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Chair

The Honourable Denis Paradis

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• (1105)

[*Translation*]

The Chair (Hon. Denis Paradis (Brome—Missisquoi, Lib.)): Good morning, ladies and gentlemen.

Pursuant to Standing Order 108(3), we are continuing our study of the full implementation of the Official Languages Act in the Canadian justice system.

Madam Commissioner, welcome to you and your team. I assume that, first, you will introduce the people accompanying you. Next, we will listen to you for about 10 minutes, then we will proceed with a round table.

We'll follow the same procedure in the second hour, but on the topic of air transport.

Go ahead, Ms. Saikaley.

Ms. Ghislaine Saikaley (Interim Commissioner, Office of the Commissioner of Official Languages): Thank you, Mr. Chair.

With me today are Pascale Giguère, the director and general counsel for the Legal Affairs Branch, Mary Donaghy, the assistant commissioner for the Policy and Communications Branch, and Jean Marleau, the acting assistant commissioner for the Compliance Assurance Branch.

[*English*]

Good morning, Mr. Chair and honourable members of the committee.

Thank you for inviting me to speak to you today as Interim Commissioner of Official Languages. I would like to take this opportunity to remind you that my team and I are always available to answer questions from parliamentarians, even during this time of transition for our office.

[*Translation*]

Your study on access to justice is of the utmost importance, and I would like to thank you for allowing me to share with you two important issues on this matter.

My comments concern the posting of Federal Court decisions and access to the justice system.

[*English*]

On the matter of Federal Court decisions, former commissioner Graham Fraser tabled a report to Parliament last fall on his

investigation into the Courts Administration Service. This report followed his April 2016 report to the Governor in Council.

The problem concerns the posting of decisions on Federal Court websites, which is often not done in both official languages at the same time. In fact, it can take many months for a decision to be published in the other official language.

[*Translation*]

We started our investigation into this situation in 2007. Ten years later, complaints are still coming in. The Courts Administration Service is of the opinion that the publication of decisions on websites falls under Part III of the Official Languages Act, which governs the administration of justice.

The institution maintains that Part IV of the act, which sets out federal institutions' language obligations in terms of communications with the public—which we consider to include Internet communications—does not apply to Federal Court decisions because of the principle of judicial independence.

[*English*]

While we recognize the importance of this principle, we believe that publishing Federal Court rulings falls under part IV of the act. We also believe that it is the public's right to have access to justice in both official languages. That is directly compromised when rulings of federal courts are not published simultaneously on their websites in both official languages.

Numerous discussions with the Courts Administration Service have failed to resolve the dispute. Our 2015 final investigation report concluded that the Courts Administration Service was still infringing the Official Languages Act.

[*Translation*]

Because the institution did not act on his recommendation, then-Commissioner Fraser submitted a report to the Governor-in-Council and recommended that this ambiguity be resolved, either by tabling a bill or by applying for a reference to the Supreme Court of Canada.

Following the Justice Minister's decision not to respond to this recommendation, Commissioner Fraser tabled a report to Parliament.

To resolve this impasse, the legislation needs to be clarified. I hope that the committee will see fit to recommend that the government draft a bill to clarify the language obligations of the federal courts regarding the posting of decisions.

[English]

Access to justice is a fundamental right for everyone. Despite the provisions of the Criminal Code that recognize the right of all Canadians to be heard in the official language of their choice anywhere in the country, approximately two million Canadians from official language minority communities are running into problems trying to exercise this fundamental right. We are seeing the same situation in civil proceedings, where provincial or territorial laws recognize the right to be heard in either official language to various degrees.

[Translation]

Many of the obstacles are described in the 2013 study on access to justice that former Commissioner Fraser published in cooperation with his provincial counterparts in Ontario and New Brunswick. The study looked at the appointment process of superior court judges and the language training provided to them. It concluded that the process does not guarantee a sufficient number of judges with the language skills needed to hear Canadians in the official language of the linguistic minority without delays or additional costs.

This conclusion was based on two main findings.

[English]

First, there is no coordinated action to determine the needs of superior courts in terms of bilingual capacity or to ensure that a sufficient number of bilingual judges is appointed to these courts.

Second, there is no objective evaluation of the language skills of superior court judiciary candidates. Until recently, the only criterion for the superior court judiciary was a single question on the application form asking candidates whether they were able to conduct a trial in either official language. This self-evaluation was never verified objectively.

[Translation]

The study presented 10 recommendations to rectify the situation and stressed the importance of establishing a coordinated approach by the federal Minister of Justice, the provincial and territorial ministers of justice, and the chief justices.

The previous federal government did not address the recommendations of our study.

However, during the last year, we have noticed some progress. I would like to draw your attention to the changes the federal government made in October 2016 to the appointment process of superior court judges.

• (1110)

[English]

The new nomination form now includes more specific questions on candidates' language skills, and the new process includes the option of evaluating candidates' language skills. When the new process is fully implemented, the Minister of Justice will have access to the results of these evaluations when discussing a court's needs with a chief justice or when making recommendations for appointments to the bench. These changes are concrete measures that address some of the recommendations issued by Commissioner Fraser in his study.

[Translation]

This recent progress reflects an increasing awareness in the legal community with regard to access to justice in both official languages. However, there are still many other issues to overcome before we can say that we have achieved real equality of access.

Thank you.

[English]

I am ready to answer any questions you may have.

[Translation]

The Chair: Thank you, Madam Commissioner.

We will now go immediately to our round-table.

Bernard Généreux, you have the floor.

Mr. Bernard Généreux (Montmagny—L'Islet—Kamouraska—Rivière-du-Loup, CPC): Thank you, Mr. Chair.

I would like to thank the witnesses very much for being here this morning.

In the current study, we are dealing with two extremely important things. Unfortunately, I have the impression that there is one element that tends to take precedence over the other. I am talking about the appointment of bilingual judges to the Supreme Court. I believe that the issue of access to justice in both official languages in Canada is as important as, if not more so, than the appointment of bilingual judges. Perhaps I should say that the two subjects are of equal importance. The matter of appointing judges is often raised, while in reality the biggest work to be done is to make justice accessible in official language minority communities. My first set of questions will touch on that, because I really think we need to get a little more involved.

So far, the witnesses we have received felt that one of the major issues was financial resources. Indeed, there is not enough money to have common law and civil law decisions translated and made available in all the provinces. Such translations would make it possible, for example, to make case law accessible to everyone, across Canada.

We talk about having equal access to justice in both official languages in Canada, but we are far, far from it. Has there been an analysis or a study that could induce the government or governments to inject the necessary funds? Has anyone assessed how much money would be needed to make a practically instantaneous translation of the judgments so that they are accessible across the profession?

Ms. Ghislaine Saikaley: I am not aware of any particular study, but that is the subject of our report to Parliament on the Courts Administration Service. We have received many complaints that the courts are making decisions available in one language only to the public and that they are not available in the other language for several months or even several years. For us, that's a big problem.

For its part, the Courts Administration Service indicates that, for judicial independence reasons, a judge may render a decision in one language, and then the decision is translated. We do not consider this equal access to justice. Section 20 of the Official Languages Act provides that decisions, in certain cases, must be rendered in both languages, including when the proceedings have been conducted in both languages, and if it is a decision of general public interest. According to the courts, very few of these decisions fall into this category, which means that the judges render them only in one language, and then they are translated.

We think the problem goes beyond translation; it affects the interpretation of legislation.

• (1115)

Mr. Bernard Généreux: As I recall, representatives of the QCGN and the president of the Quebec Bar told us that the province and the federal government do not provide the necessary funds to have the judgments translated. We are giving a somewhat derisory amount, for example \$300,000 or \$500,000, which is paltry compared to the tens of millions of dollars that it would cost to translate all judgments.

Do you have a coercive way of encouraging the government to translate the judgments or to ensure that governments at all levels are providing the necessary funds for that?

Ms. Ghislaine Saikaley: No, we have no coercive way to do that, which is why we tabled this report in Parliament. We made recommendations and there was no follow-up. One reason for it was that the money isn't there to translate the judgments. As for us, unfortunately, we only have the power to make recommendations. That's why we have turned to Parliament.

Mr. Bernard Généreux: Money is one aspect of the problem, but in the testimony we heard, people also mentioned the slowness of the system. According to them, the mechanisms for translating judgments are not in place. Apart from money, there is no willingness to see the system handle the translation of judgments. Witnesses noted that the fact that Quebec jurisprudence, in particular, was not used in English Canada because it was not translated had a negative effect. Indeed, in a number of courts at all levels across Canada, there would be a fundamental advantage to being able to use Quebec jurisprudence, just so as not to be cumbersome, among other things.

