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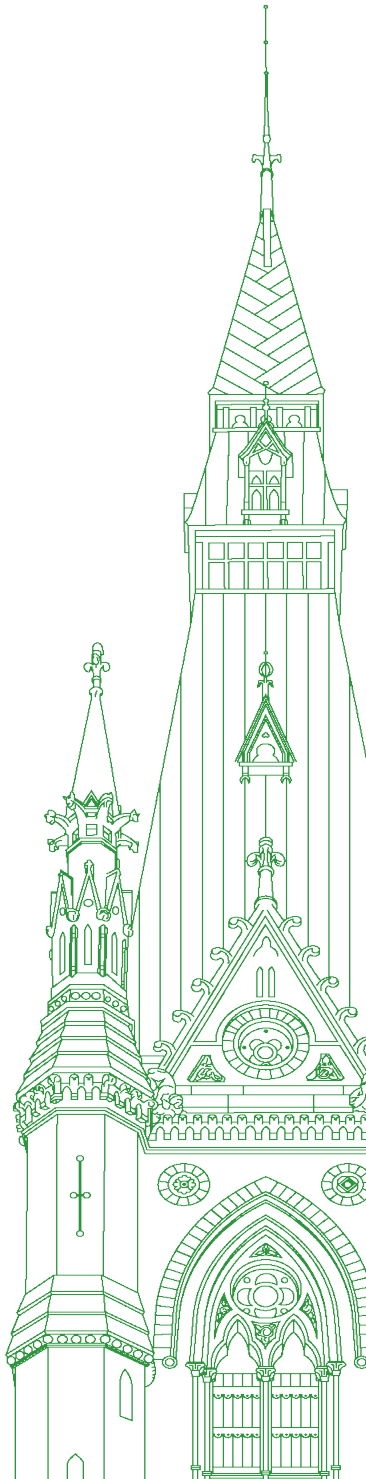

Chair: The Honourable Hedy Fry

Standing Committee on Canadian Heritage

Thursday, April 18, 2024

● (1530)

[*English*]

The Vice-Chair (Mr. Kevin Waugh (Saskatoon—Grasswood, CPC)): I call the meeting to order.

Good afternoon, everyone. Welcome to meeting 116 of the House of Commons Standing Committee on Canadian Heritage. I would like to acknowledge that this meeting is taking place on the traditional unceded territory of the Algonquin Anishinabe people.

Today's meeting is taking place in a hybrid format—I think we know that—pursuant to the Standing Orders. This afternoon, members are attending in person in the room and remotely by using the Zoom application.

I would like to take this opportunity to remind all participants of this meeting that taking screenshots or photos of your screen is not permitted. Proceedings will be made available via the House of Commons website.

Before we get into Bill C-316 and hear from Mr. Ron McKinnon, we have in front of us, if you don't mind, the budget for this study, in the amount of $19,200. I believe it was distributed just before the meeting, at about two o'clock. Is there any discussion, or does the committee wish to adopt the budget? Is there any feedback?

Everyone is good with that. Okay.

(Motion agreed to)

I do wish that we would make more use of Zoom, as we have a lot of expenses coming from Vancouver, Calgary, Edmonton, Montreal and Toronto. We do have capabilities here. When it comes time to do airports and to bring people in, it's nice, but we do have the capability to use Zoom here in the House of Commons, and that could save us a lot of money.

We'll go with this. I'll have it adopted, and we'll move on.

For the first hour, from 3:30 to 4:30, we welcome Ron McKinnon, member of Parliament for Coquitlam—Port Coquitlam.

You may proceed with your opening statement on Bill C-316. You have five minutes, sir. I know you are on Zoom today, so we welcome you to the Canadian heritage committee.

The floor is yours.

Mr. Ron McKinnon (Coquitlam—Port Coquitlam, Lib.): Thank you, Mr. Chair.

It's a pleasure to appear before the committee today to speak to my private member's bill, Bill C-316, the court challenges program act.

The genesis of this bill was the work we did in the Standing Committee on Justice and Human Rights in the 42nd Parliament. In that committee's "Access to Justice" report, one of the key recommendations was to enshrine the Court Challenges Program in law.

Canada is an open, inclusive democracy in large part because the rights of individuals are respected. However, during our hearings in that committee, we learned that it is often too easy to take for granted the many rights and freedoms that we enjoy as Canadians.

● (1535)

[*Translation*]

The court challenges program protects and reinforces our constitutional rights by providing financial support to persons and organizations seeking to put test cases of national significance before the courts. More specifically, the program provides funding to protect our constitutional and quasi-constitutional official language and human rights.

First created in the 1970s, the court challenges program plays a decisive role in helping Canadians clarify and affirm their rights, especially their official language and equality rights. Although the program was cancelled in 2006, our government restored it in 2017. We expanded it to cover rights that had not initially been included but that are protected by specific sections of the Canadian Charter of Rights and Freedoms respecting fundamental freedoms, including democratic rights, freedom of expression, the right to life and freedom and security of the person.

[*English*]

The program has, over the years, been used many times to protect the rights and freedoms of Canadians. It has provided funds to disabled Canadians to help ensure they are treated fairly; it has helped to clarify the rights of LGBTQ+ people to marry whom they love; and it has strengthened the rights of official language minorities to protect their rights and preserve their culture.

The Court Challenges Program also provided support to important cases such as Andrews v. Law Society of British Columbia, wherein the Supreme Court of Canada ruled that a law society could not prevent a qualified permanent resident from practising law in Canada simply because they were not a Canadian citizen. Think of the relevance of this ruling today as we try to recruit doctors and nurses from abroad.

[*Translation*]

The court challenges program reinforced the rights of francophone minorities in British Columbia, helping, in particular, to protect the rights of francophone children to receive French-language instruction of quality equal to that of English-language instruction.

In its June 2020 decision, the Supreme Court of Canada reaffirmed the importance of education in the official language of one's choice. The court also acknowledged the central role that section 23 of the Charter plays in enhancing the vitality of official language minorities communities.

[*English*]

I know that some may ask....

I'm sorry?

The Vice-Chair (Mr. Kevin Waugh): You have 40 seconds left.

Mr. Ron McKinnon: Okay. I will skip ahead.

By passing Bill C-316 and enshrining the Court Challenges Program in law, we will be sending a strong message about the importance of protecting the rights of Canadians. It will demonstrate our shared commitment to ensuring that the rights and freedoms guaranteed by the charter, the Official Languages Act and the Canadian Constitution are respected and upheld.

Thank you, Mr. Chair.

The Vice-Chair (Mr. Kevin Waugh): Thank you, Mr. McKinnon. You're right on.

Everybody knows the gig here. It's six minutes for the opening round. Each party will get six minutes.

We will start with the Conservatives and Mrs. Thomas.

● (1540)

Mrs. Rachael Thomas (Lethbridge, CPC): Thank you, Chair.

Mr. McKinnon, thank you so much for coming and being willing to speak with us about your bill. I look forward to discussing it in just a moment. However, before I dive into that, I wish to give notice of a motion for the committee's consideration.

At this point in time, I will invite the clerk to distribute it so that everyone has access to it in writing. Bear in mind, of course, that I am giving notice of this motion.

The motion I wish to give notice of reads, “Given that, according to a National Post article published on April 17, a York University faculty committee has presented a list of anti-Semitic recommendations that include labelling the support of Israel as 'anti-Palestinian racism', classifying anyone who supports Israel as 'anti-Palestinian, Islamophobic and anti-Arab', granting academic freedom and free speech to pro-Palestinian students while revoking these same rights from Jewish students and anyone supportive of Israel, and identifying Zionism as 'a settler colonial project and ethno-religious ideology' that should be isolated and destroyed, and given that the Government of Canada has committed to the Canada anti-racism strategy; and that the Minister of Canadian Heritage is responsible for 'fostering and promoting Canadian identity and values, cultural development, and heritage', and that the 2024 Canadian universities anti-Semitism report highlights the serious problems that our universities have with anti-Semitism, anti-Zionism and anti-Jewish hate, the committee unequivocally condemn the anti-Semitic conduct of this faculty committee at York University and report this to the House.”

Chair, I have given notice of this motion, but I believe it is so important. I would imagine that all around this table agree that anti-Semitism is wrong and that this type of vile conduct should be condemned in the most serious terms.

Given that we should share this commonality, I seek unanimous consent to consider this motion moved and adopted.

The Vice-Chair (Mr. Kevin Waugh): Do I have unanimous consent from the Liberals?

Mr. Marc Serré (Nickel Belt, Lib.): No.

The Vice-Chair (Mr. Kevin Waugh): Do I have unanimous consent from the Bloc?

[*Translation*]

Mr. Martin Champoux (Drummond, BQ): Mr. Chair, I believe there's no unanimous consent from the moment one party says no.

[*English*]

The Vice-Chair (Mr. Kevin Waugh): No. It would be a dilatory motion. I don't believe there's a debate on this. Give me a second.

All I was asking here, Mr. Champoux, was for unanimous consent. The Liberals didn't give it to me. What about the Bloc? Would you?

[*Translation*]

Mr. Martin Champoux: I need some clarification, Mr. Chair.

If someone requests the committee's unanimous consent and one member doesn't agree, I don't see why every party has to comment on that request.

I'd like to get some clarification from the clerk on this, if she's willing.

[*English*]

The Vice-Chair (Mr. Kevin Waugh): Okay. The Liberals haven't granted it. Thank you for that. We'll move on—

Mr. Michael Coteau (Don Valley East, Lib.): I have a point of order.

The Vice-Chair (Mr. Kevin Waugh): Just hold on, Mr. Coteau.

We'll stop the clock at 1:40. We had the clock going, Ms. Thomas. We did not stop it during your motion.

Go ahead, Mr. Coteau, and then Ms. Ashton.

Mr. Michael Coteau: Chair, anyone could have said no. It could have been from any single party, but you chose to go through each group. It seemed like it was intentional.

The Vice-Chair (Mr. Kevin Waugh): Well, that's your interpretation; it wasn't mine. I don't sit here, as you know—

Mr. Michael Coteau: I've never seen that done before, and you've isolated it now.

The Vice-Chair (Mr. Kevin Waugh): Yes. Ms. Ashton—

Mr. Michael Coteau: On a point of order, is that the proper process? Is that the proper process that you used? I would like you to comment.

● (1545)

The Vice-Chair (Mr. Kevin Waugh): Well, I guess I didn't use the proper process, then. I did not know that—

Mr. Michael Coteau: Okay. As long as you acknowledge it—

The Vice-Chair (Mr. Kevin Waugh): Yes. I just did.

Mr. Michael Coteau: It seemed very intentional.

The Vice-Chair (Mr. Kevin Waugh): No, it wasn't intentional, Mr. Coteau.

Go ahead, Ms. Ashton. Your hand is up.

Ms. Niki Ashton (Churchill—Keewatinook Aski, NDP): First off, I just want to clarify that I also don't support going forward with this. I'm concerned that we're going by anything that the National Post is writing, frankly, and I think this merits a broader discussion.

I am also disappointed that the Conservatives are interrupting a study on the Court Challenges Program, a program they cut when they were in power, to talk about this, so let's get back to the meeting today.

The Vice-Chair (Mr. Kevin Waugh): Thank you, Ms. Ashton, and we will.

Ms. Thomas, you have one minute and 40 seconds remaining on your six-minute round. Thank you.

Mrs. Rachael Thomas: Thank you, Chair.

I would just remind the honourable member that the six minutes are mine, and I can use them as I wish.

This was a really important motion that I brought forward today, and I am confused as to why the Liberals wouldn't grant unanimous consent when we have evidence there is anti-Semitic rhetoric and conduct taking place on university campuses across this country. The Liberal government has signed off on, and committed to, a Canada anti-racism strategy, and it is incumbent upon the Minister of Canadian Heritage to abide by her mandate, which is to foster and promote Canadian identity and values, cultural development and heritage. I would certainly hope that anti-Semitism does not belong within the definition of that.

There was an opportunity here today for us all to agree to something that seems quite collaborative in nature. All of us should agree that it is wrong to perpetuate hate toward the Jewish community in Canada, and I'm confused and grieved, actually, by the fact that I wasn't given unanimous consent to move that motion forward today.

That's me, but further to that, I'm concerned about the Jewish community and I'm concerned about how the current government that's in power treats that community. I'll leave it there for now.

The Vice-Chair (Mr. Kevin Waugh): You still have 30 seconds, if you wish.

Mrs. Rachael Thomas: Mr. McKinnon, I would be curious as to your purpose in moving this bill.

Mr. Ron McKinnon: As I mentioned in my remarks, one of the recommendations of our "Access to Justice" study on the 42nd Parliament justice committee was to make the Court Challenges Program permanent and to be enshrined in law, and that's precisely what this—

The Vice-Chair (Mr. Kevin Waugh): Thank you.

We move to the Liberals now.

Ms. Gainey, you have a total of six minutes.

Ms. Anna Gainey (Notre-Dame-de-Grâce—Westmount, Lib.): Thank you, Mr. Chair.

[*Translation*]

Thanks to Mr. McKinnon for his presentation.

Mr. McKinnon, I also want to thank you for the leadership you've shown in introducing Bill C-316. It's a testament to your commitment to human rights. As you know, this week marks the 42nd anniversary of the Canadian Charter of Rights and Freedoms.

[*English*]

This is a timely discussion. Thank you, Ron, for being here today.

Perhaps you could start by sharing with us a little about the stakeholders you worked with in drafting this legislation and by sharing some stories they shared with you about the importance of this program.

Mr. Ron McKinnon: I would have to say that mainly we relied on the report of the justice committee from the 42nd Parliament and on the experience we had with witnesses on that committee as well. The Charter of Rights and Freedoms is an essential part of our democracy, of our Constitution. Not having these constraints on government action built in puts our democracy at risk, and we certainly recognize that. I certainly recognize that, and I didn't talk to a lot of external stakeholders about this beyond that point.

Ms. Anna Gainey: I know that in your home province of B.C. there's a very vibrant francophone community. How does that part of your province feel about this legislation? Would you speak a bit more about its roots there?

Mr. Ron McKinnon: I certainly have heard no dissenting voices around this bill. The francophone communities in my neighbourhood are very strong and vital, and they certainly recognize the value of the official bilingual program and the ability of small groups like themselves to take action to preserve their rights as necessary.

In my community, not too far from where I live, in fact, there is a school devoted to francophone students, mainly from francophone families. We put our own children in French immersion from grade 1 onward, and they emerged fully bilingual. While I struggle with the language—and I can read, too, a little bit, to the painful ears of francophones—they are fluently bilingual. I see this across the country as a consequence of official bilingualism.

In Red Deer, where I grew up, you'd almost never hear French, but now wherever I am in Alberta, such as Calgary, or even in British Columbia, I can walk on the street or go into a restaurant and occasionally catch a snippet of French. It shows that the language is thriving and alive across the country, and I think that's in large measure due to the official bilingualism program. That is supported and sustained by measures such as the Court Challenges Program.

● (1550)

Ms. Anna Gainey: I agree with you wholeheartedly. I have family as well in the interior, in Kamloops, with nieces and nephews at a French school there. Their capacity in French is really remarkable and wonderful to see when we visit. When they visit Montreal, it's wonderful to see their ability to participate here in French as well.

Could you share with us about the cuts to this program that took place under the Harper government and the impact they had on the Court Challenges Program?

Mr. Ron McKinnon: As I recall, a comment made by then prime minister Harper at the time asked why we would pay for people to sue us. I think that is a problematic perspective. It's the wrong question. I think about it differently. The cost of justice can be prohibitively expensive, so justice should not be decided by who has the most money. It's a significant public good that the constitutional rights of Canadians be protected, whether or not they have money.

That's the point of the Court Challenges Program. People who are well-heeled and affluent can take matters to court on their own dime, but people who are less well off need their rights to be protected as well. They can make application to the Court Challenges Program to help them fund their initiative. If it's seen by the panellists who administer this program to be of sufficient public value, they will arguably get funded. That means that justice is available to people of all walks of life at all economic levels.

Ms. Anna Gainey: I agree with you. It's been a very important tool to protect rights.

Our government, I believe, doubled the budget for this program in 2023, and the support, I think, has been important and meaningful from that point of view.

What is the message that you want to leave for this committee about the importance of this bill being passed?

Mr. Ron McKinnon: I think it sends a strong message that we care about individual rights and about the rights of liberty, freedom of conscience and so forth. It means that we will continue, irrespective of the government of the day, to be able to support people who need access to justice.

Ms. Anna Gainey: Very good. Thanks very much.

I have no further questions.

The Vice-Chair (Mr. Kevin Waugh): Thank you, Ms. Gainey. You were right on the six minutes.

We'll move to the Bloc with Mr. Champoux, please.

[*Translation*]

Mr. Martin Champoux: Thank you, Mr. Chair.

Thank you, Mr. McKinnon, for being with us to discuss your Bill C-316.

I always find it interesting to hear people say how vital and vigorous bilingualism is across Canada based solely on examples involving their friends and families. I know two Swedes who speak pretty good French, so I think Sweden's a great example of a country where French is flourishing. That's roughly the same kind of example.

You talk about British Columbia, where you increasingly hear French being spoken. I've been to Vancouver many times and haven't heard a lot of French, but you're right: there may be more and more of it. Restaurant operators, business people and others go there and do contribute somewhat to the French fact, which is disappearing at an accelerating pace. Even in the streets of Montreal, you increasingly hear people say they find it hard get served in French. My MP colleagues from Montreal Island would be in very bad faith if they denied that.

When you prepared your Bill C-316, in which you seem to be very interested, which is all to your credit, did you consult many Quebec groups about their expectations and concerns regarding this program?

● (1555)

[*English*]

Mr. Ron McKinnon: No, I have not.

[*Translation*]

Mr. Martin Champoux: No? You really surprise me. Do you mean that one of the regions of Canada where this program is most used and most sought after—

[*English*]

The Vice-Chair (Mr. Kevin Waugh): Hold on, Mr. Champoux. We're not getting translation in English here for some reason.

[*Translation*]

Mr. Martin Champoux: Is the interpretation back?

[*English*]

The Vice-Chair (Mr. Kevin Waugh): Go ahead, Mr. Champoux. I'm sorry.

