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Chair

Mr. Art Hanger

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• (1530)

[English]

The Chair (Mr. Art Hanger (Calgary Northeast, CPC)): I call the Standing Committee on Justice and Human Rights to order.

I know it was agreed upon by the steering committee and the committee as a whole to examine the estimates. In this particular case, given the fact that so often there is such a cursory examination at best, and really you don't have an opportunity to dig a little deeper, it was decided that two programs would be viewed over the next couple of days, one being the area of the drug treatment courts and the other being legal aid.

I'm pleased that three members of the Department of Justice are here. Welcome to the committee Mr. Piragoff, Ms. Merriam, and Ms. Latimer, and thank you for attending. I know you will have the opportunity to explain the mandate of each of the areas that we are looking at. I trust this will give us the basis for the line of questioning we'd like to follow.

Regarding legal aid, I trust that all the members have the information from the Library of Parliament. On the first page of the presentation, the fifth paragraph reflects some of the mandate and the purpose behind each of these particular programs. For legal aid, of course the issue is accessibility to all Canadians, and the goal, as stated here, is to try to ensure that the legal system may be fairly accessed by all Canadians, regardless of their financial status.

In terms of safety, an important program provided through funding by the department is that of the drug treatment courts. These courts are designed to deal with the revolving door of those who are addicted to drugs, as they come in and out of the justice system on a regular basis. The drug treatment courts are designed to deal with the root causes of criminal behaviour, not simply the after-effects. I would assume that's where our questions would be focused: on these two particular programs and their mandates.

So we could begin with Mr. Piragoff, the deputy minister. Sir, we're ready for your presentation, if you would like to begin.

• (1535)

Mr. Donald Piragoff (Senior Assistant Deputy Minister, Department of Justice): Thank you, Mr. Chairman.

[Translation]

Members of the Justice Committee, it is my pleasure to appear before you to answer questions regarding funding of Legal Aid and the Drug Treatment Court Funding Program.

• (1540)

[English]

The department will continue working closely with our provincial and territorial counterparts to promote the development and implementation of legal aid policy under the auspices of the federal-provincial-territorial permanent working group on legal aid.

I would now like to turn your attention to the drug treatment court funding program. It is managed jointly by the Department of Justice and Health Canada and was initiated in May 2003. The objectives of the program are to promote and strengthen the use of alternatives to incarceration, with a particular focus on youth, aboriginal men and women, and street prostitutes; to build knowledge and awareness among criminal justice, health, and social service practitioners and the general public about drug treatment courts; and to collect information and data on the effectiveness of drug treatment courts in order to promote best practices and continue refining approaches.

Drug treatment courts were established as pilot projects in Toronto in December 1998, and in Vancouver in December 2001. They are based on the successful drug treatment courts in the United States, of which there are now more than 1,000. Both the Toronto and Vancouver courts have shown promise in reducing addiction and repeat offences in those areas. The drug treatment court funding program supports four new courts in Edmonton, Regina, Winnipeg, and Ottawa, and continues to fund existing courts in Toronto and Vancouver.

Each of the funding recipients must report annually on the results of their activities. These results are used to support annual reports to Parliament and the Canadian public and to inform others who may want to establish drug treatment courts in their communities. This reporting activity also helps to ensure that best practices and standards are consistent across the various jurisdictions, while supporting the needs of individual communities where courts are located.

The courts use court-monitored treatment and community service support for non-violent offenders with drug addictions. The participants must enter a structured outpatient program where they must attend both individual and group counselling sessions, receive appropriate medical attention such as methadone treatment, and submit to random drug tests. Participants must also appear regularly in court, where judges review their progress. If that progress is positive, judges may reward participants verbally. However, should conditions not be met, judges may impose sanctions ranging from verbal reprimands to expulsion from the program.

The drug treatment court system understands that participants have other basic needs, such as safe housing, stable employment, and job training. Staff members worked with partners in the community to help address those needs as well.

Once a participant gains a measure of social stability and can demonstrate control over the addiction, he or she is likely to receive a non-custodial sentence, meaning restrictions other than going to jail. However, if an offender is unsuccessful, the offender will be sentenced as part of the regular court process.

Funding from the Department of Justice and Health Canada is helping to support court-monitored treatment of drug-addicted offenders who have committed crimes to support their drug habits. The program promotes drug abstinence and holds offenders accountable for their actions.

Now that I've briefly described the two programs, we would be pleased to answer any questions the committee may have in this regard. Thank you.

• (1545)

The Chair: Thank you, sir.

Ms. Barnes, please.

Hon. Sue Barnes (London West, Lib.): Thank you.

First I'll put on the record—with no disrespect to the three people sitting before us as witnesses, and I don't envy their position—that when we had the earlier meeting with the minister, I asked for the minister to be able to talk to us about legal aid and drug courts. Quite frankly, I don't believe it's within your purview to be able to answer the policy questions. So while it's nice to have you here and we welcome your information, it's not going to be particularly useful. I haven't seen before where a minister doesn't want to defend his own estimates. Certainly when the people sitting in government now were in opposition, they wouldn't have stood for this.

So I will ask some of the questions and see if you can answer them.

The Chair: Excuse me, Ms. Barnes, in reference to those comments—

Hon. Sue Barnes: I hope this isn't on my time.

The Chair: —the minister actually did appear on the estimates in May.

Hon. Sue Barnes: Yes, and he didn't have the answers, because he had partial figures. We told him that he would come back and he would answer those questions. That's in the Hansard of those meetings, and he's not here today.

The Chair: Right, but just to let you know, he did appear, in fact, on those particular points.

Hon. Sue Barnes: No, he didn't, because he couldn't answer the questions. We invited him back, that day, in the Hansard, and again I put it on the record when he was here on another bill. I understood that he would be here to answer, because the policy questions are not for officials.

The Chair: Right. Understood.

Hon. Sue Barnes: So let's ask some of these questions.

The planned contribution to the provinces to assist in the operation of legal aid systems will decrease, I understand, by \$40 million. Can you give us the rationale for this change?

Mr. Donald Piragoff: It is a technical budget reporting discrepancy, but there actually is no proposed reduction in legal aid financing by the federal government for this year. What happened last year is that with the federal election at the end of November and a new government taking office in the winter, there was not sufficient time for cabinet to address this issue in the regular budget cycle. Accordingly, there is a discrepancy, as Ms. Barnes has indicated, of approximately \$40 million. It is the intention of the minister to seek that amount in supplemental estimates such that the entire amount for legal aid for this fiscal year will equal the amount of last year.

What happened is that on March 31, 2006, the three-year agreement with the provinces expired, and as I said, because a new government was in power and did not have sufficient time to discuss this issue with the provinces to negotiate a new agreement, the government decided to extend the terms of the existing three-year agreement for one more year at the 2005-06 levels.

Hon. Sue Barnes: That's fine. I understand that.

Can you tell me what will happen, say, in my province of Ontario, where the provincial legal aid, which is responsible, is in a deficit situation? The year hasn't gone through, and yet we have legislation before us, in Bill C-9 and Bill C-10, that will put people at risk of going to prison. That's the test in my province: if they have a substantial risk of going to prison, they're supposed to be able to obtain legal aid. They're \$10 million in debt right now in that system, so what is the federal government going to do and what were the discussions on those areas?

Mr. Donald Piragoff: First, as mentioned, there is the supplementary estimates request, which will provide the provinces with the full funding that they had last year. With respect to new pressures on the system, as indicated by federal-provincial-territorial ministers following their meeting last week in Newfoundland, ministers will continue to work together to look at the legal aid costs to try to reach a new agreement. They are also aware of the new funding pressures that would be created by new reforms.

But I think each of the ministers who left that meeting last week understands that responsibility in the criminal justice area is a shared responsibility at both the federal and provincial levels. Provinces, for example, cannot continue to demand law reforms without at the same time shouldering some of the costs, but on the other hand, the federal government also realizes that, as a shared partner, it must also share some of the costs. The ministers have agreed to continue their discussions and look at the actual numbers.

With respect to particular bills, as you know, you've heard testimony on Bill C-9, for example, and there are differences with respect to what the cost implications would be. I believe the bill is going to clause-by-clause. There may be some amendments. The amendments may have the effect of actually reducing the financial impact on provinces, but that's something within your purview as MPs, as to what the scope of the impact would be, depending on the scope of the bill.

But I do want to indicate that ministers did agree last week that they would continue to work cooperatively to address the costing pressures on the system, both existing, such as legal aid, and also new pressures as a result of law reform.

• (1550)

Hon. Sue Barnes: I would like to look at the drug treatment courts. Is this the same discrepancy of \$638,310, the same as the former situation with legal aid?

