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Chair

Mr. Anthony Housefather

Standing Committee on Justice and Human Rights

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• (1720)

[English]

The Chair (Mr. Anthony Housefather (Mount Royal, Lib.)): Good afternoon, ladies and gentlemen. Welcome to this meeting of the Standing Committee on Justice and Human Rights.

We are here to study the appointment of Kathleen Roussel as Director of Public Prosecutions.

It's a great pleasure to welcome you here, Ms. Roussel. I'm sure that all the members of the committee are very anxious to hear what you have to say.

We're very sorry to be a bit late. The floor is yours.

Ms. Kathleen Roussel (Acting Director of Public Prosecutions, Office of the Director of Public Prosecutions): Thank you, and of course I appreciate the importance of the budget, so I'm not at all concerned about the delay. That was obviously important.

It's a pleasure, of course, to meet with the committee today and to discuss my candidacy for the office of Director of Public Prosecutions.

In beginning, I'd like to thank the Attorney General and the selection committee for the confidence they have shown in me by sending me here today. You've obviously seen my resumé, but I'm going to tell you a little about myself.

I was born in Baie-Comeau, Quebec. After a few moves, my family settled in Hawkesbury, Ontario, a small town about an hour east of Ottawa. Very early on, I decided that I wanted to become a lawyer. At the time, my concept of the profession was shaped by what I saw on television and was very focused on criminal law.

When I graduated from high school, I attended Queen's University in Kingston, Ontario, where I completed an honours degree in religion. I subsequently moved to Ottawa to attend law school, where I was fortunate to be accepted in the French common law program. While it can't be said that I particularly enjoyed law school, I had the opportunity to work at the student legal aid clinic, which helped me confirm my interest in criminal law. I went on to practise criminal law with a small firm here in Ottawa.

By pure chance one day, I was asked by a former prosecutor, now a judge, if I'd be interested in working with the government. To be honest, I had never really considered it. Being generally open to opportunity, I decided to explore it further. That led to contracting

work and eventually to being hired by Justice Canada to further my legal practice in what was then called the Canadian Firearms Centre.

[Translation]

My time at Justice was valuable in allowing me to further my legal skills. In addition to my knowledge and interest in criminal law, I was able to discover a profound interest in administrative and labour law. Those newly acquired skills have, over time, served me well, not only in the provision of advice to government departments, but also in management, whenever I am called upon to make a decision that affects someone's interests.

Over time, as a result of increasing management responsibilities, I took an interest in financial matters and in other management functions not usually found in a legal job description. In my functions as deputy director of the Public Prosecution Service, I was placed in a role where I would be called on to manage law as well as a number of corporate services. I believe these experiences have prepared me well for the role of director of Public Prosecutions.

[English]

The Director of Public Prosecutions serves a dual function: deputy attorney general and deputy head of a small department.

As deputy attorney general, the DPP needs to have a sound understanding of criminal law and to ensure that the organization meets its obligations to the Attorney General and to the general public. The DPP needs to be able to provide clear guidelines to prosecutors that guide their exercise of discretion and allow the Attorney General to be notified of prosecutions that raise issues of general interest in sufficient time for her to react. As deputy attorney general, the DPP also needs to be a good ambassador and has an important outreach role with provincial colleagues and other justice participants in Canada and abroad.

As deputy head, the DPP has an equally important role. He or she must manage the PPSC in a fiscally responsible manner, while ensuring the well-being of PPSC employees.

I believe I can acquit myself of both functions of the DPP. I look forward to your questions.

[Translation]

Thank you.

[English]

The Chair: Thank you very much, Ms. Roussel.

[Translation]

We greatly appreciate your testimony.

[English]

Before I move to questions, I want to explain to those watching at home how Ms. Roussel was selected as the candidate who's appearing before this committee.

There is a process set out in subsection 4(1) of the Director of Public Prosecutions Act that sets out a statutory selection committee, which is composed of a representative of the Federation of Law Societies of Canada, representatives of each recognized party in the House of Commons, the deputy minister of public safety and emergency preparedness, the deputy minister of justice and deputy attorney general, and a person selected by the Minister of Justice and Attorney General.