[*Translation*]

Mr. Martin Champoux: Mr. McKinnon, I was surprised by your answer that you hadn't consulted any groups in Quebec, because that's probably where the court challenges program is most used and, in many instances, against the statutes and regulations enacted by the Quebec government, or rather the National Assembly of Quebec. I'm surprised you didn't see fit to consult Quebec groups to see what impact the program might be having on them.

[*English*]

Mr. Ron McKinnon: Well, as I mentioned earlier, I was motivated mostly by the outcome of the report of the Standing Committee on Justice and Human Rights in the 42nd Parliament, at which time we did hear from many stakeholders from across the country.

I don't believe that this contradicts anything in the national legislature of Quebec. It would merely provide funding for people who have a case to bring their case before the courts to protect their rights if the court challenges administrators felt it was of sufficient public interest.

It does not change the law around official languages; it merely means that people who feel that their rights have been abridged in some way will have some recourse to take that up before the court, irrespective of whether they have the personal funds to do so, and I think that's critically important for justice. Justice should not depend on whether or not you have enough money.

[*Translation*]

Mr. Martin Champoux: I wasn't trying to pull your leg; let me reassure you on that score. I just wanted to say and explain to you that consulting could be useful in some future time and place. Bill C-354, which was sponsored by my colleague Mario Beaulieu, the member for La Pointe-de-l'Île, is a bill that concerns the Canadian Radio-television and Telecommunications Commission and that will eventually land here, on the table of this committee. In developing that bill, we considered francophone communities outside Quebec because it concerns them. We asked them questions. I think that's a habit that should be cultivated when something specifically concerns Quebec, where there's a lively bilingual culture. I think it would be appropriate to consult those groups. It's not that we're opposed to this bill—on the contrary—but I have a quick question that I could ask you about Bill C-316.

Do you think anyone has considered the idea of providing greater transparency so, for example, we can get access to information on applications to the court challenges program and applicants who are funded by it? Do you think it would be in the public interest to disclose funding amounts granted to different groups in various cases?

[*English*]

Mr. Ron McKinnon: Thank you for the question.

I don't know that they're not available. I believe the work of the various advisory committees is available. I haven't checked that myself.

I should point out that this bill does not create the Court Challenges Program. It does not add to its scope of action and it does not reduce it. Really, the whole point of the bill is to make it harder to get rid of it. If some future government decides that we don't want people to be able to take us to court, then they have to change the law to change it back. For me to expand the nature of the Court Challenges Program, to expand it or change it officially, would probably result in more expenses, and it is not possible to undertake that in a private member's bill without getting a royal recommendation.

Also, from my experience in this place, I understand that if you try to do too much in a private member's bill, you're most likely not going to succeed. The best thing to do is to take small bites that you can swallow and not choke on.

● (1600)

[*Translation*]

Mr. Martin Champoux: I understand from what you say is that you're open to certain amendments, even if the decision in that regard is made by the committee.

In closing, I'd like to know if you think that, to qualify under a court challenges program such as the one made available to Quebeckers and Canadians, applicants should be required to prove that they don't have the necessary financial resources to bear the cost of the court cases they undertake.

Should that funding be reserved for organizations whose financial resources are too limited for them to go to court?

[*English*]

The Vice-Chair (Mr. Kevin Waugh): Give a quick answer, please.

Mr. Ron McKinnon: I believe it's up to the advisory body to decide that. They know the funding they have available and they know how to allocate it, and they make the decision on whether a given case is of sufficient public import and whether the people bringing the case have the need of their support.

I have—

The Vice-Chair (Mr. Kevin Waugh): Thank you. We're going to move on. We're way over time here.

We'll go to the NDP and Ms. Ashton for six minutes, please.

Ms. Niki Ashton: Thank you very much.

Thank you very much, Mr. McKinnon, for presenting this private member's bill to us today.

For linguistic minorities, for women and for indigenous people, the Court Challenges Program matters. Its objective is to provide financial support to Canadians to bring before the courts test cases of national significance that aim to clarify and to assert certain constitutional and quasi-constitutional official language rights and human rights.

Over its nearly 30-year history, from 1978 to 2006, the program funded more than 500 cases and interventions. These included a landmark ruling affirming sexual orientation as protected from discrimination, ruling out the defence of implied consent in sexual assault cases and confirming Métis and non-status rights as constitutionally protected.

It's also a program constantly under threat, whether it's by Liberals due to a lack of funding or by Conservatives who have twice cut the Court Challenges Program completely—once under Mulroney, who originally expanded it but then decided to withdraw financial support, and then again under Harper in 2006. Conservatives clearly like their challenges underfunded and under-resourced.

Multiple committees, civil society and others have recommended that the government enshrine the Court Challenges Program in legislation in order to enhance its sustainability and to ensure any cancellation would require the approval of Parliament.

Are you, Mr. McKinnon, worried that a future Conservative government would cancel a court challenges program, absent this legislation?

Mr. Ron McKinnon: Yes, absolutely.

Ms. Niki Ashton: Great.

Would you like to expand on that, based on the work you did previously in committee, or would you like to share some more thoughts?

Mr. Ron McKinnon: I was quite thrilled by your comments. I'd like to subscribe to everything you said. I certainly agree with you 100%.

This is an important program. The Charter of Rights and Freedoms has to be more than a certificate on the wall; it has to be something we can test things on in real life. It is said that all roofs don't leak when it's not raining. If you want to find out if the roof is worth its while, you have to see what happens when it rains. It's the same with rights. If we can't test them against the law, if we can't bring a case of what we believe to be wrongdoing before a court to have it tested and measured, the law means nothing.

We have to make access to justice and access to protection of our rights available to everyone, particularly everyone with lower means, so that their rights are protected. People who are wealthy can afford to fund their own measures, but people who have less means are not as able to do so, and they need help. That's the real purpose of the Court Challenges Program.

Ms. Niki Ashton: Thank you very much for that.

Since the Court Challenges Program was reinstated in 2017, 107 court cases related to official languages have been funded by the program. As the official languages critic for the NDP and as someone who played a significant role in passing Bill C-13, the modernization of official languages bill, which involved enshrining funding for the official languages rights and human rights branches of the Court Challenges Program, I recognize how important this work is.

The federal government doesn't always get it right, though, and even with the changes made to the Official Languages Act, we know that more challenges will occur. The official languages branch of the Court Challenges Program currently uses one-quarter of its total spending. Are you satisfied with this number? Where do you think it should be? Should it be increased and, if so, by how much? What are your thoughts?

● (1605)

Mr. Ron McKinnon: I don't have a specific number. If it's only using a quarter of its capacity, I'm wondering if they're not getting the cases that they feel are worthwhile or whether they're reserving funds for longer-term cases that might have to go all the way up to the Supreme Court. I don't know, but I certainly think it's important.

It behooves us as a government and it behooves Parliament to make sure that programs like this, and particularly this program, are well funded and that the mandates of the advisory committees are sufficient to do so.

I would like to see the scope of the Court Challenges Program enlarged beyond what it is. That's certainly not within the scope of a private member's bill, and it would require a royal recommendation. Taking too big a bite is often a mistake in private members' bills, so I'm looking just to make the thing permanent so that it's going to be difficult—not impossible, but certainly very difficult—for future governments of whatever description to get rid of it.

Ms. Niki Ashton: Okay. Thank you for that.

Mr. Chair, how much time do I have?

The Vice-Chair (Mr. Kevin Waugh): You have one minute and 47 seconds.

Ms. Niki Ashton: Speaking of expanding, we know that advocates like Cindy Blackstock, who is well versed on taking your government to court, and more broadly the federal government, has been clear that this legislation doesn't go far enough, particularly in terms of indigenous women's rights.

If we recognize that indigenous peoples, persons with disabilities and women face unique challenges in this country in terms of their rights and that the Court Challenges Program, even with this legislation, won't meet those needs, why not expand it?

Mr. Ron McKinnon: I am totally in favour of expanding it; it's just not within the scope of this bill, nor did I believe that it would be in the appropriate scope of action for a private member's bill. I think we have to take baby steps to move this along, certainly in a private member's context. Let's get this permanent, and then maybe we can add some body to it the next time around.

The Vice-Chair (Mr. Kevin Waugh): Thank you, Mr. McKinnon.

Thank you, Ms. Ashton.

Mr. McKinnon, we're getting a little interference from your mic, so can you mute it when you're not speaking, and then, when you're asked a question, turn it back on? We're getting a little bit of interference when other people are asking questions. If you would be diligent about that, it would be appreciated for the officials here.

Mr. Ron McKinnon: I admit the error of my ways. I shall try to correct them.

The Vice-Chair (Mr. Kevin Waugh): Oh, that's fine.

This is the second round. It is a five-minute round.

We have Mrs. Thomas for the Conservatives.

Mrs. Rachael Thomas: Mr. McKinnon, I'm wondering if there is anything in this bill that would require the program to report to the heritage department and to Parliament which cases were funded and at what level the financial support was given.

Mr. Ron McKinnon: No. The goal of this piece of legislation is simply to make it permanent. It essentially changes a word from "may" to "shall" in terms of whether it should be funded.

Mrs. Rachael Thomas: Mr. McKinnon, there are public dollars being used for this program. It does say that cases are supposed to be selected according to the national interest. In your view, should there not therefore be some transparency around that?

Mr. Ron McKinnon: I'm all in favour of transparency, but that's really a factor of the Court Challenges Program itself. This bill is intended just to make the Court Challenges Program permanent, not to fundamentally alter the program.

Having said that, I think the more transparency we can achieve in this situation, the better, and certainly more funding and whatnot as well. I'd be quite happy to do that, but I just don't think it's within the scope of action of a private member's bill.

Mrs. Rachael Thomas: If an amendment was brought forward calling for greater transparency around the selection of cases and the dollars attributed to those cases, would you be in favour of that?

Mr. Ron McKinnon: As I said, I agree with those things, but I don't know if that would be possible, because it would change the fundamental purpose of the bill that was referred by the House.

However, I certainly wouldn't oppose it myself. That's really a matter for the committee to decide.

Mrs. Rachael Thomas: This bill also doesn't specify the process by which the directors and officers who administer this program are appointed. I also see an opportunity to do that in this bill.

Why wasn't that pursued?

● (1610)

Mr. Ron McKinnon: That is because other aspects of the Court Challenges Program itself, like how it's set up, how it's administered and how it's funded, are totally different and separate from what I'm trying to do here. All I'm trying to do here is make it so that the program's funding is carried on permanently.

Mrs. Rachael Thomas: Again, would you be in favour of an amendment being brought forward to create some transparency around the process for how the directors and officers administering this program are selected?

Mr. Ron McKinnon: Personally, I wouldn't oppose that. I think it's a matter for the committee to decide.

I would suggest that the legislative clerk may need to be consulted to determine whether such amendments would be within the scope of this bill.

Mrs. Rachael Thomas: Further to that, I note as well that there was an opportunity in this bill to specify the governance structure, and that wasn't done. If an amendment were brought forward with regard to the governance structure, is that something that you would support?

Mr. Ron McKinnon: I wouldn't oppose it, but I think it would be beyond the scope of the bill. I think you'd have to consult with the legislative clerk to see whether it's possible.

Again, the purpose of this particular bill is merely to make the Court Challenges Program permanent, not to fundamentally change how it operates.

Mrs. Rachael Thomas: I understand the bill covers the Court Challenges Program, and of course anything having to do with the Court Challenges Program and the existing legislation would be within scope. It would be a matter of doing the work to make those amendments or changes, and I would be happy to put forward some of those proposals.

In the last 12 to 14 months, there have been revelations about the Trudeau Foundation and its foreign financing. I'm curious whether there is anything in this bill that would prevent the Court Challenges Program from receiving private dollars similar to the way the Trudeau Foundation did.

Is there anything that would prevent that?

Mr. Ron McKinnon: That has absolutely nothing to do with this bill.

The legislation that created the Court Challenges Program and the administrative aspects of it are totally apart and separate from this bill.

The Vice-Chair (Mr. Kevin Waugh): You have 30 seconds.

Mrs. Rachael Thomas: I'm sorry, but how does that have nothing to do with this bill? This bill describes what the Court Challenges Program is.

Mr. Ron McKinnon: This bill does not create the Court Challenges Program and it does not change its nature. It neither changes the way the boards are set up nor changes their marching orders. It merely says that the government “shall” fund it, not that it “may” fund it.

The Vice-Chair (Mr. Kevin Waugh): Ms. Thomas, your five minutes are up. Thank you very much.

We'll now go to the Liberals.

I believe this is the first time Mr. Serré has been in the heritage committee.

Welcome. You have five minutes.

[*Translation*]

Mr. Marc Serré: Thank you, Mr. Chair.

Welcome to the committee, Mr. McKinnon. I'm privileged to be here today.

Mr. McKinnon, I want to thank you for introducing this bill. You said that a private member's bill shouldn't include provisions for the disbursement of public funds; that's done in accordance with the procedure and Standing Orders of the House of Commons.

Mr. McKinnon, you mentioned that your bill concerned only a small part of…. I disagree with you: Your bill is very important. It's very important that the court challenges program be made permanent. As you noted, Conservative governments cancelled the program twice. Consequently, it's very important that it be made permanent, and many thanks to you for the work you've done through this bill.

I also want to thank you for the contribution you made, with other colleagues and me, to Bill C-13, which helped to modernize the Official Languages Act. You supported the bill together with 300 other members of the House of Commons. All the parties voted for the bill, which wasn't that hard to do. I thank you for the work you've done.

As you know, Montfort Hospital in Ontario is still open thanks to the court challenges program. Ontario's Conservative government had cut off funding for the program and wanted to abolish it. The program made it possible to preserve Montfort Hospital, which provides services to Ontario francophones. Thank you for your bill.

Here's my first question. We're obviously talking about the official languages situation across Canada, and that's important, but you also mentioned persons with special needs. Would you please tell us more about the fact that this bill will also protect the rights of special needs individuals? You are also a major human rights advocate.

● (1615)

[*English*]

Mr. Ron McKinnon: That's a really big question.

Fundamentally, whatever people's situation in life is—whether it's a matter of disability, gender issues or whatever—when they feel their ability to succeed has been impacted by government action or decisions that impact their rights as identified in the charter, there needs to be a way for them to bring those concerns forward to an appropriate judicial body or organization that can adjudicate their concerns, decide whether or not they have a leg to stand on, if you will, and to propose some action to be taken within the context of whatever that body is. This is essential.

As I said, if we can't test things against the charter, the charter is meaningless. It is an incredibly important aspect of our judicial system and our whole legal system. The charter is fundamental, and it is basically what we have to rely on to keep our different governments in line to be able to protect our rights.

Some of the opposition members may not appreciate that sometimes the government of the day doesn't get it right. There needs to be a way to test whatever action the government has taken if you feel that it's contrary to your best interests. You might be wrong, but unless you have a chance to test it, you don't know.

If it's a matter of significant public import because the decision that is made in this case will have application across the country, it is really in the public interest that we support a means for these decisions to be examined and executed.

[*Translation*]

Mr. Marc Serré: Thank you, Mr. McKinnon.

The British Columbia parents associations that supported Bill C-13 and the court challenges program obviously thank you for your work.

What final message would you like to send to the committee about how important it is to pass this bill? Please answer briefly because I think my speaking time is almost up.

[*English*]

The Vice-Chair (Mr. Kevin Waugh): Answer quickly.

Mr. Ron McKinnon: It's critically important. It supports one of the fundamental building blocks of our country. The Charter of Rights and Freedoms is an essential element of our constitution and an essential element of our judicial system. It's also an essential element that constrains governments in particular.

The Vice-Chair (Mr. Kevin Waugh): We're over time. Thank you very much.

We'll move to the Bloc for two and a half minutes.

Go ahead, Mr. Champoux, please.

[*Translation*]

Mr. Martin Champoux: Thank you, Mr. Chair.

Mr. McKinnon, do you believe Quebec is a nation whose values are or may be different in many respects from those of the Canadian provinces, and from the rest of Canada? Do you believe that's a fact?

[*English*]

Mr. Ron McKinnon: I believe that every province has unique concerns, unique problems and a unique culture.

[*Translation*]

Mr. Martin Champoux: That's not the question.

Mr. McKinnon, is Quebec a nation? Quebec has values that are different from those of the rest of Canada.

[*English*]

Mr. Ron McKinnon: I'm not going to weigh in on that question.

[*Translation*]

Mr. Martin Champoux: But my question is quite important, Mr. McKinnon.

We have nothing against the court challenges program, but when we talk about it, we don't seem to draw a distinction, and that's a matter of acknowledging the values that are specific to Quebec.

This program is often used to challenge statutes that have been democratically passed by the National Assembly of Quebec and are entirely legitimate. But don't get me wrong: That's not a reason for us to oppose the program, but we're calling for transparency.

Earlier I asked if you would consider it appropriate to grant public funding to organizations that have significant financial resources and can afford the cost of a court challenge.

Do you think those organizations should be able to use the program?

● (1620)

[*English*]

Mr. Ron McKinnon: I rely on the advisory bodies that administer the program to make those decisions.

I see Quebec as an isolated francophone island in a sea of English, particularly with a dominant culture such as the United States, Hollywood and all kinds of stuff going on.

Quebec in particular needs programs like this so that it can preserve its linguistic rights and culture. The fact that this applies not only in Quebec but right across the entire country is important in that context. It further strengthens Quebec's situation and uniqueness in the Confederation.

[*Translation*]

Mr. Martin Champoux: That's quite curious because not a lot of francophone groups use the program to challenge statutes in Quebec, but we see a lot of anglophone groups doing it.

I'm going to stop there, Mr. McKinnon, because I think you've done a good job of presenting your bill. I beg your pardon if my questions were at times a bit aggressive, but I can see you were able to handle them.

Thank you.

[*English*]

The Vice-Chair (Mr. Kevin Waugh): Thank you, Mr. Champoux.

I've been intense here too at times.

Ms. Ashton, you have two and a half minutes.

Ms. Niki Ashton: Mr. McKinnon, the Department of Canadian Heritage funds the Court Challenges Program 100% through a contribution agreement. Its funding is divided between two branches—human rights and official languages rights.

Budget 2023 announced an additional $24.5 million over five years, which is double the funding for the Court Challenges Program.

