



House of Commons  
CANADA

# Standing Committee on Justice and Human Rights

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JUST • NUMBER 004 • 2nd SESSION • 39th PARLIAMENT

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EVIDENCE

**Thursday, November 29, 2007**

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**Chair**

Mr. Art Hanger

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## Standing Committee on Justice and Human Rights

Thursday, November 29, 2007

• (1110)

[English]

**The Chair (Mr. Art Hanger (Calgary Northeast, CPC)):** I'd like to call the Standing Committee on Justice and Human Rights to order. We are continuing our review of the supplementary estimates for the fiscal year ending March 31, 2008.

We have before us today Department of Justice officials Donald Piragoff and Barbara Merriam. They will be present for the first hour.

I will turn the floor over to Mr. Piragoff.

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

Madame Merriam is probably caught up in the security downstairs. She'll be along shortly.

I'll start now, Mr. Chairman, since the committee is ready.

I'd like to start with a brief introductory comment, which will be provided to the committee in bilingual format.

I'd like to try to explain how legal aid is funded through the budget system. As you know, it's quite complex. One has to look at both the main estimates and the supplementary estimates to understand. Before we get into questions, I thought it might be useful to at least try to explain the funding. I know in the past we've often been confused as to exactly what the total numbers are and what the numbers represent.

**The Chair:** Will there be a written presentation too, in reference to how this is all—

**Mr. Donald Piragoff:** Yes. There's a written document. It's probably on its way from security right now. I hope it will be distributed during the course of my remarks. If not, it will be distributed during the session.

**The Chair:** Thank you.

Madame Merriam is here now, so we have a full contingent of witnesses.

[Translation]

**Mr. Donald Piragoff:** Members of the Justice Committee, it is my pleasure to appear before you to answer questions regarding funding of Legal Aid.

Joining me today is Barbara Merriam, acting Director General, Programs Branch from the department. Ms. Merriam has direct

responsibility for a series of funding programs and policy initiatives including Legal Aid.

Mr. Chairman, I would now like to speak to you about the federal government's role in funding Legal Aid.

In Canada, legal aid is a shared responsibility between the federal government—under its authority in matters of criminal law—and the provincial governments—under their authority for the administration of justice and for property and civil rights.

The Canadian model is that the provinces deliver legal aid services and the federal government contributes to the costs with the provinces and territories. Legal aid is delivered by thirteen legal aid plans, one in each province and territory, created under the statutory authority of the province or territory.

For the past 35 years, the federal government has been contributing to the costs of criminal legal aid through contribution agreements with the provinces and territories. Contributions to the provinces support legal aid in matters of criminal law, youth criminal justice and, since 2001, immigration and refugee matters in six provinces, that is Alberta, Quebec, Manitoba, British Columbia, Ontario and Newfoundland and Labrador. In the territories, the federal government contributes to both criminal and civil legal aid through Access to Justice Service agreements.

[English]

Last year, in 2006-07, the federal contribution for criminal legal aid to the provinces and both criminal and civil legal aid for the territories totalled \$112,385,463, or \$112.38 million. The document that will be distributed has an actual breakdown of that distribution per province and territory. I won't read that.

For the current fiscal year, the department has requested \$81.9 million in main estimates, and it is now requesting \$44.31 million in the supplementary estimates. These resources will allow for the maintenance of the existing federal contributions toward the cost of providing legal aid.

For the past six years, increased funding to the provinces and territories has been provided only on an interim basis, over and above the \$81.9 million already provided in the department's reference levels. Budget 2007 provides for the stabilization of resources for criminal aid at 2006-07 funding levels.

In absolute terms, the funding for legal aid has remained unchanged. However, there is an important distinction to be drawn when comparing previous years' funding to this year's funding, namely the stabilization of a portion of the funding in the amount of \$30 million that was about to sunset in March 2007. More specifically, budget 2007 allows for the interim legal aid resources to be renewed, with \$30 million of the \$44.31 million being added to the existing departmental base of \$81.9 million, thereby increasing, permanently, the legal aid base to \$101.9 million from the previous permanent level of \$81.9 million. The remaining resources of \$14.315 million will be continued on an annual basis for five years.

• (1115)

[Translation]

In order to get a complete picture of the funding situation for Legal Aid, we must consider both the Main Estimates and the Supplementary Estimates for 2007-2008. The funding levels shown in the 2007-2008 Main Estimates represent funding in support of legal aid at \$81.913 million. The funding levels shown in the 2007 Supplementary Estimates represent \$43.150 million and \$1.165 million in Vote 1 in support of legal aid.

[English]

Accordingly, the total vote 5 funding for legal aid for 2007-08 is \$125.063 million. In the material I'll provide, there's a breakdown as to how much is in supplementary estimates, how much is for main estimates, how much goes to the provinces and territories, how much goes to legal aid for immigration refugees, and how much goes to court ordered counsels.

Essentially, \$111.9 million base funding will now be available for the provinces, plus the \$30 million from the supplementary estimates. There is \$11.5 million available for immigration and refugee legal aid, which is identified in the supplementary estimates; and \$1.65 million is for court ordered counsel in federal prosecutions. That's also identified in the supplementary estimates. That's vote 5.

The total vote 1 funding for legal aid for 2007-08 is \$1.163 million, and that's also identified in the supplementary estimates.

By stabilizing funding, this approach will provide predictable funding that will permit jurisdictions to develop long-term strategies to support the delivery for criminal legal aid in the provinces and for both criminal and civil legal aid in the territories.

[Translation]

It should be noted that while Budget 2007 provided for stabilization of the criminal legal aid base, provinces and territories continue to seek further federal funding for criminal legal aid. The department remains committed to working closely with our provincial and territorial counterparts to explore suitable funding options for legal aid funding under the auspices of the Federal-Provincial-Territorial Permanent Working Group on Legal Aid.

• (1120)

[English]

Mr. Chairman, now that I've briefly described the program, and I've tried to clarify the numbers and not confuse you more, we'd be pleased to answer any questions the committee may have.

Thank you.

**The Chair:** Thank you.

I know there are some questions. Just as a point of clarification for myself and maybe for the committee, we have \$81.9 million in general funding, the supplements are another \$44.3 million, and what about the \$30 million? Is that additional?

**Mr. Donald Piragoff:** The \$30 million is included in the \$44.3 million. There's \$81.9 million in the main estimates, and that is already in the department's A-base or reference level.

The \$44.31 million that is in the supplements is being asked for in addition to the \$81.9 million; \$30 million of that will be added to the existing permanent \$81.9 million, to bring that up to \$111.9 million. Then there will still be \$14.315 million, which will continue to be funded on an annual basis, so that will probably continue to be sought in the supplementals.

**The Chair:** So the supplements are a 50% increase over the main estimates?

**Mr. Donald Piragoff:** I haven't done the calculations, but close—

**The Chair:** It's close. Why such an increase?

**Mr. Donald Piragoff:** For six years that was interim funding provided to the provinces and territories on an annual basis. The government decided to make that interim amount permanent, in order to stabilize the funding, because from year to year they were never sure that interim money was permanent. Now it's clearly permanent. There's clearly \$111 million in permanent money in our department's A-base that's available for the provinces and territories.

**The Chair:** Mr. Bagnell.

**Hon. Larry Bagnell (Yukon, Lib.):** Thank you, Mr. President.

Thank you for your presentation.

You said the provinces and territories were asking for more money, and I think you can rest assured the Liberals would be happy if there was more money in the legal aid system from all parties involved.

I don't want to get into all that detail, so I'm glad you've moved into the permanent reference levels. That's great. I just want to get into broad figures without the exact numbers. Basically, from what I understand in the totals, there was roughly just over \$112 million last year. When you add everything together—in vote 5 at least—there's \$125 million this year. Is that roughly right?

**Mr. Donald Piragoff:** It's the same this year as last year.

**Hon. Larry Bagnell:** Last year it was \$112 million and this year it's \$125 million, is it not?

**Mr. Donald Piragoff:** I'll ask Ms. Merriam to explain that.

**Ms. Barbara Merriam (Acting Director General, Department of Justice):** Last year was a total of \$125 million, so the actual amount or total hasn't changed. The only change that's significant is the \$30 million of what's in supplementary estimates that has been added now to the base.

**Hon. Larry Bagnell:** Right, okay. So the total available was roughly the same each year.

We in the justice committee have just added a whole bunch of bills with the intent of having more cases and difficult cases, more people before the courts, etc., and therefore more legal aid if we follow the objectives of the government. If they are successful—and some of those laws have passed—what provisions have been made for asking for more money for that obvious increased demand?

