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•(0915)

[Translation]

The Chair (Mr. Pablo Rodriguez (Honoré-Mercier, Lib.)):
Good morning, everyone.

Welcome to all of you.

As requested by committee members, today we'll be hearing from the Minister of Justice, the Honourable Irwin Cotler. Furthermore, as you may have seen, we have received a motion from Mr. Lauzon. Since it is admissible, we will set aside 15 minutes at the end of our meeting to discuss it. So we'll be stopping around 10:45.

First of all, welcome, Mr. Cotler. I would also like to welcome the people here with you. At the committee's request, we have roughly an hour and 30 minutes to hear your presentation and to discuss it with you.

I'll turn the floor over to you. Then we'll move on to questions and comments.

Hon. Irwin Cotler (Minister of Justice): Thank you, Mr. Chairman.

First, I want to say that my special assistants in judicial affairs are here with me today. They are François Giroux, Judicial Affairs Advisor, and Marc Tremblay, General Counsel and Director of the Department of Official Languages Law Group. We also have Suzanne Poirier, General Counsel and Director of Francophonie, Justice in Official Languages and Legal Dualism. All three are experts in the fields and subjects we will be addressing this morning. I'm going to invite them to share their expertise with you.

Mr. Chairman, ladies and gentlemen of the Standing Committee on Official Languages of the House of Commons, I am pleased to appear before you today to talk about a topic that is very close to my heart, that of official languages, from the particular perspective of access to justice.

It can be said that your committee deals with the fundamental rights rooted in section 133 of the Constitution Act, enshrined in the Charter of Rights and Freedoms, entrenched in the Official Languages Act and put in place by the Action Plan for Official Languages.

On a personal note, I should add that I became interested in the history and protection of official languages and cultures in Canada very early on in my academic career. My first publication as an academic moreover addressed that subject. In the introduction to my study, I quoted a comment made by Henri Bourassa 90 years earlier: "Let us never forget that the preservation of the language, the

struggle for the language, is the entire struggle for national existence."

It is in this context and in accordance with this approach that I am making my remarks. I recognize that, for the official language minorities, the protection afforded them by constitutional and quasi-constitutional language rights plays an essential role.

As the courts have held, language is in fact much more than a means of communication; it is also — and I say this everywhere — a means of expressing our identity. However, it is essentially a question of identity.

I'm now going to discuss with you the need, in an officially bilingual country such as Canada, for every effort to be made to ensure to our fellow citizens, especially the members of official language minority communities, the respect of their linguistic rights.

As I said, it is a fundamental element of Canada, one that is at the very core of our country. And because I also think there is always room for improvement in any organization, I intend to make sure that I and my Department do everything within our powers to work towards continuing to improve the quality of the services provided to official language minority communities everywhere in this country.

In so doing, however, we must take into account the fact that in Canada, the administration of justice is an area of shared jurisdiction.

[English]

What I'd like to do now is take you through the progress made by the Department of Justice in the matter of official languages and describe more specifically the different initiatives that have been undertaken under the action plan for official languages. But let me speak, if I may, to the issue of the appointment of bilingual judges to federal courts. I know this is of continuing interest to members of this committee, as it was when I appeared before the Senate on these issues, and in respect of which I have had discussions with the Commissioner of Official Languages, Dyane Adam, and the like. As Minister Bélanger indicated in his response on behalf of the government to the recommendations made in the 2003-04 annual report of the Commissioner of Official Languages, and as I advised her in my discussions with her, the current process is widely recognized as ensuring that the Minister of Justice will receive objective advice from a variety of sources about the qualifications of individuals applying for appointment to the bench. It is highly effective, in the course of receiving this advice, to permit the best-qualified candidates to be nominated for judicial positions.

Now, while the appointment of judges to provincial and territorial courts,

• (0920)

[Translation]

as well as courts established by the federal Parliament is the responsibility of the federal government, the courts' chief justices are primarily responsible for the overall direction of sittings on their court and the assignment of judges. Therefore chief justices are best placed in terms of identifying particular needs when vacancies arise, including linguistic capacity.

[English]

In order to give effect to this shared responsibility, whenever I'm faced with a prospective appointment, or set of appointments, to a particular court of jurisdiction, I will confer with the chief justice of the relevant court before making an appointment. I'll discuss as well the linguistic needs and capacities in respect to both the needs of the court and the capacity of the prospective candidates in that regard, and take that advice seriously, as it deserves to be taken.

On this point, I'm delighted to be able to advise the committee of the appointment I made last week to the Ontario Court of Appeal of Mr. Justice Paul Rouleau. Justice Rouleau is a founding member of the Association des juristes d'expression française de l'Ontario, and served as president of that organization from 1985 until 1987.

I might add parenthetically that more than half of the appointments I have made since I became Minister of Justice are bilingual candidates. This would include, as well,

[Translation]

Madam Justice Louise Charron of the Supreme Court of Canada and Mr. Justice Yves de Montigny of the Federal Court of Canada, and others whom I won't mention. As I said, this is a priority for me with respect to appointments.

About the selection process, I would like to point out that bilingualism is already one of the enumerated criteria in the assessment of judicial candidates by the judicial advisory committees. The question asked in the required Personal History Form for federal judicial appointments is very specific as regards to the bilingual capacity of the individual. One has to identify the "language (or languages) in which you are competent to hear and conduct a trial".

[English]

Given the critical importance of the completeness and accuracy of this personal history form to the successful candidacy of any applicant, I'm confident that this process of self-identification is considered as carefully by the applicant as it is considered by me.

As I said before, we cannot appoint fully qualified bilingual candidates unless there are such candidates in the pool. I can only appoint from those candidates who themselves have been recommended by judicial advisory selection committees—save for the appointments to the Supreme Court of Canada, but for every other level of the *magistrature*.

That's why I've emphasized the ongoing importance of the role of French-speaking jurists associations and their national federation, not only to share their recommendations with me but to identify and encourage those individuals from within the francophone and

bilingual community with the necessary qualifications to apply. I would also welcome the advice of any groups or individuals on considerations that should be taken into account when filling current vacancies.

• (0925)

[Translation]

Other new approaches, which I've carefully examined, have been proposed to me to ensure that bilingual judges are available when needed. The Senate committee has informed us of a possibility that I will be examining with my colleagues. This is the possibility of using a process of judicial interchangeability to address the occasional needs of our courts.

Another proposal has been made.

[English]

That is the possibility of designating bilingual positions. Again, I should point out that while the federal government appoints the judges of provincial superior courts, the provinces and territories are responsible for the number and specific designation of these judges.

I want to conclude on this specific subject of judicial appointments by continuing to reiterate my personal commitment toward

[Translation]

the development and improvement of the situation as regards the specific language needs of our courts.

[English]

Let me turn now to the question of unified family courts.

• (0930)

[Translation]

For example, you may be aware that I will soon be introducing a bill that will among other things amend the Judges Act to permit the expansion of unified family courts and payment of salaries to additional judges for these courts and other judges of the Provincial Superior Courts.

I want to assure you that, in filling these, I will be considering that opportunity of ensuring that the federal judiciary's linguistic profile provides access to justice in both official languages.

The Action Plan for Official Languages.

I can now explain in some details the progress made by the Department of Justice on official languages and describe the different initiatives undertaken under the Action Plan for Official Languages.

The previous government adopted an Action Plan for Official Languages, a plan that is firmly and clearly supported by the current government. For the Department of Justice and for me, this plan is extremely important, because it helps us in making major strides in certain areas.

[English]

Let me refer, first of all, to section 46, that the department can improve the implementation of the commitment—to which I referred earlier—set out in section 41 of the Official Languages Act, which provides that

[Translation]

the federal Government is committed — and this is one of its most important obligations — to enhancing the vitality of the English and French linguistic minority communities in Canada and assisting their development; and fostering the full recognition and use of English and French in Canadian society.

