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Mr. Pablo Rodriguez

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• (0910)

[Translation]

The Chair (Mr. Pablo Rodriguez (Honoré-Mercier, Lib.)): Good morning everyone. Welcome to this meeting to study Bill S-3. We are going to begin immediately. Others will be joining us afterwards.

First and foremost, I would like to welcome our witness, Mr. Caza. Thank you for having accepted the invitation to discuss this very important subject with us. Once again, good morning to all.

Mr. Caza, I assume you will begin with a short presentation. Afterwards, we will move into a period of exchanges and comments with members of the committee.

Mr. Ronald Caza (Lawyer, Heenan Blaikie LLP): Mr. Chairman, honourable members, I would like to begin by thanking you for the invitation which affords me the opportunity to speak to you on this very important topic.

In my opening presentation, I would like to discuss two issues. Firstly, I will talk about the reality of living as a member of a linguistic minority. I believe that it is important to understand this reality in order to grasp the importance of your bill or of the amendment. Secondly, we will look at the relevance of the amendment and how it affects reality for someone living as a member of a linguistic minority.

I come from Northern Ontario. I come from a village called Chelmsford, located near Sudbury. In fact, Sudbury is located in the suburbs of Chelmsford.

I am not a professor of constitutional law, I am a litigator. I litigate in a branch of constitutional law, among others. I represent real people who, every day, fight for the power to live in their language, the language of the minority.

I would like to take a few moments to explain to you what it means to live as a member of a linguistic minority. There are things that cannot be understood unless one is a member of a linguistic minority. Every morning, when a member of a linguistic minority wakes up, he must consciously decide if he will continue to make efforts to live in the language of the minority. Every morning, in Ontario, a Franco-Ontarian wakes up and decides if, on that day, he will continue to deploy efforts to live in French. Assimilation is not complicated: it occurs when a Franco-Ontarian decides one morning that he will stop trying so hard to live in French. This morning, as we meet, I can assure you that there are Franco-Ontarians, living in the province, who decided this morning that they will stop making efforts to live in French.

The purpose of language rights and all attempts to protect the rights of minorities is to make sure that Franco-Ontarians do not lose hope, so that linguistic minorities throughout the country do not lose hope, so their members do not decide to stop making efforts.

The amendment you are putting forward is simple. It reads that the federal government is not simply responsible for not causing any harm to minority communities, but that it must take positive action to make sure that linguistic minorities do not stop living in their language, and be able to preserve their language and culture.

Living as a member of a minority requires constant efforts: that is a fact. You must be conscious of this when considering the amendment. It is a constant effort. For example, francophones living in Ontario must constantly fight and expend efforts to live in French. It is a continuous battle. The fact is that many parts of Ontario are mostly English-speaking. Those who now live in the Ottawa region may be less aware of this, even if it is a fact. However, in other parts of Ontario, it is incredible.

Having represented different small Franco-Ontarian communities in the province, I want to share with you two things. Firstly, all across the province, there are incredible leaders, leaders who have spearheaded and continue to wage the battle against assimilation. That is a fact. In southern Ontario, these leaders had to defend churches and other existing institutions. I am referring to the Tremblays, the Gauvins, the Chauvins, and all kinds of people. In the region of Welland, they want to protect their institutions and services in French. In that region, people like the Giroux and other families are fighting. I am talking about cases which are currently before the courts, or the ones that have just entered the courts recently. In Penetanguishene, people want federal government services in French of equal quality to services provided in English. We must fight, and go to the Federal Court, and cite the Official Languages Act.

I am referring to a case that I argued less than a month and a half ago. We invoked the Official Languages Act because in Penetanguishene, an anglophone entity delivers services on behalf of Industry Canada. Francophones are obliged to deal with an anglophone body to receive these services.

• (0915)

We cited the Official Languages Act, and argued that the federal government had the obligation to protect minority communities and encourage their survival. The least that could be done is to provide services of equal quality to linguistic minorities living in those areas of the province. It is fundamental to their survival. When we invoke section 41 of the Official Languages Act, the court replies that there is nothing it can do because the section is only declaratory.

It is essential for linguistic minorities throughout the province and throughout the country to invoke section 41, because it is essential for their survival. It is essential that the federal government intervene. If the federal government does not take positive measures, as is provided for in the bill, members of linguistic minorities must be able to go before the courts and force the government to fulfil its obligation. It is the only amendment that has been proposed. We want to make sure that a linguistic minority has the necessary tool to force the federal government to take the measures necessary for its survival.

The Supreme Court of Canada ruled in more than one case. The court affirmed that the survival of linguistic minorities throughout Canada was essential to the survival of Canada as a whole. If linguistic minorities are unable to survive in the different provinces, Canada, as we know it, will not survive. The viability of Canada depends on the viability of linguistic minorities, and a linguistic minority cannot survive without government action, this is a fact. A linguistic minority cannot survive unless we make sure that measures are taken so that it does not lose hope and courage, so that it does not decide one fine day, that it is no longer worth the effort to live in French in Ontario, British Columbia, New Brunswick, Prince Edward Island, or in English in Quebec. It is essential to the survival of the country.

Let us now turn to the Montfort ruling. I represented the Montfort hospital in that case. I had a chance to look at the transcripts of your meetings from then up until now. It was very interesting. The Montfort ruling is not complicated. It says that the government does not have the right to make decisions or take actions that would discourage francophones from living in French outside of Quebec. That is the Montfort ruling, and exactly what Senator Jean-Robert Gauthier wants to achieve by amending the act.

We cannot guarantee that linguistic minorities will not disappear. No one can guarantee that. However, we can make sure that the federal government is obliged to do more than simply observe what is going on. The federal government has the obligation to intervene and to take positive measures to prevent such a scenario from occurring.

Certain people who have appeared before the committee seem to express concern over the possibility of seeing many cases end up before the courts. I can tell you right away that when a case comes before a court, it is only because a government, somewhere in Canada, did not fulfil its constitutional obligations. I can tell you that in 99.9 per cent of the cases, the court rules in favour of the linguistic minorities before it.

Therefore, it is easy to avoid going before the courts. Governments simply have to respect their obligations. However, the fact is that linguistic minorities would not exist in Canada if they were not able to exercise their rights, or if they were not able to go before the courts and force governments to respect these rights. It is essential that they be able to go before the courts to oblige the government to respect their rights. If there is no recourse, there are no rights. A right without recourse is simply a declaration without meaning.