Ms. Barbara Merriam (Acting Director General, Department of Justice): The drug treatment court funding program is shared between the Department of Justice and Health Canada. What you're seeing in the main estimates reflects the Justice portion and how the figures were profiled over the four-year period. So in 2005, it was \$2,333,000. In 2006-07, it's \$2,341,000.

Hon. Sue Barnes: Has the evaluation of the drug treatment courts been done by the department? I know there was a considerable amount of concern about this in Vancouver.

Ms. Barbara Merriam: As my manager mentioned earlier, the Toronto court started in 1998 with federal funding through the National Crime Prevention Centre. The Vancouver court started in 2001, again with National Crime Prevention Centre money. Both have had promising evaluation reports.

Hon. Sue Barnes: Could we get those reports?

Ms. Barbara Merriam: Yes.

Hon. Sue Barnes: If you distribute them to the clerk, he can get them to all of us.

Ms. Barbara Merriam: They're very hefty reports.

Hon. Sue Barnes: Do you have an executive summary?

Ms. Barbara Merriam: Yes.

Hon. Sue Barnes: Thank you.

Mr. Derek Lee (Scarborough—Rouge River, Lib.): I have a point of order. Is it the intention to distribute this truckload of paper to all of us?

Hon. Sue Barnes: Just the executive summary.

Mr. Derek Lee: How big is it?

Hon. Sue Barnes: They're usually short.

The Chair: How long would the summary be? Two or three pages?

Mr. Derek Lee: That's fine, thank you.

Hon. Sue Barnes: Yes, short.

The Chair: Mr. Comartin.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Are the reports online somewhere?

Ms. Barbara Merriam: I don't think so. They're not online at Public Security and Emergency Preparedness Canada, because the funding was under the National Crime Prevention Strategy. But they are available electronically.

Mr. Joe Comartin: Perhaps you could tell us where we can go for more detail.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Comartin.

Monsieur Lemay.

• (1555)

[Translation]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Good afternoon.

I was a legal aid lawyer in Quebec for 30 years, and today, one of my dreams is coming true: to meet the people who fund it. It's nice to meet you, although I'm not sure the opposite is true. In any case, we'll try to take it easy.

Why is there no drug treatment court in Quebec, in Montreal, for example?

It's probably because there are no drugs in Montreal! So, Mr. Petit, everything you have been saying for some time is apparently false.

Let's be serious. Ms. Merriam, can you answer that question?

Ms. Barbara Merriam: I'm sorry, but I'm going to answer in English.

Mr. Marc Lemay: No problem.

[English]

Ms. Barbara Merriam: There was a call for proposals that was disseminated widely across the country through our contacts in the criminal justice system and through the Health Canada contacts in the health systems, and we asked for proposals from communities across Canada. Then a review committee was established with officials from Health Canada and the Department of Justice and outside experts to evaluate the proposals, and that's how we came up with the four new courts.

[Translation]

Mr. Marc Lemay: All right. Since I'm quite familiar with legal aid, my next questions are going to be on that.

Is there any legislation that requires the federal government to fund legal aid across Canada or is it left to the government's discretion?

Mr. Donald Piragoff: There's no legislation requiring the government to provide funding for that.

Mr. Marc Lemay: So it's left up to the government's discretion?

Mr. Donald Piragoff: Yes.

Mr. Marc Lemay: Would it be desirable for this committee to strongly recommend that the government establish in legislation the requirement to fund legal aid?

[English]

Mr. Donald Piragoff: It's really up to you, as committee members, to make whatever recommendations you want to the government. All I can indicate is that because this is an area of shared responsibility between the federal government, under its authority under criminal law and section 91 of the Constitution Act, and the provinces under administration of justice, under section 92, I think the provinces are very happy to negotiate as two sovereign domains under the Constitution. But if we were to start legislating things that actually affect the administration of justice, they may not appreciate it. On the other hand, they always appreciate money. I can't speak for the provinces, but it's your recommendation.

[Translation]

Mr. Marc Lemay: I wasn't talking about legislation containing all of the details of the negotiations, I was thinking of general legislation stipulating that the government of Canada is committed to funding legal aid and to negotiating. We know that it's an area of shared jurisdiction. At least there would be legislation, and I'm going to tell you what the purpose of that will be. Transfers of funds for legal aid—and I'm talking about Quebec here—are negotiated. So far, I believe I'm not mistaken.

What happens if the negotiations fail? The money isn't transferred. What happens if the settlement of a file is held up by the negotiations, as was the case in 2006-2007?

• (1600)

Mr. Donald Piragoff: That's a problem affecting all negotiations. The powers are divided between the federal government and the provinces.

[English]

Parliament is free to impose obligations on the federal government to spend money. Clearly, the spending of money by the federal government in this area is under the finance power.

With respect to negotiations, each province is not necessarily treated the same with respect to funding, because the funding does take into account differences within the provinces—populations, legal aid costs, criminal justice statistics, etc. The funding formulas have changed from time to time, so if there were a legal obligation, there would still have to be some type of mechanism under the law for negotiations by the provinces and the federal government in order to provide a certain amount of flexibility. It would be possible

to have a legal obligation, but there would still have to be some kind of flexibility to permit the negotiation that exists at present.

[Translation]

Mr. Marc Lemay: In the draft budget, \$955,000 was earmarked as support for a legal aid pilot project. Why doesn't that show up in the 2006-2007 main estimates? That's my first question.

As for my second—and I hope you will be able to answer it—I would like to know whether your department has contemplated the increased cost of legal aid associated with the enforcement of Bills C-9, C-10 and C-27, which we are going to be considering in the next few days. Have you looked into that? I look forward to your answers.

Ms. Barbara Merriam: I'd like to answer the first question.

[English]

It is the same situation. The minister will be requesting, through supplementary estimates, the same amount of money again for this year as we had for pilot projects last year.

The Chair: Is there any further response to Mr. Lemay's question?

[Translation]

Mr. Marc Lemay: What about the second question?

[English]

Mr. Donald Piragoff: With respect to new pressures resulting from bills before Parliament, the government has been evaluating the pressures, both in terms of federal government costs such as prison costs—Public Security is looking at them—and also in terms of identifying any increases in legal aid costs through discussion with the provinces. That would be part of the negotiations in the new round.

[Translation]

Mr. Marc Lemay: I just want some clarification, Mr. Chairman. I'm sorry, but it is very important.

[English]

The Chair: Mr. Lemay, your time is up.

[Translation]

Mr. Marc Lemay: He didn't give me an answer. He's a good politician.

[English]

The Chair: Clarify your point then, Mr. Lemay, quickly.

[Translation]

Mr. Marc Lemay: He didn't give me an answer.

[English]

The Chair: Put your point forward quickly.

[Translation]

Mr. Marc Lemay: I wanted to know whether you had had an assessment done of the legal aid costs associated with the enforcement of Bills C-9, C-10 and C-27.

[English]

Mr. Donald Piragoff: We have made assessments of the costing of the various bills that the government has put forward to Parliament for adoption. That costing includes things like police costs, prison costs, and increased prosecution costs. It also includes increased legal aid costs.

• (1605)

The Chair: Thank you, sir.

Mr. Comartin is next.

Mr. Joe Comartin: Mr. Piragoff, I didn't catch the four new drug courts. You went too quickly when you were doing that.

Mr. Donald Piragoff: Do you mean the locations?

Mr. Joe Comartin: Yes.

Mr. Donald Piragoff: They are Edmonton, Regina, Winnipeg, and Ottawa.

Mr. Joe Comartin: There is some local bias here. Windsor had put in for one of those and was quite upset about the criteria, since in effect they were already operating one and a number of these other communities, I understand, were not.

Who made the determination, and what criteria were used to determine which communities would get the next one?

Ms. Barbara Merriam: As I mentioned earlier, a review committee was established to review all the proposals and to make recommendations on which ones could be funded.

Mr. Joe Comartin: Are there criteria? I assume they had criteria.

Ms. Barbara Merriam: Yes, they did have criteria.

Mr. Joe Comartin: Is that public information?

Ms. Barbara Merriam: I'm sure I could provide the criteria to the committee.

Mr. Joe Comartin: Are there any plans for expanding the number of courts?

Ms. Barbara Merriam: No. With the joint funding between the Department of Justice and Health Canada, we just have sufficient funding for six courts in total. We're hoping that through some of our other activities...for example, right now there is a national drug treatment court conference taking place in Edmonton. Representatives from all the courts are there, along with others who are involved in drug treatment courts—prosecutors, health care providers, experts from the United States. We're hoping that through these venues we can share some of the lessons learned.

