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Chair

The Honourable Denis Paradis

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• (0955)

[Translation]

The Chair (Hon. Denis Paradis (Brome—Missisquoi, Lib.)):
The session is now public.

Pursuant to Standing Order 108(3), we move to our study of the translation of Quebec jurisprudence.

It is our pleasure to welcome Antoine Aylwin, the Vice-President of the Barreau du Québec, and Casper Bloom, the Director of the Association of English-speaking Jurists of Québec.

Welcome, gentlemen. I must tell you that I am particularly happy to welcome you, having myself been a former president of the Barreau at another time in my life.

We are first going to hear from Mr. Aylwin for five or six minutes. He will be followed by Mr. Bloom, who will speak for five or six minutes also. After that, we will go around the table and all members of the committee will be able to comment.

Mr. Aylwin, we are listening.

Mr. Antoine Aylwin (Vice-President, Barreau du Québec):
Thank you, Mr. Chair, Mr. President.

Good morning, ladies and gentlemen of the committee and of the staff.

I must thank the committee for the invitation to be part of your work today.

[English]

At the outset, I thought about doing my speech in both languages and switching from one to the other, but I thought it would drive the translators crazy, so I'll do my presentation in French to talk about translation in English.

[Translation]

I am Vice-President of the Barreau du Québec. For those who do not know, the Barreau du Québec represents 25,000 lawyers. It is a professional order with a mission, enshrined in law, to ensure public protection. That means that we provide oversight for our members through professional inspection and discipline, as well as acting against any non-member practicing the profession illegally.

However, in a broader sense, the Barreau's mission to protect the public also includes a social component that extends to all participants in the legal system. It protects the public by safeguarding the rule of law and by taking public positions on a range of

legal matters, including the rights of vulnerable people and minority groups, including linguistic groups.

It is with that background that we wish to participate in your work in addressing a very specific aspect of your mandate, that of ensuring language rights in the justice system.

In the Roadmap for Canada's Official Languages 2013-2018, Justice Canada is committed to continue to help provincial and territorial governments bridge gaps in bilingual service delivery. We believe that, in Quebec at the moment, there is a specific gap with regard to this commitment. We wish to make you aware of it in order to draw your attention to the matter of translating the jurisprudence rendered by Quebec courts.

The Barreau is particularly close to this issue. Under section 133 of the Constitution Act, 1867, a Quebec judge may deliver judgments in French or in English. Section 7 of the Charter of the French Language provides the right for anyone to have judgments translated into either French or English at no cost.

As you may suspect, most judgments in Quebec are rendered in French. Although certain decisions may be translated pursuant to the Charter of the French Language, the great majority of decisions are not. Those that are translated are not necessarily of interest to the legal system as a whole.

In areas common to Canada as a whole, such as criminal law, family law, constitutional law and commercial law, most Quebec judgments are not translated. This wealth of legal knowledge is therefore accessible only to those who understand French. In our view, genuine access to justice requires legal documentation and jurisprudence to be available in both of Canada's official languages.

I am aware that some may disagree with me, but it is my opinion that the Barreau du Québec has the best lawyers in Canada in its membership, and, as a result, the Quebec bench has the best judges in Canada. Because of their bilingualism and bijuralism, our Quebec lawyers are prominent worldwide, except in English-speaking Canada. Judgments from Quebec have a quality and a richness in the evolution of jurisprudence. That jurisprudence is enriched in turn by judgments rendered in the English-speaking provinces—judgments in English—because they are used, argued and cited in Quebec judgments. But the opposite is not true.

In order to remedy the situation in part, the Société québécoise d'information juridique, or SOQUIJ, the Quebec Ministry of Justice and the various courts came to an agreement in 2003 to translate the jurisprudence. SOQUIJ has funded the translation of 1,350 pages of jurisprudence annually since 2003, about 450 pages per court. Judgments are selected for their Canada-wide interest. It is not a perfect solution, but, given the lack of additional resources, it is a start.

In 2015, it represented 25 judgments from the Court of Appeal, 25 from the Superior Court, and 21 from the Court of Quebec.

I must point out that, between 2010 and 2012, a grant of \$200,000 per year was provided by Justice Canada. In the case of the Court of Appeal, we went from 25 or 30 translated judgments to 92 translated in 2010 and 131 in 2011. That was well over the average of about 26 per year when there was no grant. However, the grant was not renewed, bringing us back to the average of 26 judgments.

The official response is that the Access to Justice in Both Official Languages Support Fund does not include the translation of legal texts. We submit that this must change, as must the rules for grants or funding.

This has repercussions on the profile and visibility of the decisions rendered by Quebec courts, as I have just mentioned, and on Quebec jurists. The same debates take place in Quebec and in the other provinces. As a result, there is a duplication of debate, meaning that people do not know whether a matter has already been decided by the courts in Quebec, or, even worse, whether the judgments are contradictory, thereby compounding the phenomenon of the two solitudes of francophones and anglophones in Canada.

It also deprives Quebec anglophones in minority situations of direct access to legal resources in their own language.

I could quote the current chief justice of the Quebec Court of Appeal, Justice Nicole Duval Hesler, or her predecessor, Justice Michel Robert, who have raised these problems and delivered a number of speeches about the issue.