● (0920)

Section 41 already exists, you are not here to decide whether or not it should be added to the Official Languages Act. Your role is to

decide whether or not those most affected, linguistic minorities, should be able to force the government to fulfil its obligations and be able to take the government to court if it fails to do so.

Ultimately, the fate of a minority is that it must always fight to survive. It cannot be otherwise. I am not here to change the situation. However, in order to fight and survive, we need weapons and tools. The more we have, the better our chances of fighting and surviving.

Bill S-3 without the amendments seeks to give Canadian linguistic communities an extra tool, an essential tool that would allow them to continue their battle, survive, preserve their language and culture throughout Canada. By virtue of this, they would be able to preserve one of the essential qualities that sets Canada apart from other countries, that is the ability to live in one's language and culture.

That ends my opening presentation. I do not know if anyone has questions.

The Chair: Indeed, I believe that there are questions. Thank you very much. You speak with much passion. I notice that for the first time today, there are more NDP members than there are Conservative members.

Mr. Yvon Godin (Acadie—Bathurst, NDP): We exhausted them with the debate last night.

The Chair: We will begin with Mr. André.

Mr. Guy André (Berthier—Maskinongé, BQ): Good morning, once again, Mr. Caza, since we ran into each other on the street this morning. Your presentation on the importance of protecting the language of minorities was dynamic and convincing.

Without a doubt, you are aware that Quebec is a francophone minority surrounded by an anglophone majority. Like you, we would like to be able to wake up in the morning without having to ask ourselves if we will continue speaking French, our language, at work.

Of course, we are somewhat concerned by Bill S-3, because it brings up the issue of equal status in the use of either one of the two official languages. To promote this and strengthen the rights of anglophone minorities in Quebec would weaken the cause of protecting the French language as a whole, which would as a side effect, have a detrimental effect on the French language as it is used and spoken by francophone minorities living outside of Quebec. This is why, in Quebec, we ask that Bill S-3 include the notion of specificity. We are different because of our language and we want this particular characteristic to be underscored in Bill S-3.

You did not speak a lot on the issue of language in Quebec. Bill S-3 contains provisions that tie into paragraphs 43(1)(d) and (f) of the Official Languages Act. For example, there may be involvement of unions and municipal corporations. In short, my question deals with those sorts of considerations.

Mr. Ronald Caza: Thank you, Mr. André.

The context in which linguistic minorities outside of Quebec find themselves is not a legal context, but a very real context. There are many people who have difficulty accepting that linguistic minorities have rights. I am not telling you anything new: in all provinces outside of Quebec, there are people who have a lot of difficulty accepting this notion. People ask us why we do not go live in Quebec.

It is important to understand that the message Quebec sends to its linguistic minority says a lot about the message we are going to get from our linguistic majority.

When Quebec hesitates and thinks of ways to limit the rights of the anglophone minority, the other provinces ask immediately why they should respect the linguistic rights of francophone minorities when Quebec does not respect its own anglophone linguistic minority.

I was one of the lawyers who argued the Casimir case. I am not talking to you about the legal facts, but about perceptions. It is obvious that Quebec has done a lot to protect and encourage its English-speaking minority. Members of this minority have institutions, particularly in the region of Montreal. On several fronts, this linguistic minority has succeeded in setting up a network of institutions that are essential for its survival.

You say that Quebec is different from other provinces because as a province, on the North American scale, it finds itself in a minority situation. This reality has already been recognized by the Supreme Court of Canada. The fact that Quebec is different is not written anywhere in the Constitution. In this respect, there is no constitutional right that we have had to defend before the Supreme Court of Canada.

Section 23 of the Charter does not say that Quebec is different from the other provinces, but Quebec is different and needs tools: this is a fact. Quebec, like linguistic minorities in other provinces, needs tools, and the goal of this exercise is to strike the right balance and make sure that Quebec has the necessary tools so that the francophonie survives in North America, while at the same time the anglophone linguistic minority also has the tools it needs to survive. There is no need to write in the body of the bill that Quebec is different and that it needs different tools.

Quebec has the Charter of the French Language. This is an example of a tool, and the Supreme Court of Canada recognized that it is a necessary tool because Quebec is vulnerable. The fact that Quebec is vulnerable means that when we study the needs of a linguistic minority and what the federal government will do for the linguistic minority of Quebec, we must also study the impact that this action or positive measure will have on Quebec, which is in a vulnerable situation. It is an obligation. It is not written in the bill, but it is a matter of logic.

It is not necessary to build this into the text of the bill. It is not written in the Constitution or in quasi-constitutional documents, but the Supreme Court of Canada has already affirmed that such is the case. A recent example is the Solski Casimir case. The Supreme Court of Canada recognizes this fact, this situation. A law must be applied while considering the context in which it is enforced. That is done. It is not written in the act. An act does not apply in the same

way in Quebec, British Columbia, Prince Edward Island or Ontario. The Supreme Court has already said this.

• (0925)

The Chair: Thank you.

We will continue with Mr. Godin.

Mr. Yvon Godin: Thank you, Mr. Chairman.

Thank you, Mr. Caza, for being here today.

As you said earlier, if we want this bill, it is because we want to be able to provide guidelines to the government, because it must comply with the act. Bill S-3—which has already been introduced three or four times in Parliament unsuccessfully—seeks to clarify the declaratory or executory status of the act. We want the act to be clear, so that the government can apply it, and so there is no need to go to court. Does it not concern you that the government is proposing amendments and arguing that it does not want to find itself before the courts every day?

Many stakeholders who have appeared before the courts and won their cases, such as University of Moncton, professor Michel Doucet, have said that the government's amendment to Bill S-3 may make things worse. The case is set for December, and a ruling may be expected 12 months later. You said yourself that the court tended to rule in favour of minorities.

This bill is a simple one, and affirms that the act is executory rather than declaratory, and the government has proposed a host of amendments. Why these amendments? The act is either binding, or it is not. The government is not willing to call it binding because it is the government that goes to the court of appeal when francophone minorities win their cases in Canada; the government is the first to appeal because it does not agree. Therefore, when a bill proposing to make the act "binding" is tabled, the government suggests amendments to water it down. Its purpose is certainly not to strengthen it. A clear law is one that states, for example, that the speed limit is 100 kilometres per hour; if one is driving at 110 kilometres per hour, it is clear that there has been a breach of the law, whereas at 100 kilometres per hour, there has not been.