[English]

Recently I received a letter from the Prime Minister, with respect to my mandate as Minister of Justice, that reaffirms this commitment. It advises that the Honourable Mauril Bélanger has been mandated to provide political leadership and to establish an overall approach to enforce the Official Languages Act.

I might add that *mon collègue* Mauril Bélanger will also unveil later this year a results-based management and accountability framework for the official languages program of the government.

As well, the Prime Minister mentioned in his letter to me the memorandum from my deputy minister respecting linguistic duality, and the role of the departmental champion of official languages.

[Translation]

A copy of this document has been distributed to you. It's a very important document in appreciating our role in relation to this challenge.

[English]

Secondly, in the matter of *les contraventions*, we've made notable progress. A new agreement was signed with Ontario in March 2003, with Manitoba in February 2004, and with British Columbia in June 2004. We are now pursuing discussions with Nova Scotia and Quebec to renegotiate current agreements. Indeed, the final version of the bilingual ticket is currently being used in Quebec for federal contraventions.

To date, in the six provinces where the contraventions system has been implemented, specific provisions ensure that forms are bilingual. I would expect even further developments within the next few months.

Following upon, therefore, implementation of article 41, and references that I've made now to contraventions, let me move to a third initiative, legislative re-enactment.

[Translation]

Regarding the legislative instruments re-enactment issue, the Department has set up a group devoted exclusively to this task. A preliminary assessment of the requirements of the Act has been completed and the Department has begun contacting other departments to inform them of their responsibilities regarding the legislative instruments under their jurisdiction. The Department has until 2007, which is five years from the coming into force of the Act, to complete the necessary review, and a further year to report to

both Houses of Parliament in detailing the results of the review. This task will permit us to once and for all ensure that federal legislative instruments are constitutionally valid. That's the challenge and goal of our department, and I can assure you we will succeed.

[English]

Let me turn now to a fourth initiative, the support fund, *le fonds à appuyer*. The Access to Justice in Both Official Languages Support Fund, as it is called, was created under the government's action plan. It's designed to increase our department's ability to develop innovative measures in order to improve access to justice in both official languages. It also aims to raise awareness within the legal community in the official language minority community regarding their linguistic rights. Under this fund, projects are funded as part of contribution agreements we have with non-profit or public organizations.

I should mention that the fund has been well received by minority language communities across Canada, and is already securing its desired results. Indeed, since its inception in June 2003, the fund has supported

[Translation]

more than 50 projects, many of which are aimed at improving the request for and the offer of services related to justice. For instance, the fund improves core funding for associations of French-speaking lawyers and their national federation, with which I've had a few meetings. It supports the creation of original works of common law in French and of civil law in English and recently put the law of Trusts Glossary on CD. It supports legal terminology training for judicial stakeholders from Western and Northern Canada as well as linguistic training for the bilingual judges of the "Cour du Québec" and supports the development of tools for lawyers working with justiciables from official language minority groups.

● (0935)

[English]

Let me exemplify the orientation of the support fund with some more achievements. In the matter of linguistic training, the institute for professional development in French of bilingual crown prosecutors of Canada is one notable initiative. This project is carried out in cooperation with Justice Ontario, and yearly provides language training to 15 provincial crown prosecutors from outside Ontario and to Ontario justice system professionals in charge of providing services in French in criminal matters.

With regard to translation matters, I'd like to further mention that a master's degree program in legal translation has been established in cooperation with the Faculty of Law and the translation school of the University of Ottawa. The program is exclusively aimed at students with a law degree, and will be open to students as early as September. The goal of the project is to fill the existing gap in this area. This gap, of course, relates directly to the issue before us, and that's the whole question of ensuring access to justice.

[Translation]

Now I'm going to move on to the issue of consultation mechanisms because it's very important to have relations in this area.

The Department has also expanded and improved its consultation mechanisms by setting up an advisory committee to study matters relating to justice in both official languages. Thus it acts as liaison between stakeholders from the legal community and official language minority communities. This committee met for the first time on February 26, 2004. Two sub-committees have been created under the umbrella of the advisory committee.

More recently, the Advisory Sub-Committee on Access to Justice in Both Official Languages held its first meeting on December 4. The Advisory Sub-Committee — Community Component (section 41 of the OLA), met for the first time in February 2005 with the French-speaking communities from outside Quebec and in March 2005 with the Quebec English-speaking community in Quebec. The group will meet again in the fall of 2005.

[English]

With regard to the action plan on section 41, a five-year action plan was begun this year on the implementation—section 1, to which I referred—and the potential impact on the official languages community is being assessed on an ongoing basis. As well, a federal-provincial working group has been set up and has been holding meetings in this regard.

I just want to mention very briefly the information kits with respect to the implementation of section 41. We even have now a CD-ROM on section 41, and another kit depicting initiatives made by the Department of Justice in matters of access to justice in both official languages. Those have been distributed.

[Translation]

I'm now going to speak briefly about a very important issue, legal aid.

The department has also been active in this area. As part of the Legal Aid Renewal Strategy, an investment fund was set up to foster approaches to address unmet needs in criminal legal aid and to civil legal aid in the territories.

To receive funding over the three years of the strategy, from 2003 to 2006, each jurisdiction prepared a three-year business plan that includes a provision relating to official languages.

[English]

I won't go into it in any detail, except to say that examples of the projects that are now being developed under the innovation fund include information services expanded to provide services in both official languages; bilingual application forms for legal aid; provision of duty counsel services in both languages; and an increased capacity to provide legal aid assistance in both official languages at the trial level. But we will continue to monitor the progress on these initiatives, and we will make appropriate improvements as required.

[Translation]

In conclusion, as you can see, the department is taking very seriously its responsibilities flowing from the action plan.

I am especially encouraged by the measures implemented by department officials to date. I would like to offer them our warmest wishes for every possible success in that area.

[English]

Furthermore, let me point out that during conversations with my counterparts—I'm referring here to provincial attorneys general, and ministers of justice, and Attorney General of the Territories—I remind them of the importance of access to justice in both official languages in terms of both process and with regard to judicial appointments. This is part of my ongoing discussions with them.

Mr. Chairman, *mesdames et messieurs du comité*, this concludes my presentation. I appreciate your consideration. I'd be happy to take any questions you may have.

The Chair: Thank you, Mr. Minister.

We'll go now to the first round of questions, starting with Monsieur Lauzon.

[Translation]

Mr. Guy Lauzon (Stormont—Dundas—South Glengarry, CPC): Thank you, Mr. Chairman. Welcome, Minister Cotler and his assistants.

Is there a shortage of bilingual judges in certain regions of the country?

Hon. Irwin Cotler: Yes, I have to admit it. It seems there's a lack of bilingual judges in certain regions of our country. That depends on whether recommendations have been made that there be bilingual judges in those places. We're trying to ensure there will be bilingual judges wherever necessary.

It's important to note that the designation of bilingual positions and the determination of a number of judicial positions are matters of provincial jurisdiction. It should also be noted that, in some jurisdictions, there may not be enough bilingual candidates to fill all the positions that could be designated bilingual. That's why I'm inviting the associations of Francophone lawyers, bodies corporate and other organizations to encourage their members to apply for these positions. I can only appoint as judges those who have been recommended by the selection committees. If the selection committee does not appoint any judges where there may be a need, that may cause a problem.

To date, more than half of the judges I have appointed are bilingual. I've had meetings with the chief judges, who are responsible for the administration of justice, and I've asked them what their needs were and whether it was necessary to have bilingual judges in specific places. I'm trying to ensure we meet the needs for the proper administration of justice.

• (0940)

Mr. Guy Lauzon: Thank you, Mr. Minister.