As part of the selection process, Ms. Roussel underwent two interviews—one with the pre-selection committee and one with the statutory selection committee—an evaluation of second language skills, and reference checks. We're sort of the final step in the process.

I just wanted Canadians to know that.

We're going to move to questions, and we'll start with the Conservatives.

Mr. Nicholson.

Hon. Rob Nicholson (Niagara Falls, CPC): Thank you very much.

Thank you, Ms. Roussel, for being here today. Congratulations on moving forward through this process.

There are a lot of challenges, as you know, in the criminal justice system. It's in the newspaper every day. You may have noticed—I'm sure you did notice—that in the last budget there were additional funds for more federal judges to be appointed. One of the things I've said is that I'd like to see just more judges filling the spaces that are there right now, but in addition to that there are others.

I didn't see any provision for additional prosecutors. Don't you think that would have been a good idea? I know you have to be careful when you're talking about budgets and what governments do. What would you do? It seems to me they would go hand in hand. With more judges to hear these, presumably we would need more federal prosecutors, but I didn't see that in the budget.

Ms. Kathleen Roussel: Certainly I would say that at the moment we have sufficient staff in order to meet our obligations. The addition of judges is something that we're going to have to keep an eye on. As new judges are appointed, it may have an impact on the resource requirements of the Public Prosecution Service, particularly if there are more courts sitting. I think it's far too early for us to judge that.

I would add that, in terms of our workload, we just looked at recent numbers and our workload is not increasing. Presuming our workload remains steady, the addition of extra judges may not actually make a difference for us. It's really just organizing ourselves to make sure that we are covering all the courts, and I would say that

for the time being, we have sufficient staff to do that. Obviously, it's something we assess on a regular basis, at least annually.

• (1725)

Hon. Rob Nicholson: I am glad to hear that. If, in fact, you find there is some sort of shortage here, I'm hoping that somewhere along the line we get informed of that.

You want to have the very best people in your department. One thing we have noticed over the last number of years is that there has been a discrepancy between what provincial prosecutors are being paid and what is being paid at the federal level. I think there are examples, in British Columbia and other jurisdictions, where people are leaving the federal prosecution to sign up with the provincial prosecution. Is this a concern of yours? What do you think we can or should be doing about this?

Ultimately, people have a career that they have to manage. If they are getting considerably more resources, as interesting and fascinating as this job is...and I think it is. It's important for federal prosecutors. I've heard from them that they do like the work, but somewhere along the line we have to make sure that we pay these individuals a proper wage, comparable to their provincial counterparts. What are your thoughts?

Ms. Kathleen Roussel: I'm going to start by letting you know where we are in terms of collective bargaining. Of course, you all know that what we pay our prosecutors is not up to me. It's a function of the Treasury Board to negotiate collective bargaining agreements. At the moment, we are going to binding conciliation with the Association of Justice Counsel. As an employer of lawyers, obviously I hope for good results and happy staff.

In terms of discrepancy, it's not across the board. There are variations among the various provincial prosecution services. There have been times when we have seen some exodus, in small pockets, to prosecution services elsewhere. We have also occasionally seen the reverse, where we have been easily able to recruit experienced prosecutors from provinces. There is a fair amount of exchange.

What I can do as a manager, given that I don't control things like the collective bargaining agreement, is make sure that we are offering the lawyers good work and that we are recognized as an employer of choice.

We've started to look at new recruitment methods, to brand the PPSC. One issue that some of you will know we've had is that we're 10 years old as an organization and there is still a lot of confusion between the Public Prosecution Service and Justice Canada. We've embarked on an exercise where we are trying to define ourselves and our work so that it is obvious to young people coming from law school, but also experienced lawyers from private practice and provincial prosecution services, and so that there is a real identity when they are coming to the PPSC.

It is not just how much you pay. I think some of it is being recognized as an employer of choice that provides good work, training opportunities, and a collegial environment to work in.

Hon. Rob Nicholson: One thing that was put forward in a report just a couple of years ago was that the mental health of the employees we have has to be a priority. That was two years ago now. I wonder if you could outline for us the priority you attach to that and your thoughts in general about maintaining and assisting those who have challenges in this area.

