



House of Commons
CANADA

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

JUST • NUMBER 041 • 1st SESSION • 38th PARLIAMENT

EVIDENCE

Thursday, May 19, 2005

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Chair

Mr. John Maloney

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• (0905)

[English]

The Clerk of the Committee (Ms. Diane Diotte): Honourable members of the committee, I see a quorum.

[Translation]

We can proceed to elect a chair or vice-chair.

[English]

I am ready to accept motions to that effect.

Mrs. Neville.

Ms. Anita Neville (Winnipeg South Centre, Lib.): I would like to put forward the name of John Maloney as chair, please.

The Clerk: Mrs. Neville moves that John Maloney be elected as chair of the committee.

[Translation]

Are there any other nominations?

[English]

Nominations are now closed.

Is it the pleasure of the committee to adopt this motion?

(Motion agreed to)

The Clerk: I declare the motion carried and Mr. John Maloney duly elected chair.

I invite Mr. Maloney to take the chair.

The Chair (Mr. John Maloney (Welland, Lib.)): Good morning, everyone. I thank you for your confidence.

I may be the shortest chair on the record of this committee, depending on what happens today.

Mr. Marceau.

[Translation]

Mr. Richard Marceau (Charlesbourg—Haute-Saint-Charles, BQ): Thank you, Mr. Chairman, and congratulations on your new position. I offer you my full cooperation.

I would like to ask you a question on the conduct of today's meeting. The minister is here, and I'm pleased to welcome him and hear what he has to tell us. However, last week, I introduced a motion that I would like us to discuss today. That could be done before or after the minister's testimony, and I would like you to

ensure that we have the necessary time to vote on the motion I introduced a week ago now. That would be very much appreciated. Thank you.

[English]

The Chair: Mr. Marceau, there's no one coming into this room at 11 o'clock. I would suggest that we do our scheduled meeting with the minister from 9 to 11 a.m., and then immediately move thereafter to discuss your motion, if that's okay with the committee and you?

Some hon. members: Agreed.

The Chair: At this time I'd call upon Minister Cotler to make his presentation, to be followed by questions and answers from our committee.

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

May I begin by offering my congratulations to the members of the committee on your appointment. I hope it's a long and sustaining one.

[Translation]

Mr. Chairman and committee members,

[English]

I'm pleased once again to meet with you to table the main spending estimates of the Department of Justice.

Joining me today is my Deputy Minister, John Sims, among other things a fountainhead of wisdom, whom I will be delighted to call upon and have that experience and expertise shared with you.

The Department of Justice plays a vital role in the enactment of Canadian laws and the promotion and protection of the rights and freedoms of the Canadian people. It initiates a broad spectrum of justice programs and policies and delivery of services for the Canadian people. It provides high-quality legal counsel to the Government of Canada and its departments and agencies. It seeks to ensure that Canada's system of justice is accessible, responsive, efficient, and fair, and it is increasingly engaged in building an international justice system.

While Canada's justice system is in many ways a model for many countries throughout the world, the system is under increasing pressure from transformative changes in Canadian society and in the world at large. As I discussed in my previous appearance before this committee some six months ago, these include such changes as the transformative impact of the constitutional revolution, the internationalization of human rights, the dramatic developments in aboriginal rights, the litigation explosion, the challenge of an increasingly diverse and multicultural society, and the emergence of globalization as a juridical as well as economic phenomena. Accordingly, as our world changes, so too must our approach to building an effective justice system, involving thereby a transformative justice agenda engaged in both domestic and international fronts.

Since I last appeared before this committee, I've identified nine areas of focus for 2005 and 2006 that will help to bring about these important changes. These are broad themes that will guide the work of the Department of Justice in this fiscal year, and I'll briefly discuss these priorities with you now.

The first is a matter of judicial appointments. If you'd asked me last year shortly after my appointment as Minister of Justice and Attorney General about my priorities, I would not have included judicial appointments amongst them. I've learned that this is a critical part of the administration of justice in this country. This is a legacy issue, and it will live on long after those who have the temporary stewardship of this position are no longer here.

[Translation]

That is why it is a great pleasure for me to take part in the appointment of two remarkable judges to the Supreme Court of Canada, judges Rosalie Abella and Louise Charron, who are, moreover, women. Thus, four of the nine sitting justices on the Supreme Court bench are women. Our Supreme Court is the most balanced in the world in this area. Moreover, wherever I go in the world, there is invariably respect and admiration for the case law concerning our Charter and the excellence and representative nature of our judiciary.

● (0910)

[English]

In all judicial appointments, merit is the overriding criterion for appointment. Excellence is a standard. A public protocol of professional qualifications and personal qualities that comprise the merit-based criteria have been published and shared with this committee. I'm also delighted that the appointments reflect the diversity of this country and our respect for that diversity.

[Translation]

We recently introduced a detailed proposal to reform the process for appointments to the Supreme Court of Canada based on the following principles: merit, constitutional framework, judicial independence and integrity of the courts, transparency and accountability, participation of Parliament, participation by the provinces and participation by the public.

[English]

Number two, promotion and protection of the Canadian Charter of Rights and Freedoms: this is one of the most compelling principles

and priorities on the justice agenda. As a law professor, but more dramatically now as a Minister of Justice and Attorney General of Canada, I believe in and appreciate the promotion and protection of the Charter of Rights and Freedoms in general and the equality rights and anti-discrimination provisions in particular.

Indeed, the constitutional revolution wrought by the charter has had a transformative impact, not only in how we teach law but in how we practice it, not only in how we litigate but more importantly in how we live.

[Translation]

In fact, we have shifted from a parliamentary democracy to a constitutional democracy. From umpires who must resolve inter-governmental disputes in a context often referred to as "legal federalism", judges have become the guardians of human rights because Parliament has conferred on them the power to protect our fundamental rights and freedoms.

From mere groups or individuals playing a passive spectator role before the power mechanisms of legal federalism, citizens have now become holders and demanders of rights, the scope of which would not even have been recognized by the courts some 23 years ago, rights accompanied by remedies that would not even have been entrenched before the Charter era.

[English]

Moreover, and this is less well known, but I suggest to you no less important in terms of our own responsibilities, this constitutional revolution in rights and remedies has generated ongoing corresponding obligations for the Minister of Justice and Attorney General of Canada. These include certifying that every proposed law and policy comports with the Charter of Rights and Freedoms; counselling departments and agencies of government, in my capacity as chief legal adviser to the government, on our fidelity to the charter, that is to say, creating a culture of respect in government for rights and freedoms; promoting compliance with our international law obligations where international laws have been characterized as a relevant and persuasive authority in the interpretation of the charter; directing that our interventions before the courts comport with the charter; ensuring that prosecutions are carried out in accordance with charter obligations; assessing applications for review of wrongful convictions in light of charter obligations; ensuring that mutual legal assistance on international legal cooperation, such as extradition, comports with the charter; and playing a parliamentary and public role, in terms of promoting awareness of the charter.

This brings me to the third priority: promoting an accessible, equitable and efficient justice system. This requires the sustained cooperation of federal, provincial, and territorial stakeholders, and it is a centrepiece of the federal, provincial, and territorial annual meeting of ministers of justice as well as of my bilateral exchanges with my counterpart ministers and civil society stakeholders.

[Translation]

The most important program, and an important component of access to justice, is legal aid, which is available to youth and economically disadvantaged Canadians who are involved with the criminal justice system.

Other programs that help make our system more accessible include services for victims of crime, youth justice initiatives, the Child-Centred Family Justice Strategy, the Aboriginal Justice Strategy, development of the official language minority communities and public legal education services.

• (0915)

[English]

The fourth priority is protecting the most vulnerable and promoting human dignity. This will continue to be a top priority. The test of a just society is how it treats its most vulnerable—aboriginal people, children, women, the disabled, and minorities. Each and every one of these groups must find its place in the justice agenda.

[Translation]

In particular, we must address the needs of Aboriginal justice, including the disproportionately high numbers of Aboriginal Canadians in the criminal justice system as both victims and offenders, and the under-representation of Aboriginals in the justice system, as both lawyers and judges. Accordingly, we will work to ensure that Aboriginal legal traditions are respected in our mainstream justice system, and continue to develop such programs as the Aboriginal Justice Strategy and the Aboriginal Courtworker Program.

The fifth priority is combating racism, hate speech and hate crimes, cyber crime, organized crime and trafficking in persons.

[English]

In our increasingly globalized world, this has become an increasingly important priority and challenge, particularly the combatting of terrorism while ensuring respect for human rights. Accordingly, as we promote and protect our individual and collective security through the combatting of international terrorism and transnational crime, we will ensure that our laws and policies comport with the rule of law; that no minority is singled out for discriminatory treatment; that respect for human rights is not compromised in the protection of our human security.

[Translation]

The sixth priority is combating racism, hate speech and hate crimes, which are an attack on the inherent dignity of human beings and an attack against our multicultural democracy.

[English]

We have developed a national justice initiative against racism and hate to address these issues both domestically and internationally, as mandated in the Speech from the Throne and as an important component of the national action plan against racism. Simply put, Mr. Chairman, as I said before, we envisage a society in which there is no sanctuary for hate and no refuge for racism.

Number seven is the improvement of our capacity for international legal cooperation. We must not only increase our level of cooperation, but also seek to exercise a leadership role in the building of an international justice system through the promotion of democracy, human rights, good governance, and the rule of law, and in the combatting of impunity and mass atrocity.

[Translation]

Canada's justice system, while not perfect, is recognized throughout the world as a model for the protection of rights, the celebration of diversity, and the safeguarding of an independent judiciary. Consequently, Canada has much expertise to share with the world. By working to improve national justice systems one by one, we can help build a world that recognizes the primacy of the rule of law.

[English]

Number eight is to support the whole of government with a comprehensive range of high-quality services. Simply put, there needs to be a greater appreciation of the increasing and compelling demand for these legal services and enhanced understanding of the need for increased resources to respond to this increased demand.

More specifically, this will involve a sustainable funding regime to accommodate the increasing volume and complexity of the demand for legal services, including the importance of anticipating and addressing legal risk management in instances of high-impact litigation, with potential impacts in the billions of dollars, as well as constraining our policy options; promoting awareness and compliance with domestic and international legal norms, such as the charter or international trade rules that increasingly underpin policy development; providing ongoing counsel; and respecting all government initiatives with a justice nexus early in the policy development process. This should be the case whether we're speaking about environmental protection, agricultural concerns, or an aboriginal justice initiative, as in a comprehensive proposal for the resolution of the residential school experience, or a health policy proposal, as in the matter of hep C compensation, or the corpus of concerns related to national security, or the basket of legal concerns related to Canada-U.S. relations and the like. Justice needs to have an involvement throughout the policy and implementation process in these whole-of-government initiatives and specific departmental and agency initiatives.

