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## **Standing Committee on Official Languages**

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**EVIDENCE**

**Tuesday, November 21, 2017**

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**Chair**

**The Honourable Denis Paradis**



## Standing Committee on Official Languages

Tuesday, November 21, 2017

• (1535)

[*Translation*]

**The Chair (Hon. Denis Paradis (Brome—Missisquoi, Lib.)):** Pursuant to Standing Order 108(3), we are continuing our study on the full implementation of the Official Languages Act in the Canadian justice system.

It is our pleasure this afternoon to welcome Mr. Marco Mendicino, who is the Parliamentary Secretary to the Minister of Justice and the Attorney General of Canada as well as Mr. Sacha Baharmand and Mr. Stephen Zaluski.

Gentlemen, thank you very much for being here with us today.

I imagine you know the rules. You have about 10 minutes to make your presentation. Afterwards we will do a round table to hear the questions and comments of the committee members.

Mr. Mendicino, you have the floor.

**Mr. Marco Mendicino (Parliamentary Secretary to the Minister of Justice and Attorney General of Canada):** Thank you, Mr. Chair.

Dear colleagues, I am pleased to be here today.

I will begin by saying that all Canadians have the right to fair and equitable access to the justice system. That system should be able to meet their needs in the official language of their choice.

The right to access justice in both official languages is crucially important. Today, I would like to present a status report on the important progress made by our government to promote that right.

[*English*]

Let me say at the outset that I am proud of the work that the minister and our government have accomplished thus far. We have made significant progress since taking government by renewing the judicial appointments process, increasing the number of bilingual judges on our courts, keeping better statistics and being more transparent so we can track progress, and providing better training for all actors within the justice system so we can improve our bilingual capacity in our courts.

Building on these initiatives, our government has announced a new action plan, whose objective is to strengthen the bilingual capacity of the superior courts across the country. This action plan, introduced by the Minister of Justice on September 25, 2017, includes seven main strategies.

First, as part of the renewed judicial appointments process launched in October 2016, applicants are required to complete a comprehensive questionnaire in which they must indicate whether, without further training, they possess the ability in English and French to read and understand court materials, discuss legal matters with colleagues, converse with counsel in court, and understand oral submissions.

In addition, the action plan now requires that candidates who self-identify as bilingual must respond to two additional questions, namely: one, can you preside over a trial in the other official language?; and, two, can you write a decision in the other official language?

In addition to that, we have augmented the degree of transparency by encouraging the commissioner for federal judicial affairs to disclose those portions of the questionnaire that touch on bilingualism and official languages capacity.

[*Translation*]

The action plan proposes measures to the federal judicial advisory committee and to the commissioner for federal judicial affairs which they should adopt to improve the information gathered in candidates' questionnaires, strengthen the assessment of candidates' second language skills, and gather more information on language skills.

The second strategy introduced by the action plan concerns the commissioner for federal judicial affairs. The commissioner will continue to play his primary role, which is to support the federal judicial advisory committees, in addition to managing the nomination process on behalf of the Minister of Justice.

As for the action plan, the commissioner for federal judicial affairs will have the mandate of carrying out language assessments, or of conducting random assessments of candidates.

The commissioner will also make recommendations to the Minister of Justice concerning an objective linguistic assessment tool, also for the purpose of strengthening the nomination process.

Third, the commissioner will examine the current language training program for judges, including the improvement of the practical component based on linguistic competency in hearings.

• (1540)

[*English*]

Fourth, with a view to further implementing the measures set out in the action plan, the minister has asked the commissioner to make training and information on the linguistic rights of litigants available to her judicial advisory committees.

Fifth, the minister has likewise requested the Canadian Judicial Council to develop training for judges on the linguistic rights of litigants, to be delivered through the National Judicial Institute.

The sixth strategy calls for the Department of Justice to work with all jurisdictions, as well as the courts, to develop the means for assessing existing bilingual capacity of superior courts. Here, the government believes that the chief justices remain best placed to inform the minister of the needs of their courts, and it is for this reason that she engages in a constructive dialogue with them and her provincial counterparts.

[Translation]

And finally, seventh, the government also commits to consulting the provinces and territories in order to better identify and understand their needs and co-operate with them.

This initiative will also require co-operation with NGOs, that will share with us the challenges faced by litigants from official language minority communities who require equal access to the judicial system.

[English]

Together with our government's previous efforts to enhance the bilingual capacity of the superior courts, we believe these seven components of the action plan are working and, Mr. Chair, the results are telling.

The most recent statistics from the commissioner for federal judicial affairs reveal that between October 2016 and 2017, 997 applications for superior court were submitted. From that number, 300 candidates possessed all four official language skills, according to their questionnaires. More importantly, 24 of the 74 judges appointed indicated that they possessed all four abilities, meaning that fully one third of all new superior court appointments in the last year are bilingual. The results are considerably stronger in bilingual priority jurisdictions such as northeastern Ontario—71%—and Montreal, where 100% of all the appointments in the last year were bilingual.

Also, Mr. Chair, look at the new chief justice of the Alberta Court of Queen's Bench, Justice Mary Moreau, who was involved in numerous landmark cases involving language rights prior to her appointment to the bench and has since contributed to a bench publication on the language rights of the accused.

As you can see, much has been accomplished. More is required. With this committee's help and thoughtful deliberation, we will get there.

[Translation]

In conclusion, the action plan proposes important new measures for gathering information, training, and co-operation among many stakeholders. We are happy about the fact that this plan corresponds also to many recommendations made in the 2013 study of the federal Commissioner of Official Languages, conducted in partnership with his Ontario and New Brunswick counterparts.

[English]

We look forward to reading your report, and we appreciate the diligent study you are undertaking. I look forward to your questions.

[Translation]

Thank you, Mr. Chair.

**The Chair:** Thank you very much for your excellent presentation, Mr. Mendicino.

We will begin our round table with Mr. Bernard Généreux.

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

I thank the three witnesses for being here today.

We started this study some time ago. Several witnesses told us that funds were insufficient for everything having to do with conveying information and training, particularly that of judges, but also training for court personnel.

Has any money been earmarked in your plan for the training of court clerks, for instance, and all those who are a part of the internal justice system organization?

• (1545)

**Mr. Marco Mendicino:** I want to thank my colleague for his question. It is so important to have the necessary resources and funds to make progress in attaining the objective of access to justice in both official languages.

[English]

What I can tell my honourable colleague is that currently under the action plan we have an envelope of \$40 million over five years. In that envelope, there are two pillars. One is informational. The other is with regard to providing training to all the role players within the justice system.

I want to assure my colleague that in both of those components the government is working closely with our provincial and territorial counterparts to ensure they have the resources and the support necessary to augment access to justice, so that anyone coming before the courts can have access to justice in the official language of their choice.

[Translation]

**Mr. Bernard Généreux:** Forty million dollars over five years is \$8 million a year for all of the provinces. It seems to me that that is not a lot of money to train all of the personnel so that people may have access to justice in both languages throughout Canada. I find this sum very small.

My next question, which is just as important, concerns self-assessment. Table 6 of the report we received from the Library of Parliament provides linguistic statistics. Among the 997 people who applied, 300 had the four required skills. I imagine that these results are not only from self-assessments. We know that the people who want to become judges must at a certain point provide a self-assessment. However, we were told several times that this self-assessment was not ideal. The assessment should be very definite, and be done according to very specific criteria. I were to assess myself to determine my level of bilingualism I would probably give myself a 9 out of 10, but that would not necessarily mean that this complies with reality.

**Mr. Marco Mendicino:** Regarding current and future investments, we are inviting our provincial partners to make submissions at this time.

[English]

We are committed to listening to those submissions as we plan for future investments when it comes to improving and strengthening our official languages capacity in our courts.

With regard to your question on whether or not applicants are self-identifying, certainly within the last year through our renewed judicial appointments process, the questionnaire does offer the opportunity for candidates to self-identify as being bilingual or having the capacity to communicate in both official languages. I touched on that in my remarks. The statistics I provided highlighted the number of individuals who met all four of the criteria, which we use primarily to assess whether somebody has a sufficient capacity in both official languages, so that when we appoint them we can confidently say that they are bilingual.

[Translation]

**Mr. Bernard Généreux:** As a government and Department of Justice, at what point are you really able to assess the information provided by the self-assessments?

**Mr. Marco Mendicino:** We must cooperate with the commissioner on the one hand, but also with the advisory committees on the other.

[English]

We work very closely with both the judicial advisory committees and the commissioner for federal judicial affairs to, one, ensure that there are spot checks and a verification of the accuracy of the answers that are provided in the questionnaires. What we are looking for is an alignment between the answers that are given and what we can discern from the due diligence that is conducted by the judicial advisory committees.

