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Chair

The Honourable Denis Paradis

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• (1530)

[Translation]

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

We will begin quite quickly because there is a vote in the House at 5:45 p.m. We will see how we can divide up the speaking time, since we have two groups today and also have to discuss a few things amongst ourselves.

Pursuant to Standing Order 108(3), we are continuing our study of the issues related to the enumeration of rights-holders under section 23 of the Canadian Charter of Rights and Freedoms.

The committee is pleased to welcome today Mr. Yvan Déry, senior director, official languages branch at the Department of Canadian Heritage. We also welcome Ms. Johanne Denis, director general, social and demographic statistics, and Mr. Jean-Pierre Corbeil, from the social and aboriginal statistics division, both from Statistics Canada.

Welcome to you all.

I believe each of you has a brief presentation. Then, as usual, we will have time for questions and comments from committee members.

We will begin with Mr. Déry.

Mr. Yvan Déry (Senior Director, Policy and Research, Official Languages Branch, Department of Canadian Heritage): Thank you, Mr. Chairman.

I will be brief, since I do not really have a presentation.

Thank you very much for inviting us to appear before the committee.

The government has responded very favourably to your report on the enumeration of rights holders. In our opinion, and this is nothing new, education is crucial to the vitality of official language minority communities across Canada. So we believe that anything that furthers the right to education is also important. We welcomed your report.

In our reply, we noted your desire to help provincial governments and school boards better enumerate rights holders under section 23 of the Canadian Charter of Rights and Freedoms. We then asked Statistics Canada to determine the best way of fully enumerating rights holders. That is also in the government's response.

We also undertook to work with Statistics Canada and other partners to obtain better data on official language minority communities, in particular by using a post-censal survey or other means to be determined during preparations for the 2021 Census.

I can answer your questions once my colleagues have finished their presentations.

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

I now give the floor to Ms. Denis.

Ms. Johanne Denis (Director General, Census Subject Matter, Social and Demographic Statistics, Statistics Canada): Hello.

I have a short presentation to read out.

First, I would like to thank the committee for inviting us to appear today.

As indicated in the government's response to the Report of the Standing Committee on Official Languages on the Enumeration of Rights-Holders, Jean-Pierre Corbeil and I wish today to reiterate Statistics Canada's full commitment to finding better ways to collect quality data on rights holders. We are firmly committed to using all of our knowledge and expertise to appropriately respond to this important issue. We are fully committed to working diligently on this.

That being said, as the national statistics agency, we take our role and professional responsibility very seriously. These involve fully understanding the needs for statistical information and expressing them in a scientific and neutral way and, secondly, balancing these needs with quality imperatives and issues related to the time to complete the form. Statistics Canada has a long and rich tradition as well as an enviable international reputation for using methodological approaches and innovative tools to meet the many information needs of those who use our data.

In September 2017, we launched a public consultation of all Canadians on the content of the 2021 Census in order to better understand their needs for statistical information. This consultation is accessible online and will continue until December 8, 2017.

As part of this process, we sent a personal invitation to complete the online consultation to the various stakeholders and associations who had sent a letter to Minister Navdeep Bains regarding the importance of collecting sound evidence in order to assess the needs related to official language minority education. We also work with staff from Statistics Canada's regional offices, and with provincial and territorial statistics coordinators in order to achieve the most accurate representation possible of the needs and use of census information.

We have also planned a working meeting on this subject between Statistics Canada and the Fédération des communautés francophones et acadienne du Canada, which will be held on October 11, 2017. The objective is to ensure full transparency and to discuss the best ways of sharing information about developments with community representatives from the provinces and territories.

Following the public consultation and the needs assessment based on the framework for determining census content, any proposed change to the content of the population census will be subject to rigorous evaluation, including qualitative and quantitative tests, based on Statistics Canada's high standards.

At this point, no one can predict the results of the census test questionnaire. I would very much like to tell you today that the results will be positive, but we will not know until a rigorous analysis of these results has been completed.

You will no doubt recall that the process for approving the census population questions is established by statute, specifically the Statistics Act. In our previous appearance, we referred to section 21 of the act, which provides that “The Governor in Council shall, by order, prescribe the questions to be asked in any census taken by Statistics Canada”. To inform Canadians of this decision, the act also requires the questions to be published in the *Canada Gazette*, no later than 30 days after the order is issued.

Based on the public consultations and the results of a rigorous process of testing and evaluations, Statistics Canada will make its recommendations about census content to the minister responsible for Statistics Canada, the Minister of Innovation, Science and Economic Development. The recommendations about census content will be reviewed by cabinet in the fall of 2019 and winter of 2020, so the questions can be published in the *Canada Gazette* in the spring of 2020 at the latest. This schedule of activities is necessary to ensure that all the systems and process are appropriately updated, tested and completed in time for data collection beginning in mid-2021.

•(1535)

At the same time as the census process, we are working closely with our colleagues at the Department of Canadian Heritage to examine the options for collecting additional data on official language minority communities, including a new post-censal questionnaire. The issue of rights holders does of course involve eligibility, but it also involves the intention of rights holder parents to educate their children in the minority official language. So it is also important to gather information about those intentions, motives and obstacles, which would provide the basis for a post-censal questionnaire.

On November 10, 2017, we will also be meeting with the strategic management committee of the Canadian Education Statistics Council to consider the potential use of their administrative data on school enrolment for the enumeration of rights holders in Canada.

Moreover, as recommended in the report of the Standing Committee on Official Languages, Statistics Canada is in the process of creating an advisory committee whose mandate will be not only to examine and provide expert advice to Statistics Canada on the best ways of collecting reliable data about rights holders, but also to provide outside advice on language-related statistics in general. This working group should include recognized university experts on language-related statistics, language rights and policies, as well as key representatives from associations. Since this is an advisory committee for Statistics Canada, the members will be approved by the Chief Statistician of Canada. The first meeting of this advisory committee is scheduled for November 2017.

As you can see, Statistics Canada is committed to being proactive on this important issue and takes its role and responsibilities very seriously.

Thank you.

Mr. Jean-Pierre Corbeil and I will be pleased to answer your questions.

•(1540)

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

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

I would ask my colleagues to indicate who their questions or comments are for.

Mr. Généreux, please go ahead.

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

I would like to thank the three witnesses for being here today.

It is interesting to hear Statistics Canada's response to the concerns raised by all the witnesses we have heard during our meetings.

Mr. Corbeil, you have met with us before and I recall our conversation. We discussed the limited number of questions that could be in the census. We cannot add questions to the census at will. If we change the census questionnaire by adding questions about rights holders, they could take the place of supplementary questions about other sectors of activity and even about the francophonie.

Without knowing the results of your upcoming consultations in advance, as Ms. Denis indicated, can you tell us whether we will be able to add questions to the census?

Ms. Denis, you said you do not know whether the consultation will be positive or negative, but I am quite confident that it will be positive. I would be very surprised if that were not the case, based on what we have heard during the consultations.

If questions about rights holders are added, does that mean that certain other questions about other sectors will have to be removed from the questionnaire?

Ms. Johanne Denis: Phrasing census questions concisely so they are accepted by the population is an art. As to the time required to complete it, you are quite right.

We have reviewed all the information gathered during our consultations. We have a framework for deciding on the content. This framework allows us to determine whether a given question is necessary in terms of legislation, programs or policies. Then we balance it all out. We do this continually. If additional questions are needed, we will add them to the questionnaire, but we will have to make a compromise.

This year in particular, we are trying to replace certain questions in the questionnaire with administrative data. You might know that we used tax data this time to replace a whole series of questions about income that used to be in the questionnaire. This allowed us to shorten it. By making greater use of administrative data when we can, we can be much more concise and open to adding new questions.

Mr. Bernard Généreux: I remember that, during the consultations, people mentioned a lot of items to be added. The witnesses who appeared had preconceived ideas of what they expected to be included in the questionnaire.

You said that an expert committee will be created. I assume this committee will review the testimony together. You also said you have already begun the process to invite all those people again to meet all the experts. I am thinking, for example, of the French language services commissioner of Ontario...

Mr. Jean-Pierre Corbeil (Assistant Director, Social and Aboriginal Statistics Division, Statistics Canada): Mr. François Boileau.

Mr. Bernard Généreux: Mr. Boileau made some quite direct remarks as to his expectations about possibly adding new questions. There could be repercussions, depending on how the question is asked and the number of questions. If you ask one question, you can get multiple answers. The questions have to be as specific as possible in order to take action on the basis of the information collected. Asking a question is one thing, but being able to interpret the answer and then make decisions accordingly is another.

Mr. Jean-Pierre Corbeil: I would simply say that Statistics Canada is probably the best placed agency or organization in Canada to decide on the questions, given our experience and reputation. We test questions all day long. What you have to understand is that the purpose of Statistics Canada's qualitative and quantitative tests, for any new survey or any new question, is to ascertain precisely which questions are effective and which ones are not. Contrary to popular belief, a significant part of the population sometimes finds it difficult to understand questions that are often simple.

