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## **Standing Committee on Official Languages**

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**EVIDENCE**

**Thursday, March 9, 2017**

—  
**Chair**

**The Honourable Denis Paradis**



## Standing Committee on Official Languages

Thursday, March 9, 2017

• (1105)

[Translation]

**The Chair (Hon. Denis Paradis (Brome—Missisquoi, Lib.)):** Welcome.

Pursuant to Standing Order 108(3), we will resume our study of the issues related to the enumeration of rights-holders under section 23 of the Canadian Charter of Rights and Freedoms.

We are pleased to welcome this morning two officials from Statistics Canada: Ms. Connie Graziadei, assistant chief statistician, and Ms. Johanne Denis, director general. Also with us is Mr. Larry Shute, from the Department of Industry.

[English]

Welcome, everybody.

[Translation]

Ms. Graziadei and Ms. Denis will have about 10 minutes for their presentation, and we will then go around the table to allow committee members to ask questions and make comments.

Please go ahead, Ms. Graziadei.

[English]

**Ms. Connie Graziadei (Assistant Chief Statistician, Census, Operations and Communications, Statistics Canada):** Thank you very much, Mr. Chair.

I want to thank the committee for inviting us to appear here today.

The most fundamental role of Statistics Canada is to support the democratic process by providing Canadians with high-quality, current, and relevant information on the state of the nation. Comprehensive, objective, and high-quality statistical information provides a solid foundation for informed decisions by you, who are our elected officials, and by businesses, unions, and non-profit organizations, as well as individual Canadians. Statistics Canada produces information that helps Canadians better understand our country, population, resources, economy, society, and culture.

As the national statistical agency, we take pride in our work and take our professional responsibilities very seriously. It is our job to understand the information needs of the nation and to address these requirements in a scientific, neutral, efficient, and effective way. We are committed to protecting the confidentiality of all information entrusted to us and to ensuring that the information we produce is timely and relevant to Canadians.

Today we are faced with continuous and growing demands for more detailed and more timely information. This is true not only for the census program but also for our ongoing social, economic, and environment programs as well. We have a long-standing history and world-leading reputation in using innovative methodological approaches and instruments to address these growing information needs.

The demand for information to be collected on the census program is not a new phenomenon. My colleague will explain to you the rigorous consultation program that we undertake to ensure we remain relevant and respond to emerging priorities.

While the census is incredibly successful and provides a richness of information at the community level, it is not necessarily the right instrument or approach to deliver high-quality information for specific topics. Some questions that are specifically designed to capture detailed information from subpopulations, for example, are better asked on a survey or captured through existing administrative sources rather than from the whole of the population.

Our social statistics program can respond to information needs faster, and we can use our analytical capacity to model and link data sources to produce information at lower levels of geography.

Our comprehensive social statistics program also includes a robust cost recovery program. One example of our cost recovery program is the use of post-censal surveys, such as the aboriginal peoples survey that is currently in the field or the survey on the vitality of official-language minorities that was conducted following the 2006 census. The post-censal survey program exemplifies Statistics Canada's partnership with other federal departments or a consortium of departments that provide funding to the agency to address specific emerging priorities.

Before I describe the process by which we obtain approval for our questions that are asked on the census program, I would now like to turn it over to my colleague, Johanne Denis, to describe our comprehensive census content consultation process that we will embark on later this year and to speak on the subject of collecting the additional language data.

[Translation]

**Ms. Johanne Denis (Director General, Census Subject Matter, Social and Demographic Statistics, Statistics Canada):** Hello.

The framework for determining the content of the census program is based on a proven process that draws on experience from previous Canada census programs, the United Nations' census principles, and approaches developed in other countries. This framework determines the priorities in the census content, in keeping with users' information needs, the burden on the respondent, privacy issues, and operational considerations. This framework is used and rigorously applied during the consultation process with data users and partners.

Starting in fall 2017, Statistics Canada will be implementing an official public consultation process. Following the consultation and the assessment of needs according to the framework, any changes proposed to the census content will be rigorously evaluated, including qualitative and quantitative testing, at the high quality standards of Statistics Canada. This rigorous and scientific approach will make it possible among other things to evaluate the effect of new content on the existing content

As to gathering additional linguistic data, Mr. Jean-Pierre Corbeil stated in his appearance on February 14, 2017, that efforts that had been made in the 1993 and 1998 census tests to assess the feasibility of including a question on the language of instruction of people aged 15 and over. The results of these tests showed that it was extremely difficult to obtain that information, and that there were major gaps and inconsistencies.

I will now briefly outline two approaches that could replace the census and that could be used to collect data about rights-holders. As the national statistics agency, it is our responsibility to respond to information needs by recommending the appropriate tools to precisely and accurately report on rights-holders.

First, similar to what was done in 2006, a survey could be conducted in 2021 and the answers to the 2021 population census could be used to select a sample of individuals belonging to official language minorities. Funding would be needed for this survey and the sample size would be determined by the geographical level required. Statistical methods and techniques such as modelling and oversampling could be used to estimate the population of rights-holders for small geographical areas, such as areas served by school boards.

As to the second approach, Statistics Canada has for a number of years collected a wide range of data from across the country, in collaboration with the provinces and territories. Each year, the agency receives data from every province and territory about kindergarten, primary and high school enrolment. If the provinces were able to collect standardized data on the language of instruction of parents, brothers and sisters, and provided that data to Statistics Canada, it would be possible to enumerate rights-holders using administrative data.

Statistics Canada has already begun discussions on the enumeration of rights-holders with board members of the Fédération des communautés francophones et acadienne du Canada. In the interest of upholding the spirit and implementing section 41 of the Official Languages Act, Statistics Canada is committed to developing and implementing the best strategy for collecting data on the subject.

• (1110)

[English]

**Ms. Connie Graziadei:** As you've just heard, the census consultation and testing process for the 2021 census will begin later this year. The process by which the questions for the census are approved is determined by legislation. Section 21 of the Statistics Act states:

The Governor in Council shall, by order, prescribe the questions to be asked in any census taken by Statistics Canada...

To ensure the Canadian public are informed of this decision, the act also requires that the questions be published in the *Canada Gazette* no later than 30 days after the decision.

For the 2021 census program, Statistics Canada plans to present its recommendations to cabinet in fall/winter 2019, with the goal of having the questions published in the *Canada Gazette* no later than spring 2020. This timeline is required to ensure all systems and processes are properly adjusted, tested, and finalized for collection to begin in early 2021.

In closing, Mr. Chair, please let me assure members that Statistics Canada takes its professional responsibilities very seriously, and we remain very committed to producing the highest-quality information using the most innovative methodological approaches at our disposal.

My colleague and I would be happy to address any questions you may have. Thank you.

• (1115)

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

We'll now go to questions and comments from the members.

[Translation]

We will begin with Mr. John Nater.

[English]

**Mr. John Nater (Perth—Wellington, CPC):** Thank you, Mr. Chair, and thank you to our witnesses for joining us this morning to discuss this issue.

I think at the root of all this is the issue of identifying rights holders and quantifying the number. It sounds fairly simply, but as we've heard from past witnesses, it's obviously not as simple as asking someone, "Are you or are you not a rights holder?" The terminology doesn't quite jibe with individuals when they're being questioned. The way we ask these questions in a census and/or survey is important.

Now in your presentation, madam—I'm not going to be able to pronounce your name correctly—

**Ms. Connie Graziadei:** That's okay.

**Mr. John Nater:** —you mentioned that the census isn't always the right tool to find the information we're gathering.

The challenge I have with that statement is that when we're talking about rights holders, we're talking about an entire population. We have a sample size of 35 million Canadians. Of those, any one could potentially be a rights holder. By using an alternative sample size, even with supersampling, we're not really quantifying the number of rights holders in a given community.

I was talking to a colleague from Peace River, Alberta, who has a number of small bilingual communities in northern Alberta, with bilingual schools there. Even with supersampling, we're not going to necessarily identify where these rights holders are, to provide that information for education.

Could you elaborate on this problem a little, in terms of identifying the right tool to find this information?

**Ms. Johanne Denis:** Do you want me to answer?

**Ms. Connie Graziadei:** Sure, go ahead.

**Ms. Johanne Denis:** On the idea of a survey in which we target using the census, we could do a post-censal survey similar to the survey on the vitality of official-language minorities. We could use techniques such as oversampling—you're right that we can go to a certain level—but we have other capacities as well. We can use a modelling approach to model at the small area level. As a scientific organization, we have used these techniques on many occasions. This is something with potential. We will need to test it and look at it, but it is something that is feasible.

On top of that, there were my suggestions about administrative data. Administrative data allows you to cover 100% of the population as well. This is another avenue worth looking at.

