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Chair

Mr. Art Hanger

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● (1530)

[*English*]

The Chair (Mr. Art Hanger (Calgary Northeast, CPC)): I'd like to call the meeting of the Standing Committee on Justice and Human Rights to order. Today, following along with the study of the effects of the abolition of the Law Commission of Canada, we have Minister of Justice Vic Toews here with us; we also have the Deputy Minister and Deputy Attorney General, Mr. John Sims. Welcome to our committee.

The committee will also express its appreciation in reference to your extended time here, Minister, with regard to the Judges Act—I know there were some further questions that the committee had of you—for 15 minutes. So thank you again for extending your time.

I now give the floor over to you.

Hon. Vic Toews (Minister of Justice): Thank you, Mr. Chair. I'm pleased to appear before the members of the justice committee, and at your request my remarks will focus on the Law Commission of Canada. I understand that if there are some questions then on the issue related to the judges' salaries, I'll see if I'm in a position to be able to answer them; if not, I'll take any questions and simply defer those answers for a more appropriate time to make sure I have the information before me.

As you indicated, Mr. Chair, today joining me is Mr. John Sims, the Deputy Minister of Justice and Deputy Attorney General of Canada.

Mr. Chair, when I first appeared in front of this committee last May, I said that the Department of Justice has a very real impact on the lives of individual Canadians. As a reflection of that impact, the Government of Canada spends, within the justice portfolio, more than $1.4 billion annually. This includes the Department of Justice Canada, the Courts Administration Service, the Supreme Court of Canada, and various tribunals and commissions.

Improving the justice system is one of the government's top five priorities. We have firmly committed to making Canada's streets and communities safer. At the same time, this government has also promised to spend Canada's tax dollars responsibly.

Mr. Chairman, in budget 2006, Canada's new government promised to review our programs to ensure every taxpayer dollar spent achieves results, provides value for money, and meets the needs of Canadians. On September 25, 2006, we carried through on this promise by finding four areas where Canadians can save money: first, by eliminating programs that were not providing value for the money; second, by cancelling non-core programs; third, by redirecting unused funds; and last, by achieving financial efficiency.

As part of that promise, the government has eliminated funding for the Law Commission of Canada. By doing so we will be saving the Canadian people nearly $4.2 million over two years. That money is going directly to pay down the debt.

The Law Commission of Canada was an independent federal law reform agency that advised Parliament on how to improve and modernize Canada's laws. However, when we looked at the various agencies of government, it became apparent that there was nothing the Law Commission of Canada did that was particularly unique or that could not and was not being carried out by other institutions.

During its tenure the Law Commission of Canada tabled a number of reports to Parliament, which were generally instigated by the Law Commission of Canada as a result of issues that it had identified. These included one on participatory justice; one on security interests; another on secured transactions; a fourth on electoral reform; another on adult relationships; and the most recent report, which was tabled in July of this year, on policing in Canada. They also produced a report on institutional child abuse at the request of the government. In 10 years—and this is an important point to make—since the Law Commission of Canada was created, during nine years of which there was a Liberal government, the report on institutional child abuse was the only report requested by the government. So in all those years there was only one report ever requested by government. These reports are still available within the public domain should the occasion arise to draw upon their contents.

The Law Commission of Canada was specifically structured to draw upon the expertise of people working in their respective fields. It was a very small organization that relied heavily on contractual relationships with outside experts. Across Canada, as I speak, there are independent research bodies at all levels inquiring into how Canada's laws might be improved, much as the Law Commission had been doing. They include provincial law reform commissions; educational institutions with policy capacity—for example, the University of Ottawa is leading the On the Identity Trail project, which is a broad partnership of the university, government, and industry players with an interest in issues related to identity and privacy—also independent non-governmental organizations interested in law reform, like the Canadian Tax Foundation or industry-specific organizations like the Canadian Bankers Association; also working groups that involve the federal, provincial, and territorial ministries responsible for justice; and finally, the private sector and research functions within federal and provincial government departments.

● (1535)

These groups are also carrying out valuable cooperative work with international associations. Many of these organizations provide their input whenever a law is getting reviewed or updated.

It was from this very same body of experts that the Law Commission of Canada drew its advice. Those very same experts are still out there contributing to policy research within their chosen fields; therefore, the capacity has not been lost at all by shutting down the commission.

Furthermore, I'm very confident that, should I need additional support and independent advice over and above what these organizations may already provide on any given law reform initiative, my own department has a capacity to foster partnerships and consultations with whoever may be appropriate for the task. For example, within the recent past my department has engaged in broad consultations with the Canadian Forum on Civil Justice; GPI*Atlantic, an independent, non-profit research and educational organization; the Dalhousie Health Law Institute; and the Saint Mary's department of criminology.*

As you all know, the Department of Justice has the ability to contract for legal research as it sees the need arising. There's a wide range of subject matter experts with whom we have relationships and with whom we can partner in addressing issues of reform or in conducting independent inquiries in areas of legal interest. We do not need to fund a standing organization for decades based upon the possibility that this need will arise. Again, I reiterate that in 10 years there has been only one request by government for any advice from that institution.

Mr. Chairman, I must state here that I support the idea of legal research and law reform. I also support our government's approach to creating efficiencies by eliminating programs and services that can be provided by other parties. In addition, I support the idea of public consultation, which is another service that was provided by the Law Commission.

Consultation can take many different forms, and it can occur at different stages of the law reform process. Consultation mechanisms also very much depend on the topic at issue. For example, this government has recently worked closely with the police associations to help find ways, through legislative reform, to better protect Canadians. Our approach is focused and task-oriented. Through this approach, we have succeeded in quickly and efficiently addressing the government priorities that Canadians voted for last year. It is clear, therefore, that we will continue to learn about issues surrounding the justice system and potential reforms through other mechanisms while still providing value for Canadian taxpayer dollars.

This government does not see a need to fund an organization that largely acts to engage the services of other organizations to carry out the research. I think that's an important point to remember. They essentially did not carry out the research directly, but in fact contracted out to have the work done on their behalf. The Department of Justice will continue to develop and maintain direct relationships with those individuals and organizations that are engaged in policy development, and it does need an interlocutor like the Law Commission of Canada to do this.

In closing, Mr. Chairman, I wish to reiterate that our government is responding to the wishes of Canadians, and that the Department of Justice has been instrumental to that response. We are making changes to the justice system that will make Canada's streets and communities safer, and we are continuing to contribute to the effort to spend Canada's tax dollars responsibly.

Mr. Chair, I welcome your questions and the questions of the membership here. I look forward to your feedback.

Thank you.

● (1540)

The Chair: Thank you, Minister.

It is the first round. Go ahead, Mr. Murphy.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): Thank you, Mr. Chairman.

Thank you, Mr. Minister. Thank you for coming and giving evidence here, your *témoignage*.

It's important for us as Canadians to understand where this new government's coming from, and I'll put the cards on the table as far as the politicization of the Law Commission is concerned. The Law Commission seems to go in and out with the switch in Liberal and Conservative governments. The Law Reform Commission was a Liberal creation ended by the Mulroney Conservatives, and the Law Commission was a Chrétien device terminated by the Conservatives.

I'll leave that obvious political angle aside and ask you three basic questions.

One is, do you think our international marquee ability to be a leader in justice issues is damaged by the fact that in western democracies we would be alone now, aside from the United States perhaps, in not having an independent advice vehicle?

The second question is central. Will the work the Law Commission does and has done in the past be done by others? You rightly point out that it contracted its services to law experts, many of whom are on the faculties of our law schools. The question might be, did you consult with the deans of the law schools across Canada to determine whether this independent research on many areas of law is needed? I can cite the six that were being worked on: globalization, indigenous peoples, policing, etc. You mentioned some of them in your remarks. How sure are we that the law schools, which seem to be the only ones standing in this regard, will have the capacity to do that if they're not getting the funding from the Law Commission?

By argument, I say to you that the CBA is off the list of people who might do your research, because I'm sure you saw the letter in which they said they were taken by surprise to hear that the CBA, the Canadian Bar Association, could fulfill this role. I argue with you that the Department of Justice, which in many cases is making laws that are going to be contested by the independent research that might be needed in various areas.... I question whether the Department of Justice is the resource centre for this type of independent research; that's what it is, independent research.

With all respect, I throw out what I say is your red herring, that only once in 10 years did the government ask for a study. That's precisely the point, isn't it? This is supposed to be independent advice on important subjects drawn from the best experts, and not necessarily advice that you would ask for as Attorney General, or I would ask for as an opposition justice committee member. The indigenous peoples, which my friend Mr. Bagnell's going to get more into, is a very good case in point. Who's going to ask for that research? I sure as heck think it's not going to be the Canadian Tax Foundation or the Canadian Bankers Association. I put that to you in a somewhat argumentative way.

In short, is our international presence damaged by your decision to cut out the Law Commission? Will its work be done by other assets in the community, given that there's no money now for legal research in the universities, and finally, by whom? With the CBA and the government, the CBA is out of the question, and the government really can't be researching its own laws.

Hon. Vic Toews: Thank you. I think those are all good questions.

In terms of just the political side you made, it's an important one. It indicates a different approach to who needs to be involved in getting independent research. There are often times, as the Attorney General, that I ask for independent research in particular cases, independent legal advice, where it would appear that the Department of Justice could be perceived to have a conflict. And that is done as a matter of course.

With respect to whether the work will be done, I taught at a university on a part-time basis for eight years, and I did so basically, if not on a pro bono basis, pretty well on a pro bono basis. The professors there—and I think it's standard right across the country—are given one-third of their time for teaching, one-third of their time for community issues, and one-third of their time for doing research in their field. They are paid to do that by the taxpayer of Canada. I'd be surprised to say that simply because $4.2 million wasn't available to these professors they would not carry out what they are, either under the conditions of their tenure or under the conditions of their contract, obliged to do. They do it on a regular basis.

You've indicated if we want specific advice. If we want specific advice, there are independent people who can do it. And I'm very surprised to hear that the CBA can't provide independent advice. They have always provided independent advice for all the years I've been coming to this committee. I haven't always agreed with it, but it certainly has been independent advice critiquing government bills. That has been an absolutely important function. And so for the CBA to say that they don't carry out that type of research, I find amazing when I look at all the publications that the CBA has done. You'll have to ask the CBA why they are discounting all of the independent legal research that they have done, not only for the House of Commons but in fact for the legal community in general. I find that a startling comment on behalf of the CBA. I haven't read the full context, so it might be taken out of context.

I see the Law Commission of Canada as simply being an administrative mechanism to hire individuals to do research. Well, I can tell you, we have people who are competent to hire those individuals inside the Department of Justice. It doesn't mean the Department of Justice lawyers will be doing the work. We will still, I anticipate, continue to hire people outside to do some of that work.

● (1545)

The Chair: Thank you, Mr. Murphy.

Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard (Hochelaga, BQ): Good afternoon, minister.

A philosopher by the name of Valéry said that a government's greatness is measured by the way it treats its minorities and the value it places on knowledge. You understand that your government will go down in history with this issue.

