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The Honourable Denis Paradis

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• (1100)

[Translation]

The Chair (Hon. Denis Paradis (Brome—Missisquoi, Lib.)): Pursuant to Standing Order 108(3), we are resuming our study of Air Canada's implementation of the Official Languages Act.

This morning, we are pleased to welcome Ms. Sara Wiebe, acting assistant deputy minister, policy, and Mr. Daniel Blasioli, senior counsel, legal services, Transport Canada.

[English]

You are most welcome. As is usual, we will hear from you for around 10 minutes.

[Translation]

We will then move on to questions and comments from the committee members.

Ms. Wiebe is giving the presentation, is that correct?

[English]

We're listening to you.

Ms. Sara Wiebe (Acting Assistant Deputy Minister, Policy, Department of Transport): *Bonjour.* Good morning, everyone.

Thank you, Mr. Chair, for the introduction.

[Translation]

Transport Canada's primary mandate is to have a transportation system in Canada that is recognized worldwide as safe and secure, efficient, and environmentally responsible. Transport Canada is committed to putting forward and implementing legislation, regulations, standards, and policies to this end. These efforts are intended to contribute to a strong and competitive Canadian economy. In this regard, I would like to focus on Transport Canada's mandate as regard the aviation sector and its responsibilities under the Air Canada Public Participation Act, or ACPPA.

During my appearance here today, I would like to provide some additional information about the context in which we conduct our policy analysis for the aviation sector in Canada.

[English]

I think we can all agree that a healthy Canadian economy is strongly connected to a well-functioning transportation sector. Transportation provides mobility for people and facilitates the delivery of goods to markets at home and abroad.

In Canada, the air transportation sector is focused on the high-speed transport of passengers and high-value, time-sensitive goods over long distances. There are about 770 Canadian air carriers that operate domestic and international air services, as well as 245 Canadian private operators.

In the 1990s, Canada implemented a user-pay policy, guided by market forces, concerning the use and development of air services and infrastructures. The government considered this system the best way to allow airlines and airports to adapt, innovate, stay competitive, and serve the public in the most efficient and profitable way possible.

As a result, Canadian airlines, airports, and their navigation service provider, Nav Canada, function according to business principles and must recover operating and capital costs from users through various fees and charges to remain economically viable.

• (1105)

[Translation]

The operating context in which airlines conduct their activities involves considerable costs related to safety and security in the air and on the ground. The democratization of the airline industry has made our aviation system more complex, owing to the increasing number of passengers and the number of aircraft in the skies.

On the whole, airlines have seen their profits drop—their profits per passenger kilometre—as a result of constant competition and consumer pressure to offer ever lower fares. As a result, the current trend in the aviation sector is that airline companies are looking for new sources of revenue from passengers in order to remain economically viable. According to the 2016 annual report of the International Air Transport Association, or IATA, airlines' profit margins range from chronic operating deficits to limited profit margins, from 1% to 8% in the best years.

[English]

Air Canada is the largest airline and the largest provider of scheduled passenger services to and from Canada. Together with Jazz and other regional airlines operating flights on its behalf, Air Canada operates approximately 1,579 scheduled flights per day to 193 direct destinations on five continents, transporting approximately 41 million passengers annually. Air Canada also employs more than 30,000 employees nationwide, and its headquarters are located in Montreal.

Air Canada is a former crown corporation, originally founded in 1936 under the name “Trans-Canada Air Lines” and then renamed “Air Canada” in 1965. Air Canada was privatized in 1988 pursuant to the ACPPA. At the time, the government opted to maintain certain obligations on Air Canada, including the location of its headquarters, where the carrier's aircraft maintenance work is done, and some provisions regarding its statutes and articles of continuance, to name just a few. The ACPPA is administered by the Minister of Transport.

Section 10 of the ACPPA prescribes that Air Canada is subject to the Official Languages Act, or the OLA, and is therefore considered a federal institution pursuant to the OLA. Air Canada is the only Canadian airline that is subject to obligations under the OLA. It has been subject to the OLA since 1969, including part IV, covering the communications with and services to the public; part V, covering the language of work; part VI, covering the participation of English-speaking and French-speaking Canadians; and part VII, covering the advancement of English and French.

Other major Canadian airlines, such as WestJet, Air Transat, Porter Airlines, and Sunwing, are not subject to the same obligations as Air Canada under the ACPPA or the OLA. However, all major airlines must provide safety instructions to their passengers in English and in French under the Canadian Aviation Regulations pursuant to the Aeronautics Act, which also falls under the responsibility of the Minister of Transport.

It should be noted that Air Canada does not receive any direct or indirect funding from the federal government for its linguistic training programs, the language assessments of its employees, or its bilingual communications activities. Nevertheless, the airline allocates significant resources, both financial and human, to develop and maintain its linguistic programs and internal tools to meet its obligations under the OLA.

As Air Canada explained during some of your committee's deliberations, the challenges they face where their linguistic obligations are concerned relate to the availability of bilingual candidates from a recruitment perspective and the dispatch of bilingual personnel in a constantly evolving operational environment.

[Translation]

Last March, Air Canada presented to you a number of measures it had implemented, and described the partnerships it has forged in all communities across the country as regards its linguistic obligations. Despite the difficulties that Air Canada faces with regard to communications and services in French, we can agree that Air Canada has made real efforts in respect of its commitment to the official languages.

• (1110)

[English]

I also want to highlight the work that's being done to support the minister's commitment to enhancing the traveller experience as one element of his transportation 2030 strategy. The department and the minister undertook extensive consultations over an 18-month period as part of the Canada Transportation Act review process. We heard from more than 300 Canadian transportation and trade stakeholders, including the provinces and territories, about how to ensure that the

national transportation system continues to support Canada's international competitiveness, trade, and prosperity.

We also heard from individual Canadians, in communities large and small, all across the country regarding their concerns about our transportation system. Canadians expressed their disappointment with the experience they faced during their air travel. The minister has committed to improving that experience.

[Translation]

To support this commitment, the minister recently introduced Bill C-49, the Transportation Modernization Act, which is the first step in improving the travelling public's experience. It includes among other things new measures regarding the rights of air travellers, the liberalization of international ownership restrictions, as well as a transparent and simplified approach for approval of Canadian airline joint ventures.

[English]

Not only would the changes being proposed encourage more competition and enable better growth; they are also designed to provide Canadians with better service that improves the traveller experience.

I started my comments by talking about the mandate of Transport Canada. I want to be clear that Transport Canada expects all federal institutions under its responsibility to ensure that their official languages obligations, as outlined in the OLA, are met. This expectation also applies to Air Canada. We believe that Air Canada continues to make progress in fulfilling this goal.

Transport Canada, in partnership with colleagues in Heritage Canada, the Treasury Board Secretariat, and the Department of Justice, has been watching closely the discussions of this committee and its review of some of the complex issues being brought before it. We look forward to receiving your advice on these important issues.

I would be happy to answer questions the members of this committee may have.

[Translation]

Thank you.

[English]

The Chair: Thank you very much for your presentation.

We'll now proceed to questions and comments.

We'll start with John Nater.

Mr. John Nater (Perth—Wellington, CPC): Thank you, Mr. Chair.

Thank you to our witnesses for joining us today. It's always a great opportunity to hear from departmental officials.

I want to start with a quick anecdote, which will lead into my first question.

Typically, I fly Air Canada when I travel back and forth to my riding, and that's London to Ottawa, or London to Toronto to Ottawa, so they're fairly short flights. I've always been very impressed with Air Canada's bilingual staff on those flights. This morning I had to take an alternate route to get back here in time because I was at an event in my riding last night, so I took WestJet. I was quite surprised that on both legs of those flights the flight attendants and at least one of the captains were also fluently bilingual. I was quite pleased and surprised by that, due to the fact that they're not subject to the Official Languages Act. That is, I think, a positive thing to see, and it leads me into my first question.

We know that Air Canada, as you mentioned, is the only one subject to the Official Languages Act, other than for safety briefings. Has the department given any consideration to extending parts of the Official Languages Act to other airlines?

Ms. Sara Wiebe: Let me start by talking a bit about how WestJet, as you mentioned, even absent obligations under the Official Languages Act, is already providing the type of service that normally you would see on Air Canada, which is subject to the act. I think what we're seeing is that the major air carriers such as WestJet, Porter, and Air Transat, see what their market is demanding of them. On a flight to Ottawa, they see that there is more than likely to be a significant percentage of bilingual or francophone passengers on that flight, and as such, the market drives them to provide that service.

At the beginning of my presentation, I talked about how the government has made a conscious decision to let these airlines function by the market. I think that's a good example of where the market is driving them, where we already have Air Canada as a result of the OLA.

We're aware that the former official languages commissioner did pose the question about extending those provisions to other air carriers, and it's a subject we're studying closely. Again, this is where I think we'll be turning to the advice of this committee in that regard. Again, it's a multi-departmental effort in terms of looking at that issue.

At this point in time, I'll just note that it is something we're studying, and we'll look forward to the advice of this committee as we continue studying that question.

• (1115)

Mr. John Nater: Great. Thank you very much.

In your comments, you talked about the cost of language training that's being undertaken by Air Canada, and your comment was that there is no federal funding that comes with that undertaking. Thinking of other institutions within the federal jurisdiction, whether it's VIA Rail or airport authorities, would I be right in assuming there would be some federal funding there to help with language training, to help with meeting with those official language provisions?

Ms. Sara Wiebe: I don't think there would be. That's one of the challenges, to be frank, about the obligation with regard to official languages provisions. Air Canada has talked to this committee about all of the efforts they have invested—both human and financial—in terms of fulfilling those obligations. That comes at a cost. I mentioned that the federal government is not providing them with any funding to support that, so inevitably the cost they are expending in support of that obligation does then trickle down to the traveller.

