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Chair

Mr. Mike Wallace

Standing Committee on Justice and Human Rights

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● (1105)

[*English*]

The Chair (Mr. Mike Wallace (Burlington, CPC)): Ladies and gentlemen, I'm going to call this meeting to order. This is the Standing Committee on Justice and Human Rights, meeting number 16.

Our orders of today are the statutory review of part XVII of the Criminal Code.

For today's witnesses, as an individual we have Mr. Lévesque and from the Language Rights Support Program, we have Madame Boudreau and Madame Loranger. And then as an individual we have Mr. Slimovitch.

We'll turn the floor over to each of you. You have approximately 10 minutes and then there will be some questions in the round. We have two hours set aside for this meeting, I would be surprised if we last the whole two hours, but we have that much time set aside.

So based on the order here, as the individual, we'll start with Mr. Lévesque. The floor is yours.

[*Translation*]

Mr. Gérard Lévesque (As an Individual): Thank you, Mr. Chair, and ladies and gentlemen members of the committee.

It is as individuals that Geneviève and I have come to meet with the members of the committee, to provide a few examples to illustrate the situation of language rights in Alberta in connection with the Criminal Code.

I will begin by referring to a 1927 quote from the newspaper *Le Droit*. The quote can be found in the notes which have just been given to you. Today I am only raising the issue with regard to Alberta, in connection with this quote. There has been so much evolution in our country since 1927 that there is no doubt that this quote no longer applies to the vast majority of the country, but I do want to raise the following question. In 2014, is the French language relegated to the status of an excluded and banned foreign language? If so, what is the rationale behind the persecution? Is it still based on legality and the principle that might makes right?

The notes we have given you are an overview of a thirty-page brief which will also be provided to the members of the committee and will allow us to reply to that question.

We have chosen to use what I learned in my classical studies, which is that it is always easier to correct a situation by using humour. In Latin, we say *castigat ridendo mores*, which means “he corrects customs by using humour”. We have chosen to give you six cartoons published over the past few years in Alberta to describe the situation. These cartoons were published in Alberta newspapers such as the Edmonton *Le Franco*, the Calgary *Le Chinook*, and occasionally in the Toronto *L'Express* to describe unacceptable situations, primarily as regards criminal law.

Unfortunately, in Alberta, the Department of Justice uses its jurisdiction over the administration of justice to prevent or limit the exercise of language rights, even in criminal law matters. Sometimes this is imposed on judges, or on the person subject to trial and the lawyers, which leads people to abandon the exercise of minority language rights. Other times, this is done in a more subtle way. The instruments and work tools of the administration of justice are not available in French, or in a bilingual format.

Our brief will provide a large number of examples that may be useful in drafting the committee's report for Parliament.

Last November, the Minister of Justice wrote to the clerk of the committee in reply to a letter from the chair, Mike Wallace. The French translation of his letter shows that he wrote to Mr. Jean-François Pagé. The official English version signed by the minister, which you received, shows that, rather, he wrote to “Jean-François Page”. At the Department of Justice in Alberta, the keyboards do not have accents. Our brief provides several examples of trial transcripts in French. You will be surprised to see that the accused Marc-André Lafleur has become Marc-Andre Lafleur. I obtained permission from my clients to quote them and to provide all of these texts.

But it goes even further than that. It happens that certain documents have to be signed at the court and are in French. The fact that the name no longer has an accent has serious consequences. I once had a client whose name was Calvé. His name no longer had an accent in the texts, be it in the recognizance to appear or in any other document he had to sign during his appearance. The documents said “Mr. Calve”. It may take some time before you understand whether you are the person being called.

Sometimes, the tactics used by the Department of Justice are less subtle. The instruction manual on how to prepare legal transcripts in Alberta makes no mention of hearings in French, not even at the criminal level.

In the document we will be providing to the committee, you will find the transcript of the criminal hearing in the matter of R. v. Castonguay, held in Calgary. Bear in mind that it didn't take place in the 20th century but, in fact, just two years ago.

Ms. Castonguay's case was the first surprise. Judge Anne Brown agreed with my arguments, which were presented in French, and rendered her decision orally in French. Since there was no written decision, I asked for the transcript, and it did not contain what I had argued in French or what the judge had said in French. We had purportedly used a foreign language. Still today, in Alberta, in 2014, that is what those who prepare proceeding transcripts are instructed to write.

● (1110)

[*English*]

If it's not in English then you put as an explanation a choice of two things: other language spoken or foreign language spoken.

[*Translation*]

The notation “other language spoken” or “foreign language spoken” appears in the transcript 15 times. The judge's decision does not appear in the transcript. Clearly, then, that represents not only a lack of respect for the independence of the judiciary, but also a denial of an individual's rights. The transcript is paramount in cases where people want to appeal the decision. The transcript has to be filed.

Back to the Castonguay case, because the Crown was not happy that Judge Brown had ruled in our favour, it appealed the decision, in English. The Crown, however, withdrew the appeal as soon as it realized that it would be a perfect opportunity for me to show the superior court what a miscarriage of justice the transcript represented. The words of the person appearing before the court, her legal counsel and even the judge had not been transcribed in the other language of the Alberta courts.

In 2009-10, I argued for four days for a clarification of the Alberta statute whereby citizens can express themselves in English or French before the courts. It wasn't a matter of federal rights but, rather, those set out in Alberta's legislation. In Alberta, citizens are indeed allowed to speak English or French before the three levels of courts. But not until this past September had there ever been a regulation allowing that right to be exercised, so much so that those charged with administering justice, the public servants and lawyers alike, had no idea how to speak French. The barriers were so numerous that French was seldom spoken.

In 2004 and 2009, I established a cause to have that right clarified. It took four days because the Crown argued that my clients and I had the right to speak French, but not the right to be understood in French. That illustrated that the Province of Alberta did not recognize the jurisprudence of the Supreme Court, which had overruled the previous authority from New Brunswick whereby Acadians had the right to speak French in the 20th century, but not the right to be understood in French.

In criminal law, more specifically in R. v. Beaulac, in 1999, the Supreme Court ruled that, from then on, language rights had to be given a broad and generous interpretation by the courts in all cases, civil and criminal. But that didn't happen in Alberta, which continued to follow the previous case law. It's almost as though the Alberta Ministry of Justice felt it could use Supreme Court jurisprudence in cases where it saw fit to do so and not in others.

I will now turn things over to Geneviève, who will explain one of the caricatures. I know she's pressed for time because she has a criminal law class at 1 o'clock. She's a second year law student at the University of Ottawa and she definitely does not want to be late for class, even though she would have a good excuse today.

[*English*]

The Chair: Thank you for the answer.

And Madame Lévesque, I'm sorry I was looking at an old agenda that didn't have your name on it so I would have introduced you. But thank you for joining us.

The floor is yours for a few minutes.

[*Translation*]

Ms. Geneviève Lévesque (As an Individual): Good morning. My name is Geneviève Lévesque, and I am the president of Regroupement étudiant de common law en français, or RÉCLEF, a group that endeavours to promote the interests of law students and improve the French-language tools available to those in the legal profession.

As part of its national mandate, RÉCLEF sent the Minister of Justice a letter in 2010. In response, RÉCLEF received a letter signed by a ministry official, on behalf of the minister.

