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Chair

The Honourable Denis Paradis

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• (1105)

[Translation]

The Chair (Hon. Denis Paradis (Brome—Missisquoi, Lib.)): Pursuant to Standing Order 108(3), we're studying the full implementation of the Official Languages Act in the Canadian justice system.

I want to welcome our friends who are joining us this morning, Mr. McColeman and Ms. Alleslev. I also want to welcome the witnesses representing KortoJura. They are the Honourable Denise LeBlanc, judge responsible for the legal language education program; Allain Roy, director general of the legal language education program; Normand Fortin, who works on conceptualization, content and certification for the evaluation service; and Françoise Bonnin, director of the evaluation service.

I want to welcome everyone here.

We'll listen to you for about 10 minutes. I don't know whether you want to share your speaking time or how you want to work. Then, we'll go around the table and take questions and comments.

Ms. LeBlanc, the floor is yours.

Hon. Denise LeBlanc (Judge responsible for the Program, Legal Language Education Program, KortoJura): Mr. Chair, ladies and gentlemen, thank you for inviting me to appear before the committee as part of the study of the full implementation of the Official Languages Act. We appreciate the opportunity to share the activities implemented based on our vision for achieving the ideal in terms of access to justice in both official languages for individuals subject to trials across Canada.

The activities in question started in 2011, when the Provincial Court of New Brunswick proposed that the Canadian Judicial Council create a language education program for provincially appointed Canadian judges. Justice Yvette Finn was appointed the judge responsible for the program.

This initiative led to a legal language education program that emphasizes the practical aspect and that has a legal language proficiency evaluation component, known as KortoJura.

In January 2017, I took over from Justice Finn as the judge responsible for the program. I'm proud to introduce the people joining me today. Mr. Chair has already introduced them. They are Allain Roy, director general of the education program, and Normand Fortin, a language specialist and the person responsible for the conceptualization and content of the KortoJura evaluation service.

Françoise Bonnin is also here today to answer any questions regarding KortoJura.

I'll now give the floor to Mr. Roy, who will provide an overview of the language education sessions.

Mr. Allain Roy (Director General, Legal Language Education Program, KortoJura): Thank you.

Since spring 2011, over 20 legal language education sessions have been provided. More than 100 judges from all Canadian provinces and territories have come to either the Caraquet region, in the Acadian Peninsula, for French sessions, or to the Saint Andrews region for English sessions. In addition, the teaching teams consist of about 40 judges and lawyers.

The program is based in two welcoming New Brunswick communities that are proud to share their culture. Along with the formal educational activities, other activities involve interacting with the community. These activities include quiz rallies, the creation of mini-documentaries, or "murder mystery" nights. We're only limited by our imagination, and the goal is always the same. We want to create opportunities for communication.

We must also mention the involvement of the legal community and the RCMP. They enhance the education sessions by participating in various exercises, such as mock trials. In terms of numbers since the start of the program, this community effort has involved over 150 community volunteers, about 20 lawyers, a little over 20 RCMP officers, approximately 40 actors, and more than 55 artists.

Two French and two English sessions are held each year. These sessions have had a significant economic impact on the regions concerned, especially since they take place outside the peak tourist season.

Our next challenge is to run other activities between the sessions to maintain the skills acquired and to provide ongoing training. We're exploring technological platforms to make tools for mentoring or tutoring programs available online. Using these new technologies, we also want to create a virtual community with all the judges who participate in our sessions. We want a Canada-wide network of knowledge sharing so that judges from the two language communities can help each other.

• (1110)

Hon. Denise LeBlanc: To give context to Mr. Roy's remarks, I'll highlight some components of our training approach.

The Centre canadien du français juridique prepares and delivers the program's educational content, in cooperation with the teams of trainers, who deliver the education session content.

The teams of trainers consist of experienced lawyers, a language specialist and judges who support the trainers.

The education sessions have two components. They have a community learning component, which Mr. Roy has already explained, and an educational component, which links daily activities with the judges' acquisition of language skills. At each education session, a theme is adopted based on the nature of the most common charges in the provincial court.

Participants learn through activities that focus on oral and written comprehension and communication in the second language, and through simulation activities that recreate, as accurately as possible, legal activities in the courtroom.

Since 2014, English sessions have been provided to judges in Quebec, in cooperation with the Conseil de la magistrature. The cooperation and support among language communities and various stakeholders continue after the education sessions. Learners become trainers who can support their fellow judges across Canada and build ties that far exceed the benefits anticipated at the start.

Regarding KortoJura, from the start of the education program, the language proficiency evaluation has been part of the objectives, given the needs. These include the need to measure the participants' progress in order to assess the program's effectiveness; the need to give the teaching team the chance to adapt education methods to the participants' needs; the need to enable the judges to conduct a self-evaluation; and lastly, the need to show the chief justices their judges' language proficiency level.

The evaluation tools have been administered and validated. They have given us the chance to implement the vision of an autonomous and independent project in the form of a legal language evaluation service.

I'll now give the floor to Mr. Fortin. He'll address the evaluation and certification of oral communication proficiency in the second official language in a legal context.

Mr. Normand Fortin (Conceptualization, test content and certification, Evaluation Service, KortoJura): Thank you.

The tools consist of two tests, the oral comprehension test and the oral communication test in a legal context. Each test is marked based on the proficiency scale I'll tell you about shortly. The oral comprehension test is taken online using a computer or tablet. The oral communication test is taken in person or online in real time using secure software, in the form of a guided discussion with a lawyer facilitator and a language proficiency evaluation expert.

The proficiency scale was created by a committee of judges and second language evaluation experts. It served as a guide for the development of the tests. The scale is based on tasks that a judge must normally accomplish. The judges who developed the grid with me ranked the various tasks based on their complexity and the language proficiency level needed to accomplish them. We created four levels of language proficiency, which were refined throughout

the training and evaluation process. I could explain what these levels represent during the question period.

Regarding the structure of the test, the oral comprehension test uses several authentic recordings from courtrooms. The candidates must answer multiple choice questions, single answer questions or open questions based on the recordings. The oral communication test in the form of a discussion includes four segments that gradually progress from level 1 to level 4 on the proficiency scale.

The candidate first reads a decision written in his or her mother tongue, then discusses the decision with a judge or lawyer evaluator in the language of the test. For the certification, after the test, the evaluators immediately agree on an assessment using the evaluation grid created for that purpose. They then recommend that KortoJura's chief evaluator certify the candidate at one of the levels of legal French. They also establish the shortcomings the candidate must address to reach the next level.

We're currently developing the Legal English Listening Test for francophone judges. The test will be validated shortly with the judges who took the training in Saint Andrews.

In closing, I would say that our tests are unique, since they were designed and developed in cooperation with judges. They cover real situations experienced by judges, and they have been validated by judges. The tests are corrected by judges, and those same judges help prepare the final evaluation of the language proficiency of the person taking the test. To our knowledge, no other evaluation tool in Canada or around the world meets these criteria.

The KortoJura evaluation service, a product of the language education program for judges, wants to take a broader approach and create tests for specialists in different legal fields based on the same model. We think the service will play a significant role in improving access to justice in both official languages for Canadian individuals subject to trials.

Thank you for inviting us to share our work with you.

• (1115)

The Chair: Thank you for your presentation.

Since five people have already asked to speak, they will each have six minutes.

We'll start with Sylvie Boucher.

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

Hello, everyone. I'm happy to see you.

I want to know one thing. The KortoJura program was designed by judges. I checked the website where people can take the test. The test takes at least two hours. Is that correct?

Do the provinces recognize the test that you make available online? I'm talking about the provinces with a francophone minority. I imagine you're everywhere.

