House of Commons
CANADA

Standing Committee on Justice and Human Rights

JUST • NUMBER 069 • 1st SESSION • 39th PARLIAMENT

EVIDENCE

Tuesday, May 15, 2007

Chair

Mr. Art Hanger

Standing Committee on Justice and Human Rights

Tuesday, May 15, 2007

● (0905)

[*English*]

The Chair (Mr. Art Hanger (Calgary Northeast, CPC)): I call to order the Standing Committee on Justice and Human Rights.

This is Tuesday, May 15. I trust everyone has a copy of the agenda before them.

Our first order of business is a motion from Monsieur Réal Ménard.

[*Translation*]

Mr. Réal Ménard (Hochelaga, BQ): Mr. Chairman, do we have quorum?

[*English*]

The Clerk of the Committee (Ms. Diane Diotte): Quorum is seven. We have eight.

[*Translation*]

Mr. Réal Ménard: Would you not like us to wait a bit, for your colleagues and some Liberal members?

[*English*]

The Chair: We have enough.

[*Translation*]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): We're dealing with a motion. It's as though they were sitting right next to us. We haven't started work on Bill C-23.

Mr. Réal Ménard: I understand, Mr. Petit.

[*English*]

The Chair: We have eight. We have a quorum.

[*Translation*]

Mr. Réal Ménard: I've gotten an education, you know. I finished my law degree. I wrote my final exam. In fact, I'm still waiting for your congratulations.

Mr. Chairman, this is a motion which I wish to submit to the committee and see passed unanimously. I'll say it again, I would be very hurt if the committee were to be divided on this matter. I would like to point two things out. First off, unlike what Mr. Lee would have you believe, it does not have to do with judges. We know full well that it is not up to us to decide whether judges appointed in British Columbia need to be bilingual. But for strategic positions, where someone would serve as a spokesperson, arbitrate and serve society as a whole, of course we would expect that individual to function at an adequate level in both languages.

I believe the government has developed a bad habit. What I'm saying regarding judges should of course not apply to Supreme Court justices. How disappointed we were to hear that former justice minister Vic Toews' professor had been appointed to the Supreme Court without knowledge of French. The government added insult to injury by appointing a unilingual anglophone as the ombudsman for victims of crime. We are not calling into question his abilities, obviously not, but he is unilingual.

I think it is our duty, as a committee, to clearly establish that for strategic positions, we expect candidates to know both languages. It is not enough to want to learn the second language, they must know both. What would be your reaction, Mr. Chairman, if an appointee were to be a unilingual francophone? I don't think you would accept that. Yet, the Minister for Canadian Heritage does not speak French. That is also the case of several parliamentary secretaries. The situation has deteriorated. These days, when we call cabinet ministers' offices, it is practically a privilege to be able to speak to someone in French.

It is time we put a stop to this. That is why I would expect my motion to be unanimously adopted by this committee. I know that my colleague has already expressed her support and I thank her for it. It is very frustrating for francophones to see that the status of their language is not respected.

I will stop here, but I expect a unanimous vote.

[*English*]

The Chair: Thank you, Monsieur Ménard.

Mr. Petit.

[*Translation*]

Mr. Daniel Petit: Thank you.

I thank you for being here.

I studied Mr. Ménard's motion. He had me working all weekend on it, so, of course, I was unable to attend your convention. While I accept Mr. Ménard's comments regarding linguistic duality in Canada, I thought it would be wise to start by assessing the admissibility of this motion. I had some research done by the analysts at the Library of Parliament, who detected a problem.

Section 15 of the Charter is the reference we turn to for all grounds of discrimination. In Canada, grounds for discrimination could be national or ethnic origin, colour, religion, sex, age or mental or physical disability. Only in section 7(c) of the Republished Statutes of the Yukon and in section 10 of the Quebec Charter of Human Rights and Freedoms do we see reference made to language. Therefore, it is only pursuant to those statutes that language may be considered as grounds for discrimination in the case of an appointment. That is not the case for the Canadian Charter, which we are governed by.

We did, however, look into whether there had been cases which could make Mr. Ménard's motion admissible from a legal standpoint. We looked into the words "in particular" which are used in the Charter, and assessed whether any analogous grounds could make this motion, which is otherwise quite good, acceptable from a legal standpoint. Analogous grounds recognized by the courts are different from those I have just referred to. They are citizenship, matrimonial status, sexual orientation and place of residence.

Once I had completed this work, I had to go a bit further and look into whether any ruling had been made. To date in Canada, no ruling would allow us to accept the wording of Mr. Ménard's motion. In fact, if we were to be dealing in the general sense with public service employees, then perhaps there would be an issue. Indeed, jobs are classified as bilingual, given the fact that it is impossible for people who work directly with the public to use interpreters. You cannot always have an interpreter at the immigration counter. It would mean duplication of staff throughout Canada, in all provinces.

I then wondered whether there were exceptions. With respect to the ombudsman, Mr. Sullivan, I wondered what type of legislation these people were subject to and what the criteria were. I discovered that we were dealing with the terms and conditions of employment for full-time governor in council appointees. So, there is the Public Service Employment Act and the provisions which, through the governor- in-council, would affect the positions of deputy minister and above. Well, in their case, official language rules do not apply. I would have accepted Mr. Ménard's position without a second thought, but this problem is a hindrance.

Of course, I said to myself: perhaps there may be a small detail in the legislation which would settle this problem. I looked into the regulations of the act we have just referred to, but was unable to find anything at all. Official languages are referred to in section 4 of the act and regulations, but there is no loophole.

● (0910)

The only loophole I found was provided by the Liberals in 2005. They had too many problems to deal with. In May 2005, Mr. Rodriguez was Chair of the Official Languages Committee. This committee issued a report containing recommendation 13, which reads as follows:

> The Committee recommends that the Privy Council Office require that those appointed to deputy minister positions meet the CBC requirements in the second official language.

The letter "C" represents the highest level of reading comprehension, the letter "B" the intermediate level for written communications, and the letter "C" the highest level for oral interaction in the second official language. The Liberals issued this recommendation, but they didn't implement it. They would have had the time to do so because in May 2005 the elections had not yet been called. They left the recommendation on hold, as they tend to do for certain things.

At the end of the day, the motion does not work. You cannot ask a government, of any stripe, to do something that is not allowed by the rules, including those created by the Liberals in 1968 at the time of the adoption of the Official Languages Act. This is not a recent problem, it dates back to 1968. The Liberals passed legislation, but they didn't think of everything. They have had 30 years to do so, but they did not.

I understand and I support the spirit of Mr. Ménard's motion, but I cannot support it in its current form. You cannot demand something which is a violation of rules. And you cannot ask for an appointment not to be made. That is a sovereign power, the power of the king, the power of government. You cannot ask it not to make an appointment. The government decides and is accountable to the public.

Well, that's it when it comes to the substance. With respect to the form, there is one other aspect which you should also consider. I cannot really speak to the English version of this motion, because of my level of fluency in English, but I did carefully read the French motion. The motion states:

> Be it resolved that, through the chairman, the Committee write to the Minister of Justice to ask him not to make appointments of persons who do not have a working knowledge of French at the time of their appointment to strategic positions.

You cannot say "who do not have a working knowledge of French". If you're going to adopt a motion on official languages, it has to consider both languages, not one alone. If we want to claim to have equality, we should require both languages, in other words: "who do not have a working knowledge of both official languages" and not only "French".

As to the form, I would point out to Mr. Ménard that the Official Languages Act does not apply in Quebec. It applies in every other province except Quebec because we are excluded from its application.

That would mean that if, in Quebec, we were to appoint a unilingual anglophone to a position we could not, under the Quebec Charter, under our own laws, tell him not to sit or not to be appointed because the language criterion in Quebec is a grounds for discrimination. So, if I were to appoint someone who only spoke English, I could not discriminate against him for that. That is one issue with respect to the form.

Before we impose anything on people throughout Canada, we should see whether the issue would even apply in our own provinces. I would say no. I do not think you should accept the substance of this. I would recommend that the spirit of Mr. Ménard's motion be respected, I find it is quite appropriate, but the form and the use of this motion should not be accepted.

That is my opinion. I can say no more, because I have not studied this matter in any greater detail than that. Thank you.

● (0915)

[*English*]

The Chair: Thank you, Mr. Petit.