**Mr. Donald Piragoff:** The federal government, in particular the Department of Justice, has been in consultation with the provinces and territories through the permanent working group I mentioned.

Federal, provincial, and territorial ministers of justice discussed this issue both last year and this year. They have agreed to continue to examine the costs, including the costs as the result of new legislation, and that the provinces would submit those to the federal government before the halfway mark of the current five-year period of this budget announcement to consider whether there should be any change in the allocation.

The short answer is that there is an exercise, right now, between the Department of Justice and the provincial and territorial governments to calculate the cumulative impact of new reforms on the criminal justice system. That includes legal aid, police costs, all those kinds of costs. With respect to legal aid, the intention is that this would be brought to the attention of the federal government before the halfway mark so that the whole structure of legal aid could be reconsidered.

• (1125)

**Hon. Larry Bagnell:** We get a lot of requests that legal aid is not as broad or deep or as well funded as it should be. Does the Department of Justice get those types of requests? What are the reactions to those requests?

**Mr. Donald Piragoff:** We have to work within the confines of the budget. We do hear from the provinces that they would like more money. That's why we're working with them to assess their needs, in particular the needs they have indicated might arise from the enactment of new legislation.

I want to be clear that the provinces have not told us not to enact the legislation. Some of the legislation has measures they have asked

for. However, they have said we will work out the costs as we go along.

**Hon. Larry Bagnell:** I'm going to give Derek the rest of my time.

**The Chair:** Mr. Lee.

**Mr. Derek Lee (Scarborough—Rouge River, Lib.):** Thank you, Mr. Chairman.

Sometimes this kind of work is about as exciting as chewing on the bark of a tree. I appreciate that the officials have gone the extra mile to help us chew on the bark.

I recall that in Ontario recently there was some public controversy over the size of one particular legal aid bill in a public trial. That occurred partly as a result of the trial judge ordering that the person shall have legal aid, shall have a court-paid or province-paid lawyer. That was a murder charge trial. In those scenarios we have this potential unanticipated explosion in legal aid expenditures. I'm sure the judge didn't take the time to think about whether it was in the budget or not.

Who picks up the tab for that type of judicial decision? Is it the province, or is it shared with the federal government? Is there any discussion of modalities between the feds and the provinces, to try to manage what I'll call that one-off judicial explosion, which in that case, from my recollection, produced a legal aid bill that was over \$1 million? It might have been \$2 million.

**Mr. Donald Piragoff:** The case you're referring to was a provincial prosecution, and provincial legal aid was responsible. So it was an issue between the Attorney General of Ontario and the legal aid plan of Ontario. It did not involve the federal government.

But I think the broad issue you're referring to is the phenomenon of court-ordered counsel for prosecutions, whether they are federal prosecutions or provincial prosecutions. Some individuals may not meet the provincial criteria for legal aid. Each province has their own criteria for funding level: certain salary limits, income levels, and other criteria as to whether or not a person qualifies for legal aid. Certain individuals may not qualify for legal aid, but due to the complexity and consequences of the case, the judge may be of the opinion that without the benefit of legal counsel the accused person could not have a fair trial with the benefit of full answer and defence. Therefore, the judge essentially looks at the Attorney General and says, "If you want to prosecute this individual, you'd better ensure that this individual has appropriate legal counsel. So Mr. Attorney General or Madam Attorney General, pay for it."

Where it comes out of the provincial budget, I don't know. Some of it may come out of legal aid; some of it may come directly out of the provincial budget of the Attorney General. It's a purely provincial matter, but that's how the situation arises.

• (1130)

**The Chair:** Thank you, Mr. Lee.

Monsieur Ménard.

[Translation]

**Mr. Réal Ménard (Hochelaga, BQ):** Mr. Chairman, I thought someone was to distribute a document to us concerning the figures that have been advanced. Will that be done before the weekend? I thought Ms. Burke had the document in question. If that's the case, I would appreciate it being distributed to us, unless it is not drafted in both languages. I don't imagine the department would appear before us without having its documents translated. Is the document available?

[English]

**The Chair:** Monsieur Ménard, the document is in both English and French, but it alternates. It's not all in one language or the other; it's a combination of both. So we will make an effort to translate it and have it distributed widely.

[Translation]

**Mr. Réal Ménard:** But it seems to me that preparing bilingual documents before appearing before us shouldn't be too complicated for the Department of Justice. It seems to me that's a reasonable requirement. I'm somewhat surprised by this amateurism.

That said, you mentioned two amounts to us, \$81.913 million and \$43.150 million. I'd like you to state the exact amount that each of the provinces will receive. These amounts will become additional funding, which is good news, of course, even though it's largely inadequate. How much will Quebec receive?

I'd like to know whether, once the funding is available, use of those funds will be subject to conditions for the provinces, such as use reserved for defence or for criminal or criminal-related offences, or whether it can be used for the overall operation of their system.

[English]

**Mr. Donald Piragoff:** Thank you.

Let me address the three issues.

We apologize for not having full copies in both official languages. There were some changes made to the document this morning to ensure that it was accurate and clarified the situation. Accordingly, we were not able to have both an English version and a French version. What we presented was essentially a bilingual version, with part in English and part in French. I apologize for that.

On whether we can provide what each province will receive in this fiscal year, we are not able to do that because we are still in discussions with the provinces as to the exact amounts. We can, however, provide you with a list of what was allocated last year province by province, territory by territory, as well as the percentage of the federal allocation, as opposed to the total shareable expenditure between the province and the federal government, province by province, territory by territory.

[Translation]

**Mr. Réal Ménard:** The provinces will be using these funds to operate their systems as a whole, but what will be the criteria for allocating the funding? Will there be a province-by-province negotiation based on population or the crime rate of each?

[English]

**Mr. Donald Piragoff:** I have a list of the exact criteria used.

[Translation]

**Mr. Réal Ménard:** Perhaps you could send it to me.

[English]

**Mr. Donald Piragoff:** It's very short. I can basically describe it very briefly.

In terms of the third question you asked, whether there are conditions to this money, no, there are no conditions to the money except that the money has to be used for legal aid.

How is it expended by the province? That is according to the province. There is some legal aid money that is conditional, and that's the money that is provided for immigration and refugees. That has to be provided for that purpose. But the general amount that's provided for criminal legal aid is disbursed by the provinces according to the provincial criteria.

With respect to the question as to the criteria that go into the negotiations and the formula, it's quite a complex formula, but I'll just describe the criteria.

The working group looks at the previous contributions by the federal government. It looks at the population of the province or territory—let me just stick with the province—and the number of rural communities in the province, the number of persons charged under the Criminal Code and the Controlled Drugs and Substances Act, and the provincial contributions toward criminal legal aid expenditures. There's a mathematical formula that looks at these and comes up with a different allocation for each province.

• (1135)

[Translation]

**Mr. Réal Ménard:** Do you at the department have a table stating what is covered by legal aid in each of the provinces? If so, I would like you to send it to us. It would be interesting to make comparisons. For example, I often hear in my province, which is a nation and which may become a country, that criminal cases in which an individual does not risk conviction are not covered.

Do you have an idea of the coverage rate and of the set of criteria imposed by province? I'm aware that they are imposed by the provinces, but I would like to have an overview. I think that would be interesting, and I'm sure you have that information at the department. Is that the case or am I assuming capabilities that you do not have? I'm talking about information capabilities, of course.

[English]

**Mr. Donald Piragoff:** Mr. Chairman, I'm not sure that I do have that information, but I will undertake to see if we do. I believe that the Canadian Centre for Justice Statistics does produce the expenditures for legal aid province by province. I'm not sure how comparable they are, because each province may report their statistics differently, but I can see if we have a chart on how each province distributes its own funds. That may be something that they don't share with us, I don't know. But I'll undertake to see what we have and see what we can provide the committee.

We can provide the committee, as I indicated, last year's allocation of federal money as well as the percentages province by province, territory by territory.

**The Chair:** Mr. Piragoff, this document that you handed to me, and there may be one other one floating around, hasn't been completed in both languages. If you could have that translated fully and sent to the committee, we'd appreciate it.

I think Mr. Ménard's points are rather interesting too. If there is the possibility of making some comparison on a graph... I'm surprised it hasn't been done before.

Do you get feedback from the provinces?

**Mr. Donald Piragoff:** I'll ask Ms. Merriam to answer that question, because she's more involved directly with the federal-provincial-territorial working group than I am.

