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Chair

The Honourable Denis Paradis

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• (0855)

[Translation]

The Chair (Hon. Denis Paradis (Brome—Missisquoi, Lib.)): Let us resume the session. I remind you that we are now in public session.

Pursuant to Standing Order 108(3), we are continuing our study on the modernization of the Official Languages Act.

This morning, we are pleased to welcome Mark Power, Darius Bossé and Perri Ravon, all of whom are lawyers with Power Law.

Mr. Power, you have fifteen minutes or so to make your introductory remarks. Then, there will be some conversation with committee members.

Mr. Mark Power (Lawyer, Power Law, As an Individual): Thank you, Mr. Chair.

Good morning, everyone.

Thank you for this invitation to discuss with you a subject about which I am passionate, but which is also important for Canada as a whole: the status of the official languages and the future of our communities.

In the few minutes I have, I thought it would be useful to provide a brief historical overview to get us all on the same page and fully understand what is happening today, both in the Senate and the House of Commons, in terms of the modernization of the Official Languages Act.

You have in your hands a small document. I see that even Ms. Boucher has it.

First of all, we must not forget that, when Canada was created in 1867, the status of French was almost not protected. At the time, the talk was about the status of English in the National Assembly, the status of French here in the federal Parliament, in legislation, or in spoken form. Beyond that, there was nothing. Basically, things got off to a bad start. Our forefathers had been promised that French and English would be the two official languages in all areas of activity, but the Constitution did not reflect that promise. It led to an extremely difficult period, which caused French Canada to wake up, especially in Quebec, but not in that province alone.

At tab 3 of the document, you will find a passage, in French, from Graham Fraser's book entitled *Sorry, I Don't Speak French*. It is followed by the passage in English. On pages 41 and 42 of the

French passage, you will find a quite incredible historical account of when the Social Cr ditistes from Quebec arrived in Ottawa. When they arrived, they decried the English-only menu in the Parliamentary restaurant, the VIA Rail announcements at the Ottawa station, and so on.

French Canadians, especially Quebec francophones, were so successful in their complaints about the state of affairs that it led to the creation of the Laurendeau-Dunton Commission in the 1960s. It produced its first report in 1965 and a real legislative movement. That is why we are talking to each other today. The real legislative movement, of course, was the first Official Languages Act, introduced in 1968 and passed in 1969.

To remind you of the significant path that Canada has taken in a few generations, I invite you to take a look at the document at tab 1. You can read it on the plane, the train, or before you go to sleep. This is the statement by the Prime Minister at the time, the father of Justin Trudeau, explaining what Canada was trying to do when it introduced that first Official Languages Act.

This was not about partisanship. Mr. Trudeau's speech was advocating for decolonization. He said how much French Canadians have suffered. The speech was well received by all parties in the House. It led to the first Official Languages Act, passed in 1969. You will find it at tab 4.

The good news is that the status of French took a big leap forward, and English was also protected. That had never been the case previously. The bad news is that no implementation mechanism worthy of the name had been included. The implementation had to be done in bits and pieces. Each federal institution was responsible for looking after its own needs. As you can imagine, when a minister was interested, things went well, otherwise, they did not.

Then, in 1982, we had the Canadian Charter of Rights and Freedoms. That allowed the status of French especially, but also English in Quebec, to take another big leap forward. A minimum level of education in English was required.

In the 1970s, your predecessors in Parliament, both in the House of Commons and the Senate, began to deplore the inadequacies of the first Official Languages Act. This led to all kinds of interesting debates. I am not talking about the Meech Lake accord, or the one in Charlottetown, but about the Official Languages Act. Those debates culminated in the act that you know so well and in which you are experts. Since then, it has been concluded that it has to be modernized through and through. I am guessing that one of the questions is to determine how to achieve that. You will find the legislative text at tab 5.

● (0900)

Some more fascinating bedside reading can be found at tab 2. It is a speech by Ray Hnatyshyn, who was the member of Parliament for Saskatoon West at the time, at second reading of a bill, followed by a speech by Jean-Robert Gauthier, speaking for the Liberals, once more underlining the lack of partisanship in the issue. Everyone was in full agreement on the need to review the Official Languages Act from top to bottom. That is what your predecessors did in 1988 and it is what must be done now, quick like a bunny, as our mothers might say.

What does the 1988 act do? I want to highlight three things that we see as important for your work.

The first is that the implementation mechanism has to be completely rethought. In 1969, the implementation of the act was vague. In 1988, almost all the responsibility was placed in the hands of the Treasury Board. Why the Treasury Board? Because it is a central agency that is able, as you know, to give other federal institutions their marching orders.

That was a conscious decision, and it received the support of all parties in the House of Commons. The objective was to correct the errors in the first act and to equip ourselves with the ways to proceed if we really wanted to get things done.

That is reflected in Part VIII of the Official Languages Act. It starts at section 46 and is entitled “Responsibilities and Duties of Treasury Board in Relation to the Official Languages of Canada”. That is clear.

The second thing to stress with the 1988 act is, of course, Part VII, which encourages federal institutions to take measures to foster and enhance the development of French and English everywhere in Canada. These are the famous sections 41, 42 and 43.

I have the impression that we are going to be talking about this after my opening statement, but I want to remind you that Part VII of the act only dates from 1988. When it was passed in 1988, it could not be challenged. In other words, in 1988, no one could go to Federal Court to demand that it be implemented. In addition, Part VII was the responsibility of the Secretary of State. Today, we would say Canadian Heritage. It is one of the only parts of the act that is not the responsibility of Treasury Board. At the time, some people criticized the fact that it probably was not going to work. I am sure you see where I am going with this.

In the Senate, in March 1988, Senator De Bané spoke to Lucien Bouchard, who was Secretary of State at the time and was steering the new Official Languages Act through the federal Parliament. What did Senator De Bané say? Let me read you a passage. Unfortunately, this is not in the document you have. However, I am sure you will agree that it is fascinating:

Second, Mr. Minister, I would like to go back to the section 42 that you alluded to. Let me tell you that, personally, I am very pessimistic about the impact that the Secretary of State will be able to have with a diluted section that reads as follows...

He then read the text of Part VII.

As you know, only two or three organizations in the federal government truly have power of coordination: Treasury Board, the Department of Finance and the Privy Council. I predict, Minister, that section 42 will never give you the authority to tell recalcitrant ministers that, under section 42, they are required to take such and

such an action in a certain part of the country in order to help you achieve the objectives of the act. As it stands now, Minister, all that provision will do is cause you frustration.

Why did Gérard Pelletier, your predecessor as Secretary of State, transfer to the Treasury Board his responsibilities for upholding bilingualism in the public service? It is not because—and allow me to speak freely—he too has a very close relationship with the Prime Minister. No, it is because the Secretary of State's legislation gave him no coercive power over recalcitrant departments. That is why Gérard Pelletier himself asked, at a certain point, for it to be transferred to the Treasury Board which, by law, must approve the budgets of departments and can impose requirements on them. By so doing, he hoped that he would be able to secure the agreement of those recalcitrant departments, by the back door if necessary. If you think that section 42 as worded will give you those powers, I predict that it will become a major source of frustration for you. Sections like that do not give departments the power to make other departments do work if they do not want to do as you direct.

Unfortunately, ladies and gentlemen, Senator De Bané was quite right. Between 1988 and 2005, for French Canadians and anglophones in Quebec, the implementation of Part VII was a tale of major frustration. Part VII did not work.

That is what led Senator Jean-Robert Gauthier to amend Part VII in 2005. On that occasion, Senator Gauthier received support from all parties, first in the Senate and then in the House. His bill, which received royal assent, is found at tab 7. In official language communities, it is known as Bill S-3.

What does the bill do? It makes Part VII open to challenge. In other words, it makes it possible to go to Federal Court. Now, what Senator Gauthier, or any of your predecessors in Parliament, did not do—I don't think any member here was there in 1988—was transfer responsibility for Part VII to the Treasury Board.

● (0905)

This may seem strange to you, coming from a lawyer, but Senator Gauthier, instead of choosing an administrative route, chose a legal route, and the result was a disaster. But I say that with the greatest respect and the greatest admiration for the person who previously represented the constituency of Ottawa-Vanier. He made a mistake, everyone made a mistake. Everyone underestimated the rigidity of federal institutions.

Why do I say that? Because, last May, the Federal Court said that Part VII means nothing. So Senator Jean-Robert Gauthier's amendment had no result. Essentially, the act as a whole is ailing.