Also, why is it so important that the next Supreme Court judges be bilingual?

I want to hear your opinion on these issues.

Ms. Françoise Bonnin (Director, Evaluation Service, Korto-Jura): The test wasn't developed only for judges in New Brunswick. In the education program, judges come from all Canadian provinces. My colleague Allain Roy could elaborate on this.

Mrs. Sylvie Boucher: Okay. Perfect.

Ms. Françoise Bonnin: So it's not at all restricted to one province.

Mrs. Sylvie Boucher: It's broader.

Ms. Françoise Bonnin: Yes.

Mr. Normand Fortin: Regarding whether the program has been accepted by each province, I think it remains to be seen.

Mrs. Sylvie Boucher: It remains to be seen? Okay.

That's what I wanted to know. That said, New Brunswick recognizes it.

We know that Parliament is responsible for the test for bilingual judges, but the province often has input.

The test leads to a certification. Is the certification recognized by the province? Is it recognized anywhere?

Hon. Denise LeBlanc: I can talk a bit about that.

Mrs. Sylvie Boucher: Yes.

Hon. Denise LeBlanc: Currently, in the provincial appointment process in New Brunswick, the test isn't mandatory or formally recognized. We're not at the point of requiring a test.

Mrs. Sylvie Boucher: Okay. That's fine. That's what I wanted to know.

This test could help us a great deal. I'm thinking of the francophones outside Quebec and the use of the correct terms.

Personally, I wouldn't pass the test, since I'm not a lawyer and I never wanted to be a judge either.

How many people pass the test at a satisfactory level, meaning at a high level?

• (1120)

Mr. Normand Fortin: Maybe I should explain the proficiency scale of our education program.

Mrs. Sylvie Boucher: Yes, I would appreciate that.

Mr. Normand Fortin: There are four levels.

I cut this part out of my original text.

Mrs. Sylvie Boucher: That's fine. That's what I wanted to know.

Mr. Normand Fortin: There are really four levels of competence.

I am not one of those who started the program. I work in the languages sector.

Judge Finn started the program. She started from the principle that a judge does not really need to become completely bilingual to perform certain duties for which a certain knowledge of French is sufficient.

Thus, in our competence grid the person who has the first level, i. e. FJ1, should have a level of competence that is sufficient to preside

over an undisputed single case, or an administrative hearing. It can be an adjournment, a plea or a request for an individual to plead guilty or not guilty.

There are judges who took the training who are now able to do that. Judge Finn's vision—and I think it is also Ms. LeBlanc's vision—was to clear up some of the backlog in the justice system.

If we can have enough judges with that linguistic level, we will have succeeded. However, at this time our sample is not large enough to say that this can be generalized. That said, we can see the results among the judges who take our training in Caraquet.

As for the other levels, the FJ2 level is higher than the FJ1. At that level a judge can preside over several successive hearings in a day, where the challenged elements are rather simple, but could require testimony; for instance, a bail hearing, or simple trials.

At the FJ3 level a judge is able to preside over the majority of hearings, but he could run into trouble if there was a disputed case involving several parties or several witnesses.

At the FJ4 level a judge can function in an environment where the vast majority of judicial activities take place in the second official language.

As you can see the FJ1 is not a beginner's level. The judge has to have learned French as a second language before it can be said that he or she has reached the FJ1 level.

Mrs. Sylvie Boucher: Approximately how many judges a year take this training or take the test?

Mr. Allain Roy: As I was saying, since 2011 about 100 judges attended over 300 classes.

There are judges who sometimes return; there are two sessions per year. About 20 judges register for each session.

The same thing applies to legal English; they are judges from Quebec for the most part.

We can also link this with the background work that was done, and the tools developed by Mr. Fortin and the judges who took the training. For instance, we were able to validate the tests easily, because we know the judges and their linguistic level very well.

At this time I think we have to publicize our tests and have them accepted by different bodies.

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

I know give the floor to Mr. René Arseneault, a member from New Brunswick.

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

I don't want to seem pretentious and that does not happen normally, but I want to say that the light often seems to come from New Brunswick.

Voices: Oh, oh!

Ms. Linda Lapointe (Rivière-des-Mille-Îles, Lib.): That's one way of looking at things.

Mr. René Arseneault: I congratulate the witnesses, and I thank them for being here.

Your comments are very enlightening. I am from New Brunswick, and I did not know how precise this test was. I thought they were ordinary language tests, but I see that there is a whole array of legal language in French and in English. Ordinary mortals do not understand how important it is to have exact terminology in French or in English.

You built this test around four levels, as you explained. When you are a lawyer, you know exactly what that means. The submission of a simple guilty or not guilty plea, where the person returns home and the trial takes place two weeks later, is not the same thing as a hearing with expert witnesses.

I say bravo to you for this initiative. There have been several trial and error attempts over the years. You have come up with a unique product. There are 100 francophone and anglophone judges a year who take language training classes, if I understood correctly. Since they come several times, one may conclude that there have been 300 training sessions.

What is the breakdown between francophone and anglophone judges? Do you host one-third francophone judges from Quebec, and two-thirds anglophone judges?

• (1125)

Mr. Allain Roy: Yes. I would say two thirds and one third.

Mr. René Arseneault: That breakdown reflects the Canadian population.

How many of them come from outside the Maritimes?

Mr. Allain Roy: We have all of the statistics. Forty-five judges from Quebec took the training, and others came from the two territories, the Yukon and the Northwest Territories. There were two judges from British Columbia, and seven from Alberta who come regularly to take training. The same thing applies to judges from Newfoundland and Labrador. There are three on Prince Edward Island, and two of them come for training. For one week we host two thirds of the judiciary of Prince Edward Island! There are also 11 judges from Ontario. Judges from almost all of the provinces came to take this training. I must add that close to 20 judges also are there as teachers.

Mr. René Arseneault: That is what I noted. There are 150 volunteers, and 20 lawyers who are also volunteers. I have an idea of how it all works. There are 40 actors who act out trials. It's quite an organization. It takes place twice a year for the francophones, and also for the anglophones. Out of curiosity, I would like to attend a session and see what it is like.

Mr. Darrell Samson (Sackville—Preston—Chezzetcook, Lib.): We should all go.

Mr. René Arseneault: Yes indeed.

Mr. Allain Roy: You would be welcome. As for the actors and artists, I think that a past winner of the Gala de la chanson de Caraquet knows that there is talent in New Brunswick in the Acadian Peninsula.

Mr. René Arseneault: Oh, oh! Thank you very much. It would be my pleasure to sing a song for you.

In 2014, you came up with this unique product. What are your sources of funding?

Mr. Allain Roy: The funding comes mostly from the Access to Justice in Both Official Languages Support Fund, and has from the beginning. Our language competency assessment program is entirely supported by Justice Canada through the Access to Justice in Both Official Languages Support Fund, and also by the New Brunswick Regional Development Corporation.

As for the sociocultural, pedagogical or community activities, the funding comes from the judges' registration fee of \$300. Those activities are not supported by Justice Canada or the Regional Development Corporation. The registration fees allow us to cover the costs of those activities and to pay the artists.

Mr. René Arseneault: Funding is always key. This program is unique, but it must be replicated and extended to provincial courts throughout Canada. You already said this, but I wanted to specify that we are talking about provincial courts here.

Is the funding adequate, and does it allow you to ensure your long-term development? That is what we want to hear.

Mr. Allain Roy: We are preparing a new action plan. Our current funding ends on March 31, 2018. We will soon be applying for funding for the next five years. We hope that the envelope of the Access to Justice in Both Official Languages Support Fund will be increased. We will always need money, that is certain. That said, we function very well with what we have currently.

Ms. Françoise Bonnin: I would like to add something, if I may.

