



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Procedure and House Affairs

PROC • NUMBER 135 • 1st SESSION • 42nd PARLIAMENT

EVIDENCE

Thursday, November 29, 2018

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Chair

The Honourable Larry Bagnell

Standing Committee on Procedure and House Affairs

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• (1100)

[English]

The Chair (Hon. Larry Bagnell (Yukon, Lib.)): Before I get to the reason for this meeting, I want to update the committee on two things.

One is that the Liaison Committee has asked us where we're travelling between March and June. I said New Zealand, but they wouldn't agree. I assume we'll just put in that we don't need any money for that.

The other thing—and this is more for David Graham—you will remember that the PPS reported in estimates that they will be buying unmarked cars with the new money. You may have noticed there are some new marked cars showing up. PPS just wanted to let you know those were bought with the old money. The new unmarked cars are still coming.

Also, there's been general agreement that in the second half, instead of going into subcommittee, we're going to continue on with the full committee, because then it would have to go to subcommittee anyway.

[Translation]

Good morning, welcome to the 135th meeting of the Standing Committee on Procedure and House Affairs.

Today, we will consider the fourth report of the Subcommittee on Private Members' Business submitted to the Clerk of the Committee on Thursday, November 22. The subcommittee recommended that Bill C-421, An Act to amend the Citizenship Act (adequate knowledge of French in Quebec) be designated as non-votable.

Pursuant to Standing Order 92(2), we are pleased to have with us the sponsor of the bill, Mario Beaulieu, member of Parliament for La Pointe-de-l'Île, to explain why he is of the opinion that this bill should be votable. He is accompanied by Marc-André Roche, a Bloc Québécois researcher.

Thank you for being here, Mr. Beaulieu. For your information, the correspondence you sent on Tuesday was distributed to the members of the committee. You can now make your presentation to the committee.

Mr. Mario Beaulieu (La Pointe-de-l'Île, BQ): Mr. Chair and members of the committee, thank you for having us here.

As I indicated in my letter to you, the subcommittee may have found my Bill C-421 clearly unconstitutional, but it did not specify

which section of the Constitution or the Charter it was alleged to have violated. In the absence of a clear indication, I will provide an overview of all the provisions that may be relevant. I hope this will answer your question. Otherwise, I am at your disposal to answer any questions you may have.

As you mentioned, I am accompanied by Marc-André Roche, the assistant to my colleague, the member for Joliette. Since we don't have a research team, he gave me a hand.

As you know, the standard used to assess whether a bill is unconstitutional is not very high. On page 1143, Bosc and Gagnon state:

Bills and motions must not clearly violate the Constitution Acts, 1867 to 1982, including the *Canadian Charter of Rights and Freedoms*.

I emphasize the words “clearly violate the Constitution Acts”. It has long been established that a disagreement on the constitutionality of a bill is not enough to make it non-votable. I have a feeling that you will not have difficulty in making your decision.

Right now, permanent residents must meet a number of criteria to become Canadian citizens. These include passing two proficiency tests: a general knowledge test about their host society and a language proficiency test, where they must demonstrate that they have adequate knowledge of English or French.

Bill C-421 is quite simple. It amends the Citizenship Act to ensure that permanent residents who ordinarily reside in Quebec must demonstrate that they have an adequate knowledge of French.

The first constitutionality criterion is the division of powers. Citizenship falls under federal jurisdiction under section 91.25 of the British North America Act, 1867, which specifies that naturalization and aliens fall under the jurisdiction of Parliament. Clearly, my bill meets that condition.

That leaves the Charter. Since the subcommittee has not indicated any specific provisions to support its decision, I will go through it as quickly as possible.

First, there are mobility rights. Subsection 6(2) of the Charter states that citizens and permanent residents have the right to move anywhere in Canada, to take up residence in any province and to pursue the gaining of a livelihood in any province. Whether or not Bill C-421 is passed, nothing would prevent a permanent resident residing in another province from moving to Quebec, settling and working there. Nothing would prevent a permanent resident residing in another province from obtaining Canadian citizenship there, then moving to Quebec and enjoying all the rights and privileges associated with Canadian citizenship.

Since Bill C-421 has no impact on mobility rights, I gather that this is not why the subcommittee found the bill to be “clearly unconstitutional”.

