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## **Standing Committee on Official Languages**

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**EVIDENCE**

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**Chair**

**The Honourable Denis Paradis**



## Standing Committee on Official Languages

Tuesday, March 19, 2019

• (1105)

[Translation]

**The Chair (Hon. Denis Paradis (Brome—Missisquoi, Lib.)):**  
Good morning everyone.

Pursuant to Standing Order 108(3), we are continuing our study on the modernization of the Official Languages Act.

With us this morning, by video conference, is Hoi Kong, holder of the Right Honourable Beverley McLachlin, P.C., Professorship in Constitutional Law, Peter A. Allard School of Law, University of British Columbia.

Welcome, Mr. Kong.

Also joining us, from Moncton, New Brunswick, is Éric Forgues, Executive Director of the Canadian Institute for Research on Linguistic Minorities.

Welcome, Mr. Forgues.

[English]

We'll start with Professor Kong for a 10-minute presentation.

After that, we'll begin a round table with the members of the committee.

We're glad to have you with us, even if it's a video conference.

**Professor Hoi Kong (Professor, Peter A. Allard School of Law, University of British Columbia, As an Individual):** Thank you so much.

I'm so grateful for this opportunity to present to this committee on the question of the modernization of the Official Languages Act.

Today I will address the specific question of whether and how an official languages tribunal should be established.

My presentation will proceed in three main parts. First, I will survey the reasons for establishing an official languages tribunal. Second, I will examine the institutional design options for the relationship between the commissioner and an official languages tribunal. Third, I will address some issues relating to the operations of an official languages tribunal.

Let me start with the reasons for establishing an official languages tribunal.

As the members of the committee are all very well aware, there are multiple avenues by which judicial remedies are available under

the Official Languages Act, in particular from section 77 forward. Given that there are these options for judicial remedies, why might we think that an official languages tribunal would be a good idea? Let me suggest three possible reasons.

First is a reason relating to the separation of powers. The language of subsection 77(4) grants the Federal Court broad remedial discretion. Indeed, the language echoes the language of subsection 24(1) of the Constitution Act of 1982. However, the Federal Court has cited from the Supreme Court of Canada's reasons in the case of *Doucet-Boudreau v. Nova Scotia (Minister of Education)* to note that there are separation of powers limits on the extent to which a Federal Court, or indeed any court, can exercise its remedial jurisdiction.

Today I don't venture an opinion as to whether the court has in fact been reticent to use the full range of remedies available to it, although I do know that the *Fédération des communautés francophones et acadienne du Canada* believes it has.

My point is that separation of powers considerations act as a limit, in principle, on what remedies a court may order. By contrast, administrative tribunals are not limited by such considerations. They are therefore comparatively freer to order remedies that are, in the words of my colleague Cristie Ford, "prospective, open-ended, and subject to ongoing revision and elaboration."

In light of this, I would agree with the FCFA's recommendation that any provision specifying the proposed official languages tribunal's remedial powers include a non-exhaustive list of possible remedies, including ones that allow for appropriate continuing oversight. That is the first rationale for establishing an official languages tribunal, a rationale grounded in concerns about the separation of powers.

Let me turn to the second rationale for establishing an official languages tribunal. Complainants contemplating a proceeding in front of the Federal Court may face issues of accessibility that they would not face in front of a well-designed and well-funded official languages tribunal. An official languages tribunal modelled on human rights tribunals in the provinces and at the federal level would have simplified procedures and would provide assistance to complainants seeking to present claims before it.

Concerns about accessibility have long justified the creation of human rights tribunals, and although there are some ongoing concerns about whether they have delivered on the promise of greater accessibility, I think it is generally accepted that they are more accessible than the courts. There is reason to believe that this would also be true of an official languages tribunal, so a second possible rationale for an official languages tribunal centres on issues of accessibility.

Third, an official languages tribunal would likely have greater expertise in resolving disputes under a revised official languages act than would the Federal Court. The source of this potential relative advantage would be twofold. First, in a revised official languages act, Parliament could specify that official language tribunal members must have specific expertise relevant to interpreting and applying the Official Languages Act. Second, once established, an official languages tribunal would, through repeated exposure to disputes under the Official Languages Act, develop expertise in the application and interpretation of its provisions.

Those are three rationales for creating an official languages tribunal, despite the fact that there are judicial remedies available under the Official Languages Act.

Let me turn now to the possible relationships between the commissioner and an official languages tribunal.

• (1110)

Generally speaking, there are two kinds of relationships between human rights commissions and tribunals in Canada, and these may provide templates for how to structure the relationship between the commissioner and an official languages tribunal.

In the first model, a human rights commission acts as a gatekeeper for a human rights tribunal. It investigates and attempts to settle complaints; decides whether complaints should be referred to a tribunal for adjudication; and once a claim is before a tribunal, it can offer assistance to a claimant, represent a claimant or represent the public interest.

Critics argue that a commission in this model occupies potentially contradictory roles. A perception of conflicting roles may arise because at the investigation phase the commission is intended to be neutral, but if the complaint goes before a tribunal and the commission participates in the adjudication, it will take a position.

Related to this criticism is another that charges these kinds of commissions would undertake their functions in improper ways, particularly in contexts where human rights systems are underfunded. Critics argue that commissions have, for instance, used threats of delays as a means of pushing complainants to settle. Critics charge this model with devoting disproportionate resources to addressing individual complaints and diverting commission resources and attention from systemic issues.

That is a first possible relationship between the commissioner and the official languages tribunal, one in which the commissioner would undertake the kinds of gatekeeper functions that a human rights commission does in the first model of human rights commission and human rights tribunal relationships.

In the second model, which is the one currently in operation in Ontario, complainants have direct access to a human rights tribunal and the tribunal itself processes the application, offers mediation services and adjudicates on the merits of a dispute. In this model, the commission:

would no longer receive, process, mediate, and investigate complaints and, where...appropriate, forward them to the Tribunal. Instead, the Commission's role would...focus on developing policies, providing information and promoting compliance with the Code. However, the Commission, [under the revised Ontario model, does retain] its authority to initiate and intervene in applications before the Tribunal.

This model addresses the concerns about contradictory roles discussed above, as the commission would no longer have gatekeeping, settlement and investigative functions. In addition, in some jurisdictions, the direct access model has resulted in significantly reduced wait times.

Nonetheless, the direct access model has been subject to some criticism. For instance, Dominique Clément argues that, "In British Columbia, the Human Rights Tribunal spends more time vetting complaints for dismissal than adjudicating the merits of human rights complaints."

In addition, because tribunals do not conduct investigations or provide representation for complainants, direct access models are perceived to be less accessible.

These are two kinds of models that could be used in structuring the relationship between the commissioner and a potential official languages tribunal.

Let me turn now to some operational issues. Under the second model, obviously the commissioner would focus on systemic concerns rather than individual complaints, and would not have investigative or gatekeeping functions, although the commissioner could retain the power to participate in a tribunal hearing to advance public interest arguments.

If this model were adopted, there would have to be sufficient commitment of resources to ensure that claimants would be able to present informed and competent complaints before the tribunal. There are models for providing this kind of support, whether through clinics or through support centres.

If a tribunal were created, since a tribunal would be charged with interpreting and applying a quasi-constitutional statute, the official languages tribunal would need to be insulated from any suggestion that it is subject to partisan influence, so it would be important to have clear criteria for expertise for appointments, protections for security of tenure during a term and potentially even protections around reappointment.

Finally, I suggest that a revised official languages act should include a provision that allows for a review after three years of coming into force. A similar provision was available in the Human Rights Code of Ontario when they revised their code.

Likely, simply because there are going to be large systemic changes with the coming into force of a new OLA, it would be helpful to have stakeholders and experts able to comment on whether or not the revised OLA has achieved its legislative objectives.

•(1115)

These are some thoughts about the creation of an official languages tribunal, rationales for its creation, issues around institutional design, and finally some operational questions.

**The Chair:** Thank you very much.

[Translation]

We now turn to Mr. Forgues, of the Canadian Institute for Research on Linguistic Minorities.

