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Chair

The Honourable Denis Paradis

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● (1135)

[*Translation*]

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

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

My apologies again for the unavoidable delay, but we have no control over the timing of the votes in the House.

We are delighted to have with us this morning, Graham Fraser, a senior fellow at the University of Ottawa, a new role for him.

Mr. Fraser, welcome to the committee.

You will have 10 or so minutes for your presentation. As usual, we will then proceed with a round of questions and answers.

Mr. Fraser, the floors yours.

Mr. Graham Fraser (Senior Fellow, University of Ottawa, As an Individual): Thank you very much, Mr. Chair.

I'd like to start off by saying what an honour it is to appear before the committee. I've always appreciated how committed the committee members are to defending official languages.

I'm no longer the Commissioner of Official Languages and I have no intention of speaking as though I still am. I have tremendous respect for both of my successors, and I would never want to speak in Raymond Théberge's stead. I have great regard for him.

Nevertheless, my 10 years of experience as commissioner may provide the committee with some insight with respect to modernizing the act.

My comments will focus on issues related to part VII of the act.

[*English*]

When I became commissioner in 2006, part VII of the act had been amended only a few months before. Rather than push for regulations to govern the application of the new part VII, I felt that it would be best to allow federal institutions to innovate and develop their own practices regarding “positive measures” for the growth and development of minority language communities.

Indeed, many institutions took their responsibilities seriously and found imaginative and innovative ways to take positive measures. These ranged from participation and support for community activities to the provision of office space for community organizations in exchange for French conversation classes. The problems emerged when federal institutions did not, in our view, interpret those obligations in a satisfactory fashion. The first was the decision by the newly elected Progressive Conservative government—made between the announcement of my nomination and the confirmation of my appointment in 2006—to abolish the court challenges program. The court action launched by the Fédération des communautés francophones et acadienne, which I supported, resulted in an out of court settlement that resulted in the creation of the language rights support program.

[*Translation*]

The second was the elimination of nearly all local programming at CBEF Windsor, a French-language community radio station. The CRTC agreed with my argument and required that the programming be restored as a condition of renewing Radio-Canada's licence. The trial judge accepted my argument that Radio-Canada was subject to obligations under part VII of the act, but the decision was struck down on appeal on other grounds. Since then, a modus vivendi has been reached between Radio-Canada and the commissioner's office.

The last is the Federal Court decision rendered by the Honourable Judge Gascon, on May 23, 2018, in Fédération des francophones de la Colombie-Britannique v. Canada (Employment and Social Development).

As you know—and the judge noted this—the Fédération des francophones de la Colombie-Britannique argued that the federal department and the Canada Employment Insurance Commission had failed to fulfill their language obligations to the francophone linguistic minority when they entered into and implemented a transfer payment agreement with the provincial government. The agreement governed the administration of employment support measures to help workers return to the labour market.

As the judge noted, I intervened in the proceedings to argue how the sections of the Official Languages Act at issue in the case should be interpreted, in my view.

[*English*]

The decision is being appealed, and I would refer you to the arguments laid out by Commissioner Théberge's legal team in the memorandum of fact and law of the Commissioner of Official Languages of Canada submitted to the Federal Court of Appeal and posted on the website of the Office of the Commissioner of Official Languages.

● (1140)

[*Translation*]

Nevertheless, I think that, as lawmakers, you should take note of Judge Gascon's analysis. In his comprehensive decision—105 pages in English and 146 pages in French—he carefully compared the terms used, weighing their meaning in English and in French throughout the act.

Paragraph 213 of the decision reads as follows:

> In short, even within the OLA itself, Parliament wanted the concept of "measures" to be one of variable geometry.

[*English*]

Mr. Chandra Arya (Nepean, Lib.): Mr. Chair, I don't have a copy of the opening remarks that were distributed to other members.

The Chair: It's for the next one.

Mr. Chandra Arya: Okay.

[*Translation*]

The Chair: Please go on, Mr. Fraser.

Mr. Graham Fraser: However, when, in the same Act, Parliament uses the word "measures" sometimes with the article "les" [in the French text], sometimes with the qualifiers "possible", "appropriate" or "necessary", sometimes with the adjective "all", one cannot ignore the fact that in subsection 41(2) Parliament was content to speak of "positive measures" to be taken by federal institutions, with the indefinite article "des" and the qualifier "positives" [in the French text], without providing further clarification or restrictions. Parliament does not say "necessary measures"; it does not say "appropriate measures"; it does not say "all possible measures." Clearly, the text of the Act reveals that the expression "positive measures" does not mean the same thing as these other types of measures. It clearly does not have the same attributes of comprehensiveness, necessity, precision or sufficiency found elsewhere in the OLA.

[*English*]

You can see from this the degree to which the judge went through a word-by-word analysis of the articles and verb tenses that were used. It is nothing if not meticulous, and it came as a bit of a shock to both the Office of the Commissioner of Official Languages and the other intervenors.

I will not go through all of Judge Gascon's extremely detailed arguments, except to note that in paragraph 216 he states flatly, "In short, section 41 does not impose specific and particular duties on federal institutions." In his conclusion, in paragraph 293, he states that the "scope of the duty contained in section 41 is hamstrung by the absence of regulations" and "the remedies sought by the FFCB and the Commissioner are not supported in the current Act, as drafted, structured and implemented."

As I say, the decision is being appealed at the Federal Court of Appeal by the commissioner. However, as legislators you are under no obligation to wait for the outcome of the appeal process. The courts interpret the intention of the legislator as expressed in legislation, and it is for you to make your intention clear.

Judge Gascon has challenged me, my predecessors and successors, and you, as legislators, arguing that our hopes and expectations for part VII were more a matter of wishful thinking than binding obligations.

While I hope that the appeal courts disagree, agree with Mr. Théberge, and overturn the Federal Court's decision, you are in a position to respond by ensuring that in modernizing the act you make your intentions as legislators clear and erase any incoherence or ambiguity, so that the obligations to take positive measures are binding and clear.