Then there is the language of communication with federal institutions. Subsection 20(1) of the Charter states that the public may communicate with the federal government in either English or French at their discretion, and that the government must be able to provide services in English or French where numbers or the nature of the service warrant it.

Bill C-421 has no effect on the language of communication between the public and the federal administration. Whether or not this bill is passed, a permanent resident will still be able to communicate with the federal government in either English or French.

Similarly, the oath of citizenship may continue to be administered in either French or English, in Quebec and elsewhere in Canada. I might have preferred it otherwise, but that would have made my bill unconstitutional. That's why I did not propose it.

• (1105)

Bill C-421 simply requires that permanent residents residing in Quebec demonstrate that they have an adequate knowledge of French, the official language and the normal language of communication in Quebec.

Let me remind you that there is already a degree of asymmetry in the application of the Immigration and Refugee Protection Act. In Quebec, the Government of Quebec selects and supports immigrants and implements integration programs. Knowledge of French holds a prominent place in all those stages.

Bill C-421 supports Quebec's efforts and extends the granting of citizenship, which already exists at the previous stages, namely selection, support and integration. The selection, reception and integration of immigrants, as well as the granting of citizenship are four elements of the same process. I have difficulty seeing how knowledge of French would be constitutional in the first three steps, but unconstitutional in the fourth. In any event, Bill C-421 has no effect on the language of communication between the public and federal institutions, which resolves the issue of its compliance with subsection 20(1) of the Charter.

There are still the provisions on official languages.

Subsection 16(1) of the Charter states:

English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada.

I emphasize the words “equal rights and privileges as to their use”. Bill C-421 contains no provisions or requirements regarding the use of English or French. It only refers to the knowledge of French. Knowledge and use are two completely different things. In addition, subsection 16(3) clarifies the scope of the Charter:

Nothing in this Charter limits the authority of Parliament or a legislature to advance the equality of status or use of English and French.

That subsection of the Charter refers to the “equality of status or use of English and French” in Canada. The Supreme Court even recognizes that French is the minority language in Canada. It

recognizes that, for English and French to progress towards equality in Canada, French must be predominant in Quebec. In the 2009 Nguyen decision, it ruled as follows:

...this Court has already held... that the general objective of protecting the French language is a legitimate one... in view of the unique linguistic and cultural situation of the province of Quebec...

This allows the court to conclude that:

... the aim of the language policy underlying the *Charter of the French Language* was a serious and legitimate one. [The materials] indicate the concern about the survival of the French language and the perceived need for an adequate legislative response to the problem...

I am talking about a constitutional judgment.

The measures to ensure the primacy of the French language in Quebec effectively promote the equality of status or use of French in Canada. It could even be argued that the government's current practice with a view to making Quebec bilingual contravenes this, since by making French weaker in Quebec, it does not promote the equality of the two languages in Canada. That being said, there's no need to debate this here.

I had to show you that my bill is not “clearly unconstitutional”. I think I have.

I am at your disposal to answer any questions you may have.

Thank you, Mr. Chair and members of the committee.

• (1110)

The Chair: Thank you very much.

[*English*]

I'm not going to do regular rounds of questioning. I'll just let anyone who wants to ask questions to ask questions. Just let me know.

Madame Lapointe.

[*Translation*]

Ms. Linda Lapointe (Rivière-des-Mille-Îles, Lib.): Thank you, Mr. Chair.

Welcome to the committee, Mr. Beaulieu.

I am the chair of the Subcommittee on Private Members' Business of the Standing Committee on Procedure and House Affairs, which deals with all the bills. Last week, we reviewed 15 bills, one after the other, with the analyst responsible for making proposals and providing explanations. We have studied your bill at length to check all that.

Do you know where my riding of Rivière-des-Mille-Îles is located?

Mr. Mario Beaulieu: Rivière-des-Mille-Îles, yes, I know where it is.

Ms. Linda Lapointe: It includes the cities of Deux-Montagnes, Saint-Eustache, Boisbriand and Rosemère.

Mr. Mario Beaulieu: It is the north shore.

Ms. Linda Lapointe: Yes, it's in the northern ring of Montreal.

My riding has a number of permanent residents.

I'm going to ask you a question about your bill.

Are you suggesting that those people who live in my riding, who are anglophones, Americans who have become permanent residents, go to Ontario to take their citizenship test since they cannot do it in Quebec because they do not have an adequate knowledge of French?

