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Mr. Steven Blaney

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● (0900)

[*Translation*]

The Chair (Mr. Steven Blaney (Lévis—Bellechasse, CPC)): Good morning everyone.

[*English*]

Welcome to the Standing Committee on Official Languages. We are at meeting 60 this morning.

[*Translation*]

This morning, we have the pleasure of welcoming Professor Michel Doucet, an expert in language rights with the Law Faculty of the University of Moncton. He will be followed by Ms. Louise Aucoin, President of the Fédération des associations de juristes d'expression française de Common Law Inc. Lastly, Ms. Tamra Thomson, Director of Legislation and Law Reform with the Canadian Bar Association, will give a brief presentation. She is accompanied by Ms. Melina Buckley.

Without further ado, we will begin with witness presentations. Professor Doucet, you have the floor.

Mr. Michel Doucet (Professor , Expert in language rights, Law Faculty, University of Moncton):

Thank you, Mr. Chairman.

I wish to begin by thanking members of this committee for having invited me to talk to you about the Court Challenges Program. I have prepared a text that I will present, after which I am open to your questions.

Since its creation in 1978, the Court Challenges Program has served to clarify the significant number of legal matters relating to language rights in Canada. Despite the notorious progress made on the legal front, there remains today many outstanding issues over how language rights are applied, and there continue to be several problems relating to the effective application of these rights.

Constitutional language rights are found under sections 16 to 23 of the Canadian Charter of Rights and Freedoms, and under section 133 of the Constitutional Act, 1867, and section 23 of the Manitoba Act, 1870. Before the Charter came into force, there were only a few Supreme Court decisions dealing with the interpretation of language rights. This case law, while having established important basic principles, did not greatly contribute to the development of linguistic communities living in a minority setting. It was thus impossible to derive any real theory on language rights in Canada.

It was only with the advent of the Charter and the establishment of the CCP that stakeholders were able to bring matters before the Supreme Court which then led the bench to state major principles which led to the emergence of what we today qualify as a theory of language rights. This new approach led by the highest tribunal of the country would be clearly stipulated in the *Crown vs Beaulac* case in which the Court ruled in favour of an interpretation based on the purpose of language rights. Allow me to quote an excerpt from the ruling:

> Language rights must in all cases be interpreted purposefully, in a manner consistent with the preservation and development of official language communities in Canada.

Francophone and Acadian communities living in a minority setting have resorted to the legal system frequently since 1981, particularly in the area of school rights, in an effort to exercise the rights they are entitled to under the Charter. Decisions handed down by the courts in all Canadian provinces and at all levels have clarified the ambit of language rights. This unprecedented development would have been unfathomable without financial assistance provided through the Court Challenges Program. The Court Challenges Program lent legitimacy to the legal action taken to recognize, affirm, confirm and apply language rights.

Without the support of the CCP, francophone communities living in a minority setting would not have had the means to have their rights recognized before the courts. This fact is made even clearer as the adverse party represented often by governments at both the federal and provincial levels has always had practically endless financial and human resources.

Overall, the scope of the CCP goes beyond merely funding litigation. The program serves as an engine of development in official language minority communities, which in some regions, are remote or even forgotten. The CCP underscores the notion of collective well-being through the preservation and development of official languages in Canada. Lastly, the program serves to foster democratic development by reminding authorities that democracy is not the exclusive domain of the majority; in a country where the rule of law and constitutional law reign supreme, access to justice ensures that the minority has the means to make sure their rights are respected by the majority.

It is highly possible that minority language education rights, recognized in section 23 of the Charter, would never have become a reality in the absence of court rulings. These court rulings would have never been handed down without the financial support of the Court Challenges Program, which allowed ordinary Canadians to launch legal action to ensure that the supreme law of the land, the Constitution of Canada, was respected, in often very difficult conditions. Today, there are minority schools, and minority school boards in each one of the provinces and territories across the country. We are greatly indebted to the CCP.

The CCP facilitates greater access to the legal system for groups and individuals whose language rights have not been recognized or have been violated. The program makes a significant contribution to the clarification of these rights. It plays an important role by furthering the understanding of constitutional provisions that relate to language rights. It has allowed for official language groups to challenge certain policies and practices that have violated their rights. The program has played a leading role in most court challenges relating to these rights since 1978.

● (0905)

To this day, there remains several cases that are outstanding and that in future will require court intervention. These cases are identified in the preliminary report on complaints lodged following the abolition of this program, prepared by the Commissioner of Official Languages.

The decision to eliminate the CCP was made even more surprising since in June 2002, the Department of Canadian Heritage had retained the services of a firm of consultants, Prairie Research Associates, to assist the department in carrying out a summary assessment of the CCP. Among its conclusions, the assessment held that the CCP had always met the needs as originally set out since its establishment, and that there was justification to continue with the program. In fact, this assessment led to the renewal of the CCP for the period of 2003 to 2009.

The report also concludes, and I quote:

> The evaluation indicates that the CCP meets the needs that led to the Program's creation and its activities are consistent with the Department of Canadian Heritage strategic objectives, particularly those relating to citizens' engagement and promotion of official languages.

What has happened since this study and the recent decision to eliminate the Court Challenges Program? Was the affirmation that the CCP was no longer part and parcel of the aspirations of Canadians, and that today the law of the majority should prevail based on any independent study? To this day, we are still awaiting an explanation. An explanation may be forthcoming once the government provides a reply to the Official Languages Commissioner's preliminary report to be released on June 21, possibly tabled on June 22. However, I doubt that a future explanation will be more convincing than the ones provided in the past.

Before concluding and answering your questions, allow me to remind members of this committee of the commitment made by Parliament when the Official Languages Act was adopted.

This piece of legislation is a cornerstone of the federal policy on bilingualism. It is a quasi-constitutional act and is a flexible and organic instrument that is forward-looking, and serves to translate hopes into a linguistic reality. When the OLA was passed in 1988, legislators sought compliance with language obligations set out in the Charter. Lawmakers intended to promote equality of official languages and to make linguistic rights binding.

This act is well entrenched in section 16(1) of the Charter, which stipulates that French and English are the official languages of Canada, that they are equal in status and use in parliamentary and government institutions, and that Parliament must foster equality of status and use of French and English.

Through this act, Parliament is working towards promoting equality of the status and use of French, pursuant to the Charter. Given this context, this is why Part VII of the act is so important.

Under section 41 of the act, the federal government has the obligation to foster the development of francophone minority groups and anglophone minority groups in Canada, to support their development, to promote full recognition of the use of French and English in Canadian society. To meet these goals, federal institutions must take positive measures to translate this commitment into concrete action. Sections 42 and 43 of Part VII confer upon the Minister of Canadian Heritage the responsibility to initiate and encourage coordination of this commitment within federal institutions, as stipulated in section 41 of the act.

Part VII is to this day the most original element of the act adopted in 1988. Two provisions in the preamble of the act are dedicated to Part VII. Section 2 of the act, which defines the intent of the law, states that Part VII is one of the three substantive sections of the legislation.

Part VII is an extension of the rights recognized in the Charter, which stipulates that French and English are the official languages of Canada, that they are equal in status and use within parliamentary institutions. Its adoption indeed gives effect to one of the most important principles, that of striving toward the advancement and the equality of status and use of English and French in Canadian society.

● (0910)

Given what lawmakers have written into the Charter and to legislation, who in this room can confidently admit without hesitation that the decision to stop funding the CCP serves to “enhance the vitality and foster the development of official language communities” and that this decision enhances the “advancement of equality” of official languages? Who could possibly affirm that this decision is consistent with Part VII of the act, an act that you adopted unanimously in 2005?

Thank you, Mr. Chairman.

The Chair: Thank you, Mr. Doucet.

We now hand the floor over to Mrs. Aucoin.

Mrs. Louise Aucoin (President, Fédération des associations de juristes d'expression française de Common Law inc): Good morning, Mr. Chairman and members of the committee.

Thank you for having invited me to talk to your committee about the Court Challenges Program, the CCP. The Fédération des associations de juristes d'expression française de Common Law inc. brings together seven associations of French-speaking legal scholars that collectively represent 1,200 jurists. The FAJEF works to promote and defend the language rights of francophone minorities in Canada's legal sector. The federation is also a member of the FCFA, the Fédération des communautés francophones et acadienne du Canada.

Our association would first like to point out that the CCP played a pivotal and significant role in fostering the development of francophone minorities, and full recognition and promotion of the use of French in Canadian society. In fact, legal bilingualism has made great strides because of court challenges that were supported through the CCP, such as in the Beaulac and Donnie Doucet cases.

By eliminating funding to the CCP, there is risk of stagnation, at best, or regression in language rights, at worse. This does not bode very well at all, in terms of compliance with Part VII of the Official Languages Act of Canada. as my colleague, Mr. Doucet, mentioned.

In our case, in particular, we are concerned with the entire issue of access to justice in French. The association is greatly concerned over the impact that funding elimination will have on francophone and Acadian communities' ability to defend their constitutional rights. We hear about francophone groups or individuals who do not have the resources to defend their language rights before the courts. Their situation is not complicated: no funding means no access, no defence of language rights, and to a great extent, no advancement of language rights.

In fact, the FAJEF has already fallen victim to this situation. At present, we are unable to intervene in cases to the extent that we were able to in past cases brought before the Supreme Court of Canada.

It should be mentioned that it is because of the CCP that francophone and Acadian communities now have services and institutions such as schools located in their communities. Eliminating the CCP is also detrimental to Canadian citizenship, and in particular for francophone minorities in Canada. Why? Because a francophone who chooses to live in a province where he will be in the minority may be forced to pay out of pocket to have his l constitutional language rights respected. As you are fully aware, this is a very expensive undertaking, one that can cost hundreds of thousands of dollars. If a minority francophone has language rights, but has no assurances that they will be respected, what does this mean?