I will use the example of the Quebec Court of Appeal, which has a similar number of judges to the Ontario Court of Appeal. The court in Quebec renders two or two and a half times more judgments than the court in Ontario. In 2015, the Ontario Court of Appeal rendered some 900 judgments compared to 2,178 by the Quebec Court of Appeal. However, of those 2,178 judgments, you will recall, about 1% are translated in Quebec, meaning about 25 judgments in 2015.

In 2015, decisions of the Ontario Court of Appeal were cited more than 1,500 times in all Canadian jurisprudence. The Quebec Court of Appeal was cited only about 300 times, five times fewer, even though it renders twice as many judgments per year.

That reality is not unique to the Quebec Court of Appeal. About 22,000 decisions are published in Quebec from all courts combined. Because of the commitments made by the government and by SOQUIJ, Quebec publishes many more judgments than the other provinces. For example, in Ontario, about 6,000 judgments are published from all courts combined.

There is interest in the translations. Since 2010, the annual number of visits to the SOQUIJ website, which posts the translated

judgments, has gone from 5,000 to 18,000. And that is only one way to access those translated judgments. A considerable number of those visits come from English Canada, the United States and even the United Kingdom, with a view to accessing the jurisprudence delivered by our courts in Quebec.

Additional funds would help to increase the reach of Quebec's courts. It would not only improve access for anglophone minorities to Court of Appeal judgments, but it would also improve access for those in the rest of Canada to a body of jurisprudence that enriches the law in the entire country.

But this is not the only objective in our initiative. We also wanted to draw your attention and your thoughts to the fact that the Canadian Charter of Rights and Freedoms, the Criminal Code, the Divorce Act and the Bankruptcy and Insolvency Act are all matters in federal jurisdiction where it is in our interest for the jurisprudence to be consistent and complete.

We are therefore asking you to consider investing resources, but also to consider collaborating with the various participants in Quebec to develop a strategy to improve translation.

We can also not forget translation quality. This is not just translation; legal translation is a skill in itself.

I will use as an example the Civil Code of Quebec, adopted in 1994 and containing more than 3,000 sections. There were 5,000 changes to the English version because the translation had been poorly done. Correcting the Civil Code took 20 years. Mr. Bloom can tell you about that, as he was very engaged in the process.

So not everyone can be a legal translator just because they want to. That means that judges have to carefully revise translations, thereby adding to a workload that is already very high. It also further delays the translations, which, once again, is a way of reducing access to justice.

Thank you for welcoming us today, Mr. Chair. We are available to answer any questions you may have on this subject.

• (1000)

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

We will now hear from Casper Bloom before we move to members' questions.

[English]

Mr. Casper Bloom (Director, Association of English speaking Jurists of Quebec): Since I represent English-speaking jurists, I'll start in English anyway.

I won't repeat what Antoine had to say on the statistics. The problem is fairly clear.

It should be clear that it makes no sense whatsoever not to have Quebec jurisprudence circulating amongst the provinces, the United States, England, Australia, and all the other English-speaking jurisdictions in the world that read our jurisprudence. Unfortunately, the majority of the decisions that are rendered here in Quebec are not read, not understood, and not cited in the jurisprudence in the other provinces of Canada.

•(1005)

[Translation]

That was also the subject of a complaint made by Michel Robert when he was Quebec's chief justice.

Let us step back a little in time.

[English]

I'm the co-chair of a committee of the Montreal bar, which is called "Access to Justice in the English Language", and I insist on having a francophone co-chair. My first one was Gérald Tremblay, and the one I have now is Pierre Fournier. They are both excellent co-chairs who understand fully the problem.

This committee is composed of lawyers and judges. The *juge en chef du Québec* insists and is a member of the committee.... I'll go back to Michel Robert, when he was the *juge en chef du Québec*. At almost at every one of our meetings he would raise the question of the jurisprudence, which is drafted in French in Quebec and is not going anywhere.

[Translation]

In his words, "without a translation, Quebec judgments are not cited. They are not read, they are not understood." Those are Michel Robert's own words.

[English]

This makes no sense whatsoever, because for what I call the "*jurisprudence nationale*", there's no such thing, except in the sense that it's the jurisprudence that's invoked and cited in all the provinces of Canada. The other provinces all exchange their jurisprudence. When they draft a judgment, you'll find that in most of their judgments they're citing other jurisdictions that happen to be the other provinces of Canada and other courts in the other provinces of Canada, but what's happened to Quebec?

Quebec represents a quarter of the country and they're being set aside. They're not being cited. They're not being invoked. That makes no sense. Antoine mentioned that some of the decisions are being translated by SOQUIJ, but the complaints I had were from Michel Robert, and they have been repeated now by the new *juge en chef du Québec*, Nicole Duval Hesler. She has announced that he is taking his retirement. She sits on my committee and she raises this problem. It's something that on our committee we are all very concerned with.

[Translation]

These are very important matters, both inside and outside Canada.

[English]

The decisions and the Canadian judgments are cited and are consulted in the United States, Great Britain, Australia, and in other jurisdictions that use the English language. It's not only, as some may complain, that Quebec is a civil list jurisdiction so it's only civil law. That's not the case at all, and Michel Robert and Nicole Duval Hesler would be the first to tell you that.

