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Chair

Mr. Anthony Housefather

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• (1530)

[English]

The Chair (Mr. Anthony Housefather (Mount Royal, Lib.)): Good afternoon, ladies and gentlemen, and welcome to this meeting of the Standing Committee on Justice and Human Rights as we resume our study on access to justice with the component of legal aid.

I am very pleased to welcome Mr. Duvall to the committee for the first time.

I thank all the regular members for being here.

[Translation]

Today, two groups will testify before us. We welcome the Association des juristes d'expression française de l'Ontario, represented by Ms. Andrée-Anne Martel, the executive director.

Welcome, Ms. Martel.

Ms. Andrée-Anne Martel (Executive Director, Association des juristes d'expression française de l'Ontario): Thank you.

[English]

The Chair: We also have the Legal Services Society represented by Mark Benton, who is the chief executive officer.

Welcome, Mr. Benton.

As I explained to both witnesses, we're going to start with a presentation from each group and then move to questions from the committee.

[Translation]

We will begin with Ms. Martel.

You have the floor.

Ms. Andrée-Anne Martel: Thank you very much.

Mr. Chair, honourable members of the committee, hello.

Access to justice goes beyond legal aid. While legal aid is important to ensure access to justice, its availability is restricted by income and the field of law in question. Access to justice in both official languages goes beyond access to legal aid. In this regard, we are submitting two recommendations today.

Here is our first recommendation:

The House of Commons Standing Committee on Justice and Human Rights recommend that the federal government make sustainable investments in legal

projects aimed at helping Canadians understand their rights in the official language of their choice.

This first recommendation stems from the following issue: the question of access to justice is not an issue for multinational corporations. It is an issue for middle class citizens who become involved in day-to-day legal issues. Here are a few examples: employment, divorce, child custody, housing, and social assistance. Often, people dealing with such legal issues do not have the financial means or access to information in the official language of their choice to obtain the legal services they need. They make too much money to qualify for legal aid, but not enough money to afford a lawyer. In this regard, the AJEFO believes the federal government can further equal access to justice in both official languages by supporting innovative projects that complement the existing traditional legal aid model.

The AJEFO has spearheaded two such projects: first, the Ottawa Legal Information Centre, the first of its kind in Ontario; and second, CliquezJustice.ca, an easy to understand legal information portal. I will give you a concrete example of the services offered through these projects. Take Beatrice, for example. Beatrice is a single mother of three. She works as a cashier in a local store. Beatrice is suddenly fired without reasonable cause. Her home is at risk and this situation will affect her custody of her children. Beatrice needs access to justice, in the language of her choice, but she makes \$25,000 per year and therefore does not qualify for legal aid services.

Our organization, the AJEFO, has developed an approach to help Beatrice find the information needed to facilitate her access to justice: Beatrice visits the Ottawa Legal Information Centre, where she is welcomed in both official languages and where she can speak French. She has a free meeting with a lawyer, who refers her to CliquezJustice.ca to help her understand her rights in terms of employment, housing, and child custody. Without providing legal advice, the lawyer gives Beatrice the legal information she needs to take the appropriate actions to resolve her issues. Thereafter, Beatrice can navigate CliquezJustice.ca to further her research. That was our first recommendation.

Here is our second recommendation:

The House of Commons Standing Committee on Justice and Human Rights recommend that the federal government invest in the creation of legal tools for legal professionals to help them offer services in the official language of their client's choosing, specifically in official language minority communities.

We believe every Canadian faced with a legal issue should have access to a legal professional, such as a lawyer, who has the necessary tools—precedents, for instance—to offer legal services in the client's preferred official language. This second recommendation stems from the following issue: most legal tools are only available in English in common law jurisdictions.

I'd like to share an anecdote that we hear far too often from our members: New parents Emile and Mathieu meet with their lawyer, Mr. Leblanc, to draft their will. They live in a common law jurisdiction. Mr. Leblanc receives instructions from Emile and Mathieu in French. However, Mr. Leblanc only has access to an English template of a will. Emile and Mathieu can either choose to receive an English will or pay to have the template translated. We would argue that imposing extra costs on them does not provide equal access to justice in both official languages.

• (1535)

The AJEFO has a solution to this. In 2013, we launched a Canada-wide portal called Jurisource.ca. We provide free legal tools such as precedents, lexicons, checklists, forms, and professional development training. These tools are just as beneficial to members of the public as they are to professionals working in the legal field. They reduce research time for legal professionals as well as the costs incurred by the client. Let's take the scenario involving Mr. Leblanc: with a French precedent, available on Jurisource.ca, Mr. Leblanc can draft Emile and Mathieu's will in French.

In closing, I highlight that access to justice remains a real issue for all Canadians. However, francophones living in linguistic minority communities face the added challenge of obtaining equal access to justice in French. Statistics demonstrate that marginalized and middle class Canadians often do not have adequate access to justice. This challenge is exacerbated when clients must choose between proceeding in French, increasing delays and consequent additional costs, or proceeding in English.

I hope to have provided a clearer picture of alternate solutions to improve access to justice, beyond the traditional view of legal aid.

Please feel free to visit our offices in Ottawa at 85 Albert Street, suite 1400. I would gladly answer any questions you may have.

