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• (1545)

[*Translation*]

The Chair (Mr. René Arseneault (Madawaska—Restigouche, Lib.)): This meeting is called to order.

Welcome to meeting number 48 of the Standing Committee on Official Languages.

Pursuant to the order of reference of Monday, May 30, 2022, the committee is resuming its consideration of Bill C-13, An Act to amend the Official Languages Act, to enact the Use of French in Federally Regulated Private Businesses Act and to make related amendments to other Acts.

Pursuant to our routine motion, I wish to inform the committee that all members completed the required login tests prior to the meeting.

Today, we are resuming the clause-by-clause consideration of Bill C-13.

First and foremost, I welcome the officials from the Department of Canadian Heritage, Citizenship, Refugees and Immigration Canada, Justice Canada and the Treasury Board Secretariat, who are here to support the committee and answer technical questions.

From Canadian Heritage, we welcome Julie Boyer, Marcel Fallu and Chantal Terrien.

Good afternoon, Mr. Fallu. This is your first appearance before the committee since we began the clause-by-clause consideration.

From Citizenship and Immigration, we welcome Alain Desruisseaux.

From Justice, we welcome Warren J. Newman.

From the Treasury Board Secretariat, we have Carsten Quell.

Thank you to all these fine people. Their assistance will be very useful to us.

Let's pick up our clause-by-clause consideration, starting with our discussion on amendment CPC-8, as amended.

Before we adjourned the last meeting, we had amended CPC-8 just to add to the English version the equivalent of the words "*ou autre*" in the French version.

To put you back in context, I will ask the legislative clerk to read out these amendments before we move on to the main amendment.

You have the floor, Ms. Thivierge.

Ms. Émilie Thivierge (Legislative Clerk): The subamendment moved to amend only the English version of CPC-8, on page 22 of the amendment bundle.

For all the paragraphs, it read,

[*English*]

"communication means any form of communication, including oral, written, electronic, virtual or other".

[*Translation*]

The same thing applies to the three paragraphs.

The Chair: Good. As I remember, the subamendment had passed.

We now go back to the main amendment, CPC-8.

Mr. Godin, would you like to add anything else?

Mr. Joël Godin (Portneuf—Jacques-Cartier, CPC): Mr. Chair, first I'd like to say hello, because we haven't seen each other since last year.

I would also like to point out that I'm pleased to be back with the committee. This committee must do painstaking work to protect both official languages. I emphasize that they are English and French.

If I may, I'd like to highlight the statement made by your Liberal Party colleague Francis Drouin, who simply expressed the opinion of many francophones living outside Quebec regarding the importance of working to protect both official languages.

With respect to amendment CPC-8, I'd simply like to say that it's a matter of terminology and that the subamendment was very relevant.

If there are no comments, we could put the question to it.

The Chair: As there are no further comments, let's put the question to it, Madam Clerk.

(Amendment as amended agreed to: yeas 11; nays 0)

The Chair: Let's move on to amendment LIB-8.

Mr. Joël Godin: I have a point of order, Mr. Chair.

The Chair: You have the floor, Mr. Godin.

Mr. Joël Godin: I would simply like to understand something.

Votes are usually called in alphabetical order. However, I see that it was done differently. I would simply like to understand how the order is determined.

The Chair: We had reached Mr. Gourde—

The Clerk of the Committee (Ms. Michelle Legault): Usually—

Mr. Joël Godin: I'm asking because Mr. Gourde was called first. I am Mr. Godin, and Mr. Génereux comes before me.

Usually, the members are called in alphabetical order, but if that's no longer how it's done, I'd just like to be aware of it.

The Clerk: I can answer the question, Mr. Chair.

Actually, I cross out the names of the replacements on my list. That said, I don't mind coming back to you.

Mr. Joël Godin: I don't want to make a fuss. I understand.

The Chair: Before we move on to amendment LIB-8, I'd like to bring something to your attention. It has to do with the words used in the English and French versions.

For consistency, I'd like to remind members that when you passed LIB-1 as amended, you chose the term "*rétablissement*" in French, and "restoration" rather than "re-establishment" in English. To ensure consistency in the bill, I urge the members to propose the necessary changes so that the same terminology is used from one amendment to another when referring to the same context. I recall that in amendment LIB-1, the word "restoration" was used rather than "re-establishment". These two words are synonyms, but we need to be consistent.

I'd also like to tell you that if LIB-8 passes, LIB-9 cannot pass, because they are both identical, and NDP-4 cannot be introduced, because we would have two definitions of the same term.

We will now begin discussion of amendment LIB-8.

Ms. Kayabaga, you have the floor.

• (1550)

Ms. Arielle Kayabaga (London West, Lib.): Thank you, Mr. Chair.

With respect to amendment LIB-8, I move that Bill C-13, in Clause 6, be amended by adding after line 8 on page 5 the following:

"re-establishment" means, in relation to the demographic weight of French linguistic minority communities, a return to the demographic weight of all members of those communities whose first official language spoken is French to the level it had at the time of the census of population of Canada taken by Statistics Canada in 1971; ("*rétablissement*")

As I've mentioned before, we are witnessing a major demographic decline of francophones in Canada, for several reasons. This decline has had a considerable impact on francophone minority communities, whose demographic weight has decreased over time.

In many francophone minority communities, the decline of French is impacting certain services such as child care, health care and other service delivery programs due to the lack of qualified francophone staff in these communities.

By ensuring that the demographic weight is re-established to the level it had at the time of the 1971 Statistics Canada census of Canada's population, people living in a francophone minority community will have access to the basic services they need, without having to wait long periods of time or travel long distances.

Many stakeholders in business, social services and health care have made this observation. They have talked about how much this decline affects the services offered. To fill this gap, some are looking for workers abroad.

This amendment is related to the one I introduced last time. Both aim to re-establish francophone communities, which continue to grow across Canada.

Thank you, Mr. Chair.

Mr. Marc Serré (Nickel Belt, Lib.): Mr. Chair, I'd like to move a subamendment tied into what was said earlier about amendment LIB-1.

In the English version, we should change "re-establishment" to "restoration".

I'm not sure if it takes unanimous consent to do that.

The Chair: If I understand correctly, you're asking for unanimous consent from committee members to have us refer to "restoration" in the English version from now on, as we did in amendment LIB-1. That's fine.

