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## Standing Committee on Official Languages

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EVIDENCE

**Thursday, December 6, 2018**

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**Chair**

**The Honourable Denis Paradis**



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Thursday, December 6, 2018

• (0850)

[Translation]

**The Chair (Hon. Denis Paradis (Brome—Missisquoi, Lib.)):** Pursuant to Standing Order 108(3), we are continuing our work on the state of Canada's francophonie.

This morning we have the pleasure of welcoming Nadia Effendi, Chair of the Association des juristes d'expression française de l'Ontario.

You are familiar with the ground rules. You will have about 10 minutes to make your presentation. Then, as usual, we will proceed with a round of questions and comments by members of the committee.

Ms. Effendi, you have the floor.

**Ms. Nadia Effendi (Chair, Association des juristes d'expression française de l'Ontario):** Thank you very much, Mr. Chair.

I am pleased to be with you this morning to present the remarks of the Association des juristes d'expression française de l'Ontario, the AJEFO, on the state of Canada's francophonie.

The AJEFO has been working to promote access to justice in French in Ontario since 1980. We are both a community and a centre of French-language legal expertise, and our more than 1,000 members include lawyers, judges, translators and students from across the province. Our organization is in fact the largest association of francophone justice professionals in Ontario.

We would like to contribute to your study this morning by providing some remarks on the francophonie, more specifically in the justice sector.

First of all, I intend to discuss the current issue of access to justice in French and the AJEFO's efforts in that regard. Second, we will outline our reaction to recent announcements by the Government of Ontario and the direct impact of those announcements on the Franco-Ontarian community. I am sure that will be of interest to you.

Allow me to begin with the current issue of access to justice. As you are no doubt aware, many studies and reports have been prepared in recent years on access to justice and concerns about that situation. It would appear from findings on the subject that litigants have little knowledge of their rights or solutions to their legal problems.

Studies also show that increasing numbers of people represent themselves before the courts in our judicial system. Lastly, the

reports state that government support for access to justice, although significant, is not currently adequate. Access to justice in French, which is likely your greatest concern, is all the more difficult to achieve.

In its 2012 report, the Rouleau—Le Vay committee noted that proceedings conducted in French resulted in additional costs and took longer than those conducted in English. That situation is attributable to a range of factors, including the lack of bilingualism among players in the justice system.

There is also a lack of communication among the various players: judges, the Ministry of the Attorney General of Ontario, justice professionals and so on. In addition, litigants encounter procedural problems in exercising their language rights.

We are proud of the AJEFO's efforts to address these issues through its diversified projects. Those projects that have been implemented under the federal government's road map 2008-2013 provide legal information to litigants and are designed to equip stakeholders.

I cannot appear before you without discussing our various projects, which you are probably familiar with. I thought you would definitely be interested in hearing about them since they are funded by the federal government.

Two of those projects concern legal information. Their purpose is to provide information to litigants in clear and simple language to compensate for the fact that they cannot hire lawyers like me.

The first project is the Ontario Legal Information Centre in Ottawa. I invite you to go and visit it. It offers Ontario litigants 30-minute meetings with a lawyer in the language of their choice, English or French, thus providing them with access to legal information on problems they are dealing with.

Since it opened, the centre has responded to more than 8,000 service requests both in person and over the phone, which shows there's a genuine need for this kind of information. This represents an average of approximately 300 meetings a month. You can imagine the number of requests the centre receives.

Although services are offered in both languages, the centre's language of work is French. The centre really strives to offer services actively in French.

•(0855)

The second program, which you may have heard about, is also funded by the federal government. It's the *cliquezjustice.ca* website, which is intended for francophone minority communities across Canada. Its mandate is to provide the general public with clear and simplified information on their rights and obligations in various areas, such as employment law, wills and family law.

The website provides Canadians with a variety of resources and helps put litigants who can benefit from its service in touch with justice professionals. It also provides educational resources to teachers who want to teach their students about various justice topics.

In the last fiscal year, *cliquezjustice.ca* logged 400,000 visits, more than 50,000 a month. In November, the last full month for which we have figures, the site received a record 80,000 visits. Once again, that attests to a need among members of the public for information on their rights.

AJEFO's last key program actually focuses on justice professionals. Litigants need services, and so do professionals. There is a shortage of bilingual people in Canada who can serve this population. One of the reasons for that is that there are not enough French-language common-law resources for litigants.

The *jurisource.ca* website is an attempt to meet that demand. It is a virtual library that is made available, free of charge, across Canada, to professionals in the common law provinces. It provides teaching resources of all kinds, such as document templates and lexicons from all across the country. Our purpose is to expand access to justice in French and to cut costs. The last thing we want is to have to tell a client who comes to us for a will in French that we don't have one and that we will have to translate it and bill the client for it. The purpose of *jurisource.ca* is to remedy all that.

Lastly, we play an advocacy role, and that's why we are here before you this morning. We like making presentations, both in court and before parliamentary committees.

We recently intervened before the Supreme Court of Canada in *Mazraani v. Industrielle Alliance, Insurance and Financial Services Inc.*, a case that may be of interest to you. The court rendered a decision in favour of language rights, reminding judges of their duty to promote access to justice in French and lawyers of their ethical duty in that regard.

I want to take this opportunity to thank our principal funder, the Department of Justice of Canada, for supporting these three projects. We are very pleased with the funding we receive. This past March, we were delighted to learn that the Action Plan for Official Languages 2018-2023: Investing in our future provides for a return to core funding for organizations representing the official language minority communities. We feel that funding is essential to ensuring the continued existence of the networks, communication among the various associations of francophone jurists and continued provision of services.

In my remaining time, I would like to talk about recent announcements by the Government of Ontario.

As the AJEFO is located in Ontario, it relies in part on funding from that province, for two projects in particular.

The Ontario Legal Information Centre has established a toll-free telephone line with funding from the provincial government. We also organize justice camps every year. Elementary school students come to us, and we give them resources and information on justice. The program is also funded by the provincial government.

Delays in confirming funding for these programs have caused problems for the centre, which is unable to meet rising demand for its services. I gave you some figures on the requests it receives. As for the justice camps, we will unfortunately have to consider terminating that program if funding from the province is not forthcoming.

The AJEFO has maintained a good relationship with the provincial government in recent years, more particularly with the Ministry of the Attorney General of Ontario. We were encouraged by some initiatives the ministry recently took, unveiling a Franco-Ontarian monument in Toronto to celebrate the 400-year francophone presence in Ontario, passing a motion to indicate linguistic identity on provincial health cards and consulting francophone entrepreneurs.

•(0900)

We saw that the government seemed intent on promoting access to justice in French and French-language services in Ontario. It also made promises to modernize Ontario's French Language Services Act.

That's why, on November 15, the AJEFO, like so many other organizations in Ontario and the rest of the country, was shocked by the provincial government's announced budget cuts, which had a direct and very serious impact on Ontario's francophone community.

We at the AJEFO denounced that serious blow to francophones' status, particularly the elimination of the Office of the French Language Services Commissioner, the issue that concerns the AJEFO as an organization in the access to justice field.

Although the provincial government announced one week later, on November 23, that the commissioner's office would be attached to the Office of the Ontario Ombudsman, we believe that proposal is still unsatisfactory.

Financial arguments cannot serve as a pretext for undermining francophones' rights. That principle was confirmed in the Montfort affair, with which you are very familiar. The Court of Appeal for Ontario confirmed at the time that the government could not rely solely on arguments of administrative convenience or vague funding concerns to justify closing Montfort Hospital.

We are seriously concerned about what's currently happening with the Office of the French Language Services Commissioner. It won't be news to you that the Franco-Ontarian community has a rich history but has also faced many obstacles. It has overcome those obstacles—and I believe it will do so again this time—and it did so by making very significant gains for the community. Those gains have been erased by the elimination of the Office of the French Language Services Commissioner.

Ontario's French Language Services Act is 30 years old. That's why the government said it intended to modernize the act and add new elements, and now, a few weeks later, we are faced with announcements such as the one you heard.

I'd like to close by saying that we want the community's gains to be restored. That's what the AJEFO wants. We want to restore the integrity of the Office of the French Language Services Commissioner. That's our objective.

