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Chair

Mr. Anthony Housefather

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• (1555)

[Translation]

The Chair (Mr. Anthony Housefather (Mount Royal, Lib.)):
Good afternoon, everyone.

It gives me great pleasure to welcome you all to this meeting of the Standing Committee on Justice and Human Rights.

[English]

I would like to take this opportunity to welcome Mr. McDonald to our committee. It's the first time he's been here.

Welcome, Mr. McDonald.

The same is true for Mr. Oliver.

Welcome, Mr. Oliver. It's a pleasure to have you both here.

[Translation]

Today, we are pleased to welcome Réjean Aucoin, president of the Association des juristes d'expression française de la Nouvelle-Écosse and Julie Chamagne, executive director of the Halifax Refugee Clinic. We also have with us representatives from the Barreau du Québec, namely Antoine Aylwin, vice-president and Marc Sauv , senior advisor, research and legislation services.

Welcome to you all.

We will start with you, Mr. Aucoin. The floor is yours.

Mr. Réjean Aucoin (President, Association des juristes d'expression française de la Nouvelle-Écosse): Thank you very much for the invitation.

I accepted your invitation as president of the Association des juristes d'expression française de la Nouvelle-Écosse. We are very honoured to be testifying before you.

I have been practising law for 25 years, and I accept legal aid certificates. Since I live in Cheticamp, on Cape Breton Island, I regularly get client referrals from the offices in Port Hawkesbury, Sydney and Antigonish. With francophone clients, when the local legal aid office has no bilingual employees, I may get certificates from Halifax, New Glasgow, and elsewhere.

My name and telephone number also appear on the list of lawyers who provide Brydges services, when a francophone lawyer is called on to represent an accused who is arrested outside working hours.

In Nova Scotia, legal aid offices can be found around the province and each one is independent from the others. The staff, however, is hired through the main office in Halifax.

For a number of years, I have been accepting many fewer certificates, largely because of the volume of work it requires and the low hourly rates paid by legal aid. For example, the last bill that I sent to legal aid was for 35 hours of work at \$80 an hour, the hourly rate paid by legal aid, even though I worked 40 hours more than that.

When I started practising law, I became aware of a situation that still exists and that disappoints me enormously: the number of trials and requests for service in French is directly linked to the number of francophone, francophile or Acadian lawyers practising in Nova Scotia.

With legal aid, the situation is even more critical, because few lawyers who can practice in French are accepting certificates. In addition, few legal aid lawyers are being hired. At the moment, the legal aid service has one francophone lawyer, another will join her in a month, and there's also one intern, who may be hired.

When we got in touch with the director of the legal aid service in Halifax in order to find out the number of service requests that are received in French, we realized that the office does not compile those kinds of statistics. We find that unfortunate, because it is very important for those of us living in a minority to have those data.

We do not know how many clients are francophone and, among the clients who could potentially be francophone, we do not know how many of them asked for services in French. We do not have statistics on the number of people who would agree to proceed with a case in French.

In Nova Scotia, the policy is to provide certificates for French-language services only for criminal law cases. Even when a request comes from a francophone client, in a family law case, for example, the policy applies. However, I can tell you that, in my region in Cape Breton, I regularly receive certificates for francophones coming to the legal aid office.

Normally, clients are given a list of bilingual lawyers with whom they can communicate. At the Halifax office, I was also told that, if a request came for a criminal case, they would certainly try to find a bilingual lawyer to accept a legal aid certificate. If need be, they would even provide a certificate to someone from outside the province.

I have talked to people in several offices, including the central office in Halifax. I have been told that job application forms always ask if people speak French, especially when they are looking for bilingual lawyers or staff. Bilingualism is an asset, but in Nova Scotia's legal aid, no position is designated bilingual.

•(1600)

We do very little such recruitment, except through local newspapers. We do not necessarily approach the universities that train bilingual students, such as the Université de Moncton or McGill.

It is also unfortunate that the statistics do not reflect certain francophone clients who might need legal services. For any language other than English, the "other" box is used, which does not yield representative data.

In my opinion, until there is an active offer of legal services in both languages, at the RCMP for instance or in regions with significant demand, people will never be able to choose between French and English or have their trial conducted in French.

Let me share an anecdote in this regard. During my first 15 years of practice, every client who came to see me, even in my own town, said they were afraid that the judge would hold it against them if they asked for their trial to be conducted in French. In the last 10 years, however, that issue has not come up again, either because I have won a few trials, or because people have learned that is not how it works, either based on my reputation or from the experience of people who have been through the justice system.

I have heard, however, that this is still the case in regions where there is no active offer or where there are fewer francophone lawyers. Through my contacts, I have also learned that there are very few bilingual lawyers who accept legal aid certificates. That is why not many services are offered in French, even in other Acadian regions.

As to the Canadian Human Rights Commission, I have had at least one case related to this aspect of the law. The person assigned to the file was bilingual. Even though the case was settled out of court, we could have continued in French.

Another one of my clients had dealings with the commission for about ten years. Some people there spoke French, but all meetings with the parties were in English. The lawyers suggested by the commission were anglophones; the briefs were written in English only; the senior management had no French-language skills; and there was no active offer of services, even for court appearances.

In closing, I would like to point out that our association opened the Bilingual Legal Information Centre, where people can get information. I do not have the exact figures, but I think about 20% of people request services in French.

Unfortunately, it is very difficult to reach clients who need services in rural regions, such as Cape Breton or southwestern Nova Scotia. The majority of requests for services in French are from the community in Halifax, and they are from immigrants or people originally from other provinces, particularly Quebec and New Brunswick. There are fewer requests for information from people from other Acadian regions.

Thank you very much. I will be pleased to answer your questions.

•(1605)

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

We will now move on to Ms. Chamagne.

[English]

Ms. Julie Chamagne (Executive Director, Halifax Refugee Clinic): Thank you, Mr. Chair, and members of the committee, for extending this invitation. It's truly a great honour for our organization to be able to present before the committee today.

As the executive director of a small but mighty not-for-profit, I'm used to engaging in shameless self-promotion and donation requests, but today my goal is to give you some insight into how our organization operates, our successes, some solutions we have found with regard to access to justice for our clients, a few of the challenges we face, and some recommendations from our unique perspective.

Our clinic was founded by local immigration lawyer Lee Cohen in June 2000, in response to the ongoing lack of legal aid for people making refugee claims in Nova Scotia. Today, coming up on two decades, we still have no legal aid for immigration and refugee matters in the province.

We started, like many not-for-profits, humbly and informally out of coffee shops and living rooms, church basements, and tiny shared offices. Today we occupy a house in the north end of Halifax, which was donated to us by one of our volunteers and supporters. We're a grassroots, non-governmental community organization. We provide legal and settlement services to refugee claimants and for certain other risk-based and humanitarian immigration applications. We also engage in advocacy and education initiatives.

We are, you could say, a kind of a privately funded legal aid, but we have a unique model in that we are a volunteer-based organization. We rely on volunteers out of necessity but also by philosophy. It is the community's responsibility and privilege to help those fleeing persecution.