At tab 8, you will find some passages from Justice Gascon's decision. The case, entitled *Fédération des francophones de la Colombie-Britannique v. Canada (Employment and Social Development)*, essentially, but not exclusively, dealt with the interpretation of Part VII.

I feel it will be useful for your work to read paragraph 213. You will find it at tab 8. It may hurt to read it, but sometimes it is important to understand the problem. Towards the end of paragraph 213 of the decision, Justice Gascon says:

Clearly, the text of the Act reveals that the expression “positive measures” does not mean the same thing as these other types of measures. It clearly does not have the same attributes of comprehensiveness, necessity, precision or sufficiency found elsewhere in the OLA.

Part VII does not say what we wanted it to say.

Let me quote one last passage. This is paragraph 216, and this is where it really hurts. The paragraph begins:

In short, section 41 does not impose specific and particular duties on federal institutions. The language used in subsection 41(2) is devoid of all specificity.

In my world, what do we do when things do not go well before a judge? We file an appeal, which is what is happening here. We will see what the position of the Government of Canada will be on appeal. In my world, winning is what really counts. What does winning look like? Going before parliamentarians and asking for the act to be appropriately amended.

That brings us back to the topic at hand: what to do with legislation that is clearly inadequate? As we see it, the time has come to rewrite the act completely, as your predecessors did in 1988. The time has come to take the act, section by section, and to ask ourselves whether it still makes sense in 2018 or 2019. Sometimes, the answer may be yes. If not, the provisions of the act will have to be improved.

Part VII is not the only one that must be rethought. We must also consider the major changes that have taken place in Canada over the course of time.

Let me invite you to look at tab 10. The wonderful map you will find there is such stuff as dreams are made on. It tells us that French can survive outside Quebec.

None of those schools outside Quebec existed in 1982. Some of them, in Nova Scotia, were established through the efforts of the member for Sackville—Preston—Chezzetcook. It is a fact that our communities are doing better than ever. But the Official Languages Act of 1988 does not reflect the impact of school administration. School boards are not major players. Very recently, the proposal has been made, through Ms. Joly and Mr. Brison, to amend the federal government's Official Languages Regulations to recognize the existence of a school as a sign of a community's vitality. However, that is all. We have to rethink the act in light of the fact that French Canada is doing much better than in the 1970s and the beginning of the 1980s.

Ideas are coming from all sorts of sources. There are good ideas and ideas that are less good. Let me invite you to take a look at tab 6. There you will find a list as long as your arm, in French and English, of all kinds of bills that tried in vain to amend the Official Languages Act before 2015, that is, before the last federal election. You have ideas of your own. You and the senators hear all kinds of witnesses proposing ideas for reform that are basically good.

In conclusion, in our professional capacity as lawyers, we have four recommendations for you.

First, more power must be given to the Treasury Board. In the 1988 act, everything attributed to the Treasury Board as a central agency was optional. In 1988, it was anticipated that the central agency could act. Instead, we should demand that one central agency be responsible for the official languages.

Second, official languages communities must be given a right to participate and a right to be consulted before major governmental decisions are made. Of course, I am not talking about a right of veto; I am not that naive. The idea is to make sure that official languages communities, language communities in general, can participate in public debates before major decisions are made, just because it is in their interest. We do it for indigenous peoples and rightly so. We

should also be able to do it for French-speaking Canadians and English-speaking Canadians.

Third, there must be an appropriate accountability framework. By that, I mean an administrative tribunal that can hear and deal with disputes or problems with the implementation of the act. But the role and responsibilities of Canada's Commissioner of Official Languages must also be rethought. They go hand-in-hand. Some things are going well but some things are going very badly.

Fourth and last, the rest of the act must be rethought. The obligations that should be in the act must be rethought. The rights that should be granted in the act must be rethought. The list is very long. I know that some witnesses have already begun to draw up that list. You have your own ideas. The message is that this federal act needs to be rethought and passed once more, and the sooner the better.

Thank you for your attention.

● (0910)

The Chair: Thank you very much, Mr. Power.

We will go immediately to comments from our colleagues. We will begin with Mr. Clarke.

Mr. Alupa Clarke (Beauport—Limoilou, CPC): Thank you, Mr. Chair.

Good morning to all three of you. Thank you for being here.

Your presentation was excellent, Mr. Power, as usual. We covered an impressive quantity of material with you in 15 minutes.

I would like you to provide further explanations on the implementation aspect. Here, we often talk about the content of the act, but we talk about its implementation less often.

You mentioned that it should perhaps be centralized within a specific agency or department such as Treasury Board. Could you expand on that aspect and continue to tell us how, in your opinion, it would be possible to strengthen the act's implementation?

Mr. Mark Power: Thank you for your question, Mr. Clarke.

There are two parts to my answer.

First, I invite you to look at tab 5 of the document. There, you will find the text of the current act. The page numbers are at the bottom. If you go to page 22, you will see the sub-heading of part VIII, "Responsibilities and duties of Treasury Board in relation to the official languages of Canada." Paragraph 46(1) is entitled "Responsibilities of Treasury Board". Afterwards, paragraph 46(2) entitled "Powers of Treasury Board" begins as follows:

(2) In carrying out its responsibilities under sub-section (1), the Treasury Board may[...]

Then, there is a list of all sorts of nice powers. I will make a very concrete recommendation: you need to replace the word "may" with the word "shall".

Secondly, Mr. Clarke, let's stay on the same page and look at paragraph 46(1), which states that "the Treasury Board has responsibility [...] for parts IV, V, VI" of the act. You should instead specify here that Treasury Board is responsible for the enforcement of the entire act, or certainly for part VII, at the very least.

• (0915)

Mrs. Sylvie Boucher (Beauport—Côte-de-Beaupré—Île d'Orléans—Charlevoix, CPC): At this time, part VII is not included, correct?

Mr. Mark Power: Precisely, and I recommend that you add it.

Mr. Alupa Clarke: Should we add only part VII, or the rest of the act as well?

Mr. Mark Power: In my opinion, Mr. Clarke, we need to add the rest of the act as well.

Mr. Alupa Clarke: Fine.

Mr. Mark Power: Allow me to add a third point to my answer, Mr. Chair, and then I will stop talking.

Just like his Conservative predecessors, the current President of the Treasury Board Mr. Brison, has all kinds of powers under section 7 of the Financial Administration Act. I am sorry, unfortunately I do not have the text of that section to hand, nor is it in the document, but I will be able to show it to you at the break. That section of the Financial Administration Act defines the role and mission of Treasury Board. It is in a way the enabling legislation for that central agency. It lists the powers that are brought to bear to serve all sorts of important matters, and I think that those powers should also be used to benefit official languages.

Mr. Alupa Clarke: Could you get back to the content of the Official Languages Act? Are there any sections that do not exist and that you would like to see added to the act?

As an example, should the creation of an administrative tribunal be among the top priorities, in your opinion? I think this corresponds to your third recommendation. I felt a lot of opposition all over Canada regarding the idea of having an administrative tribunal. If that option is not possible, what else would you suggest? Why are you more in favour of an administrative tribunal, rather than granting coercive powers to the commissioner?

Mr. Mark Power: I have a lot of respect for the work you do, of course, but I don't know exactly who you talk to in Canada, Mr. Clarke. I too travel throughout the country—too much, unfortunately—and a lot of people express the opposite opinion. So, it seems that there is more than one point of view.

At this time, the law requires that a complaint first be filed with the Commissioner of Official Languages, and in almost all cases, that people wait for the result of the investigation before going to Federal Court. That process is cumbersome for the complainants and the organizations, and involves difficult evidentiary rules. The idea behind an administrative tribunal is to facilitate, accelerate and generalize access to justice. And on that, with the chair's permission, I am going to yield the floor to my colleague, Ms. Ravon.

Ms. Perri Ravon (Lawyer, Power Law, As an Individual): In Canada, one of the areas that exemplifies the notion of the administrative tribunal is human rights. The Canadian Human Rights Act mentions an administrative tribunal which has the power

to issue binding orders and impose sanctions. The whole regime is explained in it in detail. At tab 14 of the document, you will find the act that creates that tribunal and explains how to access it, as well as the recourse it offers to litigants.

That example is interesting. In fact, it exists elsewhere than solely at the federal level. All of the provincial human rights regimes in Canada have a specialized administrative tribunal. That is the norm.

Mr. Alupa Clarke: Are there examples of administrative tribunals that deal with language rights elsewhere in the world, for instance in Belgium, or Switzerland?