In terms of your previous question, it is one of the elements that we would be assessing in terms of other air carriers being subject to the OLA. What would the cost be and what would be the impact on the traveller? Again, for the traveller travelling in Canada there is already a variety of fees and charges they are subject to, so we're hesitant to consider additional measures that would further exacerbate the cost of travel in Canada. But as I said, it's a multi-departmental effort in terms of looking at these important issues.

Mr. John Nater: In the former commissioner's special report on Air Canada, he recommended a number of new enforcement mechanisms to ensure compliance with the Official Languages Act. I would like to get your comments or thoughts on those and on whether that would be appropriately undertaken by your department. Or would it be more appropriately undertaken by a different department? Where would that rightfully fall in terms of jurisdiction?

Ms. Sara Wiebe: Again, I think this is one of the areas in which we are currently looking at the recommendation from the former language commissioner. It's a very complex and multi-dimensional issue that certainly would involve my colleagues at the Department of Justice. Again, this is where I would say that we're looking at that issue. We're studying it closely. We look forward to the advice of the committee.

The Chair: Thank you, John.

[Translation]

We will now move on to Ms. Linda Laporte.

Ms. Linda Lapointe (Rivière-des-Mille-Îles, Lib.): Hello.

Thank you very much for being here.

Air Canada's official languages obligations are very important to the committee.

You said earlier that there is a cost. You said that again to my colleague. It has an impact and Air Canada has to deal with it, while WestJet, Sunwing and Air Transat do not have to. At the same time, however, these people are adapting because they see that their clients are bilingual and that the least they can do in a bilingual country is to offer services in both official languages.

Do you think Air Canada is facing unfair competition as a result of its official languages obligations?

[English]

Ms. Sara Wiebe: Yes. You've heard from Air Canada on this issue, and we hear from them as well about the fact that as the only Canadian air carrier that's subject to this, they feel that it's not a level playing field. This is one of the considerations that we're taking into account as we're looking at some of the recommendations from the official languages commissioner.

Again, I think we're trying to achieve that balance between demonstrating the respect we have for Canada's two official languages with the impact that it would have or could have on the future of the air sector with regard to cost.

You're absolutely right, and we're very pleased to see that some of the other major air carriers are already heading in that direction and already providing those services in both official languages, but that then begs the question as to why we would need to extend the official languages provisions to them, given that they're already doing it absent obligations.

These are just a few of the considerations that we're debating as we take a look at this important issue.

• (1120)

[*Translation*]

Ms. Linda Lapointe: As you say, it is an important issue.

For an anglophone taking a flight between Quebec City and Sept-Îles, I assume that is not desirable if the services are in French only. The same thing applies for a francophone taking a flight outside Quebec when services are offered in English only. This affects me personally.

With regard to the official languages and air carriers, there are two ways of solving the problem. Everyone has to be on the same footing or...

Do you think it would be possible to request that the other air carriers also have linguistic obligations?

[*English*]

Ms. Sara Wiebe: As I mentioned, we're quite aware that it's one of the suggestions or recommendations made by the former official languages commissioner. We're looking at it very closely. I've identified some of the considerations that we're bringing to that.

Again, at the base of it, as I mentioned in my opening remarks, the obligations of Air Canada with regard to the Official Languages Act are statutory. We expect them to comply.

With regard to the expansion of that to the other air carriers, this is an ongoing discussion between me and my colleagues in the other departments in trying to assess what the impact would be. Again, we look forward to the advice of this committee.

[*Translation*]

Ms. Linda Lapointe: If I understand correctly, you are putting the onus back on us, asking us what would be best. We are still talking about transporting passengers.

We met with the president of Air Canada in March. He has chaired a number of airline associations, including in Switzerland, which has four official languages. Meeting linguistic obligations did not seem to be a problem in Switzerland, whereas in Canada we have two official languages and it seems to be problematic.

[*English*]

Ms. Sara Wiebe: This is where you find me in a bit of a difficult situation today, in the sense that I am a representative of only one of the departments that will have a voice and an opinion in terms of the final consideration of the government with regard to this issue. What I'm trying to do is to give you an idea of some of the considerations that we're bringing to the conversation, without speaking on behalf of my colleagues.

[*Translation*]

Ms. Linda Lapointe: Very well.

I will try another approach.

As representatives of Transport Canada, what do you recommend to help Air Canada improve its official languages performance? What are you doing to help the airline improve its performance?

[*English*]

Ms. Sara Wiebe: This is where I mentioned that with Air Canada we keep an open and ongoing dialogue on a wide series of policy issues, including official languages. What we try to do—and I think you see some of this reflected in the proposal the minister has made in Bill C-49—is identify those policy issues that could continue to ensure the strong viability of our Canadian carriers, including Air Canada. This is where we look at issues such as joint ventures, and where we take a look at other issues such as international ownership.

We're constantly looking at measures to make sure that we strengthen the existing carriers while continuing to ensure competition. In that way, we try to create that broader framework within all of our air carriers, including Air Canada, so that they can continue to grow and prosper and to serve Canadians well.

[*Translation*]

Ms. Linda Lapointe: Thank you very much.

Thank you, Mr. Chair.

The Chair: Thank you very much.

Mr. Choquette, you have the floor.

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

Hello and welcome to the witnesses.

We are meeting you at an unusual time, since the Standing Committee on Official Languages is itself in the eye of the storm. As you know, we are in the midst of a heated controversy regarding the likely appointment of Ms. Madeleine Meilleur as Commissioner of Official Languages.

I simply want to inform the committee that I will be introducing a motion later today to gain a better understanding of what is going on with the appointment, the appointment process, and the controversy surrounding the appointment of Ms. Meilleur. This situation is becoming more tense by the day.

The Chair: Is that the motion for which you have given us notice?

• (1125)

Mr. François Choquette: Yes, Mr. Chair.

That said, let us return to Air Canada, which is still a very important topic.

Ms. Wiebe, no doubt you received this special report in June 2016?

[*English*]

Ms. Sara Wiebe: Yes.

[Translation]

Mr. François Choquette: It is nearly June 2017 now, correct?

Ms. Sara Wiebe: Yes.

Mr. François Choquette: One year later, you are waiting for the committee's report to start studying its recommendations.

[English]

Ms. Sara Wiebe: That is correct.

[Translation]

Mr. François Choquette: Okay.

Are you not yourselves starting to consider the possibility of implementing the recommendations of the special report?

Commissioners often say that they work hard to produce good reports. For instance, Commissioner Graham Fraser told me in 2013 that he had produced a report on access to justice but that it had been shelved. It is now 2017 and the report's main recommendations have not yet been implemented. That annoyed him.

This is a very important report. Mr. Fraser has retired, but perhaps he is listening to us today. He might be annoyed to hear that you have not begun considering his recommendations.

How can you explain that?

[English]

Ms. Sara Wiebe: Perhaps I should clarify. By talking about the work that needed to be done, I by no means meant to indicate that the work had not started. I've mentioned that we've been following the discussions of this committee very closely to hear from you and from your experts in terms of the advice you're hearing.

We're very much aware of the special report from Mr. Fraser, the former official languages commissioner. We've been reviewing it. I've been in active dialogue with my colleagues in the other departments that I've mentioned, but as I indicated, we are waiting for the advice from this committee so we can finalize our advice to our respective ministers, so that a determination can be made for the government to respond.

[Translation]

Mr. François Choquette: I understand now that it is extremely important for the committee to complete its report and send it to you so you can begin studying the commissioner's report and the committee's recommendations.

[English]

Ms. Sara Wiebe: If I could just add again, just to be clear, it's not that we've not started the review. We have started the review, but again, I think it would be inappropriate of us to move forward on a response to the report from the former official languages commissioner absent the advice of this committee.

[Translation]

Mr. François Choquette: Okay.

Earlier, you answered a question from my colleague, Ms. Lapointe. I was somewhat struck, surprised, but not favourably so, by what you said about the other airlines and Air Canada. As you know, Air Canada is in a unique position as a former crown corporation. When it was privatized, it concluded a very specific

agreement with the government, requiring it to continue to comply with the Official Languages Act.

We fight every day and file complaints regularly for the act to be upheld. Yet, if I understood correctly, you are now asking whether it is necessary for Air Canada to comply with all the conditions of the Official Languages Act.

Did I understand you correctly?

[English]

Ms. Sara Wiebe: I'm hoping that you've misunderstood, because I believe—

[Translation]

Mr. François Choquette: I hope so also.

[English]

Ms. Sara Wiebe: I tried to state quite clearly in my opening remarks that Transport Canada is very much aware of the obligations of the federal institutions within our control and their obligations with regard to the Official Languages Act. We are aware that this applies as well to Air Canada, and we expect those obligations to be met.

[Translation]

Mr. François Choquette: Thank you for that clarification.

You talked earlier about Bill C-49. It was a long time ago when Commissioner Graham Fraser called for legislation to clarify and strengthen the application of the Official Languages Act as regards air travel. Correct me if I am wrong, but in terms of legislation, Bill C-49 does not do anything for the official languages.

[English]

Ms. Sara Wiebe: As I mentioned, Bill C-49, the transportation modernization act, is just the first step for Minister Garneau in the implementation of this transportation 2030 plan. There are other elements and other policy issues that the department continues to study—

[Translation]

Mr. François Choquette: Do these issues involve the official languages?

[English]

Ms. Sara Wiebe: I think the issue of official languages will be a specific area of study once we receive the advice of this committee.

[Translation]

Mr. François Choquette: Okay. The committee needs to be informed because certain people had doubts about the need for this report.

• (1130)

Mrs. Sylvie Boucher (Beauport—Côte-de-Beaupré—Île d'Orléans—Charlevoix, CPC): Yes, exactly.

