamson.

•(1715)

[Translation]

So I don't have any questions to ask them.

However, I'm asking myself some questions because I come from New Brunswick, where we have language rights under provincial laws and, of course, the Canadian Charter of Rights and Freedoms, particularly under section 23.

Notwithstanding the fact that I tell all committee members that New Brunswick is a virtual paradise, we have problems achieving linguistic harmony. We've obviously used the Court Challenges Program to support the language rights of Acadians in New Brunswick.

If this program, which can help a minority group representing 40% of the population in New Brunswick, is cancelled, what will the Francophone linguistic communities outside Quebec do, in Manitoba or Edmonton, for example, if they can't rely on this program?

My question is for Mr. Rémillard. In the language field, what will happen if people can't afford a lawyer in order to assert their rights under the Canadian Charter of Rights and Freedoms?

That doesn't just apply to education. Mr. Williamson may say that

[English]

the parents of children can probably afford to get together and fight for a school, as we had to do in Moncton, New Brunswick, against the bilingual government. But in minority rights cases, such as the coverage of the RCMP in a province, you can see that may not get the groundswell of public support, but it's nonetheless very important to the francophones and Acadians in New Brunswick, for instance.

And the bottom line is—and speaking as quickly as I can with my four minutes or less—what are we going to do without this program to bolster minority language rights in New Brunswick and in the rest of the country where the minority is even less secure?

[Translation]

Mr. Réal Ménard: As regards challenges...

[English]

The Chair: Mr. Rémillard, I would like you to reply within a minute or so.

[Translation]

Mr. Réal Ménard: There may be a very significant decline in the number of court challenges based on language rights.

It would be important to emphasize as well that language rights, even though they often apply to individuals, are collective rights. They're for the community as a whole. When an individual is asked to institute proceedings or a challenge, it's the collective aspect that is overlooked.

In the case of services, there's always a problem when an individual is prepared to pay \$100,000 for a challenge, when the impact is in fact collective and affects the Francophone community as a whole. It's somewhat the equivalent of what, in economics, is

called a free rider, hence the need for a public policy. Funding is warranted in these circumstances. That's economic language.

The reasoning is that language rights are collective rights. Without the Court Challenges Program, there'd be a very significant decline in the number of court challenges.

[English]

The Chair: Thank you, Mr. Murphy.

Mr. Ménard.

[Translation]

Mr. Réal Ménard (Hochelaga, BQ): Thank you, Mr. Chair.

I'm going to raise this question with the steering committee because, according to the rules, members have seven minutes. And it's not your prerogative to reduce the speaking time depending on the witnesses. We'll settle that in the steering committee. The rules state that members have seven minutes when there are witnesses.

Second, you're aware of the dramatic situation we're experiencing. We have a government that is quite heartless in achieving savings on the backs of people who need help, assistance from the government. That's the drama. The Court Challenges Program has \$2.5 million a year. The current government couldn't care less about minorities and has chosen to make \$1 billion in cuts and to take \$5 million away from you over two years.

When you don't respect minorities, you don't deserve people's trust. Know that the Prime Minister made a fairly stupid statement in the House. He said he was abolishing the Court Challenges Program because his government would never introduce unconstitutional bills. I'd like to know your opinion on the subject.

Imagine the calibre of our Prime Minister and his concern! How do you think Canadians, Quebecers and minorities can have confidence in this crypto head of state? May it please God that this government never becomes a majority government because the Prime Minister doesn't care about minorities. How can we respect a man who stands up in the House to say that his government will never introduce unconstitutional laws? Do you think that's the reason why the Court Challenges Program has been cancelled? What thoughts does our Prime Minister inspire in you?

•(1720)

[English]

Mrs. Chantal Tie: I'm not really prepared to answer some of those questions, but I would just point out that any government in power inherits all of the legislation from the previous government as well. So even if they don't pass any laws that infringe on minority rights, there may be other laws passed by other governments that do, which they've inherited. So it's a collective and ongoing process.

[Translation]

Mr. Réal Ménard: Here's the only possible answer: ultimately, the Supreme Court is the arbitrator as to whether or not an act is constitutional. It's really up to the Supreme Court to determine whether an act is constitutional or unconstitutional.

Mr. Réal Ménard: Do I have any time left?

One thing is quite incredible. Let's take the evolution of the rights of the language communities. Without this ability of the courts to take over, it is impossible to conceive how you can go and live and grow and develop.

The Court Challenges Program, for your communities, is what legal aid is for individuals. It's as though you started from the following principle: individuals will never need to go to court, and we'll abolish legal aid. Imagine the government using such pigheaded reasoning.

Once again, show us how important it is for the vitality, grandeur and nobility of our communities. Once again, may it please God that this government never forms a majority. I hope that you'll make people in your communities understand the danger that this government represents for minorities.

[*English*]

The Chair: Mr. Rémillard, did you want to reply to that? Very quickly, sir.

[*Translation*]

Mr. Réal Rémillard: I'm going to turn the floor over to Christian Monnin.

