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Chair

The Honourable Paul DeVillers

Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness

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● (1535)

[*English*]

The Chair (Hon. Paul DeVillers (Simcoe North, Lib.)): I call this meeting to order.

This is a meeting of the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness, and the meeting has been called to consider the main estimates for 2004-05.

I'd like to welcome Minister Cotler with us, and he has his deputy, Mr. Morris Rosenberg, et Madame Josée Touchette.

[*Translation*]

Welcome everyone.

[*English*]

I would now like to call vote 1 in order to begin our review of the main estimates.

I would ask the minister, if he has an opening statement, to make it now, and then we will go to questioning from the members.

Mr. Cotler.

[*Translation*]

Hon. Irwin Cotler (Minister of Justice): Thank you, Mr. Chairman.

As you know, I appeared here in March to table the spending estimates of the Department of Justice, and I am pleased to once again meet the members of your committee today to re-table our main and supplementary spending estimates.

Joining me today is my Deputy Minister, Morris Rosenberg, and the Assistant Deputy Minister responsible for corporate management and administration, Josée Touchette.

[*English*]

Mr. Chairman, the spending estimates I am tabling today are identical to those I tabled in March. However, since I last appeared before this committee, the Department of Justice has tabled its report on plans and priorities for 2004 and 2005, and therefore I will briefly discuss those priorities with you today in the context of this presentation.

But first, Mr. Chairman, I would like to present a snapshot of our changing and, indeed, transformative socio-legal environment, as a way of providing you with a context for the demands and pressures affecting our budget and operations. Over the past decade, the Department of Justice has sought to keep pace with a rather remarkable growth in the demand for its legal services. Currently, we are working on approximately 204,000 different files, including 45,000 civil litigation cases, 12,500 Indian residential school claims, and an inventory of some 180,000 criminal files, let alone the increasing number of what we would call high-impact litigation cases.

To handle the increased volume and scope and complexity of these cases, the department has made significant changes in the way we conduct our work. These changes are reflected in the spending estimates before you today, which reflect both the uniqueness of the department's mandate—and it should be appreciated that I serve as both Minister of Justice and Attorney General of Canada, two roles around which the department is organized—and the changing times in which we are called upon to deliver that mandate.

Over the same period, Canada itself has undergone a series of transformative changes—what I would indeed call revolutionary—that have had a dramatic impact on society and the legal system. I'll briefly summarize them to give us an appreciation of the context within which these estimates are being considered.

The first of these is the constitutional revolution, with its centrepiece, the Canadian Charter of Rights and Freedoms, whereby we have moved from being only a parliamentary democracy to a constitutional democracy, with groups and individuals having a panoply of rights and remedies that were hitherto unavailable, and a new set of responsibilities and obligations for the minister and the Department of Justice.

Second is the international law revolution, the revolution in international human rights, humanitarian, criminal, and economic law. This involves, for example, the internationalization of human rights and the humanization of international law, the whole of which is not unrelated to the globalization process, a process that is not just an economic term but also a juridical term, having juridical consequences in the globalization of media and markets of technology and trade—and indeed what might be called the globalization of injustice, of war crimes, crimes against humanity, and genocide, requiring a justice antidote to this injustice.

Third is the aboriginal rights revolution, involving among other things the intersections of sections 15, 25, and 35 of the charter and the Constitution of Canada, where aboriginal people interact with the justice system in a more sustained way, and the courts have emerged as a main avenue of redress for a whole network of claims, be they in the framework of the treaty process or in the framework of residential schools and the like.

Fourth, and as a corollary, we have seen the development of what I would call a rights-based discourse, whereby public policy issues are considered in relation to specific rights rather than as choices that are made amongst various policy options. Moreover, Canadians are less inclined to defer to their governments in these legislative choices —what the sociologist Edgar Friedenberg called the decline of deference to authority, and which finds expression in a rise of legal challenges to government action and in a willingness to criticize proposed laws, among other things.

Fifth, this increase in recourse to the courts has created what can be described as a Canadian culture of litigation and has increased the scope, the volume, and the complexity of cases before the courts. There is a new practice of determining fees based on results obtained in class actions, making it easier for people to decide to take a matter to court with respect to that particular emergent remedy. We also see in this the mounting high cost claims, not only under the charter and in the form of class actions, but also you have the mass tort claims, claims for redress of historical wrongs, not to mention the greater and more complex caseloads in the civil, criminal, and administrative justice systems, including what has been referred to as the megatrials in the criminal justice system.

● (1540)

Sixth, the Department of Justice is also called upon to play a larger role in international activities and international law development, because of that dynamic I mentioned earlier, from participation in the negotiation of new instruments to the assessment of their impact on domestic law.

There has been the judicialization, as it has been referred to, of international relations, as evidenced notably in rules-based trade agreements and an increasing tendency on the part of NGOs to call for legally binding standards in the matter of human rights. And these NGOs have emerged as an important stakeholder in the process, and so forth.

While Canada is a committed party to all the major international human rights treaties, there's still an expectation that we will participate actively in the development of new human rights instruments and the strengthening of existing human rights mechanisms. The implementation of a rules-based trading regime under NAFTA and the WTO has significantly increased the legal dimension and the litigation burden of international trade disputes. Other challenges that have inspired a greater demand for justice services include increased demands on access to justice, with corresponding pressures on provincial legal aid systems; escalating recourses to the courts and tribunals in issues related to our immigration and refugee systems; and increasing challenges to the panoply of national security initiatives.

Finally, we must consider advances in science and technology. The legal system must adapt to rapidly evolving developments in biotechnology, genetics, the Internet, and the like. All of these exert a significant impact on the government's policy and financial flexibility, as well as on our potential or perspective liability.

[*Translation*]

Mr. Chairman, I will now turn to our vision for the future, as set out in our Report on Plans and Priorities for next year.

The Department of Justice seeks to secure a fair, just and democratic society while supporting the government's goals of strengthening the social foundations of Canadian life, building a twenty-first century economy and ensuring Canada's standing in the world.

[*English*]

The justice system is under increasing pressure, however, from the transformative changes in Canadian society and in the world at large, as I indicated, that are impacting on law and lawyering. Moreover, many of these juridical challenges that arise from this transformative socio-legal environment...and I'm not referring here, Mr. Chairman, just to the inventory of litigation, but challenges that include the protection of security and human rights, of access to justice and the rights of victims, of combating terrorism and transnational crime, of protecting vulnerable groups in society, of combating the growing incidence of cyber crime, hate crime, or discrimination. Each and all of these need more reformist and collaborative approaches, as well as action on both the domestic and international levels. The justice system will, therefore, have a significant role in not only responding to, but helping to shape, these transformative changes from without. An effective response on our part will require a transformation from within, including the justice system and the justice department.

Accordingly, may I share with you five basic principles I set forth in my priorities and plans for 2004-05, principles that underpin these priorities and reflect my vision for the pursuit of justice.

[*Translation*]

First, there is protecting security and promoting human rights.

First, I want to say that I see no contradiction between protecting human security and protecting human rights. For example, one may view international terrorism as an attack on democratic security and an attack against fundamental rights: right to security, right to freedom, right to life. It can then be said that anti-terrorism policy and legislation fall within the context of the pursuit of human security and human rights protection. That's why I say there's no contradiction. At the same time, we must ensure there is no violation of human rights and that we respect the rule of law and the Charter of Rights and Freedoms in law enforcement and stronger anti-terrorism policy.

Looking at the broader context for safety and security, we will pursue international cooperation, working with other countries toward the same objectives and demonstrating the integrated Canadian approach to human security and human rights, to which I've already referred; we will provide leadership in fighting local crime and enhancing the international justice infrastructure; and we will further our efforts to ensure that Canada is not a safe haven for perpetrators of war crimes and crimes against humanity.

The second principle also aims to protect the most vulnerable among us and promote human dignity. The test of a fair and caring society is the way in which it treats the most vulnerable among us, that is children, women and minorities. This will be reflected in steps to protect children from exploitation and abuse, to promote a child-centred approach in family justice issues, and to ensure that the youth justice system continues to balance public safety and rehabilitation. Addressing all forms of violence against women is another facet of this theme. This will include measures to counter trafficking in persons domestically and internationally, through law reform and policy development, and assisting in a parliamentary review of the laws governing sex trade workers. We will continue to promote the development, ratification and effective implementation of international private law and international public law conventions aimed at protecting children and vulnerable adults, and to participate in the negotiation of a new UN instrument on the human rights of disabled persons.