By abolishing funding to the CCP, the message being sent to francophone minorities is the following: it's your language, it's your problem, protecting language rights of francophones is not an issue of public interest and does not deserve to be financially supported by the federal government. We believe this is very serious. If eliminating funding to the CCP is based on the argument that some groups or individuals do not receive funding, our federation does not see any problem in broadening the mandate of the CCP, with the caveat that the poor and linguistic minorities must not be excluded. In fact, we believe that debating ideas before the courts is healthy. It is not by eliminating access to justice for the less fortunate or for linguistic minorities that a debate of this nature will take place.

● (0915)

If eliminating funding for the CCP is based on the principle that the federal government should not help fund challenges launched against it, it follows that the tax system should be reformed. For example, a media outlet can currently claim business expenses to reduce taxes paid should it be involved in a constitutional challenge against the federal government over freedom of expression, section 2 of the Charter. Given the nature and evolution of law, the FAJEF firmly believes that a program similar to the Court Challenges Program, or at least one equivalent to it, must be an important component of our system.

That concludes my remarks. I'll be happy to answer your questions now.

The Chair: Thank you, Mrs. Aucoin.

We will continue with the Canadian Bar Association. Mr. Clerk, a document has been distributed. I would point out to the witnesses that the document you have submitted will be circulated to parliamentarians.

Ms. Tamra Thomson (Director, Legislation and Law Reform, Canadian Bar Association): Thank you, Mr. Chairman, honourable members.

[*English*]

The Canadian Bar Association is pleased to have again an opportunity to speak in favour of the court challenges program.

The CBA is a national organization that represents over 37,000 jurists across Canada. We bring a rule of law perspective to our objectives of improving the law and improving the administration of justice. We believe that the elimination of the court challenges program will have a serious impact on the rule of law and the administration of justice in Canada.

You have before you two letters that we have written in the past few months, one to the Prime Minister and responsible ministers for the program, and another to your colleagues on the Canadian heritage committee. These outline our concerns about the program, and I will ask Ms. Buckley to elaborate on those.

● (0920)

Ms. Melina Buckley (Representative, Canadian Bar Association): Thank you very much.

I would like to echo Ms. Thomson's thank you for the invitation today.

The Canadian Bar Association is eager to add its voice to the growing and unrelenting chorus of dismay about the cancellation of funding for the court challenges program. We feel very strongly that we need to be loud, because the effect of this elimination is to silence vulnerable groups in the one forum where they actually have an equal voice, and that is in the courts. We're very pleased to have this opportunity today to add our voice to this concern.

I am going to speak a bit more generally than my colleagues have about the role of the program, because that's the Canadian Bar Association's position on it. Obviously we do not represent official language communities, but we are very much in support of the work that has been done by them through the program.

I'd like to talk a bit about why we need the court challenges program, what role it plays in Canada, and why all Canadians should be concerned about the elimination of funding to it.

As Ms. Thomson said, the CBA's primary concern is with access to justice. Our courts have been very clear in connecting access to justice with access to the courts and the rule of law in Canadian constitutional jurisprudence. In order for law to be truly effective and constitutional rights to be truly meaningful within Canada, people, individuals, and groups need to have access to the courts to determine the extent and meaning of their rights.

The Constitution establishes important rights, including the ones that were covered by the court challenges program, the rights of official language minority groups to education and government services in the language of their choice or their primary language, as well as the right of everyone in Canada to equality before and under the law. As I said, these rights are meaningless unless there's an avenue to enforcement.

Canadian courts have long recognized that it would be “practically perverse”—and that's actually the language from one of the Supreme Court decisions—to expect governments to simultaneously enforce and challenge their own legislation or to simultaneously carry out programs and policies and also to be challenging them in the courts. As a result, our justice system has recognized and accommodated public interest litigation to fill this void, realizing it's not a role that the government can play. The court challenges program has played an incredibly important role in facilitating this type of litigation in its mandated areas.

As a quick aside on a related point, the Canadian Bar Association finds no comfort in governments promising to act constitutionally. Of course all governments believe they are acting in conformity with the Constitution, and the primary responsibility is on governments to do so. It is very rare in Canada that there has actually been a situation of bad faith where the government has knowingly or deliberately violated the Constitution.

It's a question of knowing the extent of constitutional rights. It's really only through a case that we can weigh, test, and balance these rights. There is really no alternative to doing that through litigation. It's by applying these evolving constitutional norms that evolve over time to specific fact situations that we in fact learn what these rights mean. I think the experience in the language rights area has been very clear in the value of that.

Without a proactive means through the court challenges program to assist individuals and groups, these constitutional rights and the control over how they're applied and interpreted would be available only to people with a lot of money, businesses, and so on. That is simply not acceptable within Canada today.

I'd also like to underscore that the amounts funded by the court challenges program are a fraction of what it actually costs to bring a constitutional test case forward. Individuals and groups raise money to help fund these cases. Lawyers often carry out the work at a reduced rate, and in some cases quite a bit of the service is for free. Even though the court challenges program only contributes a percentage of the cost of an actual case, it's an incredibly important amount. Without that, without knowing that there's at least that potential funding available for a case, most of these cases would not get off the ground.

The Government of Canada has repeatedly made representations to various United Nations committees saying that it's proud to fund the court challenges program because it helps it to fulfill its responsibilities under international human rights legislation and meet its responsibility for equal access to the courts and effective remedies under the Constitution and international human rights treaties.

● (0925)

It's quite interesting that outside of Canada this is something that the government has been very proud to talk about. In fact, the United Nations committees have really commended Canada for this important initiative.

The court challenges program, as my colleagues have already said, has been really spectacularly successful, especially in the language rights area, but there's still quite a bit more work to do. I think often in human rights and language rights parlance we talk about generations of rights. So even though we've achieved a certain amount, especially in the language rights area, there are new areas that have yet to be touched. Some of the provisions in the charter, for example, have barely been considered by the courts to date. Other ones, for example the education and the educational programs, although those areas have been developed a little bit more than some of the government services, there's still a lot of work to do, especially on the concrete remedial side and the extent of government obligations.

What is the impact of this elimination of funding to the court challenges program? I think we can think about it both in the short term and in the long term. In the short term, I think that lawyers will continue to do what they can, groups will continue to try to raise money and get cases off the ground, but I really want to emphasize that there's been a profound shift in the balance of power between groups like official language minority groups or communities and the government. The government has always had the upper hand in terms of access to resources, and now they know that the groups they are fighting against have had one of their major sources of funding taken away from them. This has been a profound shift in the balance of power.

In the longer term, I think the situation is even more bleak, because I think that individuals and groups will stop using litigation. That will be one important avenue that will be blocked for them. At the same time, we have to understand that because of their minority status or the vulnerability of groups that have so far been served by the court challenges program, they have no real effective access to the political process. So, really, many of their avenues are being closed off. I think this is a real blow to Canadian constitutional democracy and is an ugly scenario for a country like Canada that prides itself on its human rights record.

The decision to cut the court challenges program has impoverished the quality of governance in Canada, and I think all Canadians are impoverished by the short-term thinking that led to the abrupt elimination of funding to the program. It's the members of disadvantaged groups and minority groups that are hit the hardest.

In closing, the CBA would like to highlight the indivisibility of the court challenges program. Rights, like people, cannot be compartmentalized. There's an important overlap and supportive role that is played by section 15 of the charter and constitutional language rights in jurisprudence. It's very important that these are developing and evolving side by side.

This is not the time to import the type of "us versus them" mentality that we see so much in high-conflict societies around the world. Canadians aspire to build a country in which equality is experienced by all, not one in which some groups gain at the expense of others. It's the Canadian way, the Canadian Bar Association would suggest, to bring others along as we advance, to rejoice over the collective benefits and solidarity that are enhanced when constitutional rights are protected and promoted.

Those are my comments this morning, and I would be very pleased to answer any questions.

The Chair: Thank you, Madam Buckley.

We will now proceed with the first round. It's a seven-minute round per committee member.

We'll start right away with Mr. Brian Murphy.

[*Translation*]

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): Thank you, Mr. Chairman. Firstly, I wish to thank witnesses for their testimony.

[*English*]

Starting off with the Canadian Bar Association, I couldn't be more in agreement with your presentation, so much so that I'm not going to ask you any questions about it. I will pass on to CBA New Brunswick president Maître René Basque your fine job here. Thank you for the expressions such as "generations of rights" and "rights cannot be compartmentalized".

What we're going to face here, if you want to take it back to the CBA, are some red herring arguments that really began at your conference in St. John's, Newfoundland, last summer, when Mr. Toews, then justice minister, made the argument that governments should not fund cases they don't know anything about as adversaries.

What we've learned in our little research here, through this committee, is that the vast majority of cases are not against the federal government; they're against municipal governments—I have some experience in that regard—provincial governments, and other boards, associations. So that's a red herring. You'll hear, probably today as well, that we should be concerned with other minorities, other minority language needs, and that's a fair comment. But this is the official languages issue, and this is what we're here to discuss.

● (0930)

[*Translation*]

Thank you for your comments. I have two questions for Mr. Doucet and for Mrs. Aucoin.

It is important to understand that entrenching linguistic rights in section 24 of the Charter does not spell the end of case law in this area. On the other hand, it has been said that the issue of language rights has been resolved. Is this the case?

Secondly, one argument used against the Court Challenges Program is that people living in Dieppe, New Brunswick, for instance, which now happens to be the wealthiest community in the province, have the means to defend their rights. They are able to pay lawyers to defend their rights. Do you agree with this argument, Mr. Doucet?

Mrs. Aucoin, how does abolishing the Court Challenges Program affect Acadian society?

Mr. Michel Doucet: Thank you, Mr. Murphy. The comments singled out my hometown, Dieppe, and I understand why.