Ms. Kathleen Roussel: We actually had a discussion at the management table about that today. In the last few years, we put a real emphasis on training all of our staff on prevention of harassment in the workplace, because if you follow the employee surveys, it comes up as a theme every year. The training was a joint endeavour with the bargaining agents, and it was extremely successful. There's a very similar model for training in mental health that's a joint endeavour between the employer and the unions. We're looking at training trainers to participate in that.

Every manager this year has in their performance agreement something about furthering mental health in the workplace. In particularly vulnerable practices, and I would say certainly up north, we also have put a lot of emphasis on training and on the avoidance, I think, of mental health issues. We provide such things as vicarious trauma counselling to our staff who deal with very violent prosecutions and vulnerable victims.

There is already a good kernel of work, but we will put a push on that in the next few years now that we feel we've trained almost all of our staff on anti-harassment. That really is our next step. In some offices, we've already started doing some training on mental health and awareness.

Thank you.

• (1730)

The Chair: Thank you, Mr. Nicholson.

We'll now go to Mr. Fraser.

[*Translation*]

Mr. Colin Fraser (West Nova, Lib.): Thank you very much, Mr. Chair.

I would like to thank Ms. Roussel for being here and providing her testimony. I would also like to congratulate her on her appointment.

[*English*]

First, in general terms, I understand you've been acting as the Director of Public Prosecutions for a few months now. Can you give me some sense of what a typical week would look like in your role as Director of Public Prosecutions?

Ms. Kathleen Roussel: I've been acting since, I believe, March 7 of this year, so it is a few months now. It has flown by.

A typical week of an administrator in any department involves a lot of meetings, so I think that's the first thing you would see in my calendar. Every week I receive a number of meetings from the managers of various sections. We have regular management meetings that are weekly in my calendar. Legal questions bubble up at least weekly. Certain functions are reserved for the Director of Public Prosecutions, for example, signing direct indictments. We have seen more of those since the Jordan decision. I'm certainly

entertaining those on a very regular basis. Notes to the Attorney General, informing her of issues of general interest, will come to me at least once a week, sometimes more often, depending on what is happening before the courts that week.

Really, my work is an amalgamation of dealing with a legal question here and a management issue over there. The issues might be different every week, but I think the mix stays more or less the same. I would say it probably is fifty-fifty between management of law and management of corporate functions.

Mr. Colin Fraser: As I understand it, as the Director of Public Prosecutions, by legislation, you are the deputy attorney general and acting independently as the Director of Public Prosecutions. How do you balance being deputy attorney general with your role as an independent Director of Public Prosecutions?

Ms. Kathleen Roussel: The statute essentially set up the position of the Director of Public Prosecutions in order to make clear the independence of the function. Arguably, for those of us who remember when the prosecution service was part of Justice, there was functional independence being exercised, but it wasn't as apparent, perhaps, to the public.

In terms of independence, the statute has really set out the scheme by which the Attorney General is kept informed of issues of general interest, but unless she chooses to intervene, the final decisions on how to bring matters forward and the guidance to give prosecutors are mine. In terms of assuring the independence, I think the statute has set that up quite nicely, and in practice it's not an issue that arises very often.

[*Translation*]

Mr. Colin Fraser: Ms. Roussel, it's clear that you are fully bilingual. What I mean is that you have a mastery of Canada's two official language, English and French.

Do you use both languages in a normal day at your office?

Ms. Kathleen Roussel: I sometimes use them in the same sentence, but certainly, when it comes to departmental services in Ottawa, every meeting is held in both languages.

In addition, I still hold the roles of deputy director and acting director. I'm also overseeing our bilingual offices in Ottawa, Montreal and Halifax. I use French and English more or less equally every day.

Mr. Colin Fraser: Thank you.

[*English*]

The Chair: Thank you very much.

Mr. MacGregor.

Mr. Alistair MacGregor (Cowichan—Malahat—Langford, NDP): Thank you, Mr. Chair.

Thank you, Ms. Roussel, for appearing before the committee today.

I wanted to follow up where Mr. Nicholson left off, because I think he picked up on some interesting threads that I want to weave together in a worst-case scenario. You will be the manager, and I want to know how you'll handle what I see as an upcoming problem.