Since everyone seems to agree, let's go back to amendment LIB-8, as amended.

Are there any further comments about amendment LIB-8?

Ms. Ashton, you have the floor.

Ms. Niki Ashton (Churchill—Keewatinook Aski, NDP): Mr. Chair, I just want to say that we would also like to move a subamendment in the same spirit as what my colleague Ms. Kayabaga proposed. It would make the amendment even clearer.

We propose to add a percentage at the end of the amendment. We move that "6.6% of the population outside Quebec" be added. I feel that is in the same spirit as what's already been introduced to the committee.

I wonder if I can add that at this point.

How do we handle this?

The Chair: Are you moving a subamendment, Ms. Ashton?

Ms. Niki Ashton: Yes, I move that the following be added at the end of the amendment, after "1971": "6.6% of the population outside Quebec". I believe the text has just been sent to the clerk.

The Chair: All right, thank you very much.

While the text is circulating, did you want to say something, Mr. Godin?

Mr. Joël Godin: Mr. Chair, what my colleague Ms. Kayabaga said was highly relevant. What I understand is that the NDP representative is pre-empting her amendment NDP-4, which becomes a subamendment to LIB-8 and makes it clearer.

This is consistent with what you said earlier. Shall we proceed by subamendment or do we have unanimous consent to withdraw amendment LIB-8 and adopt amendment NDP-4?

• (1555)

The Chair: A subamendment has been introduced, and we are discussing it.

Are there any questions about the subamendment? Ms. Ashton is moving that a percentage, 6.6%, be added.

Mr. Serré, you have the floor.

Mr. Marc Serré: Mr. Chair, I have no issue with the subamendment. I would simply like to point one thing out. We have representatives from Citizenship and Immigration Canada with us today, and perhaps they can shed some light on this. In the white paper it says 6.6%, but I understand that Statistics Canada made an error and the percentage released is actually 6.1%. I don't know if we should keep 6.6% today, because—

Mr. Mario Beaulieu: [*Inaudible—Editor*] francophones.

Mr. Marc Serré: One moment, Mr. Beaulieu.

Towards the end of the meeting, can we get a clarification from Statistics Canada? Perhaps when we discuss the bill in the House at third reading, we could refer to the actual percentage. Is it 6.1% or 6.6%?

Therefore, I want to point out that Statistics Canada seems to have released a different percentage. I am wondering how this is handled. Can we keep 6.6% today and then make a correction at third reading if Statistics Canada confirms that the actual percentage is 6.1%, or should we make the correction today?

The Chair: Do any of the department officials have the answer?

Mr. Desruisseaux, you have the floor.

Mr. Alain Desruisseaux (Director General, Francophone Immigration Policy and Official Languages Division, Department of Citizenship and Immigration): The matter has been checked with Statistics Canada. The 1971 census, the first census conducted after the enactment of the Official Languages Act and also the first to collect data on the use of official languages, indicates that at that time the demographic weight of official language minority communities was 6.1% in Canada.

The Chair: Therefore, if we refer to the 1971 Statistics Canada census of the population of Canada in amendment LIB-8, the percentage should be 6.1%.

Is that right?

Mr. Alain Desruisseaux: Yes, exactly.

The Chair: Mr. Beaulieu, you have the floor regarding Ms. Ashton's subamendment and the amendment moved by Mr. Serré.

Mr. Mario Beaulieu: I'm not going to start a war over this, but the first official language spoken indicator has a very broad definition. It can include someone who knows neither French nor En-

glish, but who somehow once had French as a first language. In my view, a threshold of 6.6% could ensure that a genuine effort is made to make amends to the francophone and Acadian communities.

The Chair: Mr. Desruisseaux, I have a question for you.

This concerns Statistics Canada, and we need to be accurate because this is a bill.

What exactly does the 6.1% refer to? Is it the mother tongue?

Mr. Alain Desruisseaux: It refers to the first official language spoken.

Mr. Mario Beaulieu: The concept of first official language spoken is related to the mother tongue, the language used at home and knowledge of French. It can be determined by any of those three criteria.

The Chair: Ms. Ashton's subamendment refers to the 1971 census by Statistics Canada. We need to be accurate, because this is a bill.

As regards Mr. Serré's amendment, which moves that 6.1% be used instead of 6.6%, do we have unanimous consent?

Mr. Godin, you have the floor.

Mr. Joël Godin: Mr. Chair, I'm uncertain about the percentage.

The Chair: There's no longer any doubt.

Mr. Joël Godin: I will explain.

I trust Mr. Desruisseaux, but as a precautionary measure, I prefer to use the data provided by Statistics Canada. If it is 6.1%, we will use 6.1%. Should we discover that it's 6.6%, it will be 6.6%. Let's not choose a percentage today, because I'm not sure if it's 6.1% or 6.6%. I propose that we simply use the figure provided by Statistics Canada associated with a specific item we were talking about.

The Chair: We're talking about the first official language spoken, right?

• (1600)

Mr. Joël Godin: Yes.

The Chair: Is that really what we're talking about?

Mr. Joël Godin: That is what's related to the 6.6%.

The Chair: Okay.

I am suspending the meeting for a few minutes.

• (1600)

_____ (Pause) _____

• (1600)

The Chair: I will now recognize Ms. Ashton, then I'll make a few comments.

Ms. Ashton, you have the floor.

Ms. Niki Ashton: Thank you.

I like this discussion, but what matters to us is that we are basing it on the data presented in the white paper. It reads as follows: “The demographic weight of the Francophone population outside of Quebec, according to the first official language spoken, was 6.6 percent in 1971 and 3.9 percent in 2011”. We therefore took that figure directly from the white paper. That’s why we’re using that figure.

As with the immigration issue, we need to be succinct and use numbers to ensure that we have clear language in the legislation.

The Chair: All right.

Ms. Ashton, I think everyone agrees with your position. We need to have some hard numbers and a figure to base it on.

However, since the amendment refers to the 1971 Statistics Canada census, in both cases it would appear that there is an error. It could be 6.1%. That’s what was confirmed earlier, but I accept what Mr. Godin told us, which is that further verification is required. So those are my comments.