We have a bill that states that the act should be executory and the government is proposing amendments to the bill. I would like you to be more clear in this regard: are you afraid, or do you support the government's amendments?

• (0930)

Mr. Ronald Caza: Thank you, Mr. Godin.

I find it interesting that you are asking me if I am scared. Linguistic minorities stopped being scared a long time ago. We have to confront governments which continually try to stop us from drinking wine. For me, I see rights as wine. Either they prevent us from drinking wine, or they try to water it down as much as possible. This is what has been happening from the beginning, since linguistic minorities have been fighting for their rights.

Senator Gauthier's bill is a glass of wine for the Franco-Ontarian community. If the amendments proposed by the federal government are passed, they will water down the wine to the point where there would be more water than wine. All of the amendments proposed by the federal government—and we can go through them one by one, if you wish—seek to water down rights, restrict the possibility to exercise a right, and to make everything as vague as possible, through such general vocabulary, that it becomes almost impossible to exercise a right. That is the goal of the exercise.

If representatives of the federal government appear before your committee and talk to you about their fear—I can even find the quotes since I have them—it is because they fear finding themselves before the courts, and the courts will make rulings forcing them to do all sorts of things.

Overall, these representatives are saying that they do not intend to comply with the act, I am telling you this now. The only way to go to court is to not comply with the act. If one is forced to do something following a court's ruling, it is because a court considers that there was non-compliance with the act. That these representatives fear losing before the courts is of great concern to me. What is important, is the goal—a bill must set out rights. Section 23 is the best example.

You will recall the debates surrounding section 23. Look at the wording proposed and how we went from A to Z. Through these debates, in which Mr. Chrétien was directly involved, we see that the language became complicated, and the longer the texts, the lesser the rights. We finally ended up with much more simple and direct wording. After that, the courts made rulings. Mr. Godbout, you mentioned in a few of your comments how the courts applied law's the objective to the text of the act, to achieve what we have today—an extraordinary piece of legislation that ensures education for linguistic minorities. Therefore, it is extremely worrisome to have amendments whose sole purpose is to limit the scope of the rights.

The Chair: Thank you.

On that, over to Mr. Godbout.

• (0935)

Mr. Marc Godbout (Ottawa—Orléans, Lib.): Welcome, Mr. Caza. It is always a pleasure to hear you speak.

I am going to continue in the same vein. The bill, as tabled, forces the government to take necessary measures to enhance the vitality of francophone communities. Some witnesses have interpreted that to be an obligation to produce results. In your opinion, is the obligation to act and the obligation to produce results the same thing? We are not legal experts. That is why we invite people such as yourself to clarify these issues. If we do not obtain a given result, legal action could be taken against the government. Is that what the bill says, as passed by the Senate?

Mr. Ronald Caza: I read a few of the suggestions that refer to means and results, and before talking about the means, we must know to what extent there must be measures. I do not see any of that in the clause. The clause is clear: the government has an obligation to take measures. The issue is about measures.

[English]

En anglais, it's "shall take appropriate measures to advance".

[Translation]

In some situations, the government must act; that is essential. If it does not do so, it would then be in breach of the section. However, if it acts in good faith and takes its obligation into account, I do not think there would be an issue regarding results in such a case. Therefore, I fail to see how this issue of results would be decided. It is clear that the objective of these measures must be to achieve results. What the government is obliged to do—and that is what we are looking at—is to take the appropriate measures.

We are reviewing the various situations that occur and the government's obligation. Since section 41 exists already, the government already has this obligation, but we do not have the tools required to force it to comply with this obligation. We must therefore simply ensure, in the context of this bill, that we have the tools to do so. We must remember that if such measures are not taken, the linguistic minorities are doomed to suffer further irreparable damage.

Mr. Marc Godbout: Another issue we have discussed at length and that Mr. André raised is, of course, the concern of some people from Quebec. They talk about making adjustments in keeping with Quebec's linguistic reality. We were asked to consider an amendment that would take the linguistic realities of the provinces into account in the implementation of the bill.

Do you think there is any danger in that? Some people seem to think that if we passed wording of this type, this might deal with the situation in Quebec, but it would cause problems for other provinces. Some say, for example, that a provincial government could rely on the linguistic reality argument to minimize language rights.

Mr. Ronald Caza: It goes without saying that the Quebec reality must be taken into account. The courts have said that this must be done, and it will be done. Therefore, it is not necessary to add this. However, if the bill talks about the linguistic reality of a province, we have to understand that in some provinces francophones are not the second-largest language group, sometimes they rank sixth, seventh or eighth.

You would be surprised to learn how often we are told in Ontario and other parts of the country that there are more Italians, Chinese persons or Ukrainians than francophones in that province. These people tell us that there are almost no francophones in their province and they want to know why we are bothering them with these matters. In situations of this type, we have to emphasize the difference between the two founding people in this country and other communities. This difference is recognized in our Constitution, so that is an essential point that must be taken into account throughout this debate.

If the objective of the amendment is to protect Quebec on the basis of its special situation, that is not necessary. If this is included in the bill even though it is not necessary, other provinces could use this as an argument to minimize the rights of francophones. That is the real danger. If you pass a bill of that type, someone, for example the attorney general of a province other than Quebec, may proclaim very loudly that this provision cannot apply just to Quebec, because if that were the case, it would have been stated. They would then state that the provision is thus applicable to other provinces.

Situations could then be found to which the principle applied and the argument could be made that in a particular province, English is threatened. In British Columbia, for example, in some cities there are very large minorities made up of people who speak neither French nor English. If we start taking measures along these lines, we will start having problems. I can tell you as a lawyer that when we want to enhance the language rights or any other type of right of a client, the clearer things are, the fewer semantic details and the more specific the text, the better it is for the people whose rights we are defending.

• (0940)

The Chair: Thank you. I have to interrupt you at this point. We have to keep within the time allotted to each member.

We will continue now with Mr. Lauzon.

Mr. Guy Lauzon (Stormont—Dundas—South Glengarry, CPC): Thank you, Mr. Chairman.

I apologize for being late.

The Chair: We missed you.

Mr. Guy Lauzon: Welcome, Mr. Caza.