With all due respect, there are no words to describe the degree to which your government's policies toward minorities—particularly Francophone minorities outside Quebec—disgust, repel and nauseate me. I can't imagine how a government can abolish the one and only program that would enable communities to appeal to the courts, and I hope, when you travel to meet with the spokespersons of the Francophone communities, that they'll tell you how mean and short-sighted your government is. Let's hope that you pay a very high cost for eliminating this capability for defending the Francophone communities.

That said, I want to talk about reforming the commission you're abolishing. I find your logic quite peculiar. Is there anyone in the federal public service who can prepare reports? We don't doubt that. This is definitely a point of view that we can receive. The specific characteristic of the commission is, first of all, its total independence. When it comes to orientations and public servants are involved—whether they be deputy ministers or any branch of a department—an organization loses some of its independence. You'll agree with that.

Furthermore, what surprises me in your argument is that UNESCO has reminded us that knowledge and events that occur in the world double every five years. It also recalled how important it is for parliamentarians to make decisions in an environment in which we have access to decisive and conclusive information.

What is your criticism of the commission? How can you prove to us this afternoon that there was really a duplication? I was very pleased to read what the commission wrote on same-sex spouses, Aboriginal persons and on voting reform and electoral life. We feel that the body of opinions it has produced generally falls within the debates on current issues for which we expect parliamentarians to have information.

Are we to understand that, for you as a parliamentarian, that the issue of having timely knowledge and available information from an independent organization is not important?

I'll conclude by telling you that a number of consultative organizations provide the government with advice. Will you one day be abolishing the National Council of Welfare or the Senior Citizens Council, which also provide information and orientations and publish opinions? The sole mandate of the Law Reform Commission of Canada was to report to the government; it could take initiatives on current issues.

This seems to me a short-sighted action taken by a government that attaches little value to knowledge. In my view, thinking that we can assign mandates within the public service shows a singular lack of vision, of a broad view and of generosity. I admit I find it very hard to understand you.

As regards Francophones outside Quebec, I'll never pardon the petty action your government has taken. You definitely won't redeem yourselves now. This isn't the same thing. It's obviously less serious to abolish the commission than Francophones outside Quebec.

It's as though you had a kind of aversion to everything that's knowledge or is likely to differ from what you think. In view of the fact that the senior public service analyzed your election platform, saying that it was rubbish and contained virtually nothing good, you should perhaps leave some room for reflection. It's also part of the greatness of a minister to be able to face views that do not come directly from government.

This action does your government no credit. It shows no greatness in the way you directing matters or govern the state.

● (1550)

[*English*]

Hon. Vic Toews: With respect to the Court Challenges Program, of course I can't talk about that because it's before the court right now. But the issue, for example, that you have to set up a body in order to contract to get independent advice is simply reflective of a philosophy that you share perhaps with the Liberals—that the more bureaucratic layers you have, the better is it. We don't necessarily agree on that particular point.

For example, I have been involved in independent studies as a government lawyer, as a minister in provincial politics. I'm quite aware, for example, of the work done by Judge Chartier in the province of Manitoba on francophone language rights in that province. It was commissioned by our government for a judge to do. The title of the report was called *Above All, Common Sense*. But the point—

[*Translation*]

Mr. Réal Ménard: Why are you abandoning Francophones outside Quebec? Do you think they'll have access to justice? How much did it cost Prince Edward Island? Do you think any organization in the country is able to pay $500,000? How can anyone be so petty toward Francophones outside Quebec? What did they do to you? Why not recognize that they need you?

[*English*]

Hon. Vic Toews: We're getting onto two different topics. We were talking, as I understood, about the Law Commission of Canada. If you want to confuse issues, go ahead, but I'm here to talk about the Law Commission of Canada.

As I've indicated, the judge in that particular case did a remarkable service for the francophone people in my province—most of whom, in the rural areas, are in my riding. I understand the issue of francophone language rights very well. I've worked with them when the Liberal government was busy shutting down RCMP stations in my riding, which was my riding when I was a provincial justice minister. We talked about the issue of French-language services, so I'm quite familiar with the issue of French-language services and their importance. I have the largest group of francophones in western Canada in a rural riding, so when you—

[*Translation*]

Mr. Réal Ménard: You're hard to understand.

[*English*]

I'm going to ask a question.

[*Translation*]

If you want to talk about Francophones, allow me to ask you a question. If you are the member with the largest group of minorities, how can you think they don't need government assistance to go before the courts? Do you know how much the references concerning independent school boards cost?

[*English*]

Hon. Vic Toews: Let me end it this way. You are simply thinking that one vehicle is better than the other. We disagree. Do we have the same goal in mind—the enhancement of language rights in our country, including English language rights in Quebec? I hope that we have both as a goal.

The Chair: Thank you, Mr. Ménard.

[*Translation*]

Mr. Réal Ménard: Incredible!

[*English*]

The Chair: Mr. Comartin is next.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Thank you, Mr. Chair.

Thank you, Mr. Minister, and Mr. Sims as well, for being here.

Mr. Minister, I have no hope of being able to convince you to the opposite, but do you have any sense of the significance on independence of killing this program? That's really what this is about.

Let me give you a scenario, and this is the perception that a lot of lawyers in this country have of your government's role with regard to the commission. Their perception is that the commission has conducted their role in terms of their reputation both nationally and internationally as having, as you say, acted as a broker to commission studies in a wide variety of areas, as you've just heard from Mr. Ménard. They've done that well by international standards, perhaps better than any of the other commissions internationally. What they see now is a government that wants to pick and choose who is going to do the independent research that needs to be done. It's now tainted by a government that has gotten rid of the commission, is going to pick the researchers themselves, and is going to pick them from an ideological or partisan political standpoint, rather than allowing this independent commission to determine both what studies are going to be conducted and who is going to conduct them.

As a result, the perception in the country by most lawyers I've talked to is that the credibility is gone. Research, when commissioned by a government—yours in particular—is going to be completely tainted by ideological or partisan political consideration.

Do you have any appreciation of that reality in the country, at least in the legal community, among both academics and practitioners?

● (1555)

Hon. Vic Toews: I find it interesting that we're talking about a budget of $4.2 million and we see as well law professors throughout universities who are totally independent. They have tenure; they're entitled to comment and do research, as they're required to by their lawful contracts and by their tenure. The law societies provide that independent advice. The bar associations provide that independent advice on a regular basis. For someone to suggest for one moment that the government could go out and get a legal opinion that had no credibility and then try to stand on top of that in terms of defending its case simply doesn't even make legal sense, and it doesn't make political sense.

Working in the Department of Justice provincially and with colleagues right across Canada, I have found there is a high degree of independence among the justice department lawyers, first of all. That's the first thing. You don't tell justice department lawyers what kind of advice they're going to provide.

Mr. Joe Comartin: Mr. Minister, you're not going to suggest that the department lawyers have the time. I'm not challenging at all or questioning their independence; I accept that as a given statement. But they don't have the time to do this kind of research. You're not suggesting that, are you?

Hon. Vic Toews: At least we are suggesting now that we have an independent—and you're confirming that—organization, the Department of Justice, which can in fact supervise, and if you say they don't have the time, I'm willing to debate that. The Department of Justice does regular work in many areas of the law in terms of providing good independent advice, and always has. I always provided that independent advice to my ministers, whether they were New Democrat or Conservative in Manitoba, and that is a tradition inside the Department of Justice.

We're also, for example, moving to strengthen that independence through the creation of the Director of Public Prosecutions. I'm not concerned that there isn't an independent aspect and ability to not only provide evidence, but then to obtain appropriate individuals to provide us that independence.

The most glaring example I can point to that is the example of a hearing involving Mr. Justice Rothstein, where the Department of Justice paid for independent advisers to advise Justice Rothstein in any respect he wanted. Certainly no one would suggest that because they were hired by the Department of Justice to assist a potential Supreme Court of Canada judge, who was a Federal Court of Appeal judge, somehow these very eminent individuals were lacking in independence. The law societies wouldn't agree with you, the bar associations wouldn't agree with you, and quite frankly, the statement you're making is simply not justified.

The Chair: Very quickly, Mr. Comartin, one more question.

Mr. Joe Comartin: I didn't expect I was going to change any minds, Mr. Chair, so I'll pass.

The Chair: Thank you, Mr. Comartin.

Mr. Moore.

Mr. Rob Moore (Fundy Royal, CPC): Thank you, Mr. Chair, and thank you, Minister, for appearing before us today. We appreciate the opportunity.

I've heard members opposite talk about the need for independent advice and research, and so on, and I think we all agree that there is a need—and you've mentioned that—to get outside advice. But one of the figures you mentioned I found most alarming: that in the last ten years the government—ours and the previous government—has only sought advice from the Law Commission once. So it would appear that even the previous Liberal government, as far as getting value for taxpayers' dollars is concerned, was not even using the independent advice of the Law Commission.

I wonder if you could elaborate on that as to the value for taxpayers' dollars if the Law Commission was only requested to provide information once, in one report, and secondly, how the department can go about getting what is perceived as independent legal advice, go outside the department to get advice on any issue that might be before the government.

● (1600)

Hon. Vic Toews: I just wanted to make sure there wasn't any aspect I was missing in some of the other comments I made. I just wanted to check that with the deputy minister. He may have some additional comments.

Again, I think the point is made—there has been one request in 10 years for this independent body to provide pertinent advice to the Government of Canada. In all other respects, the Law Commission simply went its own way.

Who determined what they were going to do? It wasn't the government, and it wasn't necessarily governmental priorities with the Liberals. I'm certain the former ministers of justice went to the Department of Justice in 99.9% of all the work they had done to get independent legal advice. That's where they got their independent legal advice. That's where they got their ideas on law reform. Quite frankly, I'm confident that the Department of Justice, at least in most respects, can provide that independent legal analysis, so I'm very comfortable relying on in-house lawyers to do that.

There are other cases, and I mentioned the Rothstein appointment process, in which we felt we should bring in additional outside eminent counsel to advise not only Justice Rothstein, as I indicated, but also the committee. I remember sitting in the chair position; I think it was even in this room. The experts told us what they felt the constitutional limits and the constitutional proprieties were of that kind of process. We didn't go to the Law Commission of Canada to hire those experts, yet we understood that if there wasn't a credible process, the entire institution of the Supreme Court of Canada could be discredited by that kind of a process.

Is there an ability to obtain good independent legal advice on a continuing basis, whether it's from justice department lawyers, or those who are hired by the Department of Justice, or existing organizations—including provincial law reform commissions—or universities, or university professors? Those individuals are in no way bound to agree with government positions. They have the ability to comment on any piece of legislation, as they often do.

Mr. Rob Moore: Any time our government has brought forward a bill, or...having been a member in opposition in the previous government, I noticed that any time a government bill was brought before the justice committee, there was no shortage of individuals who wanted to appear as witnesses. You mentioned the Canadian Bar Association. I know that they have a director of legislation and law reform. They have a law reform director. Other bodies have appeared before our committee on government legislation to talk about every conceivable aspect of that legislation—the constitutionality of the legislation, the impact it would have on society, and so on.

