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THE SENATE

Motion to Urge Government to Reconsider Decision to Discontinue the Court Challenges Program—Debate Continued

Speech by:

The Honourable Claudette Tardif

Thursday, October 5, 2006

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MOTION TO URGE GOVERNMENT TO RECONSIDER DECISION TO DISCONTINUE THE COURT CHALLENGES PROGRAM—DEBATE CONTINUED

[Translation]

On the Order:

Resuming debate on the motion of the Honourable Senator Joyal, P.C., seconded by the Honourable Senator Robichaud, P.C.:

That the Senate urge the Government of Canada to reconsider its decision to discontinue the Court Challenges Program which has enabled citizens to seek redress and assert their rights guaranteed under the Constitution and particularly the Charter of Rights and Freedoms;

That the Standing Senate Committee on Official Languages be authorized to study and report on the benefits and results that have been achieved through the Court Challenges Program;

That the Committee submit its final report no later than December 22, 2006; and

That a message be sent to the House of Commons informing it that the Senate regrets the Government's decision to terminate the Court Challenges Program and urges it to take action to persuade the Government to reconsider that decision.—(*Honourable Senator Comeau*)

Hon. Claudette Tardif: Honourable senators, like many of us here, I was shocked to learn that the federal government was suddenly abolishing the Court Challenges Program, to save \$5.6 million over a two-year period, this on the very day that the government announced a surplus of some \$13 billion.

We are not the only ones to be disappointed. The Fédération des communautés francophones et acadienne, the Fédération des juristes d'expression française de common law, the outgoing Commissioner of Official Languages and the francophone associations in every province were all disappointed and shocked to hear that this program was being discontinued. This is obvious in the numerous articles published in newspapers across the country.

I, like many, feel that the Conservative government is making a serious mistake in abolishing a program which, over the years, has helped assert the equality and linguistic rights guaranteed under the Canadian Constitution.

[English]

I believe that the existence of this program is a clear manifestation of Canada's democratic values and an important exercise of democracy. In an ideal world, it would be expected that governments would respect and promote the constitutional rights afforded to minorities.

[Translation]

As many of you know, and as Senator Joyal so eloquently and passionately stated, it has historically been very difficult for minorities, especially francophone minority communities, to assert their rights under the Canadian Constitution to their respective provincial governments.

I can think of several examples, such as the *Mahé* decision, which gave francophone parents like me, in Alberta, the right to manage their own schools. Roughly seven years passed from the time the case first went to court in Alberta until the Supreme Court of Canada handed down the final decision in 1990.

Honourable senators, do you think that the parents involved in that case would have had the money to carry on their struggle for seven years if they had not had the support of the Court Challenges Program? Without this Supreme Court decision, my own children and many others would not have been able to obtain their education in their mother tongue, in a French-language school in Alberta.

I also think of the parents in Summerside, Prince Edward Island, who won a Supreme Court judgment confirming their right to establish a French-language school in their community. The Montfort Hospital, here in the nation's capital, would not be open today if it had not been able to assert its rights in court. There are many other examples.

[English]

Contrary to what Madam Minister said on October 3, some 25 years after the adoption of the Charter, there is still much left to challenge with regards to the Charter.

Today, in Alberta, a case concerning language rights is before the courts. An individual is bringing the Government of Alberta to court. This case, which was funded by the Court Challenges Program, has significant potential to affect minority linguistic rights in the province and to afford services to francophone citizens living in Alberta.

Will these rights be further compromised by the elimination of the Court Challenges Program?

[Translation]

Twenty-five years after the Charter was adopted, the courts are still being asked to rule on issues pertaining to language rights. However, we all know that in 1982 the provinces, except for Quebec, had agreed to entrench in the Canadian Constitution the Charter of Rights and Freedoms, which recognizes the right to instruction in the language of the minority and management of its institutions across the country, among other things.

The provincial and the federal governments thus had constitutional responsibilities with respect to official language minority communities. Yet they did not honour them!

In response to the criticism, the federal government has stated that it will not adopt an unconstitutional law and that it is a matter of savings and program efficiencies.

Are the constitutional rights of official language minorities a matter of dollars and cents? Minority rights do not boil down to a mere accounting exercise. Efficiencies or savings are not the issue here.

Furthermore, since we are a federation, laws are enacted not only by the federal government but also by the provinces. Recent history has shown that it is often the provincial governments that do not live up to their constitutional commitments under the Canadian Charter of Human Rights and Freedoms.

[*English*]

Without financial support from the Court Challenges Program, official language minority communities in Canada would not have had any way to remind obdurate provincial governments of their constitutional obligations and responsibilities toward them. We should not forget that members of minority communities rarely have the human or financial resources of a provincial or federal government. Between an individual and a big, mighty government, do you really think that the average citizen stands a chance?

The Court Challenges Program was an important tool that helped to level the playing field and made it possible for official language minority communities to exercise their constitutional rights. That is why it has been so instrumental in the exercise of Canadian democracy.

Honourable senators, the strength of a democracy is reflected in the way it treats its minorities.

[*Translation*]

What I find even more perplexing in this decision is the conflicting message it sends. On one hand, the federal government

is reminding all francophone minority communities — and I heard it again today — that it supported the amendments to the Official Languages Act made by Bill S-3. How can they rationalize these cuts?

The government tells us that it is committed to ensuring that positive steps are taken to implement its plan to promote flourishing francophone and anglophone minority communities throughout Canada and support their development.

On the other hand, by eliminating the Court Challenges Program, the government is taking away an important tool that gives francophone minority communities the ability to safeguard their rights if they are being violated. Are these communities to understand that such a decision is an example of what the government means by “positive steps”? I certainly hope not.

[*English*]

I truly hope that this government does not define these cuts as a definition and a reflection of what it means by a positive measure for the implementation of its commitments under the Official Languages Act.

[*Translation*]

Honourable senators, as the government reminds us that this program has already been eliminated in the past, it seems to overlook the fact that that Bill S-3 changed everything. For this reason, honourable senators, this matter needs to be studied objectively and in greater detail. As Senator Joyal underscored, this has already been done and I believe that we, the Senate, as protectors of minority interests, must review the matter once more to determine if the federal government has failed in its responsibilities to minorities or if it has acted reasonably.