Once they are appointed, it doesn't end there. We have worked very closely with the commissioner to encourage the provision of more spot checks and more training. I alluded to that in the course of my remarks. We are hoping to see new assessment tools that centre around levels of proficiency, so that the level stays very high.

• (1550)

**Mr. Bernard Généreux:** Thank you.

[Translation]

**The Chair:** Thank you.

Ms. Lapointe, you have the floor.

**Ms. Linda Lapointe (Rivière-des-Mille-Îles, Lib.):** Thank you, Mr. Chair.

Welcome to you all. It is a great pleasure to welcome you here today.

Mr. Mendicino, you said earlier that the funds were for information, which must surely include translation, as well as the training of those who are appointed. You also said that you work with the provinces. In this regard, I would like to know what the federal government is doing to further access to justice in English in Quebec.

**Mr. Marco Mendicino:** First, our minister and the Minister of Justice of Quebec have a good relationship. The dialogue is always constructive, particularly as regards improving access to justice in both official languages in the superior courts.

[English]

In addition, we do work that is ongoing with a number of associations whose purpose and mandate is to really ensure that language minority rights are observed wherever you are in the country. If it means ensuring that there is better French access in parts of Ontario—and I know that my colleague Monsieur Lefebvre would be able to speak quite passionately and personally about that—then we're prepared to make those investments, and the same would hold true in Quebec.

As I mentioned, we're seeing the fruits of those investments bear out. We see that in Montreal 100% of all appointments made there are truly bilingual. I think all members of the committee can take that as concrete evidence that we are making good progress to enhance access to justice in our superior courts.

[Translation]

**Ms. Linda Lapointe:** Thank you.

As our colleague was saying earlier, we began this study some time ago. People have told us a few times that some people had trouble accessing services in English in Quebec correctional establishments.

Was this brought to your attention?

[English]

**Mr. Marco Mendicino:** I'm aware that this has been raised as a concern. Obviously we would work very closely with Minister Goodale and his department to ensure that not just Public Safety but every institution and every branch is living up to the commitment of the charter, which is that any individual can access all federal institutions in the official language of their choice.

I don't know if one of my learned colleagues would like to add some detail to that, but I was made aware that it was raised as a concern.

[Translation]

**Mr. Sacha Baharmand (Counsel, Official Languages Directorate, Public Law and Legislative Services Sector, Department of Justice):** Thank you, Parliamentary Secretary.

The department is working actively to provide access to justice to the English-speaking community of Quebec. The department provides approximately \$1 million a year to fund various projects, such as Éducaloi, the Paul-André Crépeau Centre for Private and Comparative Law, and the Quebec Community Groups Network. The department recently provided around \$140,000 to the Quebec Community Groups Network to have it work with the new Association of English speaking Jurists of Quebec, to organize a large forum for the purpose of putting together a profile of the community with regard to the English-speaking population's access to justice in English. This forum should take place next March. It will certainly provide information on the department's intentions for 2018-23.

**Ms. Linda Lapointe:** Thank you very much. I am happy to hear it.

Earlier, we talked about judges and the fact that there were many candidacies. In fact, almost 1,000 people applied, and only 300 were deemed to have the four necessary linguistic skills.

Do you have ways of ensuring the level of bilingualism of these candidates? Do you intend to do an assessment?

**Mr. Marco Mendicino:** I believe the answer is yes.  
[English]

Absolutely. We want to continue to have the assessment tools in place to ensure that people who are self-identifying as having a bilingual capacity are truly living up to that level of proficiency. I mentioned that before.

One thing that I do want to mention to this committee, which I think is also a positive indication of a culture shift, is that the number of people who are self-identifying, stepping up to apply to our superior courts, and saying that they have the ability to offer legal services in both official languages is a signal that we're seeing great progress, great strides, in adhering to the principles and the values in the charter. Indeed, I think this continues to be important, so these numbers bear out a positive story.

•(1555)

[Translation]

**Ms. Linda Lapointe:** Thank you very much.

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

Mr. Choquette, you have the floor.

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

I thank all three of you for being here today to help with our study.

I will read an excerpt from a letter we received:

The Liberals' rejection of the private member's bill on the bilingualism of Supreme Court justices was all the more surprising and disappointing in light of the fact that during the last election campaign, the Prime Minister presented the Liberal Party of Canada as the party of bilingualism, and also given that in the past, the party had supported a similar bill.

And I should in fact add that this happened on three occasions.

This letter was signed by nine very well known academic authors who are among the most eminent specialists on the matter.

My question follows up on this shocking quote. What constitutional specialists or experts told you that a constitutional amendment would be necessary for my bill to be implemented? Could you send their observations and recommendations to the committee?

**Mr. Marco Mendicino:** First, I want to thank my colleague for all of the work he did on this bill.

I know that this is a topic that is close to your heart. It is an important objective for all Canadians.

Our government has committed to ensuring that all Canadians have access to justice in the official language of their choice. The measures our government has taken up till now, including the recent

appointment of Justice Malcolm Rowe to the Supreme Court of Canada, show that our government takes this policy very seriously.

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

I don't have much time, and I still have three or four questions for you, so I'd like to ask you to answer with yes or no. Will you send the names of the constitutional experts and their comments to the committee?

**Mr. Marco Mendicino:** I simply want to ensure that there is progress with these appointments.

**Mr. François Choquette:** The appointment of Malcolm Rowe was a very good thing. I am convinced that the next nomination will also be very good. That is not the issue.

Could you send the list of experts to the committee, as well as their observations and recommendations?

[English]

**Mr. Marco Mendicino:** Mr. Chair, I want to assure my colleague that the position taken by the government with respect to my honourable colleague's private member's bill was supported by a legal opinion that was thoroughly researched, reflecting upon the Supreme Court of Canada's decision in the Nadon reference.

In that decision, the Supreme Court held unequivocally that changing the composition of the court, particularly and explicitly as it relates to the eligibility criteria, is the main reason why we were not able to support my colleague's private member's initiative.

[Translation]

**Mr. François Choquette:** Mr. Mendicino—

[English]

**Mr. Marco Mendicino:** Having said that, it does not mean that we don't support the objective. I simply referred to the appointment —

[Translation]

**Mr. François Choquette:** I understand your point of view, Mr. Mendicino, and I support it.

[English]

**Mr. Marco Mendicino:** —of Malcolm Rowe as proof that we're making progress.

[Translation]

**Mr. François Choquette:** I know that you are referring to the Nadon case, but my question for you is very simple: can you send the committee the list of experts and constitutional specialists you consulted? The opinion of certain experts is completely the opposite of what you have just said. We tried to find your experts and were unable to. No one wanted to appear as an expert. The person who did appear said that she was a neophyte in this area.

Can you simply send to the committee the observations of the experts you consulted internally?

Let's move on to another question.

[English]

**Mr. Marco Mendicino:** Okay.

[*Translation*]

**Mr. François Choquette:** According to the nice letter from Mr. Samson, your department is working on a solution, on preparing a bill to solve the problem.

I will quote Subsection 16(1) of the Official Languages Act.

16(1) Every federal court, other than the Supreme Court of Canada, has the duty to ensure that:

(a) [...] every judge or other officer [...] is able to understand English [...]

(b) [...] is able to understand French [...]

(c) [...] is able to understand both languages without the assistance of an interpreter.

So Section 16 states that all judges must understand French and English, with the exception of Supreme Court justices. What do you think of that?

**Mr. Marco Mendicino:** This is a very important issue.

I know that a lot of thought is being given to it.

[*English*]

Again, I want to assure my colleague that the government will consider any private member's bill that is put forward for the purpose of enhancing official languages capacity in our courts and will assess the merits of that bill on a principled basis, but of course, we have to—we must—respect the principles and the values that are enshrined in our charter.

● (1600)

[*Translation*]

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

I have another question on this topic. Are you going to table your own bill, as Mr. Samson mentioned, before the winter break?

**Mr. Marco Mendicino:** On this topic?

**Mr. François Choquette:** Yes, on the bilingualism of Supreme Court justices.

Will you be tabling your bill before the winter break? There is some urgency.

**Mr. Marco Mendicino:** I have discussed the action plan, and all of the progress and all of the measures.

**Mr. François Choquette:** I am referring to a bill on the bilingualism of Supreme Court justices.

**Mr. Marco Mendicino:** We are ready to discuss considering a bill with you and all of the members of the committee. By the same token, I want to point out that the progress—

**Mr. François Choquette:** I apologize for interrupting you, but I really don't have much time. I only have 15 seconds left. If I have some more time later, I will let you continue.

