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Chair

Mr. Steven Blaney

Standing Committee on Official Languages

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● (0905)

[*Translation*]

The Vice-Chair (Mr. Pablo Rodriguez (Honoré-Mercier, Lib.)): Good morning everyone.

[*English*]

Thank you for being here.

[*Translation*]

In light of the absence of our venerable chair, I have the privilege and honour of presiding over today's deliberations.

I wish to welcome members of the committee and witnesses.

We are continuing our study on the elimination of the Court Challenges Program. In the usual fashion, we will begin with short presentations made by anyone of our guests today including Mr. Benson, who joins us from France.

[*English*]

Can you hear us?

Mr. Iain Benson (Executive Director, Centre for Cultural Renewal): Yes, I can hear you.

[*Translation*]

The Vice-Chair (Mr. Pablo Rodriguez): Very well.

We will begin with presentations and then move to the first round of seven-minute questions followed by a second round of questions. I would ask presenters to keep their respective presentations to 10 minutes each. These will be followed by a round of questions.

We can begin to my left.

[*English*]

We'll have a first round of seven minutes each, and then five minutes for every member.

Mr. Marcus Tabachnick (President, Quebec English School Boards Association): Mr. Chair, members of the standing committee, I would like to introduce myself. I'm Marcus Tabachnick, president of the Quebec English School Boards Association. With me today is David Birnbaum, the director general of the Quebec English School Boards Association.

Our association thanks you for this opportunity to present its views in support of the reinstatement of the court challenges program of Canada. We have felt it important to add our continuing voice to those of numerous institutions, community organizations, and academic, political, and opinion leaders, who are calling for the reversal of a very ill-conceived government decision to cancel the funding of the court challenges program.

Our association appeared on this subject last December before the House of Commons committee on Canadian heritage. Our association was one of the more than 100 that lodged complaints with Canada's Commissioner of Official Languages on the failure of this government to respect its legal obligation to consult minority language communities, among others, before undertaking the drastic and damaging steps it took.

[*Translation*]

The Quebec English School Boards Association is the public voice of nine anglophone school boards that serve some 75,000 students at the primary and secondary level, as well as those enrolled in adult education and professional training throughout Quebec. Our members' who are school board trustees elected by universal suffrage, represent the only order of government that is exclusively accountable to members of a linguistic minority community living in Quebec.

It is on behalf of these voters, and particularly their children, that the Quebec English School Boards Association is here today to call for the reinstatement of the Court Challenges Program. We find it entirely reasonable for the government to heed our demand.

[*English*]

Our leadership is deeply committed to strengthening its future through partnerships and collaboration with francophone Quebecers through agreements and innovative projects with neighbouring French school boards, municipalities, and communities. The QESBA is proud and determined to contribute to the vitality and development of English-speaking Quebec. That pride and determination instructs us to build bridges to our majority community. It also requires that we do all that we can to safeguard our constitutional and legislative rights and freedoms as a minority in Canada.

The Government of Canada, of course, has obligations regarding the vitality and development of its linguistic minorities as well. Our association maintains and insists that the reinstatement of the court challenges program of Canada is among those obligations. It is an essential tool if the individual and collective rights and freedoms of the members of both of Canada's linguistic minority communities and the vitality and development of those communities are to be realized as enshrined in part VII of the Official Languages Act, not to mention Canada's Charter of Rights and Freedoms.

As Commissioner of Official Languages Graham Fraser noted in his preliminary report on the government's 2006 expenditure review, the court challenges program's significant contribution over the years to the advancement of language rights in this country is unquestionable. Just as certain are the ongoing evolution of language rights and the need of minority language communities for reasonable access to the judicial process to ensure the protection and promotion of their interests.

The commissioner's preliminary report clearly restates the vital role of the program to linguistic minorities and equality groups across Canada, and then goes on to validate our association's complaint and that of so many others that the cancellation of the program was not, as required, the subject of due process. Mr. Fraser's preliminary finding subsequently confirmed the negative impact that will ensue from the cancellation of the court challenges program. The elimination of financing for the program will have an even more serious impact on the respect and implementation of language rights, since, on the one hand, many legal issues have not yet been resolved, and on the other hand, the crystallization of language rights depends on positive actions by governments—governments that are not always prepared to meet this obligation.

This eminently sound reasoning was echoed in May 2006 by the very same federal government that then deemed to cancel the program only months later. I quote:

> The Court Challenges Program (CCP), funded by the Government of Canada, provides funding for test cases of national significance in order to clarify the rights of official language minority communities and the equality rights of historically disadvantaged groups. An evaluation of the CCP in 2003 found that it has been successful in supporting important court cases that have a direct impact on the implementation of rights and freedoms covered by the Program.

The quote continues:

> The Program has also contributed to strengthening both language and equality-seeking groups' networks. The Program has been extended to March 31, 2009.

The above deposition was made by the Government of Canada before the United Nations Committee on Economic, Social and Cultural Rights, as reported in the commissioner's preliminary report.

The QESBA particularly addresses itself to the members of the government side on this committee when it asks for some explanation, because no satisfactory one has been forthcoming in the months that have passed since the cancellation of the program for this sudden and final decision. The absence of such an explanation has inevitably led to suggestions that the cancellation was motivated by ideological intransigence, partisan considerations, or simple disdain for due process. We await to be enlightened by a more constructive or defensible answer, if such a response exists.

● (0910)

[*Translation*]

At times, English-speaking Quebeckers have detected an obvious trend within parliamentary circles and elsewhere, of forgetting that Canada is made up of two linguistic minority communities: anglophone and francophone. It must be acknowledged that these two communities will have a high price to pay if the decision to cancel the Court Challenges Program is not overturned.

The anglophone community and the school board network that serves it have adapted well to a Quebec that is changing. Despite this, successive Quebec governments, similar to their provincial counterparts in the rest of the country, have not always been generous nor sensitive to the needs of linguistic minority voters.

[*English*]

Consequently, recourse for us to the court challenges program is as pertinent as it is to francophones in the rest of Canada and to equality groups across the country.

Our current provincial minister of Canadian intergovernmental affairs, ironically, and perhaps inadvertently, made this case for us recently. He deposited a motion before Quebec's National Assembly supporting the annual report of the official languages commissioner, which dealt so prominently with the court challenges program. It read, in part, as follows, and this is our translation:

> That the National Assembly reiterate the importance that the French language be defended and promoted as an official language of Canada and demand that the federal government clearly affirm its intention to follow up on the last report of the Commissioner of Official Languages and this, in the interests of the future of the French language in the rest of Canada.

Laudable sentiments, to be sure. And the motion carried unanimously.

It continued for another four paragraphs without a single mention of Quebec's own minority language community, Quebec's own founding voice of linguistic duality; that is to say, it concluded with not a word of reference to Quebec's English-speaking community. There is indeed a continued imperative for vigilance on minority language matters in Quebec, as well as in the rest of the country.

The nine member school boards of our association have the constitutional right to control and manage schools serving the English-speaking community of Quebec. School boards exercise that right, at least in part, by virtue of decisions rendered in landmark cases made possible by the court challenges program of Canada. Perhaps the most significant of those cases, the Mahé case in Alberta, would not likely have found its way to the Supreme Court without support from the court challenges program.

Key interventions from English-speaking community organizations in Quebec were funded in that case and in others directly affecting education rights. The right of students to attend minority language schools is also a question that the court challenges program was created to help answer.

In Quebec, access is limited by the charter of the French language but nevertheless protected within those limits under section 23 of the Charter of Rights and Freedoms. If individuals are to test the extent of those constitutional protections against the formidable resources of government, they must have the right to do so. The court challenges program is an essential, meaningful, and, lest anyone forget, financially reasonable way to ensure that right.

● (0915)

[*Translation*]

With all due respect, the number of committee hearings that have taken place and the number of reports that have been drafted are sufficient enough to merit a government promise to fully reinstate the Court Challenges Program as soon as possible.

[*English*]

With the greatest of respect, enough committee hearings have now been held. Enough reports have been drafted. It's time to call the question and to answer it with a government promise to renew, without delay, full funding of the court challenges program.

[*Translation*]

Thank you, Mr. Chairman.

The Vice-Chair (Mr. Pablo Rodriguez): Thank you very much, Mr. Tabachnick

Ms. Kheiriddin.

Mrs. Tasha Kheiriddin (Professor, McGill University): Thank you, Mr. Chairman.

Thank you for this opportunity to address you this morning. I am an author and lecturer at McGill University. I have written several articles on the program in question, that is the Court Challenges Program.

I will briefly explain to you why I feel the government made the right decision by cancelling this program. I will then explain why this program became obsolete, even if it happened to be necessary in the beginning. I will provide you with an historical overview of this program. I will then talk about official languages, because we have to make sure that all the issues being considered by this committee are not being grouped together too broadly. Essentially the question being raised here is that of official languages. Does the Court Challenges Program serve to protect official languages, or are there other problems with this program that warrant it being cancelled and perhaps replaced by something that would better address the concerns of this committee?

[*English*]

In other words, I think perhaps there is a median solution for this committee in terms of protecting minority language rights, which does not involve bringing back the entire court challenges program, which in my opinion the government had good reason to cancel. I will now explain.

In the course of writing a book, which was published a couple of years ago, I had the opportunity to interview John Crosbie. He was the minister at the time the court challenges program was enacted by the federal Progressive Conservative government of the day. I asked him why the Progressive Conservative government expanded the court challenges program beyond its initial ambit, which was language rights, the goal that Pierre Trudeau had in 1978.

