



House of Commons
CANADA

Standing Committee on Justice and Human Rights

JUST • NUMBER 016 • 2nd SESSION • 39th PARLIAMENT

EVIDENCE

Tuesday, March 4, 2008

—
Chair

Mr. Art Hanger

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• (1530)

[English]

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

Today is Tuesday, March 4, 2008. The agenda before the committee, pursuant to the order of reference of Monday, January 28, 2008, is Bill C-31, an act to amend the Judges Act.

Appearing as a witness is the Minister of Justice, the Honourable Rob Nicholson. Thank you, Minister, for appearing. From the Department of Justice we have Ms. Judith Bellis, general counsel, judicial affairs, courts and tribunal policy. We also have Mr. David Near, judicial affairs advisor, Department of Justice.

Welcome.

I believe I have one other individual here, Ms. Catherine McKinnon....

Ms. Catherine McKinnon (Counsel, Judicial Affairs, Courts and Tribunal Policy, Department of Justice): Yes. I am also counsel with the judicial affairs section at the Department of Justice.

The Chair: Thank you, Ms. McKinnon.

Minister, I'll turn the floor over to you.

Hon. Rob Nicholson (Minister of Justice): Thank you very much, Mr. Chair. Thank you for the invitation to make some comments with respect to Bill C-31, An Act to amend the Judges Act.

It's probably one of the shortest bills this committee will see, I suppose. It's straight to the point. It's one amendment to the Judges Act, but I think it is a good news story across this country that we are moving to increase, by 20, the number of judges under this section. It will permit us to add judges, and I think there is a consensus across this country that we can use more.

The bill will allow the government to achieve two very important objectives. It will increase support and access to justice for Canadians from all walks of life. The appointment of these additional judges will facilitate the timely resolution of the specific claims.

Proposed paragraph 24(3)(b) of the Judges Act, which we refer to as the pool, creates the authority to appoint judges to the superior trial courts of any jurisdiction in Canada. The pool was created, as you may know, in the 1970s, because of the recognized difficulty in

having to constantly amend the Judges Act every time you need another judge. Rather than do that, they created a pool of judges.

The concept was to allow the government to respond quickly to needs within each province or territory. I can tell you that Ontario, New Brunswick, Nova Scotia, and Newfoundland and Labrador have each previously submitted requests for additional judges, as have other provinces that have come forward.

Submissions have come in over the years. Some jurisdictions have had the benefit of sophisticated data collection to justify why they need more judges, while others have worked painstakingly to collect information that indicates their need and to back up their requests. In all instances, chief justices, judges, court staff, and provincial government officials have made tremendous efforts to make the case as to why we need more judges.

The same degree of commitment to providing clear and comprehensive data has been demonstrated by the judiciary and the Governments of Quebec and Nunavut, each of which also have outstanding requests for additional judges for their superior courts.

In Quebec, mounting civil and family law matters have been straining the court for several years now. This bill will provide some long-needed relief for the Quebec Superior Court.

The pressures on the Nunavut Court of Justice are particularly compelling and urgent. There are three resident judges sitting on the court of justice. The court is also served by deputy judges from other provinces and territories. These are sitting or retired superior court judges who offer to sit in Nunavut, typically for one-week periods. These judges provide much needed assistance to the court, but they cannot completely respond to the existing needs within the territory.

As you can imagine, geography has a huge impact on the work of the court in Nunavut. The territory covers one-fifth of the land mass of this country, two million square kilometres. Its population of approximately 29,500 is scattered across communities ranging in size from 150 to 6,000 people. Judges of the Nunavut court frequently travel on circuit through various forms of transportation—by air, snow machine, or boat. Crime rates are also a concern in the north. The number of complex criminal trials is beginning to mount, with several being adjourned over the course of the past year due to unavailability of judges. Civil and family caseloads are growing, and with the development of a bar of resident lawyers, the number of matters before the courts will continue to increase. In sum, the situation on the Nunavut court is reaching crisis proportions, and we cannot allow this to continue.

It is proposed that 14 of the new appointments be allocated among jurisdictions to address the existing pressures and backlogs. The bill will also provide the judicial resources necessary to ensure that the provincial superior courts are in a position to provide judges to act as members of the newly proposed special claims tribunal.

● (1535)

Assuring timely and impartial resolution of these claims is a key objective of the new tribunal. This tribunal will have the authority to make decisions where specific claims brought forward by first nations are rejected for negotiation or negotiations fail.

As the Prime Minister indicated in June of 2007, it is critical that the members of the tribunal have the necessary experience, capacity, and credibility to examine historical facts and evidence. They must be able to address complex questions surrounding Canada's legal obligations and determine appropriate levels of compensation. For this reason, the proposed Specific Claims Tribunals Act provides that tribunal members will be superior court judges.

It is estimated that the tribunal will require the equivalent of six full-time judges to handle its anticipated caseload of 40 claims per year. These claims are dispersed across the country, with the greatest number arising in British Columbia and some of the most complex cases originating in Ontario and Quebec.

All provincial superior courts are currently working at full capacity, with a number of them, as I have just described, experiencing significant backlogs and delays. As a result, authority for an additional six judges is being sought to provide the trial courts with the capacity to absorb the new work of the tribunal and to address these claims on a priority basis.

