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## Standing Committee on Official Languages

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EVIDENCE

**Thursday, September 28, 2017**

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**Chair**

**The Honourable Denis Paradis**



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Thursday, September 28, 2017

• (1545)

[*Translation*]

**The Chair (Hon. Denis Paradis (Brome—Missisquoi, Lib.)):** Pursuant to Standing Order 108(3), we are beginning our study of Air Canada's implementation of the Official Languages Act, but with a few minutes' delay.

We are pleased to have Michel Thibodeau with us today.

Welcome, Mr. Thibodeau. As usual, we will allow you 10 minutes or so to tell us what you have to say about your experience with Air Canada. Then we will move on to a period of questions and comments from committee members. Please go ahead.

**Mr. Michel Thibodeau (As an Individual):** Thank you, Mr. Chair.

Mr. Chairman, honorable members of the committee, good afternoon.

Thank you for the opportunity to share my experience with you on defending my language rights with Air Canada for several years. I hope that sharing my experience will help you as you study the special report of the Commissioner of Official Languages regarding Air Canada.

I have been defending my language rights against Air Canada for 17 years. The first violation of my rights was in August 2000 when I was on a Montreal-Ottawa flight. The flight attendant did not speak French and when I claimed my right to be served in French she decided to call the police who came to intercept me on board the plane. I could not believe my eyes. The rest is well known: multiple court cases over the years for multiple violations of my language rights through the Federal Court, the Ontario Superior Court, the Federal Court of Appeal and the Supreme Court of Canada.

The legal battles have been long and painful over the years. Air Canada has always wanted to recognize as little as possible and constantly sought to minimize its obligations. I remember the time when Air Canada was arguing that they had an obligation of means and not of result, that the scope of the word "shall" was not the same as "duty to ensure" and that they could not offer a bilingual service because of collective agreements. Fortunately, the courts have brought Air Canada back to order on numerous occasions.

Unfortunately, the problems persist. As you know, multiple complaints of language rights violations are filed annually against Air Canada by the Canadian public. I can tell you that as an individual Air Canada continues to violate my language rights year

after year. As recently as last week I was on a Wabush-Ottawa flight and when I got to the Air Canada desk there was only one employee and she did not speak a word of French while Air Canada has the obligation to provide a bilingual service at that location.

How is it that in 2017 Air Canada continues to violate the language rights of francophone passengers while it has been subject to the Official Languages Act since 1969? The answer is probably very simple: there is no mechanism in place to hurt Air Canada enough to change things. I have tried to make a difference over the years with multiple court actions to defend my language rights, but the violations continue.

One of the positive aspects of all these legal battles is that it is now easier to appear before a Federal Court judge and to obtain redress when language rights are violated. The courts—Federal Court, Federal Court of Appeal and Supreme Court of Canada—agreed that a fair and proper remedy is a letter of apology and \$1,500 per violation in many cases of language rights violations. Examples of such violations are: lack of service in French, announcement of a pilot in English that has not been translated by the flight attendant, unilingual English announcement at the airport for baggage.

This is not to say that it is easy to enforce one's linguistic rights and obtain redress. I can tell you that if my wife had to go to the Federal Court and go before a judge to explain the situation and get compensation, it would never happen. When she filed a lawsuit against Air Canada to enforce her language rights, it was because I supported her. I was there to prepare the documents and to appear before the judge. If that had not been the case, Air Canada would have violated her language rights and there would have been no consequence. That is what happens in the vast majority of cases. You just have to look at who, other than my wife and I, have filed lawsuits against Air Canada for compensation for violations of their language rights.

Even I, an ardent advocate of language rights who knows how to come before a judge for redress, now chooses out-of-court settlements because it's less time-consuming, less painful, less stressful. Now that the jurisprudence has been established and the scale is well known, being a letter of apology and \$1,500 per violation of my linguistic rights, I take the phone and ask those who violated my rights if they want to settle out of court instead of going through the whole judicial process. In a sense, it's a win-win solution because if we settle out of court I get redress for the violation of my language rights and the entity that violated my rights does not have to spend time and money to mount a legal defence that would cost them several thousand dollars. I am not saying that in all cases the result is a letter of apology and \$1,500 per violation. The agreements are confidential and I have no right to disclose the contents. What I am saying is that the jurisprudence is now well established and that the scale before the Court is a letter of apology and \$1,500 per violation. The only negative side is that it is not made public and therefore the social denunciation that is normally an important element of the reparation is not there.

● (1550)

So, when the Commissioner of Official Languages suggests that there should be a system of statutory damages and/or fines to facilitate the redress process when there is a breach of language rights, I agree. I think it would simplify things and more people would probably be ready to protect their language rights. It should be ensured that the quantum is in line with what the courts have already established, namely \$1,500 per violation. If a much lower quantum was chosen arbitrarily, it would be devastating for the defence of language rights and a marked decline from what has already been established in the case law.

Nor should the power now given to judges be reduced, power by which they can make a just and appropriate remedy according to the circumstances. It is a very great restorative power, the greatest in law, and it would be a grave error to limit or repeal this remedial power presently given to the judges. The idea would be to better frame the repair process to make it simpler, more effective and more accessible to "ordinary" people, like my wife, who do not have the means or the desire to go through the judicial system to obtain reparation when their language rights are violated.

A word now on the whole issue of international flights and the end of the protection of language rights guaranteed by the Canadian Charter of Rights and Freedoms.

The Official Languages Act has been amputated since the Montreal Convention and the judgments rendered by certain Canadian courts in recent years, including the Supreme Court of Canada. This is an unacceptable situation that the legislator has never wanted and that must be corrected immediately by specifying the scope of the Official Languages Act and its precedence over the Montreal Convention.

A few years ago, my wife and I traveled internationally with Air Canada. The airline has admitted to violating our language rights on several occasions during these flights. We went to the Supreme Court to defend our language rights. Unfortunately, five of the seven Supreme Court justices ruled that Canadian passengers were not entitled to any damages for the violation of their language rights on

Air Canada's international flights because of the Montreal Convention.

The Official Languages Act is clear, however, that the Federal Court judge can decide the remedy that is "just and proper" for breaches of language rights, including damages. Yet the Supreme Court has ruled that, in the presence of the Montreal Convention and the Official Languages Act, the Montreal Convention prevails. All of a sudden, they cut the Official Languages Act and withdrew the power to award damages for international flights from the Federal Court judge. This means that we had to give back to Air Canada the \$4,500 awarded by the Federal Court for the violation our language rights on international flights, three violations at \$1,500 per violation equaling \$4,500.

Two of the Supreme Court justices disagreed with the fact that the Montreal Convention would be more important than the Official Languages Act. They said this in the judgment of the Supreme Court in 2014:

...Article 29 of the *Montreal Convention* should be interpreted in a way that is respectful of the protections given to fundamental rights, including language rights, in domestic legislation... There is no evidence in the Parliamentary record or the legislative history of the *Convention* to suggest that Canada, as a state party, intended to extinguish domestic language rights protection by ratifying or implementing the *Montreal Convention*. Given the significance of the rights protected by the *Official Languages Act* and their constitutional and historic antecedents, the *Montreal Convention* ought to be interpreted in a way that respects Canada's express commitment to these fundamental rights, rather than as reflecting an intention to subvert them.

...

[171] Just as Parliament is not presumed to legislate in breach of a treaty, it should not be presumed to implement treaties that extinguish fundamental rights protected by domestic legislation.