That's a fair amount of work you actually did over the weekend, it sounds like.

Madam Jennings.

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): Thank you.

For the record, I'd like to correct a statement that Mr. Petit made to the effect that the Official Languages Act does not apply in Quebec. He is incorrect. It does in fact apply in Quebec.

It's for the very reason that it does apply in Quebec that the previous Commissioner of Official Languages, Dyane Adam, undertook a series of investigations into complaints from CUPW members who worked at Canada Post, an English-speaking minority, who filed complaints about the fact that their supervisors in Canada Post were issuing directives to employees in French only and that they were not able to receive proper direction and supervision in their language of choice, which was English. Madame Adam found that there was discrimination under the Official Languages Act.

So just to correct that, it does in fact apply in Quebec.

Now, as to the motion—

[*Translation*]

Mr. Daniel Petit: Wait a minute. That is not true. I won't allow it.

[*English*]

The Chair: There's a point of order.

[*Translation*]

Mr. Daniel Petit: Point of order. That is not true. Canada Post is a crown corporation, and you know that the Official Languages Act applies to crown corporations, even if they are located in Quebec. Do not try to tell me that the Official Languages Act applies outside of federal agencies, because that is not true.

Mr. Réal Ménard: The act applies in Quebec, Daniel. What are you saying?

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Bill 101 was butchered by the Supreme Court.

Mr. Réal Ménard: He thinks the Official Languages Act does not apply in Quebec.

[*English*]

The Chair: Order, please.

I don't know if we need to clarify that point right now—though I guess we could. I don't know if Mr. Tremblay would know anything about that.

Mr. Moore.

Mr. Rob Moore (Fundy Royal, CPC): The witnesses are here for Bill C-23, not to engage in a debate on Mr. Ménard's motion.

The Chair: I know they are.

Okay—

[*Translation*]

Mr. Réal Ménard: We can ask the question. Does the Official Languages Act apply in Quebec, Mr. Tremblay?

Mr. Marc Tremblay (General Counsel and Director, Official Languages Law Group, Department of Justice): The Official Languages Act applies to federal institutions. Federal institutions include a number of agencies which fall under federal jurisdiction, as defined by the act. There are approximately 200 institutions. That said, with respect to provincial areas of jurisdiction, indeed, the Quebec Charter of the French Language governs language issues for institutions which fall in the Quebec government's jurisdiction.

Mr. Réal Ménard: But the act applies in its jurisdiction.

[*English*]

The Chair: Thank you, Mr. Tremblay.

Back to Ms. Jennings.

Hon. Marlene Jennings: Thank you, sir.

Thank you for the clarification, because it's very clear that it applies not only to federal institutions but also to companies that fall under federal jurisdiction.

I would like to bring an amendment to Mr. Ménard's motion. The amendment would be to the very last paragraph, the last line, so that instead of a period after the word “positions”, there would be a comma and the words, “as defined under the Official Languages Act”. The Official Languages Act has several sections that do in fact provide a definition of what strategic positions are, and a working knowledge of the official languages should be required of anyone occupying those strategic positions.

I would move that as a friendly amendment.

● (0920)

[*Translation*]

Mr. Réal Ménard: As mover of the motion, I accept this amendment.

[*English*]

Hon. Marlene Jennings: If there's no debate, then I would move the question on the amendment.

The Chair: I have—

Hon. Marlene Jennings: If there's debate on the amendment—

[*Translation*]

Mr. Daniel Petit: Could you please repeat the amendment?

Hon. Marlene Jennings: The amendment would be to the very last paragraph, the last line, after the word "positions" there would be a comma and the words "as defined under the Official Languages Act".

[*English*]

The Chair: Is there debate?

Mr. Petit.

[*Translation*]

Mr. Daniel Petit: I understand the spirit of the Official Languages Act. However, in a motion you cannot ask for the Official Languages Act to be applied to positions when it is mentioned that all positions above deputy minister... It is precisely because you saw a gap that you made recommendation 13 at the official languages committee. This is not a recent gap. You saw it, you did not deal with it. So, this gap remains.

You absolutely cannot ask the Minister of Justice or any other authority to apply the Official Languages Act to positions that are not subject to it. That is what I am trying to have you understand. I am not saying the spirit of the motion is not good; it is simply not acceptable. You cannot ask for that. I'm sorry, but I have to say this doesn't look good. You issued a report in May 2005, you saw the problem, but you didn't solve it. You were in power. Stop trying to sweep your problems our way. You are the ones who did not solve the problem.

Mr. Réal Ménard: Come on, Mr. Petit. If we had to draw up a list of all those who don't look good here this morning, we would be here all night.

[*English*]

The Chair: Monsieur Ménard, order, order.

Are you finished, Mr. Petit?

[*Translation*]

Mr. Daniel Petit: Yes, thank you.

The Chair: Mr. Lemay.

Mr. Marc Lemay: Mr. Chairman, I will not do the same thing Mr. Cannon did yesterday. It's as though I had never left this committee. I find it ironic that those who speak against this motion are from Quebec. I find that very ironic, if not worse, with all due respect for my colleague across the way.

I have a few years of practice under my belt. It seems to me that Bill 101 in Quebec, which was the Official Languages Act of Quebec, has been butchered on several occasions by the Supreme Court, which essentially stated, and I respect and will always respect the honourable justices of the Supreme Court, that everything must be done to uphold both official languages of Canada where they must be upheld. It seems vital and essential to me that a director of the Department of Indian Affairs and Northern Development appointed in Iqaluit should speak English. It is possible: we could understand that he may not speak French and not understand it. But when you appoint a commissioner who is supposed to help victims of crime in Canada—to my knowledge, Quebec, unfortunately, is still a part of it—we should not even have to ask the question of whether or not this person can speak French. It is essential to me. This is an essential position. What credibility can this person expect to garner in Quebec? None, Mr. Chairman.

I also read my colleague's motion. The colleague who worked all weekend forgot to read a very important bit of legislation, the Canadian Human Rights Act. I would invite him to do so, because we at the Committee on Aboriginal Affairs and Northern Development are currently studying it. I think this motion could apply in this case.

The amendment also seems interesting to me. I would vote in favour of this amendment and of course in favour of the motion. I would invite my colleagues across the way who are preparing to vote against this motion to think twice about the message they will be delivering to those who are listening to these proceedings in French and listening to us here in French today on both sides of this river.

At this point, Mr. Chairman, many things have been taken away from francophones; some people are preparing to go a lot further. I would urge you to be cautious, colleagues, because the elastic band can only be stretched so far. My colleague across the way may very well have done the research, the fact is that there is one essential point we should not lose sight of, and that is that a disservice is being done to francophones throughout Canada through important strategic appointments. What will it be tomorrow? Will the official languages commissioner only speak French or only speak English?

I agree with my colleague, and this is the only thing I will grant him, that this should apply to both official languages. I would not accept to have someone appointed to a high office in Canada who does not speak English. But you know very well, Mr. Petit, that that would never happen. Can you name one single senior official in Canada who is a unilingual francophone? Well, I can name 10, 20, or 30 who speak only English. I could name some at the Department of Indian Affairs and Northern Development, which I know very well, who only speak English, who are in Quebec and serve aboriginal people in Quebec who only speak French.

● (0925)

Let's stop beating around the bush. This motion and this amendment should be supported and adopted unanimously. Otherwise, I would suggest you turn to Quebec in the coming days to see the type of reaction this receives, proving once again that French is a second-class language in this country.

Thank you, Mr. Chairman.

[*English*]

The Chair: Thank you.

Mr. Lee.

Hon. Marlene Jennings: Mr. Chair, I have a point of order.

[*Translation*]

Mr. Lemay, I think you were inadvertently mistaken when you said that you could name several senior officials working with aboriginal communities who, from what you said, do not speak French.

[*English*]

The Chair: That's more debate than it is a point of order.

Mr. Lee.

Mr. Derek Lee (Scarborough—Rouge River, Lib.): We certainly have our share of points of order that are not.

Mr. Chairman, our country has had this debate actually since quite a while ago. Our Parliament has had this debate. Our committees have debated it, and our members have. In many respects, we are reinventing the wheel here. We don't actually have to reinvent the wheel. The principles are contained in the Official Languages Act and in our Constitution.