Mr. François Choquette: As you so clearly explained, the committee must indeed produce this report and then submit it to your department and to the other departments affected so that some of the commissioner's recommendations can be implemented. They might not all be implemented; they were the commissioner's suggestions. We must nonetheless ensure that Air Canada properly fulfills its obligations, something that it has unfortunately had difficulty doing thus far, for various reasons.

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

Let us now move on to Mr. Darrell Samson.

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

Thanks to the witnesses for being here today to provide information.

No doubt, we have work to do. On the other hand, I do not believe that our report will change the world. That said, our report should definitely highlight the areas where we believe the government must play a greater role.

We have for a second time welcomed officials from Air Canada. We have had the opportunity to have discussions with them. We have certainly heard interesting comments about airline companies and their official languages obligations.

There is very low compliance with official languages obligations on the part of service providers. Even though Air Canada appears to impose these obligations on them, it is obvious that these subcontractors do not comply with their official languages obligations to the same extent. That worries me.

In your efforts to improve the situation, you must really emphasize the obligations of service providers. When suppliers are given this responsibility, they do not have the right not to comply with these obligations. That is for sure.

I am pleased to hear that you are also looking at the other airlines in Canada. I think it should be a level playing field for everyone, up to a certain point.

What do you think about Air Canada's remarks that its official languages obligations undermine its ability to compete? It is not a question of money or costs. Air Canada has this formal obligation. What is your reaction to those comments from Air Canada?

[English]

Ms. Sara Wiebe: My day job is to work as a policy analyst. Whenever you look at a policy issue and you see that there's a policy anomaly, you wonder why that is. Right now, we have a policy anomaly with regard to the obligation of official languages with regard to Canada's air carriers, in that Air Canada is subject, but the other air carriers are not.

As one of your colleagues mentioned earlier, normally in this type of scenario you would have a situation whereby everybody has the same obligation, more or less. I think this is one of the considerations that we are debating as we take a look at the important issues and, again, the recommendations provided by Mr. Fraser, in terms of is it important that Air Canada continue to have that...that there be a lack of balance between Air Canada and the other Canadian air carriers?

Because for them, they consider it a competitive disadvantage: they have obligations where others do not.

Again, we have to take a look at the various questions that we've been debating this morning. Is it important enough to retain that for Air Canada, given that we see the other air carriers already pursuing that, absent formal obligations? These are all questions that we're debating.

[Translation]

Mr. Darrell Samson: Yes, but with all due respect, we are not studying the possibility of reducing obligations. That is not what is at stake at all. The other carriers may do so, but on an exceptional basis. We can say that there have been some improvements, I agree, but we are not studying the possibility of reducing an obligation. This worries me considerably.

The second point I'd like to raise has to do with the decision in *Thibodeau v. Air Canada*, and with the whole issue of the Montreal Convention for the Unification of Certain Rules for International Carriage by Air. I know that my former colleague Stéphane Dion had introduced Bill C-666.

What is your department's thinking on this?

[English]

Ms. Sara Wiebe: Perhaps on that question I could defer to my colleague, Mr. Blasioli.

• (1135)

[Translation]

Mr. Darrell Samson: Thank you.

Mr. Daniel Blasioli (Senior Counsel, Legal Services, Department of Transport): As you know, the devil is in the details, as they say.

[English]

This is being examined with all the other recommendations that former commissioner Fraser has provided. One of them, as you know, is a proposal to amend the ACPPA, the Air Canada Public Participation Act, to address the Thibodeau decision. That is being considered by all the departments that my colleague Ms. Wiebe has mentioned.

Again, we will be waiting for the committee's report to take into consideration as well on that issue.

[Translation]

Mr. Darrell Samson: During its second appearance, Air Canada did mention certain strategies that were put in place in the west in order to hire bilingual people.

Could the government make some suggestions? In reality, we are here to support Air Canada, to ensure that the carrier respects its obligations. How may the government contribute to the search for strategies?

[English]

Ms. Sara Wiebe: I think this is again where we have to be careful in the context that these are private sector organizations.

It's not a government entity. When we privatized Air Canada, we wanted to put it outside of government for it to manage its own affairs in a competitive, market-driven environment. It would be difficult for us to step in and help that private sector organization with taxpayer dollars to support obligations that it already has in statute and to intervene with what is, in the end, a private sector organization. This is where we continue to look to Air Canada to fund its own initiatives for it to meet its own obligations under the Official Languages Act.

[Translation]

Mr. Darrell Samson: Precisely.

However, we must comply with parts IV, V and VII of the Official Languages Act.

The Chair: I'm sorry, Mr. Samson, but your time is up.

I will now give the floor to Mr. Vandal.

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

Every year, Air Canada presents a report on its official language responsibilities.

Does Transport Canada receive a copy of that report?

[English]

Ms. Sara Wiebe: That's a questionnaire that, as you say, Air Canada completes each year and is provided to the Treasury Board Secretariat. We at Transport Canada do not receive that specifically, but we have an ongoing dialogue with our colleagues at the Treasury Board Secretariat with regard to the results of those questionnaires.

[Translation]

Mr. Dan Vandal: Could you tell us about your relationship with the Treasury Board Secretariat? I believe Canadian Heritage acts as a watchdog, if you will, regarding official language regulations.

How does that work?

[English]

Ms. Sara Wiebe: Again, I've mentioned how complex these issues are. You've been hearing advice. Imagine us having to deal with a variety of different departments on the same issue.

That's a very good question. Why are there so many departments involved? From Transport Canada, I've talked about how we—for myself—established a policy framework for the air sector.

Mr. Dan Vandal: Just for clarification, I didn't ask why. Just describe the working relationship.

Ms. Sara Wiebe: The working relationship is actually quite good, particularly in the context of deliberating some of the issues that are before this committee. I have an ongoing dialogue. We meet on a regular basis with my colleagues at Heritage, Treasury Board, and Justice. It's very collegial and collaborative, if that answers your question.

[Translation]

Mr. Dan Vandal: Thank you.

In your presentation, this morning, you stated that “we can say that Air Canada has made some concrete efforts regarding its commitment to official languages.”

Can you tell us more about that?

[English]

Ms. Sara Wiebe: Sure. Again, we have our own conversations with Air Canada, but we were particularly interested in the presentations they've made before this committee. They came to you and I think talked to you in great detail about their linguistic action plan, their internal language policy, and their internal procedures and training of employees. They have quite a machine in place in terms of achieving that place where they can demonstrate ongoing progress with regard to hiring bilingual staff and training unilingual staff to be bilingual and then having them maintain that. That's one thing I would refer to in answer to your question.

The other point I would make is that we're also following very closely the number of complaints made against Air Canada. That's been discussed quite frequently by this committee. Let's take a look at Air Canada's history. Going back to early 2010, let's say, they were delivering about 30 million passengers at that time, and I think they had—I have the number right here—around 69 complaints. That was in 2000, actually, with 30 million passengers.

We're now at a stage where Air Canada is moving 41 million passengers, so that's a significant increase since the year 2000, but if you look at the numbers of complaints, they're more or less static. They move up and down a bit. In terms of numbers, I can see that they went up to 59 in 2013, but overall, you can see that the volume of Air Canada passengers continues to increase significantly each year, yet the number of complaints is not increasing at the same rate.

• (1140)

Mr. Dan Vandal: I understand.

I think my time is getting short, and I have a few more questions.

[Translation]

In the conclusion of your presentation, you said that “Transport Canada expects that all federal institutions under its responsibility ensure that their official languages obligations as outlined in the OLA are met.”

Can you tell me what other federal institutions under your responsibility have official language obligations?

[English]

Ms. Sara Wiebe: Within the Transport Canada portfolio, we have a series of crown corporations. This would include crown corporations such as CATSA and VIA Rail. There's a wide series of crown corporations. When I talk about the federal institutions within Transport Canada's control, I'm referring to those entities.

Mr. Dan Vandal: Thank you.

I'll transfer my time.

[Translation]

Ms. Linda Lapointe: I would like to add something about the the number of complaints and the increase in the number of passengers.

When the president of Air Canada testified before us, we filed a complaint regarding official languages, on the company's website. At a certain point, we were no longer able to access the site to file our complaint; the site blocked us. I'd say that the fact that complaints have not increased is due to the fact that people can't access the site. There are no phone lines, or if there are, you are on hold for half an hour.

I think you need to change what you have just said to some degree.

The Chair: Thank you very much.

I'll now give the floor immediately to Mr. Généreux.

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

Ms. Wiebe and Mr. Blasioli, if I had to hire someone today to promote Air Canada, it would be you. You seem to have a very good opinion of the work they do.

Ms. Wiebe, I suppose it is your opinion, as deputy minister in charge of policy. When you put policies in place, I assume you start at point *a* and arrive at point *b* with a final product.

I am going to continue in the same vein as my colleague Mr. Samson. If all of the airline companies are not subject to the Official Languages Act, this means in my opinion that Air Canada has competition, competition that has a certain weight. That is inevitable. What are your thoughts on this at this point? You said that you were in a process of reflection. Where are you at as we speak?

[English]

Ms. Sara Wiebe: If I may, I will clarify my title.

[Translation]

I am acting assistant deputy minister, policy.

[English]

I wouldn't want my deputy minister to think I'm taking over his job.

Voices: Oh, oh!

Ms. Sara Wiebe: Again, it's not that I'm trying to avoid the question. I want this committee to understand the position I'm in, in the sense that we are studying the issue. We are looking at the different considerations. We are looking forward to the advice of this committee. We are very much aware of the report of Mr. Fraser, but I am just one person in a large number of individuals who will have a view in terms of the forward direction on this.