Mr. Forgues, you have approximately 10 minutes. You may go ahead.

**Mr. Éric Forgues (Executive Director, Canadian Institute for Research on Linguistic Minorities):** Thank you for the invitation and the opportunity to contribute to the committee's study.

I'm going to begin with a few words about our research institute, for those who aren't familiar with us.

The Canadian Institute for Research on Linguistic Minorities was established in 2002. From 2003 to 2012, it was headed by Rodrigue Landry, whom many of you no doubt know. I took over as executive director in 2012 but have been with the institute since its early days in 2003.

The institute was created with the support of funding from the Department of Canadian Heritage, pursuant to an agreement signed by then minister Stéphane Dion and the Université de Moncton. That's a little bit about the institute's history.

Now, I will just mention the institute's mission: to promote a greater knowledge of the status of Canada's official language minorities and a better understanding of the priority issues that concern them. To that end, the institute is committed to carrying out, in co-operation with its partners, relevant research work that can support the various stakeholders of official language minorities and the public policy-makers in language matters.

As for me, I am a sociologist, and my main area of interest is the development and vitality of communities.

The Government of Canada's desire to modernize the Official Languages Act, in consultation with Canadians, is a golden opportunity to reflect on the ideal act tailored to the needs of official language minority communities. It is an opportunity to think creatively about how to overcome the challenges.

Being the optimist that I am, I envision at least three scenarios for the future of minority communities and official languages. First, I envision communities thriving in their language, thereby reversing the trend towards assimilation. Second, I envision greater recognition of communities and their autonomy, specifically their capacity to determine their own future. Third, I envision enhanced implementation of and compliance with the Official Languages Act.

I also see at least two potential pitfalls.

First, the government invests significant sums in official languages, through the five-year official languages action plan, without establishing tools for rigorous analysis—tools that would allow the government to identify communities' needs clearly and adequately measure the impact of its investments on communities.

The government holds extensive consultations, mainly at the organization level, but invests little in public policy research to support official languages.

The Standing Senate Committee on Official Languages, the Commissioner of Official Languages, this committee and now Minister Joly are currently conducting, or have recently conducted, consultations on the modernization of the Official Languages Act. I was in Moncton on March 12, for the first forum on promoting culture and bilingualism, hosted by Minister Joly. The vast majority of participants were heads of organizations who hammered messages they had previously delivered in other venues.

The government's practice of consulting on the modernization of the Official Languages Act and the development of the official languages action plan is certainly a good one, but consultations should focus more on individuals who do not necessarily belong to organizations.

Furthermore, research should guide the development of the action plan and the modernization of the Official Languages Act. That requires coming up with a research plan that can generate a relevant body of knowledge related to the objectives of the act. Not doing so makes it more likely that the process to determine language policies will essentially amount to adjudicating the various interests expressed by the organizations. For that reason, I think it's important for the government to work more collaboratively with the research community.

The second potential pitfall has to do with the lack of leadership shown by elected officials and the heads of government institutions subject to the Official Languages Act. This leadership is crucial if the act is to be respected because it sends a strong message that language rights and government obligations matter.

At the first forum on the modernization of the Official Languages Act, held in Moncton on March 12, Michel Bastarache underscored the importance of raising the profile of the government's official languages efforts and the symbolic importance of linguistic duality. Promoting linguistic duality hinges on symbolic gestures that improve the status of minority communities. When those gestures come from government leaders and elected officials, they send a strong signal to all Canadians because they lend legitimacy to the minority language and linguistic duality.

Now I'd like to discuss the relationship between the Canadian government and official language minority communities. Then, I will say a few words on the efficacy of the Official Languages Act, and lastly, I will comment on the need for clarity in part VII of the act.

I will now turn to my first point. The relationship between the government and official language minority communities has changed tremendously since the passage of the first iteration of the Official Languages Act. The two sides have established a collaborative relationship, a partnership even, when it comes to implementing the Official Languages Act, specifically the measures that stem from part VII. In my view, the act cannot be implemented without strong partnership between the government and the communities, and that partnership must be articulated in the act.

As I see it, the partnership extends beyond merely consulting with communities. In the draft bill to modernize the Official Languages Act submitted by the Fédération des communautés francophones et acadienne, or FCFA, on March 5, the organization included an obligation for the government to establish a five-year plan for the development of official languages. The government would do well to include that obligation in the next version of the act. The plan should be developed in co-operation with communities and their representatives. The government should endeavour to develop the plan jointly with official language minority communities because community partners and organizations play an active role in the plan's implementation. Otherwise, the organizations are likely to become nothing more than agents executing the government's plans.

True partnership between communities and the government involves recognition of the autonomy of communities and their ability to make decisions, govern themselves and build capacity. That is the way to really integrate the service principle of by and for communities into the Official Languages Act.

My second point relates to the implementation and efficacy of the act. As many have pointed out, one of the biggest challenges of the Official Languages Act has to do with its implementation. Numerous stakeholders maintain that the act needs more teeth.

What the act's 50-year history has taught us is that some institutions struggle to respect the act. While a lack of will may be to blame, a poor understanding of the language dynamics within a minority community may also contribute to the problem.

Establishing an active offer of service in both official languages necessitates organizational change. Work dynamics, culture, perceptions, attitudes, beliefs and so forth have to change.

An enforcement-based approach has its limits. When people change their behaviour, not because they are forced to do so, but because they have internalized the standards underlying the behavioural changes, it leads to better outcomes. Although necessary, enforcement and punishment are not enough. It will not be enough to give the act more teeth without building in an understanding of sociolinguistic dynamics in the workplace and service delivery. Keeping with the corporal metaphors, I would say the act needs a brain as well. To better implement the Official Languages Act, it will be necessary to leverage management expertise on how to bring about organizational change.

The Canadian government needs to improve its know-how with regard to implementing the Official Languages Act and give departments and agencies the expertise and resources they need to better support their implementation efforts.

The challenges around compliance with the act call into question its efficacy. An act is considered effective when it produces the desired effect. It would benefit the government to examine the challenges related to the act's effectiveness and to explore the conditions that would make it more effective. The government may have underestimated the sociolinguistic dynamics that favour the use of the dominant language and thus prevent full respect of the Official Languages Act in minority communities. The financial, human and material resources required to ensure compliance with the act may have also been underestimated.

A number of factors determine how effective or ineffective an act is. I will mention some of them.

First, the legal conditions must be considered. This means relying on what the act says, knowing what its objectives are and what it prescribes and prohibits. Another important consideration is recognition of the rights set out in the act and the level of obligation it imposes. Clarity and specificity also play a role. The clearer an act is, the less room it leaves for interpretation. An act needs to be consistent in relation to not only itself, but also other acts. Case law is another important factor. In addition to improving compliance with the act, court decisions provide clarity around its meaning. The remedies provided for in the act also help determine how effective it is. Does it set out any remedies? If so, what kind? Legal remedies? Complaints to the commissioner? Complaints to the institutions concerned? What authority does the commissioner have? How binding are the available remedies?

In addition, it is important to establish the right conditions for the implementation of the act. That ties in with the leadership I mentioned earlier; the commitment must come from the top. Also necessary is an information and awareness campaign to educate people on the act so that they understand it. The regulations spelling out how the act will be implemented, on a practical level, play a big role as well, not to mention internal directives issued, the financial, human and material resources allocated, and access to any necessary language training. Consideration must also be given to the resources available to the commissioner, new administrative boards—such as the tribunal discussed earlier—designated champions and coordinators as well as those responsible for the implementation of the act. Implementation will also depend on organizational skills and capacity, in terms of factoring language into how workload and services are managed.

As well, social factors can help determine the effectiveness of the act. These factors include the social, political, economic and cultural context, people's attitudes and perceptions, the buy-in of those responsible for applying, enforcing and respecting the act, and the support or opposition of interest groups.

Making the Official Languages Act more effective requires a holistic approach that takes account of all those dimensions.