The caricature contains an exact excerpt from that letter, and it reads as follows:

[*English*]

> Bilingualism in Canada is a federal construct — it is not a legal or constitutional requirement.

[*Translation*]

That comment would suggest that the employee either overstepped his authority and did not convey the minister's position or was authorized to sign the letter without first consulting the minister.

That thinking does not hold up, however, because a few days later, the minister sent Association des juristes d'expression française de l'Alberta, or AJEFA, a letter in which she said, and I quote:

[*English*]

> Alberta maintains that bilingualism in Canada is a federal construct — it is not constitutionally required in the provinces or territories.

[*Translation*]

How can a justice minister claim that the provinces and territories have no obligations when it comes to the country's linguistic duality?

Alberta has laws setting out legal obligations as far as linguistic duality is concerned. The Languages Act, for example, authorizes the use of both languages before the province's courts. The Jury Act sets out language requirements for those who serve on a jury in a criminal or civil case. Therefore, a unilingual francophone cannot sit on the jury in an English-language proceeding, and vice versa.

● (1115)

[*English*]

The Chair: Thank you for your presentation.

Our next presenter—

[*Translation*]

Mr. Gérard Lévesque: I would just like to briefly explain the other caricatures, if I may. Geneviève explained the one that mentions the federal construct—

[*English*]

The Chair: Mr. Lévesque, you're over time but I'll give you one more minute because I know you can be succinct.

[*Translation*]

Mr. Gérard Lévesque: I want to share an example that shows how the ministry currently interprets French-language forms regarding the Criminal Code. Under the legislation, some forms are provided in both French and English, while others are mentioned but not available in French.

At the court service desk, I asked for the French version of the form whereby clients authorize counsel to represent them but was told that the form was not available in French. So I asked for the bilingual version, and again, I was told that no such version existed.

Consequently, I had to ask my client to waive his rights and to sign an English-only form. I, too, had to sign the form as his counsel. But I asked my client for permission to disclose his identify in a letter I intended to send the ministry to rectify the denial of that right.

The reply I received from the Ministry of Justice was written by the Deputy Minister of Court Services. She said that, in Alberta, in order to receive a French-language form, even under the Criminal Code, it was first necessary to apply for and obtain an order authorizing the trial to take place in French and then to prepare the form oneself. That is unfair treatment given that the English-language form is available for free at the service desk to any person appearing before the court who wants it.

Worse still is that the English-language form prepared by the province contains a section reserved for ministry employees to help with the administration of justice. So when one does prepare the French-language form themselves, it makes the job of ministry employees harder.

What's more, it is incredibly difficult to file a form in French, something I experienced in both Fort McMurray and Calgary. Ministry staff wonder why they are receiving a version of a form they have never seen when the official form exists in English, so they doubt the legality of the form we prepared. The service desk would not accept my form without a letter from the ministry instructing me to write the document myself if I wanted to have one in French.

In our brief, you will find many similar examples with explanations on the failure to respect language rights in criminal matters in Alberta.

[*English*]

The Chair: *Merci beaucoup.*

The next presenters are from the Language Rights Support Program.

Madam Boudreau, are you going to lead off?

You have ten minutes.

[*Translation*]

Ms. Geneviève Boudreau (Director, Language Rights Support Program (PADL)): Thank you, Mr. Chair. Good morning, ladies and gentlemen, members of the committee.

[*English*]

As the director of the Language Rights Support Program, the LRSP, it is with pleasure that I give you an overview of the Language Rights Support Program. I will be followed by Guylaine Loranger, who is our legal adviser at the program, who will present on constitutional language rights and access to justice.

[*Translation*]

The objective of the Language Rights Support Program, or LRSP, is to clarify and advance constitutional language rights.

The LRSP has three components: (1) information and promotion, (2) alternative dispute resolution, or ADR, and (3) legal remedies.

First, under our information and promotion component, we are active across the entire country. We work to educate the public on their constitutional language rights in a number of ways, including forums, to ensure Canadians understand their constitutional language rights, a very complex matter.

Second, our alternative dispute resolution component addresses mechanisms such as mediation and negotiation.

To receive funding under the Language Rights Support Program, applicants must meet the eligibility criteria. There has to be a conflict related to a constitutional language right. Funding helps facilitate access to justice, among other things. Instead of bringing the matter before the courts, the applicant requesting funding and the other party try to resolve the conflict outside the traditional courts system. This method is less expensive and requires less time and energy than bringing the issue before the courts.

Third, under the legal remedies component, more eligibility criteria have to be met than with the ADR component. For instance, to receive funding for legal remedies, applicants must demonstrate that the matter in question constitutes a test case. Whereas applicants seeking funding for ADR methods such as mediation and negotiation do not have to meet the test case requirement.

I may have gone too quickly, so I will repeat it in English.

● (1120)

[*English*]

We have three components: information and promotion; ADR, or alternate dispute resolution; and legal remedies. The information and promotion is really so that Canadians know their constitutional language rights, and the ADR is for people to be able to make their language rights respected. They meet with the government—we provide funding for that—so that the parties can come to an agreement outside of courts, which gives access to justice.

[*Translation*]

I will now hand things over to my colleague, Guylaine Loranger.

Ms. Guylaine Loranger (Legal Advisor, Language Rights Support Program (PADL)): Thank you.

Ladies and gentlemen of the committee, as the legal advisor to the Language Rights Support Program, I am here to answer the question that was put to me, that being the relationship between the Criminal Code and the objective of the Language Rights Support Program.

The objective of the Language Rights Support Program focuses on constitutional language rights. The Criminal Code is not made up of constitutional language rights, so what do we have to do with the issue? The short answer to that is the LRSP is on the fringes of the Criminal Code.

Those of you in the room who are lawyers know that constitutional questions can be raised in a variety of disputes. Those of you who are not lawyers may be wondering how someone can raise a constitutional question before a court. That may seem like a theoretical question, or at least on the surface, especially when we talk about constitutional law.

I'd like to refer you to a specific case. The applications we receive are confidential, but some applicants do give us permission to release information about their case. To really help you understand the situation, I would refer you to the Losier case, which is summarized in the blog on our Web site. Mr. Losier's case was heard by the Court of Appeal of New Brunswick.

What do we do? Our involvement is based on the following premise. Our objective is to advance and clarify constitutional language rights and given that those rights are relatively recent, many questions are asked, and yet little is known in the way of answers.

For example, what constitutes a communication and a service related to a criminal matter when it comes to a trial? As strange as it may seem, receiving a ticket or a search warrant from a police officer constitutes a service and a communication under section 20 of the Constitution Act, 1982. Many such questions are raised.

Why am I referring you to the Losier case? The test case in that situation was whether the active offer of services was a constitutional principle included in section 20(2) of the Charter. That means that the Court of Appeal of New Brunswick recognized that the active offer of services was a constitutional right implicitly included in section 20(2) of the Charter and implicitly expressed in New Brunswick's Official Languages Act. Furthermore, when that constitutional right is violated, the judge cannot consider evidence obtained in violation of the accused's constitutional language rights. That is an actual example to help you understand how we fit in to the big picture.