I cannot put LIB-8 or NDP-4 on hold until we have the answer and everyone is convinced of the figure, because we would have to suspend all work on clause 6. That is how it works. Let me explain what we were discussing earlier. We have to deal with the subamendment proposing that it be 6.1%, and then Ms. Ashton’s subamendment proposing that it be 6.6%, and then come back to the main amendment. So we will debate things in the right order.

If you ask me if it is possible to put that aside and decide on the figure later, I would say that it is feasible, but we would have to reserve clause 6 and all the amendments that relate to it.

I will now let members of the committee ask questions.

Mr. Serré, you have the floor.

• (1605)

Mr. Marc Serré: Thank you for the clarification, Mr. Chair.

To move the process along, I will withdraw my subamendment. Let’s vote on the subamendment that proposes that it be 6.6%.

The Chair: We’ll now turn to amendment LIB-8, as amended by Ms. Ashton’s subamendment.

(Amendment [as amended] agreed to: yeas:11; nays: 0)

The Chair: As I said before, we will skip amendment LIB-9, which has become obsolete, as has the NDP-4 amendment.

We now turn to amendment BQ-4 on page 25 of your package.

Mr. Beaulieu, you have the floor.

Mr. Mario Beaulieu: The purpose of this amendment is to introduce the definition of “employee”, so that it is interpreted broadly, to include staff supplied by employment agencies. The aim is to avoid other cases such as the UNIS agency, for example. Nor should volunteer staff be excluded, in cases where these people would need to use French to fulfil their role.

The Chair: Are there any questions regarding amendment BQ-4?

Ms. Ashton, you have the floor.

Ms. Niki Ashton: Thank you, Mr. Chair.

We believe this is a very important amendment, but we would like to move a subamendment to make it clearer.

We propose to remove the reference to volunteer work, since, as we know, the Canada Labour Code does not contain a definition or explanation of what a volunteer is.

We believe this is a very important amendment, but we do not want to create further confusion. That is why we propose to remove the reference to volunteer work, but keep the rest.

The Chair: Ms. Ashton, the clerks and the analyst request that you send the subamendment in writing.

Ms. Niki Ashton: Yes, we are sending it now.

The Chair: While you are sending it, may I say that the proposed subamendment aims to modify the French version by deleting the words “la personne qui effectue du travail bénévole pour un employeur”, after the comma in the fifth line of the French version.

[English]

In English, it is “a person who performs voluntary work for an employer”.

[Translation]

The subamendment has been emailed to your P9 addresses.

Mr. Serré, you have the floor.

Mr. Marc Serré: Mr. Chair, may I ask the Treasury Board Secretariat representative for a clarification of the definitions in the Canada Labour Code?

I agree with Ms. Ashton about removing the reference to volunteer work. However, joint employers could also be considered in the context.

Could the Treasury Board Secretariat representative clarify whether the definition proposed here is aligned with the Canada Labour Code, and whether there are other factors we should know about?

• (1610)

Mr. Carsten Quell (Executive Director, Official Languages Centre of Excellence, People and Culture, Office of the Chief Human Resources Officer, Treasury Board Secretariat): At this point, we are not sure what impact amendment BQ-4 will have on the interpretation of the provisions of the Official Languages Act.

At this time, there is no such definition in the act. Moreover, the definition proposed here is not aligned with what is found in the Canada Labour Code. In fact, it is broader. For example, it includes persons in managerial positions. Currently, these individuals are not subject to the language rights regime as employees.

We are therefore unsure of the impact that the proposed amendment will have on the interpretation of the Official Languages Act. Furthermore, it creates an inconsistency with the law that defines employees in the first place, i.e., the Canada Labour Code.

The Chair: Thank you, Mr. Quell.

Mr. Godin, you have the floor.

Mr. Joël Godin: Thank you, Mr. Chair.

We just heard Mr. Quell mention that he is not sure of the impact of the amendment.

Personally, I am somewhat uncomfortable with the idea that a volunteer who is involved in an organization cannot choose the language in which they want to communicate. I understand that Bill C-13 may not be the best place to add this clarification. However, we know that our communities need volunteers, and we need to be able to communicate with them in the language of their choice.

In my opinion, it is important to leave the word “*bénévole*” in amendment BQ-4.

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

Mr. Mario Beaulieu: By definition, volunteers are unpaid, so it's definitely not governed by the Canada Labour Code.

On the one hand, volunteers do have the right to communicate in the language of their choice. On the other hand, if they find themselves in an environment where there are many French speakers, this becomes a weakness.

The Chair: We are continuing the discussion on Ms. Ashton's subamendment.

Ms. Lattanzio, you have the floor.

Ms. Patricia Lattanzio (Saint-Léonard—Saint-Michel, Lib.): Thank you, Mr. Chair.

If we were to remove the word “*bénévole*”, would that make this amendment consistent with the Canada Labour Code?

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

Mr. Carsten Quell: Thank you, Mr. Chair.

That would not be quite the case. As I said, it would still include supervisors, that is, employer representatives, who are not currently included in the definition found in the Canada Labour Code. There would still be some inconsistency.

It is important to remember that we are talking here about public service employees, not employees of private organizations or civil society.

The Chair: Are there any other comments on Ms. Ashton's subamendment?

Mr. Godin, you have the floor.

Mr. Joël Godin: We are doing some research.

A volunteer can also be defined as an unpaid employee. A volunteer is someone who does a job. I just want to protect volunteers.

Is this the best place to do it? Is it planned somewhere else? I'm wondering. The point is to make sure we do the job right. I don't have the answer.

Can anyone tell us where in the bill, what description or wording would be appropriate?

It seems that even if we remove the word “voluntary”, the proposed definition is not necessarily consistent with the Canada Labour Code.

I don't have the solution.

The Chair: Are there any other comments?

So, we will vote on Ms. Ashton's subamendment to remove any reference to voluntary work in amendment BQ-4.

• (1615)

Mr. Joël Godin: I am still considering my vote. I still think that voluntary organizations are important in our communities. Despite the fact that I have intervened as I should to protect volunteers, I do not want to short-circuit the committee, knowing that we have a limited number of meetings. I will therefore vote in favour of the subamendment, out of solidarity.

(Subamendment agreed to: yeas 11; nays 0)

The Chair: So that brings us to amendment BQ-4, as amended.

Are there any further comments on this?