It is intended that with this infusion of new judicial resources the courts will be able to allow a number of their experienced judges to be appointed to a tribunal roster of up to 18 judges. It is proposed that these judges would sit on the tribunal on a part-time basis for a period of time equivalent to the number of additional judges provided to the court. The judges to the roster would continue to sit for the balance of their time on cases assigned, as usual, by the chief justice of their own courts.

Allocation of the 20 new judges to specific jurisdictions will take place following consultation with the chief justices of the courts and the provincial and territorial governments. My officials have already commenced discussions with their provincial and territorial counterparts to obtain up-to-date data upon which to base these final decisions.

As you can see, Mr. Chair and honourable members, this bill is extremely important for Canadians, and in particular aboriginal communities. I trust that members will recognize the urgent need to facilitate the passage of this bill so that these new judges may be appointed as soon as possible and that we may provide meaningful access for those individuals that require it.

I should let you know as well, Mr. Chair, before I conclude, that I want to bring to the committee's attention the possible need for an amendment to Bill C-31. The amendment relates to the establishment of the truth and reconciliation commission.

As members may be aware, the truth and reconciliation commission will provide former students, families, and anyone who has been touched by the Indian residential schools experience with an opportunity to share their individual experiences in a safe and culturally appropriate manner. The TRC will provide a comprehensive historical record of the policies and operations of schools, as well as what happened to the first nations, Métis, and Inuit children who attended them. The commission clearly has important responsibilities to fulfill in the course of its five-year mandate.

Following a rigorous selection process, the selection panel for the TRC commissioners unanimously put forward the name of a sitting judge to act as chair of the TRC. This judge is well respected by aboriginal and non-aboriginal communities alike and is uniquely qualified for this position.

All parties to the Indian Residential Schools Settlement Agreement support his appointment to this key post; however, this appointment would leave one of the busiest courts in the country one judge short for the judge's five-year absence. In order to avoid this unintended detrimental impact on the court, an amendment would be needed to Bill C-31 to provide for an additional clause modifying one of the sections of the Judges Act. We will continue to explore the issues related to this amendment, which, if we proceed with it, would need to be moved at the report stage.

● (1540)

Those are my opening comments, Mr. Chair. If there are any questions from the committee, my colleagues and I would be pleased to respond.

The Chair: Thank you, Minister. There are questioners who would like to bring forward some questions to you.

Mr. LeBlanc, you have the floor.

Hon. Dominic LeBlanc (Beauséjour, Lib.): Thank you, Mr. Chairman, and thank you, Minister, for your presentation.

As you know, Minister, we in the Liberal caucus supported this bill at second reading. We agree with you that it's an important measure to improve access to the judicial system. The specific claims process will obviously exert additional pressure. Your statistics and your information on that are certainly compelling.

I know from former partners of mine and people I know in the profession that in my own province of New Brunswick—and you and your officials know this as well—the delay is often related to the family courts. I've heard the chief justice at a number of events talk about the pressure on the unified family court, and I know that some of the planning and some of the requests have gone in around family courts in some provinces, such as my own.

For a whole bunch of reasons, the caseloads have increased. I assume it's your intention, in consultation with the chief justices, to deal with the backlogs in family courts. In some jurisdictions in New Brunswick, people will wait eight months to get an interim motion before the court. That obviously is, in difficult circumstances around family matters, not a very ideal situation.

I'd be interested to hear your comments on that, Minister.

But also, with respect to the linguistic makeup of the courts, in my province of New Brunswick—as you know, the only officially bilingual province—some judicial districts feel greater linguistic pressure than others, even in my own province. I hope you would be sensitive, when you make these appointments and others, and try to recognize that in some cases the linguistic makeup.... And it's not just about having an anglophone who says he or she speaks French, or a francophone who pretends that he or she speaks English. Many litigants will in fact not want to appear before the court because there's a legitimate concern that the judge may or may not understand some of the subtleties of language, and therefore you have dockets that tend to become overloaded as well.

I'm wondering whether you would be open to looking at a balance. As I say, every province has its different circumstances. But in my own, I know the bar is worried about this, and I'd be interested to hear whether you're sensitive to that as well.

● (1545)

Hon. Rob Nicholson: Thank you very much. This bill is designed to create a pool. It's not specifically directed at the unified family court, but nonetheless, as you would know, in each province superior court judges are seized with divorce and family law matters in any case, and adding judges to an individual province or to a territory will ease, in my opinion, some of the pressure that exists as a matter of course.

With respect to New Brunswick, and specifically with respect to the appointments we have made there, we are sensitive to that. I can tell you that we are in continuous discussions with the chief justice to make sure we are meeting the needs of the people of the province.

Again, we're sensitive to this. I think an examination of the appointments that have been made by the government, in New Brunswick in particular, will show that we have tried to respond to it.

We consider it an asset, obviously, if a person is bilingual, and it's not just a case of francophones pretending to speak English. In having a look at their applications, we find people who have a facility in both languages. Obviously, we're sensitive to the subtleties of any language group, and we keep that in mind when we're making appointments in your province—indeed, as we do across the country, based on the needs.

But we don't come up with these on our own. We of course are sensitive to this, but we discuss it and take these matters up with the chief justice to make sure we're responding to those concerns.

Hon. Dominic LeBlanc: Thank you, Minister. If there's any time, Mr. Chairman, maybe my colleague from Moncton would like to ask a follow-up—or Larry.