[English]

According to my information, 1,049 federally appointed judges sit in provincial, territorial, and superior courts, as well as specialized courts like the Federal Court of Canada and the Tax Court. Of the 1,049, how many would you say are able to preside over cases in both official languages?

Hon. Irwin Cotler: I would not have the exact statistics, although I would be prepared to make them available to you.

Mr. Guy Lauzon: Could any of your assistants even hazard a guess? Is it 40%, 30%, 10%...?

Hon. Irwin Cotler: Let's put it this way: with respect to where the need is greatest, the need for the most part is being fulfilled. Where the problem exists is in those areas of the country—for example, in British Columbia...and I'm just using that as an illustration. I'm not singling it out. It's just as an illustration. So where you might have an area in British Columbia that has a pocket of French-speaking citizens, with respect to the need for access to justice in their language, we would wish to have appointed a judge in that area that could service their needs. This would be part of the discussions that I would have with regard to, (a), making a determination....

Let's the area of Windsor, Ontario, as an example. This is a good case study, because there is a need, frankly, to appoint a bilingual judge in Windsor, but we can only do so if the list of those who are recommended includes a bilingual judge. I get back to that initial matter, which is that among the pool of available candidates we need to have a greater number of bilingual judges.

Of course, to get back to your initial question on how many of those existing judges—

Mr. Guy Lauzon: Perhaps this information can be sent.

Hon. Irwin Cotler: I'll try to make that available.

• (0945)

Mr. Guy Lauzon: You mentioned the difficulty of getting a number of bilingual potential judges from the advisory committees. These 16 advisory committees are set up under the Office of the Commissioner for Federal Judicial Affairs, as I understand it.

Do they assess the language of lawyers who want to become judges? There must be a way that these committees can enhance the number of bilingual judges coming forward.

Hon. Irwin Cotler: Well, as I mentioned in my presentation—perhaps not clearly enough—the candidates for appointment to these courts have to respond to a questionnaire in which they need to indicate their language proficiency. Therefore, since language bilingualism is one of the criteria with regard to evaluating candidates for appointment, it would appear that those who are bilingual would have an interest in so identifying themselves, because this would be a relevant criterion for appointment purposes.

I just want to add, on the matter of statistics, my adviser just noted for me that in the Federal Court, 16 of the 29 judges are bilingual.

Again, on the matter of process of appointments, as I say, the candidates would have an interest in making reference to this. And I'll say something else. In my talks across the country to the bar, I mention that if there are people in the bar who have an interest in appointment, they would do well to bilingualize themselves—in other words, start doing this educative process prior to appointment—to enhance capacities for appointment should such a candidature arise.

Mr. Guy Lauzon: Just as a matter of interest, I don't know how we make recommendations to these committees, but I happen to know a couple of experienced and very well-respected lawyers in my riding who are tremendously fluently bilingual and who are aspiring judges. And actually, in one case, I'm sure they're mobile.

Can you explain how you get it in to this committee?

Hon. Irwin Cotler: I can explain it in this regard—

Mr. Guy Lauzon: Actually, one of them has been trying for a number of years.

Hon. Irwin Cotler: The thing is that some people sometimes make the recommendations to me, and I can't respond to this.

What is needed, in the first phase of this, is for the person to apply to the Commissioner of Official Languages. There is an application process, and there is an application form. People can apply. They are then evaluated by the *comité de sélection*. These judicial advisory selection committees then pass on each of the candidates, and they say *fortement recommandé*, *recommandé*, or not recommended. Then I will get a list from that region of those candidates who are either strongly recommended or recommended, from which list I would then be able to recommend, for purposes of nomination, somebody from that list.

I will take into consideration, among the merit-based criteria, which are excellent, the matter of bilingual capacity.

The Chair: Thank you, Monsieur Lauzon. That's all the time you have.

[Translation]

Mr. André.

Mr. Guy André (Berthier—Maskinongé, BQ): Good morning, Mr. Minister. I have a few questions to ask you.

The Fédération des associations de juristes d'expression française de common law recently complained that a number of provinces did not offer access to legal services in both languages. After 35 years of the Official Languages Act being in effect, it observed that some services relating to justice, criminal affairs and family law were not offered in both languages.

You mentioned that Manitoba had developed certain services since last year. As you know, the 1867 Constitution provided that all citizens of Canada were entitled to legal defence in both official languages. However, we see that the constitutional law issue is very different from the actual situation. In the Francophone communities, especially outside Quebec, there's a major difference between law and reality.

How many judges are there currently on the federal bench? How many of them are bilingual? What measures has the Department of Justice taken for judges who are appointed to be able to offer services in both official languages? What evaluation process have you put in place to determine whether judges are actually bilingual? Are there any language tests or mechanisms to ensure that federal judges are bilingual?

Hon. Irwin Cotler: Like you, I believe this is an important issue; I said so at the start of my statement. When we talk about access to justice, we're really talking about fundamental rights, about language rights which are rooted in our Constitution, in the Constitution Act, in sections 16 to 23 of the Canadian Charter of Rights and Freedoms. We also find them in the Official Languages Act. The importance and constitutional nature of those rights are rooted in the legislation. The question is how we can do this in the legal aid context.

• (0950)

Mr. Guy André: How many judges are there right now? How many of them are bilingual?

Hon. Irwin Cotler: I put the question to my assistants. We don't have the statistics on the number of judges who are bilingual. However, I can say that to gain access to the bench, to be appointed as a judge, every candidate must complete a form...

Mr. Guy André: You're telling me you don't know how many bilingual judges there are on the federal bench?

Hon. Irwin Cotler: No. I don't know the exact statistics, but I know the judges. What's very important is to meet the needs of the courts. I frequently talk about this subject with the chief justices and I ask them to tell me what their needs are based on their experience. That's one side of the coin. I'm doing the same thing with the Attorney General.

You're right in saying that we must have specific statistics on the number of bilingual judges. Our challenge and our goal, both for me as Minister of Justice and for my department, is to meet the needs of the judiciary and, at the same time, to recognize the importance of considering legal aid as a right.

Mr. Guy André: I understand that you're making a nice speech and that you want to promote access to justice in both official languages in the Francophone communities. But how can you achieve objectives when you don't even know the situation?

This question was put to the former Justice Minister from the Liberal Party at his last meeting with the Official Languages Committee. I'm asking you the same question today, and you can't answer it.

I can't understand how you can claim, in your nice speech, that you want to promote access to justice in both official languages, when you have no mechanism enabling you to evaluate the quality of the bilingualism of judges. Furthermore, you don't even know the status of the present situation. It seems to me that should be the priority or the basic rule. If you want to improve the situation, you have to know it. To do that, you need mechanisms to promote access to language training or promote the hiring of bilingual judges.

I'm very surprised.

Hon. Irwin Cotler: Although I don't have the specific statistics, I want to say there is a problem: the number of bilingual candidates who apply is extremely small, unfortunately. It isn't even a question of statistics. The question as to how we improve access to the judiciary remains intact.

In Manitoba, for example, roughly one candidate in 10 is bilingual. In Ontario, the ratio is roughly one in 12. In certain jurisdictions, there are unfortunately no bilingual candidates.

That said, approximately 50 percent of the judges I have appointed to date are bilingual. I'm trying to do what can be done in the context I've described regarding the bilingualism of candidates. Bilingualism is monitored at a number of stages, and that's important. The candidate must state whether he or she can hear a trial in both languages. We request that information on the job application form. As I said, bilingualism is an evaluation criterion. The report to the minister states the candidate's language ability, and the minister examines and checks the level of bilingualism, particularly where there appears to be a need.

• (0955)

The Chair: Thank you. That's all the time we have, unless you can finish in 30 seconds.

Hon. Irwin Cotler: I'm going to ask Ms. Poirier to add a point.