I think Canadians might ask why this wasn't done sooner. Why would we be spending taxpayers' dollars—you did mention that we have to respect taxpayers' dollars—when there are so many other completely independent bodies willing to perform that work?The previous government asked for research only once. They asked only once for a study to be performed by the Law Commission.

● (1605)

Hon. Vic Toews: I think that's a good point, given that the prior government did not formally respond to six of the Law Commission reports; they simply didn't even respond to them. I'm wondering what the value was. Not only did they not ask for the reports, but they also didn't respond to those reports.

All I can say is that I think there's a better way of obtaining value for money as well as good independent legal opinions, whether those are from the universities or from the bar association. Chiefs of police, for example, have a legislative committee that analyzes legislation; it is certainly independent of government, and they are more than willing to provide that information on a request basis.

I can only agree with you that there are better ways of dealing with Canadian taxpayer dollars than through the particular mechanism that was put in place here.

The Chair: Thank you, Mr. Moore.

Mr. Bagnell.

Hon. Larry Bagnell (Yukon, Lib.): Thank you, Minister and Deputy Minister, for coming.

I want to go on the record, as I have before, just at the beginning, to make sure people know I think it's an absolutely reprehensible cut and it fits right in within the pattern of the government cutting the most vulnerable in our society in a number of ways.

In this particular case, we've had evidence to the type of reports of people who were helped, the aboriginal people, the farthest from Ottawa, who would have the least chance to study things in my riding—the Teslin Tlingit Council, the Carcross/Tagish people, who are Tlingits, the people in the north, low-income workers, as we heard from in previous testimony. There's just no need for this type of cut.

The minister and the parliamentary secretary are using the bar association. And the bar association, on November 2, said, “An independent Law Commission can engage in innovative research and adopt a multi-disciplinary approach to law reform, engaging experts in law, social sciences and humanities to study these issues on a macro level.” We were frankly surprised to hear some ministers suggest that CBA could fill this role, and now the parliamentary secretary is saying that.

Of course, as the minister said, they coordinate all sorts of groups in coming up with these reports, and I don't think the minister answered the question from Mr. Murphy on whether it hurt our international position. I can tell you that Irwin Cotler, an international expert, was told twice on trips around the world shortly after these decisions that the international community was shocked.

I guess one of the biggest supports for this committee itself is the fact of what the minister and the parliamentary secretary have just said—of all the good ideas they've given to government and MPs and the research they've done that has helped people, the many reports over the 10 years, only once did government come up with that. The Law Commission had to come up with these ideas. They're there to improve government, and they came up with all those ideas, the current ideas of the day and suggestions of how to go, which is the exact reason you would incorporate people.

My first question requires just a very short answer. We just came from question period where the government was chastised roundly for breaking an election promise on income trusts. Did you tell the electorate at any time during the election campaign that you were going to close the Law Commission?

Hon. Vic Toews: Did I personally? Do you want me to start bringing in conversations with Liberal MPs that I've just had about this particular income trust? Is that what you want me to do?

Hon. Larry Bagnell: No, the Law Commission. I'm asking you if any time during the last election campaign you said you were going to close the Law Commission.

Hon. Vic Toews: So you don't want me to talk about what Liberal MPs, including very senior people inside your party, told me about the income trust issue when I was talking—

Hon. Larry Bagnell: I'm asking you a question as to whether you said you were going to close the Law Commission. You don't want to answer the question, right?

Hon. Vic Toews: No, you're not asking about that issue.

Hon. Larry Bagnell: Did you tell anyone that you were going to close the Law Commission? It's a simple question.

Hon. Vic Toews: All right. You're not asking about the income trust and what senior Liberal members told me about—

● (1610)

Hon. Larry Bagnell: No, I'm asking you about the Law Commission. How come you're hiding?

Hon. Vic Toews: All I was trying to do, Mr. Chair, was say he wasn't talking about the income trust issue.

Hon. Larry Bagnell: It was a simple question. I can see you're worried about the issue.

Hon. Vic Toews: All right, so it's not what senior Liberals might have told me about the income trust position.

Hon. Larry Bagnell: That's a pretty poor answer.

Hon. Vic Toews: All right, we'll leave that issue alone.

But in respect of the Law Commission of Canada, no, I don't believe I've ever talked about this in any campaign. It's not high on the list in my riding, I think, or else somebody would have brought it to my attention.

Hon. Larry Bagnell: Mr. Sims, did you ever provide advice to this government, or any advice that the Law Commission was not productive, or was not useful, or was not helpful, or was not a good expenditure of money?

Mr. John Sims (Deputy Minister and Deputy Attorney General, Department of Justice): I've given advice to this government on many things, and to this minister, but I don't think it would be appropriate for me to tell this committee the nature of the advice I've given confidentially to the minister.

Hon. Larry Bagnell: So, Mr. Minister, did you get any advice from anyone in the department that the Law Commission was ineffective, was not useful, or did not provide helpful advice?

Hon. Vic Toews: Did I provide that advice?

Hon. Larry Bagnell: Did you get any advice from anyone in the Department of Justice?

Hon. Vic Toews: I'm just trying to recall the specific nature of the advice. We had discussions on a number of options, and this was the option that the government eventually came up with.

Hon. Larry Bagnell: But was the advice that it was not useful or that is was ineffective?

Hon. Vic Toews: The basic question we were asked to look at was the efficiencies, and could the same services be delivered through other channels or other mechanisms?

I note, for example, the member indicated the great work that the Law Commission did. Does the member recall the response on any of these by the Government of Canada while the Liberals were in power?

Hon. Larry Bagnell: This is—

Hon. Vic Toews: Were there any responses?

The Chair: Your minute's cut short, Mr. Bagnell. I know the minister's question is left unanswered. I guess it will remain unanswered for the time being.

Mr. Lemay.

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Thank you, Mr. Chair.

Good afternoon, minister.

[*English*]

Hon. Vic Toews: Good afternoon.

[*Translation*]

Mr. Marc Lemay: You must sense around the table, at least on our side, that we don't agree with the idea of abolishing the Law Reform Commission of Canada.

[*English*]

Hon. Vic Toews: It wouldn't be the first time we've had a disagreement, would it?

[*Translation*]

Mr. Marc Lemay: No, that's obvious. I was a lawyer for a number of years, and I feel the Law Reform Commission of Canada did an essential job with all the new ways of viewing, describing and practising law in the future. Let's take information technology law for example. The advent of information technology has created a new branch of law. The Law Reform Commission of Canada worked on issues concerning cyberpedophiles.

The first question I have to ask you, minister, is very specific. When will the bill abolishing the Law Reform Commission of Canada—because it takes an act to do that—be tabled in Parliament for discussion purposes?

[*English*]

Hon. Vic Toews: As you know, we have a number of priorities in government. You've seen some of my bills; there will be more bills coming. I have no bill on the table to abolish the Law Commission of Canada.

[*Translation*]

Mr. Marc Lemay: There must be something I'm not grasping here. By cutting off its funding, you're starving it to death and you don't dare table a bill. Have I understood correctly?

[*English*]

Hon. Vic Toews: No, the legislation is not mandatory, it's empowering legislation. Why would one want to put that bill through the House? It's not necessary. It's empowering legislation. It's not mandatory. It doesn't mandate anything, in a required sense.

[*Translation*]

Mr. Marc Lemay: You can check with your 295 experts, but, in my view, you have to abolish the commission. Will the commission stay up in the air with nothing at all? Since it was a statute that created it, you need another one to abolish it. Let's say you table a bill...

● (1615)

[*English*]

Hon. Vic Toews: No, that's fundamentally wrong. Just because you pass legislation and do things pursuant to the legislation, when you stop doing those things you don't have to repeal the legislation. Your premise is fundamentally wrong.

[*Translation*]

Mr. Marc Lemay: You're saying my premise is incorrect, but a statute created the Law Reform Commission of Canada. That act is in effect. The commission was created by an act. Do you agree with me?

[*English*]

Hon. Vic Toews: That's correct.

[*Translation*]

Mr. Marc Lemay: To terminate that commission, an act abolishing it has to be passed. No? It's going to remain up in the air. You who pride yourselves on cleaning house, can't you introduce a law to abolish it completely so that we don't have to go back to it?

[*English*]

Hon. Vic Toews: I don't see any requirement to actually repeal the legislation, if that's what you're asking. There's no requirement to do that. Parliament may fund the Law Commission. The commission may do certain things. There isn't anything mandated that we are not doing.

[*Translation*]

Mr. Marc Lemay: If this committee, by a majority, asked you to restore the necessary funding for the operation of the Law Reform Commission of Canada, what would your reaction be?

[*English*]

Hon. Vic Toews: I'm not sure whether you have the power to do that. Isn't that a money bill?

[*Translation*]

Mr. Marc Lemay: That's what I want to understand. We could recommend and ask that you review the decision to cut off funding for the Law Reform Commission of Canada or pass legislation abolishing it.

[*English*]

Hon. Vic Toews: Yes, you could recommend that.

The Chair: Mr. Thompson.

Mr. Myron Thompson (Wild Rose, CPC): Thank you, Minister, for being here today.

I'm going to share my time, if there's any left, with Mr. Brown.

I only have one question for the minister. I'm going to go back to the old days.

For 52 years I've been a taxpayer. For 52 years I often wondered why my tax dollars should go to a cause that I don't support. I've been on this committee now for 13 years and I've seen lots of groups come and testify and give witness. The Canadian Bar Association, Victims of Crime, REAL Women of Canada, the Canadian Taxpayers Federation, MADD Canada, and the National Citizens Coalition have all come before this committee. Those are a few and there are probably a lot more that are not funded by the government. They fund themselves. They form a society, sell memberships, fight for a cause that they believe in, and I say, good for you. In fact, I contribute to two or three of these organizations because they fight for their cause. I think as a taxpayer I would want my money to be spent for those causes I support. Others who support other causes could do likewise with their organizations.

I would ask the ministerwhether there is any reason why a group of people who support the commission couldn't form a society. We have seven people here who would probably make good members. They could contribute some money and get it started and do their work like they always have before in the past, and we'll bring them before the committee as a group of people representing citizens who purport to advise on what they do.

Hon. Vic Toews: No, there's nothing stopping them, or there's nothing stopping a government actually responding to Law Commission reports that have come out. I know that Mr. Bagnell talked very highly about the aboriginal report. I don't recall what response the government made in respect of what he considers a very important report. I'm just wondering whether maybe the committee could look at what the government actually did during the time that Mr. Bagnell was in government. It's very easy now to say, well, it was such an important, fundamental report, and yet he did nothing. Who actually betrayed the aboriginal people? Who actually betrayed the aboriginal people, if he fundamentally believed that and did nothing? That bothers me.

Your point is well taken. A group of university professors can come forward here and say, look, we would like to submit a paper on a particular issue, whether it's aboriginal rights or securities legislation or privacy. They're already funded by taxpayers in one way or another. They are very independent. If you've ever been involved in collective bargaining situations with university professors, you'll understand exactly how independent and fundamental that is to our entire university system. To suggest that simply because one vehicle is not being funded by the government, the entire law system breaks down because we don't have access to independent legal advice.... We, as the Government of Canada, have access to the same independent legal advice as the Law Commission of Canada did.