To quote Mr. Crosbie,

> It was political correctness. If we had discontinued the program we would have received very bad publicity. It would have led to the Liberal party and opposition parties attacking on those grounds, saying we were not interested in human rights, and the institutions like *The Globe and Mail*, reinforcing our image as not being "with it" on social issues. Because of that, I thought it was not worth it to quash the CCP when it was just beginning, in addition to which the Charter was new and needed to be tested to see what it really meant. But that time is long past.

I put it to you that even if there were justifications beyond political correctness for creating the court challenges program back in 1985, clearly, more than 25 years later, there really is no reason for this program to continue.

Furthermore, the court challenges program itself, when it went beyond language rights, essentially started to fund a host of groups, which had their beginnings a lot earlier, in the late 1960s and 1970s, under the aegis of then justice minister Pierre Trudeau in the late 1960s.

You saw the Secretary of State of Canada expand to fund a large number of groups that were designed to be social animation. These involved things like women's groups, native groups, tenants' groups, a whole host of groups that were seen as social actors that the government wanted to animate through funding. The funding of these interest groups helped the interest groups grow and obviously increased their presence in Canadian public life. But this was done, as I said, mostly at the behest of government funding.

When the court challenges program was created in 1978, the initial budget of the program was quite modest. In fact, it was $200,000 a year, and between 1978 and 1982 it managed to fund six cases: three in Quebec, three in Manitoba and Saskatchewan.

These were designed to protect minority language rights. There was a challenge to Quebec's Bill 101, for example. That was the goal of the program. However, the expansion of the program was instigated not so much by a sense that minority groups were being hard done by, but a sense of the groups that had been funded by the Canadian government wanting to test section 15 of the charter, and equality rights.

This had nothing to do with minority language rights. Minority language rights have been protected in Canada since the Quebec Act of 1774. We see minority language rights protected in the BNA Act, in sections 93 and 133. This constitutional protection is part of the traditional historical basis of our country, and I put to you that to put this on the same footing as funding the equality rights challenges of these groups is not at all what should be done.

The groups in themselves, when the CCP was created in 1985 to expand it to.... They got $9 million in funding over five years. That may not seem like a lot, but when you look at the effects it's had on the judicial system, it is very significant, because unfortunately the research that has been done on the funding patterns of the CCP shows that the funding went specifically to groups that had a particular ideological agenda.

My confrere here spoke about ideological agendas of this government, but I put to you that unfortunately the CCP was not immune to an ideological agenda from the other side. And what you did see was a successive funding of groups' challenges that promoted the concept of substantive equality. The reason that was done was that there was resistance to putting substantive equality into the charter at its inception.

Substantive equality is essentially like handicapping a golf game. What it means is that certain groups who claim they have fallen behind because they are not on equal footing, they are not as strong, either economically or socially, claim the government owes them a head start in terms of achieving their goals.

● (0920)

These goals have been achieved through the court process, as opposed to the legislative process, and substantial equality was enshrined in particular by cases likes Schachter and Andrews, which were funded specifically by the CCP through groups like LEAF and other groups like the Charter Committee on Poverty Issues, Equality for Gays and Lesbians Everywhere, EGALE, the Canadian Prisoners' Rights Network, the Canadian Committee on Refugees, a host of groups that brought their challenges forward.

But let's remember who didn't get funding from the CCP. There were a number of groups who applied for funding and were denied. I think, for example, of REAL Women. There was a challenge in British Columbia, brought by John Weston on behalf of Nisga'a elders, against the accord. That didn't receive funding. In fact, who should be testifying here today.... I'm very pleased to be doing so, but really you should be have Ted Morton, Rainer Knopff, and I understand that Ian Brodie is probably in a conflict in terms of testifying before you today. I encourage all of you to read what these people have written about the court challenges program and the inherent bias in the funding that was disbursed.

The consequence of this is that instead of levelling the playing field, the court challenges program funded one side of the argument to the exclusion of the other.

[*Translation*]

The problem is that if we want to promote equality, the government's duty is to either fund everyone, or fund no one. It is economically impossible to fund everyone: when working with a budget, it is certain that there are always choices to be made. If there is a bias in how funds are allocated, one side will automatically be better funded than the other. In fact, this is exactly what happened. We saw for ourselves that several doctrines were applied at the Supreme Court.

● (0925)

[*English*]

The reading-in doctrine is one example of that.

[*Translation*]

Some of these doctrines became obsolete in the United States, but they were adopted here because these groups promoted them.

[*English*]

So trying to say here that the court challenges program should be reinstated to protect minority language rights is probably beyond the ambit of this committee, and it is not the solution to your problem.

If it is found, on the basis of empirical evidence, that minority language rights need to be protected by a program like the court challenges program, then the obvious solution for this committee is to recommend that a program be set up specifically to address the obligations of the government, under subsection 41(2) of the law on official languages, which says:

> Every federal institution has the duty to ensure that positive measures are taken for the implementation of the commitments under subsection (1).

This means a program that would be much smaller in scope and would not encompass all the other groups that have hopped onto the bandwagon, so to speak, where they were not originally foreseen, to take advantage of this program. Let those groups, let all groups in Canada, find their own funding for challenges under section 15 and other provisions of the charter.

My suggestion to this committee is that if you do feel that language rights are being hard done by through the elimination of all funding to language groups, a smaller version of this program specifically targeted to that goal should be the product of your deliberations.

Thank you.

[*Translation*]

The Vice-Chair (Mr. Pablo Rodriguez): Thank you, Ms. Kheiriddin.

We move on to Mr. Gauthier or Madam Pilon.

Ms. Ghislaine Pilon (President, Commission nationale des parents francophones): The two of us shall be speaking.

The Vice-Chair (Mr. Pablo Rodriguez): You have a maximum of 10 minutes. I would ask that you each be concise so that we can move on to question period.

Ms. Pilon, you have the floor.

Ms. Ghislaine Pilon: Thank you for this invitation to appear before your committee.

My name is Ghislaine Pilon, I live in Mississauga, Ontario. I am the mother of two teenagers, Nicolas and Mathieu. It is because of them that I am here today.

I am the President of the Commission nationale des parents francophones. Our primary objective is to support parents associations in each province and territory in fostering the family, educational and community development of francophone families living in minority situations.

Our federations serve approximately 500 parent committees across the country, and some 350,000 parents benefit from preschool and school services.

Our organization is responsible for francophone and Acadian communities on matters relating to francophone early childhood development and presides over and coordinates the National Round Table on Francophone Early Childhood Development that brings together a dozen partners. It is an active member of the National Round Table on Education that is chaired and coordinated by the Fédération nationale des conseils scolaires francophones.

Our 20 or so national partners in education and early childhood development bring together, from across the country, 31 school boards, more than 1,250 services, institutions and organizations, including 400 preschool services that are attended by 30,000 children aged 5 years or younger, as well as 630 primary and secondary schools attended by 146,000 children aged 19 or younger.

This network of people, organizations and institutions was able to come into existence, in part, because of the Court Challenges Program. These are the results of more than 25 years of strategic measures to help francophone parents. Our members are courageous and resilient visionaries.

The saga of educational rights began shortly after the adoption of the Canadian Charter of Rights and Freedoms in 1982. In 1983, parents from Edmonton, Alberta, challenged the first instance ruling that allowed provincial authorities to refuse francophone parents a French-language school. In the 1990 Mahé decision, the Supreme Court ruled in their favour, not only on the issue of being granted a school, but on the right to manage it. In 1986, Manitoba parents demanded universal recognition of the right to manage French-speaking schools. In the Manitoba order of 1993, the Supreme Court recognized this right.

The statistics, taken from the annual reports of the Court Challenges Program, speak for themselves. Pursuant to educational rights stipulated in section 23, our members and partners have made 183 applications since 1994. These figures do not include activities conducted under the original challenges program that was created in 1981 and abolished in 1992.

Over the last 11 years, 143 applications made by parents have been approved by the program. This is more than half of the approved applications, which deal with linguistic rights. You inferred correctly: francophone parents are without a doubt the most important client of the Court Challenges Program.

The following is a breakdown of the approved projects: 83 litigations, 30 activities concerning access and promotion, 21 case preparations and 9 impact assessments. In the 11 years of challenges, 55 cases were brought before the first instance, 15 were appealed, and 13 went to the Supreme Court. The most well-known cases during this period are the Arsenault-Cameron case in 2000 concerning Prince Edward Island schools, and the Doucet-Boudreau case of 2003 concerning high schools in Nova Scotia.

The following are examples of the lasting results of these cases. Throughout the 1980s, the network of French schools was consolidated from one end of the country to the other. The network of francophone school boards was created during the 1990s. French school boards have created new schools in most provinces. For example, in Prince Edward Island, four new schools were built after the Supreme Court handed down its ruling. In Nova Scotia, six new schools were built. Generally speaking, enrolment ceased to decline and has since stabilized. The quality of French education significantly improved once minority groups took over management of infrastructure, curriculum and promotion.

In 2005, school boards and partners established an action plan called "Action Plan—section 23—completing the French-language education system in Canada" .

● (0930)

Francophone communities are establishing themselves and taking in hand the management of French-speaking schools. As an example, the one and only Métis school in Canada, located in Saint-Laurent, Manitoba, will finally have its own building in 2008.

For us, the courts are the last resort. Each time a complaint was lodged, it was done because there was no other alternative, and inaction would have been intolerable. Each time, there were months if not years of pressure, exchanges of documents, meetings and negotiations. We have the intestinal fortitude and the program gave us wings.

