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Chair

The Honourable Denis Paradis

Standing Committee on Official Languages

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• (1105)

[*Translation*]

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

First I'd like to make a few remarks. We are moving on to another file this morning, that of Air Canada. I thank all of the members of the committee for their cooperation involving everything regarding the Commissioner of Official Languages file. We have just concluded another step.

This morning we welcome representatives from the Office of the Commissioner of Official Languages in the context of our study of Air Canada's implementation of the Official Languages Act.

We will proceed in the following way: the first part of the meeting will be public. I know that confidential information is going to be provided, but we will sit in camera subsequently. We will begin with a public meeting.

We are pleased to welcome the representatives of the Office of the Commissioner of Official Languages: Ms. Pascale Giguère, Director and General Counsel, Legal Affairs Branch; Ms. Mary Donaghy, Assistant Commissioner, Policy and Communications Branch; Mr. Jean Marleau, Acting Assistant Commissioner, Compliance Assurance Branch, and Ms. Carole Séguin, Senior Investigator, Compliance Assurance Branch.

You will have about 10 minutes for your presentation, and then we will take a few minutes to hear additional information in camera. We will then have questions and comments from the members of the committee.

I will decide later when we will sit in camera. I invite you to make your presentation.

The clerk pointed out that this is a briefing session. For those who are listening to us, I want to specify that this is a briefing session following meetings we held with regard to the Air Canada dossier.

I thank you very much for your presence.

Ms. Giguère, you have the floor.

Ms. Pascale Giguère (Director and General Counsel, Legal Affairs Branch, Office of the Commissioner of Official Languages): Thank you very much, Mr. Chair.

I will begin immediately with a point of information by mentioning that we do not necessarily have confidential information

to provide to the committee. However, if the committee wishes to go into more depth on certain issues, at that point going in camera might be an option.

We have information to provide to your committee this morning. We are happy to proceed in this way as long as it suits the committee.

On behalf of the Interim Commissioner of Official Languages, Ms. Ghislaine Saikaley, and on behalf of the colleagues joining me today, Ms. Mary Donaghy, Assistant Commissioner, Policy and Communications Branch, Mr. Jean Marleau, Acting Assistant Commissioner, Compliance Assurance Branch, and Ms. Carole Séguin, Senior Investigator, Compliance Assurance Branch, I would first like to thank the committee for having undertaken this important study on Air Canada's implementation of the Official Languages Act.

It goes without saying that the Office of the Commissioner of Official Languages has followed your work with interest. We await your report with enthusiasm.

[*English*]

We wanted to appear before you today in order to provide a technical briefing and elaborate on some of the proposed solutions put forward in the report.

After 10 years as commissioner, Mr. Fraser believed that the issue pertaining to Air Canada's compliance was one of sufficient importance to provide Parliament with a special report on the situation.

It is only the second time in the history of our office that a special report has been tabled in Parliament.

[*Translation*]

The special report was a summary of the interventions of the commissioner regarding Air Canada, as well as of those of the five commissioners who preceded him. The report also mentions the conclusions—including yours—of parliamentary committees that have examined the situation at Air Canada over the years.

[*English*]

In the report, the commissioner proposes to amend the Air Canada Public Participation Act to clarify some of Air Canada's language obligations and, most importantly, strengthen enforcement mechanisms in cases of non-compliance.

The report contains a single recommendation addressed to Parliament: that the special report be referred for study, on an urgent and priority basis, to one of the official language standing committees.

As mentioned in the recommendation, this special report is the last tool in the commissioner's tool box. All the other tools have failed to produce tangible results. Therefore, the commissioner is looking forward to seeing one of the standing committees on official languages study the special report in order to make strong recommendations to the government on the appropriate legislative amendments necessary to strengthen the enforcement regime applicable to Air Canada.

● (1110)

[Translation]

Since the special report was tabled in June 2016, the situation has not changed. We continue to receive complaints and to make recommendations that lead to very little progress.

I'm going to ask my colleague Mr. Jean Marleau to briefly present a summary table of compliance by Air Canada over the last year.

Mr. Jean Marleau (Acting Assistant Commissioner, Compliance Assurance Branch, Office of the Commissioner of Official Languages): Thank you.

[English]

Again this year, Air Canada was the federal institution that received the most complaints with respect to service to the public.

In fiscal year 2016-17, the number of admissible complaints received against Air Canada was nearly triple the number received in 2015-16. The majority of complaints filed against Air Canada deal with long-standing issues that have been brought to the attention of all of the commissioners many times over the years. Investigations have demonstrated time and again that in-flight and ground services are not always available and of equal quality for travelling members of both language groups.