Mr. Donald Piragoff: I should add that some of the courts are quite new. For example, Regina hasn't even started. They're just in the process of starting.

There is an evaluation component built into each of these courts. Part of the program is to undertake evaluation, so to some extent the six that exist should not necessarily be seen as exclusive or as the only six. We extended the pilot project from two to six. We will continue to evaluate the six, and if the evaluations prove positive, then I think the government will possibly consider providing more funding for expansion.

I think the government is taking an incremental approach first, in terms of having a number of pilot projects, evaluating them, making assessments, and then determining how best to proceed in the future.

Mr. Joe Comartin: Are there timelines as to when the evaluations will be sufficiently complete for the department to consider expansion?

Ms. Barbara Merriam: We have signed agreements with the six courts that go until March 31, 2009, and from now until then, each court is responsible for doing its own evaluation. But we're also doing national evaluations and we're tracking the types of participants in the different courts, who stays in, who leaves. Probably solid information would be available in that last fiscal year, 2008-09.

Mr. Joe Comartin: In terms of the people participating in the evaluation, do they include judges and police and defence counsel?

Ms. Barbara Merriam: Yes. The funding may go to the provincial governments, but they work closely with the courts, the community stakeholders, the health care providers; or if the contribution goes to a particular health-serving organization, again all the players work together. For example, all the players are out in Edmonton right now, including the judges.

• (1610)

Ms. Catherine Latimer (General Counsel and Director General, Department of Justice): Were you asking whether or not the judges are participating in the actual evaluation?

Mr. Joe Comartin: Yes.

Ms. Catherine Latimer: That would depend on the evaluation model the various groups have determined. Normally you would—

Mr. Joe Comartin: I'm sorry, there's not a standard model for all of them?

Ms. Catherine Latimer: I don't believe there is, is there?

Ms. Barbara Merriam: There would be a standard model when we look at the national picture. At one point in the formative or summative evaluation, we would have interviews with key participants, and judges are definitely key participants in this whole process.

Mr. Joe Comartin: So when we get the annual reports, they flow out of those local evaluations, I'm assuming.

Mr. Chair, I'm not clear, and I know we've had some discussion about the Law Commission. Is it permissible for me to ask questions on the Law Commission of these witnesses ?

The Chair: I'm not going to hold you to any line of questioning, Mr. Comartin, unless it's way off topic.

The Chair: Whether the question could be answered or not is another matter.

Mr. Joe Comartin: With regard to the Law Commission, the same points on evaluation. Does the department do the evaluation of the Law Commission and of the individual projects it does?

Ms. Catherine Latimer: As you probably know, the Law Commission was a product of a federal statute and they gave annual reports to Parliament.

Mr. Joe Comartin: It still is.

Ms. Catherine Latimer: There's a different requirement for accountability if it's a grant and contribution agreement, which is what the drug courts are under. So the accountability of the Law Commission is a different model.

We would not necessarily be evaluating the reports that come out of the Law Commission. They would be seen as valuable input to law reform activities that the Department of Justice might be looking at, and there certainly is the possibility of responding to the ones.... Previously, the Department of Justice could request specific work from the Law Commission as well, but it's a different type of model.

Mr. Joe Comartin: How do you determine how much money you are giving the Law Commission? There must be some criteria. You just don't throw \$3 million a year at them, I'm assuming.

Mr. Donald Piragoff: It's a statutory-based agency. I don't have the details as to how the annual funding is determined. The minister is responsible to Parliament for the agency, but it is an agency, a creature of Parliament.

Our experts on the Law Commission are not here, Mr. Chairman, because you indicated this item was supposed to be on the agenda but it was taken off, so we released our experts.

Mr. Joe Comartin: He took it off, but the committee put it back on.

Mr. Donald Piragoff: We were not informed that it would be back on today, so we released our expert from coming here. I apologize if there was some mistake on our part.

The Chair: There was no mistake on your part at all, sir. In fact, the matter was to be brought before the steering committee, and the steering committee was to discuss it further. Unfortunately, we couldn't get the members of the steering committee together in time, although we have been trying to do so. That is the point of the Law Commission and that issue coming before the committee, but it has yet to be decided.

Mr. Joe Comartin: Is there somebody within the department who would be able to answer those questions?

Mr. Donald Piragoff: Yes.

The Chair: Thank you, Mr. Comartin. Your time is up.

Mr. Petit.

[*Translation*]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): Good afternoon.

My questions are for whoever can answer them.

You were asked a question about how you could provide for certain things in relation to new legislation coming into force. I'm going to take you back into the past. In the Montreal area, there was a biker war. Mr. Serge Ménard, who is now a member of the Bloc

Québécois, was Minister of Public Safety at the time. He did some good work. He resembled us somewhat, back then. He managed to have a good many people brought before the courts. They even had the Gouin Court House built for the occasion. Of the 36 accused, at least some 20 were drug-related bikers. Some had even set off a bomb in the riding of Mr. Réal Ménard, and young Sébastien Desroches was killed in the explosion. Still, those people were entitled to legal aid. As you know, there was some conflict because the amounts were very high.

I'd like to know how you solved that problem. As we know, the cost of defending those people who were involved in organized crime was huge, and this got a lot of coverage in Quebec newspapers.

A few years earlier, there were the events in Oka, with a significant number of Aboriginal people being charged and brought before the courts. There too, they relied on legal aid. That certainly jacked up the legal aid bill.

How did you solve that problem? That may be the kind of situation we are going to have to deal with.

• (1615)

Mr. Donald Piragoff: I don't know the details of the two cases you have just mentioned.

[*English*]

Mr. Chairman, I think this is one of the reasons why the legal aid system is pursuant to agreement. Each of the provinces is responsible for determining its own funding criteria. The federal government does not impose what the criteria shall be for granting legal aid because, as I said, this is a shared jurisdiction.

The provinces are responsible for the administration of justice in their provinces. The federal government, a number of years ago and in order to promote legal aid, had agreed with the provinces that it would co-share the cost of legal aid even though the actual operation of legal aid is a provincial responsibility.

With respect to the question that was asked earlier on whether Parliament could enact a law obliging the federal government to pay the provinces, yes, Parliament theoretically could oblige the federal government to pay the provinces, but it would then be obliging the federal government to pay the provinces to do something exclusively within their own jurisdiction. The question then is what controls the federal government would have as to how the money is spent or not spent.

Clearly, when you have flexibility, such as a system based on negotiation, the federal government, whether the agreement is for five years or three years, can take an assessment of what has happened over the course of time. It can say it doesn't necessarily like how the money has been spent in particular jurisdictions and that it would like to address that issue in the next agreement.

Ms. Catherine Latimer: I think you may also be talking about court-appointed counsel, and oftentimes, if the defendant does not have legal aid, the case cannot proceed and you can't get a conviction against the person. In that case, the judge will sometimes order one level of government or another to pay the costs of legal aid or the legal defence of that person. Oftentimes, that is not necessarily consistent with the legal aid tariff, and if the bills are excessive, it causes some concern. It's an interesting problem and is one that certainly needs to be addressed.

[*Translation*]

Mr. Daniel Petit: In Quebec, there is a certificate system for legal aid. No matter how many hours are involved, a set amount is provided. Earlier, the Hon. Sue Barnes said that in Ontario, the legal aid deficit was around \$10 million. Do you know how it works in Ontario? In that province, there's an hourly system, whereas in Quebec, there's a certificate system, which is completely different. Lawyers in Quebec earn less than lawyers in Ontario. Might that explain in part the \$10 million deficit? If we were to operate the way they do in Ontario, you would owe us \$10 million.

• (1620)

[*English*]

Mr. Donald Piragoff: Each province is responsible for the development and administration of its own legal aid system and program. Some jurisdictions provide legal aid through the private sector, where individual lawyers can obtain legal aid certificates to represent clients. Other jurisdictions provide it by government, through legal aid clinics, and the lawyers there are essentially civil servants. They work for the government. Some provinces have a dual system in which they have legal aid clinics as well as a private sector certificate system.

So each province is able to develop its own system. Each system, of course, has different cost impacts, and that is another reason the cost of legal aid may be different from jurisdiction to jurisdiction. Of course, like all things in politics, everything doesn't come down to costs. There are also other reasons as to why a jurisdiction would go with one system over another, and that again is part of the flexibility that exists with the current scheme, and also with the federal government being able to adjust its negotiations based on evaluations of the past record and what's expected in the future.

The Chair: Thank you, Mr. Petit.