As Antoine has mentioned, it's all the criminal jurisdiction and all the other jurisdiction at the federal level. Whether it be in the corporate, the familial, or other areas, the civil list jurisdiction is of

importance, apart from what is under federal jurisdiction. What is under Quebec jurisdiction is important, is cited, and is consulted for decisions, so that when they are called upon, they are able to cite those decisions.

When I spoke with both Nicole Duval Hesler and Michel Robert, they pleaded with me to say that we have to do something to provide for a translation service in Quebec that can deal with the decisions and judgments of certainly both the Court of Appeal and the Superior Court, and the Quebec court to a lesser extent, because many of their judgments are and should be of great interest. Leaving out Quebec cases—which represent a quarter of the country—when we cite Canadian jurisprudence makes no sense whatsoever. It's difficult to say that it represents Canadian jurisprudence when a quarter of the country has been left out.

I have spoken to the Department of Justice. I have raised this issue. They understand. They said that, first of all, the reason they cut off the *subvention* they were giving in the few years that they did so was that they don't subsidize translation. I said, "This is not translation." It is way beyond translation; we're talking about something much more fundamental than mere translation. Translation can be done by anybody, anywhere. Here, we're talking about what I called earlier the "national jurisprudence", and it's the jurisprudence for all of Canada that's being considered. We can't look at it as simply a question of translation and the money that's available for it.

•(1010)

[Translation]

The Chair: Mr. Bloom, if I may, I invite you to continue later. I have before me a list of those who want to comment and ask you questions.

Mr. Casper Bloom: My apologies.

The Chair: No problem.

I am going to give the floor to Ms. Boucher and Ms. Vecchio immediately; they want to share the time.

You each have three minutes.

Mrs. Sylvie Boucher (Beauport—Côte-de-Beaupré—Île d'Orléans—Charlevoix, CPC): Thank you, Mr. Chair.

My thanks to the witnesses for joining us. This is very instructive.

I have four major questions; I will ask them one after another. You can answer when you can.

We all know that the Criminal Code is in federal jurisdiction but that court administration is provincial. That said, there are shortcomings in Quebec.

Why are cases not translated into English?

You say that small cases are often translated, but not the big ones. How do you explain the unwillingness to translate major cases into English?

In the rest of Canada, are cases translated into French?

Does Bill 101 have anything to do with this situation in Quebec?

Mr. Antoine Aylwin: Let me start.

In terms of the translation of the judgments, it's not that we refuse to translate the rulings depending on whether they are important or not. Instead, it is a right granted to citizens to request the translation of a ruling. For instance, in a case with an anglophone and a francophone, if the ruling is rendered in English, the francophone citizen may ask to have it translated into their language, and vice versa. The person does not request the translation of the judgment based on the merit or interest in the case, but because it's their case.

That's why I said that, at the end of the day, when we look at translated judgments, we understand that the selection is not necessarily based on the interest of the case.

Furthermore, according to what we are told, the quality of the translations is not the same, because there are two different services.

Since the administration of justice falls under provincial jurisdiction, Quebec's Shared Services Centre supports the judicial translation at the request of citizens. Its teams of translators do the translations to meet the needs of the Government of Quebec. They are not necessarily made up of legal translators. That may explain why the quality is perhaps not the same.

As for SOQUIJ, it translates a limited number of decisions, based on a selection made by the courts according to the interest of the decisions.

For instance, in the case of the 25 judgments of the Court of Appeal of Quebec that were translated, as I mentioned, it was the Court of Appeal that determined that those judgments are important.

Then you asked about translation in the rest of Canada. To my knowledge, there is no translation into French in the rest of Canada, except in some jurisdictions, such as New Brunswick. I have read translations of decisions from the Court of Appeal of New Brunswick. I'm not sure whether that is systematically the case, however. Perhaps you know more about it than I do. I know it is done in New Brunswick because of the province's particular linguistic landscape compared to other provinces. As we know, New Brunswick is a bilingual province.

Your last question was about Bill 101. Earlier, I told you that translation was done at the request of citizens. That's by virtue of a provision in the Charter of the French Language. Section 7 specifically states that people may request the translation of judgments.

In terms of the language of trials, which you brought up at the outset, there are many factors to consider. Trials take place every day in Montreal in French and in English. There are even some that are held in both languages at the same time.

•(1015)

The Chair: Thank you.

Mrs. Vecchio, the floor is yours.

[*English*]

Mrs. Karen Vecchio (Elgin—Middlesex—London, CPC): Thank you very much for today.

You've noted the fact that things are not translated and that in the Criminal Code we're going to be losing some information, so I'm going to ask you this question.

[*Translation*]

Is there a solution?

What will the next steps be?

Are any of the provinces doing this properly right now?

[*English*]

You mentioned New Brunswick. Do we know anything else in terms of what you're talking about? Is it literal translation? Does it have the necessary feel of what's going on? Are there any provinces that are doing it correctly? How can we have a solution towards this?