There should be ways of encouraging the government to invest in the translation of judgments. According to the witnesses we heard from, even the justice system doesn't seem to recognize the importance of putting forward translation to help the justice system.

The Chair: Thank you very much for your comments, Mr. Généreux.

Go ahead, Mr. Lefebvre.

Mr. Paul Lefebvre (Sudbury, Lib.): Thank you, Mr. Chair.

I would like to thank the witnesses for being here.

I'm a lawyer, and I live in a minority community, in Sudbury, Northern Ontario. I studied at the University of Ottawa in French. So this is of particular interest to me.

In your comments, you said that the nomination form for judges had changed. I found that the questions were clearer. I think the minister will be able to make a much more informed decision than before in determining whether they have the necessary qualifications.

Aside from that, there are challenges to overcome. On page 5 of your presentation, it says: "... there is no coordinated action to determine the needs of superior courts in terms of bilingual capacity or to ensure that a sufficient number of bilingual judges are appointed to these courts."

Could you tell us who decides which regions need bilingual judges? Take Ontario, for example. Isn't it the Minister of Justice who says that this region needs bilingual judges. I would like to know who decides. Is it the chief justice of the court, a local group or the Department of Justice that decides which areas should have a bilingual judge?

Ms. Ghislaine Saikaley: It's the chief justices—

Mr. Paul Lefebvre: It's the chief justices of the province, right?

Ms. Ghislaine Saikaley: Correct. They must specify their needs.

In the 2013 study, we proposed that a process be put in place to ensure that the chief justices and the Department of Justice address these issues and determine the needs and resources required.

Mr. Paul Lefebvre: Is this dialogue taking place currently?

• (1120)

Ms. Ghislaine Saikaley: There seems to be progress. Our discussions with people from the Department of Justice suggest that they want to look at the recommendations we have made, but we haven't seen anything concrete yet.

Mr. Paul Lefebvre: The fact that in some areas there is a single judge who is able to hold a trial in French is somewhat frustrating. Demand is high. This judge is sometimes called upon to serve municipalities in various regions. No doubt, that was the role assigned to that judge, but I have some concerns.

How does the chief justice make these decisions? Who provides the data that the chief judge needs to make those decisions?

Ms. Pascale Giguère (Director and General Counsel, Legal Affairs Branch, Office of the Commissioner of Official Languages): I can tell you about the information we collected in the study. We looked at this specifically. We interviewed the chief justices of all the superior courts in the provinces covered by the study. All provinces were not covered, but some Atlantic and western provinces, and Quebec and Ontario, of course, were.

The chief justices told us that exchanges with the Minister of Justice usually took place when an appointment was imminent. Chief justices are asked what their needs are, but they have to be sensitive to linguistic needs. Sometimes the minority community can better identify the barriers or the needs, as you said earlier. For example, in one area, a bilingual judge may retire and another judge has to be appointed to replace him or her. The study spoke of the need to maintain contact between minority communities in the legal system, associations of francophone lawyers outside Quebec and chief justices, who are consulted by the Minister of Justice so that the latter knows in a timely manner what the needs are, when an appointment is imminent. Since not all chief justices are necessarily bilingual, the perspectives of the communities are sometimes necessary so that their needs are made known.

Mr. Paul Lefebvre: In northern Ontario—Sudbury, specifically—one of the bilingual judges has retired, and his position has been moved to meet a need in southern Ontario. This position has not been replaced in Sudbury. Situations like this bother me. That's why I was curious about how this system worked. Thank you very much for bringing your study, your findings and your comments.

The conclusion of your presentation document, which is certainly justified, reads as follows: “However, there are still many other issues to overcome before we can say that we have achieved real equality of access.”

Since there are a few minutes left, could you elaborate on that?

Ms. Ghislaine Saikaley: Of course, the appointment of judges isn't the only issue. There are issues at all levels of the justice system, be it the lack of interpreters or the lack of staff capable of providing an active offer of service in both official languages at the courthouse. All players are involved, in fact. The judges are only one part of the puzzle. Our study has focused only on the appointment of judges, but anything that supports the judicial function deserves to be considered through this lens.

Mr. Paul Lefebvre: That's sort of why the committee decided to study those issues.

Thank you.

The Chair: Thank you very much.

Mr. Choquette, the floor is yours.

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

My thanks to the witnesses for being here today and for their testimony.

Access to justice in both official languages was a very important issue for former MP Yvon Godin, who sat on this committee as an NDP representative and whom I'm replacing in that capacity. He made it his cause and worked very hard on the issue. He introduced two bills on the bilingualism of Supreme Court judges, bills that were supported by former commissioner Fraser over the years.

Right now, there is a debate about a policy the Liberals have adopted on the appointment of bilingual judges. Of course, a policy is a very welcome first step, but we would like to see the bilingualism requirement for Supreme Court judges included in a bill.

Have you heard murmurs of this debate among constitutional experts, in terms of determining whether such a requirement would be constitutional or not? Mr. Fraser, the previous commissioner of official languages, never talked about this issue. Is this an issue that your team has addressed? What solution would you propose?

• (1125)

Ms. Ghislaine Saikaley: Of course, I have followed the committee's discussions on this issue, including the testimony of Professor Grammond, who is an expert on constitutional law. I heard his answer that it did not seem to be a problem. He suggested that the government ask the Supreme Court of Canada directly, which is an excellent suggestion. I agree with Mr. Grammond.

The other way to ensure that Supreme Court judges are bilingual is to remove the exception under section 16 of the Official Languages Act. This option could be faster and more effective.

I was very pleased with the government's announcement of the new process for Supreme Court judges; I'm all in favour of it. I believe that Canadians should be able to be heard and understood in their language before the highest court in Canada without the need for the judges to have an interpreter.

It is understood that I continue to support Bill C-208.

Mr. François Choquette: Thank you very much.

Congratulations on the activity that you organized to mark the 150th anniversary of legislative and judicial bilingualism on March 5. The work you have done is very much appreciated. A number of people were there to reflect on judicial bilingualism.

When I met Mr. Fraser for the first time, I remember that he had shown me the document you referred to earlier, which he had produced with his two provincial counterparts. He told me that it was his priority and that he would like something to come of it.

You talked about it earlier when you said that there had been progress. I asked other people, but they seemed to say that the progress was rather tentative.

Basically, it's still a self-evaluation process, but instead of one question, there are four or five.

Ms. Ghislaine Saikaley: There are four questions.

Mr. François Choquette: There are four questions instead of one. The idea is to have the option to evaluate language proficiency. That's still an option. Will that be done some day? We don't know.

It is like the big debate on GMOs right now: there is an option to indicate on the label that a product contains GMOs. However, in Canada, there is no indication on any product that it contains GMOs, but it is an option.

It's the same thing here: we say that there's an option to assess language skills. In the case of someone with university degrees in both French and English, there's already evidence of their bilingualism. That's a different story. If not, how can this self-evaluation process ensure that a person is bilingual?

That's what Mr. Fraser, the former commissioner, was telling me. So here we are with the same problem: judges who do not have the ability to provide bilingual service when they are supposed to be bilingual.

How can this process guarantee that judges are bilingual?

Ms. Ghislaine Saikaley: We have not seen the results yet, but as we interpret this evaluation process, it will have more questions and they might be more targeted. We understand that. If candidates respond that they do not have the required bilingual skills, they will not be evaluated. We will develop a system to evaluate people who say they are bilingual and then confirm their bilingual skills.

• (1130)

Mr. François Choquette: Do you know when this evaluation process will take place? It's under discussion and you are working on it with the Department of Justice, correct?

Ms. Ghislaine Saikaley: The people in that department are working on developing the process. I do not know whether they're going to consult us, but we'll certainly continue to follow up on the recommendations of our study.

Mr. François Choquette: I hope that they will consult you, given the tremendous work you have done, jointly with the three commissioners, and the report you have tabled.

Ms. Ghislaine Saikaley: We can definitely see that the first steps they have taken follow our recommendations. We want them to implement the other recommendations.

Mr. François Choquette: Thank you very much, Ms. Saikaley.

The Chair: Thank you, Mr. Choquette.

We'll now turn to Mr. Arseneault.

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

Welcome, everyone. Thank you for your presentations. They are really important.