The KortoJura evaluation service has begun to fly on its own and is becoming an autonomous and independent entity. We are now at the marketing phase, and have made some important breakthroughs. Given the scope of the potential market, the funding needs to be much greater than our current funding, which was at the outset simply aimed at setting up a project to develop our tools.

Mr. René Arseneault: I would like to point out that over the past ten days, New Brunswick has reached gender parity in the provincial judiciary; there are as many women as men. In addition, for the first time in the province's history a woman is the chief justice of the provincial court.

When I was younger and attending law school, I worked at the Centre international de la common law en français. We hosted some Louisiana lawyers who wanted to learn the terminology and how to express themselves in both official languages.

Are our Cajun friends a potential clientele for you? Is there some interest? Have you looked into that?

• (1130)

Ms. Françoise Bonnin: We are going to explore that. It's an excellent idea, but we're not there yet. We are still focusing on Canada.

Mr. René Arseneault: You need to call Warren Perrin or Marc Thibodeau.

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

Mr. Choquette, you have the floor.

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

First I would like to thank the witnesses for being here.

I am very pleased that we invited you. We are doing a study on access to justice in both official languages, and your mission is really remarkable and important in this regard.

I want to point out the presence of Mr. Yvon Godin, who has just arrived. He too has worked very hard to advance access to justice in both official languages and to defend minority official language minority. I am pleased that he has come to greet you.

The Chair: On behalf of the entire group, welcome, Mr. Godin. You worked very hard on this committee in past years. You have certainly been a good friend to the committee, and we are glad to have you with us.

Mr. François Choquette: I want to say bravo to the witnesses for their good work.

The mission you have undertaken will improve access to justice in both official languages.

We often hear it said that there are no bilingual judges in British Columbia, Prince Edward Island or Newfoundland and Labrador, and that because of that bilingual judges cannot be appointed to superior courts and to the Supreme Court of Canada. That is what we hear.

Your mission is demonstrating that on the contrary, it is possible. You are working to improve the situation. According to the current policy of the Liberal government, we have to appoint bilingual judges to the Supreme Court. There is also a policy to appoint more bilingual judges to superior courts.

Soon the level of bilingualism of superior court judges may be assessed, but in order to do so a test has to be developed. Were you contacted concerning the development of such a test?

Ms. Françoise Bonnin: We know that this issue is on the agenda, and that recommendations have been made in that regard. We were not contacted officially, but we are being kept abreast of this possibility for the years to come.

Mr. François Choquette: The policy already exists.

So you were not contacted. Who will evaluate the bilingualism of superior court judges, and how will they be evaluated?

You said you were pioneers in this area. Aside from you, is there anyone who can assess the bilingualism of superior court and Supreme Court judges? Are there tests that exist to evaluate that?

Mr. Allain Roy: In 2016, the application form for judges who want to be appointed to superior courts was changed, but it is still a self-assessment.

Hon. Denise LeBlanc: It is a self-declaration.

Mr. Normand Fortin: It's a self-declaration.

Mr. Allain Roy: Yes. We are in touch with the Office of the Commissioner of Official Languages. In fact, one of the first people to speak with us was Commissioner Graham Fraser. I think that things could develop in this regard.

Mr. François Choquette: I hope that Justice Canada and the people responsible for the Access to Justice in Both Official Languages Support Fund will contact you to develop tests for superior court judges and Supreme Court justices. Everyone is anxious to see bilingual judges at the Supreme Court of Canada.

Is the funding you receive from the Access to Justice in Both Official Languages Support Fund sufficient to carry out your mission properly?

Mr. Allain Roy: I can say that the judges' training program is going well. It could always be improved, which would help us to develop the technological aspect. We would also like to diversify our funding sources. We want to find funding elsewhere. The Access to Justice in Both Official Languages Support Fund is not the only source out there.

As Ms. Bonnin said, up till now KortoJura was a project under development. Now we want a structure and an administration, and that will certainly require additional funds. We want to extend our activities to the entire legal community, as this does not concern judges alone. KortoJura will certainly be asking for additional funds for this purpose.

Mr. François Choquette: We contacted you when the Action Plan for Official Languages was developed, since access to justice is part of that plan and your mission is closely aligned with that.

In the context of the plan, what recommendations did you make regarding access to justice?

• (1135)

Mr. Allain Roy: We belong to the Réseau national de formation en justice, or RNFJ. I think Mr. Ronald Bisson testified before your committee. Through the RNFJ, recommendations on the assessment of language ability, among other things, were included in the report. In this regard, we collaborate closely with that network.

Mr. François Choquette: Fine.

Caraquet is very far from the territories, or Vancouver, for instance.

Mr. Allain Roy: Yes.

Mr. François Choquette: However, if I understand correctly, you have no trouble attracting judges from these places. On the contrary, they want to come and learn a second language with you.

Mr. Allain Roy: Not only do they come to us, but they return. When that happens, we feel they must like us a lot to travel across Canada and land at the tiny Bathurst local airport.

In fact, all of this is overseen by the Canadian Judicial Council. The chief justices can invite judges in their court to go and take the training in Caraquet. In that sense, things happen in a closed circuit, but this allows us to reach the judges.

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

I now give the floor to Mr. Samson, from Nova Scotia.

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

I want to thank the witnesses very much for having come here, and for telling our committee about the work being done in the field to support judges in general.

It is a real pleasure for me to see my friend Denise LeBlanc, who studied with me at the University of Moncton. I believe this is the first time we've seen each other again, in fact.

Mr. Roy, Mr. Fortin, Ms. Bonnin, it's a pleasure to have you here.

My colleagues have mostly discussed the program as such. I'd like to branch out from that a bit.

Our government announced that Supreme Court justices would have to be bilingual.

What have you heard since, in the field?

Did this program generate more interest?

My question is addressed to all of you.

Ms. Françoise Bonnin: KortoJura was a project, but it is going to become an independent firm. We are going to develop tests. For the moment, we have...

Mr. Darrell Samson: I don't want you to go into all of the details. I simply want to know whether, since our government announced that it was looking for bilingual judges for the Supreme Court, there has been increased interest in your program.

Mr. Allain Roy: I don't know if it's related to the government announcement, but there is certainly more and more interest in the work that we do. That is what we've seen.

Mr. Darrell Samson: Very good.

As you probably know, Justice Rowe was appointed to the Supreme Court on the basis of a self-assessment. There was also an oral comprehension exam.

If you had to rank assessments on a scale from one to four, where would the results generally lie?

Mr. Normand Fortin: You mean for Supreme Court justices?

Mr. Darrell Samson: Yes.

Mr. Normand Fortin: I would say the results fit into four categories, given that, at this level, the individual can make distinctions. Interpretation can sometimes hinder nuances.

Mr. Darrell Samson: What an interesting program you have. I'm glad the committee has the opportunity to discuss it.

Some argue that Canada does not have enough bilingual judges to meet the demand.

Where are your thoughts on that?

Hon. Denise LeBlanc: Calling yourself bilingual is one thing, but being able to discuss legal matters in a courtroom is another. Instead of talking about bilingual proficiency, I prefer to talk about language proficiency, which is what the tests measure.

• (1140)

Mr. Darrell Samson: Where do you stand on the availability of judges in Canada to meet the demand? How can this assessment service help?

Hon. Denise LeBlanc: I can't comment on the availability of judges, but I will say that these tools will make it possible to determine how many of them have the required language proficiency.

Mr. Darrell Samson: What would you recommend the government do to achieve this objective going forward? If you were in the government, what would you want it to do?

Hon. Denise LeBlanc: I think the government needs to move away from self-assessment. In order to benefit from a sufficient pool of judges with the proficiency to deal with legal matters in both languages, it is necessary to adopt a formal assessment process, as opposed to self-assessment.