With regard to whether these rights are now clear, I agree with what Ms. Buckley said. There are generations of rights. For example, thanks to the many Supreme Court decisions on education in the minority language that have been handed down, some of the section 23 rights are now settled. However, there are still some outstanding issues concerning section 23. For example, few, if any, Canadian provinces have settled the issue of preschool education in minority language communities. Young French-speaking children do not necessarily enjoy the best conditions, that is to say, they are not always able to develop, or indeed rediscover, their mother tongue at preschool. These are questions that must be addressed. There is a lot of talk about school management and the power balance between the minister and the school boards. These questions remain outstanding.

Very few issues relating to sections 16, 17, 18, 19 and 20 of the Charter have been brought before the courts. I understand what Mr. Murphy was saying. When he was the mayor of Moncton, I was the lawyer who took the municipality to court. The case resulted in language obligations being introduced for New Brunswick municipalities. Mr. Murphy and I also discussed these issues at that time. This important decision allowed us to clarify rights and publicly debate a new generation of rights. The Constitution is an ever-developing, living organism and, in order to help it evolve, it is important to have access to the courts.

You asked whether francophone communities had the means to take matters to court. In some instances, a community fund-raiser might be the solution; however, you have to bear in mind that these are matters of public interest. An English-speaking person living in Moncton does not have to wonder whether the municipality will provide him with an English version of the municipal by-laws. An English-speaking person in Saint John does not have to fight to have access to an English-language school. An English-speaking person in Halifax does not have to plead his case to have access to health care services in his language. Francophones, however, often have to go to court because they are refused these rights. Faced with this kind of a reality, why should ordinary citizens be expected to foot the exorbitant bill?

Mrs. Aucoin said that it can cost $100,000 to take a case to the Supreme Court. I was able to take a number of cases to the Supreme Court thanks to the Court Challenges Program. Had the program not existed, I do not know how we would have managed. And I am not referring to lawyers' fees here: the cost of photocopies for a case that I will be defending before the Supreme Court in the fall is over $10,000. I do not make photocopies for the fun of it. It is the Supreme Court that requires a certain number of photocopies. The files are huge.

We are challenging the government in these cases. It knows that our resources are limited, while its own are not. Its costs are covered by the Canadian taxpayer. In many cases, preliminary questions are raised, meaning that our resources are eaten up before we even get to the substantive issues. The government, as the defendant, however, has all the resources it needs. The Supreme Court asked us to retain the services of an Ottawa agent. This alone costs between $4,000 and $5,000. Members of the public who want to have their right to education in their language and in their municipality upheld are being asked to pay $150,000 in legal costs. If they have to, they will find the means to do so. However, given that the government has already recognized these rights, providing support to have them upheld before the courts is hardly asking too much.

● (0935)

The Chair: Thank you, Mr. Doucet. That brings us to the end of the first round.

Next we have Mr. Nadeau, from the Bloc Québécois.

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

Good morning to all of you. We have heard testimony about this program from other witnesses on other occasions. The vast majority of them supported the program, although a few opposed it. There is something brewing on the political front and I need your expertise. I have my own idea as to what is going on, but I would like to hear your views.

The current federal government, the Conservative government, may consider reinstating the official languages component of the Court Challenges Program, but does not want to do the same to help others who use the program, such as persons with a disability, visible minorities, and so forth.

Ms. Buckley, Mrs. Aucoin, Mr. Doucet and Ms. Thomson, I would like you to talk to us about the dangers of only reinstating one component of the program and the need, if you see it as such, to reinstate, and perhaps even strengthen, the entire program. Perhaps we could begin with Mrs. Aucoin.

Mrs. Louise Aucoin: Certainly.

While our francophone minority communities are obviously made up of francophones, some of the francophones are also women and some are living with a disability. We are a community. In no way do we support having a program that only addresses language rights. The whole community needs the Court Challenges Program. There is a very good chance that a francophone woman with a disability living in Tracadie, or elsewhere, would have more need for the Court Challenges Program than would others. We believe that it is very important to have a strengthened Court Challenges Program, even if it goes by another name.

[*English*]

Ms. Melina Buckley: I completely agree with Madame Aucoin that the program is indivisible. I think one of the strengths, and especially since the program was re-established in 1993-94, was the way in which the language rights side and the equality rights side have worked together, and that the jurisprudence has really developed in a much stronger way because the program has brought the various lawyers and groups together to discuss strategies and so on.

I was trying to say it's not the time to divide and talk about putting one group of rights ahead of the other. We're all Canadians and we all benefit from the public interest that's served through the court challenges program as a whole. I would really urge you to say very strongly that the program should be reinstated fully in the way it was in September of 2006.

[*Translation*]

Mr. Michel Doucet: I certainly agree with Ms. Buckley's comment that we should not compartmentalize rights. That is very important in the current context. We cannot throw a bone to minority groups just to have them fight each other for it; we cannot say that one group will get special treatment at the expense of another.

The Court Challenges Program is an essential tool for Canadian democracy. Indeed, democracy entails more than simply expressing the view of the majority: it must also allow minorities to uphold their rights, particularly in the courts. In the case of the Court Challenges Program, I am one of those who believes that the program is a complete package and that rights should not be compartmentalized. I agree with the CBA on this matter.

● (0940)

Mr. Richard Nadeau: Very well.

Do I have any time left, Mr. Chairman?

The Chair: You have about three minutes, Mr. Nadeau.

Mr. Richard Nadeau: Thank you.

The Prime Minister argues that, as his government is going to respect the Constitution, the Court Challenges Program will no longer be necessary.

I would like to know how the federal government, virtuous as it may well be, can guarantee that it will respect the Constitution according to today's rules in the future. Do you have any examples of provinces, municipalities, school boards or other bodies that do not respect the Constitution? Does it make sense to say that the program is not needed given the society in which we live?

Mr. Michel Doucet: I do not know of any government for whom ensuring its legislation is constitutionally compliant is not a primary concern, unless it is acting in bad faith, as Ms. Buckley said earlier.

However, history has shown us that even well-meaning governments that want to have constitutionally compliant legislation, sometimes, and indeed very often, are guilty of infringing the Constitution. For example, I believe that the decision regarding the Court Challenges Program violates the language protection provided by the Charter. This is a matter that needs to be clarified by the courts. That is just one example of a contradiction.

[*English*]

Ms. Melina Buckley: I would add, of course, that on the language rights side many of the cases, as the honourable deputy already said, are actually against other levels of government. There's nothing the federal government can do to ensure that the provinces or municipalities respect the Constitution, other than funding the court challenges program, which is really its way of facilitating that and ensuring that groups and individuals have a way to ensure that those other levels of government are in fact acting constitutionally.

[*Translation*]

Mrs. Louise Aucoin: Education and health are two very important issues for Canadians. They are both matters of provincial jurisdiction. The Supreme Court of Canada has heard a number of cases concerning health care, such as the Montfort Hospital case. It is thanks to the Court Challenges Program that we have Acadian schools in Nova Scotia and French-language schools in Alberta and British Columbia. These are matters that concern the everyday lives of people who belong to Canada's francophone minority communities, and it is thanks to the Court Challenges Program that these advances have been made. Indeed, without the Court Challenges Program, many communities would still not have a French-language school. We would also have lost the Montfort Hospital. Even when governments intend to comply with the Constitution, it is important to have such a program available to clarify our rights.

The Chair: Thank you, Mrs. Aucoin.

Next we have Mr. Godin.

Mr. Yvon Godin (Acadie—Bathurst, NDP): Thank you, Mr. Chairman.

Firstly, I would like to welcome you to the committee.

First, the Court Challenges Program was abolished; now there is talk of reinstating a watered-down version. Official languages cases would be allowed, while others would be sent elsewhere. I was not here when our last witness, Ms. Kheiriddin, who is a law professor at McGill University, appeared before the committee. According to today's *Le Droit*, however, she argued the following when she appeared before the committee, and I quote:

> If you want to convince the government to protect linguistic minorities, you need simply tell it that it has to be the law.

We have to hope, therefore, that the government acts in good faith. However, the problem is that the government simply does not obey the law. We have a great act and a great Constitution, yet infringement occurs on a daily basis. And it is simply tough luck for those who cannot afford to go to court over these failures to uphold the law. What the government is saying is that it will carry on as usual, but it will no longer fund court challenges, because it is going to comply with Canada's laws. I would submit to you that if the law had always been respected, we would never have had to go to court and we would never have needed the Supreme Court either.

Allow me to continue reading the comments that were quoted in the *Le Droit* newspaper:

> If (subsection) 41(2) of the Official Languages Act requires, as a positive measure, the government to establish a program like the Court Challenges Program in Canada, there's your answer. ...That is not to say that the program as a whole has to be restored.

It was almost as if a messiah had come from Montreal to deliver a message to us! Things are starting to look up for the government. Somebody has found a solution to our problems. Let's divide people into groups. For example, members of the Standing Committee on Official Languages should only ever talk about official languages.

What did those who oppose the Court Challenges Program tell us? They told us that the program wasn't fair because it did not provide funding to all groups. Let us get the facts straight. Some groups, for instance, wanted to challenge the same-sex marriage legislation. Indeed, that was perhaps Mr. Harper's main problem. Some witnesses told us that certain minority groups did go to court, but did not receive any funding to support their case. That was the argument that was used.

To my mind, they did get funding insofar as the government used taxpayers' money to defend its case against these groups. Whenever a minority group feels that its rights are not being respected, the government uses taxpayers' money to defend its case. It is not a question of tax cuts, this is how taxpayers' money is really being used.

● (0945)

Mrs. Louise Aucoin: Well said!

Mr. Yvon Godin: I have a very important question for you, as we can all see what the government is playing at: it is trying to divide and conquer. Its game plan is obvious. It has become even clearer this week: we have heard from witnesses who claim to have found a solution. We heard the arguments put forward by the woman from McGill University. She tried to tell us what arguments we should use. She told us to stick to official languages and forget about other matters.