[Translation]

Mr. Bernard Généreux: You are here representing Transport Canada. I suppose that you have the competence, and surely the opportunity, of telling us about the thoughts of the committee you sit on.

My question is very simple. What are your thoughts at this time in light of what the Commissioner of Official Languages said, and of what we discussed here in committee? You say that you study and analyze everything we do, and that you are informed about the work we do in committee. I understand all that, and I also understand the mechanisms of your reflection. However, where are you at in that reflection?

I will ask you a question. In your committee, did you discuss, for instance, the relevance of making all airline companies subject to the Official Languages Act, so as to level the playing field?

• (1145)

[English]

Ms. Sara Wiebe: Absolutely. To assure this committee, that is one of the issues we are considering and for which we are doing the analysis.

[Translation]

Mr. Bernard Généreux: Do you think that that could be put in place quickly? Does it seem relevant to do so? Do you understand what I am getting at?

[English]

Ms. Sara Wiebe: Yes.

[Translation]

Mr. Bernard Généreux: I am trying to find out where your thinking process has led you.

If I were one of the people responsible for Air Canada and heard what you were saying, I would be applauding. I would be happy to learn that the committee in question may recommend that all airlines be subject to the Official Languages Act. However, I am not certain that the airlines in question would applaud.

If Transport Canada decided that all airlines should be subject to the law, would other means of transport consider that they too should be subject to this? Some would certainly react by saying that their business plans did not include expenses comparable to Air Canada's. There is, in fact, a certain lack of balance to the detriment of Air Canada, one must admit.

I want to know what your thoughts are.

[English]

Ms. Sara Wiebe: Perhaps I can talk about the steps we're taking in terms of arriving at that decision this committee is seeking.

Right now, as I mentioned, I'm in active dialogue with my colleagues in the other three departments with regard to the various issues before this committee. That is ongoing. Once we receive the advice of this committee, we will be finalizing our policy analysis and providing advice to our respective ministers.

At that point in time, it would be a decision of ministers to debate, on behalf of the government, what the response would be. It would be at that point that a policy decision would be made about how to respond to the various questions that you're asking me today. At that point in time, the government...once the policy decision is made, we would put forward the measures needed to implement the policy decision of this government.

[Translation]

Mr. Bernard Généreux: I get the impression that we are a bit like a dog chasing its own tail. We don't know who is chasing whom.

The committee may invite experts or all of the Canadian airline companies to tell us what they think of the idea, but I already know the answer. We could invite them so that you can hear their answers.

Today, I thought you had come to speak to us about Transport Canada's orientation, in light of what has been said, of what Commissioner Fraser repeated for several years, and the recommendations he made. We could have heard your thoughts and invited other experts to feed into your thinking. I do not get the sense today that I have found out about Transport Canada's intentions in a way that would encourage us to invite other witnesses for the purpose of stimulating your reflection.

[English]

Ms. Sara Wiebe: Again, this is why I wanted to appear before the committee today, after receiving your invitation, to give you an idea of what are some of the issues and the context within which we at Transport Canada are considering the recommendations of Mr. Fraser and anticipating the advice of this committee.

I wanted to give you a flavour of an air sector that's very vibrant right now, but it's not too long ago that it wasn't. I can give you a list of all the Canadian air carriers that no longer exist. We're talking about CanJet, Canada 3000.... These are all Canadian air carriers that, because of the challenge of Canada's air sector, no longer exist.

I wanted to give you a context and a flavour of the work we're doing interdepartmentally to take a look at this issue, but in the end, the decision that you're asking for, or the information that you're looking for today, would be a decision made by the government, not by me.

[Translation]

The Chair: Thank you very much.

Mr. Arseneault, you have the floor.

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

Ms. Wiebe, what is your relationship with Air Canada regarding the department's policies and objectives?

Do you often meet with its representatives? Do you talk with them? How do things work?

• (1150)

[English]

Ms. Sara Wiebe: We have an ongoing dialogue with all of Canada's air carriers, including Air Canada. I can say that we have a strong collaboration between ourselves and that company.

I think that sometimes they express concern about the direction being taken by this government. At other times, they are quite supportive of the decisions being taken by the government. In that sense, it's not always smooth, but I think we have reached a place with Air Canada where we're able to have an open and ongoing dialogue.

[Translation]

Mr. René Arseneault: You say that the dialogues are not always easy. Could you give us a concrete example relating to official languages?

[English]

Ms. Sara Wiebe: Specifically with regard to official languages, as this committee is knows this very well, Air Canada has regularly indicated its concern that it is the only air carrier subject to the official languages provisions. Just the other day, I was reviewing a submission to Mr. Emerson, who led the review of the Canada Transportation Act, and it had an entire section in there where they provided their analysis and data to support their recommendation that Air Canada be relieved of its obligations with regard to the Official Languages Act.

[Translation]

Mr. René Arseneault: So, that is pressure that Air Canada exerts?

[English]

Ms. Sara Wiebe: That is correct.

[Translation]

Mr. René Arseneault: What is your department's position in this regard?

[English]

Ms. Sara Wiebe: It's one of the issues, the points of view, that we're taking into consideration as we're debating the obligations of Canada's air carriers with regard to official languages. It's but one of many views that we're taking into consideration.

[Translation]

Ms. Linda Lapointe: So, the recommendations absolutely must say that this has to stay.

Mr. René Arseneault: Does the department understand the history that led to Air Canada's obligation to respect the Official Languages Act and comply with it?

[English]

Ms. Sara Wiebe: Absolutely, and I think that's what I tried to outline in my opening remarks about Air Canada at one point being a crown corporation and being privatized in the late 1980s. Despite the privatization under the Air Canada Public Participation Act, the government of the day determined that certain obligations would remain with Air Canada going forward, including the obligation to be subject to the Official Languages Act.

[Translation]

Mr. René Arseneault: On this precise matter, have you had discussions with Air Canada indicating that the union was not in favour of complete compliance with the Official Languages Act?

My question is hypothetical. Have you ever had the impression that even if Air Canada wanted to respect the Official Languages Act to the letter, the employees' union was reluctant to do so?

[English]

Ms. Sara Wiebe: I'll speak for myself. I've never had a conversation with Air Canada that involved reticence on the part of their unions with regard to official languages.

[Translation]

Mr. René Arseneault: You have not heard that personally, but you have heard it said in your department?

[English]

Ms. Sara Wiebe: That is not part of the information that I've had at my disposal, no.

[Translation]

Mr. René Arseneault: Are you aware of a letter written by the Air Canada union that stated that because of a policy on official languages, employees would have to comply with certain obligations and that this was unfortunate for them?

Have you heard of such a letter?

[English]

Ms. Sara Wiebe: No, I have not.

[Translation]

Mr. René Arseneault: If you had such a letter, signed by a union representative or the president of the union of Air Canada employees, which said something like: “Unfortunately, we have to comply with the Official Languages Act, and this could have some drawbacks on the way we operate”, what would your department's reaction be?

[English]

Ms. Sara Wiebe: It would be one of the issues that we would take into consideration as we further debate the considerations or the policy issues associated with this discussion.

[Translation]

Mr. René Arseneault: Ms. Wiebe, I don't have the letter here, but we have all seen it. It is something that exists and that really happened.

[English]

Ms. Sara Wiebe: Okay. I'll look forward to seeing a copy of the letter.

As I mentioned, all information associated with this discussion is welcome, because we want to make sure that when we provide advice to the government in terms of the decision they would make, it would be comprehensive and would take into consideration all issues of value.

• (1155)

[Translation]

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

There will now be two short interventions, the first from Ms. Boucher and the second from Mr. Vandal.

Mrs. Sylvie Boucher: Good morning.

Like my other colleagues here, I am somewhat astounded to note that our reports are still being studied. I have been sitting on the Standing Committee on Official Languages intermittently for

10 years and these are not the first recommendations we have made to Air Canada.

However, if I understand correctly, you have not read any of the reports prepared by previous official language committees.

[English]

Ms. Sara Wiebe: I would not say that that's an accurate statement. As I mentioned, all information that comes before this committee is information that we consider as we develop our advice to the government.

[Translation]

Mrs. Sylvie Boucher: In that case, why have measures not been taken?

If what you are telling me is true, how is it that despite all of the recommendations issued by all of the standing committees on official languages that have sat since 2006—I was part of the 2006 cohort—the situation is what it is today?

Our recommendations were almost always the same. We verified that.

Given those circumstances, why were no measures taken?

Governments can be blamed, but public servants remain and the laws are there to be respected.

[English]

Ms. Sara Wiebe: On this I will defer to my colleague Mr. Blasioli.

Mr. Daniel Blasioli: *Merci.*

As former commissioner Fraser's report did highlight, there have been multiple bills introduced by the government to make certain changes with ACPPA to address some of the issues that his report raised. They unfortunately died on the Order Paper.

So I don't think it's fair to say that no action has been taken. There has been action taken. It hasn't been completed.

[Translation]

The Chair: Mr. Vandal, you have the floor.

[English]

Mr. Dan Vandal: You referenced that the Emerson report said that the obligations of Air Canada should be “relieved”, yet the recommendation I have here is that the Emerson report said that we should clarify the obligations of airports and airlines to provide service in both official languages and work with official language minority communities to improve consistency. I don't see the word “relieved” in there.

Ms. Sara Wiebe: To clarify, when I referred to the recommendation on relieving Air Canada of its obligations, that was from Air Canada to Mr. Emerson.

Mr. Dan Vandal: Okay. That's important.

Ms. Sara Wiebe: Mr. Emerson took that into consideration in the development of his final recommendation, which—

Mr. Dan Vandal: So it was not in the Emerson report.

Ms. Sara Wiebe: That is correct.

[*Translation*]

The Chair: Thank you very much.