**Mr. John Nater:** Okay.

The final decision of which questions are and are not included in the census comes from the Governor in Council. Perhaps Mr. Shute, from Industry Canada, could comment on that.

Who makes the final recommendation to the Governor in Council, to cabinet? Is it Industry Canada that has the final say, or is it Stats Canada that provides a final recommendation to the minister and through that mechanism to cabinet?

**Mr. Larry Shute (Deputy Director General, Economic Research and Policy Analysis Branch, Strategic Policy Sector, Department of Industry):** Thank you for your question.

The recommendations on the questions for the census content rely most importantly on the work that Statistics Canada does to consult with Canadians. They make a recommendation to the minister, who then makes a recommendation to the Governor in Council.

**Mr. John Nater:** Okay. Do you know of examples in which disagreements have occurred in those recommendations?

**Mr. Larry Shute:** Do you mean between Statistics Canada and the minister?

**Mr. John Nater:** Yes.

**Mr. Larry Shute:** There are none, in my experience.

**Mr. John Nater:** Typically, then, what is recommended is what is presented?

**Mr. Larry Shute:** That's correct.

**Mr. John Nater:** Okay.

We talked a little bit about the survey on the vitality of language in minority communities, from 2006. There's no question that some important data came to us through that study. Concerning when this data is being used in courts, we had a witness, Mark Power, state that you really can't use this information in court, that it doesn't hold up.

How would you react to that? What would be your opinion on that criticism, I would say, of this particular survey?

• (1120)

**Ms. Johanne Denis:** It's not for me to say at this stage. We're embarking on census consultations, and certainly we hear you. We will consult as well with the organization, as we do already. As I said, Mr. Corbeil is in close communication with *la Fédération*. This will be part of the census consultation, and we will take your concern seriously and will look at potential ways to do additional testing. You need to understand, however, that we cannot stop looking in parallel at various options. As a scientific and rigorous statistical organization, we take this question very seriously, and work continues on that front.

**Mr. John Nater:** Going forward, then, for the next census in 2021, have there been any guidelines released by Stats Canada in terms of how many questions are envisioned overall in the short-form census and in the long-form census?

**Ms. Connie Graziadei:** That's part of the process we are embarking on now. When we're doing the consultations, we are not only looking for information needs but also at information comparability over time and the importance of that to the data users.

Obviously there are financial constraints, but probably more importantly there are also constraints of burden on Canadians, and we have put a tremendous amount of effort over the last 10 years in trying to reduce the burden on Canadians by replacing information questions with a very highly reliable source of information. An example in the 2016 census is that we didn't ask the 14 questions on income that had been previously asked, because we had a very reliable source of information.

We go through the consultation process, and it really is at the end of the consultation process that we determine what needs to be asked of 100% of the population versus what we can ask of a sample of the population, and then we use estimation in a very scientific and professional way to produce reliable information at lower levels of geography.

[Translation]

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

Mr. Samson, you have the floor.

**Mr. Darrell Samson (Sackville—Preston—Chezzetcook, Lib.):** Thank you, Mr. Chair.

Thank you very much for your presentation, ladies.

I have just six minutes so the questions and answers will have to be very quick.

My first comment is general in nature. I hope the feeling I had after your presentation was not warranted. I had the feeling in my heart, in my guts, that you were here to tell us that adding a few questions might not be the best way of gathering information. I hope that is not true, but I will leave that in your hands.

I was very interested in the way you described the context at the beginning. You are experts, and we do not question that. We want to inform Canadians and you find innovative ways of doing that. That is all good.

Mr. Corbeil appeared before us and stated that the census does not include questions pertaining to the subject of section 23(1)(b) or paragraph 23(2) of the Charter.

Do you share his view?

**Ms. Johanne Denis:** Yes, the questions in the census do not pertain to mother tongue.

**Mr. Darrell Samson:** So they do not pertain to section 23(1)(b).

**Ms. Johanne Denis:** No, they do not pertain to language of instruction.

**Mr. Darrell Samson:** So you agree with Mr. Corbeil on that.

You said that people are surveyed to gather more information. Do you think that including questions pertaining to the subject of subsections 23(2) and 23(3) would yield additional information? If the census were to include such questions as of tomorrow morning, would a scientific analysis of the data pertaining to these two sections yield additional information?

**Ms. Johanne Denis:** Right now, we are looking for a way of obtaining information about rights-holders. We are considering the possibility of obtaining that information through the census. We are also considering other options, as I said in my presentation.

**Mr. Darrell Samson:** Okay, but my question is simple: would it be possible to obtain that kind of data by using specific and scientific questions?

• (1125)

**Ms. Johanne Denis:** We would have to develop the questions, test them, and make sure they are properly understood in order to obtain precise and accurate information.

Once again, the scientific process is extremely important because ultimately you want very precise and accurate information.

**Mr. Darrell Samson:** Exactly.

When you have more information on a subject, does that help people?

**Ms. Connie Graziadei:** It depends on the quality of the information.

**Mr. Darrell Samson:** It will be good because the questions will be scientific.

**Ms. Connie Graziadei:** As Ms. Denis said, the questions have to be developed and tested in order to confirm that people can understand them before they answer them.

**Mr. Darrell Samson:** Thank you very much.

If the data is very good and everything goes well, will that help the francophone community or the province better understand what is happening on the ground?

**Ms. Johanne Denis:** Of course, if we do appropriate tests and make sure that we can measure the phenomenon precisely and accurately, we will help the communities.

We have to find the right way of doing this, however, which is what we are committed to doing.

**Mr. Darrell Samson:** Excellent, bravo.

Now I would like to talk about the 11 additional questions. When Mr. Corbeil was here, he said 11 additional questions would be needed. I have reviewed these questions. I am not an expert, but I can tell you that at least 7 of these 11 questions are not necessary. They would yield additional data, but that data is not really central to the issue. I will not recommend these 11 questions therefore, but I am merely a member from Nova Scotia.

A brief was presented by Mr. Landry and some lawyers. Mr. Landry was here a few days ago. He did a quick study of the subject, although he is not an expert on these matters as you are. He felt nonetheless that two or three questions could be slightly modified in order to obtain certain information, and that a further question or two could be added, in order to give us a complete picture.

Would it be possible to modify one or two of the questions in order to get a bit more data?

**Ms. Johanne Denis:** I will say again that we will do everything we can to measure the number of rights-holders. I am not here to criticize or to review the 11 questions that Mr. Corbeil spoke to you about during his appearance on February 14. Once again, we will use a scientific process to determine the best way of measuring the number of rights-holders and the number of questions that are needed to get that information.

**Mr. Darrell Samson:** I have just one minute left so I will try to keep it simple.

Whether there are 11 additional questions is not important. I simply want to know whether we can modify or add one or two questions. I suspect the answer is yes.

That said, the committee has some concern as to preparing the questions that will be tested in the field. What happens if, after testing three questions, the results are not what was hoped for? There might not be enough time to manoeuvre, meaning that we would lose the opportunity to do something in the 2021 census.

I have an idea. I don't know if you have heard this before. We are talking about preparing two, three or four scientific questions to obtain the maximum data. You are the experts on this. Would it be possible, however, to work with the francophone community? You mentioned that. Are you open to the idea of working with the Fédération des communautés francophones et acadienne du Canada, with four or five other associations that truly represent what is happening on the ground, and perhaps also with a French-language school board? Would it be a good idea to analyze the questions and to have discussions with two or three groups on the ground? It would not be a consultation strictly speaking, but a discussion with experts on the ground to see if the questions are good. That would increase the likelihood of these questions proving successful in the subsequent test.

Mr. Chair, can the witnesses have another 30 seconds to reply?

**The Chair:** Do you have any comments?

• (1130)

**Ms. Johanne Denis:** As I said earlier, Mr. Corbeil is already in contact with the federation. They are talking. We certainly do already work with the organizations.

**Mr. Darrell Samson:** That is excellent.

I would add the—

**The Chair:** Your speaking time is up, Mr. Samson.

**Mr. Darrell Samson:** —Fédération nationale des conseils scolaires francophones.

That is all I wanted to say. Thank you very much.

**The Chair:** I now yield the floor to Mr. François Choquette

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

To the ladies from Statistics Canada, did the Department of Industry ask you to analyze the possibility of including questions in the next census in order to obtain answers about all of the rights-holders?

**Ms. Connie Graziadei:** We have not had any talks with that department.

**Mr. François Choquette:** Oh, no?

Mr. Shute, you represent the Department of Industry. We are doing a study on the census. Since the Mahé case, the government has not complied with the need to calculate the total number of rights-holders. Are you going to submit an official request to Statistics Canada to have them change the census so that it respects the ruling in the Mahé case?

[English]

**Mr. Larry Shute:** In the weeks and months ahead, as part of the process for the development of the questions for the 2021 census, we will have discussions with StatsCan, the department, and officials from the minister's office and come to a recommendation on what to do.