All of the commissioners have investigated the aforementioned official languages incidents filed against Air Canada, and despite their interventions and numerous recommendations, the fact remains that the situation with respect to official languages has evolved very little, and Air Canada still faces difficulty in conforming to the act.

In short, our current authority to issue recommendations is not enough.

[Translation]

Ms. Pascale Giguère: It is precisely because the situation has lasted for many years that Commissioner Fraser deemed it sufficiently important to ask Parliament to study the matter.

The study undertaken by your committee is thus extremely important, in order to analyze the options presented in the special report, and to provide recommendations to Parliament on appropriate legislative amendments.

[English]

Since the commissioner has elected to turn to Parliament on this very important issue, your work will enable Parliament to give clear

guidance to the government on what, if any, legislative changes it should be considering.

[Translation]

Allow me now to speak to you about the potential solutions proposed in section 3 of the special report.

[English]

In section 3 of the special report, Commissioner Fraser concludes that the current methods of enforcement have had little effect on Air Canada's level of compliance. Therefore, he submits four options for consideration by Parliament that could strengthen the current enforcement scheme.

[Translation]

The enforcement mechanisms presented as options by the commissioner are: enforceable or compliance agreements, statutory damages, fines, and administrative monetary penalties.

[English]

Let me walk you through each of these options.

First, enforceable agreements or compliance agreements have recently been added to the tool box of the Privacy Commissioner. Under a compliance agreement, an organization agrees to take certain measures to bring itself into compliance with the act. While it would be a step in the right direction, this tool alone would not guarantee success and would be effective only if used in conjunction with other options.

[Translation]

The second option is that of statutory damages. The Air Canada Public Participation Act could be amended in order to give the Federal Court the power to grant statutory damages. This type of damage is different, since the plaintiff does not have to prove that the offence has caused injury. A range of damages could be provided for different offences in the law so that the Federal Court could evaluate the appropriate amount in light of various factors.

[English]

A third option examined in the report is fines. Since fines can be an incentive to comply with the law, the Air Canada Public Participation Act could be amended to include a list of various violations for which fines would be determined. This type of sanction is not new in the area of language rights. For example, the Nunavut Official Languages Act and Quebec's Charter of the French Language contain provisions regarding fines that can be imposed by the courts. At the federal level, this tool is also available to other agents of Parliament: the Information Commissioner and the Commissioner of Lobbying have provisions for fines in their legislation.

● (1115)

[Translation]

Finally, the fourth option is administrative monetary penalties, AMPs. Many federal regimes already provide for this type of sanction. The AMPs are imposed by the organization charged with monitoring the application of the act rather than by the courts—in this case by the Office of the Commissioner.

Among officers of Parliament, the Conflict of Interest and Ethics Commissioner has the power to impose AMPs, and Air Canada is subject to several administrative monetary penalty regimes; for instance the Canadian Transportation Agency can impose AMPs on airline companies regarding advertising, prices and airline services.

Also, the Canada Border Services Agency and the Competition Tribunal have the power to impose administrative monetary penalties on airline companies, including Air Canada.

After reviewing the various options to strengthen the enforcement regime applicable to Air Canada, the report also mentions, on page 28, Air Canada's position that all airlines in Canada should have to provide services in both official languages. In our opinion, the standardization of language obligations would be an even stronger argument in favour of considering an appropriate enforcement framework.

[*English*]

Section 3 ends with an overview of the commissioner's position that, following Air Canada's restructuring, legislative amendments continue to be needed to maintain the language rights of the travelling public, as well as Air Canada employees.

The commissioner has reiterated many times in the past to successive ministers of transport the need to introduce a new bill. However, no legislative amendments have been made since 2004. The commissioner also mentions the need to amend the Carriage by Air Act to clarify that the Montreal Convention does not restrict the awarding of damages under the Official Languages Act.

[*Translation*]

In conclusion, despite sporadic improvements and promising action plans, the commissioner was of the opinion that the time had come to note that the powers he had under the law were insufficient with regard to Air Canada. Since this special report to Parliament is the last tool the commissioner had, he recommended to Parliament that the study of this report be entrusted to one of the two standing committees on official languages.

We believe that your report will be decisive with regard to the future of Air Canada's linguistic obligations and in light of that, we would like to propose the names of certain witnesses who could also contribute to your study. We have given the clerk a list containing a few suggestions.

In addition, we prepared a condensed summary of excerpts from relevant documents. Some of them are quoted in our special report and concern the issues that are discussed in it.

I thank you on behalf of my colleagues. We will be happy to answer your questions to the best of our ability.

The Chair: Thank you very much for your presentation, Ms. Giguère.

We will go immediately to our question period, and begin with Ms. Boucher.