[*Translation*]

Mr. Antoine Aylwin: If you don't mind, I will not tell you which Canadian provinces are doing the work properly and which ones are not. As I see it, it is basically done according to the demand. In Ontario, many judgments are rendered in French. It is much easier in Ontario to have a francophone judge hear a trial than in other provinces, particularly in western Canada, simply because of numbers. There are 50,000 lawyers in Ontario. There are also more judges, more francophones and more francophone communities.

For the time being in Quebec, we are managing to adjust in order to integrate English-language jurisprudence. We read it and we argue it. It's not the ideal scenario, but we are able to adjust because the vast majority of legal professionals are bilingual.

However, the reverse is not true. Your work has probably allowed you to see that bilingualism is much more widespread in Quebec than in the rest of the country. That is why we see this as the main problem.

The Chair: Thank you.

Mr. Arseneault, the floor is yours.

Mr. René Arseneault: Thank you, Mr. Aylwin and Mr. Bloom. It's really interesting. It is fascinating to see how Canada's reality can be diametrically opposed depending on whether you are an anglophone minority in Quebec or a francophone minority outside Quebec.

Mr. Aylwin, you are a bit young to have experienced this, but during my third year of law school, Quicklaw appeared. We used old computers that started with a crank and a choke.

Voices: Ha, ha!

An hon. member: Are you that old?

Mr. René Arseneault: I for one was trying to look for Quebec jurisprudence for cases under the Criminal Code, not under the Civil Code, federal courts and so on. I wanted to get my hands on judgments in French.

I believe that decisions are systematically translated in New Brunswick, if I'm not mistaken.

The company that ran the Quicklaw service, a private company like any other, chose to publish the decisions in English only. We had to fight with the people in the company to post the decisions in both official languages.

Forgive my ignorance, but could you tell me how translation is funded. In New Brunswick, does translation fall under the province only? Ontario must surely translate its decisions, at least some of them. Are the provinces or the federal government funding it?

Mr. Antoine Aylwin: I'm sorry, but I don't know the answer to that question.

[English]

Mr. Casper Bloom: I believe that it's both.

To add to what Antoine was saying earlier, in Ontario they have made a determined effort to provide judgments in French. Of course, in Ontario, they have a commissioner who looks after francophone affairs, François Boileau, whose job it is to do what Graham Fraser was doing federally. New Brunswick also has a French commissioner. There again, they have someone to look after their affairs.

In Quebec, there's no such animal. There's nobody to do that.

It's important to have that commissioner, to have somebody who is looking after the interests of the francophones in Ontario and in New Brunswick, and of course, since the Supreme Court decision in the *renvoi* involving Manitoba.... I don't believe they're dealing with judgments, but for their laws, of course, by law, they have to translate their laws into French, and that's a good thing.

[Translation]

Mr. René Arseneault: I'm a French-speaking lawyer, but, in your case, it's the opposite.

Does the Association of English Speaking Jurists of Quebec put pressure on the Government of Quebec to comply with the legal obligation to translate at least the decisions of the superior courts?

• (1020)

Mr. Casper Bloom: Yes, and it goes even further than that.

The Government of Quebec is not really interested in minorities in Quebec. That is why we were forced to go to the federal government for help, including with legislation. Earlier, Mr. Aylwin mentioned what happened with the Civil Code. The Civil Code—

Mr. René Arseneault: Mr. Bloom, I'm sorry to interrupt you, but I have six minutes only and a lot of questions.

You are saying that the Association of English Speaking Jurists of Quebec is putting pressure on the provincial government, but the doors are shut in its face and it is faced with resistance.

Mr. Casper Bloom: The pressure we've exercised has not really led to any results.

Mr. René Arseneault: Okay.

I'll jump from pillar to post and go back to what Mrs. Boucher was saying.

There's something I didn't understand just now. If a Court of Appeal decision is written only in English, individuals can ask to have the decision translated. Is that correct?

Mr. Casper Bloom: Yes, that's correct.

Mr. René Arseneault: However, the translation centre is not specialized in that, correct?

Mr. Antoine Aylwin: That's true, but there's also the issue of delays. If the trial level decision is not in the requester's language, it is possible that the person in question may receive the translation after the appeal period.

Mr. René Arseneault: So Quebec's regulations should be changed, and that falls under provincial jurisdiction.

Mr. Antoine Aylwin: The current process at the Shared Services Centre of Quebec (CSPQ) is problematic in terms of quality, the delay for the revision by a judge and the delivery of the judgment.

Mr. René Arseneault: In the time you have to submit the grounds for appeal, no potential translation requests are factored in. Is that right?

Mr. Antoine Aylwin: Yes.

The Quebec ombudsman has prepared a report on that. The Government of Quebec then agreed to compensate someone who had been prejudiced by delays in translation.

Mr. René Arseneault: However, that person did not have access to their appeal. They were compensated.

Mr. Antoine Aylwin: In fact, the person had to pay extra fees to file the appeal because they had to do so before they received the translation of the judgment.

Mr. René Arseneault: I have one minute and I'll ask one last question quickly.

Until your translation issues are resolved by experts, let me mention that New Brunswick has the Legal Translation and Terminology Centre. There are prominent jurists in Quebec, but there are prominent translators in New Brunswick.

Some hon. members: Ha, ha!