As stated in the Speech from the Throne, Canada can also play a leading role in the struggle against hate crimes and hate speech. What is required — both domestically and internationally — is a culture of respect in place of a culture of contempt; a culture of human rights in place of a culture of hate; a culture of accountability in place of a culture of impunity. This would include development of a complete legal system against hatred and discrimination, the unequivocal condemnation of acts of hate, the development of inter-religious and intercultural dialogue as a component of our shared citizenship.

● (1545)

[*English*]

Third, Mr. Chair, is our commitment to aboriginal justice, including combating the disproportionate incidents of aboriginal people in the criminal justice system, both as offenders and as victims, and at the same time, addressing the under-representation of aboriginal people in the justice system as judges, court workers, and the like.

Reform here will help ensure that aboriginal traditions and approaches are reflected in, and accepted by, the mainstream justice system. Working with aboriginal people and other partners, we will continue to pursue alternatives to litigation where appropriate in resolving disputes as well as approaches that promote reconciliation and renewal.

Fourth, and moving now to the final of the two principles regarding our priorities, relevance and effectiveness in the 21st century will also depend on a reform of the justice system. To make sure the justice system remains relevant to Canadians, it must reflect our values and address emerging issues in a strategic and timely way. We will launch a strategy to establish principles for reforming the criminal law to capture new realities. We will seek to improve the balance between access to justice and efficiency in the justice system while continuing along a continuum of conflict resolution options.

An important part of ensuring access to justice will be to work with our partners on the sustainability of our legal aid system for both criminal and civil cases. I should add that just as we seek to improve our own justice system, we must continue to look beyond our borders to help build, at their invitations, national justice systems abroad. In the last month alone, I have met with the ministers of justice from Indonesia, Vietnam, and Bangladesh in order to lend our expertise to foreign states.

Here in Canada, I am happy to say that some significant progress has been made with regard to beginning the reform of the justice system. The Youth Criminal Justice Act, for instance, is seeking to make the justice system more equitable and effective for young Canadians. In addition, a series of pilot projects are demonstrating innovative and efficient ways to rehabilitate and reintegrate youths in conflict with the law.

To help mitigate the effects of divorce on children, a renewed funding agreement was reached with provinces and territories to implement a child-centred family justice strategy. The strategy seeks to promote the use of a wide range of services to resolve parenting disputes. Furthermore, a new legal aid strategy has been articulated to ensure that economically disadvantaged persons facing serious criminal charges have access to legal representation.

As well, legal aid funding agreements were reached with provinces and territories, and the department has also released a strategic plan and dedicated funds to improve access to the justice system for official language minority communities.

Finally, Mr. Chair, as part of the government's overall goal of strengthening our democracy, we will work as a justice department and with the justice system to promote the notion of participatory justice. This will be facilitated in part by access to relevant information, and in this context we will examine a number of key issues with a view to improving federal access to the information regime, itself bound up with the democratic process.

In addition, we will seek continuing dialogue on how the justice system can best express Canadian values and aspirations. Shortly after my appointment, Mr. Chair, I went across this country visiting every region to dialogue with my provincial counterparts, with regional officials in the Department of Justice, with members of the bar in the various provinces and territories, with interested stakeholders in the justice system, as well as, importantly, appearing before parliamentary committees in that regard. In other words, I see this democratic outreach as a fundamental tenet of my work. We will continue to work closely with other levels of government, with non-governmental organizations, with individual Canadians, and with this parliamentary committee to shape the debate and to help define the solutions.

As responsible members of the international community as well, our commitment to strengthening democracy will extend to supporting democratic reform and the justice system in states in transition. I would like to mention, Mr. Chair, that this week is restorative justice week. Restorative justice represents a paradigm shift with regard to the administration of criminal justice. We do not address the question of crime only as a crime against an abstract entity, such as the state; we are speaking here of the violations of relationships. We are speaking here of the violations of persons in their relationships to others and the community.

● (1550)

So the Department of Justice will support an innovative approach involving all the actors in the criminal justice system, involving the offenders, involving the victims, involving the community, in order to encourage the offenders to take responsibility for their harmful behaviour, in order to provide validation and recognition to the victim, and in order to improve restitution compliance. We see this restorative justice approach as being a fundamental paradigm shift in our approach to justice and protection of victims and society, along with accountability for the offenders.

Mr. Chairman, with these plans and priorities we are initiating a transformation from within the justice system to meet the challenges and transformations of the 21st century from without the justice system. The Department of Justice has done a great deal to find solutions to the problems I have outlined. I believe, however, that much work remains to be done and that we must continue to collaborate with the various levels of government and other stakeholders, as I mentioned, to effectively relate to these challenges.

In closing, Mr. Chairman, the Department of Justice will continue to seek to improve the access, the equality, and the effectiveness of our system of justice. Our work clearly involves partnerships with other provinces and territories, with other departments and agencies, with community and service groups, with individual Canadians, with the international community, and of course, with the parliamentary process as a central feature of that.

As this socio-economic environment changes and the demand for legal services grows, so too must the Department of Justice. One has to stress that this is not simply a financial or accounting matter. I am referring here, and with these I close, to the first words I uttered on being appointed Minister of Justice and Attorney General of Canada. My over-arching priority will be the pursuit of justice and, within that, the promotion and protection of equality, not just equality as one section in the Canadian Charter of Rights and Freedoms, or Charte des droits et libertés de la personne, which is having its 30th anniversary, but as an organizing principle for the building of a just society and the promotion and protection of human dignity, for the building of a society that is not only just but is compassionate.

For that reason, I believe the spending estimates before you should be seen as investments in the pursuit of that system of justice, investments that will help make our system more accessible, more inclusive, and more equitable for all Canadians.

I welcome your questions and I look forward to your feedback.

Thank you, Mr. Chair.

● (1555)

The Chair: Thank you, Mr. Cotler.

We will now go to Mr. Toews for the first round of seven minutes. If I can ask that both the questions and the answers be as succinct as possible, we will be able to cover the greatest amount of territory possible.

Mr. Vic Toews (Provencher, CPC): Thank you, Mr. Chair.

I appreciate the minister's comments. I do, however, have to express some skepticism. I've been involved with the justice system as a lawyer or otherwise since 1976, with attorney general departments and with justice departments. I've heard “the new strategy”, “the new paradigm” year after year. We're always talking about new approaches, new processes, new strategies. Frankly, most of my constituents, and Canadians, are sick of that kind of attitude.

Really, nothing is being accomplished, not even the little things—the little, but important things—that need to be addressed. We always talk about strategies. We see the growth of youth prostitution in our streets to a staggering extent and we see nothing practical ever being done.

We talk about strategies, we talk about paradigm shifts, but we see children falling between the cracks every day in greater numbers. There are no national drug strategies; there are no strategies to deal with our children to get them off the street.

I'll raise a very small issue, Mr. Minister, through the chair. You talked about children being the most vulnerable part of our society—along with other groups, but let's deal with children. Let's talk about the protection of children, talk about the age of sexual consent.

Over 80% of Canadians have said they wanted to raise the age of sexual consent to at least 16—years ago. Only a few years ago, all provincial ministers unanimously passed a resolution calling on the federal government to raise the age of consent to at least 16. Most western democracies have a minimum age of 16 years or 17 years. Even former justice minister Anne McLellan stated that raising the age of consent was something the government would be moving on. She said, “Those consultations will be concluded and reported on by December 31 of this year”—that being 2001—“and I think we will see that a consensus is emerging that with certain safeguards we should probably be moving on the age of consent from 14 to 16”.

We've seen scores of recent cases where children 14 years of age were being lured by much older predators. We see how the case law operates. There's a particularly disgusting case out of Saskatchewan where a 12-year-old aboriginal girl was the victim of rape by three men in their twenties who were acquitted—two of the men were acquitted—because they thought this 12-year-old girl was 14 years of age.

These are all small things that can be changed in our law. Most western democracies have a very clear age of consent. What do we get in the bill that comes forward to the House? We get something called “exploitive relationships”. Well, most prosecutors and most police will tell you they know it is a very difficult concept to prove. It seems to be, as one of them said to me, almost a deliberate attempt to frustrate effective prosecution.

I'm not advocating that we criminalize sex between teenagers. There has to be a reasonable age-of-consent/close-in-age exemption. But we see it in the United Kingdom, we see it in Australia, we see it in the United States, we see it in Taiwan—this is not a difficult concept—a clear age of consent to protect children against predators.