Ms. Perri Ravon: Unfortunately, I do not have that information.

Mr. Alupa Clarke: If you find it, could you send it to us?

Ms. Perri Ravon: Absolutely.

Mr. Alupa Clarke: It would be interesting to hear about the experience of another country that has created an administrative tribunal responsible for language rights.

Ms. Perri Ravon: Absolutely.

Mr. Alupa Clarke: Please continue with your answer.

Ms. Perri Ravon: In the final analysis, human rights and linguistic rights, although they are guaranteed by different provisions of the Constitution Act, 1982—section 15 and sections 16 to 20, respectively—are both fundamental and constitutional rights for which we need strong monitoring and implementation mechanisms.

Of course, there are differences. However, I think it's interesting to take inspiration from the human rights area, as it offers very useful precedents regarding monitoring and sanctions. Of course, you have to be careful because certain provincial human rights systems function better than others.

Pursuant to the Canadian Human Rights Act, the complainant first submits his complaint to the Canadian Human Rights Commission, which investigates before deciding to refer the file or not to a human rights tribunal. That tribunal will hear the parties, listen to their comments, study the evidence, and then issue binding orders and impose sanctions.

• (0920)

Mr. Alupa Clarke: Unfortunately, I see that my time is up. Thank you.

The Chair: Thank you.

We will continue with Ms. Fortier.

Mrs. Mona Fortier (Ottawa—Vanier, Lib.): Thank you, Mr. Chair.

Thank you for being here today. Your expertise is very useful in determining how we will proceed with modernizing the act.

Based on your expertise, how should we proceed? For instance, Senator Cormier conducted a very interesting consultation, which gave rise to some reports. We are examining all of that to determine how we will go about modernizing the act.

People have submitted many suggestions. I believe that to begin this modernization, we must mobilize not only the official language communities everywhere in Canada, but all of Canadian society. I am curious to know how you view this.

As you know, we are running out of time to adopt a bill before the next election, planned for next year. What do you think we could do?

Mr. Mark Power: To respond to the premise of your question, Mrs. Fortier, I must say we think the communities and Canada as a whole are mobilized over this issue. The official language minority communities and francophones in Quebec have been criticizing certain structural problems in the act for years now.

What about the anglophone majority? It's fallen in love with French. People in Vancouver, Calgary and Toronto line up to enrol their children in immersion programs. It doesn't just appeal to francophones outside Quebec and Acadians either, but also to anglophones who would prefer to avoid line-ups and spend more time with their families.

So the communities are mobilized. In my way, I reject the premise of your question.

That being said, we of course recommend that you conduct consultations. However, extensive consultations have already been held. You heard from many witnesses during your study on access to early childhood services in the minority language, which led to a recommendation on modernizing the act, and your Senate colleagues have done a herculean job to date. What's already been said must clearly be taken into account. Is it necessary to conduct consultations on the issue over two or three years? No, I don't think that's necessary since much consultation has already been done. You could do as judges do and take judicial notice of the work your Senate colleagues have done. The Office of the Commissioner of Official Languages has also conducted consultations. It's heard from thousands of people, and that's a good thing.

Times have changed. With smart phones and all the technology, the situation in 2018 is not what it was in 1988. It's not like it was at the time of the B and B Commission. We don't need to consult people for years on end. A few months would be enough, particularly when people are aware and have already had a real chance to participate.

My colleague Mr. Bossé is absolutely right to remind me of the scope of the consultations that Ms. Joly conducted in order to develop the action plan. People were heard. Anglophones and francophones talked about the action plan during those consultations and about the deficiencies noted in the act.

In short, what's needed now is action. Is it realistic to think a bill can be passed before the election? Probably not. However, the official language situation requires that the federal government take action soon.

As a Franco-Ontarian with a young daughter who attends a francophone school, it reassures me to hear the main parties and the government say something will be done, but it troubles me not to know what will in fact be done or when.

Mrs. Mona Fortier: Thank you. I wanted to hear your opinion on that.

I've really been upset since last Thursday over what's happening in Ontario. How can the act protect the gains that have been made across the country? Should we take a look at how the federal-provincial agreements and cooperation within Canada can help us revise the act in a way that strengthens federal institutions and protects the rights and services provided across the country? Is there a connection that should be made with the exercise of modernizing the act in which were currently engaged?

● (0925)

Mr. Mark Power: Yes. I have two comments on that point.

First, you'll find the wording of the federal act at tab 5 of our document. The page numbers are noted at the bottom. On page 20, you'll find the wording of part VII, which—let's tell it like it is—is cancerous to say the least. If you read section 43, at the bottom of the page, what are the current powers of the Minister of Canadian Heritage? The minister isn't required to do anything but nevertheless has powers. What I want to point out is that certain powers were conferred on the Minister of Canadian Heritage under Lucien Bouchard's act. For example, the minister may take measures to "enhance the vitality of the...minority communities," as provided under paragraph 43(1)(a); to "encourage and support the learning of English and French in Canada," under paragraph 43(1)(b); to "encourage and assist provincial governments to support the development of linguistic minority communities," under paragraph 43(1)(d); or to "encourage and assist provincial governments to provide opportunities for everyone in Canada to learn English and French," under paragraph 43(1)(e).

These provisions definitely constitute the legislative foundation on which the Government of Canada may, if it so wishes, exercise its spending power to fund, in whole or in part, the start-up of a Franco-Ontarian university, for example. This was discussed this morning in *Le Devoir*, for example. That power could also be exercised to fund, in whole or in part, the operation of an office of the commissioner of official languages or an office of the French-language services commissioner. I believe that's already being done in the territories and perhaps even in New Brunswick.

That was my first comment.

Here's my second. Sure, the government may occasionally do something in times of crisis. That's fine, but it's not fantastic. The reworked act should clearly include a revision of part VII. That would be a revision of the federal framework for funding allocated to the provinces for official languages. I'm obviously talking about the federal government here, not the provinces. I'm anticipating the question, or perhaps I'm a bit paranoid, but what I mean to say is that's being done. That's what I'm trying to say, Mrs. Fortier and Mrs. Boucher.

Tab 15 of the document contains a federal statute respecting the most provincial jurisdiction there is, health. Remember the page numbers are at the bottom. The funding criteria appear on page 5. The federal government says it pays out large sums of money in exercising its spending power but requires that certain conditions be met.

Mrs. Sylvie Boucher: That doesn't appear in other acts.

Mr. Mark Power: That's correct, Mrs. Boucher.

With your permission, I'm going to state those funding criteria:

- (a) public administration;
- (b) comprehensiveness;
- (c) universality;
- (d) portability; and
- (e) accessibility.

Why not add a paragraph (f), which would be linguistic duality, to this act or to our own? Is that dreaming in technicolor? No.

Now I ask you to go to tab 16.

Mrs. Sylvie Boucher: We'll have covered the entire document.

Mr. Mark Power: We're here to work, after all.

Mrs. Sylvie Boucher: Yes, I like that.

Mr. Mark Power: Tab 16 contains a bill sponsored by the late Mauril Bélanger. What did he propose? He suggested that we add this paragraph (f) to the Canada Health Act. I think we could improve Mr. Bélanger's bill by including the idea in the Official Languages Act.

To answer your question, Mrs. Fortier, I must say that fortunately something can be done to the present act. As for what comes next, some very good ideas have already been advanced, and we think they can and must be implemented as part of a modernized federal act.

The Chair: Thank you.

Mr. Choquette, you have the floor.

Mr. François Choquette (Drummond, NDP): Thank you, Mr. Chair.

Mr. Power, dear colleagues, thank you very much for being here today. Your presentation is informative and will guide us, and we thank you for that. It will guide both our thinking and the recommendations our future report contains. Thank you very much.

I'd like to go back to what Mrs. Fortier just said. We're currently going through a crisis. We're naturally trying to preserve the gains we have made, but we've suddenly realized that some gains we thought we had made, such as the Office of the French Language Services Commissioner, remain fragile. As I understand it, there are three official language commissioners: one at the federal level, another in New Brunswick and a third in Ontario, in the Office of the French Language Services Commissioner. The francophone university project in Toronto falls under another heading, education, which is a provincial jurisdiction. Anglophones and francophones have succeeded in managing their school boards, but early childhood and postsecondary education are beyond their control.

Are there any changes that we can make, as part of the revision of the Official Languages Act, to improve respect for language rights and, of course, access to education in both official languages across the country?

• (0930)

Mr. Mark Power: I have two or three comments in response to your question, Mr. Choquette.

