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Chair

Mr. Anthony Housefather

Standing Committee on Justice and Human Rights

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● (0845)

[*English*]

The Chair (Mr. Anthony Housefather (Mount Royal, Lib.)): Good morning, everyone, and welcome to this meeting of the Standing Committee on Justice and Human Rights.

[*Translation*]

My name is Anthony Housefather and I am the member for Mount Royal. I am also the chair of this committee. We are very pleased to welcome the witnesses to this first half of our meeting today.

[*English*]

We are joined today, from the Language Rights Support Program, by Monsieur Pierre Foucher, who is the analyst and professor; and Madame Geneviève Boudreau, who is the director. As individuals, we have Professor Noël Badiou, who is the assistant vice-president of equity, diversity and human rights at Laurentian University; and Faisal Bhabha who is an associate professor at Osgoode Hall Law School, and I know taught at least one member of this panel. I'm very pleased to welcome all of you here today.

Normally we would go first to the Language Rights Support Program. Do you need more time, Madame Boudreau?

Ms. Geneviève Boudreau (Director, Language Rights Support Program (LRSP)): No, I'm good, unless you don't want me to be first.

[*Translation*]

The Chair: No, that's fine.

You have the floor, Ms. Boudreau.

Ms. Geneviève Boudreau: Thank you, Mr. Chair.

I am pleased to speak to you this morning about the language rights support program, the LRSP.

[*English*]

As you know, the LRSP is the result of an out-of-court settlement after the abolition of the *Programme de contestation judiciaire*. The contribution agreement under which the LRSP functions is really based on the framework that was in the out-of-court settlement, with many more details. The contribution agreement is between Canadian Heritage and the University of Ottawa, and the funding is $1.5 million a year. The mandate of the LRSP is the clarification and the advancement of constitutional language rights.

The role of the University of Ottawa, as the managing institution, is basically to offer the LRSP human resources services, its financial department, and its IT department. It has a department of procurement and management of risk, and crisis management as well.

The expert panel of the LRSP, on the other hand, is appointed by the Minister of Canadian Heritage. The appointment is made from a list provided by the Fédération des communautés francophones et acadienne du Canada and from Quebec Community Groups Network, and other organizations across Canada. This appointment is nine members across Canada. Five of them are lawyers, and one of them is an expert in alternative dispute resolution, as well as four members from communities who are recognized within their communities; that's why they were on the list from the FCFA and QCGN in the first place.

The expert panel role, compared to that of the University of Ottawa, is all to do with funding. It makes the final decision on who gets funding and who applies to the program. Its role is very important as it's completely independent from the University of Ottawa, as well as from the government. It's impartial and independent. In all the six years that I have worked there, it has deliberated in all impartiality.

The component of *information et promotion* of the LRSP has evolved over the last six years. At the beginning, for the first couple of years, we did a lot of presentations across Canada. Even now, today, we make presentations during conferences, the AGM of our organization, etc. At the beginning we did a lot of consultations. We went around Canada, to all the regions, and we consulted with the organizations that worked with the francophone community or the anglophone community in Quebec. We analyzed their needs, not only to do with what information they needed for constitutional language rights but where they wanted to go towards advancing constitutional language rights.

As we progressed, the information and promotion component evolved. Now I would say that we do more collaborative projects with community organizations. As one example, the Acadian provincial association in New Brunswick came to us and said it was doing a campaign across the province to educate Acadians on their language rights, and asked if we would be interested. Of course we were. What we provide is our expertise, because a lot of the time these organizations don't have the legal expertise in language rights. We checked their stuff before it went on TV and radio, and we also provided funding.

Another example is the Canadian Teachers' Federation. It wants to check all the curricula all over Canada to see what the provinces have in their curricula to teach language rights, the vitality of communities of linguistic minorities, etc., in their classrooms. Basically, we've said yes to that project as well, of course. We do the study with them, we check for the validity of the project and the final document they provide. They use that document, which is basically a study of what's missing and what's good across the provinces when it comes to their curricula on language rights, and they go throughout the provinces and the governments and they tell them what they're doing well and make suggestions as to how they might improve. We've helped them with that project.

● (0850)

As I said, the information and promotion component has evolved over the years. We have a website that is very complete. You're welcome to visit it. It tells you all about our funding, as well as trying to say in simple and clear terms what our language rights are, as well as providing different ways of learning language rights for different learners, adult learners. In this component we provide $5,000 for impact studies. This goes through the expert panel, and it studies a new law, a new decision, and the impact of this new decision or new law on the communities and our language rights.

We basically have two other types of funding: ADR and legal remedy. The ADR is the alternate dispute resolution, so mediation, negotiation, etc. That's mandatory and was part of the out-of-court settlement. You have to do it before you can get funding for litigation. Conflict resolution as part of litigation is another component, but it's part of the litigation itself. The trial judge or the law in that province says it is mandatory that they do that ADR. We fund that as well. Each is separate, $25,920.

Exploratory study is really at the beginning when the individual or organization is not sure about their rights and they want to have legal advice, so we provide $5,000 for that. Their legal remedies are all the ones you see listed, and those are the different types of funding that we provide.

With respect to the eligibility criteria, for all our funding you need to be an individual or a group of individuals whose constitutional language rights may have been infringed, or a non-profit organization that has members who are individuals whose constitutional language rights could have been infringed.

All applications must concern constitutional language rights, obviously, because our mandate is the advancement and clarification of constitutional language rights.

For the legal remedies applications, you also need a test case. A test case is one that has never been decided in court, or it has been decided in court but you have different jurisdictions that are contradictory, or it has never been to the Supreme Court of Canada and it could be useful if it went to the Supreme Court of Canada. The staff and the analyst here provide a recommendation on the application as to whether it is a test case and whether it meets all the eligibility criteria. But it's really the expert panel that looks at these eligibility criteria and decides whether that application will receive funding or not.

The next slides are all graphs and they're pretty self-explanatory. The green line is the applications we've received and the red line is the applications we've funded. As you can see, we've gone up every year in the number of applications we've received, but our funding hasn't changed. That's why the red line is trying to keep up. Over the years, and we've been open since December 2009, we've refused 14 applications that were admissible, that did respond, that did meet our eligibility criteria, but because of lack of funding the expert panel had the hard choice of not funding those applications.

In this slide, the blue column is how much money applicants are asking for when they apply to us. The red line is how much we've approved. The green line is how much they actually spent. I'm only able to provide you the data for 51 completed files, because at the end of the file when they've done their case, we ask them to give us a financial report. In that financial report, they tell us what their actual cost was. I'm only able to give you the data for completed files, because I don't have that data on the other files.

I thought you may be interested in the next slide. It's the number of applications we funded per constitutional language rights field. Educational rights has always been the one where we receive the most applications, and that's what we fund the most. After that, it depends on the year, but mostly it's linguistic equality and rights to communications and services from the federal government and from the Government of New Brunswick.

● (0855)

The green line represents judiciary and legislative rights.

The next slide is per type of funding. Each colour is a year. It tells you the number of funded applications per type of funding that we provide every year. If you look at our last year, which just finished at the end of March, you will see that the impact studies and ADR were funded quite a bit.

The last one is about ADR files. These are the ones that are mandatory because it says so in our contribution agreement. That came from the out-of-court settlements before litigation. There are exceptions, but in most cases they have to do this before they can get litigation funding. The first column is how many applications we've received since we opened. We've received about 53 and we've funded about 39. Of those 39, about 18 are completed. Out of those 18, 10 went to trial; they came to us and applied for funding for a trial. About 4 of those 18 were completed because there was a partial or a complete resolution of the problem. That tells you how the ADR files are doing.

Thank you for your attention.

The Chair: Thank you very much, Madame Boudreau.

We'll now go to Mr. Badiou.

[*Translation*]

Mr. Noël Badiou (Assistant Vice-President, Equity, Diversity and Human Rights, Laurentian University, As an Individual): Hello and thank you, Mr. Chair.

Thank you for inviting me to appear before the committee today.

I am currently assistant vice-president of equity, diversity, and human rights, at Laurentian University. Between May 2001 and June 2008, I was also executive director of the Court Challenges Program.

I understand you have already received a lot of information about the former program so I will give you my personal views on the program.

The Court Challenges Program was a superb and uniquely Canadian tool designed to make the justice system more accessible to the most vulnerable and underprivileged Canadians. In my opinion and that of many others, the program also strengthened Canadian democracy by allowing the most disadvantaged Canadians to participate in the process of clarifying the Canadian Charter of Rights and Freedoms and the Constitution.

Moreover, it was an inexpensive and very effective tool for government. Between 1994 and 2006, a number of important and influential cases were funded by the program and had a profound and positive impact on Canadian society. I am very pleased that the government has decided to reinstate the program, as set out in the budget.