[*English*]

**Mr. Marco Mendicino:** Okay.

[*Translation*]

**Mr. François Choquette:** Canada still does not have a Commissioner of Official Languages, but your department is working on it.

Who are the members of your department's selection committee?

**Mr. Marco Mendicino:** For...

**Mr. François Choquette:** To appoint the next person who will occupy the position of Commissioner of Official Languages. I know Kathleen Sheridan was one member, among others.

**Mr. Marco Mendicino:** Yes.

**Mr. François Choquette:** Who currently sits on the selection committee? Could you send that information to the committee?

**Mr. Marco Mendicino:** I am going to let my colleagues answer this technical question. If we can respond, we will.

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

Do I have any time left, Mr. Chair?

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

However, would either one of you like to answer the question? If you don't know who sits on the selection committee, that is not a problem. You can send the names to the clerk later.

**Mr. Sacha Baharmand:** Unfortunately, Mr. Chair, I do not know the names of the members of the selection committee.

**The Chair:** Thank you. In that case, I will ask you to send the names to the clerk.

**Mr. Marco Mendicino:** I would like to say something else in this regard.

This is important, and I agree on that.

[*English*]

I want to again provide some context. This government has gone to great lengths to improve the openness and the transparency of our public appointments process. I know that this is something this committee cares about, and I know that when it comes to the appointments of important public officers, such as the one you refer to, we are prepared to continue co-operating with this committee and to have a transparent process so that all Canadians can be confident about it.

[*Translation*]

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

Mr. Arseneault, you have the floor.

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

I'd like to go back to what Mr. Généreux mentioned at the end of his intervention, that is to say the action plan, which has a budget of \$40 million over five years. This action plan rests on two pillars: information and training. Is that correct?

**Mr. Marco Mendicino:** Yes.

**Mr. René Arseneault:** Can you give me some idea of what this means in terms of training, from one end of the country to the other?

**Mr. Marco Mendicino:** Absolutely.

[English]

I alluded to the importance of the minister being in dialogue with the commissioner for judicial affairs when it comes to implementing spot-checking of or audits on official languages capacity. We have also asked the commissioner to develop new assessment tools so that we can stay on top of the proficiency of our judges who are on the bench. In other words, that means developing new tools to assess the existing capacity of our superior courts to provide services in both official languages.

The minister has been engaged in dialogue with her provincial and territorial counterparts to ensure they are also looking at ways to enhance access to justice in our provincial courts, which is where most of the legal work occurs, not in our appellate courts and certainly not in our Supreme Court.

[Translation]

The bulk of the work will be done in provincial and superior courts.

[English]

Those are some examples of where we're using the funds under the current action plan to ensure that the degree to which people can access justice in both official languages remains very high.

[Translation]

**Mr. René Arseneault:** Thank you.

What part of this five-year budget will be allocated to training? In order to accomplish what you described, do you know if you will need \$10 million, or \$20 million? Has that decision already been made?

• (1605)

[English]

**Mr. Marco Mendicino:** I hope you're not asking me to disclose details from the next budget. I think my colleague the Minister of Finance—

**Mr. René Arseneault:** No—

**Mr. Marco Mendicino:** —might have something to say about that.

**Mr. Bernard Généreux:** We want to know.

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

[Translation]

**Mr. Marco Mendicino:** There is a process, and several commitments. We work with all of our partners and with the actors in the justice system. They submit their requests and share their needs. It is something we will continue to do.

**Mr. René Arseneault:** Fine.

The Commissioner of Official Languages of Canada tabled a report in Parliament concerning the simultaneous release of French and English versions of family court decisions.

I have practised law. Jurisprudence is the engine that powers the evolution of our legal system; it moulds our laws and the evolution of our society. We need jurisprudence; it is the motor and the essence of our laws. However, there always seems to be a problem getting

jurisprudence in both official languages. That is particularly true in Quebec, but it also happens in other provinces.

Since the publication of the report the Commissioner submitted to Parliament, has the Department of Justice made any decisions on this matter?

**Mr. Marco Mendicino:** Our partners from various types of law practice, including family law, submit requests to us.

[English]

At the same time, many individuals have come forward and have advocated for a unified family court, so there have been discussions around that topic as well. I would simply say that we're mindful that most of the resources have gone into providing official languages capacity in our criminal courts, and that there needs to be an additional focus placed on our family courts.

The last thing I will add is that my father practises family law, so I hear quite a lot about this at home as well.

[Translation]

**Mr. René Arseneault:** Yes.

[English]

Jurisprudence is the motor of any legislative evolution in societies. We need to read the past decisions to make sure that we can foresee how we're going to, as we say in French,

[Translation]

evolve as a society.

What I really want to know is whether there was any direct response to that.

Witnesses came and described situations I found really sad. An anglophone lawyer in Quebec, for instance, was unable to obtain a decision in the language in which he had pleaded. Elsewhere, the opposite situation also occurs. It is difficult to obtain a decision in French in Manitoba, for instance. We were told that lawyers who pleaded in English in Quebec did not receive the decisions in English. In fact, they will never have access to the jurisprudence in that language. Consequently, in English Canada, outside of Quebec, it is impossible to follow the evolution of law and the interpretation of the law there in the language of Shakespeare.

And that was the gist of my question.

**Mr. Marco Mendicino:** That is a legitimate concern.

I think that an amount of \$2 million is invested on a yearly basis in the administration of the courts. I know that more resources have been requested for the translation of these decisions. That is an aspect we are working on.

**Mr. René Arseneault:** Thank you very much.

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

Mr. Lefebvre, you have the floor.

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

I thank the witnesses for being here today.



I am going to follow up on what my colleague, Mr. Arseneault, was saying regarding training and information.

Often, when we talk about a bilingual court or bilingual judges, people think that that means having a judge who can hear a case in both official languages. However, it goes further than that. If the stenographer or members of the court administration team are not bilingual, it will be very difficult for the litigants to be heard in their language. Often, even if the judge is bilingual, if the team is not, this causes long delays.

All of this comes back to the issue of training and the part of the five-year, \$40-million amount that will be allocated to it. What is the specific plan with regard to allocating those funds?

I know Mr. Arseneault spoke about it, but I'd like to get back to it anyway because I think that training is crucial. There are colleges that offer legal training in French. In my province, in Ontario, there is the Collège Boréal, among others. That training is also offered in New Brunswick and in other colleges elsewhere in Canada. And so we have the necessary resources.

How do you plan to execute the action plan by supporting the training of those who want to join the judiciary?

• (1610)

**Mr. Marco Mendicino:** You are right. It isn't just about more training for judges and lawyers. The justice system is supported by many other stakeholders, such as university law faculties and even high schools. That is precisely where it starts. Last week, I was in Forest Hill, in my riding, and we have students there who want to study law. That's where it starts.

You asked about the action plan.

[*English*]

It will touch on all of these aspects. It will include supporting initiatives and collaboration with the University of Ottawa; I know there is a project there. It also includes ensuring that court support staff have the ability to operate in both official languages. It's multi-faceted.

[*Translation*]

**Mr. Paul Lefebvre:** That's important.

Once the plan is formalized and you know what the resource support will look like, could you send that information to the committee?

**Mr. Marco Mendicino:** My colleague Mr. Baharmand will answer that.

**Mr. Sacha Baharmand:** Thank you for your question, Mr. Lefebvre.

I'd like to make one thing clear. When the parliamentary secretary refers to a \$40-million envelope, he is referring to the current envelope, which covers the period from 2013 to 2018. We cannot discuss the next action plan and the Department of Canadian Heritage's horizontal initiative, which obviously includes a justice component, because it is still before cabinet.

That said, the department currently supports the training of those who work in the justice system and court personnel on a variety of levels.

For instance, some \$600,000 a year is allocated to the Centre canadien de français juridique, in Winnipeg. It partners with provincial and territorial administrations precisely to help train their crown prosecutors, clerks, probation officers, and so forth.

The Réseau national de formation en justice is another organization that was established. The idea is to adopt a coordinated approach. You mentioned Collège Boréal. The department has given the college funding this fiscal year for a study aimed at identifying legal interpretation and court transcription needs. Those resources are in short supply across the country, so we are studying the situation as we speak.

**Mr. Paul Lefebvre:** Very good. Thank you.

I'm going to give the rest of my time to Mr. Vandal, since he had a few questions he wanted to ask.

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

I'd like to thank you, Mr. Mendicino, as well as the people who are with you.

As I understand it, when an individual applying for a judge's position identifies themselves as bilingual, you ask that person two further questions to determine whether they are in fact bilingual.

I'd like to know who determines whether a candidate is bilingual. Is it a committee?