Ms. Suzanne Poirier (General Counsel, Francophonie, Justice in Official Languages and Legal Dualism, Department of Justice): I simply wanted to mention that, once the judges are appointed, they're offered training in legal terminology. We're creating tools for them to acquire the vocabulary. For example, the common law in French is a recent phenomenon. So the vocabulary had to be created. There are projects across the country that provide training in legal terminology and in the latest legal language. I could go on a little about the subject, but I understand I don't have enough time.

The Chair: Thank you.

Mr. Godin.

Mr. Yvon Godin (Acadie—Bathurst, NDP): Thank you, Mr. Chairman.

Welcome, Mr. Minister. I definitely have a few questions to ask you. Sometimes I wonder whether the department is serious. I'm not talking about the minister, but about the Department of Justice. Every time Francophones win something in court, the department files an appeal. I have a bit of trouble with that.

For example, the food inspectors in Shippagan won their case over the move to Dieppe or Shédiac, and your department went to the Court of Appeal. That's the result of a desire to respect the two languages. I respect your nice speech, but, in the field, things don't have happen in the same way in the eyes of Canadians in the Francophone communities.

I'd like you to give me some additional explanation. Did you say that the Chief Justice or committee makes recommendations to you for the appointment of judges and that you are required to consider them? Did I correctly understand what you said?

Hon. Irwin Cotler: Indeed, I can't make any appointments, except those recommended by a selection committee in the region concerned. It's true that we don't have statistics on this, but I know the situation in the field. I had a number of meetings with chief justices to determine their needs. I also had meetings with the attorneys general and the associations of Francophone jurists to determine the needs of the various courts. So I'm aware of the needs and I'm aware of the law.

As regards the selection committee, it's an essential tool. Each judicial candidate must identify his or her bilingual capability on the application form. That's one of the criteria we consider.

Mr. Yvon Godin: Mr. Minister, if it's a region where the selection committee doesn't see the point in appointing a bilingual person, what power does the minister have? You're telling us that, if the selection committee of a region that has an official language minority community decides to take other action... We're dealing with human beings. If the members of that committee decide bilingualism isn't an important issue for them, that it's not an issue they agree on... A judge isn't God. If they decide it's not a priority, they won't say it out loud.

What happens if they decide that it's not a priority that the person appointed be bilingual? What is the minister's power in those circumstances? Earlier, you said you didn't have any power. I want to know whether that's the case.

L'hon. Irwin Cotler: I can't say I have any power in that regard. If, for example, a chief justice tells me that we need bilingual judges in a particular place, I tell that region's selection committee to consider that in setting the candidate selection criteria because the decision is based on criteria of excellence. It's the selection committee that makes recommendations, and then I must base my choice on those recommendations.

Mr. Yvon Godin: You make your choice based on their recommendations. I don't want to stray from the subject or be nasty, but we have to cite some examples.

The Prime Minister appointed Glen Murray, a former Liberal candidate and former mayor of Winnipeg, I believe. Parliament opposed that appointment, but the government upheld it. Furthermore, it appears that, when it comes to respecting linguistic rights, the government has no power. It appears the government relies on the committee's recommendation. You have more respect for the committees in the field than for Parliament or the language rights of the Anglophone and Francophone communities in the minority regions.

I don't want to be unpleasant, but that's the reality on the ground.

Hon. Irwin Cotler: I understand what you're saying.

You refer to my powers. I have powers respecting appointments to the Canadian Human Rights Commission, for example. I also have direct powers respecting appointments to the Human Rights Tribunal and the Law Commission of Canada. I have direct powers respecting appointments to those organizations. I don't need to select candidates from a selection committee's list of recommendations. So when I make an appointment to those organizations, I appoint a bilingual person because I have the power to do so.

In the case of an appointment to the judiciary, where I have to make a choice from a selection committee's list of recommendations, the only thing I can do is to recommend that the selection committee seriously consider the candidates' level of bilingualism.

• (1000)

Mr. Yvon Godin: I seriously think that's not enough. The Official Languages Act should be complied with.

L'hon. Irwin Cotler: I can't order them to make a particular recommendation.

Mr. Yvon Godin: Why wouldn't that committee be required to comply with the Official Languages Act? If it were required to comply with the Act, you wouldn't be in this position. If a region is recognized as having needs in the area, the members of that committee should be forced by law to recommend bilingual persons, whether it's an Anglophone or Francophone minority region.

Hon. Irwin Cotler: I'm going to ask Marc Tremblay to answer that because experts can sometimes add to what I say.

Mr. Marc Tremblay (General Counsel and Director, Department of Official Languages Law Group, Department of Justice): I'd like to point out that there is indeed an ultimate control, which is that of the courts. We're talking about implementing the Official Languages Act with regard to appointments to federal courts. We're also talking about sections 530 and 530.1 of the Criminal Code as regards criminal proceedings before all provincial superior courts. In the field of application of these measures, if the bench is ultimately unable to honour the litigant's right to trial in his or her language, there is a remedy. That power is not held by the Minister of Justice or the Attorney General of Canada. It's the courts that hold it, and ultimately, the Supreme Court, which, as it did in the Beaulac affair in 1999...

Mr. Yvon Godin: We're not talking about that; we're talking about the appointment of judges. We're not talking about a citizen who's required to go to court to be respected in his language. We're talking about the appointment of judges so as to afford the opportunity for people in the Anglophone and Francophone official language minority communities who don't need to fight in the courts where bilingual judges have been appointed in order to be heard in their own language. I'd ask the minister how we can go about ensuring that they are available.

Mr. Marc Tremblay: I want to point out, sir, that this mechanism exists. It's an encouragement that's very subtle for the judges...

• (1005)

Mr. Yvon Godin: An encouragement. That's like Part VII of the Official Languages Act, which is only declaratory, not executory. Encouragements...

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

Mr. Simard.

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

Welcome, Mr. Minister and his officials.

Mr. Minister, first I'd like to congratulate you. It's remarkable to see the bilingual appointments that have been made since you took up your duties. Earlier you referred to Mr. Rouleau. In my province, in Manitoba, there was also Ms. Rivoalen. I can tell you there was an obvious need for a bilingual judge in Manitoba. Congratulations.

We received witnesses to discuss this issue last year. One of their proposals was to determine a number, a percentage of bilingual judges. I know that's not necessarily easy because the needs differ with the provinces. It may not be a valid suggestion. I'd like you to give me your comments on the subject.

You also said you couldn't appoint judges who weren't recommended by the selection committee. I'm going to describe one of the challenges we're facing in the minority communities. In Manitoba, for example, we represent only four percent of the population. If we only consider the numbers, a bilingual person will not necessarily be recommended by the committee.

Couldn't bilingualism be one of the criteria the selection committees are required to consider?

Hon. Irwin Cotler: Bilingualism is one of the criteria the selection committees must consider. I'm going to cite the situation in Manitoba as an example. I've had a few meetings with the President of the Association des juristes d'expression française du Manitoba. In particular, we discussed access to justice and judicial appointments. If I'm aware that there's a need in a place, in Manitoba, for example, but that no bilingual candidates have been recommended, I ask the Association des juristes francophones du Manitoba to invite its members to apply for a judicial position. I do the same thing as I did today with members of this committee. If you know any bilingual or Francophone lawyers who are capable of becoming judges, tell them to send their applications to the selection committee in order to give us the opportunity to appoint bilingual judges. When I have the opportunity to do so, if the recommended candidate is an excellent candidate, I'm pleased to do it. That's what I did last week in the case of the appointment of Judge Rouleau to the Ontario Court of Appeal because I think, and everyone thinks, he's an excellent judge. He's also a Francophone and bilingual. So since there was a need for a bilingual judge at the Ontario Court of Appeal, we were able to appoint him.

Hon. Raymond Simard: Mr. Minister...

Hon. Irwin Cotler: We have to invite the association of Francophone lawyers to make its members aware...