**Ms. Barbara Merriam:** As part of our contribution agreement with the provinces, they provide us information on their expenditures for criminal legal aid. Depending on the formula and the total amount of money we have, we calculate how much they would get. But it should be noted that services vary from province to province, and how a province may describe a particular service is different from how another province describes it. So we have relied heavily on the reports from the CCJS that Don just referred to, and we always get the annual reports from the provinces on what they do. But it's sometimes like comparing apples to oranges. It's not 100% clear.

**The Chair:** Thank you very much.

Mr. Comartin.

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

Thank you, witnesses, for being here.

I want to pursue Mr. Lee's questions about that case in Toronto.

You have, both in the main estimates and the supplementary estimates, figures for "Contributions in support of Federal Court-ordered Counsel—Unique Legal Aid Cases". Could you tell me what that is for? And as a supplementary point, why is there such a substantial increase in the supplementary over what was in the main estimates back in the spring?

• (1140)

**Mr. Donald Piragoff:** The amount that has been asked for in the supplementary estimates concerning court-ordered counsel is for federal prosecutions. These are situations in which the judge orders the Attorney General of Canada to provide funding for a particular individual.

**Mr. Joe Comartin:** Let me stop you there. Then why, in the main estimates, does it say "Unique Legal Aid Cases?"

**Ms. Barbara Merriam:** Primarily the cases we become involved in are federal drug prosecutions, but we have used the language "Unique Legal Aid cases" for the ones in which, say, CRA has a case and perhaps the legal aid plan in that province or the province itself is not prepared to work with us on that case. Then we may have to work directly with the lawyer who is assigned to that case. Those are

the unique legal aid cases. The other ones are mostly drug prosecutions.

**Mr. Joe Comartin:** I will go to my second question. Why are the supplementaries for \$1.65 million? Why was there such a substantial increase over the original estimates? Am I reading it wrong?

**Ms. Barbara Merriam:** I was looking at my supplementary estimate report, and I don't see the request for—

**Mr. Joe Comartin:** It's the same figure. It hasn't increased in the supplementary estimates.

**Ms. Barbara Merriam:** No, it hasn't increased. It's the same figure that we've had for the last four years.

**Mr. Joe Comartin:** You have two categories in the main estimates, one for just regular federal counsel intervention and one for the unique. You explained what the "unique" is. What are the other ones for? Are those just federal prosecutions in drug cases?

**Ms. Barbara Merriam:** They are primarily drug cases.

**Mr. Joe Comartin:** These would tend to be the big drug cases.

**Ms. Barbara Merriam:** Yes.

**Mr. Joe Comartin:** Mr. Piragoff, in terms of the requests from the provinces, can you tell us—I say this because I know they ask for substantially more than they ever get—what their requests were like in 2007-08 versus our contributions to them?

**Ms. Barbara Merriam:** It's part of the work we're doing with the provinces and territories now. Again, I have to say how numbers collected in the provinces and territories differ. Sometimes a province will account for every telephone request. Some won't account for that telephone request—

**Mr. Joe Comartin:** I'm sorry, Ms. Merriam; let me stop you. This is what I'm asking. I'm assuming that as you go through your budgetary process each year, you get a specific request for the upcoming year from each province and territory. Am I incorrect in that assumption? That's the figure I'm looking for. What do they ask you for?

**Mr. Donald Piragoff:** It's not an annual request, because we try to negotiate a long-term agreement. We're trying to do that now with this one, with stable funding for five years.

I don't have the numbers handy for two years ago, for before the current budget was determined. Whatever they were, as far as the provinces are concerned, that's history. Since then, the government has introduced a number of pieces of new legislation, and the provinces are saying those will affect their costs, including their legal aid costs. Therefore they'd like to come back before five years, before the halfway mark, and work with us to show us what their new needs are. So we're working really on new costs, but I could try—

• (1145)

**Mr. Joe Comartin:** Are you going to do that midway through the five-year period?

**Mr. Donald Piragoff:** Yes, it will be midway. Well, it will be before midway, actually, so that if we have to make any changes, the changes can take effect at the midway point.

**Mr. Joe Comartin:** Is there an automatic increase each year in the five-year contract?

**Mr. Donald Piragoff:** No.

**Mr. Joe Comartin:** So it's a fixed amount for five years.

**Mr. Donald Piragoff:** I think it's a fixed amount for five years.

**Mr. Joe Comartin:** Is that because we have declining crime rates in the country?

**Mr. Donald Piragoff:** I don't know the reason why the Department of Finance allocated a fixed amount in the budget.

**Mr. Joe Comartin:** In terms of the criteria, do they vary from province to province in terms of how much the province is expected to contribute as its share of legal aid costs? Is that taken into account at all?

**Mr. Donald Piragoff:** The formula, which I indicated earlier, does take into account what the previous contribution of the federal government was and what the contribution of the provincial government is. So you can have, for example, variations between some provinces. For example, in P.E.I., I think, the federal contribution is about 70%, and in Ontario the federal contribution is about 23%. So it does take into account a number of factors, including the situation, the crime rate, the rural population, the number of charges, and so on in that province.

**Mr. Joe Comartin:** I know that Ontario certainly was one of the last ones in, but I think all the provinces have now reached agreement with the federal government about settlement services for immigrants and refugees. Are you aware of those agreements? And is there any component of those agreements that allows for additional funds, as part of the moneys being transferred to the provinces, to be specifically allocated to legal aid for immigration and refugee cases? You don't have to do the math; they'll do it automatically for you.

**Ms. Barbara Merriam:** No. As part of the individual agreements with the provinces on immigration and refugee services, legal aid is not covered. Legal aid is covered in our agreement. It's \$11.5 million per year shared among six provinces.

**The Chair:** Thank you, Mr. Comartin.

We'll have Mr. Calkins.

**Mr. Blaine Calkins (Wetaskiwin, CPC):** Thank you, Mr. Chair.

I appreciate your appearing before the committee today. It's been a great discussion so far on legal aid, but I would like to change the channel for a second, if you don't mind.

In my constituency, obviously, there are some issues involving youth crime, and I'd like to ask some questions along that line.

In the House of Commons right now, the government has tabled Bill C-25, which will amend the Youth Criminal Justice Act. Parts of the bill deal with deterrence and denunciation and some of the

principles involved in sentencing. The bill strengthens provisions relating to pre-trial detention, as well. I'm just wondering if you can explain, for the benefit of this committee, what's been done in the department, as far as financing or budget allocations are concerned, to help prevent youth violent crime.

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

I don't have any figures with me with respect to crime prevention, because we were requested to come to the committee today to talk about legal aid. There are a number of figures. I don't have them.

I know that the minister had them with him on Tuesday when he testified on supplementaries as to how much money is spent by the Department of Justice with respect to crime prevention—for guns and gangs, in particular.

I have a figure in the back of my mind, but I don't want to say it, because it could be wrong. So I don't want to mislead the committee by putting out a figure. But if Mr. Calkins would like, we could provide the exact figure for what the department provides in crime prevention. There's also crime prevention moneys provided by Public Safety Canada.

• (1150)

**Mr. Blaine Calkins:** If you could get that information for the committee and submit it in a follow-up, that would be fine. I would rather have accurate information than speculative information at this time. I certainly don't want to keep you guessing.

**Mr. Donald Piragoff:** If you like, I have the information now. A colleague has given me the information I had with me on Tuesday when the minister testified.

The 2006 budget announced \$20 million over two years—\$10 million per year—to prevent youth crime. In order to deliver on this commitment, the National Crime Prevention Centre and the Department of Justice have been expanding their youth prevention and intervention efforts to focus specifically on youth involved with guns, gangs, and drugs. And \$2.5 million will be earmarked annually for youth justice in the Department of Justice, while \$7.5 million—that's an average—will be utilized by the National Crime Prevention Centre, which is operated by Public Safety Canada.

**Mr. Blaine Calkins:** Just for clarification, there was \$10 million in budget 2006, and there will be \$10 million again in budget 2007. Is that right?

**Mr. Donald Piragoff:** I believe budget 2006 covered both years, so budget 2007 did not have to deal with this issue.

**Mr. Blaine Calkins:** But that was \$10 million per year in budget 2006, so we're talking about \$20 million.

**Mr. Donald Piragoff:** Yes, but most of it will be going through Public Safety to NCPC. I guess it would be three-quarters to them and one quarter to us.

**Mr. Blaine Calkins:** On the one quarter that's actually administered by the department, do you have any information on where that money goes, or any of the programs that are involved in the department?

**Mr. Donald Piragoff:** We can provide that information. I only have a very general analysis on the kinds of programs. I'd have to consult with the people in my youth justice section as to how the money is spent and the types of programs.