You referred to section 16 of the Official Languages Act. For the sake of the average person, let me clarify that this section states that every federal court, other than the Supreme Court of Canada, has the duty to ensure that the person hearing the case understands English or French without the assistance of an interpreter. This is what the section basically says. The Supreme Court of Canada is the exclusion in section 16.

Is that the exclusion you were referring to, Ms. Saikaley? Do you know the history of this exclusion? Why was this exclusion included in this section? At the time, what were the reasons that led the legislator to provide for such an exclusion?

Ms. Ghislaine Saikaley: Ms. Giguère, do you know anything about that?

Ms. Pascale Giguère: The Official Languages Act was revised in 1988. When we read the debates from that time, we see that some members of Parliament, mainly from western Canada, were apprehensive. They were afraid that, if the Supreme Court judges were required to be bilingual, given the small number of judges on the court, that would prevent some candidates from being appointed. That was a concern at the time.

Times have changed. A number of years have passed and things have evolved. There is now a pool of bilingual judges in superior courts, appeal courts and the legal profession, basically the places from where the Supreme Court judges are recruited. This pool is much bigger than it was in 1988. So this concern may no longer be relevant today.

Mr. René Arseneault: Exactly.

That brings me to the following question. Is it possible to list all the lawyers graduating from francophone or bilingual law schools and to find out how these people are distributed across the country from coast to coast?

Since 1988, many people have been studying law in French. I myself am a former student of the Faculty of Law at the Université de Moncton, which is francophone. The University of Ottawa now teaches law in French. I think even the Université de Sherbrooke teaches common law in French. I don't know all the details, but I know there has been a rapid evolution. When I was studying at the Université de Moncton, there were students from practically every province. Those students' mother tongue was English and they came to study in Moncton. That must also happen in Ottawa and elsewhere.

Historically, I can understand the apprehension and fear of the people in the west of not having judges from their area at the Supreme Court because of the bilingualism requirement. However, I find the exception to be inconsistent, since judges in other federal courts must be bilingual. After all, there are federal courts in western Canada. Why is there an exception for the Supreme Court of Canada?

Well, let's move on from the fear and apprehension.

Are you familiar with how the supposedly bilingual lawyers have been distributed since the advent of law schools in French?

Ms. Pascale Giguère: I know the Ontario Bar collects that kind of information. I am a member of the Ontario Bar myself, and when I complete the declaration as a member of the Bar once a year, I have to provide my identity and specify my linguistic abilities.

As far as universities are concerned, I do not think they collect such data themselves. So the administrative body that governs the legal profession in each province is probably in the best position to collect that kind of information. The umbrella federation of all the provincial bar associations could perhaps ask them to collect that kind of data, but I do not think it's done systematically.

A few years ago, for a study they did, Mr. Power and Mr. Grammond collected data on the number of bilingual judges in each province. Those data may no longer be up to date, but they do exist.

It would actually be up to the bar associations governing the legal profession to collect those data.

• (1135)

Mr. René Arseneault: My next question is about all the translators and interpreters who work for those courts. I wonder about services to litigants when the proceedings are not in their mother tongue. The answer is probably obvious.

If the judges working in those courts were bilingual from the outset, we would not need all those resources. We are talking about human resources and costs. Has anyone ever thought of calculating the savings if tomorrow morning there were only bilingual judges in those superior courts, including the Supreme Court?

Ms. Ghislaine Saikaley: I don't think anyone has done the math. It's a good question.

Mr. René Arseneault: That's all.

The Chair: Thank you, Mr. Arseneault.

We will now go to Linda Lapointe.

Ms. Linda Lapointe (Rivière-des-Mille-Îles, Lib.): Thank you very much, Mr. Chair.

My thanks to the witnesses for being here with us this morning. This is very enlightening.

Earlier, you talked about the 2015-16 report of the commissioner of official languages, Mr. Fraser. Have we committed to implementing the recommendations on access to justice in both official languages? We are talking about improving the bilingual capacity of the superior courts. Have some recommendations been implemented?

Ms. Ghislaine Saikaley: Are you talking about the report on access to justice?

Ms. Linda Lapointe: Yes.

Ms. Ghislaine Saikaley: We tabled it in 2013. We did not receive an answer.

Ms. Linda Lapointe: You received no answer?

Ms. Ghislaine Saikaley: No, we received no answer from the previous government.

Ms. Linda Lapointe: My understanding was that there was some improvement, if only in the evaluation of the two languages, wasn't there?

Ms. Ghislaine Saikaley: Yes.

Last fall, a new appointment process for superior court judges was announced, including the new questions on the form. The evaluation process is also supposed to be done. That's a first step.

Ms. Linda Lapointe: That's what Mr. Choquette was talking about a little earlier.

What should our government's priorities be with respect to access to justice in the next action plan for official languages?

Ms. Ghislaine Saikaley: A letter from the Canadian Bar Association to the Minister of Justice and the minister responsible for the action plan mentioned the importance of the linguistic abilities of judges. I would say that this is a major issue for all the regions.

Access to justice depends, among other things, on the bilingualism of judges. There is also the availability of these judges and the necessary support. This means courts that can work in both official languages.

Ms. Linda Lapointe: Earlier, you said that it's important to have bilingual judges, but all the required staff must also have this same ability. Is the rate of the bilingualism of the staff measured?

Ms. Ghislaine Saikaley: We have not done any studies on the issue ourselves. We looked at judges only. However, we have heard that there are also problems with the staff. The entire court system should have access to the resources needed to support access to justice in both official languages.

Ms. Linda Lapointe: You are talking about the courts, but access to justice is more than courts. Border services, the RCMP and corrections are also part of the justice system. Have you looked at what should be done for access to justice in that sense?

• (1140)

Ms. Ghislaine Saikaley: We regularly investigate complaints about the Correctional Service of Canada or the Canada Border Services Agency, for example.

Two years ago, we audited the Canada Border Services Agency. We made a number of recommendations and we are about to follow up on them.

Our audit of the Canadian Air Transport Security Authority certainly deals with aspects of justice, but it goes beyond that.

As you said, there are also the police and the RCMP. So this is very broad.

Ms. Linda Lapointe: Yes, it's very broad.

Let's look specifically at the case of Quebec, the people I represent, that is, in terms of access to justice in both official languages.

In the correctional centres in Quebec, is access to justice possible for the anglophone minority, men or women? Is it possible for that minority to make itself clearly understood?

Ms. Ghislaine Saikaley: There have to be a certain number of anglophones. You are talking about anglophones, aren't you?

Ms. Linda Lapointe: Yes.

The constituency of Rivière-des-Mille-Îles is located to the north of Montreal. We have people from the anglophone minority living there. I often tell them that I sit on the Standing Committee on Official Languages and that francophones outside Quebec are in the same situation as they themselves are in the constituency of Rivière-des-Mille-Îles. When I explain that to them, they understand that things can be difficult for francophones outside Quebec. But Quebec francophones see less of a difficulty. However, members of the anglophone community that I represent do experience that difficulty.

Ms. Ghislaine Saikaley: The federal penitentiaries in Quebec have obligations to the anglophone minority. If at least 5% of the prison population is anglophone, they are required to provide services in English to the inmates.

Ms. Linda Lapointe: How can we find out which detention centres have a prison population that is more than 5% anglophone, with resulting obligations to the anglophone minority?

Ms. Ghislaine Saikaley: Do you mean in Quebec?

Ms. Linda Lapointe: Yes, in Quebec.

Ms. Ghislaine Saikaley: We could certainly find that information for you.

Ms. Linda Lapointe: I would also be interested in having that information for detention centres outside Quebec. You have to look at the mirror image, actually; you always have to look at the situation from both sides. People in language minorities with whom we have discussions recognize that access to justice and access to health are difficult.

Are those figures available? Do you have them?

Ms. Ghislaine Saikaley: We can get them for you.

Ms. Linda Lapointe: Okay, thank you.

That is all for me, Mr. Chair.

The Chair: Thank you very much.

We continue with Bernard Généreux,

Mr. Bernard Généreux: Thank you, Mr. Chair.

I have three or four questions about access to justice.

In your opinion, what should the government's priorities be, in terms of access to justice, in the next official languages action plan? What should we focus on in the next action plan, the one for 2018-22?

Ms. Ghislaine Saikaley: Once again, access to justice largely depends on the appointment of bilingual judges. That seems to be a major issue for all the communities.

Mr. Bernard Généreux: You are not just talking about Supreme Court judges, are you?