However, every year there are a number of worthy applicants that aren't funded. It's not because they don't qualify, but because the program is underfunded, nor is this funding stable. Even with this legislation, there is a possibility that a future government could underfund the program and deny people access to the justice that they deserve.

Why enshrine the Court Challenges Program without requiring adequate funding?

Mr. Ron McKinnon: I don't believe that a private member's bill can speak too much to ensuring adequate funding. Absent a royal recommendation, we can't do anything that results in an increase in the funding.

This bill would not be possible if the Court Challenges Program was not already up and running. It's up and running already, but the choice of making funding permanent versus ad hoc, as it is currently, would require a royal recommendation.

I'm perfectly happy if we see more funding for it to expand its powers, absolutely, but I think that has to be done through a different mechanism.

I'd be happy to support recommendations to the Minister of Finance to fund it further and for the appropriate bodies to enhance legislation as might be appropriate for them.

Ms. Niki Ashton: Thank you for sharing that.

Mr. McKinnon, you drafted a bill to enshrine the Court Challenges Program under law, but it's not lost on me how many times the federal government has fought first nations in court, first nations that are defending their rights. It seems that change for first nations, when it comes to the federal government, often only comes when it is ordered in court.

The Liberals fought first nations residential school survivors, children who were kidnapped from their homes and forced into residential schools where they were abused irreparably. They fought first nations children who didn't get the education funding that they deserved. They fought first nations, including Tataskweyak Cree Nation here in my constituency, that didn't have access to clean drinking water.

In your defence of rights, would you agree that the federal government should not be spending the millions of dollars it is in fighting first nations in court that are simply defending their fundamental rights?

The Vice-Chair (Mr. Kevin Waugh): Thank you, Ms. Ashton.

We have to move on. I have two more rounds before our first hour is done.

We'll go to the Conservatives. Mr. Gourde, you have five minutes.

[*Translation*]

Mr. Jacques Gourde (Lévis—Lotbinière, CPC): Thank you, Mr. Chair.

Thanks to my colleague Mr. McKinnon for being here today.

Mr. McKinnon, the court challenges program seems to be relatively unique in the world. Do you know of any other countries that have a similar program?

● (1625)

[*English*]

Mr. Ron McKinnon: No, I don't.

[*Translation*]

Mr. Jacques Gourde: I think that's the right answer. I did some research and discovered that no other country in the world has taken any inspiration from the court challenges program. I don't know if that's because we're unique or more intelligent than other people, or if it's because we're different from everyone else in the world. Who knows? Sometimes reality is stranger than fiction.

Speaking of political fiction, could the federal government use the program if it wanted to challenge a provincial statute but didn't want to do it directly? It could use an organization from a province to challenge the law of that same province, and that challenge would be funded by the federal government.

Is that possible?

[*English*]

Mr. Ron McKinnon: That speaks of some deeper convoluted conspiracy. I don't believe that's an appropriate use of the Court Challenges Program. I think that if the federal government wants to take on a province, they'll do it head-on.

This is really for individuals who need to protect themselves from the action of government, whether that government is federal or provincial or even municipal.

[*Translation*]

Mr. Jacques Gourde: Thank you for your answer.

Canada is the only country that funds organizations so they can sue their own government. Is that true?

[*English*]

Mr. Ron McKinnon: I wouldn't construe this as suing the government, frankly: It's really about taking your problems to a court and having your rights adjudicated.

Thinking about this as suing the government is kind of where Mr. Harper came from, back in the day. I think it's wrong. I think that we have to look at this as a way of supporting and maintaining the essence of the Charter of Rights and Freedoms, which is really a key to our democracy. It behooves the government, and is in the best interests of the government, to honour and respect the Charter of Rights and Freedoms, and if the government gets it wrong at any point, we should know about it and they should know about it, and we should be able to take corrective action.

[*Translation*]

Mr. Jacques Gourde: Under your bill, it would be possible for a third party to select cases that would be funded, but the selection criteria are still unclear.

Could the third-party organization inform us about the selection criteria? Could it also tell us in its annual report how many cases were approved or denied and the reasons why they were denied?

[*English*]

Mr. Ron McKinnon: That would be good information to know. I think it's beyond the scope of this bill. That's really more fundamental to the Court Challenges Program itself and not with respect to whether or not it's permanent or temporary. I would be fully supportive of any measure that could increase the transparency of the program.

At the moment, we do rely on experts who operate independently and decide whether a given case is of sufficient public import and whether the person who is bringing it forward is an appropriate litigant to bring it forward.

[*Translation*]

Mr. Jacques Gourde: In the long term, do you think the program will require far greater financial resources than is now the case? I'm thinking here of inflation and the number of cases, which may increase. There's also the fact that we want applicants to be treated with some degree of fairness.

Do you think costs will double or triple?

[*English*]

Mr. Ron McKinnon: I think that everything costs more all the time, of course. As you mentioned, we have inflation and all kinds of things like that going on.

It's really for the Minister of Finance to determine what kind of funding goes to it. I would certainly encourage more funding than less funding so that all the cases that need to be dealt with can be dealt with.

The Court Challenges Program does not—

● (1630)

The Vice-Chair (Mr. Kevin Waugh): Thank you. We'll move on.

Thank you, Mr. Gourde.

In the second round here, our final MP is Mr. Housefather.

Welcome back. You have five minutes, please.

Mr. Anthony Housefather (Mount Royal, Lib.): I'm going to start by simply saying that I agree with Ms. Thomas's motion. I believe that anti-Semitism is a very important issue and I regret that we weren't able to discuss that motion today.

I will now turn to Mr. McKinnon, because the Court Challenges Program is absolutely one of the most fundamentally important programs that exist in this country. I think it helps minority language groups, including francophones outside Quebec, English speakers inside Quebec, racial minority groups and others seeking equality rights. It's absolutely fundamental. I congratulate Mr. McKinnon on bringing forward this very important bill.

Mr. McKinnon, do you want to go through the reasons that you think it's important to legislate that only the House of Commons, by a vote, can remove the Court Challenges Program, versus simply allowing governments to arbitrarily do so? What in the history of the Court Challenges Program has led you to this conclusion?

Mr. Ron McKinnon: First of all, I want to acknowledge that Anthony was the chair of the justice committee in which we did that report. I worked with Anthony for four years on that committee. It's good to see you back.

As was mentioned, we saw that both Mr. Mulroney and Mr. Harper cancelled it. I think it's sometimes a case of mistaken priorities. If people think of it as “why should we pay to have people sue us?”, then it's a problem. If we think of it as “why should we pay to support, to advance and to strengthen our democracy?”, then it's not an issue.

It's to make it less of a whim: “Why should we pay for people to sue us? Let's just cancel it.” Make it something that has to be more deliberative. It has to go before the House to be argued and to be debated. It's not going to be a whimsical change; it's going to be a deliberate and a much more difficult thing to change.

As Mr. Housefather mentioned, I think this is a fundamentally important aspect of our democracy. We have to do whatever we can to strengthen it, to maintain it, and when and wherever it's possible, to expand it.

Mr. Anthony Housefather: Thank you, Mr. McKinnon. I agree with you.

I think one thing we sometimes forget is that we're not only a democracy; we're also a country that has a constitution and a charter of rights. The charter of rights means that despite the democratic will of the majority sometimes, the rights of the minority need to be protected.

That's exactly the reason that we want groups seeking language rights and equality rights to have the option of having the funds to challenge government laws that contravene those rights. Sometimes the minority needs tools to take on the whim or the will of the majority. This is exactly what your bill does. Is that not true, Mr. McKinnon?

Mr. Ron McKinnon: Absolutely. Certainly the Charter of Rights and Freedoms is a check on the will of the majority. It prevents the will of the majority from becoming a tyranny. That much power, to have merely a majority decision decide everything that can possibly be, is a mistake. We have to constrain those powers in well-defined, just ways so that the power of the democracy can be wielded effectively and properly.

Mr. Anthony Housefather: Thank you so much.

[*Translation*]

Lastly, Mr. McKinnon, I'd like to address the topic of Quebec, which my colleague Mr. Champoux also discussed. I think the court challenges program applies to all provinces, not just Quebec. For example, if any government in the country passes legislation that violates the Canadian Charter of Rights and Freedoms—I would note that we also have the Quebec charter of rights and freedoms—the government is required to fund groups that want to defend their rights in the courts.

Is it accurate to say that this program applies to all the provinces, including Quebec?

● (1635)

[*English*]

Mr. Ron McKinnon: I would say yes, absolutely.

If a government is fearful of the Court Challenges Program because its programs might be challenged, I think they need to look much harder at those programs. They need to make sure that when they pass those programs, they are within the bounds that are defined and delineated by the Charter of Rights and Freedoms.

The Vice-Chair (Mr. Kevin Waugh): Thank you, Mr. McKinnon.

Thank you, Mr. Housefather.

Mr. McKinnon, you're more than welcome here. This is your private member's bill. If you would like to stay around for hour or two, please do so.

We have department officials in the room. We'll take a short break, and they'll come to address us within the next three minutes. Then we'll start our second hour.

● (1635)

_____(Pause)_____

● (1635)

The Vice-Chair (Mr. Kevin Waugh): All right, everyone; we're ready for the Department of Canadian Heritage.

Thank you very much, Mr. McMurren, director general of strategic policy, planning and corporate affairs, along with Mr. Dendooven, assistant deputy minister, strategic policy, planning and corporate affairs, for being here.

I think, Mr. Dendooven, you have the opening statements for the committee here today. The floor is yours for the next five minutes.

[*Translation*]

Mr. David Dendooven (Assistant Deputy Minister, Strategic Policy, Planning and Corporate Affairs, Department of Canadian Heritage): Thank you very much, Mr. Chair.

[*English*]

Thank you for the invitation to provide information on the Court Challenges Program.

First, I recognize that we are gathered on the unceded traditional territory of the Algonquin Anishinabe people.

In my role as assistant deputy minister responsible for the strategic policy, planning and corporate affairs sector, I've been responsible for the Court Challenges Program for more than the past five years.

The University of Ottawa was selected as the independent organization to implement, administer and promote the Court Challenges Program in 2017. It is an arm's-length entity, independent of the government, and it was chosen through an open and transparent process. The university supports two expert panels that are responsible for making funding decisions for the program—official language rights and human rights expert panels—and each expert panel is composed of seven highly qualified members identified through a selection process managed by the Department of Canadian Heritage for possible appointments by ministers.

The Court Challenges Program was initially established in 1978 to enable people living in Canada, regardless of their means, to bring forward legal cases when they believed their fundamental rights had been violated. It also supported individuals and organizations in challenging laws and policies that were perceived as undermining Canada's fundamental rights and freedoms. Since its initial creation 46 years ago, the Court Challenges Program, through its various iterations, has funded and supported major court cases that have significantly shaped and impacted the evolution of jurisprudence in matters of official languages and human rights in Canada.

The Court Challenges Program has historically been, and continues to be, administered by a third party at arm's length from the government, to avoid any real or perceived conflict of interest on the part of the Government of Canada. The program has played an important role in ensuring access to justice and equality for all Canadians.

Moreover, the program has contributed to the protection of the human rights of all people in Canada, supported vulnerable and marginalized communities and helped minorities in defending their rights, consistently promoting justice and equity.

● (1640)

[*Translation*]

The court challenges program has also played a decisive role in supporting official language minority communities across Canada. By funding challenges of statutes and policies that may erode language legislation, the program helps preserve the vitality of those communities and sustain linguistic duality and diversity in Canada.

I want to emphasize that the court challenges program may not fund challenges to provincial or territorial human rights statutes, policies or practices. However, as has been the case since it was created, the program's official languages component may fund cases involving provincial and territorial governments because some constitutional language rights apply specifically to the provinces and territories.

Since it was restored in 2017, the program has funded 115 official language rights cases and 160 human rights cases. In the 2022–2023 year alone, experts granted funding for 74 cases, consisting of 33 official language rights and 41 human rights cases. Those proceedings mainly involved the language rights of official language minority communities, indigenous rights, the rights of the LGBTQ+ community, those of disabled persons and civil liberties.

The University of Ottawa publishes the data on those cases every year once the annual reports have been posted to the program's website.

The program carries out its mandate to promote equality, justice and human rights in Canada by funding and supporting these cases. Total funding for the program was increased in the 2023 budget. The resulting doubling of the federal budget over five years, as announced in the 2023 budget, will afford the program an additional $24.5 million until 2028. One third of annual funding is allocated for the clarification of language rights, and additional funding will enable the program to support more applications.

In conclusion, the program, since its inception, has produced meaningful results consistent with its mandate and objectives, and effective mechanisms are in place to maintain its integrity and proper functioning, including its independent operation.

Thank you for your attention, Mr. Chair. I will now be pleased to answer questions about the program.

[*English*]

The Vice-Chair (Mr. Kevin Waugh): Thank you very much, Mr. Dendooven.

I really appreciated the stats at the end. Thank you. You came prepared. You had 115 on language rights and 160 on human rights, and 74 cases. That helps everyone around the table here. You came with stats, which is most important as we move forward.

The first round of six minutes goes to the Conservatives. We'll have Mrs. Thomas for six minutes, please.

Mrs. Rachael Thomas: Thank you, and thank you to the officials for being here with us today as well.

My first question has to do with clause 2 of the bill, which doesn't clearly define the term “national significance”. I'm wondering if you can shed some light on that and help us understand what is meant by that term.

Mr. David Dendooven: Thank you very much, Mr. Chair, for the question. I will speak to the program as it currently exists.

When applicants apply for funding, they need to ensure on the application that it meets the test of being a case of national importance—for example, it's a question that a lower court has never addressed before in the past. In other cases, there might be contradictory judgments that have been rendered by the courts.

● (1645)

That gives you some sense of "national importance" in terms of some of the criteria that are addressed.

Mrs. Rachael Thomas: I'm sorry, Mr. Dendooven, but I don't know that it does. I actually think that was quite grey.

Essentially, what I'm walking away with is that it's really up to the administrative body to determine whether a case will be heard. It's really up to them. They're using their own made-up criteria to determine which cases fit this definition of "national significance".

You used the term in your definition. You said that national significance means something of "national importance." Is there a list? Is there a checklist they can go through? Are there specific criteria they're looking at in order to determine if something is, in fact, of national significance, or is that just up to the administrative body to determine on their own?

Mr. David Dendooven: There is an MOU between the government and the University of Ottawa, and it goes through the criteria that need to be addressed when they apply for funding.

Mrs. Rachael Thomas: I'll just clarify, then, that there's a list that you're saying they can go through when they apply for funding. Interestingly enough, I tried to access that list, and the site was down when I did so. Perhaps you could table that with the committee.

Mr. David Dendooven: It's unfortunate, Mr. Chair, that the site was down. I went onto the website this morning, and the site was there.

There is an application form that groups, individuals or non-profits must fill out. It's very clearly indicated what the actual protections are that they can apply for.

I'll give you the example of human rights. For human rights, there are a number of sections for which they can apply for funding because they have a case for which they want to challenge certain laws that are there.

Mrs. Rachael Thomas: Again, we've been at this for four and a half minutes, and I still don't have a clear understanding of what is meant by "national significance".

Yes or no: Is there a list that the administrative body is following, a list of criteria that they are using to determine their assessment of these cases and whether they fall into this category of "national significance"? Is that being considered consistently from case to case?

Mr. David Dendooven: Mr. Chair, I would note—and I didn't mention this—that we do have experts on the panels, the committees, and there are seven of them—

Mrs. Rachael Thomas: It really is just a yes or no. Is there a list of criteria that is consistently followed?

Mr. David Dendooven: Yes, there is.

Mrs. Rachael Thomas: Okay, five minutes and 14 seconds later, there is a list of criteria that is followed by the administrative body, and it is followed consistently for every single application that is considered.

Mr. David Dendooven: There is a list that is published, so yes, there is one.

● (1650)

Mrs. Rachael Thomas: Can it be accessed publicly?

Mr. David Dendooven: Yes.

Mrs. Rachael Thomas: Where?

Mr. David Dendooven: It's on the website of the University of Ottawa, and we can provide that, Mr. Chair.

The Vice-Chair (Mr. Kevin Waugh): Could you?

Mrs. Rachael Thomas: Is that list of criteria followed in the consideration of every case?

Mr. David Dendooven: I am not there during the deliberations of the committee of experts, but they are aware of the parameters of the program, of what can and cannot be funded and of what the criteria are that they need to follow when they are assessing applications before them.

Mrs. Rachael Thomas: Who determines those criteria?

The Vice-Chair (Mr. Kevin Waugh): Thank you, Mrs. Thomas. We're at six minutes.

We'll go to the Liberals and Ms. Gainey, please, for six minutes.

Mr. Marc Serré: I'll take it, Mr. Chair.

The Vice-Chair (Mr. Kevin Waugh): I'm sorry. Go ahead.

[*Translation*]

Mr. Marc Serré: Thanks to the witnesses for being with us today.

I'd like to clarify a few points.

The passage of Bill C-316 will send a clear message to provincial governments that it's important and necessary both to make the court challenges program permanent and to provide additional funding for it in future federal government budgets. Passing the bill we're considering today is the right thing to do because it will help individuals living in minority communities across the country.

My question is for both witnesses. Earlier we talked about experts and what that involves. During consideration of Bill C-13 last year, members of the committee who are here today discussed the importance of the court challenges program and the fact that financial decisions were made by an expert panel, not by politicians. That aspect is very important.

Would you please describe for the committee how that expert panel works, how its members are selected and how it operates independently?

Mr. David Dendooven: Mr. Chair, I want to thank the member for his question.

The members of the expert panel are selected through an open and transparent process. This morning, for instance, we posted to our website information on an open and transparent process for recruiting candidates willing to sit on the official language rights expert panel. In accordance with the process established from the start, a selection committee reviews the applications. I chair that committee, and I'm here today with a representative of the Department of Justice and an outside representative from the private sector. We identify candidates who meet the criteria we've set.

Next, we conduct interviews, as necessary, with those individuals to ensure they meet the criteria and to assess their knowledge of the field, official languages in this case. We then establish a pool of potential candidates. When positions on the expert panel need to be filled, we send the minister a list of candidates. Once the minister has made a decision regarding a new member on the expert panel, we inform the University of Ottawa, which is responsible for the program, of that decision. I then contact the person in question to inform him or her of the minister's decision and to determine whether that person wishes to accept the position.