I have a question and I would like to get an answer from all of the witnesses. Do you want us to find a solution only for official languages cases, or do you want us to take all of the program components into consideration? Human rights are not divisible, nor is the Constitution. We have to decide, and it is all or nothing.

Mr. Doucet.

Mr. Michel Doucet: I will begin by saying that it would certainly be a straightforward solution. It would be very simple to say that the government should reinstate the Court Challenges Program uniquely for language rights. Maybe it was a silver bullet that was discovered yesterday, but we have to bear in mind that the decision to abolish the Court Challenges Program infringes both the Official Languages Act, as the Commissioner said, and the Charter. Perhaps one day the courts will also hand down a decision to this effect. While it may well be a silver bullet, I believe it to be neither the only solution nor the one we should choose. Once again, rights should not be compartmentalized.

I would also like to come back to the 2002 review of the Court Challenges Program that was carried out by an independent group. I am sure that all the members of this committee have read the evaluation that was done by an independent group for the Department of Canadian Heritage. It sang the praises of the program. I think that shows that the program reflects the ideals of Canadian citizenship and the aims of the Canadian Charter of Rights and Freedoms. It also serves to show that the program in its entirety should be reinstated.

[*English*]

Ms. Melina Buckley: I support Maître Doucet's comments completely. I would add, though, that it's perhaps more clear in law because of the quasi-constitutional legislation and because the constitutional language rights are more developed than the equality rights side. The positive obligation on the part of the federal government is very clear in that area, and we've heard that said already.

There's probably equally a strong argument under section 15 of the charter that there is a positive obligation on the federal government as well, but because that jurisprudence is less advanced it's not as clear. It would take another case to clarify that.

So I think that there are strong constitutional reasons and a moral obligation on the federal government to re-establish the program as a whole. Certainly the Canadian Bar Association is firmly opposed to reinstating only part of the program. It's the wrong thing to do.

● (0950)

[*Translation*]

Mrs. Louise Aucoin: The FAJEF believes that the Court Challenges Program should be strengthened. I believe that we should have more than what we have had up to now.

Mr. Yvon Godin: To strengthen is to have more, not less!

Mrs. Louise Aucoin: It is more, yes. I believe that we should have a program that... It shouldn't even be called a program. It should not be called a program, it should be an independent initiative, so that when a new government takes office, cannot be cancelled. We'd like to see a different structure that would become permanent. Perhaps we could have something similar to a foundation, that would become an entirely independent structure, and not just a program.

The Chair: Very well. Thank you, Mrs. Aucoin.

You can continue during the next round, Mr. Godin.

Go ahead, Mrs. Boucher.

Mrs. Sylvie Boucher (Beauport—Limoilou, CPC): Good morning everyone, thank you for meeting with us.

I am smiling this morning because of my good friend across the way. What luck! I'm talking about you, Mr. Godin.

Thank you for being here, it is very important for us. My question is for Mrs. Aucoin. When we met with people, both during our cross-Canada tour and here in committee, certain representatives of the CCP mentioned that it was created to fund legal action that would advance the equality rights and language rights guaranteed in the Constitution and in the Charter. In the documents provided, the following is noted, and I quote:

> A case is only typical to the extent that it addresses or raises an issue that has not yet been brought before the courts; the case must help official language minority communities in Canada protect their language rights.

We also learned that through the CCP, it is impossible to fund challenges to existing legislation, provincial or territorial policies or practices,or cases that were already being funded by the CCP.

I have a question for you Mrs. Aucoin. Have you been directly or indirectly involved in any cases funded by the CCP? If so, how many cases were you involved in exactly? And can you explain to me in what capacity you were involved, whether as a lawyer, Crown attorney, or advisor?

Mrs. Louise Aucoin: Or as a mother?

Mrs. Sylvie Boucher: Or as a mother.

Mrs. Louise Aucoin: There is an aspect of the Court Challenges Program that we sometimes overlook. When we first went to live in Moncton, there was no francophone secondary school. Mr. Murphy was the mayor at that time. I was a member of a parents group. There were seven anglophone secondary schools in the Greater Moncton Region and one francophone school in Dieppe. That meant that our children were on the road before seven in the morning and did not get home until 4:30 or 5:00 p.m. I am only talking about a normal school day, one that did not include sport or other extracurricular activities.

As a parent, I was a member of a group lobbying for a French-language secondary school in Moncton. Our parents group was made up of credit union directors and other people of high-standing in the community. We lobbied the government for years; among other things, we drafted business plans for the school. There was no French-language secondary school in what was suppose to be a bilingual city in New Brunswick. We lobbied the provincial government, but it did not want to meet with us.

Things changed when we were given some money from the Court Challenges Program; we were given $5,000 to carry out an impact study to determine whether we were entitled to a school. As soon as the courts become involved, the government became interested in talking to us. We now have a French-language secondary school in Moncton.

Yes, I benefited from this program when I was the President of the Association des juristes d'expression française du Nouveau-Brunswick, but not personally. The association was involved in cases, but it did not benefit me financially in any way. I benefited from the program when I was the President of the FAJEF, but never as a lawyer.

● (0955)

Mrs. Sylvie Boucher: Did all the cases involve education?

Mrs. Louise Aucoin: They were mostly education cases, but there was also the RCMP case.

Mrs. Sylvie Boucher: Perhaps the other witnesses would like to address the same question.

Have any of you been involved in cases, either directly or indirectly?

[*English*]

Ms. Melina Buckley: Yes, I was a counsel, one of the intervenors, in the VIA Rail case. That was funded by the court challenges program last year.

Ms. Tamra Thomson: The Canadian Bar Association has not applied for court challenges funding. We have our own program for the cases in which we intervene.

[*Translation*]

Mr. Michel Doucet: I have been involved in so many cases that I would be hard-pressed to give you an exact figure. I have been involved in cases in virtually all Canadian provinces.

Mrs. Sylvie Boucher: Including Quebec?

Mr. Michel Doucet: No, not Quebec. That is why I said "virtually all Canadian provinces". I have discussed cases with people in Quebec, but I've never been directly involved in any Quebec cases.

The Chair: You have approximately one minute and ten seconds remaining.

Mrs. Sylvie Boucher: Did you manage to win some easier cases without having to resort to the Court Challenges Program for help?

Mr. Michel Doucet: There is no such thing as an easy case when you are dealing with this sort of constitutional issue. Despite the best of intentions, such cases still very often end up before the Supreme Court. When we win at the court of first instance, we would be happy for that to be the end of the matter; however, what happens is that the government files an appeal and we have to defend it, and if we win again, they appeal again to the Supreme Court and, once again, we have to defend our case. These cases are never easy and require specific expertise.

Mrs. Sylvie Boucher: So you are saying that you have never won cases for francophones without having to turn to the Court Challenges Program?

Mr. Michel Doucet: I have been defending the rights of francophones practically since I learned to speak. Obviously, I have won cases without using the CCP, but they were less complex cases. They did not, for example, involve asking the government to set up schools and comply with legislation.

The Chair: Thank you, Mrs. Boucher.

That brings us to the end of our first seven-minute round. Members will have five minutes for both questions and answers in the remaining rounds.

Next on the list is Ms. Folco, from the Liberal Party.

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

To follow up on the question Ms. Boucher put to you earlier, I will say that given your answer, I'm very pleased to note that the people before us today are all people who not only have given some thought to the rights of both francophones and anglophones in Quebec, but who have also worked in the field. You certainly have a great deal of field experience and that is your main strength and certainly part of our overall experience.

I'd also like to add for the record that Mr. Doucet said that the program had not really been used in Quebec. Of course, in Quebec, there is talk of the rights of the anglophone minority. However, as was pointed out to us last week, the Court Challenges Program had provided a great deal of assistance in a very important case in Quebec, that of the Canada clause, which allowed children whose parents had studied in English in Canada elsewhere than Quebec to attend an English school. So there is clearly a linkage between the rights of one group and the rights of another, since these are minorities.

I have a first question, but I would like you to answer it very quickly. I really want to follow up on Mr. Nadeau's comments. First of all, have you been in contact with the minister responsible, Ms. Verner, or with the department regarding the cancellation of the Court Challenges Program? I'd like you to answer yes or no.

● (1000)

Mrs. Louise Aucoin: No. We called the minister but we did not get a response.

Ms. Raymonde Folco: Thank you. That's fine.

Here's my second question along the same lines: Have you had an opportunity to meet with the minister since she was appointed about a year and a half ago, Ms. Aucoin?

Mrs. Louise Aucoin: No, we have not been able to meet with her.

Ms. Raymonde Folco: Had you requested this, Ms. Buckley?

[*English*]

Ms. Melina Buckley: No.

Ms. Raymonde Folco: Thank you.

Ms. Thomson?

Ms. Tamra Thomson: In fairness, we did have the opportunity to address our questions to the then Minister of Justice Toews before the program was abolished.

Ms. Raymonde Folco: But not with Madame Verner. So you've not been able to meet her?

[*Translation*]

Mr. Michel Doucet: No.

Ms. Raymonde Folco: Thank you.

Now let me get to the question that I really want to ask you and that follows up on Mr. Nadeau's question. It deals with comments that we heard. I think that the committee is far more advanced in its work since it met with almost 10 witnesses before meeting with you this morning. We're now at the point where we're asking ourselves the following question: Perhaps the Court Challenges Program should not be reinstated in the exact same format as we had previously.

As people with experience in the field, as well as having given a great deal of thought to this question, I'd like to hear your views on this. I agree with the fact that the program could be improved. What would you add to this program? If you don't have time to answer my question, because I only have five minutes, I really would like you to send the chairman of this committee a brief that could guide us and that we could incorporate in our report to the minister.

Ms. Aucoin, I would put the question to you first.

Mrs. Louise Aucoin: Yes.

First of all, we would like to see a permanent program. It would then be much more difficult to abolish it a third time. For the time being, it's limited to official languages issues, to section 15. There are many areas of law that perhaps should also be included, without necessarily limiting this to section 15 and official language matters.