You spoke about Franco-Ontarians, and I am very interested in your comments, because I represent a Franco-Ontarian minority community. First of all, I understand that you do not agree with the amendments put forward by the government.

Mr. Ronald Caza: I want to make sure everyone understands that we are talking about the proposed amendments to Bill S-3.

Mr. Guy Lauzon: Yes.

Mr. Ronald Caza: It is true that I am not in favour of the amendments. I think they add too much water to the wine.

Mr. Guy Lauzon: I see.

The wine analogy is interesting.

Can you tell us how Bill S-3 will have a positive impact on Franco-Ontarians?

Mr. Ronald Caza: I will give you a good example about the implementation of the bill. When the members of a linguistic minority from anywhere in the province, from Timmins or elsewhere, go to a government office or agency in an English-speaking region to get service, as members of the minority, they tend to speak English. That is a fact we must recognize. They do this simply because they feel embarrassed and uncomfortable.

Clearly, if we look at the services of an agency, a little sign saying that service in French is available is not enough. Francophones have to feel comfortable requesting and receiving service in French.

They have to feel that the institution exists to serve them and to meet their particular needs. The needs of the linguistic minorities are different from those of the majority. We have to accept that their needs are different. In order to meet these needs, it is not enough to offer in French the same thing that is offered to everyone. We must take affirmative action. We must go further. We must take steps to help francophones feel comfortable about using services in French.

The government must take affirmative action, and not just have all the documents translated so that they can be provided in French. That is not enough.

That is probably the easiest example I could give you.

Mr. Guy Lauzon: Do you think Bill S-3 will improve the situation in this regard?

Mr. Ronald Caza: Bill S-3 will require the government to do so, just as the Official Languages Act requires it to do so. That is my belief, and that is what we argued. We are waiting for a decision from the court in the CALDECH v. Industry Canada case in Penetanguishene. That will determine clearly that the government already has this obligation.

This will enable a francophone or a community—because it is never just one person—to take charge and to remind the federal government that it is required to take affirmative action, in light of the fact that its efforts are not enough to fight assimilation.

The communities will be able to force the government to do this.

If you give me another 30 seconds, I would add that when there is a right, as there was in the Montfort hospital case, from which certain government obligations flow, we actually go to court less frequently, because those who have these obligations understand that they have them, they know that they will find themselves in court if they do not comply with them. They therefore comply with them and it does not become necessary to go to court.

• (0945)

Mr. Guy Lauzon: Let us look at a specific case, the Cornwall community. It is rare to get service in French at the hospital. What impact would Bill S-3 have if it were passed? If I do not get more services in French at the hospital, am I the one who has to go to court? I doubt I will take the hospital to court. That would be costly. The Cornwall community and the francophone communities generally have very little money. How will Bill S-3 help them deal with this situation?

Mr. Ronald Caza: I will start by answering your second question. You were saying that people in Cornwall had no money and you were asking what they could do. Then I will turn to the question about hospitals.

The fact is that most communities will probably never have the resources they need. However, there is a community, somewhere, that will take certain steps and this will become a precedent that will apply to all those in the same situation. That is how it works. With the support of all sorts of people, of a whole community, the people defending the Montfort hospital had the backbone and courage to go all the way to the court of appeal to get a judgment to clarify their rights. They clarified the rights of all minorities in Canada. In the end, every community would not have to fight for this right.

Second, with respect to the hospital, there is the whole issue of federal and provincial jurisdiction. That is a reality. There is nothing we can do about that. We have to live with it.

When the federal government develops projects or is involved one way or another in a particular field, it will have to analyze the situation and determine whether it can take affirmative action to encourage the members of the minority group to continue making the necessary effort to live in their language and protect their culture.

The Chair: Thank you, Mr. Lauzon.

If I understand your comments correctly, Bill S-3 is a step forward, but if the government amendments were passed, it would be almost a negative thing for the communities. Is that in fact what you are saying?

Mr. Ronald Caza: No. I would not say that, with the amendments, Bill S-3 would be a negative thing. I am saying that, without amendments, Bill S-3 is the tool the minority language communities need to continue their struggle.

The Chair: Is Bill S-3 with the amendments better than nothing, or would it be better to make no amendments and let people go to court?

Mr. Ronald Caza: That becomes an interesting question, I must say.

According to a number of constitutional experts—not all, although this is definitely my view and others must have told you the same thing—section 41 of the Official Languages Act is binding at the moment. It is official.

I can tell you right away that Senator Gauthier put forward this bill because he feared that the courts might find section 41 of the act to be declaratory only. That is why he brought forward his bill. He did not bring it forward to give people all sorts of reasons or excuses for defending their rights.

The linguistic minority, through Senator Gauthier, is asking you to give it a clear and specific tool. There is a danger involved if we water it down so much that there is more water than wine. What will happen if the Supreme Court of Canada decides that the whole thing is binding? The objective is not to wait for the decision of the Supreme Court of Canada in the *Forum des maires de la Péninsule acadienne* case to say that it is binding. This bill must be passed so that we know now that the act is binding. That is the objective of this exercise.

It would be a great tragedy if you were to pass a watered-down bill and the Supreme Court of Canada were to decide that what you had was wine, but you watered it down by adding a great deal of water. The objective of Bill S-3 is to ensure that the minority communities can have undiluted wine, that is, the tools they require.

● (0950)

The Chair: Thank you.

Ms. Boivin.

Ms. Françoise Boivin (Gatineau, Lib.): Thank you, Mr. Chairman.

Thank you for your presentation on this very interesting issue. Since we are preparing to do clause-by-clause consideration of this extremely important bill, I want to be sure that I clearly understand your position on this.

By the way, I really enjoyed your analogy with wine, especially since my name translates as "wine drinker." I really appreciated that.

If I am not mistaken, Senator Gauthier had two goals in mind when he introduced Bill S-3. The first was to put an end to the famous debate over whether part VII was binding or declaratory. Regardless of any amendments that might be proposed by the government, the Conservatives, the Bloc Québécois, etc., the fact remains that everyone agrees on that. It seems to me to be a less difficult issue, and it will be resolved.

If I understand correctly, Senator Gauthier's second objective was to try to clarify the federal government's role in promoting equality for French and English. Am I wrong?

Mr. Ronald Caza: That is quite true. You are absolutely correct.