Mr. Darrell Samson: That's great.

Do other institutions in Canada offer this type of training, or is your program the only one of its kind?

Hon. Denise LeBlanc: A wide range of language training programs are available to superior court judges.

Mr. Darrell Samson: What about the legal component?

Hon. Denise LeBlanc: I don't think the learning content is the same as ours.

Mr. Darrell Samson: Given how important bilingual proficiency is at the Supreme Court and superior court levels, you may want to prepare to expand your programming and services.

I have one last question. What more can we do to attract more people from Canada first?

Hon. Denise LeBlanc: We have approached a number of provincial chief justices. We ask to speak with them so we can determine how many judges would be interested in the training we offer. We advertise the program through the Canadian Judicial Council. Obviously, there are many other ways to promote it. We would be quite open to discussing with you how best to proceed.

Mr. Darrell Samson: Wonderful.

The Chair: Thank you very much.

Mr. Darrell Samson: Kudos to you. Keep up the great work.

Thank you, Mr. Chair, for being so patient.

The Chair: Thank you, Mr. Samson.

Next up, we have Dan Vandal, from Manitoba.

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

You said you provide assessments for French speakers. Are you able to train them as well, or just assess their proficiency?

Mr. Normand Fortin: We provide English training in St. Andrews.

Mr. Dan Vandal: Very good.

Mr. Allain Roy: In fact, we work with the Centre canadien de français juridique.

Mr. Dan Vandal: I see.

Would you mind providing the figures one more time? Do you have participants from Manitoba?

Mr. Allain Roy: I can provide them to you, yes.

Mr. Dan Vandal: That's great.

If the government gave you more resources, do you think demand for your services would go up?

Mr. Allain Roy: Since the new action plan is slated to begin in the next fiscal year, we are once again looking at our services. I believe the Canadian Judicial Council has a committee that deals with language training. We shared some observations with its members and asked for their feedback because they are the ones we serve. Yes, then, it is something we are currently examining.

Mr. Dan Vandal: Very good.

Thank you, Mr. Chair.

Ms. Linda Lapointe: Thank you. I'm going to keep the discussion going.

Good morning and welcome to you all. Thank you for being here.

Earlier, you were talking about expanding your services to people in other areas of the justice system. You work primarily with judges, assessing their proficiency according to the four levels. You hold courtroom simulations with lawyers and police officers. Given your expertise, who else do you think would benefit from your services?

• (1145)

Mr. Normand Fortin: I can answer that, because, before joining KortoJura, I worked at the Centre canadien de français juridique. I had begun developing the tests, but they needed fine tuning. There is a language proficiency scale for crown attorneys, one for court clerks, and one for judges. It could be expanded to include police officers, specialists in all areas, really.

Ms. Linda Lapointe: Our study has focused a lot on the bilingualism and language proficiency of judges, but support staff also play a role. From what you've observed during your simulations—which involve clerks, crown attorneys, and even police officers—is there a need among support staff?

Mr. Allain Roy: Yes, but I think that involves the Centre canadien de français juridique, which already provides training to prosecutors and other professionals. It would be possible to work with them on joint initiatives. Another possibility might be session sharing with prosecutors and judges, and the pooling of exercises. The Centre canadien de français juridique does, however, already serve a specific group of clients.

As for KortoJura, yes, we do have certain objectives when it comes to assessment.

Ms. Bonnin could speak to that.

Ms. Linda Lapointe: I'd like to know how you determine a person's second-language proficiency. Do you know whether the Centre canadien de français juridique uses a similar scale to ascertain that someone with level 1 proficiency can get by in the other language and that someone with level 4 proficiency is very competent in both languages?

Ms. Françoise Bonnin: As far as I know, the Centre canadien de français juridique doesn't necessarily do assessments, at least, not in the same way that we do. We have developed tools that have been tested and validated by judges. We currently have demand from all legal professions where people have some degree of involvement or interaction with the court. We therefore have the ability to develop tests like the ones Mr. Fortin described, not just with language

experts, but also with legal experts. We want to offer testing to those who need it, and we know the demand is huge because we are working on developing those markets. There is demand at both the provincial and federal levels, and we know that demand is tremendous. We are ready to meet it because we have a product that has been tested in the case of judges.

Ms. Linda Lapointe: Thank you. I think my colleague has a question for you.

[English]

Ms. Leona Alleslev (Aurora—Oak Ridges—Richmond Hill, Lib.): There is no question that you guys have an incredible course, and we are lucky you have the program that you do, so thank you very much for that.

From what I hear, there probably is some more work to do in having more judges able to become bilingual. You said you had about 100 judges come through the program. Could you give me a feel for what percentage of those achieve level 4 and how many times they need to come back to be able to achieve that?

Mr. Normand Fortin: All of it would depend on whether...

I am speaking in English and I know you're going to say that I have an accent that's not Canadian—

Voices: Oh, oh!

Ms. Leona Alleslev: As do I.

A voice: We all have one.

Mr. Normand Fortin: The judges go back home after their week of training. It all depends on whether they have a trial in the second language. You know, you use it or lose it. Sometimes they regress, but they come back to another session.

Some of them tell us they are able to at least do the the plea. And some are at level 4.

Ms. Leona Alleslev: Approximately how many are able to? We need to understand it in terms of the volume. How many are going through the program and therefore how long, approximately, does it take, and can they get it the first time they come into the program? That will have a distinct impact on whether and how quickly the federal government—were they to take away self-assessment—might be able to look at this.

Hon. Denise LeBlanc: One of the obstacles is the lack of training or education sessions in-between the longer training sessions and the tutoring. In terms of being able to function in a second language, especially in a legal setting, you can appreciate that if you only go to formal training sessions twice a year, and you don't necessarily get the opportunity to use your skills in-between, it's very hard to progress.

That's one of the aspects we are reflecting on in considering what will happen in the next five years. I has an impact on the length of time, if you will, before a person can reach level 4.

• (1150)

[Translation]

The Chair: Thank you, Ms. Alleslev.

Mr. G n reux, you may go ahead for three minutes.

Mr. Bernard G n reux (Montmagny—L'Islet—Kamouraska—Rivi re-du-Loup, CPC): Thank you all for being here. I won't ask for anything in return, but I did find you two new clients.

Picking up on the earlier discussion, I gather that what you developed for judges could be used in other fields, as you said, Mr. Fortin. The day before yesterday, the committee met with nurses, and we would very much like to have a Canadian exam that would recognize our nurses and make it possible for them to write the exam in French.

Your product could also be of use to newcomers to Canada, who have to undergo French testing. Even though they speak French, they aren't able to pass the test. I don't know what the problem in Canada is. We aren't equipped with the tests to determine that people are truly capable of understanding our culture and history.

As I have often said, no one is against virtue, but, when it comes to a bilingual judiciary, the government makes a clear distinction between a judge who is bilingual and one who is functionally bilingual. We have heard that on many occasions.

According to your four-level assessment scale, which level of proficiency must a judge reach in order to be considered functionally bilingual? I think the government's desire to introduce a legislative requirement that Supreme Court justices be bilingual could prove problematic. Which level of proficiency on your scale would judges need to show that they are truly bilingual and thus meet the requirement for appointment to the Supreme Court?

I know people who are fluently bilingual. For example, I think Thomas Mulcair is bilingual; he speaks both languages fluently, in my opinion. Clearly, though, he is not a judge, but, rather, a lawyer. I imagine that, if he wanted to become a judge and pass your test, he would have to attain level 4. Is there a level 5 for those wanting to become Supreme Court judges? Do they meet the requirement if they achieve level 4?