● (1125)

**The Chair:** Mr. Forgues, sorry to cut you off, but we're going to move into the question and answer portion now, so that we have enough time for everything. You can provide more information as you answer questions.

We'll start off this round of questions with Alupa Clarke.

Mr. Clarke, you have six minutes.

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

Good morning, Mr. Kong and Mr. Forgues. Thank you for being with us today.

[English]

Mr. Kong, I think you have been very specific in your opening remarks. I might come back to you, but I'll just start off with Mr. Forgues, with all due respect, as I have many questions for him.

[Translation]

Mr. Forgues, please be as succinct as possible.

You talked about the efficacy of the act. Have you seen the FCFA's proposed bill?

**Mr. Éric Forgues:** Yes.

**Mr. Alupa Clarke:** How does it rank in terms of efficacy?

**Mr. Éric Forgues:** I think the bill proposed by the FCFA is rather well done and has some good ideas, but I would suggest a few minor changes.

**Mr. Alupa Clarke:** What are they?

**Mr. Éric Forgues:** I'll start with the good part. Creating an official languages tribunal is a good idea, and I also think using research to better support the implementation of the act is very positive. On the whole, I think the bill is quite good.

However, I would point to a few issues. With respect to consultation, establishing an advisory council under the act is a good thing, but I would have included more community representation. As the proposal stands, the membership of the advisory council would include an FCFA representative, a Quebec Community Groups Network, or QCGN, representative, and a representative from each community. I would have liked to see a truly representative advisory council, one that couldn't serve as a pretext not to consult communities when creating policies.

• (1130)

**Mr. Alupa Clarke:** I understand. That's one of my concerns as well.

Do you support an administrative tribunal for official languages?

**Mr. Éric Forgues:** Yes.

**Mr. Alupa Clarke:** The FCFA is proposing that it be mandatory to review the act every 10 years. Given the principles of the Westminster system, I'm not so sure it would be smart to force Parliament to undertake such a specific exercise every 10 years.

You're a sociologist, so do you think that a mandatory review every 10 years could have a deflating effect on organizations like the FCFA? After all, they are a mobilizing force and a significant part of their focus, or underlying desire, is reforming the act. From a sociologist's standpoint, do you think a deflating effect would be likely?

**Mr. Éric Forgues:** No, on the contrary. I think there would be greater mobilization around the act.

Adopting a five-year plan would allow societal changes to be taken into account. Does society change so quickly that the act would need to be reviewed every 10 years? I think it would be a good idea. The current model guiding the government's actions has been in place since the 1990s.

**Mr. Alupa Clarke:** It's a bit reactive.

**Mr. Éric Forgues:** Yes, but what really comes to mind is the work that's done under the Canada-community agreements, as we used to call them. Nowadays, we talk about contribution agreements and direct involvement in the communities. The current model was developed in the 1990s.

**Mr. Alupa Clarke:** I'm going to move on to another question. As I'm sure you can appreciate, Mr. Forgues, I need to be speedy.

I'm not sure I understood this correctly. At the beginning of your statement, you said that compliance with the Official Languages Act was better today than in the past, and then you talked about the lack of leadership within government agencies. Did I get that right? How is compliance with the act better today?

**Mr. Éric Forgues:** I didn't say compliance with the act was better. I think there was a misunderstanding.

It's important to examine the conditions that lead to greater compliance with the Official Languages Act. Earlier, I talked about the principles that would need to be incorporated in any measures aimed at improving compliance with the Official Languages Act. Certain conditions may have been underestimated; I'm referring to conditions that make it difficult to respect the Official Languages Act in certain contexts. Take, for example, language of work or language of service requirements. For large organizations, that means building skill and capacity. I would say a major shift has to happen on that front. If the necessary resources and expertise were fully assessed and understood, that shift would be easier.

What I mean is that it shouldn't be expected to happen simply because it is mandatory. There is a whole process involved.

**Mr. Alupa Clarke:** How much time do I have left, Mr. Chair?

**The Chair:** You have 30 seconds.

**Mr. Alupa Clarke:** Excellent. That's loads of time.

Of course, many want to see the word "shall" replace the word "may" in part VII. Taking into account the federal dynamic and the Constitution Act, 1867, do you think that change is necessary?

**Mr. Éric Forgues:** I think that is something the FCFA called for.

**Mr. Alupa Clarke:** Very well, but you, Mr. Forgues, what do you think?

**Mr. Éric Forgues:** I think it's an important change, as well. Without it, the act is less binding and gives people the choice as to whether or not to comply. That change would make it clear.

**Mr. Alupa Clarke:** Thank you very much.

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

Mr. Arseneault, it is your turn.

**Mr. René Arseneault (Madawaska—Restigouche, Lib.):** Thank you, Mr. Chair.

Thank you, Mr. Kong and Mr. Forgues.

My first question is for Mr. Kong.

Is the interpretation coming through, Mr. Kong?

• (1135)

**Prof. Hoi Kong:** I understand French well.

**Mr. René Arseneault:** Excellent. What a wonderful place, this country of ours.

Mr. Kong, I graduated from the faculty of law at the Université de Moncton way back when. Pierre Foucher taught me constitutional law. You may know him. I was one of those students who cursed constitutional law. Today, being in Canada's Parliament, I realize it is the proverbial umbrella protecting the rights of all Canadians, safeguarding our entire mosaic and all the other laws.

I'm not going to tell you whether I'm for or against an administrative tribunal. That said, two official languages commissioners told the committee that it wasn't all that important to have a tribunal. According to them, what mattered a whole lot more was having a clear and specific act devoid of any ambiguity. When you have a clear, specific and unambiguous act with teeth, you have less need for an administrative tribunal. I just wanted to hear your take on that.

You know as well as I do that Commonwealth countries have historically delegated matters to administrative tribunals in order to relieve pressure on the court system. A parallel system of administrative tribunals emerged so that certain sectors could deal with so-called specialized matters. The original intent was to relieve pressure on the court system.

The official languages commissioners noted that, with the creation of an administrative tribunal, citizens wanting to have their language rights respected would have to invest time and energy in long and often costly proceedings.

I'd like to hear your thoughts on that. Are we better off with an administrative tribunal or a clear and specific act, or both?

[English]

**Prof. Hoi Kong:** I don't think that the only issues around adjudication of disputes around language acts are just questions of clarity. Obviously, we would want a law that's clearer; I think that's a good idea.

On the question about whether to create a tribunal, setting aside the issue of clarity, I don't think even the most absolutely clear law is going to eliminate the need for adjudication and for resolution of disputes. If we set that aside, then the question is which institution is better able to handle the adjudication.

[Translation]

From an accessibility standpoint, establishing an administrative tribunal is a good idea.

[English]

There are issues of complexity of procedures. There are issues of costs. If what we're concerned about is ensuring that claimants can vindicate their rights, the judicial system, with its relatively high cost, with its relatively high levels of complexity, may not be the best venue.

On the question of whether we're simply shifting the load and pushing disputes off to administrative tribunals, that may be the case, but I think we just have to weigh it against the advantages that are gained by creating a tribunal that's more accessible.

Finally, on the issue of expertise, as I said in my introductory remarks, if you have a tribunal that is specifically constituted by members who have a specific expertise in language rights—particularly people who are sensitive to this situation of linguistic communities—that might make the adjudication of those disputes a little bit more effective, rather than simply being a way of shifting responsibility.

[Translation]

**Mr. René Arseneault:** Thank you. That's quite compelling.

Mr. Forgues, welcome to the committee. This is my first time meeting you, so it's a pleasure to make your acquaintance. I was trying to figure out which area you're from. Forgues, your last name, makes me think you're from Moncton, or the southeast part of the province, but your accent suggests you're from the north.

You raised a very telling point. Everyone here knows this, but we dare not say it, or at least, we aren't clear about it: the problem lies with all the institutions that are supposed to be mindful of their official languages obligations. The real problem is in the fulfilment of those obligations by the institutions. They are the first roadblock that people encounter when they are trying to exercise their language rights.