Thank you very much.

The Chair: Thank you very much for your presentation.

[English]

We're going to go to Mr. Benton.

Mr. Benton, the floor is yours, sir.

Mr. Mark Benton (Chief Executive Officer, Legal Services Society): Thank you very much.

Committee members, ladies and gentlemen, I'm going to speak broadly about legal aid in Canada. I will speak briefly to some issues of indigenous access to justice, which legal aid plans are working on right now, and I would welcome any questions more broadly that you might have.

I've spent about 30 years working in and around legal aid. I also get to do some international development work in legal aid, so I have

a perspective that's a little broader than do many people who work in legal aid on a day-to-day basis.

I agree that access to justice is more than legal aid, but legal aid is the principal tool for access to justice for many low-income people in this country. The problem is that we really don't have a national legal aid program. What we have is a series of 13 provincial and territorial legal aid programs, with very little consistency among them. They don't even define what a case is in the same way. What we see are really historical funding patterns rather than strategic and purposive funding patterns. This is particularly so with the federal funding, which is typically, for provinces, a contribution agreement-style funding to provincial legal aid plans. Territorial funding is a little bit different and involves more details than I'll go into here.

The real problem is that we have funding models that were designed in the 1970s and that have deteriorated significantly since then. They started as fifty-fifty cost-sharing agreements, and are somewhere in the low twenties right now in terms of the contribution value. What we have is very little strategic development and not quite as much innovation as we'd like to see.

My first recommendation is that there ought to be increased, sustainable, and strategic federal investments in legal aid. It's important. It's important for how the justice system works, not just for how people experience it or how they resolve their problems but for the efficiency of the system itself.

My colleague referred to financial eligibility, the number of people who don't get legal aid. In the 1970s when that fifty-fifty cost-sharing agreement came to be, financial eligibility standards were very flexible. They were based on a real ability to afford a lawyer. These days, the highest most generous ones are one of the poverty measures. Below that, there are many legal aid plans that have eligibility standards that fall below Canadian standards for poverty. It is shameful, but it's a reality of what happens when funding becomes squeezed at a number of different levels.

My second recommendation is that we have a sense of a national standard. A federal national standard for eligibility for legal aid is important, it's valuable, and it's what should be central to what Canadian legal aid is. That may differ from community to community as costs of living differ. Nonetheless, we manage to define poverty in ways that are flexible in that regard. There's no reason that ability to afford a lawyer couldn't be done the same way.

Third, we don't have a standard for legal aid beyond the bare minimum court-required standard for criminal legal aid and for child protection legal aid. There's nothing that we could call a Canadian standard for legal aid. As is probably obvious to you, that could be an area for federal engagement. It is not at the moment. It's important. It's important because when we go across the country, there are places in which, for example, family legal aid, even for those who are eligible for it, only gets them a restraining order. It doesn't resolve the problem, and it doesn't move them to a resolution and allow them to get on with their lives.

Those are my broad comments about legal aid.

There's a third area that's increasingly prominent from an international perspective, and that is legal aid plans being a policy adviser to government, largely because they see more areas of the justice system than do other parts of the system. They represent criminal defendants, family litigants, and refugees. They often provide public legal education and legal information. They are out-of-court problem-solvers. They manage large cases, and in some cases, they are actual policy advisers. This is something that the International Bar Association is recommending in its new set of guidelines for legal aid, and it seems to be an area in which there's a value to be added and a way in which legal aid can assist through committees like this and assist government broadly in policy development.

Those are, generally, my recommendations, particularly with regard to legal aid.

• (1540)

With regard to indigenous access to justice, this is a big deal for legal aid. In British Columbia—the statistics I have—30% of our criminal clients are of indigenous heritage. About 28% of our family clients are of indigenous heritage, and about 42% of our child protection clients have indigenous heritage. Now I know those are just numbers, but the number that goes with those is 6%. That's the indigenous population in British Columbia. They are suffering legal problems at a higher rate than the general population. They're marginalized in significant ways from justice system functions, and there is very little that's being done to address that systemically within the justice system.

Looking at our own domains in British Columbia, we discovered that, notwithstanding the cultural sensitivity training and all the other pieces that we do to try to build effective bridges into those communities, our services were found to be unfriendly, unaccessible, and simply not communicated in an effective way. That's because legal aid plans tend to be run by lawyers. They tend to be administered by lawyers. They tend to be focused on justice system values rather than the importance of what people want when they appear in front of us. This isn't peculiar to indigenous communities; it's just extreme in indigenous communities.

Here is a list of recommendations I have in that regard. My recommendations are based on about three years of consultations down at the community level. These are not political consultations but rather more pragmatic ones.

There needs to be funding to establish and operate a network of community advocates to support people using the justice system.

These are not lawyers; they may not even be court workers. They are people in the community who know what's happening. In health care there are navigators, and an analogue to that is needed in justice.

There ought to be professional development and training to build intercultural competency within the justice community, including skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism. This isn't just about lawyers, though it includes lawyers. It includes everybody in the system. The Truth and Reconciliation Commission calls to action cover that quite clearly.