The excellence of the program was recognized by various UN committees and by Ms. Robinson, former UN High Commissioner for Human Rights, during her visit to Canada. When she visited Winnipeg, in 2003, I believe, she noted that the federal government's support for this program demonstrated its commitment to giving the most disadvantaged members of our society better access to justice.

Those are my comments. I simply wanted to say that this uniquely Canadian program is a necessary and very valuable tool for our society.

● (0900)

The Chair: Thank you, Mr. Badiou.

You have the floor, Mr. Bhabha.

[*English*]

Professor Faisal Bhabha (Associate Professor, Osgoode Hall Law School, York University, As an Individual): Thank you to the committee for having me here.

I want to make the best use of my time, so I'm going to try to stick to my notes. If you want to interrupt with questions, that's fine. If you want to let me know that I've gone over time, that's fine, too.

The Chair: I'll let you know, but don't worry, you won't be interrupted with questions because we have a question period for the panel after you speak.

Prof. Faisal Bhabha: Okay. Thank you. Lawyers get used to being interrupted by judges when we appear before court, so this is a bit of a friendlier environment, I imagine.

Voices: Oh, oh!

Prof. Faisal Bhabha: In the early to mid-2000s, I was a lawyer practising in a small human rights firm where about 20% of my work was funded by the court challenges program.

I speak today from a couple of perspectives, both as a lawyer who formerly worked for clients who benefited from the program, who otherwise might not have been able to bring their matters, but also now as a lawyer who is mostly an academic. I am a full-time academic. I still dabble in practice. I teach. I research on constitutional equality, statutory anti-discrimination, and issues of access to justice in the legal profession.

The court challenges program provided funding that enabled lawyers to do important work that would not otherwise be done. I'm speaking in the context of the section 15, or equality rights, portion of the program. It was quite properly subject to full and independent evaluation of its activities every five years, the last of which was carried out in 2004, when it was found to be meeting its objectives in a cost-effective manner. As a result, at that time its funding agreement was extended for another five years, which would have gone to 2009.

In fact in May 2006, when Canada appeared at the UN Committee on Economic, Social and Cultural Rights just months before the fateful cancellation of the program, Canada's written submission to the committee described the program as one of the measures adopted by the government to promote “the equality rights of historically disadvantaged groups”. That is, the government was highlighting the program on the world stage as something that we do proactively to advance equality.

There is no question that the court challenges program was critical to the advancement of equality rights in this country. It helped score key victories. It helped make the jurisprudence around section 15. It in fact has radiated to shape the content and character of the country. We're known internationally for many of the principles that came out of the court's interpretation and application of section 15. The program was good for equality in more ways than merely challenging laws and winning victories in court. It promoted legal engagement by groups historically marginalized, developed education opportunities for young lawyers like me and for many others I saw and have known through my professional activity, and helped develop communities. I'd like to speak about one particular example in which this became very evident.

In February 2005 the African Canadian Legal Clinic in Toronto convened a national consultation to discuss the issue of security certificates, which at the time was a pressing issue for many members of marginalized communities. The session brought together immigration lawyers, constitutional lawyers, law professors, representatives of the Canadian Arab and Muslim communities, various organizations, other equality rights-seeking groups, and political activists at large. It brought us all together. I was there as a relatively recent lawyer at the time.

The group shared information and knowledge and brainstormed strategies, including how best to support the case of the so-called Secret Trial 5. That was the security certificate trilogy that ultimately went to the Supreme Court in June 2006 and was decided in 2007.

By August 2005, a year before the case went to court, the groundwork had already been laid by the communities that were interested in the case. Several intervenors sought and were granted court challenges funding to appear, to make equality arguments in the case. Counsel for these intervenors took a lead role in mobilizing communities, engaging members of those communities, doing public events, educating the public on what was going on at the court, and bridging the distance between the bench and the public.

My firm got involved in representing a couple of those organizations. I had the opportunity as a young lawyer to work on a section 15 case, an equality case, which ultimately became an area of my expertise. This was at a critical point in history, just a few years after 9/11, when members of the Canadian Arab and Muslim community were very much finding themselves engaged with the law and with concerns around the application of law.

● (0905)

This case provided an opportunity for members of that community to be involved and engaged and to feel that their voices were going to be heard by the highest court. I can't overstate how important this is from a community development standpoint.

That's just one example, of a particular community that I was involved with, but I know this to be true across the board. I've spent a lot of my time in professional life working in disability rights activism, and I saw how the court challenges program mobilized the disability community across the country. Regardless of what your particular position was on a particular case, when you look at the overall impact of what the program did for communities and for members of those communities working with lawyers, it was constructive. It developed the law, it empowered members of disadvantaged communities, and it provided bridges between those who hold legal expertise and those who need vindication of legal rights.

I want to say a couple of things about what could be improved with the program.

I think the program was constrained in two significant ways. One was that it applied only to the federal jurisdiction. This was a major constraint, and not always a logical constraint. In fact, the issues that implicate equality concerns around disability benefits, social welfare schemes, education, and health all fall under provincial jurisdiction. It was extremely frustrating, as a lawyer, to work with clients and have to separate an individual's or a community's interests into what falls under federal jurisdiction versus under provincial jurisdiction. It just didn't make any sense. The interplay between the federal and provincial, as all of you know, isn't always as neat as our Constitution would like us to have it, especially in the lived experiences of those engaging with the law.

The second constraint was the limitation of viewing equality only the through the lens of section 15. Over the last 10 years, if you look at the jurisprudence of the Supreme Court of Canada, what we see is that equality is being pursued in many other areas of the charter, in particular section 7 and section 2. These are areas wherein fundamental rights are being advocated and in which equality is being used as a lens to interpret these other rights.

I would strongly urge any future program to not have overly restrictive terms of reference or rules around how to frame arguments. That can unduly restrict lawyers working with their clients from advancing what the mandate of the program should really be. I would thus urge you to think more broadly and flexibly about what equality arguments are likely going to look like, going forward, and would urge flexibility in that respect.

Thank you for your time.

The Chair: Thank you very much for that presentation.

Now we get to questions. For those on the panel who haven't yet experienced how questions work, because this is a one-hour panel we're going to do one round of questions. You're going to have six minutes of questions first from the Conservatives, then from the Liberals, then from the NDP, then from the Liberals. Given that we're doing only one round, I'll then come back to the Conservatives and the NDP to ask whether they have some short questions to fill in the gap.

We're going to start with Mr. Nicholson, who basically, just for Professor Bhabha's information, acts somewhat as Justice Scalia used to act at the Supreme Court, so be ready.

Voices: Oh, oh!

Hon. Rob Nicholson (Niagara Falls, CPC): I'm not sure what that means.

The Chair: It means you ask very good and very fast questions.

● (0910)

Hon. Rob Nicholson: I was just about to thank them for appearing here today and tell them how much we appreciate their perspectives on these.

It's important that we hear what you have to say, because you have lived this and have been a part of it over the years.

Madame Boudreau, you said that you're moving more towards the education campaign and that it has grown in recent years. Is the reason for this that there was less litigation, fewer applications? You said there was a greater rate of application, but you said there was a greater emphasis on education. That makes sense, but what was driving it?

Ms. Geneviève Boudreau: Actually, the funding allotted to information and promotion has stayed basically the same; it's just our activities that have changed. At the beginning, people didn't know us, and we wanted to make sure that we knew them, so we consulted people. We went all across Canada and did a lot of presentations across Canada. I met many government officials and organizations, just so that people were aware of the program and I was aware of their needs. Then as time went by, people actually knew us. That's why the number of our funding applications kept going up and up.

Now what happens is that people come to us and tell us they're doing such and such on language rights and that they think their members—such as Acadians in New Brunswick, in the example I used—need to be educated on what their language rights are, and that they think this is the medium to do it—radio, television, websites, and social media. We just went on and more or less tagged on to their project.

All I meant by that was that it has evolved and the activities have changed according to how the program has evolved and how people have come to know us.

Hon. Rob Nicholson: Your program, though, is independent from the court challenges program. You continue, and you would expect to continue, and I believe there have been provisions quite apart from the government's decision to start funding the court challenges program.... Yours is one that would continue.

Ms. Geneviève Boudreau: I'm not sure what the decision will be. The contribution agreement that we have presently ends at March 31, 2017. Since the challenges program has been abolished, the language rights support program was created, but only for language rights. It didn't have any quality component like the old program.

Hon. Rob Nicholson: Let me ask a question about one of the slides that you put up on the board here that showed the levels of funding. One of them was, I think either $25,000 or $35,000 for an appeal.

Are there cases that get settled in which you decide that you will not be funding the appeal because perhaps the board, tribunal, or the court got the decision right in the first place? Do you make that decision?

Ms. Geneviève Boudreau: Maybe Professor Pierre Foucher wants to answer that.