● (1620)

Mr. Myron Thompson: You're telling me, Mr. Minister, that the justice department responds to these organizations that I mentioned just as quickly as they would to organizations that were funded by the government.

Hon. Vic Toews: My experience has been that the government, including the former Liberal government, has been much more responsive to other organizations than the Law Commission of Canada. It almost seems like a deliberate insult to the Law Commission of Canada that they simply didn't respond to any of the reports the Law Commission was coming out with. Yet I know there are organizations that the former government responded to and that we as a government do. For example, if you look at the legislation we brought forward, it indicates that we've been consulting with victims groups that are independent of government, the Canadian Police Association, the Canadian Association of Chiefs of Police—various groups. We've always taken them into account. We haven't always accepted it as policy that would be implemented in legislation, but we've responded certainly much more than the prior government did to the Law Commission of Canada.

The Chair: Thank you, Mr. Thompson.

Mr. McKay.

Hon. John McKay (Scarborough—Guildwood, Lib.): Your essential argument, Minister, revolves around the independence of the Law Commission. Yet I suggest to you that your position is deeply conflicted. You are both Minister of Justice and you are the Attorney General. As an Attorney General you are involved in a huge number of lawsuits, both as a plaintiff and a defendant, and as Minister of Justice you have other administrative responsibilities. It would hardly do for the Attorney General or the Minister of Justice to be undercutting his own department by floating out a paper, for instance, on aboriginal rights and things of that nature when in fact you're involved in literally hundreds, if not thousands, of lawsuits with aboriginal groups.

I don't quite understand how you think you're going to get the same quality of advice from your own department. Given that the Canadian Bar Association, in its letter from Mr. MacCarthy, says that they are somewhat surprised to hear that the CBA could fill this role, and given that law professors aren't by nature given to doing this kind of stuff, I fail to see your argument. When we were in government the Law Commission produced reports, some of which were, frankly, a pain in the patootie. You and I would probably agree *Beyond Conjugality* was a report that neither of us thought was particularly helpful or useful to that debate, and Mr. Ménard, of course, would disagree with that, but that's another point altogether. I think your position is that you have cut off from dialogue among, if you will, the judicial community and legislative community a source of reports that is really forward thinking, that is beyond independent legal advice that you would get from other sources.

I'd be interested in your comments on that.

Hon. Vic Toews: All I can say, going back to the Canadian Bar Association, is that the bar association says it can't do all of the work. Obviously no one has ever indicated that the bar association would do all of the work, and yet they have a legal research component. They must be doing something in that legal research component. The chiefs of police have a legal research and legislative committee that does this type of work. Will they do all of it? No. The thousands of professors here in Canada all do research on areas that the government does not tell them to do research on.

● (1625)

Hon. John McKay: Isn't it the point, though, that the Law Commission would ask the deep jurisprudence questions like what's a crime, and should we update our notion of what is a crime? Your own department is not going to ask that question, and if it is, it's not doing its job.

Hon. Vic Toews: But, Mr. McKay, what's stopping a law professor from asking that question and publishing a work on it?

Hon. John McKay: There's probably nothing to stop a professor from doing that sort of thing. A law professor, on his or her own, doesn't provide that kind of area of central decision-making and collection of that kind of dissemination of material. I put it to you that even while we were in the government the Department of Justice didn't produce these kinds of papers and thinking, if you will, in terms of blue sky thoughts as to where the law should be going. I would submit to you that we in fact are losing something very significant by not allowing this commission to continue to exist.

Hon. Vic Toews: What I can tell you is that what we are doing at this point is doing needed research. It's not open-ended, but we don't ask researchers, for example, for a cooked issue. We in fact ask them on specific matters to provide us with an opinion, and they provide us with opinions on these matters on a regular basis.

Hon. John McKay: The Law Commission provides—

The Chair: Thank you, Mr. McKay.

Mr. Brown.

Mr. Patrick Brown (Barrie, CPC): Thank you, Mr. Hanger.

I want to thank the minister. If I'm correct, this is your fourth or fifth visit to this committee. Certainly you've been very generous with your time, and we appreciate your candour here today.

My question relates to what my colleague Mr. Thompson was discussing so eloquently before, that we really don't need the crutch of taxpayer dollars to have good policy development when it comes to law in Canada. You look at MADD, and do they need the crutch of taxpayer dollars to put forward ideas on back levels? Did Joe Wamback in Newmarket, when we talked about young offenders? Certainly not.

The question I'd have for you, Minister, would be this: is there an example you can share with us of a group that doesn't require taxpayer dollars whose proposals or policy developments ideas you found useful for you and your department?

Hon. Vic Toews: Certainly my colleague from the Bloc, Mr. Ménard, indicated that the Canadian Police Association has given us very good advice, and it is certainly independent of government, but there are all types of other individuals who provide us with advice. For example, when the former government had that inquiry a number of years ago into APEC, into the riots that had occurred—maybe "riots" is a little too strong a word—as I recall, it was Justice Hughes who did an excellent report into that entire situation—the relationship of the police to the enforcement of law, the relationship of government to giving police orders. It was an incredibly helpful piece of work. I can see that governments have in fact reacted in many cases to those types of reports. On the O'Connor report on Arar, Justice O'Connor did excellent work—23 recommendations that our government has accepted, and some of them involve the changing of laws.

What I find puzzling is the staunch defence of the Law Commission of Canada by Liberals who totally ignored the reports, never had a response, and then come to the committee and say, this is horrible that the funding has been cut off because of all these wonderful reports—reports that they never once acted on.

What Canadians are telling us is they want us, as parliamentarians, to spend money efficiently and effectively, and that's exactly what we are doing.

● (1630)

Mr. Patrick Brown: Minister, when we talk about efficiencies, are there any areas that with the funds saved from cutting down on inefficiencies, you'll be able to better protect Canadians? Are there any new initiatives that you and your department embarked upon to better protect Canadians? Maybe, in particular, you could share with us the investment we've seen in the RCMP as an example of an area where new funds have been put, because it's important to focus on the money that has been actually spent to protect Canadians, as well.

Hon. Vic Toews: In this particular case, the money all went to pay down the debt, as I understand it—all of those particular cuts. But I can say that on the other hand there have been hundreds of millions of new dollars invested in programs that in fact benefit Canadians in a very direct and real way. For example, my friend Mr. Bagnell talks about the aboriginal report that they did absolutely nothing with. Actually, I would prefer to see housing for off-reserve aboriginals, to which our government added more money, and on-reserve housing, for example. Those are real things that I think aboriginals actually want, rather than producing a report that has gathered dust now for I don't know how many years.

So it's a bit of a difference. The Liberals want to spend money on reports that they never used and never responded to; we want to take that money and spend it on real programs that make the difference in the life of a community, whether it's aboriginal or non-aboriginal.

The Chair: Thank you, Mr. Brown.

Thank you, Minister.

[*Translation*]

Mr. Réal Ménard: I have a point of order, Mr. Chair.

[*English*]

The Chair: Mr. Ménard.

[*Translation*]

Mr. Réal Ménard: Could you verify whether the minister, in his capacity as Minister of Justice and member for Saint-Boniface, would agree to come back to discuss the rights of Francophones outside Quebec and the Court Challenges Program? Would the minister agree to come back soon to discuss these important issues, since his colleague from the Department of Canadian Heritage has made off in a cowardly manner? I think you have a responsibility, minister.

[*English*]

Hon. Vic Toews: As the member knows, Mr. Chair, I can't do that, as much as—

Mr. Réal Ménard: You can, I checked with my leader. There's no rule. There's a convention.

Hon. Vic Toews: No, I can't discuss—

The Chair: Mr. Ménard, we will discuss in the steering committee meeting as to what other issues will be discussed here in front of the minister and the committee.

Right now, the minister has consented to stay for an additional 15 minutes. I know there were a series of questions regarding the amendments to the Judges Act. I believe Mr. Lemay would like to set those questions on the floor first, and Mr. Murphy.

Mr. Lemay, please.

[*Translation*]

Mr. Marc Lemay: Pardon me, Mr. Chair, I thought it was Mr. Cotler's turn first, then mine. As Mr. Cotler isn't here, I think it's Mr. Murphy's turn.

[*English*]

The Chair: Mr. Cotler was unable to make it today, and so it falls to you, between the two of you, as you had made that request.

The floor is yours, Mr. Lemay.

Hon. Vic Toews: I'd be prepared to have another 15 minutes added on to another committee hearing so that Mr. Lemay has perhaps a little more opportunity. I don't want to deny him that opportunity. I understand it.

The Chair: Mr. Lemay.

[*Translation*]

Mr. Marc Lemay: Mr. Chair, I can ask my questions. There's no problem. I know that Mr. Murphy was to ask those of Mr. Cotler, so I...

[*English*]

The Chair: If that's the case, it doesn't matter to me.

Mr. Murphy, would you like to lead with a question?

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

Mr. Minister, concerning Bill C-17, I suggest to you there have been many comments made, and some in a political forum—the other place. I want to make sure, and Mr. Cotler and all Canadians want to make sure, that you have an opportunity to say here today that you have the utmost respect for the judiciary, which I'm sure as an officer of the court you do.

I'd like to hear you say it, because the questioning is in this line of thinking. There have been comments made in the press and in the other place about Liberal judges. Bill C-9 and Bill C-10, as you well know, take away some discretion of judges in certain circumstances, which could be seen as a disdain for judicial discretion. In fact, the whole process with respect to Justice Rothstein's confirmation could be seen as putting judges on public example. Notwithstanding that it was a very positive experience in this instance, it could be seen as putting judges on public display for public approval by elected politicians.

Now we have BillC-17, and the concern is this. There are provisions in Bill C-17, for many of which the ship has gone by in the public somewhat, and we're on the road to finally getting a settlement of the issue. But there are contained in Bill C-17 issues with respect to...let's call it “the rule of 80”, or the ability of judges to go supernumerary in certain provinces. Supernumerary judges may not be under the same leash or chain from their respective chief justices as are full-fledged justices. This bill, when passed, will result in more supernumerary judges; I know that from the field.

I want to hear from you first of all on this issue of respect for judges. I want to hear from you, if I may be so bold as to ask, what you are going to do to get these supernumeraries to work. Are you going to appoint other judges to fill the backlog of vacancies that exist? Was there any rhetoric from you or your department with respect to getting chief justices to get their supernumerary judges to work to make the system work? You will realize there's a heavy caseload coming down the pike in justice. We will need our judges.

The two-part question, in short, is, do you have respect for judges, and will you resource the field enough so that justice gets done?

● (1635)

Hon. Vic Toews: I find that to be a very curious question. I think it arises out of a scrambling of the various responsibilities of the judiciary on the one side and Parliament on the other. It is Parliament that has the responsibility to establish social policy; judges do not. When Parliament passes legislation, every legislative scheme makes certain definitions and usually restricts or permits something or other. If what you are saying is that every time a piece of legislation is passed it shows a disdain for the judiciary, I would disagree with you.

