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Chair

Mr. Gary Schellenberger

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•(0905)

[*English*]

The Chair (Mr. Gary Schellenberger (Perth—Wellington, CPC)): Good morning, everyone.

Welcome to our witnesses here this morning.

This is our thirty-first meeting of the Standing Committee on Canadian Heritage. We are televised this morning.

Pursuant to Standing Order 108(2), the study on the court challenges program is on our agenda today.

Just to let you know, our sitting today will be over at a quarter to eleven. We do have some other committee business to do for the last 15 minutes.

We welcome you here this morning.

Mr. Matte, perhaps you would like to introduce your delegation, and please give us your presentation, sir.

[*Translation*]

Mr. Guy Matte (President, Court Challenges Program of Canada): Thank you, Mr. Chairman.

I would first like to introduce a member of the Board of Directors of the Court Challenges Program of Canada, Ms. Bonnie Morton, and the Executive Director of the program, Mr. Noël Badiou.

I'd like to thank the members of the committee for having us here this morning for us to make a few comments about the program. I know that in the last few months, a number of things have been said about this program. You have received a lot of information, and a number of people have made presentations. So it's not necessary for me to go back over the whole history of this program and how it came into being.

I believe you have received a document that we prepared for you. There are just a few things that need to be said. For example, the concept of justice, in our opinion, necessarily includes access to justice. Having rights is not enough, you also have to be able to exercise them.

The Court Challenges Program is but one of these programs that the government of Canada and/or the provinces and territories support. Various kinds of funding programs ensure access to justice. However, this one was extremely important to all Canadians, particularly those in official language minorities and those in historically disadvantaged groups, including those in the Charter of Rights and Freedoms.

A democratic system involves majority rule. We understand that, but defending minority rights is the reason why there has to be a charter to protect those rights from the whims of the majority. It's important to uphold these principles in Canada.

When the program was abolished, the government said that it did not provide value for money. To date, we have not been told how it failed to provide value for money. No one has really provided us with any justification for this decision. In fact, we were never even notified that the program was under review, nor have we ever seen the findings of that review.

Suffice it to say that in 1997 and 2003, reviews of our program were conducted and the findings were quite clear. Both times, it was found to be effective and accountable, providing Canadian taxpayers with value for their money. Between 2003 and 2006, I'm not exactly sure what happened or where the idea came from that the program was no longer providing value for money in Canada.

Canadians have made remarkable progress in terms of rights, and I would like to mention at least a few of those results. For Canadians in official language minority communities, this program has made possible major changes that never could have been accomplished without it.

In its existence, over 1,200 cases have been heard thanks to this program, and one third of them have had to do with language rights. There was, for example, the Doucet-Boudreau case in Nova Scotia, involving the section 23 Charter education rights of the Acadian minority. This case reached the Supreme Court of Canada, which upheld the trial decision permitting more effective oversight of the government's implementation of these rights. Even when the government decided to give them the right to have their own schools, it was taking so long that the judge reserved the right to go back and see whether the government had indeed respected the Charter. That was an extremely important decision because it enabled the court to monitor the implementation of official language minority rights.

In the Montfort Hospital case, you've all heard about that one, there was further elaboration on the recognition on an unwritten constitutional principle regarding the protection of minority rights. When you have things for the minority, you really have to consult that minority, and when you take away an institution, you really have to consider the impact that could have on the vitality of the community.

Finally, there's the establishment of adequate facilities equal to those of the majority language community. There are now schools and school boards in all provinces and territories of Canada. When I started teaching, there wasn't even a French-language school board in Ontario. Since then, we have seen all over, in all provinces and territories, significant change.

● (0910)

There is still some territory to be explored in the area of minority language rights, and this can be seen now, for example, with the Caron case in Alberta and the education case in the Northwest Territories. It's important for cases like those to make it all the way up to the highest court, the Supreme Court of Canada. It's a matter of equality rights.

I would ask Ms. Morton to say a few things to you about cases primarily involving equality rights.

[*English*]

Ms. Bonnie Morton (Member of the Board of Directors, Court Challenges Program of Canada): I'd like to start off by saying, in case nobody is aware of it, that this is the 25th anniversary of the Charter of Rights and Freedoms. For that Charter of Rights and Freedoms to become a real, living document, we actually have to have access to it to use it as a domestic remedy when our constitutional rights are being violated.

Since 1985 we've had the right to protect equality rights. Section 15 of the Charter of Rights and Freedoms provides the guarantees for equality before and under the law for all people in Canada. This guarantee isn't just for those who can afford to go into the courts; this guarantee is also to protect disadvantaged groups who probably wouldn't be able to get there. Aboriginal, disability, and women's groups are just a few of the groups that have actually accessed funding from the court challenges program. This funding made it possible for these disadvantaged groups to have access to justice and to ensure that their equality rights were protected.

I'd like to make reference to three cases that really show how they've actually expanded what the concept of rights is. I think you also need to understand that if we're going to have rights in the Charter of Rights and Freedoms...for it to be a living document, it has to grow with us as a society. That means our rights will also grow, and that's what the Constitution protects.

There's the Kevin Rollason case—and if I'm pronouncing anybody's name wrong, I apologize. He was the father of a young girl who was born with Down's syndrome and had life-threatening cardiac disease. He successfully challenged the employment insurance program's failure to provide full parental leave benefits to parents of children requiring a long-term stay in hospital.

Then there were the Misquadis. They were off-reserve, rural, and urban aboriginal communities that successfully challenged their exclusion from federal aboriginal human resources development agreements designed to allow aboriginal communities to create and implement employment and training programs to ensure job stability, even for those who did not live on reserve.

Then there was the Michael Hendricks and René LeBoeuf case. They were a Quebec-based same-sex couple who successfully challenged section 5 of the federal harmonization act, which

declared marriage to be between a man and a woman only in Quebec.

I'd like to say here and now that these cases and many like them that received court challenges funding actually helped to define the definition and expand the definition of what equality rights really are in this country.

I'd like to end by saying that our rights become stagnant if we have absolutely no way of ensuring that we're being protected through our Constitution, that way being the Charter of Rights and Freedoms. As soon as our rights become stagnant, so does that document called our Constitution, the Charter of Rights and Freedoms.

I'm here to ask each and every one of you to ensure that our rights and our Charter of Rights and Freedoms don't become stagnant in this country and to reinstate the funding to the court challenges program.

● (0915)

Mr. Guy Matte: I would also like to ask the executive director of the program to touch on some of the questions raised by members of the committee and how we believe these should be dealt with.

[*Translation*]

Mr. Noël Badiou (Executive Director, Court Challenges Program of Canada): Good morning.

A number of questions have been raised by witnesses before this committee, and a number of our comments are included in our brief. I would like to make a few comments.

With respect to the concern that only one side of an issue is funded by the program, we should remember that the original intention in creating the CCP was to provide funding for test cases under the equality and language provisions of the Charter and Constitution.

These equality and language provisions, by their very nature and wording, are meant to expand these fundamental rights. The idea is for everyone to be equal before and under the law and also to have access to official language services. The very notion under these provisions is inclusiveness; challenges under these provisions would naturally seek to expand the number of people who can participate. This is what has driven the funding decisions under the program. Allusions to the funding under the CCP as being too narrow a portal are exaggerated, as the CCP is about granting a voice to those who do not have one in the first place. It is not about exclusion, but rather about providing a means of access and justice.

In reply to the concern that only one side of an issue is funded by the program, it is important to remember this purpose: the program was meant to provide access to justice for a specific demographic; anyone opposed to the challenge would in fact be supporting the government, which has the ability (and has done so in the past) to bring the perspectives and arguments of these supporting groups before the courts.

The program is meant to provide a balance and help to level the playing field in the sense that it provides funding to groups and individuals who would not otherwise have a voice as the government is not representing them.

It would be counter-productive to support cases that would seriously jeopardize the rights of a group that is supposed to be protected by equality and language rights. Far from being just a matter of differing visions of equality, as our critics claim, the program refuses to fund cases that could likely undermine the equality and language rights of these protected groups.

The second issue I would like to raise is why governments should fund individuals to launch court challenges against the government.

The concept of justice, as Mr. Matte said earlier, necessarily includes access to justice. And as Prof. Lorne Sossin of the University of Toronto has noted, access to justice requires resources. Ensuring adequate resources for the people of Canada to obtain access to the courts is therefore essential for promoting justice and creating a sound civil society.

Several government-funded litigation programs exist, all based on this principle. For example, there's the Test Case Funding Program of Indian and Northern Affairs Canada, the Aboriginal Rights Court Challenges Program of the Northwest Territories, legal aid programs for criminal cases involving incarceration, legal aid programs for civil cases, primarily family law, and other special provincial legal aid programs aimed at assisting disadvantaged individuals, related to provincial issues.