...

[177] Consequently, the *Montreal Convention* does not bar a damage award for breach of language rights during international carriage by air.

Like the Commissioner of Official Languages and the two judges of the Supreme Court of Canada, I also believe that the Official Languages Act must take precedence over the Montreal Convention and that damages must be part of the arsenal of the Federal Court judge to protect the language rights of Canadians. Air Canada must be accountable for violating our language rights on international flights.

Thank you for your attention.

With that, I am ready to answer your questions.

● (1555)

**The Chair:** Thank you very much, Mr. Thibodeau.

We will begin the period of questions and comments with Mr. Clarke.

Mr. Clarke, go ahead, please.

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

Thank you, Mr. Thibodeau, for agreeing to come here at the last minute. Thank you as well for the courage you have shown as a Canadian in addressing such a major issue and devoting your energy to it for many years. Your wife has also contributed to that effort. We have laws in Canada, and it happens that some of them are not complied with. We therefore need individuals such as you to take the initiative in these types of situations. You are simply rendering a service to society.

Since official language issues are new to me, I am in no way an expert. Pardon me then if my questions seem somewhat amateurish.

How do you view the fact that Air Canada is the only private sector company subject to the Official Languages Act?

Do you feel that every service must be bilingual?

What are your relations with companies other than Air Canada?

I do not know whether my question makes sense.

**Mr. Michel Thibodeau:** Thank you for your question. I am familiar with the background to the Air Canada file and know it was previously a crown corporation. When the federal government decided to privatize it, Air Canada was already required to provide its services in both official languages. The government said that it was privatizing it but that it had to continue serving Canadians in both official languages. This matter dates back to then. I believe Air Canada must absolutely continue serving its clientele in both official languages. As to whether I would be in favour of WestJet, for example, being subject to the same regulations, I would say that would be a good sign.

I think that, for us to live as Canadians, as citizens of a country with two official languages, we must take proactive measures. I would welcome that kind of proactive measure being implemented, provided it was done over a five-year period to avoid unduly penalizing commercial companies. Companies want a certain amount of time in which to put measures in place. Transitory measures could be implemented. Whatever the case may be, the idea would be to ensure that the air carrier system became fully bilingual in 5 to 10 years. I would entirely agree with that.

I have also heard certain individuals say—and that would have been hearsay in other cases—that Air Canada should no longer have to provide its services in both official languages. I think that would be utterly absurd and unacceptable. I sincerely think that. Since I no longer work at the House of Commons, I may be somewhat partisan. I nevertheless think that a government that allowed that would be shooting itself in the foot. Canadians want to be served in both official languages. The idea is not to regress by eliminating service in both languages.

I have no objection to this bilingualism measure being applied to all airlines.

• (1600)

**Mr. Alupa Clarke:** Of course, you are familiar with all the arguments and difficulties outlined by Air Canada, such as changes that must be made to airport entry doors and situations in which a bilingual employee is sick. I think the only real solution for Air Canada to meet its obligations under the act would be for all its employees, without exception, to be bilingual.

What you think of that?

**Mr. Michel Thibodeau:** On that point, I think there is a difference between institutional bilingualism and individual bilingualism. In the case of institutional bilingualism, the institution itself must provide services in both official languages. However, I think it would be difficult and perhaps socially unacceptable to require that all Air Canada employees be bilingual.

I have no objection to it being the institution that provides services in both official languages. Consider the example of my trip to Wabush last week. When I arrived, I saw that the employee at the counter was a unilingual anglophone. I asked her to serve me in French. She looked at me for a moment and then agreed to my request. She went to find someone who was bilingual. A little later, after going through security, I realized the same unilingual anglophone employee was checking passports before boarding. There was a bilingual employee somewhere. I was a bit angry, but I have learned over the years that, in these kinds of cases, when you are not served in French, the best thing is to take notes and file a complaint with the Office of the Commissioner of Official Languages.

I am not sure the bilingual person who was sent to me was part of Air Canada's staff, but I am inclined to believe so since that individual was standing behind the Air Canada counter. In that kind of situation, Air Canada could probably have assigned that bilingual person to both counter service and checking boarding passes. I could not tell you why that was not done. Without closely examining matter, I would say that bilingual capacity was there.

I do not understand why, in 2017, unilingual employees are assigned to services that should be bilingual. Earlier I spoke with Mr. Généreux. I think the time has come to slap Air Canada on the wrist.

**Mr. Alupa Clarke:** Pardon me, sir, but is institutional bilingualism sustainable in a context in which there are 45 million passengers?

**Mr. Michel Thibodeau:** Service is provided in both official languages in many instances, such as boarding announcements and those kinds of things. It can be done. Are there a lot of breaches? Yes.

Should we give up because it is too difficult? The answer is no. I am sure that, if Air Canada were a crown corporation managed by the government and required under the act to provide services in both official languages, the federal government would take measures to ensure it did so.

**Mr. Alupa Clarke:** You do not think there is a technical problem, do you?

**Mr. Michel Thibodeau:** I do not think so.

**Mr. Alupa Clarke:** Thank you.

**The Chair:** Thank you very much.

Now we will move on to the next speaker.

Mr. Arseneault, go ahead, please.

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

Mr. Thibodeau, thank you for being here once again. You agreed to come and see us at the last minute.

I would like to add to what my colleague Mr. Clarke said before asking his questions. I congratulate you for being so determined and for helping to shape the law with such limited resources. You may initially have had the help of lawyers to guide you, but then you became an expert in the matter, even more so than the lawyers.

**Mr. Michel Thibodeau:** At first, I did not even know where the Federal Court was.

**Mr. René Arseneault:** I am a lawyer by profession and I admit I am impressed.

**Mr. Bernard Généreux (Montmagny—L'Islet—Kamouraska—Rivière-du-Loup, CPC):** I do not know where the Federal Court is either.

**Some hon. members:** Oh, oh!

**Mr. René Arseneault:** I know exactly what jungle you were thrown into, and you have made your way through it several times. Now you do it automatically and out of patriotism for your country and its two founding peoples. That is how I see it, and I congratulate you. All Canadians must have access to Air Canada's services in both official languages for the reasons you have explained. We know what those reasons are and we know why this applies solely to Air Canada. Whatever the case may be, I congratulate you.

Do these failures on Air Canada's part to provide counter or on-board service occur more on domestic than on international flights?

Tell us about your personal experience.

**Mr. Michel Thibodeau:** I have observed breaches on both domestic and international flights. There seemed to be more breaches when our flight went through Toronto. I do not have any supporting evidence, but it seems to me it is more difficult in Toronto. It is more difficult in Wabush because it is located in Newfoundland and Labrador. I noted there were fewer problems when we stopped over in Montreal. In my humble experience, breaches seem to occur when aircraft fly in anglophone areas. That is where where it gets harder to obtain services in French.

**Mr. René Arseneault:** Did the problems you detected occur more at airport terminal counters or aboard aircraft?

**Mr. Michel Thibodeau:** Based on my experience over the past 17 years, I would say there are problems in both places. Here is a specific example.

Last week I filed a complaint that I had also filed previously. On-board emergency exits are indicated by signs that read only "exit". That makes no sense to me. Air Canada has been subject to the act since 1969. Why, in 2017, should I as a French Canadian citizen see an emergency exit that is designated solely by the word "exit"? We know perfectly well that, if that were the case here in a federal building, it would be illegal. The same should be true for Air Canada.