There have, arguably, been a few appointments that are perceived to be not in keeping with the spirit or the requirements of the Official Languages Act. I don't think we should be spending a lot of time on this. Our Parliament has debated this thing seven ways to Sunday, and our country has. We've successfully resolved it. We've actually gotten through it. There may not be full agreement around the table here on that issue, but I certainly feel that as a country and as a Parliament we have it.

With respect to the motion itself, I would have preferred a motion that referred to both official languages. In the preamble it says, "Whereas respect for the French language should imbue all ministers", etc. Really, it's both languages for which we should all have respect. I'm going to move an amendment that the preamble reflect both official languages. If I were being consistent I would do the same thing with the body of the resolution, which refers only to French, but the body of the resolution evolves from the appointment of two people who are allegedly unilingual English, so there is some logic in leaving the single reference to French there.

● (0930)

The Chair: If I may, the preamble really isn't the motion. The motion is what we're debating.

Mr. Derek Lee: Thank you for your advice, but I take a slightly different view. The preamble sure as hell is part of the motion. It's not part of the body. If I don't like the preamble, I'm not going to vote for it. I'm going to change the preamble because it's part of the motion, unless the committee wants to delete the preamble from the motion.

I'm going to move an amendment now that the first preamble read: "Whereas respect for both official languages" as opposed to "respect for the French language". I'm going to move that now, and so now we have another amendment on the floor. I'm prepared to put it in writing if necessary.

Mr. Réal Ménard: *Point d'ordre.*

Mr. Derek Lee: It'd better be a point of order, Mr. Ménard, or I'm going to be very unhappy.

Go ahead.

The Chair: A point of order, Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard: First of all, Mr. Lee, this is my motion, so please allow me to speak to it.

I think the amendment is not in order because it goes against the essence of—

[*English*]

The Chair: There will be opportunity for debate immediately afterwards.

[*Translation*]

Mr. Réal Ménard: No, I want to know if it is in order. My point of order is whether or not this amendment is in order. As the mover of this motion, I say it is not, because it was not my intention to refer to both official languages. It is French which is being threatened.

My point of order has to do with whether or not the amendment is in order. This is a real point of order, Mr. Lee.

[*English*]

The Chair: Madam Jennings submitted an amendment to the motion, and it hits directly onto the motion. That was in order.

Mr. Lee, I assume, is moving a subamendment to the amendment.

Mr. Derek Lee: Not at all, I'm moving an amendment, a stand-alone.

Sure, I'll just give notice of my intention to move that amendment and we'll continue debate on Madam Jennings' amendment, but I'll finish my remarks.

I know Ms. Jennings' amendment is intended to narrow the focus of this specifically so it incorporates the principles of the Official Languages Act, and I can't believe anybody around this table would not agree with that objective.

One of the categories of appointments that do not fall within the scope of the official language objective is judicial appointments, and they're made on another basis equally consistent with the charter and our Constitution, but they don't fall within the ambit of these types of appointments. So I support the amendment and I'll move my other amendment later.

Thank you.

The Chair: Mr. Thompson.

Mr. Myron Thompson (Wild Rose, CPC): I'm just hoping that in the middle of all of this conversation and this debate we're having that we don't lose sight of one thing. I know Mr. Ménard said they're not questioning the skills and the ability of Mr. Sullivan, but when we're getting into this debate, I just hope we don't end up with something that would prevent us ever in the future from having the right person doing the right job.

I'm saying that because I have had 14 years here working with a number of victims, and on several occasions I involved Mr. Sullivan in the work that we did. On one specific occasion, the victim could not speak English. That made it rather difficult for me and Mr. Sullivan at the time, but we rectified it very quickly, because we can do that. We had services available to us and it was rectified.

So I hope we don't lose sight of the fact that future appointments could eliminate the very best qualified person for the job, and I wouldn't want to end up with anything that would prevent that.

● (0935)

The Chair: Thank you, Mr. Thompson.

Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, I have three comments that I would like to make. First of all, I would like to remind Mr. Petit that he has confused several legal concepts, and yet each is distinctive. Section 15, which deals with the right to live without discrimination, or more specifically, the right to equal opportunities, was included in the Charter in 1982 but came into effect in 1985.

My motion does not deal with discrimination. I do not understand how Mr. Petit was able to claim that we cannot pass the motion because the prohibited grounds for discrimination in the Canadian Charter of Human Rights do not include language. The issue here is not discrimination or non-discrimination. The issue is that, under the Official Languages Act, people appointed to strategic positions that are sufficiently important within the federal public service must be, as one of their primary qualifications, able to function in both languages.

I find it is intellectually dishonest to say the least, to suggest that the problem is equally serious in both official languages. There is no member of Parliament at this table, whether he is a unilingual anglophone or not, who could give us an example of francophone appointees who cannot speak English.

I remind you that at the first caucus meeting of the Bloc Québécois—my colleague Mr. Lemay was not there—when we were elected in 1993, the first thing that our leader Lucien Bouchard asked of us was to learn to speak English. The automatic reaction of francophones, on the whole, is to learn to speak English.

Mr. Chairman, it is rather amazing to see that people who have been in Parliament for 13, 15 or 20 years have never bothered to try to learn to speak French. We cannot, of course, oblige our democratically elected officials to become bilingual. However, when one is working for one's fellow citizens, when one is appointed, we are no longer talking about the democratic process. We are paid with public funds and we must serve. It's the least you could do to respect francophones and speak their language.

This issue has nothing to do with section 15, and I do not even understand why we are discussing it. It should be a given that people who are appointed to strategic positions speak French.

I was a member of this committee when Marshall Rothstein, a former University of Manitoba professor, was appointed by the Minister of Justice Vic Toews. The competency argument is spurious and dishonest. The fact that people are competent in their area cannot exempt them from having to know French.

How could the government have been so insensitive as to appoint a judge to the Supreme Court who cannot speak French? He was appointed by a minister who himself cannot speak French. We are not talking about a judge of the Supreme Court of British Columbia, where there are more people who speak Cantonese than French, but a judge of the Supreme Court of Canada. French is of so little importance to this government that the Prime Minister chose to appoint a Minister of Heritage who does not speak French. When we call a cabinet minister's office and ask to be served in French, we are spoken to in "Frenglish". And I could go on.

I would find it abominable that we not pass this motion. None of the subterfuges or specious arguments that anyone could find to distort the motion will change the fact that if we respect French in this country that is Canada, we expect that people who are in strategic positions will speak the language.

If the committee does not pass this motion, the Bloc Québécois will change its report to the committee.

[*English*]

The Chair: Thank you, Mr. Ménard.

Mr. Tonks.

Mr. Alan Tonks (York South—Weston, Lib.): Mr. Chairman, I speak acknowledging that I haven't been on this committee and I certainly don't know the legalities with respect to the substance of this motion, but on the practical side of it, I'm persuaded by both of the points that have been put forward by Ms. Jennings and Mr. Lee.

First of all, we come to the table this morning with precedents and law that have been a subject for decades, and we have reached a position where surely we can be consistent with that legal position, which has been articulated by Ms. Jennings, and which is basically the overriding thought, if you will, that we have an Official Languages Act and that everything we do with respect to our duality of languages should be in keeping with both the spirit and the legal intent of that act.

I really think that we're beating the heck out of an issue that legitimately is before us. Certainly we should revisit from time to time the very essence of what our federalism and our country is about, but if we're going to at this time create new law...and I don't think that's the intent of the motion. The motion is very general, actually. The motion just says to write the minister to ask him not to. It isn't to direct him or whatever. It is, in making appointments, to establish and adhere to the convention that a working knowledge of both languages is reasonable with respect to the job description. I would think that this committee should find that compelling to support the motion as amended by Ms. Jennings.

As a layperson on this committee for the first time, I'm giving you what I think the average Canadian would say. They would agree with Mr. Lee that we're really not at this point embarking on breaking new ground. We're in fact confirming old ground if we support the amendment that's been put forward by Ms. Jennings. Unless there is someone on the committee...and I congratulate Mr. Petit on his analysis; I found it intriguing and I do thank him for the work that he put into it on the weekend. But I don't think even his argument was in contradiction to the general spirit, tone, tenure, and thrust of this motion. I say that with great respect.

I think we should get on with the vote. I won't speak any further. I will be supporting Ms. Jennings' motion for the reasons that I've outlined.

Thank you.

● (0940)

The Chair: Thank you, Mr. Tonks.

Mr. Moore.