**Mr. Marco Mendicino:** Yes.

[*English*]

If individuals self-identify, they are asked two additional questions.

[*Translation*]

First, the candidate is asked whether they are able to preside over a trial in the other official language. Second, they are asked whether they are capable of writing a decision in the other official language. The individual's answers are first assessed by an advisory committee. If the candidate is then appointed as a judge, the commissioner uses other assessment tools.

[*English*]

**Mr. Dan Vandal:** What percentage of the individuals who come forward and get tested are tested further?

**Mr. Marco Mendicino:** As I mentioned, this is the subject of an ongoing collaboration between the minister, the commissioner and, obviously, the judicial advisory committees. When a candidate has been successfully appointed to the bench, there has been a dialogue between the minister and the commissioner for judicial affairs to develop new assessment tools to ensure that the level of official languages and bilingualism capacity remain at the high levels that we expect that to be at in order for Canadians to access justice in the official languages of their choice.

In practical terms, this can play out in two ways. One, there can be spot checks or audits. I've already mentioned that. Two, through role players such as the National Judicial Institute, which provides training to all judges, we can encourage ongoing training and continuing legal education in both official languages to keep those levels of bilingualism high.

•(1615)

[Translation]

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

It is now over to Mr. Clarke.

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

Mr. Mendicino, thank you for being here this afternoon.

I merely have a comment, but rest assured, it isn't partisan. I'm not quite sure where to begin, but here I go.

I wanted to repeat my NDP colleague's call for the names of any constitutional experts who advised your government in relation to its stance on Bill C-203.

I'd also like to point out that many political scientists and sociologists alike have studied this issue. It's a serious problem that has plagued Canada since 1982. Distinguished Université de Moncton Professor Donald Savoie demonstrated it quite clearly in his book *Governing from the Centre*. Working as an intern at the Prime Minister's Office, I saw the process in action—a process that puts Canada's democracy in great jeopardy. I am talking about the current concentration of power in Canada in the Prime Minister's Office and the Department of Justice. Together, the two entities assess every piece of proposed legislation to determine whether any part thereof could be challenged before the Supreme Court and deemed unconstitutional.

Although the practice is beneficial and legitimate, the problem is that it results in distorted public policy. The government should not rely on the interpretation of Department of Justice lawyers and constitutional experts that a piece of legislation could be deemed unconstitutional by a judge in the future. As lawmakers, we have the right to assert that a piece of legislation is sound and should move forward, despite what the constitutional experts might think.

If your government is really so concerned about constitutionality, why would you not submit a reference question to the Supreme Court on the bilingual capacity of judges? That would be the least you could do to ensure fewer distortions in our public policy and legislative authority.

As I see it, you should be taking the opposite approach, doing as you did when you were in the opposition. In other words, you should vote in favour of the bill and let Canadians decide whether there is any cause for a Supreme Court challenge, and let the judges, themselves, explore the matter in their expert writings.

Why, then, would you not refer the question to the Supreme Court in order to ascertain the opinion of the actual judges, beyond the government-paid experts at the Department of Justice?

**Mr. Marco Mendicino:** Thank you for your question.

First of all, as I told our colleague, we evaluate the merits of every private member's bill brought forward by members of the House.

[English]

We will evaluate them on the basis of their merits. While I appreciate your question, I have to dispute the contention that there has been any politicization when it comes to our appointments process. We have gone to great lengths to ensure the appointments process is open, transparent, and merit based. The quality of the appointments that we have seen to the superior court has been universally supported. That is I think in large part because of the great improvements we have made to the appointments process.

With regard to bilingualism, I think you will agree that the statistics bear out that we have made progress, both at the Supreme Court, through the appointment of Malcolm Rowe, who is functionally bilingual, and in superior court.

**Mr. Alupa Clarke:** Sir, I'll reiterate my point in English, because I did not talk about politicization in the nomination process.

I was talking about the fact that in the Prime Minister's Office, the Privy Council Office, and the Ministry of Justice there is what we call the “charter-proof process”, which is very bad for democracy in Canada, because you let lawyers who are not elected members in Canada decide on the future of what could be a law and what to introduce or not introduce in a law. That creates policy distortion in this country. We should never let any lawyers in this country decide if a law will someday in the future be deemed anti-constitutional by a judge who may not even be sitting right now.

That was my point. We should not let non-elected people decide and distort legislative action in this country.

•(1620)

**Mr. Marco Mendicino:** If I could just—

**Mr. Alupa Clarke:** Concerning the nomination process—

**Mr. Marco Mendicino:** *Monsieur le président*, if I could clarify, I want to assure my colleague—

**Mr. Alupa Clarke:** You talk about constitutional experts. They are creating policy distortions in this country.

**Mr. Marco Mendicino:** Well, I just want to clarify that there is a process in place by which we debate laws. Those laws are debated at committee, in the House, and in the Senate, and then they come back to the House for final passing—

**Mr. Alupa Clarke:** But that's not why your government has refused the law.

**Mr. Marco Mendicino:** Once in force, having received royal proclamation, they're enforced. They're there to be challenged. Sometimes they are challenged, and we have an independent judiciary who we place great faith in to evaluate and test the constitutionality of those laws, so I—

**Mr. Alupa Clarke:** But we should not, sir. We should put the trust in Canadians to contest the law if they think it's anti-constitutional. Look, most of the Conservative Party voted against that law, so I'm alone on this one right now, but I'm telling you seriously that letting constitutional experts be at the centre of government—read Donald Savoie—creates humongous democratic problems in this country: policy distortion, lack of trust in us from the people, and a lack of courage and leadership in terms of the Canadian electorate.

Concerning your nomination process, sir, it's all good and transparent, etc., but it's not forged into the law, and the next government can say that it is going to the trash bin. I will ask you this: is bilingualism at the Supreme Court of Canada a principle that you agree with?

[*Translation*]

**Mr. Marco Mendicino:** Absolutely, but that isn't a contentious issue.

[*English*]

**Mr. Alupa Clarke:** Do you want your principle to be enshrined and to stay for the next government, which will be Conservative?

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

**Mr. Paul Lefebvre:** In another 20 years.

**Mr. Marco Mendicino:** We were doing so well on the non-partisanship thing.

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

**Mr. Marco Mendicino:** I take it seriously. Trust me.

**Mr. Alupa Clarke:** Further than the principle, sir... I saw you on CTV and you were pretty good in French and English.

[*Translation*]

**Mr. Marco Mendicino:** Thank you.

[*English*]

**Mr. Alupa Clarke:** Seriously, further than the principle, don't you think it should not be just a transparent process thing but should be in the law?

[*Translation*]

**Mr. Marco Mendicino:** No.

Thank you for your question.

[*English*]

Also, I just want to take a moment to thank the members of this committee as I make my way in learning French.

**Mr. René Arseneault:** That's good.

**Mr. Marco Mendicino:** Hopefully, I have been able to communicate some of the fundamental concepts and ideas that are directly responsive to your questions. I want to assure you that this is a very personal thing for me, and that I will continue to work on it for the benefit of all of us.

Having said that, I will tell you that this is the subject of an ongoing debate. It's an important debate. We know there are important ways that we can explore in terms of how to protect these principles beyond the life of any government. As I've said before,

we're prepared to listen to all manner of ideas on how we can achieve that goal.

[*Translation*]

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

Mr. Samson, you may go ahead for four minutes.

**Mr. Darrell Samson (Sackville—Preston—Chezzetcook, Lib.):** I'm being given just four minutes? Mr. Clarke had eight. In any case, he raised some excellent points that I feel compelled to revisit.

To begin with, he said that the government should make decisions without letting lawyers assess the legality of the proposed provisions. The Conservative Party, would, even before things got off the ground, create legislation that was sure to be unconstitutional, thus putting off, by a year or two, the making of a genuinely favourable decision. The nine times that the Conservatives submitted references to the Supreme Court, it ruled the provisions in question unconstitutional. They submitted nine references to the Supreme Court; it was a game to them. They threw it all into the trash. That's what's so interesting.

My colleague also said that, if Canadians wanted to challenge the legislation, they would. That is from a member of a government that abolished the court challenges program. Its approach was to create legislation, claim that people simply had to challenge it if they felt the need, all the while, knowing full well that there was no funding for such challenges and that it could carry on with its agenda. That's rather incredible.

Mr. Clarke, I'm not referring to you, personally, but to your party. We know how its members voted.

Mr. Mendicino, I'd like to thank you for your work and your appearance before the committee today. I would especially like to thank you for the action plan. Work on the plan began a year ago, and it is going to give us the guidance we need to be successful going forward. That is pivotal.

You talked about the amounts allocated. I would like your department to request an increase in the \$40-million envelope, as well as in the \$2 million for legal translation. That is crucial.