• (1545)

Mr. Bernard Généreux: Yes.

Mr. Jean-Pierre Corbeil: Some people told us that two questions are enough. I can guarantee that those two questions would not accurately enumerate the rights holders. It is much more complicated

than that, and that is why Statistics Canada has to conduct these tests to ensure the questions have the most effective wording possible.

Mr. Bernard Généreux: That is an important point because, when people answer a question, they do have to answer it correctly according to the question they were asked. You cannot control that, but asking simple questions can make a difference. I have confidence in you. I have no doubt in that regard.

Various witnesses who appeared at the hearings last fall and last winter mentioned the percentage of rights holders they had calculated. Organizations said they had not enumerated even 50% of rights holders. We asked them how they could say that 50% of people are rights holders and do not know it. Using the census, can we enumerate 100% or about 100% of the people who meet the criteria?

Mr. Jean-Pierre Corbeil: That is our objective. You have to understand, as my colleague Ms. Denis clearly stated, that we really have to strike a balance in terms of the time it takes Canadians to complete the form. Let me give you a very simple example. In the case of a question about possible attendance at minority language schools in order to enumerate rights holders, should we ask persons aged 75 and over who have no knowledge of French and have not had children at home for a very long time?

The answer is simple, but if we do not do that, we have to find an alternative to make sure we do not leave anyone out. We really have to balance out the questions with the time it takes to complete the form, and determine who should be asked those questions in order to better balance the target population in question with the time required to complete the form.

The Chair: Thank you, Mr. Corbeil.

Mr. Samson has the floor.

Mr. Darrell Samson (Sackville—Preston—Chezzetcook, Lib.): Thank you very much, Mr. Chair, and I also thank the witnesses very much for their presence here today.

I will begin with my friend Mr. Déry. It's not that the others are not my friends, but Mr. Déry and I have known each other for a long time.

I want to take this opportunity to thank and congratulate Heritage Canada for having played a key role in the conclusion of a strategic agreement with school boards in minority environments, which our committee had recommended. That is certainly a tool that will help enormously to move French-language education in minority environments forward. Thank you.

You say that the government will do everything it can to ensure the progress of rights-holders and their rights.

Can you give me an example? You have already done certain things. Can you give me an example of other measures you intend to take to ensure that the rights of rights-holders are recognized?

Mr. Yvan Déry: Thank you, Mr. Samson.

As you know, federal-provincial agreements we sign in the area of education come with envelopes that can be used to recruit students. A lot of school boards use those funds that are given to them by the provinces to carry out promotion campaigns and all types of recruitment activities. Some provinces have also funded provincial campaigns. So, federal funds are already used for that purpose.

As recognized in the government response, there might be a way of coordinating that work better. There is a mechanism that allows school boards, provincial governments and Heritage Canada to work together. That is the tripartite committee we have already discussed. We discussed promotion at the national level. That is quite complex. Indeed, even if section 23 of the charter is the same for everyone, the vast majority of provinces give some people who do not qualify under this provision the right to attend the minority school. There are admission committees in most provinces. For instance, in the Atlantic provinces, if the mother tongue of the parents is English, they will consider the mother tongue of a grandparent. In addition, they automatically accept the children of French-speaking immigrants, even if they are not Canadian citizens.

We are talking about national promotion, but on the local scale people have often said that they would like things to take place somewhat differently there. We have to come to an agreement with school boards and provinces and territories, and determine where we could act in the context of a national campaign.

• (1550)

Mr. Darrell Samson: Thank you very much, Mr. Déry.

I would like to have enough time to put questions to my Statistics Canada colleagues. Some matters have disturbed me for a long time and I am increasingly uncomfortable.

We are talking about a full commitment, and I am very happy to hear it. However, I am worried about the fact that we are talking about doing things differently with regard to the collection and communication of data. Thirty years have gone by during which we have not been able to obtain the questions that would allow us to ensure that we receive, under the terms of paragraph 23(1)(b), information from the parents who send their children to French school, or under subsection 23(2), information on the children whose parents studied in French. We missed the boat.

How can I be sure that this will be done?

This frightens me a lot. We are talking about consultation regarding needs. And yet, the needs have been well defined. In your reply, you talk about setting up a working group.

Ms. Johanne Denis: Yes.

Mr. Darrell Samson: I would like to know who the members will be and whether the discussions will be public?

Ms. Johanne Denis: We will send the name of the members once the Chief Statistician has approved them. We have to submit our list to him and discuss it. We will convey that information to the committee as soon as we have it. That should be over the next two weeks.

Mr. Darrell Samson: Thank you.

However, I want to raise the following point. Is the issue of enumeration directly related to minority official language school boards?

Are the teachers and those organizations directly related to this?

The Alberta courts clearly stated that it was up to the school boards to designate the students on the basis of the enumeration.

Do you agree with that?

Mr. Jean-Pierre Corbeil: In fact, there are a lot of users.

Mr. Darrell Samson: The first users must be the school boards, since the number of students comes from them, does it not?

Mr. Jean-Pierre Corbeil: Yes, as well as from the departments of Education of each province.

Mr. Darrell Samson: Fine. Thank you.

I am going to sleep better tonight if you give me the answer I am looking for.

May I conclude that at least one member of the working group will be a representative of the Fédération nationale des conseils scolaires francophones, which works mostly in minority environments?

May we be certain that there will be at least one?

Those people are the first users.

Mr. Jean-Pierre Corbeil: We can't answer you, but we are considering that possibility. That said, we can't wind up with 20 members, that's clear. We are currently deciding on the composition of the committee. Several people have not yet received an invitation, since we must find a balance and take into account all of the regions of Canada. We want the committee to inform Statistics Canada not only on the issue of rights-holders, but also, as my colleague said, on language statistics in general. There are several other issues involving language. Of course, we are going to take this remark and suggestion into consideration.

Someone will undoubtedly tell me who to invite. Several people will ask why they were not invited, and why we invited someone from the east rather than from the west of Canada, and so on. We have to take all of that into consideration. I can assure you that we are going to take into account...

Mr. Darrell Samson: Mr. Corbeil, forgive me for interrupting you.

Mr. Chair, I would simply like to say that the first users, the primary users and educators are the ones who should sit on this working group. If I still know my math, one plus one equals two.

Thank you.

The Chair: I will now give the floor to Mr. Choquette.

Ms. Johanne Denis: Mr. Chair, may I answer Mr. Samson's other question?

The Chair: You have a few seconds to do that.

Ms. Johanne Denis: I like Mr. Samson's questions very much.

We work hard and we want things to work. The committee in question will help us to formulate questions to work together constructively and to find some way of getting there. One of the things that help us a lot in our modern digital world are the electronic questionnaires. In fact, an electronic questionnaire allows us to make automatic selections, which really allows us to target the populations of interest. We really hope to be able to use an electronic questionnaire, and current technology.

We no longer distribute paper questionnaires to the entire population as we used to do before. The last time, we obtained a 70% answer rate via the Internet. That is a tool we can use to great advantage in preparing questions.

• (1555)

Mr. Darrell Samson: We have to beef up the data. Bravo! That is good.

Ms. Johanne Denis: We think this is very positive and will give us additional tools.

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

Mr. François Choquette (Drummond, NDP): Mr. Chair, I am entirely in agreement with my colleague Mr. Samson; I too would like to sleep soundly, but I am very worried.

Unfortunately, there is no one here representing Minister Navdeep Bains to whom I would have liked to put the question. Since I cannot address a representative of the minister, I will turn to Mr. Déry from Canadian Heritage.

Recommendation 4 of the report, which was accepted unanimously and was endorsed by all of the experts who testified before the committee, reads as follows:

That the Government of Canada require Statistics Canada to include questions in the 2021 Census that would allow for the enumeration of all rights-holders under the broadest interpretation of paragraphs 23(1)(a) and (b) and subsection 23(2) of the Canadian Charter of Rights and Freedoms.

The use of the word “require” makes things quite clear.

Why did Heritage Canada and Innovation, Science and Economic Development Canada, the department of Mr. Bains, not accept that recommendation?

Mr. Yvan Déry: I do not think I can answer on behalf of Mr. Bains and his department, but as my Statistics Canada colleagues may confirm—and they have already done so—the process to prepare census questions was established a long time ago. There are consultations and tests. Afterwards, Statistics Canada, whose expertise is recognized, formulates a recommendation. It will then be approved or rejected, but the final determination is made by the Council of Ministers.

The government response indicates that Statistics Canada was asked to examine the best ways of enumerating all of the categories of rights-holders. Statistics Canada must examine the best questions and best means of doing that for the 2021 census. That is the beginning of the process Ms. Denis referred to. Statistics Canada will create this working group and test the questions.