I'll limit my remarks to those and will not repeat the points that I made before the committee in the other place. However, I am happy to answer any questions you may have.

[*Translation*]

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

We will now move right into the question and answer portion, beginning with Mr. Clarke.

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

Mr. Fraser, thank you for being here today and meeting with the committee on your own personal time.

We all know how deep your knowledge of the Official Languages Act runs, on both a theoretical and a practical level.

Since you talked about the Gascon decision and the fact that the federal government is appealing the decision, I'd like to keep that momentum going.

You know as well as we do that the FCFA—

● (1145)

Mr. Graham Fraser: I don't think it's the federal government appealing the decision; it's the commissioner.

Mr. Alupa Clarke: Yes, sorry. It's the commissioner.

Mr. Graham Fraser: I'm not sure what position the Department of Justice took with respect to the matter.

Mr. Alupa Clarke: Yes, of course. Thank you.

You're aware that the FCFA is calling for stronger language in the modernized act, mainly, that the word "may" be replaced by the word "shall"—in English—and that the word "peut" be replaced by the word "doit"—in French.

Do you think that change in terminology should be applied to part VII as well?

If so, how would it impact the division of powers under the Constitution?

Mr. Graham Fraser: That's a very good question.

I'm not a lawyer, and unlike when I was commissioner, I didn't bring anyone with me today. I'm not here with a team of lawyers.

I'm not sure whether replacing the word "may" with the word "shall"—and making the equivalent change in French—is the best approach or whether the same thing could be achieved by way of regulations.

In 2006, I purposefully chose not to go down the regulatory road partly because I sensed that the new government wouldn't exactly be keen on the idea. I hadn't discussed it with anyone in the government at the time, but my reporter's intuition told me that the new Conservative government would automatically opt to reduce the regulatory burden, rather than increase it.

I remember we, at the Office of the Commissioner of Official Languages, talked about the Official Languages Regulations, with the legal affairs branch raising the possibility of amending the regulations. My immediate reaction was to say that the new government didn't even know that the regulations existed and I didn't want to be the one to tell it.

Mr. Alupa Clarke: You're talking about regulations to enforce part VII, just as part IV has regulations, are you not?

Mr. Graham Fraser: Yes.

Mr. Alupa Clarke: As far as the other parts of the act are concerned, do you think changing the terminology from "may" to "shall" is appropriate?

Mr. Graham Fraser: It's worth exploring. I hesitate to say for sure one or the other because I can't tell you what the potential impact of the change would be. The benefit of taking the regulatory route is that it's easier to amend regulations than it is the act.

Mr. Alupa Clarke: Very well.

Mr. Graham Fraser: The proof is that the Official Languages Act has been amended just twice. First, it was overhauled in 1988.

Mr. Alupa Clarke: The act was reviewed in 1988 and in 2005.

Mr. Graham Fraser: Part VII was reviewed in 2005.

You see now how difficult it is to undertake a review of the act with the intent of modernizing it.

Mr. Alupa Clarke: I have a second question, Mr. Fraser.

Where do you stand on the idea of an administrative tribunal empowered to deal solely with official languages complaints? Do you think it's a good idea?

Mr. Graham Fraser: The first thing that would have to be done is to figure out what types of cases could go before the tribunal. The biggest challenge that the commissioner, champions and parliamentarians run into with respect to official languages is getting the institutions subject to the act to change their behaviour. Is the best way to do that through penalties, or are there other ways?

Mr. Alupa Clarke: What would those other ways be?

Mr. Graham Fraser: The first would be to do a better job of promoting official languages. I thought Canada's 150th birthday celebrations were a missed opportunity to really promote official languages as an indispensable part of Canadian identity. When I was commissioner, I would often say that success was invisible but failure was obvious. Sometimes, I think the government's commitment to promoting Canada's two official languages lacks visibility.

In another connection, administrative changes related to language training have made it harder for public servants to access the language training they need. I can understand why the changes were made, but, now that the cost of language training comes out of the department's overall training budget, managers have a dilemma on their hands when it comes time to manage and approve employee training. Letting an employee take language training means allowing that employee to upgrade their skills in preparation for another job, rather than their current one, so managers have a natural tendency to say this to employees:

● (1150)

[*English*]

The manager will say, "Harvey, you are an excellent employee, you have a great future in the public service and you need to get your French, but right now what you need is a human resources qualification so that you can improve what you're doing in your current job."

[*Translation*]

Given a manager's budget constraints, it is very hard for them to indulge their employees by investing in their professional development, rather than their current job.

The Chair: Thank you very much.

It is now over to Mr. Arseneault.

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

Welcome back to the committee, Mr. Fraser. It's always helpful to hear what you have to say. You have a way of putting everything in such clear and simple terms.

With all the witnesses the committee has heard from thus far, we are starting to get a sense of what our recommendations for modernizing the act should look like.

What you're saying—and I'm repeating what other witnesses have said—somewhat confirms what your former counterpart Michel Carrier, New Brunswick's interim official languages commissioner, told the committee. He told us that we didn't necessarily need something with more bite or a powerful tribunal; rather, he recommended that we start by bringing clarity to the interpretation of the act by removing all the ambiguity. According to him, the objectives of the act are crystal clear, but the way to achieve them is totally vague.

Given all the case law related to the Official Languages Act, ranging from decisions of the Court of Appeal of New Brunswick—my province—to those of the Supreme Court of Canada, I'd like to hear your view. We all know the objectives of the act, which are set out in section 2, I believe.

Mr. Graham Fraser: It's important to keep the preamble in mind, as well.

Mr. René Arseneault: You're right.

Isn't keeping the ambiguity in the existing act—meaning, we don't replace "may" with "shall"—at odds with the objectives set out in the preamble?