[*English*]

Ms. Melina Buckley: The Canadian Bar Association has long supported the idea of establishing a court challenges foundation. We did some work toward that, including getting a charitable tax status for the court challenges program so it could start to raise funds independently of the federal government funding. Because of the concerns, and because it had already been abolished once, we wanted to try to avoid that situation again, including enlarging the mandate both in the language rights area and equality rights, considering the possibility of perhaps adding mobility rights in the charter, some of the other constitutional rights that have not really been explored, and really touching on the lives of people living with minority status. I think, though, that although we would look to diversify funds, without some central substantial funding from the federal government, it's not possible. That would be the ideal situation.

I think we're all keen to have the court challenges program re-established as quickly as possible. So perhaps the best thing would be two-phased: to re-establish it as it was in September of 2006, with a commitment to moving toward long-term, stable funding for the court challenges.

[*Translation*]

The Chair: Thank you, Ms. Buckley. Thank you, Ms. Folco.

Next up is Mr. Michael Chong from the Conservative Party.

[*English*]

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

[*Translation*]

Thank you for your testimony.

[*English*]

I just have two general comments. I don't have any questions. You were pretty clear in your presentations to us.

The first one I think is a matter of perspective. There are reasonable people who could agree or disagree on this issue about the need for a court challenges program. I think arguments can be made on either side of this issue—reasonably in favour of continuing a program like this and reasonably in favour of not continuing a program like this.

I say that for the reason that the program, as it was originally established, was to clarify an area of law that had rapidly evolved in the late sixties and early seventies, and in the late seventies with the Official Languages Act, with some of the initiatives undertaken by the provinces, so there wasn't a substantial base of case law, jurisprudence, that had been established. During those years it was an era of a lot of questions around linguistic minority rights, and the program was established. Later it was expanded to include other minority rights with the advent of the 1982 Canadian Charter of Rights and Freedoms.

I think one could reasonably argue that after three decades there has been a substantial base of case law that has been established. Is it final? Is it all-encompassing? Does it clarify everything? No. There are certainly areas of law that need to be clarified, but one could argue that there is that substantial basis of jurisprudence now. There are reasonable people on the other side of the argument who don't agree, and I don't deny them their point of view.

We've been sitting here now for weeks talking about this, for months frankly, and when you look at the big picture of access to the legal system in Canada, there are two things that jump out at me. The first is that this frankly is a minuscule program in terms of access to the legal system. I think in Ottawa here on Parliament Hill we have conflated the idea of legal aid with that of the primary intention of the court challenges program. There's no doubt that one of the secondary criteria for the program, one of the secondary purposes, was to assist those who needed access to the judicial system, but the primary purpose for the program was to fund cases that would give greater clarity to that area of jurisprudence, to case law, with respect to linguistic and other minority rights.

We're looking at a system here in which the provinces are by and large responsible—well, they are responsible—for legal aid under the administration of justice. Their programs collectively are in the hundreds of millions of dollars, and what they do at the provincial level has a profound impact on access to the legal system. If you added up their programs, they're close to half a billion dollars in terms of funding to assist people to access the court system, and we're talking about a program here of $2 million to $3 million. Sometimes I wonder if we—not speaking to the witnesses now, but through you, Mr. Chair—here on Parliament Hill sometimes have a different perspective or a lack of perspective on this with respect to where really, in the real world, people need access to the judicial system. It's often through legal aid.

The final point I make with respect to access to the legal system is that there isn't an absolute right to access to the courts. The Supreme Court has recently said that in the British Columbia Attorney General v. Christie. They've said that there's a right to counsel in certain specific cases, and possibly even varied cases, but that there's no absolute right to access to the courts, and that there's frankly not a general constitutional right for state-paid legal counsel in proceedings before courts and tribunals.

Those are just the general comments that I put in front of it. As I started, I said that there are many reasonable people on both sides of this question, and I thank the witnesses here for their presentations.

● (1005)

The Chair: Thank you, Mr. Chong, for this comment.

We'll now go to Mr. Malo.

[*Translation*]

Mr. Luc Malo (Verchères—Les Patriotes, BQ): First of all, I'd simply like to know whether any of the witnesses could respond to Mr. Chong's statement.

Mrs. Louise Aucoin: I will be brief.

[*English*]

I quite agree that it was a very small amount of money. If that's the reason, I think you should go ahead and bring it back.

Ms. Melina Buckley: It's very clear that legal aid is woefully inadequate across Canada. Some of you may know that the Canadian Bar Association is actually bringing a test case in that area. We're funding it ourselves. It would not have been funded by the program.

The reality is that legal aid is there primarily for individuals to use in dealing with their personal legal issues. What the court challenges program funded is a niche on its own, completely separate from that, of public interest cases that clarify the law. You spoke about clarifying the law as if it's something we do just for the intellectual pleasure of knowing what our Constitution means. That's not why we do this work; it's to make those rights meaningful for Canadians as an aspect of their citizenship. The two are very much connected.

Yes, we need more funding for legal aid, but we should also also reinstate the court challenges program.

● (1010)

Mr. Michel Doucet: You're right; it's minuscule—not a lot of money has been put into the court challenges program, and it would be great if more money could be put into it—but it's a giant if you look at the decisions it has generated. Ask the francophones in P.E.I., Nova Scotia, Alberta, and all the provinces in Canada, who did not have a right to education in their language, if they feel that the court challenges program is a minuscule program. They feel it's a giant. In that respect, it's worth bringing back.

[*Translation*]

Mr. Luc Malo: My colleague Mr. Godin referred to the testimony of Ms. Tasha Kheiriddin who met with us last week. She seemed to be saying that there could be other solutions, other ways of adequately defending minority rights. I asked her what these other solutions were and she responded that it wasn't up to her but rather up to the government to reflect on that question and to bring forth solutions.

I'd simply like to ask you whether you see other ways of intervening in a satisfactory manner to defend and protect minority rights.

Mr. Michel Doucet: I explained earlier that I was involved in many files regarding the Court Challenges Program across Canada. Turning to the courts was not the first choice of these communities. They are very hesitant to do so. Their preference is to initiate a dialogue with the government, sit down and find a solution. However, it does happen, as Mr. Aucoin explained earlier, that you have no choice and you have to go before the courts. The fact that the Court Challenges Program exists does not preclude other options. Dialogue and pressure tactic are used each time with the government. It is only in the final analysis that communities decide that they have no other choice and that they turn to the courts. The effort required of a citizen who brings his government to court is huge and no one happily chooses this course of action; it is always a last resort. But it remains a very important last resort, in the final analysis.

[*English*]

Ms. Melina Buckley: The other important thing to remember is that the government twice evaluated the court challenges program to see whether it was doing its job or whether there was a better way of doing it. Both times the resounding evaluation by an independent evaluator was that it was meeting its objectives, it was doing it well, it was doing it efficiently, and it really had developed the expertise to make those kinds of funding decisions.

The program was set up because initially the government had a funding pool that it provided to official language minority groups. There are issues about conflict of interest and so on, and about who makes those decisions. The value of having this independent organization is huge. It's difficult to imagine a way of strengthening that. There have been no criticisms laid against the program that could be substantiated, so why do something different, other than making it stronger and bigger and safeguarding it from the kinds of political things that are going on right now?

[*Translation*]

Mrs. Louise Aucoin: It's a bit sad. The two times the Court Challenges Program was abolished, we lost institutional memory, that is the experts who worked at the program as well as the whole structure. We had to start again from scratch. When you have strengths, you have to build on them and move forward. It is all very nice to try to find new solutions but when you have a solution that works well you should try to hold on to it.

The Chair: Thank you, Mr. Malo.

We'll now go to Mr. Godin.

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

You said that the Court Challenges Program was cancelled twice. In what year was it abolished the first time?

Mr. Michel Doucet: It was in 1992.

Mr. Yvon Godin: It is not my intention to pick on Mr. Chong here this morning, but he was saying that in his opinion, the point of the program was to clarify legislation and to make sure there were legal precedents and that now, there should be enough of them.

Do you think that Mr. Mulroney, the former Conservative Prime Minister, believed that there were enough legal precedents in 1992 to abolish this program? From 1992 to 2006 were any new cases brought forward? Mr. Doucet, you said that the Constitution is a living thing. We experience it every day and things change. Was the program useful and did it serve to clarify the law, especially since S-3, the new bill, was adopted? We will be facing the challenge of referring to it. Isn't the government, that good citizen, violating the law? Does Bill S-3 solve all our problems? Do we still need to go before the courts? If not, will the communities have to test the legislation to know whether the government is compliant within its institutions? It has a responsibility to set in place mechanisms to serve people in both official languages.

● (1015)

Mr. Michel Doucet: Since the reinstatement of the program, the most important decisions on language matters that come to mind are the following: Beaulac, Arsenault-Cameron, Solsky, Boudreau-Doucet, Charlebois, Montfort and Donnie Doucet.

Mr. Yvon Godin: We didn't need these decisions; we'd already seen it all.

Mr. Michel Doucet: It would seem not. The number of pages filled and the time dedicated to bringing these files before the Supreme Court showed that we clearly needed these rulings.

Mr. Yvon Godin: Without the Court Challenges Program—

Mr. Michel Doucet: —we would only have the precedents that pre-dated the program.

Mr. Yvon Godin: Mr. Doucet, you're one of the lawyers who won several cases. Did you become a millionaire? The government has said that this program served only to enrich Liberal Party lawyers.

Mr. Michel Doucet: Mr. Murphy would certainly like to hear that, because I sued him. I'd really like to be a millionaire, but that's not the case. As I said earlier, these cases are very expensive.

Mr. Yvon Godin: What is the situation really like out there in the field? You are a lawyer and you have won cases for minorities. What is it really like in the field? In the House of Commons, the government claimed that some lawyers became millionaires because of this program. They were talking about people like you; they weren't talking about the teams of lawyers from the Department of Justice.