We then inform the University of Ottawa that there is a new member on the expert panel and speak with the individual to ensure he or she is well aware of the way the expert panel operates and of the program's parameters. In answering the previous question, I mentioned the criteria for what constitutes a case of national significance, test cases and so on. The members of the expert panel generally meet four times a year to review funding applications submitted to the program and to make their decisions.

● (1655)

Mr. Marc Serré: It's a comprehensive process. There's no reason to criticize it or assume it's not an expert panel.

Someone mentioned earlier that the program lacked transparency. Would you please describe the annual reports and what's made public?

Mr. David Dendooven: Annual reports are required to be prepared under the agreement with the University of Ottawa. They have been published on the website for many years now, along with the testimony of the chairs of the official language rights and human rights expert panels. The last annual report was submitted for the 2022–2023 fiscal year. We expect the 2023–2024 annual report will be released in November, in accordance with the contribution agreement with the University of Ottawa, which outlines the information that it's required to provide us and the documents it must post online for Canadians.

Mr. Marc Serré: Thank you for that clarification.

We've also heard, outside the committee, that the annual report date specified in clause 3 of the bill might not be consistent with that of the annual report of the current court challenges program.

Would you please explain the discrepancy between those two dates?

[*English*]

The Vice-Chair (Mr. Kevin Waugh): Answer quickly, please.

[*Translation*]

Mr. David Dendooven: The agreement currently provides that it's November, and that's in order to give the University of Ottawa a chance to assemble the report, statistics and so on. That takes time.

Mr. Marc Serré: The date in the bill is—

[*English*]

The Vice-Chair (Mr. Kevin Waugh): Thank you, Mr. Serré. We are over the time.

We'll go to the Bloc and Mr. Champoux for six minutes.

[*Translation*]

Mr. Martin Champoux: Thank you, Mr. Chair.

Mr. McMurren and Mr. Dendooven, thank you for being with us today.

Exactly what decision-making authority does the University of Ottawa have in selecting cases that are accepted?

Mr. David Dendooven: As I previously said, I wasn't present during the discussions. My only role is to chair the selection committee to identify members who have met the criteria in an open and transparent process.

It's a decision that's made in committee. A chair directs the discussion in each committee. The University of Ottawa has lawyers. As you can see in the annual report, they sort through the applications submitted to the University of Ottawa and assist the experts in determining whether the applications meet the criterion that test cases of national significance be presented. From what I understand, they develop summaries and submit everything to the panel members.

Mr. Martin Champoux: The University of Ottawa's mandate was renewed, but when will it expire?

Mr. David Dendooven: The agreement with the University of Ottawa will expire in 2025.

Mr. Martin Champoux: All right.

Earlier you mentioned established criteria that had to be met during case selection. To what information can the public have access in the report that the program manager or administrator has to provide every year? Can anyone know the names of the groups that file applications? Can anyone know the purpose of the applications and what's being challenged? Do we have access to those details? Can we also know what applications have been submitted but denied by the program administrator?

Do we have access to that information, Mr. Dendooven?

● (1700)

Mr. David Dendooven: Thank you for your question.

As I mentioned, the reports are on the website. There's no summary of cases as such, although there are a few examples, but the number of applications for appeal funding and funding to challenge a statute, in particular, appear in certain parts of the report.

That information is there, but the University of Ottawa doesn't indicate which cases have been funded until all appeals—

Mr. Martin Champoux: —until all cases have concluded. However, we ultimately have access to that information.

Mr. David Dendooven: That's correct.

Mr. Martin Champoux: However, can we know what cases have been denied funding? That was the second part of my question.

Mr. David Dendooven: That's a good question, but I don't have that information.

Mr. Martin Champoux: Would it be possible to send that to the committee?

Mr. David Dendooven: I don't have access to that information. I'll have to check the agreement with the University of Ottawa to see if we've requested information on denied cases.

I obviously read the agreement in order to prepare for this meeting, but I didn't see any applications of that kind. However, I may have overlooked them.

Mr. Martin Champoux: I'd appreciate it if you could provide that information to the committee once you've had time to check it. You can obviously do that in writing.

Earlier you said it wasn't possible to fund challenges of provincial statutes. You can see where I'm headed with this. I bet you think I'm going to talk about the Act respecting the laicity of the State, Quebec's Bill 21.

In Quebec, there are what I consider absolutely legitimate fears that the government, or groups—pardon me—might use the court challenges program indirectly to challenge Bill 21. As far as you know, are there any mechanisms that could be used to prevent those kinds of schemes? We know that some people are very good at circumventing the system, in this instance in particular.

Mr. David Dendooven: Thank you for your question.

I'm not involved in the discussions and I don't see the applications. Like you, I learn about certain things by reading the papers.

However, I can tell you that, in the interviews, we make very clear what is and isn't permitted. I also know that the University of Ottawa is reaching an agreement that clearly defines what is and isn't allowed. I'd also say that the people sitting on the official language rights expert panel always have a kind of individual meeting with university representatives at the start so they also know the program's criteria and conditions.

Mr. Martin Champoux: Thank you.

[*English*]

The Vice-Chair (Mr. Kevin Waugh): Thank you, Mr. Champoux.

We move now to Niki Ashton of the New Democratic Party for six minutes, please.

Ms. Niki Ashton: Thank you very much, and thank you to the officials who joined us here today.

In our previous hour, we raised the fact that we wished for changes that would have allowed for the further expansion of the bill. We're particularly concerned because legal advocates such as Cindy Blackstock have indicated that it's quite limited and certainly wouldn't be able to be used to support certain key challenges that indigenous groups and communities would put forward.

In the context of the work that the Court Challenges Program already does, how much has been allocated—if you have this number—over the years to court challenges led by first nations, Métis and/or Inuit peoples and groups?

● (1705)

Mr. David Dendooven: I don't have that information.

Ms. Niki Ashton: Is that something that you could share with the committee?

Mr. David Dendooven: Mr. Chair, I don't think that is something that is currently calculated, even by the University of Ottawa. We can certainly ask that question.

What I can say, however, Mr. Chair, is that one-third of the funding provided to the University of Ottawa goes to cases with respect to official languages, and the remainder of the money goes to human rights.

Within that bucket, I'm fairly positive there is funding provided to indigenous individuals, organizations or non-profit entities, and those could be Métis, Inuit or first nations.

Ms. Niki Ashton: Perfect.

That's why I'm asking. We do know how much goes towards official languages. I realize the other category is human rights, but we also know indigenous rights are distinct in and of themselves, so I think that this differentiation.... The limited scope of this bill has been identified as an issue by legal advocates such as Cindy Blackstock, so it would be important to know how important the Court Challenges Program has been for first nations, Métis and Inuit peoples and groups. That breakdown would be very useful for our committee, and certainly for parliamentarians.

The Department of Canadian Heritage funds the Court Challenges Program 100% through contribution agreements. It's funding that's divided between two branches: human rights and official languages rights. You referenced how much money was announced in budget 2023, but we know that every year a number of worthy applicants are not funded, not because they didn't qualify but because the program is underfunded, which is certainly a point of concern for us.

How does this work? You've spoken of criteria. Does it work on a first-come, first-served basis? How do you decide which worthy applicants are rejected?

Mr. David Dendooven: Thank you for the question.

Intakes occur throughout the year. I noted that the expert panels normally meet four times a year.

My understanding is that they receive views or advice from counsel at the University of Ottawa who are part of the program. They have discussions about whether or not they are of the view that the proposal meets the criteria of national importance.

[*Translation*]

That includes test cases and the other three criteria I mentioned earlier.

[*English*]

Ms. Niki Ashton: I'm not sure how long you've been working in the Court Challenges Program. Obviously, as you've indicated, many others, including the University of Ottawa, are involved.

We know that multiple committees and civil society have recommended that the government enshrine the Court Challenges Program in legislation in order to enhance its sustainability and, very importantly, to ensure that any cancellation would require the approval of Parliament.

In your experience, from what you've heard from applicants and those involved in overseeing these applications, what would be the effect for justice-seeking groups if a future government were to cancel the Court Challenges Program?

Mr. David Dendooven: I would just note that this is a program that is there for individuals, groups and not-for-profits seeking funding should they need it. If the program were no longer there, then they would not have access to that funding.

Ms. Niki Ashton: Mr. Chair, how much—

The Vice-Chair (Mr. Kevin Waugh): You have eight seconds left.

Ms. Niki Ashton: I thought it was close.

Thank you very much.

● (1710)

The Vice-Chair (Mr. Kevin Waugh): Thank you, Ms. Ashton.

Can the committee get a copy of the contribution agreement with the University of Ottawa? I see it in French, but I don't see it in English.

Mr. David Dendooven: That's something we can provide to the committee.

The Vice-Chair (Mr. Kevin Waugh): Okay. That's an oversight, I think.

Right. Good.

Could that be provided by the department or by the University of Ottawa?

Mr. David Dendooven: We have a copy, Mr. Chair. We can provide it to you.

The Vice-Chair (Mr. Kevin Waugh): Thank you very much.

It's the second round. We'll start with the Conservatives for five minutes.

Welcome, Mr. Godin.

[*Translation*]

Mr. Joël Godin (Portneuf—Jacques-Cartier, CPC): Thank you, Mr. Chair.

Thanks to the witnesses for taking part in this exercise.

My first question will be very straightforward. In what year was this consultation process established?

Mr. David Dendooven: I'm sorry, Mr. Chair, but I don't know what program you're referring to.

Mr. Joël Godin: I'm talking about the court challenges program.

Mr. David Dendooven: All right.

Mr. Joël Godin: In what year was that program created?

Mr. David Dendooven: It was created a very long time ago.

Mr. Joël Godin: Would you say it was in 1978?

Mr. David Dendooven: Yes, it was in 1978.

Mr. Joël Godin: All right.

Now I'd like you to tell us why it was created. I'd like to hear you comment on that.

Mr. David Dendooven: Thank you very much for your question.

As far as I know, the court challenges program was created in 1978 to support official language lawsuits.

Mr. Joël Godin: The purpose of the program was to assist official language minority communities in clarifying and affirming their language rights. That was the objective in 1978. Is that correct?

Mr. David Dendooven: Yes.

Mr. Joël Godin: Do you have an idea of the size of the budgets allocated to the court challenges program in 1978 compared to those in 2024?

Mr. David Dendooven: Mr. Chair, I don't have that information. We can try to find the figure that was available in 1978.

Mr. Joël Godin: The budget amount is easier to find now, in 2024.

Mr. David Dendooven: Yes.

Mr. Joël Godin: In addition to the court challenges program, are any other measures or resources available to assist official language minority communities, or OLMCs, in affirming their rights?

Mr. David Dendooven: I don't know if there are any other programs.

I'd like to go back to your first question. I clearly said that I didn't know how much money was available in 1978, but the budget for the court challenges program was increased in the 2023 budget from $5 million to $10 million a year.

Mr. Joël Godin: What you're saying is that the amount doubled from 2023 to 2024. Is that correct?

Mr. David Dendooven: Yes, the government doubled the program's funding in the 2023 budget.

Mr. Joël Godin: In your opening remarks, you discussed the breakdown of 115 official language cases and 160 human rights cases. Is that correct?

Mr. David Dendooven: Yes, I believe that's it.

Mr. Joël Godin: Now, in 2024, there's a total of 74 cases: 33 official language cases and 41 human rights cases. Is that correct?

Mr. David Dendooven: Yes, but that was for the year 2022–2023.

Mr. Joël Godin: All right.

Mr. David Dendooven: We don't have the University of Ottawa's annual report for the fiscal year just ended.

Mr. Joël Godin: I'm going to ask you a very simple question; I'd like to know your opinion.

Do you think we're avoiding the issue by limiting the tools that official language minority communities can use to affirm their rights?

Mr. David Dendooven: Mr. Chair, I'm here to talk about the court challenges program. I'm not here to express my opinion, as the member is asking me to do.

Mr. Joël Godin: Then I'll ask you another question, Mr. Dendooven.

[*English*]

The Vice-Chair (Mr. Kevin Waugh): You have one minute.

[*Translation*]

Mr. Joël Godin: Why force the government to continue this program? It was created in 1978, and this is 2024. If I told you in 1978 that there would be such a thing as artificial intelligence and that we would have to adapt to it, would you have been able to anticipate that?

● (1715)

Mr. David Dendooven: Mr. Chair, my role is to provide advice to the government. When the government of the day makes a decision, my role as an official is to implement it. In this instance, a decision has been made, as a result of which the program's funding has doubled.

Mr. Joël Godin: As a senior official, you implement what the government decides. Putting it more simply, if we met on the sidewalk and I asked you if there was some malicious intent in this, what would your answer be?

[*English*]

The Vice-Chair (Mr. Kevin Waugh): Your five minutes are up.

[*Translation*]

Mr. Joël Godin: Thank you, Mr. Chair.

[*English*]

The Vice-Chair (Mr. Kevin Waugh): We'll go to the Liberals for five minutes.

I believe it's Mr. Noormohamed.

[*Translation*]

Mr. Martin Champoux: On a point of order, Mr. Chair.

[*English*]

The Vice-Chair (Mr. Kevin Waugh): Go ahead.

[*Translation*]

Mr. Martin Champoux: I would like to provide some additional information for Mr. Godin.

I just want to tell him that, from 1978 until March 31, 1981, $103,338.35 was allocated to the court challenges program essentially to assist people in challenging Bill 101, which René Lévesque had introduced in 1976.

[*English*]

The Vice-Chair (Mr. Kevin Waugh): Thank you, Mr. Champoux, on that note.

We'll now go to the Liberals for five minutes.

Mr. Noormohamed, go ahead.

[*Translation*]

Mr. Taleeb Noormohamed (Vancouver Granville, Lib.): Thank you, Mr. Chair.

Welcome to the witnesses.

I want to know one thing. What was the impact of the cuts that the Harper government made to this program?

Mr. David Dendooven: Thank you for your question.

As I mentioned earlier, the program was abolished. As a result, there was no program left to fund challenges to affirm official language and human rights.

Mr. Taleeb Noormohamed: What I want to know is what the consequences were for the communities and individuals that couldn't afford a lawyer.

Mr. David Dendooven: Mr. Chair, I don't think I can answer that question.

However, I can say that, if you look at the annual reports being submitted, you will see examples of cases that have been funded in order to affirm certain rights. All I can say is that those cases couldn't have been funded at that time.

Mr. Taleeb Noormohamed: Great. Thank you very much.

[*English*]

I'm conscious of time.

At this time, if I might, I would like to bring forward the motion that has already been submitted and circulated by the clerk, Mr. Chair.

Would you like me to read it out?

The Vice-Chair (Mr. Kevin Waugh): Why not?

Mr. Taleeb Noormohamed: It is:

> That, notwithstanding the motion adopted by the committee on Thursday, February 1, 2024, with respect to the review of Bill C-316, the committee schedule two meetings with witnesses on April 18 and April 30 respectively; that the deadline for amendments be April 26, 2024; and that the committee begin clause-by-clause consideration no later than May 2, 2024.

Mr. Chair, the reason for wording the motion this way is to respect the ruling we had from the chair last week, and also to ensure that we are able to do this and get this study done in a timely fashion.

I hope we can move quickly to pass this motion and move forward.

The Vice-Chair (Mr. Kevin Waugh): Thank you, Mr. Noormohamed.

The motion originally was adopted, but you're 48 hours in, so I will open it up for debate.

We'll go to Mr. Champoux first.

[*Translation*]

Mr. Martin Champoux: Mr. Chair, I understand the intention behind the motion that Mr. Noormohamed is bringing forward today, and I don't disagree with the principle.

However, we're at day one of what's proposed in the motion. In other words, we're coming to the end of the first meeting that Mr. Noormohamed proposes be held on consideration of this bill. If we had had this proposal and discussion earlier, today's meeting might have been planned differently. Allow me to explain.

The Bloc Québécois attaches importance to consideration of the bill, and we intend to call very few witnesses. We've invited only two witnesses, whom I consider extremely relevant. We would like to have a chance to hear those two witnesses and to have them heard in committee. However, I can't confirm now that either of those witnesses or that the two witnesses invited by the Bloc Québécois will be available on April 30, the last date we have on which to hear witnesses.

It seems to me that precipitating matters in this manner will prevent us from doing a proper job. Once again, I don't disagree with the idea at all. We definitely have to work quickly. We have a lot on our plate between now and the end of our parliamentary business. However, I don't think it makes sense to allow only one more meeting to hear from witnesses before commencing clause-by-clause consideration. That shows a lack of respect for the parliamentary business we have to conduct.

I therefore move an amendment in the same spirit as that of Mr. Noormohamed's motion, but one that will at least allow the committee some time to do its work properly in the present circumstances.

I will read the proposed amendment:

> That, notwithstanding the motion adopted by the committee on Thursday, February 1, 2024, with respect to the review of Bill C-316, the Committee schedule a minimum of three meetings with witnesses on April 18, April 30 and May 2 respectively, that the deadline for amendments be no earlier than April 30, 2024 and that the Committee begin clause-by-clause no earlier than May 7, 2024.

I have the written version here, in English and French, which I can immediately offer to our clerk so she can retranscribe it and circulate it to committee members.

Thank you.

● (1720)

[*English*]

The Vice-Chair (Mr. Kevin Waugh): Thank you, Mr. Champoux.

Ms. Ashton, your hand has been up, and then I'll go to Ms. Thomas.

Go ahead, Ms. Ashton.

Ms. Niki Ashton: I think I've already spoken to this sentiment previously.

I support the motion put forward by Mr. Noormohamed.

This is a very brief bill, and we are keen to see it move forward as quickly as possible, and that means moving it through committee as soon as possible.

I support the initial motion—

[*Translation*]

Mr. Martin Champoux: On a point of order, Mr. Chair.

[*English*]

The Vice-Chair (Mr. Kevin Waugh): Go ahead, Mr. Champoux.

[*Translation*]

Mr. Martin Champoux: Are we debating the motion or the amendment?

I think Ms. Ashton is speaking to Mr. Noormohamed's motion, whereas we're debating the amendment.