I'm prepared to answer your questions regarding our concern over the Office of the French Language Services Commissioner in particular. We feel the independence of that office is under serious attack.

Thank you.

**The Chair:** Thank you very much for that presentation.

We will begin the round with Mr. Alupa Clarke.

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

Ms. Effendi, welcome to the federal government's Standing Committee on Official Languages. I'm pleased to see you here. Thank you for all the work you and your organization are doing.

First, I would like to ask you a brief question. You said the Ontario government paid the AJEFO for the legal information centre to provide resources such as justice camps to young people.

How much funding was allocated to those activities last year, for example?

I'd just like to get an idea of what that might mean.

**Ms. Nadia Effendi:** That's a very good question.

I'll give you the exact figures so my executive director doesn't accuse me of making false statements.

It was \$30,000 for the legal information centre and \$180,000 for the justice camps.

**Mr. Alupa Clarke:** That's interesting. Thank you.

We all agree the decisions Mr. Ford made in Ontario are an affront to French Canadians. You say that you're concerned and that this constitutes a serious attack on the status of francophones in Ontario.

I'd like you to explain to us, in your own words, how this is a serious attack, even though we know in a general way.

**Ms. Nadia Effendi:** It's important to remember there was no Office of the French Language Services Commissioner when the French Language Services Act was first passed in 1986. That office was created in 2007, and it was added because the government realized it needed additional transparency.

You've probably heard it said many times that an act has little effect if it has no teeth. So it's necessary for an act such as this one, which is designed to protect the minority, to provide for a remedy. That's the role of the Office of the French Language Services Commissioner; that's what it does. It receives complaints, and it investigates them, but it also defends and promotes the francophone community.

Without that office, and particularly without its independence—which is currently at stake—we have no remedy.

What will Ontario's francophone community do if it no longer has an organization to turn to when a problem arises and there's a shortage of services in French?

● (0905)

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

The federal government's court challenges program was suspended for the last 20 months as a result of an administrative restructuring, but it was announced a few weeks ago that it would be reopening. Since I imagine you're very much in the know, do you know whether the program is accessible now and whether applications can be made to it?

**Ms. Nadia Effendi:** Yes, as far as I know.

I have to admit I'm not exactly sure of the situation. Are all applications currently under review? Where do things stand? We at the AJEFO were obviously delighted when the names of the members of the expert panels that will review the applications were announced not long ago. I think that's really a step in the right direction.

Since you mention the court challenges program, I would like to tell you about a wish the AJEFO has. I know you're also studying the modernization of the Official Languages Act, and the AJEFO would like to make sure we don't wind up in the same situation as a few years ago when the program was cancelled. We therefore encourage you to entrench the program in the Official Languages Act.

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

I'd also like you to tell us a little about the current state of Canadian jurisprudence on language rights, in all courts.

I'm thinking, for example, of the decision rendered in May by Judge Denis Gascon, who dismissed an application by the Fédération des francophones de la Colombie-Britannique and bluntly held that part VII of the Official Languages Act was meaningless.

Do you think that case poses a threat to Canadian language rights jurisprudence?

**Ms. Nadia Effendi:** We're fortunate to have courts. They're the watchdogs that guarantee that, if a government or agency, whatever it may be, ever fails at its task, we'll have a place where we can go and seek remedy. The flipside of that, obviously, is the extraordinary cost that entails for the ordinary person, a factor that makes litigants hope they'll never need to appear in court.

As for the state of jurisprudence, it's generally unanimous in the Supreme Court: language rights there are viewed as underlying constitutional principles, a concept also found in the Charter. We feel fortunate those principles are recognized and confirmed. For example, going back to the Mazraani case I referred to, which recently concluded, the Tax Court of Canada, in that instance, had forced a witness to speak English whereas his first language was French. The Supreme Court obviously found that unacceptable and unlawful and held that the witness should have been entitled to speak in French.

However, there are exceptions, such as the British Columbia case you mentioned.

**Mr. Alupa Clarke:** It could spread, like gangrene, couldn't it?

**Ms. Nadia Effendi:** I hope not.

Ultimately, however, I'd say you have the power to prevent any consequences that are that serious, to use that term. It's up to you to ensure that the Official Languages Act is amended in part VII to give it more teeth, to provide remedies and to prevent any new decisions like the British Columbia judgment.

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

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

Mr. Rioux, you have the floor.

**Mr. Jean Rioux (Saint-Jean, Lib.):** Thank you, Mr. Chair.

Ms. Effendi, thank you for being here and for speaking so eloquently this morning.

I'm a member from Quebec. No one in my province has any problem appearing before a court or obtaining legal services in French.

In Ontario, I believe the more than 600,000 Franco-Ontarians can obtain the services of a French-speaking lawyer without a problem. However, what about the courts and the judiciary? Is it easy to get a fair trial in French and to find a judge who speaks that language? Is there a list of francophone judges?

• (0910)

**Ms. Nadia Effendi:** I'd say a lot of improvements have been made to Ontario's justice system in recent years. A lot more bilingual people are being appointed to the judiciary. Could more improvements be made? Absolutely. Improvements can always be made. No doubt about that.

Does it cause delays when someone requests a trial in French? I'd be lying to you if I said no. It obviously does. If an English case is assigned to me, it'll be a lot easier to present that case in court, and much faster than a French case. That's obviously the fact of the matter.

It's not just as a result of the availability of bilingual judges, who aren't as numerous as unilingual anglophone judges. It's also determined by the staff of the courts. There are obviously fewer bilingual personnel. That's the way it is.

I recently read that Franco-Ontarians make up nearly 5% of the population of Ontario. However, French cases don't make up 5% of the caseload at the Court of Appeal for Ontario. This shows that francophones decide to appear in English, and they probably do so for one reason: they can't find a bilingual or francophone lawyer. Perhaps they simply prefer to appear in English because they don't want to wait years to have their case heard.

There are definitely deficiencies, and we're working to address them. One of the active committees studying this issue in Ontario is the French Language Services Bench and Bar Advisory Committee, the advisory committee of Judge Rouleau. Judge Rouleau was appointed by the Attorney General of Ontario specifically to

examine this question and to determine whether measures could be put in place to improve the situation.

**Mr. Jean Rioux:** Thank you.

Let's talk about the Université de l'Ontario français in Toronto. The university already has an enabling statute and therefore exists on paper. The legislator can obviously amend an act. However, are there any coercive elements in the act that would require the process to be allowed to follow its course?

Could the Canadian government fund the university directly, without going through the provincial government, even though that wouldn't be desirable because it would release Ontario from its responsibility?

Lastly, I have a question concerning all federal government properties in Canada. Could the federal government dispose of properties it owns without going through the province? That's a situation that has arisen in the Vancouver area.

**Ms. Nadia Effendi:** I'd like to start by saying that the AJEFO's mandate focuses on access to justice in French. Our primary concerns are therefore related to the announcement concerning the Office of the French Language Services Commissioner.

However, we don't really have an education mandate, even though we work in the education sector and are involved in justice camps. Nevertheless, Mr. Rioux, I'd like to try to help you and this committee with regard to the university. I would say the following.

I haven't examined the act establishing the Université de l'Ontario français in detail, but one thing is clear. The institutions of all the minority communities in Ontario and the rest of Canada are really central to those communities. That's really what enhances the identity of those communities. When one of their institutions is eliminated, it directly affects the core and advancement of those francophone communities. That principle was very clearly confirmed by the Court of Appeal for Ontario in the case concerning Montfort Hospital, for example, which is a central institution for the community.

I think you have to be careful. I know you've heard about the Assemblée de la francophonie de l'Ontario. Various committees are currently looking into this matter to determine whether eliminating that institution is actually critical and whether legal remedies are possible.

You have unlimited leeway regarding federal government funding for the university. The federal government has an opportunity here to consider this matter further, whether as part of an action plan or of another program. The university would clearly have an impact on the Franco-Ontarian community, but also on the rest of Canada, for francophones who may wish to go and study in a province other than their own.

That's one thing to look at. It's at the federal government's discretion. You probably have virtually unlimited funding powers.