Hon. Raymond Simard: I don't think that's the problem. Bilingual candidates are applying, as are other candidates. However, when you represent four percent of the population, there may be one bilingual candidate in 50 or 100.

Hon. Irwin Cotler: As I said, the ratio in Manitoba is one in 10.
● (1010)

Hon. Raymond Simard: If a need is identified for bilingual judges in a certain region, why not establish a bilingualism criterion that the selection committee has to consider? The committees obviously have to base their recommendations on certain criteria, such as qualifications and so on. Why not establish bilingualism as one of the criteria in order to award candidates points?

Hon. Irwin Cotler: Bilingualism is one of the criteria. I can cite the criteria. Here I have the list of criteria for evaluating candidates for federal judicial appointments. Bilingualism is mentioned in the list under the heading "Qualifications and Professional Experience". That's on the evaluation criteria form. Every candidate may complete this form. If their efficiency in both official languages is recognized, we invite the candidates to mention that.

Hon. Raymond Simard: Thank you.

Do I have any more time, Mr. Chairman?

The Chair: You still have one minute and 30 seconds.

Hon. Raymond Simard: Thank you.

Earlier you referred to consultations with the chief justices to identify bilingualism needs. This is a bit like the chicken and the egg. It's often said in minority communities, in Manitoba, for example, that people can have a trial in French. However, they often have to wait seven or eight months because no judges are available. So people waive a trial in French because they're not interested in waiting. The Chief Justice then says there isn't really any demand, since people waive trials in their preferred language.

I don't know whether you see that as a problem. If we had judges on the spot and could offer adequate service as quickly as in English, I believe there'd be a lot more requests. I think there may be a problem in this regard. If the judges aren't available, people decide that it's just as easy in English, and they choose to be heard in English because it's faster.

Hon. Irwin Cotler: I understand what you mean. I'm going to ask Marc or François to add their comments, since I've answered your questions so far.

Ms. Suzanne Poirier: You're referring to the active offer of services in both official languages. This problem was detected in 2002. I'll go back to what Mr. André said. He discussed the complaints of the FAJEFCL, the Fédération des associations de juristes d'expression française de common law, regarding the uneven application of language guarantees in the country.

That's the finding that was made in the study "Environmental Scan: Access to Justice in Both Official Languages," which was commissioned by the department in 2002. Among other reasons, we established a federal-provincial/territorial task force in order to work with the provinces on finding solutions to this problem.

One of the priorities in the task force's plan is the issue of active offer of services in both official languages. You're perfectly right: it's the chicken and egg principle. There are no requests because the service isn't accessible enough. So it becomes a vicious circle.

The task force is considering the active offer of service in both official languages.

Hon. Raymond Simard: Thank you.

Thank you, Mr. Chairman.

[English]

The Chair: We'll go now to the second round.

[Translation]

This time, you have five minutes each.

Mr. Poilievre, you may start.

Mr. Pierre Poilievre (Nepean—Carleton, CPC): I want to thank the minister for being here today. First I'll make this comment: we Conservatives feel this subject is extremely important. We advise the minister to ensure it's his priority in the future. We need judges who can do their work in both official languages. It is necessary that our citizens be entitled to trials and legal services in a bilingual context.

Here's my first question. Can the minister give us examples of countries that have met the challenges inherent in a bilingual population or a population in which people speak two or three languages? Mr. Minister, are there any examples of other jurisdictions that have successfully met this challenge?

Hon. Irwin Cotler: As I said in my introduction, the focus for me is not so much the bilingualism of judges as the principle of access to justice. For me, it's not a priority for the future, but a current priority.

I tried to spell out in my presentation all the steps our department is taking to establish a fundamental principle of access to justice. It's not just a question of bilingualism; it's especially a question of access. I would add that, in my mind, this is linked to our identity as Canadians.

•(1015)

Mr. Pierre Poilievre: I simply asked you whether other countries can teach us anything in this area. It's a very simple question. If you know of none that can teach us anything, we can change the subject and talk about something else.

Hon. Irwin Cotler: I simply wanted to react, as a preamble, to your invitation to make this question a priority for the future.

Mr. Pierre Poilievre: That's very clear. That said, are you going to answer my question?

Hon. Irwin Cotler: All right. I know what's being done in other countries, but I'll ask Marc Tremblay to answer your question specifically.

Mr. Marc Tremblay: I've had the opportunity to speak with language law experts in Italy, Switzerland, Belgium, Spain and the United Kingdom, as well as with representatives of South Africa. Here we're talking about a field that is undergoing a quite particular kind of growth. In Ireland and Wales, entirely new language provisions now apply.

I can state with certainty that all these countries view Canada as an international leader in access to justice. Consequently, it's generally they who come here to learn about what we're doing, rather than the reverse. South Africa, for example, relied to a large extent on the provisions of the Constitution of Canada when it developed its language provisions.

That nevertheless does not preclude us from drawing on other models and benefiting from discussions held to explore new avenues.

[English]

Mr. Pierre Poilievre: Thank you very much for that answer. I note you mentioned South Africa, which has learned a lot from our system. I imagine that probably has a lot to do with the tremendous role Mr. Mulroney played in putting an end to apartheid, building the trust between our two countries. As Canadians, we're all very proud of that role.

Thank you.

[Translation]

The Chair: That's all the time you had.

We'll continue with Mr. Godbout, who's going to share his time with Mr. D'Amours.

Mr. Marc Godbout (Ottawa—Orléans, Lib.): Thank you, Mr. Chairman.

Paul Rouleau's appointment to the Ontario Court of Appeal is definitely good news. I can tell you that Franco-Ontarians are all pleased with it. Nor do I intend to question your official languages commitment, which is virtually legendary. Among other things, I want to thank you for your support for Bill S-3, which we hope to refer back to the House as soon as possible.

However, the mechanism for appointing bilingual judges is nevertheless deficient. Some regions are not covered, and that can almost represent an actionable offence. Wouldn't there be some way to apply exceptional measures? Couldn't you implement a mechanism to arrive at a situation that is at least acceptable? Bilingual judges could be appointed across the country, even if it meant subsequently returning to the old process. There are definitely barriers in the present process as a result of which this service is not guaranteed by the Constitution in entire regions of the country. This disturbs me greatly, and I feel this situation warrants exceptional measures.

Would you be prepared to consider some of those measures, through a task force or a commission of inquiry? I believe the situation is quite serious.

•(1020)

Hon. Irwin Cotler: Thank you for those comments. I tried to say at the outset that I was now considering the various approaches that might better respond to the need for bilingual judges. As I've already said, I've mentioned this every time I've met my counterparts. I also let it be known to the associations of Francophones lawyers so as to encourage members to apply for these positions.

Perhaps there are two measures to consider here. First, I raised the issue with the Senate committee. I'll examine that with my colleagues. I've begun discussions about the possibility of using the interchangeability of judges to meet the temporary needs of our courts. I've had discussions with the Chief Justice of the Quebec Court of Appeal, Mr. Michel Robert, with the Chief Justice of the Quebec Superior Court, Mr. François Rolland, and with the Associate Chief Justice of that same court, Mr. Robert Pidgeon, to ask them whether they were ready for the interchangeability of judges. I did the same with the Chief Justice of the Ontario Court of Appeal at the time, Mr. Roy McMurtry. I'm currently looking into this possibility, and I'll be pleased to give you details on the subject. Marc and Suzanne could be involved if that's what you wish.

The other step would be to designate some of the positions bilingual. I've also explored that option. It should be pointed out that the federal government appoints the judges to the superior courts of the provinces and territories, but that it is up to them to determine the necessary number of judges and recommend candidates. So I've spoken with the chief judges about an approach whereby a few positions would be designated bilingual where it was shown that such a measure might facilitate access to justice.

Marc Tremblay will provide you with further details.