Provide funding to support the availability of quality-assured Gladue reports. As you may know, Gladue reports are a sentencing aid that apply to the indigenous population. They were set in the mid-1990s by federal legislation. I'm sure it won't surprise you that there are 13 justice jurisdictions, and there are 13 different ways Gladue reports are prepared and presented. There is no quality control nationally. There is nothing that you would recognize really from one jurisdiction to the next that it's a Gladue report other than the title. This is an area that was introduced through federal legislation. It has been litigated several times, but we still are not getting to the place where quality reports are prepared and presented in every jurisdiction in this country, and they need to be.

I recommend the inclusion of indigenous perspectives and practices in the existing system through committing to substantially increase the number of indigenous judges and lawyers in ways that we are not doing yet. Funding for first nations courts, Gladue courts, and other indigenous-based practices that appear... In British Columbia we have first nations courts. Anecdotally, at least in the studies under way, they appear to make a real difference, particularly to serial offenders who are held accountable by the elders of their communities rather than a judge, though the elders have the support of the judge. To speak to those folks, who as you might imagine are on a legal aid plan, often means they're frequent flyers for us. To have them leave the system is a huge achievement, and we support both the training of the elders and the provision of counsel in those courts because it gets better results.

The federal funding for restorative justice programs is a good start, but it's only just a good start. It has been there for years. It doesn't, at least from the legal aid perspective nationally, appear to be coherent and strategically focused. It should be, and it should be expanded. It gets great respect in the communities where it works, and the communities themselves benefit because the capacity of the community to address legal issues is addressed effectively.

Mr. Chairman, those are my comments in the time available.

• (1545)

The Chair: Thank you very much, Mr. Benton.

We very much appreciate the interventions of both witnesses. You brought very important perspectives to us. Now we're going to move to questions. We're going to start with Mr. Nicholson.

Hon. Rob Nicholson (Niagara Falls, CPC): Thank you very much, Mr. Chair.

Thank you very much for being here with us today. You underline just how complicated in many ways all these issues are, and we appreciate your input.

Ms. Martel, I'll start with you. One of the things that you say you provide people at certain of the projects that you've put together is legal information but not legal advice. What in particular would be holding that back? Presumably these people are solicitors and they're members of the legal community. Why wouldn't they give them advice as opposed to just providing them with forms?

• (1550)

Ms. Andrée-Anne Martel: Our model is based on the existing model in Quebec, which is called the Centres de justice de proximité. Quebec currently has about nine centres. In 2012 and 2013 when we were examining the feasibility of opening such a centre, the Ottawa Legal Information Centre, studies were done to see if the centre would offer legal information or advice. It is proven that legal information does help an individual who is facing a legal issue. At this centre we limit the information to legal information.

If we take the example of Béatrice coming into the centre, she would meet with a lawyer for half an hour and receive legal information. What do I mean by this? She receives explanations on the law. If she's facing a family law issue, we'll speak about children, custody, and access to her children. We'll explain to her in simple terminology her housing issue and her employment issue. She receives this information and can then navigate the system by herself.

If she decides to see a lawyer and seek legal advice, she would be saving her time in terms of being better prepared for her meeting with the lawyer. She is also saving court time. If she does decide to self-represent before the court, she is better prepared and has the documents in hand, thus saving the province and the country money. About 90% of the individuals who visit the Ottawa Legal Information Centre are self-represented litigants. I'm sure you've seen the studies indicating that about 50% to 60% of litigants are self-represented.

Hon. Rob Nicholson: You made a very good point at the beginning.

You said the access to justice and the issues within it should not be focused on corporations. That's not the problem in our system. It is individuals who are challenged by all these different issues and, many times, problems.

One of the things I know you touched upon was this whole idea of translation and the two systems of law that we have in this country. If you look at the Canadian judicial system you have the common law in nine of the 10 provinces. Translations aren't always perfect and sometimes things mean different things. If you talk about a mortgage

it has different concepts in the civil law as opposed to the common law, so it actually adds to the complications that we have. I imagine this is one of the other things that you see on a regular basis in trying to handle two systems of law and two languages in this country.

Ms. Andrée-Anne Martel: Absolutely.

That comes to our second recommendation that touches on tools for justice-sector professionals. You were speaking about mortgages. In French that's an *hypothèque*. You need tools to ensure that our justice-sector professionals have the tools to serve their clients in French, or in the official language of their choice.

Let's take our example again. Émile and Mathieu want to have their will in French. With a will in English, when a lawyer is only working with a precedent that's only available in English, they have an option. They can either translate it to French or proceed in English. If they do decide to proceed in French they have to incur the cost of translation, which is unfair.

Hon. Rob Nicholson: Thank you very much for that.

Mr. Benton, we've heard a number of things about the different things the federal government could be doing. You brought up one interesting point about the Gladue decision and the papers that are involved with that. You said there's no standardization across the country. I've actually heard sometimes from different people working within departments of justice across Canada and our territories that an argument can be made that there's a good reason for that, because it's not the same in New Brunswick as it is in Nunavut. British Columbia has different issues as well, so the idea of the standardization actually can be a little more challenging here.

Again, there's a certain push-back that you get. Just because something works in St. Catharines, Ontario, doesn't mean it will necessarily work in Whitehorse. Do you know what I'm saying?