So there are already government-funded programs that help Canadians challenge certain laws or government practices. The CCP was but one of such programs. It focused specifically on official language rights and equality rights under the Charter and Constitution.

The CCP was meant to provide access to justice for Canada's historically disadvantaged—those who are most vulnerable to marginalization and exclusion from full participation in Canadian society—who are trying to claim their full and proper place in Canada. Without this access to justice, these disempowered groups and individuals will no longer have a voice in their efforts to seek equality and recognition.

• (0920)

[English]

The final point I'd like to address is with regard to conflict of interest. The court challenges program of Canada is keenly aware of conflict of interest. Over the years it has reviewed and revised its conflict of interest policy. Many members of the board, panels, committees, and staff are lawyers and are accordingly governed by their respective law societies and are subject to strict conflict of interest rules. Their current policy reflects a very high standard for ensuring that no one on any of the CCP's committees can receive either a direct or an indirect benefit in the use of public funds. We have attached the program's conflict of interest policy for your information, and we'd be happy to answer any questions about it.

I would add that the structure of the court challenges program is such that the decision-making panels are independent of the board. The board looks after the administrative aspect of the program while the decision-making panels look after the actual funding of applications. The board is not privy to the applications received, nor is it to the decisions that are made.

Further, the members appointed to the panels are chosen primarily for their expertise in equality or language rights. Secondary considerations relate to having panels that are diverse and regionally represented. I can add that regional representation and diversity are also looked at in composition of the board.

As an additional form of accountability, the court challenges program regularly reports the names and biographies of each member on the board, panels, and staff, both in its annual reports and on its website. This means there's an increase in transparency as the court challenges program wants to fully account for everything it is doing and who is doing it, which ultimately is for the benefit of Canadian society as a whole. While not everyone may like the court challenges program, it has resulted in providing greater equality and official language rights services to Canadians.

[Translation]

Mr. Guy Matte: To conclude, Mr. Chairman, on behalf of the board of directors and members of the program, we ask that the decision to abolish the Court Challenges Program be reversed. In the name of access to justice, we ask this committee to call for the full restoration of funding to the Court Challenges Program as it was prior to September 26, 2006.

Thank you, Mr. Chairman.

[English]

The Chair: Thank you very much for your presentations.

I've been very lenient about time, at least on the first round. I think on the first round, for questions and answers here today, we'll go for seven minutes. That's primarily what I've done for questions and answers, so on the first round at least we'll go for seven minutes and then maybe we'll go to five after that.

Mr. Bélanger, I think you're first.

[Translation]

Hon. Mauril Bélanger (Ottawa—Vanier, Lib.): Thank you, Mr. Chairman.

First of all, I'd like to congratulate Mr. Matte and his two colleagues here this morning on the quality of the document we have received. I had time to skim through it and I must say it appears to provide exactly the explanations we wanted of the operation of the Court Challenges Program, its structure and the need for it in the broader context of a healthy democratic society. I'd like to thank you for the quality of this document and I hope my colleagues will think to ensure that it's included in a report to the House, because it would benefit all parliamentarians to read it.

I'm going to ask three short questions in order to clarify certain things once and for all.

When the Prime Minister and one of his ministers stated their reasons in the House for cancelling the Court Challenges Program, they said they were sick and tired of paying for Liberal lawyers. When asked whether the political affiliation of the lawyer they chose was a factor, every witness has said no.

That's also what you seem to be saying in your brief, but could you confirm that the lawyers' political affiliation was in no way a factor as far as the Court Challenges Program was concerned?

• (0925)

Mr. Guy Matte: I can assure you of that. As a matter of fact, the program plays no role whatsoever in the choice of counsel. The applicants are the ones who choose the lawyers they are going to work with. We fund cases, and whether or not there is any political affiliation is none of our concern. That is not one of the selection criteria, and I'm sure the lawyers in various cases have been of all political stripes.

It's not our problem, and we've never even asked the question.

[English]

Hon. Mauril Bélanger: Thank you.

So I'm satisfied, Mr. Chair, that the reason given by the Prime Minister was bogus and that the notion of cancelling the program in order not to fund Liberal lawyers is indeed a fallacy.

The second area is a matter of conflicts, and those have been raised during the hearings. In particular, I believe Madam Morton mentioned one of these sources of conflicts.

You were a member of one of the agencies that received funding and were involved in some way, shape or form with the court challenges program. There was a hint that you might have been putting yourself in a situation of conflict. Would you care to comment on that?

Ms. Bonnie Morton: I definitely would like to comment on that.

I'm a member of a number of organizations. The organization that actually gave the presentation was the National Anti-Poverty Organization. I have been, in the past, the chairperson of NAPO. I am still a member of NAPO, a paying member because I've grown up in poverty, I still have family living in poverty, and I support the initiatives of that organization. I understand that under our Constitution I have the right of association, and that's protected.

I guess what I'd like to do is to address what was said.

Mr. Warkentin, the only thing that was actually truthful in what you said was that you had not met me. You don't know me. You put an attack directly on my integrity and my honesty, and you left that impression with the public. These are public hearings, and I have what you said right here, sir. I think it's unfair. If you're looking at the future of an organization, you don't attack the people within it unless you actually have proof that they have done something wrong. And you don't even assume that there is a possibility that they have done anything wrong. I think we all know what the word "assumption" means and can mean.

I would ask for an apology for the impression that this has left, because there's no way that I would ever step over the bounds of conflict of interest with the court challenges program, or any other program that I'm associated with in this country.

Hon. Mauril Bélanger: Thank you, Madam Morton. At the time the allegations or the innuendo was cast in this committee I felt rather uncomfortable. When I found out that you were coming—and I want to be clear that this was not prearranged—I was very happy,

and I'm glad that you said what you said, because I actually accept that the structures created by the court challenges program are as transparent as can be and devoid of any possible conflict. On top of that, as has just been pointed out, all of the legal participants in the program have their own codes through their societies to deal with. So I thought it was rather unfair for you, on you, and unfair in general, to cast aspersions of conflict of interest to try to shroud the court challenges program in that. So thank you for clearing that up.

I want to also ask questions about the review that led to Canada's new government's decision to cancel this program. You referred to it in your submission. Could you please elaborate a bit on that?

[Translation]

Are you aware of how Canada's new government conducted its review leading to the decision to cancel the program?

Mr. Noël Badiou: I'd first like to clear something up about conflicts of interest. Keep in mind that under our structure, members of the board of directors, for example, Ms. Morton and Mr. Matte, don't make any financial decisions. There is a real separation between members of the board of directors and groups responsible for making those decisions. So Ms. Morton has had absolutely no opportunity to influence funding decisions.

That said, to answer your question about the review of the program, I will state categorically that no member of the staff, board of directors or any committee was consulted or informed in any way whatsoever that there would be a review. In fact, we would have been happy to answer any question or concern about this. But we weren't even given the opportunity to do that.

• (0930)

Mr. Guy Matte: Not only that, but what's more, we were not given any report that found that our program failed to provide taxpayers with value for their money.

[English]

The Chair: Thank you very much. You are already past—

Hon. Mauril Bélanger: To conclude, I'd like to see if there's a—

The Chair: I gave you seven minutes.

Hon. Mauril Bélanger: Is it possible, Mr. Chair, to have a copy of the review that the government did, leading to its decision? We asked for that as a committee. I'll bring that back.

The Chair: You can bring that up after.

Ms. Bourgeois.

[Translation]

Ms. Diane Bourgeois (Terrebonne—Blainville, BQ): Thank you, Mr. Chairman.

Good morning, ladies and gentlemen.

I'm a visual person and I'd like you to explain to me exactly what the criteria or requirements are for a person to be eligible for the program.

Mr. Noël Badiou: Certainly.

The criteria for eligibility for funding under the Court Challenges Program are spelled out in the contribution agreement we gave you a copy of. The program is intended for historically-disadvantaged individuals and groups as well as official language minority communities.

The two aspects the funding criteria are based on, under the Charter or Constitution, are equality and language. The requirements are as follows. Applicants have to be individuals or groups. They can't get funding for cases that have already been brought before the courts. In addition, these individuals or organizations have to describe in writing their financial need. Finally, we cannot fund cases before the Canadian Human Rights Commission or the Office of the Commissioner of Official Languages.

Ms. Diane Bourgeois: Your critics, REAL Women, not to name names, have appeared before this committee. According to them, the equality criterion has not been met. We have here a summative evaluation of the program done by the Corporate Review Branch. Without breaching confidentiality, it says here that you may be able to explain to the committee and to Canadian Heritage the basis for your exclusion of REAL Women.