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

I thank all of you for being here this morning. Thank you also for this magnificent “bible”.

I see that over the past 40 years Air Canada has not evolved much. Despite numerous reports and recommendations made to Air Canada, very few things were done by one government or another.

A little earlier you mentioned that you had received three times more complaints in 2016-17. For comparison, how many were there in the previous year? What are the most frequent complaints made about Air Canada? They most likely come from francophones. What type of complaints do you receive most often?

• (1120)

Mr. Jean Marleau: Thank you for the question.

We compared the number of complaints we received about Air Canada last year to the number of complaints received in the previous year. So there were three times more complaints. This year, in 2016-17, there were 101 more complaints.

The complaints do often come from francophones, that's a well known fact.

As to the nature of the complaints, they are the ones that were discussed in the past. They concern in-flight service or service before flights. It's a combination; there are factual complaints, etc. We could provide more details if needed, but they are the same classic complaints that are made year after year.

Mrs. Mary Donaghy (Assistant Commissioner, Policy and Communications Branch, Office of the Commissioner of Official Languages): I simply wanted to direct your attention to the fact that in this “bible” you will find a complete history of complaints. It will not provide specific information on the nature of those complaints, but you can at least see how many there were every year.

Mrs. Sylvie Boucher: When I look at this list, I see that in 2016-17, the total number of complaints is at 1018. This means that there were additional complaints. The situation is not improving, even though we meet with people from Air Canada often, we put questions to them, and they tell us that they are very attentive to official language issues. What we see here proves the opposite. In other words, the service Air Canada provides to the linguistic minority is not adequate. That is what I understand from your table

Mr. Jean Marleau: That is correct.

Mrs. Sylvie Boucher: I wonder, in light of all the work you have put into the Air Canada dossier, if you have the impression that these people want to improve the situation.

Do you get that impression when you or the commissioner talk to them?

Ms. Pascale Giguère: The report indicates, I believe, that there have been sporadic improvements. So the trajectory has not been linear. We were given action plans that seemed promising.

In section 1 of the report, we describe the history of complaints and verifications. It shows that over the years the various Commissioners of Official Languages have thought repeatedly that the situation was improving and that these people would comply with the rules. They noted a few improvements, followed by setbacks. The overall conclusion the commissioner comes to in his special report is that the situation has not improved since 1969. And that is in fact what all of the commissioners observed over the years.

At tab 5 of the document we gave you, there is a report of the Standing Joint Committee on Official Languages, from February 2002. We provided this document so that you could have a look at the history that was written by the Standing Joint Committee on Official Languages at the time.

I think that if you read the history, which basically summarizes everything the various commissioners and committees did, you will see that that committee came to the same conclusion, which was that after several years there was still no concrete progress, despite promises that seemed to indicate that improvements would be made at a given point.

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

I now give the floor to Mr. Lefebvre.

• (1125)

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

I'd like to mention that we have been discussing this topic for more than a year. The first time the Air Canada representatives came to meet with us, we were disappointed. They came back afterwards to the committee, and I felt a more positive attitude. We thought that Air Canada had understood, and that it wanted to go forward and do certain things. However, now you are telling us that the results are worse than those of last year and the previous year, and so I have some concerns.

Last week, or two weeks ago, we heard from a representative of the Department of Transport. I must admit that I was somewhat perplexed and even a bit concerned, as I had had the impression that there had been an improvement. The Transport Canada representative more or less said that the department should perhaps eliminate the obligation of providing services in both languages contained in the act. It was not that explicit, but it was implied. That is how I understood things, and that is what concerns me.

That being said, Ms. Giguère, I know that you mentioned three possibilities in your statement. There were the recommendations in the report of the Commissioner of Official Languages. There is also the option of requiring that all Canadian airlines, or the ones that provide national service, offer services in both languages. Finally, there is the option of completely eliminating that obligation, as the Transport Canada representative implied. What is your reaction to these two options, either imposing the same obligation on all of the airlines, or backing down and eliminating the obligation?

Ms. Pascale Giguère: We are not in a position to provide opinions to you. As we indicated, we are here to provide a technical briefing to the committee and an opportunity for an in-depth look at what is in the commissioner's report. However, we can say that in this report we did include Air Canada's position very transparently. We know that Air Canada is asking that the linguistic obligations be

imposed across the board on all carriers. This is not an option put forward by the commissioner. In submitting the options that seemed the best to us, we also wanted to provide Air Canada's perspective, so that the report really contained all of the options submitted by everyone.

The reason why we gave you a document today is to inform you of Parliament's intent to maintain Air Canada's linguistic obligations over the years. In the table of contents, in the first section, the three first documents in the package show this. I think that we can say in a factual way that there has always been a commitment—that is what we see—on the part of Parliament to maintain Air Canada's linguistic obligations. The various governments that succeeded each other maintained that commitment.