• (1555)

Mr. Mark Benton: I do, and I agree, particularly when we look at the variations in indigenous cultures in Canada. Frankly, it's basically what the Gladue reports are reporting on. They'd have to be developed in different ways.

At the same time, the concern I'm expressing to you is that it is pretty haphazard. There's no effort being made and one could now be made, since we now have close to 20 years' experience with Gladue reports, to figure out what the best practices are and at least share them from jurisdiction to jurisdiction to at least promote best practice. I'm not a big fan of saying, "Here's the form to fill out." That's not what I'm proposing, but I do believe that after 20 years we ought to be doing better than we are and we ought to have creative—

Hon. Rob Nicholson: Do you see any willingness on the part of the provinces to co-operate with the federal government? My experience, or the experience of many, is that the provinces say please send us more money and thank you very much. Actually, I shouldn't say "thank you". It's actually "more". You know what I mean, "Send us more money."

Are you starting to hear that the provinces would be more willing to get on the ground here in terms of providing services? The argument could be made that if the federal government is going to be paying directly for it, that takes a little of the pressure off you. However, very often over the years, I didn't get that from them. They usually would say to just send them the cheque, and send them more, and they would take care of it.

On the other hand, you have been studying this for three years. Are you seeing any change in that?

Mr. Mark Benton: First of all, I think that tune is a well-worn tune that everybody knows the words to. It's the common tune and continues to be the common tune.

I think this issue, and I'm speaking from a legal aid perspective rather than a provincial government perspective—

Hon. Rob Nicholson: Fair enough.

Mr. Mark Benton: For example, in Nova Scotia it's the judges who develop and pay for the Gladue reports. In B.C., it's the legal aid plan. In Ontario, the legal aid plan does it through friendship centres. There are a variety of different approaches.

Of course, I'm one of those folks who sings the songs to the provincial government that sound a lot like the ones the provinces sing to the federal government about funding. I think the reality is that, because there is no common approach, we get disparate sources.

To answer your question in a straightforward way, I have not heard the provinces changing their language around that issue. However, I think the Truth and Reconciliation Commission's calls to action provide a different way to frame the conversation around indigenous access to justice that's important. This is an example where that may be put forward. I'm here recommending it to you because I feel it's not being promoted as it should be.

Hon. Rob Nicholson: Fair enough.

Thank you, Mr. Chair.

The Chair: Thank you very much.

[Translation]

Mr. Boissonnault, you have the floor.

Mr. Randy Boissonnault (Edmonton Centre, Lib.): Thank you, Mr. Chair.

Ms. Martel, thank you for your presentation.

As you know, francophones living in linguistic minority communities must by necessity learn to live in the language of the majority. However, they have rights associated with their mother tongue. I think it is important to share with my colleagues the real and practical impact felt by francophones when there is lack of access to a fundamental right, the right to access to a justice system in French.

How are people in linguistic minority communities, who must access services such as health and education services in their second language, affected by this situation?

Ms. Andrée-Anne Martel: Thank you, Mr. Boissonnault.

For a francophone in a linguistic minority community, bringing proceedings in French is more expensive and takes more time. I can give you some practical examples. I talked to you about Béatrice's situation, but I can go even further.

AJEFO members often share anecdotes with me. For example, in Ottawa, express motions are processed on Friday mornings. The lawyer arrives; his documents are prepared in French. But once they get to the express motion, which lasts from 15 to 20 minutes, we find out that the judge is a unilingual anglophone.

What happens then?

We cannot pursue the process, because the judge does not understand the content of the documents. The 15-to-20-minute motion is delayed until the afternoon. This means in practice that the client, who has paid a lawyer to prepare the motion, will have to cover the lawyer's fees for a full day.

I can give you another example, a situation that happened in a court in Ottawa. This concerned a civil matter motion lasting an hour or less, for which we were entitled to a bilingual proceeding under the Courts of Justice Act. We called the court the day before the presentation of the motion and were told that no bilingual judge was available. The motion was therefore delayed three, four or five months.

For the client, the real consequence is that the lawyer, who was already ready, has to prepare a second time. This consequently implies higher costs. There are also more delays. Ultimately, the person who wanted to have his case dealt with in French suffers. Like Béatrice, this person can choose English or wait longer and pay more to have his case dealt with in French.

• (1600)

Mr. Randy Boissonnault: As you know, our government has made it very clear that it encourages the appointment of bilingual judges. This involves all levels and all judges in the country.

What can we do, as a government, to help young people understand, even before they begin to study law, that practising in French and becoming a bilingual judge one day is an asset?

This affects practice, but also everything having to do with access to justice. I know that certain organizations in the country are your counterparts.

What is your opinion on this subject?

Ms. Andrée-Anne Martel: Mr. Boissonnault, as you rightly said, young people must be encouraged to study law in both official languages. In Edmonton, for example, there is the Association des juristes d'expression française de l'Alberta. The best way to promote this is to work with organizations in the field, which are in contact with these young people and can encourage them to study in both official languages. There must be a whole process to raise awareness not just for young people, but for the population in general.

I will return to the examples of the projects I mentioned that are serving people in both official languages. For example, the Ottawa Legal Information Centre offers its services in both languages and does not discriminate based on language. People who turn to our centre obtain services in French and in English. If they speak a language other than French or English, such as Spanish, we can also serve them, because we have a partnership with an interpretation service to ensure that we can offer services in the language of the justice system user.