Mr. Noël Badiou: I will tell you quite honestly that REAL Women was not excluded per se: they never applied. Any Canadian can apply under the program, as long as they are eligible under the funding criteria set out in the contribution agreement. The purpose of the program is to assert and promote the rights to language equality. Funding requests therefore have to be in keeping with that.

• (0935)

Ms. Diane Bourgeois: Are you telling me that they never even applied? They testified before this committee that they made repeated applications.

Mr. Noël Badiou: They may have applied prior to 1994.

Mr. Guy Matte: The new Court Challenges Program goes back to 1994. They may have applied before that. However, since 1994, they have not made any application.

Ms. Diane Bourgeois: The credibility of the witnesses is a little strange.

I would like to come back to the criteria dealing with people or organizations which traditionally have been underprivileged. Unless I am mistaken, you are basing what you say on the Universal Declaration of Human Rights of the United Nations. When you make decisions, do you also base them on the Convention on the Elimination of All Forms of Discrimination against Women or on the Erasmus-Dussault Report, which looked at the rights of native people? These documents are supposed to protect human rights in Canada when decisions are taken.

Mr. Noël Badiou: I can assure you that the people who will be appointed to those panels, that is, people who are experts in the areas of equality rights and language rights, have a very good knowledge of every fundamental document dealing with human rights, nationally and internationally. You can find on our website the names of the people who will sit on those panels and who will make decisions. They have a vast experience in the areas of equality rights and language rights.

Ms. Diane Bourgeois: Is this the first time you have been treated this way as far as departmental programs are concerned? In your

opinion, is this the first time a program has been eliminated without consulting with officials and those in positions of authority?

Mr. Guy Matte: I don't know if this applies to them all, but during the last round, when our program was eliminated, other programs were as well. I presume that our experience is no different than what has happened in the past.

Ms. Diane Bourgeois: That's all, Mr. Chairman. I will come back later.

[English]

The Chair: Thank you. Thank you very much.

We'll go to Mr. Angus.

Mr. Charlie Angus (Timmins—James Bay, NDP): Thank you very much.

[Translation]

Thank you for the presentation you gave this morning.

I represent a region with a significant Franco-Ontarian population. As an anglophone, I know that minority rights were not acquired due to the efforts of the majority. Language rights and French schools were obtained because minorities fought for their convictions. And that fight is ongoing.

[English]

And I think this principle, to me, is at the very heart of the discussion we've been having here in terms of the conversation around the table.

The principle that has been raised by some of my Conservative colleagues and some of their witnesses is that if we allow the principle that minority rights need support to be enacted, to be defended, to be made real, that somehow that takes away from the rights of the majority. In other words, if we're going to have a court challenges program, then let's ensure that every single person, regardless of race, creed, or financial ability is able to access it. Otherwise, the few minority groups that do access these rights somehow have an unfair advantage over the majority. From the discussions we've had with witnesses, it seems to me that it strikes at the very heart of our notion of a Canadian system, in which we do recognize the value of certain rights that have to be protected and fought for.

One of the issues that came up was language rights. Again, in my region, there is the fight we've had for proper francophone services. Some of our witnesses have challenged that notion. Maybe it's unfair that we have certain language rights identified. What about, for example, the issue of Korean immigrants coming here? Why shouldn't they have the same rights?

I'm wondering if you think that this attack on the court challenges program is actually part of a broader view of how we should monitor rights in Canada and whether the attacks we've heard on court challenges—that it was conflict-of-interest-ridden, that it was going after crazy special interest groups, the kind of stuff I heard on talk radio—are actually part of a much simpler attack, which is the notion that certain minority rights need to be protected in this country in order to maintain the sense of what we have as a Canadian society.

Mr. Guy Matte: You have asked a question that is quite broad and you have asked for a generalization of what we're doing. Basically, we have to realize that there are rights that have been recognized by the charter, and this has value for Canadian society. I would even say it probably makes us stand apart from most of the rest of world. I go to Africa all the time. There are lots of constitutions, beautiful words, but nothing is respected over there in many, many countries. We saw it in Guinea recently.

If we're going to have rights, there has to be a means to ensure that these rights are not only protected but that they are clarified. In 1982, when the charter was created—let's talk about language rights—minority language rights were recognized in education. There was not one school board outside the border of Quebec that was for francophones, and this was put in.

Now I'm asking you, what does the fact that there are school boards in Canada now, French language school boards, in British Columbia—where I was Monday—or in Ontario, or elsewhere in our country, take away from the majority? What does the fact that there are French language schools take away from the majority? What does it take away when you recognize that aboriginal women who are off reserve have certain rights? What does it take away from the majority?

What it gives is the potential for all Canadians to participate as much as possible in the growth of this country. And when you allow Canadians, through the exercise of rights, to do this, I think we all get better. We get to be a better country and a better welcoming country. And that's why people are clamouring to get into this country, because we have those rights. Those rights are protected and clarified. We need a means to ensure that this is going to be a living document and that it will grow with our Canadian society.

• (0940)

Mr. Charlie Angus: One of the other arguments that was laid out for us...well, we had two variations on the same argument. One came from the former Treasury Board minister, our new environment minister, Mr. Baird. He said we should not be paying money so that people can challenge government decisions. That was the very basis of his argument.

The argument we heard from, for example, our friends at REAL Women is that it's Parliament, not the courts, that decides the rights of people in this country. They laid out, as an example, their firm, undying opposition to same-sex marriage rights. I would think they would actually probably feel very comforted now that Parliament has twice voted to recognize those rights. Perhaps their concerns might be alleviated, in that Parliament has agreed on those rights.

On the question of whether the courts need to intervene to protect rights that Parliament is either unwilling to recognize or unwilling to put into law and practice, can you comment on how you see the role of the courts in having to defend minority rights in the vacuum of leadership at either parliamentary federal or provincial levels?

Mr. Guy Matte: First, let us say that we are Canadians. As Canadians, we value the Parliament of Canada and the rights and the powers it has to make laws. That's why we have things like the Charter of Rights and Freedoms. If we had no parliamentary system and no way of ensuring that these types of protections or these types of basic laws were to be made, if the Parliament had not been there,

it would not exist today. So Parliament did the right thing. The parliamentarians, the MPs at the time, did the right thing by enacting such a basic law of the land.

But a law, as you know, cannot encompass every application in the field. It usually is a very broad knowledge. It gives rights and it gives concepts, and then people have to apply it, either through additional legislation, through regulation, or through application by civil servants or by other authorities.

When you get to that level, the application is an interpretation of what the basic law of the land, the charter, says. We certainly believe, as members of the board and as a program—and I think most Canadians believe this—that it is appropriate to go and check whether the application that was done of a particular right that was recognized is appropriate and well done.

Of all the cases that we have supported in the courts—as I said, about 1,200-something since our program was put in place—we've lost cases. People lost cases. But that's fair, because at least you know that in those particular cases, those applications were rightly done by government or by its agents. In other cases, the applicants won because things were not done properly or they could have been interpreted in a different fashion. That's why we have courts: to clarify these notions when we apply constitutional rights or any other application of Parliament.

We do have a basic respect for Parliament to make and enact laws. Somebody, somewhere, has to interpret, though, and these things we should be able to challenge.

• (0945)

Mr. Charlie Angus: Thank you.

The Chair: Thank you very much.

Mr. Fast, please.

Mr. Ed Fast (Abbotsford, CPC): Thank you, Mr. Chair.

My thanks to the three of you for appearing before us as witnesses.

Before I go on to my comments and questions, I do want to correct something that I believe was stated by Mr. Badiou in response to a question from Ms. Bourgeois on whether REAL Women had ever applied for funding under the court challenges program. I believe you said categorically no. In fact, we have just confirmed with that organization that they applied on four occasions, in 1989, 1990, 1991, and 1992, so what you said was incorrect.

Mr. Noël Badiou: That was the program before ours.

Mr. Guy Matte: That's what we said, because we started in 1994.

Mr. Ed Fast: But you left that impression—

Mr. Guy Matte: No, I said 1994.

Mr. Ed Fast: —and I think Ms. Bourgeois said it was interesting.

Mr. Noël Badiou: Yes.

Mr. Ed Fast: I just wanted to clarify that, because we do want to deal with facts as opposed to speculation.

Mr. Noël Badiou: If I may just add something, what we were saying was that since the reinstatement of the program in 1994, we have not received an application from REAL Women. I think Mr. Matte did say that we did not know about anything prior to that time, because we don't have any records or access to those records prior to 1994.

Mr. Ed Fast: I just want to make sure that there is no misunderstanding as to what we're dealing with. There are organizations that did apply and were refused—I think we've all accepted that's the reality of it.