What is your take on a modernized Official Languages Act? You spoke earlier about giving the act some teeth. How do we give the act teeth so that institutions truly feel and understand the weight of their responsibilities to those concerned?

• (1140)

**Mr. Éric Forgues:** Allow me to clarify something. I'm not from New Brunswick. I was born in Ontario.

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

**Mr. René Arseneault:** Well, then. There you have it.

**Mr. Éric Forgues:** I did grow up in Quebec, though, and I've been here for about 20 years, so I may have picked up the accent in my neck of the woods.

**Mr. René Arseneault:** What a big, beautiful country this is.

**Mr. Éric Forgues:** As for the institutions, yes, they have an obligation. It's possible to reinforce that obligation in the act. It is possible to set up an official languages tribunal and to give the commissioner more of an enforcement role. I've learned something though, throughout my work on the value given to language when offering services in both official languages. I now realize how important it is that the act set out an active offer obligation. Otherwise, the offer of service can take various forms. Establishing the obligation in the act would have the benefit of clarifying the issue.

What does active offer mean? It's a term that is very misunderstood and therefore needs a clear and specific definition. I've realized, however, that even if the term is defined, a heavy-handed approach is not enough. The real focus has to be on building organizational skill and capacity to establish the resources and practices necessary to ensure service of equal quality in both official languages.



That's why I say relying on the act alone is not enough. It can help things along, of course, but we have to resolve all of the issues related to implementation. That requires careful consideration. Establishing regulations and directives may be one way to go, but perhaps we should consider other resources that aren't currently on the radar. It may be appropriate to create a centre of excellence specializing in the area, to guide agencies and institutions and give them the tools they need to ensure an active offer of service in both official languages.

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

It is now François Choquette's turn.

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

Thank you to both witnesses for being here today and giving us insight into the modernization of the Official Languages Act. Their expertise is much appreciated.

I'm going to start with Mr. Kong.

You listed the reasons why we should consider an administrative tribunal. You gave three good ones, and you did a good job of explaining them. I'd like to spend more time discussing the tribunal model as it relates to official languages and the division of roles and powers between the commissioner and the tribunal. You talked a bit about that, giving some examples.

What model would make for the best official languages tribunal?  
[English]

**Prof. Hoi Kong:** I think it depends a lot on the commitment of resources.

If you were to have a tribunal that gives claimants direct access, I think you would need to ensure that they are sufficiently supported in making claims, because otherwise the concerns about accessibility, the gains in accessibility, will essentially be lost.

I think that, if you commit the resources, then it's a good idea to have direct access tribunals, in part because the history of the model of commission with tribunal has shown that there are quite a large number of delays that arise when you have a commissioner who has multiple responsibilities. It's hard to achieve all the functions that a commissioner would be charged with, in addition to bringing complaints and referring complaints to a tribunal.

I think if you have sufficient resources to support claimants in front of a direct access tribunal, and then you ensure that the commissioner has all the resources necessary to do the kind of systemic work that Monsieur Forgues has noted to support communities, then I think you can allow the commissioner to focus on larger systemic questions rather than spend all of the time on specific complaints. Assuming sufficient resources and assuming that the commissioner is going to be freed up and given powers to do systemic inquiries and the kinds of cultural changes that Monsieur Forgues has mentioned, I think that a direct access tribunal would be a good model to proceed with.

• (1145)

[Translation]

**Mr. François Choquette:** Now I'd like to turn to you, Mr. Forgues.

You spoke at length about the importance of not just adopting an enforcement-based approach, but also ensuring the efficacy of the Official Languages Act. I think that's a very important point. Of course, we shouldn't limit ourselves to an enforcement-based approach. Official languages have to be seen as an integral part of our identity as Canadians, something to be proud of, something to recognize and celebrate. That is paramount.

Do you consider the current act to be effective in that sense? Do you think the notion of celebrating official languages is already built in? If so, where in the act is that housed? If not, as we review or modernize the Official Languages Act, should we add elements that would make the act more effective on that front?

**Mr. Éric Forgues:** At the first forum in Moncton on March 12, Michel Bastarache made another important point. He bemoaned the fact that official language minority communities are now perhaps the only ones who care about official languages. If that's true, linguistic duality and official languages may be playing a smaller and smaller role in defining who we are as Canadians. That is cause for concern. Diversity, or some other notion, set of values or vision of the country may take precedence in defining our identity.

In that event, promoting linguistic duality, as required under part VII of the Official Languages Act, would become quite the challenge indeed. Collectively, as a society, we would have to take a hard look at the cultural characteristics that define Canadian identity if we want to reach a point where respect for the Official Languages Act is a no-brainer, mainly for those who must implement the act and those who must comply with it. The work, therefore, has to focus on our values as Canadians.

**Mr. François Choquette:** I completely agree with you. Many want to take advantage of the 50th anniversary of the Official Languages Act to shine a brighter light on official languages and to hold a national forum that brings together a range of stakeholders, from prime ministers and commissioners to members of the public. Promoting linguistic duality—and you stressed the importance of this at the beginning of your remarks—is also a matter of leadership among those at the top. For decades, prime ministers have been silent on official languages during national forums. It's a topic that rarely makes it onto the agenda, and that is why it's so important to keep promoting it.

Thank you both.

**The Chair:** Thank you for that, Mr. Choquette.

Ms. Fortier, you may go ahead.

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

Welcome to you both. Thank you for being here this morning.

Mr. Forgues, I want you to know how much I appreciate your research, and have for a long time. When I was a small business owner, I was fortunate enough to make use of your research findings in my work, proposals to establish schools in different parts of the country. Your data played a key role. Those schools exist today because we had the right data to start with. My hats off to you and Mr. Landry for the work you've done.

Research is precisely what I'd like to talk about because the data are so important, crucial even. Figuring out where to find the missing data has been the subject of much discussion. In that vein, can you tell us which data are important? Should the Official Languages Act stipulate the need for statistics and data on rights holders? I'd like to hear your thoughts on that.

● (1150)

**Mr. Éric Forgues:** Doing so is essential, in fact. In one of its reports, this committee recommended that Statistics Canada establish an advisory committee to examine the enumeration of rights holders and thus provide a more accurate picture. If such a provision were included in the Official Languages Act, it would certainly be a boon for communities.

It's becoming clear that the data to assess the need for schools in communities is not available. That data would enable the different levels of government to better meet their obligations and build schools where they are needed. In some communities, the information had to be collected through door knocking. Rodrigue Landry was in charge of that initiative at the time. People were hired to go door to door to determine the number of potential students in each community.

Supported by the Statistics Canada data available to us, we are continuing that effort. Although the data are incomplete, we are still able to assess part of the demand. We do it for school boards. They aren't the most visible studies, but they do result in reports. That said, these tools are important to determine the number of schools warranted.

It's unfortunate, though, that the information has to be collected regionally. The data should be available for the entire country in order to capture the full demand. That way, we could better deal with the issue as a whole, not just to build schools, but also to expand existing ones all over the country.

**Mrs. Mona Fortier:** I'd like to delve further into the issue. Education is fundamental, of course, but so are health and immigration. I won't go as far as to say that immigration is a new issue for us, but 50 years ago, it wasn't something that factored into the act. Today, however, we recognize the vital role immigration plays.

Tell us, if you would, about some of the studies you're working on, ones that are being hampered by the lack of federal data or research. Are there other language-related data we should be collecting for research purposes?

**Mr. Éric Forgues:** The federal government hosted two symposiums on research in the area of official languages. If memory serves me correctly, they were in 2008 and 2011. In both cases, it was agreed that the government, academia and the communities needed to work together more closely. It didn't happen, though.

Academics and communities work together from time to time, but there's room for a lot more collaboration.

We live in a knowledge-based society, and if society is to have a proper vision of itself, if it is to grow and move forward, it needs access to accurate data. That's an area that has suffered serious neglect, as I mentioned at the beginning of my remarks. We are operating in the dark, feeling our way along, without really knowing where we are going because we haven't recognized how vital research is to the implementation of the Official Languages Act, specifically part VII, which deals with community development. Before we can determine the best way to meet communities' needs, we have to identify what those needs are.