Number nine—the last priority, Mr. Chairman—is the issue of criminal law reform.

[Translation]

This is an ongoing process in which the Department of Justice is cooperating with its partners. Canada's criminal law has developed gradually, often in reaction to the pressures and events of the moment.

• (0920)

[English]

These contemporary law reform initiatives must take into account now the impact of the charter and the evolution of charter jurisprudence; the globalization of injustice and of justice as an antidote to the globalization of injustice; the domestication of increasing international law obligations; scientific developments relating to detecting and prosecuting crimes, such as DNA identification, which this committee has dealt with recently; the role of criminal law in protecting human rights, particularly those of the vulnerable, as we saw recently in the matter of the tabling of the trafficking legislation; and the combatting of economic crimes and corruption such as capital markets fraud.

Now we'll look at the present environment and expected outcomes for 2005 and 2006 in light of these priorities.

These priorities and principles, Mr. Chairman, represent the transformative justice agenda linked to the mandate of the Department of Justice and to my distinctive roles and responsibilities as both the Minister of Justice and Attorney General of Canada. Accordingly, in support of my role as Minister of Justice, the department pursues an active, people-oriented policy and program agenda involving those issues that affect profoundly the lives of Canadians. Our policies and programs as set forth above seek to protect the most vulnerable amongst us, promote and protect rights and freedoms, protect human security,

[Translation]

and also to prevent, reduce or resolve conflict, divert demand from litigation and provide targeted, effective and sustainable solutions to a wide range of problems.

[English]

From a fiscal perspective, through these programs we're able to transfer funding to our partners—provinces, territories, and various non-governmental organizations—to support federal priorities in such areas as aboriginal justice, youth justice, legal aid, the rights of linguistic minorities, and protecting the interests of families and children.

In support of my role as Attorney General, the department offers an in-depth set of comprehensive legal advisory, legislative drafting, and litigation services to all departments and agencies, the demand for which is increasing exponentially, as I've mentioned, creating increased pressures on the justice department.

[Translation]

Despite these growing demands and pressures, the Department of Justice is determined to achieve the following two strategic outcomes in fiscal 2005-2006.

Strategic Outcome 1 is a fair, relevant and accessible justice system that reflects Canadian values. This includes:

[English]

developing policies and laws involving the planning, development, and implementation of our justice and policy initiatives, reflected in our priorities as well as government initiatives with a justice nexus; delivering programs, as in the design, development, and implemen-

tation of cost-shared programs and contributions such as legal aid and youth justice; managing and coordinating strategic policies and priorities, as set forth earlier, in the identification of the priorities and policies that constitute the transformative justice agenda; in other words, giving expression to these priorities, these principles, and these policies in the tabling of the estimates themselves.

A total of \$415 million has been budgeted to deliver strategic outcome 1, as set forth in the estimates.

Strategic outcome 2 relates to a federal government whose justice-related initiatives are supported by effective and responsive legal services. This includes supporting programmatic initiatives across a range of federal government departments and agencies; providing legislative services to government, including the drafting of all government bills and proposed regulations; providing legal advisory and litigation services in both domestic and international matters, whose volume and complexities are increasing exponentially; providing prosecution services, including the conduct of criminal prosecutions in money laundering matters and drugs; responding to extradition requests, which are also increasing apace; and working to combat, among other things, terrorism, organized crime, and cyber crime.

A total of \$557.5 million has been budgeted to deliver strategic outcome 2.

[Translation]

I now come to Benefits for Canadians and the Estimates of the Department of Justice. In the 2005 Budget, in the section entitled Delivering on Our Commitments, the Government of Canada provides funding for measures that will help address the social origins of crime and victimization in Canada, and to ensure that war criminals do not find safe haven in Canada.

For the Department of Justice, that means lending a hand to the Victims Initiative, the purpose of which is to increase victims' trust in the criminal justice system by raising awareness of victims' needs among criminal justice system staff and the public. The initiative makes it possible to consider the victims' viewpoint in developing legislation and policy, and to make victims and their families more aware of available services and assistance, and to facilitate the delivery of third-party services and assistance to victims. The Victims Initiative will receive \$25 million over the next five years.

• (0925)

[English]

On the law enforcement front, we are renewing the integrated proceeds of crime initiative on an ongoing basis. This is known to you. The integrated proceeds of crime initiative will receive funding of \$117 million over the next five years.

Similarly, we have funds committed with respect to the bringing of war criminals to justice, which we've also identified as a priority, and there will be an annual allocation of \$15.6 million for this purpose.

In 2005-06 the Department of Justice also forecasts an expenditure of \$399.6 million on programs to serve Canadians, particularly the most vulnerable among us, as I mentioned earlier, and particularly with regard to criminal legal aid as well as an overall legal aid renewal strategy.

Mr. Chairman, I've outlined the priorities and policies that constitute the blueprint for a transformative justice agenda whose basic purpose is the promotion and the protection of the well-being of Canadians. I've also sought to describe the transformative domestic and international environment in which we live that generates both the increased demand for such a justice agenda and its related programs, our policies and services, but also the increased pressures generated from within and without.

As Minister of Justice, I am committed to focusing on the priorities we've established and to achieving the goals we have set. The spending estimates I am tabling today will help us to realize this justice agenda and to meet the ever-increasing demand for our services. I believe these investments will help make our system more accessible, more inclusive, and more equitable for all Canadians.

I welcome your questions and look forward to your feedback.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Minister.

Mr. Thompson, for five minutes.

Mr. Myron Thompson (Wild Rose, CPC): Thank you, Mr. Chairman.

• (0930)

Mr. Vic Toews (Provencher, CPC): A point of order.

Seven minutes?

The Chair: It's five, five, five.

Mr. Vic Toews: All right. Fine.

The Chair: You've been away too long, Mr. Toews.

Mr. Vic Toews: That's fine. I just thought there was an error.

The Chair: Go ahead, Mr. Thompson.

Mr. Myron Thompson: I hope you're starting over.

The Chair: Yes, I am.

Mr. Myron Thompson: Thanks to the minister for being here.

You know, Mr. Minister, you speak rather rapidly and you read your material rather quickly, and I think most people would have a really difficult time retaining much of anything. I know it's being broadcast throughout Canada, and I can tell you for sure that average Canadians out there are probably sitting back and wondering about the very important questions that are going through their minds, the people who are out there on the ground, working day in and day out and seeing some of the things that are going on in our country.

I've been here 12 years, Mr. Minister. For 12 years we've been talking about a drug strategy—still not in place—and drugs are unbelievably worse than ever. We talk about grow ops and we talk about the industry growing day by day.

The commissioner from the penal system was here the other day informing us that 50 gangs exist in our penitentiaries. These gang

members in the penitentiaries are training individuals in the pens who are being released into our society and joining up with gang members all across the country.

It's completely out of control. Yet 12 years later, we're still talking about how tragic this thing is. We have done nothing. There is no drug strategy in place, and it's one of the worst things in our society. Our penitentiaries are filling up because of that. I don't understand how the minister can sit here and not get specific with people about how we are going to deal with the very things that are infecting our lives. And drugs are one of the worst.

Crimes against children—we know about that. Twelve years ago I first raised in the House of Commons that child pornography was a serious problem and that we had to deal with it, and deal with it harshly and get rid of it in this country. Today, 12 years later, there are no new developments. Now, child pornography, which used to be a rather small industry, has become a billion-dollar industry. It's getting worse. Every year it gets worse and worse, but I hear no national or international strategy. I know there are some good things happening, mainly due to the police officers involved in working in this area, but as a member of government, I can take no credit for any improvements in this thing. I've only been asking for it for 10 or 12 years. It's still bad. It's worse than ever. Now that we've got the Internet, it's doubling daily.

Sentencing—I can only assure the minister that people are getting sick and tired of seeing people being arrested for serious drug crimes, crimes of child pornography, many other pretty serious assaults and things like that. What's happening? The good old cream puff, mushy sentencing of house arrest. The largest cache of child pornography in the history of the country was discovered recently. And what did they do? They sent the guy home. House arrest: back to his computer, back to his Internet, order in some pizza, and print some more child pornography.

I think we're acting like a bunch of cowards in this government when we don't really take a strong stand and fight against these very things. Yet this minister, you, Minister, you object to minimum sentencing because judges always lean towards minimum sentencing. Well, if that's the case, make the minimum sentencing so tough that these people out there are going to realize that maybe it isn't a good thing to get into these various areas to make a fast buck with no regard for the citizens or children of this land.

On parole, haphazard paroles are going on out there when we know full well through the case workers, through the psychologists, through all kinds of information, that this person will be a serious risk and will likely re-offend, and yet we constantly let them out.

Some hon. members: Hear, hear!

The Chair: Excuse me, Mr. Thompson, we need five minutes for question and answer. Do you have a question?

Mr. Myron Thompson: All I'm saying is that we have failed dismally, and this minister, if he says otherwise, is wrong.

He's done a good job of protecting the charter, I'll agree with that, because all the prisoners can vote and they're really treated well. All those flowery things are really good, but for God's sake, when are you going to smarten up and fix the real problems in this country to the satisfaction of the Canadian people, instead of using all the flowery words that I heard this morning?

Some hon. members: Hear, hear!

Mr. Myron Thompson: He doesn't even have to answer if he doesn't want to.

Hon. Irwin Cotler: I'm not sure whether the honourable member even cares if I do answer, but I think the Canadian people might like to hear the answer.

I happen to respect his concern for the victims and the vulnerable, but maybe if he had listened to my presentation this morning rather than his preconceived questions, regardless of what I would say, he would have noticed that I have identified for the Canadian people, as a priority, the protection of the most vulnerable amongst us and the protection of the concerns—

• (0935)

Mr. Myron Thompson: It's words, but it's not happening. It's not happening, Mr. Minister. That's what I'm saying.

Hon. Irwin Cotler: I didn't interrupt you. I think you should allow me the courtesy of a response.

Mr. Myron Thompson: I'll give you the courtesy of a response, but let's start acting.

The Chair: Mr. Thompson, please allow Minister Cotler to respond.

Hon. Irwin Cotler: On the matter of several of the issues you mentioned—gangs and penitentiaries and matters of parole—as you know, my colleague, the Minister of Public Security, has superintending authority in these matters and appeared before you, and questions were put in that regard.

With regard to sentencing—and I think this is an important concern—and in particular with regard to matters relating to child pornography, I've constantly stated, in terms of what's happening and what needs to be happening, specifically not in flowery words, the protection of children is my most important priority. I've cited my own daughter in educating me on this. You can't get more personal and more concerned in that regard than when it touches you in terms of your own family, as the Canadian people will understand.