Seeing none, we will proceed to the vote.

(Amendment as amended agreed to: yeas 6; nays 5)

The Chair: Amendment NDP-4, which is on page 26 of the amendment bundle, cannot be moved, as the previously passed amendment LIB-8 deals with the same thing in the same place in the bill.

So we'll move on to amendment CPC-9, which is on page 27 of the package.

Mr. Godin, you have the floor.

Mr. Joël Godin: Thank you, Mr. Chair.

It's important that this amendment be accepted. We have heard from many witnesses, and this amendment is based on one of the six recommendations presented by the Fédération des communautés francophones et acadienne du Canada. In solidarity with the organizations that work very hard on a daily basis to defend franco-phone minorities outside Quebec, we should accept it.

I will not go on and on about it.

The Chair: Are there any other comments?

Mr. Beaulieu, you have the floor.

Mr. Mario Beaulieu: I would like to point out that francophones in Quebec are part of the 8 million francophones who are a minority in Canada and North America. Quebec francophones are therefore a minority in Canada, even if they are a majority in their province.

The Chair: Thank you, Mr. Beaulieu.

As no one else seems to want the floor, we will vote on amendment CPC-9.

(Amendment negatived: yeas 7; nays 4 [*See Minutes of Proceedings*])

The Chair: We will now vote on clause 6 as amended along the way.

(Clause 6 as amended agreed to)

(Clause 7)

The Chair: This brings us to amendment CPC-10, which is on page 28 of the amendment package.

If amendment CPC-10 is adopted, amendment BQ-5, which is on page 30 of the bundle of amendments, cannot be moved, as both amendments are similar and have the same objective.

Mr. Godin, you have the floor.

Mr. Joël Godin: I did not ask for the floor, Mr. Chair.

• (1620)

The Chair: I thought you wanted to speak.

That's fine.

Mr. Beaulieu, you have the floor.

Mr. Mario Beaulieu: I just want to say that we are in full agreement on this motion, as we have submitted an identical amendment. I think this amendment was suggested to us by the Quebec government. So we are in favour of it.

The Chair: I'm going to backtrack a bit.

Mr. Godin, the reason I gave you the floor earlier is because someone has to move the amendment.

Mr. Joël Godin: You are right to point that out, Mr. Chair.

I therefore move amendment CPC-10. This proposes that Bill C-13, in clause 7, be amended by adding after line 13 on page 5 the following:

(a.1) language rights are to be interpreted so as to take into account the official languages dynamic in each province and territory;

I think the amendment is clear. So I don't need to extend the debate.

The Chair: Are there any questions?

Ms. Lattanzio, you have the floor.

Ms. Patricia Lattanzio: Thank you, Mr. Chair.

I have read the wording carefully, and clearly, a provincial law cannot apply to a federal law. I am concerned that the addition of this wording may have unintended consequences on legal interpretation.

That is the comment I wanted to make about this amendment. I would like to know what the representative of the Department of Justice or Ms. Boyer think about it.

Ms. Julie Boyer (Assistant Deputy Minister, Official Languages, Heritage and Regions, Department of Canadian Heritage): The proposed wording would be in line with the act's interpretation principles, under the title "Language rights".

I would like to remind you that the bill proposes the following three principles of interpretation:

- (a) language rights are to be given a large, liberal and purposive interpretation;
- (b) language rights are to be interpreted in light of their remedial character; and
- (c) the norm for the interpretation of language rights is substantive equality.

These three interpretation principles are based on case law established by the Supreme Court. They are facts; they already exist in jurisprudence.

In this case, we are not talking about the same thing. The addition proposed in the amendment departs from the case law established by the Supreme Court. Moreover, it repeats language that is already found elsewhere in the bill.

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

Mr. Mario Beaulieu: I think this is an important addition. In fact, we passed a similar motion regarding the preamble of the Official Languages Act.

When you give equal rights to unequal groups, you get unequal results. In my opinion, the language dynamics of each province must be taken into account. The English-speaking minority does not have the same needs as the francophone and Acadian minority communities.

The Chair: Thank you, Mr. Beaulieu.

Ms. Ashton, you have the floor.

Ms. Niki Ashton: I just want to say that, on our side, we will not support the amendment, as we consider that this could be problematic in some provinces, for example New Brunswick.

The Chair: Are there any further comments?

Mr. Garneau, you have the floor.

Hon. Marc Garneau (Notre-Dame-de-Grâce—Westmount, Lib.): Thank you, Mr. Chair.

I would just like to understand what this wording means and what legal interpretations this could give rise to. If this wording is incorporated into the act, it might have to be interpreted in that way.

The Chair: I don't know if Ms. Boyer or Mr. Newman should answer that.

Mr. Warren Newman (Senior General Counsel, Constitutional, Administrative and International Law Section, Public Law and Legislative Services Sector, Department of Justice): I can venture to do so. Obviously, it is not our amendment.

When, with respect to language rights, it says that “they must be interpreted in a manner that takes into account the specific dynamics of the official languages situation in each province and territory,” the suggestion is simply that when it comes to enforcing language rights, we take into account the reality in each province and territory. That is how I understood the proposed amendment.

As to whether it is necessary to add this wording to proposed clause 3.1, you heard Ms. Boyer's comments on that. Ms. Boyer said that the bill already proposed additions to the preamble of the act to accommodate the diversity of language regimes.

I will stop there for now.

• (1625)

The Chair: I now give the floor to Mr. Beaulieu.

Mr. Mario Beaulieu: This is certainly a fourth criterion for interpreting language rights, but it has already been recognized by the Supreme Court in the 2009 Nguyen decision. It was indeed recognized that Quebec's particular and unique linguistic situation had to be taken into account in this case. This interpretation criterion makes it possible to take into account the specific characteristics and situations of various linguistic communities. This applies as equally to the francophone and Acadian communities as to the English-speaking community of Quebec.

I do not see how taking into account the linguistic dynamics of Acadians could be detrimental to them.

The Chair: Thank you, Mr. Beaulieu.

Mr. Serré, you have the floor.

Mr. Marc Serré: Mr. Chair, the proposed amendments to the preamble of the act already recognize that the official languages situation is different in each province. It's already done.

What is proposed in the amendment is contrary to the Supreme Court's three interpretation principles regarding language rights.