What does our government give us? It gives us a vague phrase saying “exploitive relationship”. Why is it so difficult for Canadian lawyers to understand that children need to be protected? Why is it so difficult to understand that we can put these protections in place for our children? Why is it so difficult for the government to bring forward legislation that does exactly that? Every civilized country in this world has it. Why hasn't ours?

● (1600)

The Chair: Mr. Minister.

Hon. Irwin Cotler: I want to say I appreciate the honourable member's concern for children's rights. I want to say I not only share the honourable member's concern, but if he were reading some of the things I have been saying in this regard—not what I myself have been saying, but where I've been referring to the most important lesson I've ever been taught in that regard.... That is, my daughter, who is now 24 years of age, when she was 15 years of age taught me the most profound lesson I've ever learned about the issue of human rights, when she said, Daddy, if you want to know what the real test of human rights is, then always ask yourself, at any time, in any situation, in any part of the world, is what is happening good for children?

That's why, in terms of our priorities, I have stated that the protection of the most vulnerable amongst us, including in particular the most vulnerable of the vulnerable, namely the children, will be an overriding priority for me personally and an overriding priority for the department. It finds expression in the initiatives we have taken. It finds expression in the fact that the first piece of legislation that was introduced on the part of the government, and not on the part of the Department of Justice only, was symbolically as well as substantively a bill for the protection of children and other vulnerable persons, in order to convey our concern with this subject matter as a priority.

In that bill, which the honourable member may choose to criticize.... If this committee is able to improve on the bill— I've said, and have said before, that we're not legislating for the Liberal Party; we're legislating for the people of Canada—if the bill can be improved, let it be improved.

The purpose of the bill was the protection of children; it was the protection of the most vulnerable. I'm not unmindful of the concerns expressed by Mr. Toews. We have to be concerned with sexual exploitation of the young. We have to be concerned with the question of the age issue. That's why there's a new offence in that bill respecting and prohibiting the sexual exploitation, as Mr. Toews mentioned, of young people. This was an attempt to respond.

You may feel it's an imperfect attempt. I don't think you should impugn our good faith. You can go ahead and critique our policy. If you have a better policy, then we're prepared to respond to that better policy. But the notion that this is not a priority for us, and that somehow there is a monopoly of virtue only in one party or one ideology—that I don't accept, Mr. Toews.

Mr. Vic Toews: Let's just look at—

Hon. Irwin Cotler: I let you—

● (1605)

Mr. Vic Toews: I'm not talking about virtue in one particular party. Even the former justice minister said you were moving from age 14 to age 16. You have done nothing about it—nothing—in three years.

The Chair: Do you have a quick response, Mr. Minister?

Hon. Irwin Cotler: I will conclude by saying that we have introduced a new bill with respect to the protection of children and other vulnerable persons. That bill—and I won't go into it; this committee knows it very well—creates six new offences in that regard. Amongst those offences it creates is one with respect to responding to the age-of-consent concerns by creating a new prohibited category of sexual exploitation of youth between 14 and 18 years of age. It gives a number of criteria to direct a court with regard to those matters.

If this committee in its wisdom should feel that there are other age-of-consent concerns that we need to respond to, this committee in its wisdom, when it considers the legislation, can do so. I'm only saying we sought to take note and, more than that, to regard as a priority the issue of the protection of children and other vulnerable people. That was the burden of the honourable member's question. I respect him for his concern. We have tried to respond. We will welcome any assistance in that regard.

The Chair: Thank you, Mr. Minister, and Mr. Toews.

[*Translation*]

Mr. Marceau.

Mr. Richard Marceau (Charlesbourg—Haute-Saint-Charles, BQ): Thank you very much, Mr. Chair.

Mr. Minister, thank you for being here today. Ms. Touchette, take care of your cold. It seems to be a bad one.

Mr. Minister, one of the first things you mentioned is the significant burden of work on your department attributable to all the Charter cases. Your department is obviously called upon to be involved in many cases, particularly concerning human rights and freedoms, and that obviously results in costs to your department.

Perhaps it's difficult to determine the cost of each of the cases, but I would like you to give me an estimate of your costs. Following numerous decisions by various appellate courts in Canada on same-sex marriage and the reference that your predecessor made, you put a fourth question to the Supreme Court on same-sex marriage. What do you estimate is the cost of that Supreme Court case to the taxpayers of Canada, when the decisions of Canada's various appellate courts seemed quite clear?

Le président: Mr. Minister.

Hon. Irwin Cotler: It's hard to estimate the cost of the case before the Supreme Court of Canada. It was necessary for us to make a reference to the Supreme Court of Canada based on three principles. One of those principles was the one I mentioned at the outset, protection of equality. Civil marriage falls under this principle of equality protection.

The second principle is freedom of religion, the idea being to assure the official religions that they will not be forced to solemnize gay and lesbian marriages.

Third, there was the principle of democracy. The idea was to give stakeholders who perhaps don't support our position the opportunity to appear before the Court so that the process before the Court is as complete and representative as possible and so that the various voices in Canada can be heard. This is a subject on which the Canadian public is divided. Consequently, there has to be a democratic process before the Court so that Parliament can hold a more informed debate on the topic.

Mr. Richard Marceau: You're a lawyer, and I am as well. We know very well that costs are related to the number of hours worked on a case, among other things. That's what happens in the private sector. I don't have to paint you a picture because you know how that works. Do you have an estimate of the number of counsel hours it took for your department to put the reference before the Supreme Court?

● (1610)

L'hon. Irwin Cotler: I'm going to ask my deputy minister to answer that question because he's responsible for that service.

Mr. Morris Rosenberg (Deputy Minister and Deputy Attorney General, Department of Justice): Thank you, Mr. Chair.

We can't give you that figure today. I can tell you that we measure our time expenditure in civil litigation. As the minister mentioned in his opening remarks, we have more than 45,000 civil cases, including Charter cases and cases against the government on the question of the definition of marriage and the compatibility of that definition with the Charter. We can try to give you an estimate of the number of hours we have spent working on the question. I will try to do that.

Mr. Richard Marceau: Mr. Minister, still on the same subject, the Supreme Court is expected to render a decision on the reference some time next March or April. Are you making a commitment to introduce a bill in the House soon after that decision so that it can take a position on this issue as soon as possible?

Hon. Irwin Cotler: Yes. As I've said a number of times, immediately after the Supreme Court decision, I intend to prepare a bill which we can discuss in Parliament. I'm going to do that quickly.

Mr. Richard Marceau: Thank you.

Let's change the subject. Earlier you referred to the importance of working to introduce a culture not based on hatred, to condemn acts of violence unequivocally and to work to achieve intercultural and inter-religious dialogue. I know that's something important to you. Unfortunately, it's not important for everybody.

You're aware of the attacks that have been made against recent Canadian communities in recent years. It's been necessary to provide those communities with enhanced security, since the events of September 11, among other things. So we're talking about security costs, cameras, security guards and so on. Does the government intend to provide those communities with financial assistance to help them bear their security costs, which have increased sharply since those events that have occurred virtually across Canada?

Hon. Irwin Cotler: I'm aware of the concern of the communities that have come under those attacks. This situation is not limited to the Province of Quebec; we're now seeing similar attacks in the other provinces and territories.

I was told that financial assistance for security costs was a provincial responsibility. It's therefore necessary for the provinces, as part of their property protection responsibilities, to offer the necessary security to reassure groups and individuals and to protect them.

Le président: Thank you, Mr. Minister.

Mr. Marceau, your time is up.

[*English*]

Mr. Comartin, for seven minutes, please.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Thank you, Mr. Chair.

Mr. Minister, with regard to the actual estimates, are the proposed salary increases that have been recommended for our judiciary included in the figures that have been included in the estimates?

Hon. Irwin Cotler: I will refer that to our deputy minister regarding these matters.

Madam Touchette.

● (1615)

Mrs. Josée Touchette (Assistant Deputy Minister, Corporate Services, Department of Justice): Merci, monsieur le président.

The increases that you're referring to are for judges, if I understand correctly. Judges' salaries are not part of the main estimates of the Department of Justice per se.

Hon. Irwin Cotler: I might add that there was, as you know, a judicial compensation commission that reported in May, and it recommended a certain increase with respect to those judges in federal jurisdictions for which we have responsibility. As we were required to do, we tabled that report within the first ten sitting days of Parliament, and we are going to reply to those recommendations, as we are obliged to do. By the end of November, we will tender our response to their recommendations in the matter of judicial salaries.