It centres on the Jordan decision and the fact that we have those hard timelines, which, given the complexity of some of the federal cases, I think will really increase the workload for our federal prosecutors. We already know that the pay for their counterparts in provincial governments is significantly better, in some cases, and that some provinces have increased their budgets to hire new prosecutors to deal with the Jordan decision. When I think about mental health, I'm thinking not really about harassment but about burnout, the stress from being overworked.

Let me paint a worst-case scenario where we have judicial appointments cherry-picking out of the Public Prosecution Service; where we have people from the Public Prosecution Service of Canada fleeing to the provinces because they offer better pay and are actively hiring people; and where we have the remaining pool suffering from that burnout, first from losing their colleagues and then having to deal with more work. I know that you don't have any control over budgetary matters, but you as a manager will have to tie all these threads together.

First of all, does this concern you? What kind of contingency plan would you develop as the top manager to effectively deal with it?

• (1735)

Ms. Kathleen Roussel: Let me start by saying that I've managed people now for the better part of 15 years, and as a manager you're always concerned about how your staff are doing. You're concerned about burnout. I think in our profession there are lots of signs of burnout and mental health issues and warning signs. It's not just us; I think the law societies have done quite a good job of putting up the alert flag and trying to offer assistance.

We're fortunate in the federal government that there's a lot of assistance available to us. I think to some extent I have to rely a great deal on my regional managers, who are the day-to-day managers of our prosecutors in the regions. They really have to look for signs. They have to make sure they're telling us when they don't have the resources they need. I can tell you that we keep a very close eye, on a very regular basis, on staffing levels. I can tell you at almost any given moment where we are in any particular region. If there is a sudden departure, we're usually well aware of it. We have regular meetings with each of our regional managers.

I've not come here asking for resources, because at the moment, I think we're managing, but I certainly can tell you that I wouldn't hesitate to go to the Attorney General to discuss resources if I felt they were required.

You're right in the sense that those in the profession generally—not just us, but also judges, defence counsel, and prosecutors, federal or provincial—are feeling a lot of pressure because of Jordan. It may very well set up, at least while we're dealing with transitional cases, a bubble effect where pressure is felt throughout the system. The reality is that you have to work through it, not just one case at a time but I think one courthouse at a time. It takes a lot of collaboration between the various justice participants. I'm satisfied that there are

good discussions going on between the justice participants, probably better than we've seen in many years.

Now, just to answer your general question, certainly as a manager I'm always concerned. I think you always have to be questioning whether people are okay and they have what they need. Sometimes it's not more people; it's people with the right resources. One of the problems I think we're all aware of in criminal courts is that in some ways, criminal law is still practised as if we were in the 1900s. There are still lots of people walking around with the Criminal Code in one hand and banker's boxes of files in the other. I think some of what Jordan will cause us to do, beyond just trying to manage cases on delay from the get-go, is to have real discussions with justice participants about how we evolve the manner in which we present cases so that they run more efficiently through the system.

It's not just the number of people. I think some of it is really discussing, for all of the justice participants, the tools and how we get there together.

Mr. Alistair MacGregor: Thank you.

I want to make sure that our Public Prosecution Service most certainly does have the resources it needs. I'm glad to see that you're aware of these concerns, as are we as parliamentarians. We saw the 2017 budget devote \$55 million over five years to create those judicial positions. Maybe the government will listen to this testimony and hopefully will realize that additional requirements can be met financially.

To end here, I have a quick question. When your predecessor, Brian Saunders, appeared before the justice committee in March of last year, he commented that he had heard from prosecutors that sometimes the courts are questioning why we are proceeding with cases against simple marijuana possession, given that the government has announced its intention to legalize.

In your time as a deputy in the Public Prosecution Service of Canada, have you heard similar concerns raised?

• (1740)

Ms. Kathleen Roussel: Let's keep in mind that I overlapped with Brian Saunders for four years, so what he heard, I heard. I think the case he referred to is in one of my regions. A judge refused to take a guilty plea on simple possession on the basis that he didn't want to be the last judge in Canada to sentence somebody on marijuana possession.

Oddly enough, despite the tabling of the bill, we have not been hearing that of late. We've not been getting much in the way of resistance from the judiciary. Certainly, from our standpoint, it's not for us to decide whether a bill will pass or not, so we are continuing to prosecute cases.