Applicants seek our assistance, sometimes for issues involving section 20 of the Charter, sometimes for issues involving section 19 of the Charter. On the subject of the delegation of the administration of justice, an example we can look to is the Contraventions Act, whereby the federal government gives the provinces funding to enforce the act.

I mention that example for your reference, but it does not come under our area of responsibility. Those kinds of cases where funding was provided happened before the LRSP was established. That, too, however, illustrates the interface between constitutional language rights and the Criminal Code.

On that note, I would conclude by pointing one thing out: numerous questions can be raised, but few answers have been given so far.

● (1125)

[*English*]

The Chair: Thank you very much.

Our final presenter today is Mr. Slimovitch.

The floor is yours.

Mr. Steven Slimovitch (Attorney, As an Individual): Thank you, Mr. Chairman, ladies and gentlemen. Just to clarify one thing, I appear before you this morning purely in my capacity as a criminal defence lawyer, not representing any group or organization.

It's interesting when I listen to my colleagues from out west. I thought only Quebec had language problems, but I guess not.

I'd like to walk you folks through section 530 and subsection 530 (2), which essentially is how the process works. By walking through it, I'll show you how I've experienced an English trial, because obviously if you want a French trial in Quebec, it's pretty easy to have. It's the English trial that is a little bit more complicated.

Section 530 simply says that you have to make an application at a certain point in the process. But that doesn't really have any great importance, because regardless of when you make your application —as long as it's not made on the morning of the trial, because then the judge won't be happy—if you make it virtually any time before the trial, the judge will grant it. It's interesting to note that section 530 says the judge "shall" grant it. So there is actually no discretion given to the judge. There's no linguistic contest here. There's no "Prove to me that you really are anglophone. How many years of English school did you have? I think you're lying. I think you're actually a French person who's trying to hide; therefore, I'm going to refuse the request to order an English trial." I've never seen that kind of thing happen, and I've never heard of it happening in Quebec.

Subsection 530(3) says the judge or the provincial court judge is to advise the accused person of this right. I've seen one courthouse in which they have preprinted forms that they give to a person who's being arraigned—two courthouses, I should say. But besides those, I've never heard a judge tell a person who's appearing, either represented or not represented, that he has a right under section 530 for a trial in English. I've never heard it.

You have, of course, sections that talk about a trial in English and in French, because you have the difficult situation, and it's becoming more and more common—I would venture a guess it's a question of finance—that more and more trials are not just one accused. They're groups of accused people. I'm involved in one right now, a fraud case with 38 co-accused. You can imagine that these 38 people speak more than one language. It becomes a nightmare to figure out what language the trial will be in, notwithstanding foreign-speaking people—there's Punjabi, there's Greek, there's Italian, and so on.

So the code does set out to a certain degree how you're supposed to proceed in that fashion. Section 530.01 talks about once the order is granted, once the judge says they will proceed in English, what that means on a practical basis. Well, it's supposed to mean that the accused has the right to have the information or the indictment translated into English.

Frankly, that's relatively useless, because all the information or the indictment is going to say is that on or about this date, Johnny Smith did assault Peter Harris, with information on where, how, whether there are statements, police reports, executed search warrants, and so on. Our courts have already decided that you do not have a right to the disclosure materials in English. Here you go. Here they are. You do what you want with them. And it's becoming more and more à la mode, at least in Quebec, to furnish defendants with huge quantities of disclosure—10, 15, 20 DVDs. Well, try to have 20 DVDs translated. And then, interestingly enough, paragraph 530.01(1)(a) says you have the right to have the information or the indictment translated.

Why exactly does 530.01(1)(b) say that you have a right to receive that copy? Well, if you're going to translate it.... What, the translator is going to keep it on his desk? It doesn't make sense.

● (1130)

The only thing that I can think is that again there is a certain *réticence* to translate, there is a certain hesitation to work in the other language.

Again, the order is granted. What do you have the right to do? You have the right to speak English. Simply put, what does that mean? You have a right to plead in English, you have a right to written proceedings in English, your lawyer has the right to plead in English. Interestingly enough, 530.1(c) talks about how any witness may give the evidence in either official language. An English trial in Quebec basically looks like this almost always: French prosecutor, French judge, English accused, French defence lawyer, French clerk. Artificially you have to drop in English in there. So you sometimes end up with strange situations. You'll end up with a francophone asking a question in his or her broken English translated into French for the witness, witness answers in French, translated into English, that's the end of the first question. You can be here for a long time but frankly that's the only way to proceed.

As I said 530.1(c.1) is a bit of a strange one because it authorizes the prosecutor to examine the witness in his or her language. Frankly, I never knew that 530.1(c.1) existed because if I saw the prosecutors speaking French to a French witness I would move for a mistrial because how can the accused have a trial in English if the prosecutor is speaking French and the witness is speaking French?

What we used to have in Quebec up until probably 2000 was an English trial that worked as follows. Everybody in the court system worked in French. Mister or Madame accused, you can go sit in the corner, we'll put an interpreter next to you, don't make too much noise, and everything will be translated for you. That worked up until decisions that came before Beaulac. And then of course when Beaulac came you couldn't have that anymore. It was just completely absurd.

While it is true that you have a right to an English trial that right, in my opinion at least, is never a problem in a major metropolitan city such as Montreal. I firmly believe that there is a certain amount of judge-switching in order to allow the more comfortable anglophone judge to sit on this case. Of course, you don't see that, that's done behind the wall so to speak.

In outlying regions that's a different story. I have seen bail hearings postponed because frankly the presiding judge couldn't do it. That's very serious. You're talking about an individual who's detained. So we're going to tell him, “You just sit in jail for a few more days, we'll get another judge who can handle the case.” That kind of situation, needless to say, is completely unacceptable.

One of the interesting things is the accused has a right to have a prosecutor who speaks the language. You have a right to have a prosecutor who speaks English, but in Quebec a prosecutor cannot be forced to speak English. So you're saying, “If you have a right to speak English and you can't be forced to speak English, how does English come out?” If you remember back to the Oka Crisis, that stemmed a number of cases.

One of the famous cases was R. v. Cross. Mr. Cross wanted an English trial and the prosecutors from Saint-Jérôme said, “You have a right to an English trial but I'm not speaking English.” Needless to say you have the whole sphere of Bill 101 and the obligatory language, employer, employee and so forth, so eventually the Court of Appeal said, “You have a right to a trial in English, but you can't force him to speak English.” What happens now is when you make a request for an English trial, it's supposed to be noted on some kind of document and the system is supposed to make sure that an English-capable judge is presiding and an English-accepting prosecutor is presiding.

● (1135)

Perhaps the thing that I find most problematic, and I would say unacceptable, is section 531. Section 531 is very simple: if you can't proceed in my case with an English trial, you can get a change of venue.

Well, that's like saying that if you can't get your constitutional rights executed or carried out in this place, go to this place, because they're better on the charter in this place.

That's unacceptable in a country such as ours, with a Criminal Code that specifically says “bilingual trial”.

Thank you.

The Chair: Very good. Thank you for that.

Thanks for those presentations.

We'll now go to our questions, beginning with Madame Boivin from the New Democratic Party.

[*Translation*]

Ms. Françoise Boivin (Gatineau, NDP): I want to thank the witnesses for being with us today to help guide us in our work.