First, without wanting to repeat what I've already explained, I don't think anyone should underestimate the fact that, when federal

parliamentarians say they're in favour of official languages, that's both symbolically and genuinely useful and important for the linguistic communities, even in disputes, fights and crises, to borrow the term you used, at the provincial level.

I personally want to thank all of you here, in particular, Mr. Clarke, who has expressed his dissatisfaction in this matter, but also the present government and its members. As a francophone outside Quebec, I find this reassuring and I'm grateful to you. It's very important. I think this is part of the federal role in the federation.

My second comment kind of follows in the wake of what Mrs. Fortier began to say. You mentioned early childhood and postsecondary education. For years, the Canadian government has granted millions of dollars to the provinces and territories and set very few conditions and, in some instances, none. That makes absolutely no sense in 2018. Responsibility, transparency and accountability have become values that can be properly used or misused, as we saw last Thursday. It's illogical for the Canadian government to allocate so much funding to Toronto without requiring something in return, such as that it keep the promises it made to francophones. I'm stating this in a general way, but that's enough for the moment.

For my third comment, I want to go back to the modernization of the Official Languages Act. It's the issue of the moment after all, despite last Thursday's surprise. As witnesses have already recommended to you, the Official Languages Act should include a section requiring, for example, that an OLEP or a federal-provincial education agreement be adopted every five years. That section could also require that a five-year action plan be adopted. I'm referring here to what the Fransaskois recommended to you. This would be a structural and structuring way to enable the federal government in future to monitor the money it gives to the provinces more closely. If the provinces knew there would likely be consequences, they would think twice or even three times before cutting the programs and services that are dear to us.

Federal support for education from kindergarten to grade 12 is not unusual, Mr. Choquette. Neither francophones outside Quebec nor anglophones in Quebec had any constitutional right to their schools in the 1960s. What did the Canadian government of the time, the government of Justin Trudeau's father, do? It put money on the table, but with conditions attached, and those conditions were met. It's time to reinstate that notion of reciprocity, more specifically by adding provisions to the act respecting responsibility, transparency and accountability.

• (0935)

Mr. François Choquette: Do I have any time left, Mr. Chair?

The Chair: Just 10 seconds.

So we'll immediately go to Mr. Rioux and Mr. Arseneault, who will share their speaking time and will have three minutes each.

Mr. Jean Rioux (Saint-Jean, Lib.): Thank you, Mr. Chair.

I'm going to continue on the same subject as Mr. Choquette.

We've just completed a tour of western Canada, where people constantly talked to us about accountability. Representatives of the school boards told us they didn't know whether they were receiving all the money they were entitled to.

You addressed the issue. Is there any more specific action that could be taken to guarantee accountability and thus to ensure that the school boards in fact receive the money the federal government sends them?

On another topic, I was told early childhood didn't fall under any agreement respecting linguistic minorities. Some people from Vancouver told us that four out of five francophone children didn't have access to early childhood services in their language.

Mr. Mark Power: I don't really know where to begin, Mr. Rioux.

Things are going well in some respects, as you can see from the map of Canada's francophone schools, but poorly in others. We need a lot more early childhood spaces, for example, and we need the money allocated to the provinces and territories to be spent for the purposes for which it is granted.

You told me you had heard from representatives of the Conseil des écoles francophones, which specifically proposes that a paragraph be added to the act under which the Government of Canada "ensure[s] that the funds transferred to the provinces and territories are actually spent as provided for in the agreements negotiated." If the act so provided, officials would have a completely different mission, and the debate itself in Parliament would probably be quite different as well.

I briefly want to add that the transparency and accountability issue obviously involves the minorities, such as the Fransaskois and the Franco-Colombians, but also concerns the majority just as much, perhaps even more so. In British Columbia, the Vancouver School Board is making cuts to immersion programs. And yet federal funding has remained stable, and the province is rich. How is it, then, that Ottawa winds up paying as much money as previously to fund fewer immersion spaces? Where does that money go? How is it that I'm the one asking the question? It makes no sense.

I don't think the revision of the act should concern only the linguistic minorities. It's a societal and national issue.

The Chair: Now we'll continue with Mr. Arseneault.

Mr. René Arseneault (Madawaska—Restigouche, Lib.): Thank you, Mr. Chair.

I have a lot of questions, but you are so—how should I put it—eloquent, transparent and clear.

Mr. Mark Power: That's quite a compliment for a lawyer.

Mr. René Arseneault: Yes.

I have only three minutes.

The more we look at the issue and share ideas, the more we see that we'll have to focus on the transfer of funding. Funding is crucial, and that's how the provinces get hurt. When the federal government allocates these enormous amounts to them, we must ensure they meet their obligations.

Going back to section 43 of the act, I don't like the wording where it states that the Minister of Canadian Heritage may take measures to "encourage and support the learning of English and French." That's paragraph 43(1)(b). I don't like the word "encourage". Since we're talking about accountability for funding transfers, it would be a good idea to use another expression such as "to ensure" the learning of French. The words in paragraph 43(1)(b) may sound right in church on a Sunday morning, but they're totally meaningless from a legal standpoint.

Don't you think that, to achieve what you're proposing, we should replace that wording with something more restrictive that will ensure that federal funding granted under agreements with the provinces goes to the right places?

I would draw a parallel with the mini-crisis involving the Quebec government and the federal Minister of Health, Ginette Petitpas Taylor. On the one hand, the minister claims there can't be two health systems in Quebec if the province wants its share of federal transfers. On the other, Quebec tells us to keep our nose out of its business. It's exactly the same situation.

How do you think language obligations should be enforced in the provinces in those circumstances?

• (0940)

Mr. Mark Power: First, as a lawyer, I think what Canada needs, and what we need as francophones, as Acadians or as English-speaking Quebecers, are better rights. The only realistic thing to do is to amend the federal Official Languages Act. It would be unrealistic to consider constitutional reform. We need tangible results, and that will be possible if we amend the act to provide for a bigger or better framework for what the Canadian government does. So I propose that you focus your efforts on Ottawa.

Second, Mr. Arseneault, your predecessors in Parliament previously sketched out what part VII could be. I invite you to go back to tab 5 of the document. You referred us to page 21 of the act, but let's go instead to the middle of the next page, where the powers of the Treasury Board are listed. I want to raise a new point here. All of you have deleted the verb "may" from subsection 46(2) and replaced it with the verb "shall". Now I want to underscore some other words.

What can Mr. Brison do in his capacity as Treasury Board President. According to paragraph (a), he may "establish policies". Under paragraph (b), he may "recommend regulations to the Governor in Council". According to paragraph (c), he may "issue directives to give effect" to certain parts of the act. These are quite restrictive provisions, Mr. Arseneault. Under paragraph (d), the Treasury Board President may also "monitor and audit federal institutions" in respect of their obligations. According to paragraph (e), he may "evaluate the effectiveness and efficiency of policies and programs."

Let's take another look at these verbs and transpose them to part VII, or, even better, let's rewrite part VII to assign those obligations to the Treasury Board; let's transform the word "may" into "shall", and your successors will be dealing with much less serious problems in a generation or two. The structural problem at the federal level is federal-provincial/territorial accountability, but also governance. That requires the parties to shoulder their responsibilities.

I'm working from the assumption that Ms. Joly has the best intentions in the world. However, the current act doesn't give Ms. Joly or Mr. Brison the necessary powers to do what must be done for us as francophones.

Mrs. Sylvie Boucher: They don't have enforcement powers.

Mr. Mark Power: That's correct.

The Chair: Thank you, Mr. Arseneault.

Mr. René Arseneault: May I have another 10 seconds?

The Chair: All right. Go ahead.

Mr. René Arseneault: So it would be advisable to subject subsection 43(1) to the obligations of section 46. The way to enforce section 46 would help us interpret section 43 and the verbs it contains, such as "enhance" and "encourage".

Mr. Mark Power: You can do whatever you want because you're the legislator. What I'm specifically recommending you do is draw on what already exists and at least add part VII to the fourth line of subsection 46(1), on page 22, where parts IV, V and VI are mentioned.

Mr. René Arseneault: Thank you.

Mr. Mark Power: Basically, Mr. Arseneault, the act should be reevaluated section by section. Some should be kept and others reworked.

The Chair: I see.

With your permission, we will take a break and resume in about five minutes.

• (0940) _____ (Pause) _____

• (0950)

The Chair: Please note, for your information, that we will be holding a press conference in the foyer at 1:45 p.m., just before oral question period, on the motion that we unanimously adopted this morning. I invite you all to join me at that time. We have invited no one; journalists are normally already there.