We did not invent this system which pits us as gladiators against the provinces, which—I will remind you—are signatories of the Charter. Legislators created the arena and provided us with arms such as the Court Challenges Program. Are decision-makers innocent bystanders? Each time, citizens are the ones who pay for the lack of political will. I'm referring here to most governments which have come into power since the adoption of the Charter.

Why do governments continue resisting the enforcement of our rights? It must certainly be a wise investment in terms of votes. However, ultimately, it must be said that parents have never lost a case before the courts. Governments have always sought to buy time.

What parents have lost is considerable: they've lost time, energy, money, and I'm not talking about federal money. We have also lost respect for many people, even within our own communities, and we have lost generations of children. As we speak, one out of every two francophone children is enrolled in a French school. Is this what you call linguistic duality in Canada?

However, let us try to imagine Canada without section 23 or the Court Challenges Program. What state would our communities be in without school networks and school boards? The goal of this program is to empower minorities, but the greatest gift of the program is hope. Who can live without hope?

There is a benefit value to this strenuous process of constantly going before the courts; and that is that we make sure that case law reflects changing needs and priorities. Our realities change as do our knowledge of these realities. Because these mechanisms complement one another, Canada is a place where the processes influence public policies. While the majorities can do without this system, such is not the case for minorities.

Case law can help society understand the evolution of knowledge in education. For example, recent research was conducted on brain development among children. When the Charter was first adopted, we did not know that language acquisition begins as early as six months in the womb, and levels out at one year. In 1982, we did not understand that cognitive functions reached full capacity before the age of two. The learning capacity of a child this age is much greater than mine or yours. Such knowledge is crucial for our children's future, particularly for the future of children living in a minority situation and educated in French. This is precisely why parents are calling for the broadening of section 23 to include preschool education.

Our work is not over, and we hope to continue without having to resort to legal means. Will we have the choice?

Members of Parliament, provide us with another solution and we will gladly stop resorting to the courts. In the meantime, keep the Court Challenges Program intact. This is our expectation: that each level of government in Canada, be it federal, provincial or territorial, honour its constitutional commitments with enthusiasm and dignity. We continue to hope. We are not seeking to protect the past. We are seeking to build the Canada of the future. The investment we are making is the investment with the highest return: our children. We want our children to be healthy, multilingual, pluricultural, curious, respectful, innovative, successful and resilient. Are you with us? That is the challenge we put to you today.

Thank you.

● (0935)

Mr. Roger Gauthier (Executive Director, Association des parents fransaskois): Mr. Chairman, I have prepared my own presentation.

The Vice-Chair (Mr. Pablo Rodriguez): Do you have any complementary information? It is very time consuming to hear the both of you.

Mr. Peter Julian (Burnaby—New Westminster, NDP): Mr. Chairman, the witnesses have things to talk about. I understand that it is just as important to ask questions, but if the statements have been prepared, it would be preferable to allow them to make their presentation.

The Vice-Chair (Mr. Pablo Rodriguez): When you were summoned to appear, were you told that you also had 10 minutes for your presentation?

Mr. Roger Gauthier: It is what I understood.

The Vice-Chair (Mr. Pablo Rodriguez): All right. Go ahead, but I would ask that you be as brief as possible.

Mr. Roger Gauthier: Mr. Chairman, ladies and gentlemen of the committee, I thank you for giving me the opportunity to come before the Official Languages Committee and talk about the Court Challenges Program. I have already had the pleasure of meeting some of you during your visit to Regina a few months ago.

I am the Executive Director of the Association des parents fransaskois. Our office is located in Saskatoon, Saskatchewan. Our association represents close to 1,500 parents of children attending the province's 12 Franco-Saskatchewanian schools, 11 junior kindergartens and 3 day care centres.

We work in close cooperation with the Francophone School Division and the Department of Learning to ensure access to quality, French-language services at the preschool and school levels. The Association des parents fransaskois, or APF, is also a member of the Commission nationale des parents francophones.

It was only after a lengthy political and legal battle that Franco-Saskatchewanian parents were granted the right to manage their schools in 1993. We have made significant progress in the past 15 years, but we still have to settle a number of issues. Progress has to be made for section 23 of the Canadian Charter of Rights and Freedoms to be fully implemented. Francophones in Saskatchewan, as well as in all other Canadian provinces and territories, have had to go to court to defend their rights, including language and school rights.

I have been living in a minority community for the past 32 years. Without wanting to disclose my age, I was 23 at the time. I am neither a jurist, lawyer nor legal expert. However, for the past 32 years, I have experienced cases where francophones in my community or francophone institutions in my province have had to use the legal system. Fortunately, most, but not all, cases were settled outside of court.

In 1985, when I was Executive Director of the Association culturelle franco-canadienne, or ACFC, I was called on to oversee Father Mercure's case before the Supreme Court of Canada, as part of a court challenge intended to recognize Saskatchewan's bilingual nature. Despite Father Mercure's passing, the Supreme Court exceptionally agreed to hear the case and ruled in his favour. That shows the great importance that the Court attaches to such constitutional matters.

I also participated in legal action before the Court of Queen's Bench of Saskatchewan as part of the Franco-Saskatchewanian School Board drive to recognize the right to education in French as the language of instruction in minority institutions. Francophone parents won their case as a result of Justice Wimmer's decision in 1988.

During my current tenure as Executive Director of the Association des parents fransaskois, parents initiated proceedings before Saskatchewan's appellate court. The 1990 decision by the Supreme Court in the Mahé case, in Alberta, spared us from having to go to the Supreme Court, because that case largely addressed the issues that we had raised before the Court. I did say " largely," not completely.

In 2002 and 2003, when I was a school trustee, the Franco-Saskatchewanian School Board had to file three notices at the Court of Queen's Bench regarding the under-funding of Franco-Saskatchewanian schools and the need to provide francophone students in Saskatoon and Moose Jaw with adequate schools. The province later decided to settle those cases out of court.

It is the Court Challenges Program that allowed us to hire legal counsel. Do we enjoy going to court to settle our constitutional problems? We do not, not at all, but that is often the last recourse available to us. How could we do otherwise when the government is unable to realize that it is denying its minority their rights?

The recognition of language rights in 1988 by the Supreme Court of Canada and the implementation of school rights were made possible thanks to funding from the Government of Canada. That was when the original Court Challenges Program was in place. Since the program was reinstated in 1994, it has helped to defend the rights of francophones on numerous occasions. The program was useful and effective. Through the funding of legal test cases, the program truly helps modernize the equality and language rights guaranteed by the Canadian Constitution.

Now, why is this program needed? Because the Government of Canada is responsible for defending the rights of its citizens, minorities, and providing them with mechanisms to access the legal system as a last recourse.

● (0940)

In my view, that is a fundamental right. The Court Challenges Program is one of the means to defend the people's rights through the court system, without any political or ideological interference. The program provides funding and, consequently, access to true legal council, i.e., it helps address basic rights and issues of public interest.

The Charter dates back to 1982, a mere 25 years ago, and the case law is still being shaped. In rendering their decisions, justices and jurists assist—and do not undermine the government—businesses and individuals, without taking the place of lawmakers, and interpret the rights recognized in the Canadian Charter and Constitution. Because constitutional law is so complex and crucial, it is important that citizens and legislators be able to use the court's opinions to legislate and administer without infringing upon the rights of minorities. Experience has shown how easy it is to overlook minorities when major reforms are implemented, without considering the consequences they might have on minority rights. This often occurs in the provinces. I insist that that leads to major consequences.

It is also important to recall that the language rights contained in the Charter were granted to provide redress for past failings with regard to Canadian minority language rights, some dating back to the start of the Canadian Confederation. The Charter contains redress mechanisms to right the wrongs of the past. According to the interpretation of the Supreme Court of Canada, section 23 of the Charter includes such a redress mechanism.

In order to preserve Canadian unity and uphold the rule of law, the Canadian Parliament and government are responsible for supporting Canadians living in minority situations and compelling the government bodies that have jurisdiction over education and language rights to make the necessary corrections, take the required steps to comply with the Charter and remedy the wrongs that were caused.

Obviously, the government of Canada does not and cannot interfere in provincial and territorial areas of jurisdiction. We understand that. The Court Challenges Program can, because it is independent from political influence, facilitate dispute resolution and help shape case law that will guide decision makers, both now and in the future.

Given all these reasons, we believe that the Court Challenges Program has to be reinstated.

Thank you.

● (0945)

The Vice-Chair (Mr. Pablo Rodriguez): Thank you, Mr. Gauthier, for your brief remarks.

[*English*]

Mr. Benson, are you still there?

Mr. Iain Benson: Yes, I'm here.

The Vice-Chair (Mr. Pablo Rodriguez): From Toulouse.

Mr. Iain Benson: *Oui, Toulouse.*

The Vice-Chair (Mr. Pablo Rodriguez): It's your turn. Go ahead.

Mr. Iain Benson: Thanks very much.

I'd like to thank the committee for inviting me to share these observations on the important subject of the court challenges program. I want to talk about principles that need to be brought to bear on any program of governmental support for constitutional development.

In my view, time and reflection have shown us that the court challenges program was effective in achieving its influence; it had advisors of the highest ability, strategists of considerable brilliance, and a successful track record. Time and reflection, however, put us in a position to examine drawbacks as well. Some of these are serious and foundational. I want to raise some of those today. Unless they're considered, in my view, we are not proceeding in the right direction with constitutional litigation in Canada today. The program must not simply be reinstated as it was; it should be fundamentally changed for principled reasons that I will comment upon now.

First of all, it's important to understand that the relationship between the courts and the legislature is often understood as a dialogue. If that's true, then it's also true that in a further sense, 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, and then between cases over time; society itself, and the law that is part of it, are dialogical. It changes over time, in part due to the debates, discussions, and self-understandings that are part and parcel of our common lives together.