What I'd like to say, too, is that for me the issue isn't a matter of taking away from the majority. I don't think that's the result of a court challenges program. So, Mr. Angus, hopefully that reassures you as to my position on that.

I think when you review the evaluation that was done in 2003, stakeholders who were complaining about the program raised two issues. One was the issue of balance and even-handedness.

I want to go back to the actual statement of purpose. When you refer to the executive summary, it states:

The main purpose of the Program is to clarify certain constitutional provisions relating to equality and language rights.

The word “clarify” is generally quite broad. It would include not only an expansive interpretation, it would also include a restrictive interpretation of the charter. But as the program morphed, it became something that focused almost exclusively on promoting and expanding charter rights.

There are many Canadians who have great difficulty accepting that only one side of an argument before the courts should be funded by a government, especially if both sides of the argument don't have the financial wherewithal to be able to carry a fight to the Supreme Court of Canada.

So that has been one of the objections, the other one being a perceived conflict of interest, which has been referred to in earlier discussions today.

I want to state that there is a difference between perceived and actual conflict. I don't believe I've ever made a suggestion that there was an actual conflict. However, there are those who also state that perception is reality.

For those reasons, I think there is some justification for Canadians to be concerned. The irony of it is, had there been balance and even-handedness in how the applications were handled and in how the program was delivered, to perhaps also provide funding to those who were promoting a more restrictive application of the charter, perhaps the program would still exist today.

Let me get to my questions.

I think all of you have read the evaluation, correct? And you're aware of the concerns that were raised by stakeholders. I would admit, many of the stakeholders, of course, supported the program, but there were significant numbers of stakeholders who had serious concerns with it.

In your discussions with those who fund the program, which ultimately is the federal government, did you ever raise these

concerns with the government, that perhaps there should be a more balanced approach to the funding arrangements that were being made with organizations that were applying for these funds?

• (0950)

Mr. Guy Matte: There is a lot to your question. I'll try to cover as much as I can. My colleagues can help me on this one.

First of all, speaking of perceived conflict of interest, anything can be perceived as a conflict of interest. Even MPs can be perceived to be in conflict of interest when they make decisions: will this bring me support in my area; will it give me support to be re-elected? When you look at things, anybody can be perceived to be in a conflict of interest.

I have been here defending francophone rights practically all my life. Does being the chair of the board mean that I'm in a conflict of interest because I'm still promoting minority language rights in this country? Everyone can be perceived as being in some conflict of interest.

The important question is whether a person is in a conflict of interest. That's where people get into trouble. I can tell you that we check this very much within our organization, to make sure that nobody is in a conflict of interest and, as much as we can, is perceived as being in a conflict of interest. But you cannot stop the judgments of other people when they look at a program like ours; it's practically inevitable.

As to even-handedness, let us remind ourselves that we are never in an even-handed situation, because when people we fund go to the courts, they go against the federal government or one of the provincial governments that is using a huge amount of resources to thwart, stop, or put all kinds of hurdles in the road of the appellant seeking to get a clarification of their rights.

So even-handedness is a very unfair thing. If it were in place, then we would ask to get as much in the way of resources for those people who are appellants as the federal government is allowing itself to use. We see it right now, for example, in the court case of Caron in Alberta, where the provincial government is putting all kinds of hurdles in the road of Mr. Caron because they know the program is not going to exist anymore: let's make sure he has no means anymore to challenge the government in its application. That's one side; it's not even-handed on the side of the appellant.

As to your next question, related to whether we talked to the government about extending the program, no. We did not ask the government to please give us more money so we can fund REAL Women, for example, if that's what you're asking. The answer is no, we did not ask that.

What we're looking at in terms of the program is not a restrictive application of the rights. That's not our job. Our job is to see whether we can clarify and expand the rights of Canadians by the interpretation of the laws you have adopted. That's what we're doing.

If the federal government believes very strongly in what you've said, then create a program that is going to give money to REAL Women and other groups that are going to do this, or charge us with doing that too and give us double the money, and we'll give money to REAL Women to go on the other side, if that's what you believe in. But that's not the job that was given to us.

Mr. Ed Fast: No, but the job you had was still to consider the applications that come in—

Mr. Guy Matte: Yes, and we do.

Mr. Ed Fast: —on their merits.

Mr. Guy Matte: We do.

Mr. Ed Fast: But the decisions that were made for funding were based on whether the rights that were being promoted were suggesting an expanded interpretation of the charter, as opposed to a restricting one. Is that right?

• (0955)

Mr. Guy Matte: Clarifying.

Mr. Ed Fast: “Clarify” is a broad word. That's why I quoted that from the purpose. “Clarification” is a broad word and would include a restrictive interpretation. On any given day, the courts of this country are interpreting laws, sometimes more restrictively and sometimes more broadly.

When we are dealing with something as important as the Charter of Rights and Freedoms, it is important that both sides of arguments be heard. We heard from organizations that appeared before us as witnesses that they had applied for funding to either be intervenors or to be primary litigants to an action and were refused. That really sticks in the craw of many Canadians.

It's not a personal attack on you. It's that the program itself was unbalanced.

Mr. Noël Badiou: Let me just add—

The Chair: Make it a very short reply because we have gone over the time.

Mr. Noël Badiou: Let me answer very quickly in terms of the balance. If REAL Women wanted to make an application to fund a case that would advance equality rights for women, certainly I would think they're an eligible group. Whether the issue they would bring forward would be eligible under the vision, if you will, of human rights legislation, international and Canadian.... When the panel looks at an application, it looks at international and human rights law in Canada and at jurisprudence. They make sure it's consistent with the expansion, the inclusiveness, of having more Canadians being included under the laws, policies, and practices of the federal government.

That's the idea. People who are supporting the status quo.... The government is already doing that. Why would you spend more taxpayer dollars to help support the government? If the government wanted to provide us with the money to do that, we could include it, but that's not really the intent or the spirit of what the court challenges program was all about. It is called the court challenges program; it's to help people challenge existing legislation, not to help people support it.

The Chair: Thank you very much. We went a little over time on that one.

Mr. Scott.

Hon. Andy Scott (Fredericton, Lib.): Thank you very much. I'll try to be concise.

On the question of the evaluation, it's quite clear there was a reference to the executive summary. The executive summary in its conclusion said quite clearly that while many individuals expressed the desire to have the CPP expanded, that wouldn't be the most efficient way to deal with what the court challenges program was designed to do.

One of the people on the independent review of the summary was Justice Gérard La Forest. I spoke to him this morning to revisit the issue and he continued to hold that in fact the court challenges program was operating the way it was supposed to, and the evaluation is quite clear on that point.

I think it is a larger issue. I'm going to agree with Mr. Angus. This is ideological. At the end of the day, just speaking to the question of conflict, if in fact holding a prior position disqualifies you from making a decision, then I would suggest this court challenges program didn't have a chance.

I would refer you to Ian Brodie, who I think holds some prominence with the government. They doled out millions to radical organizations and urged them to start charter challenges that targeted traditional Canadian values and laws. My sense is that the court challenges program was dead on the arrival of the new government if in fact you hold the position that a previously existing position disqualifies you from making these kinds of decisions.

More than that, the Treasury Board chairman at the time said it didn't make sense for the government to subsidize lawyers to challenge the government's own laws in court, which shows a painful misunderstanding of what the court challenges program is about, or, for that matter, even what the charter is about, because then the Prime Minister went on to say that they didn't intend to introduce any unconstitutional laws. That isn't for the Prime Minister to decide; that is for the court to decide. That's what the charter is about.

Given that the Prime Minister of Canada does not seem to understand the relationship between Parliament, which created the charter, and the court, which interprets the charter, this is a sad day for democracy and minority rights in Canada. The court challenges program is a victim of that ideology. I don't think there is anything more to it than that.

In terms of the question of whether or not the applications were deemed unacceptable by the court challenges program by virtue of who the organization was, as against whether or not the organization was actually acting consistently with the mandate of the court challenges program to challenge the government on an unconstitutional decision in their minds—and that's what the court challenges program was designed to do—can you confirm for me that this in fact was the reason that somebody who would come forward with an application would be denied? It wasn't because of who they were or what argument they put. It was whether or not they in fact were challenging a law of the government in the name of the charter.

•(1000)

Mr. Noël Badiou: I have to confirm that the criteria are set out very clearly in the contribution agreement. They're followed very closely, and the evaluation in 2003 confirmed that the program was doing exactly what the government's mandate was for the court challenges program. Every application that comes through is reviewed on its own merits. I can confirm that we don't look at the name of who is applying for funding. The importance is the issue, whether it's going to make things more equal for all Canadians or advance the language rights of official minority communities in Canada.