Our core volunteers are community lawyers who take on individual client files on a pro bono basis, and who, with the help of our staff and senior volunteer counsel, are mentored and trained to represent clients in front of the refugee protection division, as well as the refugee appeal division, the Federal Court, the immigration division, and occasionally other forums.

We also have a roster of volunteer interpreters, English- and French-language tutors, mental health counsellors, research assistants, community guides or buddies, and placement students and student interns in domains ranging from social work to political science to accounting to medicine and, of course, law.

We are funded by the Law Foundation of Nova Scotia and private donations, supplemented by in-house fundraising efforts. Our operating budget is almost always under \$200,000 a year, and this year it is \$167,000.

In Nova Scotia, as you might imagine, we do not see the numbers of refugee claimants seen in bigger centres in provinces such as Quebec or Ontario, but we consistently have 30 to 50 new clients a year, around 75% of whom are first-stage refugee claimants. So far for 2016-17, our success rate in front of the refugee protection division is 83.8%.

Representing refugee claimants is complex and delicate. There can be varying degrees of legal complexities in files, and individuals have other factors that need to be taken into account or addressed or worked around, including trauma, language and educational barriers, cultural differences, and proscriptions. Establishing a relationship of trust takes time and finesse. There's a finite amount of time to complete the requisite forms and story that are the basis of the refugee claim, as well as to gather and compile evidence to corroborate the claimant's fears in front of the refugee protection division, which, as many of you may know, is a quasi-judicial tribunal operating with a reverse-order questioning model.

One of our unique responses to the particularities of this hearing in front of the refugee protection division is our hearing preparation program through which, with the help of our volunteer-lawyer staff and other volunteers, we prepare clients to testify by holding a series of mock hearings. We do this because the refugee protection division hearing has very high stakes. The consequences of a wrong decision from the board can ultimately result in deportation, which can lead to persecution or even death.

We are confronted with and try to balance and address these needs and our limitations on a daily basis with unstable and insufficient funding, which necessitates staff fundraising alongside our direct-service provision to just sustain our programming. This is our reality. It is not unique to us but is the norm for many non-profits like ours across the country.

Our model developed rather organically out of this lack of access to justice. Over the years the lack of access to certain services has also created a robust settlement component within the clinic, as refugee claimants are ineligible for services offered by agencies and institutions that are IRCC-funded. Lack of social, medical, and settlement services oftentimes has a direct effect on a positive outcome in the legal sphere, so we approach our service provision holistically. A refugee claimant who's experiencing homelessness, who has untreated mental or physical health issues, or who has no money for food is not able to prepare their claim in adequate conditions.

● (1610)

Along with the multi-faceted needs of our clientele and the systemic inequities that refugee claimants experience in accessing basic services and justice, we are also responsible for finding, managing, and liaising with other entities, government and non-government, that our clients' situations give rise to or that they interact with. These intersectional situations require trusted and competent advocates or navigators, even when we are dealing with

people who are allowed to access these services, as eligibility and true access are two different things.

I have an example that I hope will showcase this crucial role. Last year we took on the case of a woman who fled terrible partner violence from her husband, who was well connected politically in their country of origin. It's a country I can't even mention here, because she's still terrified and still living somewhat in hiding. She came to our organization pregnant with her fourth child, and left directly to the shelter, which we facilitated with the help of staff and volunteers. We then met with her in the shelter for several weeks, with the help of several of our volunteer interpreters—this was not the kind of claim that could be prepared in one sitting—going through the details of terrible memories that were very painful for her to bring up. We brought volunteer childminders so that we could prepare properly and also, obviously, spare the children the terrible details.

For many months we prepared her claim and her subsequent hearing; translated the documents she had; did research on human rights abuses and available protections in her country of origin; had to learn on the fly about emergency family law custody matters; liaised with her family lawyer, the police, and the crown for her ex-husband's criminal justice matter; communicated with the shelters where she was staying to keep them apprised of every stage of her immigration proceedings; managed Department of Community Services income assistance applications; spoke with child protective services; found and helped register the children in new schools; addressed medical needs, including prenatal needs and then newborn needs; and much more.

Happily, I can inform you that she and her children were granted refugee status and are now in the process of applying for permanent residence. But this is what it takes to be safe and to start to rebuild a life. All of this takes time, expertise, understanding, flexibility, and human capital.

This case study sets the stage for our first recommendation. We must acknowledge and value the role that non-profits and community organizations play in enabling access to justice, particularly for disadvantaged and marginalized groups. While robust legal representation is paramount to the success of a refugee claim, there are so many factors at play that the role of a guide or navigator is absolutely indispensable. People taking on these roles are undervalued, overworked, and underpaid—if they are paid at all. Our recommendation would be to examine carefully the role that these community advocates play and create or open federal funding streams to community and not-for-profit organizations who work with people accessing the justice system.

Another recommendation would be to leverage community organizations like ours for the powerful educational tools they are. As I mentioned, we have a huge roster of students from many disciplines, from social work to law, doing placements, practicums, internships, or service learning at our organization during the academic year and in the summertime. This model has the benefit of allowing us to have more power and serve our clients in ways in which a small organization simply cannot without this kind of help to do the following: take clients to medical appointments, call up landlords and set up apartment visits, do in-depth research of persecution against ethnic minorities in Ethiopia, calculate the federal and provincial portion of the HST paid for the last year by our organization, prepare a brief on the availability of mental health services in Guyana, and sift through 1F(a) exclusion case law for a member of the Afghan National Army. All of that is literally just what I can think of that's been done by our summer team over the last week.

I'm using these many examples to demonstrate not only how essential it is for us as a small organization to have this power and these skills and perspectives but also what an amazing opportunity it is for students to be able to learn about refugee claimants and non-profits and apply their theory to real-life situations. My recommendation here is to continue funding work opportunities for students—we have two Canada summer jobs students right now—and, more specifically, to create funding for law student graduates to be able to have paid articles at not-for-profit organizations. This would also help mitigate the articling crisis that many law schools are faced with now.

I have a recommendation on immigration detention. Obviously that's been in the news. I won't belabour the point. However, it is a huge access to justice issue, especially for provinces like ours, where immigration detainees are held without legal aid and where they are held in the general population of criminal facilities.

My last recommendation is around language as access to justice. Words themselves mean nothing to people who can't understand them. Funding interpreters so that this work is not downloaded to community organizations, family members, or communities, which is problematic in so many ways, is essential, as is opening up eligibility for federally funded English-language learning to refugee claimants.

•(1615)

I think the success rate at the moment is 55%. When you consider that more than half will be going on to live permanently in Canada and don't have access to the LINC program for years, in some cases it would be a win-win situation and increase people's sense of belonging and ability to join the labour force more quickly.

Thank you very much. I'm happy to elaborate, clarify, and answer your questions as well as speak to some other ideas and recommendations that I might have.

[Translation]

I have prepared my testimony in English, but I am ready to answer questions from members in French.

Thank you very much.

[English]

The Chair: Thank you very much, Ms. Chamagne. It's a pleasure to hear from you.

[Translation]

We will now move on to the Barreau du Québec.

Mr. Aylwin and Mr. Sauvé, you have the floor.