It needs to be clearly understood that Canada is not the Charter of Rights and Freedoms and the Charter of Rights and Freedoms is not Canada. This is important to understand because there are those—in fact, quite a few—who seem to speak as if Canada will be developed, furthered, and based on the charter, which is shorthand for saying by the judiciary, or within that dialogue between legislature and the courts.

This wider perspective about the importance of society in the debate is one that's been recognized by the court challenges program itself, because it wanted to fund, and did fund, not only litigation but conferences, and even discussion between government officials and members of activist organizations on particular themes, and in recent reports suggested that it should be extended to the provinces as well. In such an environment it's important that this be done openly and fairly, and not just from one perspective.

Any method of governmental assistance for constitutional litigation needs to be aware of the problem of rights disputes in terms of society itself, and the fact that all citizens should be encouraged to be part of the dialogue that is constitutional litigation. If we assume that courts are not merely necessary, but are sufficient, for the maintenance of a constitution, we assume too much about the role of law. This is the essential point of my comments today.

For any program of constitutional litigation assistance to be just, it must be open to everyone—not just those challenging laws, but those defending them, or those arguing against a particular sort of challenge where there is no law in an area, which was the case in the same-sex marriage cases. If constitutional litigation is going to affect everyone, which it does, then those who may need assistance in relation to that litigation do not all come neatly labelled as challengers. Therefore, any program seeking to develop constitutional interpretation must do so on a neutral basis and not assist only one side of the arguments.

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, and the litigation history shows this. In addition, we have to realize more and more as a country that litigation is not the best strategy for a state to use as a method of nation-building or for the creation of communities of respect. There are serious drawbacks to litigation.

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.

We have been encouraging litigation as a means of nation-building and of furthering Canada. In my view, this is incorrect; we've taken a wrong tack.

● (0950)

While many groups have benefited from the funds they got through the court challenges program, I believe, along with many others, that there are serious problems in the way that program was set up and in the way funds were distributed. Any fair system in the future that genuinely moves towards nation-building has to be established on different principles. I'd like now to turn to a series of those.

I'll first mention what Chief Justice McLachlin said in her well-known Cooke lecture in New Zealand. She said, “Canadians have embraced their constitution as a means to achieve justice, they have not yet established a consensus on where that justice comes from and on what it’s based.”

Chief Justice Dickson, some years before, pointed out that the charter was not enacted in a vacuum and must be placed in its proper linguistic, philosophical, and historic contexts. In the Egan case a few years later, religious traditions were added to that context.

How are we to best do this task of placing the charter in the proper linguistic, philosophical, historical, and religious traditions context if we do not do it with maximal input from the people and groups who can best tell us what these are? How, indeed?

The court challenges program, by furthering just challenges, which biases it against traditional positions, and by giving funds to favoured groups, has not, in effect, rewarded those who need to be rewarded or funded in cases where many sides of issues should be properly canvassed.

In the same-sex marriage cases, for example, in which I acted for many of Canada's national religious groups, a fundamental question was never addressed anywhere, and that was whether marriage is properly a matter for the state. 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.

It was well known that hearings by the justice committee of the day were simply cancelled once the government of the time, with no caucus discussion, no discussion in the House—in short, none of the usual opportunities for analysis and discussion—simply skipped the matter of the appeal to the Supreme Court in the marriage reference.

That was not our finest hour in Canada. And in our analysis the optimal relationship between the irreconcilable views of citizens and the state with respect to same-sex marriage has suffered as a result. We have only seen the beginning of the disputes that will erupt in such areas as public education curriculum. In my view, we could have avoided much of that.

Now I'd like to turn quickly to the principles I'd like to say should be recommended in any new approach to governmental assistance for litigation.

First, any program should not operate to assist only those challenging laws, as I said earlier. Any litigation assistance program must operate, therefore, in terms of advancing the best arguments to assist the court to frame the issues before it, not to pursue a favoured outcome by one side of the argument. This was a cardinal error in the way the former program was set up.

Second, so that all citizen groups may have confidence in its fairness, any constitutional assistance program should be set up with representative fairness. Transparency and fairness apply not only to reporting requirements and accountability for any program giving out government moneys but to the question of who staffs such a program and who decides about applications.

As far as is practicable, it would seem to make sense to involve those from a variety of different groups themselves. We know from the history of litigation in this country over the last many years who these groups are. These people should be part of a board of advisors or members making decisions. This board would have full access to all materials and would make up its own report to assist the government and the public.

Currently there is a widely shared perception that the former program represented a narrow ideological band of members, leaving many groups out in the cold. Annual reports, for example, did not give a list of all the cases in which assistance was given by the program. They had only a selection of such cases. Who made up the selection? How representative was the selection reported? We don't know. That is unacceptable.

Third, 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 the litigation, subject, perhaps, only to a means test principle. This could be done on a demonstrated need basis for individuals or for charitable or not-for-profit organizations.

The elucidation by the courts of the application of the Constitution affects everyone, and it's unfair that only one side of the arguments are supported by the tax moneys of all citizens. We leave it to a judge to determine which particular bodies have an interest and valid representative status in a constitutional litigation. And it should follow, once that determination has been made, that recourse to financial assistance is possible. This avoids the chronological bias I mentioned favouring new claims against old ones, and it also gives everyone access who has an interest.

● (0955)

Finally, there's a need to clarify the litigation, participation, education, and advocacy in relation to charitable status. While this may be outside of the mandate of your committee, it's very important to know how many groups in Canada are threatened by the current approaches to charities in Canada.

Lastly, it is time to consider establishing a constitutional forum for stakeholders that will benefit all Canadians. The witnesses today all provided testimony on areas of their concern that could be beautifully aired in a communitarian setting before a governmentally assisted constitutional forum. This would take the pressure off a litigation framework and would ultimately present useful reports and genuine dialogue that could help the judiciary and politicians.

Thank you very much. My comments are respectfully submitted.

The Vice-Chair (Mr. Pablo Rodriguez): Thank you, Mr. Benson.

We'll start with the first round, seven minutes.

[*Translation*]

Ms. Folco.

Ms. Raymonde Folco (Laval—Les Îles, Lib.): Thank you, Mr. Chairman.

I would like to welcome you all here.

First, I want to make a comment to Ms. Kheiriddin. Ms. Kheiriddin, all the minority language groups, both francophone and anglophone ones, that we have met with to date—and believe me, I think that this committee has met almost all of the minority groups—have underlined in red ink the need and importance of the Court Challenges Program.

Since I came from somewhere else, I can relate. Canadians have developed a way that they do things, which is involving groups primarily affected by a program or a measure in the consultation process, in order to identify what the problems are and what the solutions may be. So, these groups, which are at the heart of the problem and which suffer the consequences, as Ms. Pilon said so well, have clearly told us their position. The only groups that we have met with to date that seem to have an opposing position, for all sorts of reasons, both yours and Mr. Benson's, are groups that do not represent minority language groups, with all due respect.

I have no questions for you, but I wanted to make this comment. The groups that are primarily impacted, which are suffering the consequences, have in fact told us just how important this program was.

If I may, I would like to address my question to the Quebec English School Boards Association. Just recently, there was a symposium here in Ottawa, sponsored by the Fédération des communautés francophones et acadienne du Canada. At this symposium, Ms. Verner, the Minister for La Francophonie and Official Languages, said that she intended to...

I will read it in English because my notes are in English.

[*English*]

"Canadian Heritage will launch a wide consultation with linguistic minorities from across the country."

[*Translation*]

Then, it says that:

[*English*]

Ms. Verner said that she would be asking francophones about the government's overall vision on official languages and linguistic duality.

[*Translation*]

My reaction to that is this.

[*English*]

It's like closing the barn door after the cow and the horse have already left.

But I would really like to hear from you, Mr. Tabachnick and Mr. Birnbaum, where you stand on this, whether before the government in place actually got rid of the court challenges program, you as a minority group, a language minority group in Quebec, were consulted in any way. And I'd like to know what suggestions you have made to Madame Verner as the minister, and whether you would be willing to take part in such a consultation if and when it does occur.

Mr. Marcus Tabachnick: When we appeared in December, we made a statement that consultation must take place before decisions are taken. We have never been contacted or asked or consulted on the issues before us. As I mentioned in my remarks, we are the forgotten minority in this country, and we find it incredible that we are never contacted to be part of any consultation process. And further, I'll state from our perspective that these hearings do not constitute proper consultation as required by the law.

As you mentioned, the barn door has already closed. The case has been decided, and now we're being asked for our opinion. I find it a little insulting, to tell you the truth. I think it's important that we be included in discussions, and that at some point, if decisions are going to be made, we be heard properly.

● (1000)

Ms. Raymonde Folco: Thank you.

[*Translation*]

The second question that I would like to ask you, Mr. Tabachnick, relates to exactly what you just said, that the English-language minority community in Quebec is a minority that seems to have been somewhat ignored or even forgotten. However, in light of progress due to legislation and Supreme Court decisions regarding the francophone community, or the minority francophone communities in Canada, could you tell us to what extent the decisions made, both by the courts and by the government, have had a—perhaps positive or negative, I don't know—influence on the position or situation of the anglophone community in Quebec?

Mr. David Birnbaum (Executive Director, Quebec English School Boards Association): The situation for both sides is extremely specific and important. If we talk about the evolution of minority linguistic rights with regard to education, first in response to the suggestion, which even the Commissioner has denied, that what has been done has already been done, there are 31 cases involving minority language rights and education that have yet to be resolved.