Nevertheless, we must raise awareness among young people who are going to continue their education, but also among the population in general.

Mr. Randy Boissonnault: I have two more questions.

You represent Ontario, home to half of the millions of francophone Canadians outside Quebec. There are already problems in Ontario. To your knowledge, what is the situation in Alberta or in the Atlantic provinces? Is the situation worse than in Ontario, or are there provinces where access to justice in French is adequate?

Ms. Andrée-Anne Martel: That's an excellent question, although I can't speak on behalf of Alberta or the AJEFA. However, I can tell you that recent reports about access to justice indicate that there is a national crisis: almost half of Canadians will face a legal problem during a three-year period.

Throughout Canada, more and more people are representing themselves. As I mentioned just now, 50% to 60% of people represent themselves in court, which can lead to costs and delays for the courts.

Certain projects are being carried out in provinces such as yours. For example, a legal information centre has been created in Calgary, in Alberta.

Mr. Randy Boissonnault: I have one more observation to make.

In Canada, the case law of the Civil Code is excellent and is recognized throughout the world, but primarily in the French-speaking world. There are a huge number of judgments that are known mainly in the French-speaking world, because we have not found funding to translate the excellent case law of the Civil Code. This case law can affect judgments in English. Can you tell me what you think about this?

Ms. Andrée-Anne Martel: If I understood correctly, you are asking me about common law judgments that are not available either in French or in English.

• (1605)

Mr. Randy Boissonnault: No, it's the reverse.

Ms. Andrée-Anne Martel: Ah, you are talking about common law judgments in English that are not translated into French.

The Chair: Mr. Boissonnault's question dealt with judgments in French from jurisdictions that have the Civil Code, including Quebec, and are not translated into English.

Ms. Andrée-Anne Martel: I can't really comment on civil law. For our part, we focus on common law provinces and territories. Perhaps the Quebec Community Groups Network should be asked whether needs exist in the area or it is lacking.

That is my response to that.

Mr. Randy Boissonnault: Thank you.

[English]

The Chair: Thank you very much.

Monsieur Duvall.

Mr. Scott Duvall (Hamilton Mountain, NDP): Thank you.

Thanks very much for coming this afternoon.

To Mr. Benton, how much does the federal government actually provide in funding for legal aid? Is it for criminal matters? Is it for civil matters?

Mr. Mark Benton: I can't give you this year's numbers—I just don't have them in my briefcase—but I can give you last year's numbers.

Let me put the numbers aside and tell you that there is a federal-provincial contribution agreement that covers criminal law and immigration law. It is a relatively complicated formula that divides a fixed sum of money among the provinces. There's a separate sum for the territories for those two areas. For immigration, six provinces are involved—none of the territories are—and they divide a sum among them based on another relatively complex formula.

Civil and family legal aid was at one time funded through a fifty-fifty cost-sharing agreement. In the mid-1990s it was rolled into the Canada assistance plan, where it stayed. No sum is identified for that, but in the federal-provincial discourse, as I'm sure it won't surprise you, the federal government says there's money in there for civil legal aid and the provinces say, "Show me". The legal aid plans rely on the provinces for the money and don't get engaged in those discussions.

I hope that's a helpful response to your question about how it's paid.

Mr. Scott Duvall: Yes.

Mr. Mark Benton: I can certainly provide the details of what's paid.

Mr. Scott Duvall: Okay.

Are there caps put on? When a person comes in and makes an application, what is the income threshold for them to be...?

Mr. Mark Benton: There are 13, one for each province and territory.

In British Columbia, the levels are based on the market basket measure of poverty set by Statistics Canada. It's the most generous of the standards outside of the territories.

In the territories, they tend to be more generous. They're funded in a different way. The difficulties of making justice work in the territories are such that this just makes sense.

Mr. Scott Duvall: To help everybody in this community, in dollars and cents, what would the threshold be now?

Mr. Mark Benton: For a single person, it's about \$1,400 a month.

Mr. Scott Duvall: Okay.

Mr. Mark Benton: I mentioned in my introductory comments that one of the problems is that the number has been pushed farther and farther down in most jurisdictions in Canada as a result of current levels of funding.

Back in the early eighties, it was common for legal aid to ask if you could afford a lawyer, and it actually had a test to look at a person's ability to pay. Since then, they have moved to a more arbitrary measure. If your income or assets are above that level, you won't get legal aid whether or not you can afford a lawyer.

Mr. Scott Duvall: Are there caps placed on the number of hours provided by lawyers for a criminal case? Are there caps for a civil case?

Mr. Mark Benton: Yes, caps on the number of hours are common. About half the plans in Canada rely on staff lawyer programs, so they are managed in a different way.

Those plans that use private lawyers—B.C., Alberta, and Ontario—tend to have a fixed number of hours. Sometimes they're staged. Sometimes they're subject to additional approvals. Sometimes, typically in the case of very large criminal cases, every hour is managed. Lawyers come and say what they need, and they receive approvals.

Mr. Scott Duvall: Do they do the same for civil cases?

Mr. Mark Benton: For civil cases, it's typically a block of hours for particular levels of service.

Mr. Scott Duvall: Why the difference?