Mr. Graham Fraser: Yes, indeed.

Having listened to what other witnesses told this committee and the Senate official languages committee, I realize that legal experts have scrutinized the ambiguities and contradictions between parts IV and VII of the act. Consequently, I've come to the conclusion that one of the committee's key responsibilities is to bring clarity to the act.

By the way, I'm pleased to hear that my former colleague, Michel Carrier, and I share the same view. His positions are always well-thought-out, so I hold him in very high regard.

● (1155)

Mr. René Arseneault: Not always.

Mr. Graham Fraser: Personally, I have always equated all the act's components, especially the preamble, with a value. If people view them as a Canadian value, and not as a set of burdensome obligations, they have a much easier time meeting the objectives set out in the act. As commissioner, I would say, time and time again, that inspiring people to take action was more effective than forcing them to do so.

Mr. René Arseneault: This is a bit of an oversimplification, but it's as though we are giving official languages a car, a mandatory vehicle, if you will, because we recognize that the vehicle is necessary, but we haven't put any tires on the car. That makes it hard to drive the car and arrive at the desired destination. The more clarity we introduce into the act, the more effective it can be at achieving the objectives in a clear way and providing the necessary tools. Doing that makes it possible to achieve the objectives, of course, while steering clear of legal proceedings, courts, the need to turn elsewhere and so forth.

Now let's talk about the tribunal. Let's say the act is clear and unambiguous, leaving little room for interpretation. Now, as we know, lawyers are clever, and some may do their darndest to twist the provisions of the act. Despite our best efforts, then, it may still be necessary to go before the courts. An expert from Wales appeared before the committee, and I couldn't believe my ears when she said that, after just seven years in existence, the Welsh official languages tribunal had outdone us, here in Canada—we, who have more than a half-century of experience in the area. My understanding is that their administrative tribunal is more likely to give offenders a slap on the wrist. In our case, though, it's the person or institution who has to hire a lawyer or make the effort themselves. For example, it's the offending Crown corporation that, if it disagrees with the commissioner, has to appeal the matter before the courts.

What is your take on that?

Mr. Graham Fraser: I think it would be interesting to take a closer look at that approach. There's a saying that comes to mind whenever the discussion turns to giving the act more teeth or establishing a tribunal:

[*English*]

"When all you've got is a hammer, everything looks like a nail."

[*Translation*]

This is the non-lawyer talking. If a government lacks the will to achieve progress, neither the act nor a tribunal is going to turn these objectives and values into a reality. Commissioner after commissioner, the organization that drew the most attention was Air Canada.

Mr. René Arseneault: Poor Air Canada.

Sorry to cut you off, but I don't have a lot of time.

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

The Chair: You're already out of time.

It is now Mr. Choquette's turn.

Mr. François Choquette (Drummond, NDP): Thank you very much, Mr. Fraser, for being with us today and sharing your expertise and wisdom. As far as I know, you're one of the few people who held the position of commissioner for a decade. In fact, if memory serves me correctly, most commissioners serve for a term of seven years. You have considerable expertise.

You said part VII wasn't ready for the trash heap, far from it. You said that, during your time in office, it did what it was supposed to on a number of occasions. Would you mind talking about the positive features of part VII and why they matter so much?

● (1200)

Mr. Graham Fraser: It is so important, first because it was an innovation. For once, in an act, there was a rare obligation for positive measures, without the positive measures being clearly defined, either by regulation or in the act itself.

Often, the successes of Part VII were achieved in regions, where departmental directors were located. They studied that obligation and asked themselves what they could do for the official language minority community in their region.

There were often consultations. Fisheries and Oceans Canada participated in celebrations in Gaspé. In Alberta, Parks Canada provided an office for local francophone communities if, in exchange, they would provide French conversation classes for their employees. It was a win-win, enabling the department to be more engaged with the local community. The president of VIA Rail became aware of the obligation, but he did not see which community he could consult. He assured the FCFA that he took the obligation seriously. He did not see which minority community VIA Rail could assist, but the FCFA suggested a contribution to people's travel to the organization's annual meeting.

All the successes, therefore, came as the result of consultations and of a greater commitment from the departments to the communities, often at a very local level.

I used to say to myself that this is not the kind of success that one could imagine coming from a deputy minister's office, that is to say, a directive addressed to all a department's regional offices. It comes instead from the imagination, the innovation and the openness of spirit of the federal employees on site.

Mr. François Choquette: So we have to find a way to continue promoting those successes and to have more of them. In a way, that is the spirit of Part VII.

Mr. Graham Fraser: Yes.

Mr. François Choquette: There has been a little debate—and you slipped in a word or two about it to our colleagues—about the famous powers for the commissioner, whether the commissioner should be given more powers, and so on.

Mr. Fraser, could you tell me whether, during your mandate as commissioner, you had occasion to use the coercive powers you had? Let me explain: if an agency or a department refused to provide you with documents, you had the power to demand them. If someone refused to testify or to answer your questions, you had the power to require that person to come and testify before you.

You had coercive powers. Did you have occasion to use them? Did you use them?

People talk about giving the commissioner more powers, but the commission already has some. To my knowledge, however, it is as if the powers are not used.

If you did not use them, why not?

Mr. Graham Fraser: There was the power to compel testimony under oath, for example, that a commissioner, unlike other officers of Parliament, has never used. In the special report on Air Canada in 2016, we recognized the range of the powers of other officers of Parliament.

I do not know whether this is mentioned in the report, but we learned through the grapevine that some officers of Parliament who often use the power to compel sworn testimony, do so automatically at the request, or the preference, of the institutions. Some of them say that it is better for them that testimony is compelled. Then they just have to say that they had no choice. My impression, with the departments I dealt with, was that they were people of good will.

One organization was an exception, That was clear when people from Air Canada testified before your committee. Air Canada's position is that they are competing with other airlines that do not have the same obligations, and that it is not fair. Air Canada has the obligation; Westjet, as an example, does not. There is some resistance with Air Canada, which was sometimes reflected in our reports.