I have one question in reference to the drug treatment courts. Why were they established? What were the criteria for establishing them, and what criteria were they established on?

Mr. Donald Piragoff: The reason for the establishment of the drug treatment courts was the realization that the issues of drug addiction, drug crimes and other crimes that are associated with drug crimes, are complex. It is not simply a question of motivation by greed; some of it is motivation by illness, maybe health reasons. Once people become drug-addicted, it's no longer a crime that is motivated by greed but crime motivated by a desire to fulfill a medical need to consume drugs. Therefore, as part of an effective crime prevention program, the government should be looking at ways to ensure that rehabilitation is available to certain offenders who are amenable to being rehabilitated to cure their drug addiction.

It's a recognition that solutions to drug crimes, particularly dealing with drug offenders, are multi-faceted. Depending on the crime, some traditional penalties may be appropriate for some. For certain offenders, long periods of incarceration are the appropriate means of sentence. For other offenders, because of their circumstances, other types of measures may be more appropriate, such as trying to steer them into treatment programs.

The Chair: So every drug offence in a place where there is a court, every drug charge, will go before a drug court.

Mr. Donald Piragoff: No. There are criteria for the drug courts. The drug courts, for example, will not accept violent accused persons. Persons who are involved in commercial drug trafficking are excluded from the drug courts. If the person is charged with a violent offence in association with the drug crime, they will not be entitled to the drug treatment court. If they have used a young person under 18 in the commission of the offence, or if they are charged with a residential break and enter, again they are not qualified to enter into the drug treatment court.

So the drug treatment court is really geared toward a specific type of offender, and those who use violence, are in commercial trafficking, exploit youth, etc., are excluded from the program.

• (1625)

The Chair: Thank you.

Mr. Bagnell.

Hon. Larry Bagnell (Yukon, Lib.): Just to go on record, the Liberals are strongly supportive of well-funded drug courts and legal aid.

Following up on Mr. Comartin's question and your points on evaluation, I assume there is an evaluation for the court challenges program.

Mr. Donald Piragoff: That's not a responsibility of the Department of Justice. That's Heritage Canada, so I can't speak for another department.

Hon. Larry Bagnell: Okay, that's fine.

You've evaluated the costs of the new initiatives the government has brought forward, Bill C-9, Bill C-10, etc. Could you table those estimates of the costs with the committee?

Mr. Donald Piragoff: That's a question I think you'd have to ask to the Minister. Some of those costs were discussed in cabinet, so it's up to the minister to release what he discussed in cabinet with his fellow MPs or not. I can't release what was discussed in cabinet.

Hon. Larry Bagnell: I've been told that one of the provincial justice ministers suggested today that the cost of these new initiatives could be in the order of \$1 billion to \$1.5 billion in capital, and over \$300 million a year in operating costs for all the provinces except Quebec. In your knowledgeable opinion, are they in the ballpark?

Mr. Donald Piragoff: In the assessments the provinces have given us, there are variations in not only the final figures but also in basic assumptions on how the figures were evaluated. The federal-provincial-territorial ministers agreed that the officials should pull out the pencils and start playing with the figures to try to get a better assessment, because there are discrepancies in the estimates.

Those discrepancies don't exist only between the federal government and the provinces as a whole. There are discrepancies between individual provinces, because not all of them have used the same assumptions or the same sort of baseline data.

Hon. Larry Bagnell: The estimates also show a \$1.5 million decrease from the territories. I assume that's the same as in the provinces, and that will be in the supplements. Do you have supplements partly drafted with these figures in them now? Roughly when will they be tabled?

Mr. Donald Piragoff: Yes, they have been drafted. They will be tabled in November or December.

Ms. Barbara Merriam: But weren't they tabled yesterday?

Ms. Catherine Latimer: I believe the supplementary estimates have been approved and they're just now moving them out. So I don't think there's any doubt that those resources will be flowing in December.

Hon. Larry Bagnell: On public security and anti-terrorism, why is the contribution for those areas being quadrupled, and what is legal aid for public security and anti-terrorism? Who are you defending?

Mr. Donald Piragoff: The funding for legal aid in the public security area is the result of a public security fund established in 2001 as part of the government's response to the events of September 11. There was an anticipation that, with the new legislation enacted by Parliament in December 2001, there would be increased litigation related to terrorism offences, together with more requests for extradition from other countries, and that this increased prosecution would have litigation costs associated with it. Instead of making it necessary for the provinces to absorb these costs, the federal government, as part of its program to address terrorism, also set aside a fund to address legal aid costs.

As to your second question of why the cost has gone up, last year I believe there were six individuals receiving legal aid funding under the PSAT funds. I believe this year there are 19. Within the last year to 18 months, a number of prosecutions have been launched and charges laid.

• (1630)

Hon. Larry Bagnell: What percentage of crimes can legal aid cover? There are a lot of things that poorer people would like to go to court for, but they can't afford it. Is that not true, over and above the backlog?

Mr. Donald Piragoff: There's a difference between civil legal aid and criminal legal aid. Each of the provinces and territories has criteria with respect to who may qualify for criminal legal aid. There are differences, but there's a general common denominator: if the result of the conviction would be imprisonment, then the person's entitled to legal aid, subject to income criteria, which vary from province to province.

The federal government does not provide money directly to the provinces for civil legal aid. However, through the Canada social transfer system, it provides grant funding to the provinces, and they're able to use that money for civil legal aid. The types of civil matters provinces would be willing to fund are subject to provincial criteria. Generally, it has been in areas such as family law and certain poverty issues. There is also legal aid available for some immigration matters.

The Chair: Thank you.

Mr. Moore.

Mr. Rob Moore (Fundy Royal, CPC): Thank you, Mr. Chair, and thanks to the witnesses for appearing.

You spoke about legal aid versus court-ordered counsel. Can you explain some of the challenges faced when there is court-ordered counsel? What does it actually mean, and what are the costs associated with it?

Mr. Donald Piragoff: The primary difference between court-ordered legal aid and government-funded legal aid is that certain individuals may not qualify for the government-funded legal aid; nevertheless, their personal circumstances, the complexity of the case, the consequences of the case, may be such that the courts, upon application of the individual, are of the opinion that without the assistance of legal counsel the person would not be able to have full answer in defence or a fair trial.

In these situations, the court cannot order the government legal aid system to pay. But judges can say to the prosecutor, the government, that they have to ensure that the rights of the individual to a fair trial are respected under the Constitution by giving the individual access to legal funds. Generally, this has meant that attorneys general, federal or provincial, have had to fund at least a portion of the legal costs directly out of their budget for legal aid. So it doesn't come out of the legal aid program; it comes out of the resources of the attorney general.

Mr. Rob Moore: Thank you for that explanation. It seems that could be quite problematic for a system in which there are tight monetary constraints and tight budgets.

I found it interesting when we looked at the numbers that are provided. It's sometimes hard to put them into context. You mentioned the boost in anti-terrorism, and that's all associated with the high-profile arrests that we heard about several months ago. That kind of puts it into perspective. Something like that could come out of the blue for a province.

• (1635)

Mr. Donald Piragoff: Yes, in particular I believe one of your colleagues on the committee has already mentioned some organized crime trials. If there's a mega-trial for these, with a number of court uses that don't fit the legal aid bill but that require legal counsel, and the judge orders it, then they could create unanticipated costs to the government purse.

Mr. Rob Moore: On the issue of these agreements with the provinces—and there are several areas like this—in which there's a degree of uncertainty from year to year, you mentioned there'd been a one-year extension on last year's funding levels for legal aid. What is the value of having a longer term in the agreement? What does that mean? Maybe not so much on the federal side, but what would that mean on the provincial side if we had an agreement on funding that was for longer than one year?

Mr. Donald Piragoff: Clearly, certainty would be one advantage for the provinces, but I guess you'd have to balance certainty with the need for flexibility sometimes. For example, you don't want to have a period that is too long, because if there are intervening changes and costs have dramatically increased, you can't reopen the agreement because you've signed a long-term agreement.

It's sort of like getting a mortgage. Do you go long with a fixed rate but be stuck with that rate, or do you go shorter and maybe have the advantage of flexibility? The same type of financial consideration that goes into taking a mortgage out on your house also goes into negotiated agreements. Whether you go short or long, there are advantages and disadvantages depending on what happens in the marketplace, or the so-called legal justice system marketplace.

Mr. Rob Moore: I think one high-profile instance—not just another drug case or whatever case—if it comes completely out of the blue and hits you with some sort of mega-trial, can have a huge impact on the public treasury, whether it's in legal aid or in the court-ordered counsel.