[*English*]

The Vice-Chair (Mr. Kevin Waugh): Yes.

Ms. Ashton, are you speaking to the new amendment?

Ms. Niki Ashton: Pardon?

The Vice-Chair (Mr. Kevin Waugh): Are you speaking to the new amendment?

[*Translation*]

Ms. Niki Ashton: Pardon me. Let me explain. I'm opposed to the amendment and support the original motion.

[*English*]

The Vice-Chair (Mr. Kevin Waugh): Okay.

We're dealing with the amendment.

Ms. Thomas, go ahead.

Mrs. Rachael Thomas: Sure.

I wish to pause for a moment to understand what the amendment is.

Can the clerk read it into the record?

The Clerk of the Committee (Ms. Geneviève Desjardins): Yes.

I'll read the full motion with the amendment:

> That, notwithstanding the motion adopted by the committee on Thursday, February 1, 2024, with respect to the review of Bill C-316, the committee schedule a minimum of three meetings with witnesses on April 18, April 30 and May 2 respectively; that the deadline for amendments be no earlier than April 30, 2024; and that the committee begin clause-by-clause consideration no earlier than May 7, 2024.

It is, at the earliest....

Give me a second. I'm sorry; I'm just going through the—

The Vice-Chair (Mr. Kevin Waugh): Clerk, is there any way that amendment could be...?

The Clerk: Yes. I'm typing it up as we speak.

The Vice-Chair (Mr. Kevin Waugh): Thank you.

Mrs. Rachael Thomas: Could we suspend until we get the language?

The Vice-Chair (Mr. Kevin Waugh): Could we suspend for a second? We'll get this distributed to members.

We'll suspend for a couple of minutes.

● (1720)

_____(Pause)_____

● (1725)

The Vice-Chair (Mr. Kevin Waugh): The clerk has just sent the amendment out to your P9s.

Before we get into a discussion, to the department officials, thank you. I don't think you're going to be needed. We're just about wrapped up here.

Mr. Dendooven and Mr. McMurren, thank you very much for your presence today. Thank you both for coming from the department.

We will have a discussion here, since Mr. Champoux has an amendment. Has everybody received the amendment? It is the following:

> That, notwithstanding the motion adopted by committee on Thursday, February 1, 2024, with respect to the consideration of Bill—

[*Translation*]

Mr. Joël Godin: On a point of order, Mr. Chair.

As I am not a regular member of this committee, I haven't received a copy of the amendment. Would it be possible for the clerk—

[*English*]

The Vice-Chair (Mr. Kevin Waugh): You probably didn't get it, Mr. Godin.

Mr. Joël Godin: Could you send it?

The Vice-Chair (Mr. Kevin Waugh): Yes. Thank you.

[*Translation*]

Mr. Joël Godin: Thank you. I'm sorry.

[*English*]

The Vice-Chair (Mr. Kevin Waugh): Did you get it, Mr. Serré?

Mr. Anthony Housefather: Mr. Chair, I didn't get it either.

The Vice-Chair (Mr. Kevin Waugh): Okay, Mr. Housefather, we have old new members, and you're one of them. Mr. Louis has also joined us now, as well as Mr. McKinnon, although it really doesn't pertain to Bill C-316. Well, it does, but not for the vote here.

Go ahead, Mr. Gourde.

● (1730)

[*Translation*]

Mr. Jacques Gourde: Mr. Chair, we normally have to conclude at 5:30 p.m.

Do we have to make arrangements to continue beyond 5:30 p.m.? My colleague has to leave, and I also have something in 10 minutes. At worst, we could continue at the next meeting. It will be long in any case.

I'm disappointed that my colleague has brought his motion forward because I still had two or three questions for the witnesses. We may be forced to bring them back. I would have liked to put some questions to the witnesses. If we want to do a good job, we have to be able to ask all the questions we have to ask.

That being said, we may need one or two more meetings. We'll discuss this again at the next meeting.

I move that we adjourn.

Mr. Martin Champoux: On a point of order, Mr. Chair.

[*English*]

The Vice-Chair (Mr. Kevin Waugh): What's that, Mr. Champoux?

[*Translation*]

Mr. Martin Champoux: You can't move to adjourn the meeting when you don't have the floor or when you take the floor following a point of order. I don't know what my colleague's intervention was about. I think we can resolve the matter in a few minutes if we all show—

Mr. Joël Godin: On a point of order, Mr. Chair.

[*English*]

The Vice-Chair (Mr. Kevin Waugh): Mr. Godin, go ahead.

[*Translation*]

Mr. Joël Godin: As far as I know, you have to obtain the unanimous consent of the committee members in order to extend a meeting beyond its scheduled time.

Mr. Martin Champoux: I'm pretty sure he has to get the support of a majority of members, not unanimous consent. We can put that question to Madam Clerk.

[*English*]

The Vice-Chair (Mr. Kevin Waugh): After Mr. Champoux, I recognized Mr. Godin.

Mr. Marc Serré: There are two votes.

The Vice-Chair (Mr. Kevin Waugh): Any member can move a dilatory motion to adjourn.

[*Translation*]

Mr. Martin Champoux: Mr. Chair, there was a list of members who were waiting to speak. I'm not sure you're following the order on that list.

[*English*]

The Vice-Chair (Mr. Kevin Waugh): Mr. Coteau, I'll recognize you.

Mr. Michael Coteau: Thank you very much, Mr. Chair.

Considering that the Conservative member said he had 10 minutes left, perhaps we can go 10 minutes longer.

The Vice-Chair (Mr. Kevin Waugh): Thank you, Mr. Coteau.

It's a dilatory motion, so we're going to have a vote on the dilatory motion to adjourn.

I'll hand it over to the clerk.

Mrs. Rachael Thomas: Do you not need unanimous consent?

The Clerk: You need a majority.

Mrs. Rachael Thomas: Okay.

The Vice-Chair (Mr. Kevin Waugh): Do you want me to do it by show of hands?

The Clerk: You can do either one.

I just want to double-check on a last-minute substitution to see who I have on my list right now.

The vote is on the motion to adjourn the meeting.

(Motion negatived: nays 7; yeas 3)

The Vice-Chair (Mr. Kevin Waugh): The motion is defeated.

[*Translation*]

Mr. Jacques Gourde: On a point of order, Mr. Chair.

[*English*]

The Vice-Chair (Mr. Kevin Waugh): Go ahead, Mr. Gourde.

[*Translation*]

Mr. Jacques Gourde: Since the meeting seems to be continuing and some of our colleagues have to leave, how much time is left for this meeting? I believe we're all quite pressed because one of my colleagues has to leave within the next five minutes.

● (1735)

Mr. Martin Champoux: Mr. Chair, I have an answer for Mr. Gourde.

[*English*]

The Vice-Chair (Mr. Kevin Waugh): Go ahead, Mr. Champoux.

[*Translation*]

Mr. Martin Champoux: We have two minutes left to adopt my amendment and two minutes to adopt the amended motion.

[*English*]

The Vice-Chair (Mr. Kevin Waugh): I agree. We have five minutes, if you don't mind.

We're going to get back to this amendment now. Is anyone else going to speak to Mr. Champoux's amendment?

Go ahead, Mrs. Thomas.

Mrs. Rachael Thomas: I think you have a list. I just want to make sure that I'm actually next.

The Vice-Chair (Mr. Kevin Waugh): Who's up first?

Go ahead, Mrs. Thomas.

Mrs. Rachael Thomas: I have the same problem with the amendment that I have with Mr. Noormohamed's motion, which is that our amendments are being asked for ahead of hearing from witnesses. There's no world in which it makes sense to be expected to have all of our amendments put together and submitted before we've even heard all of the testimony. I'm sorry. That is an unreasonable request.

It's a very minor change. I ask that it be corrected so that we are able to hear from all of the witnesses and we're able to take all of the testimony into consideration before having to put forward amendments. It's not partisan; it's just good process. I hope you hear my plea and you'll make a friendly amendment to that.

I guess I can offer a subamendment. I'll do that, then.

My subamendment is that the deadline for amendments be May 3. That's the day after we hear from the final witness, and it will still allow us to start clause-by-clause consideration by May 7.

The Vice-Chair (Mr. Kevin Waugh): The only change then, Mrs. Thomas, is that the committee schedule a minimum of three meetings with witnesses, which will be on April 18, April 30 and May 3.

Mrs. Rachael Thomas: No. The amendment that was made stands. My subamendment is that the deadline for amendments be May 3.

The Vice-Chair (Mr. Kevin Waugh): Is there any discussion on that?

Go ahead, Mr. Champoux.

[*Translation*]

Mr. Martin Champoux: I have two questions about that.

First, I agree on the subamendment. I think it's essential that we have the time we need to do our work properly. This is a bill, not some pointless study. It's important. I'm in favour of Ms. Thomas's subamendment because it allows us a little more time.

However, I have a question in mind, and perhaps the analysts can answer it.

If we proceed as proposed, are we allowing ourselves enough time between the deadline for amendments, May 3, and the start of clause-by-clause, on May 7?

The Clerk: The question is more a procedural one. The required amount of time is 48 hours, and that would again fall within the 48 hours. If you will allow me to make a legislative suggestion, it would be preferable to set the deadline at noon to include the afternoon of May 3 as well. The committee can at least decide that the deadline will be 48 hours.

Mr. Martin Champoux: Thank you.

Mr. Chair. I think that's reasonable. I know my Liberal and NDP colleagues were in favour of the initial motion earlier, but I think we also have to allow for the work that we have to do for any bill.

I understand why we want to precipitate matters, why we want to hurry, but this is an important bill for the Bloc Québécois, for Quebeckers, for Canadians and for official language minority communities. We must respect the work we have to do, and we must also have to respect ourselves. We need to do our work properly.

I have some important witnesses to be heard in committee, and I want to make sure they can be heard. As Ms. Thomas said, I want to have the time to prepare the amendments based on the testimony we've heard. We have to take the time to do the job right.

[*English*]

The Vice-Chair (Mr. Kevin Waugh): Is there any other discussion on the subamendment?

Seeing none, we will have a vote on Ms. Thomas's subamendment.

Do you want to go ahead, Clerk?

Keep in mind, committee, that 5:40 is the deadline here.

(Subamendment negatived: nays 6; yeas 4 [*See Minutes of Proceedings*])

The Chair: The subamendment is defeated.

We are at 5:40 right now.

● (1740)

Mr. Taleeb Noormohamed: Can we just vote and be done with this?

Mrs. Rachael Thomas: Really, couldn't we give an extra 24 hours for the amendments?

I'm just baffled. I don't even understand. At this point it's just trying to be spiteful. There's not even political gamesmanship in that.

The Vice-Chair (Mr. Kevin Waugh): Mr. Coteau, go ahead quickly.

I need someone to adjourn. We're at the time.

Mr. Michael Coteau: I would just like to request that we continue with the final two votes, since we're really in the middle of a series of votes.

The Vice-Chair (Mr. Kevin Waugh): We're back at the amendment then. Is that right?

The Clerk: We can, as long as there are speakers on the list.

The Vice-Chair (Mr. Kevin Waugh): We've done the subamendment. That was turned down. Your amendment....

The Clerk: If there is no discussion, then we can go to a vote.

Mrs. Rachael Thomas: I'm on the list.

The Vice-Chair (Mr. Kevin Waugh): You're on the list, Ms. Thomas.

Mrs. Rachael Thomas: I have about 30 minutes' worth of talking to do.

Mr. Taleeb Noormohamed: Do you ever have less than 30 minutes of talking to do?

Mrs. Rachael Thomas: No, because what we just witnessed the Liberals do here.... I simply asked for a very common-sense subamendment. I asked for our amendments to be due after we heard from all the witnesses. This is a common process. Of course you would want to hear from all of the witnesses before you put forward—

Mr. Taleeb Noormohamed: I have a point of order, Mr. Chair.

The Vice-Chair (Mr. Kevin Waugh): Mr. Noormohamed, go ahead on your point of order, please.

Mr. Taleeb Noormohamed: This sounds like debate on a subamendment that was already defeated. We are now supposed to be debating on the subamendment and/or the motion. We've already resolved the matter on this.

I would like it, Mr. Chair, if you might allow us to move on to the votes that we are currently in the middle of, rather than opening up debate on something that is already closed.

The Vice-Chair (Mr. Kevin Waugh): Ms. Thomas, continue, but make your comments short.

Then we will have Mr. Gourde.

Mrs. Rachael Thomas: With all due respect, Chair, I don't have to make my comments short. I do have to remain relevant, which I am, because I am saying that in regard to the amendment that is on the table right now, I cannot support it, because we have been asked to submit our amendments before we hear from all of the witnesses, and that is inappropriate.

It is inappropriate to require the members of this table to submit their amendments and changes to this bill before we have heard from all the witnesses. We should have the opportunity to hear from all those who wish to speak to this bill and share their various concerns with us in order to gain an understanding of what they see in this bill—both the pros and the cons, the areas that are strong and the areas that are weak, the areas that can stay as they are and the areas where perhaps changes are needed.

If this committee is not willing to hear from all those witnesses concerning this bill before we have to put forward amendments, that is just inappropriate. Really, what this committee is saying, then, is that the voices of individuals who come here after the amendments are due are null and void, because we've already made or suggested any changes we want to make. That's inappropriate. Procedurally, that is just inappropriate.

For crying out loud, this is the Parliament of Canada. This is a place where we create legislation. This is a place where we are putting pieces of legislation in place, bills in place, that govern the people of Canada. If we can't do that in the most appropriate manner possible, then shame on us. Asking for our amendments before we've properly heard from witnesses is 100% inappropriate. It is incredibly irresponsible of those at this table.

I applaud the Bloc member for seeing this and voting in favour of the subamendment that was previously discussed. Those extra 24 hours seemed appropriate, but here we are: We're back discussing a better amendment, in the sense that it proposes three meetings to hear from witnesses. I appreciate that because we'll hear from more voices, and I believe the Bloc member is correct that this is very important, but again, this amendment requires that the amendments to the bill be submitted before we hear from all those who would wish to testify.

● (1745)

The Vice-Chair (Mr. Kevin Waugh): Ms. Thomas, I have to suspend the meeting, unfortunately. We'll pick this up on Tuesday, April 30.

An hon. member: Why?

The Vice-Chair (Mr. Kevin Waugh): Why?

It's because we have members leaving here. I as well have to catch a plane right away.

The Vice-Chair (Mr. Kevin Waugh): I've given you 15 extra minutes. I'm going to suspend this meeting for now. We'll suspend it and come back on April 30.

[*The meeting was suspended at 5:46 p.m., Thursday, April 18*]

[*The meeting resumed at 4:07, Tuesday, April 30*]

● (30405)

The Vice-Chair (Mr. Kevin Waugh): Order.

Good afternoon. We're resuming meeting number 116 of the House of Commons Standing Committee on Canadian Heritage, which was suspended on Thursday, April 18.

First off is avoiding audio feedback.

Before we begin today, I would like to remind all members and other meeting participants in this room of the following important preventive measures.

To prevent disruptive and potentially harmful audio feedback incidents that can cause injuries, all in-person participants are reminded to keep their earpieces away from the microphones at all times. As indicated in the communiqué from the Speaker to all members on the morning of Monday, April 29, the following measures have been taken to help prevent audio feedback incidents.

First, all earpieces have been replaced by a model that greatly reduces the probability of audio feedback. The new earpieces in front of you are black in colour, whereas the former earpieces were grey. Please use only the approved black earpiece.

By default, all unused earpieces will be unplugged at the start of the meeting.

When you are not using your earpiece, please place it face down on the middle of the sticker for this purpose that you will find on the table, as indicated. Please consult these cards on the table for guidelines to prevent audio feedback incidents.

The room layout, as you've noticed, is quite a bit different. There's an increased distance between the microphones to reduce the chance of feedback.

These measures are in place so that we can conduct our business without interruption and protect the health and safety of all participants, including the interpreters. Again, thank you for your co-operation.

Today's meeting is taking place in a hybrid format, and I would like to make a few comments for the benefit of members here today.

As always, please wait until I recognize you before speaking.

We're resuming the debate on Mr. Noormohamed's motion, starting with the amendment moved by Mr. Champoux. However, as you may or may not know.... I'm just going to read this:

"That, notwithstanding the motion adopted by the committee on Thursday, February 1, 2024, with respect to the review of Bill C-316, the committee schedule"—and this is a change—"a minimum of three meetings with witnesses on April 18, April 30"—which is today—"and May 2"—which is Thursday—"respectively, that the deadline for amendments be no earlier than April 30, 2024"—which is today—"and the committee begin clause-by-clause consideration no earlier than May 7, 2024."

On May 7, of course, I believe Ms. Tait from the CBC is coming. That's a week from today.

If the amendment is, as we said, inadmissible, I think, Mr. Noormohamed, you've made those changes.

Is there any discussion on this?

Okay, we're going to move on. I was going to actually rule the motion out of order because of the dates that you first proposed, especially April 18 and so on.

I think the changes are required. We have the three meetings, and the third and final meeting would be this Thursday.

Do we all agree with these changes, then, going forward?

Go ahead, Mrs. Thomas.

● (30410)

Mrs. Rachael Thomas: I'm sorry. I just want to clarify, then.

You're basically ruling this entire thing out of order. Is that correct?

The Vice-Chair (Mr. Kevin Waugh): I came in here today.... Nobody knew this, but my interpretation of this was that it was out of order because of the dates. Then we would proceed from there.

We have a number of witnesses standing today by who would come forward. I was going to have the clerk, along with the analysts.... We were going to shut it down for a minute or two to do the audio checks, and then we would do the five presentations in front of us.

Yes, I was going to rule it out of order.

All right? Are we all in agreement with that?

Some hon. members: Agreed.

The Chair: If you don't mind, I would like to suspend, then, for a maximum of two minutes. We have five people online, and we need to hear what they have to say on Bill C-316.

We have done some sound checks, but I think we just want to make sure that our guests are with us.

Mr. Taleeb Noormohamed: I have a point of order, Chair. Now that have some clarity on this—and as I mentioned, I wish to withdraw the motion anyway—can we get clarity in terms of scheduling so that we know exactly what is happening in respect of Bill C-316 so that we can then move forward? Before we get to this, it's just to know where we are in terms of the next meetings, what the timing looks like, etc. Maybe the clerk can just help us out with that.