Ms. Ghislaine Saikaley: I am talking about superior court judges in the regions. It is a huge issue. Trials can be delayed for several years because bilingual judges are not available. That is what I have heard. I don't know if Ms. Giguère has heard anything different.

Mr. Bernard Généreux: In your opinion, should that be the priority that we include in the next action plan?

Ms. Ghislaine Saikaley: I would say so.

Ms. Giguère, do you have any other ideas?

Mr. Bernard Généreux: What do you think, Ms. Donaghy?

Mrs. Mary Donaghy (Assistant Commissioner, Policy and Communications Branch, Office of the Commissioner of Official Languages): I am going to add a comment.

On the subject of the official languages action plan, Mr. Fraser, the former commissioner, wrote to Minister Joly a number of times to explain his priorities. He focused on more social issues, including education.

Mr. Bernard Généreux: Training.

Mrs. Mary Donaghy: Yes, training.

So he did not focus so much on matters of access to justice. In his opinion, the most important thing was for the current government to consider all the recommendations that were in the 2013 report. He was very aware of the delay on the part of the former government, for which it was not a priority. That is the background of the last action plan. Access to justice remains a priority, but the commissioner chose to put the emphasis elsewhere.

•(1145)

Mr. Bernard Généreux: At the moment, the access to justice in both official languages support fund basically rests on two pillars: information and training. In your opinion, are the features of the fund sufficient to cover all the needs in terms of access to justice?

Ms. Ghislaine Saikaley: Are you talking about the new program?

Mr. Bernard Généreux: Yes. I am talking about the access to justice in both official languages support fund.

Ms. Ghislaine Saikaley: A number of significant initiatives dealing with access to justice in both official languages have been undertaken with help from the support fund. We hear that they are—

Mr. Bernard Généreux: Can I assume they are still underfunded?

Ms. Ghislaine Saikaley: Well, we have been told that the initiatives have been able to improve the situation, but, of course, there is still some way to go. The commissioner spoke about the progress that we have seen with judges and with all the people working in the justice system. In spite of that, the community feels that efforts must still be made to improve the situation.

Mr. Bernard Généreux: Okay.

So now I come to the burning question, just like on *Tout le monde en parle*.

No one can be against motherhood and apple pie, and I agree that the judges of the Supreme Court of Canada must be bilingual. However, in my opinion, there is a fundamental difference between a judge who is perfectly bilingual and a judge who is functionally bilingual. At the moment, the government wants to appoint judges who are functionally bilingual.

Do you distinguish between a judge who is perfectly bilingual and a judge who is functionally bilingual? If a judge is functionally bilingual, is that enough for him or her to sit on the Supreme Court of Canada?

According to the government's definition, a functionally bilingual judge is able to understand French and English but is not necessarily able to speak French and English. I stand to be corrected if that is not the case. Personally, I would not consider a judge like that to be bilingual. That's my opinion, but I would like to know yours.

Ms. Ghislaine Saikaley: As I said earlier, we are talking about the right to be heard and understood without the aid of an interpreter. So it could certainly be that judges may understand very well when litigants speak to them in an official language other than their own. But they might have difficulty speaking in that other languages. So, as you said, that person should still be bilingual enough to be able to ask clarification questions, if needed, in order to understand fully.

Mr. Bernard Généreux: As I see it, a person who is bilingual enough is not the same thing as a person who is perfectly bilingual. Please forgive me, Mr. Chair, but I am forced to say that repeatedly.

I understand the ambition, the objective, the dream of having a country that is fully bilingual from one end to the other. We all dream of that. We all dream of having perfectly bilingual judges, not only in the Supreme Court, but in all courts all over Canada. That would be just great. It would be great if God were bilingual too. I don't know whether He is, but we hope to find out that He is when we get up there. If so, all would be right with the world.

As you pointed out just now, this exception was created because, once, you could practically count on the fingers of two hands the number of perfectly bilingual judges from an English-speaking province. That may not quite be the reality today. Since 1988, society has evolved, and bilingualism has made strides in Canada, it must be said.

Does that reality justify our enshrining in Canadian legislation the obligation to choose a candidate who may be a little less qualified but who is bilingual? Is the legislation going to force us at some stage to choose, not a more qualified candidate, but another bilingual candidate who does not even have to be perfectly bilingual? He or she could be functionally bilingual, which could turn out not to be enough in certain cases, as you say. Do you understand what I mean?

Ms. Ghislaine Saikaley: Yes.

Mr. Bernard Généreux: At some stage, we are going to have to choose. If we want bilingual judges, they are going to have to be really bilingual, not just half bilingual.

Ms. Ghislaine Saikaley: As I understand it, the new questions that will be put to candidates for judges' positions in superior courts will ask whether they are capable of carrying on a discussion or a debate in English or French. Actually, I have the questions here. Candidates are asked whether, "without further training" they are "able to read and understand court documents", "able to discuss legal matters with [their] colleagues", "able to converse with counsel in court" and "able to understand oral submissions in court".

• (1150)

Mr. Bernard Généreux: I am not a lawyer, but my answer to all those questions would be yes. However, I know full well that I am not bilingual.

The Chair: Thank you, Mr. Généreux.

Mr. Arseneault, you have two minutes.

Mr. René Arseneault: Thank you, Mr. Chair.

I think we have looked at the matter from all angles.

I always put myself in the shoes of the average Canadian going to the post office in a little village like mine to buy a stamp. The employee who sells the stamp has to be bilingual.

It is a huge leap to go from that example of the postal employee selling the stamp to talk about the issue of bilingual judges on the Supreme Court of Canada.

Do you know how many years, on average, judges sit on the Supreme Court of Canada? Do you have that figure?

Ms. Pascale Giguère: No. Generally, judges are appointed at a point in their careers when they already have a number of years of experience.

Mr. René Arseneault: I would say that, on average, they are 55 to 60 years old, and they sit until they are 75.

Ms. Pascale Giguère: Yes, retirement is mandatory when they reach 75.

Mr. René Arseneault: Using a conservative estimate, let's say that judges have an average of 20 years of experience.

How many judges are there on the Supreme Court?

Voices: Nine.

Mr. René Arseneault: So, nine times 20 years.

I think of all the French-language law faculties that have popped up and all the new lawyers practising in both official languages. These days, all over Canada, there are bilingual faculties, French-speaking faculties and English-speaking faculties. We also have at least one French-language legal terminology centre for common law, a laboratory for specific terminology.

Does that all mean that the situation today is completely different than in 1988, when the Supreme Court of Canada was excluded from any requirement for bilingual judges?

Ms. Ghislaine Saikaley: I think it does. We certainly do have to consider the current situation.

Mr. René Arseneault: Nothing like that existed then. They were just starting to open the first French-language common law faculties.

The Chair: Thank you, Mr. Arseneault.

Your turn, Mr. Choquette.

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

I would like to continue along the same lines as Ms. Lapointe and talk about access to justice as it affects the RCMP.

I am sure you have read an article in the media lately about a motorist's challenge in Manitoba, north of Winnipeg. The staff of the Selkirk detachment, around St-Pierre-Jolys, is designated as bilingual. But there are problems with assigning bilingual RCMP officers there.

Do we have problems in Canada with RCMP services in both official languages? Our study is about access to justice in both official languages and actually, in a number of Canadian provinces, RCMP officers are the first people in the justice system we have to deal with. Have studies been done that give us a picture of the situation?

Ms. Ghislaine Saikaley: We receive very few complaints about the RCMP.

Mr. François Choquette: Okay.

Ms. Ghislaine Saikaley: We looked at doing an audit, but we more or less set it aside because we did not see any urgency in it.

I read the article in the paper this morning, as you did. The problem is always the same. A number of organizations seemingly do not have enough bilingual employees. As a result, if someone who can provide a service in the minority language is not there, the service can no longer be provided in that language.

The situation is the same with the Canada Border Services Agency, the Canadian Air Transport Security Authority and other similar organizations. They do not seem to correctly assess the bilingual staff they must have to meet the needs.

At the moment, we are not looking to do anything special about the RCMP. Certainly, we could receive a complaint about them.

• (1155)

Mr. François Choquette: If you got a complaint about the RCMP, there would probably be an investigation.

Ms. Ghislaine Saikaley: Yes.

Mr. François Choquette: Thank you, Ms. Saikaley.

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

We are going to suspend the meeting for a few minutes. When we resume, we will start our discussion of air transportation.

• (1155)

(Pause)

• (1205)

The Chair: We will resume the meeting with testimony from the Commissioner of Official Languages. We will be dealing with the audit conducted by the Office of the Commissioner of Official Languages into the services provided to the travelling public by the Canadian Air Transport Security Authority.