Mr. Pierre Foucher (Analyst and Professor, Language Rights Support Program (LRSP)): In short, the answer is no, because if it's appealed it's because some parties think there has been a problem with the first decision. Since the mandate of the program is to clarify the rights, a decision of a court of appeal is always useful.

Hon. Rob Nicholson: They'd always get the funds for the appeal.

Mr. Pierre Foucher: I can't remember a case where we refused funding on appeal.

Hon. Rob Nicholson: Those of us who practise law would know this. There would be no incentive then for anyone to accept any decision at a lower level. They might as well appeal because they know they're going to be funded.

Mr. Pierre Foucher: It depends on who the appellant is.

Many times, it's the government, because the government gets slammed by the trial judge and decides to appeal. Now the other party, the minority language organization or individual, will come to us and say that the government is appealing and can they have some help.

Hon. Rob Nicholson: Fair enough.

You indicated as well, Madame Boudreau, that you have had an increase in the number of applications, and depending upon the funding, how many that you can....

Are there some applications that just don't cut it in your view? It's not just a question of having enough funding for them, aren't there some that you say, look this doesn't meet our qualifications and you have to give them that information?

Ms. Geneviève Boudreau: That's totally correct.

Most of the funding that we refuse is because they do not meet the criteria. The first few years that we were open, all the ones that we refused were because they did not meet the criteria. It's only in the last three years that we've not only refused the ones that do not meet the criteria, but also the ones that do meet the criteria, because of lack of funding.

● (0915)

Hon. Rob Nicholson: Fair enough.

Mr. Pierre Foucher: Can I add something on that because I'm the one putting the recommendation to the committee?

Not meeting the criteria is usually two things.

First of all, it's not a constitutional right. And I would tag onto my colleague's comment that a renewed program should be enlarged to at least cover the federal Official Languages Act. A lot of them are based on that, and it is very clear in our contribution agreement and in the out-of-court settlement that we are not allowed to fund cases based only on language legislation. That's one. The second one is that it's not a test case.

Hon. Rob Nicholson: That's fair enough. The diagram on the board that shows the increase of applications and the gap between that is not necessarily a question of funding. It's also a question of people not meeting the criteria.

If I have time, I have maybe one request to Professor Bhabha.

I think you were at Harvard University recently, and you were talking to them about accessibility and the Canadian justice system. I don't know if you had any speaking notes or if you had prepared anything, but if you did, I wouldn't mind, and I'm sure the other members wouldn't mind, getting a copy of that if you get the opportunity.

Prof. Faisal Bhabha: I haven't spoken at Harvard in a number of years.

I'm not sure which talk you're referring to, but I have—

Hon. Rob Nicholson: It was accessibility to the court system. My understanding was that you were there talking about accessibility in the Canadian judicial system.

Prof. Faisal Bhabha: I published an article in 2007 in which I discuss the court challenges program as a case study in access to justice. If you're looking for something in writing from me, I'd be happy to share it with the committee after I leave today.

Hon. Rob Nicholson: Thank you very much. I appreciate that.

The Chair: Thank you very much.

Monsieur Fraser.

[*Translation*]

Mr. Colin Fraser (West Nova, Lib.): Thank you, Mr. Chair.

I would like to thank all the witnesses for their presentations and their time today.

I am from Nova Scotia and I know that language rights for francophones in the province are a challenging issue. Ms. Boudreau spoke about the Acadians in New Brunswick, but there are also Acadians in Nova Scotia.

Ms. Boudreau, my question is for you.

Do various groups across the country, such as anglophones in Quebec and Acadians in Nova Scotia, face different challenges as regards language rights?

Ms. Geneviève Boudreau: Absolutely.

I am an Acadian. I was born in New Brunswick and lived in Nova Scotia for five years. I have even lived in Alberta, British Columbia, and Manitoba. Now I live in Ontario. I have myself experienced the differences between the communities. Not only are there differences between francophones outside Quebec, but there are also differences between anglophones in Quebec and francophones outside Quebec, as you stated.

I was not very familiar with the experience of anglophones in Quebec before I started working for the LRSP. In the last six years, by meeting and consulting them, I have learned about the challenges they face. Let me give you an example of the different challenges that francophones face.

In Ontario, there is the French Languages Services Act, which is well implemented by the government. In New Brunswick, there are constitutional language rights that do not exist in other provinces. We can compare these two provinces with British Columbia and Alberta, where the francophone minority is smaller. The legislation is not as strong there and the government does not have the same will to implement laws in order to enable the communities to live in French.

In other words, there are many differences between the English-speaking provinces. That is why initiatives conducted in cooperation with partners are so important. They know their own experiences, and the initiatives we undertake for them reflect their needs.

The experience of anglophones in Quebec is completely different. The English language is not threatened there. The challenges are different but the community itself is threatened because anglophones are leaving Quebec. The approach is entirely different, and as a result, the assistance provided by the LRSP is very different. The francophones and anglophones take completely different approaches in asserting their constitutional language rights.

To answer your question, I would say that the challenges do indeed differ across the country.

● (0920)

Mr. Colin Fraser: Thank you.

My second question is for all the witnesses.

Did the former Court Challenges Program appropriately address the different challenges across the country? Did it allow some flexibility as to the different needs in any given province or region?

Mr. Noël Badiou: I would say so. As Ms. Boudreau just stated, the program and the communities that made the decisions were well versed in the challenges relating to language rights and equality.

Mr. Colin Fraser: I believe my colleague, Mr. Hussen, would like to ask a question.

[*English*]

Mr. Ahmed Hussen (York South—Weston, Lib.): On the language rights program, can you provide some examples of funded cases that have led to further constitutional clarity?

Ms. Geneviève Boudreau: Yes. I should have brought my list. I have to be careful of the cases I name because the way we work at the Language Rights Support Program is that if an application comes to us, it's confidential, so who made the application and the fact that they made application is confidential. If they are approved for funding, then at that point we ask them to fill out a form. The form is a bit complex but it basically asks them what information can we provide to the public. Unless they give us a yes, a tick, and they sign that form telling us exactly what information we can provide, whether it's their name, the type of funding they get, the subject of the case, the details of the case.... It's a detailed form. And it asks at what point can we provide the information. Can we provide it now, or when it's all over?

I will provide a couple of cases. Recently there was a Supreme Court of Canada case called l'école Rose-des-vents. That's in education. Maybe after I've listed two or three cases Professor Foucher will want to add some comments and maybe some details about the case. Another case was about the Senate reform. That went to the Supreme Court of Canada. There we funded the FCFA.

We are also funding some school boards across Canada, without going into details, regarding educational rights. We also fund groups of parents who are concerned about the education of their children. We're also funding some cases on section 20 of the charter, which has to do with communication in services from the federal government.

Did you want to add anything?

Mr. Pierre Foucher: I would just say that the cases mentioned did indeed clarify the law, which is the main purpose of the program.

Ms. Geneviève Boudreau: I can say that there are about 20 to 30 cases that have finished since we've started. They went to different levels of court, but a lot of the cases that we do fund end up in the Supreme Court of Canada.

The Chair: Thank you.

Mr. Rankin.

Mr. Murray Rankin (Victoria, NDP): Thank you, all, for really helpful presentations.

I'd like to start, please, with Professor Bhabha. I invite you to elaborate on those two excellent recommendations that you gave our committee.

If I could summarize, it seems the first was that you were concerned about the program, the CCP, being applied merely to federal jurisdiction. I think, for example, human rights tribunals in a particular jurisdiction in the era of the Internet quickly become known everywhere in the country and so one would expect that would prompt your recommendation. On the other hand, there's the raw federal-provincial politics that might explain why the federal government funding challenges of a particular province's laws may not be terribly attractive. I'd like you to elaborate on that.

The second observation was the limitation to section 15. I thought there you were absolutely right on the mark. I can think of so many cases where you start with section 15 because you have to, but then section 7 is what wins the day. That was the case in Carter, the physician-assisted dying case, where they abandoned the section 15 argument and went with section 7, as you know. Or there's the Gosselin case on homelessness, a critical issue in my community and elsewhere in Canada. It will be 7; it will be 15. It will be both. Maybe the court challenges program could get involved, but if it isn't framed under section 15 it can't get any funding.

I'd invite you, please, to elaborate on those two points, if you would.

● (0925)

Prof. Faisal Bhabha: Thank you, and thanks for what sounds like your supportive comments on those recommendations.

I understand from a political standpoint the reason for separating the jurisdictions, but I think if you take a purposive approach to the mandate of the program it simply doesn't make sense. Look at the charter as a piece of neither federal nor provincial legislation, but rather as a constitutional instrument that sits above all of the other laws in the country, whether they're passed by federal, provincial, or municipal law-making bodies. From the perspective of the people who are experiencing the law, it makes no difference where the jurisdiction to make that law or to change that law resides.