M. Marc Tremblay: With regard to the federal courts, I want to emphasize that the Department of Justice encouraged the formation of a task force. Under the aegis of the department, that task force is considering the same issue as it relates to the federal courts. The minister has just discussed the powers and responsibilities specific to the provinces, but, at the federal level, an entirely different series of tribunals, including quasi-judicial and judicial tribunals, is concerned. A task force has been formed to determine whether enough bilingual judges were available for cases heard in the federal courts.

The Chair: Mr. Godbout, that doesn't leave much time for Mr. D'Amours: your own time is up.

We'll continue with Mr. Desrochers.

Mr. Odina Desrochers (Lotbinière—Chutes-de-la-Chaudière): Thank you, Mr. Chairman. Thanks as well to the minister and those accompanying him.

I've been hearing about studies and analyses since 9:15, but one point is clear: some provinces don't have enough lawyers to meet the needs of the Francophone minorities. You tell us there's an advisory committee and that the provinces send you a list of names of people who may be appointed judges. Is that correct?

Mr. Minister, how exactly do you proceed? As minister, I imagine you consider Canada's situation, including the presence of Francophones outside Quebec, and you determine that a given number of judges is required. If you're responsible for appointing and designating those persons, you should tell the provinces and the other people consulted that that number of judges is the one you need. In terms of official languages, the problem is that two or three provinces are working, while the others are getting their hands slapped. I imagine you're facing the same problem in certain western provinces. Exactly what power do you have in the present situation?

• (1025)

Hon. Irwin Cotler: I have what I consider a very important power. It's not a power found in the mandate of the Minister of Justice or in the act.

The power I believe I have — and it's very important for me — is the power of raising awareness by doing a thorough job. I start with the faculties of law and I encourage them to teach how it's possible to help...

Mr. Odina Desrochers: That's in order to prepare... I want to know the power you currently have, not your power of raising awareness.

Hon. Irwin Cotler: I also have to consider this issue over the long term. I want to arrive at a situation in which we'll have enough bilingual candidates to appoint to the bench. The current problem is that we don't have enough bilingual candidates.

I don't have the power to appoint someone because I know there's a bilingual candidate in a particular place, in Windsor, for example. I can't tell that person that I'm going to appoint him or her to the Supreme Court of Ontario because the next day the papers will claim it's one of my friends.

Mr. Odina Desrochers: That's not what I mean, Mr. Cotler.

L'hon. Irwin Cotler: I know.

Mr. Odina Desrochers: I'm talking to you about your present powers. Since you're talking about awareness campaigns, what's your timetable for reaching a sufficient number of jurists who meet the expectations of the Francophone populations outside Quebec? I want to get a clear idea of your strategy.

Hon. Irwin Cotler: The strategy is clear in my mind. The idea is to increase the number of bilingual candidates. How can I do that?

I can do it by doing a thorough job in education, in the faculties of law. I can do it at my meetings with the associations of Francophone lawyers, by encouraging them to invite their members to apply. I can do it in my meetings with the selection committees, by telling them to consider the importance of the bilingualism criterion.

The only thing I can't do is to proceed with the appointments on my own. I can only appoint those who are recommended by the selection committee. I must do everything possible to encourage applications from bilingual people.

Mr. Odina Desrochers: Mr. Minister, you say you're aware of the problem, but that you have to bend to recommendations from the provinces. For example, when you meet with these people, you can't tell them you need five bilingual judges. You're not entitled to do that when you meet them. And yet your department must have objectives. You have to have a timetable.

Hon. Irwin Cotler: There is an objective, but there's also the question as to who has the power. The only thing I can do is sensitize all those who are responsible, who are involved in the appointment process. It's a process, and I'm at the end of that process.

I'm trying to sensitize the other elements in this process who have the power to improve it so that we can have more bilingual candidates, but I can't make a choice until the end of the process. During the process, I can only make recommendations and increase awareness.

I can start at the teaching stage and continue through all the other stages of the process to sensitize all participants and keep them on track so they become aware of the importance of this fundamental principle of access to justice.

• (1030)

Mr. Odina Desrochers: It could take a very long time before the problem is solved, Mr. Chairman.

The Chair: Thank you, Mr. Desrochers.

Mr. Godin.

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

Who sets the criteria?

Hon. Irwin Cotler: Do you mean the judicial qualification criteria?

Mr. Yvon Godin: Yes.

Does the act state that bilingualism must be considered in the criteria?

Hon. Irwin Cotler: Yes. There is a formula stating the evaluation criteria for candidates to federal judicial appointments. It's a protocol. We have to follow that protocol. There's a list of criteria. The list makes it possible to conduct a general evaluation of qualifications sought in electing a good judge. Among those criteria, there is bilingualism. It's one of the criteria.

Mr. Yvon Godin: If there are criteria and the act requires that they be considered, why is the minister required to increase awareness?

Hon. Irwin Cotler: I can't say it's established by the act.

Mr. Yvon Godin: That's what I'm asking. So it's not established by the act.

Hon. Irwin Cotler: No.

Mr. Yvon Godin: It's like Part VII of the Official Languages Act, which is only declaratory, not executory.

I have a final question. You voted for Bill S-3 to be presented in Parliament. Do you agree that Part VII of the Official Languages Act should become executory and that the act should be given teeth? That's what Senator Jean-Robert Gauthier has been trying to do for 10 years, and the Commissioner of Official Languages supports him in his efforts.

Hon. Irwin Cotler: As you know, I've had a lot of meetings with Senator Gauthier on the subject. I've also spoken with Dyane Adam. The question you ask me...

Mr. Yvon Godin: Do you agree?

Hon. Irwin Cotler: I can't answer because the question is now before the Supreme Court of Canada. That's why I can't answer.

Mr. Yvon Godin: We have a bill before Parliament. You can answer the question. You voted on it.

Hon. Irwin Cotler: You asked me whether the obligations under section 41 of the Official Languages Act are actionable, as Bill S-3 states. That specific question is before the Supreme Court of Canada. For that reason, I can't answer.

Mr. Yvon Godin: But Bill S-3 is before Parliament. Do you support it? Did you support it this week?

Hon. Irwin Cotler: Yes, we supported Bill S-3. The question was before the House of Commons. Serious concerns were raised in the House of Commons with respect to that bill, which has been debated for a number of years.

• (1035)

Mr. Yvon Godin: Wouldn't that be the solution to all our problems?

Hon. Irwin Cotler: I'm saying that the government will take a position on the proposed amendment in light of the coming debate.

Mr. Yvon Godin: But are you, as a good minister, prepared to support Bill S-3? You said at the start of this meeting that you believed in bilingualism, in respect for the official languages of Canada. Bill S-3 will make Part VII of the Official Languages Act binding. Everyone agrees; all the minority communities in Canada agree. As minister, you voted for it to be referred to committee. Would you support an act such as that?

Hon. Irwin Cotler: I voted and I'm waiting for the evidence and recommendations of the committee.

Frankly, I feel that section 41 of the Official Languages Act is an obligation that is binding on the government. The question is only whether it's an obligation that binds the government in a legal and actionable way.

Mr. Yvon Godin: Legal and actionable, not simply declaratory.

Hon. Irwin Cotler: It's not just a question before the committee. For me, as Attorney General, it's also before the Supreme Court of Canada.

Mr. Yvon Godin: But the Supreme Court of Canada's purpose is to interpret the laws. We're talking...

The Chair: Thank you very much, Mr. Godin. Thank you, Mr. Minister.

We'll stop here. If you wish, we can do a brief third round of two minutes each, which will take us up to 10:45. Would that be fine with you? I'm going to request each of you to be very disciplined to ensure we adhered to the two-minute limit.

[English]

Is that okay, Monsieur Vellacott?

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

Mr. Cotler, thank you for being here.