What are you doing to encourage people to become bilingual? That is my question. What strategies are available?

• (1625)

**Mr. Marco Mendicino:** A number of strategies exist, but what is key is the manner in which they are implemented through the action plan. That is what currently underlies our strategy.

[*English*]

It means encouraging education. It means working with our provincial and territorial partners. It means working with the various role players within the judicial appointments process, such as the judicial advisory committees and the commissioner for judicial affairs.

Working together collaboratively, we are adhering to the principles we have spoken about, which are to ensure access to justice and ensure that every Canadian can access their courts in the language of their choice. In adhering to these principles, I believe we're seeing more people who are willing to step forward to play a meaningful role—certainly in the context of the superior courts—as judges. That is encouraging, because the more that Canadians can have that choice and that value protected in the courts, the more we are living up to the ideals of the charter.

[Translation]

**Mr. Darrell Samson:** Are more judges and lawyers applying for bilingual positions?

**Mr. Marco Mendicino:** I would say so, yes. The figures bear that out. As I said, we had somewhere around 300 qualified applicants, and of those, 27 judges were appointed.

[English]

That's progress.

[Translation]

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

The last three minutes with our panel will go to Mr. Choquette. Please go ahead.

**Mr. François Choquette:** I have three questions and two and a half minutes.

In 10 seconds or less, I'd like you to tell me whether you are going to refer the question of the bilingual capacity of judges to the Supreme Court in 2018. Yes or no?

[English]

**Mr. Marco Mendicino:** The minister obviously will be responsible for taking that decision, in consultation with members of cabinet and the government, but certainly she would not rule out of hand at any point in time referencing a question that is of national importance. There are tests and thresholds involved when it comes to putting a question before the Supreme Court, but as I said before, we will evaluate the private members' bills on a very case-by-case basis.

[Translation]

**Mr. François Choquette:** I'm almost out of time.

First, I would have liked you to say yes. I hope you're going to tell the Minister that she needs to do so. You're already lagging behind. I have been calling for this for two years now. This is nothing new. It didn't come out of the blue.

Second, as Mr. Samson stated in his letter, you are currently working on a bill to fix the problem around the bilingual capacity of Supreme Court judges. Does it involve the Official Languages Act, and, if so, which sections? Since I don't have enough time to hear your response, would you kindly send the information to the committee?

Lastly, "implementing a process to systematically, independently and objectively evaluate the language skills" was one of the recommendations of the former official languages commissioner, Graham Fraser. You went from one question to four, but it is still a self-evaluation. Is that in line with a systematic, independent, and objective evaluation of language skills? Yes or no?

**Mr. Marco Mendicino:** I'm going to ask my colleague Mr. Zaluski to answer that.

[English]

**Mr. Stephen Zaluski (General Counsel and Director, Judicial Affairs, Courts and Tribunal Policy, Public Law and Legislative Services Sector, Department of Justice):** The commissioner for federal judicial affairs has been asked by the minister to develop recommendations for an assessment tool, which would be objective and independent, as is his office. Implementation will require money and other resources. It's for the commissioner for federal judicial affairs to make a recommendation as to how best to move forward on that recommendation.

• (1630)

[Translation]

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

It turns out I have time for one last question.

This little document I have here is a policy. As my fellow member pointed out, it is not a bill. It could be eliminated or amended at any time. It could change on a dime.

Is this policy going to be set out in a bill, yes or no?

[English]

**Mr. Marco Mendicino:** Many important principles in that action plan are being implemented and are translating into positive and concrete progress. I've spoken about that when it comes to the great strides we've made in bilingual appointments, and when we've spoken about new ways in which we can continue to assess through spot checks and enhanced training. All of these things, I think, we will continue to debate so that we can preserve these principles for quite a long time—

[Translation]

**Mr. François Choquette:** I didn't get an answer, unfortunately.

[English]

**Mr. Marco Mendicino:** —and I certainly hope that the government will be here for some time to advance all of them so that Canadians can have access to the justice system in the official language of their choice.

[Translation]

**The Chair:** Thank you very much to the parliamentary secretary, Mr. Mendicino.

**Mr. Marco Mendicino:** Thank you.

**The Chair:** Thank you very much for being here today, Mr. Baharmand and Mr. Zaluski.

Unfortunately, that's all the time we have.

We will take a short break before hearing from the president of the Quebec bar association and the Chief Justice of the Superior Court of Québec.

I encourage you to stay, if you can, since we will be discussing another important topic with them. It may be worthwhile for you to hear their comments.

We will now suspend the meeting for a few minutes.

•(1630) \_\_\_\_\_ (Pause) \_\_\_\_\_

•(1635)

**The Chair:** We will now resume the meeting.

We are pleased to have joining us, by videoconference, the Chief Justice of the Superior Court of Québec and the president of the Quebec bar association.

Welcome to the Standing Committee on Official Languages, gentlemen.

Before you, we heard from Marco Mendicino, the Parliamentary Secretary to the Minister of Justice and Attorney General of Canada. I asked him to stay on for a few minutes in order to hear your views on the subject we have all discussed.

I'm not sure which one of you would like to go first. Mr. Fournier, would you care to start?

**Chief Justice Jacques Fournier (Chief Justice, Superior Court of Québec) :** Of course.

My name is Jacques Fournier, and I am the Chief Justice of the Superior Court of Québec.

This is my third appearance before the Standing Committee on Official Languages. I met with you a year and a half ago. I also appeared nearly 20 years ago when your committee chair, Mr. Paradis, was chairing a similar committee. It was a joint committee, I believe. At the risk of sounding like a broken record, I will be saying the exact same thing I did then, in an effort to drive home the message.

Canada has a bijural legal system. Asserting that fact loudly and clearly, we enshrined it in legislation. We have a public law system that is based on common law. Under our federal legal system, judges at every level, including the Court of Appeal of Québec, Superior Court of Québec and Court of Québec, render excellent decisions. Of that, I am sure.

What the problem is, and has always been, is that the population of Quebec, including its judges, tends to be bilingual, whereas people outside Quebec are less likely to be bilingual. That is even truer among judges. That is not a criticism, simply an observation.

Judges render decisions in all areas of public law, federal law, criminal law, bankruptcy law, and so forth. When it comes to decisions rendered west of Quebec—from Ontario to the Rockies—and east of Quebec—in the Maritimes—it is as though an impenetrable curtain or screen separates the regions. Quebec case law is influenced by that of other Canadian provinces, especially in bankruptcy law and the all-important criminal arena. The reverse influence is not possible, however. Our case law is not portable. The wall separating Quebec from western and eastern Canada is impenetrable; Quebec's case law does not leave Quebec. Here, our way of thinking stems from our training as civil lawyers but influences our thinking in criminal matters and, clearly, bankruptcy law, because it is a form of private law. Our way of thinking is not portable and does not enrich Canada's body of law. Conversely, Canada's body of law does enrich ours.

For a multitude of reasons, I spent a lot of time studying what the Fathers of Confederation, the British parliamentarians, were trying to achieve when they wanted Canada to have a unique legal system. The idea was to achieve unity of thought across the entire country. Unity of thought, however, does not come from just one side of the fence. Ideas need to flow both ways in order to achieve mutual influence. That was what the Fathers of Confederation aspired to. Although it is still not the reality, it remains the aspiration.

My position has been the same for 20 years. Quebec's judges are capable of rendering excellent decisions. We saw a fine example of that at the Supreme Court. Quebec's decisions should benefit all of Canada, just as the excellent decisions of judges in common law jurisdictions benefit the entire country. What we want is reciprocity. As elected representatives, you hold that power in your hands. What we want to see is some form of reciprocity that will enrich Canada's judicial system.

That is the crux of my message for you today.

•(1640)

**The Chair:** Thank you very much, Mr. Chief Justice.

We will continue with the President of the Quebec Bar.

**Mr. Paul-Matthieu Grondin (President of the Quebec Bar, Barreau du Québec):** Good afternoon.

Thank you, Mr. Chair.

Mr. Paradis, you were once the President of the Quebec Bar too. So was Mr. Fournier, who is now the Chief Justice of the Superior Court of Québec. So all three of us have the role of president in common.

Thank you for having me.

I have been President of the Quebec Bar since June 15, 2017. I was elected to head the Quebec Bar for a two-year term.

On April 4, 2017, you heard from my predecessor in this position, Madam President Claudia P. Prémont. Little has changed since her testimony. However, as a result of the invitation you sent me, I felt it important to briefly restate a number of the Quebec Bar's positions, and to add a comment about the future Chief Justice of the Supreme Court of Canada.