I will say that when we're dealing with small amounts, obviously prosecutors will use their discretion based on what they know of the accused and the circumstances of the offence. There are, for example, diversion programs that can be looked at when you're dealing with a first-time offender, and I'm satisfied that prosecutors are exercising discretion appropriately.

Mr. Alistair MacGregor: Thank you.

The Chair: Thank you very much.

Ms. Khalid.

Ms. Iqra Khalid (Mississauga—Erin Mills, Lib.): Thank you, Chair.

It's an honour to have you here today, Ms. Roussel. Thank you for your time.

You touched on this issue briefly. We have spent many weeks looking at access to justice, and one of the issues that keeps arising is the delay in access to justice. I understand that you've indicated in your annual report a new prosecution-specific case management system. Can you describe what that is and if that will help in creating more efficiencies in the justice system?

Ms. Kathleen Roussel: You're really in my bailiwick, because in my spare time, I love to have good information. To me, good information comes from a good case management system.

We've been using a case management system that Justice Canada developed for itself years ago. It's called iCase. Because iCase is very much at the end of its life, we've started a project to replace it with something that is—I'm sure we'll give it a spiffier name at some point—a legal case management system. We're basically trying to make sure that we're able to pull useful information about our cases when we need it, and we want a system that is somewhat more intuitive for prosecutors to use.

It will not add efficiency outside of the PPSC, but certainly within the PPSC, and for me as a manager, it will be much easier to give you that just-in-time kind of information about how many marijuana possession cases we have, the ultimate disposition of them, and how long they took to get from the date of charge to the date of disposal. Right now, while we can get that information, it's quite painstaking. Each time, we're writing scripts to get the information out of the system. We're trying to build a system that will allow us to have regular reports on what I would call business intelligence information that's useful for us.

Ms. Iqra Khalid: Also, as part of your role, I understand that you will be working closely with our provincial and territorial counterparts. Can you describe your priorities in your work with the provinces and territories as well?

Ms. Kathleen Roussel: I co-chair something called the heads of prosecutions committee. It's a committee that brings together the heads of every prosecution service in Canada—provincial, ours, and the military's.

We get together and discuss issues of common interest. We have very frank exchanges on issues that are particular to our services and that impact things like recruitment and retention. While the information is in camera, I know where there may be some issues with recruitment and retention in Canada, because we're very open

with each other, and that does allow us, I think, to have an exchange on things that have worked. At our last meeting, which was in April or May of this year, we actually spent most of an afternoon on Jordan, because we think that's the sort of thing about which exchanging best practices is vitally important to us.

At every meeting there are exchanges and updates about what's going on in each prosecution service, but also there are usually two or three sessions on best practices. We also will have discussions on occasion on evidentiary issues of common interest and the development of jurisprudence. The meeting is essentially in camera because we want to make sure there is full and frank exchange. I think every member of that committee would tell you that they come back from every meeting with good ideas.

The other benefit to it, if I'm being honest, is that all of us in our prosecution services will at times have cases that we can't take, usually because of a conflict. For example, the brother of one of our lawyers is charged, and by having those contacts you're able to easily pick up the phone and ask for help from the provincial prosecution service. So it has some side benefits. It's just basically relationship building in the most basic sense.

• (1745)

Ms. Iqra Khalid: Thank you.

To turn inwards a bit, at the PPSC, your employment equity standards are actually really good. Your targets to employ women and members of indigenous communities as well as people with disabilities are very commendable. I'm wondering why there seems to be a bit of a lag in employing visible minorities, the level for which is a little lower than the general labour one is.

Could you explain that? Could you also explain how you intend to improve that, if at all?

Ms. Kathleen Roussel: We are lagging behind in a few things. Some of them the numbers don't show, and I'll give you a concrete example in a minute. That is something which I'm committed to working on.

Certainly we're lagging behind on visible minorities, and I think we're slightly behind on persons with disabilities. We know that we have to consider it at this point, because we're behind on every hiring, and so one of the things we have done is to put in every one of our managers' agreements a clause under which they are required—and we'll assess them on it at the end of the year—to put those considerations at the forefront in staffing actions. I honestly think that may not be enough, and I have asked our human resources folks to look at other strategies to basically make sure that we are attractive to those communities, because sometimes that's the problem. It does come back, I think, to branding, and what we can offer people as careers in the federal public service.