The Vice-Chair (Mr. Kevin Waugh): I read earlier today that we're going to do the second of three meetings, and then Thursday will be the third of three meetings. You agreed to that.

Mrs. Rachael Thomas: There are four meetings, according to the motion.

The Vice-Chair (Mr. Kevin Waugh): Okay.

Mr. Taleeb Noormohamed: There are four meetings, which is why that original amendment was in place. It was to bring it to three.

The Clerk: In the original motion from February, we had four meetings with witnesses and one for clause-by-clause study of Bill C-316 and another meeting with witnesses on May 2. May 7 would be with the CBC and May 9 would be with witnesses for Bill C-316. Then, following the break week, we would do clause-by-clause study on May 21, and then the committee would just need to confirm what date they would like to have as the deadline for amendments.

The Vice-Chair (Mr. Kevin Waugh): Mr. Noormohamed, go ahead.

Mr. Taleeb Noormohamed: This is not a point of order.

Given where we are at, I don't want to put a motion forward. I'm just curious: Is the will of the committee to do three meetings or four? If it's three, and everybody seems to think it's three, maybe we could just do three and find a way to get done with it. If we want to do four, that's fine—that's what's there—but I don't know what the will of the group is. I'm putting this out there more as a friendly question than as anything structured.

The Vice-Chair (Mr. Kevin Waugh): Is there any discussion on whether to have three meetings or four ? Well, there were four to begin with.

Mr. Champoux, go ahead.

● (30415)

[*Translation*]

Mr. Martin Champoux: Mr. Chair, personally, I absolutely agree that we should stick with the original motion, which proposed four meetings. We would like to hear certain witnesses on the subject. In fact, we would even like to hear more. We will accept as many meetings as we can in our very busy spring agenda.

I therefore propose four meetings.

[*English*]

The Vice-Chair (Mr. Kevin Waugh): Mrs. Thomas, you were without your earpiece. Mr. Champoux recommended four meetings for sure, maybe more.

Mrs. Thomas, go ahead.

Mrs. Rachael Thomas: I understand. Thank you.

Chair, I think it's really clear. There's a unanimous consent motion that was already moved to say that we're doing four meetings. We have witnesses here waiting to testify. Unless someone wants to move a formal motion, I think discussion is done.

The Vice-Chair (Mr. Kevin Waugh): I agree. We're fine, so we'll do the four meetings.

I'm sorry, Ms. Ashton. I didn't see your hand up, but go ahead.

Ms. Niki Ashton: It's all good. I just want to put on the record that, as before, I support having three meetings. I think it's critical to hear the witnesses we have scheduled and to move this legislation back into the House as soon as possible.

The Vice-Chair (Mr. Kevin Waugh): You really haven't added three or four meetings, but I'm going to say four, as we did, so this will be the second of four. Thursday will be the third of four, and then when we come back on May 9, it will be the fourth of four meetings to deal with Bill C-316. Is that clear?

Does the committee want to choose the deadline for amendments? Does the committee want to deal with a date for amendments?

Go ahead, Mr. Champoux.

[*Translation*]

Mr. Martin Champoux: Mr. Chair, is the deadline for amendments stated in the motion that we've adopted? The schedule has changed in recent weeks. If the last meeting with witnesses is held on May 9, I wonder if committee members would agree to make May 10 the deadline. I realize that leaves us only 24 hours after hearing final witnesses, but I think that will give us an opportunity to prepare our amendments in the meantime.

Personally, I propose that the deadline be set at May 10 because that leaves the support team, the clerk and the legislative teams time to work on the amendments we'll have introduced. I don't think the parliamentary break week will be too much for them. If we make May 10 the deadline, that will leave them time, and we'd be returning for the clause-by-clause on May 21.

[*English*]

The Vice-Chair (Mr. Kevin Waugh): Are there any other thoughts? The week of May 13 is a constituency week, and that's why Mr. Champoux has suggested we come back on Tuesday, May 21. Is there any other conversation around this?

Go ahead, Mr. Noormohamed.

[*Translation*]

Mr. Martin Champoux: I suggested May 10, Mr. Chair.

[*English*]

Mr. Taleeb Noormohamed: I just want to be clear. I thought Mr. Champoux said May 10, which we're fine with. May 20-something is too far away. May 10 we're fine with.

The Vice-Chair (Mr. Kevin Waugh): Would it be Friday, May 10, for all amendments?

Mr. Taleeb Noormohamed: Yes.

The Vice-Chair (Mr. Kevin Waugh): Okay.

I'm going to suspend for two minutes as we get our guests, all five of them, arranged.

We'll be back in two minutes.

● (30415)

_____(Pause)_____

● (30420)

The Vice-Chair (Mr. Kevin Waugh): I call this meeting back to order.

Pursuant to the order of reference of Wednesday, November 22, 2023, the committee is resuming its consideration of Bill C-316.

I would like to welcome our witnesses. We have four on video conference, and we have one in the room with us this afternoon.

We have Mr. Ian Brodie, professor, from the University of Calgary; Guillaume Rousseau, law professor; and Geoff Sigalet, associate professor.

In the room, we have Marika Giles Samson, director, Court Challenges Program of Canada.

Thank you for coming.

Also on video conference, from the West Coast Legal Education and Action Fund in Vancouver, we have Humera Jabir.

As you all know, you have up to five minutes for opening remarks, after which we will proceed with rounds of questions.

Up first is Mr. Brodie.

I invite you to make an opening statement. As I mentioned, you have up to five minutes.

● (30425)

Mr. Ian Brodie (Professor, University of Calgary, As an Individual): Thank you, Mr. Chair.

Thank you to members of the committee for the invitation to speak today.

I believe, despite my efforts over the last 25 years, I've become the leading published authority on the history of the Court Challenges Program.

As members of the committee will know, the Court Challenges Program has a checkered history. It was first established in 1978 with the intention of funding litigation against Quebec's language laws, particularly Bill 101, and by extension language laws in other provinces. Its mandate was expanded to cover what we would today call “social justice litigation” in 1985. It was then shuttered in 1992 as part of budget decisions that year. It was recreated a few years later. The federal government announced it would be cancelled again in 2006, although in fact the program never closed. It has carried on since then under a variety of sponsorships and in different organizational forms.

From 1985 until about 2000, when public interest litigation was in its infancy in Canada, the Court Challenges Program certainly helped boost that form of political organization in this country. Today, however, the Court Challenges Program probably finances a relatively small slice of Canada's public interest litigation. Most court cases about human rights, and certainly all the cases that try to limit government action, are financed by private means or by means of provincial legal aid programs without the help of the Court Challenges Program.

In my written submission, I recommend three amendments to the bill.

One is to stop the federally funded Court Challenges Program from financing court cases against provincial actions. This has been an issue since the program was created in 1978. If the federal government decides it should challenge provincial legislation or provincial programs, it can do that directly and transparently by means of litigation or other techniques.

A second amendment would prevent the program from funding cases that involve two or more sections of the Charter of Rights being in conflict with each other. There is no reason, in my submission, for the federal government to finance litigation that could, for example, limit freedom of expression or freedom of religion in the name of pursuing equality rights or vice versa.

Third, to head off the cycle of creation and cancellation, I recommend expanding the program's board to include nominees from all parties represented in the House of Commons. I think that would ensure the program would only fund cases that are genuinely beyond partisan disagreement.

On reflection since my submission, I would urge a fourth consideration, although it's not in the written submission. The public annual report of the program envisioned by proposed subsection 5.1(1) in the bill before you should include a list of all the cases that are funded and the amount of funding devoted to each of those cases.

The program used to allow the public to know what cases it funded and what cases it did not, but the Court Challenges Program now serves as a way of turning our tax dollars into untraceable dark money, and that should come to an end. The program should be reporting its funding decisions to the public in real time. If that's not feasible, it should report those decisions in its annual report.

Mr. Chair, that's all I have to say.

The Vice-Chair (Mr. Kevin Waugh): You left about a minute and 45 seconds, but that's good.

We'll move on to Mr. Guillaume Rousseau, law professor.

You have five minutes, sir.

[*Translation*]

Mr. Guillaume Rousseau (Law Professor, As an Individual): Good afternoon.

Thank you for inviting me to talk to you about some of my language law research and, of course, my analysis of Bill C-316.

I often recall that in language law, there are two basic major models or principles: the principle of personality and the principle of territoriality. I am going to provide a brief overview of this issue before addressing the bill.

The principle of personality is simple. It offers individuals the freedom to choose among multiple languages for official use. This is the situation with official bilingualism or multilingualism. On the other hand, under the principle of territoriality, a single language is mandated, a single official language: the language of the majority.

A review of the scientific literature clearly shows that the territoriality model is really the only one that is able to enhance the vitality of a vulnerable minority language. The best example is the case of Canada, which is based on linguistic personality. The percentage who are francophone fell from 27.5% to approximately 22% between 1971 and 2021. In Switzerland, on the other hand, the francophone percentage rose from 18.4% to 22.9% between 1970 and 2017.

The reason I am telling you this is as follows. During the 1960s and 1970s, when there was a decline in French in Quebec, the Charter of the French Language and its territorial approach meant that a single official language was adopted. As a result, French made progress in the late 1970s and during the 1980s. After that, however, there came several judgments that had the effect of limiting the effect of the Charter of the French Language, which is also known as “Bill 101”, and striking it down in part. Since then, French has declined.

Why have there been so many judgments against the Charter of the French Language? As Prof. Brodie was saying, the Court Challenges Program was used to fund cases that led to judgments that struck down whole segments of the Charter of the French Language. This ultimately contributed to the decline of French.

I therefore propose that Bill C-13 be amended so that the program can no longer be used to challenge the Charter of the French Language and reverse the progress made by French. That would be logical. The 2021 white paper entitled English and French: Towards a substantive equality of official languages in Canada proposed that the federal government support French in the other provinces, as it has long done, and also support it in Quebec, rather than hurting it by funding challenges to the Charter of the French Language, for example. The amendment would be to that effect.

We could even go further to remedy this historic error. Funding challenges to Bill 101 like these was ultimately a historic error, so we might go further by proposing that actions in support of Bill 101 be funded, and this would help individuals who wanted to assert their language rights as provided in sections 2 to 6.2 of the Charter of the French Language. These are fundamental language rights. Obtaining federal funds to move forward would truly be a good thing, especially given that since 2022, with the new Charter of the French Language, fundamental language rights are now enforceable.

People really may bring proceedings to fill the gaps in the specific rules in Bill 101. I always offer the following example. Consumers of goods have the right to be served in French. In certain clothing stores in Quebec, however, the signs advertising clothing, particularly for children, are in English. No clothing is advertised in French. Could the right to be served in French, this fundamental language right of consumers, mean that clothing must always be advertised in French? We do not know, but it would be worth considering an action on that point being funded by the Court Challenges Program.

The purpose of this amendment would be so that someone could not challenge provincial legislation and certain groups of people would be able to use program funds to assert the language rights provided by provincial legislation, in particular the Charter of the French Language. The same logic should apply to Quebec's Act respecting the laicity of the State. Rather than challenging it and repeating the historic error surrounding Bill 101, the fund could be used to put into effect the right to secular public services provided by that law. That would really be preferable. It is what the amendments mean, fundamentally.

In addition, there are improvements to be made regarding governance. I found what Prof. Brodie proposed very interesting, in particular that various political parties nominate people to sit on the board that manages how funding is awarded.

● (30430)

We also think that if there could be even more Quebeckers—

[*English*]

The Vice-Chair (Mr. Kevin Waugh): Please wrap up.

[*Translation*]

Mr. Guillaume Rousseau: Right.

We think that if there could be more Quebeckers, representatives of the Government of Quebec, that would be a very good thing.

As a final point, regarding transparency, once again, I support the proposals made by Prof. Brodie. I think that section 5.1 should go much further. Having a mere overview of the cases does not seem to me to be sufficient. The amendment should therefore—

[*English*]

The Vice-Chair (Mr. Kevin Waugh): Thank you, Mr. Rousseau. You've gone beyond your five minutes. We'll get a chance for questions and answers later.

Geoffrey Sigalet, assistant professor, is next.

You have five minutes, sir.

● (30435)

Mr. Geoffrey Sigalet (Assistant Professor, As an Individual): Thank you very much for the invitation today.

I want to make just one remark, which is that I am not an associate professor; I'm an assistant professor.

The Vice-Chair (Mr. Kevin Waugh): That was my fault earlier. Thank you.

Mr. Geoffrey Sigalet: You're promoting me to general when I'm a lieutenant, a baby professor.

I want to keep it simple. My view is that it would be a mistake to entrench the Court Challenges Program, the CCP, into statutory law, even through a private member's bill like Bill C-316, because it's not appropriate for public money to support the program.

I have three basic reasons for this.

First, the way the CCP has been designed and implemented has ensured that it is subject to partisan contestation. The preamble of Bill C-316 partially acknowledges this by indicating the history of how the program was abolished and then reinstated, but what it leaves out is that it was abolished by Conservatives and reinstated by Liberals. In my view, this partisan contestation undermines the preamble's own stated aim that the program should be independently administered in a way that holds the government to account.

It's very difficult for a program that is understood, at least by one major political party, to be advancing the partisan agenda of another set of political actors to effectively hold the government to account over successive governments. In truth, overall, this threatens to mire Canadian courts in partisan contestation, which is something we want to avoid. We want to avoid politicizing our courts further.

[*Translation*]

Second, the Court Challenges Program was created to challenge provincial legislation, and [*Technical difficulty—Editor*] actually the courts whose judges are appointed by the federal government to strike down provincial laws. The risk it creates is that Canadian federalism will be eroded, and it is a particular threat for the Government of Quebec.

It should be noted that the program funded at least one of the applicants who is challenging Quebec's Bill 21 in the Hak case against the Attorney General of Quebec, and probably others.

[*English*]

Third, the very idea of the CCP is in tension with the charter statements program and the idea that the federal government and Parliament are themselves responsible and accountable for protecting the rights entrenched in the charter. The CCP partly outsources to unelected special interest groups the responsibility for ensuring that legislation complies with rights. If there is a human rights or language rights issue with Parliament's bills, then it is Parliament's responsibility to fix these issues before they become law. Indeed, in my view, that's what the charter statements program stands for: declarations about the consistency of bills that should be debated and taken responsibility for in Parliament.

All of these three reasons for objecting to the CCP and Bill C-316 are compounded by what both speakers before me have mentioned already: the lack of transparency surrounding the CCP.

The CCP claims solicitor-client privilege and does not reveal the names of intervenors and litigants that it supports. This lack of transparency is a big problem for those who want to defend the program and would like to see it entrenched in statutory law. If the supporters of the CCP wish to argue that Bill C-316 should enjoy partisan support from across different parties, then the first thing they should do is waive solicitor-client privilege and publish a comprehensive list of the interventions they find.

Since 2000, they have advertised only a select set of interventions and have not identified the intervenors in their annual reports, although you can figure out some of the intervenors by looking at the case and at who is an intervenor in them. The list that they actually publish is very select. First of all, this whole conception of solicitor-client privilege as an approach to transparency is contestable. Second, it's all waivable. The CCP can waive this privilege, and indeed there seem to be good reasons for doing so.

In truth, the 2016 report issued by the 2016 Standing Committee on Justice and Human Rights on access to justice recommended that the CCP waive this privilege and publish in annual reports all cases that received support from the program. That's recommendation 7 from that report. I'll note that this committee report is, in the words of the sponsor of this bill, one of the sets of recommendations that motivated the introduction of this bill. If we're going to take this bill seriously and the reasons for it seriously, you might want to take the other recommendations in that report seriously as well.

In my view, whatever we make of the political future of the CCP or the future of this bill, informed debate about its merits cannot really take place without transparency about the kinds of cases it funds.

With that, I'll conclude my remarks and wait for the questions. Thank you very much.

● (30440)

The Vice-Chair (Mr. Kevin Waugh): Thank you for the five minutes, Mr. Sigalet, assistant professor.

Now we go to the Court Challenges Program of Canada. In the room is Marika Giles Samson, director.

Go ahead. You have five minutes.

Mr. Marika Giles Samson (Director, Court Challenges Program of Canada): Thank you, Mr. Chair.

I thank the committee for this invitation.

I wish to first gratefully acknowledge that most of the work of the Court Challenges Program, like that of this committee, takes place on the unceded traditional territory of the Algonquin Anishinabe people.

As the program operates bilingually, I will be delivering these remarks in both official languages.

By way of introduction, I have been director of the Court Challenges Program since 2020.

[*Translation*]

The purpose of the Court Challenges Program, or CCP, is to provide financial support in test cases of national importance relating to constitutional and quasi-constitutional rights involving official languages and human rights.

The program therefore has two objectives.

The first is to help more Canadians access the courts in order to assert the rights guaranteed to them by the Constitution Act, 1867, the Canadian Charter of Rights and Freedoms, and the Official Languages Act.

That objective addresses the fact that the financial costs associated with conducting constitutional cases are often an insurmountable barrier to access to justice.

The second objective of the program is to contribute to expanding our collective knowledge of the scope and meaning of the rights it enables people to assert.

[*English*]

By funding test cases of national significance, we aim to provide courts with the opportunity to advance the state of the law and contribute to our public understanding of the meaning of charter rights in Canada.

Given that most of the cases funded by the CCP seek to challenge laws, policies or practices of the federal government, it is operated at arm's length. As you know, it is currently being administered by the University of Ottawa, funded through a contribution agreement with the Minister of Canadian Heritage.

However, it is important for the committee to understand that while the program receives administrative and infrastructure support from the university—and by this I mean things like IT, accounting, payroll and facilities—the program functionally operates independently, particularly with respect to case selection. The University of Ottawa plays no role in selecting, nor has any access to information about the cases that the CPP funds.

Applications for funding are processed exclusively by CCP staff. The decisions about which cases are funded are made exclusively by two independent expert panels—the official language rights expert panel and the human rights expert panel—who are appointed through a process that was previously described by Mr. Dendooven in his testimony.

[*Translation*]

The expert panels make their decisions in accordance with their frame of reference. In making those decisions, they are careful to abide by the program's eligibility criteria and objectives.