We went from common law, which was what judges interpreted on a regular basis, and brought in statutes to change that common law. Did that show a disrespect for the judiciary? No, it indicated a specific social policy that governments and Parliament wanted to see implemented.

In all of our legislation, what we have said is, as a matter of social policy, we are bringing forward certain pieces of legislation. That doesn't show a disrespect for the judiciary. Even if it restricts their discretion, that is the nature of law-making and the responsibility of lawmakers in Parliament.

Mr. Brian Murphy: I guess the unanswered question is whether, since you have the utmost of respect for our judiciary, you will see to it in your capacity as Attorney General, in combination with the various committees across the nation, that federal judges, we'll call them—or Queen's Bench judges, or whatever level—will be sitting enough to handle the justice load, because there is a backlog of appointments.

Hon. Vic Toews: That brings me to the second question, that you're somehow suggesting I would make supernumerary judges work more than they do. That's not my responsibility; that's the responsibility of the chief justice.

You saw in Ontario a recent report that made headlines in *The Globe and Mail*, that the various judges and law society members and others talked about the administration of the legal system and the judicial system. I had no input into that. And that, I think, is a healthy kind of self-analysis and self-examination by the judiciary and by the law society to improve how things are done.

I note, for example, that just recently the Attorney General in British Columbia talked about certain issues with respect to the working hours of judges. That individual, who is a former court of appeal judge in British Columbia, I assume has a good deal of inside knowledge about how the courts operate. He ventured an opinion; that opinion was made. It's certainly not mine to make. I don't have the expertise he purported to have in making that particular comment.

The Chair: Very quickly, Mr. Murphy.

Mr. Brian Murphy: The backlog question remains. You were in St. John's, Newfoundland, in front of the CBA and said you weren't really going to change the way judges are being appointed, notwithstanding some political rhetoric during the campaign. Is there going to be movement on getting rid of the backlog of vacancies? Let's put it that way.

● (1640)

Hon. Vic Toews: When we came into government there were 23 vacancies. I don't know what the numbers are.

Mr. Brian Murphy: It's about 60, I believe.

Hon. Vic Toews: No, I don't believe there are 60 judges' vacancies. I'd have to check on that.

But the commitment I made was to look at getting rid of those vacancies by filling those vacancies as quickly as we have. I've made two larger groups of appointments, I believe both of more than ten judges at a time, and then some of smaller groups—I think about three separate groups of appointments. I can tell you that I'm working on others. But that's my first priority.

We are also looking at all kinds of issues inside the justice system, and I'm sure the chief justices are looking at how they can improve efficiencies in the court. I have the utmost respect in the ability of the chief justices to examine that issue and utilize the resources that are provided to them by the people of Canada in an efficient and appropriate way.

The Chair: Thank you, Mr. Murphy.

Monsieur Lemay.

[*Translation*]

Mr. Marc Lemay: Thank you, minister.

Indeed, speaking for Quebec, it's almost urgent that appointments be made as soon as possible. There are shortages. Right now, there's an obvious shortage of judges in Quebec. There are supernumerary judges, and other positions will become vacant. However, I get the impression that that's not the issue, minister.

I read the report of the Judicial Compensation and Benefits Commission submitted to the Minister of Justice on May 31, 2004, and I've read Bill C-17. Is Bill C-17 the response to the report? If you don't like the reports of the Judicial Compensation and Benefits Commission, are you also going to abolish it and cut off its funding?

[*English*]

Hon. Vic Toews: Mr. Lemay, you know that there's a constitutional obligation for the existence of that particular commission, but that's not to say the commission is therefore perfect in its decision-making. The Supreme Court of Canada made it very clear, and not so much in the P.E.I. reference case but in the Bodner decision, that the Parliament is ultimately responsible for the determination of the salaries, and the response the government made is in accordance with the constitutional principles.

In respect to the judges, I've recommended and the government has appointed 28 judges to date. When we came into office there were 23 vacancies, as I recall.

[*Translation*]

Mr. Marc Lemay: Okay. I know that, under the Constitution—it's written in a section the number of which escapes me—you are required to establish a commission. Can you direct, that is to say indicate to the commission that you'll be determining the kind of work it will have to do and how you see the work concerning judicial compensation instead of preparing such a large bill?

[*English*]

Hon. Vic Toews: No, I don't believe there is a specific section in our Constitution, in either the 1867 or 1982 Constitution Acts. There is the requirement under section 100 that says Parliament is responsible for the determination of the judicial compensation.

The idea of the commission was established as a constitutional principle by the Supreme Court of Canada in the P.E.I. reference case, but it's not reflected in any specific statutory provision, as for example we would have with the Law Commission of Canada legislation.

[*Translation*]

Mr. Marc Lemay: What's happening right now is that, when the judges aren't satisfied with the decision, they go to court, literally. We had this situation with the New Brunswick Provincial Court Judges Association, the Ontario Judges Association and so on. We've been in a kind of vicious circle since 2004. How do we go about breaking that circle, as a result of which, if you're not happy with the decision, you go to court, the court renders a decision, and the government isn't happy with it and goes to court?

● (1645)

[*English*]

Hon. Vic Toews: You must have some information that I don't have about the judges' association going to court with respect to this. I have not heard of it, but if you have some inside information from the judges or otherwise, I would be pleased to hear from you. I'm trying to follow it.

The commission makes certain recommendations. The Government of Canada is obliged to respond to that in a principled fashion, and we did so. In fact we came into office on January 23, and I think cabinet was sworn in on February 6. We had a response out very quickly, before the end of the summer.

The report came out in 2004, and Parliament had not dealt with it and in fact didn't deal with it until the election on January 23. So I don't see how you're saying that somehow my government has been remiss in acting in an appropriate way.

[*Translation*]

Mr. Marc Lemay: No, minister. I only want...

[*English*]

The Chair: Mr. Lemay, make it very quick.

[*Translation*]

Mr. Marc Lemay: I have a point of order, Mr. Chair.

I simply want to tell you, minister, that I'm not accusing; I'm being careful. I didn't accuse your government of not responding. What I want to ask you is how do we break this circle whereby we too often wind up in court to resolve the matter of judicial compensation? My question is just that.

[*English*]

Hon. Vic Toews: This mechanism was established as a constitutional principle by the Supreme Court of Canada. Our government will do everything to implement a decision of the commission appropriately, including revising the recommendations in accordance with the principles established by the Supreme Court of Canada in the P.E.I. reference case and later refined in the Bodner decision.

The Chair: Thank you, Mr. Lemay.

The committee would like to thank you, Minister, and Mr. Sims, for your appearance here.

This committee will be suspended for one minute while the other witnesses come to the table.

Hon. Vic Toews: Last time, I was accused of leaving too abruptly. I don't want to be seen as leaving here too abruptly. Is there anything that I'm supposed to do other than thank you, Mr. Chair, and thank the members?

Some hon. members: Hear, hear!

The Chair: No, Minister, thank you very much for your time.

Hon. Vic Toews: I will come back.

The Chair: The meeting is suspended for one minute.

● (1645)

(Pause)

● (1655)

The Chair: I call the meeting to order.

I would have the members take their seats, please. We're continuing our study of the effects of the abolition of the Law Commission of Canada and of the abolition of the Court Challenges Program on the development of minority rights.

Appearing before the committee, we have the Canadian Bar Association and the Court Challenges Program of Canada, along with the Centre for Cultural Renewal.

Thank you, folks, for appearing before our committee. You heard the minister's comments. It's good that you were sitting in the committee room at the time. I'm sure you will be responding to the minister's comments.

First, the Canadian Bar Association. Could you keep your comments fairly short, because I know the members have a number of questions they would like to ask, and if one of the witnesses would comment just on each particular group, it would be probably the best as far as time is concerned.

Who would like to present for the Canadian Bar Association?

Ms. Tamra Thomson (Director, Legislation and Law Reform, Canadian Bar Association): Thank you, Mr. Chair. I will start and then my colleague Ms. Buckley will take over—

The Chair: Very quickly then, Ms. Buckley, when you follow through.

Thank you.

Ms. Tamra Thomson: Mr. Chair, honourable members, the Canadian Bar Association appreciates the opportunity to speak to the committee today on two programs that are very dear to our mission, those being the Court Challenges Program and the Law Commission.

The Canadian Bar Association is a national organization of jurists that represents over 36,000 members across the country. Our mission includes the improvement of the law and of the administration of justice. It's within that purview that we have written to you, and the committee has a copy of our letter about the two programs on which we make our comments today.

Ms. Buckley is counsel to the Canadian Bar Association on a number of cases before the courts right now and I'm going to ask her to speak to the substance of each of the programs.

Ms. Melina Buckley (Representative, Canadian Bar Association): Mr. Chairman and honourable members, the Canadian Bar Association is here today to underscore the immense and unique contribution that both the Court Challenges Program and the Law Commission of Canada have made to good governance and the democratic process in Canada. I'm going to take the few minutes allotted to me to elaborate on that theme a little.

The Court Challenges Program's mandate is to ensure access to justice in two particular areas of constitutional rights, language rights and equality rights. The courts have drawn a very clear line between the constitutional principle of access to justice and to the courts and the rule of law. As we all know, the rule of law stands for the very important principle that the law governs our relations and gives us rights and obligations, and also that the government itself is constrained by law, and most particularly that the government is constrained by the supreme law, which is the Constitution. Without access to the courts, these rights remain meaningless, and the Court Challenges Program plays a fundamental role in ensuring access to the courts and access to constitutional rights.

Canadian courts have also long recognized that, in the words of the Supreme Court of Canada, it would be “practically perverse” to expect governments to both enforce and challenge legislation, and as a result our justice system has recognized and accommodated public interest litigation to fill this void, to fill this role, this government obligation that it cannot itself fulfill. The Court Challenges Program has very much facilitated public interest litigation in its mandate areas.

In a constitutional democracy like Canada's, constitutional rights litigation contributes to democratic values and citizenship, and it makes an important contribution to democratic dialogue about rights and their limits. As a society as a whole, we suffer when constitutional wrongs go unchecked.

To be meaningful, rights have to be exercised, and yet without assistance from the Court Challenges Program many individuals and groups cannot access the courts. The amounts funded by the Court Challenges Program are but a fraction of the full cost of a constitutional test case. Individuals and groups also contribute to these cases, and lawyers carry out the legal work on a reduced fee scale, or in many cases on a completely pro bono basis. Despite the fact that the Court Challenges Program is only contributing to a fraction of the costs of the case, that contribution is vital, and without it many of these important rights would remain mere paper guarantees. Without Court Challenges Program funding, many of these cases would never be launched, and the constitutional violations would continue unchecked.

The Court Challenges Program has been spectacularly successful, especially in the area of language rights. For almost 30 years now, the Court Challenges Program has funded cases in this area. As a result, we have a rich and vibrant jurisprudence that has meant meaningful rights for francophone communities outside of Quebec and for the anglophone community within Quebec. Even though there has been a lot of work, and very successfully done, there is yet a lot of work to be done. It is still very early days. We have to understand that human rights evolve over time and that this is an ongoing and continuing process.