I want to put things back in context. The Standing Committee on Justice and Human Rights is tasked with reviewing part XVII of the Criminal Code and following up on how it has been implemented since coming into force. Are there any problems? What can be done to fix them? What improvements can be made?

I really appreciated what Mr. Slimovitch said.

[*English*]

I did appreciate that. I'm a lawyer who practised in the region, so for the longest time I kind of had a different experience. Although we're close to Ottawa, maybe we have a bit more bilingualism. But I had a judge insisting that I would plead and do my final arguments on behalf of the accused in English because he was anglophone. They said he deserved the right—this was pre-section 17—to hear what his lawyer was saying. I tried to convince the judge that I would be brilliant in French and maybe so-so in English, but he said, "I don't care".

That being said, a lot of the things you said were a bit pre-section 17.

[*Translation*]

I think the code is clear. It says that a person has the right to stand trial in the language of their choice. The question before the committee—and I don't know if anyone has the answer—is whether we should extend the reach of part XVII. For example, when a person is arrested and an application is made for their release, isn't it paramount that the accused be able to actively participate in the language of his or her choice?

As for what already exists in part XVII, do you have any specific recommendations with respect to interpreters, stenographers, evidence provided to the lawyers, translation and so forth? That is of particular interest to me.

As for the Language Rights Support Program, I think I understand what you do. But, as I understand your work, I am not sure it really applies, especially to part XVII, unless there's a constitutional issue involved. As far as everyday trials go, you have nothing to do with helping judges become more bilingual or supporting the bilingualism of stenographers, interpreters and so forth.

Unless you think part XVII is perfect as it is, what practical measures can be taken to improve it?

● (1140)

Ms. Guylaine Loranger: To answer your question, we receive applications involving criminal matters. Yes, the Criminal Code should be improved.

Ms. Françoise Boivin: How?

Ms. Guylaine Loranger: The first thing that should be done is to clarify what applies to trials and what applies to communications and services.

I'll give you an example. We receive applications, but we can't accept them all because they don't always involve a constitutional issue. Nevertheless, the applications we receive give us a sense of what is happening on the ground. In some provinces, as soon as a constitutional language issue is raised regarding the rights of the accused, the charges are withdrawn. I am referring to communications from the Crown as they relate to sections 19 or 20 of the Charter because it is no longer a matter of the trial.

Ms. Françoise Boivin: Is the reason that it's too complicated?

Ms. Guylaine Loranger: They don't want to address constitutional issues. That's practically the mantra in some provinces, and so the charges are withdrawn.

Ms. Françoise Boivin: So they prefer to withdraw the charges than prosecute the accused.

Most criminal matters don't have a constitutional component. We're talking about individuals charged with theft, drunk driving and the like. The usual types of cases.

Ms. Guylaine Loranger: To that, I would say the Criminal Code is quasi-constitutional.

It's a matter of creating conditions for people who speak a language. It's a matter of identity. The Beaulac decision says clearly it's an issue of recognition. Section 16(3) of the Charter comes into play. It's a matter of having an environment where members of society can access justice.

To improve the Criminal Code, it would be necessary to specify whether it's a right under section 19 of the Charter. Is the administration of a federal statute being delegated to the provinces? If so, it comes under section 19 of the Charter. That should be made clear.

Ms. Françoise Boivin: Let's talk about informing accused of their rights. Oftentimes they aren't even made aware of them, and that's the rub. Some lawyers have told us they prefer not to request a trial in the language they and the accused speak simply because it takes too long. All kinds of factors come into play.

I am curious to hear what Mr. Lévesque has to say on the subject. Should all judges be forced to systematically inform accused persons of their rights in the same way?

Mr. Gérard Lévesque: The provisions prior to the latest amendments to the Criminal Code required the judge to inform the accused when he or she was not represented by counsel. It became apparent that that wasn't sufficient because, in many cases, counsel for the accused did not inform their client that he or she had the right to be heard in the minority language because counsel didn't want to lose the client.

Therefore, Ontario and New Brunswick added an obligation in that regard to their professional codes of conduct. The code recommended by the Canadian Bar Association requires a lawyer to inform clients of their language rights and stipulates that a lawyer cannot deny their client those rights. If a lawyer is unable to serve a client in the language of their choice, the lawyer must refer that person to someone else.

Ms. Françoise Boivin: Thank you.

[*English*]

The Chair: Do you want Mr. Slimovitch to respond?

Ms. Françoise Boivin: Yes, I thought he wanted to speak.

The Chair: I'll give you one minute, then, Ms. Boivin.

Ms. Françoise Boivin: Thank you.

Mr. Steven Slimovitch: The problem, I would say, is not so much in the actual drafting of the section. The problem is more in the mentality as to how it's applied. The example you gave before, where sometimes you'll proceed, in my case, in French because it'll go faster, well, I wouldn't use that example. I'll use the example where we are in the middle of a trial and I can smell that the judge wants to acquit. I don't want to spend four hours working with the witness in English. There are certain realities of the situation. So what do you do? Well, you switch to French.

Now, is the accused happy? We have a bit of—

Ms. Françoise Boivin: If he's acquitted, he'll be happy, I'm pretty sure.

Voices: Oh, oh!

Mr. Steven Slimovitch: That's right. Exactly.

So if the accused is bilingual, well, *tant mieux*, you don't have a problem. If he's not, *tant pis*, but at the end he's happy.

Ms. Françoise Boivin: Then you should leave it to the court and not to the lawyers to decide, maybe.

Thank you.

The Chair: Thank you very much for that question and answer.

Our next questioner is from the Conservative Party. Mr. Dechert.

[*Translation*]

Mr. Bob Dechert (Mississauga—Erindale, CPC): Thank you, Mr. Chair.

Good morning everyone.

● (1145)

[*English*]

Mr. Slimovitch, you have pointed out some of the issues regarding trials for anglophones in Quebec. I'm glad you were able to raise those issues here because our committee hasn't heard much about those issues in our previous sessions on this.

I was wondering if any of the other witnesses have heard similar issues about the provision of English-language services for anglophones in trials in Quebec. Can any of you comment on that?

Mr. Gérard Lévesque: Sometime in the last century, I used to be president of the previous federal program that was helping minorities. I sat for five years as chairman of the committee of official languages. I replaced Mr. Goldbloom after he was named as official languages commissioner. I replaced him as a volunteer there. On that committee, we had strong Quebec representation from the minority, and we were then aware of some of the problems... I'm not a member of the Quebec bar, I wouldn't know. I still have friends at the last meeting of the new program last November. I was pleased to meet Casper Bloom, who used to be one of my committee members in those years.

I suppose in many provinces there are still problems because if the ministry or department of justice of a province takes the position that they don't have to be generous in their interpretation of language rights, then there are all kinds of interpretation that will be a problem for the accused and his or her lawyer.

I'll give you an example. When I went in front of Justice Brown and won in 2011 a good interpretation of the language rights under Alberta law, she really laughed in both languages because her judgment was in both languages about the interpretation given by Justice Alberta on language rights. She said it was like clapping with one hand, hoping to hear a sound. I was sure that the case would be appealed, but obviously the department didn't want to take a chance with that kind of judgment. They waited two years to take back by regulation without public debate whatever had been gained. When the appeal period was finished, I wrote to the Department of Justice of Alberta and said that since they did not appeal a decision, they should at least amend the manual of transcripts so that French language proceedings will be considered. They said they didn't think it was necessary. They said that maybe the opposite would happen where a person would testify in English in a French trial, and maybe it won't appear in the transcript.