For our part, we will vote against the amendment. First of all, what it proposes is already found elsewhere. In addition, it goes further than the three principles of interpretation established in accordance with Supreme Court jurisprudence.

If there are no further interventions, we can proceed to a vote.

The Chair: Thank you, Mr. Serré.

Mr. Godin, the floor is yours.

Mr. Joël Godin: Earlier, Mr. Garneau asked a question about how the provision might be interpreted, and I think Mr. Newman provided quite a good answer. It comes down to taking into account the reality on the ground.

Yes, some of these ideas are in the proposed preamble, but you can never be too careful, as they say. I think this is a great opportunity to reinforce an important idea: the reality isn't the same in all regions, provinces or territories, and that fact has to be taken into account. It's important to recognize that the weakest language in Canada is French. It's French, so we are being careful here. We want to make sure that that will be taken into account going forward and that measures will be taken accordingly.

That said, Mr. Garneau, I'm no lawyer. I explained the intention behind the amendment. Everyone is free to support it or not. Once again, my view is that you can never be too careful.

The Chair: Mr. Garneau, go ahead.

Hon. Marc Garneau: I completely agree with having to take the different realities into account. However, what does it mean to recognize those realities? That's my question, and I haven't heard a satisfactory answer.

The language is a bit on the vague side, so there's a lot of room for interpretation. At least that's how I see it.

The Chair: Over to you, Mr. Godin.

Mr. Joël Godin: I realize there isn't a real-life situation where this provision could be applied, but it's important to enshrine these principles in the act to make sure that specific circumstances are taken into account in the future. Goodness knows Quebec is a victim of that right now.

The Chair: As far as I can see, no one else wishes to comment.

We will proceed to the vote on CPC-10.

(Amendment negatived: nays 6; yeas 5)

The Chair: That brings us to LIB-10, which is on page 29 of the amendments package.

Go ahead, Ms. Lattanzio.

Ms. Patricia Lattanzio: Mr. Chair, given the outcome of the vote just now and the fact that, as we all know, this is already set out in the proposed preamble and elsewhere in the bill, I won't be moving Liberal amendment 10. All it does is specify that “a provincial or territorial Act referred to in this Act is not to be used as an aid to interpreting language rights.”

The Chair: Very good. Thank you.

That brings us to BQ-5, which is on page 30 of the package.

CPC-10 wasn't adopted, so BQ-5 may be moved.

Over to you, Mr. Beaulieu.

Mr. Mario Beaulieu: We actually have a new version of BQ-5, which I would like to put forward.

• (1630)

The Chair: Did you send out the amendment in writing?

Mr. Mario Beaulieu: We did indeed send it to the clerk. My apologies. It was a bit last minute.

The Chair: That's fine. I think everyone received the new version, which will now be referred to as BQ-5.1.

Go ahead, Mr. Beaulieu.

Mr. Mario Beaulieu: I propose that paragraph (d) be added to the section in question regarding language rights:

(d) language rights are to be interpreted by taking into account that French is in a minority situation in Canada and North America due to the predominant use of English and that the English linguistic minority community in Quebec and the French linguistic minority communities in the other provinces and territories have different needs.

All this amendment does is reflect the reality. We are trying to avoid one of the problems that occurred in the past, with the Official Languages Act being applied the same way across the board. We don't think all communities should be treated identically under the act.

For the first time in 50 years, the government has acknowledged the decline in French and, by extension, the particular situation of French. BQ-5.1 reflects that change.

The Chair: Are there any comments?

Go ahead, Mr. Serré.

Mr. Marc Serré: Can you give us a moment to take a closer look at the amendment?

The Chair: Very well. We'll take a few moments to examine BQ-5.1.

Please be sure to note that it is BQ-5.1, so no one gets confused.

I think we can resume the discussion now.

Please proceed with your comments on BQ-5.1, Mr. Garneau.

• (1635)

Hon. Marc Garneau: Thank you, Mr. Chair.

I agree with the first part of the amendment, where it says “French is in a minority situation in Canada and North America due to the predominant use of English”. I have no problem with that.

However, I'm not sure what is meant where it says “the English linguistic minority community in Quebec and the French linguistic minority communities in the other provinces and territories have different needs”. I'd like an interpretation of what that means, please.

• (1640)

The Chair: Whose interpretation would you like to hear?

Hon. Marc Garneau: I'd like to hear what the experts have to say.

The Chair: Can you answer that, Ms. Boyer?

Ms. Julie Boyer: I'm going to ask Mr. Newman to take that one.

Mr. Warren Newman: Thank you.

The statement would build on the act's three other principles of interpretation, which are taken right from Supreme Court jurisprudence. They indicate how the language rights should be interpreted and applied.

In this case, the language being proposed comes not from the Supreme Court, but from Parliament, which would lay out how its statute should be interpreted. In its sovereignty, Parliament is free to set out principles of interpretation.

The first part of the amendment recognizes a reality, as you mentioned, Mr. Garneau—that French is in a minority situation and that English is predominantly used in Canada and North America.

The second part of the amendment also recognizes a situation, in my humble opinion, which isn't necessarily a legal opinion of the justice department. In stating that the English linguistic minority community in Quebec and the French linguistic minority communi-

ties elsewhere in Canada have different needs, the amendment picks up on the concept of substantive equality, instead of referring to formal equality, with the meaning that has always been used in the past. This says that the situations of communities in every province must be taken into account. Some are in more urban areas, while others are in agricultural areas. Those communities have different characteristics. In fact, that's why the 1988 version of the act stated that the specificity of each community had to be taken into account for the purpose of delivering services.

I think that's how the amendment could be interpreted.

The Chair: Thank you.

Over to you, Mr. Drouin.

Mr. Francis Drouin (Glengarry—Prescott—Russell, Lib.): I have two questions.

First, could this language have unintended consequences for interpretation of the Official Languages Act?

Second, what the amendment basically does is define the language communities, since it refers to both the English-speaking community in Quebec and French-speaking minority communities in other provinces and territories. Those communities obviously have different needs, but within a province, every community has different needs. In my riding, for example, the Prescott and Russell area is mainly French-speaking, but other communities in Ontario have different needs.

In short, I want to be sure that this language does not impact the other provisions in the bill or the other sections in the Official Languages Act.