Mr. Mario Beaulieu: Essentially, I think it would encourage them to learn French in order to have an adequate knowledge of it. That would be a very good thing, because it would make it even easier for them to integrate into the labour market.

In Quebec, it is vital that French be the common language to ensure its own future. Quebec is the only predominantly francophone province, the only province where we can successfully ensure that newcomers know French. This does not mean that they cannot speak English.

Ms. Linda Lapointe: Take me, I am a francophone. It doesn't get any more francophone than the name Lapointe. I was raised in Laval, I have always worked in Boisbriand, and I promote French in the House to all my colleagues.

Isn't that right, colleagues? Say yes. Say that I speak to you in French all the time. Even when you don't understand, you manage to understand.

I promote French and do everything I can to make people bilingual. In my opinion, the higher the bilingualism rate in Canada, the better.

I sat on the Standing Committee on Official Languages with Mr. Nater and Ms. Kusie, who are as convinced as I am of the value of bilingualism.

• (1115)

I mean, we are promoters of bilingualism and, in my opinion, when it comes to French, we must go even further. I am uncomfortable with your bill.

I am not a constitutional expert. We have people who can help us if need be. Those working at the Library of Parliament can help us. I am just uncomfortable with this bill.

I don't make the decision. If I am told that a bill is not constitutional, I cannot challenge it as a lawyer would. I hold a bachelor of business administration degree. I don't claim to be a lawyer at all.

I cannot see myself telling the anglophone constituents in my riding, who have the right to be permanent residents of Quebec, who contribute to society in their own way even though they speak English, that they will not become Canadian citizens and that they will simply remain permanent residents.

Perhaps some of my colleagues have something to add.

Mr. Marc-André Roche (Researcher, Bloc Québécois): I may have something to add.

The Chair: Yes, go ahead, Mr. Roche.

Mr. Marc-André Roche: The subcommittee's official report is not available yet, but the “blues” are. Let me remind you that your analyst recommended that the bill be votable. I understand from your

remarks that you are looking forward to being able to speak in the House and vote against it. That is precisely what we are discussing.

Ms. Linda Lapointe: From the discussions we have had and that were reported in the “blues”, we considered it unconstitutional.

[*English*]

The Chair: I didn't quite get it, but my understanding is that when the analyst comes to the subcommittee, he doesn't give any opinions on whether it's votable or not. He just gives all the facts from his perspective.

Mr. David de Burgh Graham (Laurentides—Labelle, Lib.): The analyst basically said that it could be voted either way.

The Chair: Now we'll go to Mr. Graham.

If you don't understand what he says.... I don't know what language he's going to speak.

[*Translation*]

Mr. Marc-André Roche: No, that's fine.

[*English*]

The Chair: None of us understand him either.

Voices: Oh, oh!

[*Translation*]

Mr. David de Burgh Graham: Mr. Beaulieu, what would you say if a bill from Alberta, for example, referred to people under 65 years of age on the date of their citizenship application, who ordinarily reside in Ontario and have an adequate knowledge of the English language?

Would that be unconstitutional? Could it be an attack on the French language? Could that mean war in Quebec?

Mr. Mario Beaulieu: I think it would probably be constitutional. However, English and French do not currently have equal status.

Mr. David de Burgh Graham: They have it in the Constitution.

Mr. Mario Beaulieu: That's right.

The Constitution seeks to ensure equality.

Mr. David de Burgh Graham: However, you are trying to take away from the federal government a power granted by the Constitution.

Mr. Mario Beaulieu: In fact, French is in decline almost everywhere in Canada. All linguistic indicators demonstrate it. The objective is to ensure linguistic diversity in Canada, and therefore the survival and the equal status of French. That is what my bill is about.

French, not English, is the language being threatened in Canada. You are raising a political issue. I think that, as far as the Constitution is concerned, it is not unconstitutional to raise this issue.

Mr. David de Burgh Graham: I completely disagree with you.

The Constitution is very clear on that point. One example of that is communication with a public servant. You seem to be saying that, in order to be able to speak to an official in our mother tongue, we have to move to the appropriate province and stay there long enough. This would replace the freedom to travel in Canada with an obligation to travel, which is not in accordance with the Constitution. I do not see how you will manage to reconcile this bill with the Constitution.