Mr. Antoine Aylwin (Vice-President, Barreau du Québec): Mr. Chair, former minister of justice, members of the committee, thank you.

The Barreau du Québec is the professional body that represents 26,000 lawyers in Quebec. Its mandate is to protect the public, in particular by governing the legal profession. Public protection also includes a societal aspect. Access to justice is an important societal issue that is related to our mandate.

We are pleased to contribute to the work of the Standing Committee on Justice and Human Rights with respect to legal aid since it is an issue that involves both justice and human rights. It is a fundamental issue. In 2002, the chief justice of the Supreme Court of Canada ruled that legal aid is an essential public service for all low-income Canadians. We must look at it in the same way as health care and education. The health of our justice system and public confidence in it depend on this.

Still relevant, these remarks are often used to call for the reform of legal aid as an essential service. As you know, the law is the foundation of democracy and of social cohesion, to the extent that the public has access to it. Access is often through legal aid.

More recently, a report from British Columbia took up the cause again.

[English]

It states the following:

We need to build a broad consensus which recognizes that legal aid is an essential public service. Along with education, healthcare, and social assistance, it is the fourth pillar of our steadfast commitment to a just society.

[Translation]

The Barreau du Québec believes in this principle and makes representations to various orders of government for it to be recognized.

Limited access to legal aid has a significant impact on the people who are deprived of fundamental rights, including equality before the law. Vulnerable people are convicted or waive their rights owing to a lack of adequate representation. There is also a substantial cost to the court system when individuals represent themselves.

In a society founded on the rule of law, it is essential for everyone to have appropriate representation. The state has a duty to provide such representation to the most disadvantaged and most vulnerable members of society. Quebec's legal aid network was established to provide legal services to all disadvantaged individuals, especially to the economically disadvantaged. It was created in the 1950s, when the legal aid system was based on lawyers providing services free of charge.

In the early 1970s, however, it became apparent that the system was lacking and that broader action was needed. Quebec's legal aid system as we know it today was created in 1973. The system in Quebec is hybrid in nature and includes permanent legal aid lawyers and lawyers in private practice who accept legal aid cases for which they are paid a negotiated rate.

I think Quebec's system differs from that in other provinces in that regard, as public-sector funding ranges from 40% to 55% every year. It is a hybrid system combining private practice and public practice.

The Quebec act respecting legal aid and the provision of certain other legal services had two related objectives: the individual defence of disadvantaged persons by lawyers and notaries, and the provision of legal information to disadvantaged persons with respect to their rights and obligations. The competition between permanent legal aid lawyers on salary and lawyers in private practice has helped keep costs down and reduce the bureaucratization of the system.

The first part of our presentation provides information about the system in Quebec, what is happening now, and the current discussions with the provincial government. We will then talk about the federal contribution, that is, the role the federal government should play with respect to legal aid.

As to Quebec's system, our representations reflect marginalized groups. Even though the eligibility thresholds reached minimum wage in 2016—which is catch-up from previous years—the fact is that certain aspects of the 40-year-old system should be changed to ensure that it is still the best way of meeting the needs of the most disadvantaged members of society.

Quebec is the only province that uses annual income as opposed to monthly income to determine eligibility for legal aid. When a person requires legal services, however, it is often because their income has dropped, which goes unnoticed if one considers the person's income for the whole year. That is one of the challenges we face in Quebec as regards access.

• (1620)

The issue of designated clientele is another consideration. In its *Reaching Equal Justice Report*, the Canadian Bar Association defines the group as people living in marginalized conditions. According to Judge Cromwell's report, the poor and the vulnerable are particularly prone to legal problems.

According to the Supreme Court justice, individuals with lower income and members of vulnerable groups experience more legal problems than higher income earners and members of more secure groups. This reality concerns the legal community, and one of the solutions lies in the creation of specialized clinics to more effectively support the most disadvantaged members of society.

Ontario is being applauded for its efforts to set up legal aid centres specifically for certain client groups.

[English]

the African Canadian Legal Clinic, the South Asian Legal Clinic of Ontario, the Metro Toronto Chinese and Southeast Asian Legal Clinic, the Centre for Spanish-Speaking Peoples, and the Aboriginal Legal Services in Toronto.

[Translation]

These initiatives are designed to help singled-out client groups. The approach is in line with that set out in the *Reaching Equal Justice Report*. The cornerstone of the report is human justice based on human rights, in other words, taking into account all of the legal problems, challenges and disputes that both individuals and small businesses experience.

The first step would be to prioritize assistance for those with essential legal needs and to adopt the specialized clinic approach to avoid the stigmatization of those client groups. A comprehensive effort is necessary to disseminate legal information on a broader scale and to continue tailoring the information to people living in marginalized conditions, including those from racialized groups. Although the resources are sometimes in place, they are not accessible to these populations.

Ms. Chamagne discussed the problems with translation and interpretation. People who are unable to receive assistance in English or French in Quebec do not have access to these resources.

I addressed the fact that monthly income is used to determine whether a person qualifies for legal aid. The situation has been this way since 1996. As you can imagine, it creates numerous challenges for individuals who have lost their jobs and are experiencing financial hardship. People in these situations can experience a variety of legal problems: they may have been denied wage loss insurance or employment insurance; they may be unable to pay their rent; they may be accumulating debt or dealing with collection agencies; and so forth.

Service coverage is another factor. The range of services covered by legal aid has been reduced. For example, summary conviction offences, under criminal law, are no longer covered. That has an impact at the federal level, as well, given that some offences involve federal legislation just as much as provincial legislation. Legal aid is covered only when the individual faces the possibility of going to jail or losing their means of livelihood, or when exceptional circumstances exist.

We believe these conditions are much too restrictive. How many people plead guilty because they don't have access to a lawyer's services and cannot afford to defend themselves despite having sound arguments in their defence? Such situations can arise in cases of systemic or indirect discrimination including racial profiling.

How many people representing themselves have slowed down or delayed the legal process? This gives rise to additional costs, which may be difficult to calculate but are a familiar reality for any lawyer with courtroom experience who has watched an individual represent themselves.

Furthermore, consideration must be given to the ongoing negotiations regarding the fees of private practice lawyers for legal aid services. Quebec's lawyers are demanding the right to be compensated for legal aid work at rates comparable to those of their counterparts in other provinces, which is not currently the case. A flat fee is paid for many services regardless of the number of hours worked. That deters lawyers in private practice from accepting legal aid mandates. The statistics are telling: the number of private practice legal aid mandates has dropped markedly over the years, as has the number of lawyers accepting legal aid mandates.

Looking at the 15-year period between 2001 and 2016, we see a 20% decrease in the number of lawyers accepting legal aid mandates, despite the fact that the Barreau's membership rose by 37% during the same period. The difference is significant in terms of the drop in the number of lawyers accepting mandates.

• (1625)

Let us now turn to the federal government's involvement in legal aid. For our purposes, the government can facilitate better legal aid schemes mainly through financial support. With that in mind, the two elements I will talk about are immigration law cases and specialized clinics, which I touched on earlier.