Mr. René Arseneault: Along the lines of what my colleague Mrs. Vecchio was saying, I must say that, in New Brunswick, we do almost everything correctly.

Having said that, I'd like to know what the federal government can do for you. How can assistance be targeted so that it goes to the right place, while reflecting the needs of all the provinces for the same reasons?

Mr. Antoine Aylwin: I can start by giving you the numbers on the funding that was granted, because I think I forgot to do so.

In 2010-2011, the government provided \$200,000; in 2011-2012, \$200,000. Then there was a phasing-out of funding: \$70,000 in 2012-2013, and \$50,000 in 2013-2014. Earlier, I mentioned that we translated more judgments, and that's because of the financial assistance.

SOQUIJ has a centre of expertise in legal translation. That centre works well and quickly with the courts. It was possible for five Court of Appeal judgments to be issued right away in both languages through a partnership between the two. SOQUIJ's work is therefore recognized. However, it does not have sufficient resources to translate more than 1% of the Court of Appeal's rulings.

To answer your question, I think SOQUIJ should be receiving funding because the translation has to be of high quality. There are delays right now, and the judges are aware of that. This would lead to a satisfactory result for everyone.

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

Mr. Choquette, you have the floor.

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

My thanks to the witnesses for being here today to talk about access to justice.

I know your priority is translation, especially for jurisprudence, but I'd like to talk to you about two other issues. I'll come back to the main topic later.

The first thing I want to talk about is access to justice in the Supreme Court.

For a long time, Supreme Court justices have been required to be bilingual. The Barreau du Québec is also in favour of that. Now there is a policy that requires it, but there are still many organizations, if not the vast majority, that call for legislation to ensure the continuity of this bilingualism policy in the Supreme Court .

What do you think about that?

Mr. Antoine Aylwin: I would say that the outcome is much more important than the process.

We have recently applauded the fact that the government has finally heard the requests for bilingualism to be part of the criteria for the Supreme Court appointment process. There was some debate about what was meant by "bilingualism". For us, it is clear: judges must be able to converse in French. Being able to understand French is not enough. They must also be able to speak and write in French. That's what bilingualism means to us.

Yes, passing legislation would be a way of ensuring the continuity of the obligation until the House of Commons changes its mind. As you know, such a piece of legislation could be amended by the same legislative body.

•(1025)

Mr. François Choquette: You talked about resources. You explained that the federal government used to allocate resources to SOQUIJ. But those resources have dwindled in the last four or five years, correct?

Mr. Antoine Aylwin: That grant was a one-time deal. There was an annual amount of \$200,000 for two years. The funding was then phased out over two years to bring it all back to zero.

However, SOQUIJ had begun to translate the judgments before that. It started the work in 2003. When federal assistance was provided, much more work was accomplished, thanks to those resources.

Mr. François Choquette: Right now, SOQUIJ no longer has a federal grant. That's my understanding.

Mr. Antoine Aylwin: That's right.

Mr. François Choquette: How long has it been since the grant has been received?

Mr. Antoine Aylwin: It's been since the 2013-2014 fiscal year.

Mr. François Choquette: Since 2013-2014, there has no longer been a federal grant.

Mr. Darrell Samson (Sackville—Preston—Chezzetcook, Lib.): Why?

Mr. François Choquette: Why is there no grant anymore? I don't know. Since then, nothing. That is my understanding. Therefore, ensuring compliance with deadlines and quality translation is an additional burden.

Mr. Antoine Aylwin: There are actually fewer services. We have gone back to the basic services provided before we received the federal assistance.

Mr. François Choquette: Why was the assistance initially granted? There had to be a reason. In addition, why was it stopped? Do you know the history behind all that?

Mr. Antoine Aylwin: That is an excellent question. I'm not sure whether Mr. Bloom is familiar with the history. I don't know the details.

Mr. Casper Bloom: I just asked why the grant was stopped and why we did not get it back. I was told that, as part of the new action plan that was to begin in 2018 and continue until 2023, we would have to make our voices heard in support of the resumption of the funding.

It is important to understand that the action plan covers a five-year period and that the current action plan ends in 2018. Right now, there is not enough money.

Furthermore, I was told that translation was not a priority. As I explained earlier, this is more than just an issue with translation.

Mr. François Choquette: Who told you that translation was not a priority? There's no need to name the person.

Mr. Casper Bloom: It was someone in the Department of Justice.

Mr. Antoine Aylwin: I'd like to add one thing. This matter involves the Department of Justice, as Mr. Bloom said, but also the Department of Canadian Heritage. We most often interact with the Department of Justice, since it is responsible for the appointment of judges. That said, the challenge remains for both departments to work together to find a solution to our problem.

Mr. François Choquette: Did the infamous one-time translation grant come from the Department of Canadian Heritage or from the Department of Justice?

Mr. Antoine Aylwin: I cannot say with certainty.

Mr. François Choquette: That's okay. You can send us that information later, or we can find it.

Mr. Antoine Aylwin: Great.

Mr. François Choquette: Thank you.

That's the end of my remarks. I will let others have the floor, Mr. Chair.

The Chair: Ms. Lapointe, the floor is yours.