Mr. Mario Beaulieu: This doesn't affect language use.

Mr. David de Burgh Graham: You require me to communicate with you in French to prove that I am able to do so.

Mr. Mario Beaulieu: That's right.

Mr. David de Burgh Graham: But it's mandatory for communicating with the government.

Mr. Mario Beaulieu: This doesn't mean that you don't know English if you speak to me in French, no more than it would mean that I don't know English if I communicate with you in French.

This is intended to encourage newcomers to learn French. I think it's perfectly legitimate. Quebec is the only province where French is the language of the majority and it's sort of the primary home of francophones in North America. So it is necessary to encourage the use of French and to make it the common language. This doesn't mean that the rights of the anglophone minority are not recognized; that's not the issue at all. If French isn't the common language in Quebec, however, it will not be the language that will enable newcomers to integrate and facilitate exchanges between all Quebecers.

• (1120)

Mr. David de Burgh Graham: The only way to deem this constitutional would be if English and French did not have equal status in the Constitution. However, their status is indeed equal in the Constitution. Moreover, there is not a single province in Canada, not one, that does not have francophones in its population.

If a bill required being able to speak English throughout the province of Quebec, it would not increase the rights of francophones, but would instead attack them. When you attack English in Quebec, you attack French in the rest of Canada.

I too would like to increase the importance of French across Canada. I am bilingual, I grew up in a family where both parents were French-speaking. However, I was raised in English because my family was not allowed to attend a French-language school because it was not Catholic. I am now English-speaking because I was not Catholic. This makes no sense.

To increase the importance of French across Canada, however, we must see both languages as truly equal. If you will allow me to make this comment, your bill is fully and completely contrary to the objectives of the Constitution. It is by no means constitutional.

Mr. Mario Beaulieu: By that reasoning, the selection criteria for newcomers to Quebec would be unconstitutional, just as would any form of asymmetry. Basically, between the weak and the strong, it is said that the law protects the weak. In practice, the two languages do not have equal status. The law is used to establish this equality of status to promote French as a common language in Quebec. The Constitution recognizes that the situation of French deserves and

justifies legislative measures to protect it and ensure its development throughout Canada.

Mr. David de Burgh Graham: Are you talking about across Canada or only in Quebec?

Mr. Mario Beaulieu: I want French to be spoken across Canada. We defend all the francophone and Acadian communities. Quebec is in some way the primary home of the French language.

I don't want to get too involved in the political debate. I think it's better to keep with the constitutional debate. Around the world, regimes based solely on institutional bilingualism, wall to wall, always end up seeing the assimilation of minority languages.

There are several countries where more than one national language is spoken. In Belgium, Switzerland and Cameroon, for instance, there is a common language for a given territory. This doesn't prevent people from knowing five or six second languages very well, but it does protect their language. If you go to Flemish Belgium, you will find that Dutch, which is hardly spoken in the world, isn't threatened in this part of Belgium, where it is the common language.

In general, the Constitution is based on the principle of protecting linguistic duality. In Canada, the endangered language is French. This language must continue to exist and flourish in our country, which explains the additional powers granted to Quebec, particularly through the Cullen-Couture agreement on immigration.

Quebec's Charter of the French Language, which some have said is a great piece of Canadian legislation, aims to make French the common language in Quebec to allow francophones to work and live in their language. I don't think it's unconstitutional.

Mr. David de Burgh Graham: Let's go back to the Constitution because that's what's at issue here.

I'm also on the Subcommittee on Private Members' Business, where I have already spoken about my wife. She came to Canada in 2005 and spoke five languages, but not French. Just before she obtained her citizenship, she moved to Quebec to be with me. If this bill had been passed, she would not have been able to. She would have had to stay in Ontario because she didn't speak a word of French. She is learning it, but it isn't easy as a sixth language. The purpose of the bill is unconstitutional, because no request made to the government is more important than that of citizenship.

Section 20(1)(a) of the Canadian Charter of Rights and Freedoms states:

there is a significant demand for communications with and services from that office in such language

A citizenship request is a significant demand. You can't say that it isn't significant enough to be in the Constitution. That's my position, and we'll agree to disagree.