He didn't answer my other letter. First of all, it would be against your policy that if it's not English, you put those quotations. It means it has to be in English, either the invitation or the original language. Second of all, I've never seen in Alberta a transcript where somebody would have been speaking in English and it would not be in the transcript. It would be replaced by “foreign language spoken”.

Mr. Bob Dechert: Ms. Boudreau, have you heard any similar concerns about access to justice in English Quebec or for an English accused?

Ms. Geneviève Boudreau: I'm going to ask Guylaine Loranger to answer that question.

[*Translation*]

Ms. Guylaine Loranger: In the case of Quebec, I want to point out that the applications we receive do not involve the Criminal Code, but rather section 133 of the Constitution Act, 1867. There's a debate around what exactly the section means. It stipulates that any pleading or process before Quebec or Canadian courts may take place in either English or French.

The problem we have is this. The federal government set out its obligations in the Official Languages Act, but Quebec has not done that. Should the federal government's interpretation apply to Quebec? That's the question we see raised. That's the answer I can give you.

Are there problems? The answer is yes. Is the situation more problematic in Quebec than elsewhere? No.

I teach law and I work with other universities as part of the Sopinka Cup moot competition in the area of criminal law. I watch students do research and observe trials. I also watch how things unfold. There's always a good excuse not to hold a trial in the language of the accused: the bilingual prosecutor or the bilingual judge is sick and there's no one else available to replace them that day. That's the case all over the country, and the following question has to be answered. What remedies are possible?

● (1150)

[*English*]

Mr. Bob Dechert: Thank you.

Mr. Slimovitch, we've heard from the Department of Justice or the Minister of Justice for Saskatchewan that there are sometimes issues in Saskatchewan with bail hearings being available in both official languages. Have you encountered that issue in Quebec for anglophone accused?

Mr. Steven Slimovitch: I've never seen that problem in Montreal proper. I've heard that the problem occurred a couple of times in slightly outlying regions.

Does it occur more often? I don't know. I couldn't answer that question, but you should also realize that sometimes a judge who you think is unilingual French actually has perfect English, so it can go both ways.

Mr. Bob Dechert: Do any of the other witnesses have a view on whether or not it should be mandated in the Criminal Code that bail hearings be provided in the language of choice of the accused?

Mr. Gérard Lévesque: It should be included. I note that this is one of the two points where I'm concurring with Jonathan Denis, the Minister of Justice for Alberta, who wrote that they are looking at the notice provision as very important; as soon as they know that an accused will be asking to use either French or English, they can make provision for that.

If it's at the start, fine. Even then we should devise a way where, if the crown is not to contest a request, maybe there's a way not to wait for an order of the judge. It could be something like it is in Ontario. I think there are five ways in which one can request a French language hearing: by filing a first document in French, or by making a requisition, or things like this. There could be an easy way to ask this of the administration of justice; if the crown is not to contest the request, why wait to appear in front of a judge?

The Chair: Thank you for those questions and answers.

Our next questioner is from the Liberal Party.

Mr. Casey, the floor is yours.

Mr. Sean Casey (Charlottetown, Lib.): Thank you, Mr. Chair.

I'd like to come back to the first question posed by Madam Boivin.

Our role here is to look at the operation of this section of the code and to make recommendations. I very much appreciate your testimony in providing us with some practical examples of how it is applied.

I recognize that the problems you've identified may not all be addressed by amendments to the Criminal Code, but that's part of what we're here to do. I wonder if you could take the next step. If you're advising the government or Parliament, where do we go from here? Should the changes be legislative? Should they be in terms of allocation of resources? Are they truly federal or are they federal-provincial? I guess I'd like to take the discussion from “here are the problems we've identified” to “here's what I think you should do about them”.

The Chair: Would you like everybody to answer?

Mr. Sean Casey: Certainly Mr. Slimovitch and Mr. Lévesque, please.

[*Translation*]

If anyone else has anything to add, I'd be happy to hear what they have to say.

[*English*]

Mr. Steven Slimovitch: First of all, the code could be more specific as to when you have a right to an English something. I've had many judges who've said that you don't have a right to an English preliminary inquiry, that the code says an English “trial”. I've said, “No, it doesn't. Look at the code. It's black and white.”

For a bail hearing, you're going to look a long time. You won't find it. It's simply not there. For arraignments, again, it's not there. Usually and almost always in Montreal, it's not a problem. The individual wants an English everything and he can get an English everything. The problem starts when you leave Montreal. The problem starts when either there are fewer resources or there is less willingness to comply with the order, much like the crown prosecutors did in Saint-Jérôme in the Cross case.

So yes, I think it could be made clearer as to when it applies, but really it's a question of how you're going to approach the situation, how you're going to see it. Do you really want a bilingual trial? You can understand that in Quebec that's a very touchy subject, a bilingual trial.

● (1155)

[*Translation*]

Mr. Gérard Lévesque: Our final brief will contain 15 or so recommendations. The first is to amend the Criminal Code to set out the consequences of not respecting an accused's right to be informed of his or her rights. A number of things need to be added to that end.

The way things are interpreted, at least in Alberta, is that if what a person is entitled to is not stipulated clearly, then they don't have access to the rest. The answer I hear most often from those who work in the court system and at the Ministry of Justice is this:

[*English*]

“We are not legally required to provide you with the French form, or a bilingual form or whatever you are asking for”. So if it can be precise, what are the consequences of not advising the accused of his right to a French trial?

[*Translation*]

I'd like to show you the transcript from Marc-André Lafleur's first appearance in court. He wasn't informed of his right to a trial in French and there was absolutely no evidence that the judge saw to it that he was. Not until six month later did Mr. Lafleur learn that I existed and that I could travel to Fort McMurray. When I told the Crown that his right had been violated, I was told that my client had not suffered prejudice because, thanks to me, he would get his trial in French.

The fact remains that he did suffer prejudice. In those six months before he met me, Mr. Lafleur saw other lawyers who knew nothing about the right to be tried in French. He did not receive any service to that end in a timely manner. The Crown submitted that he would ultimately have his trial in French. And there were no consequences to be had.

The lack of any consequences encourages those who do not see the importance of language rights to disregard them. Only one of two conclusions can be drawn: either linguistic duality is an underpinning of this country and language rights are to be respected and interpreted generously as established by the Supreme Court, or the violation of those rights is of no importance. The deficiencies that are apparent in the correspondence received from the ministry encourage violations. The ministry is claiming that it doesn't have to respect these rights, when the legislation is crystal clear. Under the Criminal Code, if English or French is spoken or an interpretation is provided in either official language during a trial, it must appear in the record.

How, in 2014, can a province that increasingly aspires to be a financial, economic and political leader in the country continue to allow policies that deny people their language rights? It's unacceptable.

The federal government is responsible for appointing superior court judges, who in turn consider the serious charges laid under the Criminal Code and related appeals. One of our recommendations to the committee, aimed at strengthening public confidence in the administration of justice, is to urge Parliament to avoid appointing anyone who is a federal, provincial or territorial cabinet minister one day to the judiciary the next. That's a fairly important measure that extends beyond language rights to the public's confidence in the judicial system.