On the subject of drug courts, can you talk about what going through drug court involves compared to going through what people would think of as a normal criminal course? What is the difference? What advantages are there to proceeding that way? You already mentioned that drug courts don't deal in cases of violence, trafficking, or using a young person, but where someone is in a situation involving drugs. What's the difference?

Ms. Catherine Latimer: There is a significant difference in terms of both underlying philosophy and approach. In a usual criminal court, someone is being held accountable for their wrongdoing in a manner that's proportionate to the seriousness of the offence. With people who are addicted, there's an understanding that this type of approach doesn't actually work to discourage them from subsequent criminal activity. There's a real problem in terms of recidivism, because generally their behaviour is motivated by a medical condition of addiction.

It has been thought that you need to completely change the dynamics, and these drug courts allow for a therapeutic regime to be interposed into the justice system so that the judge and the prosecutor both become part of a therapeutic team that is attempting to address the addiction issue. There is constant sampling to ensure there is no reuse of drugs. There's encouragement. The idea is to put them through a program of one year to sixteen months in which their use of illicit drugs is monitored and discouraged in an effort to try to get them past the addiction. If they withdraw from the program or fail in the program, it is certainly possible to proceed against them in a criminal manner for their wrongdoing, in order to hold them accountable for that.

It is an effort to try to deal with a long-standing and difficult problem in the criminal area, which is that some criminal behaviour is motivated by conditions that are not amenable to the usual criminal justice approach.

• (1640)

The Chair: Thank you, Mr. Moore.

I don't know if this has been addressed yet, but I think the question has been skirted a couple of times on Bill C-9. It has a ten-year maximum. Traffickers basically end up with a 14- or 15-year sentence, maximum. Simple possession would not be captured under Bill C-9, but trafficking could be. What would happen in a drug court if you had a trafficker who has an addiction?

Mr. Donald Piragoff: He would not be eligible, because the drug treatment courts exclude people who are involved in commercial drug trafficking.

The Chair: Okay, so traffickers are not included.

Mr. Donald Piragoff: They're not eligible.

The Chair: It's not even a point then.

Mr. Donald Piragoff: It's not, no.

Hon. Sue Barnes: Actually, there is a point here. The organized crime has to have three or more, so it's your major trafficking.

Mr. Donald Piragoff: No, it doesn't have to be organized. It doesn't have to fit the definition of organized crime. If the person is involved in commercial drug trafficking, they are ineligible.

Hon. Sue Barnes: Well, it's the same thing.

The Chair: Mr. Lee.

Mr. Derek Lee: I want to ask some number-crunching questions. The big one has to do with the bigger planning and priorities issue.

I'm looking at the trend line on spending here, and I actually don't understand it. There's something happening here, and what it is ain't exactly clear.

There is a huge drop two years out. You guys obviously must know about it. The budget moves from around \$1 billion and drops \$275 million in 2007-08. That's a 25% drop in departmental spending. Had you noticed that?

If I've taken you outside the envelope that you had prepared for today, we can address this at another time with the minister, but your department is looking at a 25% drop in its budget two years from now or a year and a half from now. My question was going to be, who is getting fired, and are you planning to privatize in some way?

Again, if it's outside the envelope, I'll...

Mr. Donald Piragoff: It's outside the envelope. That would be best addressed by our corporate people in the department who are responsible for the general financing of the department. We're here to address the financing of two specific programs, and that's why we have the experts from these programs.

Mr. Derek Lee: Mr. Moore and Mr. Petit are just dying to get into that issue.

Moving on to my second question, we've talked about the cuts to the legal aid plan, but it's not clear to me that we've established why. The upcoming cut to the legal aid plan is one-third. That's huge. I did the math on it and it's exactly 33.3%. It's as though somebody said we're going to cut this by one-third, so get out the calculator and do the math. What's the rationale for the one-third drop?

Mr. Donald Piragoff: There is no actual drop. It is a result of the budgeting cycle. The government was not able to meet the budget cycle for main estimates because the existing three-year agreement terminated on the 31st. Therefore, there was a certain amount of money in the system already, but the rest of the money missed a cycle because of the election and the new government. That's why the minister is coming back with supplementary estimates in December. It's to top up the amount to last year's levels.

Mr. Derek Lee: That's fine. So there isn't anything strange happening there. The department may be one-quarter going out of business, but other than that minor detail—which I'm sure your colleagues won't care much about...

I want to ask about something that's referred to twice, both under grants and under contributions in table 7 of the document. In terms of grants and contributions, the contributions are \$2.1 million to the victims of crime initiative, and then a \$500,000 grant, also to the victims of crime initiative, in the next year.

Most of us realize around here that the victims envelope is managed usually by the provinces. Is this a new victims initiative? If so, what is the victims of crime initiative and how are we funding it? How are we using our money? I realize it may not be seen as a ton of money, but it comes out to about \$2.5 million.

• (1645)

Mr. Rob Moore: I have a point of order. My understanding of what we agreed to on Monday is that we were going to be discussing drug courts and legal aid, not having a wide-ranging discussion on.... We as a committee agreed to limit discussion, and as a result, we have people here who are experts in those areas.

The Chair: Well, in all fairness to Mr. Lee also, if the presenters are unable to answer the question, they'll tell Mr. Lee that they are unable to answer the question. I don't have a problem with that.

Mr. Derek Lee: I'm okay with that too, Mr. Chairman, because we did signal what the issues were for this meeting.

The Chair: Yes, and they are focused.

Mr. Derek Lee: But as we read on the same page of the legal aid

The Chair: I would ask the members to try to stick to the topic, at least.

Mr. Derek Lee: Well, as I read the page dealing with legal aid and the Law Commission, I'm looking right down the gun barrel at \$2.6 million in new spending, and that's something I haven't seen before.

So I'll just ask the question. If there's an answer, great; if there isn't, we'll pick up on it later.

Mr. Donald Piragoff: Mr. Chairman, on this question we do have the experts available to answer with respect to victims.

I'd like to introduce to you Catherine Kane, who is responsible for the victims program within the Department of Justice. Mr. Chairman,

I believe she can answer Mr. Lee's question concerning the funding for victims.

The Chair: Thank you.

Ms. Kane.

Ms. Catherine Kane (Senior Counsel, Director, Policy Centre for Victim Issues, Department of Justice): Thank you.

There is a \$2 million grants and contributions fund in the Department of Justice to encourage innovative projects to meet the needs of victims of crime. That money can be provided, on a project basis, to provinces and territories and to non-governmental organizations. In addition, there's a small component that's for emergency financial assistance to individual victims where there's no other source of funding available. That's the \$2.1 million component. That's been in existence for six years now, and we have that funding through to 2010. So that would have appeared in the department's estimates since 2005.

Last year we were operating under special warrants, because as my colleagues explained, the program sunsetted and we were renewed, but the renewal got caught up in the election process. So there may appear to be zero in one of those years, but we did have the money and we did spend it very well, and it has been positively evaluated.

The other \$500,000 you referred to is the current resources available to us to assist victims to travel to National Parole Board hearings by covering their travel costs. As the minister has indicated, he does intend to enhance both of those funds, but for the time being, we're operating with the \$2 million for the program and the \$0.5 million for travel to parole hearings.

Mr. Derek Lee: Okay. Thank you, Mr. Chairman.

The Chair: Thank you, Mr. Lee.

We go to Mr. Ménard.

[*Translation*]

Mr. Réal Ménard (Hochelaga, BQ): Mr. Chairman, I'm sorry for being late, I was at a press conference on the Coffin case. I'd like to thank the Minister's Office for helping us through its officials.

I'd like to ask two questions. If they've already been asked, I apologize. I will understand if you don't want to repeat yourselves, but I'm still going to go ahead and take my chances. Reading the documents last night is what inspires me to ask these questions.

I was surprised to read that under the heading "Contributions in support of Public Security and Anti-Terrorism—Legal Aid", the budget goes from \$500,000 to \$2 million. I would like you to explain to me what this budget item is for. What has been done and why the substantial increase, when, as we know, other programs have been eliminated, programs that in our humble opinion, deserved to be renewed?

Mr. Donald Piragoff: Thank you for your questions. As I said, in 2001, the government allocated the necessary funding for legal aid needs associated with anti-terrorism.

[English]

At that time, as I indicated, Mr. Chairman, the government set up a separate legal aid fund to support legal aid that might be required as a result of new prosecutions under the new laws that Parliament enacted in 2001, as well as other associated costs, like extradition and so on.

Last year, there were six individuals seeking funding under the special PSAT legal aid fund. This year there are 19 individuals seeking funding. As you know, within the last year there have been a number of charges laid under the new Anti-terrorism Act, and therefore there are now new, increased anticipated costs for legal aid.