With regard to the Mahé case, which granted a very substantial right to manage minority schools, the actions taken by the anglophone community in this regard were funded by the program and were referred to in the judges' rulings. This ruling demonstrates, to some extent, that we have the power to manage our schools and school boards in Quebec.

[*English*]

I would remind anyone who suggests that the job is already done that there are new indications on the Quebec political scene that those school board structures could be under some danger. They are the absolute vital link to the community's vitality and development, and those are the responsibilities of this government. So to suggest that the program has already done what it has to do is completely erroneous.

And it's extremely important to note that when there is a cause that affects francophone minorities in the rest of the country, it affects us.

The other case we could point to is the Hôpital Montfort, which was absolutely pivotal for the minority language French community. Much of the decision was predicated on some very important work done in Quebec in terms of legislative guarantees for health and social services—again, made possible through interventions funded by the court challenges program.

Ms. Raymonde Folco: Thank you very much.

[*Translation*]

The Vice-Chair (Mr. Pablo Rodriguez): Thank you.

We will continue with Mr. Nadeau.

Mr. Richard Nadeau (Gatineau, BQ): Thank you, Mr. Chairman.

Good morning everyone.

As Ms. Folco just said, there is a report that was adopted, and then printed, on our visit to French- and English-minority communities last fall. The report is entitled, "Communities speak out: Hear our voice. The Vitality of Official Language Minority Communities". This document exists. If you would like a copy, let me know after the meeting. The committee could send you one.

On page 131 of this report, it states:

> All the organizations we met were unanimously and profoundly opposed to the Government of Canada's plan to cancel the Court Challenges Program.

A little bit later, the committee adopted Recommendation 26, which reads as follows:

> That the Government of Canada reinstate the Court Challenges Program or create another program in order to meet objectives in the same way.

It's not as if we were starting from scratch. Things have been said and done. I want you to know that.

I would also like people to remember another very important thing. The program was reviewed in 1997 and in 2003. Someone mentioned this earlier and I will repeat it. Both reviews determined that it was an effective and accountable program. Furthermore, it provides taxpayers with value for their money. During the 1997 review, it was also mentioned that, since its creation, the program has enabled the facilitation of numerous disputes which have greatly helped to clarify constitutional law. For example, nearly all the disputes that, within Canada, concerned the rights of official language minorities to education in their own language were funded by this program. Furthermore, many of the applicants for funding would not have been able to defend their case or further proceed without the program's support. For many of them, the program was the only possible source of funding.

I want everyone here today to know this. In the 2003 review—and I will be very brief—it states that the review's findings also show that many other aspects of constitutional provisions targeted by the program have yet to be clarified. Data show that this clarification is an ongoing process and, apparently, this will always be the case.

I would add that, because society is evolving, we need to ensure that if the state is at fault and parents, volunteers or organizations want to prove this, they need to be able to represent themselves, on an equal footing, before the courts.

Unlike what Mr. Benson and Ms. Kheiriddin are saying, it's not about providing ideological assistance for one group or another. It's that the state arrives with its army of lawyers, and parents and volunteers, in order to save their hospital or to have a school consistent with a recognized constitutional right for which they've been fighting for 60 years, need to have the tools to take action. I would even go so far as to say that, following the adoption of Regulation 17 by Ontario in 1912, if Franco-Ontarians had had the opportunity at that time to avail themselves of the Court Challenges Program, we probably wouldn't have had to wait until 1990 for the right to manage francophone schools in Ontario. Just imagine: from 1912 to 1990, that's a very long period during which all those battles had to be fought.

Mr. Gauthier, you took part in a fight to ensure that Franco-Saskatchewanians, children and parents who wanted French to be the language of instruction at school could have their schools. In the time I have left, could you tell us about the steps that parents had to go through in order to demonstrate that their social fabric is directly affected when constitutional rights are not respected and a government, be it federal or provincial, does not do its job, forcing you to go to the courts to ensure respect for the Constitution?

● (1005)

The Vice-Chair (Mr. Pablo Rodriguez): Have you finished your question?

Mr. Richard Nadeau: Yes, Mr. Rodriguez.

The Vice-Chair (Mr. Pablo Rodriguez): It was short.

Mr. Gauthier.

Mr. Roger Gauthier: Thank you, Mr. Nadeau.

The steps concerned parents with children. The first step is the desire to educate our children. I will use the Gravelbourg case, in Saskatchewan, as an example, where parents were refused the right to have a Franco-Saskatchewanian school. They created an independent school that they had to manage themselves. They purchased materials and furniture, and paid the rent. Some parents took out a mortgage so that the employees and teachers hired could ensure a certain quality of life to the students.

The fact that parents have to fight to obtain an absolutely essential service, their children's education, is moving. Why do we have to fight for this, when it takes 10 years? We know that the final recourse is going to the courts to seek a ruling on such a case.

As Ms. Pilon said, every time that parents have had to go to court, they have won. But why did they have to fight? There are all kinds of ideological questions, there is indifference, no one necessarily cares because this is a minority and no one wants to jeopardize the position of the majority.

● (1010)

The Vice-Chair (Mr. Pablo Rodriguez): Thank you.

That's all the time we have for Mr. Nadeau's question.

Ms. Savoie, it is your turn. You have seven minutes.

Ms. Denise Savoie (Victoria, NDP): Thank you very much, Mr. Rodriguez.

I apologize for being late.

I am replacing a colleague, but I am very concerned about this issue. I am from a minority community and I saw my parents fight to get French schools in Manitoba. Sometimes, we even had to hide our French books when the inspectors came to visit. Can you imagine! We saw the cultural fabric of our community disintegrate. Obviously, this was before the Court Challenges Program. We know now that there was some truly discriminatory legislation on the books.

The Court Challenges Program truly is extremely valuable in ensuring our rights as francophones. And I'm also talking about all the other minorities, obviously.

When I asked Mr. Toews, when he was minister, what we would lose by eliminating the Court Challenges Program, he answered quite casually that the Conservative government was going to simply adopt fair legislation. If those wonderful promises were kept, it would be easy to trample over many rights.

My question is this. Unfortunately, I was not able to hear your presentation, but I'd like to know what more could be done to convince this government of the merits or the interests of maintaining this program. If there are little things that need to be changed to ensure that it works for everyone, I think we would consider it. I wonder if we can make one last appeal to convince the government, which, to date in any case, has turned a deaf ear to our questions and comments.

Mr. David Birnbaum: But if the survival and vitality of these communities are, as set out in the act, a concern of this government and, as Mr. Fraser said, there has been no consultation, hence they have not complied with the act. It seems self-evident to us that the program needs to be restored.

If the Charter is indivisible,

[*English*]

we expect this committee will understand that it is of course within its purview to look at both the equality and official languages provisions of the charter, given that they often intersect. There are many in our schools who are double minorities, so that's absolutely essential. If one of the impediments to renewing the program is that there are some perceived problems,

[*Translation*]

we refer you to comments made by André Pratte, Editor-in-Chief at *La Presse* newspaper, who said that the government had thought that the patient might have a cold, and the solution was to kill the patient.

Based on our experience with the program, the assessment and study of files has always been extremely rigorous. If there are any changes that need to be made, so much the better. But going from that to abolishing a program that cost a modest $2.3 million this year really raises questions. I believe that it is extremely important to say that, based on our understanding of it, the opposition that you have heard from linguistic minority groups would be echoed if equality measures in such a program were cut.

● (1015)

[*English*]

So the notion of separating the official languages aspects of this program from the equality ones is something we would find absolutely unacceptable.

Mrs. Tasha Kheiriddin: If I could just comment there, I think that is exactly the problem. This committee is here to discuss official languages and the respect for official languages.

[*Translation*]

In answer to your question, Ms. Savoie, if you want to convince the government to protect linguistic minorities, you need simply tell it that it has to obey the law. Subsection 41(2) of the Official Languages Act requires the government, as a positive measure to establish a program like the Court Challenges Program in Canada. There is your answer.

If, from a legislative standpoint, a legal opinion says that the government does not need this particular program, the government will not be convinced. It is up to you, if you wish to make this happen. But restoring the Court Challenges Program in full—

[*English*]

I'll say it in English: it's like building an elephant gun to kill a mouse. It is going beyond the ambit of language laws, and if you look at the charter, very clearly, you will see that the sections on the official languages of Canada—sections 16 to 23—take up a very large part of our charter.

I would put to you that language laws have a special place within the Canadian fabric and constitution, and if your goal is to protect them, it is not by bringing back the program that Mr. Benson and I explained has a lot of problems, but to create something that addresses your specific needs. That is why I said....

And I really take exception to some of the comments made,

[*Translation*]

particularly by Ms. Folco and Mr. Nadeau. You did not listen to me. I didn't say that I was opposed to protecting linguistic minorities at all. I said that—

Ms. Denise Savoie: Please answer my questions, for now.

Mrs. Tasha Kheiriddin: Yes, your question is—

Ms. Denise Savoie: I would simply like to add that poor people have just as much right to housing as rich people—

Mrs. Tasha Kheiriddin: That is not the issue.

Ms. Denise Savoie: —food, but often they cannot avail themselves of those rights because they live in poverty.

It is somewhat the same when it comes to linguistic rights. If you don't have the means to avail yourself of your rights, ultimately, those rights exist only on paper.

Mrs. Tasha Kheiriddin: And that is why I said—

Ms. Denise Savoie: They are no longer rights.

Mrs. Tasha Kheiriddin: That is why I said that if you want to restore a program that specifically meets your needs, if that is how the government should ensure that it complies with the act and section 41(2), that is your future. But we don't need to say that the program as a whole has to be restored.