Mr. Mark Benton: Between criminal and civil...?

Mr. Scott Duvall: Yes.

Mr. Mark Benton: Criminal services tend to be paid on a block tariff level. You would get so much for a trial or so much for a half-day of trial. Partly, there's a commonality among them. They just tend to be slightly different business models.

Lawyers practising criminal law tend to be more used to that. Lawyers practising in the family area tend to be more used to billing by the hour. That would be the broad reason for it. It's not necessarily so in other legal aid plans, and other jurisdictions outside of Canada do it differently.

•(1610)

Mr. Scott Duvall: If there's a cap on them—let's just say, in B.C.—what happens if the lawyer needs more time? What happens to the case?

Mr. Mark Benton: If there's money available in a given year, my managers will have discretion to grant additional resources. We're one of the plans that has a capped budget. We cannot run a deficit, so they run it that way.

Typically, what happens is that sometimes clients go without lawyers.

Mr. Scott Duvall: One important question is this. As I understand it, the Legal Services Society spent \$9 million in 2016 on family cases. This was down from \$18.1 million in 2001.

Mr. Mark Benton: Yes.

Mr. Scott Duvall: Why such a massive drop?

Mr. Mark Benton: The provincial government decided to no longer fund traditional models of family legal aid and instead to fund only emergency levels of service.

Mr. Scott Duvall: It's a political decision.

Mr. Mark Benton: That was a political decision.

The literature on legal aid funding indicates that it's typically a political decision. It's the only way they can explain why things vary so much. Even within Canada, the variation in per capita funding for legal aid is substantial, but nary 100%.

Mr. Scott Duvall: Do you believe the federal government should provide funding specifically for civil legal aid, as it does for criminal legal aid, so that there is no political interference?

Mr. Mark Benton: I think it's important that in Canada we have high levels of consistency in our justice system, and legal aid is an important component of that.

In Canada, we have a standard framework for what judges are paid. We do a number of things that make sense in the scheme of things, but around legal aid there's a much higher level of diversity—a troubling level—than you see in other social services in Canada.

What I'm saying is that I believe there are important strategic issues in justice that need to be addressed, and the federal government has a role in that. It's not just about legal aid, but legal aid is a tool to that end, Mr. Duvall.

Mr. Scott Duvall: Okay.

I have just one last question, and I thank you for the time.

I guess where I'm going is that there should be a national strategy of what funding should be allowed, instead of a political provincial one, case by case. If the province is going to cut funding for people who need representation for civil matters, what happens to all the other cases? Do you just say I ran out of funding and there's no representation?

Mr. Mark Benton: One of the things that happens is that you get an awful lot of people in court without lawyers and with serious legal problems that go unresolved, and that tends to push up health and social service costs. There's quite a bit of social science in that area right now.

Mr. Duvall, at the risk of going too far into detail, one of the things that the Association of Legal Aid Plans of Canada and the Canadian Bar Association have done, as a collaboration, is to come up with seven benchmarks for legal aid that describe what that broad framework looks like. I will be sure to include that in my brief.

The Chair: Thank you very much.

[*Translation*]

We now go to Mr. Fraser.

Mr. Colin Fraser (West Nova, Lib.): Thank you, Mr. Chair.

Thank you to both of you for your presence and your presentations. They are much appreciated.

Ms. Martel, I will begin with you.

You mentioned the problem with delays in the justice system. We are currently trying to solve the problem mentioned in the Supreme Court decision, the Jordan decision. According to your observations, do criminal trials held in French in Ontario take longer to complete? Is it true that, because of procedural delays, it can take longer to bring a case to trial?

Ms. Andrée-Anne Martel: Thank you for your question.

In fact, since July 8, 2016, we have had the Supreme Court decision on the Jordan decision, which states that all criminal cases must be heard within 18 months for cases heard in the court of justice and within 30 months for cases heard in the superior court of justice. In Ontario, and throughout Canada, we are currently seeing the effects of the Jordan decision.

Firstly, criminal cases have priority. We are moving forward in this respect to ensure that there are no stays of proceedings, as has happened since the Jordan decision.

Secondly, because many criminal proceedings are dealt with as a priority, civil proceedings are set aside. I will give you a concrete example. I often meet with members of the AJEFO. One of them contacted the court, the Ottawa courthouse, to ask the question directly. He asked whether a motion drafted in French took longer to handle than another in English. The response was that the motion in French takes one month longer to be dealt with.

The answer to your question is that yes, if someone chooses a trial in French, there is indeed an impact on the proceedings, and there are additional delays, additional costs and harm caused by these delays.

• (1615)

Mr. Colin Fraser: Thank you for your answer.

Is it also a challenge, in Ontario, to find lawyers who agree to argue a case in French? Is it difficult to find lawyers who have the capacity to speak French and give an opinion in French? Is finding lawyers a challenge?

Ms. Andrée-Anne Martel: The short answer is yes.

The long answer requires an explanation.

Lawyers who speak French, who would be able to practise law in French and meet their clients' request in the official language of their choice, are not always equipped to serve their clients in French. We are talking about precedents and forms that are not available in French in the common law provinces and territories.