[Translation]

**Mr. François Choquette:** When did you start to look into the matter?

[English]

**Mr. Larry Shute:** It's recently, in the past couple of months, as the committee has had its discussions and there have been newspaper and media articles. The department is certainly aware of it, as StatsCan officials are.

[Translation]

**Mr. François Choquette:** Fine.

Did you want to add something, Ms. Graziadei?

**Ms. Connie Graziadei:** Yes. We are setting up the consultations for the 2021 cycle. Statistics Canada is well aware of the issues regarding language-related information. That is why we are currently examining what could be done in 2021 that would allow us to meet that need for information.

**Mr. François Choquette:** Yes, I understand. Unless I am mistaken the Department of Industry establishes the priorities for the census questions. This is what we were told by a Statistics Canada representative who came before the committee. He said that Statistics Canada receives its directives and guidance from the Department of Industry, and that afterwards Statistics Canada uses scientific criteria to examine whether things apply or not.

Like all of my colleagues, I have some serious concerns. The Mahé ruling says quite clearly that we are not complying with the law at this time. We do not know the exact number of rights-holders, and that has some very serious consequences for minority communities. Consequently I think that what my colleagues want to hear is that the Department of Industry will as a priority give Statistics Canada the directive to refocus its efforts so that we respect the law.

Am I mistaken, Mr. Shute?

[English]

**Mr. Larry Shute:** There are a couple of things. As Ms. Graziadei said, one is that the process of determining the questions that will go into the census, the consultation process, will be under way shortly. In general, on how to collect information in the best way, the most scientifically sound way—and there are alternative ways of collecting the information that you're looking for—Statistics Canada officials are the professional experts, and they make recommendations to the minister, saying that in the event that you need to collect this information or recommendations to the government, this is the approach they would recommend on a scientific basis, in their best professional judgment.

• (1135)

[Translation]

**Mr. François Choquette:** What we hear from Statistics Canada is that there are a lot of requests in a lot of areas, be it the environment or other concerns. I understand all of that.

What I am asking you, and what it is important that we understand, is whether it is a priority for your department to determine the proper number of rights-holders and thus respect the Mahé decision.

[English]

**Mr. Larry Shute:** There are many data priorities, many needs to collect statistical information on a wide range of subjects. Under the legislation that is now in place, the Statistics Act, which is in the process of being amended through Bill C-35, the issue is related to what information is collected being the responsibility of the Minister of Innovation, Science and Economic Development. How that information is collected—the methodology for collecting it, the processes for collecting it, and how that is produced—are by tradition and by convention the responsibility of Statistics Canada.

[Translation]

**Mr. François Choquette:** My next question is addressed to the Statistics Canada representatives.

Do I still have some time left, Mr. Chair?

**The Chair:** Yes, you still have time to ask a brief question.

**Mr. François Choquette:** Earlier you spoke of several undertakings. Are issues regarding official languages prioritized in your activities? Are they the priority?

**Ms. Johanne Denis:** We are of course aware of the request, and we are examining it. As I said earlier, we have a framework to help us determine the content of the Census Program, which is proven, objective and scientific. We receive the requests and we classify them according to this framework. We understand the legislative requirement very well; we hear you. Using our processes, we will certainly examine that possibility. It will be included in our testing.

**The Chair:** Thank you.

Our next speaker is Mr. Lefebvre.

**Mr. Paul Lefebvre (Sudbury, Lib.):** Thank you, Mr. Chair.

I am going to continue in the same vein as my colleague, Mr. Choquette. He referred to the Mahé affair, which concluded in 1990. There have been several censuses since then, and clearly the decision of the Supreme Court of Canada was not taken seriously in the censuses that followed.

You referred to a legislative requirement. In my opinion, in light of the charter and the ruling handed down in the Mahé case, it is, rather, a legal obligation. The charter grants rights to the rights-holders. The government has a legal obligation to comply.

I want to put the question to you quite directly: are you aware of the Mahé decision and of the obligations the Supreme Court imposed upon you?

**Ms. Johanne Denis:** We know the law. I will reiterate that we are aware of the needs in connection with the census. They are assessed and tested in a scientific and rigorous manner. I can't give you any other answer than that.

**Mr. Paul Lefebvre:** I understand. I am not trying to trap you; that is not my intention.

**Ms. Johanne Denis:** I don't have the answer.

**Mr. Paul Lefebvre:** You could just as well have responded that Statistics Canada was perhaps aware of the situation in the past, that this information has escaped you and that the question should be reviewed. That would not be a problem. I just want to be sure that, in

the discussions in progress, as you said, this subject will indeed be examined and we won't simply say that perhaps we will do it.

In the opinion of the witnesses we have received in this committee, this isn't something that we might perhaps do if needed; this is a legal obligation. As a government, we have the obligation to do it, by virtue of the decision of the Supreme Court of Canada and of the charter. Otherwise, it could be argued that the census is anti-constitutional because it does not respect the charter.

I am not asking you to give me your opinion on this point, but I have to share this comment with you.

In the 2016 British Columbia case about education in French, the Supreme Court of British Columbia established that the data available was not good enough to justify the right to have French schools in certain regions of the province. It also said that if the data were better, it could make a different ruling and grant the right to go to school in French. Mr. Nater also spoke about the importance of the sample. The Supreme Court of British Columbia said that it would not be a post-census survey like the one done in 2006 that would give us a good sample, but rather a complete census of the population, which respects the charter.

I will leave it at that.

I yield the floor to Ms. Lapointe, who would like to ask some questions.

• (1140)

**Ms. Linda Lapointe (Rivière-des-Mille-Îles, Lib.):** Thank you, Mr. Lefebvre, for allowing me to have the rest of your time.

[English]

In the English-speaking community in my riding, I'm the only one from Quebec. Do you find you are looking for the minority English-speaking people? Are you also looking for them, not only for *les francophones*? Are you?

**Ms. Connie Graziadei:** Yes, we are.

[Translation]

**Ms. Linda Lapointe:** I have another question.

Do you have a list of all the questions that were tested, showing which ones were kept or rejected, as well as the reasons for these decisions? Would it be possible for you to submit this information to the committee?

**Ms. Johanne Denis:** Yes, we have the reports on the tests. I can check on that.

**Ms. Linda Lapointe:** The idea would be to tell us what was rejected and what was kept during the preparation of the 2016 census, and to give the reasons. I would be grateful if you could provide us with this information.

**The Chair:** You may submit these results to the committee clerk.

**Ms. Connie Graziadei:** Absolutely.

**The Chair:** She will take care of sharing them with the members.

**Ms. Linda Lapointe:** Thank you, Mr. Chair.

I would also like to make a brief comment.

Ms. Graziadei, you made the following proposal:



[English]

a survey is better than covering all the population.

[Translation]

If I understood you correctly, you believe that it is preferable to do a survey when we are addressing sub-populations. But it seems to me that this should be done as part of a census.

I would like to know the reasons behind this assertion.

[English]

**Ms. Connie Graziadei:** There are some questions that reflect only part of the population. It's better to ask those questions directly to the subpopulation, as we have done in the past. I'll use as an example the aboriginal peoples survey, which is now in the field. If we ask questions of all of the population or the general population specific to that sub-community, the information doesn't resonate—

[Translation]

**Ms. Linda Lapointe:** This concerns indigenous people or first nations more than francophone minorities or anglophone minorities in Quebec. This is the Standing Committee on Official Languages. Without neglecting the first nations, who are important, we are trying to serve the official languages well and to ensure that all rights-holders receive what they have the right to receive in the school boards. Everywhere in Quebec, there are English speakers. It is necessary for these people to have access to education in their language, just as French speakers outside of Quebec must have this access in their own language. In my opinion, the rights-holders are very important.

Could a survey give the same result?

**Ms. Connie Graziadei:** Yes, because we could use the answers from the census, for example, answers from English speakers living in Quebec, to conduct a survey addressed directly to that community.

**Ms. Linda Lapointe:** Thank you.

**The Chair:** Thank you.

Mr. Arseneault, you have the floor.

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

Thank you, Ms. Graziadei, Ms. Denis, and Mr. Shute.

I think we are fortunate to have before us the cream of the crop from Statistics Canada. It is not always fun to be in your position, but we try to be as pleasant as possible.

• (1145)

**Mr. Darrell Samson:** We try.

**Mr. René Arseneault:** I don't want to be redundant by asking you all the questions that my colleagues asked you. However, as my Acadian colleague, Mr. Samson, said at the outset, your remarks are worrisome. They are a bit in the same vein as those of Mr. Corbeil, namely that you are listening, that you have heard us, and that you are going to conduct tests. But we have lost generations of young students in francophone or anglophone minority communities because Statistics Canada wasn't able to enumerate the rights-holders effectively and adequately.