People do not bother to complain because they find the process too difficult. They do not want to advance the law. It is true that that is difficult. When I travel with my wife, sometimes she looks at me and says, "Oh, not again."

**Mr. René Arseneault:** She tells you, "Calm down, calm down."

• (1605)

**Mr. Michel Thibodeau:** She knows I am right. We are right.

**Mr. René Arseneault:** I understand.

**Mr. Michel Thibodeau:** The fact remains that it is difficult to complain. It is so difficult that I challenge you to look at the case law and see who else but my wife and I has filed suit against Air Canada. Why does nobody do it? Because it is too difficult.

**Mr. René Arseneault:** That leads me to my next question.

The word "exit" comes from Latin. Ultimately, one could...but I do not want to discuss that word as much as the service that is provided verbally concerning an emergency measure, for example, an answer to a question, or an explanation regarding emergency exits.

There is service that is provided aboard an aircraft and service provided in an airport terminal. Are the breaches you have observed the same?

**Mr. Michel Thibodeau:** Based on what I have seen, they are virtually the same. However, as I said, I do not have any scientific data to prove that.

**Mr. René Arseneault:** This is based on your experience.

**Mr. Michel Thibodeau:** Yes.

**Mr. René Arseneault:** Few complaints go to trial, and that fact is easily explained as a result of the costs and stress involved. People give up the fight against a big machine, and I understand why that is a reason.

Given your expertise in the matter, have you heard of any other people like you who have experienced this kind of frustration with Air Canada?

**Mr. Michel Thibodeau:** Yes, people have called me at home, since I have been through it all, to tell me that Air Canada has violated their rights and to ask me whether I can help them. In fact, I have helped people by telling them what process they should follow and what they should do. So people have contacted me. Some have sent emails of encouragement, saying that the same thing had happened to them. Yes, I have heard from people.

It would be easy to conduct a study. For example, consider the way my rights were violated last week. Without seeing the figures, I am virtually certain that few people besides me will file a complaint. And yet there was a unilingual anglophone employee at the counter, whereas this region is designated bilingual for service purposes. I heard francophones talking in the waiting line; I would be curious to see how many of them will file complaints. Air Canada often says it receives only 100 or so complaints out of several millions of flights. People do not complain; I see that. This unilingual anglophone Air Canada employee served several francophones that day. So why are there no more complaints? Because it is difficult, because people get fed up, and so on.

**Mr. René Arseneault:** Do you think there are far more pending or potential complaints than the number Air Canada reports to us?

**Mr. Michel Thibodeau:** I think we may never see any complaints, but there are a lot more violations than complaints. That is for sure.

**Mr. René Arseneault:** I am out of time, but I have so many questions—

**The Chair:** Thank you very much, Mr. Thibodeau.

**Mr. René Arseneault:** That is it?

**The Chair:** Yes, that is it. It goes quickly.

Mr. Choquette, go ahead, please.

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

Thank you for being here, Mr. Thibodeau. I already know something of your situation. When Graham Fraser's special report on Air Canada arrived, I thought we should do something immediately, but we took the time to conduct the study, meet with Air Canada offices, see what could be done, meet with the unions, and so on.

I was listening to you earlier, and you actually described how I react when I realize my language rights are not being respected. I say to myself that I do not have the time to file a complaint and that I have other things to do. So I often disregard it, and I am convinced that many other citizens do the same thing. Consequently, we are not getting a true picture of the situation when Air Canada says very few complaints are filed.

• (1610)

**Mr. Michel Thibodeau:** No.

**Mr. François Choquette:** That being said, how many times are language rights violated? That is much more important, and I think we should get a clear picture of that situation.

Now what interests me is what has resulted from everything you have done. You mentioned that you had won on the domestic flights issue and that Air Canada had to pay you \$1,500, or rather that, consistent with the case law, \$1,500 is awarded in every instance in which a language rights complaint is filed.

I believe you have already read the special report on Air Canada. Is that correct?

**Mr. Michel Thibodeau:** Yes.

**Mr. François Choquette:** It contains four recommendations: enforceable agreements, statutory damages, fines and administrative monetary penalties. Based on your experience, what would be the best way to exercise a positive influence? Even if it is negative, the aim is to ensure that language rights are respected to a greater degree.

What do you think is the best solution?

**Mr. Michel Thibodeau:** Thank you for your question.

I think it has to be a mixture or combination of what the Commissioner of Official Languages proposed. With respect to enforceable agreements, I know perfectly well there have been agreements over the years between Air Canada and the Commissioner of Official Languages that have not always been complied with. That is more the Commissioner's responsibility, but I would consider that a good option.

The Commissioner said he could not institute proceedings against Air Canada as long as an enforceable agreement was in effect. I think

that, if one is in place, it should ensure that individuals can nevertheless file suit against Air Canada. I would not like to see my language rights violated while a one-and-a-half-year agreement was in place with Air Canada.

I do not know whether you know, but when the Commissioner submits his investigation report, a citizen has 60 days to file suit. The Commissioner may not be able to do so if that is put in place, but individuals whose language rights are violated might be able to do so. I think it is also important that something be done about statutory damages and fines.

To clarify what you said, the various judicial levels have held that \$1,500 per violation is just and appropriate remedy in the case, for example, of an announcement made in only one official language. This is not something automatic. That must be clearly understood. You will not be awarded \$1,500 per violation and a letter of apology merely for appearing in court, but that is a scale. You know the law: judges must rely on what has previously been settled in case law. We have seen it at three levels: the Federal Court, the Court of Appeal and the Supreme Court. They have held that the sum of \$1,500 per violation is appropriate.

Since individuals do not appear in court to fight—that does not happen; I have been doing it for 17 years and I am the only one—your proposal to Parliament should suggest a parallel mechanism that makes it more automatic or easier. In that way, people may feel they are potentially entitled to \$1,500 and a letter of apology if an institution violates their language rights. For the moment, they may file a complaint, and Air Canada may eventually stop violating Canadians' language rights.

This is 2017, the Official Languages Act has been in existence since 1969, and, last week, Air Canada was still violating my language rights. If we continue on the same path and no one goes to court, nothing will change and the situation will be the same in 5, 10, 15 and 20 years.

I think that you, as a committee, can suggest much more obtainable penalties for passengers. Things will change because that will hit them in the wallet.

• (1615)

**Mr. François Choquette:** Thank you very much.

What do you recommend regarding the Montreal Convention?

The Supreme Court has ruled that, in its view, the Montreal Convention takes precedence over the Official Languages Act. What would be your recommendation on that subject?

**Mr. Michel Thibodeau:** I think it is quite easy. Former member Stéphane Dion introduced a very simple bill, which unfortunately died on the *Order Paper*, providing that the Montreal Convention should have no effect on the Official Languages Act. I believe the government should table a similar bill.

I do not know whether you understand what that interpretation means. Consider this example. Two passengers take the same Ottawa-Toronto flight. One of them deplanes in Toronto, while the other continues on to Paris. Air Canada is required to provide service in both official languages and it knows it. There are no francophone flight attendants on the Ottawa-Toronto flight. The language rights of those two individuals have thus been violated. The one who deplanes in Toronto is entitled to file suit and potentially to be awarded \$1,500. However, the one who continues on to Paris is now on an international flight. We have the same Official Languages Act, the same violations, and the same lack of service in French, but the court will find that, if that person had deplaned in Toronto, she might have received an award, but since she continued on to Paris, she is entitled to no compensation. That is absurd.