Lastly, I'd say the disposal of properties isn't my field of expertise. I wouldn't want to venture too far and suggest what the government can or can't do. That's obviously a very broad issue. Perhaps the government should examine a specific case.

●(0915)

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

We will continue with Mr. Choquette.

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

Thank you for being here, Ms. Effendi.

I'd like to continue on the Montfort Hospital case, which you cited to illustrate how minority francophones can defend themselves in the courts, if necessary. What was the main argument that convinced the Court of Appeal for Ontario to reverse the closure of Montfort Hospital?

**Ms. Nadia Effendi:** In that case, as you'll remember, the provincial government of the time had conducted a study and decided to close Montfort Hospital for funding reasons. The Court of Appeal for Ontario rejected that decision and stated that the government and Ontario's Health Services Restructuring Commission had to consider the constitutional role Montfort Hospital played as a francophone institution essential to enhancing the identity of the Franco-Ontarian cultural minority.

The court further confirmed the vital role that institution played in the survival of the Franco-Ontarian minority. In other words, the elimination of the Franco-Ontarian community's gains or institutions would result in its erosion.

Lastly, the court confirmed that the government could not justify eliminating the hospital, an institution protected by the French Language Services Act, on financial or administrative grounds.

**Mr. François Choquette:** If I understand correctly, in light of what you just said, the transformation of the Office of the French Language Services Commissioner stripped it of its independence. The initial argument was economic in nature. The worst part of all this is that what's happening with the commissioner's office will save only \$50,000 or \$100,000, which is ridiculous. Sorry, I'm saying it because I can afford to. The economic argument doesn't hold up.

In a way, by stripping it of its independence, the government, as you said, is eroding gains that were entrenched in the French Language Services Act, which has been around for 30 years. It's also eroding the Université de l'Ontario français file, since the university already exists, its board has been in place for a few years, and it's developing programs. It even has an option, until January 8, to lease premises, an urgent matter, and has enough money to pay its present staff until January 15.

In your opinion, is this situation comparable to that of Montfort Hospital? Do you think there's a chance of going to court and winning using the same arguments?

**Ms. Nadia Effendi:** There are definitely principles that could justify a lawsuit. However, I can't venture an opinion on its chances of success in either the Office of the Commissioner case or that of the university. The decision would be up to the courts.

One thing is certain. Both the Court of Appeal for Ontario and the Supreme Court of Canada have confirmed that the protection of francophone minorities in Canada is an underlying constitutional principle. I know I'm repeating myself, but I'm doing it because this

is fundamentally important. Everyone thought this was an established gain, which makes this kind of decision all the more surprising and shocking.

Based on that principle and the judgment in the Monfort Hospital case, in which the Court of Appeal for Ontario held that the elimination of a fundamental institution actually altered or eroded an entire community, we could definitely advance legal arguments in support of the two cases you mentioned.

Going back to the Office of the French Language Services Commissioner, you really must bear in mind the exact nature of the problem in that case. First of all, the government wanted to abolish the office, which was established barely 10 years ago. Then it decided it wouldn't abolish it but would attach it instead to the Office of the Ontario Ombudsman. The government claims we have no grounds for concern because the commissioner will have the same powers. However, as you recently heard, there's a problem: Mr. Dubé, the ombudsman, confirmed that his role was to investigate, not advance or defend the Franco-Ontarian community. Remember that the French language services commissioner had two roles: to investigate on his own initiative or in response to a complaint and to promote French-language services, in addition to advising and monitoring the government on such matters. We're concerned about what we see in the bill as an erosion of the commissioner's mandate.

●(0920)

**Mr. François Choquette:** In closing, I'd like to ask a question about the modernization of the Official Languages Act.

Our committee prepared a report on access to justice that contains several recommendations. One of them was that the Liberal government introduce, before the end of its mandate, a bill requiring Supreme Court judges to be bilingual.

What's your position on that matter?

**Ms. Nadia Effendi:** The AJEFO's position on the matter has been the same for many years: we're in favour of this kind of amendment. In our view, the exception provided for in the Official Languages Act respecting official languages in the federal courts should be eliminated. It's somewhat absurd to think that litigants in Ontario can appear before a court at any level and request that their case be heard by a bilingual or francophone judge but that they don't have that option before the Supreme Court of Canada.

Although the interpreters do an incredible job in an increasingly technical field of law, mistakes do occur. There's another aspect that should be considered. When documents are filed in French, they aren't translated into English for the judges, which means the judges must read them in French.

Many people tell us there may not be enough bilingual candidates, but I don't agree. Recent appointments have included highly qualified and bilingual people from the legal community. Introducing this bilingualism requirement would promote bilingualism across Canada. I'm sure anyone aspiring to be a judge on the Supreme Court of Canada bench would take the necessary courses to become bilingual.

**The Chair:** Thanks very much, Mr. Choquette.

I have to manage my time. Ms. Effendi's so interesting all my colleagues want to speak. From now on I'll give everyone who wants to speak three minutes, including Ms. Effendi's answers.

**Mr. Darrell Samson (Sackville—Preston—Chezzetcook, Lib.):** That's the time I usually take for my preamble.

**The Chair:** Mrs. Fortier, you have the floor.

**Mrs. Mona Fortier (Ottawa—Vanier, Lib.):** Thank you very much, Mr. Chair.

Ms. Effendi, I want to begin by applauding the leadership the AJEFO has shown for at least 10 years, not just since "Black Thursday". It's incredible to see the progress that has been made on access to justice, even though much remains to be done. Your leadership has been exemplary and has had an impact on other provinces and territories. The pilot project conducted four or five years ago showed how important it is to have better access to justice in French, particularly via active offer. That's what I would like to discuss with you.

With respect to Ontario's French Language Services Act, Commissioner Boileau conducted a thorough study on active offer, and you subsequently aligned your activities and actions with his recommendations.

Can you talk to us about active offer, how far things have advanced, and why it should be further integrated into the French Language Services Act?

**Ms. Nadia Effendi:** Absolutely.

In 2009, when the French language services commissioner looked into the justice sector, he discovered that French-language services had to be improved. Following that recommendation, the Rouleau—Le Vay committee was struck to look into access to justice in French and to determine what could be done in that regard. The committee made 17 recommendations to improve services, including the recommendation that French-language services be offered by the courts.

Following another study by Judge Julie Thorburn, the purpose of which was to determine how those various recommendations could be implemented, a pilot project was conducted at the Ottawa Court House. The staff of the Ontario Ministry of the Attorney General was trained to offer its services in French automatically. In various institutions, people were probably already greeting you with "Hello, bonjour." That's the principle of active offer.

The pilot project was launched in May 2015, and the report was issued in 2017. It was discovered that active offer was a success all down the line, and there was no doubt about it. Madam, thank you for noting that active offer is directly linked to Commissioner Boileau's recommendation. That pilot project would not have seen the light of day had it not been for the commissioner's 2009 recommendation that access to justice issues be given more consideration.

• (0925)

**Mrs. Mona Fortier:** Pardon me for stopping you there, but the chair will be interrupting me soon.

**The Chair:** Everyone wants to speak, and I'm having trouble managing the time.

Mr. Arseneault, you have the floor.

**Mr. René Arseneault (Madawaska—Restigouche, Lib.):** Ms. Effendi, thank you for your vigour, your mastery of the issue and your professionalism. Having said that, need I add that you're from Madawaska—Restigouche?

**Ms. Nadia Effendi:** Oh, oh!

**Mr. René Arseneault:** You discussed your organization's funding. How many members of your staff are paid?

**Ms. Nadia Effendi:** There are a dozen of us.

**Mr. René Arseneault:** Is that for all of Ontario, north to south and east to west?

**Ms. Nadia Effendi:** Yes, our office and staff are in Ottawa. With that staff, we offer services to the entire population of Ontario.

**Mr. René Arseneault:** Does the board of directors consist of volunteer lawyers?

**Ms. Nadia Effendi:** Absolutely. They're all volunteers. There are about 15 of us. We also have committees on which about 20 lawyers from everywhere, all of them volunteers, sit.