Going back to my example: Émile and Mathieu want to have a will drafted in French. This seems very simple in practice, but when the lawyer does not have access to templates in French, he must translate an English version. The clients will have to pay for this translation.

What we are trying to emphasize in our remarks today is that there is a need for legal tools for legal professionals. These tools will be identified and posted on our portal, Jurisource.ca. The portal was launched in 2013. In the space of a few years, we have grown from about 600 visits per month to 7,000 visits. It is therefore meeting a need.

Mr. Colin Fraser: Thank you.

Is there any training for lawyers who speak French as a second language and would like to gain skills and give opinions in French in order to give their clients good representation?

Ms. Andrée-Anne Martel: I can give you an answer with regard to the province of Ontario. Currently, there are different organizations that offer professional training in French, including our organization, the AJEFO. We offer training in French to ensure that we can respond to this linguistic insecurity, as you mention. We want to ensure that our lawyers, our members, and our legal experts are capable of and comfortable with proceeding in the official language of their choice. Suppose, for example, that I am a lawyer and I work in family law. Ms. Benton, who speaks French and whose language rights I have explained to her, wants a trial in French. Thanks to the professional training offered by the AJEFO, for example, it will be possible to meet her needs.

The AJEFO holds an annual conference, where, for two days, we can answer any questions concerning professionalism and substantive legal issues. We also offer professional training in family mediation and oral arguments workshops. Other organizations in Ontario, such as the Law Society of Upper Canada, the Canadian Bar Association, and the Ontario Bar Association, also offer professional training in French.

Mr. Colin Fraser: That's very good. Thank you.

[English]

Mr. Benton, I'll turn to you. I appreciate the two recommendations that I highlighted here on my page, which are first of all, to have a standard for the ability to afford a lawyer so that there's a threshold to qualify, and then standard of service, so there's a commonality of services delivered by legal aid across the country. Do you think, though, that those two things could be separated to some extent, whereby, for example, there's a right to counsel, and you therefore could qualify at a lower threshold than if you had to have a lawyer give you advice on a family matter or even a civil matter?

Do you see there being a different standard there, rather than a one-size-fits-all for every service?

• (1620)

Mr. Mark Benton: Yes. I think one-size-fits-all only works for toques in Canada. I think we need to tailor justice to local circumstance. It's a terrific example. Those large criminal cases, which virtually no Canadians can afford to defend, are often publicly funded for the very reason that you've identified. There are some legal expenses that nobody can afford, but that we need to ensure representation is provided for. There needs to be flexibility in the system.

When I talk about guidelines or standards, we can talk about them in meaningful ways, just the way we talk about poverty in meaningful ways. We know that it costs more to live in Toronto than it does in Kamloops, and we can set standards accordingly.

Mr. Colin Fraser: Great. Thank you very much.

The Chair: Thank you very much, Mr. Fraser.

Now I think we'll go around the table and see who has any questions, and we'll do our short snappers.

Who has questions?

Mr. Duvall, back to you, and then Mr. Boissonnault, and Ms. Khalid.

Mr. Scott Duvall: Thanks. I have one quick one.

Mr. Benton, you mentioned that the reason there was such a drop of funding out in B.C., from \$18 million down to \$9 million, was because of a political decision. Would you agree with me that they're saying criminal cases supersede family cases, or family cases are a lower priority?

Mr. Mark Benton: I think, Mr. Duvall, I'd have to put it in the framework of the attorney general of the day, who felt strongly that it wasn't appropriate for the province to fund people to have lawyers to argue in court about custody, access, and division of assets. He was quite clear about that. He was quite open about it. I'm happy to send you some of his media interviews. I was following them fairly closely at the time. It is the most restrictive family coverage in the country, except perhaps in New Brunswick. We still are basically running services that are triggered by emergencies.

But yes, it was basically a political decision around funding. In straitened times, when cuts needed to be made, what was government not prepared to continue to do.

Mr. Scott Duvall: Thank you.

The Chair: Thank you.

Mr. Boissonnault.

[*Translation*]

Mr. Randy Boissonnault: Thank you, Mr. Chair.

There is a possibility that the Association des collèges et universités de la francophonie canadienne, the ACUFC, is making use of. It contacted medical schools, because the deans of these schools were basically saying that there were not enough francophones enrolled to serve Canadians in official language minority communities in a robust way. The ACUFC contacted each student in the country's medical schools and conducted a survey to identify francophones and francophiles who were not enrolled in medical programs in French. They identified 640 medical students who could speak French and wanted to offer medical services in French. I would like to know if you or your counterparts are able to ask the same questions of students enrolled in law schools throughout Canada, to find out whether they intend, as part of a future law career, to offer services in French.

Ms. Andrée-Anne Martel: Thank you, Mr. Boissonnault.

The short answer would be yes. It's obviously a very interesting approach. Could the reality of medicine apply to law? Absolutely. Currently, in Ontario, we have the common law program in French. Are there students, in Ontario, who decide to study at the University of Ottawa Faculty of Law in English, even though they are francophones or francophiles? Absolutely. Is this a process that we should imitate? Yes, and I am taking note of that.

The Chair: Thank you, that was an excellent question.

Ms. Khalid, you have the floor.

[*English*]

Ms. Iqra Khalid (Mississauga—Erin Mills, Lib.): Thank you, Chair, and thank you both for your testimony today.