My question, to the point, is with regard to the province of Saskatchewan, or perhaps even more particularly to the Saskatoon area, which is where my constituency is. I'm wondering if your officials could tell me—if not today, then maybe later—how many requests you would get for trials, at any of the levels, in French, requesting specifically that language service. Do you have figures on that for the province of Saskatchewan, or figures that are broken down into smaller districts than that, for my Saskatoon and area?

Hon. Irwin Cotler: I will ask my officials to respond. What I can tell you is that the issue of access to justice, with my counterpart, Minister of Justice and Attorney General Frank Quennell, has been the subject of discussion. He knows my views in this regard, as does the Chief Justice of Saskatchewan, with whom I've had these discussions as well.

As to the purposive nature of access to justice and its importance, that I make clear at all times, and I look to that, as I say, in the nomination process.

As to the particulars regarding the questions you've asked, I'll ask my colleagues to answer. They've had a longer institutional memory in these matters, and can better proceed.

Marc.

Mr. Marc Tremblay: As in many areas that have been examined today, the hard data is hard to come by. One must realize that this is an area of provincial jurisdiction, so historically data has not been formally gathered. It's something we are discussing with the provinces. It comes back to the issue discussed earlier, of the demand and offer.

Obtaining more statistics on the number of trials is one of the pieces of the puzzle, and one of the reasons why we have a federal-provincial-territorial working group.

Mr. Maurice Vellacott: Is there not an application that they have to submit? There has to be a process where that would be easy. Would you not agree that knowing what the numbers are would be vital in terms of doing a better job?

The Chair: Mr. Vellacott, we only have two minutes each.

[Translation]

I'm asking everyone to be disciplined, and that includes our guests today.

We'll continue with Mr. André.

Mr. Guy André: We only have two minutes; so let's get to it.

If section 133 of the Constitution Act, 1867 guarantees the use of both official languages in court; if subsection 19(1) of the Canadian Charter of Rights and Freedoms provides for that guarantee as well; if sections 14, 15, 16, 17, 18, 19 and 20 of the Official Languages Act also require the courts to provide services in both official languages; and if sections 530 and 530.1 of the Criminal Code impose the same obligations and those obligations are not met, what resources are available to Canadians who want to bring court actions in the language of their choice? What are their rights? Should they complain to the Commissioner of Official Languages? How can you complain against a court of the Queen that does not comply with the Constitution Act, 1867, the Canadian Charter of Rights and Freedoms, the Criminal Code and the law of a country?

Mr. Marc Tremblay: There have been regular appeals since the judgment of the Supreme Court of Canada in the Beaulac affair in 1999. Again this week, a case is before the Supreme Court of Canada in which a litigant has complained. She was granted remedy by the Trial Court, the Court of Appeal, and the case will now be considered by the Supreme Court. These are the courts that control their own process and that can grant remedy where language rights have been violated.

Mr. Guy André: You have to admit all the same that it's not easy for citizens to obtain remedy to the extent that it's up to the Department of Justice to administer the Official Languages Act and it doesn't comply with it.

• (1040)

Mr. Marc Tremblay: On that subject, I would add that there is also the Office of the Commissioner of Official Languages. The Commissioner is the language ombudsman. Her mandate and mission are to assist Canadians and ensure respect for their language rights in the federal institutions themselves. The Government of Canada also funds Canada's Court Challenges Program, which provides financial support for all cases that might be heard and that become leading cases in language rights and official languages. With the support of the Government of Canada, litigants can exercise their language rights before the courts.

The Chair: Thank you, Mr. André and Mr. Tremblay.

Mr. D'Amours.

Mr. Jean-Claude D'Amours (Madawaska—Restigouche, Lib.): Thank you, Mr. Chairman.

Thank you very much for being here this morning, Mr. Minister.

As you know, Mr. Minister, I come from New Brunswick, and the bilingualism issue is important there, as it is across Canada.

I don't know the process for determining whether judges are bilingual, but are there subsequently any mechanisms to ensure they retain their knowledge of their second language? A second language is like anything else: if you don't use it, you may lose it. If I don't use my English, I lose it. Similarly, if a judge doesn't have to work in French or hasn't had any French courses...

Are any processes in place to provide follow-up, when a judge is appointed and recognized as bilingual?

Mr. Marc Tremblay: I can offer some partial answers. Continuing training is offered.

I believe the Commissioner for Federal Judicial Affairs would be in a better position to provide you with a full answer. However, yes, the Department of Justice does support continuing legal training efforts. In addition, some Francophone judges — we're not just talking about bilingual Anglophone judges or bilingual Francophone judges — take continuing training in French to improve and maintain their first-language skills. So we're not just talking about the second language.

So continuing training efforts are being made.

Mr. Jean-Claude D'Amours: If I understand correctly, it's ultimately the Office of the Commissioner for Federal Judicial Affairs that ensures the judges make progress and are provided with second-language training resources.

Ms. Suzanne Poirier: With your permission, that's played out on two fronts. There's the Commissioner for Federal Judicial Affairs and continuing language training.

Since the action plan was announced, we at the Department of Justice have really been putting the emphasis on jurilinguistic training. We want to instill the necessary vocabulary in bilingual Francophone judges. We're not claiming we can enable a unilingual Francophone judge to try a case in English. However, we want to ensure that people who already have some skills can acquire the necessary vocabulary, which is very different from everyday vocabulary. It isn't obvious.

So this plays out on two fronts: continuing language training by the Commissioner for Federal Judicial Affairs and our projects, which very recently have really begun to focus on jurilinguistic training.

Mr. Jean-Claude D'Amours: Thank you.

The Chair: Thank you, Mr. D'Amours.

The last speaker will be Mr. Godin. You have two minutes.

Mr. Yvon Godin: I've finished.

The Chair: You've finished?

Very well. Thank you.

Mr. Yvon Godin: In fact, I have just a brief question. I just thought of it. Do you have any statistics on the results of the training given to judges?

Ms. Suzanne Poirier: With regard to the training offered by the Office of the Commissioner for Federal Judicial Affairs, I don't have the slightest idea. I don't know whether those figures exist. I don't think there's any formal evaluation.

Mr. François Giroux (Judicial Affairs Advisor, Minister's Office, Department of Justice): It's mainly training in judgment writing. I know that the Office of the Commissioner for Federal Judicial Affairs is offering a training session in Quebec City this week.

Mr. Yvon Godin: All right, but this goes further. Certain people may be appointed judges. I also believe some courses are offered in the other official language.

I would like you to take a look at that and inform the committee on the number of judges that have had an opportunity to learn, in the other language, the notions necessary to offer bilingual services in Canada.

Mr. François Giroux: We'll pass your question on to the Office of the Commissioner for Federal Judicial Affairs.

Mr. Yvon Godin: Thank you.

Hon. Irwin Cotler: With regard to the language training question, I'd like to emphasize, as I did at the start, the importance of the French-Language Institute for Professional Development for Canada's bilingual Crown attorneys.

I'd also like to emphasize the importance of the master's in legal translation program. I believe the creation of a master's in legal translation program will be of interest to a number of candidates who, in the future, may work in the administration of justice and will be bilingual. This will help achieve all the goals we discussed today.

• (1045)

The Chair: Your two minutes are up, Mr. Godin.

Thank you very much, Mr. Minister. Thank you, Mr. Giroux, Mr. Tremblay and Ms. Poirier.

We'll break for a minute, then discuss the motion.

Mr. Marc Godbout: I have a point of order, Mr. Chairman.

The Chair: Go ahead, Mr. Godbout.

Mr. Marc Godbout: In view of the importance of Mr. Lauzon's motion, which concerns the postponement of the study of Bill S-3, I would request the committee's unanimous consent for us to discuss it in public, Mr. Chairman.

The Chair: I suppose that will take place in public, unless someone requests an in camera session.