● (1155)

**Mrs. Mona Fortier:** Sorry to rush you, but I have a limited amount of time. I think the chair is about to tell me I'm out of time.

**The Chair:** Indeed, your time is almost up.

**Mrs. Mona Fortier:** In a nutshell, you're saying that studies, research and investigations by federal institutions should always take account of the language variable. Is that correct?

**Mr. Éric Forgues:** Yes, that is our message to you.

**Mrs. Mona Fortier:** That is what I wanted to hear. Thank you.

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

Ms. Lambropoulos, go ahead.

**Ms. Emmanuella Lambropoulos (Saint-Laurent, Lib.):** I will ask my questions in English.

[*English*]

Thank you both for being here with us today through video conference.

My questions are going to go mostly to Mr. Forgues.

First of all, you mentioned before that while there were consultations between the minister and the minority communities, there wasn't much outside of the organizations. The feedback I heard from the anglophone community in Quebec was that, yes, for the first time they felt they had been consulted. Of course, I did only speak to the QCGN with regard to this, so that might be why. In what ways would we benefit from hearing from more groups? Why is it that you think they're not necessarily fully representative of the linguistic minorities they represent?

[*Translation*]

**Mr. Éric Forgues:** As far as consultations go, I was in Moncton—I have mentioned this three times now—and I remember a speaker who said hello to everyone, introduced himself and specified that he was not the leader or president of any organization. That made the people in the room laugh because everyone we had heard from so far was a director or a president of an organization.

I think it is important to hear that voice, as well, to consult those people, to take the pulse of a population that is not necessarily part of organizations that defend very sectoral, very specific interests, but that does provide a different perspective. To my mind, diversity of viewpoints is essential in consultations. When organizations are consulted exclusively or primarily, there is a risk of maintaining the status quo in terms of intervention models in communities.

It must be possible to question certain practices. I'm not saying that is not the case, but health organizations will say it is important to take action in health. In early childhood, people will say it is important to take action in early childhood. The same goes for the economy, arts and culture, and so on. Interests are very defined within the organization. If consultations were limited to that, the status quo would be ensured, with the focus always on enhancement, in the sense that more is always being requested. That is normal; it's the nature of those types of consultations.

That is why it is important to change up the consultations, so as to also include in them citizens and independent researchers whose perspectives can also be critical in terms of the collective reflection we are engaging in on official languages.

[*English*]

**Ms. Emmanuella Lambropoulos:** Because a lot of our focus is on francophone communities outside of Quebec, I'd like to hear a little bit of your take on the anglophone community within Quebec. Considering that you are the executive director of the Canadian Institute for Research on Linguistic Minorities, is there anything in particular that sticks out as being different for the anglophone minority in Quebec, some 1.1 million Canadians, than it is for the 1.1 million Canadians who are francophone minorities?

[*Translation*]

**Mr. Éric Forgues:** When the institute was created, our mandate was to focus both on francophone communities outside Quebec and on English speakers in Quebec. However, we quickly realized that, from the research point of view, we were dealing with two very different realities. Anglophones in Quebec do not really see themselves as a minority. So research problems will not be defined in the same way as for the francophonie outside Quebec.

Not only is the way to problematize the issue or to pose inquiry questions different, but we also realized that research capacities had to be developed and research interest on anglophones in Quebec had to be simulated. The issue was different.

We decided to work with people on the ground, such as Lorraine O'Donnell, coordinator of the Quebec English-speaking Communities Research Network.

So the differences are fairly significant. I am not an expert on anglophone communities in Quebec, but I have noted some really different dynamics. Problematization is different, as are the issues involved.

• (1200)

**The Chair:** Thank you very much.

Ms. Boucher, go ahead for five minutes.

**Mrs. Sylvie Boucher (Beauport—Côte-de-Beaupré—Île d'Orléans—Charlevoix, CPC):** Good afternoon, gentlemen.

I am speaking to our two guests.

I have often heard Mr. Forgues say that the Standing Committee on Official Languages was frequently meeting with the same individuals. I have been a member of the committee for a very long time, and we are in fact always meeting with the same organizations.

Now that we are heading toward the modernization of the Official Languages Act, do you think it would be important to include the linguistic majority in the debate? Would it not be a good thing to look beyond our bubble in order to move forward, toward the future, and include others?

Instead of considering ourselves, the linguistic minorities, as enemies, we should become allies in our fight for the modernization of official languages. Would that be a good idea?

**Prof. Hoi Kong:** Mr. Forgues, I will let you answer.

**Mr. Éric Forgues:** Thank you.

I do think that would be a good idea if we want to have engagement of the anglophone community outside Quebec, for example, or of the francophone community in Quebec. If we want people to participate in the debate and feel involved in the whole issue of official languages and be engaged in it, we also have to hear from them. They should be invited to discussions and asked to participate in the current collective reflection.

In my opinion, it is very important to hear from them, establish a dialogue and maintain it.

**Mrs. Sylvie Boucher:** Thank you.

**The Chair:** Mr. Kong, do you want to add anything?

**Prof. Hoi Kong:** I agree. I also think that well structured consultations should be created, so that consultations would not only be an opportunity to express frustrations.

I think that, to create a good partnership, consultations that lead to that objective must be held.

**Mrs. Sylvie Boucher:** We are talking about the modernization of the act. We are all politicians around the table and, frankly, we all know that language sometimes becomes a political issue.

However, I do not feel that way. I think that our language is what belongs to us the most and what defines us as human beings. So we have to rise above partisanship.

I really liked what was said earlier. Yet, when we talk about the federal government, especially public servants and the machinery of government, that is one thing. But how can we make us as politicians understand, across party lines, that linguistic duality is important, that the modernization of the act involves everyone and that we have to rise above partisanship because our language is what defines us?

To move forward, we have to build on something. How can we ensure that the modernization of the act becomes apolitical and is the true reflection of what is happening in minority language communities?

The question is for both witnesses.

• (1205)

**Mr. Éric Forgues:** Go ahead, Mr. Kong.

**Prof. Hoi Kong:** I think we must emphasize the importance of linguistic duality in Canada. That is the cornerstone of our identity. I think that's what is important. If that was emphasized, we could see the emergence of a less partisan process.

**The Chair:** Thank you.

Mr. Forgues, you have time for a very quick answer.

**Mr. Éric Forgues:** That is actually in the Constitution Act of 1982, which is above any kind of a political game. I think that linguistic duality defines Canada's fundamental identity and cannot be challenged.

Perhaps we need to promote it better with certain groups. I don't know how the issue of leadership can be included in the act, but that is crucial. Perhaps something is escaping us in terms of the way to improve leadership in official languages, but that is very important.

**The Chair:** Thank you very much, Mr. Forgues and Mr. Kong, for briefing the committee members.

We will suspend proceedings for five minutes. After that, we will speak by videoconference with another stakeholder, who is located in the United Kingdom.

• (1205) \_\_\_\_\_ (Pause) \_\_\_\_\_

• (1210)

**The Chair:** We are continuing our discussions.

We have the pleasure of welcoming Meri Huws, who is Welsh Language Commissioner, in Wales.

Ms. Huws, welcome to the Standing Committee on Official Languages. Thank you for joining us. We would have liked to have you with us in person, in Ottawa, but we will do what we can over videoconference.

We will first listen to you for about 10 minutes. Committee members will then make comments and put questions to you.

Go ahead.

[English]

**Ms. Meri Huws (Commissioner, Welsh Language Commissioner):** *Diolch yn fawr iawn.* Thank you very much.

I would have loved to have been in Ottawa as well, but it couldn't be arranged this afternoon. I apologize for that.

Thank you for this opportunity to contribute to your discussion. What you're doing is really interesting. You're reviewing a piece of legislation that you've had since 1969, and I'm working with a piece of legislation that we've had in Wales for the past seven years.