**Mr. René Arseneault:** So they went all over Ontario.

**Ms. Nadia Effendi:** Absolutely.

**Mr. René Arseneault:** Roughly speaking, what are the federal and provincial contributions to your operating budget?

**Ms. Nadia Effendi:** Definitely about 80% of our funding comes from the federal government and approximately 20% from the provincial government. Earlier I mentioned the amounts we received from the provincial government.

**Mr. René Arseneault:** So you receive approximately \$180,000 from the provincial government.

**Ms. Nadia Effendi:** We get a total of approximately \$200,000 from the provincial government

**Mr. René Arseneault:** That's \$30,000 plus \$180,000; that's quite a lot of money. I know there's never enough money because there's always some catching up to do, but is your funding stable? That's what makes the organization sound.

**Ms. Nadia Effendi:** We were very pleased to learn that the funding we had received from the federal government was renewed. However, you won't be surprised to learn that some of our programs have been cancelled. The federal government decided to give us less money for certain programs. We may be very efficient, and perhaps it decided we could do our work without that funding. In actual fact, our funding was cut, and we therefore had less money with which to provide the same services.

**Mr. René Arseneault:** Having been on the executive of an equivalent organization in New Brunswick for many years, I know the exact role you play as chair.

In this entire wave that has broken since "Black Thursday", how is your organization actually putting pressure on the Ford government, which gives you about \$200,000 in funding? How do you feel about that? Are there any threats? How do you manage it?



**Ms. Nadia Effendi:** As soon as we heard the news, we immediately sent a message to all our members criticizing the budget cuts. Then we urged our members to mobilize and support the initiatives of the Assemblée de la francophonie ontarienne and others. You saw the protests that were held last weekend.

We asked to meet with representatives of the Ontario government, and we hope they'll grant our request. We're still waiting for an answer. Our members are key players in the Franco-Ontarian community because they're the ones who have to appear in the law courts every day and represent litigants' interests.

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

Mr. Blaney, you have the floor.

**Hon. Steven Blaney (Bellechasse—Les Etchemins—Lévis, CPC):** Thanks very much, Mr. Chair.

I agree with Mr. Arseneault. The Association des juristes d'expression française de l'Ontario is in good hands with you, Ms. Effendi. Thank you for your dynamism and your very clear views.

You're a lawyer, and I'd like to hear your legal opinion, but, first, I'd like to clarify a point.

• (0930)

**Mr. René Arseneault:** Free of charge!

**Hon. Steven Blaney:** Yes, free of charge!

I was a member of the previous government, which implemented the language rights support program, the LRSP. That program was suspended 20 months ago and is no longer accessible. It was replaced by the court challenges program, which is still not operational. The first meeting of the expert panel responsible for official language rights is scheduled for December 17. If anyone wants to check that information, I have the article from *L'Express* here. It's simply a point of view. It's important for us to maintain funding for the LRSP. I can't wait for it to be available, as it was before my Liberal colleagues suspended it.

My question concerns part VII of the Official Languages Act. The legal opinion, Ms. Effendi...

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

**Hon. Steven Blaney:** You have to call a spade a spade and discuss the facts.

Mr. Chair, I see my speaking time flying by, and I want to let my lawyer speak.

Ms. Effendi, you raised an important point when you said we should give the law some teeth. Subsection 41(1) of part VII is very clear:

The Government of Canada is committed to (a) enhancing the vitality of the English and French linguistic minority communities in Canada and supporting and assisting their development; and (b) fostering the full recognition and use of both English and French in Canadian society.

And subsection 41(2) reads as follows:

Every federal institution has the duty to ensure that positive measures are taken...

Earlier we talked about provincial measures, but here we're talking about positive measures the federal government can take.

Can the federal government advance the francophone communities, more particularly the Franco-Ontarian community, in view of recent events? A major university project is under way, but you didn't say a lot about that. Could the federal government play a leadership role in that regard, as Mr. Jolin, president of the Assemblée de la francophonie de l'Ontario, asked?

Thank you.

**Ms. Nadia Effendi:** I'd say the duty to advance English and French under part VII of the act is clear. The measures the federal government can take to help the institutions and ensure the minority language communities advance are virtually unlimited.

The only thing I would note, since I know you're also studying the modernization of the Official Languages Act, is that it would be helpful to define what a positive measure is. That's a question that's been the subject of many arguments in the courts. It's something that should be considered.

**Hon. Steven Blaney:** So you're saying that, in modernizing the Official Languages Act, we should define the concept of...

**The Chair:** I must interrupt you, Mr. Blaney. Time is short, and I have to manage it.

We will immediately go to Mr. Samson.

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

I don't have much time, but I have enough to make sure the facts are well noted. My sincere thanks to our guests for suggesting that the court challenges program be directly entrenched in the act because that's in fact what has to be done. Why? I'll tell you why.

Pierre Elliott Trudeau created the program in 1978, and the Conservatives cancelled it when they subsequently took power. In 1992, the Liberals returned to power and restored the program. Mr. Harper's Conservatives were elected in 2006 and cancelled it again. Every chance they get, the Conservatives cancel the court challenges program and the Liberals restore it. That will stop because we're going to include it in the act. Then the Conservatives won't be able to cancel this program for Canada's minorities.

I'd also like to go back to the two provincial programs you mentioned. I don't think they're paid for by the province. I think they involve federal government money. We should verify that. For Nova Scotia's programs, federal money is paid to the Department of Education and then spent. We should verify what happens with the programs you mentioned because I'm not sure exactly where the money comes from.

I'm going to use my remaining time to ask you one important question. I'd like to know your opinion on divorce in French. Shouldn't we be able to divorce in French? Tell me a little about that.

**Ms. Nadia Effendi:** We think an amendment should be made to the Divorce Act. Granting that right would be a very simple matter. The Divorce Act should provide for it in the same way the Criminal Code contains provisions for trials in French.

We support the proposal of the Fédération des associations de juristes d'expression française de common law, which wrote a report and made that proposal to the committee charged with reviewing the Divorce Act. We're absolutely in favour of that.

• (0935)

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

Do I have any time left?

**The Chair:** You have 10 seconds left.

**Mr. Darrell Samson:** Then I have 10 seconds to tell you that, the other day, I heard an expression that I can't forget. Quebec protects its institutions, but, in a minority setting, it's institutions that guarantee the vitality of the communities, precisely as in the Montfort case.

Thank you very much for your excellent testimony.

**The Chair:** Madam Chair of the AJEFO, thank you very much for providing your insight in response to questions and comments by members of the committee. On behalf of everyone here, I congratulate you and thank you once again.

We will suspend for a few minutes, after which we will welcome the Commissioner of Official Languages.

• (0935)

(Pause)

• (0935)

**The Chair:** Pursuant to the Standing Orders, we are resuming our consideration of the state of Canada's francophonie.

Just before we do, I would like to mention that we will finish today's meeting in camera for 10 minutes or so to discuss committee business. Consequently, we will be speeding up the testimony somewhat.

It is a pleasure for us this morning to welcome Raymond Th  berge, the Commissioner of Official Languages. He is accompanied by three representatives from the Office of the Commissioner of Official Languages: Pierre Leduc, Assistant Commissioner; Ghislaine Saikaley, Assistant Commissioner; and Pascale Gigu  re, General Counsel.

Ladies and gentlemen, welcome.

Commissioner, as usual, you have roughly 10 minutes to make your presentation. Then we will go around the table.

• (0940)

**Mr. Raymond Th  berge (Commissioner of Official Languages, Office of the Commissioner of Official Languages):** Thank you very much.

Mr. Chair, honourable members of the committee, good morning.

First, I would like to acknowledge my associates here: Ghislaine Saikaley and Pierre Leduc, assistant commissioners, and Pascale Gigu  re, general counsel.

I am appearing before you today with not a little apprehension. Given the current trend that is spreading across the country, I am more than concerned about the events that have been making headlines in recent weeks. I'm sure that the situation has you troubled, as well, which is why I'm bringing it to you so promptly. We all have a part to play and we all need to ask ourselves what we can do.