If the concern of the program is to promote the development of equality law generally, and to empower the communities that are experiencing vulnerability or inequality, then that jurisdictional distinction makes no sense. It seems, for reasons that I mentioned, that when you look at the areas of law that fall under provincial jurisdiction it makes even less sense to separate that out because the areas in which historically disadvantaged groups in Canadian society are most adversely affected is in those areas that fall under provincial legislation.

I would urge members of this committee, and the government in particular, to sidestep the political issue and focus on the purpose. If you're going to bring the program back, give it the teeth it deserves, and make it into something that will be a real instrument for a quality change in the country. It will be something that we can be proud of as a nation if that is indeed something the government wishes to stand behind.

I think you've made my point. Carter is the case that comes to mind most immediately. I attended the annual constitutional cases conference at Osgoode Hall Law School just last Friday, which is a premier event for scholars and practitioners to analyze the year's developments. Again this year, as we've heard over the last several years, section 7 is in a way becoming the new section 15. There are those who say that this is a horrible thing, and there are those who say that this is simply a reality.

Mr. Murray Rankin: It's the reality.

Prof. Faisal Bhabha: It is the reality, and whether we worry about the watering down of section 15, I don't think that should be a reason to create formal restrictions on the ability of funded parties to argue other sections.

Mr. Murray Rankin: Another point you made I'd like to run by Ms. Boudreau, if I could, and Professor Foucher may wish to comment.

You commented that in 2004 there was a third party review that Professor Bhabha did of the court challenges program. That got me thinking about the many reviews that might have taken place on aspects of the language rights support program. For example, on the alternative dispute resolution component, has there been a third party review of the effectiveness of that aspect of a settlement and therefore one of the components of your program? Has there been any third party review undertaken as to its efficiency?

● (0930)

Ms. Geneviève Boudreau: Yes, as per normal, the program was evaluated after five years by Canadian Heritage. They did an extensive review of the five years of the language rights support program. I've seen a copy of that report, but it's not yet been made official and public. It hasn't been published yet, but maybe if you ask you can get a copy.

Mr. Murray Rankin: I'll make an FOI request. Oh, I can't, it's at the University of Ottawa. It's not covered.

Mr. Pierre Foucher: No, that's the government review.

Mr. Murray Rankin: I see, that's right. It would be a government review.

Ms. Geneviève Boudreau: That's the government review of the program. The government reviews all its programs every five years, and that was an extensive review of the program.

Mr. Murray Rankin: You're not able to comment on it?

Ms. Geneviève Boudreau: Well, I think I can comment. Can I comment?

It's not public? No comment.

Mr. Pierre Foucher: All right.

Ms. Geneviève Boudreau: All I'm going to say is that it was very positive in the efficiency of the program, and they had recommendations on certain aspects. You may be able to get a copy.

Mr. Murray Rankin: The reason I'm asking is that I think it's a creative aspect of the program, the fact that there is an ADR requirement, and it's something that might well be a recommendation for the court challenges program that the aspect be taken into account.

Professor Foucher.

Mr. Pierre Foucher: That's a question that comes up frequently. I did some research on the American literature. Since Professor Owen Fiss's paper called “Against Settlement”, where he argues against ADR for constitutional cases because it's public, whereas mediation is private, it is non-compulsory. Judgments are compulsory, and it is about the Constitution and not only about a private dispute between two parties; it concerns the state. There's an ongoing, raging debate in American doctrine about the appropriateness, *la pertinence*, of ADR in constitutional cases.

From what I gather, from what I've read on the topic, it's that American judges try to settle the cases after they go to court, but nobody imposes mediation before going to court. We have within the LRSP a structure where mediation will be funded after the case. But we also have the obligation in our contribution agreement. Parties who want to get the funds for litigation must first go though a mediation process funded by the LRSP. This is the aspect that is problematic. It doesn't work very well. Lawyers are resistant to it. After the case is introduced in court, sure, everybody wants to sit down at a table presided over by a judge who tells the parties to try to settle the dispute. But before, that's a problem.

Mr. Murray Rankin: That's a good point.

Prof. Faisal Bhabha: Can I speak to this point as well?

The Chair: We're working late, but yes, go ahead.

Prof. Faisal Bhabha: Then I'll just quickly say, I want to echo the concern around forcing mandatory mediation. I believe in ADR. I spent three years as a vice-chair of the Human Rights Tribunal of Ontario where I conducted over 200 meditations in human rights anti-discrimination cases. I believe that anti-discrimination cases can be settled, but I think it's a problem for the reasons that have been mentioned to require it as a condition of funding and to institute it. I'm not surprised to hear that it hasn't been working very well on a practical level. I think it can pervert the relationship between the lawyer and the client and it can create pressures of the sort that are not ideal.

Having said that, ADR is a very useful mechanism to manage minimal resources or fixed resources in a context of over-demand on those resources. I don't want to disparage dispute resolution mechanisms, but I would not recommend that you continue this condition or that you apply it. I think it's even more problematic, or perhaps it's problematic for different reasons in the equality rights stream, to impose mediation for reasons that Professor Fiss and others have written about, the dangers of settling fundamental rights.

The Chair: Thank you very much for that very complete answer. I have asked the analyst if we can get a copy of the Canadian Heritage report for the committee.

Mr. Bittle.

● (0935)

Mr. Chris Bittle (St. Catharines, Lib.): Professor Bhabha, you spoke eloquently of the importance and the significance of the court challenges program, but as we've seen, its funding depends on who is in government at the time.

Is there any mechanism such as an endowment that you feel would be helpful to ensure that there is continued and uninterrupted funding for this program, regardless of who is in government?

Prof. Faisal Bhabha: I've argued in my published writing, in the article I've promised to share, that it very well may be that the court challenges program is integral to the rights of the charter itself. In other words, it may be that the court challenges program could be viewed as being constitutionalized. If there were some way to constitutionalize the program, it would benefit from being tied to the text it is designed to promote. How that is done is another issue. I don't know that courts would be willing to pronounce on that. I think there would have to be an initiative from government.

What I observe through my personal experience in efforts to resist the cancellation of the court challenges program is that the language rights program was a lot less fragile than the equality rights program. This may be because of some of the differences in the way it's statutorily entrenched, with a commissioner for language rights established. The signal from the legislative side has been far stronger to committing to instituting language rights protections in a way that enabled that program to be salvaged through negotiations with the government, in ways that the equality rights communities were completely unable to accomplish.

I share your concern about the future of any program that might be adopted, and I would urge that such a program be protected. I don't have more than that. I haven't thought through any more suggestions on how you could either constitutionalize the program or ensure its protection from further cancellation.

Mr. Chris Bittle: You mentioned your 2007 publication. We've talked about it a couple of times. In it, you mention that the exclusion of the poor and other disadvantaged persons from the justice system is not a problem for the poor. You said it was “a problem that threatens the entire constitutional democratic order”.

Can you explain this and elaborate on it for me, please?

Prof. Faisal Bhabha: If you look at what our charter guarantees by way of equality and you look at the social facts in our society, there's a major gap. As long as that gap exists, I would argue that the government and public officials have positive duties to do something about it. The program is one way to do something about it.

I suggest that it's more than simply about interest groups advancing the narrow political agendas of particular constituents. Rather, these sorts of cases that seek to bridge the gap between the needs of equality-seeking Canadians and the promises that are contained in the charter are an important function for government. I think the program is a useful way for government to vindicate the rights that it is obliged to promote through the charter.

Mr. Chris Bittle: Back to that 2007 paper, “Institutionalizing Access-to-Justice in Canada: Judicial, Legislative and Grassroots Dimensions”, could you tell the committee how Canada compares with other countries in regard to access to justice?

Prof. Faisal Bhabha: The court challenges program was unique and something to be celebrated. At the time that it existed, every time I travelled to other countries and compared notes on anti-discrimination protections in these countries, no place that I visited had anything like it. Scholars and policy-makers that I've encountered in other countries have been impressed by Canada's commitment to the charter. Of course, what I find in other countries is that they have laws on the books but also gaps in society that don't reflect those laws. Citizens throw their hands in the air and question the value of a law on paper that isn't actually realized in practice. This kind of program is a way of showing the public that the government actually does care about the Constitution and about the rights contained in the charter.

● (0940)

The Chair: I think Madam Boudreau has one thing to add.

Ms. Geneviève Boudreau: I just wanted to add that it's the same thing for the language rights program. As far as we know there's nothing like the language rights support program on the language side anywhere in the world that's funded by the government to litigate against the government.

The Chair: Thank you very much.

Mr. Hussen.

Mr. Ahmed Hussen: Yes, very quickly, Professor Bhabha.

Earlier you mentioned that access to justice requires an integrated approach involving activists, community members, and their professional allies, meaning lawyers.