Mrs. Sylvie Boucher: Do you mean the place next to the lobbies?

The Chair: Yes. I mean the central foyer where the journalists are.

At 1:45 p.m., we will be there to talk a little about the motion we unanimously adopted this morning.

On another note, I spoke with Mr. Power during the break about the francophone university project in Toronto. I'm going to ask him to provide more details on that issue.

If the federal government paid out the entire amount, would there be anything preventing us from going ahead? I know the Canadian

government has already invested in the university. How far does this spending power go?

• (0955)

Mr. Mark Power: Personally, I hope Mr. Ford changes his mind and keeps his election promises regarding a university for French-speaking Ontario.

In a general way, this crisis emphasizes just how important it is for the federal government not to forget its power of persuasion or the economic lever it has as a result of the transfers it makes.

Beyond that, the point of your question is really whether the federal government could pay the entire amount required to establish the university, if ever that were necessary, or if Parliament deemed it desirable. The answer is yes. It could do that by virtue of its spending power. It's called the federal spending power. Ottawa may spend in areas of provincial jurisdiction. Health is a good example. The federal government could absolutely step in and essentially save the day by absorbing the difference so the institution could start up. That kind of agreement could last two or three years until new ideas emerge at Queen's Park, in Toronto.

So the legal answer is yes.

The Chair: Thank you.

We'll continue our round with Ms. Lambropoulos.

Ms. Emmanuella Lambropoulos (Saint-Laurent, Lib.): Thank you, Mr. Chair.

Thanks to the witnesses for being with us today.

My question concerns what you said about redesigning the role of the Commissioner of Official Languages. I'm at tab 4, on page 11.

What changes would you suggest to enable the commissioner to play a more effective role and to have more powers?

Mr. Mark Power: The good news, Ms. Lambropoulos, is that a lot has changed since then. What we see at tab 4, on page 11, are the powers of the Commissioner of Official Languages as they were in the late 1960s.

It's nevertheless important and helpful that you've raised that. To tell the truth, it didn't work, and that led to a complete revision of the commissioner's powers. I'm glad you've given me the opportunity to mention that.

In the next tab, tab 5, you'll see the commissioner's powers and responsibilities since 1998, starting on page 23.

However, that doesn't alter the fact that your predecessors in 1988 opted for a model under which the Commissioner of Official Languages was supposed to be both a champion—I would say a *cheerleader*—and a police officer, in that he or she had to conduct investigations and issue reports. Commissioners also have the power to appear before the courts, should they wish to do so, without having to institute proceedings themselves.

It's our professional view that this duality doesn't work. One of our basic recommendations would be to separate the two roles. That's a further explanation for the administrative tribunal idea. In fact, lawyers aren't the ones recommending it. Even people who previously occupied the position criticize its inherent problems, and not just the francophones. Graham Fraser also said it publicly to whoever might wish to hear it.

Mrs. Sylvie Boucher: That was a long time ago.

Ms. Emmanuella Lambropoulos: I see. Thank you.

I'm going to tell you about a situation in my riding, Saint-Laurent. This is slightly different from the subject we're discussing; I know that education is an exclusively provincial jurisdiction. This year, 45 students are not going to school because there is a shortage of spaces in the francophone schools. Some of those students are newcomers. There are 45 students on a waiting list at the secondary level. These children are not going to school; they're sitting at home waiting for a space to open up. There are lots of spaces in the anglophone schools and classes that aren't completely full. Many francophone teachers are also available to teach.

I find this incredible. How can the right to education be less important than Bill 101?

Is there anything the federal government can do to improve the education situation?

•(1000)

Mr. Mark Power: I think the official languages in Canada would be better served if Parliament actually implemented realistic ideas.

Some things we definitely don't recommend. For example, after Thursday's announcement at Queen's Park, we don't recommend that you transform the Commissioner of Official Languages of Canada into an ombudsman. Nor do we recommend that you try to amend Bill 101 in Quebec. You are the politicians, but I don't think these options are likely to produce results. That being said, your question elicits two answers that might help you.

First of all, there is obviously a connection between spaces at majority schools and those at minority schools, and sometimes you can help the one by indirectly helping the other. I'm unfortunately not familiar with the situation in Saint-Laurent, but I know perfectly well that, if more spaces were opened at French-language schools in regions outside Quebec, whether in Ottawa, Toronto or in the west, that would help repatriate francophones who are enrolled in immersion and who should not be there. That would thus create spaces in immersion classrooms and thereby reduce waiting times for immersion. In other words, a concerted strategy focusing on minority students and majority students seeking immersion programs would be helpful outside Quebec.

What about the situation you mentioned? I admit I don't know.

Lastly, you said that education was a provincial jurisdiction, but that's not the case with regard to education from kindergarten to grade ^x, that is to say, at the primary and secondary levels. The Constitution, rightly or wrongly—rightly, in my view—has created a third level of government such that, for reasons of management and control, the province may not do what it wants with respect to French-language schools, whether it be in Moncton, Halifax or

Vancouver. This schools management prism didn't exist in 1988. The Supreme Court of Canada recognized it two years later. Consequently, it's absent from the present Official Languages Act, from part VII and the other parts. This must absolutely be a focal point in any revision of the act.

The Chair: Thank you.

Before going to Mr. Deltell, I'm going to make a minor correction. Earlier I mentioned that there would be a press conference in the foyer at 1:45 p.m., but it will be held at 1:55 p.m. instead because I've been told the microphone will already be in use at 1:45 p.m.

Mr. Deltell, please go ahead.

Mr. Gérard Deltell (Louis-Saint-Laurent, CPC): Thank you, Mr. Chair. I want to inform you right off the bat that I'll be sharing my speaking time with my colleague from Beauport—Limoilou.

Ladies and gentlemen, thank you for welcoming me to your committee.

Ladies and gentlemen, welcome to your House of Commons. Thank you very much for the quality of your documentation. I'm just passing through today, but it's a profitable passage because your documentation provides a lot of information per square inch.

I just want to ask one question further to what Mr. Arseneault asked earlier.

Subsection 46(2), under the title "Powers of Treasury Board", in part VIII of the Official Languages Act, states: "...the Treasury Board may..." You would like to replace the word "may" with the word "shall".

You said at the outset, and the chair said it as well, that the official languages have a special status because they constitute a national element of major importance. Would you like the Treasury Board to be required to issue specific directives respecting some federal or provincial transfer in any particular field, or do you think that should apply solely to official languages?

•(1005)

Mr. Mark Power: To date, our recommendations have focused solely on official languages. What is requested, with respect to federal transfers to the provinces and territories, is that a section be added to the act clearly stating that, where a federal institution signs an agreement with a province or territory, that agreement shall at least include a linguistic clause, as it is called in the communities..

Mr. Gérard Deltell: I understand the idea of the linguistic clause. You explained it very clearly using clear words and the passion you're known for.

I'd nevertheless like to ask you a question. If you don't wish to respond, that's of course your prerogative, since you've come here to talk about official languages. Do you think that obligation should apply to every federal transfer to the provinces or territories, whether it be in health, education or any other sector?

Mr. Mark Power: Mr. Deltell, I admit I hadn't anticipated that question. So I'm going to answer from the heart. In my opinion, the problem with official languages is entirely different. If you look at the Canadian Charter of Rights and Freedoms, you'll see that it focuses mostly on official languages.

Mr. Gérard Deltell: Thank you, Mr. Power. That's clear.

Mr. Alupa Clarke: I'd like to go back to the administrative tribunal. You cited the example of a human rights tribunal. That tribunal must have sanctioned a Canadian Crown corporation at one time or another. It doesn't just sanction individuals who have harmed other individuals; it must also sanction private companies. What happens when the human rights tribunal sanctions a Crown corporation? What does it do? Does it impose monetary penalties, and, if so, how does it impose sanctions on a Crown corporation or a department?

That's an important question for us. If the tribunal told Air Canada, for example, that it had witnessed it acting in a manner that contravened the act, it could impose a monetary sanction of \$5,000. For Air Canada, however, that would be tantamount to a minor tax. It wouldn't even be a problem.

Ms. Perri Ravon: That's true.

Mr. Alupa Clarke: I imagine companies wouldn't necessarily like that, but several people have told us it would be an easy solution. People have also discussed a situation in which the government would sanction itself by paying monetary penalties for contravening the act.

What does an administrative human rights tribunal do in those kinds of cases?