As I said, REAL Women can apply, or any other group that was here before the committee. In fact, some groups that have received funding have been refused because the issue they brought forth wasn't substantive enough in terms of advancing or fulfilling the mandate of the court challenges program.

Every application is reviewed on its own merit. That I can confirm, without a doubt.

Hon. Andy Scott: Mr. Chair, I would like to confirm for the purpose of the people who are watching, particularly, that Parliament created the charter. The Supreme Court ultimately would arbitrate whether or not government decisions were compliant with the charter. It wasn't limited only to those people who had the means to engage private counsel. The court challenges program was designed so that people who didn't have the means to get private counsel would be able to exercise their charter rights as citizens of Canada. The court challenges program offers that.

Its cancellation, particularly in the face of the arguments that have been put by the former chairman of the Treasury Board and the Prime Minister as to why we would offer an opportunity for a Canadian to sue the government, basically denies a fundamental understanding of what Parliament decided in terms of the charter and a fundamental misunderstanding of the role and the relationship of Parliament to government and the charter. The court challenges program is simply an unfortunate victim of that ideologically driven mistake.

The Chair: Okay, please be very brief.

Ms. Bonnie Morton: To kind of build on that, before the Canadian Charter of Rights and Freedoms, we had the British North America Act. With all the international agreements Canada had started entering into, it was no longer a domestic remedy because it didn't protect the obligations Canada made to our international partners through international law. So that's where we started to look at how we changed it.

We came up with the Charter of Rights and Freedoms, and it has been pushed at the international level over and over again by our government, as a way of showing that as committed partners within international law we are protecting the rights of even the most vulnerable in our community.

I was in Geneva in May and presented before the economic, social, and cultural committee. At that time, our government stood proudly before that international body and supported having the court challenges program as a way to ensure protection for the most vulnerable in this community and country.

What went wrong? Where was it no longer valuable? That's my question.

The Chair: Okay. Thank you.

Ms. Bourgeois.

[*Translation*]

Ms. Diane Bourgeois: Thank you, Mr. Chairman. I have a comment and a question. My comment follows what Ms. Martin said.

Earlier, I referred to three conventions to which Canada is a signatory, that is, two conventions and a report which Canada accepted. I would like to come back on that subject for the next few minutes. Indeed, Canada made a commitment before the Human Rights Committee, and the report of our witnesses mentions this in an international context. I would like to remind you that Canada signed on to the report, the International Covenant on Civil and Political rights, and it is extremely important—in any case, it was extremely important—for Canada to have been a signatory. By signing that Covenant, Canada was officially recognized as being an advocate for minority rights and human rights in Canada.

There is also the Convention on the Elimination of All Forms of Discrimination against Women. Canada is also a signatory to that convention. Canada was never shy about telling the world that it was one of only 20 countries which at the time signed on to this convention. I believe that Canada would lose a lot of credibility if it eliminated its Court Challenges Program, since it is thanks to the Charter, and to the covenant signed within the framework of the convention, that several feminist groups in Canada were able to uphold their rights.

Third, there is the Erasmus-Dussault Report. Last fall, the minister responsible for aboriginal communities told us that he agreed with the Erasmus-Dussault Report on native communities and that there had to be changes. He promoted the report. Canada would look rather foolish if it abolished the Court Challenges Program, since this program could help our native communities.

I will now move on to my question for the witnesses.

In its 2003 summative evaluation of the Court Challenges Program, the Corporate Review Branch made a recommendation which I find extremely important. It is recommendation six, which says that, in the name of transparency and accountability, if the program were to be renewed, it should include a greater exchange of information between the Department of Canadian Heritage and the organization. The program's detractors told the committee all kinds of stories and they do not seem to be aware of how things work within your organization.

First, don't you think there was a communication problem? Second, don't you think that it would be to your advantage to appear more often before the Canadian Heritage Committee to present reports, which would have perhaps allowed us to support you even more? Do you think that more could have been done in that regard?

•(1005)

Mr. Guy Matte: I will give you two answers. Firstly, it is certain that if you were to invite us more often, we would be more than happy to accept. We have absolutely no concerns over the organization's transparency.

Secondly, all those wishing to make an application will find information in our documents and on our website. Anyone with concerns, or those who simply happen to fall upon the website, will be able to access all relevant information on the Court Challenges Program, including information on criteria, procedure and eligibility. The website also posts a few cases. Most cases can be found on the Internet, since they are also included in our annual reports.

As you know, all communication requires two parties: the communicator and the party receiving the communication. Mr. Fast is right, and let's not try to hide it, there are groups in Canada that are not the least bit interested in developing Canadian law in relation to the Charter. I must come to terms with the following fact: there are people who are against broadening rights, clarifying the rights of certain underprivileged groups, and those people are also a part of the Canadian spirit. This is why we are Canadians. I accept this fact, but blame cannot be placed on the program because there are groups who want nothing to do with it.

Ms. Diane Bourgeois: For example, could an individual or group that has suffered psychological harassment and is lacking the means to defend itself be able to address your organization in order to claim their rights or receive assistance? As regards psychological harassment, we all know that there are no laws in Canada which address this problem.

Mr. Noël Badiou: The applicant would have to make sure that the request fulfils all criteria to obtain financing, meaning the issue must relate to equality rights or linguistic rights. If indeed, the matter deals with equality rights or a federal government policy, assistance would be available, but there would certainly have to be an element of—

•(1010)

Ms. Diane Bourgeois: Suppose the case deals with a homosexual, for example—

Mr. Noël Badiou: It must be a political matter. In addition, it must concern a member of a historically disadvantaged group. The application must concern equality rights.

Ms. Diane Bourgeois: Thank you very much.

[English]

The Chair: Thank you very much.

Mr. Fast.

Mr. Ed Fast: Mr. Chair, I would like to continue on a little bit and ask the witnesses some questions to help me understand how the program worked.

First of all, who appoints the board of the court challenges program?

Mr. Noël Badiou: The court challenges program board is set out in its bylaws. There are two representatives from the equality rights groups, two representatives from the language rights groups, one member from the equality rights panel, one representative from the language rights panel, as well as one person appointed by the

Canadian Bar Association and the Canadian Council of Law Deans. The two representatives from each of the equality and language rights members are elected, if you will, by the members rather than appointed.

Mr. Ed Fast: Who are the members of the organization?

Mr. Noël Badiou: The members of the organization are set out. They are the historically disadvantaged groups and individuals.

The program is structured very much following the contribution agreement. So the people who are eligible to be applicants under the court challenges program are also eligible to become members of the court challenges program.

Mr. Ed Fast: So is it safe to say that the members of the court challenges program are, in many cases, also the beneficiaries of the program?

Mr. Noël Badiou: Some of the members are also beneficiaries, yes.

Mr. Ed Fast: Quite a number, is that right?

Mr. Guy Matte: Let's talk about what "beneficiaries" means, in your mind. If "benefit" means, can we get a benefit out of this—

Mr. Ed Fast: No, I'm talking about "have received funding". The organizations they represent have received funding under the program.

Mr. Guy Matte: Oh.

Well, in my case, certainly not.

Mr. Ed Fast: No, I'm talking generally.

Mr. Noël Badiou: Yes, but you're talking about the members...the members of the board or the members of the organizations?

Mr. Ed Fast: Let's start with the members of the organizations who elect the board.

Mr. Noël Badiou: Right.

Mr. Ed Fast: With respect to the members of the organizations, many of them, or certainly some of them—

Mr. Noël Badiou: Some of them, yes.

Mr. Ed Fast: —are members of organizations that receive funding under the program. Correct?

Mr. Noël Badiou: Correct.

Mr. Ed Fast: And it's those individuals, then, who choose the board members.

Mr. Noël Badiou: Correct.

Mr. Ed Fast: Is it safe to say that the board members represent organizations as well that receive funding under the program?

Mr. Guy Matte: No, because I do not belong to any of the organizations that are members, for example, as a chair—

Mr. Ed Fast: No. I'm not talking about you as a chair.

Mr. Guy Matte: No, you are talking about members of the board. I'm a member of the board and I was elected by the linguistic group, but I do not belong to any one of the groups.

Members are looking for people who are going to be on the board and have some even-handedness, so they look for those who would be able to serve people and serve the program well. Since, for example, my experience in the past has related to linguistic rights, some people who know about this asked me whether I would be interested. I said yes. It's about the same for other people who are members of the board. Some are put there by the law faculty of—

Mr. Ed Fast: You may have misunderstood my question.

We did have testimony from Chantal Tie, who's a member of LEAF. For seven years she was a member of the CCP's board of directors, and she was also a member of this group that receives funding under the program. So in fact board members often represent organizations that receive funding from the CCP. Is that not correct?