Once again, Madam Commissioner, we will listen to you for 10 minutes or so. After that we will go around the table.

The floor is yours.

[*English*]

Ms. Ghislaine Saikaley: Mr. Chair, members of Standing Committee on Official Languages, thank you for giving me the opportunity to present my audit report on bilingual services to the travelling public provided by the Canadian Air Transport Security Authority, CATSA, published only a few weeks ago.

CATSA is a relatively young organization. It was established as an agent crown corporation in 2002. Since then my office has conducted several exercises to help the institution understand and meet its official languages obligations.

[*Translation*]

In 2012, as part of an exercise regarding the language rights of the travelling public in airports, the Office of the Commissioner of Official Languages conducted observations of the Canadian Air Transport Security Authority at eight international airports.

The organization received perfect scores for visual active offer. However, it needed to do better in terms of in-person active offer and availability of service in the official language of the linguistic minority. Despite that, in 2014-2015, among the organizations examined, it was ranked second for the most complaints filed with the Office of the Commissioner. The complaints, related to communications with the public, were filed under Part IV of the Official Languages Act.

[*English*]

My office therefore conducted an audit of CATSA from December 2015 to March 2016 to determine to what extent it was meeting its language obligations to the travelling public.

Airport security screening officers, who are, in fact, third-party service providers acting on behalf of CATSA, have a demanding job with very specific tasks. The first priority in their work is to ensure the safety and security of the travelling public in airports.

Before passengers or their belongings enter the secure area of a Canadian airport, they are screened by these officers at airport screening checkpoints. This is a mandatory part of the pre-boarding process for the travelling public. These screening officers must meet the appropriate language obligations and Transport Canada standards.

• (1210)

[*Translation*]

An active offer of service in both official languages at screening checkpoints is particularly important in situations where the people providing a service hold a position of authority. An active offer of bilingual services is of prime importance. Travellers have to know that services are available in both official languages and that, from the outset, they can use English or French in their interactions with the screening officers.

The audit looked primarily at CATSA's first area of activity: the screening of passengers, their carry-on baggage and their personal belongings at screening checkpoints in class 1 airports, those with at least 1 million passengers, which are required to provide services in both official languages under the act.

[*English*]

The audit had four objectives: to verify whether CATSA senior management is committed to implementing part IV of the act, which governs communications with and services to the public in order to guarantee that passengers have the opportunity to be served in the official language of their choice; to verify whether CATSA has formal mechanisms for active offer and for ensuring that services of equal quality in English and French are provided during all steps of the airport security screening process; to verify whether CATSA takes the needs of official language minority communities into account in the planning of its bilingual services; and to verify whether CATSA effectively monitors the delivery of services of equal quality in English and French by the third-party service providers who are contracted to provide services at screening checkpoints in airports.

[Translation]

The audit revealed that CATSA's senior management has made a number of efforts to integrate official languages into its work, in accordance with the principles and responsibilities set out in CATSA's official language policy. Despite the efforts to clearly communicate its official languages obligations to all employees of service providers, CATSA's screening officers do not always greet the travelling public in both official languages and the available services are not always of equal quality in both official languages. The language skills of screening officers are not evaluated in the same way by the different service providers throughout Canada.

There is also no consistency in the training that these service providers offer to the screening officers with respect to official languages. CATSA does not know the optimal number of employees necessary in order to ensure bilingual services at all times, and the current standard set out in the language clauses does not guarantee services of equal quality in both official languages.

[English]

CATSA does not consult official language minority communities regarding services. It checks passenger satisfaction with the services provided in the preferred official language. However, only a small number of francophones are surveyed, and the current methodology makes it difficult to determine the accuracy of the results regarding services provided to francophones.

CATSA has conducted an evaluation of the quality of services provided to the travelling public, and it included an official languages component. Appendix B of the audit lists my 15 recommendations and includes CATSA's comments and action plan, as well as my own comments.

[Translation]

I am largely satisfied with the measures and timelines proposed by CATSA. Its action plan is capable of greatly improving the institution's performance and concretely improving service to passengers. I encourage CATSA to continue its reflection concerning the measures proposed in response to recommendation 3, which calls for CATSA to review the linguistic identification of the positions of directors and general managers in the regions, and to recommendation 8, which calls for CATSA to review its official languages standards under the Contract Compliance Program. Furthermore, I encourage the institution to make the consequences of failing to meet these new standards consistent across all regions.

• (1215)

[English]

Ultimately, CATSA must fully implement all of the recommendations in the audit report in order to meet its obligations under the act in terms of communications with and services to the public in both official languages. My office will conduct a follow-up of the recommendations in the next 18 to 24 months.

I would be happy to answer any questions you may have.

[Translation]

The Chair: Thank you very much, Madam Commissioner.

We will now begin immediately with Mr. Bernard Généreux.

Mr. Bernard Généreux: Thank you, Mr. Chair.

Thank you again to our witnesses.

Madam Commissioner, page 5 of the document in French discusses services that are not always of equal quality. You make reference here to the quality of services that are not being offered to the population in French and in English. How are you able to assess that the service is not equal? Is this about the quality of service in French or in English?

Ms. Ghislaine Saikaley: It may certainly be that, or that may still happen when there is no bilingual officer at each line, for example. In such a case, you have to do business with another person. You have to interrupt the service and ask a colleague to come and provide the service. So this is not a service of equal quality, because the person has to wait to receive service. Sometimes this can take a while.

Mr. Bernard Généreux: In Canada, there are six international airports with over one million travelers. Is that correct?

Ms. Ghislaine Saikaley: There are more than that, but we studied only six of them.

Mr. Bernard Généreux: You studied only six of them, so the report takes into account what you have observed in six airports.

Ms. Ghislaine Saikaley: Yes.

Mr. Bernard Généreux: You say that, in spite of all the efforts that have been made, they ranked second, among those you analyzed, with respect to the percentage of complaints received. When it comes to the percentage of complaints received, I imagine that in all of the Canadian airports—not just the six that you studied—the number of travelers is in the millions.

Ms. Ghislaine Saikaley: That is correct.

Mr. Bernard Généreux: What is the percentage of complaints you received compared to the total number of travelers? Do you have any idea?

Ms. Ghislaine Saikaley: I do not have the percentage.

Mr. Bernard Généreux: Are you able to estimate it?

Ms. Ghislaine Saikaley: It is a very small percentage, that is certain. During the last year, we are talking about 30 complaints out of 60 million passengers.

Mr. Bernard Généreux: Obviously, if I noticed that I wasn't receiving service in the language of my choice, my first reflex would not necessarily be to go complain to the Commissioner of Official Languages. There must be hundreds, or even thousands of travelers who experience this, but who do not necessarily bother to complain. As for the 30 people in question, they may be a reflection of a certain number of people who are not happy with the services.

When you talk about visual active offer, does this mean you consider what happens inside airports as well as the service offered there, more specifically in certain locations? Do you consider the entire airport or only the location where the service must be provided?

Ms. Ghislaine Saikaley: Currently, it is only the locations where CATSA has its checkpoints, namely, the places where security measures are implemented in airports.

Mr. Bernard Généreux: So do you feel that the display is clear enough for people to be able to request service in both languages or for them to understand that the service is offered in both languages? I see a difference between these two concepts. It's fine to post "French here" or whatever else, but this does not mean that people are encouraged to request service in French.

Do you see a difference between these two concepts?

Ms. Ghislaine Saikaley: Basically, visual active offer is simply ensuring that there are signs indicating that the service is available in both languages. This is only one component of active offer.

This is why it is also necessary to make an active offer in person. Of course, this must be followed by a service offered in both languages.

Mr. Bernard Généreux: Unfortunately, I have not read your report. I wanted to let you know.

There is also no consistency in the training offered by suppliers. Are you talking about suppliers who are members of the association? I want to be sure I understand properly, and that also goes for the committee. CATSA is indeed an association, isn't it?

• (1220)

Ms. Ghislaine Saikaley: CATSA is a federal institution.

Mr. Bernard Généreux: So CATSA is a federal institution.

When we talk about suppliers to this federal institution, the same suppliers do not provide training across Canada. So there is not consistent training all across Canada. Is that correct?

Ms. Ghislaine Saikaley: In fact, CATSA does business with three security companies. The people who wear the CATSA uniform are not....

Mr. Bernard Généreux: All right, these are subcontractors.