• (1650)

[Translation]

Mr. Réal Ménard: I want to make sure I get this right. People charged under the Anti-Terrorism Act can get aid to defend themselves, but that aid is not channeled through the provinces. Do those individuals apply directly to the federal government? I imagine, for example, that in the case of the six people being prosecuted, it is redistributed to the provinces.

Mr. Donald Piragoff: That is correct.

Mr. Réal Ménard: Yet, those people who have been accused of being involved in terrorist organizations have to request assistance from the provincial legal aid system. That's my understanding.

That brings me to my second question. I would like you to be perfectly comfortable and for your generosity to match my conviction that my question is well founded. You are aware that we are considering Bill C-9, whose future is uncertain, and Bill C-10. Both bills could lead to an increase in the prison population. You could tell me that an increase in the prison population is part of the Conservative Party's platform, but I don't want to ask you political questions.

Have you assessed the impacts of these bills on the demand for legal aid? I know that you have. Otherwise you would not be living up to your responsibilities. Would you agree to providing us with these studies, if we guarantee you that they will be for our use only?

[English]

Mr. Donald Piragoff: Thank you, Mr. Chairman.

As I indicated, the various departments have provided to the government cost estimates of the proposed reforms. Those include cost estimates with respect to policing, prosecution services, prison services, as well as legal aid. Those figures have been presented to cabinet. I'm not permitted to disclose information that was provided to cabinet; the minister, however, could.

[Translation]

Mr. Réal Ménard: Perhaps our chairman would agree to making a request. I know that you are quite close to the Minister of Justice and to his immediate colleagues and it would be unfortunate if legislation were passed without our knowing the numbers. As the Gomery Commission's report stated, a parliamentary committee has to have convincing and conclusive facts to enable us to play our role

as members of Parliament. If my colleagues agree, we could ask our chairman to request those numbers of the Minister of Justice. As you know, according to some rumours, the cost could be roughly \$1 billion.

Could you nod your head if you think those rumours have any substance to them? A billion dollars, that's a lot. Do those rumours have any substance to them?

Mr. Donald Piragoff: I think it would be better to ask the minister questions related to costs.

Mr. Réal Ménard: Then, Mr. Chairman, we will give you that mandate. I know that you are just as keen as I am to have those numbers. If my colleagues agree, we could ask to write to our Minister of Justice to request those numbers.

Do I have time for a third question?

[English]

The Chair: No, Mr. Ménard, and certainly the matter could be posed to the minister to determine what response he might wish to give.

Mr. Thompson.

Mr. Myron Thompson (Wild Rose, CPC): Yes. Thanks for coming.

There are a couple of things I need to find out about that deal with the kind of work we do in our ridings. There are a number of people who come with various types of issues. In most cases they are provincial matters—social services, workmen's compensation, and such things. About the best thing you can advise them is, "You need to get a lawyer and challenge this." Of course, the first answer you get in a lot of these cases is, "I can't afford a lawyer". Well, you need to go to legal aid. "Well, I don't qualify for legal aid."

What do you do as an MP when you face those kinds of dilemmas in your riding? What's the simplest way to guide these people who are looking for genuine help? I could pass the buck to the MLAs, but they're looking to me for help, and I'd like to do it myself.

• (1655)

Mr. Donald Piragoff: They're the experts.

Ms. Barbara Merriam: The examples you give are quite common across the country. What you could suggest to people is to contact the public legal education organization or agency in their province to see if there are any pamphlets or papers that could help explain the process you would have to go through if you were representing yourself. The legal aid plans themselves have websites and often have helpful information that is open to the public. Those are some....

Mr. Myron Thompson: These are the kinds of things that I never knew existed. How to direct these people is something we face fairly regularly.

Another thing that has me puzzled is whether it is because of a lack in the number of people serving in legal aid that we have such a backlog in the courts. Are we short of legal aid people? Is that the problem? People in my riding are waiting for trials still to get moving, and it seems that there's a shortage of legal aid people. Is that the case?

Mr. Donald Piragoff: There's no one cause for backlogs in the justice system. There are a number of different reasons. Part of it may be legal aid, part of it may be simply an increase in crime in certain jurisdictions, part of it may be due to other factors.

What the Conservative government has done is set up a number of working groups with the provinces and territories to look at the causes of backlogs. We've also set up a steering committee composed of judges, the bar association, and some representatives of the provinces' attorneys general, to look at justice efficiencies—in other words, where the justice system can be made more efficient. One of the priorities of the provinces right now is looking at remand backlogs. The backlogs exist because it is taking a while for certain people to get to trial.

But one can't simply say it's because of a lack of legal aid that there are backlogs. It's a complex problem, and that's why we're looking at it.

Mr. Myron Thompson: That's good. But the department is looking at it, and it can be resolved?

Mr. Donald Piragoff: Yes, together with the provinces. And also we've brought in the bar association and the judges so that we could have a multi-disciplinary examination of this problem of court backlog.

Mr. Myron Thompson: We have had a couple of cases in my riding that have puzzled me. One was a head-on collision by a drunk driver from the reserve, who killed four people. It took longer to have that case resolved than the sentence he got. There were 18 court hearings. It went on and on, and it was all through legal aid.

I'm trying to understand why that would be, when the initial plea was guilty. How can that possibly happen? I could give you the specifics of the case, but it went for 18 trials. I know, because I was at every one waiting for the results, as the people who died in this situation and the driver of the vehicle were all from my riding. I know it was legal aid that was assisting the offender.

Is there any explanation as to why certain cases would go 18 times, in which the plea is entered as guilty?

Mr. Donald Piragoff: I can't comment on a specific case when I don't know what happened. In that situation, the best person to ask would be the provincial attorney general who was responsible for the prosecution.

• (1700)

Mr. Myron Thompson: That would be good. When we're paying for legal aid, I'd really like a clear explanation as to why we'd have to pay so much for legal aid in that case, because it went on and on and on.

The last one I have is that the SPCA brought a charge against a farmer in my riding. Normally, when these SPCA people bring a charge related to animals, there is an automatic \$1,000 fine, and if you just pay it, it's done. But this farmer was a little upset and he wanted to challenge it. Of course, I don't know whether that was a civil or a criminal thing, or what, but it was a rather interesting case, because he wanted legal aid and didn't qualify. So he hired a lawyer and was found innocent of animal abuse and ended up owing the lawyer \$11,000. He could have paid \$1,000 and been done with it,

but he ended up owing this lawyer \$11,000. Of course the next case was the lawyer in court trying to collect \$11,000 from the farmer.

These things seem just to go on and on. I'm wondering whether legal aid can contribute to helping. This slow tying-up of the process of getting the job done seems to be a lack of legal assistance. Can legal aid contribute to helping speed up the process and allow the stuff that just goes on and on?

I don't really know what to lay my finger on, except it seems that the backlogging and a few other things are getting completely out of control.

Ms. Catherine Latimer: I was just going to say that you have raised a very significant problem that hurts accessibility to the justice system for a lot of people, and there are lots of things that can be done to speed things along. For example, the federal Department of Justice has issued guidelines for reasonable child support, which has led to easier and faster solutions in a lot of areas where these areas would be hotly contested before.

It is important that we look at some of these issues from a systemic basis to see if there are ways in which these issues can be sped up and made much more accessible to people generally.

Mr. Myron Thompson: Thank you for that. If there's anything that takes place, I'd like to be part of it. We deal with these kinds of issues locally all the time, and it would be very helpful.

The Chair: Thank you, Mr. Thompson.

Mr. Murphy.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): Thank you, Mr. Chair.

The issue of backlog is fairly interesting. One of the sure but partial solutions to it would be for the government to get on with making the appointments to the judiciary that are open, but I suppose the criteria for the list are so small that it might be difficult to do that quickly.

In any event, I'd like any of the witnesses to tell me whether any of you went to or kept abreast of the first ministers meeting on justice recently and the Canadian Bar Association meeting in St. John's, Newfoundland.

Mr. Donald Piragoff: Yes, to both questions, but not the same individual.

Mr. Brian Murphy: That's all I wanted to know, because it is a matter of public record that the outgoing president of the Canadian Bar Association, who was a classmate of mine, excoriated the government, and I think that's a non-partisan issue at the moment. He got really mad, rootin' tootin' mad, at the government, and I don't think it was just the current government. It was at the government's abandonment of legal aid in this country. The first ministers, one of whom I know quite well, are concerned about legal aid being in crisis.

As ministerial officials here, do you accept that legal aid is in crisis in this country? If you don't want to be as traumatic as saying "crisis", do you think it's in good shape?