Mr. Christian Monnin (President, Federation of Associations of French-speaking Jurists of Common Law): Thank you very much.

My name is Christian Monnin, and I'm President of the Association des juristes d'expression française du Manitoba.

To answer your question, Mr. Ménard, I can give you a concrete example of the results of the Court Challenges Program. You have one here before you, in the flesh.

Mr. Réal Ménard: May I touch you?

Mr. Christian Monnin: I'm a Franco-Manitoban, and without this program my Francophone Manitoba would not exist as it does today. Thank you.

Mr. Réal Ménard: When you think the Minister of Justice is from Manitoba!

[*English*]

The Chair: Thank you, Mr. Ménard.

Monsieur Godin.

[*Translation*]

Mr. Yvon Godin: Thank you, Mr. Chair.

An hon. member: Don't get angry!

Mr. Yvon Godin: No, you won't make me waste my four minutes.

The Court Challenges Program has nothing to do with a form of justice that gives a response. This program gives an individual a chance to appear before a judge in a given system, unless the government does not believe in our system. In that case, we shouldn't have courts of justice or judges, and we should abolish lawyers. The government, through Minister Baird, clearly told the House of Commons that it wouldn't pay people to challenge its laws because they're perfect and must be complied with.

If that's the case, if we want to save money, I'd like the taxpayers' representative to tell us whether that's indeed what he wants. Do you want us to completely abolish our democratic system in Canada? Is that the case?

Otherwise, I'll propose something to you, since we have to save taxpayers' money. When a citizen appears before the court and wins his case, the government won't be entitled to appeal from the judge's decision because it would be using taxpayers' money to do so.

As Francophones and Acadians, we represent a minority that was deported by boat to Louisiana in 1755. When Louisiana suffered damage as a result of Hurricane Katrina last year, we didn't even help in the reconstruction. That's what it is to be a minority. That's what happened to us.

Let's take the example of the Francophones in the riding of Acadie—Bathurst whom the government wanted to transfer to Miramichi, where 70% of the population is Anglophone. It was through the Court Challenges Program that we were able to make ourselves heard and to win that case. The Francophones of Prince Edward Island won their case concerning their schools. It was also through the Court Challenges Program that that was done.

I'm asking you the question honestly. I know you support this. I'd like to know from the people who want to save taxpayers' money if they're opposed to it.

• (1725)

[*English*]

Mr. John Williamson: I've heard that abolishing this program today will mean the end of the charter, the end of democracy, and now the deportation of francophones. That is ridiculous. I also heard another member—

Mr. Yvon Godin: That's not what I said.

The Chair: You asked him a question. He's trying to reply.

Mr. Yvon Godin: He has made a statement that I don't agree with.

The Chair: Have respect for the witness.

Mr. Yvon Godin: Have respect for the member of Parliament who has the right to be here.

I am not saying we abolish all of that. Are you saying that the people have no right to defend themselves, that they're on their own against the government?

Mr. John Williamson: People have every right to go before the courts on their own. That's what citizens do every single day in this country.

Mr. Yvon Godin: Against the government?

Mr. John Williamson: I heard Mr. Ménard suggest that these groups that receive tax money should go out and fight to ensure that the Conservatives don't receive a majority. So now we're advocating that groups go out there and fight the government because they're receiving tax dollars, and if they want to keep receiving those tax dollars.... That's just wrong.

Mr. Yvon Godin: Who paid your expenses to be here?

Mr. John Williamson: It's democratic—

Mr. Yvon Godin: I'm sorry, it's my question. Who paid your expenses to be here—the taxpayers?

Mr. John Williamson: Citizens donate to us voluntarily.

Mr. Yvon Godin: Who paid for your flight to come here?

Mr. John Carpay: The taxpayers of Canada.

Mr. Yvon Godin: Thank you. I have no more questions.

Mr. John Williamson: I walked up from 130 Albert, so I can assure you the cost to the taxpayer was very low. It was zero.

The Chair: Thank you, Mr. Godin. Your time is up.

Mr. Thompson.

Mr. Myron Thompson: A couple of questions were previously asked by my colleagues from the Liberal Party and the Bloc. I'd better not say the two Johns, but Mr. Carpay and Mr. Williamson never had a chance to respond, and I'd like them to do so.

Mr. John Carpay: Can you refresh my memory on the questions?

Mr. Myron Thompson: There was one in particular from Mr. Murphy.

Mr. Brian Murphy: What are we going to do to save linguistic rights?

Mr. Myron Thompson: Yes.

Mr. John Carpay: What I hear repeatedly is that this program helps the poor impoverished individuals who are just unable to get any money anywhere. First of all, it's not true, because the plaintiff we're supporting, Chief Mountain, has been litigating with voluntary supporters. I think that's something that a lot of people miss. There's a difference in voluntarily contributing to a cause you believe in. The money that our foundation has received to support the equality rights of Chief Mountain has come from people who agree with that cause. The money that the court challenges program hands out is taken from people who agree and also from people who disagree. You only get money from the court challenges program if you agree with their particular vision of justice. If you don't agree with it, you're not going to get the money. It's wrong to force taxpayers to advocate only one side.