When I think about it, I am not sure whether fining Air Canada $25,000, for example, for this or that incident would be worth it. It is the cost of two business class tickets to Beijing. It is peanuts for Air Canada. It would make the news, but I don't know whether it is an effective way to change behaviour.

The FCFA suggested that all the penalties could be used to set up a fund for language training. But a fund of that kind could be set up without imposing fines. The idea of fining Public Services and Procurement Canada because a construction site does not have a bilingual sign is not very useful. What use is it for one federal institution to fine another federal institution? Is it really going to change behaviour?

I am not sure.

● (1205)

The Chair: Thank you, Mr. Fraser.

We now move to the next speaker.

Three speakers are left; time is getting on, so you will have three minutes each.

Mrs. Fortier, you have three minutes.

Mrs. Mona Fortier: Thank you very much.

Thank you for coming today, Mr. Fraser. I am pleased to hear that you are at the University of Ottawa, which is my alma mater, and a fine university in my constituency.

Officials from the Association des collèges et universités de la francophonie canadienne (ACUFC) were here earlier this week. The Association had a message for us: without the right to equal access to education in French as a first and a second language, from early childhood to the post-secondary level, we cannot talk about Canada's official languages having equal status.

I would like to hear what you have to say about that. Is there a way to strengthen the act as part of the modernization?

Mr. Graham Fraser: Studies have shown how important French-language education at pre-school level is for retaining students in the francophone system. When Ms. Meilleur was Ontario's minister of education, she told me about the experience in the city of Windsor, where they had created francophone early childhood centres and followed the children afterwards. An impressive number of those students continued to study in French, unlike the students who had not had the opportunity to attend a francophone early childhood centre.

The federal government already gives a considerable amount of money for first-language and second-language education to minority institutions, but that is not very well known. I discovered that it was difficult to find out what the provinces were doing with the money that Ottawa was distributing to them. When I was commissioner, one provincial education minister even told me that, when he received a federal cheque, he did not read the covering letter. That was tongue in cheek; his officials certainly read it. However, the provinces have a way of thinking that they decide how to spend the federal money they receive.

The fathers of Confederation decided that Ottawa would be responsible for major matters like the economy, or international activities, and that minor, less important matters, like health and education would be in provincial jurisdiction. For some time, Canadians have not agreed with the fathers of Confederation about the relative importance of those topics. Often, the conflicts between the feds and the provinces are about the major questions of education and health. They have always been thorny issues.

Take university chairs as an example. The federal government has succeeded in playing an extremely important role in university research, even though education is clearly a provincial responsibility.

● (1210)

The Chair: Mr. Fraser, I am going to give the floor to Mr. Rioux for two minutes.

Mr. Jean Rioux (Saint-Jean, Lib.): I will continue along the same lines.

As you so rightly say, education is in provincial jurisdiction. However, we see situations, such as in Vancouver, where only one francophone child in five can attend a French-speaking early childhood centre. There is also the situation with the Université de l'Ontario français.

Could the federal level obtain the jurisdiction necessary to ensure the vitality of bilingualism in Canada? Should that be clearly set out in the new version of the Official Languages Act?

Mr. Graham Fraser: You could try to go that route.

We are going through a period of new federal-provincial and even interprovincial tensions. Currently, there are tensions between British Columbia and Alberta. Could the provinces be ready to find common ground for understanding on the language issue, given that it is not as controversial as it was 50 years ago? It is possible.

The historian Matthew Hayday has published a book entitled *Bilingual Today, United Tomorrow*, which deals with an education initiative of the first Trudeau government, the official languages in education program. The program set out to finance French-language education. The book is a meticulous analysis of that initiative.

At one point, there was provincial resistance and budgetary pressure. If the trend had continued, there would have been 1 million immersion students in 2000. Because the funding hit a ceiling, there were only 300,000. It ended up being a question of money.

● (1215)

The Chair: Thank you, Mr. Fraser.

Mr. Clarke, you have the last word, for one minute.

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

I would like to present a notice of motion. It is a notice of motion, because I have decided to change the motion I introduced 48 hours ago. We can debate it at our next meeting, next Tuesday.

It reads as follows:

That the Committee call on the Royal Canadian Mounted Police to reverse its decision, effective April 1, 2019, to end unilingual francophone training at its academy, Depot Division in Saskatchewan.

I hereby give notice of this motion.

I will use these final seconds to thank you for appearing today, Mr. Fraser. Thank you also for the excellent work you have done and are certainly going to continue to do for the benefit of the Canadian duality.

Mr. Graham Fraser: Thank you very much.

The Chair: Thank you very much for your presentation this morning, Mr. Fraser. I hope your retirement continues to be a happy one.

I will suspend the session for a few minutes.

Thank you very much.

● (1215)

(Pause)

● (1220)

The Chair: We now resume the session.

I would like to welcome Marie-France Pelletier, Chief Administrator of the Administrative Tribunals Support Service of Canada.

We will listen to your presentation and then, as usual, we will go round the table.

Ms. Marie-France Pelletier (Chief Administrator, Administrative Tribunals Support Service of Canada): Thank you very much.

Thank you for this opportunity to appear before you today on the matter of official languages.

[*English*]

I'd like to begin by briefly describing the role and mandate of the Administrative Tribunals Support Service of Canada, or ATSSC, which was established on November 1, 2014, with the coming into force of the ATSSC Act.

The ATSSC is responsible for providing support services and facilities to 11 federal administrative tribunals by way of a single integrated organization. The goal in creating our organization in 2014 was to pull the resources of several smaller tribunals into a larger organization, the ATSSC. This would allow the ATSSC to better leverage the resources at its disposal to help meet the needs that have long been identified by tribunals, which they did not have the capacity to address within their own limited budgets and staff complement.