A long time ago, the Canadian Bar Association asked for a minimum cooling off period of two years. So somewhere between two years, which is not acceptable for governments that have been in power for years, and five days, the committee should be able to find a reasonable compromise.

I have personally experienced a situation where a politician was appointed to the bench after a waiting period of five days. When, as a notary in Alberta, I would submit a bilingual or French-language form from Ontario to certify documents I had to send for clients in Switzerland, Belgium and France, the province could certify that I was a notary public in Alberta in English only. The province would attest my signature and my seal and send the document to a French-speaking nation like Switzerland, Belgium and France in English. The document can be provided in either language, but the province wants to provide it in English only. What good does an English-language document do in a country like Belgium, where they speak Walloon and Flemish?

● (1200)

A justice minister tells me his ministry cannot provide me with the form I am asking for because “we are not legally required” to do so, and five days later, he is sworn in as a judge. Well, that makes me wonder whether I will have to argue my case in his court and whether he will view language rights in the same way.

[*English*]

The Chair: Did you want to respond to Mr. Casey's question?

Mr. Steven Slimovitch: Can I just add one quick sentence? There's a certain irony when you go into a courthouse—well, at least in Montreal, and I'm sure it's the case in the other courthouses too. There's absolutely no English outside the courtroom. But when you get into the courtroom, you can speak English. But when you leave the courtroom, your English doesn't exist, and that's a function of the reality of the situation in Quebec.

The Chair: Thank you very much.

Thank you, Mr. Casey, for those questions.

Thank you, witnesses, for those answers.

Now from the Conservative Party, we have Mr. Goguen.

[*Translation*]

Mr. Robert Goguen (Moncton—Riverview—Dieppe, CPC): Thank you, Mr. Chair.

I want to thank the witnesses for sharing their insight with us.

Obviously, you have more than just judges and prosecutors in court. There are interpreters and stenographers as well. When we looked into the effectiveness of these Criminal Code provisions, one of the complaints we heard from several provinces had to do with the lack of translators and stenographers.

Do you have any comments or suggestions for the federal government with respect to improving the situation?

[*English*]

I'll leave that open to anyone.

[*Translation*]

Mr. Gérard Lévesque: I think post-secondary institutions need to be encouraged to train qualified interpreters for every region of the country. There were unacceptable situations in Alberta where the interpretation was inadequate. When the Alberta Ministry of Justice retains someone to interpret court proceedings, the person does not have to be a member of the Association of Translators and Interpreters of Alberta or other appropriate professional body. And the results are not acceptable.

In Alberta, I've seen that kind of thing happen at every level, from the provincial court to the court of appeal. For example, someone who is trying to earn a living can offer their services to the ministry even if they don't have the necessary education or if they have been trained as an interpreter or translator but not a legal one. We end up with people who don't know the terminology. If we are provided with an interpreter specializing in meteorology, well, it isn't the same.

I can assure you that in some cases where the accused is not represented by counsel, the Crown itself has recognized the problem. The Vaillant case in Calgary is an example of that. The judge, in other words, the Crown, recognized that the interpretation was so inadequate that, had the accused had a lawyer, that lawyer would have requested that the case be dismissed. Consequently, the charges were withdrawn. In fact, the Crown prosecutor had already corrected the interpreter once. The judge had done so as well, and by the end, even the accused had started correcting the interpreter. The accused even added that he should offer his services as an interpreter, so he could earn as good of a living as he did as a truck driver.

Mr. Robert Goguen: The problem seems to be twofold. First, everyday French is not the same as legal French. Second, interpreters don't appear to receive the same training from province to province. French may be viewed as universal, but in order to ensure everyone has the necessary qualifications, what can we do to standardize the training that legal translators receive? Do you have anything to suggest in that regard?

[*English*]

Mr. Steven Slimovitch: Very quickly, we have very strict guidelines on who can be an interpreter. We don't follow the American model in which anybody can walk in and there's a voir dire held to see if the person is a competent interpreter.

Mr. Robert Goguen: "We" being Quebec?

● (1205)

Mr. Steven Slimovitch: Sorry. I mean Quebec, exactly.

It's highly regulated. Only one time in 23 years have I seen an interpreter whose quality was unacceptable. The judge just stopped the trial and we continued the next day with someone else. That's once in 23 years.

But in terms of the clerk, there's not much the court clerk has to say in the process. The court clerk is going to speak a little bit. For that court clerk to be able to speak in the other language, I can't see it being all that difficult.

Mr. Robert Goguen: That covers one aspect, but again you're talking about a legal translator having a certain standard, and certainly it may be a high standard of Quebec civil law, whereas in the other provinces, you have nine that are French common law, and the terms—I mean if you're talking here about trust, and not to get into it—and the concepts are not always equivalent.

Mr. Steven Slimovitch: Well, I presume each province regulates its interpreters, and each province decides who is a competent interpreter. I can't believe they don't.

Mr. Robert Goguen: Well, I know Manitoba, for instance, has—

[*Translation*]

an organization that brings together the community of French-speaking legal experts.

[*English*]

Certainly at the

[*Translation*]

Université de Moncton, they have the Centre de traduction et de terminologie juridiques.

[*English*]

In Quebec, Manitoba, and New Brunswick it may not be a problem, but what do we do in little old Saskatchewan? I don't know. I wish I had the answer.

[*Translation*]

Mr. Gérard Lévesque: The same goes for training provided to French-speaking legal professionals. The training is not provided in all the provinces, but certain provinces have enough institutions that can help the others.

However, there is a problem when it comes to professions, which come under provincial jurisdiction, and not all provinces recognize the profession of interpreter or translator.

Ontario has a piece of legislation that recognizes the Association of Translators and Interpreters of Ontario. Its members have a code to follow and competency criteria to satisfy. However, that is not the case in Alberta. The Association of Translators and Interpreters of Alberta is not recognized by any legislation. Although the association has programs to ensure the quality of services provided by its members, the government does not even require those whose services it uses to be members of that association. So that's why there are problems. There must be a political will to ensure quality service and to figure out who should provide the training. Canadians increasingly have the right to mobility, since they can be trained in one province and work in another, as long as their language rights continue to be respected from one province to the next.

[*English*]

Mr. Steven Slimovitch: I should tell you, though, that this is one of the reasons, although perhaps not "the" reason, we've gone away from the interpreter interpreting from mouth to ear, the way it used to be. Clearly nobody heard that. Nobody was recording that. So nobody knew if the quality of the interpretation was any good.

Now the interpreter has to interpret out loud and it has to be recorded, so at least the accused can come back and say, "Read this. I couldn't understand a word they were saying."

[*Translation*]

Ms. Guylaine Loranger: I attended the Caron hearing before the Court of Appeal of Alberta. I listened carefully and I took some notes on the interpretation. My colleagues were making their case, and I was listening and taking note of the translation. The situation was so bad that the judges stopped the hearing and requested new interpreters.

The legal errors were substantial. The term "droits civils et propriété" was translated by "civil law" instead of "civil rights". I will spare you all the major errors I heard. The interpreters translated "théorie de l'arbre vivant" as "the tree is alive" instead of "living tree".