Mr. Michel Doucet: I admit that well-established law firms often have a great deal of difficulty dealing with cases funded by the Court Challenges Program, because of the rates they charge.

Mr. Yvon Godin: Minister Baird said in the House of Commons that this was nothing but a program to enrich lawyers in the provinces. But in fact that is not at all the case.

Mr. Michel Doucet: I don't know a single lawyer who became a millionaire because of the Court Challenges Program.

Mr. Yvon Godin: Therefore the program truly helps minorities, people and the community. It doesn't help individuals, as is the case with legal aid. There is a difference between the two.

Mr. Michel Doucet: It depends on the type of Charter rights involved, whether individual rights collective rights. When you open a school in Summerside, Prince Edward Island, it is not just for Ms. Arsenault-Cameron. The whole community benefits.

Mr. Yvon Godin: Do I have any time left?

The Chair: You have about one minute, Mr. Godin.

Mr. Yvon Godin: Mr. Chong talked about legal aid at every meeting. That's his right. Could you elaborate a bit on the subject of legal aid? The government is saying that people used it.

[*English*]

They use it for legal aid, which is not really legal aid as we know it in the province. There's a difference between the two.

Ms. Melina Buckley: The common thread with legal aid, as a government program—which the federal government does contribute to, by the way, even though it's within provincial jurisdiction for the most part—and the court challenges program is that they both facilitate access to justice. So in that sense, they are common.

But the court challenges program is focused on test cases. It's focused on developing the law on issues that have not been before the courts, whereas legal aid is your everyday case—it's ensuring that the law is meaningful to individuals.

Mr. Yvon Godin: It's like the RCMP not respecting the official languages in New Brunswick—the big difference with the other one, maybe.

[*Translation*]

The Chair: Thank you, Mr. Godin.

We've just completed our second round of questions. We'll go on to the third round, with the same formula, that is five minutes for questions, comments and answers.

Mr. Jean-Claude D'Amours, you have the floor.

● (1020)

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

I hear murmurings, as if people were happy that I was speaking. I wish to thank you very much for being here.

Ms. Aucoin, could you tell me how many students attend the francophone high school in Moncton?

Mrs. Louise Aucoin: There are about 900 students enrolled.

Mr. Jean-Claude D'Amours: Ms. Aucoin, when you received the sum of $5,000, did you know that represented about 1% of the Court Challenges Program for the defence of language rights? I think there are people who should realize that this is to defend the rights of young people, of children. As a mother, you understand, it only cost $5.55 per child to defend their rights which is really not very much. As I often say, that's peanuts.

Mr. Doucet, you will be going before the Supreme Court soon regarding the Court Challenges Program. Do you think that the government will send its lawyers to try to tear apart the arguments that may be presented?

Mr. Michel Doucet: Of course, the government is represented by its lawyers.

Mr. Jean-Claude D'Amours: Do you think it will cost more than $5,000 for that team of lawyers who will be on the case?

Mr. Michel Doucet: In fact, I'm doing this work *pro bono*. I presume that's not the case for the government lawyers.

Mr. Jean-Claude D'Amours: To make sure that people understand, *pro bono* does mean that you are providing your services absolutely free of charge. It's for a good cause, really, and not to get rich. So you're doing this for free. And to have given 900 children the opportunity to attend a francophone school, because they are francophone, well that's not very expensive at all. Perhaps the other side will finally understand. If you consider the reality, the minimum wage is higher than that in New Brunswick. Let's take the example of New Brunswick, because we're in the same province. It's incredible to see how obstinate the government is being over $5.55 per student in this case. In addition, there are people who have worked for free, who have volunteered their services.

Mr. Doucet, you said earlier that you don't oppose one minority against another, when talking about various minorities. There's no doubt the government is throwing people a bone, as you mentioned, even though there is no meat on it. Everyone is jumping on that bone hoping to be able to get their little share of it and in the end...

Ms. Buckley, I think you were saying that access to the courts is a right in Canada. The government has thrown people a bone, but we have to forget about rights. If you have no money, there is no meat. You can go to court: the right to go to court is the bone, and the means to do so is the meat. However, the government is not giving people the means to go before the courts.

Earlier I was listening to the comments of Conservative members of the committee who were saying that what we are doing here today, that is examining the abolition of the Court Challenges Program, was very important for them. It is all very well to say that it is important, but they haven't understood a thing. If it's so important, let them reinstate the program right here and now, and that would be the end of the discussion. We'll stop arguing about this.

When I say they haven't understood anything, I am also saying that their understanding of the situation is certainly poor. I am not a lawyer. I am a banker. I used to finance businesses and that's a bit different. They certainly cannot claim that I got rich because of the Court Challenges Program.

A few weeks ago, during the adjournment debate, I put a question to the Minister of Justice concerning the Court Challenges Program, and the Parliamentary Secretary to the Minister of Justice responded. During the four minutes allocated for his response, he used the expression "legal aid for criminal law" five times. As I said, I'm not a lawyer, but in answer to my question about the Court Challenges Program, the parliamentary secretary stated that one of his government's top priorities was the firm desire to protect families, and providing legal aid in criminal matters was one of the ways to accomplish this goal. To my knowledge, that is a long way off from the Court Challenges Program.

At the end of his response, he added the words "the new government". Let's forget about that. In fact I think that if he were to look up the definition of the word "new" in the dictionary, he would see it means "very recent". However, this government is starting to get old. I would have said instead that "the Government of Canada is determined to continue to fund legal aid in criminal matters".

Can you tell me whether minorities are being prosecuted in court over criminal matters? With regard to the Court Challenges Program, the government says that minorities shouldn't worry, because it does provide money for legal aid in criminal cases. Where is the connection between legal aid in criminal cases and the guarantee of being able to defend one's rights through the Court Challenges Program?

In the time remaining, can you tell me whether there is any connection here? You are lawyers. Is there or is there not a connection?

● (1025)

The Chair: Mr. D'Amours, you have exceeded your time limit. Consequently, we will not be able to hear the witnesses' answers now.

Mr. Jean-Claude D'Amours: I am sure that this matter will be raised again.

The Chair: Could you tell me who will be speaking during this third round, please?

It will be Mr. Nadeau.

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

The comments made by my colleague from the Republic of Madawaska are very interesting and I would like to hear your thoughts on the matter.

In my opinion, in discussing the evolution of society, another aspect has yet to be covered, mainly the principle of reparation owed to minority French-language communities. We are familiar with people's thoughts on this matter. Moreover, we discussed this briefly during our last meeting with the Association des parents fransaskois. Could you answer my colleague from the Republic of Madawaska? I would also like to take this opportunity to say: long live Edmundston and the eagle flag.

Then, Mr. Doucet, could you deal with the issue of reparation, further to the learned comments Mr. D'Amours?

[*English*]

Ms. Melina Buckley: Very briefly, in response to that, the only connection between criminal legal aid or legal aid in criminal matters and the court challenges program is that they both facilitate access to justice. And if the member was saying the Government of Canada can only afford to do criminal legal aid, and that's a priority, then I guess that's the government's determination, but I don't see the relationship at all.

[*Translation*]

Mr. Michel Doucet: Providing legal aid for criminal cases does not do much in terms of helping build very strong schools under section 23.

As far as section 24 is concerned, we are just starting to deal with the question now, further to the Doucet-Boudreau decision. I had an opportunity to be involved in this case as well. The communities were very quiet about the redress that they could seek from the government for violating Charter provisions. Very often the communities simply requested declaratory judgments. However, the communities did realize that, at one point, declaratory judgments were inadequate in themselves because, despite the fact that the Supreme Court had made a ruling, several governments continued to disregard the court order. Consequently, these communities had to go back to the courts—I am envious of the situation that we are currently experiencing in Newfoundland—in order to request clarification. Obviously, today communities are going to start demanding clarification of section 24, which deals with reparation. With the Doucet-Boudreau decision, the parameters have been set. We will need to build on these parameters.

Mr. Richard Nadeau: This is, therefore, theoretical because there is no jurisprudence or test case to fall back on.

Mr. Michel Doucet: As far as language rights are concerned, this still has to be developed, setting aside the Doucet-Boudreau decision, even though we have made tremendous progress.

Mr. Richard Nadeau: Something is bothering me. If I have understood correctly, persons with disabilities were forced to turn to the Court Challenges Program in order to have access ramps installed in provincial or federal government buildings. What battles did they have to wage, with the support of the Court Challenges Program, to obtain the same services as people who are not disabled?

[*English*]

Ms. Melina Buckley: It depends on the nature of the case. Some of those cases have been brought under human rights legislation, so they were not funded by the court challenges program. But some of the major cases in that area would have been the Eldridge case, for example, which was the right to sign language interpretation in medical services, so that a woman who was giving birth could communicate with her doctor. That was one important case in that area that was funded in part by the program. Another more recent one is the VIA Rail case, which dealt with the duty to accommodate individuals in wheelchairs in the train, under the Canada Transportation Act. And that was also an important victory recently.

[*Translation*]

The Chair: You have about one minute remaining, Mr. Nadeau.

Mr. Richard Nadeau: That's fine.

I have another question. Considerable mention has been made of the Charter provisions that deal with official languages and of section 15, which covers all members of society, but does not deal with official languages. In your opinion, which groups stand to benefit in this instance from the Court Challenges Program?

● (1030)

Mrs. Louise Aucoin: Equality issues are dealt with in section 15 of the Canadian Charter of Rights and Freedoms. Any citizen who feels that his or her rights have been violated or that he or she has been discriminated against can invoke this provision. Generally speaking, this is usually the case with vulnerable members of society, namely women, people who belong to visible minorities or the disabled. This section really targets the vulnerable members of Canadian society.

The Chair: Mr. Jacques Gourde now has the floor.