**Mr. Blaine Calkins:** I would like that very much. Thank you very much.

We'll go back into your comfort zone on legal aid. I remember you talking about the transfers to the provinces and the territories. For the provinces the money was just for dealing with criminal cases, and for the territories it was for criminal and civil cases. Did I hear that correctly?

**Mr. Donald Piragoff:** That's correct.

**Mr. Blaine Calkins:** I believe I heard you say there was \$112.38 million altogether. That's the number I wrote down. Did I hear that correctly?

**Mr. Donald Piragoff:** That's correct.

**Mr. Blaine Calkins:** That was for which fiscal year?

**Mr. Donald Piragoff:** That was for 2006-07.

**Mr. Blaine Calkins:** So that's for our current fiscal year. How does that play into the supplements? If I add the \$81.9 million and the \$44.3 million together, that gives us \$126.1 million—or maybe my addition is wrong.

**Mr. Donald Piragoff:** The \$126-point-something is the total amount allocated in the budget for all legal aid.

**Mr. Blaine Calkins:** So is this \$112.3 million the forecast amount that we'll need?

**Mr. Donald Piragoff:** The \$112 million is for criminal legal aid in the provinces, and civil legal aid in the territories.

**Mr. Blaine Calkins:** If \$126.1 million will be included with the main estimates and the supplementary estimates, and the criminal and civil legal aid is only \$112 million, where is the other funding allocated?

**Ms. Barbara Merriam:** The remaining resources of approximately \$14 million include \$11.5 million for immigration and refugee legal aid. They also include the \$1.65 million in court-ordered counsel/unique legal aid cases that Mr. Ménard was talking about. Finally, it includes \$1.165 million in vote 1 to the department for staff, and research and policy development.

• (1155)

**The Chair:** Thank you, Mr. Calkins.

Ms. Jennings.

**Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.):** Thank you very much for your presentations.

Given that my Conservative colleague went a bit off topic, I'm going to go a bit off topic too. But like him, I will come back to the estimates.

Janet Hinshaw-Thomas was arrested and charged under the Immigration and Refugee Protection Act, section 117, for allegedly

aiding and abetting human trafficking into Canada. Under that section the Attorney General of Canada has to specifically authorize laying of charges and a prosecution. It was denounced all across Canada and in parts of the United States as well. She is a well-known human rights advocate. Finally, under the pressure of all of this advocacy and public outcry, the Attorney General decided to drop the charges.

I'd like to know exactly what the process is within the Department of Justice on the Attorney General side. Does the Attorney General, when he or she is named Attorney General, simply sign off a delegation of authority that works its way down the line so that the little prosecutor at the border station can decide on their own because they've been delegated the authority? Or does it actually require that such a prosecution move its way, before charges can be laid, all the way up the line in federal justice, and at some point either you, a senior assistant deputy minister, the deputy minister, or the Attorney General himself actually has to sign off on it?

If you can't answer the question now, I'd like it in writing through the chair to me. Thank you.

Now I'll come back to the estimates.

**The Chair:** Ms. Jennings, at the close of this hour, which is about two minutes away, we are lining up a new set of witnesses. So keep that in mind.

**Hon. Marlene Jennings:** I will.

**The Chair:** At twelve noon I will be calling an end to this set of witnesses.

**Hon. Marlene Jennings:** Now my question goes specifically to estimates and supplementary estimates.

Given all of the new justice legislation that this government has brought out to create minimum mandatory sentencing, changes in the determination of sentences for youth, etc., has the department begun to estimate on its own—for the drug cases that are federally prosecuted—and with the provincial and territorial governments the increased cost that this will mean to the administration of justice—the actual prosecution, the trial, the cost to public corrections services? Has that been costed out? If these pieces of legislation, whether it's Bill C-26, on controlled substances, or Bill C-25, on the Youth Criminal Justice Act, are actually implemented as they were tabled, what will the cost be?

If so, please bring it to us through the chair.

**The Chair:** Mr. Piragoff, you have 30 seconds to answer that question.

**Hon. Marlene Jennings:** He can do it in writing through the chair.

**Mr. Donald Piragoff:** I'll answer the question quickly.

With respect to the first question, Mr. Chairman, as you know, the Department of Justice was divided last year into the Department of Justice and the Director of Public Prosecutions. The responsibility for prosecutions now lies with the DPP, and I think Mr. Saunders is best placed to answer the first question of Madam Jennings.

With respect to the second question, as I indicated earlier, yes, we have started to do cost analysis with the provinces concerning the impact of new proposed federal legislation.

**The Chair:** Thank you very much, sir.

Thank you both for attending, Madam Merriam, Mr. Piragoff.

We will suspend for two minutes.

• \_\_\_\_\_ (Pause) \_\_\_\_\_

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• (1200)

**The Chair:** I will call the meeting back to order.

I'd like to continue our study of the estimates with this next line-up of witnesses. From the Public Prosecution Service of Canada, we have Mr. Brian Saunders, acting director of public prosecutions; Mr. George Dolhai, acting deputy director of public prosecutions, headquarters; and Mr. Marc Fortin, acting general counsel and director, office of the general counsel and director.

Will Mr. Saunders be making the presentation?

**Mr. Brian Saunders (Acting Director of Public Prosecutions, Public Prosecution Service of Canada):** Yes.

Thank you, Mr. Chair. I'd like to thank the committee for the opportunity of being here today to discuss our supplementary spending estimates.

[Translation]

As you can see, there are only two elements in our Supplementary Estimates: first, funding related to the creation of our service in the amount of \$9 million; second, funding in the order of \$5 million to hire prosecutors. That's related to funding for new positions at the RCMP. In view of these new investigator positions, we expect to have more work.

[English]

Those were my opening comments. I'll turn it over to you for your questions.

**The Chair:** That's your presentation, sir?

**Mr. Brian Saunders:** There are just two elements in our supplementary estimates, and I think they're quite straightforward.

**The Chair:** Thank you.

I'm going to turn the floor over to Mr. Bagnell.

**Hon. Larry Bagnell:** That was a long presentation.

Maybe you could just confirm.... I think you were here during the last session. On the same question related to the increased activity due to the increased legislation, from what I understand from the last witnesses, you have that well under hand. There's extensive study going on to estimate the additional cost for the additional laws we're passing through this committee.

• (1205)

**Mr. Brian Saunders:** Today's supplementary estimates are an example of that. Where there are initiatives that affect the prosecution service, we are typically consulted on them. We are asked whether the initiative will increase demand for prosecution services. As you can see with the increased number of RCMP officers, we are receiving additional funds to conduct the prosecutions we assume will result from having an additional 600 RCMP officers on the job.

We have developed a ratio, which has been accepted within the government, of one prosecutor for every five new police investigators. That ratio differs when the investigators are associated with a department other than the RCMP. For example, Environment Canada, or another department, might increase the number of its investigators, but we don't assume that would produce as many prosecutions as the police would. We have a different ratio for determining the number of prosecutors that should follow from that type of initiative.

So the answer to your question is yes, there is a process.

**Hon. Larry Bagnell:** You were referring to the increase in police. Are you also referring to the increase in legislation that would lead to prosecutions?

**Mr. Brian Saunders:** That would be part of the consideration. We do an examination of the proposed legislation to see whether there would be an increase on the demands placed upon the prosecution services.

**Hon. Larry Bagnell:** Shortly I'm going to turn it over to Mr. Lee for the rest of my time.

So you are analyzing the different pieces of legislation that are going through Parliament.

**Mr. Brian Saunders:** Yes. There is a process in place that allows us to have a say as to whether that will increase the demand for our services.

**Hon. Larry Bagnell:** Thank you.

Mr. Lee.

**Mr. Derek Lee:** I want to go back to Ms. Jennings' question related to prosecutions under the Immigration and Refugee Protection Act.

As I understood the question, the Attorney General of Canada has either explicit control or prosecutorial control over prosecutions. In the particular one Ms. Jennings referred to, I got the impression that the authority of the Attorney General had been left with, delegated to, or horizontally transferred to the Department of Public Prosecutions. Could you explain the procedure or modalities involved in that? I would have thought that statutory authority delegated to the Attorney General stays with the Attorney General and that it doesn't get delegated up the Rideau.

**Mr. Brian Saunders:** Under the Director of Public Prosecutions Act, the authority of the Attorney General is delegated to the Director of Public Prosecutions. We have, in effect, the Director of Public Prosecutions and the Deputy Attorney General of Canada for the purposes of conducting prosecutions under federal law. The Immigration and Refugee Protection Act would be an example of federal law under which we've been given that responsibility.