Ms. Denise Savoie: Thank you.

I would like to make a few comments before—

The Vice-Chair (Mr. Pablo Rodriguez): Ms. Savoie, unfortunately, that is all the time we have.

We will conclude our first round with Ms. Boucher.

Mrs. Sylvie Boucher (Beauport—Limoilou, CPC): Good morning, everyone. I want to thank you for coming. It's always interesting to learn everyone's perspective, and we are taking notes.

My question is for members of the Quebec English School Boards Association. Last week, we met with representatives of the CCP, who mentioned that the program had been created to fund court cases that advance equality and linguistic rights guaranteed by the Canadian Constitution or the Charter.

The documentation provided, states, “A case is a test case only if it deals with a problem or raises an argument that has not already been decided by the courts." This case must help official language minority communities in Canada to protect their linguistic rights.

I have a simple question. If I understand correctly, your association was directly involved...

You cannot hear me?

Mr. David Birnbaum: It's a bit loud. It's okay.

Mrs. Sylvie Boucher: Okay, I will repeat my question. If I understand correctly, your association was directly involved in a case that used the CCP. Is that correct? Did your association have access to the CCP, yes or no?

● (1020)

Mr. David Birnbaum: Not currently, but some years ago, the Quebec English School Boards Association did.

Mrs. Sylvie Boucher: What was the context of that case?

Mr. David Birnbaum: Well, simply put—

[*English*]

If you were a Canadian-born child who studied in English, under Bill 101 you would not have been able—as a Canadian citizen who grew up in English, one of Canada's official languages—to send your child to school in English in Quebec.

Thanks to the court challenges program,

[*Translation*]

this student, subject to Bill 101 and section 23 of the Constitution, can now attend English school.

That is one example, madam.

Mrs. Sylvie Boucher: So you were able to ensure access to your English schools thanks to the CCP. Have I understood correctly?

Mr. Marcus Tabachnick: Yes, there is a class of children who have this right thanks to Supreme Court rulings.

Mrs. Sylvie Boucher: Okay.

To completely change the subject, I want to speak to everyone here. I know that the CCP is before the courts currently for a number of reasons. As a member of the government side, I will not talk about it. However, if you have any long-term solutions to suggest to the government, how would you see a system ensuring access to your linguistic rights? I know that they are part of the Charter.

[*English*]

Mr. Marcus Tabachnick: If I may, I don't think there's any disagreement that on the linguistic side this program should be put back in place. What we're saying is to do the right thing in a Canada that has evolved and changed is to reinstate the program the way it has been put in place, the way it has evolved, and if some of the rules need fixing, then sit down with the people who are responsible and will help to fix the rules.

You don't throw out the whole court challenges program when it's the right thing for a country that has evolved and it recognizes the evolution.

[*Translation*]

Mrs. Sylvie Boucher: Okay.

[*English*]

Mr. Iain Benson: I'd like to suggest that what we need to do in Canada is pull the lens back and look at the problems we're causing by constant recourse to litigation. As I said, it's been recognized by some of our leading philosophers and theorists that litigation is not the way to form a culture over time. It produces a culture of winners and losers.

Now, I appreciate that in the minority language rights situation, your focus might be a little different from the thrust of my comments, which are directed more to situations where there are valid positions on both sides by citizens' groups.

Appreciate that, for example, again, to take one of the carrier issues of the day, same-sex marriage, the debates there were between legitimately holdable views between minority groups in many cases—Hindus, Sikhs, various kinds of religious groups who are also minorities that had what you could call a traditional viewpoint—and other groups that were maybe also minorities.

So it's not always the case that the program is set up to properly encourage dialogue, and I think we need to look at a way to really approach dialogue on key issues in Canada. It's essential that we do that.

[*Translation*]

The Vice-Chair (Mr. Pablo Rodriguez): You have one minute remaining, Ms. Boucher.

Mrs. Sylvie Boucher: Ms. Pilon, earlier, you said that you had won a lot of cases. I think that they are mainly related to education, are they not?

Ms. Ghislaine Pilon: The vast majority of cases involving parents going to court concerned schools. There was no French education. If we hadn't gone to court, if we hadn't taken the case all the way to the Supreme Court of Canada, there might not be very many francophones left. If our kids hadn't been educated in French, they wouldn't be able to speak it.

We have a bible, a Charter of Rights that we take for granted. No one enforces it. It's sad when you have to wait decades before going before the courts to avail yourself of rights that you already have. Without the Court Challenges Program, I can assure you that there wouldn't be many francophones outside Quebec. There wouldn't be many anglophones in Quebec either.

I find it extremely sad to be here yet again telling you why the Court Challenges Program has been so important to minorities and non-learners. People in wheelchairs couldn't access our buildings without this program. They went to court for that right.

The provinces don't even protect our rights. We have to fight all the time. I know parents who have fought for decades, and their children did not attend French schools. I find it extremely sad to be here yet again repeating the same things and trying to find solutions.

● (1025)

The Vice-Chair (Mr. Pablo Rodriguez): Thank you, Ms. Pilon. I must interrupt you. I apologize, but that is all the time we have.

Thank you, Ms. Boucher.

[*English*]

We'll now start the second round, with five minutes each this time.

[*Translation*]

Hon. Mauril Bélanger (Ottawa—Vanier, Lib.): Thank you, Mr. Chairman. I will try to get right to it.

[*English*]

I just want to comment on Mr. Benson's testimony, rapidly. I'm not asking a question here.

First of all, the concept of a constitutional forum is an interesting one, and personally, I wouldn't mind investigating that a bit. But when you're arguing that the court challenges program is one-sided and that in society both sides need to be heard, I couldn't agree more. But in the case that we have described, I believe there's a limit to the amount of money that the court challenges program will give on any case—maybe $75,000, and I'd have to verify that—and in every single case that has gone before the tribunals, there has been someone arguing the other side, governments, whether the Government of Canada, or governments of the provinces, and they have limitless amounts of money arguing contra what's being argued via the court challenges program. So to insinuate that currently it's all one-sided, I'd have a bit of a difficulty with that.

I want to go to Madame Kheiriddin. I listened carefully and I read your February article in the *National Post*, and I can only infer from that that you agree that the cut of the program was ideological in nature.

Mrs. Tasha Kheiriddin: I don't think the cut was ideological in nature. I think the program actually was ideological in nature from its inception—not the official languages part, in 1978, that was different; I wouldn't qualify that as ideological.

But on the cut to the whole program, the program had grown into one that was funding one side of the argument to the exclusion of the other, as Mr. Benson said. It's not just a question of one side having limitless resources—i.e., the government—and one side will now have some money to take a challenge. What it means is that the program determines what challenges are brought, and that is what changes the evolution of the law.

Hon. Mauril Bélanger: I have only five minutes, so please....

I'm reading into it—and if I'm reading too much into it, tell me quickly—that indeed there was an ideological component to the decision to cut the court challenges program last fall.

Mrs. Tasha Kheiriddin: No, I'm saying that it actually levels the playing field between groups. There has been 25 years of this; we don't need it any more.

Hon. Mauril Bélanger: When it was cut, the government presented this as a cut because it was inefficient and a waste.

Mrs. Tasha Kheiriddin: Well, there are examples of that, if you'll permit me.

The program was spending $1,421 per application on public awareness instead of actually on the program itself.

Hon. Mauril Bélanger: It's my time, excuse me.

There was a Supreme Court ruling where there was some interesting language about the nature of our Constitution, our Charter of Rights, and that it is a breathing, living document, if I recall the words, equating it to a tree that is growing. Do you agree with that?

Mrs. Tasha Kheiriddin: I agree that a constitution such as ours is a living tree, but that does not make it incumbent on a government to fund every single program under the sun. They can choose. Parliament is still sovereign in terms of the programs they fund to pursue certain goals.

Hon. Mauril Bélanger: Of course.

Do you agree with the reference to the Supreme Court on secession? In the couple of minutes I have left, I want to explore this reading-in concept that you bring up.

There were a number of unwritten principles established in the ruling of the Supreme Court on the reference on secession. Are you familiar with that?

Mrs. Tasha Kheiriddin: I am familiar with the reference, but not the fine detail of it.

Hon. Mauril Bélanger: Okay. It was based on that conclusion and the unwritten principles that the community I represent, Montfort Hospital, won its case, essentially. So I buy in very much to the fact that it's a breathing, living document. Reading in is part and parcel of a living, breathing constitution.

You referenced one matter in particular. You say in your notes or in that article that "Possibly the most controversial use of this"—what you call a "doctrine"—"was to read in sexual orientation as a prohibited ground of discrimination under Section 15". Do you disagree that sexual orientation should be read in, as you say? Do you think sexual orientation should be a ground for discrimination?

● (1030)

Mrs. Tasha Kheiriddin: I think that the frames of the charter do not put sexual orientation into the charter. I think that under the term "sex" it would have been possible to include sexual orientation without necessarily invoking the reading-in doctrine. Using the reading-in doctrine makes the legislature abdicate from its responsibility for passing laws that are clear in the first place or for amending them to reflect evolution of society.

Hon. Mauril Bélanger: The legislature does not abdicate; it has the capacity, through the notwithstanding clause, to overrule any judgment of the Supreme Court. It chose not to. This is not an abdication.

[*Translation*]

The Vice-Chair (Mr. Pablo Rodriguez): Mr. Bélanger, that is all the time we have right now.

Hon. Mauril Bélanger: Unfortunately!

The Vice-Chair (Mr. Pablo Rodriguez): Unfortunately.