Here are a few examples of the worrisome events that have taken place throughout the country: the Government of Manitoba announced that it had changed the status of the Bureau de l'  ducation fran  aise within the Department of Education; it also announced that it was eliminating 11 full-time translator positions; and the Federal Court dismissed the application of the F  d  ration des francophones de la Colombie-Britannique. Plus, there is a lot of uncertainty about the future of linguistic duality in New Brunswick following the most recent provincial election.

Let's move on to the current crisis in Ontario. Now, while I appreciate the provincial government's spirit of openness in moving the Office of the French Language Services Commissioner to the Ombudsman's office, I have to state that the decision does not even come close to meeting the needs of the Franco-Ontarian community. This compromise weakens the role of the Commissioner by eliminating his ability to strengthen the public's right to French services in Ontario, to suggest improvements and to ensure the development of French-speaking communities.

[English]

Right now, Ontario has a commissioner who has made a real impact. He has been instrumental in ensuring respect for and compliance with the French Language Services Act. The creation of the office of the commissioner, with a head reporting directly to the Legislative Assembly, made it clear to Franco-Ontarians that there was real value in having both the office and the commissioner.

As for the decision to abandon the plans for a French language university in Toronto, I believe that this is a major setback that shows a lack of vision on the part of Ontario's elected officials. This was a project that brought hope and that was to fulfill an essential need of the Franco-Ontarian community, the largest French-speaking community in Canada outside of Quebec.

Deficits should not be reduced by sacrificing the rights of Canadians and of official language minority communities. When I see setbacks like the ones we've seen over the past few months, I really have to speak out. Even though my mandate is federal, I am responsible for the language rights of all Canadians and for ensuring the development of both English and French linguistic minority communities.

As I said recently, it's astonishing to see language issues of this magnitude back in the spotlight nearly half a century after the first Official Languages Act was passed. The act is part of Canadians' collective memory and represents the very foundation of the social contract that unites us. How can something that defines our identity be considered to be a remnant of the past, especially when linguistic duality is such a powerful symbol of openness, empathy and respect? When we remove the stones one by one from the base of the building, do we not risk bringing down the very foundation of Canadian identity?

[*Translation*]

The government, federal institutions, the courts and a great number of civil society stakeholders have all helped to shape Canada's linguistic landscape into a very different entity from the one it was before the Official Languages Act was passed. Through their efforts, linguistic duality and official languages have become embedded in Canadians' consciousness and deeply woven into Canada's social fabric, and English and French are now the languages of the national conversation. Setbacks like the one we've just seen in Ontario call that social contract into question.

The language rights enshrined in the Canadian Charter of Rights and Freedoms are a reflection of the importance that Canadians place on the development of official language communities and on the equal status of English and French in Canadian society, in Parliament, in the Government of Canada and in federal institutions.

Looking at events that are happening across the country, I can only conclude that provincial leaders have lost sight of constitutional principles like language rights.

This is not unlike the controversy surrounding the Royal Commission on Bilingualism and Biculturalism and the harsh criticism it came under between 1963 and 1969. But despite the difficulties they came up against, commissioners Laurendeau and Dunton persevered to come to a consensus on the issue.

The B&B Commission left us a very important legacy. Its recommendations led to policies on official languages and multiculturalism, and it laid the foundations of both linguistic duality and cultural diversity as Canadian values.

It also created a framework of language rights at both the federal and provincial levels that shaped both the Official Languages Act and the Canadian Charter of Rights and Freedoms, establishing as quasi-constitutional Canada's language regime.

• (0945)

[*English*]

Language rights are ingrained in our history and show the promise of our future. There are many examples of significant and sometimes controversial developments in the history of linguistic duality since the Official Languages Act was passed.

In 1970, French was restored as a language of instruction in Manitoba, a status it had held until 1916. In 1991, the official languages regulations on communications with and services to the public were adopted. In 2003, the Office of the Commissioner of Official Languages for New Brunswick opened its doors, and in 2009, the DesRochers decision was a major legal victory for linguistic duality.

The trend we're seeing now is compromising our fundamental values. Canada must continue to be a leader and a beacon for linguistic duality and support for official language minority communities. This is an opportunity for Canadian Heritage to foster the development of linguistic duality at a national level. The government has already unveiled its action plan for official languages, which is part of Minister Joly's mandate. But in light of recent events, I wonder whether it's enough.

I encourage the government to explore the other ways to promote linguistic duality. The Department of Canadian Heritage Act requires the minister to strengthen and promote "Canadian identity and values, cultural development and heritage." Why not develop a promotional campaign and enhance some existing Canadian Heritage initiatives?

[*Translation*]

I would add that the provinces and territories also have an important role to play in protecting official language minority communities by making sure that linguistic duality is always on the agenda.

Investing in the future, in young Canadians and in our communities ensures the vitality and longevity of Canada's official languages.

I will be calling on all of our elected officials to set aside their political affiliations in order to protect the gains we have made in terms of language rights.

With half a century of experience and expertise in all matters related to the Official Languages Act, my office is in the best position to make recommendations. I submitted a special report to Parliament last May that proposed a principled approach to the modernization of the Official Languages Regulations. Next spring, I will be presenting my position—and my recommendations—on the modernization of the Act.

[*English*]

As parliamentarians and as members of this committee, you are in an ideal position to support the implementation of my recommendations to study the draft regulations, which will have a major impact on official language minority communities, and to influence the government's decisions on the modernization of the Official Languages Act in order to ensure legislation that is relevant, dynamic and strong.

Given the current situation and considering that the Official Languages Act is about to turn 50 years old, I think it's time for the government to take action and establish a dialogue with the provinces and territories, perhaps in the form of a federal-provincial-territorial summit, in order to discuss the future of linguistic duality and of official language minority communities, and to come up with concrete and sustainable solutions.

[*Translation*]

Thank you for your attention. If you have any questions, please feel free to ask them in the official language of your choice, and I'll be happy to answer them.

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

We will now begin our round with Mr. Blaney.

**Hon. Steven Blaney:** Thank you, Mr. Chair.

I want to welcome Mr. Théberge, the Commissioner of Official Languages of Canada.

Commissioner, I can't help but note the symbiotic relationship that exists between you and this committee as a result of a basic element of the Canadian identity, the Official Languages Act.

You also said something that we entirely support: no one may cite limited financial resources as a reason to penalize or undermine linguistic minority communities. As Mr. Samson has said, the animals look at each other differently when there's less water in the lake.

Mr. Th  berge, I want to ask you something this morning. We'll be hearing from you once again on the modernization of the act, but we're currently facing a very troubling situation: the Franco-Ontarian community and its institutions have been weakened. We've decided to conduct this special or urgent study to find some quick solutions. We went out into the streets last Saturday, and on Sunday in Quebec City, but now we want solutions.

I want to ask you what you think of this.

Beno  t Pelletier, constitutional expert, professor in the law faculty of the University of Ottawa and former Liberal minister, is a highly respected man. Here's what he had to say about the federal government: "If it wants to make a special offer of funding for the Universit   de l'Ontario fran  ais, then it's normally up to Ottawa to make that offer."

The president of the Assembl  e de la francophonie de l'Ontario told this committee that the university was a nearly \$90 million project and that the federal government could offer to fund it for the next four years so the project could continue. The university already has its president and is already on its way.

That brings me back to part VII of the Official Languages Act. I won't reread it in full because you're familiar with it. It states, for example, that the federal government's role is to support and assist the development of our communities and that "every federal institution has the duty to ensure that positive measures are taken."

You use the word "crisis". We're about to put the cap on the pyramid of Ontario's educational system; we're just about there. What can the federal government do? Your role as commissioner is to defend official languages and provide advice. What advice would you give the minister? I'd like to hear what you have to say on that subject.

• (0950)

**Mr. Raymond Th  berge:** The federal government has some leeway in the matter since the positive measures referred to in part VII aren't very clearly defined.

It was previously unusual for a federal department to invest in postsecondary education infrastructure. That's done through various programs in several provinces. It seems to me the present situation warrants the federal government's providing its assistance to advance the project.

Even if an agreement is reached to fund the Universit   de l'Ontario fran  ais, something still troubles me: the Ontario government made a strictly economic argument and didn't seem to acknowledge the importance that institution would have for the future of the Franco-Ontarian community.