Mr. Donald Piragoff: All systems can be improved. All systems can be worse. In this country we have a relatively good legal aid system compared with other countries. That is not to say it cannot be improved, and that's why ministers last week in Newfoundland agreed that they would work together to negotiate new agreements. The minister gave his commitment to his colleagues that he would bring their concerns about legal aid to his cabinet colleagues around the federal table. There has clearly been goodwill expressed by the minister publicly that legal aid is an issue that requires federal participation because of the cost, that this is not something that can be borne by the provinces individually, and despite the fact that it is solely within the provinces' constitutional jurisdiction, the government will continue this participation.

To that extent, I think we should let the ministers continue their discussions, and hopefully they'll come up with an agreement within the next year or two and have a renewed legal aid strategy and funding agreement for whatever period of time they agree to extend it.

• (1705)

Mr. Brian Murphy: On the answer you gave earlier on the supplementary estimates moving the legal aid contribution from under roughly \$120 million required in the 2005-06 main estimates down to \$80 million in the 2006-07 estimates, your answer was that in the supplementary estimates coming this would be restored. Did I understand correctly? Was that to roughly \$120 million?

Mr. Donald Piragoff: Yes, that's correct. It is \$126 million, I believe.

Mr. Brian Murphy: What I didn't understand from your answer either—be more precise, if you would—was whether that includes any of the estimated increase that any legislation that is part of the government platform would cost legal aid.

Mr. Donald Piragoff: That amount is based on last year's levels. Because of the termination of the three-year agreement on March 31 and the inability to negotiate new agreements, with the change of government, etc., the \$80 million was in the original main estimates budget of last year. It is basically almost a kind of A-based funding, and it's base funding that has been allotted to the department for legal aid purposes.

The extra \$40 million is something that has to be sought every year. It could not have been sought originally because of the change of government, and therefore it comes halfway through the year, through supplementaries.

Mr. Brian Murphy: Right now, even at \$126 million, if that's what the figure is going to be, none of that includes increased legal aid costs as a result of the government program, let's say, of Bill C-9, Bill C-10, and Bill C-27.

All we really know is that the government has put about \$225 million in Mr. Flaherty's budget for prisons, when our estimate is that the capital for prisons is \$1.5 billion. Notwithstanding that the government has done estimates for cabinet purposes on police, prison, and legal aid costs, we don't have those figures and we don't know the cost of the program.

Mr. Thompson is a big supporter of the program. He says his people tell him that whatever the costs are, we'll pay for it. I would

think he and others would want to know what it's going to cost and would stand behind the figures.

I guess we're waiting for that. Mr. Moore may have them in his sheath of documents over there, but we'll have to wait for another day and another witness to get that answer. Is that right?

Mr. Donald Piragoff: As I said, I'm not at liberty to disclose information that was discussed in cabinet. Only the minister has the authority to discuss that.

Mr. Brian Murphy: Why can't you tell me about the supplementary? That's not purely cabinet.

Mr. Donald Piragoff: I think the minister has already publicly indicated that he is coming with the—

Mr. Brian Murphy: I think he said something about the cost of legal aid for Bill C-9, Bill C-10, and Bill C-27. I think I heard that today in the locker room or somewhere.

No, that doesn't work. Oh well, darn it.

The Chair: Thank you, Mr. Murphy.

Mr. Brown.

Mr. Patrick Brown (Barrie, CPC): Thank you, Mr. Chairman.

Do you have any information on how the legal aid system in Canada compares to other countries? Would we be comparatively generous?

Ms. Barbara Merriam: We have a researcher, who is not with us today, who studies the systems around the world. He would certainly be in a better position than I am to comment on other systems.

But I think, as Mr. Piragoff said, there's always room for improvement, and that's what we are always trying to do with our provincial and territorial counterparts. We have a federal-provincial-territorial permanent working group on legal aid. We have representatives from every province and territory and from every legal aid plan. We're trying to work together collaboratively at the officials' level.

• (1710)

Mr. Patrick Brown: As much as it's fair to say there's always room for improvement, at some point I would be interested in seeing how Canada compares to other countries, and if it's not available today, that's fine. Is Canada more of a model in terms of generosity, or is it lagging behind?

Mr. Donald Piragoff: We could probably make the research available to you, if it's there, and provide it to the clerk.

Mr. Patrick Brown: Thank you.

The Chair: Thank you, Mr. Brown.

Does legal aid actually provide a service to Canadians that would be charged for in another country? Would they provide funding for an offender who is charged in another country?

Ms. Barbara Merriam: No.

Mr. Réal Ménard: Is that a suggestion?

The Chair: No, it's not. I'm aware of challenges that have come before the courts in other nations, particularly the U.S., where Canadian legal counsel was provided. I'm only curious about whether it's through legal aid or through some other aspect of funding.

[*Translation*]

Mr. Marc Lemay: With your permission, Mr. Chairman, I could answer that question because one of my clients was involved with the justice system in the United States. There is a legal aid system in the United States, just as there is in Australia, Great Britain, New Zealand and several European countries. I know this because I have had clients in those countries.

[*English*]

The Chair: I'm aware of that. That wasn't my question, though; that wasn't my question.

On the drug courts, if the witnesses recall, a few years ago there was a substantial withdrawing of drug charges in a court in British Columbia. In fact, I think it was on more than one occasion. Several hundreds, if not thousands, of cases were withdrawn because of a backlog, and a lot of it was attributed to that. Have the drug courts become more efficient in dealing with the huge number of cases before them? Is this one of the reasons they were established?

Mr. Donald Piragoff: The drug treatment courts are not dealing with the largest proportion of the drug offences in the country. The drug treatment courts are really dealing with a very small subset of offenders who fit the criteria. In other words, they are non-violent, they are not exploiting children, and they are not engaged in commercial trafficking. They are people who the system—the prosecutors, the defence—have agreed are possibly candidates for treatment. That's the purpose of the drug treatment courts.

When you refer to drug courts, yes, in certain courts 90% to 100% of the business is drug cases, but they're dealing with all kinds of drug cases—trafficking, simple possession, everything. The drug treatment court is a special subset of drug courts in general.

The Chair: Thank you.

Mr. Bagnell, you have time for one question. You've got two minutes.

Hon. Larry Bagnell: How are the negotiations going for next year's funding, starting April 1?

Ms. Barbara Merriam: At the officials' level, we work very cooperatively with our FPT permanent working group on legal aid. We gather information there to assist our minister. The minister, in participating in the FPT meeting last week and also through meetings with his counterparts across the country, gleans information. At this point that's about all I can say, because any decision about the future would be a cabinet decision.

• (1715)

Hon. Larry Bagnell: One of the directors told me the funding talks are stalled—that they're not even talking; that there's no indication they will continue; that when they finally finish all the negotiations, it will take a long time to do the agreements. The provinces and territories are waiting to determine their funding. All this has to happen before April 1. People don't know how to plan their programs and their staffing; people are leaving.

I have one last question. In the estimates, I think the budget for the Yukon—I don't know if it's the cost-shared budget—is roughly \$1.32 million, and for the other two territories it's \$5 million. We've roughly the same populations. How come we can't have more money?

Ms. Barbara Merriam: I'm not quite sure what you're referring to.

Hon. Larry Bagnell: I mean the legal aid money.

Ms. Barbara Merriam: Yes. For the three territories, we do things a bit differently. We have what's called access to justice services agreements. In these agreements we roll in the money for legal aid, the money for public legal education, and the money for the aboriginal court work program. It's all funnelled through one agreement. About 70% of the money is for criminal and civil legal aid in the territories. This year will be exactly the same as last year; it would have been negotiated with the territories for the past three years, and it's going to be exactly the same this year.

The Chair: Thank you, Mr. Bagnell.

Mr. Lemay is next.

[*Translation*]

Mr. Marc Lemay: I'd like to understand something. Under "Total Contributions", there is a category called "Items not required". Once again, that is the answer you gave to my first question earlier. There is a subsection entitled "Contributions in support of Federal Court ordered counsel—Unique legal aid cases". That \$250,000 will be in the supplementary estimates.

What do you mean by unique legal aid cases in the Federal Court? Did I misread this?

[*English*]

Mr. Donald Piragoff: Yes, as I indicated in an earlier question—I believe it was from Mr. Moore regarding the difference between legal aid and court-ordered legal assistance—this federal money for unique legal cases has been allocated to address the cost to the federal government, where the courts have ordered the provision of legal assistance in the context of federal prosecutions.