Ms. Linda Lapointe (Rivière-des-Mille-Îles, Lib.): Good morning.

[English]

Welcome. We are happy that you are here with us today.

[Translation]

Thank you very much.

I will be sharing my speaking time, but I have some very specific questions.

As you know, the feds are responsible for the appointment of Superior Court justices. How is the number of judges calculated in the various districts in Quebec? Is it reassessed according to the demographic growth?

Mr. Antoine Aylwin: I'm not sure how familiar you are with the process. As a first step, the province identifies the needs. The federal government then has to respond and confirm the needs. For instance, Quebec says that it needs six more judges and then the federal government decides to appoint additional judges. There's often a disconnect between the two.

• (1030)

Ms. Linda Lapointe: What is the situation in the Laurentian region, in your opinion?

Mr. Antoine Aylwin: The Laurentian and Lanaudière regions are the pool with the highest increase in Quebec's population, but the number of judges has not increased accordingly.

Ms. Linda Lapointe: Thank you.

I have another question about the Laurentian region. If I come from the Lower Laurentians and I'm an anglophone,

[English]

is it easy to be represented in English in Saint-Jérôme?

[Translation]

Mr. Antoine Aylwin: Do you mean in terms of lawyers or judges?

Ms. Linda Lapointe: I'm thinking of the entire picture. If you go to court and you want to be represented in your language, is that easily done?

Mr. Antoine Aylwin: I wouldn't be able to answer your question, because I've never had that experience.

[English]

Ms. Linda Lapointe: Do they have to go to Montreal?

[Translation]

Mr. Antoine Aylwin: I don't know.

[English]

Mr. Casper Bloom: Basically, you have to get a judge from Montreal. In the Saint-Jérôme district you'll find some lawyers who are bilingual, but not that many, and judges, even fewer.

Who determines how many judges are going to be assigned to any particular jurisdiction? It's the chief justice of the province at the time who decides how many judges they need and in which jurisdictions.

[Translation]

Mr. Antoine Aylwin: I can tell you that the last time I went to Saint-Jérôme for an out-of-court settlement, I was before an anglophone judge.

That said, my answer is very anecdotal.

Ms. Linda Lapointe: My question is about the translation grant you were talking about just now. You were not talking about translation from English into French, but rather the translation into English of jurisprudence written in French.

Is that specific to Quebec? In Quebec, the translation is from French into English. Is the translation in other provinces from English into French? Do you know if that happens in other provinces?

Mr. Antoine Aylwin: As was said earlier, I know that it is done in New Brunswick.

Ms. Linda Lapointe: I'm talking about federal grants.

Mr. Antoine Aylwin: I don't know whether other parts of Canada have received grants for translation from English into French.

Ms. Linda Lapointe: Thank you.

I had other questions, but I will turn the floor over to my colleague with whom I'm sharing the time.

Mr. Paul Lefebvre (Sudbury, Lib.): If you wish, you can continue, Ms. Lapointe.

Ms. Linda Lapointe: Okay, thank you.

Something piqued my interest. You said that Ontario and New Brunswick have an official languages commissioner, but that the Government of Quebec was not at all interested in the anglophone minority.

Did you really say that?

Mr. Casper Bloom: That's exactly what I said.

For years, the Government of Quebec has shown little interest in the English-speaking minority, regardless of the party in power. It has shown very little interest in minorities in general and especially in the anglophone minority.

Ms. Linda Lapointe: What would happen if, for example, people in Ontario said that they were not interested in the linguistic minority?

Mr. Antoine Aylwin: Please note that I said nothing to that effect.

[English]

Ms. Linda Lapointe: You have the right to say that. Okay.

[Translation]

However, that surprised me.

Mr. Casper Bloom: In Ontario, the francophone minority started to lobby for services in French a long time ago. It was done well. It is a long-standing success.

There is the Association des juristes d'expression française de l'Ontario. There are associations like that in every province, but it started in Ontario, where it has been very effective.

Ms. Linda Lapointe: Thank you very much.

I will let my colleague continue.

Mr. Paul Lefebvre: I will continue along the same lines.

Ontario is celebrating the 30th anniversary of the French Language Services Act this year. This is very important to me, as a Franco-Ontarian and a lawyer working in Ontario.

It is too bad that we don't have comparative data. It would have been interesting to compare the data to see who is funding the translations in Ontario and New Brunswick. We know that there is a clear inequality. It would be good to know whether the funding for translation stopped in Quebec, but continued in the other provinces.

I want to briefly address the issue of access to justice in English in Quebec. If someone wants to go to court for a case, an offence or anything else, are there any delays? I know that we face substantial challenges in Ontario when we want to have a case in French in the superior court or the provincial court. Is it the same in Quebec when someone wants to have access to justice in English in the lower courts?

Mr. Antoine Aylwin: The answer is probably not the same in all jurisdictions. Ms. Lapointe pointed out that there were probably fewer services outside the major centres. I know it's not a problem in Montreal, but I went to Toronto this year when the courts resumed and I heard about the issue with delays. Ontario is not the only one experiencing delays. It is also the case in British Columbia and elsewhere in western Canada.