Mr. Rob Moore: Thank you, Mr. Chair.

I agree with Mr. Tonks on his last statement that we should get on with the vote. Mr. Tonks said we're beating the heck out of the issue. Mr. Lemay said we're beating around the bush. Mr. Ménard said he can't believe we're debating this. So let's get on with it and vote.

I've already said at our last meeting why I wouldn't be supporting this, because I think it's critical of the appointment that was made of Mr. Sullivan, who is making every effort to become fluent in both official languages. Services under his mandate are going to be offered in both official languages. We fully support both official languages. But I'm not going to support a motion that in essence, I believe, will condemn the appointment of Mr. Sullivan.

If everyone knows how they're voting, let's get on and vote, and we can move on to committee business.

The Chair: We have two witnesses. I have to apologize on behalf of the committee for making you sit through all of this. I know you're here for another reason. I do appreciate Mr. Tremblay's position too.

Mr. Dykstra, you're last on the list.

Mr. Rick Dykstra (St. Catharines, CPC): I just have a question of clarification more than anything else. It's in regard to Ms. Jennings' repositioning of the final sentence: ", as defined by the Official Languages Act". I'm not going to be voting in favour of the amendment, but in terms of clarification, it leaves it a little vague as to whether or not the "as defined by the Official Languages Act" sentence, at least in English, actually points to the fact that it.... Is it the working knowledge of French, as defined by the Official Languages Act, or the appointment to strategic positions, as defined by the Official Languages Act? You could take it both ways. You could say, well, are strategic positions actually defined in the Official Languages Act or...?

I know what your intent is, but the actual wording of it leads one to believe it could one or the other rather than one specific. So she may want to clarify the point.

● (0945)

The Chair: Thank you, Mr. Dykstra.

Ms. Jennings.

Hon. Marlene Jennings: Clearly, it's the issue of strategic positions. I thought it was quite clear, and it appears from the debate that has occurred on my amendment that it was clear to everyone. If there appears to be some ambiguity, I'm open to suggestions as to language that would clarify it, but I thought it was quite clear.

Mr. Rick Dykstra: Are strategic positions defined in the Official Languages Act?

Hon. Marlene Jennings: I know that the official languages committee undertook a review of this whole issue of appointments and recently, I believe, came out with a report or recommendation that actually refers to the definition of what a strategic position is under the Official Languages Act.

Mr. Rick Dykstra: Okay.

The Chair: Thank you, Ms. Jennings.

We'll get on with the vote. The vote is on the amendment as presented by Ms. Jennings.

Hon. Marlene Jennings: May we have a recorded vote, please?

The Chair: We'll record the vote.

(Amendment agreed to: yeas 9; nays 2)

The Chair: Now we'll move to Mr. Ménard's motion.

Mr. Derek Lee: I had an amendment, Mr. Chair, so I'll move the amendment quickly, with no debate.

I move that in the first preamble, the words "French language" be replaced with the words "both official languages".

I'm not going to debate it, Mr. Chairman.

The Chair: You may not want to, but is there debate?

The vote is on the amendment presented by Mr. Lee.

[*Translation*]

Mr. Réal Ménard: Is it only the preamble that is amended?

[*English*]

The Chair: Those in favour please signify.

[*Translation*]

Mr. Daniel Petit: Are we voting on the change moved by Mr. Lee?

[*English*]

The Chair: Yes.

(Amendment agreed to [See *Minutes of Proceedings*]

The Chair: Now the question is on the motion as amended.

Hon. Marlene Jennings: Could you just give us the actual yeas and nays?

The Chair: The vote was yeas, six; against, four.

We will vote now on the amended motion. It is a recorded vote.

(Motion as amended agreed to: yeas 7; nays 3)

● (0950)

The Chair: That ends that business.

We will go on to Bill C-23, An Act to amend the Criminal Code (criminal procedure, language of the accused, sentencing and other amendments),

We have before us Monsieur Marc Tremblay, general counsel and director, official languages law group; and Anouk Desaulniers, senior counsel, criminal law policy section.

We are now going into clause-by-clause consideration of Bill C-23.

(On clause 1)

[*Translation*]

Mr. Réal Ménard: Could you quickly remind us of the meaning of section 1?

Ms. Anouk Desaulniers (Senior Counsel, Criminal Law Policy Section, Department of Justice): The changes to section 1 are intended to reorganize all of the provisions of the Criminal Code that deal with proof of service of documents under section 4 of the Criminal Code.

Following that, you will see that in light of other sections of Bill C-23, we will proceed to repeal various sections so that the only provision that settles the manner in which service is proven would be dealt with under section 4 of the Criminal Code.

Mr. Réal Ménard: All right. Carried.

[*English*]

(Clauses 1 to 4 inclusive agreed to)

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, as there are no amendments before clause 11, could we not vote on clauses 1 to 10 all together, if everyone agrees, without voting on them individually, and move on to clause 11 where there is an amendment?

[*English*]

The Chair: Yes, we could do that.

(Clauses 5 to 11 inclusive agreed to)

The Chair: Next comes amendment BQ-1, the new clause 11.1.

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, my amendment—

[*English*]

The Chair: There are some procedural errors involved here, but speak to it.

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, my amendment is an example of a case when your indulgence would be very helpful to us.

When we were studying the issue of organized crime and the need for updates, the police reminded us that Bill C-95 extended wiretapping warrants to one year, but that warrants for GPS and some other tracking warrants were not harmonized. I limited myself to GPS warrants. When someone appears before a justice of the peace or a judge from another province, the maximum warrant they can obtain is for 60 days.

I am working for your friends, the police, who are also mine. This was obviously a request of the Canadian Association of Chiefs of Police. I do not think, therefore, that you will declare it to be out of order, insofar as this section has already been re-opened, and I imagine that it will be carried unanimously.

● (0955)

[*English*]

The Chair: There is, no doubt, some sympathy for it, Mr. Ménard. But it proposes to change another section of the Criminal Code that this bill, Bill C-23 does not touch on. You're talking about section 487.01. Bill C-23 does not deal with it. It does change some sections of the Criminal Code, but not this particular one.

It's inadmissible.

[*Translation*]

Mr. Réal Ménard: I remind you that Sunday was my birthday. Try to show some generosity and find a precedent. Between Westminster and Mr. Gilbert Parent, there may be some small opening that would allow you to see it as admissible.

[*English*]

The Chair: I would like to search deep, though I don't have much of a pool to draw from on this particular point, but you could challenge my ruling.

[*Translation*]

Mr. Réal Ménard: I challenge your ruling, Mr. Chairman.

[*English*]

Mr. Derek Lee: Mr. Chairman, on that point, I think the Westminster system is notorious for both its congeniality and its cruelty.

Mr. Rick Dykstra: That's a very subjective statement.

The Chair: Shall the chair's position be—

[*Translation*]

Mr. Réal Ménard: Could we wait for Ms. Jennings? You know that as far as challenges are concerned, Ms. Jennings is the absolute master. We could wait for her to come back, Mr. Chairman.

[*English*]

The Chair: We will continue here.

Mr. Moore has a point.

Mr. Rob Moore: Yes, the department witnesses may want to comment on some of the problems this amendment might raise in its current form.

The Chair: Ms. Desaulniers, please.

[*Translation*]

Ms. Anouk Desaulniers: The amendment would modify subsection 487.01(4), which deals with a warrant authorizing an officer to observe. We're talking about visual observation. The amendment is intended to add what we commonly call GPS, that is to say global positioning systems, to this section, which in our opinion, if it is to be added to the Criminal Code, would be better placed in section 492.1, which deals with tracking devices.

We therefore feel that even in terms of its content, the amendment as it is currently drafted would be inappropriate.

Mr. Réal Ménard: Mr. Chairman, I would then be open to a subamendment. I am in the hands of our legislative drafter. The idea was to harmonize things following what we did with the passage of Bill C-95.

I trust you to decide on the appropriate place within the Criminal Code. If it is the committee's wish, we could draft a subamendment so that this would appear under subsection 492.1.

[*English*]

The Chair: Monsieur Ménard, procedurally you can't do it that way. You have put the motion forward. I ruled it out of order. You can't change the ruling, as it's out of order.

[*Translation*]

Mr. Réal Ménard: We are challenging your decision, Mr. Chairman. Ms. Jennings has arrived; you are in trouble!

[*English*]

The Chair: You'd have to challenge.