Something the numbers do not show but that is of concern to me is that while we have no difficulty attracting female prosecutors, when you look at our demographics, and the higher levels of prosecutors, at our senior level, women are greatly under-represented. That's of extreme concern, I think, to my entire management team, not just to me. We have asked our employment equity and diversity committee to do a special study, to find out where the barriers are, because we noticed not only that women were not getting the promotions, but also that they weren't applying for the promotions. We've now finished a survey, and I'm expecting the results in the next few weeks. That ought to help us develop an action plan.

The numbers are very instructive, but we try to go beyond the numbers to see if there are actually other gaps that would not be visible. When you look at our demographics, more than 50% of our prosecutors are female, but in the higher levels we're getting below, I think, 30%.

The Chair: Thank you very much.

We've completed our first round of questions. Do any committee members have a short question they'd like to ask, or are we good with the questions?

Yes, Mr. Cooper.

Mr. Michael Cooper (St. Albert—Edmonton, CPC): I have one question.

Thank you, Ms. Roussel, for being here today. I just want to follow up on or maybe dig down a little further into some of the comments you made earlier around hiring the best candidates possible.

You indicated that the PPSC has undertaken new hiring methods. Could you elaborate on what those are and whether they're yielding results? To that end, I heard you say, just at the end of an answer to Ms. Khalid, that the PPSC is currently behind in all areas of hiring. Did I hear you correctly in that regard, or was that in the specific context of recruiting women and other visible minorities?

• (1750)

Ms. Kathleen Roussel: It was in that specific context. We're not having difficulties generally across the board with recruitment, except, I would say, in certain areas of the country. You can appreciate that recruiting a senior lawyer to work in Nunavut is quite difficult. In some areas we have taken on an exercise where we really are trying to sell not just the PPSC but also the work environment and the community in which the lawyers would be practising. We've

started to experiment with it. This is a new undertaking. We decided to launch it at our managers meeting last fall, so it's quite new.

I think we want to make sure, when we are going out to try to recruit young lawyers and also experienced lawyers, that we're able to properly explain to them the mandate and the exciting work of the PPSC, as well as the role in the justice system, which I think is quite important. I think sometimes we undersell the importance of the work. We refer to that as “branding”. We're trying to really brand ourselves as an employer of choice, based in large part on the kind of work we're doing, but also sometimes on the environment in which people would be working.

We've also started to look at developing our own articling program. In many regions we still are partnering with Justice Canada. That's not a bad thing. It's actually served us quite well. But in some of our larger centres, we think we would be able to recruit articling students who, rather than doing a rotation with us, would spend a year with us. In places like Old City Hall in Toronto, which I believe is the busiest court in Canada, it's quite crucial for us.

The other thing I would say is that four years ago, we developed the federal prosecutor development program, or FPDP. It is a very novel program. I don't believe any of my provincial colleagues have it. When we hire a young lawyer, we set out for them a program of learning that will have them move from the hiring level into what we call a working level, and that comes with a substantial raise. We can move lawyers through that in usually three to four years. The reason it's different is that we do it without any competition. Once we decide that you've met the competencies required for our working level, you're simply promoted, without having to compete for a new job.

We have a number of programs. The branding is much newer. I think in a year from now, when I'm back here for main estimates or something else—presuming I am back here after today—I'll be in a position to tell you how that went.

The Chair: Thank you.

Seeing no other questions, do I have the agreement of the committee for us to go in camera to consider the appointment, and then hopefully make a decision?

Some hon. members: Agreed.

The Chair: Ms. Roussel, thank you very much for coming before us and talking to us. I don't want to pre-empt myself by saying that we look forward to working with you in the future, but I'm sure we do.

Ms. Kathleen Roussel: Thank you very much.

Have a good evening.

The Chair: Thank you.

If everyone who is not supposed to be here would kindly leave the room as quickly as possible, it would be very much appreciated. We are going in camera.

[Proceedings continue in camera]

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