My mother worked for Statistics Canada at a time when you had to knock on doors and ask people how many refrigerators, children, and cars they had. But in this case, let's put on our blinders and confine ourselves to the context of the rights-holders.

I asked Mr. Corbeil two specific questions. In fact, you have just confirmed his responses in a sense, but in a different way. In these questions, I asked Mr. Corbeil whether he had consulted specialists on the matter. He answered me by saying that he was ready to hear from everyone, all the departments and agencies. But this did not answer my question. In fact, I had asked him if he had consulted specialists on the matter. A good many constitutional experts could perhaps help Statistics Canada realize what its obligations are towards rights-holders.

I will ask you the question again. Has your department consulted such experts?

I would like to have a brief answer, yes or no.

**Ms. Johanne Denis:** Mr. Corbeil works continuously with experts on the matter. He, himself, is an expert, as you know.

**Mr. René Arseneault:** No, no.

**Ms. Johanne Denis:** He is a Canadian and international expert.

**Mr. René Arseneault:** I am talking about experts outside Statistics Canada.

**Ms. Johanne Denis:** He works with Mr. Landry, and he has worked with several stakeholders in the field.

**Mr. René Arseneault:** Agreed.

**Ms. Johanne Denis:** The answer is yes.

**Mr. René Arseneault:** Perfect.

Do you feel that we really need 11 more questions in order to determine the number of rights-holders under section 23 of the charter?

**Ms. Johanne Denis:** I cannot comment. Mr. Corbeil is the expert, so that is for him to do. That is part of the tests and trials we will do.

**Mr. René Arseneault:** There is another question I asked Mr. Corbeil that worried me. From what I understood, for 2018, there will be tests on 75,000 people. Is that correct?

**Ms. Johanne Denis:** I think it is actually 50,000 people.

**Mr. René Arseneault:** No matter. Will these tests take place in 2018?

**Ms. Johanne Denis:** They will take place in 2019.

**Mr. René Arseneault:** I asked him whether, in the event the tests are not conclusive, it would be possible to have, for 2021, a form that would comply with the obligations set out in section 23 of the charter. I still do not understand the answer.

**Ms. Johanne Denis:** There are several ways to do testing.

For my part, I believe strongly in initial qualitative tests, which may take the form of discussion groups, cognitive tests, or one-on-one tests. There is a great deal of work that can be done at the cognitive level by using representative samples, among other things.

The big content test, in 2019, is also intended to be operational. It will allow us to know if we can implement these questions and apply them to the entire population.

There is therefore an iterative process, and we are putting time into it. We will perhaps do a second quantitative test; that is what we are examining. It is all woven into the schedule up to now.

**Mr. René Arseneault:** All right, but if the 2019 test is not conclusive, you would have to do your homework again to prepare another test. Is there not a risk of missing 2021 that way? Do you believe you will have enough time? That is what I want to hear from Statistics Canada.

**Ms. Connie Graziadei:** We are going to examine all approaches to confirm which one is the best to obtain the information required under the law.

**Ms. Johanne Denis:** There is the census, but there are also other means. All of this must be done simultaneously. We must not wait to see that it is not working and then have to change tack and do things differently. We have an obligation, and we our meeting it. We are also going to examine the court's decisions. We recognize that this is extremely important.

● (1150)

**Mr. René Arseneault:** For how long has that been recognized at Statistics Canada?

**Ms. Johanne Denis:** We have always recognized the importance of linguistic data.

**Mr. René Arseneault:** You speak in general terms, but I want to know how long Statistics Canada, since the Mahé case, has recognized that the enumeration of rights-holders is a constitutional obligation under section 23 of the charter? How is it that this information has still not been collected?

Since when have you recognized that this is important? That is what I want to know in the first place.

**Ms. Johanne Denis:** Work was done in 1993 and in 1998 to test some questions, as you already know. This has been mentioned several times, and I said it in my statement also. Unfortunately, the tests were not conclusive at the time. Looking at things today, we are examining what we can do for the future.

**Mr. René Arseneault:** Mr. Shute, I am going to repeat the question of Mr. Choquette. This worries me greatly, and I would like to have a clear answer.

Am I correct in believing that, prior to this year, the department did not indicate to you the importance of complying with the constitutional obligations under section 23 of the charter in order to determine the number of rights-holders? Did I understand your testimony correctly?

[English]

**Mr. Larry Shute:** I'm not sure what you're asking me exactly. Is it whether the department is telling me what I should be aware of?

[Translation]

**Mr. René Arseneault:** For how long has Statistics Canada been telling you that this issue is urgent? When did you receive instructions from the department to that effect?

[English]

**Mr. Larry Shute:** No. I have not had any instructions, but in the course of the past few weeks and months we've been having discussions with Statistics Canada about this issue.

[Translation]

**Mr. René Arseneault:** Has no one—

**The Chair:** I am sorry, Mr. Arseneault, but I must now give the floor to someone else.

Mr. Albas, you have the floor.

**Mr. Dan Albas (Central Okanagan—Similkameen—Nicola, CPC):** Thank you, Mr. Chair.

I'm very pleased to be here today.

Thank you for the work you do for Canadians and for your appearance before this committee.

I would like to ask you some questions about the 2006 Survey on the Vitality of Official-Language Minorities, or the SVOLM.

This survey provided probative data on education in the language of the minority. Was this data taken into account by the provincial and territorial governments as well as by the minority school boards?

**Ms. Johanne Denis:** Do you want to know if the data were used?

I am sorry, I do not understand your question.

**Mr. Dan Albas:** Yes, that is what I want to know.

**Ms. Johanne Denis:** Yes, the data were widely used and are still used a lot today. That is the most comprehensive survey we have ever done on languages in Canada. It allowed us to collect very detailed data on minority communities.

This survey proved to be a great success, and the data are still used today. Unfortunately, we have not done another survey of this type, but we would very much like to, because it provides a great deal of information on all the communities.

**Mr. Dan Albas:** Thank you for your answer.

Can the SVOLM data be used by a provincial or territorial government or a minority school board to determine the number of rights-holders?

**Ms. Johanne Denis:** I am not familiar with all the details of this survey. Mr. Corbeil would be the best person to answer your question. However, I can say that it is certain that this survey can be used by the provinces.

I am sorry that I cannot offer you more information on the communities. We could obtain this information and send it to you later.

● (1155)

**Mr. Dan Albas:** Excellent. Thank you.

In his appearance before the committee, Mr. Corbeil talked about various possible options other than the census in order to enumerate the rights-holders. He talked about a post-census survey, but also about "the provinces' administrative files".

Can you explain to us what that means?

**Ms. Johanne Denis:** Statistics Canada has a Centre for Education Statistics. As you know, education falls under provincial jurisdiction. The role of Statistics Canada is to work with the provinces and territories to collect and provide harmonized Canada-wide data on education. This is a successful partnership that is working very well.

There is a survey on elementary and secondary education that collects information on enrolments in schools. This survey is conducted annually. Each province and territory provides this data, and we then compile and harmonize the concepts using this survey. I believe this is a significant source of information to determine the number of rights-holders. We could work with the provinces and territories to have them add this information to their administrative system. In this way, we could have information about school boards. I consider this an extremely attractive approach.

At Statistics Canada, we are working extremely hard in terms of the administrative data. In fact, this is one of our priorities. This allows us to obtain much more accurate data with a very detailed breakdown by geographic location, but also to harmonize the data and reduce the response burden for Canadians. We have a lot of success using administrative data. This allows us to link this data to data from other sources in order to enrich the study of a given phenomenon.

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

Thank you very much, Mr. Albas.

Before concluding, I would like to make a few comments.

First, I will follow up a bit on what Mr. Samson was saying at the beginning. I am concerned to detect, at least in your text, a resistance to take the necessary measures with regard to section 23 of the charter and the rights-holders. That worries me personally.

Second, you mention that you are examining the requests, that you are consulting with people, and so on. I believe that before doing all that, you have the legal obligation to comply with section 23 of the charter. This legal obligation must be met before carrying out the consultations or examining the requests. This is a legal obligation you have.

Third, a scenario occurred to me when you said you were going to present your recommendations to the cabinet in fall and winter 2019. I just want to remind you that we will then be in the middle of an electoral campaign, if I am not mistaken. In the middle of an electoral campaign, I suppose it is easier to bring recommendations to cabinet, since some will have concerns other than approving questions.

**Ms. Linda Lapointe:** You make an interesting comment, Mr. Chair.

**The Chair:** So I find all this puzzling. It is rare for me to interject when the committee's time with a panel of witnesses has come to an end, but I want to tell you that your testimony is puzzling to me in a number of respects.

In closing, thank you for your appearance in any case.