The Attorney General has also issued a directive under section 10 of our statute instructing us to make use of the *Federal Prosecution Service Deskbook*. That deskbook sets out the principles that guide our prosecutors in doing their work. It also has a chapter setting out delegations of authority because there are a number of statutes that provide the Attorney General with the responsibility of making decisions. In the case that Ms. Jennings raised, it's under section 117 of the Immigration and Refugee Protection Act, which calls upon the Attorney General to give his consent before any prosecution can be laid under that provision. Pursuant to the Director of Public Prosecutions Act, it is our office that takes that decision, pursuant to the deskbook I mentioned that has been delegated to regional directors within our organization.

When making that decision, like any decision of the prosecutor to start a process, the prosecutors have to look at two principles. These two principles are followed by every prosecution service in the land, and they are as follows. On the evidence before you at the time you make the decision, is there a reasonable prospect of conviction? If so, does the public interest favour a prosecution?

So the prosecutors involved examined the file they were presented with and the base of the evidence they had at that time, applied those principles, and consented to the institution of the prosecution.

Subsequently, additional evidence was brought to their attention. And prosecutors also have under the deskbook that I mentioned a continuing obligation to evaluate a case. In other words, if new evidence or new information comes forth, they are supposed to revisit their decision and apply those two guiding principles I mentioned. When this new information came forth, the prosecutors, pursuant to their obligation, considered it and determined that in light of this new information, there was no longer a reasonable prospect of conviction, and in effect they stayed the prosecution.

• (1210)

**Mr. Derek Lee:** Are you saying that in every case where a Canadian statute refers to either the consent or approval or collaboration with the Attorney General of Canada in a prosecution or a criminal procedure, all of that authority has been delegated to the Director of Public Prosecutions under this new statute? I'm concerned.

I just want to make a sidebar reference to a real-case scenario in the Criminal Code. We now have these security procedures, under the Anti-terrorism Act, that require the consent of the Attorney General. Are you telling me Parliament's wish that the Attorney General—it could be an attorney general of a province—explicitly requires the consent of the politically elected Attorney General is now being interpreted as being delegated to a public servant? I'm getting the impression that's how you've interpreted this statute.

**Mr. Brian Saunders:** I'll turn over the question on terrorism to Mr. Dolhai, who's an expert in that area. If the legislation says that

the consent of the Attorney General is required, it has always been the case that a decision of that nature can be delegated, and it is often taken, for example, by the Deputy Attorney General. Under the legislation, the Director of Public Prosecutions has a status of the Deputy Attorney General for criminal matters.

If legislation says the Attorney General should make the decision personally, then clearly that cannot be delegated. In cases where the legislation does not require the personal involvement of the Attorney General, it has long been the case, even before the establishment of the DPP, that this decision could be taken by officials other than the Attorney General.

**The Chair:** We'll go to Mr. Ménard.

[*Translation*]

**Mr. Réal Ménard:** I feel we are going to learn something this morning. I get the impression that there is a professor emeritus in you and that he might come out.

We know that, in Bill C-2, the Conservative government has begun a quest for transparency and that a position of director of prosecutions was created. However, no one has yet been appointed to that position. I had every hope that it would be you. Well, we don't know the future, so we'll see.

Your services have assessed the possibility of prosecuting a person who has previously belonged to the political system. Let's take a random example, that of a former prime minister. Let's imagine that it appears from a public investigation that a former prime minister has, for reasons it is not for us to assess today, accepted funds from a businessman.

This is a pure fiction, but if it occurred, would you have complete flexibility in bringing charges or would you be accountable to some form of political hierarchy? You of course understand the fictitious nature of my example, but I'm counting on you to make it pedagogically interesting.

I am trying to understand how independent you are when it comes to instituting proceedings. In the case of charges under federal narcotics legislation, that would be fine, but, if a former prime minister were involved, would you have complete flexibility to institute proceedings?

**Mr. Brian Saunders:** First, I want to point out that the individual's status is not what is relevant when we make the decision to institute proceedings. It should also not be forgotten that it is the police who conduct investigations, not us.

**Mr. Réal Ménard:** You stated two criteria. You assess whether there is a reasonable prospect of conviction and whether an offence has been committed. As a basic principle, it is established that the individual has committed offences for which it is possible to secure a conviction and it is determined where the public interest lies. Those are your criteria.

But if the case involves a person who has previously belonged to the political system, how independent are you? I'm talking about situations in which all conditions are met, of course.

•(1215)

**Mr. Brian Saunders:** I mentioned two conditions, but there is a third. If an individual is charged by the police, it must be seen whether the offence is within our jurisdiction. If it is a fraud case, for example, that's a prosecution that comes under the provincial government's jurisdiction.

Under our act, we have a right to make a final decision regarding prosecutions, except in cases where the Attorney General issues a directive to us under section 10 or section 14, I believe, which gives the Attorney General the right to take control of the prosecution.

**Mr. Réal Ménard:** All right.

**Mr. Brian Saunders:** But in both cases, the Attorney General must publish the directive in *The Canada Gazette*.

**Mr. Réal Ménard:** Your independence is framed by two guideposts. Law students learn that the provinces prosecute Criminal Code offences and that attorneys, that is the federal government, act in cases under federal statutes.

So there must always be two guideposts. Ultimately, even if you decided not to prosecute, the Attorney General could intervene and apply a kind of veto.

**Mr. Brian Saunders:** Yes, that's included in the act.

**Mr. Réal Ménard:** It's interesting, Mr. Chairman, that we have a copy of sections 10 and 14.

**Mr. Brian Saunders:** I'm told that it's section 15, not section 14. I apologize. Section 10 gives the Attorney General the right to issue a directive, and section 15 gives him the right to assume conduct of the prosecution.

**Mr. Réal Ménard:** Do I have time to ask a final question, Mr. Chairman?

[English]

**The Chair:** Very quickly, Mr. Ménard. Very quickly.

[Translation]

**Mr. Réal Ménard:** First I'd like to know the difference between the new service that you direct and the old one.

Then I'd like you to describe to us in a few words the process followed in the case of the position of permanent director of public prosecutions, for which I did not rule out the possibility of applying.

**Mr. Brian Saunders:** I'll have no trouble answering the second question: I'm not involved in the selection process.

As to the first, you want to know the difference between the old service—

**Mr. Réal Ménard:** —and the new.

**Mr. Brian Saunders:** I believe that Minister Toews said when he appeared before the parliamentary committee to discuss the bill that undue interference had not at all been a problem in the old system, but that he wanted to see a new kind of guarantee designed to protect prosecutors applied.

In future, if the Attorney General wants to intervene in a case, he will have to do so in a very different manner. As you know, Quebec, Nova Scotia and some Commonwealth countries have also adopted the system involving a director of public prosecutions.

**Mr. Réal Ménard:** I wish you good luck for the future.

**Mr. Brian Saunders:** Thank you.

[English]

**The Chair:** Thank you, Mr. Ménard.

Mr. Comartin.

**Mr. Joe Comartin:** Thank you, Mr. Chair, and thank you to the witnesses for being here.

I want to pursue the same issue, but I won't be as subtle as Mr. Ménard, who rarely is.

On the setting up the Mulroney-Schreiber inquiry, I guess I was under the same misapprehension that it would have been the Director of Public Prosecutions who normally would be giving advice as to the mandate of that inquiry. I understand from your evidence that this is not the case.

Mr. Saunders, as you are from that department, who in the department would normally have given advice to the minister as to the mandate of a public inquiry of that nature?

**Mr. Brian Saunders:** Let me explain why he wouldn't give advice on the mandate. A public inquiry is not a criminal process.

**Mr. Joe Comartin:** I understand.

**Mr. Brian Saunders:** Our mandate is limited to giving advice to investigative agencies in criminal matters.

To answer your question, the mandate would be considered by a number of officials within the Department of Justice. They have an assistant deputy attorney general in charge of litigation; they have associate deputy ministers who I assume would have been involved in working on that. But as I understand from reading the media, the government has retained Mr. Johnston to give advice on the terms of reference for that commission of inquiry.

**Mr. Joe Comartin:** But historically the advice would normally have come from within the department?

**Mr. Brian Saunders:** Yes, but other officials in government can also give advice, depending on the scope and nature of the inquiry.

**Mr. Joe Comartin:** The chair and I agree strongly that we don't do a good job on estimates, and this is one of the occasions.