Mr. Paul Lefebvre: They did maintain that position. I understand that.

You mentioned that in 2004, the government had put something in place with regard to Air Canada, or that it did something... I misunderstood what you said in your presentation. You said that something occurred in 2004. Could you explain in more detail what that was?

Ms. Pascale Giguère: In 2004, Air Canada withdrew from the protection of the Companies' Creditors Arrangement Act. It had placed itself under the protection of that act in 2003, but in 2004, it got itself out of that situation financially with the help of a corporate structure that was extremely different from the one it had prior to that. Air Canada would in future be managed by a holding company, and some of its subsidiaries would be completely removed from its structure and become independent legal entities.

This led to a sudden deterioration of the linguistic rights that were previously guaranteed by section 10 of the act governing Air Canada. The commissioners, Ms. Adam, and then Mr. Fraser, as soon as he was appointed, made representations to the government, asking it to intervene so as to maintain the obligations that were in effect previously. Successive governments tabled bills, but none of them were passed and they all died on the order paper.

• (1130)

Mr. Paul Lefebvre: You spoke of mechanisms we could put in place, such as compliance agreements, statutory damages, fines, and administrative monetary penalties.

You said that other departments or commissions used similar mechanisms. Could you provide more information on that? You said that other commissions could impose penalties if an organization did not respect its obligations. Is there anything else we should also review? There is a precedent, as this already exists within government.

Ms. Pascale Giguère: In the report we provide certain examples for each one of the options presented. We indicate whether other officers of Parliament have this power, and if it is already used in Air Canada's case, for instance as concerns the administrative monetary penalties. I could certainly review each one of these options, but it would be a bit long. Generally, regarding linguistic rights, there are certain examples. I spoke of the fines. That mechanism would require that we amend the law, of course, but it would be administered by the courts, by the Federal Court, which would have the power of imposing fines. Something similar is included in the Official Languages Act of Nunavut regarding language rights.

The Chair: Ms. Giguère, I'm sorry to interrupt you, but I must now give the floor to Mr. Choquette.

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

I am going to continue in the same vein.

The special report sets out four options: the compliance agreements, statutory damages, fines, and administrative monetary penalties. When I asked the Transport Canada representatives if they had begun to examine those options, they replied that they were waiting for our recommendations. I think they had also received the report. In fact, I hope they did. Be that as it may, they had not yet begun to look at this, which is unfortunate.

Among these four options, which seems the easiest to put in place? I'm not really knowledgeable in this area. Could one of these four options be implemented without the need for a bill? Could the four options be put in place through regulations? Do we need to amend an act to put in place one of these four options?

• (1135)

Ms. Pascale Giguère: All four options would necessitate an amendment to the Air Canada Public Participation Act. Some would require shorter amendments, whereas others would necessitate more detailed provisions.

For instance, the provisions of the enabling legislation would have to list the offences that could be sanctioned by fines. Generally, this type of provision not only lists the offences and the minimum and maximum fines, but also the mitigating or aggravating factors. For instance, if Air Canada were to commit the same offence several times, the amount of the fine could be increased.

Such a regime would not be extremely detailed in the legislation, but it would nevertheless necessitate that we adopt certain legislative provisions. With regard to the administrative monetary penalties, you would have to amend the enabling act to give the power...

Mr. François Choquette: Would we need to amend the Air Canada Public Participation Act, or simply change an act having to do with the commissioner?

Ms. Pascale Giguère: All of the legislative amendments we propose would involve the Air Canada Public Participation Act, for the simple reason that Air Canada is different from other federal institutions. Although it is subject to the Official Languages Act, it functions in a context where imperatives are of a commercial and financial nature. Other federal institutions do not necessarily have such systemic issues.

Mr. François Choquette: Would it be easier to opt for administrative monetary penalties than fines? Would it require fewer amendments or less clarification?

Ms. Pascale Giguère: I will try to be brief.

I would not say there is a difference in terms of ease. The two systems are very different from each other. One is administered by the Federal Court, as I mentioned. There are certain provisions that set the parameters, but the court has the discretion to determine the amount of the fine, depending on the circumstances.

Administrative monetary penalties are part of a regime administered by the institution that ensures compliance with the legislation. In this case, it is administered by the Office of the Commissioner of Official Languages. It is a regime that would still require more detailed provisions, whether they are included in the act or in a regulation or policy. So there could be a document accompanying the act that would cut down the legislative amendments. However, there would have to be another document detailing the scheme.