We will come back to this side.

[*English*]

Mr. Chong, your turn.

[*Translation*]

Hon. Michael Chong (Wellington—Halton Hills, CPC): Thank you, Mr. Chairman.

My question is for Ms. Kheiriddin.

[*English*]

I want to make a few opening remarks before I ask my questions.

I think the first thing that we all have to keep in mind here is there's a bit of conflation of the debate about the court challenges program. Many people think it was in place to assist groups with access to the legal system; that's not the case. The whole idea of the program was, especially in its early inception in the 1970s, to clarify linguistic rights in an era when we had a lot of new pieces of legislation. We had the 1977 *Charte de la langue française* in Quebec; in the late 1960s we had the Official Languages Act.

With the advent of the charter we had the expansion of rights, especially minority rights. There were a lot of questions around clarification, around what constituted rights with respect to those two areas, so this program was established to clarify those rights. It wasn't established to give access to the judicial system for groups that couldn't afford it. That was not the purpose of the program. That access is provided through provincial legal aid programs.

What we're talking about here is a program that costs the government $2 million to $3 million a year. You may disagree with its cancellation or you may agree with its cancellation, but it was a $2-million- to $3-million-a-year program.

Legal Aid Ontario alone spends over $200 million a year on providing access to the justice system. Provincial legal aid programs are in excess of half a billion dollars a year. I think many people have conflated this debate by indicating that the court challenges program had the same effect and the same purpose as provincial legal aid—in other words, to provide access to the judicial system—but that's not the case; it was there to create a foundation of case law to clarify both linguistic and, subsequently, minority rights.

After three decades, one could make a reasonable argument that we do have that substantive base in case law now, and that it has substantially clarified our linguistic and minority rights. Case in point: if I'm an immigrant who's moved to Quebec, do my kids have the right to take their schooling in English? No. However, if I'm a Canadian-born citizen and I move to Quebec and I was schooled in another part of the country, do I have the right to have my kids go to school in Quebec in English? Yes. The court has clarified that. That's just one example of the clarification of rights. That's the first point I want to make.

The second point I want to make is about something that was stated in the 2003 summative evaluation of the court challenges program. It said that the main purpose of the program is to clarify "certain constitutional provisions relating to equality and language rights", and it adds that "a group or individual that would present legal arguments calling for a restrictive application of these rights would not receive CCP funding".

Maybe you could elaborate on that. I know you touched on it in your opening remarks, as did Mr. Benson. Maybe you could clarify your views on this.

Mrs. Tasha Kheiriddin: This was exactly the problem with the program, and Mr. Benson also discussed it. Groups such as Kids First, other family-oriented groups, REAL Women, and the Nisga'a elders in British Columbia were specifically denied funding. They were told they were not going to get the money. In the case of the Nisga'a elders, I interviewed the lawyer involved in that case, John Weston, and he said specifically that when it became clear that they were going to challenge the treaty, they were told their funding was going to be pulled.

When you see the list of litigants who did receive funding and the motives they had behind the cases—the types of legal opinions they were advancing—that's where the problem comes in. If you're funding only one type of legal opinion to the exclusion of the other, you're going to get cases brought forward continuously to advance one particular view.

If you look at the 24 equality rights judgments between 1984 and 1993, nine of them had a party or intervenor funded by the CCP. Most of these were successful. So it may not be a lot of money but it did have an impact. If that impact is only going one way, that's a problem.

What you said earlier about the original purpose of the program is really important to keep in mind. The reason we're here is partly because of what Graham Fraser pointed out about the 2005 amendments to the Official Languages Act, and the sort of positive duty that's imposed on the government. For example, we don't have an official religion act, an official mobility rights act, or an official equality act, with these types of positive obligations to fund or create programs to advance them.

The point I'm trying to make is that if you look at the language—

● (1035)

[*Translation*]

The Vice-Chair (Mr. Pablo Rodriguez): I have to interrupt you.

[*English*]

We have to move on.

[*Translation*]

Mr. Nadeau.

Mr. Richard Nadeau: Thank you, Mr. Chairman.

In fact, Mr. Fraser was quite clear that abolishing the program violated Part VII of the Official Languages Act as passed during the last Parliament. It is, nevertheless, important to stress that the government is not even complying with the law by abolishing this program.

Mr. Gauthier, you said earlier that the Mahé case, which goes back to 1990 and was launched by Franco-Albertans, had answered a number of questions and ensured that Franco-Saskatchewanians would not have to go to court, but that there were other things that were unsatisfactory or needing clarification. Could you tell us what you are referring to? Would a court challenges program help to clarify them?

Mr. Roger Gauthier: In 2003, the francophone school board started legal proceedings regarding the underfunding of Franco-Saskatchewanian schools. The province of Saskatchewan has just amended its funding formulas, and consequently this will significantly reduce the funding that the school board had received over the past two or three years.

With the Court Challenges Program, we had succeeded in getting the government to change its funding regulations applicable to the school board, but, following the funding reform, the province failed to take into consideration minority rights. Without realizing it, it took action that hurt our funding. In my opinion the school board should begin legal proceedings once again against the province.

Currently, we are serving approximately 20% of the students who are entitled to study in francophone schools. As we continue to seek out and bring students to our schools, we realize, for example, that schools built for 100 students now have to suddenly serve 125 or 150 students, and that the school is overcrowded. In our opinion, something needs to be done.

Often, policy and administration are not successful in resolving the problem, and legal proceedings are once again needed to find a solution. I am unable to provide you details on all the cases, but, with regard to these two particular cases involving linguistic and educational rights, we see this constantly.

Mr. Richard Nadeau: Mrs. Pilon, are there any other provinces, other regions, where a court challenges Program would be very helpful to minorities?

Ms. Ghislaine Pilon: Everywhere. For example, only one out of every two francophone students attends our schools, and that's because too few schools have been built. Where I live, in Mississauga, a secondary school already has 850 students and is overpopulated. We cannot build another school for an additional 800 students at the secondary school level. However, this would be very beneficial in South Mississauga.

But the students are now attending English schools, and we know full well what happens when teenagers study in English: they become anglophones; they lose their French. Yes, we need a program in order to legally challenge the fact that we cannot build schools when there are enough students to justify the need. We already have the numbers. We know that 5,000 students could be attending our schools but they are not.

Yes, it would be extremely practical and really important to continue these efforts. Parents do not have the means to invest $25,000, $30,000 or $40,000 in studies, much less the time needed. Before cases are heard by the courts, students are no longer at high school, they're in university.

● (1040)

The Vice-Chair (Mr. Pablo Rodriguez): Thank you, Ms. Pilon.

We will conclude the second round with Ms. Savoie. I suggest we follow this up, to be fair to everyone, with a final three-minute round, after which we will conclude our deliberations. Is that acceptable?

Ms. Denise Savoie: Okay.

The Vice-Chair (Mr. Pablo Rodriguez): Ms. Savoie.

Ms. Denise Savoie: Thank you. I would like to go back to Mr. Benson's comment. He said that we had to initiate a dialogue with our citizens so that we don't find ourselves in a situation where there are winners and losers. I think that everyone here would fully agree that the objective is not to create winners and losers, but to resolve problems that only this program can remedy. If we could resolve these problems by adding a constitutional forum or something else of this nature, we would all agree to implement it.

Mr. Gauthier and Ms. Pilon, recently I read that the illiteracy rate of francophone minorities was really very high, which is worrisome. Indeed, we are losing very important resources because we are not successful in reaching out to these minorities to help them be educated in their language. No doubt this illiteracy reflects past problems. I would like to hear your comments on the matter.

I would also like to know whether, in your opinion, the Court Challenges Program could help resolve this problem. I refer to the francophone minorities, but I know that other minorities are dealing with this problem.

Mr. Roger Gauthier: I think that you are right. Low literacy levels among francophones are directly related to the fact that they did not have access to their schools or control over them.

That being said, as I mentioned in my presentation, section 23 does have a restorative aspect to it. We must be very vigilant to ensure that governments, and sometimes with the assistance of the courts, can decide on and analyze the solutions that must be implemented in order to remedy the situation and repair the harm done in the past.

As far as I am concerned, the Court Challenges Program, in addition to clarifying situations, can help us advance jurisprudence in order to specify the types of restorative measures. We have received no apology from our governments because our rights have been violated for 50, 60 or 100 years.

We know that instruments have been provided for in Part VII of the Official Languages Act and that the government has the ability to take positive measures. We also have the right to go before the courts, but when we don't have the means to do this, this right is useless. I am not talking about legal aid, which will not necessarily give us a constitutional expert who will be able to help us defend our case effectively.

We need a program that will enable us to get really professional and effective assistance to defend our case. Having used the Court Challenges Program many times, I know it is effective. As Mr. Nadeau said, the evaluations have demonstrated this. There have been fundamental changes.

When I arrived in Saskatchewan 32 years ago, the situation was very different from the one we have now. But it is not perfect yet. In the space of 25 years, we cannot change the history of a group or minority community that has been kept quiet and crushed for a long time. We need time to get back on our feet and to get the resources that allow us to do this. I hope that politics will enable us to do this.

● (1045)

The Vice-Chair (Mr. Pablo Rodriguez): Mr. Gauthier, I will have to interrupt you. That concludes the second round.

[*English*]

We'll go to the third and last round of three minutes each.

[*Translation*]

I would ask you to adapt your questions or answers accordingly, please.

Mr. D'Amours.

Mr. Jean-Claude D'Amours (Madawaska—Restigouche, Lib.): Thank you, Mr. Chairman.

Thank you everyone. I will limit myself to three minutes. I will be quite fast and I will ask you questions requiring quick answers.