The Chair: You have two minutes.

Hon. Larry Bagnell (Yukon, Lib.): Thank you, Minister, for being here. I am supportive of this bill and also of the principle of the specific claims bill. There's no problem, so we can put that aside.

I just want to have an academic discussion on a couple of things. Under the Specific Claims Tribunal Act, where there will be one judge.... When you see a “tribunal”, you might think it's three or something, but it's one judge, and there's no appeal. Generally, the only experience I've ever had of committees or quasi-judicial committees or judicial things in which there is no system of appeal is

I think in the case of the refugee board. It seems almost undemocratic, un-Canadian.

I'm wondering about your thoughts on that structure of the specific claims process and what your thoughts are on the judicial recommendation...advice in cabinet, from your personal experience of boards and systems.

Hon. Rob Nicholson: It seems to me, Mr. Bagnell, that it's in everybody's interest that we move ahead and that we expedite these claims, and that's what we're attempting to do. It goes forward obviously with the approval of the individuals who are prepared to move forward on that and to arrive at some certainty or some closure to some of these outstanding issues. I think most people would welcome that.

Again, having individuals at the superior court level will ensure an expertise that I think will be invaluable to the process. We can argue about whether this is perfect or not. Certainly we know the regime that we have in place is very imperfect. There's a proliferation of claims and they're difficult to settle. So I think this is a reasonable attempt to bring some finality and closure to it.

The Chair: Thank you, Mr. Bagnell.

Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard (Hochelaga, BQ): Thank you, Mr. Chairman.

Good afternoon, Mr. Minister. I would also like to welcome the officials. You are aware that the Bloc Québécois, which everyone recognizes as reasonable and open-minded, supports this bill. We are prepared to work as expeditiously as the situation requires.

I have a few questions to ask, and my colleague Mr. Lemay will no doubt take over on first nations claims.

Why choose the number 20? Is that really tackling the problem?

I agree that every additional judge will require more funds from taxpayers, but why 20 rather than 30 or 35 more? Are we really going to deal with the backlog, if we take into account the criteria established in the Askov decision?

● (1550)

[*English*]

Hon. Rob Nicholson: I think we are responding. We operated for the last 35 years or so with a pool of 30 judges. In the pool, we're making a substantial increase to 50. Again, I'm not the lead minister on the specific claims tribunal, but our analysis of this is that you're going to need the resources of six judges, not necessarily, obviously, the same judges, but the time allocation that would be necessary.

So it seems to me that's a reasonable estimate, and I felt this was also an opportunity to increase the number of judges available across this country, whether it should be 14, or 10, or some other number. I think 14 is a reasonable number in terms of our discussions with the provinces, but again, I'll be watching it very carefully.

[Translation]

Mr. Réal Ménard: Does the department keep statistics by jurisdiction on the average time it takes to try a case? How does the system work? With the Askov decision, in Ontario, it was found that not having a trial within a reasonable time went against our constitutional guarantees. Has the situation improved considerably? Does your department in some way monitor what is happening in Quebec, in Nova Scotia, in Prince Edward Island...

Obviously, we have to make a distinction between civil law, family and criminal law, whether or not there was a preliminary inquiry. Are there any statistics province by province on how the courts work that could assist us?

We agree that there needs to be more judges; that is not the problem. I'm trying to understand why there would be 20 more rather than 25 or 30 more.

[English]

Hon. Rob Nicholson: Again, in answer to the first part of your question, Mr. Ménard, we are in constant communication with our provincial counterparts and with the chief justice in each province. You specifically mentioned the province of Ontario. We're keenly aware of some of the challenges there in terms of population increase.

In the end, there's no magic to why we're going forward with 20. It seems to me that would be a reasonable approach to the pressures our courts are under at this particular period of time. As to whether this will be the last time any government will ever need to come forward, I doubt that. As the population expands, as there's more pressure on our courts, we will constantly have a look at that.

Ms. Bellis, do you have any further comments?

Ms. Judith Bellis (General Counsel, Judicial Affairs, Courts and Tribunal Policy, Department of Justice): I can just say, Mr. Ménard, that the information we receive from the provinces is developed and submitted to us with the joint input of the chief justices and the officials and courts that would have the statistics you're referring to. While the information we used as a base for the assessment for the minister and the government in this case will need to be updated—it's slightly out-of-date—we have a commitment from all of the affected jurisdictions to provide us with refreshed information. In the criminal courts certainly we have not heard in our discussions any serious suggestion that the superior trial courts are facing an Askov situation at this time, but as the minister says, it's part of the stock and trade of the judicial affairs section of his department to stay on top and on track as part of a central core of the work we do in support of the Minister of Justice.

[Translation]

Mr. Réal Ménard: As I only have one minute left, my colleague will take over.

[English]

The Chair: One question.

[Translation]

Mr. Marc Lemay (Abitibi—Témiscamingue, , BQ): Thank you, Mr. Minister.

It just so happens that I am also the Bloc critic for aboriginal affairs and northern development. We are currently studying Bill C-30 at the committee. You will understand that I have some very specific questions.

Following meetings we had with the first nations who appeared before us, the first question I want to ask you, Mr. Minister, is the following: will the selection criteria for judges be improved or changed to ensure that judges who will be part of the Specific Claims Tribunal will be sensitive to aboriginal issues and the kinds of cases they will be called to work on? They will have to work long hours and, above all, over many months.