I'd like to take this opportunity to recognize the reinstatement of the court challenges program, which was something the Barreau du Québec had been calling for. The ability to obtain funding for these kinds of cases contributes to access to justice.

Quite frankly, until just recently, I didn't know that the federal government funded legal aid services in cases involving immigration law and criminal law. According to the statistics we were able to obtain, in 2014-15, the commitment with respect to criminal matters was \$23.4 million, in Quebec alone. For its part, Quebec contributed \$134.1 million to the legal aid program.

Our first request is that steps be taken towards greater information transparency. A few years ago, a number of years ago, actually, the federal government contributed 50% of the funding and the province provided the other 50%. The transfers were then consolidated under federal-provincial agreements. Subsequently, during our negotiations with the Quebec government, it was challenging for us to find out what the federal government's contribution was and to make sure that the money went to Quebec's legal aid system. The issue is actually quite topical given that we are in negotiations right now and need the data in order to evaluate the system.

Of course, the federal government has a role to play in criminal law and immigration law. However, when the government decides, for better or for worse—I'm not here to pass judgment—that minimum sentences should be imposed and when it introduces further immigration legislation, making the practice of immigration law even more complex, it makes lawyers' jobs even harder. The complexity of immigration law has skyrocketed in recent years, and so too have the legal needs. The federal government is nevertheless

responsible for ensuring that affected individuals have access to legal aid services and that those services are adequately funded.

The people eligible for legal aid in immigration matters are often facing serious threats. I mentioned human rights earlier. They are at risk of being removed or deported, have been denied citizenship, and have been separated from their families and loved ones. The hardship they face is beyond anything we can imagine. The requirements have multiplied and grown more complex over the past few years. It is our view that the federal government should take that new level of complexity into account when deciding how much it will contribute to legal aid.

Turning now to specialized clinics, I would point out that such clinics exist in the health sector and are tailored to the specific cultural needs of patients. Adopting a similar approach in the legal sector would only have positive effects. It would take into account Canada's multicultural and indigenous reality. Increased federal funding for legal aid should be geared towards communities that are often marginalized. Private specialized clinics require a commitment by the federal government. The purpose of these specialized centres is to provide representation to specific groups, with experts helping not just poor, but also marginalized, clients.

I will now summarize our recommendations.

First, legal aid funding should take into account new legislative requirements in immigration and the increased complexity of immigration law cases.

Second, federal legal aid funding should support private specialized clinics geared towards marginalized communities and groups.

Third, the method used to calculate federal legal aid funding should be available and the funding should be subject to greater transparency.

Thank you.

• (1630)

The Chair: Thank you very much, Mr. Aylwin, for your presentation.

Many thanks to all the witnesses.

[*English*]

It was a pleasure to hear from all of you.

We'll now move to questions, starting with Mr. Nicholson.

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

Thank you very much for your testimony here today.

Monsieur Aucoin, in one of the comments you made, you said you did a case and did not bill 40 hours of your work on it. Did you not bill because legal aid wasn't going to cover it, or were there restrictions on how many hours you could put in? What was that all about?

Mr. Réjean Aucoin: The maximum hours they provide for is normally 20 hours per file. This was a complex file, so I requested some additional funds. They allotted 15 extra hours, but at the end of the day I requested more funds and they refused. I kept track of my time to see how much time I would spend on this file, and it was another 39 or 40 hours on that case.

Hon. Rob Nicholson: Fair enough, then.

You said there are bilingual lawyers who will not take legal aid cases. Why is that? Is it just the amount of money they're going to get out of it, or is it too complicated? What's the issue there?

Mr. Réjean Aucoin: I believe the issue is mostly the question of money because of the rates they pay, which are between \$65 and \$80 per hour. So most bilingual lawyers—

Hon. Rob Nicholson: They get paid between \$50 and \$80 and hour?

Mr. Réjean Aucoin: No, between \$65 and \$80.

Hon. Rob Nicholson: And \$80 an hour.

Mr. Réjean Aucoin: The lawyers I have spoken to over the years have given that as one of the reasons they don't take many cases. In my case, it's a bit different because I live an hour and three-quarters or two hours from the courthouse. I take legal aid certificates to pay for some of the expenses while I combine it with private clients.

Hon. Rob Nicholson: When was the last time they raised the wage?

Mr. Réjean Aucoin: It was at \$70, and I believe they raised it three or four years ago, which is the maximum.

Hon. Rob Nicholson: Well, you're in the middle of an election in Nova Scotia.

Madam Chamagne, you might answer this as well. Is it something that's being raised? Are they questioning the different political parties as to where they might stand on this?

Mr. Réjean Aucoin: Not that I'm aware of.

Ms. Julie Chamagne: No, in terms of opening up legal aid to refugee and immigration matters, I know there has been discussion, but I'm not aware at what point the discussion is. I know there's going to be some federal funding for refugee representation. I'm not sure exactly what format it will take in Nova Scotia, but it's definitely a question that I'm asking all the candidates.

Hon. Rob Nicholson: But nobody is asking during this provincial election about the resources for legal aid, that you know of.

Ms. Julie Chamagne: No.

Hon. Rob Nicholson: Fair enough. I asked that just out of interest.

Ms. Julie Chamagne: Not that I know of. We're a little bit out of the legal aid loop because of our particular kind of status as an organization.

Hon. Rob Nicholson: Fair enough.

Monsieur Aylwin, you made a couple of interesting comments. You said that the competition between legal aid lawyers and private sector lawyers has been a good thing. Tell me about that. Is there competition to get the work?

• (1635)

Mr. Antoine Aylwin: No. First I would be very glad if politicians would campaign to give more money to lawyers, but I don't think that's going to be the case in the near future.

Hon. Rob Nicholson: I think that's an excellent idea, but anyway, that's another story.

Mr. Antoine Aylwin: The competition has been great in Quebec because it has enabled the public system and the private system to be efficient. The goal that was set at the outset of the regime in 1972 was to enable private lawyers to continue to do this mandate for the public body—not taking care of all the requests, but maintaining a balance so that they don't have lawyers doing nothing, and have a buffer with private practice .

But in recent years what we've been seeing is the beginning of a shift towards the public system, because the private practice lawyers won't accept mandates, as Mr. Aucoin mentioned, given the limited amount of money they would receive, or they would limit their practice to the mandates on which they can make money. This is about volume. For example, one of the interesting tariffs is the following. If you plead guilty to an accusation, there's a very short amount of time invested, and it's a lump sum. So if you have 20 clients in a morning pleading guilty, that's a great morning for a lawyer.

Hon. Rob Nicholson: Yes. It may not be for his clients—but anyway, yes.

Mr. Antoine Aylwin: And it's not hourly based, and that's an incentive. If the client's not ready to plead guilty, the lawyer will make an analysis and consider whether to take the file, because if the lawyer has to invest a lot of time, as Mr. Aucoin did in the example he gave, it might not be worth it.

So we see a shift. But at the outset, the system was really designed to make sure that the responsibility for the legal aid system was not left only to one set of lawyers, and since we have fewer private practice lawyers taking mandates, we have other lawyers to do the mandates. But now with the Jordan decision, we have a real challenge because we have more judges, we have more crown attorneys, and we have more rooms, but we don't have more legal aid. We don't have more resources to process the cases.