Do you want to add something, Mr. Samson?

**Mr. Darrell Samson:** I have one very short question.

**The Chair:** No. We have finished.

**Mr. Darrell Samson:** Yes, but it is because I did not understand the answer the witnesses gave. I just wanted—

**The Chair:** You may be able to speak to them later.

For the moment, we are going to suspend the meeting for a few minutes.

Thank you very much to the witnesses for appearing.

• (1155) \_\_\_\_\_ (Pause) \_\_\_\_\_

• (1205)

**The Chair:** Pursuant to Standing Order 108(3)(f), we are continuing to study the full implementation of the Official Languages Act in the Canadian justice system.

We are pleased to welcome today Mr. Ronald Bisson, senior manager at the Réseau national de formation en justice, or RNFJ.

Welcome, Mr. Bisson.

We also welcome Ms. Karine McLaren from the Centre de traduction et de terminologie juridiques of the Faculty of Law of the Université de Moncton.

Hello, Ms. McLaren.

Lastly, we welcome Mr. Rénaud Rémillard, who is director general of the Centre canadien de français juridique and Fédération des associations de juristes d'expression française de common law.

Welcome, Mr. Rémillard.

Since there are three of you, we are going to allow you five to six minutes to make your presentations. We will then move on to questions and comments.

We are going to begin with you, Mr. Bisson. You have the floor.

**Mr. Ronald Bisson (Senior Manager, Réseau national de formation en justice):** Mr. Chair, I first want to thank you for inviting us to speak before the committee as part of the study of the full implementation of the Official Languages Act.

Our presentation is divided into three parts. First of all, I would like to talk to you briefly about three of the requests included in the action plan we submitted to the federal government. You have all received the reference document. Our plan is complete. My colleague Ms. McLaren will then speak about challenges and solutions regarding the standardization of common law in French. Lastly, Mr. Rémillard will speak about the measurement and certification of legal-related language skills.

I will get right to the point and address the requests submitted by the RNFJ to the federal government.

With regard to the first request, we ask that, as part of the new action plan for official languages, the federal government adopt a public policy on equal access to justice in both official languages. In this public policy, we believe that the federal government should affirm its objectives with respect to equal access to justice in both official languages. It should also formulate the principles of collaboration with the provinces in the area of justice, taking into account the constitutional and legislative framework.

It is also very important that the federal government recall that in criminal and family law—and here I am speaking specifically of divorce and conditions of marriage—we must stop talking in terms of linguistic minorities. The Beaulac decision was very clear on this subject. It is rather an issue of two official language communities that are equal. Wherever I go in Canada, I hear people talking about minorities and they say they want to serve them. In criminal and family law, we don't talk about minorities, but about two equal communities. This is our first request.

As for our second request, we believe that federal departments and agencies should really increase their participation in the federal government's multi-year action plan. We propose that the following departments and agencies in particular—but there could be others—also participate in the action plan: the Canada Border Services Agency, the Royal Canadian Mounted Police, the Correctional Service of Canada, the Public Prosecution Service of Canada, and Public Safety Canada. The goal here is more efficient use of public funds.

Our field is training and the development of linguistic tools. The numbers are small. If these departments and agencies also participated in the action plan, the training work would be greatly facilitated. We are talking here about participation only with regard to training and linguistic tools. The other duties of these departments and agencies are not at issue.

The two requests I have just mentioned obviously have a significant impact. We believe that it will be necessary to have a point within the federal government for horizontal coordination of all matters relating to justice. We recommend that the federal government assign responsibility for this coordination to Justice Canada's official languages directorate. This will have an impact on vote 1.

With regard to the third request, we recommend that the federal government invest in structuring initiatives. We are aiming at a systemic corrective action. With one-off, short-term projects that have no effect on the system, it is difficult to advance equal access to justice. In the plan we submitted to you, we have formulated six areas of action that in fact include a systemic approach in the field of training and tools. This begins with standardization of common law in French. Ms. McLaren will speak about this in a moment.

The measurement and certification of legal-related language skills will then be discussed. Mr. Rémillard will address this topic in a few minutes. We will then talk about tool development, training of jurilinguists, on-the-job training, and lastly, post-secondary training.

To conclude, I remind you that the RNFJ works in the field of education and development of tools. We want at all costs to avoid unreasonable delays related to language issues within the justice system and in criminal law. Following the decision in the *R. v. Jordan* case, we would never want to see language issues cause such a delay.

We also believe that language issues should not cause delays in other areas of law where we have rights in the different provinces. Justice system users who experience these delays often see them as a denial of justice. We therefore want to ensure that the necessary tools

and training are available, so that the service can be offered at the same time.

• (1210)

We conclude by reiterating our objective, namely that the justice system in Canada have the institutional capacity to function equally well in both official languages.

On that note, I yield the floor to Karine McLaren.

• (1215)

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

Ms. McLaren, please go ahead.

**Ms. Karine McLaren (Director, Centre de traduction et de terminologie juridiques, Faculté de droit, Université de Moncton, and member, Réseau national de formation en justice):** Mr. Chair, ladies and gentlemen, hello.

I am director of the Centre de traduction et de terminologie juridiques of the Université de Moncton and I am also a member of the Réseau national de formation en justice. Since I only have a few minutes to talk to you about a rather specialized subject, I am going to dive right into the heart of the matter, the standardization of French common law vocabulary.

What is standardization?

Essentially, it is the creation of Canadian common law terminology in French according to a scientific approach. The objective of standardization is to establish in French a language of common law that coincides exactly with the language of common law in English and that is the same from one province to another. The endeavour should lead to a complete terminology in all sectors making technical use of the legal vocabulary of common law.

Why is this process necessary?

It is necessary because the common law terminology network was developed exclusively in English for centuries. As a result, we find ourselves in an exceptional situation, where we have to introduce as a group a set of legal terms whose meaning is heavily charged and which simply do not exist in French. The standardization operation therefore often results in the creation of new terms or concepts in French, which are called neologisms. This terminology is documented in a terminology database called Juriterm.

The standardized terminology of common law in French is the cornerstone to access to justice in French. This is the submerged part of the legal iceberg or, if I can use another image, these are the roots of the living tree of common law. It is the existence of this technical language that makes it possible, among other things, to build and feed the tools used by legal professionals to offer legal services to justice system users; to teach common law in French; to support language training of professionals in the justice field; to provide legislative drafters with the legal vocabulary necessary to draft laws in both official languages; and to provide legal translators, court interpreters and stenographers with a reliable vocabulary for expressing the law in the other official language.

Think about the following scenario: a couple who wish to divorce appear before an attorney. The legal document templates do not exist in French. They are told that they either have to use the English templates or pay to have them translated into French. Equal access to justice in both official languages demands that these documents be available in these two languages. These documents must not only be available, but also be correct and reliable.

We can't act as terminologists by inventing incorrect or approximate equivalents where there is a high risk that they will not be interpreted as we wish by the courts. Standardization is a scientific process. Each term requires an extensive study of its terminological network in its legal context. This is a job that must be performed by expert jurilinguists.

The problem today is that there are still entire fields of law that have never been studied and fields that have been studied only partially. Common law in French has a lot of catching up to do. The essential tools it requires are also still quite insufficient.

This gives rise to another fundamental problem: if the language of common law in French is not complete or reliable, it is absolutely impossible to talk about equal access to justice in both official languages. Claiming to practise common law in French becomes an undertaking charged with risks and problems for all players in the judicial system, starting with justice system users. We then turn to English, even if it is not the justice system user's chosen language, in order to avoid potentially harmful consequences related to working in French. This is precisely what linguistic insecurity is.

For these reasons, we are making the following recommendations to the committee today.

The government must take positive measures to equip the justice system with the language code and a range of linguistic tools to enable it to function equally well in English or in French.

To do this, the federal government must mandate, empower, and equip the specialized agencies and bodies that operate in this field so that they can tackle three priority areas of action in a consistent manner. The three areas of action are as follows: the standardization of the French vocabulary of common law; the creation and development of the necessary tools, in other words, *Juriterm*, the *Juridictionnaire*, miniglossaries, model instruments, resources necessary for legal education in French, and so on; and the training of the architects of the language of law, legal translators and court interpreters, in particular.

• (1220)

In short, we must move from a reactive approach to a systemic, coordinated, and long-term approach.

Thank you to the committee for listening.

**The Chair:** Thank you very much, Ms. McLaren.

We will now move on to Mr. Rénaud Rémillard.

**Mr. Rénaud Rémillard (Director General, Centre canadien de français juridique inc. et Fédération des associations de juristes d'expression française de common law inc., and member, Réseau national de formation en justice):** Thank you, Mr. Chair.