With all due respect, when the Supreme Court held that it was taking nothing away from the Official Languages Act in deciding as it did, it nevertheless took away the \$4,500 that we had received and deprived all Canadians who travel internationally of the possibility of compensation.

The law is very clear. As a lawyer, you know that. Where there are no restorative measures, the law is dead. At present, the law is dead at the international level.

The court may order Air Canada to write a letter of apology, but do you not think its officers will laugh at that? They will take a standard document, add a name and address, affix a stamp, and, voilà, case closed. Internationally, the law is dead.

I am saying that Parliament must act, and quickly. It must tell the legal system that the Official Languages Act is more important than the Montreal Convention.

**Mr. François Choquette:** Thank you.

**The Chair:** Now we will hear from Paul Lefebvre.

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

I also want to thank Mr. Thibodeau for being here and for continuing this struggle for the past 17 years. I tip my hat to him because that takes energy and courage. I myself am a lawyer, and I know that the effort involved in constantly bringing lawsuits puts enormous stress on one's family. You have to want to fight constantly.

I would like to ask some questions about the process. You just told us you filed a complaint last week. How many complaints have you filed in total?

**Mr. Michel Thibodeau:** You have to distinguish between those concerning Air Canada and the others. I can tell you—

**Mr. Paul Lefebvre:** The report the committee is studying is the one on Air Canada.

**Mr. Michel Thibodeau:** Yes.

**Mr. Paul Lefebvre:** We are also studying the Official Languages Act as it pertains to Air Canada.

**Mr. Michel Thibodeau:** I am not sure how many complaints I have filed concerning Air Canada. It may be 20 or 25. I would have to check. With the years—

**Mr. Paul Lefebvre:** All right.

I want to talk about the complaint process. When you do business with Air Canada and you observe that your language rights have been violated, what approach do you take?

**Mr. Michel Thibodeau:** It has changed over the years.

**Mr. Paul Lefebvre:** I see.

**Mr. Michel Thibodeau:** I was enraged the first time the police were called.

Although I did not have an attack of air rage and stayed seated, I was nevertheless frustrated. And we tried to point that out to the judges.

I act differently today. I am still frustrated, but I show it less.

**Mr. Paul Lefebvre:** I see.

**Mr. Michel Thibodeau:** In fact, I may be more frustrated than previously because my language rights have been denied for 17 years. Today, I take notes to remind myself of the incident and the date of the incident, for example. I also take pictures. Then I file a complaint with the Commissioner of Official Languages. It takes months before my application is processed.

**Mr. Paul Lefebvre:** I see.

**Mr. Michel Thibodeau:** In recent months, I have called them when I received the report.

**Mr. Paul Lefebvre:** You call the Commissioner of Official Languages?

**Mr. Michel Thibodeau:** No, I call Air Canada.

**Mr. Paul Lefebvre:** I understand.

**Mr. Michel Thibodeau:** That is what I did recently.

Here is another specific example concerning Air Canada Cargo. I took something to Ottawa airport and noticed that the signs in the parking lot were in English only. In addition, the exit doors inside the airport were marked “exit”. Since that bothered me, I filed a complaint. The Commissioner of Official Languages said I was right, and Air Canada said I was right. I do not usually complain for no reason. I would even go so far as to say that my complaints have been founded in 99% of cases.

**Mr. Paul Lefebvre:** I see.

**Mr. Michel Thibodeau:** Air Canada acknowledged that the signs should have been bilingual. I called Air Canada to see if there was a way to resolve the matter amicably, but I have not yet received an answer. I am waiting for Air Canada's call. That is what is happening for the moment.

● (1620)

**Mr. Paul Lefebvre:** The committee has heard from Air Canada management representatives on two occasions. If memory serves me, they told us they had an internal official languages complaints process. So there is an internal complaints system at Air Canada.

Have you had—

**Mr. Michel Thibodeau:** Personally, I have always done business with the Commissioner of Official Languages.

**Mr. Paul Lefebvre:** Directly?



**Mr. Michel Thibodeau:** I am very well served by highly competent people who know the files. According to the Official Languages Act, that is how you should act.

The legal trigger that enables me to appear before the Federal Court is the complaint I file with the Commissioner. Under the Official Languages Act, any person, any complainant who files a complaint may subsequently go before the courts. If I filed a complaint through another organization, I would probably not be entitled to do so.

I do not know whether you are aware of this, but the Commissioner of Official Languages has two ways of solving these problems. The first is an informal system. In other words, he tries to solve the problem with the person concerned. The second is the formal investigation system, through which he determines whether the complaint is founded.

Personally, I always opt for the formal process because I do not want to have to debate with a judge as to whether one of my rights has been violated. I ask the Commissioner for a note stating that my right has been violated. Then I can file suit. When I go to court, it is much easier than having to file evidence. Imagine the situation if I had to do that.

**Mr. Paul Lefebvre:** I see.

**Mr. Michel Thibodeau:** I do not think that is a good way to do it.

**Mr. Paul Lefebvre:** Then the burden is entirely on you.

**Mr. Michel Thibodeau:** Yes.

The process is very simple: file a complaint with the Commissioner of Official Languages, wait for the report stating that the complaint is founded, and call Air Canada. If Air Canada does not respond to my complaint, I file suit.

**Mr. Paul Lefebvre:** You suggested that a parallel system of automatic measures be put in place. The amount of the fine is already established. The Commissioner of Official languages may confirm or not confirm that a person's language rights have been violated.

You are very much engaged in the Air Canada file, but I would like to know whether other parallel institutions have these kinds of automatic measures.

**Mr. Michel Thibodeau:** I do not know because I have not had a chance to look into the matter. As you said, I am an official languages expert because I have previously experienced these kinds of situations. Apart from that, I do not know.

However, I can tell you one thing. It would be a lot easier if there were a system—it would be up to you to decide what system—in which the Commissioner of Official Languages, who determines whether a Canadian's language rights have been violated, would tell the complainant that he is entitled to \$1,500. That would be a lot easier. We would need fewer judges and that would unburden the judicial system. I am not sure the majority of complainants would follow through to the end of the process. All I know is that doing nothing is a serious matter. Since no one complains, they continue to violate our rights and have done so since 1969. I think we have to find other solutions.

**Mr. Paul Lefebvre:** Thank you very much.

**The Chair:** Mr. Picard, go ahead, please.

**Mr. Michel Picard (Montarville, Lib.):** I am going to give my time to Mr. Arseneault.

**The Chair:** Mr. Arseneault, you have the floor.

**Mr. René Arseneault:** Thank you, Mr. Chair, and thanks to my colleague.

Mr. Thibodeau, earlier in response to my colleague Mr. Lefebvre, you said that the remedial process should be better framed. In fact, that is a simple way of saying that the complaints process should be made easier for litigants. What do you think would be the ideal process?

**Mr. Michel Thibodeau:** Once the Commissioner of Official Languages has concluded that the complaint is valid, that rights have been violated—

**Mr. René Arseneault:** Pardon me for interrupting you. So you should start by filing a complaint, should you not?

**Mr. Michel Thibodeau:** Yes, and it is simple. It could be a photograph showing an English-only sign. There is nothing complicated about it. The Office of the Commissioner of Official Languages does not ask you to complete a long, complicated form. It can be done by sending an email stating that rights have been violated. The people at the Commissioner's office respond requesting details, as they just did in the Wabush case. Once that is done, and it is very simple, once the report is filed, and the Commissioner confirms that rights have been violated, I would personally consider it a good move for the Commissioner to impose fines or damages.