Mr. Joe Comartin: I want to pursue the issue of the age of consent while you're here, Minister.

Has there been any research done by your department as to how many of our youth between 14 and 16 engage in sexual relationships on a consensual basis? Secondly, if that research has been done, what is the age of the partners involved in those relationships?

Hon. Irwin Cotler: Thank you for your question, Mr. Comartin. I think you can be best informed on that. I'll ask our specialist in that regard, Catherine Latimer, to respond to you. I have not conducted the research myself, therefore I will ask someone who is anchored in these matters to respond.

Ms. Catherine Latimer (Senior Counsel/Director, Youth Justice, Department of Justice): There certainly have been some studies done that relate to sexual activity of adolescents, and not necessarily by the department. There is some evidence that adolescents at the ages of 14, 15, 16, and 17 are sexually active in Canadian society. There seems to be little doubt about that.

Mr. Joe Comartin: But the department does not have any particular figures on it.

Ms. Catherine Latimer: I can verify that for you. We certainly know generally that there have been some studies done. I can look to see what the department has on hand, and I'd be happy to provide it for you.

Hon. Irwin Cotler: I just might add parenthetically—but this will require a further breakdown—that the research and evaluation we have with regard to those restorative justice initiatives that we have introduced show that there are lower rates of recidivism, that there is greater victim satisfaction and greater restitution compliance where restorative justice initiatives have been instituted. That may suggest that we ought to do more of them as a matter of principle, and maybe we ought to explore where, within those restorative justice initiatives, in matters of youth justice it has had the particular impact that relates to your question.

Mr. Joe Comartin: Mr. Chair, through you to the minister, has any estimate been given of how many additional charges we would lay against individuals who are now 14 if we increased the age to 16, and what type of effect that would have on the department and on prosecuting those offences across the country?

Ms. Catherine Latimer: I certainly don't have those numbers on hand, but I could pretty well indicate that the level of sexual activity increases significantly over those 15- or 16-year-old age groups as opposed to 14 and under.

You're really talking about what we used to call the statutory rape provisions here. This is non-compliant. What you're doing is essentially saying that 15- and 16-year-olds would not be able to consent to sexual activity. That would certainly have an impact on the adolescents of our society.

Mr. Joe Comartin: The question I'm really asking is whether an analysis has been done on what the effect would be on the department and on prosecutions generally. Have we done that analysis?

Ms. Catherine Latimer: I'm not sure that we have done the analysis, but I will look into it.

Mr. Joe Comartin: Thank you.

Do I still have some time?

The Chair: You have two minutes, Mr. Comartin.

Mr. Joe Comartin: With regard to the provision of legal aid across the country, certainly the government has been criticized for not being more proactive in assisting the provinces in both providing funding to the existing programs and in fact developing additional programs so that accused persons, at least in the criminal justice system, would always be sure they have adequate legal protection. Is there anything in the department in terms of expanding the work that you've done historically?

● (1620)

Hon. Irwin Cotler: As to the general principle, the federal government is committed to ensuring that economically disadvantaged Canadians have equitable access to criminal legal aid. With respect to the fiscal year 2004-05, with which we are concerned, what the Government of Canada is planning to contribute—and it relates to increases over the previous fiscal year—is $124.8 million to assist provinces in the operation of their criminal legal aid systems. This is up from $82.3 million in fiscal year 2003-04, so this is a significant increase with respect to criminal legal aid assistance. There is also $4.17 million to the territories for their access to justice services, which would be legal aid, aboriginal court work, public legal education and information services; $2.5 million for public security and anti-terrorism legal aid; $1.65 million for federal court-ordered counsel; and $0.95 million for legal aid pilot projects, which can relate to criminal legal aid.

I'm not unmindful of the demands, as I stated in my opening remarks, with respect to the provision of criminal legal aid, even though we've augmented our transfers to the provinces and territories. I have met just in the last few weeks alone with my counterparts from British Columbia, Saskatchewan, Ontario, and Quebec, and this is an issue that was a subject of our discussions, and it is going to be an issue in the upcoming federal-provincial-territorial meeting of ministers of justice. As a matter of principle and as somebody who was involved in my first work in poverty law —I began as a poverty law lawyer, and some think I'm still there—I understand the importance of this. Where we can enhance the support we will do that.

The Chair: Thank you, Mr. Minister and Mr. Comartin.

Now to Mr. Macklin for seven minutes.

Hon. Paul Harold Macklin (Northumberland—Quinte West, Lib.): Thank you very much, Minister.

Picking up on Mr. Comartin's point, when we are discussing legal aid, over the last few months you have made a number of statements and in particular addressed the Canadian Bar Association in Winnipeg concerning pro bono advocacy. I'm wondering if you could give us what you see as a concept for the advancement of pro bono in this country. Do you see it as supplanting legal aid to some extent, or how do you see this advocacy working? What is its ultimate goal?

Hon. Irwin Cotler: Number one, I think it's important to state at the outset that we do not see pro bono as being a replacement for legal aid. That which is required by legal aid is a responsibility of government and that responsibility has to be delivered by government.

With respect to pro bono, this was the subject of some of my remarks to the annual meeting of the Canadian Bar Association, and more recently to a pro bono day at the University of Ottawa law school, which was really a call to action to the professional bar, to law firms, to corporate counsel, to students at law schools, and to the Department of Justice, for each and all of us to engage ourselves more fully in the pursuit of the public good. By that I meant with respect to involving ourselves in relation to under-represented cases and causes wherever it is appropriate for us to be able to do so.

I indicated at the time that I was going to invite all the stakeholders involved in this matter—the ones that I mentioned, but include in Quebec Chambre des notaires as well—to come together so that we can develop initiatives that will help advance the public good in the sense of providing more effective involvement in under-represented cases and causes, but not as a substitute for the legal aid that has to be otherwise provided by government.

● (1625)

The Chair: Mr. Macklin.

Hon. Paul Harold Macklin: When you spoke in your opening remarks about a reformist approach, your predecessor indicated that he was going to start a full review of the Criminal Code. Is there a continuation being sought out by you of that approach? How do you see us going forward in making significant reformist approaches to the way in which criminal law is dealt with?

Hon. Irwin Cotler: I think we need to begin to address our whole approach to criminal law and the criminal justice system with regard to a number of foundational principles. The first is that we need to see the criminal law not only as it is, as an enforcement system, but also as a human rights protection regime.

With respect to a human rights protection regime, I think it's not accidental, it's not *par hasard*, that the first five pieces of legislation we have introduced in Parliament are all by way of amendment to the Criminal Code and are all by way of providing for a human rights protection regime, whether we are talking about the protection of children and other vulnerable persons or whether we are talking about the rights of the mentally disordered accused, with respect to which I appeared before this committee, or whether we are talking about enhancing the capacity to order DNA evidence and the like. In other words, we have to see criminal law as part of a human rights protection regime.

The second thing is that we need to look with regard to reforms in the administration of criminal justice. That's why, just by way of two examples—I mentioned one, the approach to restorative justice—two days ago we released a consultation paper with regard to the obligation to disclose. The Canadian Charter of Rights and Freedoms has resulted in what might be called the constitutionalization of criminal justice, and that requires an obligation on the Crown to disclose to the accused all relevant information pertaining to the right of the accused to have a fair hearing and fair trial before the court.

A third approach—and this relates to the participatory justice approach—is that we look not only with respect to accountability for the offender, but also with respect to the validation with regard to the victims. In other words, an emerging third theme is the notion of victims' rights and of seeing all the actors in the criminal justice system as being part of a participatory process. That's where the restorative justice comes in.

A fourth thing is that we need to appreciate that when we're dealing with regard to, for example, aboriginal peoples, there is a particular concern here because of the disproportionate incidence of aboriginal peoples not only as offenders—and there we are working with restorative justice models—but also as victims in the criminal justice system.

Finally, while we need to approach the criminal justice reform in terms of these foundational principles, in terms of specific legislative initiatives, we have now, with our counterparts and with the provincial attorneys general, a working group with regard to fairness and efficiency in the criminal justice system in order to work at *au fonds*, to go to the core of how we can improve the administration of criminal justice for the benefit of all stakeholders in the system, at the same time as we look to the reform of the basic principles of criminal law itself, as I indicated earlier.

The Chair: That's pretty much it, Mr. Macklin.

Hon. Paul Harold Macklin: Okay. Thank you.

The Chair: The second round, three minutes.

Mr. Breitkreuz.