Mr. Jacques Gourde (Lotbinière—Chutes-de-la-Chaudière, CPC): Thank you very much, Mr. Chairman.

I would like to congratulate all of the witnesses for coming here. Since summer is upon us, this is worth mentioning.

My question is for all of the witnesses. Before beginning, I would like to quote an excerpt from the 2003 Summative Evaluation of the Court Challenges Program. It states:

> The main purpose of the Program is to clarify certain constitutional provisions relating to equality and language rights.

The document refers to clarification, and one of the main criteria of the program is, and I again quote:

> [...] that the Program, as currently delivered, will only support cases that protect and advanced rights covered by the Program. In other words, a group or individual that would present legal arguments calling for a restrictive application of these rights would not receive CCP funding.

The Court Challenges Program was created to clarify certain constitutional provisions regarding equality and language rights.

In your opinion, are there other ways that the government could support court challenges while clarifying certain constitutional provisions regarding language rights?

Mr. Michel Doucet: I'm not sure that I understood the question specifically. However, if you are referring to the promotion of legal proceedings whose objective is not necessarily to clarify or advance language rights, I believe that the federal government would find itself, should it support such cases, in a situation where it would be in violation of its own Official Languages Act, which states, in Part V, that the government must have affirmative action programs to promote the development of francophone minorities.

This is why I said earlier that, as far as the assessment of the Court Challenges Program is concerned, when we support measures designed to promote the development of francophone minorities, we are complying with the government's obligation to have positive measures in place.

Mrs. Louise Aucoin: The excerpt that you quoted talked about restricting rights. In my opinion, that does not appear to be the government's objective. Perhaps I misunderstood, but I do believe that the important thing here is to clarify rights.

Also, when we read the jurisprudence, we can see that, increasingly, there is reference made to the importance of interpreting rights broadly and in a liberal fashion. The whole approach to interpreting rights goes against restricting rights. I don't know if I understood correctly, but if you wish to create a new program that would meet these requirements, an improved program which would not be limited to section 15 of the Charter and the Official Languages Act, but which would really clarify every aspect of the Constitution, a program that would cover all constitutional cases, that would be very interesting, and we would certainly throw our support behind such an endeavour.

[*English*]

Ms. Melina Buckley: I think what Maître Aucoin said is a very important point: that all governments in Canada have a primary responsibility to try to ensure the full promotion of constitutional rights—all of them. They can do it, obviously, without being brought to court to do so—and that's the primary way. But the only way to clarify the extent of these rights and for the legal doctrine on rights to develop is by pronouncements of the court. So I don't think there's any way to move forward on that front without a program like the court challenges program.

● (1035)

[*Translation*]

The Chair: You have less than one minute remaining, Mr. Gourde. Do you wish to stop there? All right.

We will now turn the floor over to the representative of the New Democratic Party, Mr. Godin.

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

Mr. Gourde asked a question in his preamble. Ms. Buckley, you referred to two evaluations, I believe.

[*English*]

Wouldn't it be important for this government to see your people and ask your opinion? You are the Canadian Bar Association. I believe that means something.

[*Translation*]

Ms. Aucoin, you are the President of the Fédération des associations de juristes d'expression française de Common Law inc. The government decided, on its own initiative, to eliminate a program which we know is important. Indeed, we have been hearing this message since this morning. These people have been hearing this message for months now and they will continue hearing it if the program is not reinstated.

Do you feel that by abolishing this program, the government is shirking its responsibilities or do you think that this decision is simply one of the vagaries of politics?

[*English*]

I don't think that's hard to answer.

Ms. Melina Buckley: I think you're asking for a bit more of political evaluation of the situation.

Mr. Yvon Godin: Well, do you think it is a political decision?

Ms. Melina Buckley: All I can say is that the Canadian Bar Association has asked for an explanation of the decision, and we have not, to this date, been furnished with an explanation.

Mr. Yvon Godin: When did you ask for it?

Ms. Melina Buckley: We met with the Minister of Justice, Minister Toews, just prior to the decision, because his ministry is the one the Canadian Bar Association deals with most closely. I believe we were told at that time that the program was being reviewed and that a decision would be made at the end of the review. But that was all we were told.

Mr. Yvon Godin: It would be reviewed with whom?

Ms. Melina Buckley: That I don't know.

Mr. Yvon Godin: It was not with the Canadian Bar Association?

Ms. Melina Buckley: No.

Mr. Yvon Godin: At the time, did you say how important it was that you meet with him to explain or to put your position? You had nothing to win from it; you were just there to represent the Bar Association. You believe in law—I hope—and you believe in justice, and here was a way for Canadians to say here is a new law and we'll give people the opportunity to go to court. That's your interest, because you said you never used it yourself. Then you must have an interest in justice in our country.

Ms. Tamra Thomson: The Canadian Bar Association made its view on the program very clear to the minister last August.

[*Translation*]

Mr. Yvon Godin: And you, Ms. Aucoin?

Mrs. Louise Aucoin: The Court Challenges Program is indeed very important to the FAJEF, but we have not had an opportunity to meet with Ms. Verner on this matter. When the FAJEF met with Mr. Toews—and I was not president at that time—we were also concerned about the appointment of a unilingual anglophone judge to the Supreme Court of Canada.

Mr. Yvon Godin: We have been told that the government has spent or is spending more than $700 million on action plans, including the plan for 2003.

Mr. Doucet, I'm thinking about all of the money that has been spent in 10 years. If the government had not challenged the decisions initially handed down... Indeed, many decisions were accepted in the first instance. However, these are subsequently being challenged by governments. Isn't that true?

● (1040)

Mr. Michel Doucet: If the government loses in the first instance, it decides whether or not to appeal the ruling. Any party in a court proceeding has the right to decide to appeal a ruling. In some respects, this enables communities to have issues clarified by the highest court in the land. Accordingly, it is important to monitor this process. However, for communities with little money, this is no easy feat.

Mr. Yvon Godin: Let's take, for example, the case involving the RCMP. Had the government accepted the decision rendered by the appeal court judges... Has this case been heard by the New Brunswick Court of Appeal?

Mr. Michel Doucet: The case was heard by the Federal Appeal Court and it is now before the Supreme Court.

Mr. Yvon Godin: If the government had accepted the ruling, it would not have been necessary to bring the matter before the Supreme Court, meaning that the government would have accepted the lower court's decision.

Mr. Michel Doucet: Everything would have been concluded at that stage.

Mr. Yvon Godin: On the one hand, the government gives the communities money, and on the other hand, it challenges them in court. It is really the government that is spending the money.

The Chair: Thank you, Mr. Godin.

That completes our third round. I would now like to inform committee members that there is one individual—

Mr. Yvon Godin: I would like to present a motion, please.

The Chair: I would simply like to finish up with our witnesses. We are still at the discussion stage. A member has indicated that she wishes to question the witnesses. I would therefore like to obtain the committee's consent so that one final question can be put. Are committee members in agreement? Ms. Folco has requested that she be allowed to ask questions for one final round. No one else has asked to do this.

Is there a question?

Mr. Yvon Godin: We always have three rounds. I would like to keep some time so that we can consider the future business of this committee.

The Chair: We could allot three minutes to committee members who wish to ask questions.

Mr. Yvon Godin: How many would like to ask questions?

The Chair: Who would like to ask questions? Raise your hand.

There's one individual, so there'll be one three-minute question. Ms. Folco.

Ms. Raymonde Folco: Thank you, Mr. Chairman.

I would like to thank the committee members as well for their understanding. In my opinion, the fact that the government gives money to citizens who wish to protect themselves from its decisions is the highest form of democracy. I'm very proud that the Canadian government, that Canada, regardless of which party is in power, has instituted this type of program. I sincerely hope that it will be maintained.

That being said, every time I or another member have asked a question during question period, one minister or another and even the Prime Minister, has answered—and I checked Hansard—saying, at any rate, the money was going directly to the groups, without going through the Court Challenges Program, and that this would protect the rights of minorities and the development of minority language communities. So then, do you know whether or not the groups out in the communities have used, since the elimination of the program, public funds to challenge government decisions?

Mrs. Louise Aucoin: Usually, for community groups, we have what we call contribution agreements with the government. So, if we have funding to go ahead with projects, generally speaking, we are not allowed to use this money for court challenges. It is absolutely impossible for the FAJEF to use this money, which has been obtained for a specific program, for this purpose.

Ms. Raymonde Folco: Can you confirm that, Ms. Aucoin?

Mrs. Louise Aucoin: Certainly.

Ms. Raymonde Folco: Thank you.

The Chair: Great. Thank you very much.

Mrs. Sylvie Boucher: I would like to correct some of the comments made heard here earlier.

The Chair: This is a point of order.

Mrs. Sylvie Boucher: This is a point of order. The member for Laval—Les Îles said earlier that the CBA had written to Minister Oda. The CBA never wrote to Minister Verner. We just verified that fact. Earlier you stated that the CBA had written to the minister. The Fédération des associations de juristes d'expression française du Common Law did not write to Minister Verner either.

● (1045)

Ms. Raymonde Folco: I would really like it if we could check the minutes because I do not recall having asked a question about a letter or anything of that sort. Mr. Chairman, I would like this matter to be verified.

The Chair: We will do that, Ms. Folco.

Mr. Yvon Godin: Mr. Chairman,on this point of order, what I heard is that the association had called the minister's office to discuss this matter and that it had not obtained a response from the minister. We could check this in the blues.

The Chair: We will clarify that issue. Mr. Graham, would you check this? Fine.

The time has come to thank the witnesses for meeting with us. I would like to thank you for making your presentations within the allotted time and for presenting your arguments in a concise and well-organized fashion. Thank you for coming.

We will now continue our session.

Mr. Yvon Godin: Mr. Chairman, could we please deal with the motions?

The Chair: Yes, does the motion pertain to the Court Challenges Program?