Whether the decision comes from a Federal Court judge or the Commissioner of Official Languages, it does not make much of a difference for the person whose rights have been violated. I want it acknowledged that my rights have been violated, I want it to stop, and I want a letter of apology. Then, whether the decision comes from the Commissioner, who has the power to slap Air Canada on the wrist and tell it that it has re-offended, or from the court—

I would be in favour of that power being given to the Commissioner. In fact, that would be one of the solutions. I am not saying it is the only one, but it would be a simple process.

• (1625)

**Mr. René Arseneault:** When you filed your first complaint 17 years ago, did you deal directly with the Office of the Commissioner of Official Languages?

**Mr. Michel Thibodeau:** Yes, and the news was also reported in the press.

I phoned *Le Droit* to tell them I had asked to be served in French and the police had been sent after me. Imagine... The journalist arrived at my home shortly thereafter.

I proceeded by email every time. There was no form to complete and the process was very simple. I explained what had happened, that I was in Wabush on such and such a date, at such and such a time, and that I was not served in French. I sent the email.

I know now that this takes time. I used to check every other day to see if I had received a reply. Now I know the answer will not come for months, five or six months.

I am not saying it is perfect, but I wait for the answer, and when I receive it, I call Air Canada to say that the company has re-offended and to ask what it intends to do.

**Mr. René Arseneault:** Do you always speak to the same person at Air Canada?

**Mr. Michel Thibodeau:** Yes.

**Mr. René Arseneault:** Who is that person?

**Mr. Michel Thibodeau:** Since this meeting is public, I will not reveal the person's name because I do not want to get the individual in trouble.

I have no privileged contact within the company, but you learn over the years, after 17 years.

**Mr. René Arseneault:** We met with some Air Canada people who said that there was an internal system for handling these kinds of complaints, that everything was working, and that there was a very small volume of passenger complaints.

**Mr. Michel Thibodeau:** Personally, I do not go through that system, but I contact the Office of the Commissioner of Official Languages. I cannot comment on that system.

**Mr. René Arseneault:** So Air Canada has never directed you to its complaints processing system?

**Mr. Michel Thibodeau:** As far as I can remember, no. I do not remember.

It was much more difficult at the outset. Now it is much easier because Air Canada knows me and knows what I can do.

Its lawyers initially fought over minor points. I can tell you that I once found myself before a judge in Montreal and one of Air Canada's lawyers said that, if the incident occurred again, Air Canada had the power to throw me off the aircraft. That was said before a judge. The lawyers fought over details because this was new, there was no case law, and they thought they could do what they wanted with me.

After a number of years, however, they realized they could not easily get the better of me. They got to know me, but it was enormously difficult, so much so that I once passed out in front of three Appeal Court judges because I was exhausted and I had files that were piling up. The Appeal Court judges told Air Canada that its appeal was much more oppressive than meritorious. The company wanted to beat me up, and it has the resources to do that, but now it knows me.

**Mr. René Arseneault:** You file your complaint via email, and you get a call five months later, and the case is resolved. Is that correct?

**Mr. Michel Thibodeau:** I am not telling you I receive \$1,500 every month. I have no right to tell you—

**Mr. René Arseneault:** I am well aware of that, but I am developing a hypothesis. Air Canada agrees to give you a specific amount and to avoid further proceedings. If you are satisfied with that, you say, "Yes." It is always the same department at Air Canada that calls you. Is that correct?

**Mr. Michel Thibodeau:** I am the one who calls them, but yes.

**Mr. René Arseneault:** You say you wait for an email reply.

**Some hon. members:** From the Commissioner.

**Mr. Michel Thibodeau:** I wait for an email from the Commissioner of Official Languages concerning the report.

**Mr. René Arseneault:** Pardon me. Then you contact Air Canada.

**Mr. Michel Thibodeau:** Yes, once I have received the report. What I need is the report confirming that my rights have been violated. Otherwise we would merely be exchanging legal arguments.

Air Canada initially said it had an obligation of means. It argued that it was doing everything possible to serve me in French but that, if it did not do so on one specific occasion, that did not mean my rights had been violated. The court rejected that argument and found that Air Canada always had an obligation to serve me in French. However, that was the argument that Air Canada originally used.

I wait for the Commissioner's report stating that my rights have been violated, and then I call Air Canada and ask what happens next.

**Mr. René Arseneault:** I could ask you more questions, but my colleague Dan Vandal—

**The Chair:** Your time is almost up.

Now we will hear from Mr. Généreux.

**Mr. Michel Thibodeau:** I apologize if I am saying too much. I can try to—

**The Chair:** No, Mr. Thibodeau. This is fine the way it is.

Now we will hear from Mr. Généreux and then Mr. Vandal.

**Mr. Bernard Généreux:** Thank you for being here today, Mr. Thibodeau.

I am going to play the devil's advocate. I am not a lawyer, but these are all lawyers opposite me. The chair is a lawyer too.

**An hon. member:** Mr. Vandal is not a lawyer.

**Mr. Bernard Généreux:** He is not a lawyer? Okay. That is not my fault, but what can I do? So I am going to play the devil's advocate.

Mr. Thibodeau, you spoke a little earlier, and you observed that we think differently. Do you know how many complaints were filed against Air Canada before 1969 and how many have been filed since then? Has a comparison been made? I do not necessarily have the answer.

**Mr. Michel Thibodeau:** I am not aware.

• (1630)

**Mr. Bernard Généreux:** No? All right.

Air Canada must surely, or probably, have received complaints when the company was a crown corporation. It was required to provide service in both official languages.

**Mr. Michel Thibodeau:** I was born in 1967. I am not sure about what happened in 1969.

**Mr. Bernard Généreux:** I see.

Do you consider yourself bilingual, francophone or an anglophone who speaks French? Are you francophone?

**Mr. Michel Thibodeau:** Yes.

**Mr. Bernard Généreux:** You are bilingual. Is that correct?

**Mr. Michel Thibodeau:** I am bilingual. I am fully bilingual, but I am also completely francophone.

**Mr. Bernard Généreux:** Perfect, all right. I am a francophone too, and I speak a little English.

You told us you cannot bear to see the word “exit” and that you file complaints because the word “exit” is posted on an airplane door or somewhere in an airport. You consider that a systematic violation of your rights?

**Mr. Michel Thibodeau:** Yes.

**Mr. Bernard Généreux:** Because there is no sign that reads “sortie”.

**Mr. Michel Thibodeau:** Yes.

**Mr. Bernard Généreux:** However, above the door here, there is a drawing of a character and no text.

So you are bilingual and understand the exact meaning conveyed by the sign, and you consider it a violation of your rights if Air Canada has not taken the trouble to ensure that signs posted everywhere, in its aircraft, in airports, or in its environments—a parking lot or anywhere else—are in both official languages instead of English only. In your view, if it has not done so, that constitutes a systematic rights violation. Is that correct?

**Mr. Michel Thibodeau:** Yes.

That is what the Commissioner of Official Languages has acknowledged.

**Mr. Bernard Généreux:** Yes, and he is probably right.

**Mr. Michel Thibodeau:** Air Canada acknowledges it as well.

**Mr. Bernard Généreux:** Yes.

**Mr. Michel Thibodeau:** We have not yet received a response concerning the “exit” sign.

However, we have received one regarding Air Canada Cargo.