You still need to have some details since, by their very nature, administrative monetary penalties require a certain level of predictability. In this case, Air Canada should therefore have a good idea as to—

Mr. François Choquette: A minimum amount, for example?

Ms. Pascale Giguère: Yes. Air Canada should also be able to find out when it would be subject to administrative monetary penalties, what the amount would be, and so on.

So there has to be a fairly detailed scheme, but it does not necessarily have to be in the enabling legislation.

Mr. François Choquette: Okay.

I know Graham Fraser is not here today to explain it, but could you tell me why you chose to propose four options instead of presenting the one you prefer? Perhaps it's the mechanism of enforceable agreements, because you're suggesting it first.

Did you present the options in order of priority, thinking that you had to put the enforceable agreements first, because it would be a simpler and more effective solution? Do I understand the reason behind the order of the suggestions?

Ms. Pascale Giguère: No, there is no specific order in the way we presented them.

When we were preparing the special report, we thought about the options we wanted to present. We had the choice not to present any, but we thought it might help Parliament if the commissioner himself provided a few options. We evaluated a number of them and selected a few.

One of the reasons we chose these is that they are already in the toolbox of some officers of Parliament. So we're not asking you to look outside what has already been done with respect to officers of Parliament. It may also involve mechanisms that are already applicable to Air Canada, which would not be very different from what Air Canada already knows.

Mr. François Choquette: Is Air Canada already subject to the four options, or only to administrative monetary penalties?

Ms. Pascale Giguère: Air Canada is already subject to administrative monetary penalties.

Mr. François Choquette: Air Canada already is. Is that also the case for the other three options?

Ms. Pascale Giguère: No.

I said either that the options were in the toolbox of the officers of Parliament or that there were mechanisms to which Air Canada was subject. Air Canada is not subject to enforceable agreements.

Mr. François Choquette: So are the AMPs the only tool Air Canada is subject to? It is familiar with the tool, then.

Ms. Pascale Giguère: Absolutely.

Mr. François Choquette: As for the other options, they are used by other institutions.

Ms. Pascale Giguère: Yes, other institutions use the different options.

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

• (1140)

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

The Chair: Mr. Arseneault, the floor is yours.

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

I will be sharing my time with Mr. Picard.

My thanks to the witnesses for being here. It is very interesting and it is a fine document. This will be my “bible” for the weekend. I will try to come to grips with it and have it at my fingertips.

When we began the study on Air Canada, I was fairly impartial. I wanted to know all the ins and outs of Air Canada. However, I still remember the appearance of the president and CEO and his way of looking at things, which I would call cavalier and unconcerned about the seriousness of the complaints. That's the image that stayed with me.

I followed on the website the adventures of Mr. Thibodeau, one of the complainants challenged by Air Canada. He took up the challenge. I heard a lot of evidence. In addition, last week or the week before, Transport Canada officials basically told us that Air Canada was pressing hard to remove the requirement of compliance with the official languages. That was my understanding. I may have misunderstood, but frankly, my opinion is starting to be tainted by Air Canada's goodwill, or lack thereof, to fully comply with the Official Languages Act.

I do understand, however, that the number of complaints—as Air Canada put it—should be put in context: how many passengers are there and how many complaints are there? There are a lot of passengers, there are thousands and thousands of passengers a year, but the number of complaints is much lower.

In spite of that, I very much appreciate your suggestions for deterrents. Coercively, we are trying to force someone to honour their commitments, agreement or contract. These disincentives are truly interesting. There are four of them and a mix of the four would also be perfect.

I do not have an opinion on the order of precedence, but have you considered the possibility that, if administrative monetary penalties were imposed on Air Canada, the costs incurred by the complainants would be reimbursed? In any case, for complainants, it is complicated to complain. I was a lawyer, and justice is often very just, for those who can afford it.

To file a complaint from New Brunswick, Cape Breton, Vancouver or northern Saskatchewan, you have to go through the federal courts. That is a significant cost. It is probably included in the administrative monetary penalties.

Ms. Pascale Giguère: Of course, private companies always tend to pass on the operating costs to the customers. If Air Canada were subject to administrative monetary penalties, they may end up in the operating costs. We have no real control over that.

However, there would be an advantage. Private institutions are in fact often very aware of the financial risks they incur. When they have to make choices and to follow priorities, they often avoid doing things that involve financial costs. Lawyers who advise private companies often advise them, given two choices, not to make the choice that would have financial consequences.

Despite the fact that what you are saying might materialize, a mechanism such as administrative monetary penalties is effective because, ultimately, it has financial consequences. This usually discourages private institutions from doing something that would harm the profits they might otherwise be making.

Hiring bilingual staff can be expensive for Air Canada, but, if the company has a choice between hiring bilingual staff and paying administrative monetary penalties, it will probably choose the method that will cost the least.