Mr. Minister, with all due respect to Superior Court judges, the ones that will sit on the Specific Claims Tribunal will sit for long hours in difficult areas. Will they be prepared? Will there be special criteria for these judges?

• (1555)

[English]

Hon. Rob Nicholson: I think it goes without saying that for the individuals at the superior court, we will not put the new 20 people there. My expectation would be that these would be individuals who have the experience, capacity, and, quite frankly, the credibility to be able to examine the complex issues you have addressed. We will place our trust in the chief justice of each province to make sure they are individuals who will have that credibility with them.

You quite correctly point out that there are long hours on this, and you'll notice in my opening comments that I didn't indicate that it would be our expectation, for instance, that one of these six would be the one individual who would just do this permanently. It would take up the time of one judge, but you could have that spread across a number. We have to place trust in the system, but again, I think this is a huge step forward, and it will add greatly to the credibility of the process to have experienced superior court judges.

The Chair: Thank you, Mr. Ménard.

Mr. Comartin.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Thank you, Mr. Minister, for being here. I share the concern of Mr. Ménard as to whether the number presented here is sufficient.

Can you tell us what consultation went on with not only the judicial counsels but also the bar association? Was the Federation of Law Societies involved in that consultation? The reason I want to highlight this a bit is I want to challenge Ms. Bellis' comment that we're not at some risk of another Askov. That's not what I'm hearing in Ontario, particularly from the defence bar. They're very much on the verge of arguing another Askov in the criminal situation. Of course, in addition to that, we have major problems in Ontario in the family law area at the superior court level.

Let me ask you about the consultation first, and then I have some other questions.

Hon. Rob Nicholson: The consultation process is with the governments of the various provinces as well as our discussions with the chief justices across Canada. It's actually a two-part thing. It's not just a question of us appointing a judge in a particular province. The resources, the staff, the support, the salaries all have to go with that, so it has to be done in tandem with the provinces that identified the needs and are prepared to accept new judges. It would be irresponsible for us, obviously, just to impose new judges on a jurisdiction and indicate to them that it's their job now to pick up the tab, because, as you know, with the administration of justice and the organizations of the courts, much of these.... So that's what we'll do.

The basis of our discussions have been with the provinces that are sensitive to this to make sure that suggestion is compatible with the costs they will bear.

Mr. Joe Comartin: With respect to Askov, did you want to make any further comment on that, Madam Bellis?

Ms. Judith Bellis: I'm not in a position to debate it here, Mr. Comartin. I know there are members of both the family and the criminal bar who have said it would be a good thing to have more. I also wonder, when the criminal bar is talking about an Askov situation, given that 98% of criminal matters are in fact dealt with at the provincial court level, not at the superior court level...it would seem to me it's more likely that is where the pressure is coming from. But I cannot absolutely specify.

• (1600)

Hon. Rob Nicholson: With respect to the consultations, I should indicate to you that while it's not formal in the sense that we've set out to get this input, we do get the input. When I have met with the Canadian Bar Association and other groups that are involved with the administration of justice or with the bar, they've been very clear to me that they would like to see something like this.

I can tell you that as recently as four o'clock yesterday, 24 hours ago, the Attorney General for Ontario made the point to me that he was pleased to see we were moving ahead with increasing the number of judicial components with this particular bill.

I get input all the time on this, Mr. Comartin. So as I say, I don't think there's any group that will say they're not.... I haven't run into anybody yet who is against us increasing the size of the bench across the country, but—

Mr. Joe Comartin: That's not the issue, Mr. Minister. It's whether you've gone far enough, and that includes us. We clearly accept the fact of the need for additional appointments. I just have serious doubts as to whether this is going to be sufficient, because we're really only talking about 14 additional positions across the whole of the country.

Hon. Rob Nicholson: At considerable expense, I have to tell you that.

Mr. Joe Comartin: Right now I'm putting you on the spot to some degree here. Is there a difference between what you're hearing from the judicial councils? I'm hearing that they want more than this number but that the provinces are simply not in a position financially to be able to meet those additional demands.

Hon. Rob Nicholson: It's a delicate balance that we always—

Mr. Joe Comartin: Am I unfair in characterizing it in that way, that this is where the conflict would be?

Hon. Rob Nicholson: I don't think there is a conflict. I've received good feedback. Let's face it, depending on where you are in the system, you always want more. If I said there's a million dollars for something, there's no shortage of people who would say, well, it should be \$2 million, and if it's \$2 million, it should be \$4 million. If I say 20 judges, there are those who will say, well, maybe it could be 30. And I have no doubt if I said 30, there could be 40.

All I'm saying is that in our consultations with various provinces in terms of the resources that will be necessary and the case that is being made across this country for additional judicial appointments, I think this is a reasonable response.

Just so you know, Mr. Comartin, one of the suggestions that was talked about was to come forward with just the six positions we need for the specific claims tribunal and that would be a reasonable bill. I bet it would probably have support here. I was among those who said this is also an opportunity to increase the component and let's boost this up, and as you see, we have 20 before you.

Mr. Joe Comartin: How much time do I have?

The Chair: You have time for one more question.

Mr. Joe Comartin: On two quick statistics, just to set this in context, did I hear you correctly say the last time the pool was increased was 35 years ago?