I have two quick questions with respect to that. What do you see as being the federal government's role in that process? Also, with respect to access to justice, does legal aid have a role to play with regard to public interest litigation?

Prof. Faisal Bhabha: I argue in the paper, and I continue to believe, that you need a multi-faceted approach to access to justice, and legal aid is certainly part of that. Legal aid is a shrinking resource in this country. Ontario has probably the best legal aid in the country, and it's a system in which I've worked. It serves a very small segment of the population and it covers a very small area of legal services. I would suggest that legal aid, pro bono, and other access to justice initiatives are complements but they don't substitute or reproduce what a program like the court challenges program does. This links to your first question. I think the federal government can play a role in precisely this multi-faceted approach to access to justice that you've heard me say in connecting communities to their professional allies in order to give access to the courts.

A federal government that encourages and facilitates and provides the space for a community organization and engagement with the law is a federal government, I think, that is unique in the world and would be a model for delivering on the promises of liberal rights. We've seen in every western democracy that I'm familiar with a major gap between rights on paper and rights in the lived experiences of the population. This is something that our liberal democracies have failed to overcome, this major challenge of the apparent hypocrisy between the words of the law and the lived experiences.

I think the federal government can demonstrate that it wishes to overcome that gap by supporting the very communities that can empower themselves. It's not about handing money to lawyers to fight cases in court for or against government. I will point out that in my court challenges funded work, I was involved in an intervention in support of government legislation against a challenge from an organization that was seeking to do away with equality-positive legislation. The program both supports government efforts to litigate in favour of equality as well as to bring challenges to legislation.

The Chair: Thank you very much.

We're out of time here.

Do you on the Conservative side have any short questions that you wanted to ask, because we're only running one?

Mr. Cooper.

Mr. Michael Cooper (St. Albert—Edmonton, CPC): Yes. I have one question for clarification. It's directed to Mr. Foucher or Madame Boudreau.

The comment was made that the mandatory ADR process has not worked particularly well. Yet, during your presentation, Madame Boudreau, I thought I saw numbers. Perhaps you can clarify what they are because I didn't have an opportunity to write them down. They showed that of the ADR cases only a small number went to trial. If I'm accurate in what I thought I saw, actually the ADR process resulted in a settlement without the need to proceed to trial.

Could you perhaps clarify?

Ms. Geneviève Boudreau: Out of the completed files, whether successful or not, the number is 18. Instead of looking at it the way that only 10 out of the 18 went to trial, maybe look at it the other way. That is, out of the 18, only four were successful because only with four of those was there actually a partial or complete resolution of the problem. Ten went to trial, and then you have to assume that with the others the people just decided not to go to litigation because litigation is very time-consuming...energy, blah, blah, blah.

● (0945)

Mr. Michael Cooper: Well, isn't the purpose of ADR not to go to litigation?

Ms. Geneviève Boudreau: No, the purpose of ADR is to resolve the problem, and to clarify and advance the constitutional language rights. It's not for people to just give up.

Mr. Michael Cooper: I'm certainly not suggesting that.

What is the purpose of ADR if it isn't to try to avoid going to trial in the first place? Why would you have an ADR process?

Ms. Geneviève Boudreau: The ADR process is not necessarily to avoid trial. I'll give you a concrete example. There's a group of parents whose school is next to a toxic dump, so the environmental situation for the kids is not safe. They want the toxic dump to be cleaned up or they want a new school. They go through ADR, and if it works, that means the dump is cleaned up or they get a new school so their kids don't have that toxic dump next to them. But if it doesn't work, and the parents decide they don't want to go to trial, they're stuck with that toxic dump. That's just an example.

Mr. Michael Cooper: Well, you've made a specific insinuation that certain—

Ms. Geneviève Boudreau: No, this is actually a case.

Mr. Michael Cooper: No, I'm talking to you about the statistics that you put forward. You have insinuated that a certain number of people just gave up.

What is that based on? Do you have any evidence to demonstrate that, or is that just your best guess?

Ms. Geneviève Boudreau: Well, those are statistics. There are 18 cases that finished; 10 that went to trial; and four that were resolved. So why do you think that the five cases didn't go to trial? They didn't resolve the problem, so the problem is still there. I'm assuming they didn't want to go to trial.

The Chair: I appreciate that. I think the question is made. We can take whatever we want from the statistics, and we'll figure that out.

I just have one short mop-up question, if that's okay.

In regard to the confidentiality obligations under the program, there has been a lot of criticism related to the fact that since 2000, we have not seen all of the names, the amount of funding, and at least some cursory explanation of how they are being funded.

Is there a time limit for the confidentiality obligations? At some point under the language rights program, does the confidentiality obligation lift?

Ms. Geneviève Boudreau: No.

What I'd say is that in regard to the funding, the information is available through our annual report in the sense of how much was funded for litigation, the number of—

The Chair: But not the name of the person?

Ms. Geneviève Boudreau: No. We publish in our annual report the ones that we are able to publish, and I welcome you go to on our website and see that.

There has been talk about, if the program were to continue, the possibility of telling applicants that if they want funding from us, they need to let us publish. That was a proposed modification of the program.

The Chair: Thank you.

Thank you so much for an incredibly informative panel. We really appreciated your participation, and we'll look forward to receiving the report you made from 2007. Thank you very much everyone.

We will suspend now to get the other panel up to their chairs.

● _____ (Pause) _____ ●

● (0950)

The Chair: I would ask my colleagues to please take their seats.

● (0955)

[*Translation*]

I am very pleased to welcome the witnesses appearing today.

We will hear from representatives of the federation representing francophone and Acadian communities outside Quebec.

[*English*]

We also have the umbrella group that represents the English-speaking communities of the province of Quebec.

It gives me great pleasure to welcome Sylvia Martin-Laforge, who is director general of the Quebec Community Groups Network. Welcome to our former colleague, Marlene Jennings, who is a former member of Parliament for Notre-Dame-de-Grâce—Lachine, who is also testifying on behalf of the QCGN.

[*Translation*]

I am also very pleased to welcome Sylviane Lanthier, president of the Fédération des communautés francophones et acadiennes du Canada, the FCFA, as well as Audrey LaBrie, its vice-president.

You have the floor, Ms. Jennings.

[*English*]

Hon. Marlene Jennings (Quebec Community Groups Network): Thank you very much.

Good morning, Mr. Housefather, Mr. Falk, Mr. Rankin, and members of the justice committee. Thank you for the opportunity to appear before you today to discuss the Government of Canada's intention to reinstate the court challenges program.

I am Marlene Jennings, as Mr. Housefather has stated. I'm here today representing the Quebec Community Groups Network and Canada's English linguistic minority communities, which we refer to collectively as the English-speaking community of Quebec. Joining me is QCGN's director general or executive director, Sylvia Martin-Laforge.

The Quebec Community Groups Network, or QCGN, is a not-for-profit representative organization that acts as a centre of evidence-based expertise and collective action on the strategic issues affecting our communities across Quebec. QCGN's 48 members are also not-for-profit community groups, most of whom provide direct services to members of our communities across Quebec. Some QCGN members work regionally, providing regionally based services. Others work across Quebec in specific sectors such as health and arts and culture.

English-speaking Quebec is Canada's largest official language minority community, with just over one million citizens in Quebec whose first official language spoken is English. We would like to acknowledge the leadership of the Fédération des communautés francophones et acadienne du Canada, FCFA, over the past decade. It did so first by fighting to ensure support was available to assist Canadians and protect and advance their linguistic rights through the language rights support program when the court challenges program was defunded in 2006 and, second, by recently creating the study committee earlier this year, of which I was a member, to make recommendations to FCFA and QCGN related to the Government of Canada's pledge to reinstate the court challenges program. The QCGN stands in lockstep with FCFA on this matter. We have passed a resolution supporting the study committee's recommendations, most of which Madam Lanthier and Madam LaBrie will outline when they make their presentation.

Courts play a central part in protecting and advancing linguistic rights, a process that invariably pits governments against Canada's official language minorities. In our democratic system, even governments that aspire to govern on behalf of all citizens invariably express the will of the majority. Human rights, of which linguistic rights are a subset, are by definition restrictive on government action, a set of boundaries that protects individuals and minorities from the detrimental effects of state power. John Adams' “tyranny of the majority” can be and has in the past been prevented to some extent within our democratic tradition by ensuring that individuals and minorities have substantive equal access to justice to protect and advance their rights.

But without initiatives like the court challenges program, the scale of justice is tipped in the government's favour, since the resources available to government—money, lawyers, time, and power—are on its side. Our community, that is, the English-speaking minority community of Quebec, has a long association with the court challenges program, which was key in upholding and advancing the language rights of English-speaking Quebeckers, particularly in the 1980s when we fought for freedom of expression in the Ford case and began a continuing journey to secure our minority language educational rights under section 23 of the charter.