In terms of the bilingual nature of the Supreme Court of Canada and of the federally appointed judiciary, the Quebec Bar restates the right to be heard by a judge in either of the country's two official languages. This is a basic right that all Canadians must be able to enjoy without the need for an interpreter. It is a matter of the equal status of our official languages and of Canadians.

As for the appointment of a bilingual chief justice, in my opinion, there is a lot of talk about functional bilingualism. The best situation is for the chief justice to be able to read judgments in either of the official languages with no problem, understand both languages perfectly and be able to speak, or ask questions in either language.

In addition, since Canada is a country with a bijural tradition, the Quebec Bar believes that it would be appropriate for the next chief justice to be from the civil law tradition.

As for the obligation for legislation to be drafted and passed in both official languages, let me remind you of the Quebec Bar's position. Under section 133 of the Constitution Act, 1867, the National Assembly, just like the Parliament of Canada, must pass and publish its acts in both official languages. The federal Parliament could provide technical and financial assistance to Quebec in order to enable Quebec bills to be drafted and translated.

As for the translation of judgments rendered by Quebec courts, I share the opinion of Chief Justice Fournier in large part. A large number of judgments are rendered in Quebec in matters common to all provinces and all territories of Canada, such as family law, criminal law, constitutional law, and commercial law. Unfortunately, that wealth of legal wisdom is available only to those who understand French. Genuine access to justice requires all legal and judicial documentation to be available in both of Canada's official languages.

So we are asking for Canada's Department of Justice to work with the various stakeholders in Quebec, including the ministère de la Justice du Québec, the courts, and SOQUIJ, to provide financial assistance to develop a strategy that will enable French-language jurisprudence from Quebec to be translated and made known across the entire country.

Thank you very much, Mr. Chair.

● (1645)

**The Chair:** Many thanks to both of you.

We are now going to take 25 to 30 minutes so that the committee members can comment and ask questions.

Mr. Généreux, the floor is yours.

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

Good afternoon, Mr. Fournier and Mr. Grondin.

We have heard from a lot of witnesses. We have also had people from your organization before us, Mr. Grondin. As you said, the money that SOQUIJ would like to receive in order to be able to translate more documents is a major factor. From what I understand from the Parliamentary Secretary to the Minister of Justice, 40% of the allocation will go to training and information. As the total budget is about \$8 million per year over five years, it is not a budget in which we are going to find the money we need to achieve that objective.

Mr. Fournier, this is the third time in a number of years that you have testified before the Standing Committee on Official Languages. You feel that you are repeating yourself. Given the current government's action plan, is it your impression that you would still be repeating yourself if you were still in this position in 20 years?

In its desire to have an open and transparent process, the government's objective is to have as many bilingual judges as possible in Canada. I understand from your comments that, because judges in Quebec are bilingual, they are able to read and understand all the judgments written in English, but the opposite is clearly not the case, given that most of the jurisprudence in Quebec is in French only, and the English-speaking judges elsewhere in Canada cannot understand it.

In an ideal world, all judges in superior courts, and in the Supreme Court of Canada, would be bilingual and everyone would be able to understand documents in both languages. According to what you are saying, the reality is that it will be a very long time before that happens.

**Chief Justice Jacques Fournier:** You have grasped what I said exactly.

If I may, I will add a comment.

Not only do the judgments go unread by our colleagues in other provinces because of the language barrier, but the doctrine is not influenced either. You know that university professors teach what they understand, at least, we hope that they do. Quebec's production of jurisprudence has become a little marginalized. The first point in my remarks was that it does not influence Canadian jurisprudence; but it also does not affect the doctrine. The wheel keeps on turning: jurisprudence enriches doctrine and doctrine enriches jurisprudence.

The language barrier could be removed if the judgments were translated. I am not talking about translating the several hundred thousand judgments that might be rendered in the course of a year. An editorial committee would have to be able to determine which judgments are important in matters of federal law. We need to be able to translate more important judgments. What is being done now is minimal.

At the Supreme Court, clearly, the judgments are translated as a matter of course. The Federal Court proceeds in the same way. In Quebec, if we had an editorial committee, it would be able to identify any recent judgments that are seen to be important for the rest of Canada. It might be a matter of aboriginal law, for example, where there are a lot of challenges. That is an emerging field of law.

We render good decisions in Quebec, at least in my view. Unfortunately, those decisions have no influence on the rest of Canadian jurisprudence. The other way around, we are being influenced more and more by Canadian jurisprudence. Something in that situation is not working, if the intent was to have a bijural system.

**Mr. Bernard Généreux:** Does the fact that the interpretation of the judgments is not available, or at least translated for Canada as a whole, have any repercussions on the jurisprudence of a constitutional nature? What undesirable effects does that have?

● (1650)

**Mr. Paul-Mathieu Grondin:** Not all cases have constitutional questions that go right to the top. So there actually can be repercussions for the rest of Canada. Moreover, a lot of people all over the country interpret the Constitution one way or another. We do a lot of interpretations here in Quebec. Chief Justice Fournier talks about doctrinal texts that are mostly written by people in universities. Those interpretations do not necessarily get to the rest of Canada. Of course, there may be bilingual people elsewhere in the country who read them. That said, some constitutional interpretations rendered in Quebec, either in judgments or in doctrinal texts, certainly do not make their way all across Canada.

**Mr. Bernard Généreux:** Okay. Thank you.

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

We now move to Mr. Arseneault, from New Brunswick.

**Mr. René Arseneault:** Good afternoon, Chief Justice Fournier and Mr. Grondin.

Before I became a member of Parliament, I practised as a lawyer in Acadia. As you know, New Brunswick is an officially bilingual province. You said earlier that there are two opaque walls to the east and the west of Quebec that prevent your neighbours from reading what you write. Curiously, in my case, the situation is quite the opposite. When I began to practice law in French, Quicklaw had only just appeared, the Internet was not yet up to the task, and we were not able to get data. So, to be able to read decisions in French, I went and read those from Quebec, including the ones on criminal law and bankruptcy law.

I am very familiar with the situation. It is true that English Canada does not know the legal legacy and evolution of Quebec society, even though it is a part of Canada. That is a major shortcoming. Things really have to be put right. So I would like to ask you a practical question.

What happens with court of appeal decisions in Quebec? Does the province of Quebec require your decisions to be translated simultaneously, even before they are made public?

**Chief Justice Jacques Fournier:** No. However, let me give you the example of the reference to the Quebec court of appeal of the federal plan for a national securities commission. It was a few years ago now. Knowing that the decision was going to be published nationally, the court of appeal delayed the publication of its judgment so that it could have two official versions. That is not institutionalized as a practice. With major cases, decisions of the Quebec court of appeal are not automatically published in both languages at the same time. There is no requirement to do so.

For us, the language of the judgment is generally determined by the identity of the person who loses the case. That is what we are taught. If one party speaks French and another party speaks English, we are going to be asked to write the judgment in the language of the losing party. That is so in the superior courts and also in the court of appeal. Judgments are not automatically published in both languages.

Let me take this opportunity to pass on a fact to you. Today, when I met with some people from the ministry, I found out that all the translation would be handled by SOQUIJ. That means that someone is actually able to take charge in a project like this. Clearly resources are limited in Ottawa, but they are to an even greater extent in the provinces. We need budgets to—

**Mr. René Arseneault:** Chief Justice Fournier, let me interrupt you to point out that I come from a small province that is not very rich, but that manages to do it. I understand what you are telling me. It is a reality. However, I have a hard time understanding that, in a big province like Quebec, judgments from the court of appeal cannot be made available simultaneously in both languages, especially when one party speaks English and the other party speaks French. I have a hard time understanding that.

Are you exerting any pressure on the provincial government to study the ways in which the other provinces operate and to find out how decisions can be rendered in both official languages in Ontario?

**Chief Justice Jacques Fournier:** Mr. Arseneault, we have a really hard time exerting pressure to get funding. The number of translations done is very limited. Exerting pressure so that all judgments can be translated is like banging your head against a brick wall.

**Mr. René Arseneault:** I was not talking about all judgments. I was talking about those from the court of appeal.

**Chief Justice Jacques Fournier:** Do you know how many court of appeal judgments we have in the province of Quebec?

**Mr. René Arseneault:** Pro rata, I would say that it would be the same number as in New Brunswick. Except that, in New Brunswick, the judgments are bilingual.

**Chief Justice Jacques Fournier:** The answer is 1,600 judgments.

I admire the way New Brunswick goes about it. So please don't blame me.

• (1655)

**Mr. René Arseneault:** I am not blaming you.

**Chief Justice Jacques Fournier:** The fact remains that, given the number of appeals here, we cannot require it; it will not work.