Hon. Rob Nicholson: In the early seventies, I believe.

Ms. Judith Bellis: Yes, other than the unified family court pool.

Mr. Joe Comartin: Which we've now lost. I guess I really have three. We've lost the 27 family court judges who have now been rolled in. Is that correct?

Ms. Judith Bellis: They've been appointed.

Mr. Joe Comartin: Yes, but they're rolled into the numbers. Or am I wrong on that?

Hon. Rob Nicholson: Not the pool of the 30. The 30—

Mr. Joe Comartin: They're not in the pool, are they?

Ms. Judith Bellis: No, there are no judges left.

Mr. Joe Comartin: Overall, how many judges do we have at the superior court level, including the appeals level across the country?

Hon. Rob Nicholson: Right across Canada altogether?

Ms. Judith Bellis: It's in the range of 1,100, including supernumeraries.

Mr. Joe Comartin: And has that been increased by the provincial legislatures increasing that number in the last while?

Hon. Rob Nicholson: They wouldn't increase the superior court, because they're only appointed by ours, but they, of course, appoint their own at the provincial level.

Mr. Joe Comartin: Okay, they've already done it there.

Thank you.

The Chair: Thank you, Mr. Comartin.

Mr. Moore.

Mr. Rob Moore (Fundy Royal, CPC): Thank you, Chair, and thank you, Minister, for being here.

Further to Mr. Comartin's question, you were saying increasing the pool from 30 to 50. Can you describe a bit what we're talking about when we say "the pool"?

Hon. Rob Nicholson: Yes, and because Ms. McKinnon wanted to have a comment concerning Mr. Comartin's intervention, I'm going to ask her to answer first.

The Chair: Ms. McKinnon, please go ahead.

Ms. Catherine McKinnon: Thank you.

I just wanted to make a correction. The pool was originally created in the 1970s, but it was last revised in 1992. At that time, there had been 10 salaries authorized for the county courts, and that was moved into the general provision for the superior trial courts.

But when we speak about the pool generally, as the minister has described, we have what is a general authorization for appointments to the provincial superior trial courts. They can be allocated to any jurisdiction in Canada. You will see in the Judges Act that there are provisions, sections 12 through 22 of the act, that specify the various courts of the individual jurisdictions and the number of appointments authorized for each court. This pool offers an additional authorization for appointments to any of those jurisdictions.

• (1605)

Hon. Rob Nicholson: In answer to your question, Mr. Moore, it offers some flexibility. Rather than having to amend each individual provincial or territorial provision with respect to the appointment of superior court judges, if we had what is known as a pool we could take individuals and allocate them, as needed, across the country.

Mr. Rob Moore: Being from New Brunswick, I'm familiar with some of the issues around New Brunswick's case.

Minister, can you tell us a bit about what you were hearing from the provinces—from New Brunswick, from Nova Scotia—on the need you're addressing with this bill, and maybe relate some of the general concerns they've expressed and how providing these additional positions is obviously a major step in the right direction?

Hon. Rob Nicholson: You specifically mentioned New Brunswick and Nova Scotia. There has been a fairly dramatic increase in the number of applications for child protection that have now been before the courts. I think in New Brunswick alone, since 1997, there's been a 65% increase in the number of child protection applications. Needless to say, these applications put more strain on the system, there's no question about that.

As I say, on each of the occasions that I have met with provincial attorneys general, depending on the situation in the province, they have made the point to me that they would like to see either one or more additional judges appointed, depending on the jurisdiction. Ontario has asked for more than one, not surprisingly.

Much of the cost of this is borne by the provinces, as you know, so they're not making idle requests that are entirely at the expense of the federal government. We bear considerable expense, obviously, in paying the salary of these individuals; nonetheless, they've made the case and they've been very clear with me about the need.

Mr. Rob Moore: Thanks.

Mr. Petit is going to take my additional time, Mr. Chair.

The Chair: Mr. Petit.

[*Translation*]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): Thank you, Mr. Chairman.

Good afternoon, Mr. Minister.

There is something new: this pool of 20 judges that we are adding. I know that you have tabled several bills that have recently been passed, for example Bill C-2 that has just been passed by the Senate. We know that this could create a volume which, in truth, would be justified given the new legislation that we have passed. The fact remains that aside from this volume, there is the specific issue of what we call the claims tribunals.

Could you tell me, as we are looking towards an increase in the number of judges, what the participation of the Assembly of First Nations would be? This is important. In Quebec, the first nations represent approximately 88,000 people. In the other provinces, it is much more. The fact that a third party may participate really is rather new. I would like to know how you see any assistance that the first nations may be able to offer as far as future appointments are concerned.

[*English*]

Hon. Rob Nicholson: Obviously, Monsieur Petit, they certainly add to the credibility of any process that affects their rights. The discussions are primarily led by my colleague, the Minister of Indian Affairs and Northern Development, Mr. Chuck Strahl, and before him, Mr. Jim Prentice. They are fully aware of the process we are undertaking. It has received widespread support.

I indicated to you, as I was concluding my remarks about the truth and reconciliation commission, which obviously has huge implications for aboriginal Canadians, that they're supportive, I can tell you, of the individual we have in mind to take over that.