Ms. Ghislaine Saikaley: They are subcontractors, they are not CATSA employees.

Mr. Bernard Généreux: The people are not CATSA employees.

Ms. Ghislaine Saikaley: Exactly.

There are three companies in Canada.

Mr. Bernard Généreux: Can we name these three companies? Certainly there is Garda.

Ms. Ghislaine Saikaley: Indeed there is GardaWorld, but I forget the name of the other two.

Mr. Bernard Généreux: You will be asked other questions. You will have an opportunity to answer this question later.

These suppliers then are not subject to an obligation to offer a consistent training. For example, CATSA could offer these businesses a training plan for employees. But that is not how it works.

Ms. Ghislaine Saikaley: No, CATSA makes these businesses responsible for training their employees.

Mr. Bernard Généreux: According to law, could this be required? Could the government require it?

Ms. Ghislaine Saikaley: We examined this component and made recommendations in our report.

Normally, if the recommendation is implemented, it is a matter of ensuring that there is consistent training. CATSA certainly has a role to play in producing the training and making it available to the businesses.

Mr. Bernard Généreux: In your opinion, should this training deal only with the language issue?

Ms. Ghislaine Saikaley: As far as we are concerned, yes, and we would actually like this to be the case.

The Chair: Thank you, Mr. Généreux.

Mr. Vandal, you have the floor.

Mr. Dan Vandal (Saint Boniface—Saint Vital, Lib.): Thank you very much.

Ms. Saikaley, you chose six airports. How did you choose them? Why Halifax and not Winnipeg, why Edmonton and not Québec City?

Ms. Ghislaine Saikaley: Firstly, as I indicated, we wanted to choose class 1 airports, which have to serve at least one million passengers. These locations have an obligation to provide services in both official languages.

Secondly, we wanted to have a picture that covered all of Canada. So we restricted ourselves to these airports. We also chose the airports according to complaints received and locations where no service is offered.

Mr. Dan Vandal: You said there are more than six airports that serve over one million passengers. Is that correct?

Ms. Ghislaine Saikaley: Yes.

Mr. Dan Vandal: What are the other airports?

Ms. Ghislaine Saikaley: There are 17 in all.

Mr. Dan Vandal: Seventeen? All right.

It seems to me that there should be a big difference in the results, for example between Edmonton and Montréal. In Edmonton, 15% to 20% of the population is francophone. Did you study the diversity of the results in the airports selected?

Ms. Ghislaine Saikaley: Yes. In addition, we inserted a table in our audit report that shows the percentage of bilingual employees from one region to another. It is clear that in Montréal and in Ottawa, among others, there are not many issues. In fact, there are practically none related to Edmonton, for example.

Mr. Dan Vandal: Which regions received the highest number of complaints?

Ms. Ghislaine Saikaley: I do not think we have the numbers by region.

Do we have them?

Mr. Jean Marleau (Acting Assistant Commissioner, Compliance Assurance Branch, Office of the Commissioner of Official Languages): It is Toronto.

Ms. Ghislaine Saikaley: Yes, it is in Toronto.

It concerns big airports. In Toronto, it is fairly problematic.

Mr. Dan Vandal: You mentioned a number when you spoke to Mr. Généreux. I think that there were 30 complaints out of a certain number of flights, correct?

Ms. Ghislaine Saikaley: There were 30 complaints during the last year, while there were 60 million passenger screenings. There are several steps in a screening. I imagine that the count is done whenever there is a screening.

Mr. Dan Vandal: We are not talking about employees of companies like Air Canada or WestJet, we are talking about people who are involved at the very beginning, who handle security, correct?

Ms. Ghislaine Saikaley: These are indeed the people who examine luggage and who make travelers go through the metal detector.

Mr. Dan Vandal: How did you obtain this information? Did you observe this visually? Does this come from surveys?

Ms. Ghislaine Saikaley: Are you talking about when we conduct the audit?

Mr. Dan Vandal: Yes.

Ms. Ghislaine Saikaley: We use several methods. We can analyze the documents CATSA has provided to us, for example.

Our auditors also go on site, they make a lot of observations and they conduct interviews with the employees. In this case, we did interviews with community association members.

So we use a range of tools when we conduct an audit.

• (1225)

Mr. Dan Vandal: You mentioned that this is the third audit conducted in this regard. Is that correct?

Ms. Ghislaine Saikaley: This is the first audit. However, in 2012 we conducted an observation exercise in several airports. At that time, we also audited CATSA's activities, although it was simply an observation exercise.

Mr. Dan Vandal: So you did not conduct an audit in 2012.

Ms. Ghislaine Saikaley: No.

Mr. Dan Vandal: Between 2012 and 2016, were there other observations?

Ms. Ghislaine Saikaley: The Office of the Commissioner has certainly investigated the complaints received each year. They come from different regions. This shows that there continue to be issues.

I can tell you that when our employees travel, they have the opportunity to make observations that they may report to the office. They may mention, for example, that they took such and such a flight and that there was no active offer, nor even service in French or in English. This is part of the information we may use during this type of exercise.

Mr. Dan Vandal: Is the name of the organization CATSMA?

Ms. Ghislaine Saikaley: It is CATSA in English and ACSTA in French.

Mr. Dan Vandal: Apparently, CATSA reports to Canadian Heritage every three years. Is it actually to Canadian Heritage, or is it to Public Services and Procurement Canada?

Ms. Ghislaine Saikaley: Do you mean about official languages?

Mr. Dan Vandal: That is correct.

Ms. Ghislaine Saikaley: It would be to the Treasury Board of Canada Secretariat.

Mr. Dan Vandal: Is it every three years?

Ms. Ghislaine Saikaley: I would not be able to answer that question, unfortunately. I do not know.

Mr. Dan Vandal: I would like to ask you another question.

You mentioned that they do not consult official-language minority communities. What is your recommendation to tackle this problem?

Ms. Ghislaine Saikaley: There must be regular contacts with community groups in order to know their needs. We believe that establishing these relationships could also help these groups recruit bilingual employees, because these associations are part of the communities. They could give their opinion on how to find bilingual employees.

Mr. Dan Vandal: All right.

Do you believe that CATSA will follow up?

Ms. Ghislaine Saikaley: Yes, I am optimistic that that will happen.

As I was saying a bit earlier, this organization is fairly recent. During the audit, its representatives were very receptive and they were very cooperative. I am confident that they will implement all of the recommendations. We drafted our recommendations so that they fit together with each other. I am convinced that if these recommendations are implemented, the services will be greatly improved.

Last week, I left from Ottawa to go to Edmonton. CATSA provided me with impeccable service. This was the first time I saw that. I experienced active offer and service in French at all the screening points.

A voice: They recognized you!

Ms. Ghislaine Saikaley: They had my photo in Ottawa!

They did not recognize me in Toronto, however.

The Chair: Thank you very much.

Mr. Choquette, you have the floor.

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

It seems that there really is a recurrent problem in air transport. Mr. Fraser, the previous commissioner, did a special report on Air Canada. Now there is this study on the Canadian Air Transport Security Authority, or CATSA. According to the picture you are painting today and from what I can see, there seems to be a regression in service offer in both official languages.

The newspaper *La Presse* has revealed certain facts about bilingual employees at screening points. Since 2010, there has been a decrease in bilingual employees at practically all airports in the country. For example, they went from 8 to 6 bilingual employees in Toronto, and from 13 to 11 in Vancouver. Even in Montréal, the staff went from 99 to 94 bilingual employees. So there seems to be a problem and the situation is starting to get out of control. At Air Canada, there are also problems that can be explained in a number of ways.

How would you describe access to services in both official languages in air transport? There seems to be a problem in this area.

• (1230)

Ms. Ghislaine Saikaley: There is certainly a problem and it seems that the challenges are almost the same. We often hear that it is difficult, in particular, to recruit bilingual people in certain regions. However, recruiting bilingual people is not the only solution. We can also train personnel.

What we observe is that the vocabulary of the employees who hold these positions is rather limited and that the questions they ask are rather simple. Their employer could very well train them to make an active offer and at the very least to provide a minimal service. There are indeed recruitment problems, but it is also possible to offer training.

This seems to be a question of allocation of positions. As we said, CATSA has established that it was sufficient to have one bilingual person for every two counters, but this decision was not based on any fact or statistical data. There must be an analysis of the situation and this must be planned. The number of flight attendants on Air Canada flights must be planned. If two flight attendants are assigned to a flight and one is bilingual and the other monolingual, half of the passengers will receive service in both languages and the other half will not. On the other hand, if two bilingual attendants are assigned to the flight, all passengers will have service in both languages.