That's why, in the matter of sentencing with respect to Bill C-2, we proposed a series of significant reforms to ensure that sentencing in cases that involve the abuse and sexual exploitation of children reflects the serious nature of such crimes. We proposed the most comprehensive set of enhanced sentencing regimes and penalties that has yet been brought forward by any government with respect to protecting children: increasing, for example, the maximum penalties on summary conviction for child-specific offences from six to eighteen months; doubling the maximum penalty on indictment for sexual exploitation of a young person from five to ten years; increasing the maximum penalty on summary conviction for all child pornography offences from six to eighteen months; in all cases involving the abuse of children, requiring sentencing courts to give primary consideration to the objectives of denunciation and

deterrence of such conduct; and making the abuse of any child an aggravating factor for sentencing purposes. I can go on.

I've also indicated that I'm open to any other suggestions the committee can come up with to better protect our children with regard to these most heinous and predatory of crimes. On that I'm on record on the ground, *sur le terrain*, doing whatever we can in a non-partisan way to protect the most vulnerable of the vulnerable, namely our children.

In the matter of a drug strategy, I suspect the honourable member has not seen, and I will not go into it now for reasons of time, a nine-point strategy with regard to combatting the whole issue of drugs in this country, with particular reference to the scourge—I've called it that, and I don't need the honourable member to tell me about the scourge—of grow-op operations in this country. In our proposed legislation, we have four calibrated offences, with increased sentencing attached to combat the scourge of grow-op operations; a whole drug education strategy that works with respect to prevention, as well as with respect to deterrence and enforcement.

I might add in that regard, because reference was made to there being no national or international strategy, that this was a subject of discussion just yesterday with the Attorney General of the United States, Alberto Gonzales, with regard to the whole issue of cross-border cooperation in the combatting of drugs.

The Chair: Mr. Minister, thank you.

Mr. Marceau, you have five minutes for questions and answers.

[*Translation*]

Mr. Richard Marceau: Thank you very much, Mr. Chairman. Mr. Minister, welcome to the committee.

Of course, we're always pleased to have you here. I'm convinced you know what subject we're going to discuss for a few minutes. I know you're always a well-prepared man. You're also surrounded by an extraordinary staff, who have no doubt prepared you well.

Chief Justice Michel Robert, of the Quebec Court of Appeal, was interviewed on the program *Maisonneuve en direct*, on November 19, 2004. The host asked him: "Mr. Robert, if you had been a supporter of the sovereigntist party or a member of the sovereigntist party, would you be on the Appeal Court bench?" Mr. Robert answered: "No, I wouldn't be on the Appeal Court bench because I believe the Government of Canada appoints people with federalist convictions to positions that are to be filled in the hierarchy." Question from the host: "So there's a political dimension." Answer from Judge Robert: "There's a constitutional aspect, I would say, yes, but beyond that, I believe the system has to be made more transparent [...]"

On April 26 of this year, Michel Robert said two things: "One should normally adhere to the Canadian federal system because that's the system in which we operate. I have nothing against anyone who wants to change the Canadian system to another system — he's perfectly free to do so — but I don't think he should hold judicial office." He continued: "To be appointed, to hold office in the federally-appointed judiciary, I believe it's a kind of prerequisite; you shouldn't be sovereigntist. Ultimately, I believe that's the opinion generally held by all judges in Canada."

Mr. Minister, if this isn't discrimination based on political opinion, what is it?

Hon. Irwin Cotler: Mr. Chairman, I'm going to repeat what I have clearly stated on a number of occasions when the member has asked me that question. This is also a response to what he has shared with us concerning Judge Robert's remarks. Mr. Robert moreover has corrected, for the public, the interpretation that was made of what he said. In my view, previous participation in public life should not disqualify anyone from seeking judicial appointment.

Past political activities are of little importance to me. Whether one has belonged to a political association of any candidate, or whether one is a sovereigntist or a socialist, is of no importance to me. The only question that must be answered is this: what are the candidate's merits? On the contrary, those who have taken part in public life often have personal and professional qualifications that may be considered an asset for a member of the judiciary. This is not relevant for me. I don't want to take a discriminatory approach toward those who take part in public life. I'm saying that shouldn't undermine judicial appointments.

● (0940)

Mr. Richard Marceau: Mr. Minister, I completely agree with you when you say that previous participation in public life should not be a barrier to judicial appointment. However, there's a bigger problem than that. I'll quote part of an article in *The Gazette*, which is not a very sovereigntist paper:

[English]

A Gazette study shows that nearly 60% of Quebec lawyers appointed to the bench by the federal government since the 2000 election contributed to the Liberal Party of Canada in the years leading up to their appointments.

[Translation]

Mr. Minister, if we limit ourselves to lawyers who have worked in private practice, that percentage increases to 72 percent. Don't you think that it would change the situation if three-quarters of the lawyers in private practice who were appointed judges contributed to the Liberal Party of Canada. Taking part in political life shouldn't be a barrier to judicial appointment. However, it seems that to be appointed judge, you have to be from a certain political family.

I know you're a recognized legal specialist. So you're aware of the old common law maxim that justice must not only be done; it must also be seen to be done. This figure — 72 percent of judges who had previously been in private practice gave money to the Liberal Party — doesn't it bother you? As a lawyer, doesn't that bother you?

Hon. Irwin Cotler: I have to say I have no knowledge of these matters regarding contributions to political parties. I must also say it's a bit absurd to suggest that a contribution can buy a seat on the bench, when you know how the appointments process works and that judges are appointed by federal authorities on the recommendations of an independent committee in each of the provinces.

Those committees are independent of the Department of Justice and report to the Commissioner for Federal Judicial Affairs. They consist of judges, representatives of the provincial government and of the local bar association, as well as individuals appointed by the Minister of Justice who are not specialists. In my view, it's absurd to think anyone can buy the recommendation of organizations like those I've just cited. Since this system was adopted, only candidates

recommended by those committees have been appointed judges. Personally, I can only appoint as judges people whose names have been recommended by those independent committees.

It is a well-known fact that the present process enables the Minister of Justice to receive general, objective advice on the qualifications of candidates for judicial appointments. Our judges are respected, and their qualifications and commitment are known not only in Canada, but also internationally. That in itself proves that this process is effective. I find it hard to understand how anyone can say that judges who are appointed to the judiciary have bought their appointments. That's an injury to the reputation of judges and to judicial independence.

[English]

The Chair: Mr. Comartin, for five minutes, question and answer, please.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): I want to follow this point up.

Mr. Minister, quite frankly, I have to say to you that I find some of the terms you use somewhat offensive, to suggest that Mr. Marceau or I are advocating that there's been a purchase of judgeships. Neither one of us is suggesting that. What we are suggesting is that there is a built-in bias by the existing system in favour of Liberal-oriented candidates—that is large L Liberal-oriented candidates. That's what we're suggesting to you, and we believe there's enough evidence there to support that.

Quite frankly, your position would have perhaps some more merit if there wasn't an alternative. I've raised with you a number of times the Ontario alternative, Peter Russell's position, which he took way back in the mid to late eighties, that eventually got into play. We've seen that system work very well for provincial appointments in the province of Ontario.

The key difference there is the composition of the committee. Let me suggest to you the composition of that committee is appointed by the government in power at the time. In most of those appointments there are going to be people who, again, are going to be oriented to the government in power, whether it be an NDP government, a Liberal government, or a Conservative government. We'll eliminate the Bloc for the time being.

But it is possible, Mr. Minister, to improve the system. There is enough there to suggest that our appointments are somewhat tainted by this built-in bias. When you have a clear system as an alternative, why don't you adopt it?

● (0945)

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

I'm pleased to deal with the question that there is a built-in bias, the reference you made to Peter Russell's recommendations—some of which were made before the present system was put into place—and any suggestions that may emanate from you or *un député du Bloc* or anyone else.

Let me just reiterate some basic points on this. If there's an allegation of built-in bias, let us look at the system with respect to this allegation and see what in fact does take place.

One, the nominations process for the federal judiciary is an independent one, at arm's length from the minister.

Two, the process is under the superintending authority of the Commissioner for Federal Judicial Affairs.

Three, the process is organized around judicial advisory committees in each province composed of representatives from the judiciary, the Canadian Bar Association, the provincial law society, and the provincial attorney general, as I mentioned earlier in French—all respected organizations.

Four, judicial advisory committees vet applications from candidates in accordance with prescribed merit-based criteria that are publicly available on the website.

Five, the judicial advisory committee in its evaluative process then recommends candidates for consideration by the Minister of Justice.

Six—and this is very important—the minister can choose only from candidates recommended by the judicial advisory committee. No candidate has ever been chosen that was not recommended by the committee.

Seven, the minister himself engages in a consultative process with respect to the candidates recommended by the advisory committee.

Eight, the candidate's political affiliation, if any, is not a relevant criterion. It will not be a factor in the choice of a candidate, nor will it be a factor in the exclusion of a candidate. The last time I looked at the charter, freedom of political association was a protected right.

Nine, the allegation that candidates who contributed to a political party of their choice were appointed to the bench are just that—allegations. Even if true, they demonstrate only a correlation, not a causative factor. Clearly, people should not be appointed because of such contributions, but they should not be discriminated against either, lest we begin to discourage participation in the political process and have the democracy of that process suffer.

Ten, the implication that some candidates who supported a political party were appointed to the bench solely because they supported a political party—and I said the implication or inference—and not because they were otherwise meritorious candidates can tend to impugn the independence and reputation of the judiciary.

To conclude, the nominations process, in my view, is independent, merit-based, and accountable. This does not mean, Mr. Comartin, that improvements cannot be made. This is why I convened the chairpeople of all the judiciary advisory committees, in order to listen to their suggestions regarding this process.

I will say with regard to Peter Russell's specific recommendation regarding the process in place in Ontario for provincial candidates that the problem with a shorter list is if you have a shorter list that's only candidates of a corporate and commercial nature, and the court—and this is part of the consultative process—identifies for you that their needs are for *un criminaliste*, a criminal law specialist—

Mr. Joe Comartin: That's not true, Mr. Minister.

Hon. Irwin Cotler: Mr. Comartin, with all due respect—

The Chair: Mr. Comartin, we have to move on.

Thank you.

Hon. Irwin Cotler: My own view is that one has to take into account the benefit of a larger list of nominees.

The Chair: Minister Cotler.

Hon. Irwin Cotler: But I'm open to—

The Chair: Minister Cotler, we have to move on, please.

Mr. Macklin, for five minutes, please.

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

I received a call from a constituent this week. Initially, it sounded like it was a call that related to the guidelines for child support. He was one of the 71,000 people who find themselves in this position almost on an annual basis.