The Court Challenges Program has also done a superb job in funding equality rights test cases. Of course, this has been for a much shorter period of time, and there's even more work to be done in that area.

I'm going to turn now to the Law Commission of Canada. The Law Commission of Canada has also played a huge role in improving the administration of justice and furthering the rule of law in Canada through its mandate, which is the renewal of law to ensure that it's relevant, responsive, effective, equally accessible to all, and just.

The CBA has long been supportive of a federal Law Commission. In fact, we've been on the record in support of such an institution since 1966. It is very much a part of modern government. It's a bit ironic that the Canadian government has cut the Law Commission while it's at the same time proposing and supporting such developments abroad in countries such as Bangladesh that are under much more serious economic conditions than Canada is.

The Law Commission of Canada has contributed to a democratic dialogue. It works through a very participatory process. It has established partnerships with institutions, including law schools, public policy fora, the CBA, and many other organizations. It promotes open and informed dialogue and citizenship engagement in all of its processes. While it's independent of the partisan process, it is a very important input into government policy and law-making.

● (1700)

I think what's really important and what I don't think was very clear in the earlier discussions that I overheard is that the Law Commission of Canada sets its agenda through consultation and develops its projects based on this public consultation, and through this process, it identifies pressing issues that are not being systematically addressed by others. So by very definition, it's playing a unique role in only dealing with issues that cannot be adequately addressed by other institutions. We should also keep in mind that the Ministry of Justice has a representative on the advisory committee to the Law Commission of Canada, so they too have a voice in the issues that are studied by the Law Commission.

The Law Commission takes a very innovative and multi-disciplinary approach to its research. It's not something that a busy government department can do on a day-to-day basis.

I'd like to mention in particular the indigenous legal traditions project, which is really just in its formative stages—or at least the first stage of that research was finished—but the Law Commission had important plans to consult and further that work, and that's really being cut off at a very unfortunate time. It's a project that would help to cultivate and refine aboriginal legal traditions in Canada and would help to address the very difficult situation that these communities face and would help to build and help rebuild the relationship between aboriginals and non-aboriginals within Canada.

I think what's important to realize is that even if there are no specific legislative changes that come out of this project, there will be a contribution to the way the country operates, and that law reform is much broader than just passing a bill or commenting on a bill; that law influences culture and influences institutions outside of that process.

We understand that the Minister of Justice and other members of the government have said that the CBA can carry on the Law Commission's work. This is simply wrong. This is not work that the CBA has the capacity to do. The CBA participates in law reform processes and contributes the perspective of the legal profession on law, the administration, and support of the rule of law, but we are not a research institution. It's completely unrealistic to think we could fill the void left by the elimination of the Law Commission of Canada. We are an organization with a different mandate. We have no funds for this task, and it's only through voluntary efforts that the CBA members, who are busy lawyers with full-time practices, do the important law reform work that they already do. You cannot ask us to do more. There is a big difference between commenting on a bill and carrying out substantive, long-term law reform work.

In our view, the Department of Justice is also obviously engaged in law reform, but it does not have the capacity to carry out the same type of work as the Law Commission of Canada does. In fact, I was working for the Canadian Bar Association full-time in 1992 when the Law Reform Commission was cut and for the five years before the new Law Commission was started. We worked very closely with the Department of Justice to try to fill the void, and we all agreed that it just could not be done by either of our institutions or working together.

The Law Commission of Canada has a unique role that's not filled by any other organization, whether publicly or privately funded. In particular, there's no independent organization that's accessible, permanent, and has the comprehensiveness to carry out the work that the Law Commission does.

In closing, the CBA would like to point out that the abolition of both the Court Challenges Program and the Law Commission will impoverish the quality of governance in Canada. All Canadians are impoverished by the short-term thinking that has led to the abrupt elimination of these two institutions, but it is the members of disadvantaged groups and minority groups that will feel the cuts the hardest. The abolition of these two programs serves to reinforce the marginalization and precariousness of the positions of the francophone community outside of Quebec, the anglophone community within Quebec, aboriginal persons, women, persons with disabilities, racial minorities, and other vulnerable groups protected by the Constitution.

The CBA urges you to take all steps available to you as individuals and as a committee responsible for justice and human rights to redress a terrible wrong that has been done.

Thank you.

● (1705)

The Chair: Concerning the Court Challenges Program of Canada, would the presenter be you, Mr. Norman?

Prof. Ken Norman (Treasurer, Member of the Board of Directors, Court Challenges Program of Canada): Yes, Mr. Chair.

My name is Ken Norman. I'm the treasurer of the Court Challenges Program. I sit on the board of directors of the program as the representative of the Council of Canadian Law Deans. I have with me our executive director, Noël Badiou.

Mr. Chair, honourable members, I want to talk first from our brief that's filed with you as to the purpose of the Court Challenges Program. The purpose is access to justice, and the rationale for our fund lies in the fact that access to justice requires resources. For sound civil society reasons, there are a number of government funding programs founded on this same rationale with regard to litigation. The Court Challenges Program is but one—or was but one—of such programs.

A year ago, the Canadian delegation appeared before the UN Human Rights Committee during the review of Canada's fifth report on the International Covenant on Civil and Political Rights. Focusing only on charter court challenges and leaving to one side such litigation funding programs as the test case funding program of Indian and Northern Affairs Canada, or the aboriginal rights Court Challenges Program of the Northwest Territories, the Canadian delegation explained the various circumstances in which charter issues may arise during government-funded litigation.

It offered examples such as criminal legal aid, civil litigation involving government or quasi-governmental actors, and individuals engaged in litigation with governmental actors over rights and access issues. The Canadian report proceeds to note that “the Department of Canadian Heritage also funds the Court Challenges Program (CCP), which provides financial assistance for test cases of national significance in order to clarify the rights of the official language minority communities and the equality rights of disadvantaged groups.” In this light, what sense, I ask you, can be made of Treasury Board presidentJohn Baird's comment justifying the funding chop to our program on September 25 of this year, that “I just don't think it made sense for the government to subsidize lawyers to challenge the government's own laws in court.”?

I come before you to ask that this singling out of the Court Challenges Program be reversed. In the name of access to justice, we ask that you call for the restoration of funding to the Court Challenges Program.

I'll now speak briefly to our history and our accomplishments.

The program was established in 1978, following important language rights cases that were pursued in the courts by individuals at great financial cost and personal expense. In view of the fundamental importance of the rights in question, it was recognized that there was a need for a program that would assist individuals from the official minority language groups in bringing forward cases to clarify their constitutional language rights. It was understood that there needed to be a mechanism through which those groups could have their rights recognized. Without such a mechanism, members of those groups would have little or no voice in seeing their rights recognized and respected.

Then in 1982, with the charter coming into effect, the mandate of the program was extended to include language rights under the charter. Then in 1985, with the equality provisions clicking into effect, the program's mandate was further expanded.

In sum, the program was meant to provide access to justice for Canada's historically disadvantaged; those who are most vulnerable to marginalization and exclusion from full participation in Canadian society; and Canada's official minority language groups, who are also trying to claim their full and proper place in Canada. Without this access to justice, these disempowered groups and individuals will no longer have a voice in their efforts to seek equality and recognition. Thus, there's no weight to the argument that the Court Challenges Program somehow failed in its mandate when it did not grant funding to those status quo groups seeking to intervene in support of a government's position.

● (1710)

I want to move to value and effectiveness, as this issue has been raised. In cutting the Court Challenges Program, the government said it did not provide “value for money”. We would be very interested to know on what basis this assertion was made. The program was never notified that it was undergoing a review. Neither staff nor board members were contacted or asked for any information about the program, so what was the nature of the review? What were its findings? Upon announcing the cut, the government did not tie its decision to any supposed findings of any such review.

There have been two formal public reviews of the program, one in 1997 and one in 2003. I will move to a couple of the points made in the 2003 evaluation, the more recent one.

The evaluation said the program is effectively managed. It also said: “The evaluation findings suggest that there are dimensions of the constitutional provisions covered by the Program that still require clarification and that, most probably, there will continue to be dimensions of the constitutional provisions that require clarification indefinitely.”

There are some additional points I'd ask the honourable members to consider. Our program is a small one, but it is national in scope. It is wholly administered by a small staff of eight people from a single office in Winnipeg, Manitoba. The administrative budget is relatively small when considering the importance of the issues funded and the national scope of the program.

Under the limitations established by the Court Challenges Program in administering funds, the real costs of taking a case forward are not even fully covered by any means. There is limited funding that, once granted, allows applicants to leverage the participation of very skilled and experienced lawyers who agree to work at a much lower hourly rate than their norm for some of the work and on a pro bono basis for other portions of their work.

On the impact of the program, our brief sets out some of the important cases. There is one in particular I want to highlight in the brief time I have available, and that's a case out of Prince Edward Island, a minority language rights case called Arsenault-Cameron v. Prince Edward Island, in which the Supreme Court of Canada makes the point and the link between the language funding side and the equality funding side of the program, that link being substantive equality. I quote from Arsenault-Cameron: “Section 23 is premised on the fact that substantive equality requires that official language minorities be treated differently, if necessary, according to their particular circumstances and needs, in order to provide them with a standard of education equivalent to that of the official language majority.” This idea of accommodation is at the heart of the idea of equality in section 15 as well.

In terms of the section 15 cases, contrary to the perception of some, equality challenges have rarely produced clear wins at the hands of the legal system. Funding from the program provides equality-seekers with an opportunity to keep their issues before the courts in the hope that over time the legal principles that they advance will be recognized by the courts. Furthermore, the issues brought before the courts can help to raise the profile of certain issues which can stimulate public debate and lead to legislative reform that advances human rights. The program provides the least powerful in society—disadvantaged groups—with a means to continue the dialogue, which they otherwise would not have.

Let me move to a final point, which is that the Court Challenges Program has been recognized and praised not just by the UN Human Rights Committee under the International Covenant on Civil and Political Rights, which I began my presentation by referring to, but also by the United Nations Committee on Economic, Social and Cultural Rights. As well, the former United Nations High Commissioner for Human Rights, Ms. Mary Robinson, has commented on the wonderful work of the Court Challenges Program and the uniqueness of it, and has stated that this type of program should be replicated in other countries.

● (1715)

Finally, we've had the charter in existence for about a generation. However, constitutional rights continue to evolve. One only has to look to the United States, where constitutional rights continue to be raised in the courts 200 years after their Bill of Rights was entrenched. Surely there's a continued need for our program, which provides some of the resources for disadvantaged Canadians to have access to justice.

Thank you.

The Chair: Thank you, Mr. Norman.

We'll hear the Centre for Cultural Renewal, Mr. Benson, please.

Mr. Iain Benson (Executive Director, Centre for Cultural Renewal): Thank you very much for inviting me here. I'm representing the Centre for Cultural Renewal, which has been going in Canada now for about 15 years. It's an independent think tank and involves a wide variety of people with a small staff. We do a lot of work in the area of pluralism, trying to determine what principles can be used to further the common life of Canadians.