Ms. Perri Ravon: First of all, generally speaking, the reparations that a human rights tribunal awards go instead to the victims. That's the main objective. Then there may be penalties, such as administrative or monetary sanctions, for example, but the primary role of a human rights tribunal is to remedy a violation that has been committed. We're talking about damages, and an amount of money is offered to the victim as compensation, as you see in other areas of law.

In addition to that, a tribunal may award declaratory relief by stating that a person's rights have been violated. There may also be various forms of injunction. For example, the tribunal could inform an organization or institution that it must take or stop taking a given action. Lastly, there could also be punitive sanctions. That's sort of what you were saying.

You have to think of the entire range of potential remedies that a tribunal can use. That's the benefit that this kind of institution represents. It affords a great deal of flexibility. In the area of language rights, a tribunal could opt for the remedies that we consider most appropriate in that field. They would be somewhat tailored to the situation.

Mr. Alupa Clarke: Do you have in mind any examples in which a human rights tribunal had to sanction a Crown corporation by imposing monetary or administrative sanctions? What I most often hear is that it would be ridiculous to create a tribunal that would sanction the government. With respect to a human rights tribunal, this kind of situation has definitely occurred over the past 30 years. As I previously said, you may send us that information by email or some other means.

Ms. Perri Ravon: Yes, I think it would be preferable for us to provide some specific examples.

Mr. Alupa Clarke: All right.

We need to know how the tribunal proceeds and when that occurs. When I speak with people about this, they all tell me that what I'm saying is ridiculous, that no one would ask a department to pay money to the central government for contravening a law of that same government. It's a vicious circle. That must certainly happen with a human rights tribunal.

Ms. Perri Ravon: You have to understand that the money generally goes to the victim.

Mr. Alupa Clarke: Yes.

Ms. Perri Ravon: Everything is oriented toward the victim. Whether it's a human rights violation or a language rights violation, the money goes to the victim, not to the government.

• (1010)

Mr. Alupa Clarke: I see.

The Chair: Mr. Power, do you want to add a comment?

Mr. Mark Power: Yes.

Mr. Clarke, I can assure you it's not ridiculous. We'll explain it to you in writing. Depend on us and we'll give you the information you need.

At tab 12, you'll find an excerpt from the Official Languages Act of Nunavut. It's far away, but the purpose is to see how things have changed in Canada since 1988. What do we see here? We see an official languages promotion fund that is supported by court orders. We're not talking about the personal enrichment of anglophones or francophones. It's possible to view this as a community development tool.

My third and final comment will be very brief. This may seem quite curious coming from a lawyer, but I would point out that the main purpose is to avoid going to court. Yes, it's important to talk about an administrative tribunal and a plan B when things don't work out, but, basically, you have to rethink administrative management in order to avoid the courts. And for that, you need a central organization that actually takes action rather than one that "may" take action.

The Chair: Thank you very much.

Now I turn the floor over to Mr. Samson from Nova Scotia.

Mr. Darrell Samson (Sackville—Preston—Chezzetcook, Lib.): Thank you very much, Mr. Chair.

Colleagues, thank you very much for your outstanding presentation. It has informed us on many aspects and further clarified the issues in our minds.

I'm going to follow on from the question by my colleague Mr. Deltell. I don't know whether this is a good thing, but I would've answered it the same way you did, Mr. Power. There are two founding peoples in Canada. The federal government is responsible for enforcing the Official Languages Act for both the francophone minorities outside Quebec and the anglophone minority in Quebec. It is essential that we have the power to ensure it is complied with. We can definitely ask that it apply to health or other sectors, but it's essential the provinces have the power to enforce the act.

My questions will focus on education.

The Official Languages Act doesn't mention the education sector. How can we include it in the act? The Supreme Court has held that the school boards or francophones have a right to schools in their language. That's not included in the act, but how can we include it?

Mr. Mark Power: First, the federal Official Languages Act touches on the education issue. Take a look—not now but later—at paragraph 43(1)(b) of the act, which concerns encouraging and supporting the learning of English and French. That was good in 1988, but it's bad in 2018. Things have changed.

Second, the consequence for the schools, as illustrated by the nice map at tab 10, is that there are now school governments. As you know, they recently signed a strategic agreement with the Department of Canadian Heritage, and not without reason. The official language minority communities that exercise schools management should have a say in the way the federal funding sent to the provinces and territories for their benefit is spent.

Mr. Darrell Samson: That leads me to my second question. Shouldn't the federal government forward the money directly to the school boards? After all, they're responsible for doing the work.

Mr. Mark Power: Mr. Samson, that's already being done in other sectors. The Canadian government sometimes signs agreements directly with community organizations. It has already done that in economic development, but, to date, not in education. Why? I would suggest the following hypothesis. Since significant sums of money are involved, some provinces may prefer to spend that funding as they wish.

Mr. Darrell Samson: School boards are recognized to a much greater degree in the Canadian Charter of Rights and Freedoms than community organizations. Consequently, they have a power of governance. You mentioned government; that's like governance. Shouldn't school boards have that power, even more so than the health sector? Health is an example of a field where this obligation doesn't exist.

Mr. Mark Power: Mr. Samson, the point is that the Government of Canada has thus far been inconsistent in the way it signs or doesn't sign agreements with the communities. The basic aim in modernizing the act is to ensure greater consistency. In education, the provinces and territories negotiate agreements with Canadian Heritage for our benefit. Accordingly, what's currently happening is that Mr. Ford and his officials are in talks with Canadian Heritage for the purpose of signing an agreement between Canada and Ontario for my benefit and that of my granddaughter. However, right now, I'm not convinced the Government of Ontario has my best interests at heart.

• (1015)

Mr. Darrell Samson: Mr. Power, I have to stop you, but I know where you're headed, and I completely agree with you. We saw some evidence of that last week.

There's a real property problem in the provinces. We don't have access to properties. The provinces can spend 5, 10 or 20 years trying to buy a property, as is the case in British Columbia, and we're in the process of selling properties that belong to the federal government. That's a specific example. What can we do? What can we change in the Official Languages Act to ensure direct

consultation is conducted and so that the needs of the minority are known?

Mr. Mark Power: I'm going to be more succinct, and I accept feedback.

The Conseil scolaire francophone de la Colombie-Britannique, the CSFCB, submitted a brief to your committee. On page 7, it suggested the exact wording of section to be added to the act. That section would have the effect of requiring the Canadian government at least to consider the official language communities before selling a property. Those communities aren't seeking free properties; they're prepared to buy them, but they must at least have a chance to do so. I'm essentially talking about an option to purchase.

Mr. Samson, I'm anticipating your next question. How serious is this problem? We don't know because we don't enumerate all rights-holders. That's another request that the CSFCB has made; it appears on page 15 of its brief. Personally, I would like to answer to additional questions in the 2021 census.

Mr. Darrell Samson: I have a final question. You say the Treasury Board "shall" ensure that rights-holders are enumerated, and I entirely agree with you; we've discussed that here.

What would happen if we had a weak government and a weak Treasury Board minister? What should be included in the act to ensure it's complied with, or can the way it's drafted be challenged in court?

Mr. François Choquette: Good lawyers.

Mr. Mark Power: Thank you, Mr. Choquette!

I want to think that the two official languages are important enough for a beautiful consensus such as the one you have in your committee to continue. I'm reassured to know there's unanimous support for a beautiful upcoming announcement.

I also want to think that the scenario you describe is only hypothetical. Going back to your scenario, let's imagine things go badly. If the Official Languages Act was reworked so that a central agency was genuinely responsible for its administration, that would make life simpler in the event of court challenges because accountability would be much clearer. It would also reassure the Federal Court judge who might one day have to order it done, or not, to see that the legislator, Parliament, had clearly worked through the issue and intended that the act should actually be enforced.

One clear point emerges from the recent judgment by Judge Gascon, which appears at tab 8. He found that your predecessors didn't really want the act to have teeth. I want to think he's mistaken, and we're counting on you to prove it.

The Chair: Thank you very much, Mr. Power.

Mrs. Boucher, the floor is yours.

Mrs. Sylvie Boucher: Good morning, Mr. Power.

It's always an honour to have you with us. Your remarks are clear and precise, which is not always the case of those of other lawyers. I congratulate you on that.

All joking aside, Mr. Power, I'm going to continue along the same lines as Mr. Samson.