He went on to explain to me that he'd had high income in the last couple of years, but his income had dropped significantly. He had an order under the child support guidelines for a particular amount of payments. At the moment, he has found himself a low-income proposal for bankruptcy that has been accepted by his creditors. He found himself with this order in place that was way beyond his ability to pay. Trying to keep a roof over his head was going to be a major problem for him.

When he was asked why he didn't get a variation order, he said he couldn't get a variation order at the moment because he didn't have the money to hire a lawyer. He was then asked why he didn't go to legal aid. He said he'd been to legal aid, but his gross income was over the threshold. Therefore, he couldn't get the variation order and was going to lose what little he had.

The question I raise with you is this. How do we deal with situations like that, when it's not just the poor of the poor who don't have access to justice, but rather it's others who find themselves in circumstances like this and simply don't have access to the justice system we've put in place? Is the answer that we need to do more work with our civil legal aid programs? Do we have to encourage some type of pro bono exercise in order to assist in situations like this?

It is my belief that there are many more than just the constituent who called me who find themselves caught by this. In fact, we seem to provide an opportunity to resolve it, but it's the access issue that is of concern. Could you comment on this and provide some light to people who find themselves in this position? How might we amend or modify the system we presently have in place or encourage some alternative means to assist people in that situation?

• (0950)

Hon. Irwin Cotler: Thanks for your question.

If we state, as a matter of general principle, that the federal government is committed to ensuring that economically disadvantaged Canadians have equitable access to justice, criminal legal aid, and the like, the proper answer could be, yes, that's a good statement of principle, but in real life it doesn't work out that way. And you've given an example in that regard.

I'm not unmindful of the demand. In fact, my first involvement was as a poverty law lawyer, involved in the founding of the Pointe-Saint-Charles legal clinic in Montreal and other storefront legal services across Canada. So I began as a poverty lawyer, and I know what it means not to have access to justice.

In the matter of criminal legal aid, we've sought to augment our transfers to the provinces and territories by \$125 million over the past three years. Now there's a total of some \$371 million with respect to criminal legal aid.

The issue that's pressing at this point, of course, and you gave an example to this effect, has to do with the whole issue of civil legal aid. With regard to civil legal aid, this is a matter of provincial jurisdiction, both with respect to the determination of the nature of the aid and the delivery of service. But I don't want to leave it on a jurisdictional level. That won't respond to the person who calls you. They don't care who has the jurisdiction; they want to know what they can do with respect to that human situation.

As I said, we have sought to provide provinces with \$119 million in criminal legal aid systems at this point, for the next fiscal year 2005-06, of which \$11.5 million is for civil legal aid involving immigration and refugee matters. The answer could come back that, yes, but I don't have an immigration and refugee thing. We also have family justice concerns in civil legal aid. We have income security concerns with regard to the elderly. I could go on.

On civil legal aid, we are providing close to \$1 million for civil legal aid pilot projects. We're providing \$4.86 million for the territories for their access to justice services, which has a civil legal aid component. We estimate that the total expenditures on civil legal aid in the provinces and territories now are themselves probably over \$300 million. We do have, although it's unspecified, the exact aid here in terms of the Canada social transfer.

Therefore, having said all that, recognizing an increased demand for unmet civil legal aid, we've asked the federal, provincial, and territorial ministers to come up with some resolve in this matter—they're to report back next month to us—with regard to the principles respecting civil legal aid and, most importantly, the nature of the unmet legal need.

I've already spoken to the federal Minister of Finance and said it's a priority for us in the Department of Justice and it's a priority with respect to people on the ground that we augment the support system for civil legal aid in this country. It goes to the question of protecting the vulnerable, it goes to the question of access to justice, and it goes to the question of having a responsive and equitable and inclusive legal system.

• (0955)

The Chair: Thank you, Mr. Minister.

Mr. Toews, five minutes, sir, questions and answers.

Mr. Vic Toews: Thank you very much, Mr. Chair.

With respect to the comment Mr. Marceau and Mr. Comartin raised about the issue of the judicial appointments process, I share that concern. Notwithstanding your explanation, given the failure to properly explain what has been going on there, I'm also going to be supporting Mr. Marceau's motion in respect of the chief justice. It is an unfortunate way to have to proceed, but, quite frankly, we aren't getting very straightforward answers on this entire issue, and I'm disappointed. I'll just leave that comment.

The second comment I want to make, before I get into my question, is on the issue of child pornography. I heard my colleague, Mr. Thompson, express his concern about child pornography. Mr. Minister, all I want to say is that the situation is simply unacceptable. I speak with line prosecutors. I speak with police officers. The ability to prosecute effectively and to actually send these individuals away so that they're not hurting children is simply not there. Our children are at risk, and in 12 years this government has allowed the situation to deteriorate. House arrest for these kinds of sexual predators is an insult to our children. It's a crime against our children.

I want to work with you, Mr. Minister, with respect to that. I believe your heart is in the right place and that you do care about these children, in the same way Mr. Thompson and I do, and that you will do something. I want to work with you on that, but I don't see anything in Bill C-2 that will really change things.

The last point is this. I've received some complaints from your department. Some were as a result of travelling I've done across the country, meeting with prosecutors, policy people, and others. I don't always take these complaints at face value. I know everyone has an axe to grind, and we sometimes have to look at the truth or try to determine what the issue actually is. But from what I'm hearing from inside your department and from people who approach me, my general impression is that your prosecutors are starved for resources and they are basically burning out. It is a serious issue with respect to the big drug crimes prosecutions that they're doing and in other areas of the country where they have other types of responsibilities.

At the same time, I hear from people who have done policy work that they are not as busy as they wish they could be. I see that you're quite well briefed on policy issues. The complaint I'm hearing is that pet projects for the minister get all the attention and all the resources, but some of the things that aren't quite as popular, those line prosecutions such as those drug prosecutions in downtown Vancouver or downtown Winnipeg or downtown Calgary, are not getting the resources.

Rather than simply pouring more money into the system, is there a way of looking at maybe shifting some of the resources to give prosecutors a bit of a hand? I speak as a former prosecutor. I know what these people go through. Life under the charter has not made life much easier for them. You know yourself what warrants are all about now. What used to take a 10-minute conversation with a magistrate now is an all-day affair. That doesn't just affect federal prosecutors, but it also affects provincial prosecutors and police.

I'm wondering if you have looked at shifting some of those resources, Mr. Minister.

• (1000)

Hon. Irwin Cotler: Thank you, Mr. Toews, for a very thoughtful set of questions.

On the matter of child pornography, I want to state parenthetically that I believe I did give a specific response to Mr. Marceau's question regarding Justice Robert. I was very explicit that political affiliations will not be factored into any consideration for nomination for the courts.

But on the child pornography issue, number one, in our legislation, Bill C-2, we've broadened the offence of child pornography, as you know. I won't go into it.

Two, we sought to clarify and narrow the defence with respect to child pornography, recognizing that child pornography is always a crime. There is, in that sense, no defence to the crime of child pornography. With respect to any legitimate use, only with a harms-based approach can there be any kind of a defence such as prosecutors having in their possession pornographic materials for prosecutorial purposes.

Third, we've created a new category for sexual exploitation of youth between 14 and 18 years of age. I know that may not go far enough; I'm just going through the initiatives. We've increased, as I indicated earlier, maximum sentences. But that's a specific concern.

Let me get to your point about house arrest. To use your words, it can constitute a "crime against children". You see nothing in the bill that would respond to concerns regarding conditional sentencing and the like. One of the reasons is because at the federal-provincial-territorial meeting of ministers of justice in January, we agreed, among us, that conditional sentencing in many cases does a lot of good, but in some cases, the purpose and principle for which conditional sentencing was established is being breached. And in a matter of child pornography, I am open to doing away with the notion of conditional sentencing. I think I told you this in our own private discussion. I'm saying this thing—

Mr. Vic Toews: You did. I didn't want to raise that, Mr. Minister, but because you raised it...

Hon. Irwin Cotler: I'm saying publicly that I am open. When it comes to the question of the protection of children, when it comes to the kind of predatory abhorrent, obscene practice of child pornography, I'm open to whatever remedial approaches may assist in that regard.

On the matter of the prosecutors, I have met with our prosecutors across this country. I agree with you, I think they are under increasing pressure from, among other things, the constitutionaliza-

tion of criminal justice under the charter. But the sheer volume and complexity, whether we're talking about a mega-trial and so on.... So there is an increased pressure resulting from an increased demand. They are underresourced. I have said before, and will repeat again publicly, that we do need to give them more resources.

On the matter of the redistribution of resources now, I think it's important to appreciate, and I'll close on this point.... You said that maybe we're giving more to policy than to our services, including prosecution. I want to say that approximately 4,622 full-time employees, or 92% of the total, are devoted to the Attorney General function of providing legal services to client departments, including prosecutions. Only 414 full-time employees, or 8% of the total, are involved in developing policies and laws delivering programs managing strategic priorities and the like. So we, right now, are allocating 92%, within which is the prosecutorial function in that regard.

So from a budgetary point of view, in terms of our internal distribution, I think we have it right. The problem is that we still don't have enough resources for the prosecutors to do their job given the increased demands and pressures on them, as you described and as I share with you.

The Chair: Thank you, Mr. Minister.

Monsieur Ménard, pour cinq minutes.

[Translation]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): Thank you, Mr. Chairman.

Mr. Minister, we don't have much time. I have about 10 questions to ask you, and I would like to hear your answers. I'll try to limit myself to three questions. Could you give me fairly brief answers so that we can address these three subjects: the Criminal Code reform, drafting federal statutes to make them understandable and privacy?

You addressed the subject of criminal law reform. I know you haven't tried to copy what I said, but I could have sworn I heard a federal Minister of Justice 15 or 20 years ago — long before I was in politics — announce at the time that the Law Reform Commission of Canada would try to revise the Criminal Code. Where do we stand on that? Have you abandoned the Criminal Code, which was revised by the Law Reform Commission of Canada at the time? Where does the Criminal Code reform stand?

• (1005)

Hon. Irwin Cotler: Thank you for your question, Mr. Ménard.

No, I haven't abandoned the project. It's a matter of resources and day-to-day obligations. Thus far, I must say...

Mr. Serge Ménard: I believe you misunderstood me.

I asked you whether you had abandoned the new Criminal Code project developed by the Law Reform Commission of Canada. Have you abandoned it and moved on to another reform? That's what I'm asking you.

Hon. Irwin Cotler: No, I haven't abandoned it. I took part in the work of the Law Reform Commission of Canada at the start. I've remained faithful to it to date.