Mr. Garry Breitkreuz (Yorkton—Melville, CPC): Thank you, Mr. Minister.

On December 3, 2002, the Auditor General in her report criticized the justice department for not providing Parliament with an estimate of all the major additional costs that would be incurred enforcing the Firearms Act and part III of the Criminal Code. Almost two years have passed and the government has yet to provide this information to Parliament. Estimates by the Library of Parliament put this unreported figure at another $1 billion.

We know that the government transferred the Canadian Firearms Centre to the Solicitor General's department in April 2003, but the CFC's plans and priorities report for 2004-05 states that the Department of Justice also provides legal advice, drafting, and litigation services to the Canadian Firearms Centre. This same report states that the justice department will spend $1 million in direct and indirect costs on the firearms program. This $1 million is reported by the CFC, but it is part of the justice department's estimates for this year.

Using the Access to Information Act, I have been trying to get, since May—and I would like to say, Mr. Minister, without success—a list of all the litigation the justice department is involved in related to the Firearms Act, part III of the Criminal Code, court challenges, etc. In May, the justice department said it had no such report, so I asked for a list of your department's files on the subject. But according to the investigators at the Office of the Information Commissioner, your department has been in a deemed refusal position on my request since the end of May, and further, your officials have refused all demands by the Information Commissioner to provide the documentation I requested.

I want to give you one example. The application of the firearms registration requirements to the Nunavut Inuit has been temporarily suspended by the court since December 10, 2002. The lawyers in the Library of Parliament state that there has been no legal action on the file since July 2003, when a judge rejected a request by the federal government to have Nunavut's main lawsuit dismissed.

My question to you, Mr. Minister, is this. What is the status of the Nunavut case? How many firearms cases is your department currently litigating? How many lawyers are working on these files, both public and private? How much will the litigation of these cases cost taxpayers? What legal effect will these cases have on the full implementation of the Firearms Act? At last report, 59 sections are still not in force. Why won't your department answer our Access to Information Act request? After all, you are the minister responsible to Parliament for that act.

● (1630)

The Chair: That leaves three seconds for the answer. I think we'll allow some latitude in this case.

Hon. Irwin Cotler: I want to express my appreciation to the honourable member for the diligence of his involvement in this issue over the years. I respect the concerns that animate that engagement on his part.

I only want to say that in our advice to the Canadian Firearms Centre such legal advice that we give is part of the ongoing work that a minister in a department gives as counsel to departments and agencies of government. It would fall within the purview of our work in that regard.

With regard to all the other particular questions that you asked, I'm tempted to say that we will get back to you, for example, on these matters of freedom of information requests and the like, but I will ask my officials who are with me if they have a more fulsome reply to you in that regard.

The Chair: Mr. Rosenberg.

Mr. Morris Rosenberg: Thank you, Mr. Chair.

I can reiterate what the minister said. I will undertake to go back to the department to determine the status of the access to information requests, to determine the reasons if there is in fact a deemed refusal, and I will speak to the Office of the Information Commissioner to get its perspective on it. We will then act accordingly after having that information.

I will undertake to do that, Mr. Breitkreuz, and get back to you.

Mr. Garry Breitkreuz: It's a very important part of trying to determine all the additional costs, and that's what the Auditor General said has been hidden from Parliament.

Hon. Irwin Cotler: Mr. Breitkreuz, if you don't mind a moment of levity, we can also provide what the cost was of getting that response to you in terms of our service, but thank you for the question.

The Chair: Could we undertake to send that through the committee, then, for the benefit of all members?

Mr. Garry Breitkreuz: Is that a request?

The Chair: Yes, and I saw some nodding of the heads, so I take it as an undertaking. Thank you.

Madame Bourgeois.

[*Translation*]

Ms. Diane Bourgeois (Terrebonne—Blainville, BQ): Thank you, Mr. Chair.

Good afternoon, Mr. Minister. There are people who look at us this afternoon and who envy me. Just imagine, I have the opportunity to have before me the three most important persons in Canada, the three persons who must ensure that Canada has an accessible, fair and responsible justice system.

Hundreds of people are wondering today whether you, sir, have made some provision to ensure that the poor have sufficient access to legal aid services, to reduce the number of unrepresented persons in our courts. When I say the poor, I also mean battered women and men who have lost their jobs and who don't have access to legal aid services. I also mean groups of women who wonder whether you're going to come back with your divorce modernization bill.

Mr. Minister, you've just told us about Restorative Justice Week. You tell us that an attempt will be made during that week to recognize the status of the victim. What do we do about all those federal public service employees and all those employees who are governed by the Canada Labour Code, who are harassed, who lose everything and who have no opportunity to find another place in the federal public service or to find another job in Canada? What do we do about those people.

Mr. Minister, would you be prepared to support a bill designed to fight psychological harassment in Canada, since we know that Canada currently has the most psychological harassment in the work place?

On behalf of all those people, who expect you to provide a fair public administration, I ask you whether you have conducted comparative analyses between the sexes to ensure that all bills introduced by your department respect both women and men.

Thank you, Mr. Minister.

● (1635)

Le président: Mr. Cotler.

Hon. Irwin Cotler: First I want to say, as I previously mentioned, that I share the honourable member's concerns about the administration of justice, particularly for those most discriminated against in our justice system. As you said, we should have an accessible, fair and responsible justice system. Here we're talking particularly about the most vulnerable among us.

I didn't refer specifically to the poor, but the fight against poverty and the relationship between the law and poverty are also among our priorities. When I was a professor at the Faculty of Law, I had the opportunity to publish a book on law and poverty. I am very much aware of the goals and challenges of the justice system with regard to the poor.

As for legal aid, as I said, the federal government has made a commitment and continues to commit to guaranteeing economically disadvantaged Canadians fair access to legal aid granted in criminal cases. As a result of that, in the 2004-2005 fiscal year, the Government of Canada intends to pay—I'll only give you one example—$124.8 million to help the provinces manage their criminal legal aid systems. What's particularly important here is that that figure represents an $82.3 million increase over the last fiscal year.

I'm aware that we must improve legal aid as much as possible for those who are economically disadvantaged. That will be one of the priorities on the agenda at my meetings with my provincial and territorial counterparts.

As to the restorative justice issue, as I said, it's not merely a project, but an approach to gaining insight into victims' rights. I had a meeting with France's new Secretary of State for Victims' Rights, who was here a month ago. She made a few recommendations on human rights issues, particularly women's rights. In that context, our department has made a commitment to ensuring full equality among individuals.

With respect to the question you asked about divorce, I would say that no decision has yet been made regarding the date on which the reform of the Divorce Act will be placed on the *Order Paper*. Since this is very important in principle, I will say I am in favour of a legislative reform of the Divorce Act in which the emphasis would be placed on the overriding interests of the child. The approach would be based on the notion of parental responsibility.

● (1640)

As you know, since a draft amendment of the Divorce Act was tabled in December 2002, the situation has changed with regard to the question of marriage and same-sex unions. Regardless of the steps the government wishes to take on the Divorce Act, it will have to consider this question. We're awaiting the Supreme Court decision before placing our bill on the *Order Paper*.

The Chair: Thank you very much.

[*English*]

Ms. Neville for three minutes.

Ms. Anita Neville (Winnipeg South Centre, Lib.): Thank you, Mr. Chairman.

I'm going to start with two questions, although I have many. I'm picking up somewhat, Mr. Minister, on Madame Bourgeois' comments. There are two areas, somewhat related, that I'd like to ask you about.

I know there have been many reports and research papers dealing with the issue of prostitution in this country. All of them have called for the repeal of the laws, largely because they encourage violence against women. I wonder if you could tell me what you're doing to protect people involved in prostitution and really to protect them from exploitation, violence, and abuse. That's my first question.

My second question is about something you referred to in your comments, but not specifically. The federal-provincial-territorial ministers responsible for the status of women prioritized violence against aboriginal women as their major concern—one of many, but a significant issue. I understand that they are going to be calling for a federal-provincial-territorial meeting among themselves with the relevant justice ministers early next year. I wonder if you could tell the committee what your department is doing specifically to address the issue of violence against aboriginal women.

● (1645)

Hon. Irwin Cotler: Let me begin with your first question, which actually has two related but nonetheless separate parts. One has to do with the question of sex trade workers, and prostitution-related offences, and the other has to do with, as you say, how we protect against the violence and abuse of women, including prostitution. Let me take the last question first.