Mr. Guy Matte: Oh, members.

Ms. Bonnie Morton: I'd like to try to address this. We're being asked, as a court challenges program, if members of our board actually are affiliated members to organizations that receive funding. Are we asking the same question of the Canadian association of banks? Bankers sit on these boards. They get benefits from being part of the Canadian Bankers Association, right?

Mr. Ed Fast: They're not receiving government funding, though.

Ms. Bonnie Morton: Okay, but—

•(1015)

Mr. Ed Fast: They're not receiving government funding.

Ms. Bonnie Morton: But I sit on the board as a member who might be involved with some of these organizations that have received funding. You need to understand that as a board member I do not make the decisions on who receives funding; I don't even know who has made an application.

Mr. Ed Fast: I understand that. I'm not suggesting there's an actual conflict of interest; I'm saying the public has a perception of what goes on at the CCP program.

My final question has to do with the panels that actually make the funding decisions. Who appoints those panels?

Mr. Noël Badiou: The panels are appointed by a selection committee. The board appoints members to the selection committee, and again, it's for their expertise in either equality or language.

Mr. Ed Fast: So again, board members who represent organizations that sometimes receive benefits also appoint the members of the panels who actually make the funding decisions.

Mr. Guy Matte: No, that's the selection committee.

Mr. Ed Fast: The selection committee.

Mr. Noël Badiou: The selection committee then appoints, independently, members of the panel.

Mr. Ed Fast: So you can see, we're starting to build up this whole house of cards that a lot of Canadians consider to be a conflict of interest.

Mr. Guy Matte: I don't think so, sir. I think it has to do with keeping things very separate.

Mr. Ed Fast: Again, there's one thing that's actual conflict and there's perceived conflict.

Mr. Guy Matte: So your problem is not so much with the program but with the way the program is managed through our particular corporation, which was set up at the request of Heritage. If that's the problem, give it to somebody else, but please make sure there's a program somewhere to protect the rights of Canadians. If you can fund it in a way that is not...I certainly don't mind. I'm not working for our corporation and saying please, save us. I don't care if you kill our organization, as long as there's a program to protect Canadians. If you agree with that, please do something about it.

The Chair: Thank you very much.

We're going to go to Mr. Scott, please.

Hon. Andy Scott: Thank you very much.

I think it's important. Mr. Fast has suggested that there is a perception in the Canadian mind that there's something untoward here, or it's a perception he acknowledges. I would suggest that, by virtue of the time he's taken to make those connections, he's not alleviating the perception. He may be adding to the perception.

I would like to make something very clear so that Canadians watching this would not allow themselves to be drawn into that. For instance, the members opposite are familiar with NSERC or SSHRC. These are federal research granting agencies, with huge budgets. The panels that decide who gets the research money are made up of academics who work within various universities in Canada, and they make decisions all the time about who is going to do what research. I would suggest that we shouldn't hold the court challenges program panels to a higher standard—or perhaps the government has some plans for NSERC and SSHRC and the medical research agencies.

The reality is that in the universe of people—and I think yesterday, when we talked about the CBC, Mr. Fast even referred to the fact that when there is the universe of people who are specifically engaged in this exercise, those are the people we call upon to help us make decisions about these exercises. This is that universe. And to deny that universe the opportunity to make decisions because they've committed their lives to it would be a terrible denial of access for these people.

I just want to make the point again for the purposes of the perception of conflict, which is I guess what is being proposed. The reality is that there are all kinds of agencies where people are big enough to make decisions that they believe are right, and they're not motivated by self-interest. I think we should have greater access to post-secondary education for university students. I've got two kids in college. Surely that doesn't disqualify me from holding that position.

The Chair: Thank you.

Yes, sir.

Mr. Noël Badiou: I think it's important to include the people who are being demographically targeted by this program. You can't just create a program without having the input of the people who are actually going to be affected by it. One of the strengths of our program is to actually have the people who are targeted, or who are identified as being the ones who need assistance, also being able to set some direction in terms of how best the program will serve their needs. It's about helping these disadvantaged groups and individuals and the official minority language groups in Canada. If they're not even included in the process, I think it would be a flawed process.

The Chair: We can go back to Mr. Fast.

Mr. Ed Fast: If I could respond to that, Mr. Chair, I appreciate Mr. Scott's comments, but when you look at the structure here, we're talking about the members of the program who represent organizations who benefit from government largesse. Then we have those members appointing members of the board. The members of the board in many cases also represent organizations that receive funding. When they then appoint the selection panels that make those funding decisions, those selection panels also comprise board members who in some cases represent those organizations. The reason that's critical is because there is a large number of groups in Canada who have been excluded from consideration for funding. These groups came before us, they've articulated well that they feel left out of the process simply for the reason that they advocate at times a more restrictive application of charter rights rather than an expansive application. These are organizations that also don't have the means to conduct litigation all the way up to the highest courts in the country, and that's the frustration.

I don't take issue with Mr. Scott saying that there are many organizations in Canada where that kind of a scheme exists. But when you're dealing with government money and when there's a group in our society that is excluded, in my mind unfairly, from accessing those funds, we have a serious problem.

•(1020)

Mr. Guy Matte: I agree totally with you when you talk about the unfairness of groups not having access to justice. I think that's why we're here. I totally agree with your last comment on this. I think you should make sure, as a representative of the government, that you carry the message to the Prime Minister and to the heritage minister and the justice minister that you believe people who seek justice should have access to justice. I think that's an important statement.

First, just to set the record straight, no member of the board represents another organization. When we are on the board we are individuals; we're not there as representatives of an organization. Some of us may belong to some organizations, but we do not represent them. That, I think, is an important distinction.

Second, when you say there are lots of Canadians who find it difficult to believe we should have these types of programs, I would refer you to, for example, the Premier of Newfoundland, who said you should reinstate the court challenges program. Every minister responsible for francophone affairs in the country, whether in Alberta, British Columbia, or the territories has requested that the government reinstate the program.

I don't believe there's a huge amount of conflict of interest within our organization, but if that is the problem, if that is the problem for

the government, solve the problem. Do something about it, but please make sure that people have access to justice. If it's your belief that there's conflict of interest—and I don't believe it and I totally disagree with that argument—please reinstate the program and put it in a fashion that you believe is appropriate so that people can have access to justice. That's the real issue here.

Mr. Ed Fast: I would suggest to you that you had the opportunity to fix that problem, the perception of conflict.

Mr. Guy Matte: There was no problem for us. This is what we were mandated to do.

Mr. Ed Fast: The individuals who are appointed to the board, the individuals who are appointed to panels, at the very least should be independent. You say the individuals are there in their personal capacity. You know, Canadians see past that.

Mr. Guy Matte: Some Canadians.

Mr. Ed Fast: Of course.

No, Canadians understand what's happening here.

The other question I had, and I don't want to badger you, but you mentioned earlier that you had never taken this up with those who make the funding decisions. You never took it up with those in authority who established the program and funded it. You never took up some of the concerns that were raised in the 2003 report, concerns about conflict of interest and concerns about the restrictive application of the funding arrangements.

Mr. Guy Matte: No, I'm sorry, the response was that what we were doing was okay. What did we have to change?

You're saying some groups said that, but the report itself, the evaluation, when it came out from Heritage Canada, said that what we were doing was appropriate. So why would I go and say, I'm sorry you feel it's appropriate, let's change stuff so it's inappropriate?

Mr. Ed Fast: So you totally disregarded the views of the stakeholders whose views weren't accepted in the final report?

Mr. Guy Matte: We do not disregard them. Those views were part of the report, we agree. I told you before, I understand that some Canadians will never agree with the expansion of rights under the charter. Some people don't even accept that there are two official languages in this country, but that's the law of the land—it's too bad.

•(1025)

The Chair: Mr. Angus.

Mr. Charlie Angus: I'm very pleased we've had this opportunity today, and that it's televised, because I think it has clarified for many people the fundamental issue we're dealing with.

When we began this, I was trying to understand the Conservative point of view, and we heard first of all—from the Prime Minister—that it was a Liberal lawyer slush fund, and that was proved to be a falsehood. We've seen this relentless attack from Mr. Fast on conflict of interest, which I think hasn't been shown, but Mr. Fast has very much clarified the Conservative view here, and I appreciate that he has managed to do that.

The heart of the argument I'm hearing from him is that certain groups believe in a restrictive notion of rights, that certain groups want to test the limit of minority rights, to take away rights, to exclude people from rights, and because they can't access your fund to go after minority rights, they're somehow left out in the wilderness, and this is somehow unfair. We had the example of our friends from REAL Women. It turns out it has been 13 years since they made an application to a fund that no longer exists. It wasn't your fund, and I was thinking 13 years is a long time to lick your wounds when you're out in the wilderness Mr. Fast is talking about.