A few days ago, I also talked to the new Chair of the Law Commission of Canada, Yves Le Bouthillier, about this challenge you've just referred to. Privacy law is still a priority for me. It's one of our priorities.

It's not just a question of resources, but also a question of time and obligations. It's a priority for us.

Mr. Serge Ménard: That's good.

Second, I noticed very early on in practising law that poorly drafted statutes were first poorly understood, then being poorly applied. Federal statutes have long been unreadable. An effort was made at one point. It seems to me that effort has stopped because statutes are now completely incomprehensible.

And yet efforts have been made in Quebec. Quebec's Charter of Human Rights and Freedoms is a text that is understandable and easy to teach to students. The Civil Code is understandable, and we can cite from it. If you cite passages from federal statutes to students, I assure you that few people will understand. Are you aware of this fact, and do you intend to make efforts to make federal statutes understandable so that they can be written in accessible language?

I had the same objective when I was Minister of Justice in Quebec, but I wasn't very successful. I nevertheless appointed Louis Borgeat associate deputy minister of legal and legislative affairs.

Whatever the case may be, I imagine this is a concern for you. Are you going to make it one of your department's objectives?

Hon. Irwin Cotler: I'm going to ask my deputy minister, Mr. Sims, to answer because he has considerable experience and expertise in this area. However, I want to emphasize that, in my mind, the Civil Code is more than a statute: it's a blueprint for a society.

As regards Quebec's Charter of Human Rights and Freedoms, I agree with you: the text is clear. If I were teaching, I'd use it because it's an excellent presentation of rights and freedoms in a language that can be understood.

John, I'll hand over to you.

Mr. John Sims (Deputy Minister and Deputy Attorney General, Department of Justice): Thank you, Mr. Chairman.

Obviously, sir, it's a constant struggle to find ways to draft statutes in a clear, accessible manner.

That depends in part on the subject because some are harder than others. I'm thinking of the Income Tax Act. The subject is so complicated that it makes even the most accessible, understandable statutes hard to read.

It's a constant struggle. We're doing our best. Around the world, Canada's statutory instruments are considered as models of clarity. Canada helps foreign countries draft their own laws using its bilingual model. However, I agree with you, sir, that this struggle and this work must continue.

• (1010)

[English]

The Chair: Mr. Ménard,

[Translation]

please be brief.

Mr. Serge Ménard: Mr. Minister, do you believe the Privacy Act should be reviewed in light of technological changes, as Canada's Privacy Commissioner thinks?

Hon. Irwin Cotler: People who know me know I'm not in the best position to answer a question related to technology because I'm not familiar enough with technology. However, I've brought an expert, Mr. Bill Pentney, and I'm going to ask him to try to answer your question.

[English]

The Chair: A brief response, please.

[Translation]

Mr. Bill Pentney (Senior Assistant Deputy Minister, Policy Sector, Department of Justice): Mr. Chairman, questions related to privacy and technology involve a number of aspects of government work. They are related to the Anti-terrorism Act, for example, and to other government operations. So every aspect of the legislation to which technological questions apply is always reviewed.

It isn't possible to resolve all technology-related issues through a single act. We're trying to meet the challenges by reforming the Criminal Code, studying and revising anti-terrorism legislation and other statutes. For example, we're trying to introduce into the Criminal Code provisions to prevent the corruption of children via the Internet.

We don't anticipate an overall reform. We're trying for the moment to respond to technological issues in specific fields. However, this issue is also a concern for a lot of people in government because it also concerns the delivery of government services.

[English]

The Chair: Thank you.

Mr. Comartin, five minutes for questions and answers, please.

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

Mr. Minister, to go back to our last round, I just want to say how much I disagree with your assessment of how the Ontario system works. There is no suggestion within that system—and I say this coming from a smaller community rather than one with large corporate law firms.... The judiciary is well represented and reflective of the community as a whole, both in terms of small law firms and the broader multicultural composition of our society.

Having made that statement, I am wondering if your department... As I understand the system now, the committee makes recommendations based on three categories, those candidates who are highly recommended, recommended, and not recommended. Have you done any analysis of how many of the appointments have come from the highly recommended versus the mediocre recommended category?

Given your tendency to go on with your answers, could you also advise us where we're at with the Judges Act and the proposed increased compensation of judges, and how much that will cost the federal budget?

Finally, are the figures we have today in the existing budget, or are they increases that would come in addition to the existing budget proposal?

Hon. Irwin Cotler: With regard to the Ontario system, when I said I was open to any suggestions, that included those that may emanate from the Ontario model. I did a study of this before I became a minister. I'm not saying the judiciary as appointed does not reflect the community. I'm saying there may be a constraint if you've got a short list only. It may happen that for a particular appointment there are only corporate people on that short list, but the court whom you consult for purposes of that appointment may say they need a criminal law person. If your list was longer, you would have a better capacity to be flexible. That's all I'm saying. I'm not saying that the court did not reflect the needs and the nature of the community as a whole.

In the matter of highly recommended, recommended, and not recommended, you're correct that the person has to fall into a category of either highly recommended or recommended. I wouldn't say that recommended people are to be characterized, let alone disparaged, as being mediocre. If you reach the threshold of recommended, it means the committee is coming back with a judgment that a person is a meritorious candidate for the bench. It may be that he is not as outstanding as those in the highly recommended category, but he is certainly meritorious with respect to appointment.

Have we made a statistical study with regard to highly recommended, recommended? No, we have not done that. I can tell you, though, that in many of the instances I've done some spot checking. In other words, I've taken a look at those who are recommended or highly recommended. I've looked at the files. I've not always found a discernible difference. If you're a law professor, you may give one student an A and another an A minus. Both of those students would qualify for graduate school or to be a research assistant. The margin of difference may be something of a nuance, and other considerations are taken into account. If the student who has an A minus is an expert in criminal law and the student who has an A is an expert in commercial law, and if the professor needs a research assistant that summer with expertise in criminal law, he or she might well take the student with the A minus rather than the A.

It's the same thing with regard to recommended and highly recommended. We have not made an empirical study, but I work from the highly recommended category because I believe this should be the preference with respect to appointment of the judges. I will

say, however, that those who are in the recommended category have also been meritorious candidates worthy of appointment.

• (1015)

Mr. Joe Comartin: My question is with regard to the Judges Act.

Hon. Irwin Cotler: With respect to the Judges Act, we have been tabling a significant number of pieces of legislation. We have been going with regard to a parliamentary timetable set out some time ago. We would expect to table that legislation in the near future, if Parliament and the government are not adjourned for an election.

With respect to the cost of the Quadrennial Commission and its work, I'm not aware of what the cost is. I'll try to provide that answer for you.

Mr. Joe Comartin: The increase—

The Chair: Thank you, Mr. Comartin.

Mr. Joe Comartin: I didn't get an answer, Mr. Chair, to my other question about whether it's in the budget. I just need to know whether it's in the budget.

The Chair: A quick response, please.

Hon. Irwin Cotler: We'll have to get back to you on that.

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

The Chair: Thank you.

Mr. Cullen, please, for five minutes for questions and answers.

Hon. Roy Cullen (Etobicoke North, Lib.): Thank you, Mr. Chair. Thank you, Minister.

I have a couple of topics that we have discussed before. One has to do with the sanctions related to gun-related crime and gun smuggling. The second topic is the integrated market enforcement teams or the fight against market fraud. Let me begin with that one.

Our government introduced some market fraud legislation a couple of years ago to deal with fraudulent activities as they relate to our securities markets, with the idea of protecting Canadian investors and people with investments in pension plans against fraudulent promoters or people who are putting fraudulent information into prospectuses, etc. Part of that included funding for some justice lawyers to be part of these integrated market enforcement teams in the regional set-ups across the country. I'm wondering if the lawyers are in place, because the RCMP and other law enforcement people can collect a lot of information and evidence, but they do need the help of lawyers to put it in front of a court.

Second is gun crime. The former Chief of Police of the City of Toronto, Julian Fantino, came out and called for a ten-year mandatory sentence for a gun-related crime. We know that won't meet a charter test, but between that and what we have today, I'm wondering if the minister can comment on where we could go with that, and also with gun smuggling. Fifty per cent of the guns that end up in Toronto come from the United States. In my riding of Etobicoke North, we have a huge incidence of gun-related crime and drug-related crime. In fact, in 2003 there were some 12 or more gun-related murders related to drugs. I'm wondering if the minister could comment on those aspects: the integrated market enforcement teams, and sanctions for gun crime and gun smuggling.

• (1020)

Hon. Irwin Cotler: I'm going to also invite and involve our new deputy minister, Bill Pentney, who has particular expertise in both the areas you've mentioned.

I just wanted to say that, as you know, Bill C-13, with regard to capital markets fraud, was enacted in March 2004 and came into effect in September 2004. It introduced two new offences to fill certain gaps in the law: insider trading and employee intimidation. It increased penalties for existing market-related crimes and enhanced evidence-gathering tools for police. The whole purpose here was that in protecting against capital markets fraud, we would protect investor confidence and in fact help to protect our market as a whole.

The bill will strengthen, therefore, the prosecution of capital markets criminal fraud through concurrent jurisdiction that allows for the addition of federal resources to enhance the prosecution of these resource-intensive crimes. Proposed joint protocols with provincial prosecution authorities will also protect the traditional provincial role and ensure a cooperative relationship between the federal and provincial authorities in that regard. This is something that has as well been in discussion with my counterpart.

The integrated market enforcement teams are led by the RCMP, justice prosecutors as advisers, forensic accounting services, and professionals from relevant disciplines. They are in the four key financial centres of Toronto, Vancouver, Montreal, and Calgary. The federal government has committed up to \$30 million a year, when it is fully phased in, for this coordinated national enforcement effort working with the provinces.

With regard to any further discussion on that, and the matter of gun-related crime and sanctions, I'll turn it over to Bill Pentney.

Mr. Bill Pentney: Thank you, Mr. Chairman.

With respect to the integrated market enforcement teams, as the minister said, the government has introduced legislation that depends in part on achieving a degree of cooperation with the provinces in regard to who will prosecute. Agreements are being put into place in terms of who will take the lead in prosecuting these serious and very troubling crimes. Prosecutors are being put in place to work with the RCMP as part of those teams. So those teams will be in place.

The agreements are being reached with the provinces. In the very near future all of those teams will be up and running. Having said that, I think no one should expect that there will be a flood of prosecutions immediately launched, because these are among the most complex crimes to investigate. The integrated teams will take

some time to be able to address them. But they are being put in place; the agreements have been reached with the provinces in terms of a cooperative approach to prosecutions; and that will be moving ahead.