Ms. Françoise Boivin: I have a problem that is somewhat tedious, since it is a legal question. I am sure that you are comfortable with legal texts because these issues involve a lot of legal procedures. In my opinion, whatever legislation we end up adopting, some people will always try to stretch things a bit in order to deny a right or get a bit more, etc.

That said, let us look at Senator Gauthier's bill. I would like you to explain to me your position on the government's proposed amendments. There are some that I, personally, am not happy with, and I sometimes feel that we are getting bogged down in the little details.

However, I am not convinced that the wording in Bill S-3 is necessarily clearer. I will read subsection 41(2) of the Official Languages Act as it is amended by Bill S-3:

(2) Within the scope of their functions, duties and powers, federal institutions shall ensure that positive measures are taken for the ongoing and effective advancement and the implementation of the Government of Canada's commitments under subsection (1).

What is meant by "positive measures"? I find that expression very fuzzy and vague. Instead of diluting the meaning, did the government not try to clarify things?

I have the same concern with the wording in subsection 43(1) as it reads in Bill S-3:

43. (1) The Minister of Canadian Heritage shall take appropriate measures to advance the equality of status [...]

I may be rushing things a bit, but I would like to see this question settled and this provision made binding, so that governments can no longer make excuses and realize that both languages must be given equality of status, Quebec being a special case—I agree with you—because of the charter of the French language. Of course, that charter will not be affected by Bill S-3. But these questions should be settled once and for all.

I also have the impression that some people will say that the wording is not clear. It talks about measures to advance the equality of status. When will that process be finished? In one year, two years, twenty years, immediately? What measures will be taken?

You say that the amendments are aimed at watering down the bill. Are you sure of that? Maybe it was actually a misguided attempt—I apologize to the minister and his staff—to try to clarify things.

Mr. Ronald Caza: I will give you my opinion as a lawyer who has studied these amendments.

There are two legal notions to keep in mind. I understand what you are saying. I can understand that the original wording may not seem clear when you read it. When I look at what the government has proposed, it does seem much clearer.

Ms. Françoise Boivin: It is clearer?

Mr. Ronald Caza: Yes, it is more precise because it seeks to limit possible interpretations. One must bear in mind two legal concepts regarding language rights. First of all, the Supreme Court of Canada stated clearly and unequivocally that when one interprets a quasi-constitutional right—since the Official Language Act in fact constitutes a quasi-constitutional text—one must consider what the objective of the legislation is. You look at the goal and objective of the legislation. Its objective is to ensure the survival of linguistic minorities. After that, you look at the words and interpret them so as to achieve that objective. It is there to reassure you.

We are getting to the most important thing when it comes to rulings. In a recent decision, the Supreme Court of Canada confirmed that a judge has extraordinary powers when it comes to defending linguistic minorities. This was a decision involving Nova Scotia. In that province, at the end of a trial, a judge stated that the government had to build churches and high schools for the francophone community. The trial was over, but he said that he was not finished and he wanted to see plans three months later. The government's representatives said that once the decision was handed down, the judge's role was finished, and that if plaintiff were unhappy, they should go back to court again. The Supreme Court confirmed that the judge could make this decision as there was no future for the linguistic minorities.

Irreparable harm is caused by every day of delay with regard to the adoption of the law or the provision of other tools. Examine the amendments that are being proposed by the government. Read them word by word. What is the objective here? Is it to make sure that the linguistic minority has an effective tool or is it to ensure there are limits on the federal government's responsibility? In my opinion, the amendments are clear: the purpose is to limit the federal government's possible responsibility.

● (0955)

Ms. Françoise Boivin: Do I have any time left?

The Chair: No madam, as a matter of fact you went over your time by a few seconds.

Ms. Françoise Boivin: Thank you, sir.

The Chair: We will move on to Mr. Bergeron.

Mr. Stéphane Bergeron (Verchères—Les Patriotes, BQ): Thank you, Mr. Chairman.

Mr. Caza, thank you for your presentation. It was very passionate but also very clear and precise nevertheless.

I noted a number of things that you said, but one statement in particular struck me—and in that sense your statements are very similar to those made by other witnesses who appear before this committee—and that was that in the framework of this legislation, the legal tools should serve those who are most affected. You also

said and that also appears very important to me, that it was normal that different tools be provided in the case of Quebec. That is fine, except that is not what the Official Languages Act states. It has to do with the progression toward equality of status, which is pure fiction, considering that Quebec, even though it may have a francophone majority, represents a minority in North America as a whole. You stated in this regard that it was not necessary to make an exception regardless of the legislation because the principle was recognized by the courts.

You know that in the United Kingdom, a decision was made to rely on unwritten constitutional conventions, which is not in keeping with the Canadian tradition. In Canada, a decision was made to codify constitutional rules. You did point out that the Official Languages Act had a quasi-constitutional status. Among your colleagues who are constitutional experts, some teach and others are practitioners. Mr. Doucet, for his part, even went so far to propose that it would not be in any way harmful to include a special provision in the Official Languages Act regarding Quebec's special situation as a francophone group within Canada. My colleague Mr. André proposed that Quebec be excluded purely and simply. You are saying that is not desirable. Our colleague Mr. Lauzon said that provincial jurisdiction had to be respected. Some of your colleagues, as well as the government lawyer, were of the opinion that this was not the best course of action: they claimed that the government does respect the Constitution and provincial jurisdictions.

Mr. Doucet proposed that a reality that is taken into consideration by the court be included in the Official Languages Act, namely the linguistic reality involved in applying the legislation. That point of view also received the support of Mr. Braën and your colleague Mr. Foucher. I would like to know whether you feel that this would reassure those who are somewhat cold to this, or worried because in the past, the federal government never hesitated to use its spending power. Part VII of the Official Languages Act deals directly with that spending power. As a matter of fact, it goes well beyond the limits of the federal administration.

In your opinion, would the inclusion of a brief provision specifying that the linguistic reality must be taken into account when applying the Official Languages Act, particularly when it comes to part VII, be an option that could be considered?

● (1000)

Mr. Ronald Caza: I can answer that question in two stages. First of all, you said that in the United Kingdom there were unwritten conventions, but that in Canada, the Constitution was codified. As a matter of fact, that is not exactly the case: in Canada we do have unwritten principles. According to one of those principles, governments must respect and protect linguistic minorities. That is a constitutional right that is unwritten but that does exist.