As someone said earlier, what's important is to develop our institutions. It's really a matter of negotiation. The federal government has the necessary levers to do it, and, from what we hear, it has shown some willingness to do so. It also depends on the

provincial government's desire to negotiate this agreement. The federal and provincial governments have definitely shown some openness. It's really a matter of negotiating at this stage.

However, we shouldn't lose sight of the fact that, even if the situation of the Universit   de l'Ontario fran  ais is resolved, I'm still concerned about the underlying reasons for the decision to scrap the university.

**Hon. Steven Blaney:** In short, you'd like the federal government not to be the only one playing a leadership role. In view of the Official Languages Act, however, it would be appropriate for the federal government to take the lead in a critical situation. Do I correctly understand your thinking, Mr. Th  berge?

**Mr. Raymond Th  berge:** Yes, the federal government must definitely act and do what has to be done. From what I've heard, it has taken steps to work with the province to find a solution to the situation.

Remember that a number of things are happening in several provinces and territories that also deserve special attention.

**Hon. Steven Blaney:** Yes.

Mr. Th  berge, you were also rector of the Universit   de Moncton before you were appointed Commissioner of Official Languages. How long did you hold that position?

**Mr. Raymond Th  berge:** For nearly six years.

**Hon. Steven Blaney:** Could you tell us about the merits of the Universit   de Moncton? I know the formula isn't the same and that the Universit   de l'Ontario fran  ais wants to set up in Toronto because it would already be benefiting from an academic environment. It has submitted a plan under which it would be well located.

Could you tell us about the impact your new francophone university had on Moncton and on the Acadian community, including the Brayons.

• (0955)

**Mr. Raymond Th  berge:** The simplest answer is that the Universit   de Moncton transformed Acadie. Try to imagine Acadie without the Universit   de Moncton. The influential figures in the Acadian community come from there. It's what has enabled Acadie to transform. Mr. Arseneault is one of many examples. Without the Universit   de Moncton, Acadian society would have made very little progress.

The francophones in southern Ontario don't have access to postsecondary education in their language. Barely 3% of the necessary programs are offered there. The programs are taught in Ottawa and Sudbury, but not in the south. However, the francophone population is growing significantly in the south. In my opinion, if we want to develop institutions in that part of the province, they will have to include postsecondary education institutions and sound structures.

**Hon. Steven Blaney:** Thank you very much.

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

Mr. Samson, you have the floor.

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

Thank you and your team for your sustained efforts, Mr. Th  berge. You've raised some very interesting points that made me react.

He said no one should cite the economy or the deficit as an excuse to violate the fundamental rights of francophones outside Quebec or English-speaking Quebecers. I'm so convinced of that that I've even drawn an analogy: when there's less water in the lake, and by that I mean less money, the animals around the lake look at each other differently. Consequently, the minorities are given less. I completely agree with you that this is a leadership issue and that this is where the problem lies. I find it very hard to accept that a government can view a deficit as an adequate excuse to violate rights.

We saw this in Nova Scotia during the time of our New Democratic government. The NDP has been in power once in the history of Nova Scotia, and I hope it was the last time. Just imagine: during its mandate, the party that supposedly protects minorities abolished certain ridings with black or Acadian majorities. The former ridings were ultimately reinstated pursuant to a court decision.

• (1000)

**Mr. Bernard G  n  reux:** By the Liberals.

**Mr. Darrell Samson:** I didn't want to say it, but you force me to do it, Mr. G  n  reux. The NDP refused to acknowledge the harm caused to Nova Scotia's black community. It was indeed the Liberal government that followed that apologized and then did what had to be done. I'm moved by that.

I haven't asked any questions yet because I agree with you so much.

Moving on to my second point, the role a university can play, I know Mr. Blaney often talks about universities. I appreciated his question. I know that he was hoping for a certain answer and that he got it: the university is an essential institution for the survival of francophone minorities and English-speaking Quebecers; there can be no doubt about that. We also heard some good expressions that I unfortunately don't have the time to repeat.

Now I come to my question.

A few weeks ago, Ontario's commissioner, Mr. Boileau, told us about his role. I personally learned a lot. After listening to his presentation, I thought that, if I was in power, I'd like to have a commissioner at my side because he would do a lot to help me protect linguistic minority rights. Mr. Boileau told us about the importance of engaging in promotion, providing proactive protection, maintaining good relations and being a convenor. All of that is essential.

In the three or four minutes I have left, could you explain what you've done in the four areas of your own role since you took up your duties?

**Mr. Raymond Th  berge:** Thank you for your question.

As you mentioned, my office has two extremely important roles to play. On the one hand, it plays a protective role by ensuring that everyone complies with the act. On the other hand, it has a promotional role. We try to play both parts equally.

With respect to protection, we've been conducting our investigations since February. We've developed a new model called the official languages capability maturity model to assist federal institutions in more effectively discharging their obligations. That model will be unveiled in 2019.

We've also conducted lengthy and elaborate consultations on modernizing the act. We've held more than 50 consultations in person across the country. We also conducted an online survey in which 4,200 respondents talked about modernization.

**Mr. Darrell Samson:** When can we see the report?

**Mr. Raymond Th  berge:** That'll be in the spring. A preliminary version will be published on Monday, but the final report will be issued in the spring.

In addition, we've intervened twice before the Supreme Court.

We also prepared and submitted to parliament a special report on the official languages regulations. I hope this committee will review them to determine their impact.

We've also done a lot of work to advance linguistic duality in the schools and with federal councils in the region. However, my office doesn't always have the resources it needs to do the kind of promotional work it would like to do. Over the past five years, we have managed to meet more than 7,000 students in minority and majority schools as well as many representatives of the communities, but I think we've gotten to a point where we really have to find a way to step up promotional activities to increase understanding of what duality is today, in the current context, because people are starting to forget where it all comes from. Historical memory lasts 70 to 80 years, and the act is now celebrating its fiftieth anniversary. We're starting to wonder how we can be asking these kinds of questions today. What we'd like to do first in the promotional area is put all that on the public agenda.

The last time I met with the committee, we agreed on my office's three priorities, and we're going to work on that basis in the coming years. However, we have to react to unexpected situations such as the ones that have arisen in recent weeks. I repeat, the same thing has happened in New Brunswick, Manitoba, Saskatchewan, Alberta and British Columbia. These are things that happen.

**The Chair:** Thank you, Commissioner

Thank you, Mr. Samson.

Mr. Choquette now has the floor.

**Mr. Fran  ois Choquette:** Thank you, Mr. Chair.

Thanks to the entire team from the commissioner's office for being here today.

Commissioner, you mentioned the historical context in which we find ourselves, which seems to tend toward limiting language rights across the country. This is a problem that must be addressed. You're absolutely right to say that, although what's happening in Ontario has received a lot of media coverage, other types of erosion are occurring across the country and must also be addressed. Thank you for providing that very important detail.

You floated the idea of an official languages summit. You may of course ask the committee for any assistance you may need in organizing it. It's the premiers and ministers who must do that, but I believe the commissioners also have a role to play in it. Give us a proposal. I think we could work on something for next year. I think it would be very important. I also think the Office of the Commissioner of Official Languages of Canada would be the right institution to organize it, with assistance from various governments, of course.

That being said, what's happening in Ontario is nevertheless serious. We're talking about a considerable decline in rights. I'm sure you've had occasion to communicate with Mr. Boileau, the French language services commissioner. Indeed, he was still commissioner when last we heard. What did you retain from your discussions? Do the three commissioners have a strategy or common thoughts on what's going on?

• (1005)

**Mr. Raymond Th  berge:** Yes, I've spoken with Mr. Boileau and with Mr. Carrier from New Brunswick. What concerns us is the loss of independence. It's important for a commissioner to be independent, especially in the language rights field. An ombudsman has a particular job to do. He receives complaints from all citizens concerning many cases, but he doesn't specialize in language rights.

The commissioner's role is not merely to conduct investigations. You also have to advance the official languages in the community and in the machinery of government. That's extremely important. That's what we've been doing for 50 years. We still have a lot of work to do with the machinery of government because it ultimately provides services in French.