Mr. Yvon Godin: Yes. It reads as follows:

> That the Standing Committee on Official Languages invite the Honourable Bev Oda, Minister of Canadian Heritage; the Honourable Josée Verner, Minister for La Francophonie and Official Languages; and the Honourable Rob Nicholson, Minister of Justice, to explain to the Committee at its next meeting, on Thursday, June 21, 2007 or in September, 2007, the reasons why the Court Challenges Program was cancelled in September of 2006.

To not ask the question would be a terrible mistake. The government must at least—and I'm doing this for the government—have an opportunity to explain its reasons to us. It would be interesting to hear the ministers explain why they acted as they did. We have questions to ask them, and in any report that we table, it is normal that the ministers of the House, the decision-makers, have an opportunity to explain themselves before the committee. Even at the Justice Committee, the Minister of Justice appeared. It would be a mistake on the part of the committee to not give the ministers an opportunity to come and explain themselves to us.

The Chair: Mr. Godin, your motion is relevant. The purpose of your motion is to invite witnesses to appear with respect to the—

Mr. Yvon Godin: Exactly, so that they can explain why the program was cancelled.

The Chair: The motion is in order. I am prepared to hear comments with respect to Mr. Godin's motion. Then, I would like to deal with the business of the committee; I have circulated a sheet on this matter. I would like to thank the witnesses for their participation.

With respect to the motion, I will hear first from Mr. Chong, followed by Ms. Boucher and Ms. Folco.

Mr. Chong.

[*English*]

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

I wasn't here when the committee was struck, so I'm not familiar with the motions that were adopted at the beginning of this committee.

Did we have notice of this motion?

[*Translation*]

The Chair: The clerk has informed me that when a motion is tabled regarding routine business, it is in order, as I indicated earlier.

[*English*]

Hon. Michael Chong: The only comment I would have, since the motion has been ruled admissible, is that it's entirely unreasonable to ask ministers to appear in front of committee with less than 48 hours' notice. I don't think it's a reasonable motion to put in front of the committee to ask members to consider supporting it. It's Tuesday just before 11 o'clock and we're asking a whole number of ministers to appear on Thursday at 9 a.m. That's not reasonable; they have schedules and agendas planned weeks in advance. I can tell you right now they're definitely occupied Thursday morning between 9 and 11. I don't think it's reasonable for the committee to call them on such short notice.

[*Translation*]

The Chair: Thank you, Mr. Chong.

Ms. Boucher.

● (1050)

Mrs. Sylvie Boucher: We don't really know when the session is going to come to an end. We do know that, in theory, it should end soon. Should this occur tomorrow evening, I will not be there. Nor do I believe that Minister Verner will be here on Thursday, given how things unfold when the session comes to an end. It is really impossible. She has a very busy schedule and it is the end of the session for everybody. I think that this meeting could take place, but in September. For the time being, since we are nearing the end of the session, we have been putting in many long hours. Perhaps it would be better to continue this work in September.

The Chair: Thank you, Ms. Boucher.

I too have had an indication that it would be difficult for Minister Verner to appear on Thursday, and I wish to inform you of that, Mr. Godin.

Mr. Yvon Godin: Mr. Chairman, I am prepared to amend my motion in order that we can hear from her when she will be available, even if it is not until September.

The Chair: Duly noted.

Ms. Folco.

Mr. Yvon Godin: Excuse me, we have an amendment here.

The Chair: So it will read by the end of the session or—

Mr. Yvon Godin: I had written June 21 in the motion, but if that poses a problem for the minister, it would be when we come back in September.

Ms. Raymonde Folco: It could occur on June 21, in the afternoon, since there is a meeting scheduled with the minister in the morning.

Mr. Yvon Godin: We are flexible, we are not ministers. We could hear from her in the afternoon or at the next committee meeting in September.

The Chair: So, do you wish to amend your motion?

Mr. Yvon Godin: Yes.

The Chair: Have you submitted your motion in writing to the clerk?

Mr. Godin: Yes.

The Chair: Ms. Folco.

Ms. Raymonde Folco: Mr. Chairman, I cannot accept the arguments put forward by the members opposite.

First of all, I'm hearing that the ministers will have only 36 hours or something of that nature to prepare themselves. Then, there's the matter of the number of questions that we, the opposition, have asked during Question Period in the House of Commons, as well as the number of representatives who have tried to meet with one minister or the other. Obviously, some were unable to get a meeting. Finally, the fact that the ministers, or the minister, made a decision regarding the cancellation of the Court Challenges Program means that someone has reasons for eliminating it.

The only thing that we are asking these ministers to do is to come before us and explain their side of things. After all, we have heard from at least 10 witnesses, perhaps even more, when we consider the travels undertaken by this committee right across Canada. With the exception of two of them, to my knowledge, everyone told us the same thing.

I feel that the motion tabled by my colleague, Mr. Godin, is fair and balanced. I am really hoping that the ministers will all come and talk to us about this matter. I would even suggest to my colleague that we ask the ministers to send us something in writing if they cannot come, to explain exactly why they cancelled this program.

The Chair: Thank you, Ms. Folco.

I will reread the motion:

> That the Standing Committee on Official Languages invite the Honourable Bev Oda, Minister of Canadian Heritage; the Honourable Josée Verner, Minister for La Francophonie and Official Languages; and the Honourable Rob Nicholson, Minister of Justice, to explain to the Committee at its next meeting on Thursday, June 21, 2007 or in September 2007, the reasons why the Court Challenges Program was cancelled in September 2006.

Mr. Godin.

Mr. Yvon Godin: Mr. Chairman, in response to my colleague's suggestion, the problem is that if the minister responds to us in writing, we will not be able to ask her why she refused to have meetings, etc.

I'm saying that we should vote.

● (1055)

The Chair: Mr. D'Amours.

Mr. Jean-Claude D'Amours: Mr. Chairman, I will be brief.

First of all, I am nevertheless surprised to see that the government members are expecting the House to adjourn on Wednesday, when according to our program, as far as I can see, this will happen on Friday. I do understand that they may want to leave earlier, because things are starting to heat up more and more, but I am a bit surprised to hear such comments. Sometimes the rumours fly.

Mr. Chairman, you can tell me whether or not I was suffering from a moment of weakness at one point. Did you not announce at our last meeting that Minister Verner was suppose to appear before this committee on June 19, 2007 which, it so happens, is today?

The Chair: As you know, Mr. D'Amours, the committee adopted two motions to have the minister appear, but she was unable to do so today. As I indicated, it would appear that she is not able to come on Thursday either.

Mr. Jean-Claude D'Amours: I understand what you're saying, Mr. Chairman. However, if we go back a few meetings, is it possible that you announced here, at the committee—unless my memory is playing tricks on me—that the minister was to appear before the committee on Tuesday, June 19, 2007?

The Chair: Yes, according to the information that I had at that time, the minister was hoping to appear on June 19.

Mr. Jean-Claude D'Amours: I thought that my mind had been wandering for a moment, but that wasn't the case. How many times are we going to have to ask the ministers to appear? They're going to go back and forth with us because they do not want to appear before the Official Languages Committee on such an important issue. I can't believe it. I understand that they are not available Thursday; indeed, they will never be available.

The Chair: Thank you, Mr. D'Amours.

We will now hear from Ms. Boucher, and I would then like to know whether the committee is prepared to vote on the motion.

Mrs. Sylvie Boucher: Mr. Chairman, with respect to the motion that has been tabled and the fact that the minister was unable to appear on June 19, to comply with the motion adopted, Minister Verner will respond in writing to the committee before we resume our work. All right?

Moreover, anyone who has ever been a minister knows that at the end of the session, it may be difficult to free up their schedule for a meeting the next day or the day after that.

The Chair: Thank you, Ms. Boucher, for that clarification.

Mr. Chong.

[*English*]

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

We have studied this issue to death. I think everything that needs to be said on this subject, on both sides, has been said. I don't think it's a productive use of the committee's time to spend yet another meeting on this issue. I think there are far more productive ways for the committee to spend its time.

Frankly, we do have some serious challenges in this country with respect to linguistic minority rights, with respect to the use of French in this country. The fact is that French is declining as a language in this country, and yet we're focusing on this $2 million or $3 million program, and we've studied it to death.

Frankly, there are a lot more productive ways for the committee to be using its time. If we look back at the time we've spent on this particular program in years hence, I think people are going to look back and say it wasn't a productive use of the committee's time.

It would be far better to take a look at broader issues around bilingualism and how we're going to increase the number of people in this country who are bilingual than spending meeting after meeting discussing this subject. I think that would be a far better use of our time. I don't think we should spend another meeting on this subject.

If I could use an analogy, Rome is burning and we're worried about the silver chalices. We have to move on.

[*Translation*]

The Chair: Thank you, sir.

I would like to remind the committee members that it is 11 o'clock. I would like to know whether or not the committee is prepared to make a decision on the motion.

Ms. Raymonde Folco: I would ask for a vote, Mr. Chairman.

Mrs. Sylvie Boucher: Mr. Chairman, we want this to be a recorded division.

The Chair: Agreed, we will now move on to the vote.

The motion reads as follows:

> That the Standing Committee on Official Languages invite the Honourable Bev Oda, Minister of Canadian Heritage; the Honourable Josée Verner, Minister for La Francophonie and Official Languages; and the Honourable Rob Nicholson, Minister of Justice, to explain to the Committee at its next meeting on Thursday, June 21, 2007 or in September, 2007, the reasons why the Court Challenges Program was cancelled in September 2006.

(The motion was agreed to by a vote of 5 to 3).

The Chair: I would also like to tell you, before I adjourn the meeting, that I have distributed a document on committee practices as they relate to the appearance of witnesses. It pertains to the budget that is required to cover witnesses' expenses.

Does the committee give its consent for the tabling of the current expenses by witnesses?

A voice: Yes.

The Chair: Agreed, consent is given.

The meeting is adjourned.

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