Mr. Normand Fortin: My sense is that they would have to achieve level 4.

Mr. Bernard G n reux: You think they would need to be at level 4?

Mr. Normand Fortin: Yes, because level 4 means that the person is able to function in either an anglophone or a francophone environment.

Mr. Bernard G n reux: In your view, then, that person would be considered fluently bilingual?

Mr. Normand Fortin: Yes.

Mr. Bernard G n reux: That means they would be more than just functionally bilingual. I see the "functionally bilingual" requirement as problematic. To my mind, a judge is not bilingual when they are able to hear and understand a case in the other language but unable to speak that language, which they apparently understand. I think that, in addition to understanding everything, a judge has to be able to communicate and converse in every respect in both English or French, in other words, both official languages.

Hon. Denise LeBlanc: That depends on how you define "functional". I would agree with you if "functionally bilingual"

meant someone who could function fluently in a courtroom in both languages.

Mr. Bernard G n reux: There's no definition. At least, I haven't seen one so far. I have never seen a definition for what constitutes a bilingual judge or the level of proficiency required to indicate that a judge is bilingual.

As I said, no one is against virtue. At the same time, though, if a legislative requirement is introduced, some anglophone provinces might not have enough bilingual judges. If it becomes necessary to identify a second category—one that designates an individual who is functionally bilingual and therefore not fluently bilingual—are we to understand that some provinces will never have enough bilingual judges for appointment to the Supreme Court? That is what I wonder.

Mr. Normand Fortin: Allow me to explain how we put together the test, because that might answer your question. We, ourselves, did not sit down and make up the content; the information came from judges. They were the ones who told us that, in order to perform a particular function, it was necessary to be fluently bilingual, whereas, for other functions—

Mr. Bernard G n reux: Yes, I see.

Mr. Normand Fortin: In the case of Supreme Court judges, you would need to work out with them what the requirements are to perform their duties in that environment.

The Chair: Thank you very much.

Mr. Bernard G n reux: I just have one last question, if I may, Mr. Chair.

Justice LeBlanc, you said earlier that we should be talking about language proficiency, rather than bilingual proficiency. You differentiated between the two. Would you mind explaining the difference, quickly?

• (1155)

Hon. Denise LeBlanc: I think it's easy for someone to call themselves bilingual. Take, for example, a judge who is doing some shopping over at the Rideau Centre; they might consider themselves bilingual if they are able to converse with the sales clerk or someone else and have that person understand them.

Where the distinction comes in is in the courtroom. If the judge doesn't have the language proficiency to be able to communicate in both official languages with the party in question or to make a quick, reasoned and consistent determination after hearing the evidence at a bail hearing, that judge is not bilingual. In that case, we are talking about the judge's language proficiency.

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

The Chair: Thank you very much, Justice LeBlanc.

On behalf of the committee, I want to thank and commend the four witnesses for the tremendous work they have done. Your presentation was great.

We will now take a quick break. We can use that time to converse quickly with Yvon Godin, if he wouldn't mind coming over.

- (1155) _____ (Pause) _____
- (1205)

The Chair: We now resume our study on the full implementation of the Official Languages Act in the Canadian justice system

We are delighted to have joining us now Benoît Pelletier, a professor at the University of Ottawa Faculty of Law and former minister.

Welcome, Mr. Pelletier.

Prof. Benoît Pelletier (Professor, Faculty of Law, University of Ottawa, As an Individual): Thank you.

The Chair: You will have about 10 minutes for your presentation, after which, we will move into questions and comments from members.

We are all ears.

Prof. Benoît Pelletier: Thank you, Mr. Chair, for the opportunity to discuss with the committee the bilingualism of Supreme Court judges through a legal lens and, should you wish, a political one as well.

[English]

I will be pleased to answer your questions in the official language of your choice, although I'll speak mainly in French. I have prepared a summary of my presentation, which has been sent to you. I would like to thank the clerk of this committee for having asked that this summary be prepared, so that you have my presentation in both official languages. Those who speak English can follow my presentation through the English version of it.

[Translation]

Section 101 of the Constitution Act, 1867 enacted the Supreme Court Act. The provisions of the federal Supreme Court Act are partially entrenched in the Constitution of Canada. That's basically the result of the Reference re Supreme Court Act, an important decision rendered by the court in 2014 and which I'll discuss in more detail later, during the period for questions.

The Constitution Act, 1982 provides that the constitutional amendments regarding the composition of the Supreme Court are subject to paragraph 41(d) of the 1982 Act—section 41 deals with unanimous consent. Other constitutional amendments regarding the Supreme Court of Canada are subject to paragraph 42(1)(d) of this act—the 7/50 formula.

The issue is when an amendment is purely constitutional and when it is not. When the amendment is purely constitutional, we have to apply paragraphs 41(d) and 42(1)(d). When it is not, the amendment can be made by Parliament itself.

The Reference re Supreme Court Act states that the essential features of the Supreme Court are protected under part V of the 1982 Act. These essential features relate to the continued existence of the court; the proper functioning of the court; and the place of the court in Canada's legal and constitutional order.

More specifically, paragraph 41(d) of the 1982 Act deals with subsection 4(1) and sections 5 and 6 of the Supreme Court Act. These sections codify the composition of and eligibility requirements

for appointment to the court as they existed in 1982. In other words, the composition of and eligibility requirements for appointment to the court—as codified by subsection 4(1) and sections 5 and 6 of the Supreme Court Act and as they existed in 1982—are covered by paragraph 41(d) of the 1982 Act.

Subsection 4(1) and sections 5 and 6 also cover the continued existence of the court—since abolition would altogether remove the court's composition—the functioning and the legitimacy of the Supreme Court as a general court of appeal for Canada; the jurisdiction and integrity of the court; and the special representation of Quebec on the court. Paragraph 42(1)(d) of the 1982 Act relates to the other essential features of the court but not all the provisions of the Supreme Court of Canada.

The essential features of the court must be understood in light of the role that it had come to play in the Canadian constitutional structure by the time of patriation. These include the court's jurisdiction as the final general court of appeal for Canada, including in matters of constitutional interpretation, and its independence.

Paragraph 42(1)(d) of the Supreme Court Act also includes the proper functioning of the court.

Some provisions of the federal Official Languages Act are quasi-constitutional, as pursuant to section 82 of this act. This is the case of the provisions in part III of the act, entitled “Administration of Justice”. However, the provisions of the Official Languages Act can be unilaterally amended by Parliament, on the condition, among others, that they do not affect an essential feature of the Supreme Court of Canada.

- (1210)

Section 16 of the Official Languages Act requires every federal court other than the Supreme Court to ensure that, if English is the language chosen by the parties for proceedings conducted before it in any particular case, every judge or other officer who hears those proceedings is able to understand English, if French is the language chosen by the parties for proceedings conducted before it in any particular case, every judge or other officer who hears those proceedings is able to understand French, and if both English and French are the languages chosen by the parties for proceedings conducted before it in any particular case, every judge or other officer who hears those proceedings is able to understand both language.

We believe that requiring bilingualism as a selection criterion for Supreme Court judges would not affect the essential features of this court. Indeed, such a requirement would not affect: the continued existence of the court; the proper functioning of the court; the place of the court in Canada's legal and constitutional order; the composition of the court as codified by subsection 4(1) and sections 5 and 6 of the Supreme Court Act and as they existed in 1982; the eligibility requirements for appointment to the court as codified by subsection 4(1) and sections 5 and 6 of the Supreme Court Act and as they existed in 1982; the legitimacy of the court; the competence of the court; the integrity of the court; the role that the court had come to play in the Canadian constitutional structure by the time of patriation; the court's jurisdiction as the final general court of appeal for Canada, including in matters of constitutional interpretation, and its independence.