Our purpose is to improve capacity to meet the needs of the tribunals, achieve efficiencies through economies of scale and improve access to justice for Canadians.

The 11 tribunals supported by the ATSSC represent a portion of the nearly 30 federal administrative tribunals and are generally small organizations that vary in size from approximately three to 100 full-time and part-time members. Their mandates are varied, spanning a vast array of societal activity from commerce to the administration of monetary penalties in certain sectors, to international trade, human and indigenous rights, social programs, labour relations, protection of whistle-blowers and the protection of cultural assets.

The ATSSC also supports the National Joint Council, which is a forum for co-development, consultation and information between the Treasury Board of Canada in its role as an employer and public service bargaining agents.

[*Translation*]

The Administrative Tribunals Support Service of Canada, or ATSSC, reports to Parliament through the Minister of Justice and Attorney General, but it operates at arm's length from the Department of Justice.

In terms of our work, we provide the specialized services required by each of the tribunals to support the registry, research and analysis, legal and other mandate-specific or case-specific activities.

As well, we provide the tribunals with internal services, such as human resources, financial services, information management and technology, accommodations, security, planning and communications, and all support services.

On a day-to-day basis, tribunal members work with ATSSC employees who assist them with case files, editing decisions, making travel arrangements for hearings, and a number of other tasks required by the tribunal members in the course of their work.

The chairpersons of the 11 tribunals served by the ATSSC have supervision over, and direction of, the work of their respective tribunals.

By providing support services and facilities, the ATSSC enables the tribunals to exercise their individual powers and perform their unique duties and functions in accordance with their respective legislation, rules and regulations.

We actively work with the tribunals to identify improvements to the systems, services and processes the ATSSC provides to them. We are committed to ensuring that appropriate resources are available to support the tribunals' operational processes and caseload management.

● (1225)

[*English*]

Our workforce includes approximately 600 employees, the majority of whom are located in the national capital region. The organization also supports approximately 200 Governor in Council appointees who are the members of the 11 administrative tribunals.

The year 2019 marks an important milestone for the ATSSC as the organization is celebrating its fifth year in operation.

Looking ahead, the ATSSC is focused on providing the best possible service to the tribunals that we serve by championing a culture of service excellence, innovation and continuous improvement. In particular, the ATSSC will work to improve the digital capabilities of the tribunals by establishing new and improving existing case management systems. We will also continue to grow and sustain a healthy and respectful workplace that supports personal well-being, career development and continuous learning for our employees. Additionally, we will continue to assess and hone our service standards and delivery models to achieve even greater efficiencies in our business practices while preserving our commitment to excellence.

[*Translation*]

Now that I have provided a brief overview of the ATSSC, I would like to share some information about tribunal models and some general cost considerations related to operating administrative tribunals.

As I mentioned previously, the mandates of the 11 administrative tribunals supported by the ATSSC vary widely, from those that handle the appeals of administrative monetary penalties, to others that deal with matters directed to them by a referring body—the Canadian Human Rights Tribunal, for example, which hears complaints referred to it by the Canadian Human Rights Commission.

Each tribunal has a unique mandate and fulfils very specific purposes. For example, the Canadian Cultural Property and Export Review Board reviews applications for certification of Canadian cultural property. The Specific Claims Tribunal hears cases on indigenous land claims. Both the Canadian Industrial Relations Board and the Federal Public Sector Labour Relations and Employment Board deal with a variety of labour relations matters.

As such, the ATSSC must provide resources that correspond to the nature, scope and complexity of cases dealt with by each tribunal, as well as each tribunal's caseload. A number of tribunals the ATSSC supports have caseloads that surpass several thousand cases per year, such as, for example, the Social Security Tribunal and the Federal Public Sector Labour Relations and Employment Board.

Also, cases come before tribunals in various ways, for example through applications, complaints, appeals and references, or they may be referred by another body. Matters are adjudicated, and in some cases, there is also a focus on providing mediation assistance at all stages of a proceeding.

[*English*]

Given these considerations, the costs to operate an administrative tribunal can vary greatly depending upon the tribunal's prescribed mandate and expected caseload. There are also costs for back office functions such as finance, human resources, etc., or case management system expenditures and a number of different support services that the tribunals need from time to time.

In reflection of these factors, the annual budgets of the administrative tribunals the ATSSC supports range from approximately $225,000 a year to up to about $28 million a year.

In terms of overall operating expenditures for the ATSSC, our total main estimates for 2019-20 are $92 million. These funds support the wide-ranging services that the ATSSC provides to the 11 tribunals. Approximately $68 million, or 74%, of these funds are dedicated to the core responsibilities that directly support the tribunal mandates, while the remaining $24 million, or 26%, is allotted to internal service operations.

The ATSSC closely monitors its budget to ensure that we are able to meet the needs of the tribunals. This includes monitoring emerging trends to determine their potential impact on tribunal caseloads, monitoring legislative changes to assess their impact, and ensuring that budget planning and allocations have built-in flexibility to appropriately allocate the resources if and where required.

● (1230)

[*Translation*]

Mr. Chair, that concludes my remarks. I will be happy to answer questions from the members of the committee.

The Chair: Thank you for your presentation, Ms. Pelletier.

Without further delay, I give the floor to Mr. Clarke.

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

Ms. Pelletier, good afternoon, and thank you for joining us today.

I invited you because I wanted to hear from an expert. You are one because you are the head of the Administrative Tribunals Support Service of Canada.

I want to make sure that I fully understood. You said earlier that there are from three to 100 members. Is that in your service or in each of the tribunals?

Ms. Marie-France Pelletier: In each of the tribunals. Our smallest tribunal has three members and the biggest can have up to 100 members.

Mr. Alupa Clarke: I am sure you understand that we invited you here because we are studying the possibility of an administrative tribunal devoted exclusively to the official languages.

Ms. Marie-France Pelletier: Right.