I agree we should use the word "shall" rather than "may". What should be changed in the act? New responsibilities have been assigned to the Department of Canadian Heritage. It must conduct consultations, but that department is in addition to the Treasury Board. Perhaps I'm extrapolating, but I don't think Canadian Heritage has a lot of power, unlike the Treasury Board. That's what I understand from everything I read.

Canadian Heritage conducts consultations with other federal departments. Apart from that, has the person responsible at Canadian Heritage, regardless of the party in power, ever had enough power to change things with regard to the Official Languages Act, or should we still turn to the Treasury Board?

• (1020)

Mr. Mark Power: Your question concerns a point of law, and, yes, we are a few lawyers and a few lawyer apprentices. Not everyone drags the Constitution around in their briefcase.

Your question elicits two answers. First, the act confers certain optional powers on Mr. Brison and not on Ms. Joly. Basically, you should repatriate and enhance those powers and not use a common denominator.

Mrs. Sylvie Boucher: I don't mean to take anything away from Ms. Joly, but she's not the Minister of Canadian Heritage; it's Pablo Rodriguez. It's a bit complicated and it's sad. Mr. Rodriguez is the Minister of Canadian Heritage, Ms. Joly is the Minister of Tourism, Official Languages and La Francophonie, and then there's the Treasury Board.

Regardless of party, which of those three ministers has the most power? Is it Mr. Brison, Mr. Rodriguez or Ms. Joly?

Mr. Mark Power: In order, it's Mr. Brison, Ms. Joly and Mr. Rodriguez. Why? Because, when the government reshuffled portfolios, a decree was issued providing that powers normally attached to Canadian Heritage would follow Ms. Joly to her new position. That's the technical answer to your technical question.

Mrs. Boucher, it shouldn't change this way every two or three years, even though intentions may be good. In our view, and as professionals, a proper structure should be codified in the act so that it can't be changed by decrees or alternating government cycles. We think the official languages question is important enough that we can move beyond that.

I admit I've lost my train of thought. I apologize, Mrs. Boucher.

Mrs. Sylvie Boucher: If I understand your logic, statutes, such as the Official Languages Act, are important enough that they should not be politicized.

We are politicians, but we're nevertheless quite open. An act should be strong enough to remain intact and follow the established calendar if there is a change in the party in power following an election. Isn't that true?

Mr. Mark Power: All the parties have either contributed directly to the Official Languages Act or made specific suggestions to improve it. The Liberals got the ball rolling in 1969; the Conservatives are responsible for an act that was excellent in 1988; and the New Democrats made all kinds of suggestions along the way.

Now's the time to take action. The Liberals are in power. We need a better act for anglophones and francophones across the country.

Mrs. Sylvie Boucher: Thank you very much.

The Chair: Thank you, Mrs. Boucher.

I turn the floor over to Mr. Choquette.

Mr. François Choquette: Thank you very much, Mr. Chair.

I'd like to go back to the Gascon judgment. That judgment really shook up all the communities across Canada as a result of the judge's interpretation of part VII.

I appreciated the fact you said that he had made an interpretation that differed from yours and that it was not what legislators wanted at the time.

Part VII must be revised, of course. In particular, we're talking about positive measures, which are not defined.

How do you think those positive measures should eventually be defined?

Mr. Mark Power: I'll begin by emphasizing that the Federal Court judgment is long, detailed and thoughtful and is a source of ideas for a revision of the act, including part VII.

The government needn't attempt to have the judgment overturned on appeal, or even to institute an appeal, if the Federal Court's ideas were to be applied.

With regard to the substance of part VII as such, we need clarity and detail first and foremost. Those are the two ideas that emerge, that rise to the surface, following the Federal Court judgment.

The Federal Court tells us it's far too general and very vague. Even worse, it tells us that Parliament was very clear in other parts of the act but not clear in part VII.

Senator Gauthier obviously did his best and did us a favour by amending it in 2005. Ironically, the Federal Court, in its own way, may have done us a favour as well last May.

We have diagnosed the problem, and we know the necessary remedy. It's time to take action by drafting a part VII that is detailed, describes a proactive and systemic approach and contains positive and targeted measures, while calling for active citizen participation. My colleagues, M^e Ravon and M^e Bossé, and I said so, but the Commissioner of Official Languages also said it in his annual report.

Can you guess the year? It was 2006.

We've been talking about it for a long time. Now let's take action.

• (1025)

Mr. François Choquette: The regulations were recently revised. Some stakeholders and organizations wondered why we didn't talk about regulations under part VII. That might've clarified certain obligations pending a revision of the act. That's a result we're expecting from this part VII.

There have been debates on this. Unfortunately, the regulatory review is done. Next, if I correctly understand it, regulations should be made under this part VII.

Mr. Mark Power: There are no doubt things I don't know about. However, there is theoretically nothing preventing the government from making regulations under part VII soon. Theoretically, it can be done.

On the other hand, Mr. Choquette, the real question is whether the official language communities need a band-aid or treatment for the underlying problem.

Sometimes a band-aid is good, but it's not a long-term solution. We need a reform of the act. True, the Federal Court judgment will encourage us to clarify our thinking on part VII.

For a year and a half, your colleagues in the Senate have been examining all kinds of issues related to the act, not only to part VII and the regulations. Your predecessors did the same. That's why we felt it was useful to include, at tab 6, a list of bills introduced before the last federal election.

It will take more than regulations to solve the problem, Mr. Choquette.

Mr. François Choquette: Lastly, let's talk about the Office of the Commissioner of Official Languages. You began to explain the need to review somewhat the commissioner's role and the provisions of the act respecting the commissioner's office. For example, you recommend that an administrative tribunal be added. Are there any other aspects of the act concerning the commissioner's office that should be reviewed, revised or improved?

Mr. Mark Power: Mr. Choquette, it would already be a very good thing if those two items were implemented.

I would also emphasize how actively involved the federal commissioner, Mr. Thériault, is in this societal debate. He recently proposed some new and constructive ideas for moving matters forward in a different way.

Since you, as MPs, want tangible ideas, here's a tangible example. Under a new version of the act, the Commissioner of Official Languages could be required to prepare evidence files that would then be produced in court, either in Federal Court or in an official languages administrative tribunal. However, preparing evidence is a costly undertaking. It's complicated and it takes time.

Consequently, it would be helpful for complainants to know that this evidence and the legal argumentation are substantiated when they're submitted to the body that decides their cases, whether it be a tribunal or a Federal Court judge. In most cases, the complaints are founded. Some may be frivolous, of course, and will have to be dismissed.

At the moment, the burden of proof is solely on the complainant. The commissioner may choose to file evidence if he wishes. I think it would be useful for the future of French and the official languages that the commissioner be required to produce evidence files in certain cases. That would represent a very significant change for access to justice and—here's an ironic comment from a lawyer—would reduce the need to put the matter before a tribunal. The quality of the evidence would be better, which would encourage transactions.

• (1030)

The Chair: Thank you very much.

Mr. Clarke, you have the floor.

Mr. Alupa Clarke: Two weeks ago, we heard from senior officials at the departments of Canadian Heritage and Tourism, Official Languages and La Francophonie. Exactly how they were divided was unclear.

I asked them whether they had begun to take their first step, regardless of what it might be, in the process of revising the act. Someone answered yes. I asked what that first step was, and the answer was that they had to organize consultations, slowly but surely. I asked whether that first step had begun. I think he answered that that was not really the case, but I'll have to look at the transcript of the meeting. The witness seemed to be saying that the officials in question were currently in talks with the minister to determine how to move forward and begin the first step.

Mr. Power, I'm recalling these facts in order to tell you that I don't think a major revision of the act will take place between now and the next election. I want to be logical and efficient for the benefit of the OLMCs across the country, and I don't want to repeat myself. However—I think you addressed this question indirectly with Mr. Choquette—the judgment that was rendered in British Columbia is really negative for language rights in Canada. However, it significantly illustrates the deficiencies of part VII of the act.

Consequently, if I tell you, sadly, to abandon hope of a major revision of the act before the 2019 election, what legislative measures could the government introduce immediately without waiting for that revision? I'm thinking here of measures that can be easily passed in the House in the six months we have left in which to sit.

Mr. Mark Power: I don't know whether you'll like my answer, Mr. Clarke, but I prefer to tell you the truth. The next version of the Official Languages Act must be properly done. However, it will take a little time for it to be properly done. I obviously recommend that you proceed quickly and allocate the necessary resources, and I hope that's what the government will do. However, I don't think it would be prudent to adopt a bad act soon, at any cost, without awaiting the outcome of all the work.