The CCP's frames of reference, eligibility criteria and objectives are published on its website.

To assist the experts in doing their work efficiently, the program's legal staff verify that the applications are complete. They also prepare initial analyses in order to identify any eligibility problems and situate the case submitted in relation to the existing case law.

[*English*]

Everything that touches on the funding applications we receive, including the deliberative work of the expert panels and the ongoing management of funded cases, is considered highly confidential. This is to uphold the established rights of any prospective or current litigant to litigation privilege.

Briefly put, litigation privilege applies to any communications created for the dominant purpose of litigation when litigation is contemplated, anticipated or ongoing. This kind of privilege is intended to safeguard litigants' privacy rights so that the parties can go about mounting and pursuing their case free of interference. It's not the only form of legal privilege that applies to the work of the CCP, but it is the one that encompasses virtually all of the information that we hold about the applications we receive and the cases that we fund.

It is because of litigation privilege that the reporting requirements of the program are structured in the way that they currently are. The program does not report on the identity of funding beneficiaries until such time as the case in question is completed and all remedies exhausted.

Thus, our reporting requirements are drafted in a way that ensures transparency while respecting the rights guaranteed by litigation privilege of those who interact with the program. I would just add briefly that they are their rights to privilege, not the CCP's, and it is not for the CCP to waive them.

This program, however, does report on its activities. In December of every year, the program publishes an annual report on our website in which we report on how many applications were received and funded, provide anonymized summaries of some funded cases and provide information about the financial performance of the program.

In addition to the information contained in the annual report, the program provides financial and operational updates to the Department of Canadian Heritage several times a year, and once a year provides an updated, albeit anonymized, list of all files handled by the program.

● (30445)

[*Translation*]

It will be my pleasure to answer your questions in the official language of your choice.

[*English*]

The Vice-Chair (Mr. Kevin Waugh): Thank you, Marika.

Our final guest here for five minutes, by video conference from Vancouver, is Humera Jabir, who is a staff lawyer with West Coast Legal Education and Action Fund.

Go ahead, Humera, if you don't mind.

Ms. Humera Jabir (Staff Lawyer, West Coast Legal Education and Action Fund): Thank you very much for having West Coast LEAF here today.

My name is Humera, and I use she/her pronouns. I am a staff lawyer working on the homelands of the Musqueam, Squamish and Tsleil-Waututh nations.

West Coast LEAF supports Bill C-316, which would provide the Court Challenges Program with a legislative home. We also seek two amendments to further strengthen access to the guarantees enshrined in constitutional law and official languages legislation.

Our position on this bill arises from our decades-long experience advancing justice and equality for women and people who experience gender-based discrimination. We were formed in 1985 to ensure that charter rights, particularly section 15 equality rights, would receive robust protection. We have appeared before courts and tribunals in many cases to advocate for equality rights and protection from discrimination.

In our current justice system, all litigation is costly, and constitutional litigation is even more so. Going to trial as well as bringing or facing an appeal can be financially draining and cost hundreds of thousands of dollars. Developing and litigating test cases that seek to move constitutional law forward, especially on systemic issues, may involve several years of litigation, likely at three levels of court, and support from dozens of lawyers, staff and expert witnesses.

The program as currently structured caps funding at $200,000 for trials, $50,000 for appeals and $20,000 for test case development. This funding is a significant help, even if it only partially covers the total costs of litigation. Without it, accessing justice would be even more of an uphill battle.

The program is also an important funding source for public interest litigants, many of whom are non-profit organizations with very limited resources. In the 2022 case of British Columbia (Attorney General) versus Council of Canadians with Disabilities, CCD, the Supreme Court of Canada recognized the critical role that public interest organizations play in supporting access to justice by bringing cases on behalf of people and communities who face social, economic or psychological barriers in litigating cases on their own.

The program also funds intervenors who join cases as third parties to share unique perspectives with the courts. For decades, intervenors have made notable contributions to the development of constitutional law by ensuring that the perspectives of those whose rights and interests are impacted by a case are considered by courts and that legal decisions are informed by broader implications. West Coast LEAF has also received funding from the program to partially support the litigation costs of interventions.

While we support Bill C-316 in principle, we also recommend two amendments to bolster access to justice in constitutional and language rights cases.

First, section 2 of the bill should be amended to include language indicating that the program will support claims arising from federal, provincial and territorial jurisdiction. Presently, funding is only available for cases connected to federal jurisdiction; however, provincial and territorial laws directly affect the largest number of Canadians, and areas of law falling within provincial jurisdiction, such as family law or access to social services, often disproportionately impact women, people of marginalized genders and people facing other intersecting barriers.

The program must also include cases engaging provincial or territorial jurisdiction if it is to achieve its goal of supporting cases of national significance, which is the language used in the bill. Andrews versus Law Society of B.C., the first ruling from the Supreme Court of Canada on section 15 equality rights, was a case concerning provincial law. Similarly, the CCD case mentioned earlier in my remarks was also provincial in scope, but required the Supreme Court of Canada to decide legal questions concerning public interest standing. These cases significantly impact constitutional jurisprudence, but they may not have met the program's criteria for national significance as they did not squarely engage federal jurisdiction.

Second, the bill should be amended to clarify the term “independently administered” and to specify how independence from government will be secured. Litigation is an adversarial process, and cases brought against the government will necessarily run counter to government's interests. The bill must prevent the possibility of interference in funding decisions through the pulling or limiting of funding.

We understand that many committee members have expressed a wish for greater transparency and accountability, and we agree that the process of funding applications must be transparent and accountable; however, we caution that this must not come at the expense of independence and must balance concerns around preserving litigation privilege.

To conclude, by adopting Bill C-316, this committee would be signalling respect for constitutional rights and the rule of law. The Supreme Court of Canada has stated that if people cannot challenge government actions in court, individuals cannot hold the state to account and the government will be or will be seen to be above the law. It also ruled that there cannot be rule of law without access to justice.

● (30450)

By enshrining the program in legislation, this committee would be supporting meaningful and consistent access to courts to check and balance government and to advance fundamental rights.

Thank you.

The Vice-Chair (Mr. Kevin Waugh): Thank you, Humera. That was right on five minutes.

We will go to the first round of questioning of six minutes. We'll start with the Conservative Party.

Go ahead, Ms. Thomas.

Mrs. Rachael Thomas: Thank you.

Thank you to each of you for being with us, both in person and online. It's very much appreciated.

My first question goes to Mr. Brodie.

Clause 2 of the bill doesn't define “national significance”. Are you able to shed light on that today?

Mr. Ian Brodie: Yes, Ms. Thomas, I think the term “cases of national significance” is a term of art here. It's the same wording used in the Supreme Court Act. It's directing the court to give a leave to appeal in the cases of national significance and has been used in the various iterations of the Court Challenges Program back to the 1970s.

My interpretation is that the program is intended to finance cases that would, in the program's view, eventually be eligible to find their way to the Supreme Court.

Mrs. Rachael Thomas: Thank you, Mr. Brodie.

I am curious, however. Even though there's this definition of national significance and we have history to rely on in terms of what that means, when it comes down to it, the Court Challenges Program is actually not transparent in terms of which cases are funded and which ones are not. This seems to be problematic, to me at least, and I think to many others, because you are taking public dollars and using them to fund cases, but it's being done in secret. There seems to be this darkness around that, I suppose you could say.

Can you comment on that a little bit further?

Mr. Ian Brodie: My interest in the program goes back to the 1990s, to my—

[*Translation*]

Mr. Martin Champoux: A point of order, Mr. Chair.

[*English*]

The Vice-Chair (Mr. Kevin Waugh): Just a minute, Mr. Brodie.

What's that, Mr. Champoux?

[*Translation*]

Mr. Martin Champoux: The interpreters seem to be having problems following Mr. Brodie at the moment. Would it be possible to check whether everything is working?

[*English*]

The Vice-Chair (Mr. Kevin Waugh): We're having some interpretation issues, I believe.

[*Translation*]

Mr. Martin Champoux: Mr. Chair, we are told that Ms. Thomas's microphone is still on, and that causes problems for the interpreters. That is the explanation the interpreter has just given us.

[*English*]

The Vice-Chair (Mr. Kevin Waugh): We're going to suspend for a minute. I'm sorry, Mr. Brodie. We'll be back in a second.

Ms. Thomas, you have 4:01 left. That's where we stopped the clock.

● (30450)

_____(Pause)_____

● (30455)

The Vice-Chair (Mr. Kevin Waugh): We will resume.

As you know, we've had some issues with sound in the House of Commons and committees. If you ask a question, please shut off your mic after the question is asked. Then we can move forward with the answers. It's trial and error, as you all know.

Ms. Thomas, do you want to ask the question again? It's been several minutes. Mr. Brodie has tremendous capability, but not the rest of us, including me. I forgot your question.

● (30500)

Mrs. Rachael Thomas: Sure.

Mr. Brodie, in your opening remarks you commented on the lack of transparency around the selection of cases. Obviously, some are chosen and some are not. There are winners and there are losers at the end of the day. I'm curious to hear your further comments with regard to the problematic nature of this lack of transparency.

Mr. Ian Brodie: Yes, it's very difficult for a number of reasons.

First of all, for those of us who are observers—and I've been an observer going back almost 30 years now—when the program cut off information to the public about who it funded and who it didn't in real time, it became impossible to do a proper analysis of what the impact of the Court Challenges Program was. Was it meeting the objectives set out by the funding document? Was it serving the public interest in a broader sense?

I would say that this is particularly difficult in cases involving one section of the Charter of Rights coming into conflict with another section of the Charter of Rights. The government has, if I understand correctly, legislation pending before Parliament on online harms. That legislation—I don't want to get into the details, since it's still being debated—will inevitably end up in court, with both freedom of expression claims and equality rights claims. It's very difficult for the groups that are on the freedom of expression side to argue the case if they think in the back of their heads that there's a possibility that the equality rights arguments being advanced in those cases are being funded by the federal government when their arguments are not.

To those of us who are observers, that's the kind of transparency issue that I think goes beyond, and goes to the actual implementation of the Charter of Rights and the guarantee of constitutionally protected rights and freedoms in the country.

Mrs. Rachael Thomas: Thank you.

What is the fix to this, then? How could greater transparency be created?

Mr. Ian Brodie: Well, as my colleague Professor Sigalet has said, there's nothing to stop the program from simply waiving the privilege it has claimed in various court cases over the years and to do what every other government funding program does in real time, which is to let us know, once the decision is made or after a couple of days of edit and so forth, through press releases which cases are being funded, to what extent those cases are being funded and the dollar value that's involved.

The program used to do this. It did until about 2000. That's how I was able to do my original academic research. Once that research was under way, there was this claim of privilege, which was novel at the time.

Mrs. Rachael Thomas: Thank you.

Mr. Sigalet, you made a couple of comments in this regard, but perhaps you could expand on how this bill could be revised to make it less partisan in nature.

Mr. Geoffrey Sigalet: There could be restrictions or new rules on partisanship to require bipartisan oversight. You could require a committee like this to review the program and appointments and ensure that there's better political representation from across the political spectrum.

One of my colleagues is Andrew Irvine. I'm really lucky to have him as a senior colleague in my department here at UBCO. He was the president of the BC Civil Liberties Association for a little while, back before the recent president said, “Burn it all down”, and he told me that the BCCLA used to have a rule that you had to have representatives from each political party, card-holding partisan members of each political party, approve a case before it went forward.

There are ways of experimenting with a model like that. You could either write that into this kind of statute or just require it to be an informal thing in the culture of the organization. Those are two options.

Mrs. Rachael Thomas: Thank you, Mr. Sigalet.

Just briefly, I'd like to move a motion. It's standard. It's already been put on notice. It reads as follows:

> That, pursuant to the Order of Reference from the House dated Thursday, February 29, 2024, the Committee invite the Minister of Heritage to appear for no fewer than 2 hours regarding the Main Estimates 2024-2025, and that this meeting take place no later than May 31, 2024.

The Vice-Chair (Mr. Kevin Waugh): Is there any discussion?

Go ahead, Mr. Noormohamed.

Mr. Taleeb Noormohamed: Has the motion circulated?

The Vice-Chair (Mr. Kevin Waugh): I think it has for months. It's the same one that was tabled on March 12.

Mr. Taleeb Noormohamed: Okay, it's the same one that's been tabled.

Just give us a moment to take a look.

● (30505)

Mr. Michael Coteau: Can we just pause for a bit?

The Vice-Chair (Mr. Kevin Waugh): Yes, we'll suspend for a second.

● (30505)

_____(Pause)_____

● (30505)

The Vice-Chair (Mr. Kevin Waugh): All right, we'll resume.

Go ahead, Mr. Noormohamed.

Mr. Taleeb Noormohamed: It's on the motion, right?

I have no issue with having the minister come. I think what we would like to do is propose an amendment that it be one hour for officials and one hour for the minister, as has been the standard custom.

The Vice-Chair (Mr. Kevin Waugh): That's fine.

Go ahead, Mr. Coteau.

Mr. Michael Coteau: How does it fit into the calendar? What would be the—

The Vice-Chair (Mr. Kevin Waugh): That's the million-dollar question. It has to be before the end of May.

What do you think, Clerk?

The Clerk: I can reach out to the minister's office and get their availability for you.

Mr. Michael Coteau: Are there some slots before the end of May in our current schedule?

The Clerk: We currently have seven meetings, and we can move things around. Three meetings haven't been decided on: May 23, May 28 or May 30.

Mr. Michael Coteau: Okay.

The Vice-Chair (Mr. Kevin Waugh): Okay.

Ms. Patricia Lattanzio (Saint-Léonard—Saint-Michel, Lib.): If I understand correctly, on May 21 we will be doing clause-by-clause consideration on the sport study. Normally, that would take a few sessions, would it not?

Is the clause-by-clause study for that on May 21? That's what I understood, Mr. Champoux.

[*Translation*]

I'm sorry, I wanted to talk about the clause by clause consideration of Bill C-316.

[*English*]

The Vice-Chair (Mr. Kevin Waugh): Do you mean the safe sport study?

Ms. Patricia Lattanzio: It's Bill C-316. I'm just wondering how many meetings we....

An hon. member: I agree. Now, we could change the old schedule because.... Remember that whole fiasco....

Mr. Taleeb Noormohamed: I have no objection to it if we can figure out how.

The Vice-Chair (Mr. Kevin Waugh): Mrs. Thomas, we're looking at the calendar. It would be the 23rd, the 28th or the 30th. Is that correct? That's what we're looking at.

We'll let the clerk, if you don't mind, reach out to the minister, and we'll give her some options. We have the 23rd, the 28th and the 30th, and we'll see if it fits her schedule.

Mr. Michael Coteau: Will adopting this motion push the safe sport report back at all?

The Vice-Chair (Mr. Kevin Waugh): Well, to be honest with you, it could. We have online harms tentatively scheduled on the 23rd and the 28th right now. Then we have safe sport on the 30th.

Mr. Michael Coteau: I have no problem with this, but my only objection would be that I really would like to get that report done.

The Vice-Chair (Mr. Kevin Waugh): Go ahead, Mr. Champoux.

[*Translation*]

Mr. Martin Champoux: I understand everyone's concerns about the safe sport study, which we would all like to finish. It has been dragging on for much too long.

However, in this case, we have to meet with the minister about the estimates. That is the normal order of things in the committee's parliamentary business and it has to be before May 31. We cannot do it later. I understand wanting to do everything, but that has to be done as the priority, before going on to other matters.

If we present the minister with options, we can organize our schedule around the available times she offers us.

● (30510)

[*English*]

The Vice-Chair (Mr. Kevin Waugh): Good. We'll have the clerk reach out to the minister to see if we can fit her in, as well as the departmental officials, for one hour each. How's that?

I'm just looking at the schedule. It could be May 23, May 28 or May 30, but it has to be done before the end of the month.

Mr. Taleeb Noormohamed: I just want to confirm that we're required to have this done by May 31. Is that correct? I just want to make sure.

The Vice-Chair (Mr. Kevin Waugh): Yes.

Mr. Taleeb Noormohamed: Okay, that's fine. Then we have to make sure that we can.... Okay.

The Vice-Chair (Mr. Kevin Waugh): Thank you, Mrs. Thomas. Is there anything else?

No. You're done.

Mr. Serré, welcome. You represent the Liberal Party of Canada for six minutes of questioning here. Go ahead.

An hon. member: He represents the—

Mr. Marc Serré: Mr. Chair, I represent the people, the constituents.

Mr. Kevin Waugh: Well, it says “Liberal Party of Canada”. The people of Nickel Belt are very proud, so....

[*Translation*]

Mr. Marc Serré: Thank you, Mr. Chair.

Thanks to the witnesses for being here to testify about the Court Challenges Program.

My first question is for Ms. Giles Samson.

A witness and some members of the Conservative Party talked about confidentiality and lack of transparency. Earlier, Ms. Jabir referred to important factors relating to confidentiality. I think there are some significant problems there.

Can you explain your argument regarding the annual report to the committee, and tell us about the suggestion that a parliamentary committee should choose the experts in order to avoid partisanship? In my opinion, it would be a colossal mistake to involve parliamentarians in selecting the experts.

Can you explain how the selection of experts works and how transparency is ensured?

Mr. Marika Giles Samson: I am happy to answer questions about transparency.

In my opinion, it is a question of striking a fair balance. There are three factors.

First, we have to share as much information as possible about the management of the program and we have to provide all the information we can.

Second, a balance has to be struck between that consideration and the rights established by the Supreme Court of Canada that allow social assistance recipients to maintain a certain degree of confidentiality in bringing their case, which preserves their ability to carry it through. In my opinion, that right, or privilege, should apply equally to people who have financial needs. We do not ask other people how they are paying to have their litigation resolved.

The third part of the triangle of transparency is the independence of the program. We have to be able to preserve the integrity and decision-making independence of the CCP, beyond the reach of public or political pressure. That is why the CCP has been administered by a third party. The independence of the program is strengthened when the expert panels are able to select the cases to be funded based solely on the eligibility criteria.

In my opinion, questioning their decisions does not respect either their expertise or their independence. We should note that there are seven members on each of the panels. That represents a diversity of views.