It's important to be independent and to be able to criticize an organization and to congratulate it where appropriate. To do that, you have to be independent. That's the aspect we've focused on.

If the Office of the French Language Services Commissioner were attached to the Office of the Ontario Ombudsman, that would be more than a commissioner's office because the two don't play the same role. Our discussions covered a lot of ground.

In Ontario it's the Legislative Assembly; here it's Parliament. The commissioner's independence must be guaranteed or else the commissioner wouldn't really be a commissioner. That's the main point we agreed on.

**Mr. Fran  ois Choquette:** I'm going to continue in the same vein.

The commissioner's office at times puts cases before the courts to defend rights that have been violated. Was the commissioner's office involved in the Montfort Hospital case?

**Mr. Raymond Th  berge:** Yes, former commissioners Goldblum and Adam were interveners in the Montfort Hospital case.

**Mr. Fran  ois Choquette:** In the discussions, they seem to be saying that, if they can't manage to negotiate a political or diplomatic solution to the present situation in Ontario, it would be possible to go to court. The court challenges program has now been restored. Are you considering going that route? Are you preparing for that eventuality?

**Mr. Raymond Th  berge:** From what I understand, when Mr. Jolin appeared, he said he was considering all political, legal, community and even communications options.

That's a hypothesis we're formulating, but let's say we have to go to court. In that case, the commissioner's office would rely on a series of tests to decide whether it should get involved in a given case. At that stage, I would probably seek intervenor status. It's always important to proceed that way because some cases define points of law. Moreover, one of the main reasons why we go to court is to clarify a point of law. If the purpose of the lawsuit we were contemplating were to clarify points of law, it would be important for my office to seek intervenor status.

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

For the next round of questions, several members of the committee wish to speak once again. To stick with our schedule, you will have four minutes each, which will include the commissioner's answers.

Ms. Lambropoulos, you may begin.

**Ms. Emmanuella Lambropoulos (Saint-Laurent, Lib.):** Thank you, Mr. Chair.

Good morning, Commissioner.

What steps have you taken following what happened in Ontario? I know it's a different level of government, as you mentioned, but I'd like to know specifically what you've done.

[English]

Did you just come out and speak out against it, or did you actually speak to the actors involved?

**Mr. Raymond Th  berge:** I had conversations with Monsieur Boileau, Monsieur Jolin and Monsieur Johnson. I talked to a number of parliamentarians to ask them to put aside their political allegiances to try to come up with a solution. We published an op-ed article in *La Presse*, *Le Droit* and the *Ottawa Citizen*, placing the Ontario situation in a broader context. I had conversations with QCGN.

The idea of the conversation I had with parliamentarians was to try to contain the situation. As I mentioned to a number of them, we want to be able to manage the situation so that it does not become more of an issue than it already is. We don't want what's happening in Ontario to influence what's happening in Quebec, for example.

Those are the kinds of things we're doing right now. We are always in conversation with parliamentarians in terms of trying to move this forward.

• (1010)

**Ms. Emmanuella Lambropoulos:** If the same thing had happened in Quebec, would you take the same measures?

**Mr. Raymond Th  berge:** Absolutely. My role is to support both official language communities.

The announcement that was made recently with respect to school boards is something that worries us at the office.

**Ms. Emmanuella Lambropoulos:** That sounds good.

This is not really to do with what we've been discussing today, but part 6 of the act is something that might need some reviewing, because we know it's not necessarily being respected by all federal agencies. Can you give us some guidance on how we can change it to make it more biting? I know you've already answered this question, but I'm looking for more specific solutions.

**Mr. Raymond Th  berge:** At the moment, we're still working out the kinds of recommendations we want to make with respect to part 6. Part 6 is really an issue with respect to English-speaking Quebecers who want to work for the federal government. We're still trying to work out something in terms of how, through recruitment processes or other ways, we can try to increase the participation within the public service. It's a challenge. I don't know if legislative tools are the way to do it. We have to look at that. It's like saying that we want to increase the number of kids in this classroom, but we can't legislate it. There are other factors at play.

We're looking at that, and we will definitely be making some clearer recommendations down the road with respect to part 6.

**Ms. Emmanuella Lambropoulos:** Okay. Thank you.

[*Translation*]

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

Mrs. Fortier, you have the floor.

**Mrs. Mona Fortier:** Thank you very much, Mr. Chair.

Good morning to you, Commissioner, and to the team accompanying you. Thank you for being here today.

We've talked about the crisis in Ontario and about the feeling that there have been setbacks in other provinces. That's possibly the case in New Brunswick, but also in Manitoba, where the duties of the Bureau de l'  ducation fran  aise were changed last year. I don't want to ask the same questions as have already been asked, but I'm trying to get a clearer idea here, and you may be able to enlighten me.

In his last appearance, Mr. Boileau suggested we might look at models from other countries. Canada, of course, is an official languages leader, but there may be foreign models that we can draw on to strengthen both the act and official languages in Canada.

Do you have any examples for us?

**Mr. Raymond Th  berge:** I'm a member of the International Association of Language Commissioners. Canada, in a way, is the founder of that association. Last year, I attended its annual international conference, in Kosovo. With all due respect to my colleagues from other countries, I think Canada sets the standard, at least at the federal level. If we compare our language regime to that of Ireland, Kosovo or Catalonia, for example, we have nothing to be ashamed of.

We have to start from what we are as a country or as provinces in order to build a nation. We've been building a nation for 30, 40 or 50 years, and now's not the time to back off. We have certain tools, but we'll need new ones, and they can be developed when we modernize the act. We nevertheless have tools and resources if we want to use them.

**Mrs. Mona Fortier:** You mentioned a federal-provincial-territorial meeting in your presentation. How do you see that? How could that advance official languages in Canada?

**Mr. Raymond Th  berge:** Here's where the idea for that forum, summit or meeting came from. I see that the concept of linguistic duality doesn't appear to be understood today as it was in the past. Many new leaders take actions that simply run counter to linguistic duality, but I don't think they're aware of the effect their actions have. For example, the decision to eliminate 10 translator positions and to replace them with freelance contracts can have a major effect. Gains are very minor in some provinces and territories, and the minority language is eroded when some of those gains are erased.

We have to explore other mechanisms with the premiers and ministers responsible for francophone affairs. We have to find a way to put the concept of linguistic duality back on the table and to agree on what it means and on what we're going to do to promote it. That's important.

The role of the provinces and territories isn't to neglect, because most Canadians receive more services from the provinces than from the federal government. However, the initiative has to come from the federal government, and that starts with the Prime Minister and then descends to the other levels.

• (1015)

**The Chair:** Thank you very much, Mr. Th  berge, and, thank you, Mrs. Fortier.

Mr. Clarke, you have the floor.

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

Good morning, Commissioner. You said you were going to submit your proposals for modernizing the act in the spring. Why did you choose that timing?

**Mr. Raymond Th  berge:** We are currently developing the document. We'll be meeting with the Standing Senate Committee on Official Languages on Monday to outline its main principles, and then we'll present the recommendations that follow from those principles.

We're still thinking. We're watching what's happening. We're studying all the briefs, all the discussions and all the committees to gather as much information as possible so we can come up with recommendations that will be conducive to a modern, dynamic and robust act. This isn't something we take lightly. We have a certain amount of time left. For example, we're still waiting for the plan from Ms. Joly regarding a potential consultation, and we don't want to get ahead of all that.

**Mr. Alupa Clarke:** I understand. Now I'd like to go back to what my colleague Mr. Blaney raised and get into the details.

Mr. Pelletier, a great constitutional scholar whom I like, said, "I see the two governments are passing the buck back and forth on this issue. It's merely become a pretext for Ontario, and that attitude is somewhat suspect."

I don't think the federal government should play Mr. Ford's game. To quote Mr. Pelletier once again, "But the AFO's offer is quite unusual." The idea here is that the federal government would fund the university's first four years for a total of \$39 million to ensure it doesn't disappear in a month or two.

To continue the quotation, "That's why, if the federal government is really interested, it would be a good idea for it to let everyone know because we would be looking at a unique proposal." Mr. Pelletier added, "If it wants to make a special funding offer in connection with the Université de l'Ontario français, then it's normally up to Ottawa to make that offer."