The government's position is the following: we just asked Statistics Canada to include the best possible questions in its work to enumerate the rights-holders. Neither I nor the people from

Statistics Canada can say today what the result of that process will be, but it is our way of tracking the results you expect.

Mr. François Choquette: Unfortunately, that is a way of not moving forward with recommendation 4, which asked the government to mandate Statistics Canada. I understand that Statistics Canada wants to look at all possible options aside from the census to count the rights-holders.

As our committee has taken pains to specify, only enumeration can allow us to adequately count the rights-holders. Unfortunately, you did not go that far. We certainly are worried. We hope that this will produce the same result in the end, but we would have liked it to be clear in your answer. That said, I still have hope. We will see what the outcome will be.

I want to speak on behalf of all of the official language organizations who, upon looking at that answer, really wonder what the result will be. We aren't certain that the census is going to provide the results we would like.

That was the first thing I wanted to speak to you about.

Ms. Denis and Mr. Corbeil, I will now move to another topic, your advisory committee. I don't know if you received all of the recommendations of the Fédération des communautés francophones et acadienne du Canada, the FCFA, or of the Quebec Community Groups Network, the QCGN, in this regard. We received a letter from the Association canadienne-française de l'Alberta, the ACFA, telling us that they would like this or that person to sit on that advisory committee.

Did you consult the QCGN and the FCFA to see who the best people would be to sit on that committee?

• (1600)

Mr. Jean-Pierre Corbeil: My colleague Ms. Denis mentioned to you that we are going to have a meeting on October 11 with the upper management of the FCFA. One of the objectives of that meeting is precisely to discuss that. We held talks on this with the members of the QCGN, and we will have others.

We also received requests from the Canadian Institute for Research on Linguistic Minorities, which is an important organization.

Without giving you the names of the organizations or members of this committee, I can assure you that we are taking all of this into account. In our discussions with the representatives of the FCFA and of the QCGN, we will ensure that the best persons are around the table.

Mr. François Choquette: That answer is in keeping with the requests from the groups. That's very interesting.

I would like to go back to the mistake, the blunder or electronic problem—I don't know what to call it—in connection with the census. How is it that experts from anglophone communities, among others, had to sound the alarm for you to realize that there was a mistake in the results of the census? That is quite serious.

Mr. Jean-Pierre Corbeil: All I can say is that the meeting of October 17 or 19 will focus on that topic.

The Chair: That is what we had agreed upon, Mr. Choquette. We can go back to that topic during another meeting.

Mr. François Choquette: Fine.

I'm done, Mr. Chair.

The Chair: In any case, your speaking time is up.

Mr. Vandal, you have the floor.

Ms. Linda Lapointe (Rivière-des-Mille-Îles, Lib.): No, it's my turn.

The Chair: No problem.

Ms. Lapointe, you have the floor.

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

I thank the witnesses for being here.

Mr. Corbeil, I am following up on my colleague's question. You will have a formal meeting with the FCFA on October 11, and you said you had spoken with the QCGN. Have you had formal meetings with that organization to find out about the situation in Quebec?

Mr. Jean-Pierre Corbeil: All I can tell you is that we will soon be meeting with the director of research and policy at QCGN, and one of the topics of discussion will be precisely that.

Ms. Linda Lapointe: Are you keeping to the timeframe? You said there will be a meeting on October 11, and that in November there will be a meeting of another working group.

Mr. Jean-Pierre Corbeil: No, it is the same advisory committee. Our objective is to hold a first meeting in November.

Ms. Linda Lapointe: Fine.

Mr. Jean-Pierre Corbeil: There may be some constraints or setbacks, but that is our objective.

Ms. Linda Lapointe: Earlier, my colleague spoke about a list of members being considered to sit on the advisory committee. Have you sent out any invitations?

Mr. Jean-Pierre Corbeil: Not yet.

Ms. Linda Lapointe: So no invitations were sent. Is there a list of names?

Mr. Jean-Pierre Corbeil: We discussed the matter. Just so you know, that was last week.

Ms. Linda Lapointe: Fine.

Mr. Jean-Pierre Corbeil: We are preparing a list that will strike the best possible balance, as my colleague said, between the academic milieu, experts on the topic, representatives from the associations, lawyers and other people who have expertise in the field. I cannot say more than that for the moment.

Ms. Linda Lapointe: Fine.

Let's go back to recommendation 4 and the tests and consultation process, as well as to finding the best ways to enumerate the rights-holders. What really concerns me is that we want to respect the timeframes and guarantee that we will be very well equipped. You mentioned dates earlier, and you referred to the fall of 2019, winter 2020 and the next census, in 2021.

What bothers me is that we could be receiving the answers late and we may not have time to react in order to determine the right questions to ask in order to do an effective enumeration. I'd like some reassurance, because I continue to be concerned.

• (1605)

Ms. Johanne Denis: The timeframes are certainly very tight. We are conducting various tests. There are lots of qualitative tests for which we meet with communities throughout Canada. We hold what we call "discussion groups" or individual interviews. What we call "qualitative tests" are used to help and guide us as to the formulation of the questions we are proposing, that is to say we want to see whether they seem to be well understood.

As for the quantitative tests—they will take place later in 2019—we use our evidence-based statistical methods in order to see which formulation is the best, which one will allow us to measure what we are attempting to measure properly. As Mr. Généreux mentioned earlier, we have to ensure that we have the question that will really target the concept we are attempting to measure. The quantitative tests will allow us to ensure the statistical accuracy of the wordings.

There will be qualitative tests during all of 2018, and quantitative tests up to a certain point in 2019. So we will have a good year to conduct testing; in fact, almost two years.

Ms. Linda Lapointe: When do you think you will have pinned down the questions in 2019?

Ms. Johanne Denis: We will have them in the fall of 2019.

Ms. Linda Lapointe: The fall of 2019 is not really good timing.

Ms. Johanne Denis: Excuse me, not in the fall. The test will take place during the summer of 2019.

Ms. Linda Lapointe: I am not sure that the fall of 2019 is a good moment.

Mr. Jean-Pierre Corbeil: Madam, I can only say that Statistics Canada is not...

Ms. Linda Lapointe: Could you do this in the spring of 2019?

Mr. Jean-Pierre Corbeil: Listen, these are not the first questions Statistics Canada does tests on.

Ms. Johanne Denis: We already have questions.

Mr. Jean-Pierre Corbeil: You have no idea how many questions we have to test for every census in order to ensure their validity; we get requests from all over. This is not the first time we conduct such tests. We do it for every census.

Ms. Linda Lapointe: I understand, but in the past, this escaped anyone's notice, and we did not get an accurate assessment of the number of rights-holders.

Mr. Jean-Pierre Corbeil: I can only say to you, when you say that it's been 30 years...

Ms. Linda Lapointe: No, I did not say that. My colleague said that.

Mr. Jean-Pierre Corbeil: When you say that something escaped us, all I can reply is that this is the first time in two years that people have exerted pressure to get Statistics Canada to collect information in such an explicit way on this topic.

As my colleague said, we understand the requirements and demands. With respect to the timeframe, I can guarantee that Statistics Canada will do everything in its power to see to it that all of the questions that can allow us to enumerate the rights-holders will be tested. I can guarantee it, and we will find the best way of doing so. That is really all we can do.

Ms. Linda Lapointe: You just need to be careful about when the questions will be ready. There is something of a parallel timeline to keep in mind.

You mentioned earlier that, in light of the responses obtained in statistical tests, you realized that people may have poor comprehension, either of the French or the English. I don't think that illiteracy or comprehension issues are new.

Mr. Jean-Pierre Corbeil: That's right.

Ms. Linda Lapointe: I also don't think that a statistical test can change all that much over the years, but people should still have a better education in 2017-2018 than in 1960. How affected do you think we are by that problem?

Ms. Johanne Denis: That is what we are assessing by conducting tests. We are making sure to have the simplest and most concise questions possible that enable us to measure what we need to measure. When we say that we are building on all our science, that is what we are doing.

Ms. Linda Lapointe: Okay. That aspect of the problem has always been there.

Ms. Johanne Denis: Yes, exactly.

Ms. Linda Lapointe: Unfortunately, that is currently still the case. People still have problems. That is not new.

The Chair: Thank you very much.

Members will now have four minutes for their questions and comments.

Mr. Vandal, go ahead.

Mr. Dan Vandal (Saint Boniface—Saint Vital, Lib.): I want to begin by thanking you for your presentation.

I will share some good and some bad news we received this morning from my province. The Division scolaire franco-manitobaine, or DSFM, says that enrolment for this year is at 5,591 students. That is an increase of 2%, which is good news. Schools in urban areas are experiencing strong growth, while enrolment numbers in some schools in rural communities are dropping. This issue is very important for our small villages, such as Saint-Georges, Saint-Jean-Baptiste and St-Pierre-Jolys. A number of those small villages lack Internet access.

Ms. Denis, you said that you receive 70% of your responses for the enumeration over the Internet.