I can tell you that, in Montreal, the right to be tried in the language of one's choice, in French or in English, is not a problem. Resources are available for that. However, preparing the judgments can sometimes be problematic. Sometimes staff are not able to render a ruling in English. However, trials are heard in the language chosen by the accused.

•(1035)

Mr. Paul Lefebvre: You mentioned federal statutes such as the Bankruptcy and Insolvency Act and the Competition Tribunal Act. Translation isn't a problem in that context. Even if the cases are heard in Quebec, all federal court judgments are translated.

Mr. Antoine Aylwin: Oh, you are talking about federal courts?

Mr. Paul Lefebvre: Yes. You mentioned it earlier, and I didn't really understand what you meant.

Mr. Antoine Aylwin: What I meant was that the federal courts aren't the only ones ruling on those matters. Superior courts and appeal courts issue judgments related to the Bankruptcy and Insolvency Act, for instance. The same is true of the Divorce Act, constitutional legislation, and so forth.

Mr. Paul Lefebvre: That's also the case with the Criminal Code, obviously. As I see it, therein lies the rub: even though federal statutes are applicable, the judgments can't be translated.

Mr. Antoine Aylwin: I would go even further. I realize we aren't there, but it's false to think that civil law and common law have no bearing on one another.

Mr. Paul Lefebvre: That is for sure.

Mr. Antoine Aylwin: You are a lawyer, but those who aren't might be under the impression that some sort of wall separates the two and that no attention is paid to what happens on the other side,

but that's not the case. Judges pay a lot of attention, if only when assessing damages. Concepts rooted in common law have been integrated in Quebec, and similarly, certain civil law notions are considered in common law jurisdictions. Ultimately, judges want to issue rulings that make sense, sensible judgments, and if other courts have already ruled that certain concepts make sense, judges will find reassurance in that and make judgments that will shape the case law going forward.

Mr. Paul Lefebvre: Thank you.

The Chair: Thank you.

Mr. G n reux, it's your turn.

Mr. Bernard G n reux (Montmagny—L'Islet—Kamouraska—Rivi re-du-Loup, CPC): Thank you, Mr. Chair.

Thank you to the witnesses.

Mr. Aylwin, would you mind telling the committee what the abbreviation SOQUIJ stands for exactly?

Mr. Antoine Aylwin: The Soci t  qu b coise d'information juridique.

Mr. Bernard G n reux: Thank you.

Mr. Bloom, do you think Quebec should have its own official languages commissioner?

Mr. Casper Bloom: A commissioner's office?

Mr. Bernard G n reux: An official languages commissioner, as Ontario and New Brunswick each have.

Mr. Casper Bloom: Yes. In fact, a request to that effect was made to the government, but it wasn't interested. Its response was that ministers were responsible for all Quebecers within their ministerial portfolios and had to deal with all problems, regardless of whether they were the problems of the majority or minority groups. Theoretically speaking, the government is right. Practically speaking, however, that's not how things work in reality. We would very much like to have a commissioner or some sort of office in Quebec that was responsible for anglophone affairs.

Mr. Bernard G n reux: Okay. Thank you.

Mr. Aylwin, the \$200,000 in funding given to SOQUIJ was discussed earlier. That's peanuts for an organization that has to translate hundreds and hundreds of decisions.

What would the annual cost of translating all Quebec judgments be?

Mr. Antoine Aylwin: I don't know.

Mr. Bernard G n reux: At some point, it will be necessary to make a choice and decide what to translate and what not to translate. That choice should not be based solely on the quality of the judgments.

Who will decide what gets translated, where and when will it be translated, and who will foot the bill?

Mr. Antoine Aylwin: I don't want to say it's the unfortunate rule of three, but we translate about 75 judgments a year. The \$200,000 in funding made it possible to translate 80 more judgments. Considering that judges in Quebec issue some 22,000 decisions a year—

Mr. Bernard Généreux: I agree with you on that.

Earlier, Mr. Bloom said he was hopeful that, in the government's next action plan, for 2018-23, it would turn on the tap and a lot of money would be flowing for the translation of more judgments.

How much do you hope to receive?

Mr. Casper Bloom: It's not for us to say how much money would be necessary. The chief justices of each court know what their needs are. Currently, in each case, they decide whether there is merit in translating decisions and key judgments that could have an influence in the rest of the country or elsewhere in the world.

• (1040)

Mr. Bernard Généreux: Pardon me, but is it up to the chief justices in the other provinces to decide whether a certain judgment warrants being translated into French? If so, who pays for that in Canada's other provinces?

Mr. Casper Bloom: I have no idea. Grants do exist, but I don't know how the money is used.

In Quebec, the chief justice of every court decides which judgments should be translated. Clearly, if the judgments could be influential or of particular importance in the rest of the country or elsewhere, judges will try to see to it that they are translated. Thus far, the court judges, themselves, are often the ones doing the translation, which means that an extra burden is being imposed on judges who are more bilingual than others and able to write in both languages. They are being relied on to do a job that would normally be done by a translation service.

Mr. Bernard Généreux: Mr. Aylwin, let's come back to the rule of three you just mentioned. A \$200,000 grant made the translation of 80 more judgments possible, in addition to the 75 judgments translated initially. From that, we could say that the cost of translating 160 judgments is half a million dollars. You said that judges in Quebec deliver 22,000 judgments a year. According to the rule of three, translating all of those judgments would cost several million dollars.