Mr. Alupa Clarke: Without producing a completely new act, could we simply amend part VII of the act?

Mr. Mark Power: Mr. Joly...

Voices: Oh, oh!

Mr. Mark Power: Mr. Clarke, please pardon that sign of fatigue.

Mr. Alupa Clarke: I thought I was making you sad by telling you it wouldn't be done before 2019. In fact, unlike the Liberals, I don't know the truth.

I'm asking you whether it would be possible simply to amend the act without completely changing it.

Mr. Mark Power: The act is sick. It's cancerous. It requires major surgery. More than a band-aid, it needs chemotherapy.

Mr. Alupa Clarke: However, let's not forget the judgment that was rendered in British Columbia, and which could quickly become case law in a year. By the time the new version of the act comes into force, in perhaps two or three years, if we wait until after the election, we must prevent another judgment from confirming this one. Consequently, what can we do right away? How can we amend part VII to prevent immediately this judgment in British Columbia from becoming case law?

Mr. Mark Power: First, Mr. Brison, the Treasury Board President, could take action by exercising the powers conferred on him under section 46 of the act. That would already go a long way. That may mean making our government friends do their homework, but that's why they're here. That would be something tangible and possible.

Second, and here I'm speaking as an individual, not on behalf of the Fédération des francophones de la Colombie-Britannique, I see no reason why we couldn't immediately file an appeal from that judgment in the Federal Court of Appeal, since all the parties currently agree the act should be reformed. That would be another tangible action, but you'll probably want to call the Fédération in Vancouver and request its opinion on this.

Specific administrative measures may indeed be taken, for example, with respect to the federal-provincial agreements currently being negotiated, in education, in particular. Many things can be done by various means other than under the act.

Whatever happens, I encourage you to continue your work. Thus, in the worst case, we won't have to go back to square one at the start of the next Parliament, regardless of who's in power, and we'll be able to take up the torch again and pass an act that suits everyone.

Mr. Alupa Clarke: Are there currently any other cases before the Canadian courts in which one of the parties might want to rely on the BC judgment?

• (1035)

Mr. Mark Power: Yes, there are all kinds of complaints.

Mr. Alupa Clarke: So the danger is imminent.

Mr. Mark Power: The answer is yes.

The Canadian government's lawyers follow the instructions they receive. It's up to the Minister of Justice and Attorney General of Canada, Ms. Wilson-Raybould, to instruct them on the official language issues those cases raise. It's not up to me to do that.

Mr. Alupa Clarke: Two weeks ago, Ms. Joly reported to this committee that she had said in cabinet—if I'm not mistaken—that she didn't necessarily agree with the BC judge's reasoning. Is that consistent with what you suggest Ms. Wilson-Raybould should tell her lawyers?

Mr. Mark Power: On the one hand, the commissioner is independent, and rightly so. Until it is proven otherwise, that independence, which is important, must be respected.

On the other hand, I have given you a list of tangible actions that the government could take other than by legislative means, and that could yield immediate results.

In response to your specific question, that judgment does indeed have consequences, although it's only one judgment among many,

from various sources, on which the Federal Court might rely. The Federal Court of Appeal will have to clarify the issue at some point, but, in the meantime, the minister could ask her lawyers not to advance certain arguments.

The Chair: Thank you, Mr. Clarke

Mr. Power, I would like you to clarify a point for us.

At one point, during the Stéphane Dion era, the Privy Council administered the official languages file in a political manner. Would there be any reason to return to that? How can that be done in the context of a renewal of the act? How does one go about imposing a superior political will on everyone, including the Treasury Board, which is responsible for enforcing directives? We can see that the official languages file is often shunted from one minister to another.

Mr. Mark Power: Mr. Chair, I think Mr. Dion did a spectacular job on the official languages file when he was responsible for it. You can think whatever you want about Mr. Dion on other issues, but he did an absolutely remarkable job on official languages.

If I understand correctly, however, his success depended more particularly on his privileged relationship with the prime minister of the time. That was one of the reasons, but not the only one, why I cited Senator Pierre De Bané in my presentation on the subject of Gérard Pelletier's privileged relationship with the prime minister of that time.

The official languages file should not depend on good relations between key ministers and the prime minister. Sometimes that works well, as in Mr. Pelletier's time and that of Mr. Dion, but sometimes it works very poorly. The communities need certainty, which also benefits the Government of Canada and its institutions. That's why, in my professional opinion, a central agency, the Treasury Board in this instance, should be empowered and given a mandate.

The Chair: Thank you.

Now I turn the floor over to Mr. Arseneault.

Mr. René Arseneault: How much time do I have?

The Chair: You have about five minutes left.

Mr. René Arseneault: I am going to share that time with my friend Mr. Rioux.

I'd like to ask a question about the decision rendered by Judge Gascon of the Federal Court. Hasn't an appeal been filed from that decision?

Mr. Mark Power: Yes, an appeal has been filed, and it's up to the Fédération des francophones de la Colombie-Britannique to file a brief as the appellant.

In the interests of full disclosure, I must tell you that we are the lawyers for the Fédération des francophones de la Colombie-Britannique. Yes, an appeal proceeding is under way.

Mr. René Arseneault: I imagine that, under the normal procedure, an appeal may be filed and a decision rendered long before the Official Languages Act is amended.

Mr. Mark Power: Yes.

Mr. René Arseneault: What do you think would be the worst case and best case scenarios resulting from that appeal judgment? That's a hypothetical question, and I know lawyers hate them.

Mr. Mark Power: They either love them or hate them.

Regardless of the decision of the Federal Court of Appeal, judges, by definition, cannot rewrite the act, which is a good thing. Even if the Federal Court of Appeal were to correct certain inconsistencies in the act, the judges could not rewrite it and should not be able to do so. That isn't their role; it's yours. That's why, regardless of the decision rendered, the process you undertake and the one the Senate has been pursuing for 18 months now are so important.

On the other hand, sir, that process must yield a tangible result, that is to say, a new act.

• (1040)

Mr. René Arseneault: Thank you. Now I'll turn the floor over to Mr. Rioux.

Mr. Jean Rioux: Thank you.

Going back to the early childhood issue, we were told out west that there was no money for early childhood transfers. As a result, four out of five children in British Columbia can't attend a French-language early childhood centre. I believe early childhood is the crucial time for maintaining a child's natural language.

Can that situation be corrected?

Mr. Mark Power: Yes. On the one hand, Minister Duclos really should be applauded for his actions on early childhood. Very significant funding is being transferred to the provinces and territories. It's not enough, but it's definitely progress.

On the other hand, those linguistic provisions that are included in the agreements are deficient and made in piecemeal fashion. There will be one in an agreement negotiated by Mr. Duclos and another in an agreement negotiated by Ms. Joly, and there will be a third one here or there. They will have to be standardized. That should be done. The Official Languages Act should clearly prescribe the linguistic minimum that should be included in every federal-provincial agreement. That specifically is the wording that was proposed by the Conseil des écoles francophones on page 18 of its brief.

The proportional nature of the process is a concept that you find in other fields such as health, for example. It's widely done, but it's done in piecemeal fashion. When things go well—this goes somewhat to the chair's question—it's a matter of chance, but when they go badly, it's because the structure is defective. Please amend the legal architecture.

I want to thank Mr. Bossé for reminding me of one point. Sometimes things go well, and that's a matter of chance. The agreement between the federal government and the provinces on cultural infrastructure is important. Infrastructure means money. However, this agreement includes no linguistic clause. The federal government is enormous. A federal institution can't always be expected to consult the others. That's why such important matters must go through a central organization. That's done with regard to pay equity and racial equality as well as in other important fields. There are federal standards. The same should be done for official languages.

Mr. Jean Rioux: Thank you.

The Chair: Before the meeting ends, the clerk has some information to pass on to you.

The Clerk of the Committee (Ms. Christine Holke): I simply wanted to remind you that the report on nurses will be tabled in the House on Wednesday. I just received a call from the Press Gallery. I was told the press conference could not be held in the foyer as a result of the economic statement.

The Chair: It will be tomorrow.

The Clerk: So it will be at 3:45 p.m. instead of 3:30, and it will be in the Charles Lynch Room. I'll be sending you an amended notice.

The Chair: In closing, I would like to thank Messrs. Mark Power and Darius Bossé, as well as Ms. Perri Ravon, for their testimony. It was clear and truly instructive for all members of the committee. Thank you very much.

Mr. Mark Power: Thank you.

The Chair: Thank you very much.

The meeting is adjourned.

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