[*Translation*]

Mr. Marc Lemay: There are several programs. I'll list just a few: "Contributions for access to justice services to the territories (being legal aid, Aboriginal courtwork and public legal education and information services)".

If I understood correctly, this is only for the three territories. Am I correct?

Ms. Barbara Merriam: Yes.

Mr. Marc Lemay: Thank you. I also see: "Contributions under the Aboriginal Justice Strategy Fund".

Does that include legal aid or is that a completely different program?

[English]

Ms. Barbara Merriam: It's a totally different program; it's not legal aid.

[Translation]

Mr. Marc Lemay: I also see: "Contributions to the provinces under the Aboriginal Courtwork Program".

Is that also a different program? Is that a program for those who support Aboriginal clients in the courts? Is that legal aid?

[English]

Ms. Barbara Merriam: No, it doesn't mean legal aid. It means a court worker who is going to assist an aboriginal person through the court system and work closely with the—

• (1720)

[Translation]

Mr. Marc Lemay: Thank you.

[English]

The Chair: Thank you, Mr. Lemay.

Mr. Comartin.

Mr. Joe Comartin: Thank you, Mr. Chair. I wanted to follow up on a different tack.

When I was still practising, it seemed to me there were more and more suggestions, or actual attempts by lawyers, to get cases covered, both in the criminal and immigration law areas, where the courts would be asked to appoint counsel directly, and the department, whether provincial or federal, would be required to pay directly, as opposed to going through the legal aid system.

Regarding the item that Mr. Lemay just drew to your attention, is that where those costs come from?

Mr. Donald Piragoff: At the federal level, yes. That's what the unique legal cases idea is.

Mr. Joe Comartin: Usually it's a situation where both the judge and the counsel are frustrated by the legal aid system in that it's not working, in the sense that it's not available, or people aren't eligible, or they can't get a certificate, or whatever.

May I ask, do you know if that amount has been growing over the years, where there are direct orders for the government to pay? If so, what percentage of growth are we seeing?

Mr. Donald Piragoff: I don't know the percentage, but it has been growing over the last few years.

In fact that is an item that's being studied by the justice steering committee, which I mentioned earlier, that's composed of judges, and defence, bar, federal, and provincial officials. They're looking at the whole issue of the unrepresented accused, because it is becoming a matter of concern.

Barbara, do you have any figures as to how much it has gone up?

Ms. Barbara Merriam: We track it in different ways. We did a court site study that's on our—

Mr. Joe Comartin: May I ask, are you tracking at both the provincial and federal levels, or just at the federal?

Ms. Barbara Merriam: We are actually trying to track at the provincial level. We know our own statistics, the ones that we have been.... I should step back for a moment.

With federal court-ordered counsel—these are often drug cases with federal prosecutors—we have an understanding, through our contribution agreements with the provinces and territories, that if we have one of these cases and would like to use the legal aid rates, we can approach the legal aid plan to see if it can provide a lawyer at a reasonable rate.

In any case, we have been trying to track federal and provincial court-ordered counsel, and we're in the process of analyzing these results. But we can see that the numbers are going up.

The Chair: Thank you, Mr. Comartin.

Mr. Joe Comartin: Can I just ask, Mr. Chair, that if there is some kind of report on that research, it be shared with the committee?

The Chair: Madam Merriam, is there a report?

Ms. Barbara Merriam: We have a draft report. We do have a chart. It's not a perfect chart, but it does give you a flavour of the increase over the last number of years.

Mr. Joe Comartin: When will the report be available?

Ms. Barbara Merriam: Probably in the near future. If you would like a report—

Mr. Joe Comartin: Could we have both the chart and the report sent to the clerk, Mr. Chair?

Thank you.

The Chair: Is that feasible, Madam Merriam, to have the chart and the report?

Ms. Barbara Merriam: Yes. Since I mentioned that we were doing it with the FPT permanent working group on legal aid, we're collecting our numbers together; we're trying to make sure we're all collecting them in the same way. The report would have to be agreed to by them. We'd have to finalize it before we could release it.

The Chair: Understood.

Mr. Petit, one question.

[Translation]

Mr. Daniel Petit: I would like to ask you a general question. Please feel absolutely comfortable to tell us whether or not you can answer.

We are currently considering Bills C-9 and C-10. You will have noted that the questions we are asking you are about costs, etc.

You are senior officials but I do not know all of you. I am new, but I've been on the other side in the past, that is to say, I have had the opportunity to observe the people who sit here.

Do you really think that the Bills C-9 and C-10 can be passed by April 2007 when the Liberal Party has the majority in the Senate? We already have Bill C-2, which has not come back. Is it logical to think—please feel comfortable in answering this—that Bills C-9 and C-10 will get back to us by April?

• (1725)

[*English*]

The Chair: Order, please. Obviously there's going to be no reply.

Mr. Lee has a question.

Mr. Derek Lee: The chair has me firmly focused now on the drug courts envelope.

I had an opportunity with other Parliamentarians three or four years ago to get a look at the Toronto drug court up close and personal. It seemed like it was efficacious, but I was just curious about whether there has been any departmental study of the spending effectiveness for that. You have to invest in a new court, new procedures, but you get savings from diversion from other courts. You get improved outcomes, I understand, on the part of the persons attending regularly before the court. They're retained in the court system much longer, so there's a higher retention cost, but they're not incarcerated, so there are savings there.

Is there any document out there that attempts to reconcile the costs and benefits, even on an interim basis?

Ms. Barbara Merriam: I was asked earlier if we could provide the executive summaries of the two reports that are already available—one on the Toronto court and one on the Vancouver court. Costing was an aspect of both of those evaluations, but costing is very complex, very difficult, and I don't think either one was able to resolve it. So this is another thing we will be studying with all six courts over the next couple of years.

Mr. Derek Lee: Thank you, Mr. Chairman.

The Chair: Thank you, Mr. Lee.

Ms. Barnes.

Hon. Sue Barnes: I have two questions.

Has anybody ever done the impact studies on when people don't get legal aid and they end up going unrepresented before the courts? When I was doing that stuff, that usually wasted more time than anything else, when you had people who didn't know what they were doing. Even duty counsel were overwhelmed with this.

The second question is with respect to “three strikes, you're out”. I think there'd be a chill effect if you had it even on the first offence. I've already had both prosecutors and lawyers talk to me about that, that whenever things stack up, you're going to have the impact of not wanting to do a guilty plea, not only in the third but in every single offence that's in any sort of listing situation. So instead of going to a guilty plea, there will now be trials, which is going to have an impact, obviously, on court time. It's also going to have an impact on the legal aid costs.

In preparation for our bill and for your supplementary estimates—which already have been finalized, I know—have you done any

studies with respect to the impact? Did anybody ever give consideration to perhaps unintended consequences?

Mr. Donald Piragoff: On the first question, unrepresented accused, I don't know if there are specific studies, but there has been, as indicated, an increase in unrepresented accused. It is increasing trial length, because judges are saying they have to spend more time explaining things to the unrepresented accused. That would not necessarily happen if there were counsel. Clearly, unrepresented accused are slowing down the justice system, because the judge has to ensure the person gets a fair trial.

The alternative is that some cases may be so complex, as Mr. Moore has indicated, that the courts have to order the Attorney General to fund the provision of legal counsel; it's not possible for the judge to assist the unrepresented accused. That is a topic the justice steering committee is looking at. That's the committee composed of the judiciary, especially the bench and bar, and the government is looking at that issue.

• (1730)

The Chair: Thank you, Ms. Barnes.

Hon. Sue Barnes: The second question wasn't answered.

Mr. Donald Piragoff: The second question on three strikes?

Hon. Sue Barnes: The chill effect, and whether you did any planning from a legal aid perspective on what will happen under the court system of justice at the third.... It's legal aid.

Mr. Donald Piragoff: The legal aid course. That is being discussed with the provinces to determine the cost that might be associated with this particular reform.

Hon. Sue Barnes: Yes, and they have been talking to me.

Thank you.

The Chair: Thank you, Ms. Barnes.

Mr. Moore.

Mr. Rob Moore: I have the documents that we said we'd have for the committee on Monday on some of the cost analysis on Bill C-9. Shall I give that to the clerk?

An hon. member: [*Inaudible—Editor*]

Mr. Rob Moore: Because they didn't have it at the beginning.

The Chair: Order, please.

The documents are now presented to the committee, as requested at a previous meeting, if the clerk would distribute them.

I would like to thank the witnesses again for appearing before the justice committee. I think this has been informative. I've learned a bit about our drug treatment course as well as legal aid. We will continue our review for one more session in reference to both these issues.

Thank you, again.

This meeting is adjourned.

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