Mr. Antoine Aylwin: It's hard to say exactly how much because it depends on the number of pages we are talking about. Court of Appeal judgments are usually lengthier than those of administrative tribunals.

Mr. Bernard Généreux: What I'm really wondering is what the ideal amount would be. In your view, what amount of federal funding would be appropriate to ensure enough judgments were translated to give Quebec better representation in the body of Canadian case law?

Mr. Antoine Aylwin: That's an excellent question.

In an ideal world, all the Court of Appeal judgments, at least, would be translated. The mere fact that these cases have made it to the Court of Appeal means they carry a certain degree of importance. Three, sometimes five, judges have considered the questions of law, so the court's judgments are worthy of being disseminated.

I'm a lawyer at Fasken Martineau, and when I joined the privacy group, the Personal Information Protection and Electronic Documents Act, or PIPEDA, was coming into force. Quebec had already had protection of personal information legislation in place for

10 years, and the federal commissioner called upon us to educate English-speaking Canada on the body of case law that Quebec had built in 10 years, since the decisions had never been made accessible.

It was the federal commissioner's idea to take that step in that context. It was a small initiative involving a sliver of the decisions rendered. Unless a myriad of initiatives like that one are undertaken in each area of law, more translation resources will be necessary.

Mr. Bernard Généreux: Quickly—

The Chair: Thank you very much, Mr. Généreux, but looking at the clock, I see it is now Mr. Samson's turn.

Mr. Darrell Samson: Thank you, Mr. Chair.

Thank you all for joining us today.

I'd like to delve a little deeper, if I may, into the matter of the law's influence on Canadian society.

It's being said that Quebec has little interest in translating its case law. In fact, the Government of Canada decided to withdraw its translation grants. That really worries me.

What concerns me tremendously is the influence and advancement of the law and cultures in society. By taking the position that not translating Quebec's judgments isn't all that serious, the Quebec government is missing a huge opportunity to influence Canadian society through its culture, people, thinking, and so forth.

I commend English-speaking Canada for the fact that Quebecers consult anglophone case law, common law precedents, and use what is going on elsewhere as the basis for their decisions. Why, then, would the reverse not be just as important?

It's crucial. It goes well beyond a simple matter of money and translation. It has to do with making sure the country's two founding peoples share the fruits of their labour and work together to help society grow. We are completely missing the boat here.

I'd like to hear your thoughts on that.

Some hon. members: Ha, ha!

• (1045)

Mr. Antoine Aylwin: I'm glad I don't have to answer that.

Some hon. members: Ha, ha!

Mr. Darrell Samson: Actually, I wanted to hear your thoughts on that.

[English]

Mr. Antoine Aylwin: It cuts both ways.

[Translation]

We are here today to shine a spotlight on the situation in Quebec, but I think you need to look at the big picture as well.

Does every jurisdiction in Canada go to the trouble of translating its judgments to make sure the case law is accessible to Quebec, New Brunswick, and Ontario's and Manitoba's francophone communities? I don't think so.

I think it goes both ways. Quebec fulfils its constitutional duty to deliver judgments in the language of the party before the court. With the Charter of the French Language, Quebec has acquired an imperfect tool for the non-legal translation of judgments. In our view, that is not adequate.

Mr. Darrell Samson: I'm sorry, but I'm not so sure you understood what I meant.

Mr. Antoine Aylwin: I understood what you meant perfectly, but I was careful not to tread on political ground.

Mr. Darrell Samson: Fine, I understand.

I'm not saying all of Quebec's 22,000 judgments should be translated. It seems to me, however, that there is a responsibility to see to the translation of any judgment that might have a significant impact on Canadian case law, which includes Quebec case law, or even on case law around the world. That ensures that legal experts continue to advance and shape case law, thereby helping society develop.

Mr. Antoine Aylwin: Put yourself in the shoes of the chief justice of the Court of Appeal; imagine that, for every batch of 100 judgments, you had to choose one to be translated. That's unacceptable in our view. There is no way that only one out of every 100 Court of Appeal judgments is of sufficient interest to be translated.

Mr. Darrell Samson: That's exactly the point I'm making. As I see it, the Quebec government should be eager to have more Quebec

court judgments translated so that judges, legal experts, and lawyers around the country could use the case law, thereby influencing Canadian society.

Mr. Antoine Aylwin: We're going to invite you to our next meeting with Quebec's justice minister. You might be able to help us.

Some hon. members: Ha, ha!

The Chair: Thank you, Mr. Samson.

Mr. Casper Bloom: I agree with you completely, Mr. Samson.

Mr. Darrell Samson: Thank you.

Mr. Casper Bloom: Justice is an integral part of society overall. As you said, influencing and shaping justice can only benefit Canadian culture.

The Chair: My apologies, Mr. Bloom, but some members have other committee meetings to get to.

On behalf of all the members, thank you kindly, Mr. Aylwin and Mr. Bloom, for your presentations and your time today. We heard you loud and clear.

Thank you very much.

The committee will reconvene Thursday morning.

The meeting is adjourned.

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