Ladies and gentlemen, I am director general of the Centre canadien de français juridique, which is located in Winnipeg. This is a non-profit organization that was created or established in 2010 by seven provincial associations of jurists, namely, associations from British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, and Nova Scotia. Its goal was to offer training in legal French for stakeholders involved in the administration of justice. By this, we mean provincially appointed judges, probation officers, crown attorneys, court interpreters, and others.

As you know, language is the primary tool of law. The legal field demands a specialized language. Language plays an essential role in the proper functioning of the judicial system. When language is not mastered, errors and negative consequences pile up. The justice system user is then poorly served.

But after 150 years of judicial bilingualism in Canada, a key element is still lacking. In fact, there is no measurement or certification of legal-related language skills.

Of course, there are already measurements of language proficiency level, such as the federal public service assessments that result in scores of A, B or C, with which you are probably familiar. However, no measurement of this type exists in the legal context, that is, in legal French. Nor is there an equivalent in legal English. Nevertheless, the importance of measuring and certifying legal-related language skills is clear.

These measurements and certifications would increase the public's confidence in the language proficiency of stakeholders in the judicial system, including judges, court interpreters, crown attorneys, and probation officers.

They would make it possible to avoid situations where legal-related language proficiency leads to unfortunate situations or, in the worst case, to legal errors that could undermine the rights of justice system users.

They would also help the judicial system better allocate its bilingual human resources in order to more effectively serve francophone justice system users.

Lastly, they would make it possible to determine objectively the true bilingual capacity of judges and other stakeholders involved in the administration of justice. This information could be useful, in particular when selecting candidates for the judiciary.

The action plan of the Réseau national de formation en justice proposes to remedy the absence of measurement and certification of legal-related language skills. And so, we ask that the federal government commit, in the next action plan for official languages, to supporting the projects proposed by the Réseau national de formation en justice, including initiatives promoting training programs in legal French as well as programs for measurement and certification of legal-related skills.

Thank you. I will be happy to answer your questions.

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

Thank you to the three witnesses.

We will begin the round. I would like to ask the members of the committee to specify the person to whom the question is addressed.

We will begin with Mr. John Nater.

**Mr. John Nater:** Thank you, Mr. Chair.

I thank the witnesses for the information they have provided to us.

[English]

I will be asking my questions in English, so that I'm clear in what I'm saying. French is my second language.

The issue of standardization of language is something that I recognize is exceptionally important. Madam McLaren, I find fascinating some of the standardization work that's being undertaken. I wonder if you could elaborate a little bit and provide some examples of phrases or legal terms that are problematic in the sense of multiple meanings, or some examples that require standardization that isn't already there.

[Translation]

**Ms. Karine McLaren:** For example, we were contacted by a legislative drafter from New Brunswick. The goal of standardization is to ensure that everyone uses the same French vocabulary of common law throughout Canada. We cannot have a situation where New Brunswick uses certain terms, while Ontario and the federal government each do something else.

The question was in particular a practical one, because standardization concerns the technical vocabulary of common law. For example, this legislative drafter, who does codrafting and not translation, was not able to define the concept surrounding time limits. She gave the following examples:

- (1225)

[English]

“As soon as possible, as soon as practicable, as soon as reasonably practicable, as soon as practical, forthwith, immediately, without delay, within five days.”

[Translation]

All of these concepts have a fairly specialized and limited meaning, in English. There is a federal guide on their use, but there is no guide in French. No one has tackled this issue.

In addition to standardization, we provide guidance on phraseology. We also have a tool, the *Juridictionnaire*, which offers absolutely essential advice. For example, all of these concepts of time limits have a rather specific meaning in a legal text in English. For each time limit concept, there is a corresponding specific time limit. The court will interpret it in one way and not another. However, in French, uncertainty reigns, and this is a fundamental problem.

Let's take the example of the expression "fee simple absolute", which has been standardized in property law. I think it is "fief simple absolu" in French. When we purchase a property, a house, there is a contract of purchase and sale, and we know what we are buying. We know that we are obtaining the most absolute right that can be had. If this concept does not exist and then this agreement of purchase and sale has to be interpreted by a court, we no longer know what the concept of "fief simple absolu" means.

Consequently, many people do not want to use the French version, because it is not reliable. They do not know what it means. They therefore want to turn to the English version, which is completely contrary to true equality and to access to justice in both official languages.

[English]

**Mr. John Nater:** Very good.

I'm assuming that this isn't a one-time process. I suspect that you can't standardize everything, and then your job is done. This is an ongoing, constant, evergreen type of project that would have to be undertaken.

[Translation]

**Ms. Karine McLaren:** In fact, we started doing standardization in the 1980s under the aegis of what was called POLAJ, an initiative of the Department of Justice. Since then, we have done standardization in several areas of the law: the law of evidence, contract and security law, the law of trusts, family law, property law, and estates law. For the last three years, we have been working on alternate dispute resolution.

The problem is that our funding is granted on an annual basis, which means that it is not predictable. We never know how much we are going to receive. We need expert jurilinguists to do this kind of work. When we run out of funds, as happened this year, we have to stop the work completely. We are not able to complete the work. We constantly find ourselves playing catch-up. In fact, there are hundreds of years of common law we have to catch up with, and that is not possible with this kind of ad hoc approach. We know for only a year at a time how much we are going to receive and how many people we can have working on these initiatives. When will we get to the point where the common law in French can be expressed in the same way as the common law in English? We are constantly playing catch-up.

We are in the process of designing a new approach. At this point, we are doing standardization in entire fields of law, because that approach has an advantage. When we standardize in a field, there are a lot of related terms. We therefore do a lot of work at the same time. However, we would also like to be able to respond to ad hoc needs that arise. It must be noted that the common law is evolving at lightning speed in a number of other fields, such as medical assistance in dying, terrorism, and immigration. We have not even begun that yet.

We need to adopt a truly systematic approach. Instead of looking at a single area of the law, it would be better to address all these needs at the same time.

[English]

**Mr. John Nater:** Mr. Bisson, this is my first question to you.

You talked a little bit in your opening remarks about investing in structures and investing in longer-term projects rather than ad hoc scenarios. Did you have any specific ones in mind that your organization would benefit from in the long term?

[*Translation*]

**Mr. Ronald Bisson:** I could give you an example. At present, we offer on-the-job training for employees. We have done statistical analyses. We estimate that outside Quebec alone, about 12,000 employees use French in relation to the justice system, sometimes a little, sometimes a lot. For four or five years now, the members of the Réseau have reached about 200 people per year through on-the-job training. However, 200 people out of 12,000 is not going to make a lot of progress.

Investment in technology is needed. We are calling for investment in technology so that not only the training can be given in person, but also an employee can access training directly in their office, using their computer.

We also have to note that many employees use French sporadically. If an employee attends a training session, which may last from three hours to five days, they could forget the content two, three, four, five, or six months later.

Technology is an example of an investment that provides structure and is permanent.

• (1230)

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

Mr. Vandal, you have the floor.

**Mr. Dan Vandal (Saint Boniface—Saint Vital, Lib.):** Thank you very much, Mr. Chair.

It is a pleasure to meet with our witnesses.

In fact, I know Mr. Rémillard, because we come from the same neighbourhood in Winnipeg.

Mr. Bisson, you are a former Manitoban.

As you know, except perhaps Ms. McLaren, I was a municipal councillor at one time, and we did not have access to justice in both official languages, so this is all new for me.

In recent years, what have the federal government's priorities been in terms of access to justice in both official languages? Where has the funding gone?

**Mr. Ronald Bisson:** The Department of Justice could give you all the details on that, but I can still give you an initial idea.

For several years, we mainly invested in access to the courts. We were talking about access to justice, but we were mainly investing in prosecutors and in training provincially appointed judges, police, and support staff in the courts.

For the last two years, we have understood that equal access to justice is much broader than just access to the courts. In fact, studies show that only about 6% of cases end up in court.

Now, we want to expand this training to family law and all the other areas that also involve access to justice.

**Ms. Karine McLaren:** I would like to add something.

We are dependent on the roadmap for access to justice in both official languages. That is how our organization funds its standardization work. Our organization is not the only one working

on standardization. There has to be a partnership with other jurilinguistic centres and the federal government's translation bureau.

One of the problems is that the present roadmap funds two components: training and information. It is difficult to categorize jurilinguistic tools under either of those two headings. We have to stress the fact that these tools support training, but they are neither direct training nor information. However, these tools are absolutely essential because they are the foundation on which everything is built.

There has been a consultation process for the new 2018-23 roadmap. We specifically want to expand these two components, so that the new roadmap will reflect the importance of this work.

**Mr. Dan Vandal:** Thank you.

**Mr. Rénaud Rémillard:** I would like to add something concerning the two components, training and information.

A number of justice centres have been set up in several provinces, and in Alberta, Saskatchewan, Manitoba, Nova Scotia and Ontario in particular. These centres are intended precisely for individuals who go there to get legal information. That is another component. There is the training component, but fairly substantial investments have also been made in legal information.