[*English*]

Thank you very much, Ms. Wiebe and Mr. Blasioli.

[*Translation*]

Thank you for your presentation.

We are going to suspend the meeting for a few minutes so that we can move on to our next topic, official languages in our justice system.

• (1155) _____ (Pause) _____

• (1200)

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

It is our pleasure to welcome Mr. Daniel Jutras, who is a professor at McGill University.

Welcome to the committee, Mr. Jutras. You will have 10 minutes for your presentation. As per our usual procedure, we will then have questions and comments by the members of the committee.

Prof. Daniel Jutras (Professor, As an Individual): Thank you very much, Mr. Chair.

Good afternoon, everyone.

I am very pleased and very honoured by your invitation to speak to you today on the issue of the bilingualism of Supreme Court of Canada justices, more specifically. I know that you have spent considerable time on this question recently.

As the chair said, I will make a brief presentation of about 10 minutes in French.

• (1205)

[*English*]

I will be happy to answer in English or in French any questions you may have about my presentation. I will, therefore, dive right into what I want to say today.

[*Translation*]

First, I will give you a succinct summary of my message today.

I apprised myself of your deliberations and comments, as well as the exchanges you had with certain experts. In my opinion, there are three questions involved with regard to the bilingualism of Supreme Court justices.

The first is whether it is desirable that every one of the justices of the Supreme Court of Canada have a sufficient mastery of both official languages. In other words, should an advanced grasp of both languages be part of the eligibility conditions for a nomination to the Supreme Court of Canada? My answer to that question is yes. I think that a requirement for that qualification is very important and probably essential.

If we answer yes to that question, we have to ask ourselves how to achieve that objective. The second question is whether it is desirable

to act through legislative means, that is to say by including that requirement in a law or by amending an existing act. Contrary to the experts you have heard until now, I think the answer is no. In my opinion, the political advantages of such an initiative would be less important than the legal risks it would entail. In addition, the formal commitment of the Prime Minister as it stands, the one we know and which was used in the last process, seems sufficient to me to achieve the objective of the bilingualism of Supreme Court justices.

Of course you may disagree with me. If so, you must ask yourself if a legislative proposal, be it a law or an amendment to an existing legislative text, which would impose bilingualism as a prerequisite to a nomination to the Supreme Court of Canada, would constitute a constitutional amendment. If so, this amendment would require the consent of Parliament and provincial legislatures, as you know. To this question—would this be a constitutional amendment if you were to include it in a law?—my answer is again yes, in all probability, and once again contrary to experts you have heard.

Allow me to explain succinctly what I mean by each of these points.

First of all, I think it is desirable that all of the justices of the Supreme Court of Canada have sufficient mastery of both official languages. An advanced level of competence in both official languages should be a part of the required skills to be eligible for a nomination to the Supreme Court of Canada. In order to arrive at that conclusion, you have to understand how the court functions, and the nature of the work of these judges.

Those who testified before you spoke repeatedly about errors that can occur in simultaneous translation or the interpretation of oral presentations made before the court, but that is only one aspect of the question. Many other elements of the work of judges at the Supreme Court of Canada require linguistic competence in French and English. I will mention five quickly; it will give you a clearer idea of what I mean.

First, judges must read and interpret legislative texts that are written in both official languages, and not just any texts: the Criminal Code, the Income Tax Act, the Divorce Act and the Constitution itself. You may say that since these laws are written in both official languages, you only have to understand one of the two versions. But that is false, since all of the rules of interpretation require that you understand both versions in order to be able to determine the meaning of both when there is some ambiguity. It is indispensable that you read both versions.

Secondly, judges must be able to read and understand the decisions of the lower courts that are often drafted in only one language. I do not only mean the decision that is being appealed before the court, but also the relevant jurisprudence which may be written only in French or only in English.

Thirdly, judges must also read and understand the written presentations of the parties and the language they are written in, and not only the oral presentations made at the hearing. As you probably know, those briefs are not translated by the court. A lot of documents are translated within the Supreme Court of Canada, but the briefs presented by the parties are not.

Fourth, there is a more diffuse element that must be taken into account: judges must be able to take part in discussions held at the court on the decision to be rendered. The presence of a unilingual judge will mean that the conversation will probably take place in the language of that judge, practically only in English.

Fifth—and this is also an important point—judges have to be able to understand both versions of the rulings the court itself hands down, in order to be able to assess the quality and accuracy of the translation of the rulings. In short, bilingualism is an absolutely essential component in the work of the judges.

That said, we must admit that the court can function in a fair and effective way even without mandatory bilingualism. It has done so with great success for decades. It works because the translation and interpretation services on the Hill and at the court itself are excellent—these are indeed very talented people—but especially because this is a collegial court. There are nine of them around the table, and the cooperation among the judges allows them to prevent misunderstandings and misapprehensions. This goes on continuously. In my opinion there's no real risk that a ruling will be based on a misunderstanding of French or English. It is very unlikely that will happen. If you wish we can talk about that later.

However, we have to admit that this situation is not optimal. In my opinion, ideally judges should be able to have access to all of the texts, discussions and representations without an intermediary, be it an interpreter, a translator or a researcher. Otherwise the court is forced to make compromises, arrangements. This is not an optimal situation. I would even say that in my opinion, bilingualism is related to operational competence, that is to say to the work performed by the judges, as is their knowledge of the law. We can get back to that later. There will probably be questions on the important symbolic aspect of the presence of both languages and bilingualism in the court.

However, I will go on to my second point.

Once the premise has been established that candidates must be bilingual to be eligible for nomination to the Supreme Court, how can we apply that principle?

I said earlier that it was not desirable to include this in an act, and that the Prime Minister's commitment was sufficient.

In the context of the nomination process for the Supreme Court in the fall of 2016, the Prime Minister formally committed to making bilingualism an essential qualification. We know that that commitment led to the nomination of Judge Rowe, whose knowledge of French is in my opinion amply sufficient to allow him to discharge the responsibilities I have just listed.

What would we gain by including that requirement in a law rather than basing it on the formal commitment of the Prime Minister?

There would first of all be a symbolic gain, which is not negligible. It is a gesture that would emphasize the equal importance of both official languages. There would also be a gain I would describe as strategic, also not negligible, since a law is more difficult to get around than a political commitment. That said, since you are all jurists in a way, you know that an ordinary law can be repudiated,

just as a political commitment can, when you are ready to pay the political price that comes with that legislative change.

I question the risk involved in including such a requirement in law, because a law would impose conditions that would determine the legality, in the strict sense of the word, of a nomination. That is probably not the case with a political commitment. However, when a requirement is enshrined in law, one can demand that it be respected.

Consequently, if an act imposes bilingualism as a condition of nomination, any nomination of a justice to the Supreme Court can be challenged before the courts. Someone could in fact allege that that requirement was breached, and claim that the judge is not sufficiently bilingual in his opinion, and that that appointment should be rescinded. I know that this issue concerns you, all the more so because bilingualism is not a binary notion. You are not bilingual or unilingual; you are more or less bilingual. I am very bilingual. Some people are more bilingual than I am, and others are less so. So this is not a criterion that will be easy to manage before the courts, once that principle has been established. We can talk later about how this could be tested. All that said, I think it would not be a very good idea to include this criterion in an act.

Such a challenge would contain a real risk—and there are recent examples—that could be embarrassing for the judiciary, and humiliating for the judge concerned. This risk would be complex and unpredictable on the factual and legal levels, and could as a result weaken the Supreme Court itself. Whenever nominations are challenged, there is a risk that the authority of the court may be weakened.

● (1210)

In a word, in my opinion, the only thing gained by inserting the condition in legislation would be symbolic and, as a strategy, it is not worth it.

Let me conclude with a few words on a more fundamental issue, which brings with it more complicated debates. It is my view, but you may not agree with me and you may go in the opposite direction. You may perhaps want to insert a change containing a bilingualism requirement for the Supreme Court in an ordinary act.

What would happen if you did that? I am firmly convinced that you would not escape a constitutional challenge to that ordinary act. Someone would take the matter to court. They would be seeking to find out whether or not the bilingualism requirement needs a constitutional amendment.

That brings me to my third point. In my opinion, if Parliament chose to pass such a legislative text, it is almost certain that the legislation would be challenged before the courts and, in my opinion, it would probably be overturned. A condition like that probably needs an amendment to the Constitution that requires the agreement, not only of Parliament, but also of all the provinces. Let me explain why, in a few words.

Some experts who have appeared before you have stated—and, with all respect, I was quite shocked by it—that they were 100% certain that this initiative does not require a constitutional amendment. With respect, I do not share that opinion. Certainty here is out of reach. The case law on constitutional amendments is in its infancy. I feel that we are not able to state with certainty that an amendment is not required.

The concern I am expressing to you does not come from an excess of prudence, or from trepidation, as one of the experts said, or from an excuse to oppose bilingualism, which, I have to say, I think is desirable at the Supreme Court. In fact, there are specific, solid reasons to believe that a change of that kind cannot be made without the agreements I have just mentioned.

It is all very simple: the Constitution has an amending formula. For our purposes, one of the important texts is paragraph 41(d) of the Constitution Act, 1982. This reads that amending the Constitution in relation to the composition of the Supreme Court requires the agreement of Parliament and of all the provinces. So we have to ask ourselves what the composition of the Supreme Court means.

It turns out that we already have a ruling on that issue. It comes from the reference to the Supreme Court on what we call the Nadon case. I am quoting paragraph 105 of that ruling. This issue is to determine what the composition of the court is and whether it needs the unanimous support of Parliament and the provinces. What is the composition of the court? It reads like this:

Both the general eligibility requirements for appointment and the specific eligibility requirements for appointment from Quebec are aspects of the composition of the Court.