Is that right?

•(1610)

Ms. Johanne Denis: Yes. We receive the rest of the responses through a paper questionnaire—

Mr. Dan Vandal: Okay.

Ms. Johanne Denis: —or through telephone interviews.

Mr. Dan Vandal: Yes.

Ms. Johanne Denis: So it's a mixed mode of data collection.

Mr. Dan Vandal: That may be a problem in small villages. I just wanted to let you know.

Ms. Johanne Denis: Yes.

Mr. Dan Vandal: We need good schools. Unfortunately, since those people don't always have Internet access, the message may not reach them.

Ms. Johanne Denis: Yes.

Mr. Dan Vandal: I would like to come back to the theme raised by Ms. Lapointe.

You talked about the questions that were being asked.

Are there any surveys?

Mr. Jean-Pierre Corbeil: In general, wording is proposed for questions. We meet with focus groups to ensure that the questions are understood and to see how they are interpreted. As mentioned earlier, the way people understand a question depends on how the question is worded. Qualitative testing and focus groups help us ensure that people have understood the objective and the wording of a question. Afterwards, we administer a quantitative survey in various regions of Canada.

Mr. Dan Vandal: Okay.

Mr. Jean-Pierre Corbeil: The sample is large. If the sample consisted of a hundred or a few hundred people, the results may be different than if it consisted of several thousand people. The qualitative testing, which is conducted with tens of thousands of individuals, helps us ensure that the questions are understood and that the results are consistent.

Mr. Dan Vandal: Will all that work be done in 2018 or in 2019?

Mr. Jean-Pierre Corbeil: We are already starting to look at the wording of questions. In 2018, we will conduct qualitative testing. As my colleague said, this is an ongoing process.

Ms. Johanne Denis: That's right.

Mr. Jean-Pierre Corbeil: The process will take from two years to two and a half years.

Mr. Dan Vandal: When exactly will we know whether the census questionnaire contains the necessary questions to better enumerate rights-holders?

Ms. Johanne Denis: That's a good question. You will know it once the information has been published in the *Canada Gazette*. It becomes secret once we recommend the questions to the government, to Minister Navdeep Bains. Then the cabinet approval process comes into play.

Mr. Dan Vandal: Can you give us an idea of the timeline?

Ms. Johanne Denis: You will get the answer in spring 2020.

The Chair: Mr. Clarke, go ahead for four minutes.

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

Good afternoon, everyone.

I have a few general questions. So I will let you decide who will answer.

How many French Canadians are there in the country right now?

I'm not talking about francophiles, but about French Canadians born to French Canadian mothers.

What did the latest censuses say about that?

Mr. Jean-Pierre Corbeil: I suggest, regardless of the definition criterion—and there are many of them—

Mr. Alupa Clarke: Yes, and I mentioned one of them.

Mr. Jean-Pierre Corbeil: —that you watch the video of Elvis Gratton defining a French Canadian.

Mr. Alupa Clarke: What I am interested in are children born to French Canadian mothers.

Mr. Jean-Pierre Corbeil: We are talking about roughly 1 million people.

Mr. Alupa Clarke: How many?

Mr. Jean-Pierre Corbeil: Roughly 1 million people.

Ms. Johanne Denis: Those are francophones outside Quebec.

Mr. Jean-Pierre Corbeil: Are you talking about the number of francophones in Canada?

Mr. Alupa Clarke: Yes, in all of Canada.

Mr. Jean-Pierre Corbeil: The figure is approximately 8 million people.

Mr. Alupa Clarke: Okay.

Since the coming into force of the Constitution Act of 1982, and the application of section 23 of the Canadian Charter of Rights and Freedoms, has the proportion of rights-holders in Canada decreased, increased or remained stable? Regardless of whether or not the number of francophones is accurate, what do the figures show? What does the situation look like?

Mr. Jean-Pierre Corbeil: I cannot give you an answer on rights-holders because the 2006 post-censal survey on the vitality of official language minorities was the first time we were able to enumerate rights-holders according to the three criteria set out in section 23 of the charter.

If we use only the most important criterion in Canada outside Quebec, that of French as a mother tongue, the number has always increased and continues to do so.

• (1615)

Mr. Alupa Clarke: Okay.

Mr. Jean-Pierre Corbeil: The demographic weight is decreasing, but the number of people is increasing.

Mr. Alupa Clarke: Okay, I understand.

Is there another way for Statistics Canada to help the federal government enumerate rights-holders, such as by using the social insurance number?

I am not judging Statistics Canada, only asking the question. After all, there are all sorts of tools at our disposal.

When my son and my daughter were born, in Quebec, I answered the questions. Of course, I don't know where they will live later. However, there are all kinds of ways to track an individual's movement, including passport applications. That's only one example.

Doesn't Canada have other tools to determine who rights-holders are?

Mr. Yvan Déry: The description of a rights-holder provided in section 23 of the charter is fairly specific.

Mr. Alupa Clarke: That's true.

Mr. Yvan Déry: The definition was not established for the purposes of enumeration, but rather so that a citizen could come before their ministry of education or their school board to say that they are entitled to education in the language of the minority and claim that right. When someone comes before their school board, it is relatively easy to check their background, have a discussion with them and understand their situation.

Mr. Alupa Clarke: Yes.

Mr. Yvan Déry: When it comes to enumeration and general population estimates, things get complicated. What we have always thought of as the majority of rights-holders is established based on the mother tongue criterion. You talked about this, and it is in your report. It is relatively simple to check. Statistics Canada is very capable of and adept at checking it. What is more complex are questions we are missing, such as those on the parents' educational background.

Mr. Alupa Clarke: Yes.

Mr. Yvan Déry: In addition, a distinction must be made between someone having attended a French immersion school outside Quebec—so an English school where courses are taught in French—and having attended a French school. Obtaining that information through a simple question is already complex.

Mr. Alupa Clarke: I can imagine.

Mr. Yvan Déry: It's relatively simple for someone who comes before their school board, especially since, in most provinces, the majority of school boards will tell a citizen whose mother tongue may be English or an immigrant who is still not a Canadian citizen that the admissions committee has the power to admit them and that the province accepts them. The process is more generous on the ground than what is proposed in section 23 of the charter.

Mr. Alupa Clarke: I would like to ask another quick question.

The Chair: You have to ask it very quickly.

Mr. Alupa Clarke: Is the enumeration of rights-holders part of the short-form census, the long-form census or both?

Mr. Jean-Pierre Corbeil: There is currently no enumeration of rights-holders in the census.

Mr. Alupa Clarke: Okay.

Mr. Jean-Pierre Corbeil: The only criterion we can use is in the census short-form questionnaire.

Mr. Alupa Clarke: Thank you.

The Chair: Thank you, Mr. Corbeil.

Mr. Arseneault, go ahead.

Mr. René Arseneault (Madawaska—Restigouche, Lib.): I have four minutes, right?

The Chair: You have three or four minutes.

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

I will share my time with Mr. Samson.

I would like to go back to the answers given by Mr. Corbeil and Ms. Denis to a question asked by my colleague Linda Lapointe.

I am sure that you receive thousands of suggestions of questions to help you consider several spheres of our society. I would just like to remind Statistics Canada that the enumeration of rights-holders is a constitutional obligation. The enumeration of rights-holders gives us access to data on education. The Supreme Court of Canada told us that this is one of the ways to do that. I know that, indirectly, this is a Statistics Canada responsibility, but the enumeration of rights-holders is an obligation under the charter.

Does Statistics Canada have legal advisers who are looking into those obligations?

Mr. Jean-Pierre Corbeil: We do have legal advisors.

We are currently creating a working group, an advisory committee. We will ensure to have trained lawyers on the committee. That way, they could inform Statistics Canada and give advice on the best way to word good questions and the appropriate way to answer them.

Mr. René Arseneault: On that note, I will yield the floor to my friend Mr. Samson, so that he can sleep well tonight.

Mr. Darrell Samson: My colleague asked a good question.

I am thinking of the architects of the Canadian Charter of Rights and Freedoms.

Do you think that the architects of the charter, both at the federal and provincial levels, included, in paragraph 23(1)(a), the notion of “French” parents, in paragraph 23(1)(b), the notion of parents “who have received ... their instruction” and, in subsection 23(2), the notion of a child who “has received ... instruction” only to cover the first 30 years following the adoption of the charter?

If we are wondering what they had in mind and what their objective was, it seems to me that something must be done quickly.

• (1620)

Mr. Yvan Déry: As I was saying earlier, section 23 of the charter was drafted to give individuals rights, and not to make the work of Statistics Canada easier.

Voices: Oh, oh!

Mr. Darrell Samson: I agree with that!

Ms. Linda Lapointe: It was drafted by lawyers and not by statisticians.

The Chair: Mr. Généreux, go ahead.

Mr. Bernard Généreux: Ms. Denis, you mentioned earlier the electronic version of the census and the fact that 70% of people choose to fill out that version.