I'd like to start with giving you a brief overview of our position in Wales, and some of the issues that I think may be of interest to you as a committee and some of the issues I've encountered as a commissioner.

I've been commissioner now for seven years. It's a statutory period of seven years, which comes to an end at the end of next week, so I'm really reflecting on seven years in the role. I cannot be reappointed, so at the end of next week, I will walk into the sunset and another person will take over as commissioner.

In terms of my position in Wales, I was appointed as a consequence of the Welsh Language (Wales) Measure 2011, a piece of legislation that built on previous legislation. We had Welsh language legislation in 1942 and 1967. I will just note that those pieces of legislation were introduced specifically to give people rights to use the language in the judicial system, the court system. In Wales, our first rights to use the language within a public context were granted in terms of giving evidence in court or appearing in court.

In 1993, Westminster legislation gave the Welsh language parity with the English language in Wales. It did not give it official status. We had to wait for that until the 2011 legislation, which did three specific things. It gave the Welsh language official status in Wales for the first time since 1536. It established my role as a language commissioner, and I'll talk a little about my role in a minute, because it is a hybrid role. It also established a very comprehensive regime of imposing standards on public sector organizations in Wales. We have a series of very specific legal duties that are placed on public sector bodies, and I'll talk a little about that.

First of all, in relation to standards, we have in Wales sets of standards that are imposed on various sectors within the public sector. It sounds complicated, but essentially we've gone through an exercise of imposing, in the first instance, standards on government, local authorities and our national parks. We have also imposed standards now on police forces; post-16 education, which includes universities; the health sector in Wales; and also our large national organizations, like our national museum, our environmental bodies. In the past seven years, we've gone through a series of exercises that have placed legal duties on those organizations.

The schedule of standards placed on an organization can be divided into five families of standards. We have standards in relation to service delivery, engagement with the public. We have standards in relation to internal operation of organizations, how they deal with their workforce, the rights that are given to workers within the organization. We have standards in relation to policy-making by the organization. We have standards in relation to promotion of the language by organization. We have standards that require organizations to collect evidence as to how they are operating within the standards.

• (1215)

A normal organization, such as the Welsh government, would have a schedule of approximately 100 standards that they are required to comply with, divided into those five families. It's part of my role as commissioner to be a statutory regulator of those standards.

Complaints of non-compliance and investigation of complaints as to non-compliance are referred to me. If I become aware, because of our monitoring activity, that an organization is not complying, I can intervene and require compliance. I have extremely robust enforcement and compliance powers.

I also have powers to establish investigations without complaints being referred to me. It's more than an ombudsman role. If I'm aware or I suspect that there are problems, I can conduct investigations. Those investigations can lead to legal steps, which can, in the worst case, include imposing fines or referring the organization to a higher court. I have very robust processes as a regulator.

Also, along with my regulatory role I have a promotional role. It's a hybrid role, the role of the commissioner—and very clearly a hybrid role. There are very definitely two sides to this coin, as regulator and as promoter of the language.

Promotion of the language entails a whole host of activities, from raising awareness to information campaigns. Also, an activity that I consider to be important and influential in the way I have worked is to conduct investigations or research into certain policy areas where I consider that steps need to be taken to improve the quality of service or the quality of experience for the service user, and to advise government on those policy areas.

Within our legislation, if I recommend to government or to a national body that they should take steps in terms of policy development, they are required to consider and respond to that in an official context. They don't have to take on board my recommendations, but certainly they need to respond to those recommendations.

I've found that promotional policy influencing role very useful, particularly in areas of health, social care and education. We've also undertaken work on the experiences of prisoners within the prison system and their capacity to use the Welsh language whilst they are interred or imprisoned. We've also worked very closely with mental health organizations in looking at services in terms of mental health. We've used those powers, as well, in terms of town and country planning.

That has been, as I said, very useful set side by side with my regulatory role. They're two sides of the same coin; I find them very useful to sit together.

There are big challenges for us moving forward. I would see our policy-making role continuing, but certainly new forms of communication and technology are proving to be both a challenge and an opportunity to ensure that we are engaging with the requirements of developing bilingual media and doing that in an effective way. We have noticed that certain organizations have.... In particular, the banking sector has lost ground as it's moved from face-to-face banking services to digital banking services. We've been working very hard with that sector as well.

•(1220)

I suppose that's the last note from me. Banks do not fall into my legislation but, because of my promotional role, I can engage with those organizations as well.

During the past seven years, I've welcomed having that duality of role, and I see that as working very well together.

The very last thing I should say is this. As a regulator, I have a language tribunal that sits by my side that essentially can intervene if there are complaints that I am behaving in a manner that is not legal, not reasonable or not proportional. We have a language tribunal, but it's the last point of challenge on my activity. I think that's proved

useful. It's not been particularly active, thank goodness. There have not been many complaints about the way I've undertaken my duties, but it sits there as a tribunal overseeing my activity.

I hope that gives you a flavour of our position in Wales, and there may be lessons. We have a very recent piece of legislation, and there may be some lessons there that are of use to you as you consider your agent and legislation at this point.

•(1225)

**The Chair:** Thank you very much, Meri, for your presentation.

I will go to my colleagues for questions.

I will start with Alupa Clarke.

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

Madame Huws, it's an honour to have you through televised conference. I knew a bit about Wales, but I didn't know that there were so many particularities and that there was a commissioner. Thank you very much for taking the time to speak with us.

I'll go right to the subject at hand. You have punitive measures in your regulatory functions, including up to £5,000 in fines. In terms of all the measures at your disposal, which do you find have the most impact when you have to use one of them?

**Ms. Meri Huws:** I have adopted a policy of escalation. Post-investigation, when you find that an organization is not compliant, our first response would be to seek a rapid remedy for that and essentially require them to comply within a specific period of time.

I have avoided using fines because fines don't change behaviour. There is always a danger that an organization pays a fine and continues not to comply, so we work very hard with organizations to change non-compliant behaviours.

The one thing we've found to be useful is requiring a work plan that we monitor to ensure that they achieve compliance. Rather than hitting an organization very hard with financial penalties, it's far more effective, in my belief, to work with them to achieve compliance. I'd happily use fines if an organization just ignores me, but I do find that working side by side works well.

**Mr. Alupa Clarke:** In those instances where you do use the fine, who is the fine paid to? Are these paid to collective funds or a place where fines are amassed to be used to address the lack of services, for example?

**Ms. Meri Huws:** The money would come into this organization.

I'll just say that we have never, ever used a fine.

**Mr. Alupa Clarke:** Okay, I see. That's interesting.

If you had to, the money would come to your organization, and you would use it for your own structural needs or anything else?

**Ms. Meri Huws:** That's a good question, and I can't answer because we've never been in that position. I'm certain the Welsh government might have an opinion on that.

**Mr. Alupa Clarke:** When it comes to your relationship with whichever tribunals exist, I would like to better understand your relationship with them, because we're considering adopting the model of administrative tribunal.

Would you personally take a cause to the tribunal on behalf of an individual or an organization?

• (1230)

**Ms. Meri Huws:** No. The Welsh Language Tribunal has a very specific remit. The Welsh Language Tribunal polices me. Its prime focus is to ensure that I am reasonable, proportional and legal in the way I operate.

There are two types of case that are referred to the tribunal. One would be where someone has complained to me as a regulator about an organization that isn't complying with Welsh language standards; I have investigated; I possibly have decided they are complying; and the complainant doesn't agree with me. They can refer the case to the tribunal, and it has to be on a legal ground.

The second type of case would be where I have investigated an organization; I have found that it is not complying; and it believes that my judgment is not appropriate. We have a case at the moment where an organization believes that my interpretation of a complaint about its reception services is not appropriate, and it has gone to the tribunal.

Essentially, the tribunal monitors me as a regulator. I'm the person who actually looks at cases. If I have received a complaint and I believe it is very serious, and I have found that an organization is not complying with its duties, I can refer that case to the civic courts. I could actually then seek a court injunction to require it, if it doesn't comply with what I believe is compliance.