Mr. Alupa Clarke: How many member judges would an official languages tribunal require, in your opinion, based on an equivalent tribunal?

Ms. Marie-France Pelletier: I can give you a general answer. It is important to understand, much as I explained in my remarks, that the functions, the mandate and therefore the resources, both human and financial, are influenced by the very nature of the mandate conferred on the tribunal. That comes from its enabling legislation.

Mr. Alupa Clarke: Since the mandate does not exist in this case, it is very difficult for you to give us any figures.

Ms. Marie-France Pelletier: I could give you an idea of the size.

Mr. Alupa Clarke: Yes, exactly.

Ms. Marie-France Pelletier: However, if you ever create a tribunal and entrust it to us, we will conduct our own analysis before you make a decision.

Mr. Alupa Clarke: I understand, and you're really not committed to anything today. That being said, could you give us an idea of the size?

Ms. Marie-France Pelletier: I am aware that there has been a lot of discussion about a comparison with the Canadian Human Rights Tribunal, in particular. That model seems to be of interest to some. Let me point out, with respect to this model, that the Canadian Human Rights Commission receives approximately 1,100 complaints per year and refers an average of between 5% and 10% of them to the Canadian Human Rights Tribunal. Under this model, the tribunal currently operates with a dozen members. Some work full time, others part time, and they are all over the country.

Mr. Alupa Clarke: How much does that tribunal cost Canadians per year?

Ms. Marie-France Pelletier: We invest $3.7 million a year in actually operating the tribunal. It is important to keep in mind that this does not include the administrative costs for support services. Those must therefore be added in. So the $3.7 million only covers the tribunal's operations and the services provided directly to the tribunal by employees with expertise in the area.

Mr. Alupa Clarke: Thank you very much, Ms. Pelletier.

I will now venture into an area with which I am not very familiar: direct access and indirect access. Would the Commissioner of Official Languages give the green light or determine that an individual may apply directly to the tribunal? How do things work on the human rights side?

Ms. Marie-France Pelletier: It is a reference body. The Canadian Human Rights Commission reviews the complaints that it receives. In a number of cases, as I understand it—and they should be asked to provide you with more details on this issue—the complaints are predominantly resolved through mediation at the commission. That is why, as I said, about 5% to 10% of the complaints received by the commission are subsequently transferred to the tribunal.

Mr. Alupa Clarke: My understanding is that some administrative tribunals are not under your supervision. In fact, the word “supervision” is probably not the proper word, since your role is essentially one of support. In short, I would like to know why those tribunals are not your responsibility.

Ms. Marie-France Pelletier: The decision was made when our organization was created. I personally did not participate in those discussions and I was not informed of the reasons.

Mr. Alupa Clarke: If an administrative tribunal were to be created within the next few months, what would you advise the government? As the present leader, would you advise the government to include the tribunal in your organization?

Ms. Marie-France Pelletier: Of course, we have what it takes to provide this type of service. If the government chose to give us one more tribunal, we would be able to fulfill that mandate. However, this choice is up to Parliament, since the tribunals that obtain their support services from my service are listed in the schedule to our act. Legislative change is therefore required to assign responsibility for support services to the tribunals.

Mr. Alupa Clarke: Thank you very much.

● (1235)

The Chair: Thank you, Mr. Clarke.

Mr. Arseneault, the floor is yours.

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

That was a good question, Mr. Clarke.

Welcome, Ms. Pelletier.

By the way, Ms. Pelletier is a former colleague from the Faculty of Law at the Université de Moncton. Actually, she studied with my wife. I studied law with Ms. Pelletier's older sister.

I am pleased to see you back here after all these years.

You heard the questions I asked the commissioner.

Earlier, I mentioned the administrative tribunal in Wales. We heard from Meri Huws as a witness. The position of Commissioner of Official Languages for Wales was created only seven years ago. Unless I am mistaken, in seven years, only 13 of its decisions have been challenged and none of them have been overturned by the administrative tribunal in question. It's unbelievable. This leads me to say that the legislation in Wales in this case must be extremely specific and not subject to interpretation for there to be so few complaints. In addition, the judgments must be very clear.

I will continue along the same lines as my friend Mr. Clarke.

A parallel has often been drawn with the Canadian Human Rights Tribunal, which is an administrative tribunal. I am not very familiar with the Canadian Human Rights Act. I am more familiar with the New Brunswick Human Rights Act, which must be similar. The act is very proactive in providing investigative powers and the power to ask an employer to remedy a situation. Those powers are fairly coercive, but that is why there were only 1,100 complaints across Canada, in all languages and provinces combined. That's not a lot.

Ms. Pelletier, is this small number of complaints across Canada the result of the fact that the Canadian Human Rights Act is not ambiguous and less open to interpretation than the Official Languages Act?

Ms. Marie-France Pelletier: I cannot comment with certainty on the issue. ATSSC provides services to 11 different tribunals in 11 different areas, and I cannot claim to be an expert in each of those areas.

Mr. René Arseneault: Can you provide us with a thesis, please?

Some hon. members: Ha! ha!

Ms. Marie-France Pelletier: No. Perhaps I would do so in my personal capacity, but not as part of my official role.

I cannot comment with certainty on the reasons for that. Perhaps my colleagues from the commission and the tribunal could comment, but they would still have to be willing.

● (1240)

Mr. René Arseneault: As a lawyer by training, you deal with all sorts of tribunals. Is there a correlation between legislation that is sort of wishy-washy on many aspects and a large number of appeals to an administrative tribunal?

Ms. Marie-France Pelletier: Right now, my role is to administer support services. My legal training is a little rusty because I haven't practiced in a number of years.

Clearly, it is up to Parliament to create a tribunal. That is the task you are currently working on. Ultimately, the choice to create or not to create a tribunal is a public policy decision. This choice should be based on the imperative that you are trying to address. There are different ways to do so and it remains to be seen which one you will be proposing.