That is what the judges based their decision on. You are asking what we honestly think and what your options are. This does indeed come under provincial jurisdiction, but the penalty can fall under the Criminal Code.

What happens if the defendant's right to a fair trial has been violated because the translation or interpretation was inadequate? The penalty can come under the Criminal Code.

Mr. Robert Goguen: It's already covered in the charter.

Ms. Guylaine Loranger: Yes, but our mandate does not apply to all human rights.

Mr. Robert Goguen: Okay, I understand.

● (1210)

Ms. Guylaine Loranger: Section 2 covers freedom of expression. The federal government has some tools at its disposal despite the limitations imposed by provincial jurisdiction.

The Criminal Code can specify what is part of the process. This is crucial for human rights when it comes to sentencing hearings.

Mr. Robert Goguen: Such as bail hearings.

Ms. Guylaine Loranger: Yes, such as bail hearings. In the case of such rights, the Evidence Act is applied differently because some evidence is presented that would not be admissible to the trial and that has a major impact on the sentencing.

I was giving you examples of evidence being rejected in cases where constitutional rights were violated, but if you specified that it was a matter of a constitutional right—which is implicitly included—there could be profound implications.

Mr. Robert Goguen: So we need better oversight.

[*English*]

The Chair: Monsieur Goguen, thank you for those questions and answers.

Madame Péclet from the NDP, the time is yours.

[*Translation*]

Ms. Ève Péclet (La Pointe-de-l'Île, NDP): Thank you very much, Mr. Chair.

I want to thank our witnesses for joining us. I think this is a very insightful discussion.

My first question is more general. You can probably make a very quick comparison. The question is for all the witnesses.

Based on your experience, what aspects have improved since the legislation was adopted? What aspects have unfortunately not been part of the discussions and were not part of the bill's passing, but deserved to be amended and included in the legislation's broad framework? Can you make a comparison between what is going well and what needs more attention? The goal of the study is to see what has happened since Part XVII of the Criminal Code was applied and what needs to be done to improve it.

Mr. Gérard Lévesque: The Criminal Code stipulates that provinces can adopt rules and regulations to ensure the implementation of rights, be it when it comes to part XVII or other parts. The legislation could perhaps specify that, in doing so, the provinces must hold discussions with representatives of minority communities. Normally, this should go without saying. The Regulatory Review Secretariat of the Alberta Executive Council has a policy to consult the people concerned, either in the commercial field or any other field. However, they do not hold consultations on legal rights, and especially not with minority communities.

We have asked to meet with the representatives of Alberta Justice to discuss certain issues—even those of a criminal nature. For a few years and a few more years to come, their position has been and will be not to hold discussions with representatives of the francophone community or with representatives of French-speaking legal professionals until the Supreme Court decides whether Alberta was justified in withdrawing the rights to justice in French in that province. This was done in 1988.

However, that does not affect the use of French or English before the courts. Those are two parts of the Languages Act. The francophone community has been punished for years. We have that in writing. You can read in our brief that individuals—often the Minister of Justice himself—have written a number of times to the Association canadienne française de l'Alberta and the Association des juristes d'expression française de l'Alberta to tell them that they would not meet with them until the Supreme Court rendered its decision on the Caron case, which has to do with the provision of justice in French.

They do not even want to discuss that. They request a meeting to discuss other considerations, such as whether they will have a transcript of the criminal hearing in French because, if not, the defendants will be denied their constitutional rights to make a full answer and defence. They do not allow any meetings. The last letter I received was very clear. They returned one of the letters I mailed two years earlier. They said that I had misunderstood and that this situation also applied to criminal law. I was told that, when the time came, I could write to the minister and not the Alberta Crown Prosecution Service.

So there is a lot of control in that area. You have quite a tall order before you to include in the Criminal Code a provision that would ensure consultations. For 10 years, I was the executive director of the Association of French Speaking Jurists of Ontario. I can tell you that we had a very good relationship with the Attorney General of Ontario and that consultations were exemplary. Ontario, since my time growing up in Ottawa and over the last eight years....

● (1215)

Ms. Ève Péclet: Do you agree with Ms. Loranger? Do you think penalty provisions should be included in the Criminal Code for violations of language rights?

Mr. Gérard Lévesque: That would be our first recommendation. The violation of the right to be informed of one's language rights should have consequences. If there are no consequences, this will not be an important right for those considering it.

[*English*]

The Chair: Who else would like to answer the question?

Mr. Slimovitch.

Mr. Steven Slimovitch: To answer your last question first in terms of consequences, although I think it's extremely, incredibly important, I'm very confused as to how you could put consequences for the non-respect of a certain right. You don't have that in the Criminal Code. I can't think of anywhere in the code where you have that. If there's a charter right that is breached, ask for a remedy under the charter. That's why we have subsections 24(1) and 24(2).

I think the real question is not necessarily what's in section 530, or what's in this part. The real question is, what is the intent and what is the feeling of the government? That's the real question. Are they prepared to give trials in the other language? If you have judges of whatever jurisdiction, and they value it, you're going to get that trial. If you don't, you may have a problem. The question is, we should remove.... It should not be a question of, well, maybe you have a right, maybe you don't. It should be clear in the *magistrature* that, of course, you have a right to a full, in my case, English trial.

Ms. Ève Péclet: Would you argue that the judges have to be personally obligated to inform the accused of his rights if he's not represented?

Mr. Steven Slimovitch: Yes, but even that, that's like the beginning. You have a right to a trial in English.

[*Translation*]

So, now, we will begin.

[*English*]

Ms. Ève Péclet: Yes.

Mr. Steven Slimovitch: But he doesn't understand. He doesn't understand what's part of the trial. He doesn't understand. Does he get a document or does he not get a document? Can he cross-examine in English? He doesn't know that. He doesn't know any of those things.

Ms. Ève Péclet: The accused?

Mr. Steven Slimovitch: Sure.

Ms. Ève Péclet: But now are you talking about the lack of resources or the implications of—

Mr. Steven Slimovitch: No. For us it's not a question of resources. I don't see at all the question of resources, definitely not in Montreal, and definitely not in the surrounding regions of Montreal. The resources are there. It's possible you could do an English trial at the drop of a hat. The question is, do you really want to do an English trial? That's the question.

Ms. Ève Péclet: So your problem is political will?

Mr. Steven Slimovitch: Yes.

The Chair: Madame Lévesque, I'll give you five seconds.

Ms. Geneviève Lévesque: I just have a brief interruption.

The problem is the lack of specified issues under the code. As has been mentioned through the experiences of the lawyer beside me, it becomes a political will to find the resources and have a debate. People are voluntarily blinding themselves, but it doesn't mean the problem doesn't exist. Therefore there would be a need to specify or have a framework to at least show what the boundaries are, or if not, what the choices are.

The Chair: That's more than your time.

Thank you very much.

Our next questioner is Mr. Wilks from the Conservative Party.

Mr. David Wilks (Kootenay—Columbia, CPC): Thank you very much, Mr. Chair.

I thank the witnesses for being here.