What you were looking at as a tribunal duty of investigation and enforcement sits with me. Our tribunal is there to ensure that I do not make any decisions that are inappropriate.

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

**Ms. Meri Huws:** There are very few cases that are actually referred to the tribunal. We're still in single figures.

**Mr. Alupa Clarke:** How do you say "thank you" in Welsh?

**Ms. Meri Huws:** You say *diolch*.

**Mr. Alupa Clarke:** Okay, *diolch*.

[Translation]

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

We now go to Jean Rioux.

**Mr. Jean Rioux (Saint-Jean, Lib.):** Okay.

Commissioner, thank you very much for sharing your experience before you leave for other pastures, as you have announced.

We know that, in Canada, bilingualism is part of our identity. The wish is for everyone to speak both languages. That is not the reality; it is an ideal.

Do you consider your country bilingual? Is your objective for everyone to speak both languages, or is there really a concentration of Welsh speakers in a more specific region?

We know that Canada has a very unique phenomenon of immersion schools where people can learn the other language.

Can you give us an overview of the situation of bilingualism, if there is one, in your country?

[English]

**Ms. Meri Huws:** Yes, of course.

To start with, we are a very small country. We have approximately three and a half million people and approximately 20% of them speak Welsh. So 20% of the population speaking Welsh is an interesting demographic because if you look at children from three years of age to 18 years of age, approximately 50% of that population speak Welsh because of the impact of education.

We have immersion education in some places in Wales and we have Welsh medium education as well. We have a growing young population who speak Welsh and a dying older population who would have learned the language at home. Our growth area is very definitely among young people who are learning the language as a consequence of education.

If you look at the map of Wales, traditionally the predominantly Welsh language areas are on our west coast, which is the coast facing Ireland, the coast furthest away from England. That has traditionally been the area where the Welsh language is strong.

Economically, that is a poor area. It's an agricultural area and it's suffering from outward migration. People, young people, are moving away from that area. We're losing traditional Welsh-speaking communities in that area. Our growth areas, because of the profile of Welsh speakers, are our cities, such as Cardiff where I'm sitting at the moment, and in places such as Swansea and large industrial towns in the eastern part of Wales, closest to the border with England.

We have a changing demographic of growth in areas where the language has not been spoken as a natural language, as a home language, for a century or two in some areas. We are dealing with an emerging population of new speakers. Our biggest challenge is retaining those people as Welsh language speakers as they come out of the education system. We're trying very hard to ensure they can move into employment where the Welsh language is seen as a skill and that they see value in having the Welsh language as a skill.

We are dealing with a changing demographic and education is critical for us, but also for me. Securing a Welsh or bilingual workplace is also a key driver in ensuring that those young people remain Welsh speakers.

• (1235)

[Translation]

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

We are looking into the possibility of having an administrative tribunal.

I understand that, as commissioner, you have enforcement powers and that the administrative tribunal is an appeals tribunal based on your rulings, as you explained earlier.

The option we are focusing more on is one where the commissioner would promote bilingualism and ensure the security of people in minority situations, whereas the tribunal would have more enforcement powers. What do you think about that perspective?

[*English*]

**Ms. Meri Huws:** I have powers of regulation and coercion where legal duties have been placed on public bodies. I also have that promotional role. We have had to debate in Wales as to whether we can have both roles within one person. I believe very strongly after seven years that we can. We need to have appropriate governance to ensure that we keep those roles apart within the office, but I do see them working very well together. We require an organization to comply but we can also provide them with tools through our promotion work, which aid them in that compliance. For example, we've provided non-statutory guidance to organizations on appropriate translation, appropriate simultaneous translation or textual translation. We can require compliance, but we can also enable them to comply. I find that beneficial.

I also find it beneficial that I can deal with complaints, because my experience is that an independent commissioner can work rapidly where that is required. If a complaint comes in and it is serious and has immediate effect, I can intervene very quickly, whereas—possibly—an administrative tribunal would not be as fleet of foot, would not be able to move as fast. I do find that useful when we have serious complaints that come in and we need to respond quickly.

● (1240)

**The Chair:** Thank you very much.

We'll go now Mr. François Choquette.

[*Translation*]

**Mr. François Choquette:** Commissioner, thank you very much for joining us today by videoconference.

I see that this is still a young institution. It has been in existence for seven years. I want to begin by thanking you for your services as commissioner. I understand that the end of your term is approaching. I am sure that your services have been well appreciated. We know how difficult and important a commissioner's work is, especially in official languages. I believe that Welsh is now an official language of the United Kingdom.

I will tell you about a situation here, in Canada, to explain our thought process on the need to have an administrative tribunal whose role would differ from yours. Here is an example.

In 2014, an incident took place on Parliament Hill, and the RCMP had to respond in a more involved manner. A gunman opened fire on the Hill. Some citizens did not have services in French at the time. Complaints were made against the Royal Canadian Mounted Police, the RCMP.

We are in 2019. The commissioner agreed to examine those complaints and has made three very simple recommendations: first, assess the language skills of people working for the RCMP on the Hill; second, implement an intervention process to inform the officers on language obligations; third, have a complaint acceptance process—in other words, determine how complaints submitted directly to the RCMP are received and processed.

The commissioner's report was issued around 2015. The RCMP has taken no action on the Hill following those three recommendations. The commissioner even did a follow-up and, once again, there has been no response. We are now in 2019 and none of the three

recommendations, which are fairly simple in my opinion, have been followed.

So we are dealing with uncooperative agencies. What would be your role? What could you do that the Canadian commissioner cannot do? He can make recommendations, but there are no consequences.

[*English*]

**Ms. Meri Huws:** The initial difference would be that, if I were to investigate following a complaint, I would have requirements rather than recommendations made of the organization, so my judgment would lead to statutory requirements with which they are required to comply. If they do not comply, I can then escalate within my organization, within the commissioner's office. We can move to a position where I impose a fine or I move the case forward immediately to a court to obtain an injunction. Rather than having a series of recommendations, I have a series of legal requirements that I can impose on, in your case, the police.

That role has greater teeth than recommending change; I “require” change.

● (1245)

[*Translation*]

**Mr. François Choquette:** If I understand correctly, over those seven years as commissioner, when you came across similar situations, you issued no recommendations, but you rather imposed what you call legal requirements. After imposing those legal requirements, did you have to take things further or did the institutions respond positively to your demands?

[*English*]

**Ms. Meri Huws:** My experience, on the basis of seven years, is that in 99% of cases we have immediate compliance. We've investigated Welsh government on a regular basis, whether it's non-compliance.... They have responded to the legal requirements. We are starting to see possibly one or two organizations that are not complying as quickly as is required, and we are looking to escalate those organizations, but, certainly, I have rigorous compliance powers. They are strong. I certainly know, in talking to other commissioners, that my powers are substantial, which is why the tribunal was created in order to ensure that I do not abuse my powers.

**Mr. François Choquette:** Thank you very much, Madam.

**The Chair:** We'll now go to Darrell Samson.

[*Translation*]

**Mr. Darrell Samson (Sackville—Preston—Chezzetcook, Lib.):** Thank you very much for your presentation. It is very useful and helps us consider different possibilities, which may perhaps apply to Canada in our important reflection on this issue.

My question follows up on the comments of my colleague Mr. Choquette. You make those decisions, and people must act quickly, but they can also say that they do not agree with your decision and decide to turn to the tribunal. What can happen then? The tribunal may do one thing or another, and you can do the same.

Could you please describe the process that takes place in such cases?

[English]

**Ms. Meri Huws:** What the tribunal could do is confirm my decision or require me to reconsider. Those are the two real options that they have. First of all, they can say the decision is correct and they confirm it. The second option is to refer the case back to the commissioner for reconsideration. Usually, they will give me legal arguments as to what I should consider, so those are the two steps that can occur; I am either confirmed or required to reconsider.