My comments focus today primarily on constitutional development by litigation assistance. But my final recommendation for necessary changes will apply as well to the Law Commission questions before the standing committee, which I don't address in my substantive remarks. You'll all get a copy of my full remarks; because of the time restrictions now, I'm just going to touch on some of the key parts.

Constitutional litigation is in everyone's interest. No one group owns the Constitution, and no one set of aspirations controls how the Constitution will change and develop as it is interpreted over time. In an open society, the capacity for self-evaluation and criticism is a good thing. In that respect, having a system that permits evaluation of laws against the Constitution is to a certain extent healthy. Similarly, providing financial assistance to those who cannot afford litigation, if done fairly and appropriately, can also, with some important caveats, be a good thing.

I am not concerned today either to praise the Court Challenges Program as it was or to bury it; I am simply asking for your ears so that we can analyze some of the principles that might vivify constitutional assistance litigation going forward. I think very serious changes need to be made to the program as it's currently constructed.

The Court Challenges Program has had advisers of the highest ability and strategists of considerable brilliance. Its track record speaks for itself. Perhaps we now have, however, an opportunity to rethink what sorts of programs will serve the country best going forward. Programs will come and programs will go. What is buried as a dead duck at one point can sometimes rather quickly show the characteristics of a phoenix.

The effects of the program cuts lead to considerations well beyond the footprint of the previous program, in my submission. Those who wish continuance of the program as it is form one of the most powerful lobbies in Canada today, so I'd like to offer some principles that, it seems to me, ought to concern us all and be applied to considerations should such a program of financial assistance for constitutional litigation be reformulated or developed and moved on from where it currently sits, which is one of my strongest recommendations today.

Why should we be concerned about government-supported constitutional litigation and careful how such support is set up and who will decide applications before a program? It's often said in Canada that the relationship between the courts and the legislature is a dialogue. If that is true, then it is also true that in a further sense the debates within cases themselves are part of that dialogue. There is a dialogue and a debate about the nature of the Constitution carried on within each case, in a sense, and then between cases over time.

Society itself and the law that is part of it are dialogical. It does change over time, in part because of the debates and discussions and self-understandings that are part and parcel of our common lives together. Thus, in cases on any particular theme, as strategists well know, there are developments, and a good strategist chooses cases carefully with a view to obtaining the desired outcomes over time.

Because the result affects everyone, it's essential that the greatest access possible be given to citizens. Interpretation of the charter now, over two decades of it, has accomplished a great deal. Interpretation is an ongoing reality, and we're frequently told our Constitution is a living tree. It's useful to recall that trees are not usually found alone. They are not the only growing things, and second, they are dependent upon the soil that will nurture them. The garden too, in which that tree is a constitutional development stance, is a living reality; threaten the soil and you threaten the tree itself. Constitutional documents are words on paper unless the lived reality of the community breathes life into them in its day-to-day being.

● (1720)

Canada is not the Charter of Rights and the Charter of Rights is not Canada. This needs saying, because there are those—in fact, quite a few—who seem to speak as if Canada will be developed further and be based on the charter, which is shorthand for saying by the judiciary, or within the dialogue between legislature and courts. We must remember that there are other equally important dialogues at work, as I said a moment ago, and one of those is the dialogue within cases themselves, the very debate of principles that is located within each piece of litigation.

I want to move at this point to highlight what I think is the essence of my submission.

If we assume that courts are not merely necessary but are sufficient for the maintenance of a constitution over time, we assume too much about the role of law. That is the central point of my comments today. For any program of constitutional litigation assistance to be just, it must be open to everyone—not only to those challenging laws, but also to those defending them as well, or arguing against a particular sort of challenge. For example, there may be no law in an area in which a litigant may seek to have one, as was the case in the same-sex marriage cases, which hung up on the tenuous thread of the challenge to a common-law definition.

If constitutional litigation is going to affect everyone, then those who may need assistance in relation to that litigation do not come all neatly labelled as challengers, and therefore any program seeking to develop constitutional interpretation must do so on a neutral basis and not assist only one side of the argument. What is constitutional is not just what is new and challenging; it can also be what the Parliament and legislatures, federal and provincial, may have brought into place already.

As Canadian philosopher Charles Taylor has noted, judicial decisions are usually winner-take-all. Either you win or you lose. In particular, judicial decisions about rights tend to be conceived as all-or-nothing matters. The penchant to settle things judicially, further polarized by rival special interest campaigns, effectively cuts down the possibilities of compromise. When litigation is being used this way, however, because we are encouraging it to be used this way, it would make sense to ask what kind of equality is being pursued. What are we saying about that internal dialogue on issues of the day that should exist between citizens? To go to the courts on what amounts to this winner-take-all model that Charles Taylor expresses concerns about effectively tends to give one side of what can often be a two-sided discussion a victory, and that is not the way to produce a civil society that is functioning at its best over time.

My paper develops this theme in far greater detail than I can right now, but I'd like to turn to the question. It is this: how are we best to do this task of placing the charter in the proper linguistic, philosophical, historical, and religious tradition that the Supreme Court of Canada has told us it should be placed in if we do not do it with maximal inputs from the people and groups who can best tell us what these are? In one of the recommendations below, I argue that litigation is not the best way to accomplish the kinds of reflection best suited to the best kind of judicial decision, and that another approach needs to develop.

Constitutional rights are important, and the courts have a necessary role in defending them, particularly when the state is acting against individuals or groups, but it is a necessary role the courts have, not a sufficient one. The first period of work under the court challenge program and the first period of development under the Charter of Rights and Freedoms has shown us the development of jurisprudence, particularly in relation to equality rights, language rights, and so on; I'm going to suggest that the next period of development in Canada needs to look beyond a litigation framework for constitutional analysis. We need to start getting out of a new sectarianism of debates, largely political, between interest groups. I think we need to do that by making substantive measures that will bring into the same room the groups that have fundamental disagreement, because at the end of the day we as citizens live with radically opposed viewpoints and co-existent lives in the same country.

Therefore, here are my recommendations.

First, assistance should seek to best elucidate the merits of both challenges and defences to laws, since constitutional merit does not belong only to challengers.

Second, all citizen groups must have confidence in the fairness of any constitutional assistance program that's set up, particularly with regard to representative fairness. As far as practicable, it would make sense to involve those from a variety of different groups themselves, and we know from the history of litigation in this country over the past many years who those groups are. They should be the members of the board of advisers, or the members making decisions in a project like the Court Challenges Program—not just a selective group of law professors and certain activist groups, however excellent they may be.

● (1725)

Three, once the courts have granted intervenor status to groups in a constitutional litigation, funding assistance to a certain level should flow to all sides of that litigation, subject perhaps only to a means test principle. This flows from my first proposition, that constitutional development isn't just for the new. The judges, after all, determine that particular bodies have an interest and valid representative status in constitutional litigation. It should, therefore, follow that recourse to financial assistance is possible for not-for-profit groups, for registered charities, and for individuals who satisfy the means test.

Four, there is a need to clarify the role of litigation, participation, education, and advocacy in relation to charitable status. The Court Challenges Program itself brought a challenge to the Supreme Court of Canada, unsuccessfully, for a west coast women's advocacy group. I know of many other groups that share concerns about the deregistration, or the lack of registration, given to certain charities. There needs to be attention to that.

Five, and I think most significantly, I'm arguing that instead of focusing governmental moneys, federally or provincially, primarily on court challenges for some, we should consider establishing in Canada a constitutional forum for stakeholders that will benefit all Canadians. This constitutional forum would involve groups that are here today—for example, the CBA—representatives of law schools, representatives of religious organizations, labour organizations, aboriginal rights groups, women's groups, and linguistic rights associations, as well as representatives of sexual orientation activist groups, etc.

Only with a constitutional forum of this kind, which involves the actual groups that have the interest, can we see the kind of principled analysis developing that we need in Canada. My brief spells out how we failed that need miserably with respect to same-sex marriage, how we could have done much better, but that recourse to the method that was chosen in the courts and then with the marriage reference truncated what I hope will eventually be a proper analysis of the role of the state in relation to same-sex marriage.

There's a lot in my submission. I've gone slightly over time, and I apologize to my colleagues here, but those are my comments.

Thank you.

● (1730)

The Chair: Thank you, Mr. Benson.

Mr. Bagnell, you have five minutes.

Hon. Larry Bagnell: Thank you.

The minister, when he was here a few minutes ago, carried on about this aboriginal report, asking why Liberals didn't do anything about it. He rather embarrassed himself, showing how little he knows. The report is not even out yet. It's just a working paper, and it hasn't come to Parliament.

When you make decisions to cut things like these two valuable programs, you should do it on evidence or evaluation or recommendations from the department. Some people are arguing this government is just doing it on ideological grounds instead of those. I want to follow that up.

Melina Buckley, you gave a tremendous speech. I don't know how anyone could say more or cut the program after that. But the minister suggested they were cutting things that were not providing value for money. I asked the department and the minister if he ever got evidence from the department, and you probably saw the response: there was no evidence or advice from the department that there was not value for money.

Where do you think he got advice that it was inefficient or ineffective? It didn't seem to be from the bar association.

Ms. Melina Buckley: I can't comment, obviously, on the decision-making process behind the cuts. I can certainly say that the Canadian Bar Association was not consulted and that in fact at our annual meeting, just prior to the cutting of the Court Challenges Program, we had reaffirmed our commitment to the Court Challenges Program, to the vitality of that institution in an access to justice framework, and in fact to expanding the program. The Canadian Bar Association has been on record since 1989 as saying that particularly in the area of equality rights there should be funding to challenge provincial laws and policies as well as federal ones.

So in whatever way the decision was made, it certainly didn't involve consultation with us.

As Professor Norman has already mentioned, the Court Challenges Program was just recently reviewed. As part of its contribution agreement before it's renewed every five years, there's a very thorough review process that goes on by an independent agency. I believe it took about six months to undertake that. Many people were contacted—critics of the program, independent advisers, and so on—and both times that the Court Challenges Program was reviewed it came out with glowing recommendations.

So it's difficult to see on what basis that decision was made. I'm also not aware of any actual review of the Law Commission's work that was done. And certainly the Canadian Bar Association would have been more than happy to participate in such a process.

Hon. Larry Bagnell: It's astonishing. Where's the evidence they're making this decision on? The advice from the department is not to cut the program.

You just said the evaluation was remarkable. Commendation of the program should keep it going. So it's astounding that there's any suggestion to cut this.

Leaving that, the minister's second point was that it wasn't doing anything, that there were all sorts of other groups doing this. If they were all doing this, and available to do so, why were there so many projects?

I'm assuming you would disagree with the statement that they were not providing value for money, as the minister said. What was all this valuable work they were doing, if there were all these other groups that could do it? Was there a need for it?

Ms. Melina Buckley: Absolutely. I think the need for the program was very clear.