However, I have been waving the flag for years, saying that what we have to do is find a way to export the great product we make here, at least in the fields of public and federal law.

**Mr. René Arseneault:** Specifically, what are you asking our committee for today in order to solve the problem?

**Mr. Paul-Mathieu Grondin:** Can I answer that question?

The budgets we have previously requested for SOQUIJ could help us a lot. Then a committee made up of chief justices, or of judges of a certain court, and others involved, could determine which judgments are of interest and should be translated.

The reality is that some judgments are procedural in nature. We do not want to translate for the sake of translating, but we do want to translate everything that can leave a durable legacy. Our requests are reasonable. We must be clear on that.

**Mr. René Arseneault:** Do I still have time, Mr. Chair?

**The Chair:** You have one minute.

**Mr. René Arseneault:** Okay.

Some representatives of the QCGN came to testify before the committee not so long ago. They told us that there really was a major concern in terms of jurisprudence.

Don't put that flag down, Mr. Chief Justice. Keep waving it.

I feel that you really have to go and see what is being done elsewhere. I remember that, when I was a student, we met with some lawyers from Louisiana. I come from a province where we practice English common law in French. But it is the opposite in Louisiana; they still practice civil law. It is a hybrid system, in that they practice civil law and common law, but in English. That's our world turned upside down. In my opinion, it makes a lot of sense to see what is being done outside Quebec, so that some reasonable solutions can be found.

You talked about 1,600 decisions coming from the Court of Appeal, but the volume is not the same in New Brunswick. You cannot compare 1,600 decisions to about 200 decisions in New Brunswick.

**Chief Justice Jacques Fournier:** Certainly, it has to be happening elsewhere. I am thinking about European states that are trilingual. However, right now, the issue is money. It can easily be done, but it needs a little funding. SOQUIJ exists and has the equipment. But it has to get bigger because what is being done now is clearly not enough.

What we want to export is about federal law. It makes it an official languages issue. That is also the reason why we are turning to you to pass on the message that this is not right. We went to a lot of trouble to do the Interpretation Act on the duality of legal traditions and the Official Languages Act. However, nothing is happening with the jurisprudence; it is not moving. It is positive law; that is why we want to export it.

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

**Mr. René Arseneault:** Thank you.

**The Chair:** We will go to Mr. Choquette, MP for Drummond, right away.

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

Gentlemen, thank you very much for agreeing to talk to us on a very important issue: equal access to jurisprudence and the impact of jurisprudence across Canada.

Before I ask my first question, I would like to ask the chair if he can ensure that there is follow-up on the questions I asked the Parliamentary Secretary to the Minister of Justice earlier, so that we have the answers before the winter break.

**The Chair:** I took note of your comment. We can talk about it right after the witnesses' appearance.

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

**The Chair:** We will spend a bit of time in camera to prepare the future business. We are going to talk about it then.

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

Gentlemen, do you know how much money is currently being invested in SOQUIJ? How much more may be needed?

Contrary to what Mr. Arseneault seemed to be saying, I think it's up to the federal government to ensure compliance with the Official Languages Act and to promote official language communities across the country. In my humble opinion, access to justice in both official languages and the dissemination of the major cases in both official languages are the responsibilities of the federal government, no question.

Do you know how much money is currently being invested in SOQUIJ and how much more is required to meet your needs?

• (1700)

**Chief Justice Jacques Fournier:** No. Honestly, it would be a guessing game and my answer might mislead you.

The amount is to the tune of a few million dollars, but I don't know the number exactly.

**Mr. Paul-Mathieu Grondin:** I can make a clarification.

If I'm not mistaken, there was some funding until 2012, which was then terminated. The funding must definitely increase because it was not enough. As soon as we receive it, we will be able to translate more decisions.

Of course, the more funding we have, the more decisions we'll be able to translate. It's not complicated, it's the rule of three.

**Mr. François Choquette:** I was trying to understand just now. I'm not an expert on the issue.

Are rulings translated in Quebec and, if so, how many? Just now, you were saying that the decisions are written in the language of the losing party. Apart from that, are rulings being translated because they create case law, or are there no rulings creating case law? Of course, at some point, you are the ones deciding which rulings are important and will become case law. Are some translated or are there none right now?

**Hon. Jacques Fournier:** There are some. That's what I was telling Mr. Arseneault earlier. On occasion, the Court of Appeal will prepare its ruling in both languages, but that's still not the common practice.

SOQUIJ will soon take the lead in the area.

The translation of a decision is often requested by a member of the public for whatever reason; the person may not be satisfied with the ruling, or they may be so pleased that they want to see it in their own language. However, the translations are terrible. At times, you could swear that a computer translated the text word for word. That said, the translation of rulings is still a marginal practice. As a result, the budget earmarked for translation is insufficient compared to the importance I at least attach to it.

What we know and what we are saying is that a quasi-governmental institution exists, that it is able to act right now and that it is in the process of equipping itself to carry the ball. This is a good opportunity to talk to that ball-carrier to figure out how far it will be taken.

As a francophone Canadian with a background in civil law, I think it's important for the rest of the country to know what I write and what I think. The "I" is clearly generic in this case. I'm not talking about myself; I hardly write anymore.

**Mr. François Choquette:** Okay.

Of course, the best solution is SOQUIJ, which we were talking about earlier.

We often wonder about the best way to determine the most important judgments that should be translated. You mentioned that a committee of experts could decide.

Could you clarify your thought? Who should determine the importance of rulings? What would the process be to determine which judgments are important and should be systematically translated?



**Chief Justice Jacques Fournier:** Now, thanks to computers, almost everything is published. However, until perhaps 15 or 20 years ago, committees used to oversee what was being published. SOQUIJ had one. It was an editorial committee whose mandate was to check what was being published and to determine what was of interest.

The only thing we would do is to provide a slightly different direction so that they wonder, when dealing with public law, whether the rulings are of interest for our fellow judges and lawyers, or whether our professor friends should study them to see what solutions Quebec has come up with. It is an editorial committee, simply put.

I don't know how many people SOQUIJ has. Perhaps four, perhaps eight, but not a whole lot.

**Mr. Paul-Matthieu Grondin:** SOQUIJ's mission is really to disseminate legal information. The organization is therefore perfectly equipped to make those decisions.

**Mr. François Choquette:** Okay.

**The Chair:** For the benefit of all members of the committee, could you explain what SOQUIJ is?

**Mr. Paul-Matthieu Grondin:** Yes. We use acronyms a lot. SOQUIJ is the Société québécoise d'information juridique. It is a Quebec crown corporation.

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

We will now turn to Ms. Lapointe.

**Ms. Linda Lapointe:** Thank you very much, Mr. Chair.

I was just about to ask what the acronym stands for. Although I'm from Quebec, I'm not from the legal community unlike a number of the people here today.

So it's the Société québécoise d'information juridique. The provincial government is therefore funding this organization. You are saying that it has four to eight people.

• (1705)

**Chief Justice Jacques Fournier:** Just a moment, we have to be careful. SOQUIJ translates rulings, but that's a small part of its mission. SOQUIJ's mission is really to gather case law, to determine which judgments or cases, if dealing with appeal courts, are more important, to make summaries and to publish them in specialized journals. That's SOQUIJ's mission. At the same time, only marginally, I repeat, does the organization handle translation. However, that's not its primary mission.

When I say four, six, seven or eight people, I'm only talking about the editorial committee that is going to read the rulings.

Now, thanks to electronic distribution, everything is accessible. They have lawyers who read ruling after ruling and, at some point, they find one of interest. A case-compendium author will write a summary of it and, as a result, the distribution of the ruling will become more significant, because users searching with keywords will know that they are in the right area.

We can add to this very mission and decide that we will now add a step, by reviewing federal law and criminal law to determine which

decisions are important for a specific reason, and that we will translate and export them.

That would be done first at the level of the Court of Appeal, because of its authority, but many rulings are also rendered in the lower courts. For instance, 99% of the cases heard in the Court of Quebec fall under criminal law. Even in Quebec, this fact is often ignored. The Court of Quebec has excellent judges who could provide outstanding services to all Canadians. That's our thinking.

**Ms. Linda Lapointe:** A little earlier, you said that SOQUIJ summarizes the rulings that it deems worthwhile.

**Chief Justice Jacques Fournier:** An editorial committee does that.

**Ms. Linda Lapointe:** The editorial committee determines which judgments will have an impact on the jurisprudence as a whole.

**Chief Justice Jacques Fournier:** Yes.

**Ms. Linda Lapointe:** However, that's done at a provincial level only. It's not about federal law.

**Chief Justice Jacques Fournier:** No.

**Ms. Linda Lapointe:** Could we set up an organization that does the same thing in terms of federal law? In family law, Quebec has rulings that are not known outside the province, such as those related to bankruptcy.