It cannot get any clearer than that. To say that a constitutional amendment is not required in order to achieve the objective we are talking about this morning, we have to ignore that language or, in all cases, interpret it in such a way that the important aspects are removed. The court continues:

It follows that any substantive change in relation to those eligibility requirements is an amendment to the Constitution in relation to the composition of the Supreme Court of Canada and triggers the application of Part V of the Constitution Act, 1982.

That means the rule of unanimous consent.

I am not going to go too much further because I want to leave you a lot of time for questions. Nevertheless, I feel that Sébastien Grammond made an interesting argument that quite significantly restricts what we must understand by the terms and language of the Supreme Court here. I would say that, despite everything, the opinion of the court contains no restriction to the qualifications. So it is certain that the legislation would be challenged on the basis of the text I have just read.

What is a substantive change to the eligibility requirements for appointment? In my opinion, the general conditions for appointment are already in sections 4, 5 and 6 of the Supreme Court Act—being a judge or a barrister for 10 years, and the specific conditions for the judges from Quebec. They are clearly enshrined. Bilingualism is not one of them.

In closing, I would add two things. First, adding conditions can be an amendment. Just because it is an addition and not a removal does not make it any less of an amendment to the eligibility conditions for

appointment. Clearly, if you wanted, for example, to remove the requirement to have three judges from Quebec on the court, you would need a constitutional amendment because you would have removed an eligibility condition.

However, if you were to decide, in the interests of gender equality on the Supreme Court bench, to require a minimum of four female judges and four male judges, you would be looking, in my opinion, at a major amendment to the composition of the Supreme Court and it would require the amendment process I was talking about.

● (1215)

So it is important to see that adding words or terms possibly constitutes an amendment that would require the support of the feds and the provinces.

I would add—and this is the final point I wanted to emphasize—that there is something paradoxical in stating that a constitutional amendment is not required. What is driving the desire to include a bilingualism requirement in the text of the legislation is the importance of bilingualism for the legitimacy of the court, its political integrity, and its ability to function.

We cannot say that is absolutely fundamental for Supreme Court justices to be bilingual and then, at the same time, say that it is not a major change to the composition of the Supreme Court. I don't think those two arguments can be made at the same time.

Basically, I feel that it is essential to require bilingualism. I feel that it can be done perfectly well by political commitment, such as we are seeing at the moment, but it seems dangerous to do it by legislation for the reasons I have described. I think that what we have here is the same thing that was worrying Montesquieu when he wrote, “the best is the mortal enemy of the good”.

● (1220)

[English]

Leave well enough alone.

[Translation]

And I feel that it will be better for everyone.

Thank you.

The Chair: Thank you, Mr. Jutras.

We now move to the period for questions, answers and comments.

You have the floor, Mr. Généreux.

Mr. Bernard Généreux: Thank you for being here, Mr. Jutras.

Your comments are music to my ears. I especially want to focus on the arguments. You have analyzed the debates that have gone on up to now. You are certainly aware of my comments on the issue of functional bilingualism. For me, the debate is pointless.

No one can be opposed to motherhood and apple pie; everyone is in favour, it's unanimous. We are all convinced that the judges must be bilingual. There's no problem with that, but enshrining it in the legislation—

The Chair: Excuse me, but we have been told that we have to go and vote in the House. So I have to get unanimous consent for us to continue for a few more minutes.

Mr. Bernard Généreux: I didn't hear the bells.

The Chair: But the lights blinked a few seconds ago.

Mrs. Sylvie Boucher: It might just be a test.

The Chair: You can continue, Mr. Généreux.

Mr. Bernard Généreux: Functional bilingualism, as some describe it, is a concept that makes no sense, in my view. You either are bilingual or you are not.

Clearly, as you said earlier, there are a number of degrees of skill in both languages at a given level. So it is not easy to amend the legislation or enshrine this in it.

I like your argument a lot. You cannot say one thing and then say the opposite. Could you tell us more about that?

Prof. Daniel Jutras: I think that we share the same view, but in terms of skill in both languages, I am suggesting a range. It's not binary; it is not just yes or no. For example, I am trying to learn Italian these days and it is not easy. I am not at all bilingual with Italian but I am with English. It is difficult to measure. It is difficult to measure that ability in terms of a legislative exercise or a legal challenge.

Mr. Bernard Généreux: Let me interrupt you. Going by the tests we have been shown, the questions the candidates are asked, you don't need a very good knowledge of the other language to answer them.

Prof. Daniel Jutras: I think that is important. Measuring bilingualism is done by tests. Language experts can measure it through tests, but I am not sure that an appointment as important as justice of the Supreme Court should be decided by an individual's degree of bilingualism. The possibility of rising to the Supreme Court being determined by failing a test that is now given to public servants, to senior federal public servants, is a little alarming.

Mr. Bernard Généreux: Learning a language is automatically an ongoing process, actually.

Prof. Daniel Jutras: Exactly.

The important thing for me—and this is what we mean by “functional bilingualism”—is that you have sufficient command of both languages to do the job. It is always measured functionally, that is, in the context of the task to be done.

In my opinion, a high degree of skill in both languages is required. I have described to you a little bit of what is involved. You have to read complex texts. You have to interact with very intelligent people in another language, which requires advanced skill in both languages.

• (1225)

Mr. Bernard Généreux: Let us suppose that Supreme Court judges have to talk about nuclear power or end-of-life conditions. The terminology in each area, either about electricity or anything else, is extremely complex and involves specific vocabulary.

Earlier, you were talking about the quality of the translators and interpreters working on the Hill. Even if the judges were completely bilingual, we would still need their services.

Prof. Daniel Jutras: Yes.

Mr. Bernard Généreux: The entire government and legal apparatus absolutely needs them.

Prof. Daniel Jutras: Exactly. I believe that service must be available. The worst-case scenario we can think of is a non-bilingual judge not wearing an earpiece for fear that someone might notice, because wearing the earpiece would mean that he is not bilingual and does not have the required skills. That situation would be a little unfortunate.

That said, I want to go back to something I said and that I really believe. There are important considerations with appointments, whether it is representing the diversity of the population of Canada, or anything else. Choices always have to be made because no one has all the required qualities. So there is a priority order. In my opinion, one of the essential qualifications, other than legal knowledge, is bilingualism. It is an operational ability. It allows the court to function. I say and I repeat, the court is working at the moment, even though there have been unilingual judges in recent years. There are nine sitting judges. No judge ever ends up sitting alone and not understanding a word of what is going on. That does not happen. There is always a certain level of understanding.

Mr. Bernard Généreux: Let me ask you a question. Imagine that we had legislation that required all Supreme Court justices to be bilingual. Do you believe that we could one day also ask all parliamentarians to be bilingual? Could we get to that point because of the requirement we imposed on the Supreme Court?

Prof. Daniel Jutras: Quite frankly, I don't think I can answer that question. You know your job, and all its political ramifications.

Mr. Bernard Généreux: I just opened a door and I can shut it again right away.

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

We now move to Paul Lefebvre.

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

Mr. Jutras, thank you very much for being here with us. I have read your bio and I congratulate you on your achievements.

A number of aspects intrigue and interest me. As you know, access to justice in both official languages is critically important, at least for me. When we go to court, we have to know that the judge in front of us can understand us in the language of our choice, especially at the Supreme Court of Canada, the highest court in a bilingual country.

Your career took you to the Supreme Court, You worked with Chief Justice Beverley McLachlin as—

Prof. Daniel Jutras: I was executive legal officer.

Mr. Paul Lefebvre: ...executive legal officer in the Supreme Court. You said that, when the judges meet for their discussions, everything goes on in both languages. In your experience, and so that we understand clearly, if someone comes to the Supreme Court and presents a brief in French when there is a unilingual anglophone judge—because there have been some in the past, even during the years when you were there—there is no translation—

Prof. Daniel Jutras: There is no official translation structure.

Mr. Paul Lefebvre: So they cannot ask the translation service to translate the brief for them?

Prof. Daniel Jutras: Frankly, in all honesty, I do not know. I did not work in the judges' internal offices. I do not know how they access the information.

Mr. Paul Lefebvre: The justices of the Supreme Court meet every day to discuss judgments—I have seen the table they sit at; it is really something. How do we know that the content of a case presented in French is discussed in French when there is a unilingual English judge at the table?

Prof. Daniel Jutras: I do not know. Once again, when they sit around that table, it is them alone. No one else is in the room. So I do not know. I will say that, in recent years, there has certainly been a change there. I have seen other situations when judges are having conversations among themselves and they switch between English and French because a lot of judges speak French now. The Quebec judges all speak English, of course. That is interesting, actually. One cannot imagine a unilingual francophone judge being appointed to the Supreme Court. That is something else to consider.

Mr. Paul Lefebvre: Certainly.

Prof. Daniel Jutras: I was recalling the conversations because, clearly, when a judge is unilingual English, it is more difficult to have a conversation in French about a case submitted in French.

• (1230)

Mr. Paul Lefebvre: The critical question is whether francophone litigants who come to the court will be understood by someone. Of course, they should have access to translation and interpretation service. I agree with you, those services are excellent. However, with simultaneous interpretation, it is more difficult to understand the argument being made. In my view, that puts litigants at a disadvantage, especially at the Supreme Court of Canada.

Prof. Daniel Jutras: It's both symbolic and practical.

If you are interested in the symbolic aspect, whether it is actually real on the ground or not does not matter. If you're concerned about the symbolic aspect, we have to fix it.

Being concerned about the concrete and practical aspect means wondering whether there can be any misunderstanding that would prevent an individual from having access to justice. Personally, that does not worry me much.