Mr. Warren Newman: Thank you for your question.

From a legal standpoint, I don't think the provision would have any unintended consequences on the Official Languages Act, a statute that aims to advance official languages equality. That said, I'm not on the inside; sometimes the courts can hand down surprising rulings.

On the face of it, nothing in the amendment appears to undermine the purpose of the act, which is to advance language rights and enhance the vitality of linguistic minority communities.

The Chair: Since no one else wants to comment, we will proceed with the vote on BQ-5.1.

(Amendment agreed to: yeas 10; nays 0)

• (1645)

The Chair: We are now on BQ-6, which is on page 31 of the amendments package.

Go ahead, Mr. Beaulieu.

Mr. Mario Beaulieu: This amendment is consistent with what we just adopted, but goes a bit further.

First, it would add new subsection 3.2(1), as follows:

For greater certainty, the implementation of this Act shall be carried out in accordance with the jurisdiction and powers of the provinces and territories, including with the Charter of the French language.

When it comes to linguistic planning in Quebec, I don't think the federal government should interfere, but it should at least adhere to the Charter of the French Language, which seeks to make French the official language and common language of Quebec. This is the condition to ensure the survival of French in Quebec and therefore in Canada and North America.

Next, the amendment would add new subsection 3.2(2), as follows:

Where there is a conflict, the Charter of the French language prevails over the incompatible provisions of this Act.

We know that the Official Languages Act sometimes interferes in areas under provincial jurisdiction in order to make English the official language, which has the result of encouraging newcomers to favour English. That is what we want to avoid. We want to ensure that the Charter of the French Language can apply, so that newcomers can integrate and learn French at a rate that will maintain the demographic weight of francophones.

The Chair: Thank you, Mr. Beaulieu.

From time to time, in the course of clause-by-cause consideration, the chair has to decide whether a proposed amendment is in order or not. In this case, I have to tell you, Mr. Beaulieu, that your amendment is out of order.

Bill C-13 amends the Official Languages Act by providing for certain measures to advance the equality of status and use of English and French in Canadian society. Under your amendment, in the event of conflicting statutes, the Charter of the French Language prevails over the incompatible provisions of the federal act.

Page 770 of the third edition of the *House of Commons Procedure and Practice* states the following:

An amendment to a bill that was referred to a committee after second reading is out of order if it is beyond the scope and principle of the bill.

The chair is of the view that giving precedence to a provincial law is a new concept, which is beyond the scope of the bill as passed by the House of Commons at second reading. Accordingly, I find the amendment to be out of order, unfortunately.

Is everything okay, Mr. Beaulieu? This is the first time this has happened in quite a while, so I just want to remind you that you have the right to challenge the chair's decision.

Mr. Mario Beaulieu: Yes.

Basically, it relates to proposed subsection 3.2(2), if I'm not mistaken, or does it affect the entire amendment?

The Chair: It affects BQ-6 in its entirety. I must rule it out of order.

If there are no further comments, we will move on to—

Mr. Mario Beaulieu: I'd like to challenge your decision, Mr. Chair.

The Chair: Very well.

That is your right, Mr. Beaulieu.

The chair's decision has been challenged.

Procedure dictates that the committee vote on whether to uphold the chair's decision or not. The committee will now vote on the following motion:

That the decision of the chair be sustained.

I will now ask the clerk to hold the vote.

(Ruling of the chair sustained: yeas 10; nays 1)

• (1650)

The Chair: Shall clause 6 as amended carry?

Seeing no objections or abstentions, I declare clause 6 adopted unanimously.

(Clause 6 as amended agreed to)

The Chair: Shall clause 7 as laid out in the bill carry?

Seeing no objections, I declare clause 7 adopted unanimously.

(Clause 7 agreed to)

The Chair: We are now on clause 8.

Shall clause 8 carry?

(Clause 8 agreed to [*See Minutes of Proceedings*])

The Chair: We now go to clause 9.

Shall clause 9 carry?

(Clause 9 agreed to [*See Minutes of Proceedings*])

The Chair: That brings us to clause 10.

Shall clause 10 carry?

(Clause 10 agreed to [*See Minutes of Proceedings*])

The Chair: Now we go to BQ-7, which is on page 32 of the amendments package.

Over to you, Mr. Beaulieu.

Mr. Joël Godin: I have a point of order, Mr. Chair.

The Chair: Go ahead, Mr. Godin.

Mr. Joël Godin: We just adopted clause 10, and if I understand correctly, BQ-7 also pertains to that clause.

If we've adopted clause 10—

An hon. member: [*Inaudible—Editor*]

Mr. Joël Godin: It's an addition. All right.

The Chair: Mr. Beaulieu, you can speak to BQ-7 now. The floor is yours.

Mr. Mario Beaulieu: BQ-7 would add the following:

The choice of either official language by a person appearing before a federal court shall not be prejudicial to that person and, in particular, shall not affect the number of judges or other officers who hear the case, where the court in question sits with a panel of more than one judge or other officer.

This amendment is symbolic for Quebec. We believe that, from a legal standpoint, it could have a significant impact on safeguarding the rights of francophones outside Quebec.

The Chair: Go ahead, Mr. Serré.

Mr. Marc Serré: Thank you, Mr. Chair.

Since we have legal experts here, I'd like them to comment on the issue's significance as it relates to the separation of powers.

The amendment is in order. That's not in question. I would simply like more information on the part of the amendment that deals specifically with the separation of powers.

Isn't there an important issue that should be raised in connection with this amendment?

Mr. Warren Newman: In the justice department's view, the separation of powers is a basic principle of our constitutional framework.

The Supreme Court places significant emphasis on the principle's importance. In fact, parliamentary privilege, a principle that members of the House of Commons hold dear, is somewhat based on the separation of powers.

For that reason, we have always been very careful to ensure that, when provisions of the Official Languages Act or other acts interfere with the administration of justice, they do not affect the administrative role of the chief justice or of other judges within their courts, even indirectly. That has always been important.

That said, the provisions of part III of the Official Languages Act, 1988 version, did impose obligations on federal courts, including the new duty that judges be able to understand the parties to the proceedings conducted before the court without the assistance of an interpreter.