Earlier, my colleague Mr. Choquette touched on this, but I would like to know how we could go about ensuring that the rulings of the federal courts in Quebec are properly translated and that the rest of Canada can benefit from them. You mentioned SOQUIJ, but are there other ways to go about it?

**Chief Justice Jacques Fournier:** That would be the role of the editorial committee. Law experts, influential lawyers and university professors come together on the committee to analyze the rulings.

I have to say that the work is done at a basic level, because about 80% of rulings are of great interest to those involved in the case, but of no interest for the advancement of the law, here or elsewhere. That's the reality. I say 80%, but it may be 85% or 90%. The rest contains creative, innovative and easy-to-discover solutions. If this becomes SOQUIJ's mission, its editorial committee needs to expand and we have to check with stakeholders what's happening elsewhere in Canada.

I see Mr. Arseneault nodding. That's really how things are in New Brunswick. Rulings can be read in either language. Most lawyers in Acadia and elsewhere in New Brunswick are bilingual, so they don't need translation. They can consult the case law. Mr. Arseneault could talk to you afterwards, in camera, and tell you that Quebec produces good material.

**Ms. Linda Lapointe:** Thank you.

You said that, in Quebec, we could have creative solutions. Do you feel that the rest of Canada wants to understand the creativity of Quebec judgments?

**Mr. Paul-Matthieu Grondin:** I will take the liberty of answering that question.

Trust me, the reality is that all the lawyers in Canada are looking for any creative solution they can understand. For the time being, the creative solutions you hear about most often in the rest of Canada are from other provinces, including New Brunswick. You hear a little less about those in Quebec, because they are not translated as often. We would like our creativity to be useful elsewhere as well. And I'm sure that people elsewhere would like to have easier access to our creativity.

• (1710)

**Ms. Linda Lapointe:** Thank you very much.

**The Chair:** Thank you, Ms. Lapointe.

Let's move to Nova Scotia, MP Darrell Samson's province.

**Ms. Linda Lapointe:** That's saying a lot.

**Mr. Darrell Samson:** Moving to Nova Scotia is a challenge.

Good evening. Thank you for your presentations.

Mr. Fournier, I think we were at a breakfast or lunch together last year, and you talked about this issue of case law. I don't think there's any doubt about that...

Can you hear me?

**Chief Justice Jacques Fournier:** Yes, yes. I recognize your accent.

**Mr. René Arseneault:** He's a character.

**Mr. Darrell Samson:** Thank you.

The question is essential. In terms of the doctrine, you said that the impact of a people and a culture is essential. I think our argument should instead focus on that to convince the federal government or the provincial government, because both levels can play a role in ensuring that the translation is done and up to date.

My colleagues asked about the make-up of an editorial committee. Do we not already have a way of processing rulings according to various themes and therefore determine which ones have a greater impact and should be translated first? Is there not already some work being done that would simplify, if you will, the task of determining which judgments must be translated?

**Chief Justice Jacques Fournier:** I agree with you. I think this idea is promising, but we are truly at the very beginnings, so everything needs to be done. Once there's a willingness to do the translation demonstrated through commitments of material, budgets and personnel, whether made by your committee or someone else, we can find solutions together. We are not being asked to reinvent the wheel. That's already been done. We are going to find solutions.

You are right about the culture. The legal field is in fact part of a people's culture. In a bilingual country, it is not right for the culture of a people to be a one-way street.

**Mr. Darrell Samson:** Absolutely.

Mr. Arseneault said that the rulings are translated in New Brunswick. Why is Quebec not doing the same thing?

**Chief Justice Jacques Fournier:** I don't know. At one time, there may have been political reasons and budgetary reasons, of course. Budgetary reasons are still running the show.

The province of Quebec could work with the federal government and come up with a project with the potential to ensure that everything is bilingual. Everyone would come out a winner.

**Mr. Darrell Samson:** I agree with you.

Have any formal requests been made for that? If so, when? How much money has been invested in it?

**Mr. Paul-Mathieu Grondin:** There are challenges in Quebec other than the translation of rulings. Even in the legislative process, it isn't clear. In Quebec, legislation isn't co-drafted, like it is at the federal level and in other provinces. It's already a challenge to ensure that our laws are adopted in both official languages in a timely manner.

Of course, we have already asked for more rulings to be translated. As you know, in Quebec and some other provinces, justice is the budget's poor relative. It's hard to be heard before people from health and education, for example. We all have these challenges too. I tip my hat to New Brunswick, which is doing this well.

**Mr. Darrell Samson:** The federal government is talking about working with the provinces. So I think it is a good time for a discussion between Quebec's minister of Justice, the federal Minister of Justice and even the Minister of Canadian Heritage, since it affects the influence of culture. Quebec jurisprudence could influence other cultures. I think it's fundamental in Canada. But there is something about this that doesn't work. If it were presented or sold that way and there were discussions between the departments at different levels of government, I'm sure it would make a difference. It is the 150th anniversary, after all.

There is no reason it can't be determined which rulings are the most important and have the greatest influence. The project should be undertaken collaboratively.

You may have had access to the action plan that was presented in September by the federal Minister of Justice. It talks about the various steps to be taken to ensure that there are bilingual judges, bilingual lawyers, bilingual law firms, and so on. This whole question could be integrated into the essential notion of the influence of a culture or a people. I can't see what's not working, so I encourage people on the ground to deal with it.

• (1715)

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

I will now give the floor to Mr. Clarke.

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

Mr. Fournier and Mr. Grondin, good afternoon. It's an honour to meet you, even though it's by teleconference. My name is Alupa Clarke, and I am the member of Parliament for Beauport—Limoilou, in Quebec.

You spoke about an editorial committee that could select key rulings. I see some danger in that, and I'll explain why.

I think all rulings should be translated systematically. As you well know, judicial activism is a real phenomenon. In criminal law, rulings are more objective, based on facts and hard evidence. Constitutional rulings, however, are something else. Chief Justice, you mentioned a section of the Constitution Act 1867. I love that; I really like to cling to 1867. That said, the editorial committee could engage in judicial activism by choosing rulings favourable to a certain interpretation of the Constitution for the province of Quebec. You see where I'm going.

In this case, how can we trust that this editorial committee won't engage in judicial activism, which we wouldn't want to see happen?

**Chief Justice Jacques Fournier:** First, there is no question that this committee would be infiltrated by judges. We're talking about a committee made up of scientists, university professors, lawyers, and so on. There is no question of judges promoting their ideas. It's forbidden, anyway. We write down our views and sign them.

**Mr. Alupa Clarke:** So it would be a diversified committee where various professions would be represented. Perfect.

**Chief Justice Jacques Fournier:** There would be university professors.

**Mr. Paul-Matthieu Grondin:** Mr. Clarke, these decisions already exist. People made them a while ago. All existing rulings are available in at least one of the two official languages. That's translation.

Of course, if you say you want to translate all of them, we will be happy to, but we're trying to make reasonable requests. We have come a long way. Many people everywhere will agree that some rulings be published. This doesn't mean that they will agree with the outcome of the ruling. It may be that the outcome of the ruling is not what a committee member would have liked, but the committee member considers that this issue might influence the jurisprudence elsewhere. So, in a very general sense, the members of this committee will be independently minded. That must be clear.

**Mr. Alupa Clarke:** You're right. Thank you.

Several people from francophone minorities outside Quebec have reported a situation. I think it's a very serious problem. I would like to know if, as Chief Justice of the Superior Court of Québec, you've heard about it.

It's been said that in several small Canadian municipalities outside Quebec, when a person waives their right to be served in their own language in a federal court, such as in Dalhousie, New Brunswick, for instance, it is considered to upset the community, sociologically speaking. Some statistics show that a person who asked to be served in the language of their choice is more likely to lose their case if they are French-speaking.

Have you heard about this problem? If so, I think it would be good for you to talk about it.

**Chief Justice Jacques Fournier:** If I had heard of this problem, I would have denounced it loud and clear. I'm not aware of similar cases. I can tell you that, in Quebec, if it turned out that a person was at a disadvantage because they had chosen to exercise a constitutional right and a judge was involved, the judge would have a serious problem. I would personally take a complaint to the Canadian Judicial Council. This is totally unacceptable in a country that insists so much on saying it's bilingual.

● (1720)

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

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

I would like to thank my friends Paul-Matthieu Grondin, president of the Quebec Bar, and Jacques Fournier, Chief Justice of the Superior Court of Québec, for their presentations and for providing insight to the members of the committee.

We will suspend the meeting for a few minutes before we go in camera.

*[Proceedings continue in camera]*

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