• (1125)

Mr. Mario Beaulieu: If we only disagree, then the bill is votable and it is up to the House to deal with it. Just because we don't like a bill doesn't make it unconstitutional. All bills contain an element of constraint. Your spouse probably could have passed the French test. Requesting that people with sufficient knowledge of French be favoured is not an exaggerated requirement.

Mr. David de Burgh Graham: So you acknowledge that your bill violates the Constitution, but not seriously. Is that what you're telling me?

Mr. Mario Beaulieu: No. I don't think my bill is unconstitutional, let alone meets the test for deeming a bill to be non-votable. I don't think it violates the Constitution. What you are raising is more about the political aspect than the constitutional aspect, and it is up to Parliament to make a decision about the political aspect.

Mr. David de Burgh Graham: I'm a member of the Subcommittee on Private Members' Business of the Standing Committee on Procedure and House Affairs, which has held 18 meetings since the start of this Parliament. I think I've missed just one meeting. To date, we have rejected two bills. Actually, I think it was three—for one of them, it was fairly clear.

It's our job to do this. Every private member's bill passed in the House of Commons has first been studied by this subcommittee, including the Bloc Québécois bill. We analyzed it—you can read the “blues” of our proceedings—and we agreed that your bill was not votable because of its unconstitutional nature.

This is the process, and it is up to us to decide whether or not it is votable. If you don't agree with our decision, you can appeal to the House, which will hold a secret ballot; that's your right.

My recommendation to my colleagues is to consider that your bill is not constitutional.

Mr. Mario Beaulieu: I think it is constitutional. The arguments you've raised are more political in nature. You gave the example of your spouse, who is one specific case, but the Constitution applies to the entire community and the Canadian population as a whole.

Based on your reasoning, you would be against all the measures that Quebec has taken to promote French because you would consider them unconstitutional. You would say that the criterion related to knowledge of French to select immigrants to Quebec is unconstitutional. It's the same thing.

We don't prevent people from communicating with the government in English or French. All we want is an incentive. We want people to demonstrate that they know French. The Citizenship Act already requires knowledge of English or French, and if a person does not have knowledge of either language, their application is rejected.

We believe that in Quebec, knowledge of French should be required of immigrants because it is the common language. This doesn't mean that it's not important to know English or to be bilingual on an individual level. In Quebec, French must be strengthened. I don't want to get into a political debate, but in Montreal, French is on the decline. The indicators show that there is a decline in French because newcomers are not sufficiently francized. It's not a far-fetched requirement that we want to use to crush anyone; it is a requirement that aims to ensure the future of French in Quebec.

Mr. David de Burgh Graham: This brings us back to the Constitution again. It's a matter of communication between the federal government and aspiring citizens, if I may call them that, and not between them and a province or a private company. It is in that context only that this is unconstitutional. Your bill would force

people to choose one language over another, which would run counter to the values of section 20 of the Charter. It's black and white for me, and there's no ambiguity. If it were a Quebec government bill, there would be no problem, but this bill concerns the federal government and the Constitution.

Mr. Mario Beaulieu: My answer to you is that our bill does not have to do with communications between an individual and the government.

Mr. David de Burgh Graham: Yes, it does.

Mr. Mario Beaulieu: It has to do with language proficiency.

Mr. David de Burgh Graham: To demonstrate language proficiency, communication with the government must be established.

I'll give the floor to my colleague, because we could talk about this until we're blue in the face.

• (1130)

[*English*]

The Chair: Thank you, Mr. Graham.

I have a question.

[*Translation*]

I apologize for speaking in English.

[*English*]

Mr. Mario Beaulieu: No, it is okay.

The Chair: You said that Quebec determines who gets to immigrate, so they can already choose to make sure there are only French people applying. Why do you need to have the test in French? You've already taken care of that.

Mr. Mario Beaulieu: It's not exclusive. One of the criteria is to know French. If you know English, it gives you other points. It's not exclusive.

In the integration process, there is the teaching of French, but what we see is that it is not efficient enough. We think that since you already have to show sufficient knowledge of English or French, we say that in Quebec it would be appropriate that a knowledge of French would be the criteria to have citizenship. It is another incentive to make sure that people have a sufficient knowledge of French.

When we look at the Supreme Court judgments like the Nguyen case and these things, it is recognized that French in Quebec needs legislative support to ensure that people are allowed to work and live in French and to ensure the survival of the French language in Quebec and in Canada.