In respect of firearms and the commission of offences, this is a difficult and troubling social issue, there's no doubt. But we must recognize that the Criminal Code already has very harsh penalties that can be invoked, where judges deem them appropriate, to address the use of guns during the commission of crimes. They range from a minimum of four years to a maximum of 14 years, or life in prison for serious offences committed with a firearm.

The issue of whether the framework of federal law is sufficient to deal with the seriousness of the crime is one issue. There's a second issue about the enforcement of gun-related crimes. As the minister said, we were in discussions yesterday with our counterparts from the United States Attorney General's office. The United States obviously shares the problem of gun-related crime. Their sense, like ours, is that it's mainly a challenge of enforcement and of putting the proper evidence before the courts, as opposed to being a problem with the legal framework that now exists for gun-related crimes. The penalties that are now in the legal framework are already very serious, among the most serious in the code itself.

• (1025)

The Chair: Thank you.

Mr. Breitzkreuz, you have five minutes for questions and answers.

Mr. Garry Breitzkreuz (Yorkton—Melville, CPC): Thank you, Mr. Chair, and thank you, Mr. Minister, for appearing before our committee. I'm glad to hear you didn't make the claim that your previous legislation, Bill C-68, is doing anything to combat violent crime using weapons. I just wish you could convince your colleague to transfer some funds that are now going into that initiative to front-line policing priorities.

I've got two questions I want to raise with you. You mentioned the proceeds of crime initiative as one of your priorities. I have introduced into the House a motion to bring property rights into our Charter of Rights and Freedoms. I do not understand why that is not one of your priorities. Every other modern democratic society has property rights as one of the foundational rights in their constitutions and legislation. I do not understand why you have avoided doing that.

We had a rally on the Hill here just this week, again emphasizing how important this is to the people of this country. Yet that is not one of your priorities, Mr. Minister, and I'm wondering why not.

Hon. Irwin Cotler: Thank you for your questions in that regard. I am aware of and respect your commitment to both of these issues, among others.

In the matter of property, clearly the ownership and use of property is a basic component of our economy and our way of life. Now, it's not true that there is no protection for property rights in our law. I sometimes reminded my colleagues who used to say there was not a certain protection regarding right X that by saying that they might have removed a remedial approach that in fact did exist.

Current Canadian law recognizes and protects property rights in various statutes. It does so in the common law. In addition, the Canadian Bill of Rights, with respect to those matters that have not been overtaken or referenced in the Canadian Charter of Rights and Freedoms, still subsists. It ensures Canadians that they will not be deprived of the right to enjoyment of property except by due process of law, and that is a statutory protection that in fact is remedial.

As important as property rights are, I think you'll appreciate that Canadians have recognized that they're not unlimited. Environmental laws, municipal laws, and family laws place reasonable and necessary limits on the ownership and use of property. Such regulation might not be possible if the protection for property rights was increased above the threshold of protection we now have.

Now during the debates—I'll close with this—that preceded the introduction of the charter, and again during the negotiations around the Charlottetown Accord, the provinces strongly resisted entrenching property rights in the Constitution since they characterized it at the time as an intrusion into provincial jurisdiction and a restriction on their ability to legislate in areas involving property.

So those are some of the political contexts and realities as to why it was not included, but I just want to say that it does exist in common law, in statute law, and in the Canadian Bill of Rights. If I was acting as a lawyer on behalf of somebody who had concerns with respect to matters relating to the right to property, I would invoke those protections.

Mr. Garry Breitkreuz: Mr. Minister, the Supreme Court has already contradicted what you have said. They said that if the Charter of Rights had replicated what was in the Bill of Rights, then they could recognize it. But in their court rulings they have said that because it was intentionally left out of the charter, it is not recognized. Farmers and others have lost cases on that basis. In fact, farmers are losing their land and are not able to enjoy the fruits of their labours precisely because the courts have ruled that this was not replicated in the charter.

As for your point about the provinces not supporting it, Mr. Minister, be fair. There were one or two provinces that weren't ready to move on that, but that could have been something the federal government continued to promote and it chose not to—and that's what really upsets me. So you're not entirely accurate in what you have said.

I would like to raise another issue because time is very limited here. My colleague across from me has raised the issue of legal aid. You talked about how the test of a just society is equality, etc. The organization Egale received \$35,000 to challenge the definition of

marriage. Why weren't other groups equally funded? Why do you only fund or support groups that support your position?

• (1030)

Hon. Irwin Cotler: Let me just respond on the issue of property rights.

The Supreme Court has not said that property rights are not protected. What it has said is that property rights have not been entrenched in the charter, but it has acknowledged that they otherwise exist, as I said, with regard to the Canadian Bill of Rights and the like. There have been a number of motions and bills in that regard.

Governments have claimed that sufficient protection exists in Canadian law that property rights are not under serious threat; that the existing legal framework strikes a reasonable balance between property rights and the public interest in regulation and distribution. So what I would say is whether or not the section on property rights should be enhanced will require consideration of a number of issues. I'm open to that consideration.

They would include necessity. Does the existing legal framework provide adequate protection of property rights? Does the balance between property rights and the public interest need to be adjusted? On impacts, how will enhanced property rights impact regulation of the environment, municipalities, aboriginal land rights, incorporation and operation of limited companies, division of family property, succession and estate planning, proceeds of crime, and numerous other areas?

It's not a simplistic response, and I know you're not engaged in that. I'm just saying the issue is not simple in terms of the options available.

On implementation, how would enhanced property rights be implemented? In what forums would government action be reviewed and fair compensation be determined? On jurisdiction, would the jurisdictional hurdles involved in enhancing property rights be manageable? And so on. In other words, they can be considered—I'm open to the consideration—but these are the issues that would need to be addressed in that regard.

In the matter of proceeds of crime, we have indicated, because there has been all-party support with respect to a motion brought forward by Mr. Marceau in this matter, that we would respond by the end of this month, and we intend to do so. I also recently discussed with provincial and territorial ministers proposals concerning the reverse onus in the Criminal Code proceeds of crime regime. All my counterparts agreed there's a need to ensure that criminals don't benefit from their ill-gotten gains. The government has agreed in the House to move forward with the legislative changes. There is all-party support for that. Any such legislation that can fortify our proceeds of crime regime while at the same time fully respecting our charter requirements is an initiative we support and that we will be tabling in that regard.

Mr. Garry Breitkreuz: You never answered my question. Why are you funding groups that support your position?

Hon. Irwin Cotler: I didn't get to the last point.

The Chair: Very quickly, Mr. Minister, please.

Hon. Irwin Cotler: With regard to the question of support for groups such as Egale, the department administers several funding programs that are used to support projects or activities that aim to improve the Canadian justice system. All non-governmental organizations, individuals, and community groups are eligible to apply. I have no involvement in that process. The department carefully reviews all funding proposals it receives and makes determinations, in accordance with criteria, as to whether or not a project can be funded.

Egale Canada is among the many organizations that have submitted proposals that addressed issues of importance to the justice system. Consequently, they were deemed eligible for funding. For example, in 2004-05, Egale received roughly \$48,000 for a national, community-based project dealing with the issue of homophobic violence.

That is the framework within which grants are determined, and that responds specifically to the issue of Egale.

Mr. Garry Breitkreuz: I must request, though, are you not responsible for what happens in your department?

The Chair: No, I'm sorry, Mr. Breitkreuz, you've exceeded your time by almost two times.

Mr. Marceau, please.

[*Translation*]

Mr. Richard Marceau: Thank you, Mr. Chairman.

Mr. Minister, you just referred to the reversal of the burden of proof. As you are aware, on March 22, the House unanimously ordered the government to table a bill to that effect before May 31.

You and I aren't soothsayers or astrologers, but, in the event the government doesn't fall this evening, I'd like to know whether that order of the House for May 31 will be complied with.

• (1035)

Hon. Irwin Cotler: Thank you for that question, which is both specific and important. The government has undertaken in the House to make legislative amendments in this matter before the end of May. As you said, all parties in the House supported the commitment we made, and I intend to ensure it is met.

Mr. Richard Marceau: On one of your many visits here — you're now, as it were, an honorary member of this committee — we discussed assisted suicide. In answering one of the questions I had raised, you said you were interested in a broader debate on this very delicate issue. I also tabled a petition to that effect, and I received your government's response this week.

Since this is a very important and delicate subject, I have always thought we should at least agree on definitions, terms. I suggested at the time that you follow the example of your predecessor, Martin Cauchon. Your department could thus table, propose or prepare a discussion paper similar to the one Mr. Cauchon prepared on same-sex marriage. The idea would be to define the terms, such

as assisted suicide, passive euthanasia and active euthanasia. Few people know that passive euthanasia is legal in Canada right now.

Would you be prepared to propose and table a consultation paper on assisted suicide, defining the terms and possible options and clarifying what has been done, as well as the situation in various countries? The members of this committee could rely on that document to start a dialogue with Quebecers and Canadians in all regions of the country who want to talk about these matters, particularly in the wake of the Terri Schiavo case, which was very much in the media in the United States and therefore in Canada.

Hon. Irwin Cotler: I agree with you that it's a very delicate subject. The question of helping someone die concerns many Canadians deeply. I myself have been involved in that type of situation in my personal life. So I understand the depth of the subject. Issues related to assisted suicide and euthanasia have been extensively debated in various forms over the past decade. Court judgments have also been rendered on the subject. The question of the right to dignity and the issue of concerns about the rights of persons with disabilities are also involved.

Canadians are still interested in discussions on these very troubling death-related questions. As I said, I remain attentive to their opinions. I have proposed that there be a debate on the subject in the House of Commons.

However, definitions are a problem. It must be pointed out that this is a criminal law, health law and palliative services matter. In the present circumstances, it is entirely appropriate to want to clarify these matters. I'm prepared to consider the possibility of talking to my senior officials about a potential consultation paper that might include various definitions and possible choices. It might also be a matter of taking part in a public debate on these questions. I'm very sensitive to this subject, and I'm going to explore all possible options.

• (1040)

[*English*]

The Chair: Thank you, Mr. Minister.

Ms. Sgro.

Hon. Judy Sgro (York West, Lib.): Thank you very much, Mr. Chair, and welcome, Minister Cotler.

Minister Cotler, I wanted to ask you specifically about the Louise Russo case, a young woman in my riding who was the victim of a random shooting last year. Have there been any discussions with the provinces regarding these kinds of random shootings that leave victims with little opportunity for any kind of compensation? And compensation is not even the right word to use. I recognize that we've made some changes in a few areas, but there is the whole issue of what happens to people who have their lives taken away and end up being paralyzed for life.