This may discourage a federal or private institution from continuing to behave in a way that prevents it from saving money.

• (1145)

Mr. René Arseneault: Let me look at it from the complainant's point of view.

In my practice, even when people had the right to file a complaint against any organization, I would say that arbitrarily 70% did not because they did not have the energy or the means to pay even \$100 for small claim and \$1,500 in legal fees, for example.

The Chair: Mr. Arseneault, let me stop you there. You said you were sharing your time with Mr. Picard.

Mr. Picard, you have the floor for six minutes.

Mr. Michel Picard (Montarville, Lib.): Thank you.

Can we evaluate the 101 complaints against the total number of passengers? To give us an idea, do you have the number of complaints for the anglophone service and the francophone service?

Mr. Jean Marleau: Not really.

Mr. Michel Picard: I would like to talk about the approach of imposing damages or administrative monetary penalties. In business, it's all about the bottom line.

If we imposed fines on the company, what would be the consequences? Would it pass those costs on to customers?

Ms. Pascale Giguère: The objective is to ensure that there are fewer and fewer violations of the act and that it is less and less necessary to impose administrative monetary penalties or fines. It is a deterrent because there are consequences.

According to Air Canada's history of bilingual services and to what Commissioner Fraser says in his special report, the same complaints keep coming back year after year. The first commissioners of official languages reported the same complaints in their annual reports. In the last year of Commissioner Fraser's term, it was basically the same complaints.

Imposing fines may prevent such situations from going on for more than 25 years.

Mr. Michel Picard: In that case, might Air Canada increase the price of its tickets by \$5, in order to set up a fund to cover the costs of settling any potential complaints? Ultimately, the customers would pay.

Ms. Pascale Giguère: Air Canada is already subject to administrative monetary penalties through other entities, such as the Canadian Transportation Agency. We do not know whether that means additional costs on the ticket you buy, but Air Canada certainly has to remain competitive. To do so, it cannot keep increasing ticket prices.

Mr. Michel Picard: Since we are talking about incentives, there's something I would like to know.

The Official Languages Act seems to be one of the things that binds Air Canada to the government through its original agreement. Technically speaking, failure to do so could be a breach of contract. So the contract would lapse, which would jeopardize the very ownership of the company.

Ms. Pascale Giguère: Air Canada is not bound by a contractual relationship. In 1988, the government passed legislation to privatize Air Canada. Parliament was the one that decided to privatize Air Canada, so it has the power to take over the company. Again, Parliament is sovereign and it can pass any laws it wants. At the moment, since the relationship is not contractual, we cannot talk about a breach of contract.

Mr. Michel Picard: Other than money, are there any coercive measures that could be used in Air Canada's case?

Ms. Pascale Giguère: Air Canada is a private company that operates in the airline industry. In this world, profits have to be generated, but the profit margin is relatively small and difficult to obtain. Money is often what determines the priorities of companies that operate in this highly competitive world.

• (1150)

Mr. Michel Picard: Does the government have other tools through other departments or agencies? Am I going to have to call our provincial colleagues? For instance, could it strip Air Canada of routes, licenses, stripes on its planes, or anything else?

Ms. Pascale Giguère: Unfortunately, since the market has been deregulated and Air Canada is a private company, it would be difficult to take markets away from it. That would have been possible when it was a crown corporation.

From 1937 until the 1950s, the airline industry started to expand and the market was not very competitive. Air Canada took advantage

of the fact that the government had set aside some market shares and routes for them; it gave it priority in this area. Now that it is a private company, it is the market that dictates which routes are taken up by one company or another.

Mr. Michel Picard: Thank you.

That's all for me, Mr. Chair.

The Chair: Thank you very much.

Mr. Généreux, the floor is yours.

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

Good morning, ladies and gentlemen.

Ms. Giguère, you answered one of Mr. Arseneault's questions earlier and I really appreciated your honesty with respect to administrative monetary penalties.

Suppose that there are monetary penalties associated with the complaints, that each complaint gives rise to a penalty of \$100 and that there are an average of 100 complaints a year. It would cost the company \$10,000.

As you said earlier, Air Canada is a private company. So it must make profits to be able to reinvest in the business, maintain its competitive edge, and so on. Actually, the Air Canada folks could decide to pay the \$10,000 in question and stop hiring bilingual people. They would inevitably weigh both possibilities to compare the financial implications.

Once again, I appreciate your honesty in mentioning this possibility. It is important to understand this. It is in fact a private company.

Earlier, you talked about witnesses that the committee could hear.

Who are those witnesses and where are they from?

Ms. Pascale Giguère: I think we have distributed a list.

Mr. Bernard Généreux: Okay.