Hon. Marlene Jennings: I challenge the chair's ruling.

The Chair: Monsieur Ménard has already put that forward.

Shall the ruling of the chair be sustained?

(Ruling of the chair overturned)

The Chair: Mr. Bagnell.

● (1000)

Hon. Larry Bagnell (Yukon, Lib.): I think Mr. Ménard was proposing to fix his amendment so it would be put in the proper part of the act, as suggested by the witnesses. Can we make that amendment now so this amendment makes more sense?

I'll make that amendment if Mr. Ménard cannot amend his own motion.

The Chair: Okay, Mr. Bagnell.

Hon. Larry Bagnell: It's to put it where the witnesses suggested.

The Chair: Putting it under the correct section is what you're talking about.

[*Translation*]

Mr. Réal Ménard: What exactly does section 492.1 say?

Ms. Anouk Desaulniers: Subsection 1.

[*English*]

The Chair: The same problem is going to crop up here as it did with your motion, Monsieur Ménard. It's still changing a section that is not part and parcel of the....although Bill C-23 touches on it.

[*Translation*]

Mr. Réal Ménard: You do realize, Mr. Chairman, that we are ever-so- gently going to quash your ruling.

[*English*]

The Chair: Yes.

Ms. Desaulniers, what more can you add?

[*Translation*]

Ms. Anouk Desaulniers: If it is still the intention of the members of the committee to mention GPS explicitly in the legislation, it would be best mentioned in subsection 492.1(1). There is nothing in the existing section that explicitly bans the use of GPS, which is indeed a tracking device. The amendment should be completely rewritten in order to add GPS to section 492.1, where it states that “can be obtained through the use of a tracking device”. You would have to add the words “including a tracking device”.

Mr. Réal Ménard: I am not very happy with the work of the legislative advisers. Every time we ask one particular legislative adviser to draft amendments, they are badly written. We must settle this problem with the whips' office.

The goal was to do what the police had asked us to do, which was to harmonize, after the passing of Bill C-95, the duration of warrants for wiretapping and increase them from 60 days to 1 year. We wanted the length of the GPS warrants, which are very useful undercover techniques for police investigations, to increase from 60 days to 1 year.

[*English*]

The Chair: Mr. Ménard, the witness has said it's not going to work with this wording. It's just not going to fit in and more work needs to be done on it, obviously. There was some effort to correct the problem as it is right now, but I think it's going to take a little more work, honestly.

[*Translation*]

Mr. Réal Ménard: You are quite right, Mr. Chairman. I want to withdraw it so that it will clearly indicate "for one year". I will solve that with the person who drafted it.

[*English*]

The Chair: Thank you, Mr. Ménard.

Are you going to remove the subamendment, Mr. Bagnell?

● (1005)

Hon. Larry Bagnell: Do you want me to remove my subamendment for now?

The Chair: Yes, thank you.

I think that then remains as is. It's inadmissible as it sits and it just needs some additional work.

We'll move on.

(Clauses 12 to 17 inclusive agreed to)

(On clause 18)

The Chair: We are now on clause 18. And that is Mr. Bagnell. I'll just make reference to Liberal amendment number 1.

Mr. Bagnell.

Hon. Larry Bagnell: Thank you, Mr. Chair.

I have five amendments in the next four clauses. They're not amendments I thought up; they came from the witnesses. I think they're very minor points.

Basically, all five amendments make clear the wording to protect that the witness gets fair treatment in their official language. I'll explain each one as they come along, but I'm happy to hear what the witnesses have to say, and then the members can make their own opinions.

The first one, this amendment, only adds the word “may”, and that's the only difference. What the clause basically said before was that if there are witnesses who have different languages, then you have to have a bilingual trial. But a bilingual trial may not be the fairest in all cases; in fact, it may not be possible. You may not have bilingual prosecutors and judges, or it may prejudice one of the witnesses because most of the trial would be in the other person's language. So instead of saying you have to have a bilingual trial when you have witnesses, it says you “may” have a bilingual trial, because you may also have two unilingual trials if that turns out to be more practical or fair. It was suggested by two of our witnesses.

I'm happy to hear from the department.

The Chair: Mr. Tremblay.

Mr. Marc Tremblay: In our view, that was the intent of the provisions, the amendments as drafted. If we look at the French version, it says:

[*Translation*]

"*Constitue une circonstance[...]*"

[*English*]

One of the circumstances that can justify a bilingual trial would be the situation where multiple accused are involved. So I think that goes, in the same sense, to the spirit of the motion.

Hon. Larry Bagnell: In the exact spirit of the motion.

Mr. Marc Tremblay: Yes, exactly.

(Amendment agreed to)

(Clause 18 as amended agreed to)

(On clause 19)

The Chair: We are now dealing with Liberal amendment number 2.

Hon. Larry Bagnell: Thank you, Mr. Chairman.

This clause basically allows the accused to have the documents that are charging him in his own language. In the big blank space in the middle, there used to be the words “on application by the accused”. The only other change is under proposed paragraph (a) in the second last line, where it says “automatically”. That word was not there.

Basically what this change does is this. Instead of the accused, who has a different language, having to go and apply to get things in his or her own language, it's automatically translated and given to them. So it took out the words “on application by the accused”, so you don't have to ask for it. Once it's been determined that the trial is going to be in your language, then you would automatically have the documents charging you. I think it's obvious and fair that the person should get them. They shouldn't have to go through the bureaucratic step of having to apply for them. This was also suggested by our witnesses.

I'm happy to hear from the department.

● (1010)

Mr. Marc Tremblay: Thank you.

I think we spoke to this during our appearance before the committee. There are basically three major principal objections to the amendment as moved.

The first is that the provinces were not consulted on such a concept. What we told them as we went about explaining the thrust of the bill is that it would bring about changes as already recognized in the case law and it would clarify the code. So the case law, as it currently stands, and the interpretation of the existing code provisions provide for a translation upon request. So this would be a financial burden of some consequence for the provinces if the amendment were adopted.

On the issue of equal value, we also spoke to that issue. We have in Canada a situation on the ground that the Commissioner of Official Languages himself points out regularly: there are so many millions of francophones who do not speak English and some many millions of anglophones in Canada who do not speak French. Among these people are police officers on the ground who write the original documents that are the key documents for the indictment, and they write them in the only language, in many cases, they can use. To provide the translated version of that originating document with equal status, in our view, introduces some uncertainties into the criminal justice system. It provides for additional arguments by the accused wherever there might be discrepancies, and it essentially would create what might be fairly described as additional loopholes.

The Chair: Go ahead, Mr. Ménard.

[*Translation*]

Mr. Réal Ménard: We were rather supportive of the first part. However, we were afraid that the second part of the amendment, "(2) The original version of a document and the translated text are of equal value", could be a subterfuge to allow for the delay of the beginning of proceedings in the case of inconsistent versions. I understand that Mr. Tremblay shares this opinion.

Should we not vote on only the first part of the amendment, and not on the second?

[*English*]

The Chair: One needs a subamendment to delete it.

[*Translation*]

Mr. Réal Ménard: I do not know if the mover insists on our keeping the second part of his amendment, which could result in delaying the start of the proceedings. We would like to vote on the first part of the amendment only, that is to say on subsection 530.01 (1), but not on the second part, that is "(2) The original version of a document and the translated text are of equal value".

Would you be prepared to withdraw that part of your amendment, Mr. Bagnell?

[*English*]

Hon. Larry Bagnell: Mr. Chairman, if that's the will of the committee, I'll withdraw the second part of my amendment on equal value.

The Chair: You need a subamendment to delete it.

[*Translation*]

Mr. Réal Ménard: I move a subamendment to delete the second part of amendment LIB-2.

[*English*]

The Chair: You're referring to proposed subsection 530.01(2).

[*Translation*]

Mr. Réal Ménard: Yes.

[*English*]

The Chair: It is this: “The original version of a document and the translated text are of equal value.”

[*Translation*]

Mr. Réal Ménard: Yes. I am also told that it is not lines 30 to 42, but lines 30 to 40. I suppose that is also an issue of consistency.

[*English*]

The Chair: Thank you.

Mr. Moore.

Mr. Rob Moore: I have nothing to add to that.

(Subamendment agreed to)

Hon. Larry Bagnell: Now we're back on what's left of the amendment. I just want to refer to the witnesses' statements.