Is it possible, with the technology available nowadays—I am not talking about Phoenix, quite the contrary—to adapt the census to specific regions? We agree that the forms are the same for everyone in the country, that the same questions are put to everyone.

Would it be possible in the future to adapt the questionnaire—either by region, or in another way—so that a modified form would be used in regions and small villages with no Internet access, such as Mr. Vandal's region. That could make it possible to collect much more specific data. It is easy to do that electronically, and people only have to click on an option for three other questions to appear, which is impossible to do on paper.

If that is an option, it could open up the possibility of going much further, and in a much more specific manner, when it comes to the questions we want to put to some individuals regarding rights they may have, but of which they are unaware.

Ms. Johanne Denis: That's an excellent question.

Mr. Jean-Pierre Corbeil: It is an excellent question. We are obviously looking at that very carefully. However, what you need to keep in mind and understand is that the order of questions is crucial, because the answers have to be compared.

I will give you an example. If we are looking for something specific concerning part of the population, or certain municipalities, and we add three or four questions between two questions other concerned citizens will answer, we could end up with answers that may have been influenced by those new questions.

What we are trying to determine is whether there is a way to create supplements to questions to target specific populations based on various characteristics, but without breaking up the continuity or order of questions all Canadians must answer.

Mr. Bernard Généreux: That can currently be done electronically.

Mr. Jean-Pierre Corbeil: Yes, exactly.

Mr. Bernard Généreux: Earlier, Mr. Vandal asked you whether the committee meetings will be public. I'm not sure I understood the answer.

Apparently, we will find out who the members of the committee will be within two or three weeks. Is that correct?

Ms. Johanne Denis: Yes. We will know who the members are.

Mr. Bernard Généreux: Will the committee's proceedings be public?

Ms. Johanne Denis: That's a great question. It will be necessary to balance public information requirements with committee business confidentiality. I can't answer yes or no. We will see as the committee's work progresses. The committee will advise the chief statistician, so that means the confidentiality of the committee's work is protected by Statistics Canada or the Statistics Act. What we can do is see what can be made public and what can be shared.

Mr. Bernard Généreux: I have a subquestion for you in that case.

Would it be possible or feasible to share information that may be heard in camera, or in the course of private proceedings, with the Standing Committee on Official Languages? The official languages committee regularly meets in camera. That way, we could follow the committee's proceedings.

Many of us share the same questions and concerns. I'm not normally a worrier, and I sleep fairly well at night. I do, however, tell those who are worried that we, on the Standing Committee on Official Languages, have taken the initiative to start this discussion. I want to say to Mr. Samson publicly that he was a key player in raising this whole issue involving rights holders. We owe him a debt of gratitude.

The committee held meetings, conducted consultations, and heard from distinguished and smart witnesses who delivered valuable presentations. It seems to me, then, that it would be beneficial for us to have the opportunity to follow the proceedings. Perhaps we could even provide you with some additional insight, without, of course, getting involved. The committee could perhaps make recommendations based on comments made in the course of your proceedings.

We are able to work together on a confidential basis.

• (1625)

The Chair: Thank you, Mr. Généreux.

I'd just like to point out a few things.

We are talking about not just the survival of minority francophone communities across the country, but also their development. You are playing an essential role in the survival and development of all francophone communities.

As I sit here and listen, I sometimes get the sense that you hear us but that you aren't listening. That's the impression I'm getting up here.

I want to repeat a point I made during a previous meeting. In the fall of 2019, Canada will have a federal election. According to your timeline, you plan to bring your proposed questions to cabinet in 2019, during the election campaign. That worries me. In 2019, cabinet will have other things on its plate besides approving, rejecting, or changing the questions you will have proposed. You are telling us, members of Parliament, that we will find out the results in 2020 or so, after the election in fall 2019, if that is indeed when it takes place.

In order to dispel some of the uncertainty felt by the people at this table, I'd like to ask you something. In the next six months, would you be able to put forward one or more questions related to paragraphs 23(1)(a) and (b) and subsection 23(2) of the Canadian Charter of Rights and Freedoms? You could always rework them afterwards; I wouldn't object to that. By March 31, though, I'd like you to provide us with sample questions addressing paragraphs 23(1)(a) and (b) and subsection 23(2).

Mr. Jean-Pierre Corbeil: All I can say about that is that we have already given the committee members the questions that were used

to enumerate rights holders in the post-census survey on the vitality of official language minorities, conducted in 2006.

According to the advice we received, we needed between eight and 12 questions to measure the number of rights holders. What I mean is that, in order to be able to measure that number in accordance with section 23 of the charter, we have to be able to determine whether the individuals are Canadian citizens. That question is currently part of the census. Questions on mother tongue are also included. The other questions are not nearly a page long, as some have suggested, and they have already been asked.

Ms. Johanne Denis: They have been tested.

Mr. Jean-Pierre Corbeil: What's more, they have already been tested for the purposes of the 2006 survey. We can send you the questions.

I put them to legal experts. For instance, I asked whether, in the question stating that the parent must have attended elementary school in French in Canada, it was also necessary to specify the duration of attendance. They told me that they didn't know yet.

The Chair: Mr. Corbeil, I fully understand the difficulties you are raising.

I'm asking you something very tangible and specific. By March 31, we'd like to receive one or two sample questions related to the issue we are interested in here, in other words, questions about section 23 of the charter.

Mr. Jean-Pierre Corbeil: You can't have one or two questions to enumerate rights holders under section 23 of the charter.

The Chair: You scare me when you say that.

Mr. Jean-Pierre Corbeil: Mr. Chair, I say it because they were already tested in 2006, with 5,000 respondents in Canada, outside Quebec. We didn't conduct some thoughtless survey.

All we are saying is that, if the objective—which we take very seriously—is to fully enumerate rights holders in accordance with the three criteria set out in section 23 of the charter, we have to make sure that all the questions are asked.

I can send you the questions that were asked in the post-census survey. We will endeavour to ask the same questions.

Ms. Johanne Denis: We will endeavour to make them shorter.

Mr. Jean-Pierre Corbeil: If it's possible to make them shorter and ask fewer questions, we will.

The Chair: You could do that within the six-month time frame I mentioned. You would have until March 31.

Mr. Jean-Pierre Corbeil: We could send you some hypothetical questions, but they won't have been tested.

The Chair: All right. I'll discuss it with my colleagues.

In the meantime, thank you for your input today.

I will now suspend the meeting momentarily.

•(1630) _____ (Pause) _____

•(1635)
The Chair: _____ (Pause) _____

•

Pursuant to Standing Order 108(3)(f), we are continuing our study of Air Canada's implementation of the Official Languages Act.

We are pleased to have as a witness today Pierre Foucher, a professor in the civil law section of the faculty of law at the University of Ottawa.

Welcome Professor Foucher. I, myself, am a civil law graduate from the University of Ottawa. It's certainly a pleasure to have you with us today. You will have about 10 minutes for your presentation, after which, we will move into questions and comments from committee members, as per usual practice.

I'd like to advise everyone that the meeting will be ending at a quarter of 20 after five this afternoon. A vote is scheduled for a quarter to six, and the bells will ring at around a quarter after five. Furthermore, since we need five minutes to discuss committee business in camera before the end of the meeting, I'm going to make some minor adjustments to the schedule as needed.

Professor Foucher, over to you.

Mr. Pierre Foucher (Professor, Faculty of Law, University of Ottawa, As an Individual): Thank you very much, Mr. Chair.

Good afternoon, ladies and gentlemen. I'm extremely honoured and pleased to be here today. It's been a long time since I've been invited to appear before a House of Commons committee. I'd like to start by saying that I practise bijuralism, that is, I teach civil law half the time and common law the other half of the time. I also head a research centre in the faculty of arts. That means I have three deans.

Mr. René Arseneault: We are inclusive.

Voices: Oh, oh!

Mr. Pierre Foucher: That's it. We speak at least two languages.

I'm here to speak to you about the implementation of the Official Languages Act at Air Canada. In preparation, I obviously read the official language commissioner's report on Air Canada and the airline's response to the preliminary report.

I'm not going to wade into the numbers battle or comment on the evidence, which, according to the commissioner, is stacked overwhelmingly against Air Canada, while, on the contrary, the company argues that its relatively low number of complaints, in proportion to its volume of passengers, is proof of the progress it has made.

The parties profoundly disagree on the company's achievement of the objectives set out in the act. By its very mandate, however, the commissioner's office is the most appropriate authority to evaluate the pace of progress and delays.

I heard you discussing section 23 of the charter earlier. I could tell you from experience that the same kinds of comments are made about certain provincial governments that balk at fully implementing

the education rights of their minority population. They argue that they are making strides and that progress takes time. If I were to do that, though, I would be straying from my point.