● (1000)

I must say we are very pleased that Eric Maldoff, a leading Canadian jurist and tireless defender of our community's language rights, will be appearing before you on April 21 to provide you with examples from his experience, and to talk with you about the serious linguistic rights issues that now face our community in Quebec.

Our study committee made its recommendations based on two principles: independence and sustainability. Our committee understood that equality rights are of real importance to Canadian society, but our committee also believed that language rights are fundamentally different from equality rights, and that the two streams within the court challenges program, once reinstated, should be made independent of each other.

The study committee also believed that the new program should be independent of government. It should exist through an act of Parliament, to which it would be accountable, and it should be independently governed by a consortium of official language partners, including Canada's English and French linguistic minority communities, leading law schools, and expert language rights jurists. That independence should shelter the program somewhat from the whims of the government of the day. In any event, it is irrational to expect a government to have a governance role in a program that exists to support court actions against that very same government.

Sustainability is also a key, as is having sufficient resources at hand to meet the needs. In addition to the public investment that will be referred to by the FCFA, the new program must have the ability to raise funds from private sources. We should be thinking in terms of a foundation proclaimed by act of Parliament rather than a government program.

This was not part of my official statement, but given that there was a question posed to the previous panel, and a statement was made that the English language in Quebec is not in danger, that in fact it's just the English-speaking community's future that is in danger, I would like to take a moment to address that, because that is the position we hear all the time. The English language in Quebec is not in danger, only the communities are. In fact, the English language in Quebec is definitely in danger. An essential element of a minority language community continuing to thrive is that community's ability to work in one's language, to receive the full range of public and non-public services in one's official minority language.

Let's just give one example: to be able to work in one's language. The largest employer in Quebec is the provincial government, followed by municipal governments. One per cent of Quebec's provincial public service is made up of English-speaking Quebeckers, under the 2015-16 stats. We also know, under Census Canada, that English-speaking Quebeckers make up over 13% of Quebec's population. That means once we educate our children in English, they have nowhere to go, virtually, to work, so they leave. The use of English in the public space has been severely restricted under language laws in Quebec. When that theory of "the English language in Quebec is not in danger" is promoted and accepted, that puts the vitality and the future of our community in even more danger.

I wanted to underscore that, so that you do not walk away with the view that was expressed earlier by representatives of the language rights program, that English in Quebec is not in danger. It is in danger. The federal government has a responsibility and a role to play in ensuring that those dangers are minimized.

I give you one example.

● (1005)

The federal public service in Quebec, as well as companies and organizations that are federally regulated, are required to permit the use of English in the workspace. When I was a member of Parliament, I personally saw private members' bills that came forward to have Bill 101 applied to all federally regulated companies and associations. That would have eliminated any possibility for members of the English-language community to actually live and work in English.

I will end my remarks there. Thank you.

The Chair: Thank you very much, Ms. Jennings.

[*Translation*]

We will now hear from the representatives of the Fédération des communautés francophones et acadiennes du Canada.

You have the floor, Ms. Lanthier.

Mrs. Sylviane Lanthier (President, Fédération des communautés francophones et acadienne du Canada): Mr. Chair, members of the committee, thank you for inviting us to appear before you today.

My name is Sylviane Lanthier, president of the FCFA. With me today is our vice-president, Audrey LaBrie.

First of all, a few words about our organization and who we represent.

In 9 provinces and 3 territories, 2.6 million people have chosen to live in French. The vibrant and diverse francophone communities in every region of the country are the reason Canada can boast of genuine linguistic duality. The FCFA is the main voice of those communities and the people who belong to them, people who are determined to live their lives in French.

In recent decades, francophones in minority communities have had to turn to the courts several times to assert the language rights guaranteed to them under sections 16, 20 and 23 of the Canadian Charter of Rights and Freedoms. It was largely to support them that the Court Challenges Program, the CCP, was established in the 1980s. As you may know, the program had two components, one to protect language rights and the other to protect equality rights.

The CCP had a rather difficult history: its funding was eliminated in 1992, restored in 1993, only to be eliminated again in 2006. After the FCFA filed a petition for judicial review with the Federal Court, the government of the day created, in 2008, the language rights support program, commonly known as the LRSP. Simply put, our communities have not had access to the CCP for nearly 10 years to secure support for new language rights cases; we also cannot overlook the seven years during which the LRSP served this support role.

This is why, in the wake of the current government's commitment to reinstating the CCP, the FCFA board of directors decided last November to create an external committee to study the issue and to draft recommendations. For us, it was not simply a matter of choosing between two programs. For the first time in nearly a decade, we have an opportunity to thoroughly examine how support is provided to Canadians wishing to assert their language rights.

The committee was made up of outside parties familiar with both programs, although they were not directly associated with any ongoing cases or issues. It also included representatives of the Quebec Community Groups Network, to ensure that its work and recommendations would reflect a shared perspective of official language minority communities in Canada. Finally, Michel Bastarache, former Supreme Court justice, provided support to the committee. Both the CCP and the LRSP were notified of the creation of this committee.

The committee's mandate was to answer the following question: what would be the best way to uphold and promote the language rights of Canadians? The final report was submitted in February to the FCFA board, which broadly adopted the committee's recommendations. You have before you the resolution to that effect.

Without going into detail, I would like to highlight a few of the principles adopted by the committee and endorsed by the FCFA.

First, the sustainability and independence of the program are important. As I said earlier, the funding of the CCP was eliminated twice, and after the last time, nearly three years went by before Canadians wishing to assert their language rights could once again receive support.

That is why the creation of the enhanced program we are recommending should be based on federal legislation and therefore have a legal foundation. That is also why the government should support the enhanced program with a substantial initial endowment fund that would enable it to operate independently thereafter.

The second principle is that this enhanced program should be specifically devoted to language rights. Let me be very clear: the FCFA recognizes the importance of equality rights and fully supports the idea of a program dedicated to defending those rights. To put it simply, since the legal foundation of language rights differs from that of equality rights, we think two separate programs should be created.

Third, this enhanced program should be expanded to allow for redress under such legislation as the Official Languages Act or any other federal statute pertaining to language rights. Currently, the LRSP allows for recourse only pursuant to constitutional language rights.

● (1010)

Finally, given the significant growth in demand for the defence of language rights since the LRSP was established, the government's initial endowment fund should represent a significant increase in funding.

The FCFA is aware that the federal government announced in the March 22 budget that it would reinvest in the Court Challenges Program. We appreciate the government's gesture of support but maintain that the resolution we put before you today—which is the result of serious and extensive study—best reflects the needs and aspirations of official language minority communities.

Before, closing I would like to speak for a moment about Bill C-203, which was introduced by MP François Choquette. This bill would amend the Supreme Court Act by making the ability to understand both official languages without the assistance of an interpreter an essential requirement for appointment to the highest court of the land.

As you surely know, Bill C-203 is the successor to two bills tabled in the last Parliament by Yvon Godin, the former member for Acadie-Bathurst. This has been a topic of discussion for nearly 10 years. At issue is essentially the right of members of the public to be heard and understood in the official language of their choice before the highest court of the land.

Thank you.

The Chair: Thank you very much.

Let us turn now to questions, starting with the Conservative Party member.

You have the floor, Mr. Falk.

[*English*]

Mr. Ted Falk (Provencher, CPC): Thank you to all of our witnesses for coming to committee this morning. I've enjoyed hearing your testimony.

I'd like to begin by asking the Honourable Ms. Jennings some questions. Thank you for your presentation.

I come from Manitoba, so Quebec issues sometimes make the news there too. Periodically in the news we see that there are signage issues, English versus French and how large a sign can be and how much English can or cannot be displayed on a particular sign.

Can you tell this committee a little bit more about some of the other challenges, or the challenges English-speaking Canadians face in Quebec, and also elaborate on whether Quebec legislation is consistent with federal legislation when it comes to language issues?

Hon. Marlene Jennings: Quebec has Bill 101. It has its own charter of rights, and in the charter of rights there is a section that recognizes the existence of the English-speaking minority communities, and recognizes our right to continue to thrive.

I have to bring it back to what was stated by the previous panel; you have rights that governments adopt on paper, but lived experience does not always match up.

In terms of the signing issues, it's really not a major issue these days except primarily in one area, and that's in the area of health services. The issue of having equal access to health services and social services in the English language flares up again and again. There is a process that exists in Quebec to ensure that every single health establishment has a policy and a program to ensure that the clients they serve can receive their service in English.

There was recently a major health reform in Quebec that established new integrated health and social services centres, called “integrated university health and social services”. Existing establishments, rehab centres, long-term care facilities, hospitals, and so on, were regrouped by geographical territory. As a result, we are now in the process—if I take the island of Montreal for example—of redeveloping the process to establish the regional committee for Montreal for access to English services in health and social services program.