The witnesses also, remember, did bring that point forward in committee. We also asked the witnesses who were here if there would be very much documentation and whether it would be a lot of work. Their answer was no, because these are not very big documents.

So if you look at the additional cost, even if it's a small cost to the province, it would be for cases in which the person would not be treated fairly. I think that additional cost to make sure those people who don't realize they have to make an application to get it in their language get it automatically in their language is a tiny cost, and it's a cost that promotes fairness.

● (1015)

The Chair: Thank you, Mr. Bagnell.

Mr. Tremblay, would you like to reply to that?

Mr. Marc Tremblay: No.

The Chair: Is that the only cost you would see attributed to this particular amendment?

Mr. Marc Tremblay: Yes. What I might add is that although it may be true that in many cases the indicting document is relatively short, we are taking additional measures to promote minority language trials.

So the scope of the endeavour might grow with time, and that's the purpose of the provisions we've introduced today, that there will be more and more of these trials and situations where the accused will avail themselves of these rights. But otherwise, I think what's on the record from the witnesses is accurate.

The Chair: Madam Jennings.

Hon. Marlene Jennings: I'm pleased to hear Mr. Tremblay's statement about how the amendments that are being brought forward are in light of ensuring that there are more and more minority language trials available to the accused, and that obviously the government, having moved in that direction, is aware of the additional costs that such a policy, through the Criminal Code amendments, would impose on the provinces, where the majority of criminal trials actually take place. According to some of the expert witnesses we had, it was up to 95% or 97%; they varied on the percentage.

Given that this is the case, then I would assume that the government has already done its proper homework to determine over time what these additional costs could be, and it has taken this into account in the moneys it transfers to the provinces for the administration of justice. Therefore, any additional costs that Mr. Bagnell's amendment—should it carry, and I hope it does—might incur would possibly require some adjustment in the future.

In its wisdom, the new Conservative government has already taken into account significant projections of additional costs by moving forward these amendments to the Criminal Code. So the issue of additional costs with respect to this amendment, should it carry, should not be a major preoccupation to the members of this committee. In its wisdom, the government has already projected additional costs and will be providing resources to the provinces.

The Chair: Mr. Petit.

[*Translation*]

Mr. Daniel Petit: No, it is all right.

[*English*]

The Chair: Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, I just want to make sure that I understand correctly. I'm speaking to Mr. Tremblay and to Mr. Moore. We were favourable to the amendment, but we now understand that first of all, there could be a cost to the provinces. During the federal-provincial-territorial meetings, the provinces declared that they were in favour of the status quo. Therefore, this amendment is not necessarily the result of consultations or of some desire expressed by the provinces. We are right to make this assertion.

Whatever displeases the provinces displeases us.

Mr. Marc Tremblay: What we suggested to the provinces for the consultations was, in our opinion, the status quo, therefore translation is available only at someone's request. We must therefore assume that since translation would automatically be available, there would be certain additional costs that could displease some of them. We do not know as we did not discuss these issues with the various jurisdictions.

● (1020)

[*English*]

The Chair: Mr. Ménard.

[*Translation*]

Mr. Réal Ménard: We are obviously aware that the Minister of Justice is not the Minister of Finance, but we have no indication that the federal government intends to provide any compensation for the provinces.

[*English*]

The Chair: Mr. Moore.

Mr. Rob Moore: Chair, what's been stated pretty clearly is that the concept this amendment would bring in has not been signed off on, if you will, by the provinces. It would incur an obligation on the provinces, an extra cost, and that's why the government at this time is not supporting the amendment. The provinces have not been thoroughly consulted, and they certainly haven't given their sign-off on it. So we don't want to impose a cost burden on them beyond what's been discussed.

The Chair: Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard: Thank you.

[*English*]

The Chair: Monsieur Lemay.

[*Translation*]

Mr. Marc Lemay: I am now speaking as a lawyer. I am asking a question. Suppose I am defending those accused in the Air India bombing, or I am defending Romanians accused of running a prostitution ring. You are telling me that under this amendment, the Quebec prosecutor would have to provide my clients with the relevant translations, etc., and that you have not discussed this with the province of Quebec. In fact, this constitutes a considerable increase in costs. Is that actually what you are telling us?

Mr. Marc Tremblay: We did discuss production upon request with all of the authorities. I'm not able to state that everyone cherished the thought, but I believe that I would be right in stating that the jurisdictions accepted our argument, that is to say that there is already a recognition of this obligation in case law, under existing provisions, and that what the bill was seeking in its original version was only confirmation, for the purposes of clarity, of what was already recognized by the courts as being the law.

[*English*]

The Chair: Thank you, Mr. Tremblay and Mr. Lemay.

[*Translation*]

Mr. Marc Lemay: With all due respect, Mr. Chairman, there is something that we cannot support. Therefore, I will vote against this amendment because there has been no assessment done of the costs. We amend the Criminal Code taking that into account, and it is the provinces that will be grappling with such an amendment. There was no cost assessment done in relation to this amendment.

Mr. Marc Tremblay: The provinces and territories did not ask us to carry out such an assessment. In most cases, it must be pointed out that according to the area of jurisdiction, there are very few trials in the minority language. Therefore, the additional costs for them, if there are any, are minor. In fact, they recognize that it is not an issue of additional costs resulting from this bill, but indeed a recognition of existing costs for the implementation of the Criminal Code as it stands.

[*English*]

The Chair: Thank you, Mr. Tremblay and Mr. Lemay.

Don't forget, Mr. Lemay, it is a Liberal amendment.

[*Translation*]

Mr. Marc Lemay: Whether it is a Liberal or a Conservative amendment, it is the same thing.

[*English*]

The Chair: It's an amendment that the government never put forward. There are other issues here.

[*Translation*]

Mr. Marc Lemay: My question is important, Mr. Chairman.

In my opinion, if we have both languages, French and English, in a single trial, everything is fine, but I am thinking of the witnesses. If the witnesses are Romanians or Russians... God knows how it all works nowadays, particularly as far as child pornography is concerned. Still, we must think of what the future holds. I am talking about witnesses, about the translation of documents in a case where the crown witness is a Romanian who speaks only Romanian, for example. We did not evaluate the costs, but they could be considerable.

Mr. Marc Tremblay: No, the costs are not considerable. I understand your previous question better now. It must be pointed out that the proposed amendments to the Criminal Code, as well as the amendment that has been put forward here today, in both cases are only intended for the original document, the document that serves to formulate the indictment against the accused, and not the other pieces of evidence, the evidence on the record, the documentary evidence, the testimony, etc. which are not targeted by these provisions. Therefore, we come back to the statements made by other witnesses indicating that in general, the original document is short and emanates from the state, and not from witnesses.

● (1025)

[*English*]

The Chair: Thank you, Mr. Tremblay.

Mr. Comartin.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Mr. Tremblay, I'm having problems with this, and I guess I just go back to my experience.

Mr. Chair, I want to challenge a bit what you said earlier about this being a Liberal one. In fact, the government motion is a significant change, increasing the rights, where a person, in effect, on application, has an automatic right to this translation.

The Chair: When we get to that one—

Mr. Joe Comartin: Well, I want to stay with the cost issue, because that's what we're talking about here.

You had to make an assessment, and then the provinces had to make an assessment when they...I don't know if they've agreed, but they understand this is coming by way of application. Any lawyer who has applied on behalf of his client for a trial in the other official language is going to, at the same time, make this application. Anybody who has asked for their trial is going to want those documents translated, so the cost is already there in the government's proposal. In the vast majority of cases, those applications are going to be made almost by rote when you apply for the trial in your own language.

If the provinces haven't analyzed it from that standpoint, they should have, and so should the federal government. So the cost here is a red herring. It really is. There is really going to be no difference. The only thing here is not forcing the individual to have to make the application. In effect, that's what your section is doing, but in the vast majority of cases, if they're asking for the trial, they're going to make the application. So the costs are already going to be there.

Mr. Marc Tremblay: That's certainly not the experience in Ontario or in other jurisdictions.

Mr. Joe Comartin: There's no experience to speak to. You haven't been able to do it.