Back in 1988, it was felt that the federal courts would be able to comply with that provision. It was a different kettle of fish for the Supreme Court, but things changed over time with the appointment of bilingual judges and so forth.

Accordingly, we must always strive not to infringe on the court's internal management or the prerogatives of every chief justice regarding the composition of the court where it sits with a panel of judges or other officers.

I'll leave it there for now.

• (1655)

The Chair: Very well.

Over to you, Mr. Godin.

Mr. Joël Godin: I would like to propose a subamendment to BQ-7, Mr. Chair.

The Chair: Go ahead.

Mr. Joël Godin: If I'm not mistaken, it was sent to the clerk. Can you tell me whether that was the case?

The Chair: It appears that a copy was sent to everyone's personal emails.

Has everyone read Mr. Godin's subamendment?

Are there any questions?

Go ahead, Mr. Godin.

Mr. Joël Godin: Thank you, Mr. Chair.

I'm not sure whether Ms. Ashton—

The Chair: We've lost Ms. Ashton, it seems.

The meeting is suspended until she rejoins.

• (1655)

(Pause)

• (1655)

The Chair: Ms. Ashton, we lost you for a moment.

Can you hear us?

Ms. Niki Ashton: Yes, I'm here.

The Chair: That's great. Thank you.

Everyone has received Mr. Godin's subamendment.

Go ahead, Mr. Godin.

Mr. Joël Godin: Thank you, Mr. Chair.

In my view, the principle that no Canadian who participates in a judicial process should be prejudiced in his or her choice of either official language is an important principle. However, I would exclude from amendment BQ-7 everything that comes after the word "person".

As Mr. Newman said, we have no business interfering in the judicial process. We need to leave that responsibility where it belongs. The powers need to be separated.

Therefore, I would be in favour of accepting the text in the first three sentences of amendment BQ-7 and deleting the rest of the text.

I think it is important that all Canadians have access to justice in both English and French across Canada. The number of judges is not important. What matters is that Canadians can be heard by judges in the language of their choice and in a timely manner.

• (1700)

The Chair: Thank you, Mr. Godin.

Ms. Lattanzio, you have the floor. Mr. Serré will be up next.

Ms. Patricia Lattanzio: Thank you, Mr. Chair.

My question is the same as the one my colleague asked about the amendment.

Could problems or difficulties arise involving the separation of powers in terms of the amendment that was just proposed?

Mr. Warren Newman: I do not see any difficulties in this regard if we limit ourselves to saying that "[the] choice of either official language by a person appearing before a federal court shall not be prejudicial to that person". The courts will take the ball and run with it, ensuring that the language rights already conferred by part III of the Official Languages Act are respected. I think this is an improvement, because there is no interference in the courts' affairs. There is no mention of the number of judges or what can be done, for example.

Ms. Patricia Lattanzio: It's not restrictive.

Is that right?

Mr. Warren Newman: That's right. It gives judges some discretionary power when it comes to implementing this principle.

Ms. Patricia Lattanzio: Thank you.

The Chair: Mr. Serré, go ahead.

Mr. Marc Serré: That answered my question.

The Chair: Okay. I see that there are no further comments.

The vote is on the subamendment.

(Subamendment agreed to: yeas 11; nays 0)

The Chair: The subamendment is carried.

We now move on to amendment BQ-7 as amended.

Are there any questions? I see there are none.

The vote is on amendment BQ-7 as amended.

(Amendment, as amended, agreed to: yeas 11; nays 0)

The Chair: Amendment BQ-7 is carried unanimously.

That brings us to amendment LIB-11.

Ms. Lattanzio, go ahead.

Ms. Patricia Lattanzio: Thank you, Mr. Chair.

I would like to point out to the members of the committee that amendment LIB-11 has been amended, so I am not moving it. In its new version, amendment LIB-11 is still called LIB-11, and it deals with the importance of equal access to justice in both official languages and the fact that this should be taken into account when appointing superior court judges.

The Chair: We are currently distributing the paper version of amendment LIB-11. Those who are using the Zoom platform to participate in the meeting can already see this document in their personal email.

I will suspend the meeting while the document is being distributed.

• (1705)

The Chair: We are resuming the meeting.

Ms. Lattanzio, you can move the new version of amendment LIB-11.

Ms. Patricia Lattanzio: I will be brief, Mr. Chair.

The amendment provides a great opportunity to promote and protect French outside Quebec. Even more important is equal access to justice, because it is a necessary service. I think this amendment will be very well received across the country. Here is an opportunity for the federal government to take into account this equal access to justice in both official languages when appointing superior court judges.

I would add that the Office of the Commissioner for Federal Judicial Affairs should provide the necessary language training for federally appointed judges.

The Chair: Thank you.

Ms. Ashton, you have the floor.

Ms. Niki Ashton: This amendment is closely related to Manitoba's reality, since the province has a large francophone community. Thanks to the work of francophone lawyers across the country, we

know that the situation is quite serious, especially here in Manitoba. No judge can hear a case in French, which is obviously unacceptable. This is not theory, it is the reality here, and it must be changed.

I would like the team that is with us to clarify something. We want to make sure that this amendment casts a wide net, since access to the courts is so important. Proposed subsection 16.2(1) and section 16.3 are about the language proficiency of superior court judges, and proposed subsection 16(3) is about appointments to the federal courts.

Does the term “superior courts” also include the federal courts?

Mr. Warren Newman: According to the Department of Justice, in this context, it includes the federal courts. Reference is made to the Interpretation Act, which includes a broad definition of “superior court”.

The Chair: Thank you.

Is everything okay, Ms. Ashton?

Ms. Niki Ashton: The sound cut out a bit. If I understood correctly, it includes the federal courts? Is that indeed the case?

• (1710)

Mr. Warren Newman: Yes.

Ms. Niki Ashton: Okay. Very well, thank you. If it is important to us that this be the case.

The Chair: Thank you, Ms. Ashton.

Mr. Beaulieu, go ahead.

Mr. Mario Beaulieu: I am inclined to oppose this, as I believe it will have harmful implications. Mr. Newman will confirm or deny that. It's like requiring all federal court judges in Quebec to speak English, when there are about 9% English speakers in Quebec. We already have the opposite problem, sometimes—that is, we have difficulty accessing justice in French when there is an English-speaking judge.