There are nine judges around the table. You work in Parliament, have interpreters and are on a parliamentary committee. There may be people in the House of Commons who are not perfectly bilingual. I imagine that is the case. Sometimes interventions are made in French and they are translated. If one of your colleagues said that what someone had said was frightening, you would say that was not exactly what they said. This is exactly what happens in court.

There are nine judges around the table and they talk to each other. The possibility that a unilingual English-speaking judge who heard a case in French writes the judgment and makes a fundamental error is zero. Let's be honest, it's impossible.

Mr. Paul Lefebvre: You think having nine judges provides protection.

Prof. Daniel Jutras: Yes, that's right. However, I would add right away that this is not ideal. That's what I started with.

Ideally, everyone would have access to information directly, without the help of an intermediary.

Mr. Paul Lefebvre: You're telling us that this qualification does not have to be written into the act. If we put it into law, it can be a change to the Supreme Court Act. You think there has to be an amendment to the Constitution to ensure that Supreme Court judges are bilingual. You also said that we have to choose between the Supreme Court Act and the Official Languages Act, and because it can be amended later by Parliament, it is not really worth it.

At the same time, our government, our Prime Minister, said that they want judges to be bilingual. So they are demanding it. This could change in 2019 if another government were elected and did not consider this qualification to be important.

Prof. Daniel Jutras: Yes.

Mr. Paul Lefebvre: The priority might be to have as many female candidates as men. A new government might want a completely unilingual Supreme Court of Canada, in French or English. The ability of litigants to be heard in their official language would no longer be a priority.

Prof. Daniel Jutras: That's right.

The Chair: Thank you, Mr. Lefebvre.

Mr. Choquette, you have the floor.

Mr. François Choquette: I appreciate your comments, Mr. Lefebvre. They are very relevant.

Mr. Jutras, thank you very much for being here.

Your arguments are very good, but I disagree with you on the last comments. I agree with all the other ones 100%. I do not share your opinion on certain things, but nothing is perfect.

The problem with political commitment is that a government can make a political commitment, begin to honour it, and change its mind for different reasons at some point. The current government was committed to electoral reform, for example, but it did not follow through. The government was committed to appointing an official languages commissioner in a transparent and impartial process, but that was not the case.

Furthermore, have you given advice to the government on its position?

Prof. Daniel Jutras: Have I personally advised the government?

Mr. François Choquette: Yes, have you personally advised the government?

Prof. Daniel Jutras: No, not at all.

Mr. François Choquette: Do you know people who have advised the government on an amendment to the legislation?

Prof. Daniel Jutras: Are you asking me whether I know who has?

Mr. François Choquette: Yes.

Prof. Daniel Jutras: No, I have no idea.

Mr. François Choquette: I ask myself this question and I have previously asked the government where its legal advice came from.

Prof. Daniel Jutras: I don't know.

Mr. François Choquette: I don't either, and that's a big problem. I have asked the question several times already. We do not have a clear legal opinion. I thought you might have given them legal advice.

• (1235)

Prof. Daniel Jutras: No, I would have told you.

Mr. François Choquette: That's why I'm asking you. That would have helped me understand where the legal opinions come from.

Prof. Daniel Jutras: No.

Look, I do not know who it is, I have no idea. It is probably a Canadian constitutional expert.

I am not an expert. I am a Supreme Court “groupie” rather than an expert on constitutional law. So I would not be consulted on an issue like that.

Mr. François Choquette: You have not mentioned a reference to the Supreme Court to actually determine whether the appointment of bilingual judges would be constitutional or not.

Is your plan to ask the government to request that the matter be referred to the court?

Prof. Daniel Jutras: First of all, I have no plan for that.

Mr. François Choquette: No, but do you think it would be a good idea?

Prof. Daniel Jutras: It's a solution, but it may not be a good idea.

A distinction must be made between two things: challenging the appointment of a particular judge is not the same as challenging the legislation that would amend this requirement for appointment through ordinary legislation.

Challenging the appointment of a particular judge—as we saw once in the Nadon case—has been circumvented. The process has been sped up a great deal. Otherwise, it would have had to escalate from the lower court to the Court of Appeal up to the Supreme Court. It would have taken a tremendous amount of time. In that case, the ambiguity of the Supreme Court Act was raised, and the court was asked to provide an opinion on the issue by reference.

Is it a good idea to make a reference? I do not know what the Supreme Court thinks. Clearly, I cannot read the judges' minds. In my view, a reference to the Supreme Court on matters affecting the Supreme Court puts the Supreme Court in an uncomfortable position.

Mr. François Choquette: Mr. Jutras, unfortunately, that's all the time I have. I could talk to you for hours, since I'm really passionate about the issue. We could have talked about conditions that are essential and not essential to amending the Constitution, but I do not have the time right now.

So I am going to move my motion. I already gave notice on Friday, May 26, 2017. It reads as follows:

That the Committee, before presenting its report to the House on the nomination of Madeleine Meilleur, invite the following people to appear in order to gain a better understanding of the appointment process for the position of Commissioner of Official Languages:

1. The President of the FCFA;
2. Michel Doucet;
3. The Boyden representative responsible for the selection process;

4. The Deputy Minister of Canadian Heritage;

5. Mathieu Bouchard;

6. Gerry Butts;

7. Rémi Leger;

8. The Deputy Minister of Justice;

9. The Chief Human Resources Officer of the Treasury Board of Canada Secretariat;

10. The Deputy Secretary to the Cabinet of the Privy Council Office (PCO).

The reason for this motion is that, as you know, the Standing Committee on Official Languages must make a decision on the appointment of Madeleine Meilleur as the future Commissioner of Official Languages, as proposed by the government. So our decision must be made after careful consideration and with utmost transparency, and we must ensure that we are not going to make a very serious mistake in supporting the appointment of Madeleine Meilleur as Commissioner of Official Languages.

Madeleine Meilleur appeared before us at our last meeting, and we asked her a few questions. The answers we received are very concerning to us, because there seem to be contradictions in what she said. For example, she said that she had no longer been a Liberal member for some time. The last response she sent us was in April 2017. It's recent as a date, it's like it was yesterday. We may even wonder since when in April 2017, she stopped being a member.

A voice: April 7.

Mr. François Choquette: Okay, it was on April 7. There you go.

There is something else. We talked about the last time she met with the Prime Minister. Her answer was also quite nebulous; we did not know exactly what to think about it. We had an answer on that. I understood that she had met with the Prime Minister during the election campaign. I may have misunderstood. That's why we wondered whether it was at a fundraiser. When she gave us her answer, she said it was at an event that took place in 2014, if memory serves. So I have some serious questions about the appearance of Madeleine Meilleur.

As you know, the controversy is ongoing right now. With each passing day, something new comes up, a new group adds its voice to those who have qualms about the appointment of Madeleine Meilleur. Recently, the FCFA met with all its members who asked what was happening with this appointment. The FCFA members were unable to unanimously agree on the choice of Madeleine Meilleur. So opinions are divided about the process, which is raising a lot of questions.

Recently, the Quebec Community Groups Network, or QCGN, also sent a letter stating that it was very concerned about the appointment process. Will Ms. Meilleur be far enough removed from the Prime Minister, far enough removed from the government, to be able to make impartial and fair decisions? I have major doubts about that.

All this is without mentioning the report about Michel Doucet in the media. I think you've all seen this out in the media and you all fell off your chairs, just like me.

•(1240)

After going through the entire process, Mr. Doucet was told that, if you are not close enough to the Liberal government, you stand no chance of being appointed Commissioner of Official Languages. That's beyond outrageous. It is absolutely incredible to hear that.

We are talking about a position of the utmost importance within the government and at the highest levels of government. We have learned that you have to be part of the Prime Minister's inner circle to hope to get there. You have to meet with Gerald Butts and Katie Telford to get the position of Commissioner of Official Languages. There is a breach of trust in the process. This process is being questioned not only by the opposition parties—they are not the only ones questioning the process—but also—

The Chair: Mr. Choquette—

Mr. François Choquette: Yes? I am not quite finished presenting my arguments.

The Chair: I'm listening, but I have some questions for you.

Mr. François Choquette: Yes, Mr. Chair.

You want to ask me questions. I'm listening to you.

The Chair: I have some questions about the admissibility of your motion. Let me explain.

You state: "... in order to gain a better understanding of the appointment process for the position of Commissioner of Official Languages".

You talk about the appointment process. If I refer to Standing Order 111(2), it says: "The committee, if it should call an appointee or nominee to appear pursuant to section (1) of this Standing Order, shall examine the qualifications and competence of the appointee or nominee to perform the duties of the post to which he or she has been appointed or nominated."

Mr. François Choquette: You're right, Mr. Chair, but—

The Chair: Let me finish my explanation.

Mr. François Choquette: Yes, Mr. Chair.

The Chair: In light of that Standing Order and the wording of your motion, I am concerned about the admissibility of the motion. That is why I want to know what all my colleagues here think.

Mr. François Choquette: I understand, Mr. Chair.

May I just say a few words about admissibility, Mr. Chair?

The Chair: Yes, I'm listening.

Mr. François Choquette: On the issue of admissibility, I agree that we can change the wording if that's the problematic aspect of the appointment. I'm talking about the wording you mentioned, what you read about the candidate, and the situation before us. That's basically what I was saying, that the question is whether, precisely, the candidate Madeleine Meilleur is not too close to the high-ranking officials and the Liberals' inner circle to have the distance required to make fair, impartial and transparent decisions.

I was saying that I and other Canadian citizens filed a complaint against the Prime Minister—can you imagine—because he did not comply with the Official Languages Act. The Privy Council Office, through the Prime Minister, did not comply with the Official

Languages Act. It was the interim commissioner who tabled a report on that issue.