For example, regarding the list of cases that Mr. Williamson mentioned, the court challenges program will fund you if you go into court to argue to change the traditional definition of marriage, but if you want to go into court to argue to preserve that definition, you're not going to get money. The court challenges program will fund you if you subscribe to their particular brand of feminism, but if you're with REAL Women of Canada and have a different idea about women's rights, you're not going to get the money.

I think it's dishonest to suggest that people have no other recourse, because they do. They can raise money from other people, as we have done to keep our litigation alive in support of equality rights.

Mr. Myron Thompson: Also, in regard to the comments from Mr. Ménard about what the leader of our country, the Prime Minister, said....

Mr. John Carpay: Everybody has the right under the charter to challenge a law that they think is not constitutional. Of course, that's hard for individuals, but we have freedom of association in this country. You can get together with other people who support the same cause, create an organization, raise support from people who believe it, rather than force people to contribute to something they disagree with.

Mr. Myron Thompson: This is my last question. A few years ago, 42 years ago, I proposed to my present bride, and she said yes. What if she had said no? Would that be an infringement of my rights?

It sounds like it's getting to the point of ridiculousness. We talk about the right of marriage. Well, since when did I have a right to marriage? There has to be some common agreement there.

• (1730)

Mr. John Williamson: Let me address that from a macro level. Every year, the Government of Canada spends \$26 billion on grants and contributions to organizations and associations across this country. The problem is, people in this town think they have a God-given right to take tax dollars and then go out and advocate for their special cause. The government should be applauded for being able to trim some of that back, but frankly they haven't gone far enough.

No organization has the right to accept tax dollars and then go press their pet issue. If they want to go out and lobby on their issue, they should go out, find Canadians to join their cause, to donate to their cause, and then get involved politically.

The court challenges program is one component of that ongoing advocacy that flies in the face of the values of millions of Canadians.

Mr. Myron Thompson: In other words, taxpayers should not continually financially support ideas they do not support.

Mr. John Williamson: On the left or the right, yes.

The Chair: Thank you, Mr. Thompson.

I'd like to thank the committee and I would like to thank all of the witnesses for appearing in front of this committee. It certainly has been a spirited debate on this issue.

I would ask the committee members to stay put—the witnesses are free to leave—as we have a motion to deal with.

We have one order of business yet to complete, and that is Mr. Ménard's motion. Does everyone have the motion in front of them?

Mr. Ménard.

[*Translation*]

Mr. Réal Ménard: Mr. Chair, 50 years ago, a man from the Gaspé Peninsula was executed at Bordeaux Prison. That was done in conditions that a number of observers of the legal scene characterized as unacceptable from the standpoint of the execution, the rules of procedural fairness and the conduct of the trial. It was a very well-known situation in Quebec, but I don't know whether it was in English Canada. The family filed an application for judicial review, as the Criminal Code allows.

I would like us to invite the government to analyze whether or not there are grounds for a judicial review and to do so quickly and diligently. I'm certain it will do so. The review group reports to the Department of Justice, but it is also independent.

I only want us to be supportive of this family, which has obviously suffered from a stigma. We understand that. For reasons of solidarity with the family, my colleague Raynald Blais has done a lot of work with the family. I'm convinced that all the members of this committee will understand the appropriateness of this motion.

[*English*]

The Chair: Discussion? Mr. Lee.

Mr. Derek Lee: I'm in favour of it. I simply find the wording kind of general. It says "recommend that the government act in the matter with diligence and speed". It's not too clear.

Is it the intent that the government respond to the request for a judicial review? What are you asking the government to do?

[*Translation*]

Mr. Réal Ménard: We simply want to send a clear message to the government, that we want it to work diligently and quickly. We're not setting a deadline. We hope the Chair will introduce this motion in the House so that everyone takes note of it. However, we're not asking for a response or a deadline because we understand that would be inappropriate.

• (1735)

[*English*]

The Chair: Mr. Lee.

Mr. Derek Lee: Is there currently a judicial review? No. Is the government considering the request now?

Mr. Rob Moore: Given a chance, I'll speak to it.

The criminal conviction review group is reviewing the application, so there is a legal process being followed. Thanks to our colleague for bringing this forward. We will act with speed on the process. Therefore, I've read the motion and I'm pleased to support it.

The Chair: Is everyone in favour?

(Motion agreed to) [See *Minutes of Proceedings*]

Hon. Sue Barnes (London West, Lib.): I will bring a motion next—

The Chair: Colleagues, one more thing. We have a steering committee meeting directly after the vote, back in this room.

Mr. Myron Thompson: Mr. Chairman, one thing the steering committee should do is go to all of the House leaders and see if we can't get our votes at three o'clock after question period as often as possible, so we don't have them interrupt these meetings.

The Chair: The meeting is adjourned.

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