I've been trying to figure out whether the severing of the Office of the Director of Public Prosecutions from the Department of Justice as a separate division is costing us substantially more or less, and I can't figure it out from the estimates. I'm not an accountant, obviously, but I would have thought there would be a clearer set of figures. And maybe I'm missing them; maybe they're there. So my first question is, has analysis been done as to whether this severing is less expensive, more expensive, or the same as the costs before? And if the analysis has been done, what are the findings?

•(1220)

**Mr. Brian Saunders:** I think it can be explained quite simply, Mr. Comartin.

First, the budget of the former Federal Prosecution Service—which was part of the Department of Justice—was transferred to our organization. In addition, we were provided in budget 2006 with \$15 million in one-time transition costs to pay for accommodations, given that some of our office had to move out of shared space with the Department of Justice, and also for informatics, or information technology.

A lot of that money, as you note, has been reprofiled. In this supplementary estimate, we're asking for \$2 million for this year. In a sense, we could not reasonably spend the \$15 million for relocation and informatics this year. We were waiting to develop a national accommodations plan and in effect to hire a chief information officer. We wanted to spend it in a rational fashion, so we reprofiled it so we can have access to those one-time funds in future years.

The second element in budget 2006 given to us to help us create this new organization was \$7.8 million, which is part of the \$9 million. After you subtract employee benefits, it comes out to \$7.1 million, which will allow us to hire our management staff. For example, when we were with the Department of Justice, there was a director general of human resources, who did our work and that of the rest of the department. As a new organization, we have to hire our own human resources individual, our own chief information officer, and others, whom we call the senior management.

If you look at the costs that Parliament has given to us to establish a new organization, it is composed of three elements: the money transferred, representing the budget of the former FPS; the \$15 million in one-time transition costs; and the \$7.8 million, including the employee benefit plans, in order to allow us to set up our management structure.

**Mr. Joe Comartin:** This is not my strong point, by any means, but I'm going to conclude that because of the additional administrative expenses, there will be a slight additional percentage cost—not in absolute dollars—in the administration of the department for public prosecutions beyond what it would have been had we left it with the Department of Justice. Is that fair?

**Mr. Brian Saunders:** Yes. As I explained, if you establish a new department and you now have two directors general of human resources, whereas before you had one, there is an increased cost, that's clear.

**Mr. Joe Comartin:** Okay.

How much time...?

**The Chair:** One quick question, Mr. Comartin.

**Mr. Joe Comartin:** The ratio that you gave us of five police to one prosecutor, what's the basis of that? When I think of that, if I put five more police officers on the street, I'm expecting I may also see a decline in crime because they act as a preventative. So I wonder where the ratio came from, and is it valid when you have a declining crime rate?

**Mr. Brian Saunders:** I'll turn this over to Mr. Fortin in a moment, but let me explain one thing about the ratio. It only applies when there is a federal initiative to add new police officers—the RCMP. When the Ontario Provincial Police or the Toronto city police force adds new police officers, and frequently these police officers are

engaged—as you know, in Toronto there's a guns and gangs initiative—we do not get additional resources for that.

**Mr. Joe Comartin:** But you have additional prosecutions.

**Mr. Brian Saunders:** We might have additional prosecutions flowing from that.

I'd also say that we've noticed that our file caseload over the last couple of years has not increased. It has sort of remained stable in the south, in the southern provinces, but we're finding that in our north, in the northern territories, where we conduct the Criminal Code prosecutions, sadly, the rate has gone up.

Maybe Mr. Fortin can explain the five-to-one ratio.

• (1225)

**Dr. Marc Fortin (Acting General Counsel and Director, Office of the General Counsel and Director, Public Prosecution Service of Canada):** The five-to-one ratio was developed over an analysis of several years' worth of data. Which data? It covers the types of cases we have, the type of complexity we have, where we prosecute, and also the direct and downstream impacts of the work performed by investigative agencies, number one being the RCMP, for example. It depends also on the type of work that a new initiative would bring to PPSC, as well as—

**Mr. Joe Comartin:** Perhaps I could interrupt. This is information I want. If this is in a written form, that's all I would require. Perhaps I could simply see the analysis that was done, if it's in a written form.

**Dr. Marc Fortin:** Yes, I could provide—

**The Chair:** Mr. Fortin, is it a written analysis?

**Dr. Marc Fortin:** I could provide a note, following the notes I have, quite quickly.

**The Chair:** That would suffice, if you could do that, Mr. Fortin, and supply it to the committee.

Is that the conclusion?

**Mr. Joe Comartin:** Yes.

**The Chair:** Thank you, Mr. Comartin.

Mr. Dykstra.

**Mr. Rick Dykstra (St. Catharines, CPC):** Thank you.

Through you, Chair, I did see the numbers in terms of how many staff are employed, how many prosecutors and private sector lawyers are involved, and noticed that in 2006 federal prosecutors were involved in more than 60,000 cases. For an understanding of the number, what would the caseload be like in terms of distributing those cases and how that might happen? Second, have you done an evaluation of the number of cases you have against the overall budget that you have allocated, determining whether or not you are able to use that as a basis for going forward in terms of budgeting?

**Mr. Brian Saunders:** Your first question dealt with the division of labour between agents and staff counsel, I assume.

**Mr. Rick Dykstra:** Yes, I think so, but more along the lines of... There are not very many departments in any of the ministries that have the type of interaction, in terms of private sector and public sector. So the question, to be a little clearer, is asking how that interaction works and how the determination is made with respect to who is allocated what work.

**Mr. Brian Saunders:** You've probably read that at present we have approximately 450 staff prosecutors and we employ about 800 agents across the country. We're required to retain agents—they aren't working for us full-time, usually—because we cover virtually every courthouse in the country and it's too expensive to have staff counsel waiting in some remote area sometimes, waiting for one or two cases to come along. It's more economical to hire an agent to do that.

The agents all report to a staff counsel who is the agents' supervisor. That's a means we use to ensure the quality of work of the agents. And, with respect, that also explains the division of labour between the agents and the staff counsel. As I say, this is for the outlying areas, but sometimes they're also used to deal with overflow. For example, in the regional office of Toronto, there might be too many cases for staff counsel, so we'll then retain an agent to assist us to get through the workload.

**Mr. George Dolhai (Acting Deputy Director of Public Prosecutions, Headquarters, Public Prosecution Service of Canada):** I'd just add that in general, the less complex work would go to the agents. More complex work would be handled by staff counsel.

**Mr. Rick Dykstra:** The follow-up to that question was in terms of the figure that was put out there—as I understood it, 60,000 cases in 2006.

You do your review, obviously, with respect to how the year went, and then you do your forward projections. Do you use the caseload, and obviously the number of prosecutors, in determining that? Do you actually do an estimated cost per case, or is that not how you do your work in terms of that budget?

**Mr. Brian Saunders:** We can do a cost per case, but averages are very misleading. We do a sorting or analysis of our caseload, and we categorize them by level of complexity. We have low, moderate, high, and what we call mega-cases. A low case, for example, is a simple possession case. It doesn't take too much time and is done relatively inexpensively.

On the agent side, we have benchmarks that we have developed over the years, which tell us how much time an average case of that nature should take. If an agent takes more time than the benchmark, we contact the agent and say, "Is there a problem here? You're taking more time than normal." If they're spending too little time, we also contact them and say, "Are you spending enough time? We want to make sure we're getting a quality product here." So we use that on that side.

With respect to the work we do, as Mr. Dolhai pointed out, we do the more complex files. We keep those for ourselves. It's very hard to come up with an average cost of those cases, because they differ so much in the requirements they have. Some of them will have teams

of four or five lawyers working full-time for a period of time. As you can well understand, that would skew any figure if you were to add that into the mix with a simple possession case, which takes a couple of hours.

• (1230)

**Mr. Rick Dykstra:** I'm going to turn the rest of my time over to Mr. Moore, but I have one quick question.

Obviously, with all the prosecutors we have across the country, there is availability to an individual who requires either one of our official languages. Is that totally available?

**Mr. Brian Saunders:** We have the capacity throughout the country to provide a prosecution in both official languages.

**Mr. Rick Dykstra:** Thank you.

**The Chair:** Mr. Moore, you have one and a half minutes.

**Mr. Rob Moore (Fundy Royal, CPC):** I'll try to make it quick.

In a scenario where someone has multiple offences, some of which would be prosecuted by way of a provincial prosecution and some of which would be handled by federal prosecution, how do you cost for that if the total case is going to be carried by one method or another, either by federal prosecution or by provincial prosecution? And if the provincial prosecution carries a case, does your office and your budget help defray some of the cost that you would have incurred otherwise?