Hon. Rob Nicholson: That's interesting. In one of your examples, you said that the legal aid lawyers can sometimes make money if they get a number of pleas or convictions on summary conviction. Sometimes that might work to the disadvantage of the lawyer—

Mr. Antoine Aylwin: Exactly.

Hon. Rob Nicholson: —if they are charged with a hybrid offence and they put a lot of hours into convincing the crown to reduce it to a summary conviction, and then they find out that they get their \$150 in the mail or whatever it is. So it's not necessarily to their advantage.

Mr. Antoine Aylwin: No, not necessarily.

Hon. Rob Nicholson: No.

Mr. Antoine Aylwin: They make the calculation.

Hon. Rob Nicholson: Yes.

Mr. Antoine Aylwin: You don't want incentives in the system where the lawyer—

Hon. Rob Nicholson: That's right.

Mr. Antoine Aylwin: —will calculate which mandates he will take and which mandates he won't.

Hon. Rob Nicholson: That's a very good point.

You mentioned criminal summary offences and the federal government's role. Other than creating the offences, which is the federal government's role, there are no consequences.... You referred to it in the middle of your testimony, and I may have misunderstood what you said, but you made a specific reference to the federal government with respect to legal aid. I wonder if you could expand on that.

Mr. Antoine Aylwin: Let me clarify what I meant. The responsibility for legal aid is something I link to the legislator who makes the legislation.

Hon. Rob Nicholson: Okay.

Mr. Antoine Aylwin: So, summary conviction is a shared responsibility. Some penal offences come from the provincial governments and some from the federal government, so it's shared.

Hon. Rob Nicholson: Fair enough.

Mr. Antoine Aylwin: That's what I meant.

Hon. Rob Nicholson: You said that some of the fees paid to lawyers are not comparable with the fees paid other provinces. Were you talking about Quebec, specifically?

Mr. Antoine Aylwin: Exactly.

Hon. Rob Nicholson: What is the situation in Quebec? Is it lower, higher, or in the middle?

Mr. Antoine Aylwin: It's lower. I had a few examples.

• (1640)

Hon. Rob Nicholson: Is it lower than the \$65 to \$80 they're talking about in Nova Scotia?

Mr. Antoine Aylwin: We don't have hourly rates. As Mr. Aucoin mentioned, if you go into a preliminary inquiry—

[*Translation*]

it's actually a bail hearing—

[*English*]

for a Quebec lawyer, it's \$150. For an Ontario lawyer, it's \$218. For a B.C. lawyer, it's \$250. You see it's 40% more in B.C. for the same kind of work, and there are many examples like that.

I'll give you a divorce proceeding with *mesure accessoire*. In Quebec it would be \$850. In Ontario it would be \$3,000.

Hon. Rob Nicholson: Let me just get straight the \$800 on the divorce. Is that an uncontested divorce? You said there's no hourly rate on that. You can have divorces that go on forever with all the fighting.

Mr. Antoine Aylwin: I don't want to make a mistake. I could come back to give you the exact answer.

Hon. Rob Nicholson: Thank you very much for all your testimony.

The Chair: Thank you very much.

[*Translation*]

Mr. Boissonnault, it's your turn.

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

Thank you, Mr. Aucoin, for your participation today and your presentation.

As you know, francophones living in minority communities have long faced challenges, if not barriers, when it comes to access to justice.

Could you briefly explain the personal toll on a francophone, an Acadian, or a Canadian in a minority language community of not being able to access the justice system in their mother tongue?

Could you tell us the personal cost to a Canadian of not having access to justice in their mother tongue?

Mr. Réjean Aucoin: You know, a former lawyer and now retired judge told me something 25 years ago, back when I was beginning my practice. He was anglophone and would come to my small town once a month. He admitted to me that, in many cases, his clients ended up pleading guilty to crimes because it was simpler and quicker than requesting a trial in French. Intimidated by the thought of an English-language trial, some of his clients preferred to plead guilty and be done with it.

I can tell you that, if I were to request a trial in French today, it would still be difficult, even with the decision in Jordan. A few more French-speaking judges have recently been appointed by the province. In the past, however, it was common to have to wait a few years for a trial to be held or to have at least one extra step automatically imposed because of the time it took to find a francophone judge before a trial date could be set. Proceedings were often delayed because the francophone judge came to town only once every three or four months. In my region, we had access to a single francophone judge, who came from Halifax or southwest Nova Scotia.

It's difficult to calculate the monetary impact, but I think the situation contributes to a loss of identity. People aren't proud of their identity; they have to make a special request in order to be able to speak their language in dealing with Nova Scotia's justice system.

I told you what the situation was like during my first 15 years in practice. I was actually the first lawyer to request French-language services on Cape Breton Island. The first time I sent the court a letter to request a French-language trial, the clerk called me to ask what the letter said. She told me that I had to send her the letter in English; I responded that my client was francophone and was not paying me to write a letter in English. She then asked whether I could at least tell her what the letter said, which I agreed to do.

Nova Scotia has made a lot of progress since then. Training has been made available, and bilingual clerks have been hired. There is still a long way to go, though.

Overall, the effect this has on Acadians is that they are afraid to ask for services in French.

Mr. Randy Boissonnault: So it contributes to a loss of identity and pride.

We are gearing up to celebrate the Canadian Francophone Games in Moncton and Dieppe. The slogan chosen for the games is “Right Fiers”, or right proud in English.

Listening to you, however, I am realizing that people are not “right proud” to ask for legal services in French. They think they are more likely to be found guilty and to experience long delays if they proceed in French. They worry that it will take a greater toll financially and personally.

Mr. Réjean Aucoin: It's even worse than that. In Halifax and other places, people have gone to court and requested a trial in French only to be told by the clerk that there was no francophone judge, which was completely untrue. The clerks might not have known that there were francophone judges. That happened a few years ago. Things might be different now, at least I hope so.

• (1645)

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

This is clearly a fundamental issue for the development of minority language communities.

My next question is for Mr. Aylwin, from the Barreau du Québec.

Immigration and criminal matters now involve greater complexity.

In your system, are there people who face access to justice barriers not only because of low income, but also because of intersectionality, in that they are members of the indigenous or LGBTQ2 community, for instance?

Are you able to help these people, or do you not have enough resources?

Mr. Antoine Aylwin: I would say yes, in both cases. Some resources are not available to certain groups of people, especially in immigration cases, where language barriers exist. For example, a clinic with little resources cannot afford to advertise its services in 18 different languages. It has to stick to English and French.

What's more, services adapted to these people's realities do not necessarily exist. I talked about specialized clinics for racialized or marginalized client groups. Those cases require people who understand the reality these individuals face, not just people who can deliver the service, particularly when dealing with refugees. In

that sense, then, I would say that we don't really have those resources.

Mr. Randy Boissonnault: Ms. Chamagne, I'm going to come back to you during the second round.

Mr. Aylwin, you called for greater transparency around legal aid transfers, in Quebec.

Could the federal government make other policy changes to ensure better access to legal aid in Quebec?

If more funding were available, what three priorities would you spend the money on?