When a Canada-wide consultation was held in Ontario, he did not want to answer in French to Franco-Ontarians. In the Sherbrooke area—

•(1245)

The Chair: I'm ready to listen to what you have to say about admissibility. You asked me to comment on the admissibility, Mr. Choquette. I'm ready to listen to you, because I have to decide, first of all, whether or not your motion is in order.

Mr. François Choquette: Yes, Mr. Chair.

The Chair: That's why I'm asking you, as a first step, you and the colleagues here, to indicate why this would be acceptable and why it would not.

Mr. François Choquette: That's what I was saying. With respect to Madeleine Meilleur's competence and impartiality, we have all indicated that she has all the required qualifications, except necessary ones like impartiality and independence from the government

We also learned today that she left the Liberal Party on April 7, 2017. That was yesterday, Mr. Chair, which is why I believe this motion is in order, so that we can study and better understand how Madeleine Meilleur is too close to the Liberal Party. So we have to look at that.

That's why it would be relevant to meet with everyone listed in my motion.

The Chair: You have the floor to talk about receivability, Mrs. Boucher.

Mrs. Sylvie Boucher: With all due respect, Mr. Chair, I think this motion is transparent and receivable. We've always said that the nominations would be made transparently. The more we learn about this nomination, the less transparent it seems. How is it that some candidates had access to Gerald Butts?

The Chair: Mrs. Boucher, you're talking about the process. I'll refer you once again to Standing Order 111(2), which states that a committee shall examine the qualifications and competence of the appointee or nominee to perform the duties of the post to which he or she has been appointed or nominated.

Mrs. Sylvie Boucher: Exactly.

Ms. Meilleur may have the competence, but she doesn't have everything she needs to be impartial. Impartiality will be lacking. When she appears before this committee, or when she produces fine reports, every member of the opposition will ask who she is speaking for, the Liberal Party or herself? She has been attached to the Liberal Party for a long time. Let's stop fooling ourselves. She was a minister in the Ontario Liberal government, gave money to the federal Liberal Party and to the leadership organizers of the Prime Minister, the Right Honourable Justin Trudeau. Are we going to be led to believe that she would be impartial to a post that is supposed to be apolitical?

With all due respect, Mr. Chair, we need to debate this motion here. Our committee is the one responsible for official languages and their management. If the Liberals on the other side of the table are at least concerned about defending their language, as we have done from the beginning, they will agree. This is one of the finest committees the House of Commons has. These people have been fighting for real issues from the beginning, but on their own behalf, not on behalf of the Liberal government.

• (1250)

The Chair: We'll now move on to Ms. Lapointe.

Ms. Linda Lapointe: I ask that the debate be adjourned.

[English]

Mr. John Nater: On a point of order, I don't think the motion is in order, because we weren't debating the actual motion. We were debating the admissibility of the motion, so we weren't actually.... If we were debating the motion, Madam Boucher would have had the floor prior to Madam Lapointe. We're discussing the admissibility of the motion, not the actual motion, so I don't think we can adjourn on the motion until Madam Boucher—

[Translation]

The Chair: If I may, I'll suspend for a few minutes. I just want to consult with the clerk, with your permission.

• (1250)

(Pause)

• (1250)

The Chair: After verification, it appears that the motion to adjourn the debate is in order at this time. I will call the question.

Mr. François Choquette: Mr. Chair, I would like to ask for a recorded vote, please.

The Chair: It will be a recorded vote. No problem.

That the debate be adjourned.

Mr. François Choquette: That the debate be adjourned or that the meeting be adjourned?

The Chair: That the debate on the motion be adjourned.

The rest remains on the agenda.

Mr. Darrell Samson: We can return to the witnesses.

The Chair: I'm told we can't discuss it.

(Motion agreed to: yeas 5; nays 4 [See *Minutes of Proceedings*])

The Chair: We are coming back to the agenda.

Mr. Choquette, you have close to three minutes.

Ms. Linda Lapointe: He was up to 15 minutes.

The Chair: No.

You have three minutes left to discuss with the witness, Mr. Choquette.

Mr. François Choquette: Mr. Jutras, I'm glad to come back and you're not gone.

[English]

Prof. Daniel Jutras: Welcome back.

[Translation]

Mr. François Choquette: I have a question for you. We have experts, constitutional experts, Benoît Pelletier and Sébastien Grammond, who do not share your opinion. They make it clear that we can change some aspects of the appointment Supreme Court justices, but not all. Some aspects are essential. They are listed and very clear. For example, in Nadon, which you mentioned earlier—and I studied it, as well—it says specifically that the justices who ruled on this case did not take a position on other aspects; right?

I'll go back to Benoît Pelletier's argument: he asked the members of the committee whether the appointment of a unilingual English judge was an essential condition.

What do you say to that?

• (1255)

Prof. Daniel Jutras: That's a sensitive issue.

The fact that there's a disagreement between these two constitutional experts—which I respect very much—and I suggest that a challenge would inevitably be brought before the courts, because it is not an issue that has been decided.

I must admit that I am extremely surprised that Benoît Pelletier is 100% certain that this doesn't require a constitutional amendment. I understand Sébastien Grammond's argument a little differently. I think his analysis is a little more nuanced, and he suggested to you that a reference to the Supreme Court could be a way of testing this issue.

So the short answer to your question is that, in my opinion, the statement you referred to is in the judgment in Nadon, in the reference. As it does whenever there is a reference, the Court has said that it does not rule beyond the question put to it.

The Court has also provided extremely clear language that ties the composition of the Court—one of the elements on which a constitutional amendment is required—to the conditions of eligibility for appointment to the Supreme Court.

We can't ignore the language completely and say that it is not written. We must give meaning to what is written. This is what Sébastien Grammond does. I think he has told you that you have to read that in the specific context of the reference and that this is therefore about the conditions that affect Quebec and the representation of Quebec judges in the Supreme Court. However, even Sébastien Grammond goes a step further by saying that there may be other conditions of appointment that are essential to the functioning of the Supreme Court.

So I ask you the opposite question. Let's say that we're adding conditions for appointments, and that we require, for instance, that there be at all times among the nine judges of the Supreme Court an Aboriginal judge and two minority judges representing the cultural communities and visible minorities in Canada. I'm absolutely convinced that an exercise like this would require an amendment to the Constitution, which affects the composition of the Court.

That's my answer. It's a difficult question.

Mr. François Choquette: I have little time left, and will stop there.

Thank you.

The Chair: We will move quickly to the last speaker, René Arseneault.

Mr. René Arseneault: I'll continue along the same lines as Mr. Choquette.

When I read paragraph 105 of the decision, at least the one I have in front of me, because you quoted an article earlier and—

Prof. Daniel Jutras: It's a paragraph from the court's opinion.

Mr. René Arseneault: Yes, it isn't the same as what I have in front of me, but it's not a big deal.

Since I don't have much time, I'll very quickly quote the one I have here, from the Supreme Court: "... any substantive change in relation to those ... requirements ...".

Prof. Daniel Jutras: Yes.

Mr. René Arseneault: We're talking about sections 5 and 6 of the Supreme Court Act.

Prof. Daniel Jutras: No, not in the same paragraph.

Mr. René Arseneault: No, but that's what we're talking about. I don't want to argue, because I only have two minutes.

Do you think the Supreme Court was really saying that any amendment whatsoever requires an amendment to the Constitution?

Prof. Daniel Jutras: No. Let's agree on that.

Mr. René Arseneault: Okay. Thank you, but that's all I wanted to say. I only have two minutes.

Prof. Daniel Jutras: Listen, if you don't want—

Mr. René Arseneault: I know, but put yourself in my shoes. Mr. Choquette took all my time.

Prof. Daniel Jutras: The Court says—you have the paragraph in front of you—

Mr. René Arseneault: Yes.

● (1300)

Prof. Daniel Jutras: Give me two seconds to answer you. "[A]ny substantive change ..."; we aren't talking about any amendment whatsoever.

Mr. René Arseneault: It says "to the eligibility requirements for appointment".

Prof. Daniel Jutras: Yes, "those ... requirements"; it relates to sections 4, 5 and 6. Adding something to sections 4, 5 and 6, would be amending them.

Mr. René Arseneault: Exactly. I agree with you.

Prof. Daniel Jutras: We agree.

Mr. René Arseneault: It is very clear, and I appreciate how clearly you've explained your position. You claim that political commitment in this sense is more effective than taking the risk of a court challenge.

Do you think that even the current government's position could be challenged in court? What I mean is requiring an amendment to articles 4, 5 and 6, even in a non-legislative form, only at the request of the government or on an election platform?

Prof. Daniel Jutras: It's possible. I don't think it's as solid, as arguments go.

Mr. René Arseneault: Why would it be less solid?

Prof. Daniel Jutras: Because it's a political statement, which isn't necessarily subject to control by the courts. It's a matter of justiciability.

Mr. René Arseneault: However, in practice, it's the same thing for the challenger. I'm a unilingual anglophone or a unilingual francophone. I have the right C.V. and I want to be appointed to the Supreme Court of Canada, but with the commitment or the election platform of the government in place, I can't. So I take issue.

Prof. Daniel Jutras: Yes.

Mr. René Arseneault: The effect is the same, right?

Prof. Daniel Jutras: The short answer is yes.

Mr. René Arseneault: Even that is likely to be challenged in court.

Prof. Daniel Jutras: That's right.

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

The Chair: No, that's it.

Mr. René Arseneault: Thank you very much.

The Chair: Mr. Jutras, thank you for the clarity of your brief. It was very timely. I think every member of the committee would agree with me.

Before the meeting ends, I would like to mention to the committee members that I have asked the clerk to add "Committee business" to next Thursday's agenda. We will continue our discussions on Mr. Choquette's motion.

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

The Chair: The meeting is adjourned.

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