Mr. René Arseneault: I don't have much time left and I'm going to turn to practical matters.

You mentioned $3.7 million for the Canadian Human Rights Tribunal, plus administrative costs. Do you have any idea of what that would be?

Ms. Marie-France Pelletier: In general, it's about 26%.

Mr. René Arseneault: In addition to the $3.7 million?

Ms. Marie-France Pelletier: Yes, that's the proportion for our organization. Our organization's administrative costs are approximately 26%, and 74% of our funds go directly to operating the tribunals.

Mr. René Arseneault: Of the 11 tribunals you look after, which is the most expensive?

Ms. Marie-France Pelletier: The one with the largest budget is the Social Security Tribunal because of the high volume of cases.

Mr. René Arseneault: You are in charge of administering the tribunals. What are the most common issues before the Canadian Human Rights Tribunal? Can you tell me that?

Ms. Marie-France Pelletier: I don't have any specific information on that, but I can always ask the tribunal to provide it.

Mr. René Arseneault: No, I was asking out of curiosity. We can do it ourselves.

That's it for my questions.

The Chair: Thank you, Mr. Arseneault.

We'll now go to Mr. Choquette.

Mr. François Choquette: Thank you, Mr. Chair.

Ms. Pelletier, thank you very much for being here today and for the insight you bring to the table.

You mentioned the famous monetary penalties imposed by federal administrative tribunals that you support.

To your knowledge, do the administrative tribunals you supervise also have the power to impose compliance orders?

Ms. Marie-France Pelletier: Yes.

Mr. François Choquette: To your knowledge, which tribunals could use compliance orders?

Ms. Marie-France Pelletier: I think the Canadian Human Rights Tribunal does. I would have to check to make sure, but I know it is possible for some of our tribunals to do so.

Mr. François Choquette: What is the difference, as far as you know, between administrative monetary penalties and compliance orders? What are the advantages and disadvantages of each?

Ms. Marie-France Pelletier: Once again, this comes back to the imperatives that Parliament is trying to address. Earlier, I explained that structures will be created, depending on the area and the gap that Parliament was trying to fill.

For example, most of our tribunals that adjudicate on monetary penalties act much like appeal tribunals for penalties that have been established by other government entities. The role of these tribunals is to determine whether to impose a penalty or how much.

That's how some of our tribunals do it.

Mr. François Choquette: Do you have any examples of a compliance order?

Ms. Marie-France Pelletier: None come to mind, unfortunately, but I can ask.

Mr. François Choquette: Okay.

To your knowledge, do any tribunals order administrative monetary penalties against federal departments or agencies?

● (1245)

Ms. Marie-France Pelletier: That's a good question. I would have to check.

The examples I have in mind are more along the lines of departments that impose penalties on individuals.

Mr. François Choquette: Penalties are imposed on individuals as well as on the private sector.

Ms. Marie-France Pelletier: That's right. Individuals appeal to the tribunals.

So I don't have an example in mind, but it's possible. I can't say for sure.

Mr. François Choquette: That would be quite exceptional, if I understand correctly.

Ms. Marie-France Pelletier: I have no expert knowledge on that.

Mr. François Choquette: Okay.

How many federal administrative tribunals are there in Canada?

Ms. Marie-France Pelletier: There are close to 30 tribunals. I would say around 26 to 28.

Mr. François Choquette: You supervise 11 of those tribunals.

Ms. Marie-France Pelletier: Yes.

Mr. François Choquette: Are the other tribunals autonomous? Are they supervised?

Ms. Marie-France Pelletier: That can vary.

Some are fully autonomous, because they are large enough to set up their own support structure. Others may receive support services from their department or another agency. It can vary a great deal.

This is the case with the 11 tribunals that are part of our organization at the moment. There are a variety of different models.

Mr. François Choquette: The costs or investments in the tribunals range from a few hundred thousand dollars to a few million dollars.

What is a typical example of a tribunal that costs a few hundred thousand dollars? Why does it cost so little?

Is it because it has a smaller team or because the tribunal is used only on a few rare occasions?

Can you explain how it works?

Ms. Marie-France Pelletier: That's exactly it. Our smallest tribunal is one to which very few cases are assigned. It exists because, when cases are entrusted to it, they are major issues that need to be resolved. We still need to maintain a certain level of support, a minimum level of services, given that we do not know when the cases will come in. Other tribunals may have a heavier and more constant workload.

Of course, workload plays a major role in generating costs for those tribunals. The volume of cases is often the largest component of the budgets. However, sometimes, the volume may not be huge, but the files are complex. So there are a number of variables from one tribunal to another that generate costs and require resources, but it is generally the volume of cases that matters most.

Mr. François Choquette: Thank you.

The Chair: Thank you, Mr. Choquette.

Mr. Rioux, you have the floor for four minutes.

Mr. Jean Rioux: Thank you, Mr. Chair.

My questions will be mainly about facts. First, could you tell me approximately how long a case lasts when it is processed by the Canadian Human Rights Tribunal?

Ms. Marie-France Pelletier: It can vary a great deal. The issues before this tribunal are complex and usually require a lengthy study. Clearly, a number of steps need to be taken. This is the case for the Canadian Human Rights Tribunal, but it is also the case for any other tribunal. The issues must go through those steps. In addition, the exchange of documents between the parties or mediation may sometimes cause delays for the tribunal. It is difficult to determine.

Mr. Jean Rioux: In a nutshell, we can say that it takes more than one day.

Ms. Marie-France Pelletier: Yes, absolutely.

Mr. Jean Rioux: Okay.

Are any decisions made right on the spot? As a general rule, how long does it take for a judgment to be rendered?

Ms. Marie-France Pelletier: I cannot comment on the practices of one tribunal versus another, but to my knowledge, very few of our tribunals make decisions without deliberations. It is not impossible, but in my opinion, that is not how it is done.