Again, I'm not the Minister of Indian Affairs and Northern Development, but the process obviously has to have the support of the stakeholders in this, and I'm very pleased by the work that's been done by my colleagues on this to advance this file. I think everyone in this country would agree that the present situation of having a rising number of claims that take a long period of time and bring no finality, no justice, to the individuals involved doesn't serve anyone's interest.

So it does have widespread support to have these new judges for the tribunal and to have an individual who can preside over the trust and reconciliation commission. Again, these things are done in consultation with aboriginal Canadians, and that is as it should be.

• (1610)

The Chair: Mr. Petit.

[*Translation*]

Mr. Daniel Petit: Thank you.

[English]

The Chair: You've had enough time? Thank you.

Mr. Bagnell.

Hon. Larry Bagnell: Thank you.

I'll continue on that same question that Mr. Lemay asked—and this has been feedback from aboriginal people on that particular bill. Once again, could you make it clear to me, in regard to the judges who are going to be picked for the specific claims, what is going to be different in their selection from other judges, to make sure that aboriginal people are confident?

You made a great statement that the person for the truth and reconciliation commission is well respected by aboriginal people and non-aboriginal people, but how is your selection process for the specific claims judges going to make sure they're respected by aboriginal people?

I know that if we were to say to the Assembly of First Nations, for instance, "Pick the person who's going to arbitrate over the specific claims between the two bodies, the government and the first nation government", we wouldn't agree with that. So I'm sure they just want input. What's different in picking the specific claims judges from normal judges that will give confidence to the first nations peoples over whose disputes they will be party to?

Hon. Rob Nicholson: Certainly anybody can make representations, Mr. Bagnell. You can make representations to me, quite frankly, and I will pass those on to the chief justice in the territory or the province. These are existing superior court judges, so I think they certainly have that credibility going for them.

My expectation, and our expectation in consultations with chief justices across this country, is that they want people who are experienced who will bring that credibility. If there's any input you want to forward, certainly to me, we would certainly be pleased to pass that on, because we want it to work. But again, you're going to be getting highly qualified people. This is a new regime that has widespread support, and in my opinion, it will be a huge success.

Again, I'm not the lead minister on putting this together, so I want to be clear about that. Nonetheless, if there are any questions or comments that you or any other member have with respect to this, we would certainly be pleased to pass those on.

Hon. Larry Bagnell: How much time do I have left?

The Chair: You have two minutes.

Hon. Larry Bagnell: Okay. I'll pass my time to Mr. Murphy.

The Chair: Mr. Murphy.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): It's a very brief question. I have two minutes.

Thank you, Mr. Minister, for coming.

I'm just trying to get, if I understand it right, at the issue of vacancies. I had figures that as of January 24, 2008, there were 31 vacancies. I know in the run-up to a possible election on your side, you filled a lot of judicial vacancies. I know it was just a coincidence. But it says in the briefing document that the room has

been used up. Is the document saying there are no judicial vacancies?

Secondly, if there are 14 new ones to be made across Canada, when do you think you'll be making those once this becomes law?

Hon. Rob Nicholson: We have vacancies on a regular basis.

Again, I want to thank you for your comments, Mr. Murphy, with respect to the bona fides of the judges we have nominated. We take into consideration a number of things. One of your colleagues was talking about our sensitivity to people who speak both official languages, or to have individuals who can respond to the needs of a particular community across this country.

Since taking office, we've appointed 146 judges to this point in time. I expect vacancies will continue on a regular basis. With the amendments to the Judges Act—you will remember just before Christmas we had a considerable increase in the number of judges who either went supernumerary or retired, so that put added pressure. We have been very consistent in terms of not trying to meet any particular quota or timetable. We want to make sure we get the right people and we get qualified individuals who will do honour to their sovereign and their country in taking on this huge responsibility. It's a role we take very seriously.

Again, the 20 I'm talking about are over and above any existing positions or any vacancies. If there are two vacancies, for instance, in the province of New Brunswick, we tend to fill those vacancies as expeditiously as possible. Then, once this bill is passed, we will be in discussion with chief justices across this country in terms of the allocation from the pool.

I hope that answers your question.

•(1615)

Mr. Brian Murphy: It's a fine response.

Thank you very much, Mr. Chairman.

The Chair: Monsieur Lemay.

[Translation]

Mr. Marc Lemay: Mr. Minister, I would like to discuss two extremely important points with you. I would like to talk about the reconciliation commission in a few minutes. In the notes that the department provided to us, it says the following:

This infusion of new judicial resources is intended to provide the courts with the capacity to allow a number of their experienced judges to be appointed on a part-time basis to a tribunal roster of up to 18 judges.

The first important expression is "experienced judges", the second being "on a part-time basis", the tribunal being the tribunal for specific claims.

This is not in fact what the first nations want. These people do not want a judge to tell them that he has only four months to give them. Mr. Minister, I imagine you have a great deal of experience. Moreover, your colleagues have looked at this issue. I myself am studying the matter. We know that it takes three or four years to arrive at an agreement.

I would like to know if we will have judges on a part-time basis, both at the Superior Court as well as at the Specific Claims Tribunal, or whether judges will sit on the Specific Claims Tribunal until the end of their mandate following which they will return to be judges at the Superior Court. Do you understand the difference?