Mr. Antoine Aylwin: That's a great question.

I certainly won't say that the federal government can't provide more support, but I don't want to alienate my colleagues in Quebec who are responsible for legal aid, either. Being mindful of both jurisdictions, I will say that transparency isn't all that matters; the federal government's involvement in legal aid matters as well.

The term “by design” comes to mind straightaway. Immigration and criminal legislation is created, and that legislation creates needs.

I sit before the Standing Committee on Justice and Human Rights, so I don't think it will come as a shock to anyone when I say that the Criminal Code needs to be overhauled. Introducing complicated legislation creates the need for more legal aid. What you are doing at one end you are paying for at the other.

Fundamentally, right from the start, the legislation needs to be simpler and more accessible to the public.

Mr. Randy Boissonnault: Would you mind listing your three priorities for new funding?

That would be much appreciated.

Mr. Antoine Aylwin: I am going to write that down.

Mr. Randy Boissonnault: You can discuss it with your colleagues. You don't have to answer on the spot. Take a bit more time to think about it.

Mr. Antoine Aylwin: Given that I must write to the clerk for Mr. Nicholson's question, I'll take the opportunity to add things.

Mr. Randy Boissonnault: Perfect. Thank you.

Mr. Antoine Aylwin: Thank you.

The Chair: Thank you, Mr. Aylwin.

Thank you, Mr. Boissonnault.

[English]

We're going to go to Mr. MacGregor.

Mr. Alistair MacGregor (Cowichan—Malahat—Langford, NDP): Thank you, Mr. Chair.

Monsieur Aylwin, I think you made a comment during your response to Mr. Nicholson about linking the responsibility for legal aid to the level of government that has made the legislation. Can you just repeat what you said there?

Mr. Antoine Aylwin: Yes. It goes in conjunction with what I just said. The need for legal aid comes with the legislation that sets the obligations of a citizen, whether criminal, immigration, etc. Facing the government's decision to adopt a certain piece of legislation, a citizen has a need for legal aid. That's how I make the connection between the fact that we need to regulate, to set the rules of society—that's what you are compelled to do every day—and the fact that when we do that, we have to take into consideration that each piece of legislation we put in place will impact citizens, some more than others. The need for legal aid stems from that legislation.

• (1650)

Mr. Alistair MacGregor: Perfect. Thank you.

That brings me to you, Ms. Chamagne, because in your testimony you underline the fact that there is no legal aid for your clients.

The last time I checked, the Immigration and Refugee Protection Act, and all the regulations made under it, was a federal statute, and at the board and the refugee protection division, all were appointed by the federal government.

In light of Monsieur Aylwin's comments, can you provide your own commentary on that, and some recommendations that this committee should be making to the federal government?

Ms. Julie Chamagne: Yes, I think that's absolutely.... Mr. Aylwin was talking about the recent complexities, in the past couple of years, with regard to immigration legislation and the intersectionalities. If, on the one hand, you have mandatory minimums of six months imposed and, on the other hand, you deny permanent residents the right to go to the immigration appeal division—by one day, actually—then you're catching so many more people in those intersectionalities and, as we were saying, dividing families. It has really grave consequences.

We are a little, ragtag not-for-profit. Every month or two, we get our volunteer lawyers on board, train them up, and go in front of the Immigration and Refugee Board by video conference. It's a very complex area of the law. It's always changing, and there are so many different dimensions and factors.

Obviously, one recommendation would be for the federal government to fund legal aid for immigration and refugee matters and, as I was saying, acknowledge the role that community organizations can play when we are dealing with vulnerable and marginalized groups. The specialized clinics you were talking about are really important, not just for eligibility, but for access: linguistic access, cultural access, and comfort.

Mr. Alistair MacGregor: Monsieur Aucoin, I don't have a question for you, but I'll follow up on what Mr. Boissonnault said. I attended a conference on judicial and legislative bilingualism, and it very much echoed the concerns you have when clients are unable to receive legal services in the language of their birth. Legal concepts are very complex, and when you don't have translation services and interpretation, it's very complex. So, thank you for adding that particular testimony.

Monsieur Aylwin, I want to bring the questioning back to you. The province of Quebec is the largest province in this country, and it has a vast northern territory. What are some of the major challenges

for legal aid programs that are unique to the rural and remote areas of Quebec, up in the north, and especially to first nations?

Mr. Antoine Aylwin: Thank you for the question.

We've been involved with what we call “northern justice” in recent years. We've been going to the north, seeing the status of justice there as it is. It's a shame that we live in a country that accepts the way that aboriginal and natives are treated up north. That's what I can tell you.

We've been doing an initiative. It was two or three weeks ago that we had a legal clinic up north. We went with ProBono Québec to render services, but there are so many issues it's very difficult to tackle them all at once. There's the language issue. There's the cultural issue.

For years, we've been developing guides. They don't want written material. They have a spoken tradition, so it's not the same solution. It has taken a while for us to realize that despite our willingness to help, there were some ways we were trying to help that didn't help that much.

I use the expression *les plus démunis des démunis*. When you look at what's happening right now up north, it's just a disaster. That's one of the priorities, right there.

• (1655)

Mr. Alistair MacGregor: It's been a while since this committee has considered the access to justice issue. We've had a number of justice bills.

Going back to previous witness testimony, a lot of it has centred on the fact that the federal component of legal aid is bundled up in the Canada social transfer. The federal government will say it does fund legal aid, and the provinces will say, “No, you don't.”

There's a lot of this happening, so a lot of people have recommended that the federal government have that separate amount of legal aid.

Just so that we are clear, when we're writing our report, is this something you are in support of?

Mr. Antoine Aylwin: Totally. That's one of our recommendations.

Mr. Alistair MacGregor: Okay, thank you very much.

The Chair: Thank you very much.

Mr. Bittle.

Mr. Chris Bittle (St. Catharines, Lib.): Thank you so much.

Ms. Chamagne, you suggested that you have other recommendations. If that's the case, would you care to discuss them?

Ms. Julie Chamagne: Yes.

One of my other recommendations was to try to mitigate some of the damage that has been done to the reputations of refugee claimants over the past couple of years. Refugee claimants have been a very stigmatized group.

I can see this first-hand with how they don't want to be identified as such. I think a lot of that has to do with some of the language that was being used around refugee claimants, like “bogus”, “fraudulent”, and “queue-jumping”.

Now recently, there's been a bit more of a happy feeling, let's say, around refugees. I think that refugee claimants have been lost a little in that, and people still aren't clear. One of my recommendations would be to clarify and to celebrate not only government-assisted refugees and privately sponsored refugees, but also refugee claimants generally.

Mr. Chris Bittle: Thank you so much.

Monsieur Aucoin, is there a way that the federal government can encourage more bilingual lawyers and bilingual judges to either get into the practice and/or accept more legal aid? I know you discussed increased funds, but specifically in terms of bilingual lawyers, is there any way to attract more of them?

Mr. Réjean Aucoin: I've always thought that if there were designated jobs that were posted, whether for government or federal appointees, then they would have to find bilingual candidates. Until that's done and there is an active offer of service, and until...