It's very important, insofar as possible, to avoid writing into bills things that are not necessary. I must say that I did not see Professor Foucher's presentation, but I did have an opportunity to review the presentations by Professor Bra n and by counsellor Doucet yesterday. I disagree with the notion of adding to a bill a provision that forces the courts to consider the linguistic reality of the provinces, and I have already explained why. It's because provinces with an anglophone majority will use that. The only reason that can justify adding such a provision would be to ensure that the reality of Quebec is taken into consideration. That is in fact the only relevant reality in Canada. There is no other. However, the courts have already decreed that in constitutional matters—and I would even add in quasi-constitutional matters—that reality has to be taken into account. So upon analysis, we can see that it is not necessary to add this. It's dangerous to include things in bills that are not necessary: one way or another, it always ends up weakening existing rights.

In my opinion, we should not choose this solution for two reasons. The main one is that it is not necessary. We need a strong Quebec for minorities to survive outside Quebec. It is in everyone's interest that the francophone majority remain very strong in Quebec, but it is not necessary to write that into the law. Clearly, it must be taken into consideration. In addition, I'd be worried that the formulation could be interpreted in a way that is harmful to other linguistic minorities.

Mr. St phane Bergeron: Allow me...

The Chair: That's all the time you have, Mr. Bergeron.

Mr. St phane Bergeron: I don't even have a few seconds left?

The Chair: Not only have I already given them to you, but I've even given you more. I am being generous today, because this is our last meeting. You missed a very interesting part of the discussion. Mr. Caza, referring to the specific situation in the provinces, spoke about the situation where there are minority groups who speak a language other than French or English, who are in fact more numerous than francophone minorities. You must have left the room at that point. It was rather interesting. We can look at the transcript.

I assume members of the committee want to proceed to a third round.

But I was about to forget Mr. Godin! How could I have done such a thing?

Mr. Yvon Godin: I don't know.

Mr. St phane Bergeron: How could you, indeed?

The Chair: We are referring to the unforgettable Mr. Godin.

Mr. Yvon Godin: You probably got lost somewhere along the way, bogged down in the details. You forgot about the most important things, you forgot about me.

Let's get back to our discussion. It is true that every day matters. The Acadians, who have been here for 400 years, have fought many battles. The court will rule in December...

I will wait for my colleagues to end their chat: I'm losing my train of thought.

• (1005)

Mr. St phane Bergeron: You usually have much more endurance than that. It must be exhaustion setting in.

Mr. Yvon Godin: It's because of last night's overtime. The message must not have gotten through.

The court will rule in December. Would it be preferable to amend Senator Gauthier's bill or to wait for the ruling?

Mr. Ronald Caza: The answer is no. The bill without amendments, in other words Senator Gauthier's bill...

Mr. Yvon Godin: Excuse me, Mr. Chairman. The bill without amendments is clear. Basically, it makes part VII binding. I think that solves many problems.

Mr. Ronald Caza: Yes.

Mr. Yvon Godin: However, I was wondering if it wouldn't be preferable to wait for the court's decision before making amendments to Senator Gauthier's bill.

Mr. Ronald Caza: I think it will depend on the amendments. In terms of the bill as such, I do not hesitate to support it. Each one of the amendments should be carefully considered.

Mr. Yvon Godin: However, I'm wondering about those details.

Mr. Ronald Caza: We have to wonder what the impact of each amendment on linguistic minority rights would be. We have to make sure that the final product is no weaker than what we started with.

Mr. Yvon Godin: It is about respecting provincial realities. Let's forget about other minorities; let's just deal with French and English. Take other provinces such as Alberta. The Alberta government claims that French in the province is of little importance and therefore the government doesn't have to act. The government says that it is not obliged to protect or look out for Italian, Chinese or any other language.

Nothing would preclude a new version of the legislation from stipulating respect for provincial realities. The reality, for a province such as Alberta, is that there are few francophones there. That would lead to a new interpretation and a new debate.

Mr. Ronald Caza: It's a very negative debate for the francophone community.

Mr. Yvon Godin: That's correct.

Mr. Ronald Caza: You're talking about reality. When a person appears before the courts, they are only dealing with reality. In fact, no one goes before the Superior Court, the Court of Appeal or the Supreme Court to discuss anything other than reality.

When courts hear linguistic rights cases, facts represent 80 per cent of the work and points of law, perhaps 20 per cent. Sometimes, perhaps less than 20 per cent, 10 per cent or 5 per cent. So, facts and reality are what matter. Reality will always be taken into consideration.

Mr. Yvon Godin: If we write into the bill that we are going to take into consideration the situation in the provinces, we're going to be giving a new tool to provinces that have absolutely no regard for minorities and never have had any. That wasn't in the bill beforehand.

Mr. Ronald Caza: What you're saying is very important. If we use such terms, or several clauses suggested by the federal government, you are giving tools to those who want excuses in order not to promote linguistic minorities. These tools would serve the interests of those who don't want to promote linguistic communities.

Mr. Yvon Godin: We are not forced to consider other languages.

Mr. Ronald Caza: I can tell you this clause will certainly not help the linguistic minority.

Mr. Yvon Godin: Thank you.

The Chair: Thank you, Mr. Godin.

Let's now proceed to the third and final round.

Mr. Vellacott, you have the floor; you may choose to split your time with Mr. Lauzon.

[*English*]

Mr. Maurice Vellacott (Saskatoon—Wanuskewin, CPC): Merci.

In the passage of this bill, whether in its present form or amended, I'm wondering, Ronald, if you would feel that it would give considerably greater access to recourse by individuals who would be needing the services.

As my second question, how much of an increase do you anticipate in terms of litigation around this matter? You have much experience in this area, and your law firm does. Would you figure an increase by 50%, 75%...?

So those are my two questions: what kind of positive access it would give to people more than is now, and also the matter of the increase in litigation.

Mr. Ronald Caza: On your first question, I think it will help individuals. It will empower them. It will empower them even if they don't go to court. It will empower them when they want to explain why or build a case as to why they're entitled to this service or that service. They'll be able to say, "You know what? I have that right." And with rights, you don't always have to go to court. Court is the last resort. That's where it will be very important, I think, for individuals.

As far as litigation is concerned, at Heenan Blaikie they've always been involved a lot in linguistic rights, and I must tell you that my impression is that it will not necessarily generate more litigation. What it will do is it will give another tool or another defence mechanism to individuals who are going before the courts in any event because they need to have a situation changed.