I am under the impression that, although it is not clearly stated, this implies that all judges in Quebec are bilingual and therefore speak English. Did I understand this correctly?

Mr. Warren Newman: According to the wording, the importance of equal access to justice must be taken into account. Thus, there is still some discretion as to how many judicial candidates should be subject to the bilingualism requirement. Moreover, this refers strictly to the appointment of superior court judges, of course, and not to the courts whose appointments are the responsibility of the Government of Quebec.

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

Mr. Joël Godin: Mr. Chair, I would like to ask Mr. Newman a question.

Ms. Ashton said that there may be a problem with access to courts in French in Manitoba. Bilingualism of judges is not mandatory. What is important is that Franco-Manitobans have access to justice in French. So wouldn't requiring judges to be bilingual in order to apply be limiting?

To address the needs Ms. Ashton mentioned, it is important to ensure that Franco-Manitobans have access to justice in French.

Mr. Warren Newman: In Manitoba, Franco-Manitobans, like other Manitobans, are guaranteed the ability to use both French and English in court. Everyone has the right to plead in their own language. We are talking about section 23 of the Manitoba Act, 1870, which is the equivalent for Quebec of section 133 of the Constitution Act, 1867.

The administration of justice in the provinces is within their own jurisdiction. This amendment proposes that, in the appointment of judges—including those of the superior courts in Manitoba, of course—the federal government should take the importance of equal access to justice into account.

This does not really address all the other structural needs that must be addressed to ensure that the courts truly operate equally, in French or in English. I believe, however, that this is not in itself the amendment's purpose.

The Chair: Mr. Godin, go ahead.

Mr. Joël Godin: Mr. Newman, I have another question for you.

The right to access the courts in both official languages is enshrined in the Canadian Charter of Rights and Freedoms. The obligation to provide these services is covered in section 1. This section does not ensure that French-speaking judges will meet the needs. Manitoba is given as an example, but it could be any province or territory.

Is it necessary for a judge to be bilingual in order to be able to meet the specific needs of francophones in Manitoba?

• (1715)

Mr. Warren Newman: Again, I would venture to answer that question, which I would prefer to avoid doing, out of caution.

In constitutional terms, you mentioned the Canadian Charter of Rights and Freedoms. The provision that concerns courts is section 19, which is limited to courts established by the Parliament of Canada, as well as those established by the New Brunswick legislature. The guarantee for Manitoba comes from another constitutional statute, as I have mentioned. That is the Manitoba Act, 1870. These guarantees are equivalent in terms of jurisprudence. The Manitoba language rights reference confirms that.

So a constitutional right to use either language exists in Manitoba, New Brunswick, the federal government and Quebec. In part III, in particular, the Official Languages Act attempts to supplement this constitutional minimum for the use of either language by adding a series of other rights.

However, one cannot necessarily predict that the situation will improve in every province. Some collaboration is also needed at the provincial level.

The Chair: Thank you, Mr. Newman.

Ms. Ashton, you have the floor.

Ms. Niki Ashton: Thank you.

I just wanted to talk about the reality here at home and about why we support what is in this amendment.

This enables us to have a framework for validating judges' language proficiency. It enables us to provide language training. A judge can say that they are bilingual, but this is about verifying that through an evaluation. It is also a matter of providing courses, so that judges can preside over courts in French. Currently, this is not the case in Manitoba. We do not have judges presiding over courts in French.

I would also like to make it clear that Manitoba has a strong desire to welcome francophone immigrants. That desire is really clear within the francophone community. That said, the last thing we want as parliamentarians is to welcome a good number of immigrants and tell them that in Manitoba they will have access to all the rights available to Canadians, except the right to access justice in their language.

In theory, they all have that right under the act, but in reality, there are no judges presiding over courts in French. I know that in some cases people have to force themselves to stand trial in English, which is obviously unacceptable.

This is a clear message that francophone lawyers in Manitoba are sending.

I hope that we can support them in what they are saying through this amendment.

The Chair: Mr. Godin, go ahead.

Mr. Joël Godin: Mr. Chair, I will continue on the same topic as Ms. Ashton.

I think the priority should be the appointment of francophone judges in Manitoba. In my opinion, this is the key to solving the problem that Canadian citizens, and particularly those in Manitoba, are experiencing.

The Chair: Mr. Beaulieu, go ahead.

Mr. Mario Beaulieu: Section 12 of the Charter of the French Language states the following:

12. A person to be appointed to the office of judge shall not be required to have knowledge or a specific level of knowledge of a language other than the official language unless the Minister of Justice, after consultation with the Minister of the French Language, considers that the exercise of that office requires such knowledge and that all reasonable means have been taken to avoid imposing such a requirement.

Do you think this amendment conflicts with that section of the charter?

Mr. Warren Newman: No, as this section of the Charter of the French Language covers the appointment of judges by the Quebec government to the Court of Quebec. It does not cover the appointment of judges to the Quebec superior courts or to the Quebec federal courts. This is actually being challenged in the Court of Quebec.

In this case, the role of the Minister of Justice is relevant to the appointment of judges by the Quebec government, not the federal government. Thus, there is no conflict or incompatibility.

• (1720)

The Chair: Thank you, Mr. Newman.

Ms. Lattanzio, go ahead.

Ms. Patricia Lattanzio: Thank you, Mr. Chair.

I would like to say something before we go to the vote.

The amendment was proposed with the spirit of the act in mind. In my opinion, we should seize this great opportunity to promote the French language, even outside Quebec, and to give francophones outside Quebec the possibility to have access to justice in a way that is appropriate.

The Chair: Thank you, Ms. Lattanzio.

Since no one else wants to comment, I ask that the clerk proceed to the recorded vote on amendment LIB-11, as amended.

(Amendment agreed to: yeas 6; nays 5 [*See Minutes of Proceedings*])

The Chair: I see that time is running out, but I would like to propose something to the committee members.

Do we have the committee's unanimous consent to extend the meeting by 10 or 15 minutes?

I see that some people are refusing; they probably have other obligations. So we don't have unanimous consent.

Before we go any further, I definitely need to discuss the famous travel budget request.

I'll let the clerk speak to that, but I think this part of the meeting needs to be in camera.

So I'm going to suspend the meeting, so that we can go in camera.

The meeting is suspended.

[*Proceedings continue in camera*]

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