Mr. François Choquette: Let us go back to the meeting you had with the CATSA managers.

In two recommendations, you say that you disagree with the decisions of this association with regard to the linguistic identification of the positions of directors and general managers as well as official languages standards under the Contract Compliance Program.

How is it that CATSA did not listen to you about these two recommendations? Do you meet with CATSA to encourage it to better understand these two recommendations you presented?

Ms. Ghislaine Saikaley: When CATSA committed to implement 13 of the 15 recommendations, it was under the former president. Since then, the new president has been appointed. I met with him with my team and I had the impression that he was going to review this and that he was really committed to implementing all of the recommendations. We will certainly follow up in 18 to 24 months to see if this has been done.

CATSA's reservations were not so significant. You spoke just now about the difference and the challenges. When there is strong leadership at the head of an organization, this greatly supports the

establishment of a culture of service excellence. I am optimistic that with the current leadership, CATSA will see the importance of each of the recommendations and will implement them.

Recommendation 8 asks that each region be given a bit of latitude to implement the bonus program. We have had discussions on this topic, and I think CATSA understood the importance of also ensuring consistency in this regard. I am optimistic that CATSA will implement this.

Mr. François Choquette: You said earlier that recruitment of bilingual people is not always easy and that there could be more training. When the Air Canada people came here, they told us that they would need a little more support from the federal government. Is it the same thing for CATSA? Are they asking for a little more support from the Cabinet to create a list of bilingual employees and potentially bilingual employees or to provide language training?

• (1235)

Ms. Ghislaine Saikaley: No, the people from CATSA did not raise these questions. I think CATSA accepted the recommendation about consultation of official-language communities, within which there could be a pool of potential employees. I saw the comment from Air Canada and this solution seems complicated to me. Perhaps the question should be put to the Public Service Commission. I imagine that they are the ones who would be responsible for creating this type of bank of employees.

In my opinion, the skills these organizations require of their employees are different. It is good to have a bank of bilingual employees, but I think that requiring a multitude of different skills would be difficult to manage.

Mr. François Choquette: I was aiming more at the issue of training.

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

Mr. Samson, you have the floor.

Mr. Darrell Samson (Sackville—Preston—Chezzetcook, Lib.): I thank the four of you for being here today and telling us about two extremely important subjects for our committee. I am going to focus on CATSA.

For a year, I have been hearing a lot about the deficiencies of the subcontractors of Air Canada and CATSA in terms of services in both official languages—and Mr. Choquette spoke about it also. This is troubling to me.

Are the guidelines rigorous enough to ensure that the suppliers chosen have the same obligations concerning services in both official languages? Is there a deficiency in this regard?

Ms. Ghislaine Saikaley: Section 25 of the Official Languages Act is clear on this point: even if services are subcontracted by a federal institution, the latter remains responsible for these services. As far as we are concerned, CATSA is responsible for providing services in both official languages. It is up to them to implement the services.

Mr. Darrell Samson: I quite agree, madam, but my question is more specific.

In your opinion, are the guidelines rigorous enough to ensure that subcontractors provide services in both official languages?

Ms. Ghislaine Saikaley: The contracts that these organizations enter into with subcontractors are supposed to contain language clauses. As far as knowing whether these clauses are clear enough, the question should go to the organizations in question. Does CATSA impose penalties? Does it refuse to grant bonuses if its subcontractors do not provide the required services? Could this be strengthened? Some of you would very likely say yes.

Mr. Darrell Samson: We should really examine this.

Let us now talk about recommendation 3. When senior management is not bilingual or does not include a certain percentage of people who can get along well in both languages, what happens? This is a question of leadership.

Ms. Ghislaine Saikaley: Absolutely.

Mr. Darrell Samson: This has impacts on everything else.

This is troubling to me. Are there means to ensure that there is a certain percentage of bilingual people in these positions? Mr. Choquette said just now that a decrease in bilingual personnel is being seen. In your opinion, is this reasonable and understandable? What are the solutions?

Ms. Ghislaine Saikaley: It is certainly a question of leadership. We do not understand why there is resistance on this subject. In the regions, the representative of the organization is in the field. If the employees are expected to be bilingual and to provide service in both official languages, but the supervisor himself is not able to do so, this sends the wrong message. This is why we recommend that the managers in the regions be bilingual.

Mr. Darrell Samson: You did mention in your comment that you do not support this type of response. However, what is the solution? What can the government do? What means should be used, in your opinion, to measure service quality?

Ms. Ghislaine Saikaley: You still have the ability to bring the managers of the organization before you and strongly encourage them to implement the recommendations.

• (1240)

Mr. Darrell Samson: In addition, do you think that people clearly know the difference between Air Canada and CATSA? Often, when I ask questions, people do not seem to know the difference between the two organizations. Do you agree? If yes, what can we do to better inform people about these two organizations? You say that there are 30 people. The others may have made comments to Air Canada thinking that the employees worked for Air Canada.

Is there a problem? Can you suggest a solution?

Ms. Ghislaine Saikaley: First of all, it is true that people do not always understand their rights. As was said earlier, people who do not travel much are more nervous, especially in front of a person in a position of authority, and they do not want to make waves when they have to go through security. This is a difficult situation.

In addition, these are all different companies. Should they unite? Should the airport authority that hosts all these agencies do more advertising to tell people that they have rights and to assert them? This is a good question. I do not really have a suggestion.

Mr. Darrell Samson: I am going to allow you to reflect on that, with time.

There is also the question of consistency. As you say, these three different suppliers do not have to follow the same rules and do not have the same contracts. This is an enormous deficiency. It is clearly articulated and there does not seem to be a solution. That is troubling to me.

Now, the Air Canada people are talking about doing slightly more direct recruiting. All the same, I give them credit. They mentioned that they were working with the Réseaux de développement économique et d'employabilité, or RDÉE, in the provinces and in certain regions in the west. That is interesting.

What is CATSA doing in this regard?

Ms. Ghislaine Saikaley: I think CATSA was not doing very much. However, the purpose of our audit is to propose real ways of doing things which, in our opinion, will greatly improve the situation.

Mr. Darrell Samson: I give you a lot of credit, because you are focusing on a number of targets. I congratulate you for June 2017. However, we would have to be sure to conduct an audit quickly and check whether it is in place.

Ms. Ghislaine Saikaley: Yes.

Mr. Darrell Samson: This is still troubling to me.

Do I still have more time?

The Chair: No, it is finished.

Mr. Darrell Samson: I was just beginning my remarks.

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

We give the floor to Ms. Lapointe.

Ms. Linda Lapointe: Thank you again for being with us.

I will allow myself to take this opportunity. A bit earlier, Mr. Samson had a question.

You talked about contracts and subcontracting.

Have you had a chance to examine the clauses of these contracts? Have you been able to see, in the service offers, what was said about bilingualism? Was it conclusive? Was it incisive enough?

Mr. Jean Marleau: I would say yes, in general. We saw certain things, but there were shortcomings. The recommendations made in the audit talk about exactly that, in other words, that some of these obligations should be strengthened in order to obtain consistent quality, but also somewhat higher quality too.

Ms. Linda Lapointe: That is fine, thank you.

In the documents, certain airports are discussed. You said earlier that it was easier to respect the bilingualism issue in Ottawa and in Montréal, because there are a lot of bilingual people in the population. I have the data here. These are overall scores, and they appear in table 3 which is titled "Outcomes of Observations in Airports, Canadian Air Transport Security Authority, 2012–2013".

Jean-Lesage International Airport in Quebec City has a score of 91%. Is this because it was difficult to recruit bilingual people?

For Montréal, the score is 95%. It seems to me that it should be 100%, considering there is a bilingual population pool available.

In Ottawa, where it seems easy to recruit because of the bilingual population, the score is 79%. So I am troubled, because you said that this was a problem in Toronto. You know that Toronto is the hub for transport all over America. Many people come from Montréal and Quebec City, and they are routed through Toronto on their way to somewhere else. You alluded just now to people who do not travel often and are more nervous. This is very troubling to me.

There are troubling percentages, considering your observation about the ease of finding bilingual people in Ottawa and in Montréal. In Quebec City, I assume that people, like Mr. Généreux, are bilingual. There must be others.

A voice: No, it is not 100%.

Ms. Linda Lapointe: I would like to hear what you think about this, because that troubles me a little.

• (1245)

Ms. Pascale Giguère: Are you talking about what we, we have observed?