One is the issue of sentencing for random shootings of innocent victims, but the second is the issue of what happens from a financial perspective. Some of the provinces have small compensation packages of up to \$25,000, but what do the victims do after those, or what does the family do then? Have we had any consideration of this, since random shootings seem to be becoming an increasing phenomenon, especially in our major urban centres? Have we looked at this with the provinces to have some sort of ability to offer financial compensation? This woman will never walk again for the rest of her life, and she also has a severely disabled child in a wheelchair. What happens to families like this, who could be any of our families across this country?

Hon. Irwin Cotler: I think your question or concern deals with the broader question—which is not to diminish any of the personal victims in any situation—of how do we address victims' concerns. A policy centre for victims' issues was established in the year 2000 to help develop and implement a federal strategy for victims, and to enhance the role of the victims themselves in the justice system, through victim impact statements and the manner in which we can have a better appreciation of the impact of crime on the victims and the manner in which the victims themselves, as witnesses, can testify with regard to that impact. This feeds into the whole approach with regard to restorative justice, that we don't just see crime as an abstract act against an abstract entity—the state—but we see crime as having impacted on a particular individual, their family, their community, and the neighbourhood of which they are a part. We seek, therefore, through that restorative approach, to relate to all of the actors impacted by crime.

Our commitment is to how we can improve the situation for victims of crime, because they are among the most vulnerable in our society. If you look at who are the victims, they tend to be the most vulnerable—women, children, minorities, aboriginal people, immigrants, the poor, and the marginalized. So our main objective now is how can the special situation and needs of victims be addressed so that our criminal justice system is responsive to all victims of crime and their variegated needs?

In that regard, our victims initiative has been renewed on a permanent basis, such that \$25 million has been allocated in budget 2005 to permit that essential work to continue until 2010. Our work here will be complemented and dovetailed with similar initiatives of the Minister of Public Security.

I think we need to look very closely at what, up until now, has sometimes been an ignored part of the criminal justice system, namely, the impact on the victim and how we can factor in that impact and give the victim a role, and give expression to that impact, in our criminal justice system, and start using a restorative model that will take the victim into account and not just, as I said, regard crime as against an abstract entity called the state. Crime is against real people with real families, in real neighbourhoods and real communities.

• (1045)

Hon. Judy Sgro: Could I ask you, Minister, if you could have your staff forward that information to me?

I have a quick question. When the judges level a sentence against someone, are they able within the current judicial system to

recognize the horrific level of the crime, or are they still restricted to having to stay within certain confines from a sentencing perspective?

Hon. Irwin Cotler: The victims do have, from that sentencing perspective, the opportunity to prepare and present a victim impact statement. Our legislation, for example, with respect to protection of children and other vulnerable persons, seeks to facilitate testimony of both victims and witnesses in that regard to supplement the earlier criminal law reforms with regard to victim impact statements.

I would hope we would continue to explore ways and means, which is what our victims initiative and the centre for policy with regard to victims of crime are doing to explore how looking at the criminal justice system through the victim's lens can enhance the protection of the victims and respect their needs.

The Chair: Mr. Warawa.

Mr. Mark Warawa (Langley, CPC): Thank you, Mr. Chairman, and thank you, Minister, for being here.

I've listened intently, and I have questions on two topics, the first being child pornography and sexual assaults and the second being marriage.

Minister, each time you've been before the committee you have eloquently shared with us how the protection of the most vulnerable, our children, is very important to you. Each time you've shared that you have a daughter, that you look at it through your daughter's eyes, and that you care for your daughter.

Minister, I too have children. I have five children and I love them dearly. They're grown now, and I also have a grandchild.

It is our responsibility as a government to ensure the protection of these children. I appreciate the comments you've shared with us, but I'm concerned that all of this appears to be a lot of talk and very short on action.

Mr. Chairman, I'd like to share a story of a Langley tragedy, where we had a young man convicted of a sexual assault, and he received conditional sentencing for that assault of two young ladies. The victims are living on each side of him. Yes, there's a risk assessment. Is that person going to reoffend? But, Mr. Minister, consider the impact on the victims. They see their attacker on a regular basis. He lives right next door to them. Is that fair? Does that protect those victims? Does that protect our community? Is that a proper use of conditional sentencing? I would argue it's not.

Minister, you've said you were going to consider not using conditional sentencing for child pornography. Well, I'm going to ask you, will you also consider eliminating the use of conditional sentencing for sexual assault, not just child pornography but also sexual assault? You've acknowledged that the use of conditional sentencing has been abused and that we need to look at that. What offences would no longer qualify for conditional sentencing?

Also, there's the age of consent. The vast majority of Canadians are very strongly asking for the age of consent to be raised from 14 to 16. We've heard witnesses sharing that a 14-year-old is unable to realize the risks and consequences of consenting to a sexual relationship with somebody. We heard examples of a 60-year-old having sexual relations with a 14-year-old and even a 12-year-old. They thought she was 14, but she was only 12.

Mr. Chairman, this is unacceptable; we need to protect them. I want to know why the minister is resistant to raising that age of sexual consent. If he thinks back to when his daughter was 14 years old, can he say she was able to make an informed decision? I don't believe so. I don't think any 14-year-old is able to do that. So why is he resisting increasing that?

On minimum sentencing, we have 27 offences right now that qualify for minimum sentencing. Why is he resistant to minimum sentencing for things like child pornography or a sexual offence? I believe we need to strongly consider minimum sentencing. It's a fact that maximum sentencing is rarely used, so when you increase the sentencing, it doesn't mean we're going to actually get increased sentences. So, Mr. Chairman, I think we need to really seriously consider minimum sentencing for sexual offences.

The last question regards marriage. The minister has shared that there have been grants given to Egale. The question is, why is your government discriminating against other opinions? It appears you're very one-sided in the grants that are being given, and no grants are given to those groups that do not agree with your position, your plan to destroy traditional marriage.

Thank you.

•(1050)

Hon. Irwin Cotler: Thank you for your questions. I'll try to answer them one by one.

On the matter of conditional sentencing, as I indicated at our January 2005 meeting, the Ministers of Justice affirmed that conditional sentences are an effective tool, in many cases, but they also expressed the need to identify some limits on the use of conditional sentencing, particularly in regard to serious and violent crimes. The ministers asked the FTP working group on sentencing to analyze options for conditional sentencing reform and report back to the deputy ministers when they meet next month. We will have the report back on that particular issue, which includes matters with respect to sexual assault.

I also spoke to the Senate Standing Committee on Legal and Constitutional Affairs, because this committee was understandably unable to do so due to your charged agenda. They agreed to my request to conduct not only a review of the operation of the conditional sentencing regime, but also a review of the latest evidence on the efficacy of mandatory minimum penalties.

I say that because I've expressed my view on a number of occasions, as a matter of principle. My appreciation of the evidence is based on considerations in that regard and on everything I've read, etc. All the people I've consulted have said that mandatory minimums are neither a deterrent nor effective with respect to criminal conduct. If there's more recent evidentiary-based considerations, I'm open to that consideration.

On the matter of FTP considerations, I also want to mention that the Alberta Minister of Justice and the Attorney General prepared a paper in June 2003. They jointly addressed the issue of conditional sentencing with British Columbia, Manitoba, Ontario, and Nova Scotia to express their concerns on the use of conditional sentencing for serious violent offences. They came up with a number of options. There are four. I'll only give you two, because I think they may be relevant, among others, for consideration.

The first option was to prohibit the use of conditional sentences involving serious violence, sexual assault, as you mentioned, and related provisions, driving offences involving death or serious bodily harm, offences involving organized crime or terrorist activity, and theft involving a breach of trust. The second option is the creative presumption that the offender may rebut that a conditional sentence may not be used for those serious offences.

I mention that because it's going to be part of the package that is being considered right now and that will be reported on next month in that regard. We're taking these particular options seriously, as well as others, in our overall assessment of the issue of conditional sentences.

In the matter of Egale and others, a question was put earlier on whether or not I have control over these matters. I don't want to have control over these matters. It's an independent evaluative process. Anybody is free to make an application, any individual, an NGO, and the like. If it conforms to the criteria, a professional assessment is made and a grant is conferred, I don't think members would want me to be engaged in that regard in any way.

The court challenges program is run at arm's length by Heritage Canada, so there is no conflict of interest.

On the matter of raising the age of consent from 14 to 16 years, I've answered this question before this committee, and I'll be very brief in restating that answer.

One, it's a threshold principle, and we need to appreciate that. Any non-consensual sexual activity constitutes an assault in that regard, and it begins with that, regardless of age.

Two, right now the age is 18 years, with respect to what might be called predatory offences involving children, be it child prostitution or child pornography, or where there's a disparity in matters of dependence, control, authority, and the like. The age is 18 years in regard to that.

Three, we proposed a new category of sexual exploitation in our proposed Bill C-2 with respect to certain criteria regarding youth between the ages of 14 and 18 years of age.

•(1055)

Finally, I might add in that regard, after you take these three considerations into account, the reason we don't have the age of 16 for the rest is precisely because we don't want to otherwise criminalize activity that is generally or normally engaged in by young people at the same time as we have specific criminal law targeting for predatory practices with respect to the vulnerable between the ages of 14.... We're seeking to also expand that category in our new legislation.

On the matter that we plan to destroy marriage, we're not planning to destroy marriage. We respect marriage in the preamble to our... We not only respect marriage; we regard the institution of marriage as fundamental to our society, fundamental to the nature of family relationships. All we are saying is to extend this institution, with respect to civil marriage, to a minority that does not now have equal access to it. But as the Supreme Court said, the conferral of rights on a particular minority does not take away any rights from anyone else, be it an opposite sex couple, be it religious communities.... It does not touch religious marriage. It does not touch religious communities; they are free to continue to exercise and practise their beliefs as they wish. They could never be coerced into performing a same sex marriage if it's contrary to their religion or belief.

So we are protecting religious marriage in all its configurations. It's utterly unrelated to the legislation. The legislation is a civil marriage act, and with regard to that it's only extending civil marriage; it's not destroying civil marriage as an institution. The preamble specifically says we are granting equal access because of our respect for marriage as an institution; we want those who are in a loving relationship to be able to have equal access to the institution of marriage to give expression to that loving relationship.

The Chair: Thank you, Mr. Minister. We are almost at the end of our time. We have three people who have indicated they'd like to ask another question, one of whom hasn't had an opportunity.

We had a late start, Mr. Minister, because of the necessity of the election of the chair. Does your schedule permit you to give us a few extra minutes?

Hon. Irwin Cotler: I'd like to very much. As you may know, there's been a cabinet meeting on from 9 a.m. till noon today. My subject matters in that cabinet meeting were postponed till 11 a.m. so that I could accommodate both you and the needs of the cabinet. So I'll try to answer briefly to questions, if I may.

• (1100)

The Chair: With your indulgence, I would prefer to go to the individual who hasn't had an opportunity.