Mr. Marc Tremblay: It's been the case law since 1995. It has been on leave to appeal to the Supreme Court, which was refused. This is the state of the law since 1995 and this is what we told the provinces, that this is the state of the law and that this is merely clarification of existing law, and therefore there are no additional costs entailed in moving the bill forward, because the costs are already counted, if you like, in the existing provisions of the code. What we're avoiding here is costly and lengthy potential arguments, which have not arisen often, as to the interpretation of the code, having the potential for these debates to happen again and again before the provincial courts, so we propose clarification of the existing law.

That's why, in going to the jurisdictions, we've told them the intent here is to clarify the existing law. If anyone wants to take issue with whether that's the existing law, they would have had that opportunity. Nobody has challenged that assertion, so my appreciation of the situation is that the provinces recognized that this was the pre-existing requirement of the code and/or that the additional costs would be fairly minor.

We've had no indications from the jurisdictions that on the original way the amendments to the code were framed, they would have objections to this. When we change it to automatic, then that is a separate issue.

I'd like to point out as well, perhaps not to open up another issue, that under the Official Languages Act there are existing similar provisions and they too, since 1988, have been formulated as an on-request formulation so that the non-governmental party before a federal court, when confronted by the representatives of the state, can obtain a copy of the originating documents upon request.

So there is consistency in approach here in what we're doing in terms of the original amendment, and consistency as well with the case law that had gone forward.

● (1030)

The Chair: Thank you, Mr. Tremblay.

Mr. Bagnell.

Mr. Joe Comartin: I'm sorry, I haven't given up—

The Chair: I'm sorry?

Mr. Joe Comartin: I hadn't given up the floor, Mr. Chair.

Again—and I'm saying this to the rest of the committee—any lawyer who looks at that section of the code once passed, where you can make an application, is going to make the application. You would be on the verge of being incompetent if you didn't, at the time you applied for the trial. So those are going to come anyway.

Let me make one additional point, in terms of the comment Mr. Tremblay made of the Official Languages Act. You're right there, to ask for documentation to be translated. We're talking about a significant difference here in terms of what's in peril. We're talking about the person's liberty in a lot of cases, in these criminal cases, and the right to have that document, it seems to me, should be recognized, with the added risk that you have, as opposed to a number of the other documents that you would be seeking under the Official Languages Act, such as some other documentation coming from the public service.

But you're not necessarily talking apples to apples; you're talking more apples to oranges. It's much more significant having these documents available to you automatically than it would be having those documents under the rest of the official languages provisions.

The Chair: Thank you, Mr. Comartin. You heard Mr. Tremblay's argument opposing that point.

Mr. Bagnell.

Hon. Larry Bagnell: I think we're just about ready to vote, but I want to ask a quick question to the witness before I make a last comment.

Could you make an estimate, without getting really technical, about roughly how many of these types of trials there are a year in Canada?

Mr. Marc Tremblay: That's very difficult to do. Part of our consultation over the past ten years with the jurisdictions, on recommendations by the Commissioner of Official Languages originally made in 1995, was to seek from them information on how many such minority language trials they have. We suggested various ways of obtaining that information—for example, instead of the amendments that are put forward today on the informational aspects of letting the accused know of their right, introducing a new form into the system. The provinces said that's too formulaic, too formulistic, and there are already too many forms, although that would have allowed us to get to some of that data.

The information we have is sketchy. In places like Saskatchewan they can say they had five trials last year, ten trials the year prior, and two in the current fiscal year, because they have so few. In Ontario, where it's more—

Hon. Larry Bagnell: Okay, I need short answers, but I have a second part to my question.

Can you roughly estimate whether an average indictment document would be five, ten, or twenty pages, just for the general public?

[*Translation*]

Ms. Anouk Desaulniers: In general, an indictment may have, depending on the number of counts,

[*English*]

one, two, or three pages. But if for some reason we're talking about a mega-trial and it involves many accounts, then it may go up to five or six pages. But it's rarely more than that.

Hon. Larry Bagnell: To summarize, as Mr. Comartin said, most lawyers, unless they're incompetent, are going to ask for this anyway. In the odd case in Canada, the one or two times a year when someone doesn't ask for it, we're going to have to translate maybe five more pages. We get more than that translated for each of our meetings. I don't think that's very onerous.

I rest my case.

The Chair: Mr. Lee.

Mr. Derek Lee: I'm not going to support the amendment for three reasons, and I accept that prima facie it looks like a pretty reasonable thing to do.

But the first point is that the package of amendments that is proposed in the bill has evolved as a result of PTA agreements—federal-provincial agreements with the provinces—and discussions. The specific amendment now proposed is at variance and inconsistent with what had been agreed to in those discussions.

Second, the provision, the way it's been constructed now, either directly or indirectly imposes a specific automatic procedural burden on a prosecutor. This would be new. Prior to this, or based on the package of amendments that have come through, a prosecutor would be obligated to respond if requested, but the amendment that's proposed by Mr. Bagnell will make it an automatic procedure, a must-have, and if it's not there you're going to get your charges thrown out. I think that should be vetted before we impose it.

Third, we're trying to fix something that, based on the current law of the land, is not broken. Our courts, both on the criminal side and the official languages side, if I take the testimony here at face value, have found that the on-request mechanism proposed by the bill, not by the amendment, is a satisfactory resolution to the two-language challenges we have right across the country in the criminal process.

I'm reluctant to, on the fly, impose this new procedural and legal benchmark without vetting it through the system. I'll leave aside the question of costs that may be there. They may be minor, but believe me, if you have to do something in every case where there's a section 530—that's every case, without exception—if you don't do it right, you lose your case, and I don't want to go there yet.

Thank you.

● (1035)

The Chair: Thank you, Mr. Lee.

(Amendment as amended negatived)

(Clause 19 agreed to on division)

(On clause 20)

The Chair: Next is amendment L-3.

Mr. Bagnell.

Hon. Larry Bagnell: This is on the accused having a trial in their language, but the witness doesn't speak that language. This provision allows the prosecutor or judge to examine the witness in the witness's own language. This is a very minor amendment to say it's not always automatically done that way—which it doesn't necessarily have to be—and it could prejudice the accused. It adds the words "if the circumstances warrant".

It was suggested by the witnesses, and it clarifies that the judge can let the witness speak in his own language or one of his own languages if the circumstance is warranted. It makes sure it's not automatic, and if the circumstances warrant, the judge will allow the witness to speak in his own language.

The Chair: Thank you, Mr. Bagnell.

Mr. Tremblay.

Mr. Marc Tremblay: We would say that the bill as drafted with the presence of the word "may", and *en français "peut"*, already implies an exercise of discretion by the judge, who would normally take account of the circumstances of the request. But the amendment in that sense goes with the spirit of the bill.

● (1040)

The Chair: Mr. Comartin.

Mr. Joe Comartin: I'm just a bit concerned that we have no criteria or guidelines for "if the circumstances warrant". It's wide open.

Mr. Marc Tremblay: There are other provisions in section 530 and section 530.1 that use similar language. Some more specific language was at stake in the Beaulac case, which was "if the administration of justice warrants it". Whatever the phrase is, the Supreme Court has stated that the courts would interpret these discretionary powers in the code with a view to implementing the basic right of the accused to a trial in his or her language.

So we have guidance on what the types of circumstances there might be, but it does open up this section to some interpretation. In the original amendment, "may" and "per" would have developed according to case law as well.

Mr. Joe Comartin: If we put in "if the circumstances warrant", are we limiting the discretion? That is not Mr. Bagnell's intention; he wants to do just the opposite and broaden the scope of the discretion. I wonder if that will limit the justice to the interpretation of previous cases.

Mr. Marc Tremblay: My understanding of the witnesses' testimony is that they indeed wanted to circumscribe the exercise of discretion used by the judge. The fear, if I understood the testimony correctly, was that the judge might have recourse to circumstances unrelated to the right of the accused in making this determination.

So I sense that the thrust of the amendment is to direct the judge to those types of considerations in making his order. But again, from my perspective, "may" or "if the circumstances warrant" are pretty much to the same effect, taken in the context of the interpretation of the provision as drafted in the whole.

Mr. Joe Comartin: Okay.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Comartin.

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

The Chair: We'll now go to amendment L-4, still dealing with clause 20.

Mr. Bagnell.

Hon. Larry Bagnell: Thank you, Mr. Chair.

I think everyone agrees that the person has the right to a judge or prosecutor in their language. That makes sense. That's a great change to the code. But that doesn't require them to speak to the accused in that language. So all this amendment does is say that they will address the accused in that language. For a lot of us, you can get a rating in both languages, but you may be more comfortable in one. Therefore, you may not follow the intent of that change by not using the language.