On the outgoing commissioner's recommendation, your committee took up the matter of strengthening the powers conferred under the act to bring Air Canada in full compliance with its requirements. In the report, the commissioner recommended a concerted approach on two fronts: first, improving sanctions through monetary penalties; and second, clarifying the scope of the act. I will address each of those two elements.

With respect to enforcement measures, I want to assure you that the commissioner's office did not come up with anything new. Should you decide to recommend that the government adopt solutions proposed in the commissioner's report, you won't be ushering in any new ideas. These types of sanctions exist elsewhere, in other sectors and in other statutes, applying to other administrative organizations.

All of the recommendations are appropriate. It certainly isn't easy to determine which one would be most effective, a question you may have for me. It's akin to asking how many crimes are prevented as a result of increased police powers.

Coming back to official languages, I will say that the number of complaints can certainly serve as a yardstick, but that the decrease in the number of complaints can be due to numerous factors, not just fear of the law. Each of the commissioner's proposals has its advantages and drawbacks.

Let's assess the four proposals. First, the commissioner suggests entering into enforceable agreements or compliance agreements. These agreements would have legal force and, if not adhered to, could lead to other sanctions. This is the model that the Office of the Privacy Commissioner of Canada uses. It would be a step up from the action plans Air Canada submits to the commissioner's office but does not follow afterwards. These agreements do not work, however, unless they go hand in hand with at least one other measure, given the need to compel a contracting party to keep its commitments.

Second, the commissioner proposes instituting statutory damages. They would be awarded simply for violation of the act, without claimants having to prove any negligence or actual loss stemming from the violation. The notion of statutory damages in the area of language law is already accepted. They were used in at least one decision in 2006, in a case involving the Northwest Territories. The ruling was issued by Judge Moreau. A range of damage awards would be prescribed, and the matter would first have to be heard by the Federal Court, which would then decide whether the act had been violated. If so, the court would take a number of factors into account in assessing the amount of the damages. This option requires the involvement of the court, and that can be costly.

Third, the commissioner suggests introducing fines. The Air Canada Public Participation Act would set out the violations for which fines would be imposed. Fines are punitive. Unlike statutory damages, which have a compensatory and deterrent function, fines are meant to be punitive. They replace imprisonment. They must be substantial so as not to be perceived by the company being fined as a hidden tax or the normal cost of doing business.

[English]

It's the cost of doing business.

• (1640)

[Translation]

For it to really be a fine, the wallet has to take a harder hit.

An administrative fine is a punishment frequently used in regulatory law to ensure compliance with regulations that prohibit wrongful conduct. Nunavut introduced such a system but, to my knowledge, has yet to use it. Quebec also uses this measure to ensure compliance with Bill 101, doing so more frequently. There, matters are referred to the director of criminal and penal prosecutions, who lays charges on behalf of the attorney general. If the court determines that the Charter of the French Language was violated, it can impose fines in accordance with the rates set out in the act, and has done so.

Last, but not least, the commissioner suggests using what he calls administrative monetary penalties, which are automatic fines that do not rely on the discretion of a judge. They are imposed by the organization overseeing legislative compliance. In this case, it would be the Office of the Commissioner of Official Languages. The Canadian Transportation Agency already has the authority to impose administrative monetary penalties for contraventions involving the advertising of air service prices. Air Canada is therefore accustomed to administrative sanctions.

The Canada Border Services Agency and the Competition Tribunal are also authorized to issue these penalties to airlines, including Air Canada. This is a quick and inexpensive mechanism for users, who don't have to go through the courts. It doesn't rely on the involvement of the director of criminal and penal proceedings or the discretion of a provincial attorney general. The commissioner's office could be authorized to impose the penalties. Language commissioners, however, generally don't like to have such a power, arguing that it undermines their neutrality and impartiality.

I think that internal safeguards can be put in place to make such a system work without hurting the commissioner's credibility. The system used by Quebec's liquor, racing, and gambling regulator, the Régie des alcools, des courses et des jeux du Québec, comes to mind; it has a separate division that deals with sanctions.

I will now turn briefly to the second part of the commissioner's report, which has to do with clarifying the scope of the act. One recommendation is meant to correct the effect of the Thibodeau decision—in fact, I believe he appeared as a witness before the committee. The idea is to specify that the well-known Montreal convention—which regulates the awarding of damages for breaches during international carriage by air—cannot apply or impede other monetary awards issued for violations of the Official Languages Act during domestic flights within Canada. Such an amendment is possible and would not be in breach of international law.

It is also clear that Air Canada's restructuring had the effect of shielding a number of its divisions from the application of the Official Languages Act. It will be necessary to find a way to prevent that going forward. The privatization act could include grandfather clauses and extend language obligations to regional carriers

operating on Air Canada's behalf, even if they aren't subsidiaries. An order mechanism could also be incorporated.

Lastly, the commissioner examines a few hypothetical scenarios involving the scope of the Official Languages Act and Air Canada: keeping the status quo; subjecting all air carriers in Canada to the language obligations, including WestJet and Air Transat; and simply doing away with Air Canada's language requirements to let the market dominate. To my mind, the last scenario isn't an acceptable one because the market will always favour the strongest language. That's what sociolinguistics has shown us.

In a country that values linguistic duality, that will not work. The same logic could also be applied to ports, airports, and any other federal entity that might seek privatization, and in the medium term, that would put an end to the policy of official bilingualism. I don't think, therefore, that the solution is to exempt Air Canada from the application of the act.

It is also suggested that the Canadian Transportation Agency, known as CTA, be mandated to deal with the issue and given exclusive authority over the language policies of air carriers. That's not a good idea either. The Commissioner of Official Languages retains authority over implementation of the act, even though other entities might play a role. Such is the model of concurrent jurisdiction.

• (1645)

As I bring my presentation to a close, allow me to quote Justice Martineau of the Federal Court. There was a case between CBC/Radio-Canada and the Commissioner of Official Languages. One of the defence arguments made by CBC/Radio-Canada was that the Office of the Commissioner should not be conducting investigations into its use of language, or the use in its programming, because that was the responsibility of the Canadian Radio-television and Telecommunications Commission, or CRTC.

Justice Martineau's reply was: "I firmly believe that this obstinate quest to create, at all costs, a scission between "broadcaster" and "institution" is misguided and wrong from the point of view of enforcing a constitutional, quasi-constitutional or statutory linguistic obligation."

In my opinion, we are equally unable to separate the functions of a commercial carrier and of a national institution providing air transportation. If the CRTC is able to regulate CBC/Radio-Canada's language policy, with the commissioner standing by its side, it seems to me that the commissioner should be able to keep all his powers of enforcement under the Official Languages Act.

We must remember that Air Canada is not just any airline, it is Canada's national airline. Air Canada belonged to the federal Crown, which is why its linguistic requirements have been maintained. The need to maintain them is as applicable today as at the time it was privatized.

I also concur with those who feel that Air Canada cannot divest itself of its commitments by changing its business structure. As the courts have held on a number of occasions, the government cannot escape its obligations indirectly by having work done by someone else.

Monetary penalties are a deterrent in terms of enforcing the law. They must be used sparingly, but they must exist in order to better ensure compliance with its obligations. If not, the Official Languages Act will remain an act that will be very difficult to enforce, even though it imposes legal obligations in the same way as any other act.

Thank you very much.

I am ready to answer your questions in the official language of your choice.

The Chair: Thank you very much, Professor Foucher.

We will now go around the table, with each speaker having five minutes. We will start with Mr. Clarke.

• (1650)

Mr. Alupa Clarke: Thank you, Mr. Chair.

Thank you for joining us today, Mr. Foucher. It was much appreciated. You gave a great presentation, and I learned a lot from it.

Could you continue your explanations about the consequences and advantages of the commissioner's fourth recommendation, the one about administrative monetary penalties? You mentioned that one of the consequences would be to undermine the commissioner's credibility.

I will give you the time you need, as long as it is within my five minutes, to go more deeply into the consequences and advantages of that recommendation.

Mr. Pierre Foucher: Let us start with the advantages. Administrative penalties are quick, easy, automatic, and set out in an act, a regulation or an order. There can be criteria in the act that would allow the commissioner to set the process in motion after he has written a certain number of reports on Air Canada's shortcomings in complying with the act.

The other solutions require people to go to court.

One of the disadvantages mentioned by the commissioners, but not by me, is that if a commissioner investigates Air Canada—or any other institution, if we extend the system to other federal institutions—he could be frowned upon. Air Canada could say that it is well aware that, if it does not do what is required, there will be an automatic penalty. That would change the commissioner's role into the language police, and the commissioner would not want that.

I say that there is a way of structuring the system in order to create a kind of partition between the commissioner's function to investigate and recommend, and the function involving administrative penalties. In the structure of the Office of the Commissioner of Official Languages, there would be a division dealing solely with administrative penalties. The commissioner could decide that enough was enough, and could send a report to his administrative division, which would set the process in motion.