This is a fundamental issue we're dealing with, because the notion being put forward by the Conservatives puts civil rights jurisprudence on its head. What they are saying here today is that unless you allow groups from the majority, who can test and take away rights from a minority, then you should not allow the minority to have access to defend those rights. That seems to be the fundamental argument we have heard here. That seems to be the entire attack. I think, in a subtler way, it was explained by the Treasury Board minister, who said it's not wise government policy to provide money for people to test government, to test the Conservative government's laws.

This will be my last comment on the court challenges program. I think we are dealing with a fundamental view of how minority rights exist in Canada, one upon which we have based this jurisprudence for years, and it is under attack from a viewpoint, and what the attack is has been very clearly articulated.

I'd like to hear your viewpoint on the need to maintain the notion that government has a fiduciary responsibility to ensure that minority groups have the ability to ensure they can access rights that theoretically are proclaimed but sometimes not enacted in law.

Ms. Bonnie Morton: I'd like to start by saying that democracy in this country means more than putting a check mark on a ballot once every four years. I take my democratic responsibility and my rights quite seriously, and that's why I do the work I do, through the United Church of Canada, as well as with every low-income and grassroots organization and equality-seeking group I'm involved with.

It is our right and our responsibility to use that Charter of Rights and Freedoms, the Constitution, to ensure that all our constitutional rights are upheld and not being violated.

Can our government make a mistake when they bring in a law? They're not infallible, and I don't think it's done intentionally. As a woman who over the years had to try to fight for rights.... If women hadn't fought for their rights and taken their democratic responsibility seriously, would you women be around this table today? Would all of us women have any voting rights? I need to ask that question. If we hadn't taken our democratic responsibility seriously.... To take it seriously in this country today requires

having some funding to access domestic remedies. That's what court challenges is about, and the funding, and I thought we were here at this table to talk about the truth of the program, not to perpetuate false perceptions.

So I hope what comes out of all these hearings is the truth.

The Chair: Mr. Angus, do you have anything more?

Mr. Charlie Angus: I'm finished.

The Chair: Mr. Bélanger.

Hon. Mauril Bélanger: I wanted to look at perpetuating this idea that there's a conflict out there in terms of the benefits or the beneficiary of whatever the court challenges program used to do. The one benefit that comes from the court challenges program is a payment of legal fees, and in that sense, it has been made quite clear, quite explicit, that there is no conflict. I would like to know if there has ever been a complaint or a conflict brought to the court challenges program since its reincarnation in 1994, after its first cancellation by the Conservative government. Has there ever been a conflict?

• (1030)

Mr. Guy Matte: The answer is no, for the record.

Hon. Mauril Bélanger: In terms of the money that we're talking about here, it's non-existent. Where Mr. Fast is trying to create a sense of a beneficiary conflict is in the sense of those who benefit from the decisions that may flow from the court challenges program. And in that case, I'll say *mea culpa*, Mr. Chairman. I'll say *mea culpa*. I am in conflict because I've benefited personally because my rights as a francophone, a minority in Ontario, are now better defended because of the court challenges program. This is a benefit that I have, and I don't think there's a problem with that. If Mr. Fast has a problem with that, he should say so.

In terms of the mechanism, if he has a problem with, essentially, peer evaluation, which is what we have here, then he should also bring forward and question the Canada Council's methods, as another example to the one that my colleague, Mr. Scott, has given, for allocating public money. For the Canada Council, it's peer evaluation that is given. This is a very similar concept that we have here. This concept that he's trying to perpetuate, or enhance the conflict about, is just non-existent, and I wish we could get off that.

The other thing I think I need to say here is that I don't sense from my colleagues on the opposition a great deal of angst when it comes to linguistic rights. I didn't sense through the witnesses that we, on this side, convened a great deal of angst when it came to the rights of seniors, people with disabilities, or aboriginals. The witnesses who they suggested and where I felt some angst from their side were in matters dealing with sexual orientation and same-sex marriages in particular.

Are we going to scrap the entire...? It's not "are we"; this government has scrapped the entire court challenges program, in my opinion, because of the government's hang-ups with matters of sexual orientation. And that's a shame, Mr. Chairman. None of the other explanations we've had make sense.

I'd like to ask the parliamentary secretary if he would be prepared to try to find out if there is a review.... Well, there is a review. That's what the government said they did. Can we get that review, Mr. Chairman, in front of this committee so we understand on what basis, if it's not what I'm proposing, the government decided to scrap the court challenges program?

The Chair: Thank you.

Mr. Abbott, if you'd like to respond.

Mr. Jim Abbott (Kootenay—Columbia, CPC): Yes.

In response to Mr. Bélanger, I would be pleased to check into it. However, I can only presume that it would be a cabinet document, in which case it definitely would not be available.

Hon. Mauril Bélanger: Let's find out if it is. In 30 years we'll know.

The Chair: Mr. Fast, this will be the last question.

Mr. Ed Fast: Thank you, Mr. Chair.

I'd like to close as well by saying, first of all, that there's no angst on the part of this individual here on any of those rights issues. I will defend them to the hilt.

The issue is, are we excluding some in our society from having their voices heard when it comes to interpreting the charter? The suggestion that somehow we're excluding people from funding who wish to take away charter rights is totally false. We're talking about being truthful here. That's not what the case is.

The issue is that these individuals believe in a more restrictive application of the charter. And from time to time the courts apply a more restrictive approach; at times they apply a more liberal approach to the interpretation of the charter. That's all these groups are asking for, that there be fairness, even-handedness, and balance in how the funding is allocated.

I've never suggested there's an actual conflict of interest. What I am saying is that the groups involved in membership on the board and on the panels appear to be almost like a club, and this is something that needs to be addressed and should have been addressed before. A lot of Canadians had concerns with the program because of those problems, the perception of conflict of interest, and the problem with only expansive interpretations of the charter being funded under this program.

Mr. Chair, I believe in the Charter of Rights. I believe it needs to be a living document, as Ms. Morton stated. It needs to adapt to the times. But as it adapts, we use the courts to interpret that document. If we're going to provide funding for challenges to the charter or to decisions that government has made, we need to allow more than just one voice to be heard.

Often, the government voice is heard and it's usually well funded. We also have those seeking a broader application of the charter who want to be heard. And then there are those who want to intervene as

well in those proceedings and who may have a different approach, who may argue more vociferously or less vociferously for a restricted application of the charter.

In any case, there needs to be some fairness in the system, and we need to ensure that the program has credibility. Unfortunately, we've lost that opportunity. The irony, as I said earlier, is that had some of these issues been addressed, perhaps the program would still exist.

Those are my comments.

● (1035)

The Chair: Thank you.

Yes, Mr. Badiou.

Mr. Noël Badiou: The voices that are being brought forth are the ones that would not otherwise be heard, so I think that's very important to know about the program. The voices you're talking about, that want to defend the legislation of the government, are already being defended by the government. I mean, that voice is already there. The government gets advice from these groups and presents their voice in defending the challenge being brought forth by the voices that do not have the means to otherwise bring forth that issue. The government, if it chooses to, can certainly fund these groups, in addition to their own lawyers, to bring that extra voice in its own defence or supporting the government.

What we're saying is that the program is providing funding for the group that's challenging the law, saying that it isn't going far enough, it isn't being inclusive enough. I think that's very important to know, that this is the fundamental principle of what the court challenges program is about.

In terms of the membership, the program does outreach on a regular basis to try to include and get more groups from the various communities across Canada. It fluctuates in terms of numbers, but over the years it has gone up and down depending on interest in the program of one or another particular issue. But the program is always open to new membership from the very groups that are being targeted, if you will, and are supposed to benefit from this program.

In terms of opportunity for the program, like the evaluation said, the court challenges program of Canada, the corporation, was doing its job. It is serving Canadians and was serving the mandate of the government.

So we would love to see what we did or what was wrong. We would have loved to have had the opportunity to respond to any of the concerns, to have provided additional information that the government may have wanted before making any decisions about cutting the program.

Where was our opportunity to really provide—

Mr. Ed Fast: It's right here in the evaluation.

Mr. Guy Matte: No, the evaluation said that we did the right thing.

Mr. Noël Badiou: The evaluation suggests that we did the right thing.

Mr. Guy Matte: It says we did the right thing. It's like blaming the victim for what's happening, and I think it's unfair, sir. If you really believe in that particular program, such as you are saying, make sure it happens. And fund both sides. We do not mind. I mean, do it. But make sure that we, as Canadians, and those who are seeking equality rights and those who are seeking clarification of linguistic rights have real access to justice.