**Mr. Brian Saunders:** We have arrangements with all the provinces. We call them major-minor arrangements. What that means is that we look at the charges against individuals and we determine the major charge against the individual. If it's a charge that is normally prosecuted by the province, they will undertake the provincial prosecution and the federal prosecution, and they'll do so at their own expense. Likewise, if the major charge is a federally prosecuted charge—and there are some charges under the Criminal Code that the province normally does—we will undertake the prosecution of all the offences and we will bear the cost of that prosecution. So that's the understanding we reach with the provinces, and it's the understanding that has been in place for many years.

**Mr. Rob Moore:** That's good. Thanks.

**The Chair:** Thank you, Mr. Moore.

As one point of clarification from the chair, were there 60,000 cases tried in 2006?

**Mr. Brian Saunders:** There were 60,000 cases handled by our prosecutors.

**The Chair:** Okay, "handled".

**Mr. Brian Saunders:** That would include new files and also files that are continued from the previous year, because, unfortunately, files are often not completed in one year. When you're dealing with complex cases, they can go on for a couple of years.

**The Chair:** How many of the 60,000 would be related to drugs?

**Mr. Brian Saunders:** The majority of our work is drug-related. I believe—and Mr. Fortin will correct me if I'm wrong—in terms of money expenditures, about 77% of our resources are spent on drug prosecutions.

**The Chair:** What other federal charges, then, would you be handling with the other 23%?

**Mr. Brian Saunders:** We do a large number of what we call “regulatory” prosecutions. Those would be any of the many federal statutes that contain offences. The primary ones we do would be revenue prosecutions, Fisheries Act prosecutions, and customs prosecutions.

**The Chair:** Great. Thank you very much.

We'll go to Ms. Jennings.

**Hon. Marlene Jennings:** Thank you, Chair.

And thank you very much. I apologize for not being here when you made your presentation.

I missed your assurances that the Public Prosecution Service of Canada has been delegated all the AG's authority when the AG has to authorize an actual prosecution, regardless of which law it is under. It's all been delegated to the Public Prosecution Service by law, in which case, I then have this question. Janet Hinshaw-Thomas was prosecuted. Charges were brought against her under section 117 of the Immigration and Refugee Protection Act on the basis that she had aided and abetted illegal entry into Canada. That particular section requires the specific authorization or the express authorization of the AG. If that power, that authority, has been delegated to the Public Prosecution Service, then I would like to know why the Public Prosecution Service authorized the laying of such charges.

Second, the charges have now been dropped. So I would like to know why the Public Prosecution Service decided to drop the charges and what interpretation you are giving to section 117. Is it in conformity with the assurances that had been given by then Minister of Citizenship and Immigration Elinor Caplan to the Standing Committee on Citizenship and Immigration that good Samaritan human rights activists would never be prosecuted under that, and that's why it requires the express authority of the AG?

• (1235)

**Mr. Brian Saunders:** I answered this question a few minutes ago, but I'll answer it again.

I mentioned that under subsection 117(3), there is a requirement for the Attorney General's consent, and that authority has been delegated to the Director of Public Prosecutions. We have a deskbook called the *Federal Prosecution Service Deskbook* that we have been directed by the Attorney General of Canada, pursuant to a directive under section 10 of our act, to use. That deskbook contains a chapter on delegation that sets out the levels of delegation for cases in which the Attorney General's involvement or consent is required.

In the case of subsection 117(3) of the Immigration and Refugee Protection Act, it's been delegated down to the regional director of an office.

In the case you've mentioned, our prosecutors, including the regional director, were presented with a crown brief prepared by

investigators, as is the case with any case, which they were asked to consider for the purpose of consent. They looked at it with these two guiding principles in mind, and these are principles that are applied by all prosecution services in respect of any case that comes before them: Was there a reasonable prospect of conviction on the basis of the evidence they were presented with, and if so, was the public interest favouring the prosecution?

Our deskbook contains principles or considered relevant factors that must be taken into account in the application of both those principles. They applied those principles and made their decision to consent to the prosecution.

Subsequently, additional information was brought to their attention. Under the principles that guide their work, they are required to apply those principles on a continuing basis. So they examined this new information, and given this new information, they decided that there was no longer a reasonable prospect of conviction, and they introduced a stay of proceedings.

**Hon. Marlene Jennings:** Thank you.

Now I'll go to the issue of the actual interpretation of subsection 117(3), I believe it is, and its conformity with the assurances the former Minister of Immigration, Elinor Caplan—at that time it was Citizenship and Immigration—made to Parliament through the Standing Committee on Citizenship and Immigration, that, in fact, that section would not capture human rights activists or good Samaritans who were doing a human rights duty in assisting people in need. First, has the Director of Public Prosecutions issued a directive interpreting that act in conformity with that?

Second—you may not be in a position to answer this second question, but I still would like it on the record—now that criminal charges have been laid against Ms. Janet Hinshaw-Thomas and have been dropped, will she have any difficulty entering Canada? Will our border services stop her because there were criminal charges laid against her at one point?

**Mr. Brian Saunders:** I'm not really in a position to answer that. I wouldn't characterize the charges that were laid against her as criminal charges. These were charges laid pursuant to the Immigration and Refugee Protection Act, which is—

**Hon. Marlene Jennings:** I mean penal charges—she would have been liable to possible imprisonment, etc.

**Mr. Brian Saunders:** Yes, that's clear. But all regulatory offences contain consequences in terms of fines or imprisonment.

**Hon. Marlene Jennings:** No, penal. Thank you for correcting my inaccurate terminology.

• (1240)

**Mr. Brian Saunders:** In relation to your first question, on whether I have issued a directive or a clarification, no, I have not.

**Hon. Marlene Jennings:** And why not?

**Mr. Brian Saunders:** I guess in my mind the prosecutors fulfilled their responsibility. They applied the principles set out in the deskbook. They were brought a case by the investigative agency, the Canada Border Services Agency, and asked to apply the principles that all prosecutors apply, and they did their job.

**The Chair:** Your time is up, Madam Jennings.

For Ms. Jennings to obtain that information, would there not be a hearing officer somewhere or another source for her to go to, or is it through the public prosecutions office?

**Mr. Brian Saunders:** In relation to Ms. Jennings' second question, I would think that would be a question that would be asked of the Canada Border Services Agency.

**The Chair:** Thank you.

Mr. Ménard, on a point of order.

[Translation]

**Mr. Réal Ménard:** I have a point of order, Mr. Chairman.

Would it be possible to obtain a copy of the deskbook referred to so that all committee members can know the criteria? Could we have it sent to the clerk in both languages?

**Mr. Brian Saunders:** The deskbook is available on our Web site.

**Mr. Réal Ménard:** Send it to us. That's perfect.

**Mr. Brian Saunders:** I think Chapter 15 concerns the decision to prosecute.

**Mr. Réal Ménard:** All right.

**Mr. George Dolhai:** Another chapter states who may make the decisions in each case.

[English]

**The Chair:** Thank you, Mr. Saunders, for that response.

Very quickly, Mr. Lee, we do have some committee business to deal with, but if you would, put your question.

**Mr. Derek Lee:** I have two questions. I think they could be put shortly and answered quickly. Again, they relate to this issue raised by Ms. Jennings and others.

In many cases I know that Parliament has wanted the Attorney General to take political responsibility for certain decisions. What you've indicated here today is that in many cases, with a view to ensuring independence in much of what happens judicially or in terms of criminal procedure, these consents and approvals have all been delegated by a statute of Parliament. Now, as a legislator I'm becoming somewhat concerned in that what we appear to have delegated—by your interpretation—is now removing the Attorney General's responsibility for many of these decisions. I'm wondering if the deskbook purports to address that in any way, or have we possibly missed this issue as legislators?

This is my second question. In the Mulroney-Schreiber relationship issue going back many years, the department at one point in time would have initiated an investigation in suspected criminality. I don't think they found any, so no charges were ever laid. Then later on that became a civil matter; there was a civil lawsuit.

My question is which branch of your department would have provided the advice to government in relation to settlement or

defence of the civil suit that was brought by the former Prime Minister? Which branch of your department provides that advice, if it's not your department?

**Mr. Brian Saunders:** I'll answer the second question first.

Our department would not be involved in any civil litigation. We're involved in criminal or regulatory matters only.

**Mr. Derek Lee:** Even though this came out of a criminal investigation?

**Mr. Brian Saunders:** Yes, but remember, criminal investigations are conducted by the police forces.

**Mr. Derek Lee:** Yes, that's right.

Thank you.

**Mr. Brian Saunders:** They keep very much to themselves when they conduct investigations.

You also asked who in the Department of Justice would have been involved in providing advice. There would have been civil litigators. I recall that a number of outside counsel were retained by the Department of Justice to provide advice to the government on that issue.