**Mr. Bernard Généreux:** That is curious because, in France, the word “exit” is used more than the word “sortie,” and yet it is a francophone country.

That is simply to say that francophones who travel to Paris on Air Canada will probably hear more English words there than they did before leaving Quebec or Canada.

I am still playing the devil's advocate. I want to hear what you have to say so I can understand the arguments you make. I am not defending Air Canada in any way.

Do you think that a business like Air Canada, which is now a private company, makes a good faith effort to provide the service for which it is responsible under the Official Languages Act? There is a certain breach.

I am coming back to the situation that occurred in Wabush, of which you spoke.

Incidentally, 3.9% of Wabush's population of 1,800 inhabitants is francophone. So that is less than 5%.

**Mr. Michel Thibodeau:** Perhaps that has changed.

**Mr. Bernard Généreux:** That is what my assistant just told me. That figure comes from Statistics Canada. I do not know the year in which it was established, but it must not have been that long ago.

However, is it possible to make an error or breach in good faith in a business like Air Canada, which serves 46 million passengers a year?

Do you feel that there is no leeway and that Air Canada should make no more errors, anywhere, without exception, as it is still doing by using unilingual anglophone cabin personnel, for example, or a pilot who does not speak French, or whatever?

**Mr. Michel Thibodeau:** If you are framing your question in absolute terms, I will not answer it.

Instead my answer is as follows. I am saying that I have a right to be served in the country's two official languages. Furthermore, it is up to Air Canada to take the necessary measures to serve me in the official language of my choice. The government has set forth obligations in the charter, which is the supreme legal instrument in this country. A business in Canada, a country that has two official languages, must serve its customers in both languages. What is being debated today, and what we are trying to define, is the mechanism that should be used where that obligation has been breached.

I am not prepared to defend Air Canada and say it is incapable of doing so for one reason or another. According to Air Canada, only a small percentage of the millions of passengers it serves complain. However, based on my experience and the number of trips I have taken during which I was not served in French, the percentage in my case is enormous.

**Mr. Bernard Généreux:** Has it declined? Do you get the impression that the problems have diminished in the last 17 years you have been conducting your fight? Do you feel the situation is less serious?

**Mr. Michel Thibodeau:** No.

**Mr. Bernard Généreux:** Air Canada representatives testified before us and said that measures had been put in place and bilingual personnel had been hired across Canada. We know perfectly well that it may not be easy to find bilingual personnel in Wabush, but they found a bilingual employee to serve you.

Coming back briefly to the Wabush case, you said that Air Canada went and found someone who was bilingual, but you nevertheless felt that the company had violated your rights—

**Mr. Michel Thibodeau:** Yes.

**Mr. Bernard Généreux:** Is that because that bilingual person did not stay on site to provide the rest of the service until you had boarded the aircraft?

**Mr. Michel Thibodeau:** It was not just that.

When you talk about proper and equal service in both official languages, there has to be an active offer of service.

● (1635)

**Mr. Bernard Généreux:** That is correct.

**Mr. Michel Thibodeau:** The active offer was not there at the outset.

**Mr. Bernard Généreux:** The expression “active offer” is important.

**Mr. Michel Thibodeau:** There is also the matter of the time it took to find that person. Service must be equal in both official languages.

**Mr. Bernard Généreux:** Yes.

**Mr. Michel Thibodeau:** French Canadian citizens must not feel they are being served less well than anglophones.

**Mr. Bernard Généreux:** Earlier, in response to a question from Mr. Lefebvre, you touched on the matter of other organizations that are subject to the Official Languages Act in Canada. There are many.

**Mr. Michel Thibodeau:** Yes.

**Mr. Bernard Généreux:** Have you previously had problems related to the Official Languages Act and compliance with your language rights in the provision of services by other businesses or government organizations?

**Mr. Michel Thibodeau:** Yes.

**Mr. Bernard Généreux:** Did you file complaints against those organizations?

**Mr. Michel Thibodeau:** Yes.

**Mr. Bernard Généreux:** Was the complaints processing system the same as the one in place at Air Canada?

**Mr. Michel Thibodeau:** Yes, it was the same complaints processing system.

**Mr. Bernard Généreux:** Air Canada has an internal complaints processing system. You have never used it. Is there a specific reason for that?

**Mr. Michel Thibodeau:** No, because what governs my language rights is the Official Languages Act.

**Mr. Bernard Généreux:** I see.

**Mr. Michel Thibodeau:** The Official Languages Act provides that anyone who believes his or her rights have been violated may file a complaint.

**Mr. Bernard Généreux:** All right.

So the process was the same with regard to the other organizations subject to the Official Languages Act?

**Mr. Michel Thibodeau:** Yes.

**Mr. Bernard Généreux:** Did you often file complaints in the other cases as well?

**Mr. Michel Thibodeau:** Yes, regularly.

**Mr. Bernard Généreux:** And were they handled in the same way by the... Sorry, I forget his name.

**Mr. Michel Thibodeau:** By the Commissioner of Official Languages?

**Mr. Bernard Généreux:** Yes, pardon me, the Commissioner of Official Languages.

Was the process the same?

**Mr. Michel Thibodeau:** Yes. As usual, I am waiting for a report confirming that my complaint is founded.

**Mr. Bernard Généreux:** All right.

**The Chair:** Thank you, Mr. Généreux.

Now we will move on to the next speaker.

We will hear from Mr. Vandal.

**Mr. Bernard Généreux:** Mr. Vandal, will you give me your allotted time?

**Some hon. members:** Oh, oh!

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

Mr. Thibodeau, your journey on this issue is remarkable.

I have a few very brief questions. I think you have answered most of them.

Do you think Air Canada has the same responsibility to serve you in French if you take a flight from Saskatoon to Calgary?

**Mr. Michel Thibodeau:** I cannot answer that, and I will tell you why.

Air Canada is not required to provide service in both official languages across Canada. It is required to do so in certain regions, such as Quebec and Ontario, and at certain airports, those that receive more than a million passengers a year, I believe. Furthermore, surveys are conducted regularly to determine the percentage of the francophone population that travels by air.

I do not know whether the route you referred to is considered a route on which bilingual service must be provided.

**Mr. Dan Vandal:** I understand.

You have appeared in the courts: the Superior Court of Ontario, the Federal Court of Appeal, and the Supreme Court of Canada. Are you a lawyer? Do you represent yourself or do you rely on legal services?

**Mr. Michel Thibodeau:** I have represented myself in most cases. I learned the law in my living room by spending entire nights and weekends reading documents. I have had to spend thousands of hours studying the subject.

When we appeared before the Supreme Court of Canada, we were represented by lawyers. Apart from that, I have represented myself in the Federal Court of Appeal and the Superior Court of Ontario.

Why did I appear before the Superior Court of Ontario? When Air Canada sought protection under the Bankruptcy and Insolvency Act, it tried to treat me as a creditor and thus to exclude my complaint. I was forced to go to Toronto to fight, and the judge ruled that the financial portion of the complaint would be handled in the same manner as in the case of creditors but that a letter of apology had to be provided. In the end, I was awarded \$700.

As regards the violation of my language rights—which was very significant—I fought before the Superior Court of Ontario because Air Canada wanted to argue that, as a creditor, I was entitled to nothing. That is why I petitioned the Superior Court of Ontario, about which, incidentally, I knew nothing.