The Chair: It would be done somewhat along the lines used by the Régie des alcools, des courses et des jeux, as you mentioned earlier.

Mr. Pierre Foucher: Exactly, the Régie des alcools, des courses et des jeux works a bit that way. There is a separation between the issuing of permits, regulatory matters, and the system of penalties,

which operates completely separately in order to preserve the neutrality of the permit-issuing.

Mr. Alupa Clarke: As for the consequences, you mentioned those that the commissioner's office suffered. What would be the consequences for Air Canada?

Mr. Pierre Foucher: I imagine that if the penalties are high enough and frequent enough, at some stage, Air Canada, which is a private company, would react by increasing the price of air tickets. At that point, customers would react in turn by abandoning the company. Air Canada will realize that, for economic reasons, it can do nothing else but to comply with the act because the penalties are multiplying.

Mr. Alupa Clarke: So, in your opinion, it would definitely work.

Mr. Pierre Foucher: It could work.

As I was saying earlier, we will never know how many accidents we have managed to prevent by issuing fines to delinquent drivers. On the other hand, it is certainly a deterrent that encourages people to obey the law. If they do not obey the law, they will have to pay the price for it.

Mr. Alupa Clarke: The Office québécois de la langue française has a language police section, does it not?

Mr. Pierre Foucher: Yes, the Office has that function, but the Office does not handle those matters itself. The Office sends the file to the Director of Criminal and Penal Prosecutions, the DPCP, which will lay the charge and go before the Cour du Québec to argue the case. Ultimately, the judges of the Cour de Québec will impose a penalty if they see a violation of the act. So it is no longer in the hands of the Office. The idea was to completely separate that role from the Office's role, and it falls to the DPCP. There is another model, but you would have to imagine a division of Canada's Department of Justice that would handle prosecutions. In terms of offences, we know that, in general, the Department of Justice has delegated its powers of prosecution for summary offences to the provincial attorneys general. That is what gave rise to the offences affair at the beginning of the 2000s.

Mr. Alupa Clarke: Could you by chance give us any examples of carriers in Quebec that were delinquent and that had issues with the Quebec language police? How did they turn out?

Mr. Pierre Foucher: No, I do not have any examples for you off the top of my head.

Mr. Alupa Clarke: If ever an example comes to mind, could you send it to us?

Mr. Pierre Foucher: Certainly. I can do some research.

Mr. Alupa Clarke: As a final word, could you comment further about the opinion of sociolinguistic experts who say that, where no legislative protection is strictly enforced, it will be doomed to failure in the free market?

Mr. Pierre Foucher: You want me to answer that in two minutes?

Voices: Oh, oh!

Mr. Alupa Clarke: I realize that it is impossible.

Mr. Pierre Foucher: I have been working in the area for 38 years, so I have dealt with a lot of sociolinguists, political scientists, and the like. The evidence is overwhelming.

The sociolinguist Louis-Jean Calvet, for example, says that cities devour languages. In his opinion, people in the same city will all speak the same language in 15 years if nothing is done to protect the minority language. Another has said that languages in contact are languages in conflict, and the stronger language will win.

The evidence is overwhelming. There is no way around it. If there is no legislation to protect the use of a language or to provide it with space, the stronger language will dominate. That is even clearer here, in North America, where we are surrounded by 330 million anglophones.

Mr. Alupa Clarke: Thank you.

• (1655)

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

The floor now goes to Mr. Arseneault.

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

Mr. Foucher, what a pleasure to see you here! We have not seen each other for more than 20 years.

Mr. Pierre Foucher: That's right.

Mr. René Arseneault: Mr. Foucher was my constitutional law professor. He was also a coach for the Laskin moot court competition. But above all, he was an excellent musician who would strum the guitar and sing the songs of Robert Charlebois.

Mr. Pierre Foucher: You have a good memory, Mr. Arseneault.

Mr. René Arseneault: My colleague Mr. Clarke had some excellent questions. They coincide with mine, actually.

Monetary penalties seem to be a really economical solution, legally and procedurally.

It seems that we are talking about amending the Air Canada Public Participation Act. That is the act in question, is it not?

Mr. Pierre Foucher: Yes.

Mr. René Arseneault: Do we have to reconcile that with subsection 77(4) of the Official Languages Act, the scope of which is much broader?

How could we amend both acts in order to achieve that objective?

Mr. Pierre Foucher: Well, clearly the administrative penalties in the Air Canada Public Participation Act would apply only to Air Canada. It would leave the other provisions in the Official Languages Act open, if required. The mechanism would really be squarely aimed at Air Canada.

I do not want to go even further beyond the mandate you gave me, but, if I had the choice, I would include it directly in the Official Languages Act, so that it applies to everyone.

Mr. René Arseneault: That is where I was heading.

Mr. Pierre Foucher: It is not the question I was asked, but if you are asking me for my opinion, the answer is yes.

In my opinion, it is a scandal that the Official Languages Act is one of the only acts in Canada that provides for such little recourse and so few penalties when it is not complied with. It would be in our interests to tighten the mechanisms a little.

Mr. René Arseneault: We are talking about Air Canada, but I would still like to talk about the Official Languages Act.

If you read subsection 77(4), you can see that it has almost no teeth.

If we have one problem to solve, it really is Air Canada. In fact, the history that the former Commissioner of Official Languages provided is overwhelming. It has not stopped, from 1974 to today.

What solutions would allow for subsection 77(4) to be amended in order not only to solve the problem with Air Canada, but to protect and promote other institutions?

Mr. Pierre Foucher: For those around the table who are not legal scholars, section 77 is the one that allows judges to grant appropriate and just remedy. It presupposes that a person is already before the court, the court in this case being the Federal Court. It is the mechanism that the Official Languages Act has established. If you are talking about administrative fines, that is the mechanism you have to go through, but if you are talking about administrative monetary penalties, or AMPs, you don't have to. The responsibility would go directly back to the Commissioner of Official Languages. You would not need to rely on subsection 77(4).

Subsection 77(4) leaves the door open to various options. The courts could have been innovative in the matter of sanctions. We have seen Justice Moreau award compensatory damages in the Northwest Territories case. In the Thibodeau case, we saw the court of first instance make an order that was termed "structural". It had the power to do so. The Supreme Court reversed the order, saying that it was too vague, and so on. However, the court's power to make a ruling already exists.

The difficulty comes in the fact that judges are prudent; they do not wish to be too innovative in terms of the remedies they grant. So we could provide them with some ideas. We could, for example, tell them to levy a fine or to order compensatory damages, and to develop a series of criteria along those lines. We are not going to rewrite the act this afternoon, but we could tempt them a little by telling them that they have the power to act and, if they do so, they will be reflecting Parliament's intention.

Mr. René Arseneault: Those are excellent comments. We had Mr. Thibodeau here at our last meeting. In his opinion, a \$1,500 fine would be just. He told us that he had become an expert in his case, more so than some lawyers. It is now easy for him to present his claims in court, but, for the person in the street seeking a remedy against Air Canada, for example, for the first time, alone and unrepresented, it is a whole pile of work. What do you think about a \$1,500 fine? Do you feel that it is a just penalty, with enough teeth to act as a deterrent?

•(1700)

Mr. Pierre Foucher: For a first offence, it might perhaps be acceptable. However, if Air Canada re-offends, the answer is no. The amount of the fine would have to increase significantly, as I was saying earlier. This should not simply be a business tax. It should be a real deterrent. I always like giving as examples speeding fines, and the loss of a driver's licence. The greater the speed, the higher the fine. On Highway 417, between Montreal and Ottawa, there is a big sign indicating that, if someone is caught driving at such and such a speed, the penalty can go right up to a licence suspension, perhaps in addition to a \$1,000 fine, I am not sure. When you see that, you tell yourself that it is worth easing off the gas. That is the kind of position that has to be taken with airlines, just like with anyone else. If you go too far, you are going to be paying quite a significant fine.

The Chair: Thank you very much.

We now move to Mr. Choquette.

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

Thank you for your testimony, Mr. Foucher. Your remarks are very interesting and enlighten us as to the possibilities and advantages of the four options suggested by Mr. Fraser, the former Commissioner of Official Languages. I asked people from the commissioner's office why there were four options and whether one was preferable to the others. They had a hard time giving me an answer.

I was hoping to get an answer from you. I have some inkling of what it would be, but I am going to ask you the question anyway. Do you have a preference for any of the four options?

Mr. Pierre Foucher: The last one.

Mr. François Choquette: Okay. Oh, that's excellent!

Mr. Darrell Samson: He didn't hesitate.

Mr. François Choquette: At the beginning, you mentioned that each of the options had advantages and disadvantages. Now I gather that, if there has to be a preference, it would be for administrative monetary penalties.

Mr. Pierre Foucher: That's it.

Mr. François Choquette: It would be very simple and would happen quickly, wouldn't it?

Mr. Pierre Foucher: Yes.