In conclusion, we believe that the bilingualism of Supreme Court judges can be imposed unilaterally by Parliament, either through an amendment to the Official Languages Act or through some other way.

The Chair: Thank you very much for your presentation, Mr. Pelletier.

We will begin the first round of questions and comments with Mr. Généreux.

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

Mr. Pelletier, welcome.

Clearly, you are in favour of Bill C-203 being passed. In your opinion, should this bill be amended to indicate that judges must be functionally bilingual or maintain its current wording? The government distinguishes between bilingual judges and functionally bilingual judges, since it has begun to appoint judges who consider themselves functionally bilingual. The witnesses we have heard before you, including Justice LeBlanc, talked about language skills rather than bilingualism.

It is hard to be against motherhood and apple pie, but I personally make a distinction between someone who is bilingual and someone who is truly bilingual.

Do you make that distinction?

Prof. Benoît Pelletier: First of all, I must say that I am in favour of bilingualism being imposed as a condition for the appointment of Supreme Court judges, but beyond that, I am of the opinion that it can be done constitutionally.

Mr. Bernard Généreux: Are you saying that this condition can be imposed without being enshrined in legislation?

Prof. Benoît Pelletier: No. It can be done through legislation without being enshrined in the Constitution of Canada.

Mr. Bernard Généreux: Okay.

Prof. Benoît Pelletier: I have relied on the Reference re Supreme Court Act, meaning the 2014 decision of the Supreme Court of Canada.

In that decision, the Supreme Court basically says that the essential features of the Supreme Court are covered by complex constitutional amendment procedures, whether in the composition of the court, the unanimous consent, or the 7/50 formula in the other cases.

It is important to determine whether, by making bilingualism mandatory for Supreme Court justices, we would be changing or affecting an essential feature of the court. After conducting an exhaustive analysis of the Reference re the Supreme Court Act, I concluded that the answer was no. The court provides sufficient information on the essential features of the court for me to be able to reach that conclusion. That is also the reasoning that I have presented in the summary before you.

Basically, the features of the court relate to its continuity, and therefore to its very existence. Would the bilingualism of Supreme Court judges endanger the very existence of the court? No. The essential features include the proper functioning of the court. Would

requiring Supreme Court judges to be bilingual compromise the proper functioning of the court? No.

The other essential feature is the court's place in Canada's constitutional and legal order. Would imposing bilingualism on Supreme Court judges affect the Supreme Court's role as a last court of appeal in Canada? Again, the answer is no.

Based on this reference, I conclude that bilingualism can be imposed without the need for a formal constitutional amendment.

● (1215)

Mr. Bernard Généreux: In that case, can we expect to maintain the representativeness of all the Canadian regions and to draw from a pool of candidates sufficiently bilingual to sit on the Supreme Court, for all the Canadian provinces?

Prof. Benoît Pelletier: If necessary, a transition period may be provided to enable legal experts to adapt and, in certain cases, simply put, to take French courses.

That being said, if the Prime Minister and the Government of Canada make it very clear that Supreme Court of Canada judges will now have to be bilingual, which will be provided for by an amendment to a piece of legislation, the legal experts will hear and understand the message. My friends are skilled enough, well trained and intelligent to adapt to the new rule, or even to do so fairly quickly.

Mr. Bernard Généreux: That will be the case for people who aspire to be appointed to the Supreme Court.

Prof. Benoît Pelletier: Those people will indeed take steps—in the good sense of the word, of course—to get there and to acquire the necessary qualifications to do so. If bilingualism is one, they will understand the need to become bilingual and to have a reason for doing so.

The Chair: Thank you, Mr. Généreux.

Ms. Lapointe, the floor is yours.

Ms. Linda Lapointe: Thank you, Mr. Chair.

Welcome, Mr. Pelletier. It is a real pleasure to welcome you today. We have previously had the opportunity to sit together in the National Assembly.

Some argue that imposing bilingualism on Supreme Court judges would be impossible, unconstitutional. You have made your points on that.

Do you have any additional arguments to convince those opposed to this imposition?

Prof. Benoît Pelletier: First, I will tell you about the legal aspect and then the political one.

Ms. Linda Lapointe: That was my second question.

Prof. Benoît Pelletier: From a legal standpoint, I am 100% sure that it is possible to impose bilingualism on Supreme Court judges without making a formal constitutional amendment. Those who claim otherwise are extremely cautious or are looking for an excuse. In my view, the Reference re Supreme Court Act is sufficiently clear, as I have said, about the idea that bilingualism can be imposed on judges without a complex constitutional amendment.

This can be done by amending the Supreme Court Act, by amending the Official Languages Act, or by passing a new piece of legislation that would deal with this condition of appointment.

From a political standpoint, those who oppose the appointment of bilingual judges to the Supreme Court often find it unfair for anglophone jurists. However, I would say that the greatest injustice is experienced by the litigants themselves. They go to the Quebec Superior Court and the Quebec Court of Appeal in their own language and are faced with a dilemma when they appeal to the Supreme Court of Canada. The dilemma is whether the person is going to speak in French and run the risk of a judge not understanding the subtleties of the arguments, or whether they will instead switch to English.

The litigants are the first victims, in my opinion.

● (1220)

Ms. Linda Lapointe: You talk about the injustice to those who speak English, but I think francophones also experience injustice.

Prof. Benoît Pelletier: There is an injustice to francophones who, in many cases, are exposed to the English language and hear cases in French and English. I am thinking of some bilingual judges who hear cases in both languages.

However, the greatest injustice is experienced by the litigants, in my opinion. This argument has already been raised—I am not the first one to do so—but I think it deserves to be reiterated over and over again.

Ms. Linda Lapointe: Thank you very much.

Earlier, we talked about judges. If we were to impose bilingualism through an amendment to the Official Languages Act or a new piece of legislation, how long do you think it would take current judges to become bilingual?

Prof. Benoît Pelletier: If they show a lot of determination, I think they can acquire an adequate knowledge of French and understand cases within a few months.

Ms. Linda Lapointe: Earlier, representatives from KortoJura said that they were doing simulations. I know that, if you do not practice the second official language, you can very easily lose the proper words. In terms of judges who aspire to be appointed to the Supreme Court and who understand only one language, how can they successfully acquire knowledge of the second language to become Supreme Court judges?

Prof. Benoît Pelletier: First of all, it is often a question of personal initiative. A person who really wants to access this position will try to learn French. The person may become even more interested in civil law, while they're at it. We talk a lot about bilingualism, but we could also talk about bijuralism. Let's just stick to bilingualism for the time being.

This must come from within first of all. Law schools may also make French courses accessible to students. However, it is not possible to isolate a pool of potential candidates if they don't make their ambition public. I think it will basically be personal initiatives, but I hope they will be supported by the law schools.

● (1225)

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

Ms. Linda Lapointe: Thank you very much.

The Chair: We will continue with Mr. Choquette.

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

Mr. Pelletier, thank you for being here today.

As Yvon Godin explained earlier, the Liberals supported the bill on the appointment of bilingual judges to the Supreme Court at the time. The Nadon decision, which you mentioned and which was rendered in 2014, as I recall, sort of changed my colleagues' arguments. Now they say that an amendment to the Supreme Court Act may require a constitutional amendment.

A few weeks ago or a few months ago, we received another expert, Sébastien Grammond. I'm not sure whether you have had the opportunity to hear or read his testimony, or whether you are at all familiar with his opinion. He pretty much told us the same thing as you, that you need to make a distinction between essential and non-essential criteria for judges. To the best of your knowledge, what is the argument of those who believe that such a change would be unconstitutional?