**Mr. Dan Vandal:** I understand. Now there is a system for resolving complaints amicably. How many times have you settled complaints in that manner? Twice? Five times?

**Mr. Michel Thibodeau:** To date, I would say a few.

**Mr. Dan Vandal:** A few.

**Mr. Michel Thibodeau:** I do not really want to go into the detail because, every time complaints are resolved amicably—

**Mr. Dan Vandal:** Less than five times?

**Mr. Michel Thibodeau:** Yes.

**Mr. Dan Vandal:** What Air Canada department did you contact?

**Mr. Michel Thibodeau:** I always use the same contact. As I said earlier, I do not want to reveal that person's name. It is a person with whom I have been in touch over the years, and that makes it easier for me. The other option would be to go onto the Internet and look for Air Canada's legal services, but I do not know where I would wind up.

**Mr. Dan Vandal:** That means that Air Canada opens a special door for you.

**Mr. Michel Thibodeau:** I would not put it that way because it would not be accurate.

• (1640)

**Mr. Dan Vandal:** I understand.

**Mr. Michel Thibodeau:** I do not get any special treatment. It has happened over the years, in the same way as I learned where the Federal Court was. I now know I have a contact in Air Canada's legal department.

Believe me, if you ask Air Canada whether I am one of its favourite customers, the answer will be “No.”

**Some hon. members:** Oh, oh!

**Mr. Dan Vandal:** Thank you very much.

I have no further questions.

**The Chair:** The next speaker will be Ms. Kusie.

**Mrs. Stephanie Kusie (Calgary Midnapore, CPC):** Good afternoon and thank you for being here today.

It is good for me, as an anglophone, to hear what you have to say and understand your story better. Thank you.

As an anglophone, how could I offer support to someone and show that person sympathy in situations such as the ones in which you find yourself.

**Mr. Michel Thibodeau:** I am not sure I understand the question. Pardon me.

**Mrs. Stephanie Kusie:** If I witness a situation in which someone like you, a francophone, does not receive service in the language of his or her choice, how could I provide my support? Consider, for example, the situations you have described.

**Mr. Michel Thibodeau:** All right, I understand. Thank you for your question.

I would suggest filing a complaint with the Office of the Commissioner of Official Languages. You do not need to be the person who is denied service. If you observe a breach of the Official Languages Act, you may file a complaint. What happens—and you can check the minutes of your previous proceedings, or you may already have done so—Air Canada still says that no complaints are

being filed. I think the best thing to do in that case is to file a complaint. In any given situation, if the Office of the Commissioner of Official Languages receives 5, 10, 15 or 20 complaints on the same subject, that may eventually help the cause.

I really think that would be the best way to do it. It is also possible to go and find the person responsible, if he or she is a unilingual anglophone, and to ask whether that person knows he or she is required to provide service in French. That can be done. What I have learned over the years is that it is not always the fault of the person behind the counter.

**Mrs. Stephanie Kusie:** I understand, yes.

**Mr. Michel Thibodeau:** It is the Air Canada people who decide where an employee works, as in the case of the person in Wabush, who was a unilingual anglophone. I am not saying it was that person's fault for not speaking both official languages.

**Mrs. Stephanie Kusie:** Yes, yes.

**Mr. Michel Thibodeau:** What I am saying is that Air Canada should not have put that person in that situation. Do you understand?

It would not necessarily be fair to go and find and blame that person. You could ask if that employee is aware that Air Canada has an obligation to serve its customers in both official languages. I think that would be very good.

**Mrs. Stephanie Kusie:** Thank you.

I have a second question. I believe complaints are currently sent to either the Commissioner or Air Canada. Do you think the complaints that are sent to Air Canada should be automatically forwarded to the Commissioner too?

**Mr. Michel Thibodeau:** Personally, without knowing Air Canada's system, I would say yes.

**Mrs. Stephanie Kusie:** All right.

**Mr. Michel Thibodeau:** I think that should go through a central place. Since the Official Languages Act protects rights, the complaint is the instrument that triggers the entire process, whereas I believe everything should go through the Office of the Commissioner of Official Languages.

**Mrs. Stephanie Kusie:** All right. Thank you.

**The Chair:** Thank you, Ms. Kusie. Now we will hear from Mr. Choquette.

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

I would like to go back to your answer to a question, that the Office of the Commissioner of Official Languages is the most appropriate organization to manage complaints and to ensure that fines are imposed.

**Mr. Michel Thibodeau:** I believe so.

I have seen Air Canada's proposal for a bill that, if I correctly understand it, would provide for a transportation board or other entity to handle that. I would be opposed to that idea.

**Mr. François Choquette:** All right.

**Mr. Michel Thibodeau:** Over the 17 years during which I have defended my language rights, I have always been well served by the Office of the Commissioner of Official Languages, which has experts, lawyers, who handle complaints concerning language. I believe that should remain the responsibility of the Commissioner's office.

**Mr. François Choquette:** Indeed.

With respect to other general improvements to the situation regarding Air Canada, we mentioned enforceable agreements, fines and monetary penalties that would be the responsibility of the Commissioner's office. Someone also mentioned a bill by former MP Mr. Dion designed to give the Official Languages Act precedence over the Montreal Convention.

Are you aware of any other recommendations to improve the language rights situation at Air Canada that would address virtually all the problem situations you have experienced?

• (1645)

**Mr. Michel Thibodeau:** To answer your question off the top of my head, I would say I would proceed in stages. One of the Commissioner's recommendations is to verify or review the situation every 5 or 10 years to see how it is evolving.

As committee members, as elected MPs, and as the government, you could introduce measures such as fines or damages—\$1,500 per violation—and assess how that evolves over time, over the next five years. If, after five years, still no complaints have been filed and Air Canada is still not serving its customers in both official languages, you might find that the system does not work. That would mean we would not find ourselves in the same situation in 2039.

There could be a staged procedure involving various approaches and—I just want to go back to this point—it would make no difference whether the Commissioner of Official Languages or the court imposed the \$1,500 fine.

Currently, a Federal Court judge alone may impose fines. It would be even easier if it could be explained to judges that, even though they retain the right to order just and appropriate remedy, the government, the committee, and Parliament believe that a fine should be approximately \$1,500. There might be an information tool designed to make this possibility known to the general public. You could try solutions to see if they change the situation, and if it does not change in the next five years, you could try something else.

**Mr. François Choquette:** As regards the idea of informing the public and Air Canada's passengers, the airline conducted sample-based surveys, and it was difficult to determine exactly what the results were. The airline said that people were quite satisfied, but when we looked at the results, we saw that the percentage of people who were not satisfied with the service in French, in the official language of their choice, was nevertheless quite high. These were internal surveys.

Would it not be the government's responsibility to verify, based on the many reports prepared by the Commissioner of Official Languages, whether passengers are satisfied with Air Canada's service in both official languages and compliance with their language rights?

**Mr. Michel Thibodeau:** I think that could easily be done. It will require no statutory amendments or anything else. Perhaps we should make a recommendation to the Commissioner of Official Languages. I know he conducts occasional studies on Air Canada.

**Mr. François Choquette:** Yes.

**Mr. Michel Thibodeau:** If the purpose of your question is to determine whether it is possible to do a very specific study of customer satisfaction with service in French, I cannot remember whether that has been done or when a similar study was conducted. I believe it can very well be done by the Office of the Commissioner of Official Languages.