Mr. François Choquette: Amendments would have to be made to the Air Canada Public Participation Act, right?

Mr. Pierre Foucher: Yes.

Mr. François Choquette: The topic of my next question has already been addressed by Mr. Arseneault, but I'll talk about it anyway as well.

We have talked a lot about whether the Office of the Commissioner of Official Languages should have more powers.

In addition to Air Canada, other agencies are somewhat more reluctant about complying with the Official Languages Act. You touched on this, but I'd like you to expand on it a bit. Should the Commissioner of Official Languages be given more powers and, if so, how should it be done concretely?

Mr. Pierre Foucher: As I said to the previous commissioners at some point in their mandate, the Commissioner of Official Languages should have more power. They all told me that these increased powers would undermine their independence and that they preferred the status quo. I replied that it would be possible to separate the powers or to step them up. There are undeniably all sorts of ways to calm the apprehension of commissioners who are afraid of losing their credibility because of increased powers.

This is an administrative agency. Initially, the idea was for the commissioner to conduct investigations, prepare reports and make recommendations to Parliament and federal institutions. In the event of a problem, the matter could ultimately be referred to the Federal Court. The commissioners weren't given the tools they needed to carry out their mandate properly.

I agree that the commissioner should be given more power, not only the commissioner for the federal government, but also to the provincial commissioners, whether it be New Brunswick, Ontario or somewhere else.

Mr. François Choquette: Thank you very much for that answer.

I gather that we could give them more powers by amending the Official Languages Act.

•(1705)

Mr. Pierre Foucher: That's right.

Mr. François Choquette: That really clarifies things. Our committee will soon review the Official Languages Act, as you have recommended.

Mr. Pierre Foucher: I recommend that that path be explored.

Mr. François Choquette: It's very interesting. It could be done by adding administrative monetary penalties, or AMPs, to the Official Languages Act, isn't that so?

Mr. Pierre Foucher: Yes, as one of the commissioner's powers.

Mr. François Choquette: That could be done.

You said that AMPs have advantages and disadvantages. Would these penalties be an effective power for the Office of the Commissioner of Official Languages? You said at the outset that enforceable agreements may be worthwhile, but they aren't enough. Could AMPs be complementary to these agreements?

Mr. Pierre Foucher: Yes because we want to give the federal institution in question a chance to do something to correct the problem. It would be asked to submit a plan, as is currently done.

Let's take Air Canada, for example, which submits a plan to the commissioner. He confirms that the plan is satisfactory and that everything will be fine, but after two years, the company abandons its plan and there are no penalties. If the plan had legal force, Air Canada would be subject to administrative monetary penalties after two years.

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

Mr. Lefebvre, you have three minutes.

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

Mr. Foucher, thank you for being here. I did my studies in French in the common law section of the Faculty of Law at the University of Ottawa. You also were in that faculty, as well as the one in Moncton, weren't you?

Mr. Pierre Foucher: Yes.

Mr. Paul Lefebvre: A few months ago, when Transport Canada officials came to the committee, they implied that it was time to let Air Canada do what it wanted and no longer deal with providing services in French. When they appeared before us, representatives of that company told us that all carriers should also be subject to the Official Languages Act, as you mentioned.

What do you have to say about that?

Mr. Pierre Foucher: I will enjoy my academic freedom. It's good to be a professor, because you can sometimes say things that may seem huge.

There are already difficulties in applying the act to Air Canada. Applying the act to all carriers would increase the difficulty. The Office of the Commissioner of Official Languages needs a larger budget. I would go even further. I don't understand why all institutions under federal jurisdiction, including banks, airlines and interprovincial transportation companies, aren't subject to the Official Languages Act. They should also be required to comply with Part IV of the act and provide services to their clients in French or English across Canada.

Following the same logic of what I said earlier, if you don't protect a language, the stronger language will prevail. It isn't enough that banks have the choice to provide mortgages in French, they should be forced to offer them to their clients. They would have to have bilingual advertisements and bilingual employees. What I am saying is huge.

Mr. Paul Lefebvre: Yes.

Mr. Pierre Foucher: So a lot of institutions would be subject to the act. Perhaps it should be done gradually.

Mr. Paul Lefebvre: If there was a review of the Official Languages Act, I think extending the act should be addressed and studied.

We are currently working on a report that addresses the whole Air Canada issue. When the commissioner came to testify before the committee, he said that the situation has existed for 30 or 40 years. Obviously, the issue of penalties, whether monetary or otherwise, is one of the subjects we would like to address. In fact, Mr. Foucher, we thank you very much for your comments on this.

I would like to ask you a quick question.

You said that other penalties have been applied in other sectors. Could you tell us about the other penalties?

Mr. Pierre Foucher: These are situations where a company subject to a commissioner violates a requirement set out in the act. In this case, the commissioner in question automatically triggers an administrative monetary penalty. That is how the Office of the Privacy Commissioner works.

It serves as a deterrent to the company.

Mr. Paul Lefebvre: This is a precedent that can be used, right?

Mr. Pierre Foucher: Yes, it already has been. As I said at the beginning of my presentation, the commissioner's four options are already being implemented.

• (1710)

The Chair: Thank you very much.

Mr. Généreux, you have the floor for three minutes.

Mr. Bernard Généreux: Last week, we heard Mr. Thibodeau's testimony. He explained to us that, in his opinion, an "Exit" sign above a door on an airplane or in an airport or in the Air Canada offices violates his rights.

A company like Air Canada uses airplanes, but it does not manufacture them. Before signing a contract, it could always demand that "Exit" or "Sortie" be above the airplane door. This isn't the case because these airplanes are sold around the world.

Do you think this is really a violation of Mr. Thibodeau's language rights? I don't want to play devil's advocate, but it's become... I can't think of the right word. Can you help me?

Mr. Pierre Foucher: A mission?

Mr. Bernard Généreux: Yes, a mission.

At a certain point, too much is just like not enough.

In this case, someone is trying to find all the problems he may encounter or all the things that may violate his rights in order to denounce them systematically. Basically, I understand Mr. Thibodeau's mission very well. It's obviously become a mission for him, and that's his right.

If the commissioner had the opportunity to fine a company without anyone having to justify how the language rights hadn't been respected, wouldn't it open the door to terrible abuse?

Mr. Pierre Foucher: There are two elements to that question.

First, if there is an abuse by the commissioner, the courts are there to correct it. We see this in other administrative areas. I have given courses in administrative law in my career and have taught this to students.

Second, as far as the substance of the matter is concerned, it is true that simply reading "Exit" over the aircraft door does not make the person become anglophone. However, it is a message that is sent to the French-mother-tongue population. It is as if they were being told that their language was secondary. For young people who see this, it's like drops falling into a bowl. As Gilles Vigneault said, the drop that falls into the bowl and causes it to overflow is no bigger than the others. However, when the bowl is full, it overflows. That is bilingual signage. That's the bilingual announcements in airports and bilingual airline tickets. Why do you think the Inuit have demanded that the airline print its airline tickets in Inuktitut? I went to Nunavut, and my airline ticket was printed in three languages. Why did they demand this? It's because the Inuit population wants Inuktitut to become a commercial language. The same spirit is behind the Official Languages Act.

In isolation, you're right, this case can seem like that of a Don Quixote-like missionary, tilting at windmills with his sword. However, if we aren't careful, if we don't draw a line in the sand to indicate that it ends here, the drops will continue to fall into the glass, and it will overflow.

Mr. Bernard Généreux: You would rather amend the act than see the commissioner attack Air Canada only. Including provisions in the act is saying that all institutions under federal jurisdiction will be subject to the act.

Obviously, the commissioner doesn't just receive complaints about Air Canada, although we often talk about Air Canada. I don't want to be Air Canada's lawyer, because I'm not a lawyer; I work in a body shop. The fact remains that...

Voices: Oh, oh!

Mr. Bernard Généreux: What do you mean? You keep waving your professions around!

I'm joking; I shouldn't needle the witnesses.

The Chair: Well!

Mr. Bernard Généreux: Out of fairness, we could determine that all federal agencies must be on equal footing and not just target Air Canada, VIA Rail or any other organization, is that right?

Mr. Pierre Foucher: Yes. We targeted Air Canada because the company belonged to the federal government, but applying this to all airlines in Canada could be an interesting idea.

Mr. Bernard Généreux: What you propose is option four, administrative monetary penalties.

Does the commissioner also have to apply that?

Mr. Pierre Foucher: Yes.

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

Professor Foucher, thank you for your presentation.

Mr. Pierre Foucher: Is it over already?

The Chair: Yes, but your remarks were very instructive for the members of the committee. On behalf of everyone, thank you once again for your presentation.

Mr. Pierre Foucher: Thank you for inviting me, and good luck. We will read your report with great interest.

The Chair: Thank you.

We will pause for one minute, since we are going to continue the meeting in camera to address committee business.

[Proceedings continue in camera]

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