What they're doing now is the government is being challenged on what it's doing, but the problem we have is that with this specific right that the government has, it's not obvious to what extent it's a legal obligation and not simply a statement to basically make everybody feel good. That's why it's essential.

My opinion is it's not going to generate necessarily a lot of litigation. It may generate litigation, because that's sort of the nature of fighting for your own rights, but I think what's more important is that individuals who are going to be challenging in any event will have a tool to ensure they're able to do so successfully. What's most

important, I must tell you, is that 99% of individuals who are going to obtain those rights will do so without fighting, and of those who start fights, who start litigation, 95% are going to settle before getting to court.

So just generally speaking, there is very little in any area, including linguistic rights, that actually ends up going to court, and the stronger and clearer your rights are, the less likely it is that you'll end up going to court. And I can tell you now that if you start amending the act, with all the amendments that are being proposed it is much more likely that you'll end up in court than if you adopt this bill as it's now being proposed by Senator Gauthier.

● (1010)

Mr. Maurice Vellacott: There's not merit in any of the amendments that were put forward by the minister?

Mr. Ronald Caza: I've looked at all the amendments, and I must tell you that I don't see any of the amendments making the tool or the line that's being offered to the linguistic minority any better. The impression I have is that if you look at them, you'll see they all have the same purpose, and the purpose is to water down, either one way or another, the obligations that rest on the government.

Mr. Maurice Vellacott: So they tend to cloud up more than clarify?

Mr. Ronald Caza: Or limit, not necessarily cloud up. I think Madam Boivin was saying that sometimes it's not even clouded up. If you look at it, it's even clearer. It's clearer because it's limiting the right. So of course that makes it clearer. That's not necessarily a good thing.

If the right is a lot larger than it should be...and Mr. Godbout explained earlier how we looked at the language that was in section 23. The courts were able to use that language and interpret it in a way that ensured we'd be able to offer adequate educational minority linguistic rights. If language that had been there at a certain point in time that was much more specific had been kept, I can tell you we would not have the education system we have now. It's not necessarily a good thing to be limiting the right, just as it's not a good thing to be clouding it up.

You need language that, when we apply the principles of wishing to realize or ensuring that we realize the objective, allows the court or clarifies that there is that obligation to take positive measures to preserve the linguistic minorities.

Mr. Maurice Vellacott: Thank you.

The Chair: There are four seconds left.

[*Translation*]

Mr. Guy Lauzon: All right.

The Chair: Before I hand the floor over to the next member, I want to ask you to stay for 15 minutes after this final round, to discuss, perhaps in camera, our future, our plans; I also wanted to report to you on my meeting with the Liaison Committee regarding the trip.

I think you want to split your time, Mr. André.

Mr. Guy André: Yes, I will be splitting my time with Mr. Bergeron.

According to the statistics we have seen, between 1951 and 2001, the number of Canadians whose mother tongue was French has gone from 29 per cent to 23 per cent. Outside of Quebec, during the same period, this proportion has decreased from 7.3 to 4.4 per cent. In terms of language of use, things aren't any better. The number of Canadians who speak mostly French at home has gone from 25 per cent in 1971 to 22 per cent in 2001. According to other statistics, French is losing ground in Canada, within francophone minorities outside of Quebec as well as in Quebec.

You're saying that the Supreme Court recognizes the distinct nature of the language situation in Quebec. At the same time you're saying that we cannot include this specificity recognized by the Supreme Court in a bill. I can't see why not; when it is recognized by the Supreme Court, why could we not mention this legal recognition in Bill S-3?

•(1015)

Mr. Ronald Caza: There are two reasons for this. I was reading the proposed wording, and one of the amendments was not dealing with Quebec but rather the reality in the provinces. The Supreme Court of Canada spoke of the reality in Quebec, and that is, without any doubt, what needs to be taken into consideration.

As I was saying, I believe you shouldn't add wording to bills that is not necessary, because it always ends up coming back to bite you in the end. It's very dangerous. If it isn't necessary to add it, I don't think it should be added.

The goal is to ensure that positive federal government measures in Quebec for anglophone linguistic minorities will not be negative for the francophone majority in Quebec. That is the concern we read in the amendment to this bill.

Legally speaking, the law as it stands is clear and precise on this matter, so this is not a potential risk. So, it is not necessary to add it to the bill.

Mr. Stéphane Bergeron: Mr. Caza, I would like to briefly go back to the answer you gave me earlier. I would remind you that the amendment that I referred to with respect to taking linguistic reality into consideration has not been drafted. This is not one of the amendments that you may have seen to date; this is one that has been suggested verbally by Mr. Doucet. Mr. Braën and Mr. Foucher have told me, to some extent, that they are in agreement with this amendment.

I do not think that they are less competent or less concerned than you are about the survival of francophone and Acadian communities. And yet, they seem to feel that this amendment—which would reassure Quebeckers viewing Bill S-3 and the Official Languages Act as potential threats to an already fragile linguistic situation in Quebec—would not constitute, in any form whatsoever, a violation of the rights of francophone and Acadian minorities in the other provinces. I need you to tell me what leads you to believe that a province could use a linguistic reality reference in the legislation against francophone and Acadian minorities, whereas the courts themselves take this linguistic reality into account. Why would including this in legislation, contrary to what your colleagues Doucet, Braën and Foucher appear to think, in your opinion, allow provincial governments to violate the rights of their minorities?

Secondly, what suggestion would you make to assuage the concerns of people in Quebec who are legitimately concerned about part VII of the Official Languages Act becoming binding, and about the law possibly jeopardizing the current linguistic balance in Quebec?

•(1020)

Mr. Ronald Caza: First of all, the Official Languages Act as it exists now applies to everybody in Canada equally. Nothing in the Official Languages Act states that it is different for Quebec.

My opinion, which I believe is also shared by Mr. Braën and Mr. Doucet, is that part VII of the act is already in force. So we have a bill and an act that is in force which makes no specific mention of the situation in Quebec.

Before you said so yourselves, in the committee, I had never heard anybody say that there was some concern in Quebec about part VII of the Official Languages Act. Now, all we want to do is clarify, in part VII, that it is binding. You are saying that some people may have some concerns. I do not exactly understand the grounds for such concern. Concerns about what? The fear that the federal government will impose all kinds of measures on Quebec that will be to the disadvantage of the linguistic majority? I will give you my opinion: Quebec already has this protection. Although my opinion may not be the same as the others, I do think that, when things are clear, there is no need to add anything further.