[Translation]

**Mr. Darrell Samson:** That is interesting. In reality, the tribunal supports you indirectly. It can say that you are correct and, even if it disagrees, provide you with arguments so that you would reflect on your decision further. You can make a change or confirm your decision.

Let's continue the process. If you thank the tribunal for providing you with arguments to reflect further, but you maintain your original decision, what happens then?

[English]

**Ms. Meri Huws:** I am pleased to say that I have not yet arrived at that position where I've been challenged on reconsideration.

There are situations where cases that have been referred to the tribunal have been confirmed. I welcome that.

I have been required to reconsider on a few occasions. On one occasion, I did not change my position because I believed that legally I was in a correct position. That was not referred back to the tribunal. At other times I have changed my decision, because I accepted the legal argument or the elements of argument that had been presented.

We have not found that it prolongs the process. The number of cases referred to the tribunal are few, and when they are referred, they are normally on issues where guidance is welcome.

• (1250)

[Translation]

**Mr. Darrell Samson:** Okay. We will put that in brackets and continue to talk about the case where you maintain your decision, but the institution refuses to comply. You impose higher fines, but the institution is still refusing or only partially complying, which is still not acceptable. So you take the case before the highest court. What can happen then?

[English]

**Ms. Meri Huws:** The ultimate would be a court injunction imposed on that organization to comply.

[Translation]

**Mr. Darrell Samson:** I really like the way you operate. I cannot speak on behalf of all the committee members, but I think this opens up interesting perspectives for us.

How much time do I have left, Mr. Chair? About 10 minutes?

**The Chair:** You have a few seconds left.

**Mr. Darrell Samson:** Ms. Huws, I would still like to bring up a point you raised earlier with regard to your regulatory and legislative role, on the one hand, and the role you play in promotion, on the other hand. Like you, I think that both are working well. That's

probably because you help institutions and the government by supporting them and by promoting instead of engaging in a fight with them every time.

Thank you for your comments on this issue.

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

We now go to Mr. Arseneault.

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

Welcome, Ms. Huws.

[English]

My colleague Darrell Samson and I are descendants of the Acadians, the first settlers in what was then called New France.

It's very interesting. You were a pearl for us today, just to hear you....

That fight—well, not a fight; I don't like to call that a fight. On that mission you have with your friends and your community with the protection of the Welsh language, if I understand right, the Welsh Language Tribunal is only for the organization to appeal after one of your decisions. Am I correct?

**Ms. Meri Huws:** It's for the organization or a complainant to appeal, someone who has complained to me about an organization.

**Mr. René Arseneault:** So it's not a tool for the commissioner?

**Ms. Meri Huws:** No.

**Mr. René Arseneault:** Only two decisions can be made by that tribunal. It can refer to you to reconsider your decision or it can confirm your decision. From that tribunal, there is no way a citizen or an organization can make an appeal from a tribunal decision to a legal court. Right?

**Ms. Meri Huws:** You're right.

**Mr. René Arseneault:** You said that only a few of your own decisions went to the tribunal. Am I correct?

• (1255)

**Ms. Meri Huws:** That's true.

**Mr. René Arseneault:** In seven years, how many decisions, roughly, were contested in front of the tribunal?

**Ms. Meri Huws:** If we look at the register, I think we're at case number 13 at the moment.

**Mr. René Arseneault:** Is it mandatory for the tribunal to keep jurisprudence and publish the decisions?

**Ms. Meri Huws:** Yes.

**Mr. René Arseneault:** It is an obligation, so any organization or citizen can have access to that information.

**Ms. Meri Huws:** Yes.

**Mr. René Arseneault:** Now, if I come back to you as commissioner, you said something that's interesting to me. You said that if you have to force an organization to respect or to conform to the legislation, the only tool you have, above yourself, is a legal court, right?

**Ms. Meri Huws:** Yes.



**Mr. René Arseneault:** There are two tools here as concerns the commissioner. There's a tribunal for the people, organizations, or whoever would contest your decision, and there's one for you if somebody does not conform. Why was it important for your office not to rely on the tribunal to enforce legislation, instead of going back to a legal court, and to let the tribunal impose fines or impose whatever sanctions?

**Ms. Meri Huws:** The decision was made, when the legislation was put together—in order to achieve effective delivery or effective compliance with the standards—to place that responsibility on the commissioner as a first point of call. The commissioner can respond quickly and effectively. They saw it as more appropriate that it would be the commissioner who dealt with cases in the first instance and who also sought compliance.

We have a model in Wales. We have commissioners in other areas. Their powers aren't as strong as mine. We have a tradition. We have a children's commissioner. We have an older people's commissioner. They would also have statutory powers as well. Mine are stronger. It's a model that we see as working, because there's also belief that a tribunal can be very impersonal, and that having reference to a single person, an independent commissioner, is a good model to secure justice.

[Translation]

**Mr. René Arseneault:** Do I have any time left, Mr. Chair?

**The Chair:** A little bit.

**Mr. René Arseneault:** That's good.

[English]

What strikes me is that it's very effective and quick with a tribunal, but it is a tool for the organizations or whoever does not respect the legislation. It's a tool for them.

For the Welsh people, if they cannot get a solution with your office, then you, as a commissioner, have to appeal to the legal process, with a real judge. For the people who need to be respected in their language, that's a long process.

It is quicker for the offenders. They can have access to a tribunal quickly.

**Ms. Meri Huws:** Our experience is that you can have access to a commissioner much faster than to a tribunal. Is it fair for me to say that you are talking about the norm being people not complying, organizations not complying? My experience over the past seven years—I may have been lucky—is that organizations, public sector organizations, wish to comply.

**Mr. René Arseneault:** Maybe Welsh organizations are more open to compliance, but I would say that in other countries it's not always like that.

Let's take a basic experience. Somebody wants to have access to a government office in Wales and his language, Welsh, is not respected. He refers to your office. Then you ask that governmental institution to conform. It doesn't want to. That person who appealed to your office will have to wait until you, as commissioner, refer that file to a legal court, with a real judge. It is expensive. It's long. Am I correct?

● (1300)

**Ms. Meri Huws:** Yes, but I have other powers, then, to force compliance.

**Mr. René Arseneault:** Oh. How?

[Translation]

**The Chair:** Mr. Arseneault, I have to interrupt you because your time is up.

**Mr. René Arseneault:** Thank you very much.

[English]

**The Chair:** I'm sorry, but there is another questioner, Bernard Généreux.

[Translation]

Mr. Généreux, you have three minutes.

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

[English]

Thank you, Ms. Huws.

I'm going to have to be quick because we don't have much time.

Do you have a minister with whom you collaborate? Do you have to reply to a minister in the government?

**Ms. Meri Huws:** Legally, I'm independent. I'm what's known as a corporation sole, so I am a legal entity. We are funded through the Welsh government. Our funding stream comes from the Welsh public purse, but ultimately I am independent and I regulate the Welsh government as well. Most of our work—

**Mr. Bernard Généreux:** If someone is not complying, which could be the government or a private body, if you had to fine a government body £5,000, who would pay and to whom? If the government is at fault, you would have to fine the government, which you never have—but wouldn't you have to fine the government?

**Ms. Meri Huws:** Yes, I could impose a fine on the Welsh government. I don't think that would be my first choice because that would be a waste of public funding, but—

**Mr. Bernard Généreux:** I believe that doesn't make sense, that's why everybody is laughing here.

Do you have the power to regulate a private body as well, such as an airline or a private company?

**Ms. Meri Huws:** No. We regulate public sector bodies. With the 2011 legislation there was a long discussion about including the banking sector and supermarkets within legislation. Because of very effective lobbying, they were not included at that point, but it remains a discussion. There are discussions about including parts of the private sector within our legislation in the future, but not at present.

[Translation]

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

[English]

Thank you very much, Meri, for your contribution to the work of our committee.

[*Translation*]

**The Chair:** Thank you.

We would love to see you in person in Ottawa at some point. It has been a pleasure.

[*English*]

**Ms. Meri Huws:** *Diolch yn fawr.* Thank you very much.

The committee is adjourned to the call of the chair.

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