All this does is say that not only does the accused have a right to a judge or a prosecutor who speaks his or her own language, but that they also will speak that language to the accused.

I'd be happy to hear from the department.

The Chair: Mr. Tremblay.

Mr. Marc Tremblay: There are two things. The intent behind the bill in those provisions is not to change anything with respect to the part of the phrase that required the judge to "speak". We haven't changed that. That was there in 1988: the judge "speaks"; the prosecutor "speaks". So you take issue with that, and I'll come back to it. We haven't changed that.

What the bill does is clarify that this requirement that the judge speak the language of the accused also applies with the necessary adjustment in bilingual trials. That may mean that the judge needs to speak both official languages. That's the thrust of the bill.

On the issue of whether the judge or the prosecutor should actually use the language of the accused or use both languages where that's the order made, I would say, first, it is in our view an unnecessary specification, because the case law again has interpreted the existing provisions of the code in that way, that when the code indicates that the judge "speaks", this actually means that the judge and the prosecutor must indeed use the official language of the accused.

As well, I would caution the members that it appears to me that the motion as drafted actually would reduce the right of the accused as it's currently understood under the code. If I can explain that, currently with the phrase that says the judge will use the language of the accused, in the case law in Ontario—this is the Ontario Court of Appeal in the recent case of Potvin—Madam Justice Charron, as she then was, indicated that it meant the judge would actually be required to use the language of the accused throughout the proceedings. Whether he was speaking to witnesses, whether he was speaking to the Crown, whether he was speaking to the accused, the judge would actually be using the language throughout—hence, our slight qualification to that situation by providing in the bill that in exceptional circumstances the judge might examine the witness in a language other than the language of the accused.

By adding the words, "shall use the official language of the accused when addressing the accused", we feel that might actually narrow the scope of what is currently required and what is certainly our interpretation of the requirements of the act, both for the judge at paragraph 530.1(d) of the Criminal Code, and for the Crown or the prosecutor at paragraph 530.1(e).

● (1045)

The Chair: Thank you, Mr. Tremblay.

Mr. Moore.

Mr. Rob Moore: I don't have anything to add to that.

The Chair: Mr. Comartin.

[*Translation*]

Mr. Joe Comartin: Mr. Tremblay, it was francophone lawyers who appeared before the committee who recommended that we proceed in this manner. Did you find any cases where the judge did not speak to the accused in his or her official language?

Mr. Marc Tremblay: Yes, that was the situation in the Potvin case. There was a trial order. I think it was a bilingual trial order, but I am not absolutely sure. It may have been for a French trial. For the purposes of this argument, let us presume that it was supposed to be a bilingual trial. The judge spoke English, except when he spoke to the accused. In the same way, the crown attorneys made their submissions in English, except when they were addressing the accused. This case went all the way to the Ontario Court of Appeal, where the court ruled that the accused had been denied the right to stand trial in his own language.

In other words, a French trial must take place primarily in French, rather than in English with rare moments in French when someone is speaking to the accused. It must take place in French, but with accommodation, particularly when some witnesses do not speak French.

[*English*]

The Chair: Mr. Lee.

Mr. Derek Lee: Thank you.

I'm inclined to follow the advice of the department here. I can see conceptually how this provision could in some circumstances narrow the rights of the accused. I'm really cautious—and I'm referring to my remarks on a previous amendment—about monkeying with courtroom procedures on the fly.

Also, the way this amendment is worded imposes a statutory obligation in a criminal trial. As I interpret it, if a judge were to inadvertently make a remark that is not in the official language of the accused, it would be a statutory non-compliance with a right of the accused. That could overturn the whole trial. You could have an accused with a counsel whose official language is other than that of the accused. So you have one whose basic language is French, one whose basic language is English, and in the course of the trial a judge might be directing a remark at the counsel and inadvertently use the wrong language for two or three minutes. Nobody is prejudiced by it, but you have a circumstance that could result in the trial being overturned.

I'm going to be cautious. I'm not going to support this amendment the way I see it now.

● (1050)

Hon. Larry Bagnell: I have a point of order, Mr. Chair.

The Chair: A point of order, Mr. Bagnell.

Hon. Larry Bagnell: Although I don't agree with Mr. Lee—we make statutes, that's what we do—I'm going to withdraw this amendment.

The Chair: Thank you.

Is there unanimous consent that the amendment be withdrawn?

(Amendment withdrawn)

(Clause 20 as amended agreed to)

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, given that it is 10:55, could we adjourn the meeting rather than getting into another debate? We could pass clause 20.

A voice: We finished with clause 20.

[*English*]

The Chair: We have 10 minutes to go yet.

Mr. Derek Lee: We could pass the rest of the bill.

Mr. Rob Moore: Mr. Chair, to help speed things up, the government is going to be supporting the Liberal amendment to clause 21, as well as the—

The Chair: That's amendment L-5.

Mr. Rob Moore: Yes, as well as amendment NDP-1.

If people want to talk about it, they can, but—

The Chair: Okay, let's carry on then.

(On clause 21)

The Chair: We are on amendment L-5.

Mr. Bagnell, it has been clearly pointed out that—

Hon. Larry Bagnell: Okay, we'll go to the vote.

The Chair: The vote is on amendment L-5.

[*Translation*]

Mr. Réal Ménard: We want to better understand the gist of the amendment, Mr. Chairman. It has not yet been voted on, has it?

[*English*]

The Chair: I didn't get through the vote.

There's a point of order from Monsieur Ménard. Monsieur Ménard, do you want to debate?

[*Translation*]

Mr. Réal Ménard: We are discussing Liberal amendment 5, are we not?

[*English*]

The Chair: Liberal amendment 5.

[*Translation*]

Mr. Réal Ménard: I want to understand the goal of the amendment. We do not view it favourably for the moment, but it is possible that an explanation would change our minds.

[*English*]

Hon. Larry Bagnell: Basically a judge gives an order on how a bilingual judge or prosecutor can use their languages in a trial. All this amendment does is say that when they're giving that order, when they're explaining how the languages have to be used, they're respecting the right of the accused to be tried in their own official language to the extent possible.

The Chair: Debate?

The question is on Liberal amendment 5.

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

The Chair: On the same clause, NDP amendment 1.

Mr. Comartin.

Mr. Joe Comartin: Again, this amendment was recommended by francophone jurists. It simply recognizes that although we're giving discretion to the courts in all the other provinces, because New Brunswick is officially bilingual, it's not necessary there—and that needs to be recognized—judged there would not be allowed to exercise the discretion that's allowed for under proposed section 530.2.

We're simply recognizing the uniqueness of New Brunswick and excluding it from the operation of this section.

● (1055)

The Chair: Thank you, Mr. Comartin.

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

(Clause 21 as amended agreed to)

(Clause 22 agreed to)

(On clause 23)

The Chair: We're on government amendment 1.

Mr. Moore.

[*Translation*]

Ms. Anouk Desaulniers: If I may, I would like to provide some explanation on this issue. The aim of clause 23 is to allow the accused the option of re-electing without the consent of the prosecutor, when the latter has filed a preferred indictment. The aim of the government amendment is therefore to correct errors in drafting.

In subclause (2), there is a reference to subsections 561(5) to (7), which provide a mechanism for re-electing, that is the requirement to give notice and the way in which the court reacts upon having received it. We must plead guilty. In the following subsection, that is subsection 565(3), this mechanism is already provided for. It was therefore not necessary to refer to it in subsections 561(5) to (7). The intention of the first part of the government amendment is to eliminate the reference to these subsections.

The amendment has a second part, which is aimed at a section that is not necessarily amended by the bill. What we are suggesting, however, is necessary if we want the section to have an effect. In subsection 561(3), there is again an erroneous reference to the consent of the prosecutor whereas the objective of this provision is precisely to abolish the need for this consent.

[*English*]

The Chair: Thank you, Ms. Desaulniers.

Mr. Lemay, do you had a comment?

[*Translation*]

Mr. Marc Lemay: No, that is all right.

[*English*]

The Chair: The question is on government amendment 1.

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

(Clause 23 as amended agreed to)

The Chair: We're running out of time here. Is there a motion of adjournment?

Some hon. members: Yes. Agreed.

The Chair: This meeting is adjourned.

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

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

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