**Mr. Dan Vandal:** Ms. Lapointe, do you also want to ask a question?

**Ms. Linda Lapointe:** Yes, thank you.

Ms. McLaren, you were speaking about jurilinguistics a moment ago. You are working on translating the common law into French. Are you also working on translating Quebec's civil law into English?

**Ms. Karine McLaren:** No. Our centre works exclusively on translating the common law into French. We also work closely with the Paul-André Crépeau Centre for Private and Comparative Law at McGill University, which deals with the Quebec side of things.

**Ms. Linda Lapointe:** Right. So it is another organization in Quebec that handles that.

**Ms. Karine McLaren:** Yes.

**Ms. Linda Lapointe:** Right.

Thank you.

**Ms. Karine McLaren:** The phraseology tools for legal French apply both in Quebec and in a common law province. Only the technical vocabulary of the common law in French would change in Quebec.

• (1235)

**Ms. Linda Lapointe:** Thank you very much. That is a precise answer.

**The Chair:** You have the floor again, Mr. Vandal.

**Mr. Dan Vandal:** At what level of the justice system does access to justice in both official languages present the greatest challenges?

**Mr. Rénaud Rémillard:** Perhaps I can answer that question.

In fact, it varies from one province to another. Certainly there have been additional investments in the provincial courts, mainly to comply with the obligations set out in part XVII of the Criminal Code, which provide that a person is entitled to be tried in the official language of their choice when they are charged under the Criminal Code. A lot of emphasis has been put on that.

Obviously, language rights also vary from one province to another. In some provinces, there is no access to justice in French simply because there are no language rights.

So, given that it varies from one province to another, it is difficult to identify a specific challenge. I can say, however, that in the past, the emphasis has been put mainly on the language rights obligations in the Criminal Code. For more legal reasons, that is where the emphasis has been. Conversely, we get a lot of calls from people who want information about family law, divorce, or another subject of that nature, because that affects their everyday lives.

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

Mr. Choquette, you have the floor.

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

Mr. Rémillard, thank you very much for your testimony.

I would like to go back to what you said a little earlier. If I am not mistaken, you said that there is no mechanism to specifically assess legal language skills.

**Mr. Rémond Rémillard:** That is exactly right. There is no assessment of legal language skills. A person can have the language skills needed for functioning in a general way—for example, when you order a coffee in Paris—but understanding what is said in a courtroom or at a trial where there is a lot of legal content is an entirely different thing. There is no measure for assessing those skills.

**Mr. François Choquette:** I am going to ask you a question, and it is not a problem if you do not know the answer.

There is a new process, or a new policy, for appointing judges to the Supreme Court. Justice Rowe, who is bilingual, has been appointed. What language assessment was done in his case?

**Mr. Rémond Rémillard:** I could not answer that question.

**Mr. François Choquette:** Right.

In Graham Fraser's report, which was produced with the official language commissioners of Ontario and New Brunswick, it says that one of the problems in the superior courts is the fact that the judges self-assess. The problem is that some judges overestimate or underestimate their language skills.

After this new announcement by the federal government, there will be more self-assessment and, if necessary, a language assessment. What do you think of this new approach?

**Mr. Rémond Rémillard:** The certification measure is intended to provide an objective criterion. Essentially, it is to determine whether a person has the necessary language skills. It is also a way of providing everybody with security. It reassures people to be told that they can preside at a hearing or argue a case in French. It is an objective way of determining the level of French skills in a legal context.

This is an instrument we use in the public service. We propose that something similar be put in place, but in a legal context. As I said, words are important in the legal field, and so it is important to measure these skills accurately.

**Mr. François Choquette:** Do you want to add something, Ms. McLaren?

**Ms. Karine McLaren:** Self-assessment absolutely does not work. I think we have to move toward a model that is not based on self-assessment. The papers recently reported a case in New Brunswick where a judge appointed to the Provincial Court who said he was bilingual gave a decision when he was not capable of hearing the case in French. That was published in the newspapers and the decision was appealed. So self-assessment is a bad idea.

You are undoubtedly aware of Justice Finn's language training program, for example, which is intended to train judges to hear cases in the other official language. The judge is also working on establishing a certification measure that will involve certain levels. The certification measure is not used to tell judges whether they speak well or not, but to tell them what they are capable of doing.

I think that is a very good approach, because the judges can then situate themselves on a certain scale. It lets them know what cases they can hear and how far they can go. It is a gradual process, you could say. The judges can continue to take training until they are capable of moving to the next level. I think that is the way to go.

• (1240)

**Mr. François Choquette:** What you are saying is very important. When I met the Commissioner of Official Languages, that is one of the first points he talked to me about. He also took his report off his bookshelf and asked me to read it carefully and make sure it was going to be implemented. At that time, in 2013, it had unfortunately been shelved. So he asked me to make sure there would be action taken on the main recommendations.

One of the recommendations was that self-assessment not be used, and that an assessment of language skills be done instead. You have said that it is not sufficient to do an assessment of language skills, that it must also be done with consideration given to the legal or professional aspect.

Has progress be made in relation to the training, the availability of the people who teach in both official languages, or access to training in both official languages for becoming a judge or lawyer?

**Mr. Rémond Rémillard:** The Centre canadien de français juridique offers training for crown attorneys and court interpreters. Some training courses can be given online, and others in person.

I was in Canmore recently, where 80 people—crown attorneys, court interpreters and provincial court judges—were taking a training course. There was a mixture of people: linguists and people who had taken language training with professionals in the field, that is, crown attorneys who are bilingual and are very familiar with the work. The training was not abstract; it was very concrete. There were mock trials with all of the participants, and this gave the interpreters a chance to play their role.



At one point, some of the participants decided to switch from French to Spanish, to change things. Two or three participants were able to speak Spanish. The training took place first in French, and then the crown attorneys, provincial court judges, and other participants had to do it all over again. In many cases, the people had French as a second language, and for others it was their mother tongue, but they were all in the habit of practising exclusively in English. When they tried to use correct terminology in the courtroom, it was not always easy. That is the kind of training we give.

We also often get calls or emails from people who work in federal, provincial, or municipal institutions who are asking for this kind of training. In some cases, the people are prepared to pay out of pocket to take this training.

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

Ms. McLaren, you may answer also.

**Ms. Karine McLaren:** The training that Mr. Rémillard is talking about is meant for justice professionals, but not judges, and certainly not for federally appointed judges. I had wondered about that question myself, because our organization was interested in providing training.

The present roadmap would not fund training for federally appointed judges. There are already organizations that look after providing training for judges, the National Judicial Institute and the Canadian Institute for the Administration of Justice in particular. That is how training for judges is delivered, and we have not tried to look beyond that.

It would be a good idea for there to be co-operation with those organizations so we could find a way to stress the importance of language training for judges.

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

Mr. Lefebvre, you have the floor.

**Mr. Paul Lefebvre:** Thank you, Mr. Chair.

I would like to come back to you, Mr. Bisson.

In your presentation, you talked about three priorities that you want to emphasize, public policy relating to equal access to justice in both official languages and horizontal governance through the Department of Justice. You did a study and decided that these were your priorities.

What was not working, for your group to come up with those priorities?

• (1245)

**Mr. Ronald Bisson:** I can answer your question, Mr. Lefebvre. I am also going to go back to Mr. Choquette's question.

At the Réseau, we consider it important to measure the progress achieved. That is part of our approach. If we cannot measure something, it is difficult to manage it, and if we do not manage it, we cannot improve it.

Through the Réseau, we reach about 200 people per year at present. These people receive on-the-job training. However, there are 12,000 people, or even more, who are eligible for the training.

I would also like to talk to you about post-secondary graduates. You asked whether there were enough professionals. There are about 300 graduates per year, outside Quebec, in various justice fields. These are programs to train lawyers or police officers, college programs, and so on. According to our statistical analyses, there would have to be at least 600 graduates per year to meet the needs over the next few years. In other words, the number of graduates would have to be twice what it is. Otherwise, the number will be flatly insufficient in five or ten years. This is already apparent when we talk to human resources managers who hire justice professionals. There are not enough bilingual people, and they are really wondering where they are going to be able to find them.

In our first two recommendations, we suggest that a federal policy be established. A lot of things are happening when it comes to equal access to justice in both official languages, but there is insufficient coordination. We do not take a system approach.

We believe, however, that the federal government should make a public policy setting out its objectives in relation to equal access to justice and the principles underlying its relationships with the provinces. This is, in fact, a federal-provincial relationship issue. Things are not always well coordinated. In some places, you can speak to the judge in French, but you cannot do it at the entrance and you also cannot file documents in French. That is the coordination that is necessary. We are proposing that the Canadian government set out the way it is going to work, in a public policy.