Is that all right?

[English]

If you guys decide that it's in camera, you vote for it. If not, we're here for two hours. What do you want, in camera or public?

Mr. Maurice Vellacott: Well, I think we said it was in camera. Isn't that the nature of the...?

[Translation]

The Chair: No, it's not advisable.

Do you want a vote?

Mr. Marc Godbout: I would like a recorded vote.

The Chair: Who wants us to continue the public meeting?

Hon. Irwin Cotler: Is our testimony over?

The Chair: Yes. Thank you very much. Pardon me.

Hon. Irwin Cotler: Otherwise, since I'm available, I wouldn't want to leave.

Thank you everyone.

The Chair: If this interests you, you may remain.

We'll resume. Once again, who wants us to continue our public meeting?

Who would prefer to go in camera?

[The public meeting continues]

The Chair: So we'll continue our public meeting. Very well. We don't need to suspend our proceedings. We have 10 minutes to do it.

We've received a motion from Mr. Lauzon, a motion that is admissible.

Would you like me to read it?

[English]

The motion reads: As the committee prepares to travel the week of May 9th to May 13th 2005 to speak to people firsthand about the federal government's progress on the implementation of the Action Plan:

[Translation]

That the Standing Committee on Official Languages complete its study of the implementation of *The Action Plan for Official Languages* before it begins its study of Bill S-3, An Act to amend the Official Languages Act (promotion of English and French).

That is the motion introduced by Mr. Lauzon. It is admissible.

Is there any discussion on the subject?

Mr. Yvon Godin: Does anyone second it?

The Chair: Yes, it's seconded by Mr. Vellacott.

Mr. Godin.

Mr. Yvon Godin: Mr. Chairman, I have to say I'm not in favour of Mr. Lauzon's motion. If there's a way to conduct the two studies together, I'll agree, but to stop the study of Bill S-3...

In the eight years I've been here, when a bill has arrived in the House of Commons, it's become a priority. As a legislator, a member, all I see that's very important in Parliament are the bills. We can conduct studies and we can put them on the shelves. We've seen that in the case of employment insurance. Recommendations have been made to Parliament over the past eight years. Ultimately, the department makes the changes it wants to make.

So I would like us to conduct a study, but Bill S-3 will render declaratory Part VII of the Official Languages Act, which is only executory. That probably includes three-quarters of all the recommendations in our report. What do we need? We need laws so that judges can sit in court and tell citizens they have upheld the law and that they're going to interpret it.

I say we're going to go against the current, against our mandate as members. As members, we're here to pass laws in Parliament. We shouldn't just talk.

Lastly, a bill which I strongly support, Bill S-3, was introduced in the House of Commons thanks to Senator Gauthier. Incidentally, I congratulate him for it. We've been talking about it for years. At last, we have a bill. I would like us to address the bill as a priority, while continuing our report at the same time. We can do these two things at the same time, and even more than that. We can increase the number of meetings. I'm prepared to sit day and night so that we can study Bill S-3 and the report at the same time.

I ask my colleagues....

•(1050)

The Chair: Thank you, Mr. Godin.

Mr. Simard.

Hon. Raymond Simard: Thank you very much, Mr. Chairman. I entirely agree with Mr. Godin. That doesn't happen often, but I entirely agree with you, Yvon.

First, we have a responsibility as legislators to study bills. That's our responsibility. I entirely agree that we can do two things at the same time. We've been doing it since our committee started.

In my view, this is a tactic of our colleagues on the other side to delay, once again. I think it's really harmful to do that. We've tried four times to pass Bill S-3 or a similar bill in the House of Commons. It's now before the committee for us to make amendments to it. People have concerns. We're here to resolve them and to see how to improve these things. I can even tell you that, in the House of Commons — and this should be recorded — two of our colleagues from the Conservative Party, who are here in committee, voted against Bill S-3 with one of our colleagues from the Bloc Québécois.

I find it deplorable that this is being sent here. This is hypocrisy. It's sent here, but with the intention that it should not be studied. Let's be honest. We've been talking about Bill S-3 for a long time. It's time to study it. I'm especially counting on our colleagues from the Bloc Québécois — who should be sensitive to this subject — to support this motion.

The Chair: Thank you.

I ask you to be brief, please.

Ms. Boivin.

Ms. Françoise Boivin (Gatineau, Lib.): We're always asked to be brief when it's my turn to speak.

Hon. Raymond Simard: You've already voted against it.

The Chair: Order, please.

Ms. Boivin.

Ms. Françoise Boivin: I hope that won't be counted as part of my very brief period of time.

The Chair: Go ahead.

Ms. Françoise Boivin: I would simply like to say that I entirely agree with Yvon Godin and with my colleague Raymond Simard. I

supported this bill, introduced in the House by Mr. Boudria on Senator Gauthier's behalf. It's a golden opportunity. In the last election, when we learned that our government would be a minority, the various parties said it was possible to work together. We're going to see whether they were sincere, but that's what I heard at the time of the election. So let's work together.

We have a great opportunity to pass Bill S-3 after numerous attempts. There will never be a better opportunity. Let's not miss it, since we are the Standing Committee on Official Languages. I'll limit myself to that because, if I started characterizing this motion, it wouldn't be very nice. In my view, the Anglophone and Francophone linguistic minorities have a right to have us consider Bill S-3 on a priority basis.

The Chair: Thank you.

Mr. Vellacott.

[*English*]

Mr. Maurice Vellacott: I just think at this point, it's been pressed by the committee that we want to get across the country in terms of this travel and do that very good work. At this juncture, I think it is much more important that we hear some planned witnesses in respect to that, and that's what we're promoting at this point. Instead of moving on to another issue, we need to follow through in terms of preparation for the travel across the country.

[*Translation*]

The Chair: I want to clarify a point, however. If the motion were passed, we'd hear from Jean-Robert Gauthier two days from now for the first meeting, since the motion to invite him was passed before this one. Then we would resume work on the action plan.

So Mr. Gauthier will be with us in two days, on Thursday.

Mr. Lauzon.

[*English*]

Mr. Guy Lauzon: Thank you, Mr. Chair.

I don't see this as being a motion regarding Bill S-3. We've been trying to make this country bilingual for 35 years. We have an action plan that is supposed to bring bilingualism, the two official languages, to the country. And here we are with a chance to have witnesses. We've heard how the action plan is being retarded, and for a variety of challenges it's not being pushed forward.

We're going on a field trip to try to find out if the action plan is working, and where it is and where it isn't. It not that we don't want to deal with the...but let's deal with the action plan. Yes, we'll deal with Bill S-3, but let's do it in an orderly fashion.

That would be my motion.

•(1055)

[*Translation*]

The Chair: I turn the floor over to Mr. D'Amours. We'll then quickly move on to the vote.

Mr. Jean-Claude D'Amours: Mr. Chairman, as you know, we've been working for a number of months to advance our report on the official languages question. But we can do more than one thing at a time. We can do a number of things together. Our research officer is working on this. So I absolutely fail to understand why we can't advance...

What troubles me is that you think we don't want to advance bilingualism in Canada. It's very important to put an effort into that. As politicians, we're not here to listen to our fellow citizens and to sit in the House; we're here to advance issues for our fellow citizens.

One of the important things is to advance and pass laws. Bill S-3 is a law of that kind; it aims to advance bilingualism, not only in a province, but from coast to coast. That's how we can do good things.

It's incredible to think that we can't advance two issues at the same time.

The Chair: If there are no more speakers, we'll vote on Mr. Lauzon's motion.

(Motion agreed to: yeas, 6; nays, 5.)

The Chair: I remind committee members that we are invited to lunch today by the Commissioner of Official Languages. It's at noon at 344 Slater Street, on the third floor.

Thank you very much and see you later.

The meeting is adjourned.

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