Ms. Kheiriddin, I have a few questions for you. Could you confirm to me that you were indeed appointed to the Judicial Advisory Committee for the Canadian Tax Court by the current Conservative government?

Mrs. Tasha Kheiriddin: Yes.

Mr. Jean-Claude D'Amours: Could you also confirm to me, Mrs. Kheiriddin, that you were appointed by the current Conservative government to the Old Port of Montreal Corporation board of directors?

Mrs. Tasha Kheiriddin: Yes.

Mr. Jean-Claude D'Amours: Mr. Benson, you stated on your website that the Centre for Cultural Renewal makes available... leading thinkers. I'm reading an excerpt.

[*English*]

> In the short time since it began, the Centre has accomplished a great deal. We have applied both our expertise and the experience of many leading thinkers to a variety of issues in Canadian society.

[*Translation*]

Mr. Benson, are these leading thinkers members of your American board of directors? As we can see, 50% of the Centre for Cultural Renewal board of directors are... Actually, there is a Canadian and an American board.

[*English*]

Mr. Iain Benson: I don't see the relevance of any of these questions, but I'll answer them.

We have a small U.S. board and a shrinking Canadian board.

Mr. Jean-Claude D'Amours: Excuse me, Mr. Benson, you say you have a small board of U.S. members, but your website shows that there are four members on the Canadian board, and four members on the American board. I feel that's more than a few; it is 50-50.

Mr. Iain Benson: That's not accurate. The Canadian board is more than four people. I was just on the phone with them recently, and there are way more than four people.

Mr. Jean-Claude D'Amours: It's coming from your website.

Mr. Iain Benson: It's out of date, I think.

Mr. Jean-Claude D'Amours: Mr. Benson, thank you. I just want to confirm something else with—

Mr. Iain Benson: But you asked me a question; may I be permitted the courtesy of a response?

[*Translation*]

Mr. Jean-Claude D'Amours: Mr. Chairman, I would like to continue.

I now have some questions for the Commission nationale des parents francophones, the Association des parents fransaskois and the Quebec Anglophone School Board Association.

Last Tuesday evening, I participated in what we call an adjournment debate at the House of Commons on the Court Challenges Program. On five occasions, the Parliamentary Secretary to the Minister of Justice referred to "criminal legal aid" in his four-minute response, and he concluded by saying:

> Canada's new government is committed to continue funding for criminal legal aid.

Don't you find it a little bit ironic that, on my side of the chamber, I was talking about the Court Challenges Program and that, on five occasions in the four-minute response, the parliamentary secretary told us that we should not be concerned and that the Conservative government was funding criminal legal aid?

The Vice-Chair (Mr. Pablo Rodriguez): That is all the time that we have.

Yes? No?

Mr. Marcus Tabachnick: Yes or no? Yes.

The Vice-Chair (Mr. Pablo Rodriguez): I'm sorry, but the three minutes are up.

Mr. Malo, you have three minutes.

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

Mrs. Kheiriddin, you heard the comments made by Mrs. Pilon, Mr. Gauthier, Mr. Birnbaum and Mr. Tabachnick. You do not appear to oppose the demands made by these people nor do you feel that they are not entitled to defend their views as a minority language group. Am I mistaken?

● (1050)

Mrs. Tasha Kheiriddin: No. I would like to make some clarifications.

In my presentation, I wanted to say that certain rights were different from others. Minority language rights go back to the Quebec Act of 1774. It would be different if we were to put these rights on a equal footing with the Charter Rights, which include, among other things, the right to equality, and to say that this protection should not be given. Moreover, the Official Languages Act includes a positive obligation, which differentiates it from other programs in various fields that are not necessarily defended by the government in the same way.

[*English*]

This is why I'm saying there's a difference between the two. I respect what they are saying. Remember, though, that whenever a program is cut, people who are affected by it will obviously be upset. This is natural. This is the dilemma governments face every day as to how to deal with this and balance interest.

What I'm saying here is that if there's a legal duty on the Government of Canada to preserve this particular program to abide by the law, then that is what this committee should be looking at. That is the narrow scope of the issue, not whether equality rights should be protected or other things. This is a committee for official languages, if I'm not mistaken. With all due respect, that's your mandate.

[*Translation*]

Mr. Luc Malo: So you have nothing against a support program which would enable these groups to express their opinions before the court?

Mrs. Tasha Kheiriddin: If, legally speaking, there has to be such a program in order for the government to comply with the law, I am not against the idea. As I said, it is incumbent upon this committee to determine whether that is the case and, if so, to make the necessary recommendation. It is not about saying whether or not we should keep the program, first of all because it is not necessary, and then because it is not necessarily a good thing and, finally, because this is not a matter that comes under your purview.

Mr. Luc Malo: Without saying so specifically, you are suggesting other solutions, solutions to respond to the requirement to protect and promote linguistic minorities. What are these solutions?

Mrs. Tasha Kheiriddin: It is the government and not me who will decide on this matter. The government is sovereign and determines which programs it will establish in order to exercise its rights fully. It is important to remember that this is up to the discretion of the government. Parliament is always sovereign. If the government deems that this program is neither good nor necessary, it can choose to eliminate it. However, it would be a different matter should the law oblige the government to keep some aspects of it, and that is the heart of the matter. This is what must be determined here.

The Vice-Chair (Mr. Pablo Rodriguez): Thank you, Ms. Kheiriddin and Mr. Malo. Three minutes goes by quickly.

Mr. Chong.

Hon. Michael Chong: Thank you, Mr. Chairman.

[*English*]

I want to make a commentary in the last three minutes to defend the government's reputation with respect to rights, the protection of rights, the protection of both linguistic minorities and minority rights, and other minority rights.

The opposition, especially members of the Liberal Party, have been a little hypocritical on this. We're talking about a program here that costs the government about $2 million to $3 million a year.

The vast majority of access to the legal system in this country is provided through provincial legal aid programs. We're talking on a scale of 200 times the access. Legal aid programs together in this country spend close to half a billion dollars a year on access to the justice system.

I would point out that those programs are funded partly through fiscal federalism, through the transfer in the mid-1990s, through the CHST transfer, and today through the Canada social transfer.

I would also point out that if you look at what the previous government did with respect to support for access to the legal system, they put cuts in place that caused the government of Ontario, for example—just in one province—to cut access to the legal system from 280,000 certificates a year in the early 1990s to approximately 80,000 certificates a year by the mid-1990s. So we're talking about over 150,000 certificates a year that were lost in the mid-1990s. There were 150,000 cases of justice denied, because people did not have access to the legal system.

We have to put this in a bit of perspective. The government has been very good about defending minority and linguistic rights. Yes, we took a decision to cancel this program, because we felt that its mission had been fulfilled. But I think it's a little rich for members of the Liberal Party to be braying about rights, when you look at what happened in years past.

I just wanted to put that on the record, Mr. Chair.

● (1055)

Mr. David Birnbaum: If I might, with all due respect, we understand that the witnesses are here to testify. We can enjoy your debate between you.

With all due respect, as the beneficiaries of this program—and we're speaking for individuals in our communities—we would say that the program needs to be reinstated. We're not looking at any relative records between parties.

This government went to the United Nations and defended the program, noting that it would be continued until March 2009. Four months later, it was cancelled. We still don't know why.

We're telling you that these are evolved rights that need continued protection. There is one class of rights for equality or minority language groups, and the necessary programs....

[*Translation*]

The Vice-Chair (Mr. Pablo Rodriguez): Thank you, Mr. Chong.

We will conclude with Ms. Savoie.

[*English*]

Ms. Denise Savoie: Merci.

Monsieur Gauthier spoke of article 23, which makes provisions to make good on the wrongs of the past, and I refer to high literacy levels.

During the last election, many francophones outside Quebec spoke to me and expressed a fear about a the possibility of the Conservatives being elected.

[*Translation*]

These francophones fear that their rights have been violated. Moreover, I had dared to believe that we had evolved sufficiently so that these things would never occur anymore, but I have realized that I was wrong when it was announced that this program had been abolished. I would agree that this program—and I am pleased that Mr. Gauthier mentioned it—could have or would have been useful in the future with respect to section 23, in that it could have a restorative effect and help francophones achieve further progress.

I would like to go quickly back to a question put by Mr. D'Amours. I too received the same answer from the minister of Justice, namely that criminal legal aid was not going to be eliminated. I do not see how that relates to the problem before us. Does one of you understand how the criminal legal aid program pertains to the abolition of this program?

I would like to begin with Mr. Birnbaum, please.

Mr. David Birnbaum: We find it hard to understand the logic behind such an observation.

Mr. Marcus Tabachnick: My answer remains the same.

Mrs. Tasha Kheiriddin: I suppose that Mr. Toews was alluding to criminal law because the freedom of individuals was at issue and this is a very significant matter.

Mr. Roger Gauthier: I don't understand you. Most of the cases have nothing to do with criminal law.

The Vice-Chair (Mr. Pablo Rodriguez): You have 30 seconds, Ms. Savoie.

Ms. Denise Savoie: It was said a little earlier that this program was designed to clarify language rights. Clearly, it was designed to protect Charter rights, but that will be of little help if we do not implement programs to protect these rights.

The Vice-Chair (Mr. Pablo Rodriguez): Thank you very much.

I have been told that we have to vacate the room because the Standing Committee on Finance is meeting here.

I would like to thank all committee members.

[*English*]

Thank you very much to all of you.

Mr. Benson, from Toulouse, thank you very much for participating with us.

[*Translation*]

We will meet again soon.

The meeting is adjourned.

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