This brings me to Mr. Serré's question about how we choose the cases described as being of national significance: the test cases. That is really a question of expertise. It is necessary to know where a case falls within the case law and how it may clarify or further rights. I think it works very well because those decisions are assigned to experts.

Mr. Marc Serré: Thank you, Ms. Giles Samson.

● (30515)

[*English*]

Mr. Brodie, you were the chief of staff for former prime minister Harper. You know this program. You said it was at arm's length earlier, but you were involved in the government here.

I'm a francophone from northern Ontario. You know that this program helped the Montfort hospital, the francophone hospital in Ottawa.

This program was also used for l'Université de l'Ontario français.

[*Translation*]

What do you say to minority official language organizations or individuals in Canada who need this kind of support? They do not have the necessary funds. The organizations do not have funds to take legal challenge all the way to the Supreme Court. They need a fund to ensure that language rights are respected in Canada.

What do you say to those organizations? The Conservatives abolished this program; you witnessed that. If a new Conservative government were elected in the near future, do you think it would cut this program a third time?

[*English*]

Mr. Ian Brodie: I understand that of course litigation is extremely expensive. It's expensive for all the organizations that are involved in different types of human rights and Charter of Rights litigation in Canada.

The point I've tried to make in my written submission is that over the course of the years, the Court Challenges Program has gone through the cycle of being created and cancelled and recreated again. In part it's because of the partial nature of the Court Challenges Program's coverage. For example—this is the point I tried to make in the written brief—during the course of the COVID pandemic crisis, there were all sorts of new government regulations and rules that came down that limited various civil liberties in the Charter of Rights and so forth. They were challenged by all sorts of groups across the country—I've listed some of them in the written brief—that were entirely financed by private means with no support whatsoever from the Court Challenges Program, as far as we understand.

[*Translation*]

Mr. Martin Champoux: Mr. Chair, we do not have any interpretation.

[*English*]

The Vice-Chair (Mr. Kevin Waugh): Thank you, Marc. Your time is actually up.

What is the will of the committee? The bells have started ringing. They are the 30-minute bells. Do you want to continue with the first round here? We have the NDP and the Bloc. If that's the will, we would go until about 5:30.

Go ahead, Mrs. Thomas.

Mrs. Rachael Thomas: I guess I'm actually curious whether the committee would maybe be willing to....

In the first round, we still have two more left, the Bloc and the NDP. That would take us to 10 minutes. Then I'm wondering whether perhaps we would have agreement to do maybe three minutes per party after that, which would still give us 10 minutes to vote.

An hon. member: No.

Well, we'll have the Bloc and the NDP, and then—

[*Translation*]

Mr. Martin Champoux: Yes.

[*English*]

Mrs. Rachael Thomas: Okay. What about two more minutes per party?

The Vice-Chair (Mr. Kevin Waugh): Okay, the will, I think, is....

Let's finish the first round and see what's going on.

From the Bloc, we have Mr. Champoux for six minutes, please.

[*Translation*]

Mr. Martin Champoux: Thank you, Mr. Chair.

I admit that I would have liked to be able to have a bit more time. Maybe there will be another round of questions after this one. I think Ms. Thomas's proposal was really very reasonable. This is also an interesting subject.

Mr. Rousseau, I am really pleased to have you with us today. Thank you for accepting the invitation. I know you have an extremely full schedule, as do the other witnesses, undoubtedly. I particularly appreciate your being here, since you have done a lot of work on cases that involve the values, and even the unique challenges, seen in Quebec, particularly regarding secularism and the protection of French.

I would like you to tell me a bit about the connection between the court challenges program and the values that are dearly held in Quebec and that differ in several respects from the values in other regions of Canada. From your experience, paint me a bit of a picture of those challenges as they relate to the court challenges program.

Mr. Guillaume Rousseau: Good afternoon.

Thank you for the question.

We know that the program really has been used several times, and unfortunately with success, to challenge the Charter of the French Language, which, as you know, is one of Quebec's most important laws when it comes to defending its distinctive character. So this program was created for that, to be used for that. We know this. It is documented. Not only has that weakened Bill 101, but there is also every indication that the subsequent decline in French is directly related to this weakening of the act, as a particular effect of the judgments resulting from actions funded by this fund. So this fund, in my opinion, is directly connected with the increasing fragility of French.

The same thing is happening with the Act respecting the laicity of the State. We have been informed that the English Montreal School Board, the EMSB, has received money from this program, and this suggests that the fund will be used to finance groups that already have a lot of money. The EMSB has funds with millions of dollars. It is very well subsidized.

So it is not just small not-for-profit organizations, NPOs, or individuals who are less well off who benefit from the program. The EMSB is very wealthy. Should the cases where the program can provide funding not be limited solely to NPOs or individuals? That is another question.

These two cases, secularism and French, clearly illustrate that a lot of the time, this program is used to damage Quebec's interests and distinct character.

As a lawyer who is often involved in cases where my clients are defending Quebec's distinctiveness, we see that the other parties opposing us and opposing Quebec's distinct character have access to this program, which is not the case for my clients.

Apart from the appearance of partisanship that my colleagues have rightly raised, there is a problem, and the concrete results make it clear that there is a bias against Quebec in the cases funded by this program.

● (30520)

Mr. Martin Champoux: I find what you are saying interesting.

I would connect it with what Mr. Serré said earlier when it was his turn to ask questions, when he was talking about the usefulness of this program, which made it possible, for example, to save Montfort Hospital in Ontario, and also the Université de l'Ontario français. It is not a bad program. It has its use. However, the way it is organized may make it easy, as you say, for it to be used by opponents of legislation enacted by Quebec's National Assembly, particularly those who take aim at protecting French and secularism.

I do not think this is an easy idea to apply, but earlier, one of the speakers proposed that there be representatives of political parties on the selection committee for members of the CCP's expert panels.

At first, I would have said spontaneously no, but I am thinking that this would allow for a kind of guard dog at the source, upstream, someone who could say that one or another case is flatly contrary to Quebec's values, or for any other reason, and it cannot be supported.

Do you think that could be a solution? If not, how could this program be supported, if we want to support it and at the same time also protect the values that Quebec espouses?

Mr. Guillaume Rousseau: I think it is not a bad idea to include experts, including experts from academia, but that does not mean there cannot also be parliamentarians. It is not really a bad idea for there to be a parliamentary process upstream of the experts being appointed. At the National Assembly of Quebec, there are often appointments approved by a qualified majority, that is, two thirds of the parliamentarians, which means that it very often cuts across party lines. A similar process could be imagined for this committee.

The other possibility I raised is this. Hypothetically, if Quebec had special status and this program could not be used to challenge Quebec legislation, that would have to be taken into account in the appointment method. As I said, ideally, I would like this program to be used more for the defence or broad interpretation of Quebec legislation that grants language rights, such as Bill 101, or that grants fundamental rights, such as the Quebec charter of human rights and freedoms, or the Act respecting the laicity of the State, which grants the right to secular public services. Based on that, certain members of the committee, certain experts, could be appointed by the Government of Quebec. That would be another way to do it.

Ultimately, what is needed is transparency. It is fine to talk about national significance, but we do not know exactly how that criteria is interpreted by the experts. Having a better appointment method does not mean there is no need for transparency downstream.

Mr. Martin Champoux: You are talking about transparency, and I think that is a very important concept. In fact, a number of witnesses have told us that transparency was missing from the bill.

Do you think we should know the identity of the applicants, and once the cases have been decided, because I am not talking about cases in progress, we should be able to know who the applicants are and what cases have been funded?

Mr. Guillaume Rousseau: Yes, I think that really would be justified.

The bill as it now stands talks about an overview of the cases, and that is much too minimal. In my opinion, the professional privilege argument is limited, because no one is obliged to take the money. There are conditions attached to the money. These are public funds. It's fine to say that people who are less well-off have as many rights as wealthier people, but these are public funds. Normally, that comes with transparency obligations.

● (30525)

Mr. Martin Champoux: Thank you, Mr. Rousseau.

Mr. Guillaume Rousseau: Thank you.

[*English*]

The Vice-Chair (Mr. Kevin Waugh): Thank you very much.

We'll move to the NDP and Ms. Ashton for six minutes.

Ms. Niki Ashton: Thank you.

I want to thank Ms. Jabir for joining us today and sharing her testimony.

I want to begin by recognizing that West Coast LEAF, which is almost 40 years old, came out of the struggle for gender equality in our country. Of course, we know it is very much connected to the fight for section 28 in the Charter of Rights and Freedoms. It is an organization that has been in this fight for a long time and is one that deals with many of the court challenges, whether on section 15 or 23, that the Court Challenges Program funds.

I want to go back to the Harper era, when the Court Challenges Program was cut.

Of course, many of us were involved in fighting back against that decision. I'm wondering if you could share a bit about what that meant for the rights of women, people living with disabilities, indigenous peoples and others who, for a number of years, did not have recourse through the Court Challenges Program. To what extent did that cut set us back as a country?

Ms. Humera Jabir: Thank you very much.

I think what's important for the committee to keep in mind as it makes its deliberations is that accessing the judicial system, for those in equity-seeking groups—indigenous communities, people facing disabilities or otherwise marginalized groups—is never a first resort. Often litigation is preceded by years of advocacy, including grassroots advocacy and engagement with legislators such as yourself, in order to try to bring forward the issues that are being experienced in these communities. Because of the cost of litigation, it is usually not the first resort for any of these groups or communities. Bringing forward cases takes considerable fundraising and efforts by average Canadians to try to build a community up around the issues that are important and need to be addressed.

I'd like the committee to certainly sit with this—that litigation is often a last resort to try to protect constitutional rights and create change. For those who need to access CCP funding in order to bring cases forward, it is usually a considered decision. They are bringing forward cases for which there is a strong rationale and often a long history of efforts to bring about change on issues of importance to the equity-seeking groups and to try to uphold those constitutional rights in a way that hasn't been possible to date.

I think it's very important for the committee to recognize that access to justice is fundamental. It must be available and accessible to everyone in a meaningful and consistent way. What the CCP offers is a small part of what the total cost of bringing cases forward requires.

Constitutional litigation is an evolving area, in which all cases that are brought forward have the potential to enrich and refine the laws, rights and entitlements of all groups. Certainly, our focus is on how to enrich constitutional law, recognizing that the cases brought forward and adjudicated by the courts have the potential to impact the public interest, not only for one group but also for many.

Ms. Niki Ashton: Thank you for sharing those critical points.

You talked a bit in your testimony about the need to expand the legislation in front of us. That's something we've heard from other witnesses as well.

Do you think we should expand the Court Challenges Program so that it covers other parts of the charter? What would you like to share with the committee on this front?

Ms. Humera Jabir: Certainly, some of the other parts of the charter not currently included are covered by criminal legal aid. We are able to see development on the charter with respect to those areas.

Our emphasis is on provincial and territorial jurisdiction cases because, as I shared in my remarks, although cases such as the Andrews decision and the CCD case may not involve federal laws, policies or practices, the outcomes of those cases have impacts across the nation for public interest litigants, for the development of constitutional law, and for how constitutional law is interpreted and applied not just for one group but also for everyone.

It is very important that the question on the table considers the evolution of constitutional law, the impacts it has on many groups and the development of the law. These are very challenging and important questions. One constitutional decision can have an impact on many others with respect to remedies available and how systemic issues are approached.

It is therefore very important that the question of what cases are considered is one that takes into account broader implications, including how constitutional jurisprudence is going to advance.

● (30530)

Ms. Niki Ashton: Thank you very much.

I see that I have one minute. I'll quickly go back to your point about how groups do not take lightly the decision to take the government to court.

We know that many court cases take a very long time. I'm thinking of the first nations child welfare case that took nine years. We know how costly this can be.

In juxtaposition with private groups with significant amounts of money—often acting on behalf of corporations in the oil industry, the mining industry, etc.—how important is it to recognize what marginalized groups are up against and what defending their rights ultimately means for all of us?

Ms. Humera Jabir: It's essential.

I would add that there are not only financial consequences of trying to bring these cases forward. Litigation that lasts years has an emotional consequence, a psychological consequence. Bringing these cases forward places an extremely high burden on groups, especially those who face discrimination in our society and who are otherwise marginalized.

The CCP has funding for trials. It has funding for motions and for appeals.

The Vice-Chair (Mr. Kevin Waugh): Please wrap up.

Ms. Humera Jabir: These cases, which take decades, also require many interim steps, all of which need to be negotiated and dealt with in the courts. They are [*Inaudible—Editor*] litigation.

The Vice-Chair (Mr. Kevin Waugh): Thank you, Ms. Jabir.

Thank you very much to our guests today.

We need unanimous consent to continue.

Mrs. Rachael Thomas: On a point of order, according to the daily resource capacity report, if CHPC is delayed or suspended for any reason, it may continue beyond six o'clock until it reaches two hours of meeting time or 6:30, whichever is earlier.

I would ask the chair to suspend the meeting and make every effort to find the necessary resources.

The Vice-Chair (Mr. Kevin Waugh): According to the clerk, the resources are there to go until 6:30.

We could do that. That would be the two hours.

Ms. Patricia Lattanzio: Mr. Chair, we all know that there is an important vote to get to. I'm going to move to adjourn this meeting.

The Vice-Chair (Mr. Kevin Waugh): Mr. Coteau, go ahead.

Mr. Michael Coteau: I thought you needed unanimous consent to go forward. .

The Vice-Chair (Mr. Kevin Waugh): We do, to keep going now before the vote.

I guess we don't have that, but we do have resources here until 6:30, meaning we could come back at 6:00.

Mr. Michael Coteau: But if you don't have unanimous consent, that's it. It's done. It's a done deal.

The Vice-Chair (Mr. Kevin Waugh): Do we want to go to 6:30?

Voices: [*Inaudible—Editor*]

The Vice-Chair (Mr. Kevin Waugh): We don't have that consent.

Is it the will to suspend and come back at 6:00? I would do that.

Mr. Michael Coteau: I've seen so many times that if there isn't unanimous consent, we don't come back. I've seen that with many members here. I think we should stick to what you originally asked for, unanimous consent, even before our last two speakers. We said we would agree to let the last two speakers go and then we would finish. That was the agreement we made.

The Vice-Chair (Mr. Kevin Waugh): Mr. Champoux, go ahead.

[*Translation*]

Mr. Martin Champoux: I would like to clarify one point.

During the preceding discussion, we had agreed to continue the committee meeting while the vote was being called. We never talked about ending it after the vote.

The committee may very well decide to come back after the vote, and that is what I would like to see.

I think the issue being considered is a very interesting one and I still have questions to ask the witnesses.

I propose that we go and vote and come back after.

We never agreed to interrupt or adjourn the meeting. We agreed to continue the round of questions while the vote was being called.

[*English*]

The Vice-Chair (Mr. Kevin Waugh): Then is the majority opinion to come back?

We could continue at six o'clock, after the vote, or at 6:05, and then we could go to 6:30. We could just suspend.

● (30535)

Mr. Taleeb Noormohamed: You don't have unanimous consent, Mr. Chair.

If you want to change the way the committee has functioned, which the actual chair has done as a courtesy to members when we've said we don't have unanimous consent to continue past a certain time—some of us have child care obligations and other things we need to get to—that's fine, and we can start playing that game as well, but this is not a game, Mr. Chair.

Ms. Ashton has her hand up. We agreed to something I thought we understood, which was that we would let this round go and then we would move on.

The Vice-Chair (Mr. Kevin Waugh): Ms. Ashton, go ahead.

Ms. Niki Ashton: I also thought unanimous consent didn't exist for carrying on. I will also say that this whole meeting has been pretty disjointed with various technical issues, etc., so I'm not sure what we'll get by carrying on, given what we have seen for the last hour and a half, so I also support adjourning at this time.

The Vice-Chair (Mr. Kevin Waugh): We need a majority to bring everyone back, according to the clerk. Is there a vote on this, quickly? Could we have a show of hands?

Mr. Michael Coteau: On a point of order, Mr. Chair, we've sat on this committee for a long time. Every single time we've had to have unanimous consent in order to go past a certain official ending time. That has been the rule since the beginning. I've been on this committee for two years. You originally asked for unanimous consent. You didn't get it. Now, for some reason, we're switching to a vote.

I think you should stick to your original decision to ask for unanimous consent to extend past six o'clock. You're not going to get that, and therefore the meeting is done.

Mr. Taleeb Noormohamed: Further to that, Mr. Chair, it is not the prerogative of the committee to delay members from attending the House to vote.

You no longer have a majority of members who are prepared to come back. There are five of us on this side, plus Ms. Ashton. That's your majority, Mr. Chair.

I would strongly recommend that we try not to play games with the tone of this committee. It's already been a problem. We're trying to do our best to work together.

When Ms. Fry has been the chair, every time there has been a move from any member of any party to say that we don't want to go past that time, everyone's respected it.

Why do we want to change it today? I don't know.

The Vice-Chair (Mr. Kevin Waugh): Well, we've only had one round. Usually we're well into the second round, so that's why I'm asking. I've been on this committee for eight years, and this is the first time we've only done one round.

Mr. Taleeb Noormohamed: I can think of at least three meetings where people decided they were going to delay things while we had witnesses waiting to deal with online harms, and we had to ensure that we had the ability to deal properly with people who were coming forward with traumas.

You can't all of a sudden decide that you want to change how the game is played.

The Vice-Chair (Mr. Kevin Waugh): We need a majority vote to adjourn.

Mr. Taleeb Noormohamed: You have a majority of members, Mr. Chair, who have indicated their desire to adjourn. I don't know how much more clarity you need.

The Vice-Chair (Mr. Kevin Waugh): We don't have unanimous consent to continue sitting right now—

Ms. Patricia Lattanzio: And you have my motion to adjourn.

Mr. Taleeb Noormohamed: You have a motion to adjourn, and it is supported by the majority of committee members.

The Vice-Chair (Mr. Kevin Waugh): We'll go to a vote on that.

Would we like a roll call to come back at 6 or 6:05?

Mr. Taleeb Noormohamed: Some of us have the ability to go back to the House to vote, so....

The Vice-Chair (Mr. Kevin Waugh): The motion is to adjourn the meeting, and a roll call has been requested.

Madam Clerk, please proceed.

(Motion agreed to: yeas 6; nays 4)

The Vice-Chair (Mr. Kevin Waugh): We are adjourned.