The Chair: Is there anyone else on the speaking list?

Mr. Bittle.

Mr. Chris Bittle (St. Catharines, Lib.): Stephanie, do you have any questions? We've gone on long enough.

[*Translation*]

Mrs. Stephanie Kusie (Calgary Midnapore, CPC): Thank you, Mr. Chair.

Mr. Beaulieu, I would like to thank you for being here today. We have no further questions.

Of course, we had questions about the constitutionality of the bill and the consultations you held when drafting the bill. We have had all the answers we need. So there are no further questions.

I would like to thank you again for being here today, Mr. Beaulieu.

Mr. Mario Beaulieu: Thank you.

[English]

The Chair: Mr. Bittle.

Mr. Chris Bittle: Thank you so much, Mr. Chair.

Thanks to both of you for being here. I appreciate the discussion.

Let's talk about the Constitution, and let's focus on the legality of things, even though, with respect, your presentation seems to be far more.... I appreciate the passion—the passionate and political versus the legal—but let's focus on this.

I've had the opportunity to sit on the justice committee and have heard a lot of constitutional arguments being put forward. I didn't hear any cases put forward in your opening submission. I've looked at your subsequent submission and it cites the Nguyen case. That case deals with section 23 of the charter, and you're arguing under sections 16 and 20.

Why aren't you bringing forward cases that deal with that? If we're dealing with a very specific legal issue, why are you cherry-picking a paragraph from a case dealing with a different section of the charter to support your arguments on sections 16 and 20?

Mr. Mario Beaulieu: I will let Mr. Roche answer.

[Translation]

Mr. Marc-André Roche: In fact, the selected excerpts were taken from the preliminary section of the judgment, where general observations are made and on which a judgment is subsequently based.

We understood that this was a general observation and that it applied equally well to all articles.

[English]

Mr. Chris Bittle: I did a quick Google search. Neither of you are members of the Barreau du Québec?

• (1135)

[Translation]

Mr. Mario Beaulieu: No.

[English]

Mr. Chris Bittle: Do you have any constitutional experts who support your position and have provided any evidence in this case? I haven't seen anything. Again, I'm hearing a very political answer. You're calling on us to provide legal scope to this, and you're not delivering on that. Is there any evidence from a recognized expert?

I'm no constitutional scholar—my fellow lawyers in St. Catharines will assure you of that—but do you have any constitutional scholars who would support your position?

Mr. Mario Beaulieu: Of course.

[Translation]

Mr. Marc-André Roche: We consulted three of them, and I am sure that with the research budget of a recognized party, we would have been able to pay them for a formal legal opinion.

The Chair: What did these three people say?

Mr. Marc-André Roche: According to two of them, it was absolutely clear.

The third had some doubt but, in his view, the constraints passed the test of reasonable constraints, since it was based on a public policy objective that had already been recognized in previous Supreme Court decisions.

Mr. Mario Beaulieu: I consulted a lawyer on the part about freedom of movement and establishment, meaning the right to move from one province to another. He didn't give me a legal opinion, but he did give me a written answer.

He didn't feel that this violated a citizen's freedom of going from one province to another because if someone passed their citizenship test in Ontario, they could come to Quebec. At the same time, if someone passed their citizenship test in Quebec, they could very well settle in Ontario or elsewhere.

So this doesn't violate that section of the Constitution.

[English]

Mr. Chris Bittle: I appreciate the answer, but we have nameless individuals. As said by a legal scholar from *The Simpsons*, Lionel Hutz, hearsay and conjecture are types of evidence. They're not necessarily good evidence.

With respect, I don't think that you provided us with any evidence to support your case from a legal standpoint. I appreciate the budgetary constraint, but if you've talked to these individuals and they're legal scholars, they're used to providing affidavits or support statements. We don't see anything here. There would have been no cost to that.

I appreciate the time. Thank you, Mr. Chair.

Mr. Mario Beaulieu: From our point of view, it's up to you to demonstrate that it's unconstitutional.

The lawyer I contacted is François Côté. I could send you his....

[Translation]

The Chair: Thank you.

Are there any other questions?

[English]

I'd like to thank the witnesses very much. It's been a very interesting discussion. We'll suspend for a few minutes and go into committee business.

[Proceedings continue in camera]

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