I'm glad that the question of funding came up, because if the federal government is funding legal aid, why isn't there an obligation to offer services like the RCMP or any other government department? Why doesn't that exist? Then the Acadians or francophones could have access to those services. Until there is that obligation, until there are more lawyers and more judges, it will be difficult.

There has been an increase in the number of bilingual lawyers practising in Nova Scotia. They're more and more in demand, and they're picked up. So it's progressing. It's not as fast as I would like, but it is progressing.

As the legal aid officer told me in Halifax, when there is someone bilingual with the equivalent references, in consultation with the local office, they will appoint a bilingual one. They're happy to have one of them. However, there's no designated post or position for that.

That's the best I can tell you at this time.

Mr. Chris Bittle: Thank you.

I'll open this question up. Is there a role for technology to step in and bridge the gap, especially with minority languages? We discussed rural and remote first nations communities. Even with immigration and refugee files, is there a role that technology or a different use of existing technology could play? Being a lawyer, I know that courts are often reluctant to embrace advancements, but do any of you see a possibility of technology improving the situation?

● (1700)

Mr. Antoine Aylwin: Can I jump in on your last question?

Mr. Chris Bittle: Absolutely, yes.

Mr. Antoine Aylwin: When the federal government says that Supreme Court judges must be bilingual, that's an incentive for many lawyers in the country to be bilingual as well. That's something really positive, to address the question you asked. If we want to have some positive discrimination in universities or bar schools in favour of francophones, or for bilingual people to become lawyers.... I say the latter because it's easier to take a bilingual person and make them a lawyer than to make a lawyer bilingual.

Some hon. members: Oh, oh!

Mr. Antoine Aylwin: I know that at Dalhousie University, if I'm not mistaken, there's a program for natives. There's positive discrimination in their favour, so that they can create aboriginal lawyers. That might be a way to address the situation.

As for technology in terms of access to justice, unfortunately there are a lot of people who lack access to justice and to technology as well. Don't get me wrong, that's a priority for us, to bring technology into the courtroom, to stop carrying that much paper—not just for the health of lawyers, but just to be more efficient. It's insane how much paper we're carrying around in our justice system.

When we're talking about people at the bottom who really need the basics, often they don't have access to technology. To provide the service, I think we can think about ways to get translators available on Skype, or things like that, as a plan B. But it cannot be at the front end of the services.

Ms. Julie Chamagne: I have a bit of the same reticence, I guess. As I was saying, we do all our refugee protection division hearings by video conference—not out of choice but because that was part of the legislative change in 2012.

At the same time, we've used technology; we've used video conferencing; we have been instrumental in setting up a sister clinic that operates in quite the same way as our model in New Brunswick, which also doesn't have legal aid for refugee and immigration matters. It's called the New Brunswick Refugee Clinic. We're in contact with them, obviously by telephone. I don't know if that's technology; it has existed for a while. We're also in contact by video conference, and it's a good way to prepare our clients for that.

It would be really helpful, not only because of the sheer volume of paper and trees used, but also because, for us, when we courier a huge stack of papers to the Immigration and Refugee Board in Montreal, it costs us \$30 every time. It would be excellent to be able to just scan and upload documents. Postage is quite a big cost, actually, for a small organization.

Yes, I definitely think there's a role for technology.

Mr. Antoine Aylwin: If I can add to that, you were talking, Mr. Boissonnault, about what the federal government can do. I know you're not making the rules of the Federal Court, but you make the law.

The rules are shaped against the use of technology and efficient practices. We lose so much time in making copies and making sure that you have the right margins and things like that, that we lose sight of what we're trying to achieve.

Sometimes we're trying to be very nice, but are we achieving what we are trying to do, by having so many rules and being so complicated?

Mr. Chris Bittle: Thank you so much.

The Chair: Thank you very much.

Now we'll go to whatever shorter questions members of the committee have.

By the way, I would like to welcome Mr. Levitt and Mr. Duguid, who are joining us today. It's nice to have you with us.

Mr. Boissonnault.

Mr. Randy Boissonnault Thanks, Mr. Chair.

[*Translation*]

My fellow colleagues, thank you for mentioning that Supreme Court judges must now be bilingual.

The court challenges program is a priority for Minister Joly and Minister Wilson-Raybould. When I was sitting on the Standing Committee on Official Languages, as parliamentary secretary, it was an important issue for us.

I agree with you when you say it's a benefit for the community and for the principle of access to justice. I'm happy to hear you say it.

As you know, the Standing Committee on Official Languages is studying the issue of access to justice in full compliance with the Official Languages Act. I encourage you to follow its work closely.

First, I want to make a suggestion. Then, I'll ask Ms. Chamagne a question.

We saw that the Association des collèges et universités de la francophonie canadienne, or ACUFC, wanted more francophone doctors. This association said that not enough francophones were registered in medical programs. The ACUFC then surveyed all the medical students across the country, regardless of their language of study. According to this survey, 642 francophones and francophiles said they wanted to provide services in French during their medical career. This amounts to one third of the students across the country.

I strongly encourage the justice system and your colleagues to do the same thing with all the law students, because I think assets can be found.

As you said, we can train people once they've learned the language, but not the other way around.

Ms. Chamagne, I want to know whether you've had the opportunity to work with aboriginal people or people from the LGBTQ2 community on issues concerning refugees?

• (1705)

Ms. Julie Chamagne: More and more, I would say. I haven't had the chance to work with aboriginal people, but I've had the opportunity to work with the LGBTQ+ community.

We've had cases of people from Yemen, Saudi Arabia, Uganda and around the world. We've had many refugee protection claims, which we handle, of course. However, we've also had many questions regarding whether it's a good idea for these people to start the process. On some occasions, foreign students have asked us whether it would be worth it to lose their student status. We work a great deal on this issue at the Halifax Refugee Clinic.

We also provide a training and information session to the clinic's volunteer lawyers and to other volunteers regarding the new guide.

Mr. Randy Boissonnault: Do you mean the new guide for refugees?

Ms. Julie Chamagne: Yes, thank you.

It's the Immigration and Refugee Board of Canada's new guidelines on sexual orientation and gender identity and expression. The purpose of the training is to better explain the changes and barriers when it comes to the representation of the LGBTQ community.

Mr. Randy Boissonnault: My next question is for all the witnesses.

It concerns an element of cooperation between the provincial, territorial and federal levels.

If we were able to have a training program or to find more ways to help train lawyers on issues concerning marginalized people, especially in criminal law and immigration law, would lawyers be interested?

Is it something we could address with the justice systems in your own provinces?

Mr. Antoine Aylwin: First, regarding your invitation to follow the work of the Standing Committee on Official Languages, I would urge you to read the brief that the Barreau du Québec sent recently. Last fall, I appeared before the committee to talk about the translation of decisions. We're very concerned about this matter.

Second, regarding training for lawyers on issues concerning marginalized people, the École du Barreau had an initiative last year for a person of aboriginal descent. The initiative was successful. We think we can focus on other marginalized groups to guide them through the justice system and help them become lawyers. It should be a way to help people escape marginalization.

This goes beyond law. It's about having models and people to consult later. For us, it's very positive.