Ms. Linda Lapointe: Yes.

Ms. Ghislaine Saikaley: Was the active offer provided? Was the service available? These are the elements dealt with in our observations about service.

Ms. Linda Lapointe: The visual active offer is good, but the active offer in person and the availability of services are less so. Is that correct?

Ms. Ghislaine Saikaley: Absolutely. Moreover, that is what we are still observing today. There is a lot of misunderstanding. Institutions make efforts and tell their staff that they have to make an active offer and that it is really important. These employees make an active offer, but because the service is not available, it is of no use. The active offer and the service go hand in hand. They have understood that it is necessary to make an active offer at this stage, but not why it is necessary. Active offer consists of indicating that a service is available in both languages.

Ms. Linda Lapointe: I would go a bit further. Earlier, my colleague Mr. Samson talked about Air Canada. I will talk about it also, but from a different angle.

People from Air Canada told us here that the collective agreement provides for a bilingualism bonus. The flight times display indicates how many bilingual employees there must be on site. In this way, bilingual employees have the advantage of choosing the best hours, which bothers monolingual people.

Have you been able to access the collective agreements? Are there bilingualism bonuses? Is there something to do about this?

Ms. Ghislaine Saikaley: No. I think that Air Canada has still refused to make the collective agreements public.

Ms. Linda Lapointe: It was the Air Canada people who told us that.

Ms. Pascale Giguère: A few years ago, when there were actions against Air Canada, we were able to consult these collective agreements. In the last 10 years, there has been progress in this area, but we have not analyzed the agreements recently.

Ms. Linda Lapointe: Concerning Canadian Air Transport Security Authority employees, would that not be an incentive to encourage them to be bilingual? You said earlier that the exchanges were fairly limited. These employees do not have to know the whole dictionary in order to do their job, it is enough for them to understand the questions and answers. Is there a bonus for them if they can do that?

Ms. Ghislaine Saikaley: They receive bonuses, but as we explained, these are not employees of CATSA, but of companies.

Ms. Linda Lapointe: You are talking about the subcontractors that were discussed earlier.

Ms. Ghislaine Saikaley: That is correct.

The contract entered into between CATSA and the subcontractors stipulates the obligations to be met. There is also a bonus for employees who provide services in French. However, the subcontractors only check that the active offer is made; they do not check the service quality. This is part of our recommendations, because that does not go far enough. We must not merely check that the signs are in both languages and that we hear "Hello/Bonjour". If there are only one or two bilingual people in place, that is not enough. They must check that the service is provided and that it is a quality service.

Ms. Linda Lapointe: In sum, the subcontractors are asked to ensure that the service offers respects the contract clauses.

Ms. Ghislaine Saikaley: Absolutely.

Ms. Linda Lapointe: Thank you.

Mr. Chair, I would like to point out that certain people do not respect the allotted speaking time as well as I do.

The Chair: Mr. Généreux and Mr. Clarke will share their speaking time.

You may begin, Mr. Généreux.

Mr. Bernard Généreux: This will not take long. If I understood correctly, the officers should be functionally bilingual.

Ms. Ghislaine Saikaley: Yes, that is it.

Mr. Bernard Généreux: I now yield the floor to Mr. Clarke.

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

Mr. Samson raised a critical issue, the issue of delinquent suppliers. I would like to talk about that.

You were talking about solutions. In fact, the solution is strictly political. There are no others. However, it is extremely dangerous, in Canada, to talk about bilingualism. It can cost us an election.

In November 2015, the Supreme Court issued a decision in the Caron-Boutet case. In my opinion, it was not by chance that the decision was issued after the election. During the election, it could have triggered a constitutional crisis, or at least a political crisis. This is certainly a case that you are very familiar with, madam. The Court decided to reject the challenge of these two francophones from Alberta and Saskatchewan that was based on historical reasoning and on agreements. In their opinion, Alberta and Saskatchewan should be bilingual provinces and all their laws should, by this very fact, be bilingual. They unfortunately lost their case, because the Supreme Court must first and foremost protect Canadian unity. It does not say this, but it remains that this is its absolute role.

I remind you also that, on the site of the Office of the Commissioner of Official Languages, your predecessor, Mr. Graham Fraser, expressed his extreme disappointment in this Supreme Court decision.

Mr. Caron's lawyer, one of the plaintiffs in the case, said this: "The Trudeau government should do the right thing and say that it will correct this mistake and pay the province of Saskatchewan and Alberta the money they need to translate all their laws and the court rules".

Bilingualism is a question of politics and money. This is the problem. It is extremely expensive. When the Supreme Court decided that Manitoba should be bilingual, according to the agreements, it cost billions of dollars.

For the providers to stop being delinquent, we, the politicians, must set an example. In particular, we could invest the billions of dollars necessary for Alberta and Saskatchewan to become bilingual provinces. In this way, they could no longer oppose this idea for financial reasons.

On the other hand, there would still be political problems. In fact, I am not sure that Ms. Notley would be re-elected if she took this initiative.

That being said, madam, I would like to know whether, like Mr. Fraser, you were disappointed by this decision and whether you believe that the current liberal government—and I really am asking this without any partisanship—should correct this problem in a political manner and not stop at this decision?

• (1250)

Ms. Ghislaine Saikaley: Yes, I was also very disappointed in this decision.

As for what the government must do, it is certain that...

Mr. Alupa Clarke: You do not have power, strictly speaking. You can provide guidance, but that is all.

Ms. Ghislaine Saikaley: That is correct.

The next Action Plan for Official Languages will be very important. Since I have met a lot of people in the last five months, I can tell you, however, that everyone is trying to turn the situation to their own advantage.

Mr. Alupa Clarke: Yes, indeed.

Ms. Ghislaine Saikaley: There is early childhood, immigration, justice, and so on. It would take a lot of money to respond to all the problems the communities have been experiencing, going back a number of years.

As far as the amount of money necessary, I do not know.

Mr. Alupa Clarke: That could be the solution.

New Brunswick is the only officially bilingual province, even though Quebec is also bilingual. In fact, according to the British North America Act, all of our laws must be bilingual. At the National Assembly of Quebec, one can freely speak English. A minister was even criticized for responding in French to a question posed in English last week at the National Assembly.

I ask myself some serious questions about the Official Languages Act. In my opinion, because of the very important cultural rivalries and the political culture in Canada, this act is not being implemented adequately.

This brings me to my second question.

As interim commissioner, do you believe that regional bilingualism, as in Switzerland, could be a solution? Each region would have a referendum to choose a language, and this choice would then be applied. Do you find this revolutionary, too dangerous? What is your perspective on this subject?

Ms. Ghislaine Saikaley: Since I have never thought about this question, it would be difficult for me to answer it today. This is not a system that Canada has chosen. It would probably be up to Parliament to debate it.

Mr. Alupa Clarke: That is all for me, Mr. Chair.

Thank you.

The Chair: Thank you.

I will now give the floor to Mr. François Choquette for a few minutes.

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

I would like to return to the Air Canada issue.

The special report contains a few potential solutions. I do not know if you have received a response from the Department of Transport or from another department following these recommendations. Just now, the issue was recommendations concerning CATSA, two of which have not been accepted. However, you are in the process of working on this with the new president.

Commissioner Fraser recalled that he very rarely made a special report and that, if he had submitted one, it was because the situation was critical. He stressed that the situation was very particular and that special measures needed to be taken to settle the problem.

You have certainly received from the Department of Transport a nice letter or a nice response saying that it would examine and assess the situation, especially because there have been recent rumors about the possibility of privatizing the airports. That troubles us greatly.

Have you received a response concerning these rumors of possible privatization of the airports?

• (1255)

Ms. Ghislaine Saikaley: No, we have not received a response from the Department of Transport, but we were not expecting to receive one. Our report to Parliament was submitted as a last resort. We were asking one of the two committees to study the question, so that it could recommend to the government the measures to take. We have not received a response from anyone about this.

As for your last question, we have also heard this rumor that the government would like to privatize the airports. My only wish is that this not happen to the detriment of language rights.

Mr. Dan Vandal: The services are already private.

Ms. Ghislaine Saikaley: Yes, indeed.

The Chair: Have you finished, Mr. Choquette?

Mr. François Choquette: Yes.

Thank you to the committee members.

Thank you very much.

Our next meeting will be held next Tuesday.

The Chair: Thank you very much, Madam Commissioner, and thank you to the people who accompanied you. The discussions we have had with you have been very fruitful.

The meeting is adjourned.

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