Mr. Benton, you mentioned that funding models are outdated with respect to legal aid across the country. You also went on to talk about a possible national standard for legal aid.

We had some discussion about that. I am wondering if it is possible, first off, to update or modernize the funding system while also creating benchmarks as conditions for provinces in terms of the implementation of legal aid across the country. If so, what kinds of benchmarks would you recommend?

• (1625)

Mr. Mark Benton: I mentioned earlier that the Association of Legal Aid Plans had gotten together with CBA and identified benchmarks, and I can provide those to you. It wasn't possible for me to talk to you about them meaningfully in 10 minutes, but they are important and valuable, and designed to be malleable to local circumstance, even within provinces and territories.

I believe that in Canada we have mastered the art of federal-provincial relations around setting standards while allowing local variations in ways that work. I work in other countries, in other federations, and they don't do it as well as we do. We value the diversity. We recognize that uniformity isn't one of the things that works for us. I think the fact of two founding nations sort of guaranteed that in our mix. I believe it's all possible. I think we do it with medical care in important and valuable ways, and that's a place we can look to. I think we do it in education, as well.

Ms. Iqra Khalid: In what ways can funding models be updated or modernized?

Mr. Mark Benton: I think that part of the piece... Mr. Nicholson's questions alluded to this earlier, in terms of where the provinces are going to be on this if you're going to say... Is it "We just want more money; leave it to us to spend"? I think, in fairness, that's often what everybody's heard.

I think the reality is that it's time to change the conversation. If you don't mind, I'm going to turn the question on its side for a minute and say that when I'm working in other countries people really have a difficult time understanding how we could have 13 different justice systems in Canada—14 actually. They have that difficulty, and I think Canadians do, too.

We have a sense of what ought to be basic standards, just as we do with health care. I think that model of our emotional attachment to health care and what we think and feel about it is what we need to bring to the discussion of how justice works in Canada. I think it's all doable. I think we're pretty good at it.

I will send you the material that I believe provides that standard. I do want to stress, though, that you can't do that at the current level of funding, so the discussion about what the priorities would be, and in what order they would come forward... To Mr. Fraser's question about our financial eligibility and the extent of services being separate issues. They sure are, and they have different cost implications.

Ms. Iqra Khalid: Thank you.

The Chair: Thank you very much, Ms. Khalid.

Mr. Falk, go ahead.

Mr. Ted Falk (Provencher, CPC): Thank you, Mr. Chairman.

Thank you to both of our witnesses today for testifying here at committee. I appreciate that very much.

Mr. Benton, you made a comment in your presentation that service was “unfriendly” and “unaccessible”. You made a broad swipe and said that it was probably because lawyers were doing the work or it was run by lawyers. I think Mr. McKinnon, Mr. Boissonnault, and I were the only ones not offended.

Can you comment on that a little further? Is there a systemic problem around why you find it unfriendly and unaccessible that needs to be addressed within the system?

Mr. Mark Benton: I've done legal aid for 30 years. I've had lots of indigenous clients, and I have run this plan, so I am accountable for this for the last 12 years. I was surprised that we were getting such a consistent.... Oh, sorry, and I'm a lawyer.

I said that I think it's because we're lawyers. It's because we are attached to procedural fairness: “Here are the rules that work in the courtroom. Here is what we're going to make sure happens.” That's what we are experts in. We'll do our best to make sure it's understandable to you, but that's not our first priority. Our first priority is making sure that procedural fairness works. That is what courts do. It is what they are for, and it is how we train lawyers.

But that's not what justice is for, and it's not what justice is to Canadians. Justice is accessible and meaningful. It is something that matters to them and their communities. We don't do a good job of that. Lawyers and judges don't do a good job of it. They're getting better. I work with some amazing judges and lawyers on this. There has really been a shift in the last five years, and I think it's going to shift some more. We talked earlier about the national action committee report on access to justice. I think that's a real hallmark of that kind of work. It calls for justice systems to be client-centred—

not institution-centred, not lawyer- and judge-centred, but citizen-centred.

I think that's an important shift, one that takes us to the place where we start asking people what they think of our services. It has helped us a lot, as a legal aid plan, to actually go out to communities and say, “What do you think of what we do? We're figuring out ways to do it better.”

• (1630)

Mr. Ted Falk: We talk about training people in lots of disciplines, but for whatever reason, in certain professions we neglect to train people through motivational seminars and customer service. I think that if we were to make a bit more of an effort, maybe we could resolve some of that.

Mr. Mark Benton: If that were a recommendation I could have made an hour ago, I would have done so. I think it's actually quite important, and it has been well documented. As we have the discussion about how access to justice works, it's going to work better the more we pay attention to what people need, rather than what lawyers and judges feel they should have.

Mr. Ted Falk: Thank you, Mr. Chair.

The Chair: Thank you.

Does anybody else have any questions for the panel?

If not, I want to thank you, Mr. Benton and Madame Martel, for your excellent presentations. You've really hit home with issues, with respect to official-language minority communities and indigenous communities, that we needed to hear as we are considering the solutions we are going to come forward with on legal aid.

[*Translation*]

We thank you very much.

[*English*]

Have a good day, everyone.

The meeting is adjourned.

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