Prof. Benoît Pelletier: The Reference re Supreme Court Act is actually about the Nadon decision. I reiterate that, in that decision, the Supreme Court said that the essential features of the court were subject to a complex constitutional amendment procedure.

The issue is figuring out what the essential features of the court are. That is why I listed a series of essential features of the court in the summary of my presentation.

Mr. François Choquette: It's a very good description, by the way. Thank you very much for doing that.

Prof. Benoît Pelletier: Thank you.

I don't think the appointment of bilingual judges to the Supreme Court of Canada affects one of its essential features. I am actually sure it does not.

As long as an essential feature is not affected, Parliament may amend the Supreme Court Act. I repeat: as long as an essential feature is not affected.

In the case at hand, bilingualism could be imposed through an amendment to the Supreme Court Act. If the Government of Canada has any fears that it is illegal, it can always refer the matter to the Supreme Court and ask the question head on. However, this can also be done through an amendment to the Official Languages Act, in which case section 16 of the act would apply to the Supreme Court judges as well as to other judges of the federal courts. This can also be done by passing a new piece of legislation, albeit a scenario that seems less likely, but nevertheless theoretically possible. This would be done by passing new legislation that would provide for the appointment of bilingual judges to the Supreme Court of Canada.

The question is figuring out what we mean by “bilingual” judges.

Mr. François Choquette: We will be able to find that out. We are fortunate to have people like those from KortoJura, who can conduct evaluations.

Prof. Benoît Pelletier: There you go.

Mr. François Choquette: You are right, Supreme Court judges must absolutely be evaluated, as should those in superior courts, who evaluate themselves. I am one who believes that there should be a language competency evaluation. Judges appointed to the Supreme Court should also have to be evaluated.

Mr. Grammond, who is an expert, said the same thing as you. You are both experts and you tell us that you are persuaded that it is not an essential condition and that, as a result, we can change the conditions, by some legal process or other.

That is important because, until now, we have heard no constitutional expert who is able to tell us why it would be unconstitutional. Everyone reminds us of the Nadon decision but, in the Nadon decision, it was never said that a language competency evaluation would be unconstitutional. You have told us why that is the case and we really appreciate it.

What I could add about the Supreme Court judges is in connection with the bill. As you mentioned, there is more than one way to proceed.

The conclusion of your presentation is really relevant. Let me read it: “In conclusion, we believe that the bilingualism of Supreme Court judges can be imposed unilaterally by Parliament, either through an amendment to the Official Languages Act or through some other way.” That is clear.

You do not see an argument that could be made to state that the act would be unconstitutional. To your knowledge, there are no arguments to support that.

•(1230)

Prof. Benoît Pelletier: No, but let me add an important nuance.

In the Reference re Supreme Court Act, it says that the composition of the court is part of its essential features, just like the appointment conditions. The court specifies that the appointment conditions are those codified by subsection 4(1) and sections 5 and 6 of the Supreme Court Act. That is where there may be an ambiguity, leading some to react with extreme caution by saying that the essential features of the court would be affected.

Mr. François Choquette: That subsection contains no criteria about—

Prof. Benoît Pelletier: No. Subsection 4(1) and sections 5 and 6 of the Supreme Court Act do not deal with the bilingualism of judges or other qualification criteria, but rather the composition of the court. They indicate there that it is made up of nine judges and three of them must come from Quebec. They describe appointment conditions in general.

Mr. François Choquette: So, from that, you conclude that it is not unconstitutional.

Prof. Benoît Pelletier: You've got it.

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

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

The Chair: Your turn, Mr. Arseneault.

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

Mr. Pelletier, I am going to continue along the same lines as Mr. Choquette, but before that, I want to thank you for giving us the

benefit of your knowledge, the fruit of your research, and your understanding of the entire Nadon affair.

I'm going back to the Constitution Act, 1982, but I don't want to make you repeat what you have just told us in different words.

Paragraph 41(d) seems to raise a little concern on the part of some extremely prudent, almost austere, legal experts. The paragraph contains the words “the composition of the Supreme Court”.

Has anyone defined the word “composition” as it appears in paragraph 41(d) of the Constitution Act, 1982?

Prof. Benoît Pelletier: Yes, the Supreme Court provides us with a definition.

Mr. René Arseneault: In the Nadon decision?

Prof. Benoît Pelletier: Yes. In it, the court specifies the appointment conditions and the composition of the court, as codified by subsection 4(1) and sections 5 and 6 of the Supreme Court Act.

Mr. René Arseneault: Exactly. That is what my colleague Mr. Choquette was talking about.

Going by what you are telling us today, as long as the composition is not affected, as explained in the Nadon decision and as it appears in subsection 4(1) and sections 5 and 6 of Canada's Supreme Court Act, there is no need to amend the Constitution to establish a bilingualism requirement for judges on the Supreme Court of Canada or on any other superior court.

Prof. Benoît Pelletier: That's right.

Mr. René Arseneault: In subsection 4(1) and sections 5 and 6 of the Supreme Court Act, the meaning of the word “composition” is clear. There is no mention of male/female parity or French/English parity. In my opinion, we should be requiring male/female parity in our courts as soon as we can.

Mrs. Sylvie Boucher: But we are talking about bilingualism here.

Mr. René Arseneault: Yes, but we could use the same argument.

Here is what I want to get out of it, in a nutshell. Right at the outset, you said that your preference is for an amendment to the Official Languages Act, or to some other act. That's the first act that you would amend. In your opinion, is that the easiest, simplest way?

Prof. Benoît Pelletier: Yes, it is the easiest way and probably the

—

•(1235)

Mr. René Arseneault: Least aggressive.

Prof. Benoît Pelletier: Yes. It is the one that would raise the fewest legal debates, because the Supreme Court Act would not be affected. Let me repeat: it could be done because no essential feature of the Supreme Court would be affected.

Mr. René Arseneault: If we were to amend the Official Languages Act, we would eliminate the exception for the Supreme Court in subsection 16(1) of that act.

Prof. Benoît Pelletier: Yes, exactly.

Mr. René Arseneault: Here is subsection 16(1) of the Official Languages Act:

Every federal court, other than the Supreme Court of Canada, has the duty to ensure that:

(a) ...every judge or other officer who hears those proceedings is able to understand English...

(b) ...every judge or other officer who hears those proceedings is able to understand French...

So, we would drop the words “other than the Supreme Court of Canada”.

Prof. Benoît Pelletier: Yes.

Mr. René Arseneault: In your opinion, that is the easiest and least aggressive way. It would not irritate the people who claim that you have to amend the Constitution. That is my understanding.

Prof. Benoît Pelletier: Yes, but I would not hesitate to irritate them, by suggesting an amendment to the Supreme Court Act directly. If you wanted to be very clear and say that judges must not only understand French but also be able to speak French, you might have to use other means than section 16, which has its share of ambiguities.

Section 16 says that judges must be able to understand a language; it does not say that judges must be able to speak a language. If we really want to be clear, we could choose to insert a new definition in the Supreme Court Act that would say that judges have to be able to speak in English and French in order to be appointed to the Supreme Court of Canada.

That brings us to the issue of language level. That is the issue you discussed this morning, I understand. I am less qualified in that area.

Mr. René Arseneault: That's fine.

I am sorry, but I have neither received nor read the document you provided. I don't have it at hand. Did you propose an amendment to section 16?

Prof. Benoît Pelletier: Yes. At the end, I talk about an amendment to the Official Languages Act or some other act. When I talked about an amendment to the Official Languages Act, the section I had in mind was section 16, yes.

Mr. René Arseneault: You did not propose what that might look like, as part of any text.

Prof. Benoît Pelletier: No, because that requires an appreciation of language abilities, which I do not have.