[English]

Hon. Rob Nicholson: That's a very good point, Monsieur Lemay, and I'd want to be clear about that. The individual who would take on that responsibility would complete that responsibility. They wouldn't say, "I'm only doing this for four months of the year and therefore you're out of luck". I think that's actually part of our problem with the resources we have available. Some judges or some individuals can't commit that kind of time.

This is precisely meant to address that. If, let's say, in a province there was one allocation of the one of the six, it would allow the chief justice, for instance, in the example given by the Department of Justice, to appoint three individuals who could sit. Once that individual is seized with the issue, they're seized with that case and they would complete that case. What we're saying is, in the regime we are putting in place we're not having one individual who will sit forever and just deal with specific claims. We're having superior court judges who, when they're seized with it, they're seized with it, but nonetheless they can then go back at some point. And as you quite correctly point out, just like trials today, they can take one day or they can take one year, but the person has to complete that.

[Translation]

Mr. Marc Lemay: Thank you very much. That clarification is very interesting. I will share it with the first nations' representatives who will be appearing before us again, and who asked me that question.

As for the reconciliation commission that your colleague Mr. Strahl wants to set up, I find that a most interesting idea. I would like to know what amendment you might be bringing forward for Bill C-31. I think that your colleagues have brought some pressure to bear in this regard, but I am going to add a little more by asking you if you are in a position to move this amendment quickly, given the importance this has and will have for the first nations' truth and reconciliation commission.

• (1620)

[English]

Hon. Rob Nicholson: I think you've made a very good point.

What I propose I think can only be done at the report stage. I would be looking for an increase of one individual. The truth and reconciliation commission, as you know, will take up to five years. It would cause an intolerable strain on a court to have one of its individuals taken for five years and not have a replacement. That's what we are trying to address.

Because of your interest, as soon as we have that amendment, I will certainly inform you. I will attempt to do that at the report stage, when this gets back before Parliament. Again, we are accommodating an individual, who has the support of everyone, but we will try to be fair to the court in question so that it will not be unduly strained by having an individual gone for five years.

The Chair: Thank you, Mr. Lemay.

Mr. Dykstra.

Mr. Rick Dykstra (St. Catharines, CPC): Mr. Chair, I want to ask questions to the minister.

It always seems that we're talking about justice. When a couple of Niagara MPs get in the room, things seem to happen. I'm sure all members would agree.

I'm not hearing any unanimity there.

Hon. Rob Nicholson: I'll second that, Mr. Dykstra.

Mr. Rick Dykstra: Thank you very much, Minister.

One of the questions I have is from the overview. It talks about the two purposes you outlined for the act and also the creation of the authority to appoint 20 new judges to the provincial superior trial courts. Then it talks a bit further, that not 20 but 18 judges will be appointed as tribunal members by the Governor in Council on the recommendation of the Minister of Justice. I wonder why there were 20 at the beginning and then only 18 would be appointed as Governor in Council—

Hon. Rob Nicholson: It is really to address two matters. One of them is the tribunal. For instance, if I take the example of New Brunswick—it doesn't matter which province—let's say the province was getting one extra judge to accommodate the specific claims tribunal. We would expect the chief justice would then make recommendations to have three superior court judges available. It's not just one person on a permanent basis; you would have three. We would have that in whichever province or territory.

We are asking for a designation of more than that because the individual may not be available. It sounds a little confusing with the 20. There are six places for the claims tribunal. The other 14 are superior court judges, who we are appointing. It has nothing to do with the six, except that in a province, for instance, you might get two judges. You might get one to assist on the trials. You have the resources, but those resources we expect would be spread among three. It's three to one. That's where you get the 18.

• (1625)

Mr. Rick Dykstra: All right.

A little further in the act it talks about purpose. You've kind of outlined the 14 and the six and the two group responsibilities.

We also talked about the fact that they would deal with approximately 40 cases a year. I wonder if you or the officials could point out what the 20 appointments will do to the backlog. Are we going to reach a point that it will actually catch up and we will be in a much more reasonable position with respect to the amount of time individuals have to wait?

Hon. Rob Nicholson: As you can see, I have one component of this whole question on the tribunals. I have to tell you, Mr. Dykstra, you'd be better off posing that to Indian Affairs and Northern Development. They actually have the lead on this, so for any estimates as to the length of time for each case or how many might be expedited, and even the backlog, they would be in a better position than I am to answer. My component of this is to get more judges so they will be available to deal with this challenge.

Mr. Rick Dykstra: Thank you.

The Chair: Thank you, Mr. Dykstra.

Do you have a question, Mr. Murphy?

Mr. Brian Murphy: One brief question we had on this side was whether any of the expected appointments are necessary due to the flood of litigation expected in the area of defamation and libel coming out of the House of Commons.

Hon. Rob Nicholson: Are you intending or do you know of any individuals who are intending to commit that kind of...? Sometimes it's very difficult to estimate in advance.

Mr. Brian Murphy: There's going to be a flood of cases.

Hon. Rob Nicholson: I always tell people to be very, very careful in their words and actions.

Mr. Brian Murphy: I was just asking the question, Minister.

Hon. Rob Nicholson: I understand there is pressure right across this country for superior court judges to deal with a wide range of issues.

The Chair: Thank you, Mr. Murphy.

Next on our agenda is clause-by-clause.

Mr. Comartin.

Mr. Joe Comartin: I have other questions.

The Chair: You may ask your question.