That's a whole process and I'm part of that process because I'm vice-president of the board of one of the largest CIUSSS. That's what we call them on the island of Montreal, and that CIUSSS is going to be responsible, under the law, for appointing the members to the regional access program committee, which will oversee all of that.

Yes, there are issues, and on that level the issues are being handled, and we hope that it will be successful.

Where we have an issue is with Bill 86, a new educational bill that completely reforms our structures and abolishes school boards, school board elections, and overhauls everything. Many constitutional experts believe that it violates section 23 of the Canadian Charter of Rights and Freedoms, the English-speaking community's constitutional guarantee to control and manage education. Given that our schools and school boards are the sole public institutions that our minority community continues to control and to manage, that would spell death. A court challenges program, reinstated and re-enhanced, would go a long way towards providing our communities with the necessary tools to contest that legislation if the government proceeds with it, adopts it at the National Assembly, and then begins to implement it.

Right now, nothing's happening because it hasn't been adopted. It's still before the National Assembly.

Have I answered your question?

● (1015)

Mr. Ted Falk: Yes, somewhat.

Do you not see the LRSP as being able to fulfill that need as well?

Hon. Marlene Jennings: No. The reason is this. I wasn't a politician, but I was an activist in my community back in the 1980s when the court challenges program was put into place. The court challenges program was supremely effective at pushing back on the Quebec government, largely on major issues that concern the vitality of our community and our language. We then saw it abolished in 1992. The good thing is that there was a short gap before it was reinstated. We see the differences between it and the existing program, which was put into place after a court challenge, by the previous government. It did not reinstate the court challenges program but put into place the language access rights program.

There is a major difference. It is not as effective. It is not as accessible, and that whole experience has simply driven home the point that FCFA and QCGN are trying to make here, that it's not good enough to have a government program for which the government is actually responsible for governance, and the very survival of that program is based on the whim and the will of whatever government is in place.

It should, in fact, be a separate institution created by an act of Parliament, reporting to Parliament, endowed with capital funds to start off, and able to solicit funds from private sources as well, and that would provide a greater measure of protection for the two official language communities across Quebec than any program will do.

● (1020)

Ms. Sylvia Martin-Laforge (Director General, Quebec Community Groups Network): I just wanted to add something.

The issue around the provincial government is certainly critical, but most of the worries we have in the provincial government are of provincial jurisdiction. I think the other major improvement to the program would be to have it cover the federal Official Languages Act. We feel somewhat abandoned, sometimes, around what the federal government does in terms of section 7, around helping the English-speaking community as well.

Certainly across Canada, it would be an improvement to have it cover the Official Languages Act, but certainly in Quebec we would feel less abandoned by the provincial government. I have to tell you that most federal ministries don't know what to do in Quebec to help the vitality of the English-speaking community, and quite frankly, some of them have lots of imagination, but many have no imagination, and it might help them to get more imaginative if there were a carrot and a stick.

The Chair: Those were excellent questions and excellent answers.

My colleagues have been kind enough to let me be the questioner for the Liberals on this round because I am from an official language minority. I just wanted to add, in response to the QCGN response, that as a former mayor of a community in Quebec, I think there is a major distinction between the way the English-speaking communities in Quebec have issues versus francophone communities outside Quebec.

One example would be bilingual status. If you are not a municipality where the English-speaking community makes up the majority in Quebec, your municipality is banned, by law, from adopting bylaws in both languages. You're not able to work in English within the municipality. You're not able to send out bilingual communications. You're not allowed to erect bilingual signs. So even if English-speaking people are 45% of your community, the Quebec law bans you from putting up signs in both languages. Ontario has a very good law that sets a certain number.

[*Translation*]

I'm not sure but I think it's 5% or 10% of the population of Ontario, with a threshold of 5,000. In light of this, there really has to be bilingual status in Quebec. Bilingualism is prohibited if anglophones do not make up a majority in the community. This is very problematic.

[*English*]

On the question of signs, as they said, it's mostly government signs. A hospital that doesn't have a majority of English-speaking users is unable to put up bilingual signs, which has caused problems in many small English-speaking communities in the Gaspé peninsula and other parts of Quebec.

[*Translation*]

Personally, I am delighted that the FCFA and the QCGN have worked together on these recommendations. It's very important for all official language minority communities in Canada to work together. I also have some questions for you in that regard.

If I understand correctly, you would like the CCP to be expanded to apply not only to the language rights set out in the charter but indeed to all federal laws relating to language. Do you think we should allow provincial laws to be challenged under this program? Did a witness recommend that? Do you think we should expand its scope to include not only federal laws but also provincial laws that undermine language rights?

I would like to hear first from the FCFA and then from the QCGN.

● (1025)

Mrs. Sylviane Lanthier: This is a delicate matter. In my opinion, we are getting into the distinctions between provincial and federal jurisdictions. In my view, this makes it a political issue.

We are here before the Standing Committee on Justice and Human Rights of the House of Commons, which examines federal laws and federal matters. For the moment, our priority would be for the new program to include all federal laws that involve language rights. There is the Official Languages Act, of course, but there are twenty or so other laws that could be subject to various judicial reviews or be covered under the program.

These are very important points, in our opinion.

[*English*]

The Chair: Ms. Jennings.

Hon. Marlene Jennings: Thank you.

QCGN has the same position as FCFA. We do not believe that an enhanced court challenges program is a forum or instrument the government decides to use to put it into place. It should not be available to contest provincial laws. It should be available to contest federal laws for the official languages legislation. As Madame Lanthier mentioned there are at least 20 other federal laws that have clear linguistic issues and rights contained in them, and they should be part of what's allowed to be contested.

It's a different jurisdiction. Provincial governments have their own responsibility to put into place their own instruments available to their citizens to contest their legislation.

We're talking about a federal charter. We're talking about federal laws.

The Chair: Fair enough.

You didn't get a chance I think to extrapolate on Bill 86. Bill 86, for my colleagues, is essentially proposed legislation that is currently before the National Assembly of Quebec that would abolish the election by universal suffrage of school board commissioners. On the English side at least there's a legitimate argument that many people feel could be made that it takes away from the English community the right to control and govern their schools.

Ms. Jennings, would the current language rights program cover a challenge to Bill 86, and how would you see that being done or recommend it be done with respect to the court challenges program, or Ms. Martin-Laforge?

Hon. Marlene Jennings: I think the current program would probably cover it. If that bill was adopted and came into force it would be under section 23 of the charter that a challenge would be made. I do believe the current program would be available to provide funding for that.

Ms. Sylvia Martin-Laforge: I can support that in the sense it is our understanding that the notion of parent, and who is a parent and how that works, could become a test case, because when the Mahe decision came out things had changed. Jurisprudence and the communities have evolved and so it would be considered. It could be considered as a test case, because that's what we're constrained with.

LRSP talked to you about it having to be a test case. We're always up against that, but the English-speaking community of Quebec in recent years has not been litigious. We don't take stuff to court much. We believe we should try and make it work. Often we haven't looked at possibilities of going to court, but this time I think this might be the straw that broke the camel's back in terms of if they try and put this through that we would look at it.

There have been talks with LRSP, and there is a potential for it in the context of being a test case.

[*Translation*]

The Chair: I have one last question for the FCFA.

You recommended that funding be allocated to create an independent program. I can understand this since the Court Challenges Program was abolished twice.

You also spoke about making a distinction between cases involving equality issues and those involving language issues. Would you recommend a program with two separate expert groups, as was the case with the first Court Challenges Program? Or would you advocate two completely separate programs?

● (1030)

Mrs. Sylviane Lanthier: We would argue for two completely separate programs. These are two sets of very specific rights that do not apply in the same way at all. We are talking about individual, collective, and linguistic rights, as well as equality rights. They are not at all the same thing.

In looking at previous programs, it would, in our view, be more effective to have a program devoted to a single set of rights and not two. We think this would be more effective and, equally important, that this model would ensure the survival and independence of the program, which are key to our proposal. These are also key conditions for the program's long-term success.

The Chair: Thank you very much.

You have the floor, Mr. Rankin.

Mr. Murray Rankin: Thank you, Mr. Chair.

First of all, I would like to thank all the witnesses who appeared before us today.

My first question is for Ms. Lanthier, the president of the Fédération des communautés francophones et acadienne du Canada.

I read your proposal from February 27, 2016. You also mentioned it today. You recommend that the Court Challenges Program be expanded to allow for recourse under the Constitution, including charter rights. That would include other federal laws and the Official Languages Act of Canada. Would you like to elaborate on this?

Moreover, to pursue the chair's line of thought, I wonder why provincial laws shouldn't be added? I am thinking, for instance, of New Brunswick's Official Languages Act. Why not include a provincial law?

Mrs. Sylviane Lanthier: There are two parts to your question.