I would like to deal with another aspect. Just imagine that the bill states that consideration can be given to the reality in a province and then we send this bill to all of the anglophone provinces stating that this is what they must use in order to protect and respect linguistic minorities. The message that we will convey to everyone is that they will have an opportunity to find excuses for not respecting their obligations. In Quebec, you do not need to do this, because you already have protection. But the other provinces will start looking for excuses enabling them to use this against us. We are the ones who are in danger, the francophone linguistic minorities outside of Quebec. That is why I believe that it is dangerous to add such an amendment.

The Chair: Thank you.

We will continue with Mr. Simard, who may share his time with Mr. D'Amours.

Hon. Raymond Simard (Saint Boniface, Lib.): Thank you very much, Mr. Chairman.

Welcome, Mr. Caza.

Normally, we do not present amendments to the committee until the discussions have been concluded, but in this case, all of the parties have presented them ahead of time. I think that this has been very beneficial for us, because we have had an opportunity to hear comments and criticisms not only with respect to the government amendments but also with respect to amendments from our Conservative colleagues, who had concerns about provincial jurisdictions, and from our Quebec colleagues, who wanted the province to be excluded from the application of the law. Right from the start, we thought that this would be very difficult to do. We are starting to see that it may be problematic to add that linguistic realities will be taken into account. Consequently, I think that it has been most helpful to have had an opportunity to present amendments at the beginning. At any rate, personally, I have found this to be very beneficial.

Earlier, you said that if we did not have this recourse, we did not have the right. I found that interesting. I am wondering whether we will wind up by having fewer court cases if that were to become clearly enforceable, even though you believe that this is already the case. Indeed, the departments would realize that they have an obligation to respect the rights of minority communities.

Mr. Ronald Caza: That is absolutely right.

Mr. Lauzon explained that this was not obvious to a member of a community. You yourself gave the example of someone from Cornwall who had started to say that he was not receiving services from the federal government, that there were no positive measures and that he was thinking about going to court. I can tell you that if this right is not spelled out clearly then the likelihood that someone will try and avail himself of this right is much slimmer. There is a lesser likelihood that those who are to respect this right will do so for two reasons. First of all, it is not clear. Secondly, they know that there is a very small likelihood that someone would go to court.

If the individual from Cornwall knows that he or she may win by going to court because it is clear, there will be two consequences. You will tell me that the individual may go to court. However, based on my experience, I can tell you that this is not what happens in practice. The person who must respect the law will do so, because the other person will have a stick to make sure he does. If nobody has a stick, there will be no reason to respect the law and we will have to rely on the goodwill of governments. While there may be some governments of good faith on which we can rely, there may be others where we cannot. That is why this cannot be an issue of goodwill. It has to be a matter of law. The minority needs rights. The minority cannot rely on the goodwill of the majority.

• (1025)

Hon. Raymond Simard: Why do you think that part VII was not included in subsection 77(1) at the outset?

Mr. Ronald Caza: We feel that it is enforceable all the same. I do not know why, it is a political matter. Perhaps the people did not realize, at the beginning, to what extent it was or was not enforceable. When we appear before the court, we work with the law; we do not ask ourselves questions about the wording of the legislation. We look at the words and objectives of the act, and this is what we use when we speak to the court. What we are looking at now is a bill. What counts for people arguing in this field is that they work as best they can with the tools available.

Hon. Raymond Simard: Does the Charte de la langue française have priority over Bill S-3?

Mr. Ronald Caza: These are two different fields. The Charte de la langue française applies to matters under provincial jurisdiction. When there is a conflict between the Charte de la langue française and the Official Languages Act, the courts are obliged to find a definition or common application to comply with their respect of objectives. In the Casimir decision, the courts examined what Quebec wanted to do in its field of jurisdiction as well as its obligations under the Charter and they found a definition which satisfied both aspects, a definition where it was recognized that Quebec was different. This is a somewhat asymmetrical definition where the same legislation was in force in Quebec, but in a different way. The courts will always do this.

Hon. Raymond Simard: Thank you.

The Chair: You have 10 seconds remaining.

Hon. Raymond Simard: Thank you, that will be all.

The Chair: Thank you.

Mr. Godin.

An hon. member: He is not there.

Mr. Stéphane Bergeron: No comment.

The Chair: Thank you.

Going back to Mr. Simard's comment, if the only amendment sought to include part VII in subsection 77(1), would that be satisfactory?

Mr. Ronald Caza: Pardon me, you are suggesting that Bill S-3 be amended? Do you want to restrict that to S-3?

The Chair: I mean that in subsection 77(1)...

Hon. Raymond Simard: We could set everything aside and subject part VII to subsection 77(1) of the act.

Mr. Ronald Caza: I want to make sure that I have understood you correctly. Are you suggesting that subsections (1) and (2) not be adopted and that S-3 be amended so that only subsection (3) will remain? The lawyers have discussed section 77 at great length, but I think that was primarily because, from a legal perspective, this was a tool. However, I think that the obligation imposed by section 41 is very important, because it ensures that the government cannot simply sit on its laurels and watch the train go by. I think that is important today. Perhaps it was not so much the case in 1969, 1971 or 1978, but today, it is much more important.

Francophone linguistic minorities outside of Quebec are much more vulnerable today than they ever were. Mr. André, you gave me some statistics. I have some that are worse than yours. Assimilation is exacting a heavy toll. There is not one Franco-Ontarian family that does not have members—brothers, sisters—who have been assimilated. I can tell you that assimilation has wrought havoc. In one, two or three years, it will be too late. We need to take measures right now. These obligations have to be established immediately.

As I said at the beginning of my presentation, if we agree to say that it is essential, in Canada, to protect our linguistic minorities and ensure that they can live in their language and culture throughout Canada, if we agree with that, we have to adopt the bill and do so immediately.

The Chair: Thank you very much.

Mr. Ronald Caza: Thank you.

The Chair: This has been most interesting.

Mr. Ronald Caza: Thank you.

The Chair: I will suspend the meeting for 60 seconds, and then we will continue in camera.

[Proceedings continue in camera.]

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