Thank you, sir.

The Chair: This meeting draws to a close. I must thank our witnesses very much for appearing today.

Hon. Andy Scott: You said we'd go until a quarter to eleven.

The Chair: Well, we can't go another full round. This is the schedule.

Hon. Mauril Bélanger: Mr. Chairman, you said at the start of the meeting that this would go to a quarter to eleven. I understand we can't do another full round, but we can start one.

The Chair: In fairness, we never have before. We've always gone on even rounds.

Hon. Mauril Bélanger: Well, split it.

The Chair: Okay, I'll go one quick question each, and we can't go.... I'm looking at my watch here. I have to turn around to look at the clock. I'm going to give two minutes, then, to each person.

Mr. Scott.

Hon. Andy Scott: I appreciate what Mr. Fast said about his support for the charter, but I think this goes beyond or above Mr. Fast, given the fact that the Prime Minister clearly articulated that he doesn't believe in the process that is represented by the court challenges program when he said, "Trust me, I don't intend to introduce laws that violate the Constitution."

As a lawyer, Mr. Fast must understand that it isn't for the government to determine whether or not the Constitution is violated by its laws. That's for the court to decide. That's the whole purpose of a charter.

So notwithstanding his support for the charter, I think this is a bigger problem than Mr. Fast.

• (1040)

The Chair: Thank you.

Ms. Bourgeois.

[*Translation*]

Ms. Diane Bourgeois: Thank you, Mr. Chair.

Rather than a question, I have a comment to make.

I am very disappointed that the Court Challenges Program has been abolished for ideological reasons. Nonetheless, I agree with some of the ideas which have been shared. To a certain extent, we should have been able to meet with the program's managers and point out to them what was not working, or what could potentially cause a problem. That would have been one way of showing some degree of civility and decency.

I find it shameful that a program that has been so useful to women, linguistic minorities, and individuals who are in need, has been

abolished. I will be inviting all BQ members to do what I will be doing in my riding, that is condemning the cavalier fashion in which this government has treated democracy in Canada, and those who were of service to those in need.

That is all, Mr. Chair.

[*English*]

The Chair: Thank you.

Mr. Angus.

Mr. Charlie Angus: Thank you.

I think we've discussed most of the issues of relevance today.

I'm going to end on a perspective that I bring from my region. The francophone school boards were not given the right; they had to fight, and there were bitter fights for years about those rights.

In my region, both school boards represent a new level of leadership that has benefited all of our communities. I know personally the grandchildren and some of the grandparents who fought bitterly against the extension of the school system, who are now proudly watching their children being assimilated into the francophone system, because it creates leaders.

It's important to have a program to ensure that in other parts of Canada, our francophone communities are able to access the same rights, which we now have in northern Ontario.

Instead of talking about the negative aspects of rights, we need to see the value of what it means for the Canadian context when rights are fully realized and we start to move forward.

Thank you very much for coming today.

The Chair: Thank you.

Mr. Fast.

Mr. Ed Fast: Thank you, Mr. Chair.

I want to state again—and I appreciate Mr. Scott's comments—that Canada is very fortunate to have a Charter of Rights. We are held up around the world as a role model, and it's up to us to defend those rights. How we do that is usually and often up for discussion.

Mr. Scott did mention that the Prime Minister "doesn't believe in the process". Those were his exact words.

If the process is flawed—as we and witnesses have certainly suggested—then it's not surprising that the Prime Minister wouldn't support the process. I don't believe this Prime Minister would ever support a process that is flawed. Why would he perpetuate that kind of a process and pour public moneys...?

You either cancel the program or fix it. But you're not going to carry on same old, same old—business as usual—doing things that are in essence flawed.

That's been our contention at this table. Cancelling the program was the right decision to make.

Perhaps in the future we'll come up with other ways of providing assistance to those who can't by any means access the courts to defend their charter rights.

But the program was flawed; many Canadians agreed with us.

I'll leave my comments at that, Mr. Chair.

The Chair: Okay, thank you.

For the second time, I thank our witnesses so much for being here today and giving us their answers.

Thank you.

• (1045)

[*Translation*]

Mr. Guy Matte: Thank you, Mr. Chair. We appreciate that this committee has taken the time to hear us.

All members of this committee seem to agree on the need for the program. This is comforting to us. I hope a similar program will be reinstated, despite the fact that the government has abolished one of the best programs to have ever been established, the Court Challenges Program.

Thank you.

[*English*]

The Chair: We'll have a two-minute break, because we have another committee coming in and have to vacate.

• _____ (Pause) _____
•

The Chair: Could I have everyone's attention, please?

Fortunately or unfortunately, we have another committee following us, and we have one more piece of business to do. If everyone could take their places, we can be brief.

This is a motion put forward by Mr. Angus. We discussed it a little bit on Monday. The motion reads:

Due to the ongoing uncertainty of the future of the Canadian Television Fund (CTF) as precipitated by recent announcements from Shaw Communications Inc. and Vidéotron Ltée that they will no longer live up to the terms of their license by withholding contributions to the fund, this committee will investigate the impacts of the CTF's potential elimination on the health of Canada's domestic television production and make recommendations to the House of Commons based on our findings.

You have heard the motion.

Would you like to speak to the motion, Mr. Angus? Be brief, please.

• (1050)

Mr. Charlie Angus: Thank you, Mr. Chair.

I had held off on this motion, at the advice of Mr. Abbott, in that we were expecting a clear response from the minister. That was fully my sense of what would be coming out of the meeting with Vidéotron Ltée and Shaw.

However, given the position that's come out from Vidéotron Ltée and Shaw following the meeting with the minister, I am much more concerned about the situation in the CTF now. The message we are hearing from industry is: "It's dead. Done. Gone." That's a direct quote.

The effects of that will be profound both for domestic television and for anything we look at on CBC. I am asking that we make it a priority to look at it immediately.

I think that within four sessions we can adequately address it. But given the crisis that we are in right now, I don't believe we can afford to wait on this. People are very concerned. I think it is up to us, as the heritage committee, to step into the breach.

The Chair: Okay.

Mr. Abbott.

Mr. Jim Abbott: In keeping with your admonition, Mr. Chair, I will be very brief.

The only caveat is that we have to give some thought to what this does to our CBC review and the scheduling, if we therefore instruct the clerk to do some rescheduling with respect to the CBC review.

The Chair: I've been advised by the clerk that we could work it in. Some of the witnesses who are coming forth on the CBC issue or public broadcasting are still getting their briefs together. We could look into it very quickly. It could happen.

Very briefly, Mr. Angus.

Mr. Charlie Angus: I certainly don't think it will throw things off. The main people we need to talk to about CTF have already been identified, mainly as witnesses within the context of our CBC, by and large. They would have been scheduled to speak. Clearly, if they spoke, they would have been speaking about CTF.

Given the nature of this and the need to get some clarity around this, I'm suggesting that we move it up to the front and deal with it now. If we do not deal with it, anything else in terms of the CBC study becomes very problematic. If we have uncertainty at CTF, we will be in the dark on any further discussions that we have on how the CBC is going to maintain its programming and how it does stuff.

I'm asking to move it up front. I believe within four meetings we could fully address it, and that would be a good jumping point for the CBC study.

The Chair: Okay.

Ms. Keeper.

Ms. Tina Keeper (Churchill, Lib.): Mr. Chair, I agree there is an urgency. I'm in complete agreement with Mr. Angus that we move the CTF review up in front of the CBC. We feel domestic television production may be in a crisis. I think this requires our immediate attention.

The Chair: Thank you.

Mr. Abbott.

Mr. Jim Abbott: Just for absolute clarification, so that we're all on the same page, we're saying that the four sessions we'll be having on the CTF are dealing with the CTF. The information from those would then be beneficial to move forward into the CBC. We're not dealing with the CBC when we're dealing with the CTF in those four sessions. I say that just for clarity.

•(1055)

Mr. Charlie Angus: No, sorry, the CBC is part of it because the argument that's been launched by Vidéotron and Shaw is that they do not want their money to be tied in any way with the public broadcaster. So the CBC will be a part of it when we're dealing with the CTF. We need to look at CTF and its validity in order to understand the CBC, so there are connections.

The Chair: I'm going to be very short here and then we're going to quickly call the vote.

The one thing is that there are two dates we can't change: Thursday, February 8, which is already set; and February 13, when the minister is coming here. So we could start it on February 15. That's how close to being frontloaded we can be on that.

I'll ask for a vote on Mr. Angus' motion.

(Motion agreed to)

The Chair: It's unanimous.

The meeting is adjourned.

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