I imagine there are lawyers on that list.

Ms. Pascale Giguère: Yes.

Mr. Bernard Généreux: Does the list include government lawyers?

Ms. Pascale Giguère: We included the deputy head of the institution. I imagine that person would be accompanied by his legal counsel.

Mr. Bernard Généreux: Okay.

The Chair: Mr. Généreux, we'll be taking a look at the list later.

Mr. Bernard Généreux: Okay.

Mr. Marleau, you spoke about complaints that have been made against Air Canada since 1970. While the others were speaking, I amused myself by tallying up all the complaints that have been made between 1970 and 2017. There have been 6,518 complaints in that time. I may be a bit off, but that works out to about 133 complaints a year.

I just want to stress that we can say virtually anything about the numbers, from the perspective we're adopting. For the current year, the number of complaints is actually two and a half or three times higher than last year. However, I could also say that, although I'm not here to defend Air Canada, these figures are 30% lower than the average for the past 40 years.

In terms of the four options that the commissioner specified last year in his special report, I think it will be important to bring in additional witnesses. We are talking about complaints against Air Canada that have been filed since 1970. The number of complaints, the total number of complaints, and how Air Canada ranks relative to other institutions. We see that Air Canada is often first, second or third. It is rarely fourth or fifth.

Which institutions is Air Canada being compared to on this list?

Do you know which ones they are?

• (1155)

Mr. Jean Marleau: The situation changes from year to year, obviously. So there are different departments. In any event, the table clearly shows that the situation at Air Canada has remained problematic over the years. You talked about the number of complaints, but the fact is that Air Canada is still on that list. We also want to show you that our recommendations are not leading to any changes. Indeed, the same types of complaints return. In the history of the Office of the Commissioner, Air Canada has always been one of the top five on this list on which we record complaints. It is on the list again this year with a large number of complaints.

Mr. Bernard Généreux: Last week, we found out that French was not popular on Parliament Hill or in the National Capital Region. It was in a CBC report, if I'm not mistaken. An example was a situation where only one person was English-speaking, while the other 10 were francophone, but where everyone ended up speaking English. That is the kind of example we often hear about. That's my case, since my sister works in the public sector. She has experienced that situation and does still.

Are complaints from other departments and agencies included in this?

In terms of official languages, it goes without saying that complaints other than those about Air Canada are filed in Canada.

Based on what we have heard, French is always undermined in the National Capital Region.

Does this give rise to complaints from other agencies and departments?

Was that brought to your attention?

Mr. Jean Marleau: There are certainly complaints that come from elsewhere, from departments, as you say.

Usually, half of the complaints—I'm make a lot of generalizations because we have been receiving them for several years—involve the public service. This was the case in 2016-17. The others had to do with various parts of the act.

Mr. Bernard Généreux: Does this include Air Canada?

Mr. Jean Marleau: Yes. However, in terms of Air Canada, the complaints relate almost exclusively to service to the public.

Mr. Bernard Généreux: So it's related more to situations on airplanes, where people haven't necessarily been able to speak to employees in French, for example.

Mr. Jean Marleau: That's it.

Mr. Bernard Généreux: The fact that Air Canada is a private company in a regulated world obviously places it in competition with other carriers. I looked through the whole report earlier, and I recall that, several times, previous reports have proposed that all transportation companies be subject to official languages.

Obviously, no government has ever gone so far. Inevitably, once again, in the competitive environment that Air Canada is in, once it is subject to this legislation and the other carriers are not, it must pay related fees. Its representatives have explained it to us. There are costs associated with implementing the act. The other companies do not have to pay that money.

If we want more competition in Canada, if we want the rules to be fair for everyone, shouldn't all airlines be subject to the act?

Ms. Pascale Giguère: In the report, you can see that we refer to a report of the Senate committee that encourages the government to evaluate that possibility.

It's also important to go back to the beginning and ask why Air Canada is subject to the act and other airlines are not. Air Canada, of course, has a relationship with the Canadian government.

Mr. Bernard Généreux: Ms. Giguère, when Air Canada had to—

The Chair: Mr. Généreux, your time is up, but I will let you ask one last question.

Go ahead.

Mr. Bernard Généreux: It was in 1982, I believe, when Air Canada was privatized that it was subject to the act.

Ms. Pascale Giguère: It has been since 1969.

Mr. Bernard Généreux: It has been since 1969. So it was well before privatization. That information cancels out the questions I was going to ask.

The Chair: Thank you very much.

That brings the witnesses' appearance to an end.

Thank you very much for the additional insight you've given us on Air Canada. Again, on behalf of the committee members, I thank you for being here this morning.

We will suspend the meeting for a few minutes.