Mr. Randy Boissonnault: That's a good example. Thank you.

[*English*]

Mr. Alistair MacGregor: Mr. Aylwin, with previous witnesses, I have raised questions concerning the Charter of Rights and Freedoms and legal aid, specifically sections 7 and 15. It's quite a coincidence that just a few weeks ago in my home province of British Columbia a lawsuit was launched by the Single Mothers' Alliance BC in the B.C. Supreme Court. They rely on sections 7 and 15, and they were arguing that the restrictive eligibility requirements in British Columbia, in particular, were affecting some women's rights to security of the person.

There was one case where a woman was trying to escape an abusive husband, and the barriers she faced in the legal system were not allowing her to properly disengage from an abusive spouse. Under section 15, we have equality under the law and the right to not be discriminated against. I'm just curious, do you know of the case? Do you have any thoughts on the constitutional provisions with respect to legal aid? I know there have been court rulings on this, but I'm looking for an opinion from you.

• (1710)

Mr. Antoine Aylwin: Yes, we heard about the case. I'm not saying we might not intervene in the future. We had discussions in Quebec with regard to new tariffs. With the new new code of civil procedure, the cost of a non-contested divorce tripled. Now it's begging the question of whether the costs are at a level at which people won't be able to divorce because they can't pay the costs of filing it with the court. It's certainly a serious issue. I know the charter cannot be easily amended, but I would like to have a more specific recognition that legal representation and advice should be a fundamental right in this society.

Mr. Alistair MacGregor: Thank you.

The Chair: Thank you.

Mr. McKinnon.

Mr. Ron McKinnon (Coquitlam—Port Coquitlam, Lib.): I have a question for Ms. Chamagne. I'd like to talk a little bit more about the cultural barriers to access to justice that you referenced, I believe, in relation to refugees.

Is there a cultural reticence to ask for help, or does the system not recognize the cultural differences of the people it serves?

Ms. Julie Chamagne: I think it can be a lot of things. I'm trying to think of examples. There are different ways that people have of remembering things. People in many cultures do not have this idea of dates that's so important to our culture and so important to a refugee claim. We've had refugee claimants who are reticent to talk about their trauma, because it's traumatic, because of cultural issues, or, in the case of access to mental health services, because of stigma and cultural issues.

The cultural barriers go both ways. Sometimes I find that the way a person is testifying, which is inherent to their culture, causes some credibility issues, say, about why the person can't remember an important date. This is transposing our cultural values on refugee claimants and their experience. That's what I would refer to. Obviously, it's a case-by-case situation, and it's something that brings in the need for specialized legal clinics. It's something we always have to be mindful of when we're gathering stories and testimonies, and when our clients are testifying.

Mr. Ron McKinnon: Would you consider this part of the systemic inequities you mentioned, or would that be a much broader topic?

Ms. Julie Chamagne: Yes, I think they are. It might vary from province to province, and I can only speak about Nova Scotia and the experiences some of our clients have had there. Lack of cultural competence in government agencies and other organizations is a big reason people don't access the services they might be eligible for. I was talking about the difference between eligibility for services and actual access to services.

Mr. Ron McKinnon: I would like to build on something Mr. MacGregor spoke of. He was talking about your remarks that there's no legal aid for refugees.

My understanding is that there's no funding for IRB processes. Is that the entirety of what that means, or is it in some way the fact that these people have not yet achieved permanent residency or citizenship status, which somehow excludes them from other aspects of legal aid?

• (1715)

Ms. Julie Chamagne: No. To clarify that as much as I can because I'm not a spokesperson for Nova Scotia Legal Aid, refugee claimants and other people without permanent residence or citizenship can access legal aid services in different domains, in family law and criminal law, if they are eligible financially.

It's just the domain that's not funded, and not the person.

Mr. Ron McKinnon: As one final opportunity for you to have a teaching moment, could you explain to me, my not being a lawyer, what the reverse order questioning model is?

You mentioned that the process—

Ms. Julie Chamagne: Instead of counsel leading our witness, the reverse order questioning that happens at the refugee protection division is the one board member now leading the witness. That can be problematic. It's hard for our volunteer lawyers to get used to it as well.

Mr. Ron McKinnon: I stand informed. Thank you.

The Chair: Thank you, Mr. McKinnon.

Mr. Falk, you're next.

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

Thank you to our witnesses for your testimony here today.

Mr. Aylwin, you indicated there's a disparity between provinces with different rates for similar services. Those rates are established by the provinces?

Mr. Antoine Aylwin: Exactly.

Mr. Ted Falk: Were you suggesting in your testimony that the federal government should mandate this on provinces?

Mr. Antoine Aylwin: It's not something I suggest. I meant to inform you of the situation right now. We're in negotiation right now. This is a standpoint we've taken in the negotiation to compare from province to province. We're in the process.

I thought it would be useful for you to understand why there are differences across the provinces. The fact that we have a strong public regime may in part explain why we have such a difference, because people have more options in Quebec than they might have in other provinces.

Mr. Ted Falk: Would you be in favour of a standardized rate schedule across the country?

Mr. Antoine Aylwin: I think it would be difficult to apply because when you look at the basket of legal aid, each province will decide what and how they want to cover. I think it's very difficult to compare the decision that may be made by one province to another.

If you're talking about setting regime standards for immigration or criminals, that might make sense, but if you're talking about all legal aid in the civil regime, I'm not sure it's a good idea for the federal government.

Mr. Ted Falk: Okay. Good. Thank you.

Ms. Chamagne, thank you for your testimony as well. Can you describe to me any of the best practices your organization has developed in dealing with refugees? I think you have done a little of that throughout your testimony.

Ms. Julie Chamagne: As I was saying, it's really on a case-by-case basis. We try to work from a very flexible and anti-oppressive standpoint. I think that's important. We obviously talk a lot about what I was saying, which is the holistic approach to service provision, whereby access to justice and other services are taken together so the person can present their best case in front of the Immigration and Refugee Board.

Obviously, we try to maintain a certain professional distance, but also to flatten some of the hierarchies. Establishing that relationship of trust is very good.

Mr. Ted Falk: Are you predominantly dealing with people who have come into our country legally and made a refugee claim, or people who have come in illegally, or what?

Ms. Julie Chamagne: We're dealing mostly with refugee claimants as well as some other humanitarian applications and risk-based immigration applications.

As for how those refugee claimants have entered, Halifax is a big university town, so we have some international students who have been here for several years and the situation back home may be connected to a political opinion they may have. The situation back home changes, and their funding is cut off, and then they are at risk of losing their student status and therefore having to leave or be removed from Canada. At that point, they make refugee claims.

We're also a port city, so we have people arriving in container ships and at the airport. We have had a few people come up through New Brunswick and make inland claims when they arrive in Halifax.

So there are a lot of different ways that our clients would come.

● (1720)

Mr. Ted Falk: Thank you.

The Chair: Thank you very much.

I don't think there are any further questions.

I would like to thank all of the witnesses today. You've provided very helpful testimony for our committee as we move to writing our report.

[*Translation*]

Have a good day.

[*English*]

The meeting is adjourned.

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