One of the great scourges of our time, which I've referred to as the new global slave trade, is trafficking in persons, particularly trafficking in women. That is the fastest-growing criminal industry in the world today, and the third-largest in terms of a $10 billion criminal industry. We have sought to make this issue of combating trafficking in women a priority for our department as a matter of principle and policy.

We have developed an interdepartmental approach, with nine initiatives. I won't go into them other than to mention the three that underpin whatever we do: one, prevention, to do what we can to prevent the trafficking at source, as well as Canada acting as a country of transit and destination; two, the question of protection, namely, to protect the victims of this global slave trade; and three, prosecution of perpetrators who are responsible. These are the “three Ps”, as I've referred to them—prevention, protection, and prosecution. So that's in terms of trafficking, and it can include coercion into prostitution.

With regard to sex trade workers as a distinguishable issue, and prostitution-related laws in that regard, I had occasion during part of that outreach of which I spoke to meet with a group of law students at the University of British Columbia. They'd formed an NGO, a non-governmental organization, called Pivot, who did an excellent study, which I referred to my officials, with regard to the experience and victimization of sex trade workers. They received affidavits from some 75 sex trade workers. It's one of the more comprehensive narratives we have of the particularity of that experience, of the violence and abuse.

In relation to that, and in part in consequence of that, I'm referring to this committee the matter of doing a study with respect to the plight of sex trade workers and prostitution-related laws, and what we need to do in that regard. I must say that, now, with this new Parliament—and I'm not unmindful of the burdens on this committee, because I know them—I'm referring this matter to you so that we can be the beneficiary of the committee's study of this very important issue. You should be receiving that reference perhaps today or tomorrow.

To the final point you mentioned, that of violence against aboriginal women, part of what we do with regard to protecting against violence against women, just generally speaking, I trust will help protect aboriginal women. In particular, with regard to our aboriginal justice strategy, which is inclusive in relation to aboriginal women, we are seeking to support what might be called community-based approaches, such as diversion, sentencing alternatives, family and civil mediation, and other programs to strengthen the links between community justice workers and the courts, and with a view to relate as well to the particularity of the plight of aboriginal women in that context.

The aboriginal justice strategy supports at this point about 85 programs servicing approximately 280 communities across Canada. They've enabled aboriginal communities to develop their capacity to deal with justice issues in their communities while incorporating their own cultural values and traditions. I'm not unmindful of the fact that there is a specific issue within that with regard to the plight of aboriginal women and violence against aboriginal women. I have been in touch with my colleague, the Minister of Indian Affairs, in that regard. Within our approach of an aboriginal justice strategy, we remain cognizant in particular of the violence respecting aboriginal women.

● (1650)

Ms. Anita Neville: Thank you.

The Chair: Thank you, Mr. Minister.

Ms. Anita Neville: I have no more time.

The Chair: No.

In future, I'm going to have to ask members to have a short preamble and one question at a time. If there is any time left, then we can go to a second or third question.

Mr. Warawa, for three minutes.

Mr. Mark Warawa (Langley, CPC): Thank you, Mr. Chairman.

I have two comments and a question. The comments are regarding restorative justice and then the age of consent, and then I have a question on conditional sentencing.

My background is 14 years in local government. Restorative justice is not a new concept. Strangely, approximately 11 years ago it was the now Minister of Health, Mr. Dosanjh, then the Attorney General of British Columbia, who at the UBCM convention shared the importance of restorative justice and moving in that direction.

It appears as empty rhetoric, with all respect, when there are just words, no action, and it's presented as a new program. Restorative justice, specifically the diversion program, is downloading when there are no dollars to go along with the program. At the same time the federal government was reducing the health and social transfer payments to the provinces, the provinces were downloading onto local governments, and the local governments were supposed to do a diversion and restorative justice program. It just doesn't work if you don't have the funding. It is a good program if there is funding. So hopefully those aren't just empty words.

On the age of consent, the minister shared that they've introduced a new bill for the protection of children, and also commented that if there's a better policy, then they'd look at that policy. Well, Canadians have been asking for the age of consent to be raised from 14 to 16. Again, in local government...and most recently, the Federation of Canadian Municipalities unanimously supported the age raising, as did our police forces. So there is a better policy.

I was disappointed with the bill presented by the government. There needs to be amendments, Mr. Chairman. The loopholes that permit child pornography need to be tightened and removed. The age of consent needs to be raised from 14 to 16. Those are my comments.

I have a question on conditional sentencing. Since 1996, the justice system has given child predators, murderers, rapists, and impaired drivers who kill the opportunity to serve their sentences at home rather than in prison. House arrest, or conditional sentences, were introduced to the Canadian Criminal Code in 1996 by the Liberal government, supposedly for the purpose of lowering incarceration rates in Canada. Since that time, thousands of conditional sentences have been imposed for violent crimes despite the promise that this was not what the law was intended for.

The law sets out the sentencing principles for judges to apply, but the guidelines set out by the Liberals in 1996 for conditional sentences were so big that judges have made them their own laws by allowing violent offenders to serve sentences in the comfort of their homes. In doing so, they've sent the wrong message to the community—namely, that the crimes committed were not that bad, and that the consideration of the victims comes second to that of the offenders.

Most provincial attorneys general and police across Canada agree that conditional sentences should not apply to serious violent offences, serious sexual offences, offences involving weapons, or drug trafficking. Just yesterday, MADD Canada called on the federal government to eliminate conditional sentences for the persons convicted of impaired driving causing death and impaired driving causing bodily harm.

My question for the minister is this: why has there been no movement to eliminate conditional sentences for such serious offences?

The Chair: Mr. Minister.

Hon. Irwin Cotler: Once again, I appreciate the member's question, and I appreciate his experience and involvement. I just want to say that I always have a series of four or five questions, so you'll pardon me if I try to do them as quickly as possible.

I will agree with the honourable member that restorative justice is not a new concept. What I would like to recommend is new is that, one, we are beneficiaries of perhaps the most comprehensive study done on this, by the Law Reform Commission of Canada, called *Transforming Relationships Through Participatory Justice*. It identifies various models and various approaches to restorative justice, the criminal justice system, and participatory justice in the civil justice system. We are seeking now to relate our own restorative justice initiatives from the justice department to the experience and recommendations made by the Law Reform Commission of Canada report.

So while, as the honourable member says, it's not a new concept, we are trying to approach it in ways that will improve the concept and the delivery system in that regard. And we have made this a priority; I've made this a personal priority and we've made this a priority for the department. I welcome any of your suggestions in that regard.

On the matter of the age of consent—

● (1655)

The Chair: Mr. Minister, I think that's something the committee will be dealing with at length when we deal with Bill C-2, so perhaps you could go to conditional sentencing.

Hon. Irwin Cotler: I will go to conditional sentencing and relate it also to the impaired driving issue, which is the context in which it was related.

On the matter of conditional sentencing, the Supreme Court of Canada has indicated that conditional sentences that contain conditions that severely restrict an offender's liberty in the community can address sentencing objectives of denunciation and deterrence. We shouldn't think of it as only a theoretical concept that does not have an operational application in terms of denunciation and deterrence.

Certainly, from time to time—and members opposite have given examples of this—there have been sentencing decisions that do appear troubling. I would like to caution that we should not infer from the specific decisions that have been troubling a conclusion with regard to our overall experience with conditional sentences, which appears to demonstrate that they have become an important option for courts to consider using in appropriate circumstances.

Having said that, I would like to encourage this committee to continue the work of the justice committee in the last department and to review the operation of the conditional sentencing regime and try to seek that review for our benefit.

In the particular matter of drug-impaired driving as an offence—and I think it's important to appreciate that it is an offence—we've introduced legislation to mandate the investigation of this offence and provide further protection.

In the matter of conditional sentencing upon a conviction for impaired driving, such a conditional sentence is not available if the offence carries a minimum period of incarceration. As you mentioned, some courts have taken the view that the 1985 amendments to the Criminal Code that created higher maximum penalties for impaired driving that causes death or bodily harm eliminated the minimum period of incarceration for repeat offenders. I don't share that view. I've asked my officials to seek ways and means to ensure that minimum periods of incarceration for repeat impaired driving offenders do apply in those cases that have caused death and bodily harm. At the same time, I welcome the input of the committee to further assist us in that regard.

The Chair: Thank you, Mr. Minister.

[*Translation*]

Mr. Marceau.

Mr. Richard Marceau: Mr. Minister, with respect to Bill C-2, are you open to the idea of minimum penalties for persons convicted of sex crimes against children, pornography, procuring or other offences?