● (1250)

Mr. Jean Rioux: As a general rule, is there a maximum time limit for rendering a judgment?

Ms. Marie-France Pelletier: It varies from court to court. For some, a time limit is set out in their legislation, while for others, that isn't the case. It's really case by case.

Mr. Jean Rioux: Right.

Lastly, can people appeal a decision to a common law court?

Ms. Marie-France Pelletier: When there is a right of appeal, the appeal is usually made either to the Federal Court or to the Federal Court of Appeal.

Mr. Jean Rioux: Okay.

That's it for me. I can share my time with Ms. Fortier. I know she had some questions.

Mrs. Mona Fortier: Thank you for being with us, Ms. Pelletier.

I have two questions, which are open-ended. You'll understand why. I think that, with your experience and expertise, you can contribute to our current study on the possibility of creating an administrative tribunal.

Are there any issues you think we should look into, as legislators, to determine whether we should create an administrative tribunal?

Ms. Marie-France Pelletier: It isn't something I've been thinking about. In my role—

Mrs. Mona Fortier: I'm asking you.

Ms. Marie-France Pelletier: Yes, indeed, but you'll understand that my organization's role is primarily operational. We don't have a team of policy analysts who study issues like this. So thinking about these issues isn't part of our organization's mandate. That's why I haven't had the opportunity to address a subject like this.

Mrs. Mona Fortier: It's not a problem.

Ms. Marie-France Pelletier: Okay.

Mrs. Mona Fortier: So I'm going to ask you my second question. We're wondering whether it would be useful to create an administrative tribunal and, in doing so, we will consider the advantages and disadvantages. Are there any advantages or constraints among what currently exists that we should consider? For example, should we learn from an experience such as the Social Security Tribunal of Canada? If not, should we include the positive aspects of some administrative tribunals in our decision-making filter?

Ms. Marie-France Pelletier: In general, the administrative tribunal community is currently engaged in a major reflection on the modernization of processes and the use of technology, while maintaining a focus on access to justice.

The choice to create an administrative tribunal is usually based on the desire to provide a more flexible mechanism than is the case with a court of law. The administrative justice community is seriously considering new models for conflict resolution—if you want to call it that—or complaints, which would make greater use of new technologies, among other things.

Mrs. Mona Fortier: I just thought of one last question. Is there a periodic evaluation of the mandate of these courts, for example, every three or five years? You were talking about modernization, but is it possible to revise the mandate set out in an act or regulation?

Ms. Marie-France Pelletier: The enabling legislation of some of our courts includes an obligation to review their mandates, for example, every five years or, at the very least, within the first five years of the court's existence.

● (1255)

Mrs. Mona Fortier: Okay.

Ms. Marie-France Pelletier: In Ontario, on the other hand, legislation was passed about ten years ago to govern the operation—if you want to call it that—of administrative tribunals. This legislation requires a court to review its operation periodically—every seven years if I recall correctly—and to amend it if necessary. I think I remember that this review must include certain elements, set out in the legislation. However, it has been a while since I read it, and I advise you to go and read it yourself.

Mrs. Mona Fortier: Thank you very much.

The Chair: Thank you, Ms. Fortier.

We'll continue with Ms. Boucher.

Mrs. Sylvie Boucher: Thank you for being here, Ms. Pelletier. Your testimony is very interesting.

Have I understood correctly that the Administrative Tribunals Support Service of Canada has been around for five years now?

Ms. Marie-France Pelletier: Yes.

Mrs. Sylvie Boucher: It's only been five years, and you're already wondering how to do better. You say that you want to "champion a culture of service excellence, innovation and continuous improvement".

Of all the courts you deal with, is there one that stands out in trying to keep up with technology and all the new developments that are coming?

Also, can you tell us if the creation of an administrative tribunal really relieves the judicial system?

Ms. Marie-France Pelletier: I don't think I can give a definitive answer to your second question, because it would first require a fairly complete analysis of the field of administrative justice.

As for what stands out, I would say that each of the courts is trying interesting ways to better manage its workload. However, given the significant differences between the mandates of each, a solution that works for one court wouldn't necessarily be appropriate for another. So it's difficult to make comparisons of this nature, but it's clear that each court wishes to modernize its activities and is making efforts in this direction.

Mrs. Sylvie Boucher: In the case of official languages, it's often "always the sames" that we've seen pass through this committee over the past 10 years, whether it's Air Canada or other departments. The situation doesn't change.

Over the past five years, have these administrative tribunals led to major changes in the machinery of government? Has the expertise of your various courts helped to improve the situation?

Ms. Marie-France Pelletier: I don't know if that was the objective of creating our service.

Most of the courts we work with on a daily basis have existed for a long time. There are two or three that are more recent, but there are some that have been around for 25 or 30 years.

So, the idea wasn't to change the functioning of the courts or their mandate. It was simply to create an organization that would bring together the support services so that these courts could focus on their tasks, which they alone can accomplish. These are the mandates assigned to them in their enabling legislation.

There are three main reasons for the creation of our service. First, we wanted to find efficiencies through economies of scale. That is the reason everyone remembers because it was a budgetary measure, therefore associated with money. Second, the needs of the courts had to be met in order for them to carry out their mandates. Finally, it was an attempt to improve access to justice. Obviously, this is not our exclusive role; we support courts that want to make improvements in this area.

Our mandate isn't to change the structure of administrative justice. We are helping the tribunals to operate.

Mrs. Sylvie Boucher: You oversee them.

● (1300)

Ms. Marie-France Pelletier: I'd say instead that we support them.

The Chair: Thank you very much.

All I have left to do is to thank you very much, Ms. Pelletier, for your presentation, for being here and for sharing your experiences with us.

Ms. Marie-France Pelletier: Thank you.

The Chair: As for the members of the committee, we'll meet again on Tuesday.

The committee is adjourned until Tuesday.