On your first question, about the responsibility of the Attorney General, under our legislation it's very clear that everything the office of the director does is under and on behalf of the Attorney General of Canada.

Our mandate is set out in subsection 3(3) of the legislation. The opening words are: "The Director, under and on behalf of the Attorney General...initiates and conducts prosecutions on behalf of the Crown". So we are accountable, or I am accountable, to the Attorney General.

The purpose of the legislation is to make it clear that the prosecution function is independent, and if the Attorney General wants to intervene in any way in a case, he must do so in a manner that is seen by the public.

● (1245)

**Mr. Derek Lee:** Just to clarify—and I'm using your words—is it your view that unless the statutory words say that the Attorney General must personally consent, authorize, approve, or whatever, then the Attorney General is capable, under this statute or others, of further delegating that out of his or her reach?

**Mr. Brian Saunders:** You'd have to look at the legislation. That is an example of wording that would make it impossible for an interpretation that the Attorney General—

**Mr. Derek Lee:** But we don't use that wording very much in Parliament. I haven't seen it, but it may exist in one or two places.

**Mr. Brian Saunders:** Let me refer to the Interpretation Act, subsection 24(2), which says that anything that can be done by a minister can, in effect, be done by the deputy minister.

The principle of delegation and authority from a minister to a deputy minister is not established in legislation, but it is well known in the common law principle as the Carltona principle. So this is not an exceptional circumstance.

Mr. Dolhai.

**Mr. George Dolhai:** It's always a matter of construing the statute to determine the appropriate level of delegation.

But on the delegation of authority, there are a host of things that require Attorney General consent or authorization that didn't occur as a result of this act but have been of long standing.

The deskbook sets out which level is appropriate in each case and reflects an assessment—ultimately a decision by the Attorney General, who is the one who authorizes the deskbook—that this level is the appropriate one. But the Attorney General always has the ability, even under this legislation, to intervene or take over a prosecution, or issue a directive.

**The Chair:** Thank you, Mr. Lee.

I would like to thank the members of the Public Prosecution Service for their attendance.

This puts an end to our questions. We have some committee business to attend to.

Mrs. Freeman.

[*Translation*]

**Mrs. Carole Freeman (Châteauguay—Saint-Constant, BQ):** Based on what criteria do you recruit lawyers from the private sector?

**Mr. Brian Saunders:** The two main criteria are competence and integrity.

**Mrs. Carole Freeman:** Where do you recruit these individuals?

**Mr. Brian Saunders:** We publish advertisements in the newspapers, and we conduct competitions and evaluations.

**Mrs. Carole Freeman:** Who evaluates them?

**Mr. Brian Saunders:** We have a supervisor in each region who is responsible for managing attorneys. We also have a team here in Ottawa that is responsible for managing attorneys.

**Mrs. Carole Freeman:** You said you handle 60,000 cases a year. You no doubt have a kind of report that states... In fact, there is organized crime, drugs.

Could you provide us with a report on how the cases break down?

**Mr. Brian Saunders:** We talked about that in our annual report, which we filed in June.

**Mrs. Carole Freeman:** Do you have the budget for each province?

**Mr. Brian Saunders:** Not in the annual report.

**Mrs. Carole Freeman:** Is it possible to know the number of cases handled, their nature and importance by means of a breakdown by province?

**Mr. Brian Saunders:** Yes.

• (1250)

**Mrs. Carole Freeman:** I'm going to ask one final question.

It was said that \$5 million was allocated to increase the number of positions at the RCMP and the number of federal prosecutors “to focus on law enforcement priorities such as drugs, corruption and border security”.

What do you mean by corruption?

**Mr. Brian Saunders:** I think they previously said that was part of it, but most lawyers, prosecutors that we're going to hire under this budget will handle drug cases.

**Mrs. Carole Freeman:** Corruption and drugs are the same thing?

**Mr. Brian Saunders:** Corruption is organized crime and a little of that as well. Drugs are often linked to organize crime.

**Mrs. Carole Freeman:** That's good, thank you.

Thank you for your generosity, Mr. Bagnell.

[*English*]

**The Chair:** Thank you, Madame Freeman.

Again, thank you for appearing in front of our committee. It's very much appreciated.

Perhaps I could call the committee's attention to the supplementary vote. There should be a copy in front of you. Does everyone have a copy of the votes for the supplementary estimates?

**An hon. member:** I'm ready.

**The Chair:** Okay.

JUSTICE

Department

Vote 1a—Operating expenditures, and, pursuant to section 29.1(2)(a) of the *Financial Administration Act*, authority to expend revenues received in a fiscal year, and to offset expenditures incurred in the fiscal year, arising from the provision of mandatory legal services to Government departments and agencies and optional services to Crown corporations, non-federal organizations and international organizations provided they are consistent with the Department's mandate and the payment to each member of the Queen's Privy Council for Canada who is a Minister without Portfolio or a Minister of State who does not preside over a Ministry of State of a salary not to exceed the salary paid to Ministers of State who preside over Ministries of State under the *Salaries Act*, as adjusted pursuant to the *Parliament of Canada Act* and pro rata for any period of less than a year – To authorize the transfer of \$547,509 from Health Vote 1, and \$426,000 from Transport Vote 1, *Appropriation Act No. 2, 2007-2008* for the purposes of this Vote and to provide a further amount of.....\$17,812,007

Vote 5a—The grants listed in the Estimates and contributions – To authorize the transfer of \$330,000 from Justice Vote 1, *Appropriation Act No. 2, 2007-2008* for the purposes of this Vote and to provide a further amount of..... \$109,475,415

Commissioner for Federal Judicial Affairs

Vote 20a—Operating expenditures.....\$395,601

Courts Administration Service

Vote 30a—Program expenditures.....\$3,223,830

Office of the Director of Public Prosecutions

Vote 35a—Program expenditures.....\$14,226,320

(Votes 1a, 5a, 20a, 30a, and 35a agreed to)

**The Chair:** Shall I report the supplementary estimates (A), 2007-2008, to the House?

**Some hon. members:** Agreed.

**The Chair:** That has been carried.

Thank you, committee.

We have an issue on some witnesses. The issue, of course, is that some of the previous witnesses who were submitted were unable to attend, one of them, of course, being the automobile manufacturers, dealing with Bill C-343. They will submit a written submission. There has been a request from the dealers association, and it would be good. Since the manufacturers were unable to attend, I would suggest that the dealers association take their place.

Is there agreement?

**Some hon. members:** Agreed.

**The Chair:** And also the National Association of Fleet Administrators.

**Mr. Derek Lee:** The same kind of thing. The same time?

**The Chair:** At the same time.

It is agreed that those two will replace the manufacturers.

Professor Thomas Gaybor is unavailable.

Do we have some other suggestions?

[*Translation*]

**Mr. Réal Ménard:** I think we should give you the mandate. Someone has to come and tell us about minimum mandatory sentencing and an evaluation. Regardless of the university he or she comes from, we have to hear a witness who covers this aspect of the bill.

[*English*]

**The Chair:** Okay.

You will leave that authority with the chair?

Mr. Dykstra.

**Mr. Rick Dykstra:** I have a suggestion. We've had Professor Gary Mauser here before as an individual. We could put him forward as a potential replacement.

**The Chair:** Mr. Mauser?

Madam Jennings.

**Hon. Marlene Jennings:** I'm going to recommend Nicole Crutcher, of Carleton...

**The Chair:** She can't make it.

[*Translation*]

**Mr. Réal Ménard:** Mr. Mauser doesn't talk about minimum mandatory sentencing. That's another fact. He's also very much in favour of the government, and that's fine, but we need someone who talks about minimum mandatory sentencing. That's not his field of expertise and he is very close to the government.

[*English*]

**The Chair:** He's unable to make it.

Mr. Dykstra, I'm sorry.

**Mr. Rick Dykstra:** Mr. Mauser testified on Bill C-9, and I don't know why he would be excluded from being someone very capable of speaking to those issues.

**Mr. Derek Lee:** Excuse me, Mr. Chairman.

**Mr. Rick Dykstra:** He's a criminologist.

**Mr. Derek Lee:** Excuse me—it's a point of order.

**The Chair:** Mr. Lee.

**Mr. Derek Lee:** Not on the point, but we're in public meeting at this point, and normally we would probably discuss witnesses in camera.

**The Chair:** That's a good point, Mr. Lee.

Let's suspend for 60 seconds, and go in camera.

[*Proceedings continue in camera*]

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