First, you asked what kinds of laws we would like to see covered by the program. As things stand, I would say the programs pertain to constitutional rights only. That means the charter.

We would also like the Official Languages Act, which is quasi-constitutional, to be covered by the next program, since it is an extremely important statute for francophone and Acadian communities, and for all minority communities. This act provides the framework for the federal government's specific actions relating to language rights, services to the public, public servants' language rights, and support for official language communities.

Under part VII of the act for instance, the government is required to take positive measures to enhance the vitality of official language communities. What exactly do “positive measures” entail? Does the government do this systematically and at all times? How does it do this? These are important questions for us because this legislative tool gives us leverage to bear upon the government to take positive steps to support community development. We are therefore adamant and strongly recommend that the act be covered by the new program.

Other federal laws also impact language rights. Consider, for example, the Criminal Code or the Canada Revenue Agency Act. There are about twenty laws in all that impact language rights or concern matters affecting language rights. If all of these laws were covered by the next program, the program would then be able to review the federal government's whole legislative framework relating to language rights to ensure that these rights were respected and upheld.

Mr. Murray Rankin: Thank you. I see your point.

[*English*]

Perhaps I could ask a question of Ms. Jennings.

Thank you for your presentation, and welcome back to Ottawa, as a former deputy.

I'd like you to elaborate a little on the distinction that you made between the English language being in danger in Quebec with respect to individuals and with respect to communities. You drew a distinction, and then you seemed to depart from that distinction and say that English was in danger, in a sense, globally, both within the communities and at an individual level, if I understood you properly. I'd like you to explain and elaborate a bit, if you could.

● (1035)

Hon. Marlene Jennings: The point that I was trying to make—and I may have made it badly, so I'll attempt again—is that the English language, as a language, is in danger in Quebec. Part of the reason for it is that, to flourish, language requires that the community, the members who hold that language, be able to conduct many of their daily human activities in their language. In Quebec, because of certain pieces of provincial legislation, members of the English-language community are unable to conduct a lot of their daily activities in English.

I gave the example of the labour force. The largest employer in Quebec is the provincial government. A little more than 13% of the Quebec population are members of the English-speaking minority community. Only 1% of the Quebec provincial public service are members of the English-speaking minority community.

If you, as members of Parliament, support and adopt either government legislation—which I don't believe would ever happen—or a private member's bill that stipulates that federally regulated companies and organizations located in Quebec are subject not to the Official Languages Act but instead to Quebec's provincial language, then you have just taken a whole chunk of the labour force where we will no longer be able to work in our language.

Right now, if you work for the federal government in a department, agency, or company that is federally regulated under the Official Languages Act, you have a right to work in English. That would no longer be the case. Then, what's the point? We educate our children. We hold dearly our schools, which are the only public institutions we now control. We no longer control our hospitals, which our communities raised monies for, established, built, and ran, and did so because our doctors and nurses, who were coming out of universities, were not able to find employment in those health institutions that at the time were largely run by religious orders. We created our own institutions. We created our own rehab centres. Gradually, under the modernization of the infrastructure in Quebec—and it's a good thing—those institutions were declared public and became, many of them, francophone institutions. A very few of the institutions were designated bilingual, and therefore you can continue to work there in English. You can provide the services to the clientele in English.

There is a psychological collective mindset in Quebec, which was largely justified, by the majority community for decades and decades and decades, and that was that their language in Quebec was in peril and the francophone culture in Quebec was in peril. In fact, it was a well justified fear at the time when, prior to the modernization of the Quebec state, virtually all of the levers of power were in the hands of members of the English-speaking minority communities. That is no longer the case. All of the levers are in the hands of the francophone majority. There is a demographer called Richard Bourhis, who specializes in doing scientific study, demographic studies of the English-speaking minority communities of Quebec.

● (1040)

Richard Bourhis has been stating that Quebec is in fact a secure dominant francophone majority and therefore should act as such, which means that the relationship with the English minority community should change inherently.

It's a long discussion. It's not something that we can discuss fully here, but it's something that I would urge the justice committee to ask the official languages committee to take a look at. They should be inviting Richard Bourhis to come and discuss his studies.

The Chair: Thank you very much.

I wanted to clarify one thing for the committee, because I think it's important. In Ms. Jennings' first response she was talking about the under-representation of English-speaking Quebecers within the Quebec civil service, which also applies, by the way, to the municipal civil services and the federal civil service in Quebec, although not to the same extent.

Although it may be causally linked, that's a separate issue from the fact that Quebec's Charter of the French Language says that the Quebec government and all institutions within Quebec that are not officially bilingual, where the minority is the majority, have to operate only in French. She's saying that if the Charter of the French Language were applied to federal institutions in Quebec, the people in those institutions, even if they were in an area in which English was the majority language, would work only in French. They would have no option to work in English.

Companies of over 50 people in Quebec are also subject to the provisions of the Charter of the French Language. So except for small businesses, there is little space for English-speaking Quebecers to work in English. That's what I think she was saying, in case any of you didn't get it.

Monsieur Fraser.

Mr. Colin Fraser: Thank you very much, Mr. Chairman, and thank you so much for your presence here today and your excellent presentations. We also appreciate the work that you do on this important issue.

First, I would like to ask a question of the FCFA.

[*Translation*]

It's a question of the administration of justice, which falls under provincial and territorial jurisdiction.

Do provincial and territorial employees providing services have sufficient support to serve clients in their official language?

Mrs. Sylviane Lanthier: Are you referring to municipal and provincial employees? Is that what you mean?

● (1045)

Mr. Colin Fraser: Yes.

Mrs. Sylviane Lanthier: Okay.

It varies from province to province. Our experience is very different from that of Anglo-Quebecers, who live in a single province. Francophone communities are spread out across the country outside Quebec. As a result, the situation can vary dramatically by province and territory.

Let me just say that some provinces provide more extensive services in French. There is just one province, New Brunswick, that is officially bilingual. The other provinces have French-language services acts, such as Ontario. Others have policies pertaining to French-language services, such as Manitoba and others. The availability of services in French and the way in which the province or territory offers them varies. The same is true at the municipal level. To my knowledge, three provinces currently have bilingual municipality associations or groups of municipalities that offer services in French, but they do not necessarily do so because they are required to by law. These provinces offer services in French because they have francophone communities and because they wish to offer services to them. I am referring to Ontario, Manitoba, and New Brunswick. I do not have sufficiently detailed information to add anything further in this regard.

To return to what I said earlier, I would say that the main concern of the Fédération des communautés francophones et acadienne at present is to identify what actions the federal government can take and, since it already has tools to enhance the vitality of official language communities, how it can use and apply them. I am referring to the Official Languages Act. It is not fully implemented but should be to ensure first that the federal government fulfills its own commitments across all provinces and territories. This is very important. In so doing, we believe that the federal government would also set the right tone and could then be an official languages champion and encourage the provinces to do more in this regard.

As to francophone communities, the conference of francophone ministers is held once per year to address a range of issues related to living in French across Canada, including Quebec. The federal, provincial, and territorial ministers review all the laws pertaining to French-language services in various provinces and discuss ways of improving them. The provinces compare notes and make slow progress. They do make progress, though, and actions can be taken. In this regard, the federal government has a key leadership role to play to ensure that the provinces and territories continue to participate in this movement to promote linguistic duality right across the country.

Such promotion could enable the 2.6 million people who want to live their lives in French in Canada to do so, and to have the space to do it in as many sectors as possible. This also includes education, health services, economic development, cultural life, and so forth.

The Chair: Thank you very much, Ms. Lanthier. That will be all for now.

An hon. member: It is 10:45.

Mrs. Sylviane Lanthier: I believe our vice-president would like to speak.

The Chair: Did you want to say something, Ms. LaBrie?

Mrs. Audrey LaBrie (Vice-President, Fédération des communautés francophones et acadienne du Canada): I would like to expand on what Ms. Lanthier said about provincial French-language services laws.

There are still provinces that do not offer such services or even have policies on French-language services. I am a Franco-Albertan. In Alberta, federal offices are the only places where I can expect to receive services in French. Moreover, pursuant to the Official Languages Act, the French-language services are not necessarily equivalent to those offered to the majority. To add to what Ms. Lanthier said, we feel a strong need for the federal government to exercise leadership on linguistic duality since our services are eroding and since, even in provinces with French-language services legislation, services are entirely inadequate. They need to be dramatically improved in order to be equal to those offered to the majority.

The Chair: Thank you.

[*English*]

I'd like to thank the panel for excellent testimony.

[*Translation*]

It was a great pleasure to have you with us here today.

[*English*]

We'll take all of your recommendations under advisement.

Can I have a motion to adjourn? It's moved by Mr. Fraser.

Everybody agreed?

The meeting is adjourned. Have a great day, everyone.