The 2003 action plan is a model that we have analyzed extensively. In appendix A, we set out an accountability framework for official languages that covers the entire federal bureaucracy. As of today, that accountability framework is still having a structuring effect. What we have thought about is a model of this type.

Why extend the action plan into the field of justice? As Ms. McLaren said, Justice Canada is the only actor. For our part, we are permitted to work only with provincial employees.

**Mr. Paul Lefebvre:** Yes.

**Mr. Ronald Bisson:** The federal government is supposed to offer other types of programs. There are very few in the provinces.

If we offer training in legal French to a police force in Winnipeg, how many people are going to attend? However, if we add the St-Pierre-Jolys detachment, there might be more. This is what I had in mind when I talked about the efficient use of public funds. Because the number of people reached is very low, we could start working on reaching more people.

**Mr. Paul Lefebvre:** You mentioned the 2003 action plan, but then there were the 2008 and 2013-18 plans.

Has the situation stayed the same or have there been changes since then in terms of funding, for example?

**Mr. Ronald Bisson:** I do not recall the figures, but until 2003, the former POLAJ, which Ms. McLaren mentioned, invested a total of about \$650,000 per year in the field of justice. Starting in 2003, that figure rose to about \$10 million. In 2008, it was about \$14 million. Since 2013, it has been about \$20 million. I am talking here about the total for training. We can see that there has been some growth.

•(1250)

**Mr. Paul Lefebvre:** You said that outside Quebec, you train 300 people who will be able to work in the justice system in both official languages. Is that correct?

**Mr. Ronald Bisson:** Yes. There are 300 graduates.

**Mr. Paul Lefebvre:** You say there is still a shortfall of 300, since 600 will be needed.

**Mr. Ronald Bisson:** That is correct.

**Mr. Paul Lefebvre:** In your opinion, if the shortfall is not met, how will that affect our communities?

**Mr. Ronald Bisson:** I am going to answer as simply as possible. The biggest consequence is language insecurity. Ms. McLaren referred to this. Francophones show up and request a service in French. The person in front of them answers, more or less. We know what people usually do then: they immediately switch to English. That is the biggest consequence, obviously. People simply do not receive service in French.

We are talking about criminal law, but also about family law. Delivery of services should not depend on demand. The decision in Beaulac was clear on that point. The courts must be institutionally bilingual; it has nothing to do with demand. In these circumstances, if we really want people to use the service, it has to be available.

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

Mr. Arseneault has the floor.

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

Good afternoon, ladies and gentlemen.

Once again, as I said to the other witnesses, we parliamentarians are very fortunate to have the *crème de la crème* with us. You have come to share your extensive knowledge with us and answer our questions. I thank you very much for that.

Ms. McLaren, I listened to you talk a little earlier about all the work that remains to be done and all the backlog that has accumulated, given the evolution of the law, the common law, and the terminology. It reminded me a little of Ray Ventura's song *Tout va très bien, Madame la Marquise*. Ultimately, what I understand is that everything is not going all that well.

So the problems relate mainly to the rapid evolution of new fields in the common law, and the shortage of people and funding.

**Ms. Karine McLaren:** I think the problem stems mainly from the fact that there is no systemic approach. That comes from the way it was decided to standardize the common law in French. The work is done bit by bit, carefully, slowly, and every year we have to wait in order to plan the work. The problem stems, first, from the way it is funded and the way it is structured. For example, if we have \$80,000 for a year, we can work on several standardization issues in a field, and at that rate, it is going to take us three years to complete the standardization in that field.

The resources are not adequate. The number of people working in this field needs to be doubled or even tripled. We really have to get to a point where we will be able to express ourselves as well in French as in English in the common law. The work must not be limited to the Centre de traduction et de terminologie juridiques. At

the CTTJ, we have a person who works on standardization, but we need three times as many. That is also the case for the other organizations that work with us in Ottawa and at the federal government's translation bureau.

In the past, the Department of Justice was more committed and involved, but that is less and less the case. The person who handled standardization has left. Now, it is the translation bureau that handles standardization issues. Our centre is the Ottawa centre.

As I said, once all the funds for the year have been spent, we stop the work. This year, all the funds had been spent in November. That means that we have been doing absolutely nothing since November, and we will be doing nothing until March, when new funds will be injected. In fact, we are never sure the funding will be renewed.

For two or three years, we have been receiving less and less funding, since the support fund has received more and more applications for activities that fall within the fund's mandate. So that means that it is trying to fund more things with less money. As a result, centres like ours, which play a fundamental role, have less money to meet standardization needs.

**Mr. René Arseneault:** I understand. You live from one annual grant to the next. I know how that is. You are not able to do long-term planning.

**Ms. Karine McLaren:** That is right. There needs to be a systematic approach. We should at least know what the budget for the next five years will be, so we could determine the fields we are going to work on. We have to be able to plan, instead of reacting when we receive \$500,000, for example. It is hard to plan what we are going to do with amounts like that.

**Mr. René Arseneault:** Fine.

Apart from the CTTJ at the Université de Moncton and its office in Ottawa, are there other centres in Canada that specialize in legal terminology in French for the common law?

**Ms. Karine McLaren:** No. The Centre de traduction et de terminologie juridiques is the pioneer for common law in French. We coordinate standardization activity across Canada. I stress the fact that this is for everyone, for all the provinces and the federal government. The federal co-drafters use this terminology in federal legislation. We work with the Centre for Legal Translation and Documentation, which does the drafting for some things, and with the translation bureau, which has a terminology team. These are the three partners who write these things. That makes up the standardization technical committee.

We also have a steering committee, which that has more members, but I am not going to go into that too deeply.

•(1255)

**Mr. René Arseneault:** Right.

I would like to come back to the context of the rapid evolution of the law and the need to agree on very specific terminology. In English, in the Commonwealth countries, technology law and environmental law, for example, have seen a lot of changes. Since I completed my law degree, those fields have seen incredible growth.

In English, is there the same problem with standardizing vocabulary and terminology?

**Ms. Karine McLaren:** The question simply does not arise for English, because these concepts evolve in English. They are interpreted by the courts in English. I am talking about Canadian common law. In Canada, when there is a new term or a new concept, it is the courts that interpret it. The concept is interpreted and circumscribed, and it is found in context, in judicial decisions and in legislation. The problem never arises, then. The concepts continue to evolve in English. Obviously, there will always be problems of interpretation, but they are resolved in the courts.

In French, conversely, the situation is not the same. We are behind all that. We wait for the concept to evolve first in English, and then we determine what the concept means, how to circumscribe it, and how it is used in context.

I can give you examples, I have collected a few that are in areas under federal jurisdiction, in particular divorce. For example, there is the term "legal alien". That is a technical term that has a very specific meaning. In French, there are equivalents such as "*étranger illégal*". That is a totally incorrect term, however. A person cannot be illegal. There are also "*étrangère illégale*", "*étranger clandestine*", "*étrangère clandestine*", "*étranger à situation irrégulier*", "*étrangère à situation irrégulière*", "*étranger en situation irrégulier*", "*étrangère en situation irrégulière*", "*clandestin*", and "*clandestine*". *We cannot practise common law in French with concepts like these. It is completely ridiculous. Do you see what I mean?*

**Mr. René Arseneault:** Is there a next generation being trained in Canada? Do the universities offer programs where people can specialize in terminology?

**Ms. Karine McLaren:** That is a very good question. Thank you for asking it.

The last point I want to make is that common law in French essentially arose from translation. The people who do this translation are also the ones who are constructing legal language in Canada. The legislation and case law are the product of translation. A decision translated by a poorly trained translator enters the law forever.

In Canada, there are no training programs in legal translation, and there are practically none in terminology or judicial interpretation. That is one of the questions we raised in our action plan within the Réseau. We absolutely have to invest in basic training, structured training, in legal translation. It is a highly specialized field. A person does not spontaneously become a legal translator. It calls for many years of practice, expertise, and a good understanding of legal concepts.

That training is not offered in Canada. What we have now is a very problematic situation. All of the experts who began their careers in the 1970s have retired or are about to retire. Recognized expert jurilinguists work or have worked at the CTTJ, my predecessor, Gérard Snow, being one. There is no one left to replace them, however. That is why we absolutely have to invest not simply in translation, but also in specialized legal translation, legal interpretation, court reporting, and so on.

**The Chair:** Thank you all very much, Mr. Bisson, Ms. McLaren, and Mr. Rémillard, for contributing to the committee's work.

We are going to meet again in two weeks.

**Mr. René Arseneault:** We are going to miss one another.

**The Chair:** Indeed.

Thank you, everyone.

The meeting is adjourned.

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