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

Now we will hear from three speakers, Messrs. Généreux, Clarke, and Arseneault, and then we will adjourn. You have two minutes each.

**Mr. Bernard Généreux:** Mr. Thibodeau, in a special report, the Commissioner of Official Languages has proposed solutions to improve implementation of the Official Languages Act at Air Canada. Since you have previously experienced various problems with other organizations subject to that same act, do you feel it is discriminatory toward Air Canada to subject it alone to the four proposals made by the Commissioner: enforceable agreements, statutory damages, fines, and administrative monetary penalties?

Should we add such provisions to the act so that they are applicable to all organizations subject to the Official Languages Act?

**Mr. Michel Thibodeau:** That would not be a problem for me.

I do not believe that would be discriminatory, since those organizations must comply with the act and currently do not.

**Mr. Bernard Généreux:** Yes, but this is a special report on Air Canada.

**Mr. Michel Thibodeau:** I understand that.

**Mr. Bernard Généreux:** The Commissioner would like these measures to be added to the act and solely with respect to Air Canada. That is what is stated.

**Mr. Michel Thibodeau:** I understand what you are saying.

I am answering your question off the top of my head.

**Mr. Bernard Généreux:** Yes.

**Mr. Michel Thibodeau:** I think something has to be done, either with respect to the Air Canada Public Participation Act or by extending those measures, as you say, to the entire Official Languages Act. That would not be a problem for me.

**Mr. Bernard Généreux:** That is the question I am asking.

**Mr. Michel Thibodeau:** Personally, I would agree.

**Mr. Bernard Généreux:** From the moment several organizations, both private and public, are subject to the Official Languages Act and statutory damages and penalties may be imposed on organizations that fail to comply with it, they should all be treated equally. Do you agree?

**Mr. Michel Thibodeau:** Yes.

**Mr. Bernard Généreux:** Imposing these penalties solely on Air Canada would be discriminatory toward that organization relative to the others, would it not?

• (1650)

**Mr. Michel Thibodeau:** I am going to respond as follows. Personally, I would not consider it a problem if the Official Languages Act applied to all organizations.

**The Chair:** Thank you, Mr. Généreux.

Mr. Clarke, you have the floor for two minutes.

**Mr. Alupa Clarke:** Given all the reading you have done, can you inform us, or enlighten us, on the subject of Bill 101, which is in force in Quebec? I believe it contains provisions for penalizing private businesses.

**Mr. Michel Thibodeau:** I unfortunately cannot answer that question.

**Mr. Alupa Clarke:** All right.

**Mr. Michel Thibodeau:** The reason is simple: I have come to know the language rights field because I have been obliged to do so to defend my rights. I have not examined Bill 101 and therefore am not an expert on it.

**Mr. Alupa Clarke:** When you say you are in favour of introducing mechanisms for imposing fines on Air Canada, do you know of any examples of countries that have official languages legislation, such as Switzerland or Belgium, and that impose that type of measure on private companies?

**Mr. Michel Thibodeau:** No, I have no examples to give you.

**Mr. Alupa Clarke:** All right.

**Mr. Michel Thibodeau:** On the other hand, I am not saying this would be new. The penalty of statutory damages has been around since the Official Languages Act has been in force. I believe it was assented to in 1988.

**Mr. Alupa Clarke:** All right.

**Mr. Michel Thibodeau:** The difference is that you have to go before the court and the court will order statutory damages. I propose to make that simpler. I am not asking whether damages should be imposed. They already exist.

**Mr. Alupa Clarke:** All right.

**Mr. Michel Thibodeau:** The court has previously determined that a violation of language rights is worth a fine of \$1,500. There has been no change to that.

I am merely asking that there be a simpler process for people. This is not something new. It already exists.

**Mr. Alupa Clarke:** I understand now.

**The Chair:** Thank you, Mr. Clarke.

We will continue with Mr. Arseneault, who will ask the final questions.

**Mr. René Arseneault:** Mr. Thibodeau, I do not have a lot of time for the question I want to ask you. It concerns enforcement or deterrent measures. By that I mean the \$1,500 fine.

In what year was the first judgment rendered?

**Mr. Michel Thibodeau:** The three most important judgments are the ones you have before you, of which I gave you copies. The Federal Court judgment was in 2011. These are the most important and most recent judgments, but there were previously others.

**Mr. René Arseneault:** You have become an expert on this question. The way is well paved for obtaining remedies for services that you regularly use.

How many hours of personal work do you estimate are necessary from the moment a complaint is filed until it is amicably settled?

**Mr. Michel Thibodeau:** It must take about 10 hours based on my most recent complaints.

**Mr. René Arseneault:** About 10 hours for you?

**Mr. Michel Thibodeau:** Yes, more or less 10 hours.

**Mr. René Arseneault:** And how many would it take for a neophyte entering the jungle for the first time?

**Mr. Michel Thibodeau:** Oh, oh! I wish him good luck!

Let me tell you what will happen.

**Mr. René Arseneault:** I am thinking of the \$1,500 amount. If he needs a lawyer's help, is that amount a deterrent?

**Mr. Michel Thibodeau:** I think that, if the remedy granted is \$1,500, and if you have to go through the entire court process, hire a lawyer, and carry on with the rest, not many people would do it. However, I hope that, if there were an easier mechanism, people would use it.

I made a considerable effort to prepare my first case, and if the judge had told me I would be awarded a remedy of only \$1,500, I would have felt that was not enough. I sought \$500,000 the first time. That figure included punitive and exemplary damages. I thought it made no sense to call in the police after all those years of requesting service in French without it being granted to me. I was angry and I sought \$500,000. Then I read some law books and understood that \$500,000 was too much to ask.

**Some hon. members:** Oh, oh!

**Mr. Michel Thibodeau:** I devoted hundreds of hours to this matter. If someone had told me I would ultimately be awarded \$1,500, I would have told him to go take a hike and would have been unable to continue. Now it is easier because I only need to use my telephone. I already have the necessary forms and I know how the system works. I can afford to take action.

**Mr. René Arseneault:** Allow me to interrupt you.

For you, \$1,500 is good because the process is quick, but is that amount not a deterrent for a neophyte?

**Mr. Michel Thibodeau:** I think that would make for a good debate. We could review the system in five years. Whatever the case may be, it is better than the amount currently offered. Today people do not know whether they are going to be paid \$100, \$200 or \$500. As I told Mr. Généreux, in an airport where we recently found ourselves, the airlines responsible for overbooking aircraft were offering \$800 to people who were prepared to wait for the next flight.

In this case, we are talking about a violation of charter rights. It is important to understand that I was not the one who set the \$1,500 amount. It was the judges of the Federal Court, the Court of Appeal and the Supreme Court of Canada. They considered the matter and, having regard to other cases in which rights had been violated, charter rights in this case, pondered what such a violation might be worth. There were previously no relevant scales. The courts considered that, as the amount had been \$3,000 in one case and \$10,000 and another, the violation was worth \$1,500. It was the courts that decided on the amount, not me. In short, they found that a violation of charter language rights was a serious act and that, consequently, the amount awarded would be \$1,500. I think that is a good start.

Will that solve all problems? No.

I hope it will ensure that offenders have their wrists slapped a little harder and that the problems are solved.

•(1655)

**The Chair:** Thank you very much, Mr. Thibodeau. Your testimony here today has been very informative for committee members. On behalf of everyone, once again, thank you very much.

The committee will reconvene next Tuesday.

The meeting is adjourned.

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