We already tried once in the 1990s without the Law Reform Commission, as I pointed out. There were the same kinds of concerns about value for money, and that the Department of Justice and the CBA could do it better than an independent agency that was off doing its own thing. That exercise was a flop. The Law Commission was reinstituted stronger than ever, with an even better framework. In its reincarnation, the Law Commission was incredibly skilled at establishing very effective consultation processes that we can all—the government and the CBA—learn from.

It really has done a fabulous job of engaging ordinary citizens in understanding the law better and in contributing to the way it's going in the future.

● (1735)

Hon. Larry Bagnell: Mr. Norman, one of the ministers suggested, why would we need the Court Challenges Program when the government is never going to pass any laws that are unconstitutional? Of course, maybe this government wouldn't, but they have to deal with all the laws ever passed in Canadian history.

I ask you, is that true? Has the Constitution never been challenged? Is there no need for a Court Challenges Program, because the government always passes laws that are constitutional? Has the Constitution ever been challenged, and has the Court Challenges Program ever been involved in a challenge?

Prof. Ken Norman: Thank you for the question.

Constitutions are best understood as living trees. In my remarks, I cited the American constitution's Bill of Rights—200 years and growing. To my eye, there's no shortage of development at work in terms of litigation south of the border on the question of clarifying constitutional rights.

Constitutions have to reflect the societies that they're the foundation of. The courts are a vital player. I grant the point that absolutely the legislature is a vital player as well, but without the supremacy of the Constitution, the democratic project fails as a constitutional democratic project. This means that you absolutely have to have a supreme judiciary, as we do in this country, which in the end has the responsibility to say what this provision in the Constitution means at this time for this case.

For us, in terms of the history of the Court Challenges Program, to leave it only to those who have the means it takes to fight a case through to the Supreme Court of Canada, we're talking very large dollars. To leave access to the Supreme Court of Canada on constitutional questions as fundamental as official language minority and equality rights in this country to those who have the dollars to do so would be a shame, in my submission.

The Chair: Thank you, Mr. Norman.

Mr. Ménard.

[*Translation*]

Mr. Réal Ménard: As you know, this is a fairly difficult and sad time for human rights because we're dealing with a quite heartless government that is not that concerned by these issues. It is a government that has resolutely chosen to sit on the right, and, like all right-wing governments, it does not believe in equal opportunity. That's the difference between the existence of a court challenges program and its non-existence. I'm saying that we won't yield. The minister can represent the Francophones in his riding all he wants, but he didn't want to answer my questions today. We're going to introduce motions.

You're familiar with the democratic adage that governments are sometimes blind but never deaf. We have to raise the volume. In all regions of Canada, I hope there's a caravan of personalities—I'm going to talk to my caucus about this—that travels through the Francophone communities to let them know how dangerous this government is for those who believe in equal opportunity for Francophones.

I never understood the Court Challenges Programs as such was a program that provided 100% funding for leave to go to court. That's obvious. You have contribution agreements and you receive $2.8 million a year. I read in your contribution agreements that you have to reserve $1.8 million for challenges; the rest is to cover expenses. You don't have a big budget; that's clear. The principle is this: what we accept because we're democrats is not challenges against laws; it's defining what laws are. The idea is to define the extent of a right. It isn't because a law was defined in a particular manner in 1996 that it won't be expanded and defined in another way in 2001, 2002 or 2003.

I'm not talking about section 15, but let's just take the idea of the entire issue of the manaagement of school boards, which we call school commissions in Quebec. How could anyone think that, without the Court Challenges Program, there would have been major advances like those we witnessed a few years ago. So point that out to this government, and I hope that the ministerial types switch to listening mode and that we have a minimum amount of awareness so that they can again realize that the vitality of our communities is at stake. I know we're not talking about their survival, but rather about the vitality of our communities.

Once again, there is a price to be paid by a right-wing government. When things go well, when we can afford to go to court, when we have no reversals of fortune in life, we don't need the government. When you're in the majority and you live in Alberta, Saskatchewan or Manitoba, when you're Anglo-Saxon and speak the language of the majority, you don't need the courts. The program isn't for that.

I apologize on behalf of the government for having one like that. May it please God and voters that, next time, this government is dispatched as it deserves. However, tell us how important for schools management the rights that you defend and the Court Challenges Program are.

● (1740)

[*English*]

Prof. Ken Norman: I'd be happy to do so, very briefly.

I think the school board issue is a wonderful example that those who have a fulsome view of bringing diverse groups to the table need to address. Where, if one's dealing with a recalcitrant anglophone community in Saskatchewan—where I come from, to take an example that won't offend others—where, if not in the courts, will the francophone official minority community in Gravelbourg, for example, have the capacity to move forward on what their children have a right to—a language of instruction that is their own?

We need the capacity to at least partially fund those parents and fund the groups who support those parents, to have their voices heard in court and have the court deal with a situation in which, as you know, sir, and as I'm sure the other honourable members do as well, you are facing governments that have absolutely a stone wall built. I'm talking here largely of municipal governments, but also provincial in these cases. This is not about dialogue. This is about "I'm sorry; go away."

Without the courts—what? You go away.

The Chair: Thank you, Mr. Ménard.

Mr. Comartin.

Mr. Joe Comartin: Thank you, Mr. Chair.

Thank you all for coming.

The President of the Treasury Board has repeatedly stood in the House—as I recall, at least several times—and, Mr. Norman, in addition to the point about paying lawyers, has made the accusation, slandering those of us who are lawyers and don't belong to the Liberal Party, that this is a fund for Liberal lawyers to conduct these hearings under the court challenge.

Both Mr. Norman and Ms. Buckley, are you aware of any study that identifies the political affiliation of the lawyer who's taken on any of these cases?

Prof. Ken Norman: First, we don't fund lawyers; let's just put that on the table. We fund individual and group applicants. They retain lawyers. Those lawyers, as I have spoken to and as Ms. Buckley has spoken to, have a portion of their fee paid. It works like that. How is this funding done? It's done by a committee of experts who are themselves appointed by advisory panels to the program, at arm's length from the likes of me on the board of directors.

So it's a funding of individual applicants and group applicants on test cases of national importance that test questions of substantive equality on both the section 15 cases and the official language minority cases.

The vehicle for all of this, of course, is counsel, so the money ends up in lawyers' hands. But it's not funding lawyers, and the panels do not, when they make these decisions, always know who the lawyer is. They're funding applicant groups and applicant individuals.

Ms. Melina Buckley: To add very briefly to that, legal fees are only part of what the money goes to. In these constitutional cases, disbursements are very high for things such as expert reports. You'd be amazed at the costs that go just to photocopying and to everyday things such as travel to get to court and having your experts and witnesses get to court and so on. If there is any idea that lawyers are getting rich from this Court Challenges Program, it's completely wrong.

Mr. Joe Comartin: My second question is this. I thought the minister today showed a really high level of ignorance of the use some of the studies have been put to. I think in particular of the study the Law Commission did on electoral reform in the country a few years ago and of all the work that was done in committee, in this House in the last Parliament, using that report as one of their basic documents.

I wonder whether you can point, either Ms. Buckley or Ms. Thomson, to any other studies like this that have been used by parliamentary committees or by commissions.

● (1745)

Ms. Melina Buckley: I can't think of any particular studies offhand, but they certainly informed the debate generally in other law reform measures.

Mr. Joe Comartin: Thank you, Mr. Chair.

The Chair: Thank you, Mr. Comartin.

Mr. Blaney.

[*Translation*]

Mr. Steven Blaney (Lévis—Bellechasse, CPC): Good afternoon. I'm going to speak in French. Thank you for being here, and I congratulate you on your argument for the organization you represent. I have a few brief questions.

First, what is the percentage of the financial contribution you make relative to the total cost of a case? Could you enlighten me on that subject?

Second, you're not necessarily able to accept all proposals. What is the percentage of requests that you handle?

What is the impact of your organization on cases? Is it really useful? Could cases be heard without the support of your organization?

[*English*]

Prof. Ken Norman: Thank you for the question. The percentage varies from case to case in terms of the complexity of the case, but the funding is a subvention; it is a partial support, and other ways, sometimes through pro bono work, are found for the case to move forward.

With regard to the data, in terms of—

Mr. Steven Blaney: Do you have a rough ratio?

Ms. Melina Buckley: If you spoke with lawyers who do these kinds of cases, they would say it's 50% to 60% of the cost.

Mr. Steven Blaney: That much? Okay.

Ms. Melina Buckley: It depends. Sometimes, with more complex cases, you wouldn't even be covering the disbursements, because at the trial level the program has a ceiling of $60,000. The disbursements in one case I heard about recently were $125,000. That's just the hard costs of running the case, with nothing going to lawyers. So as Mr. Norman said, it depends on the nature of the case.

Mr. Steven Blaney: How many cases do you have?

Prof. Ken Norman: Thank you for that. I have it in my brief on page five, which you'll have before you once it's translated.

Let me just give you some numbers here in terms of total budget for this past year and total number of cases. There were $525,000 allocated to language rights and $1.5 million to equality rights this year. This amount covers an average of 123 applications for equality rights funding and an average of 35 applications for language rights funding, so you do the math. A quick calculation demonstrates the limited nature, on a per-case basis, of the money that can be contributed.

Mr. Steven Blaney: Do you refuse some demands?

[*Translation*]

I imagine you also reject requests.

[*English*]

Prof. Ken Norman: Yes, it's covered in our annual report and we publish—

Mr. Steven Blaney: Okay, I may check in it.

Prof. Ken Norman: Please do. It's available on our website. Our brief gives you our website. We have bar charts and pie charts that show you province by province, issue by issue.

Mr. Steven Blaney: Okay, I'll check in that.

[*Translation*]

My other question is for Mr. Benson.

Mr. Benson, I'd like to know this. Do you think the Law Reform Commission of Canada did a good job of carrying out its mandate for Canadian society and for the government? I'd like to have your opinion on the Law Reform Commission of Canada. You briefly addressed this question in your presentation. Perhaps you could go back to it. With regard to the way in which it performs its mandate, do you see any improvements that should be made. How can that mandate be carried out?

[*English*]

Mr. Iain Benson: As I said earlier, my comments were primarily directed to the Court Challenges Program.

With respect to the Law Commission, the report of theirs that I know very well was the one with respect to close personal relationships, looking at the marriage question. I thought that report was very rigorous within a certain ideological framework. Implicit in what I just said is that it missed a great deal because of the ideology it brought to bear on it.

Whether that kind of bias was common to all their work, I'm not qualified to say. I haven't studied it. On that particular study, there were some very important questions that I thought were massively under-evaluated, such as the role of the state in relation to marriage itself, which is a primary question that's never really been properly addressed in Canada. The fact that the Law Commission failed to analyze that I thought was very telling.

So no, on that particular report, I thought it was not well done.

● (1750)

Mr. Steven Blaney: Okay, thank you.

The Chair: Thank you, Mr. Blaney.

That brings to a conclusion our meeting. I want to thank all of the witnesses for appearing today and for your presentations. It's very much appreciated. Part of this examination of course will result in, I believe, a report that will be sent forward to the minister.

Thank you for your appearance.

This meeting is adjourned.

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