• (1155)

_____ (Pause) _____

• (1205)

The Chair: We are resuming the meeting.

Mr. Choquette, you have the floor.

Mr. François Choquette: Mr. Chair, I will withdraw the motion we debated last time because it no longer applies.

The Chair: It is obsolete.

Mr. François Choquette: Yes, it is obsolete. We were asking to meet with witnesses about Ms. Meilleur's abilities.

However, I have two more very short motions that I would like us to take a look at today.

The first reads as follows:

That the Committee recommend to the Prime Minister that he meet with representatives of the Fédération des communautés francophones et acadienne du Canada and the Quebec Community Groups Network in order to include them in the appointment process for the next Commissioner of Official Languages and that the Chair report the same to the House.

The second motion reads as follows:

That the Committee recommend to the Prime Minister that he comply with the Official Languages Act, which requires genuine consultation of the leaders of the opposition parties, which means more than simply informing them of the government's choice in a letter, and that the Chair report the same to the House.

I don't want us to go through the whole debate again, because we've already talked a lot about it. As you mentioned, we would also like to make progress on the special report on Air Canada and draft our own report, a committee report, on Air Canada. This whole controversy lasted five weeks and, fortunately, it is now a thing of the past. I know that Mr. Samson sometimes jokes that he now wants to apply for the position of commissioner.

However, the idea is simply to ensure that the committee, now that the controversy is over, does not repeat the same experience. So what can we agree on? We can't agree on everything, but can we agree, as a committee, on two things? I think so, and that's what I'm suggesting to you.

• (1210)

Mr. Bernard Généreux: We could give the position to a Conservative Party donor.

Some hon. members: Oh, oh!

Mr. François Choquette: We must include the QCGN and the FCFA in the process. They must be consulted, it doesn't matter how. Do we just want to know what criteria they'd like to see used, or something else? It doesn't matter, provided they are included in the consultation. Besides, that's what they requested. They are still currently asking to meet with the Prime Minister. There should also be consultation with the leaders of the recognized opposition parties to avoid problems like those we've had.

I think we can reach a consensus on these two motions. I am, of course, prepared to amend them, if necessary, based on my colleagues' comments.

The Chair: Given that we have just seen these two motions, I propose that we discuss them next Tuesday, during our morning session, because I had planned something else for today.

Do you agree, Mr. Choquette?

Mr. François Choquette: Mr. Chair, I will let the other members of the committee speak.

The Chair: Mrs. Boucher, you have the floor.

Mrs. Sylvie Boucher: I disagree, Mr. Chair, because the motions are in order. We are doing committee work today. These motions are still in order.

The Chair: You're right; they are in order.

Mrs. Sylvie Boucher: I think we could talk about them today, and it would be done. We could then move on to something else next Tuesday.

The Chair: Are there any other comments?

Go ahead, Mr. Vandal.

Mr. Dan Vandal (Saint Boniface—Saint Vital, Lib.): According to the information I have, the FCFA has already made a request to meet with the Prime Minister; perhaps its members have already met with him, I'm not sure.

Mrs. Sylvie Boucher: No.

The Chair: Please, Mrs. Boucher.

Mrs. Sylvie Boucher: Don't they read the newspapers?

Mr. Dan Vandal: I think it would be nice if they met, and I think that, even without this motion, they will meet to discuss the process.

On the second motion on the consultation, again, I believe that the Prime Minister knows the legislation on appointing a Commissioner of Official Languages. So I don't think we need a motion like this one.

The Chair: We should dispose of one motion at a time.

Mr. Lefebvre, you have the floor.

Mr. Paul Lefebvre: Mr. Chair, we just received the motion. I propose that we discuss it on Tuesday, because there are other things on the agenda today.

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

Mr. Michel Picard: I'm only passing through, but I will convey the message to Ms. Lapointe.

Personally, I oppose the first motion concerning the organizations because I think Cabinet is already available. I have visited a few committees, and the kind of recommendation where a group meets with the Prime Minister could turn his office into a human resources department, and I don't think that's the intent. I think his office is already fairly accessible and open enough to receive members of organizations without having to make a recommendation about it.

As for the second recommendation on the consultation, I think it's in everyone's interest to speak and discuss. However, the word "genuine" is subjective and will be difficult to interpret. It will make interpreting the motion difficult. So I oppose both motions.

The Chair: Thank you.

Do you have any other comments?

If there are no other comments, I think we could discuss this informally outside this forum and put it on the agenda for Tuesday morning, so that we can move on to other topics now. So on Tuesday morning, the first item on the agenda will be the two motions put forward by Mr. Choquette.

I'm going to suspend for one minute before we go in camera.

[Proceedings continue in camera.]

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