Even if Ms. Joly and the Prime Minister are right in saying it would normally be up to Ontario to make a request, I think that responding that way in the exceptional situation we find ourselves in is tantamount to playing Mr. Ford's game.

As commissioner, are you going to invite the federal government to take an unusual action and offer Ontario the \$39 million for the first four years of the university's life?

**Mr. Raymond Thériège:** Right now, I'm not necessarily aware of the negotiations and discussions taking place between the federal and Ontario governments, but I suspect they're happening, and I'm trying to analyze what's going on. I saw Mr. Pelletier's remarks in the newspaper. In my opinion, it's definitely not the commissioner's role to interfere in that. If negotiations are indeed under way, I think it would be a good idea to wait and see whether they produce results. However, going back to what I said earlier, even if funding for the university is resolved, the basic question as to the reasons why the government proposed to eliminate the university remains unanswered.

**The Chair:** Thank you, Commissioner.

Mr. Arseneault, you have the floor.

**Mr. René Arseneault:** Thank you, Commissioner, and thanks to your team. I believe you're well advised.

Further to the first question from my colleague Mr. Clarke, spring arrives on March 31. Do you intend to table your report in late March or at least before Parliament rises for the summer?

•(1020)

**Mr. Raymond Thériège:** Yes.

**Mr. René Arseneault:** You think you'll do it by May at the latest perhaps?

**Mr. Raymond Thériège:** Yes, that's correct. We also have our annual report in May.

**Mr. René Arseneault:** Earlier you said you were drawing on everything that's produced here, all the briefs that are submitted to us and excerpts from evidence we've received. There really have been a lot of ideas.

Ms. Effendi gave us another one today just before your appearance. I think it's an excellent idea because we have no protection from a government that might also decide one day to cut the court challenges program. Unless I'm mistaken, Ms. Effendi's suggestion, that we provide in the Official Languages Act that the program is necessary, is a new one. What do you think about that, in a minute or less?

**Mr. Raymond Thériège:** My short answer is that it's an excellent idea.

**Mr. René Arseneault:** It's an excellent idea indeed. It doesn't appear in the evidence or briefs that you've seen to date. However, keep it in mind when you write your report.

There are two parts to the court challenges program: the linguistic minorities part and the human rights part. I ask you to tell me, perhaps off the top of your head, whether they should be separated. What's your view on that?

**Mr. Raymond Thériège:** I'm going to our consult general counsel on that matter.

**Mr. René Arseneault:** Perhaps I should have put the question to M<sup>c</sup> Giguère.

**Mr. Raymond Thériège:** I think the linguistic minorities component should definitely be part of the Official Languages Act. As for the broader rights, I'll let the legal experts and parliamentarians decide.

**Mr. René Arseneault:** If we separate the two components, we could insert the linguistic minorities part in the act and the human rights part in an independent program. That's an option I suggest you study.

You've read the evidence given by people who have appeared before this committee. There has been a debate as to whether there should be an independent commissioner with investigative powers or an administrative tribunal. What do you think about that?

**Mr. Raymond Thériège:** The administrative tribunal concept came up frequently in our consultations. Generally speaking, one of the benefits of an administrative tribunal is that it's a much faster and less costly remedy than going to court, although that's not always the case, particularly with regard to speed. On the other hand, one of the disadvantages is that it might relieve federal bodies of their responsibilities in that they would simply let the administrative tribunal decide.

**Mr. René Arseneault:** That's precisely what the respective official languages commissioners of Ontario and New Brunswick said. I was a bit dumbfounded, but that's exactly what could happen. It might release the departments and officials from the responsibilities. All cases would be referred to the administrative tribunal, and we'd waste five, six or seven years. I know there's a way to shorten delays in the legal process. That's what's done in small claims and other courts in all the provinces.

Otherwise, do you think there's another option than an administrative tribunal?

**Mr. Raymond Thériège:** Yes. We can suggest other mechanisms to ensure compliance, such as monetary administrative penalties and binding agreements that we call transactions. Those agreements include a timeline, and there are consequences where they are not complied with. Most of the time, federal bodies comply with the commissioner's recommendations, but, ultimately, that doesn't necessarily alter behaviour.



**Mr. René Arseneault:** Commissioners Carrier and Boileau, who appeared here, suggested setting aside the courts for the moment and adopting an act clearly providing that the departments have duties they must discharge. The act must have teeth and must not merely state pious wishes. The act must not leave room for any interpretation or laxism.

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

We will now move on to the next speaker, Mr. Généreux.

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

Thank you, Mr. Thériault.

I want to go back to the statement you just made. You said that, even if the university funding issue were resolved, the basic problem of lack of respect for the Franco-Ontarian community and all francophone minority communities in Canada would remain.

Would you please explain exactly what that means? I put the question to Mr. Nolin, but he didn't want to venture an opinion. Since you are the Commissioner of Official Languages of Canada, you're perfectly able to tell me what you think. I don't doubt there are financial solutions for the university's problems, but I'd like to hear your comments on that.

• (1025)

**Mr. Raymond Thériault:** I think the basic problem is attributable to the fact that the specificity of a francophone minority community or an anglophone community in Quebec, for example, isn't recognized. There's a history behind that specificity, and the linguistic communities make an enormous contribution to the development of their province and society.

If there's no change in the role of Ontario's commissioner, that means the importance of that community is still unrecognized. We've resolved the financial issue regarding the university, but are we recognizing the francophone community's place in Ontario? I think that's the problem.

**Mr. Bernard Généreux:** You're telling me the current Ontario government doesn't recognize francophones.

**Mr. Raymond Thériault:** In my opinion, the present government doesn't clearly understand the place the Franco-Ontarian community, an official language minority community, occupies in Ontario. One need only consider the comparison that's been made between that community and the Chinese or other communities that have settled in Canada. It shows that people don't really understand the history associated with the official language minority communities, which is entirely different from that of a Chinese or other community. The reason is that we've strayed from the concept of linguistic duality and what it means today.

**Mr. Bernard Généreux:** Imagine that Quebec decides tomorrow morning to abolish anglophone school boards in the province. Would your thinking be the same?

**Mr. Raymond Thériault:** Yes.

First, I'd say you have to understand the importance of the anglophone school boards in the development of that community. Second, I would ask ministers or prime ministers to have a frank discussion with the community on the impact of that decision. Third, I would recall that we must comply with the Canadian Charter of Rights and Freedoms.

As a result, the governments of Nova Scotia and Prince Edward Island have shut down school boards. On the other hand, they've preserved the Conseil scolaire acadien provincial in Nova Scotia and the Commission scolaire de langue française in Prince Edward Island. The government definitely has the power to close school boards or commissions if it wants, but those two examples prove it's possible to preserve minority school commissions.

**Mr. Bernard Généreux:** Going back to the idea of attaching Ontario's French language services commissioner to the Office of the Ontario Ombudsman, could you explain how that would work, the changes it would impose on the commissioner's role and the everyday reality of Franco-Ontarians as well as the impact on his independence? Are any other Canadian provinces in the same situation?

**Mr. Raymond Thériault:** The only regions in Canada that have commissioners who are responsible for language issues are the provinces of Ontario and New Brunswick, as well as the Northwest Territories and Nunavut.

Attaching the commissioner to the Office of the Ontario Ombudsman would strip the commissioner of one of his two roles, the one associated with the promotion of French-language services, in which he conducts studies and investigations. That's not in the mandate of an ombudsman, who responds to individual cases submitted by individual citizens. The commissioner position should therefore be changed. However, Mr. Dubé has bluntly said it's not his role to act as the Commissioner of Official Languages.

It's possible to have an organization that's designed to receive complaints, if that's what you want, but that's not the commissioner's role. His role is to advance English and French, increase awareness and educate not only the the government, but also the anglophone majority in order to improve French-language services in Ontario in health, education and other sectors.

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

Thanks very much to you, Commissioner, and to the members of your team. It's definitely enriching to hear you talk about today's topic.

We will suspend for a few minutes and then resume in camera.

*[Proceedings continue in camera]*





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