Hon. Irwin Cotler: Yes, I'm open to recommendations on the subject.

Mr. Richard Marceau: Thank you very much.

In the estimates document that your department sent us, we see there is a reduction of approximately $6 million in the budget of the Office of the Privacy Commissioner. I know that Mr. Radwanski is no longer there, but that kind of cut seems to me to be quite significant. How do you explain why that budget fell from $9,816 million in 2003-2004 to $3,918 million in 2004-2005?

Hon. Irwin Cotler: Thank you for your question. I'm going to ask Ms. Touchette to tell you the reasons for that reduction.

Mrs. Josée Touchette: The budgets of the agencies and the Justice portfolio are not part of the department's Main Estimates. So we can't answer questions on the budget of the Office of the Privacy Commissioner, which is an arm's length agency, or give you details on the decisions that have been made to increase or reduce its parliamentary votes.

● (1700)

Mr. Richard Marceau: Excuse me, but I don't understand.

You say it's part of your votes, but you can't answer my question. Is that correct?

Mr. Morris Rosenberg: Mr. Chair, I'm told that the Privacy Commissioner will appear today before the new committee considering access to information and related matters. That may be the best place to put that question to the Commissioner.

Mr. Richard Marceau: Mr. Minister, you've made a name for yourself through your extensive human rights work. In the Ministry Summary of the Justice Department's votes, we see that there is a reduction of approximately $2 million in the budget of the Canadian Human Rights Commission from 2003-2004 and 2004-2005. How do you explain that cut?

Hon. Irwin Cotler: I'd like to thank you for raising this point. I'm going to ask Ms. Touchette to explain it to you. However, I must say that, in view of my mandate, I'm not involved in the Commission's day-to-day operations. If the committee wants details on the Commission's budgetary allocation, I recommend that it request them from the Office of the Commissioner. I don't have that information and therefore can't share it with you.

The Chair: Ms. Touchette, do you have any information to give us?

Mrs. Josée Touchette: Yes, Mr. Chair.

If I understand correctly, Mr. Marceau, you are at the start of the Estimates, at Parts I and II, the Government Expenditure Plan and the Main Estimates. Chapter 19 concerns the Department of Justice, and you can see the heading "Department 19-4". That's where you find the department's budget. The commissions, tribunals and services that appear under that are part of what's called the Justice portfolio. However, as they are commissions and tribunals that are independent of the department, the department has no day-to-day control over the operations of those commissions or tribunals. They are in fact independent, and we can't account for the budget or the administration of their budget, precisely in order to preserve that independence.

Mr. Richard Marceau: I'm trying to understand the importance of that independence. Even if these organizations are independent, their operating votes nevertheless come from the votes of the Department of Justice.

Are you telling me that these organizations agreed to a reduction in their budgets? If you aren't responsible for that, are they responsible for their own budgets?

Mrs. Josée Touchette: Chapter 19 concerns what's called the Justice portfolio.

Mr. Richard Marceau: Yes.

Mrs. Josée Touchette: Within the portfolio, there are what's called envelopes.

Mr. Richard Marceau: Yes.

Mrs. Josée Touchette: The "Department" envelope is the one for which we can answer. Each of the other envelopes is separate and independent. As the Deputy Minister noted earlier, the Privacy Commissioner will be able to answer questions concerning her budget. We aren't able to tell you whether or not those organizations agree to an increase or reduction in their budgets because the envelopes for those commissions and tribunals are entirely separate. To preserve the principle of independence, we actually respect that distinction and separation.

● (1705)

Mr. Richard Marceau: Who decides on the envelope?

Mrs. Josée Touchette: The envelopes are submitted by the President of the Treasury Board to Parliament, where there is a vote. They are set following extensive discussions among officials, but it's ultimately Parliament that approves them.

The Chair: Are you saying that the amounts of those budgets are determined through the Treasury Board?

Mr. Morris Rosenberg: Mr. Chair, since the organizations are part of the Justice portfolio, but not of the Department of Justice, and as they submit their own financial requests, I think the best way for the committee to ensure that those amounts are sufficient would be to question them directly, either in writing or by asking the Chief Commissioner to appear before the committee with his officials to answer to it.

Le président: Thank you.

[*English*]

Mr. Maloney, for three minutes.

Mr. John Maloney (Welland, Lib.): Mr. Minister, your department's performance report for the period ending March 31 of this year referenced the new drug treatment court program that's operating in Vancouver and Toronto. It seemed to be an innovative approach to try to help our drug offenders end the cycle of addiction, criminal behaviour, and incarceration. Could you tell us, have these programs been successful, and is there any possibility they may be extended to other communities throughout Canada?

Hon. Irwin Cotler: The drug treatment court and its related funding program—I should add it's $1.28 million—is one component of an overall drug strategy with regard to education, prevention, treatment, and the like that is being led by the Department of Health. But we have our own involvement with it because drug treatment courts specifically represent what we consider to be an innovative approach to helping drug offenders end the cycle of addiction, criminal behaviour, and incarceration. So it has those approaches with respect to prevention and treatment.

As you mentioned, there are currently two pilot drug treatment courts operating in Vancouver and Toronto, and I've discussed this with the respective attorneys general in these jurisdictions. Shortly the Department of Justice will be calling for proposals from communities that are interested in having a drug treatment court, and a review process will determine which ones will be funded from the program's budget.

So with regard to the component of the drug renewal strategy, that is led by the Department of Health, but, if you will, the justice-related components are our own.

With regard to the drug treatment courts in Vancouver and Toronto, they were considered to be innovative demonstration projects, and as a condition of funding, evaluations were conducted on both projects. Vancouver, for example, has just released a process evaluation that indicates that the implementation of the drug treatment court in Vancouver has been very successful. With respect to Toronto, the Toronto evaluation concluded that the drug treatment court "has successfully implemented a unique court-supervised treatment program". As well, it states that this unique governance structure allowed it to successfully achieve the overall goals of which I spoke earlier.

So we are responsible for managing the drug treatment court program. We expect to enter into a four-year agreement with Toronto and Vancouver having regard to the evaluations we have received. We are now in the process of establishing three other drug treatment courts following the anticipated call for proposals, which will be released in the next few weeks.

Now, just to conclude on this point, as a requirement of funding, all drug treatment court funding recipients will be expected to participate with our department in a full outcome evaluation of their courts. So it isn't just a funding program for the purposes I mentioned; it has a built-in evaluation component. Only after we evaluate the program do we continue the support for it. And only upon the evaluation of the two, if you will, innovative test projects, the evaluation having been returned with a conclusion that they've been highly successful, have we made the determination now to enlarge this, call for proposals, and implement this in a broader way.

● (1710)

The Chair: Thank you, Mr. Minister.

Mr. Moore, for three minutes.

Mr. Rob Moore (Fundy Royal, CPC): I want to thank the minister for this opportunity.

My question is about child pornography and the protection of children. It has already been discussed a bit in this meeting. We've had quite a history with the controversy over the artistic merit defence surrounding the Sharpedecision that has created a great deal of public debate. In the last Parliament we saw a bill come forward, Bill C-20, that attempted to, presumably, close some loopholes for possession of child pornography by including a defence known as the public good defence. That met with a lot of controversy, as we know, and concern from victim groups and child advocates and police groups.

Bill C-2, the latest bill, includes a legitimate purpose defence, again a defence for, among other things, a legitimate purpose in art. I took note of the minister's comment, and I agree with it, that when we're evaluating legislation, a great question to ask and a paramount question to ask is if it is good for children. I agree with that statement.

Sometimes what's lost in the debate around child pornography is that people don't know there is a definition out there. When they think of an artistic defence, they think maybe that's to cover things like Anne Geddes' pictures that may be hanging on my wall, or these coming-of-age movies that have been discussed. It is important for people to know and recognize that we do have a very detailed definition of what constitutes child pornography. When you read that —I won't read it; we can all access it—you realize that anything coming under that definition would be highly offensive and dangerous to children.

My question to the minister is: How is it good for children, in light of the very detailed definition we have for child pornography, to allow for possession based on an artistic component? What legitimate purpose, based on art, is there for allowing possession of child pornography considering the definition we have in the Criminal Code?

Hon. Irwin Cotler: Thank you for your question. I might add that my whole approach to the child pornography legislation was within the spirit of "Is it good for children?" We purport to have a bill that would combat child pornography that clearly is pernicious and prejudicial and harmful to children. Whether we have achieved that or not is something this committee will deliberate upon.