I'm going to take a little different tack on this. Being retired from the RCMP, I'm going to take it from the police side of it. It seems to me that we always put the horse before the cart, because all I've heard today is what happens when we get to court. But first we have to get to court. That's a significant dilemma we're talking about, sections 530 and 531, with regard to the police. From the perspective of some provinces such as New Brunswick, law enforcement officers sometimes need to verify what court the accused wants to proceed in. If they get it wrong, then we're lost out of the gate.

I'm wondering if there's any comment on that part of it from the perspective of the police officer side of it. Because I find it somewhat frustrating sometimes. All of my service was in British Columbia. I only had one time when a person invoked their right to the other official language. It was a challenge for me. It was in northern British Columbia where we had very few, at that time, French-speaking members. It was much different than today.

I'd like to hear how we try to remedy loosely sections 530 and 531 from the perspective of the police, which becomes a real challenge. I've seen where we've lost trials and the police have done significant work. Through no fault of their own, a decision based on a charter argument throws the case out.

I'll start with whoever wants to throw the ball.

● (1220)

Mr. Steven Slimovitch: I would say the answer to that, for the most part, is a cue card. All of our officers have cards on which the right to counsel, the right to be advised of the right to counsel, and so on are written in English on one side and French on the other side.

This gentlemen or this lady may have never spoken any other English in her life. That may be the only English she speaks, but it's sufficient for the accused to understand what his rights are.

Mr. David Wilks: I don't disagree with you.

Go ahead, please, Madame Loranger.

[*Translation*]

Ms. Guylaine Loranger: I would like to refer you to a Supreme Court of Canada case. I'm talking about Société des Acadiens et Acadiennes du Nouveau-Brunswick v. Canada, from 2008.

The issue you raised is twofold. The RCMP is a special organization. The Supreme Court has established that the RCMP is a federal institution at all times. So, as a member of a federal institution at all times, when an RCMP officer arrests an individual, they must comply with section 20 of the charter. Under that section, in terms of communications and services, the officer must provide an active offer. That is covered in part 4 of the Official Languages Act, which also stipulates that the police officer must provide an active offer. So the officer must speak to the arrested individual in French. They could say the following:

[*English*]

"*Bonjour madame/monsieur.* Would you like to be spoken to in English or in French?"

[*Translation*]

Now here is the problem. The issue of significant demand under section 20 of the charter comes into play. There are also official languages regulations that outline specific territories, events and contexts where services should be offered in both languages. Everyone is entitled to a hearing in their language, so we are no longer talking about significant demands.

This has to do with the concept underlying section 19 of the charter. When the evidence before a judge violates certain rights, the judge cannot take it into consideration. If the officer violated section 20 of the charter, the situation becomes problematic.

[*English*]

Mr. David Wilks: If I can just interject, that's part of the problem. The problem is that at the time of arrest, whatever the charge is, in the heat of the moment if I am a police officer, I'm not really worried about language rights.

My job is that you're going in the back of the car one way or the other. I don't care what language it's in, but you're going in the back of the car, and then we'll deal with it from there. That becomes the problem.

Mr. Steven Slimovitch: But that's okay. Once the individual is in the back of the car, they can, as the Americans say, be Mirandized. I don't think it's all that difficult a situation. I don't think the police officer has to get into a fight with a suspect and read him his rights at the same time. He clearly can do that afterwards.

A problem might occur if the accused were to make some kind of spontaneous declaration. Then you might get into a complicated situation.

Mr. David Wilks: That rarely, if ever, happens.

I'm just giving you a policeman's perspective. Sometimes we're challenged by the fact that in 10 seconds we have to think about every law that's going to be brought up before the court and then we will be scrutinized before the court for hours on what they assume we should have known. My job is not to be an expert on the charter. My job is 10 (a) and 10 (b): make sure they get it; make sure they can contact a lawyer in the language of their choice; and after that, have a good day.

● (1225)

The Chair: We have a minute and a half to respond to the "good day" comment.

[*Translation*]

The floor belongs to Mr. Lévesque.

Mr. Gérard Lévesque: I would just like to point out that Alberta does not have a provincial police force. The Royal Canadian Mounted Police provides law enforcement services there. RCMP representatives are open to discussions with representatives of French-speaking legal professionals.

Two years ago, Ms. Lévesque organized in Edmonton a meeting on access to justice in both official languages. We were very pleased to welcome three representatives of the RCMP to discuss both sides' suggestions to improve services to Canadians.

We were surprised that Alberta Justice did not agree to attend the meeting with the other 75 participants. We had a very good meeting, but the provincial government's main partner was missing.

[*English*]

The Chair: Thank you very much for that.

Our final questioner for today is Madame Boivin.

[*Translation*]

Ms. Françoise Boivin: I was the first person to ask questions and I will also be the last.

I want to use my time to first congratulate Geneviève. What you are doing as a young law student is quite amazing. I think you have chosen the best university when it comes to law.

That being said, I heard the issues raised by my Conservative colleague Mr. Wilks, but I think they are inconsistent with this review of Part XVII of the Criminal Code. We currently discussing the post-arrest stage. Be that as it may, perhaps we should study these issues in more depth. I have some sympathy for those problems, but the substantive issue here is whether that part's provisions are sufficient, as I said earlier.

I want to make sure I understood what you said, since we will soon start drafting our report.

Canada is a large country that is bilingual on a federal level. Bilingualism is probably much better reflected in Montreal than in the regions—such as Saguenay or elsewhere in Canada. Large bilingual cities like Montreal are few and far between. I just want to put this into perspective. I am a Quebecker who is proud of being able to write and read fluently in both languages. However, achieving that has required a great deal of effort and personal will. In some cases, this goes hand in hand with the individual's background and circumstances.

I understood what you meant when you said that some willingness was necessary. We are talking about political will, and perhaps we should remind our judiciary branch that it has some obligations under Part XVII of the Criminal Code. We must ensure that this issue is no longer left to the lawyers. I am not saying this is bad or good, but I know how things work in criminal law. On a morning when there are three or four offenders without a lawyer and no one has their lawyer cardex, whoever is in the room is chosen. Basically, in some cases, the language issue is not the lawyer's priority. Therefore, it may be preferable to leave that up to the individual presiding over the trial—the judge.

To ensure that political will—the real will to hold a trial in the language chosen by the defendant—judges should inform people of that right and of the fact that they can use it in the simplest possible way. In some remote areas—more rural areas or the regions across Canada—that may prove a bit more difficult, but the legislation already provides that this must be done and what must be done. I think that your testimony on that issue will prove to be rather edifying.

If I have understood correctly, you think this should also apply to the appearance and release stages, which are extremely important for defendants. Is that right?

● (1230)

Mr. Gérard Lévesque: The appeal stage also plays a part, if applicable.

Ms. Françoise Boivin: If I have understood correctly, sentence rendering and the related debate also come into play.

Thank you.

[*English*]

The Chair: Thank you very much.

Thank you for those questions.

Thank you to our witnesses today. Thank you for the very informative discussion we had on this topic.

We will be having the Commissioner of Official Languages on Thursday, and then we will be giving directions to our library staff to help us develop a report on the study we will be doing. That will be happening in the next few weeks.

Thank you for joining us this morning.

Before we adjourn, I need someone to move the motion.

An hon. member: I so move.

The Chair: The budget has been moved for this study. All those in favour?

(Motion agreed to)

The Chair: The meeting is adjourned.