Mr. René Arseneault: So we are talking about two things. If we were to amend subsection 16(1), we would have to remove the exception for the Supreme Court, and, in the following subparagraphs, add that judges must be able to speak both languages as well as understand them.

Prof. Benoît Pelletier: If you want, you might make a special provision for the Supreme Court of Canada or a provision that applies to all federal courts. But that mechanism seems a little more complex to me. What you are suggesting—adding something specific for the Supreme Court in section 16—is still a little more complex in terms of the legal drafting.

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

Mr. Vandal is going to share his time with Mr. Samson.

Mr. Vandal, the floor is yours.

Mr. Dan Vandal: Thank you, Mr. Chair.

Thank you very much for your presentation, Mr. Pelletier.

I come from Saint Boniface, Manitoba, the indigenous capital of Canada's First Nations and Métis. I do a lot of work with the Manitoba Métis Federation and the Manitoba chiefs tell me that, if Supreme Court candidates must be bilingual, there will never be an Inuit or Métis judge.

Do you have an opinion about that?

Prof. Benoît Pelletier: If that is so, it will also be the case with the directives currently being issued by the Prime Minister of Canada. Using non-legislative and non-constitutional means, he is indicating that Supreme Court judges must be appointed if they have a certain level of functional bilingualism. If that is the case, indigenous peoples will be penalized.

I have seen the comments from indigenous leaders, in particular from the Chief of the Assembly of First Nations. I have to tell you that I have no solution for them.

We have to remember that official bilingualism is part of the Constitution of Canada and it is perfectly normal that Supreme Court judges should have to be comfortable in both languages. But I have no solution for their particular case.

I know that Senator Murray Sinclair and National Chief Perry Bellegarde have warned the government of the danger that indigenous peoples will be adversely affected by a measure to impose bilingualism.

Honestly, I have no particular solution to suggest.

• (1240)

The Chair: Mr. Samson, you have the floor.

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

Mr. Pelletier, I first want to tell you that it is a pleasure to see you again. I heard a speech you gave a decade or so ago at the Fédération nationale des conseils scolaires francophones. The speech, which dealt with the ways to support the relationship between Quebec and minority communities, was much appreciated. I want to recognize your leadership once more and to thank you.

The situation involving the Supreme Court judges affects the two founding peoples. The three judges from Quebec have to be able to speak both languages, of course. So do the other six judges. So we can say that the playing field is level.

I also want to congratulate Justice Rowe. If my information is correct, his knowledge of French was not very advanced two or three years ago. He has really concentrated his energy on learning and mastering the language, and he has succeeded. That's a concrete example. I will now ask my question.

If you were Prime Minister, which option would you choose, and why?

Prof. Benoît Pelletier: I would choose to amend the Official Languages Act. That seems to me to be easiest and clearest under the circumstances. The Supreme Court itself renders decisions recognizing that bilingualism is a fundamental value of Canadian society and supporting the idea of moving towards the equality of both languages, not just in theory, but also in practice.

So, if we are actually supposed to move towards the equality of the two official languages, imagine if bilingualism is not required from those who want to be appointed to the Supreme Court of Canada. It seems to me that it contradicts the Supreme Court's own jurisprudence.

Mr. Darrell Samson: So your choice would be to amend the Official Languages Act.

Prof. Benoît Pelletier: Yes.

Mr. Darrell Samson: That could result in other amendments to the act.

Prof. Benoît Pelletier: Yes.

Mr. Darrell Samson: Do I have a little time left?

I would like to let my colleague ask a question.

The Chair: You have a minute left.

[*English*]

Ms. Leona Alleslev: In search of the Canadian compromise, what would your opinion be of a mixed Supreme Court bench, where not all judges were bilingual? What impact would that have on perhaps changing the Official Languages Act—or in that case, would we need to look at the Supreme Court Act? Does it have to be all or nothing?

Prof. Benoît Pelletier: I think it has to be, because if one judge is not bilingual, then there will be a clear indication or signal sent to the lawyers that in order to be well understood by the judge, they have to speak English. Among the judges themselves, there will be one language used, and that will be English. I think it's a question of justice with regard to the citizens and with regard to all of those people who send their cases to the Supreme Court of Canada, whose cases are heard by the Supreme Court of Canada. It's also a question of justice among the justices of the Supreme Court themselves. Again, if there is one judge who does not speak French, then English is going to be the common language.

• (1245)

Ms. Leona Alleslev: Would it be possible to amend the Official Languages Act to make it not all, but partial?

Prof. Benoît Pelletier: I don't see how it could be done without legislating the status quo.

[*Translation*]

The Chair: Thank you very much.

Mrs. Boucher, you have the floor for three minutes.

Mrs. Sylvie Boucher: Thank you, Mr. Chair.

Good afternoon, Mr. Pelletier. It is an honour for us to meet you. Thank you for helping us better understand the nature of the Constitution. Sometimes, we can get lost in it.

The bill has been on the agenda for a good number of years. I was parliamentary secretary for official languages a while ago and, yes, Mr. Godin, I voted against the bill for many reasons.

As a follow-up to what we heard earlier, I have always had a little difficulty in explaining bilingualism too. Being fluently bilingual is one thing, understanding another language is another thing, and speaking that language is something else again.

In my view, bilingual judges must not only understand the language, but must also speak and understand legal language. Just now, when the people from KortoJura came to testify, I appreciated hearing them say that, when we ask judges to be bilingual, they first of all need to understand legal language.

I am reasonably bilingual. If I was at the Supreme Court as a lawyer, or if I became a judge, I am not sure that I could handle legal language in English as well as in French. That is where I have a little difficulty. Personally, I always had a hard time understanding why there would be no more need for interpreters. French has a number of variations, depending on where the speaker comes from.

I am from Quebec, and, when I hear Mr. Samson speaking, I am not sure I always understand what he is saying.

Ah, ah! I mean that in the nicest way.

That said, how can we go about enshrining in legislation the fact that we agree that judges must be bilingual without touching the Constitution, but including the legal nature of the language, which seems to me to be increasingly important in the light of the testimony we have gathered?

Prof. Benoît Pelletier: Two things. First, if someone wants to convince you that mandatory bilingualism would affect an essential characteristic of the Supreme Court, turn the question around. Ask them if being unilingual is an essential feature of the Supreme Court.

Mrs. Sylvie Boucher: That is a good point.

Prof. Benoît Pelletier: Clearly, the answer is no. However, unilingualism is what people want to change.

Mrs. Sylvie Boucher: Yes, that's true.

Prof. Benoît Pelletier: There you go.

So, basically, when you ask which situation would be changed, the answer is unilingualism. I will never be convinced that unilingualism is an essential feature of the Supreme Court of Canada. Believe you me, a Supreme Court judge will never be convinced of that either.

If there were a reference to the Supreme Court of Canada, I am convinced that it would declare, as I did—I can say that with no pretension because, in any event, my analysis was based on the judgment of the Supreme Court itself—that making bilingualism a requirement on the Supreme Court does not require a constitutional amendment.

Second, as for the rest, judges have to understand oral and written language. Must they then, on top of that, be able to speak in French? I can say that it would be desirable. However, if that were to become a political obstacle, a deal-breaker, an amendment to section 16 of the Official Languages Act could, at very least, represent a compromise.

The Chair: Okay, thank you very much.

Mrs. Sylvie Boucher: Thank you.

The Chair: Thank you, Mrs. Boucher.

Mr. Pelletier, thank you very much for this extraordinary conversation between yourself and the members of the committee.

It was very enlightening. Thank you again on behalf of the committee.

Prof. Benoît Pelletier: Thank you.

The Chair: We are going to suspend the meeting for two minutes and come back in camera to discuss future committee business.

[Proceedings continue in camera]

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