What needs to be appreciated here is that, number one, we sought to broaden the definition of child pornography to include audio formats as well as written material that has as its predominant characteristic the description of prohibited sexual activity with children where that description is provided for a sexual purpose. I might add in that regard that we're dealing also to have it apply to all material that depicts the sexual abuse of a real and an imaginary child, where the depiction satisfies the Criminal Code's definition of child pornography. Both are included in our definition because we recognize, and I think Canadians recognize, that both types of depiction can cause a reasoned risk of harm to children. For example, it can be very difficult to distinguish, as the Supreme Court of Canada recognizes in the Sharpe case, between a real child and a computer-generated picture or composite of a child. That's why we also expanded it to the audio formats.

We also introduced an offence to prohibit the advertising of child pornography, to increase the maximum sentences on summary conviction, to make the commission of any child pornography offence with intent to profit an aggravating factor and so on. I can go on and on, but I want to go to your specific point now on the harms-based approach, which has to be seen in that regard, that an act in relation to material found to constitute child pornography...child pornography remains child pornography. There is no defence with respect to child pornography in that it is a crime and remains a crime.

The only defence there is where it has a legitimate purpose related to the administration of justice, science, medicine, education, or art and does not pose an undue risk of harm to children. That's why we called it a harms-based approach.

● (1715)

Mr. Rob Moore: If I may, it's that art component. I know that in a response to a question I put before, you mentioned that police need to be able to possess this material. Everyone agrees with that. It's that art component, where once again we've left it to the courts to determine whether something causes undue harm to children.

We haven't, in my opinion, narrowed it enough. I would like to know what you could possibly contemplate falling under that description of child pornography, yet falling under the defence of having a legitimate purpose in art. I can't contemplate any such material where it would fit our Criminal Code definition as child pornography, yet still come under a defence as having a legitimate purpose with regard to art.

The Chair: A brief response, please, Mr. Minister.

Hon. Irwin Cotler: A very quick response.

Clearly, we did not propose to eliminate all the defences available to child pornography, because that was a key factor in the Supreme Court of Canada's decision to uphold the overall child pornography legal regime. As Attorney General, I have to certify that the legislation we propose comports with the charter. We couldn't eliminate those defences, because it would be struck down, so we sought to narrow the defence and, in narrowing the defence to a legitimate purpose, a harm's-based standard, to take in the factor that was used by the Supreme Court itself.

In the matter of the specific artistic defence, under the existing defence of artistic merit, acts and materials can—and this is within that narrow concept—benefit for the defence where they have some objectively demonstrable artistic value. As an example, they use artistic techniques or style. Under the legislation we propose, only acts that have a legitimate purpose related to art and do not also pose an undue risk of harm to children can benefit from the defence. The availability of the defence will not alter any determination by the court that the material in question constitutes child pornography. It remains a crime.

The Chair: Thank you, Mr. Minister.

Now Mr. Tonks, who has been sitting very patiently—

Mr. Alan Tonks (York South—Weston): Impatiently, Mr. Chairman.

The Chair: —and quite uncharacteristically quietly. You have three minutes.

Mr. Alan Tonks: Very characteristic, in terms of patience, Mr. Chairman.

Mr. Chairman, I'm sure the committee would be interested to know the nature of the comprehensive review that will be carried out pursuant to Bill C-36, the anti-terrorism bill. As I'm sure the minister is aware, at the time that bill was discussed there was a great deal of anxiety expressed in terms of what some described as a draconian and invasive intrusion into the area of human rights. The issue was how we can balance out individual rights against the higher public good.

I'm sure the committee would be interested to hear, as would those who are watching, Mr. Chairman, how the review is going to be undertaken. As you know, under section 36 of the act there was a requirement for a comprehensive review. I wonder if the minister would like to sort of etch out the process and some of the experience that has prompted the terms of reference for the review.

The Chair: Thank you, Mr. Tonks.

Mr. Minister.

● (1720)

Hon. Irwin Cotler: Thank you, Mr. Tonks.

I was actually a member of the justice and human rights committee that considered Bill C-36 in its draft form at the time and indeed recommended a number of amendments to that legislation. Now it has been adopted as a matter of law, and section 145 of the legislation mandates what is called—I think I'm quoting it almost directly—a comprehensive review of the provisions and the operations of the act. Therefore, what we envisage pursuant to section 145 of Bill C-36, or anti-terrorism law, is indeed a comprehensive review of both the law and its operation or application. We need to do this within three years of the adoption of that legislation. I think the prescribed date, if you will, in respect of which we need to initiate that process, is around December 18.

As to how that review will be conducted, I don't think there has been a determination yet about what will be the appropriate forum for that review. A number of suggestions have been made that it would be a joint House-Senate committee, which is a model not unfamiliar. We did this with regard to, at that time, the adoption of the Canadian Charter of Rights and Freedoms, for example. Or we would strike a new ad hoc committee for that purpose, or—and frankly, this would be my preference, if I can indicate it as such—this committee could undertake that review.

The reason I state that is because this is the committee that I think has the natural institutional memory, if I can do that. It was the committee engaged in the adoption of the law to begin with, so why should not this committee now undertake a comprehensive review of that law three years after its adoption, as required?

As to what would be the nature and scope of the review, apart from the statutory framework of the comprehensive review of the provisions and operations that I indicated, I think it would be up to the committee to make that determination as to the particular components of the law and the particular features of its application that it wished to have reviewed. It might, for example—and I'm only using one example—take a look at what has been the nature and application of two of the more controversial sections with regard to the anti-terrorism law as it was adopted. I'm referring to those provisions relating to preventive arrest and investigative hearings. I filed a report to Parliament that stated that those two provisions were not in fact invoked or applied in the last year. The committee may want to look at this. It may want to look at section 4 of the Official Secrets Act, which I had referred as a separate reference to this committee to look at.

Bill C-36 does have consequential impact on other statutes, so those other statutes, in relation to Bill C-36, come legitimately within the purview of this committee. It would be up to the committee that is set up for that purpose to make its own determination as to the nature and scope of the review within the statutory mandate, as I've described it.

The Chair: Thank you, Mr. Minister.

[*Translation*]

Mr. Marceau, you have three minutes.

Mr. Richard Marceau: Mr. Minister, in your presentation, you referred to personal dignity. There are some who feel that the entire question of personal dignity can include the right to die in a decent, dignified manner.

If memory serves me, in the last issue of *L'actualité*, former Supreme Court Justice Claire L'Heureux-Dubé said there was an urgent need to amend the law as regards the right to die with dignity.

Can you give this committee your opinion on the subject, which may be delicate, but which is of interest to increasing numbers of people, particularly since, if my memory still does not fail me, approximately 77 percent of Canadians think that a person should have the right to die with dignity?

Hon. Irwin Cotler: I find that an engaging question. I must say that I was asked that question in a discussion with people from the Faculty of Law at Laval University. I told those people from the Faculty of Law that the legal and health issues involved in assisted suicide were very complex and, I thought, entailed a lot of moral aspects. They are also divisive as a result of the opposing interests of those who seek greater independence in making personal decisions about their lives and those who advocate total respect for and protection of disabled or dying persons.

I wish to remind the committee that, in 1995, a special Senate committee took an in-depth look at the legal and health issues regarding euthanasia and assisted suicide. In its report, the committee recommended that the Criminal Code offence provided for assisted suicide should remain as it stood. The government is monitoring developments on this issue, and we will continue examining progress made in terminal care to determine whether it is necessary to amend our criminal law.

I've also had talks with Madam Justice Claire L'Heureux-Dubé. Since this is a very loaded and complex question, perhaps we should have an open debate on it in the House of Commons. There have been legal changes not only here in Canada, but also in various other countries. I have studied some of those changes. There were the judgments of the Supreme Court of Canada in Rodriguez and Latimer. There's also been a lot of research conducted, and articles have been published by professors from the Faculties of Law and Medicine.

I think we could benefit from an open debate on the subject in the House of Commons. At the same time, this committee could also debate it, if it has the time, but I hesitate to recommend another study to this committee, which has kept up a very heavy and busy research program. I respect this committee's work, and I don't want to add another subject to its program, but the House of Commons could examine it.

● (1725)

The Chair: Thank you, Mr. Minister.

It will soon be 5:30 p.m., and we can sit until then. If members have no further questions, I'll thank the Minister for appearing here today.

However, I ask that committee members remain to study a report from the Subcommittee on Agenda and Procedure. We'll sit in camera after a five-minute break.

[*English*]

Thank you.

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