Mr. Joe Comartin: Thank you, Mr. Chair.

How are the existing 30 members in the pool apportioned across the provinces?

Hon. Rob Nicholson: That's a very good question.

Mr. Joe Comartin: I think you said the 14 appointments that will be going across the country have not been determined yet. The second question is, does the federal government have a position as to how they will be apportioned?

Hon. Rob Nicholson: On the second part of your question, we have some ideas how they can and should be allocated, but we'll do that in conjunction with our discussions with chief justices across the country and input from the provinces. I've had a number of provincial and territorial inputs as to whether they should get another judge or more than one judge. But I didn't want to put the cart before the horse. I've got to get this thing through Parliament first.

With respect to the 30, I don't have that information, but I think we should be able to give you that. It's been done over the years; we'll get that information for you.

Mr. Joe Comartin: Are we at risk of the 14 being taken up and then there'd be an additional demand from the provinces at this time?

Hon. Rob Nicholson: In my experience, there are always additional demands from the provinces in many areas, but I think we are meeting the reasonable demands. I can tell you one attorney general has approached me and told me he needed one and asked if I could appoint one. I told him I would do my best to accommodate him. If he changes his mind and says he now needs two, I would take that into consideration. But it comes in part from the discussions we've had, so it's not quite as arbitrary as it might otherwise look.

We have a pretty fair idea of where the demands are, and if a province says to me they need one more judge, we'll try to accommodate that. It's a reasonable request, but they won't be getting two or three because that's not what they asked for.

So we hope to meet the demands. If there are demands in the future, we'll have to respond to that.

Mr. Joe Comartin: There's no risk they won't all be taken up? All 14 are definitely going to be taken?

Hon. Rob Nicholson: I don't think there's any question. I think the 14 will be welcomed in addition to the six. I think it'll work, and I had good feedback as recently as 24 hours ago from the Attorney General of Ontario.

Mr. Joe Comartin: Is there any reason for the federal government not to want to increase the pool? It doesn't cost us anything.

Hon. Rob Nicholson: It's not exactly no cost. Obviously, it's hundreds of thousands of dollars in salary per individual. So it ends up costing the Government of Canada millions of additional dollars. But again, we're only one component of that. The provinces and territories have the responsibility for the administration of justice, so they will bear the costs.

I think we have an estimate of what each judge would cost us.

• (1630)

Ms. Judith Bellis: Compensation and benefits for a superior court judge are now in the range of \$350,000 to \$360,000, if you take the pension into consideration. Of course, those appointments are ongoing. Once judges are appointed, it's very difficult to reduce the complement of a court.

A voice: Probably impossible.

The Chair: Very quickly, Mr. Lemay.

[*Translation*]

Mr. Marc Lemay: Mr. Minister, let us assume that Bill C-31 — I believe it will be passed today — will pass and that Bill C-30, which we will probably be studying until the end of April, will also pass.

According to your plans, when will the new judges be able to undertake their duties? Will the chief justices and the provinces be given any directives so that they can start looking for judges to work on the Specific Claims Tribunal?

[*English*]

Hon. Rob Nicholson: Ms. Bellis has said she would like to comment on that.

Ms. Judith Bellis: Monsieur Lemay, as you know, Bill C-30 contemplates that the tribunal will actually have a six-month period for it to be up and running once the bill receives royal assent. That period has been established exactly for the purposes about which you are concerned, for chief justices and the chair of the tribunal, who will be one of the six, or 18, depending on the way it's structured, to undertake the necessary consultations internally to identify the judges who would be recommended for the roster, for the Minister of Justice to make the recommendation to the Governor in Council, as well as to have the tribunal administration established and all the other mechanical issues that will have to be rolled out as we go.

So in terms of when would be the first point of appointment, the roster that's contemplated would be in place six months after the coming into force. But you can be sure that provincial chief justices who know there are significant specific claims matters in their provinces will already be giving consideration to those issues. I expect that the Minister of Justice and Minister Strahl will have those views in good time.

The Chair: Thank you, Mr. Lemay.

[*Translation*]

Mr. Marc Lemay: Thank you.

[*English*]

The Chair: Minister, thank you for appearing.

I have one quick question from the chair.

You had mentioned something about an amendment, but that would be introduced at report stage in the House.

Hon. Rob Nicholson: Yes, it would.

The Chair: We will not be dealing with that issue here.

Hon. Rob Nicholson: No.

The Chair: Thank you kindly, sir.

Hon. Rob Nicholson: Thank you.

The Chair: Ms. Bellis, Ms. McKinnon, and Mr. Near, thank you for attending.

I will suspend for two minutes, and then we will do clause-by-clause consideration.

- _____ (Pause) _____
- _____
- (1635)

The Chair: I call the standing committee back to order.

Now we'll go to clause-by-clause consideration of Bill C-31. I'll call the vote on clause 1.

(Clause 1 agreed to)

The Chair: Shall the title pass?

Some hon. members: Agreed.

The Chair: Shall the bill carry?

Some hon. members: Agreed.

The Chair: Shall I report the bill to the House?

Some hon. members: Agreed.

The Chair: That is it. Bill C-31 has been carried.

Now we have other business and we will go in camera.

[*Proceedings continue in camera*]

Published under the authority of the Speaker of the House of Commons

Publié en conformité de l'autorité du Président de la Chambre des communes

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