Ms. Neville.

Ms. Anita Neville: Thank you, Mr. Chair. It's hard being at the end of the line.

There are two areas, Minister, that I'm concerned about—and I do appreciate the time constraint.

In another forum I've heard a considerable amount about the cutbacks to legal aid and the impact that's having on community groups. I'm wondering if you could elaborate on what the cost-sharing arrangement is or is not involving the federal government, and what we can do. We've heard over and over again that groups on the ground are being affected, and not in a positive way, because of these cutbacks. I'd appreciate a quick comment on that.

My other concern or comment is, you've identified the trafficking of individuals as a priority for your government. I'd appreciate a quick comment on how you had come to that and your perception of the importance of trafficking of individuals.

The Chair: Thank you, Ms. Neville.

Hon. Irwin Cotler: On the matter of civil legal aid, because that's where the real concern arises, and I've indicated before, frankly, my ongoing concern with this, one means of trying to develop.... What we basically are trying to develop is a sustainable approach to civil legal aid, and we're exploring the possibility of establishing a dedicated federal transfer payment to the provinces and territories outside of the Canada social transfer, something similar to what is now available with respect to criminal legal aid as a kind of expressed transfer, and we currently provide criminal legal aid resources, \$371 million over a three-year contribution agreement, to the jurisdictions in that context.

This new proposed regime, if we can succeed in that regard, would remove current federal funding for civil legal aid involving immigration and refugee matters from the existing criminal legal aid agreement into a separate federal contribution for that subject matter, which is increasingly important and touches human lives in a profound way.

Also to be included in a separate federal contribution agreement for civil legal aid, if we could bring it about, would be funding for a number of areas that are in federal jurisdictions but that touch human lives—leaving jurisdictional things aside, though we can't ignore them. I'm talking about legal aid for pensioners who are denied access to the Canada Pension Plan disability benefits and old age security, legal aid for those denied access to employment insurance, and family law matters involving divorce and corollary relief. In other words, we need to find a way to play a more direct and transparent role in developing a sustainable regime for the funding of civil legal aid.

In the matter of trafficking in persons, shortly after I became Minister of Justice and Attorney General, I described this as being the contemporary global slave trade. What we're involved with here is the bartering and bonding of persons, the commodification of human beings, and I indicated that this would be a priority for me. It would be organized around the 3 Ps: the prevention of trafficking, to begin with; the protection of the victims of such trafficking; and the prosecution of the perpetrators of this heinous offence. With that objective in mind, I tabled last week legislation that creates three new Criminal Code offences to combat human trafficking where the victims are the most vulnerable women and children.

The Chair: Thank you, Minister, for your attendance here today and for your very full and comprehensive answers. We look forward to your next appearance, whenever that may be.

Hon. Irwin Cotler: Mr. Chairman, I have one thing I want to add, because I did not have the answer for Mr. Comartin. It has now been provided to me.

Mr. Comartin asked a question regarding the cost of the judges' salary increase. As you know, that salary increase is 10.8% over four years, with statutory indexing. It would come out to 2.8% per year, and with almost any comparative index you'd come out to that, but the overall cost of the salary increases would be \$93.7 million over four years.

The Chair: Thank you, Mr. Minister.

On a point of order, Mr. Thompson.

Mr. Myron Thompson: Very quickly, on the age of consent, I need to get it perfectly clear. Under the proposals by this government, a 14-year-old can have consensual sex with a 40-year-old. Is that true? Yes or no.

• (1105)

The Chair: We'll ask our researchers for a comment.

Mr. Myron Thompson: I want it perfectly clear in the minds of people. Can a 14-year-old have consensual sex with a 40-year-old?

Hon. Irwin Cotler: In my view, number one, if you would pass Bill C-2, the new category of sexual exploitation of a vulnerable youth would be addressed in that particular issue, and as I said, if it's non-consensual for reasons of duress and a disparity of authority and dependency and the like, that could still be caught under our existing law.

Mr. Myron Thompson: That tells me nothing.

Mr. Mark Warawa: The answer is yes.

Mr. Myron Thompson: The answer is yes?

The Chair: Mr. Minister, do you have a comment?

Hon. Irwin Cotler: Only to say that I appreciate Mr. Marceau's reference to me being an honorary member of this committee. I'll be pleased to return if this committee invites me and I can be of assistance. Thank you, Mr. Chair.

The Chair: I will suspend for about three minutes, and then we'll reconvene to deal with Mr. Marceau's motion. Thank you.

• (1106)

_____ (Pause) _____

• (1110)

The Chair: I'd like to reconvene the meeting.

Mr. Marceau has a motion. Mr. Marceau has the floor.

[*Translation*]

Mr. Richard Marceau: Thank you very much, Mr. Chairman.

I'll be brief. The quotations I read to the minister earlier speak for themselves. The Chief Justice of the Court of Appeal, Michel Robert, made some remarks that I feel are unacceptable on the part of the Chief Justice of a Court of Appeal. He has politicized his office, whereas his position imposes on him a duty to be reserved.

I don't want to reread what was read, but he made two mistakes. First, he gave the position he occupies a political colouring, clearly excluding people who have another political allegiance than his own. Second, in my view, he attacked the Charter and the spirit of the Charter. Judge Robert, one of the most important people in Canada when it comes to respect for, protection and promotion of human rights, said that discrimination based on political opinion was acceptable in Canada in 2005, in the twenty-first century.

For these reasons, I ask this committee to condemn Michel Robert's remarks, which moreover have been unanimously condemned. I have the press file with me, for those who would be interested in seeing the reaction and very serious damage done to the

reputation of justice in Canada. There are some very interesting things for those who want to read them.

Second, I ask this committee to study the judicial appointments process. I want to emphasize that Minister Cotler said earlier that he was prepared to make improvements and entertain suggestions for that purpose. I believe that's a matter for this committee. Those are the reasons for this motion.

[*English*]

The Chair: Thank you.

Comments or questions?

Mr. Macklin.

Hon. Paul Harold Macklin: Thank you, Chair.

With respect to this motion, all of us are touched and concerned by the way in which this matter was responded to. But in looking at the first paragraph of the motion, I don't believe it accurately characterizes the comments of Michel Robert. Based on what I heard this morning, I'm not convinced that he said it was acceptable to discriminate on the basis of political opinion when appointing candidates to the federal judiciary. I think there's been some licence taken with the statements. If statements are going to be put in, we should put in accurate statements that are actual quotes from the individual.

Secondly, I understand that the honourable member has placed a complaint with respect to this member of the judiciary before the Canadian Judicial Council. I suggest that the Canadian Judicial Council is the proper venue for determination of whether Chief Justice Robert's remarks, in the words of the honourable member's motion, fail to abide by the principle of judicial restraint and threaten the principle of judicial independence. The council was established, in large part, to address such complaints as an independent and objective forum outside the political fray. Indeed, I believe the honourable member has recognized the council's role in this type of matter by filing the complaint concerning the comments in question.

The council has been given the authority to address complaints against judges. It acknowledges and is respectful of the separation of powers between Parliament and the judiciary. Further, with all due respect to my colleagues around this table, judicial council members have much more expertise in issues such as judicial restraint and judicial independence than we do as a committee. The committee I think would be doing a great disservice to the expertise and the important work of the council by commenting on this issue prior to the council's consideration of the complaint. Not only that, but in view of the reasons that the council was established, including the preservation of the separation of powers, it would be inappropriate for this parliamentary committee to comment on matters of judicial conduct.

I'm concerned that the motion is inappropriate. It could be seen as an attempt by us to influence the council's objective and dispassionate review of this complaint. Accordingly, I would encourage this committee and the members to reject this motion. I believe the matter is before an expert body designed specifically to deal with this type of question, and I think that's where this matter properly belongs.

Thank you, Mr. Chair.

•(1115)

The Chair: Are there any other comments or questions?

There being none, I'll call the question.

(Motion agreed to)

The Chair: Are there any other matters of concern before we adjourn?

Mr. Ménard.

[*Translation*]

Mr. Serge Ménard: I sent you a notice of motion on cigarette smuggling. I don't think it raises a lot of problems. I made some corrections to ensure we weren't talking about other committees.

In fact, a very similar motion has been submitted to the Standing Committee on Health to ask organizations reporting to Health Canada to adopt a moratorium on issuing cigarette manufacturing licences.

This is an action that I think can be said is being undertaken by the RCMP. From what I know, the number of seizures of illegal cigarettes has increased sharply, not only in Quebec, but also in Ontario and British Columbia. It seems we're witnessing a new wave of smuggling, similar to the one we experienced in the early 1990s, which seemed to calm down.

This is being observed near the U.S. border, in particular near the village of Akwesasne. I don't know whether you know it, but Akwesasne straddles three jurisdictions: the American state of New York, Quebec and Ontario. The smugglers are just next to the Cornwall bridge and have access to Lake St. Louis. It's always been an easy place for them to cross.

According to media reports, we're now witnessing a bit of the same thing that happened in the Montreal area in the 1990s. Small businesses have noticed roughly a 30 percent drop in their cigarette sales. That would be good news if we were sure it was attributable to a sudden 30 percent drop in cigarette smoking. In fact, a decline of that nature in a few months can only be explained by an increase in smuggling. We're essentially proposing that the RCMP, in cooperation with other agencies, initiate a campaign to ensure compliance with the appropriate legislation and so on. I think you can read the motion faster than I can read it out loud.

I don't think it really poses a problem. It would allow for joint action with Health Canada and Public Safety and Emergency Preparedness Canada.

[*English*]

The Chair: Thank you, Mr. Ménard. This motion has received 48 hours' notice, so it is entertainable.

Mr. Cullen.

Hon. Roy Cullen: So the motion is in order. Are we going to be debating it right now? I know some people said they wanted to leave.

I'm going to take a few minutes to deal with this motion. Is everyone comfortable with that?

•(1120)

[*Translation*]

First, I'd like to thank the member for Marc-Aurèle-Fortin for raising this question.

I'm going to be very clear. The government recognizes that the integrity of the Canada-U.S. border is essential to the public safety and economic security of people on both sides of the border.

[*English*]

Mr. Chair, I think the member has raised a very important question. I'll take his word for it. I don't have any data myself that the incidence of tobacco smuggling has gone up. Certainly, that's something that needs to be investigated.

The problem I have with this particular motion is that we're again into the committee directing the RCMP to take action. I'm wondering, given the competing demands on the time of the RCMP, if we found, for example, there was an increase in the amount of trafficking in people, in the incidence of grow ops, in crystal meth operations, or in gang violence, are we at this committee then going to direct the RCMP to focus their energies on certain areas? They'll be running from pillar to post if they listen to the advice of the committee.

As we all know, we're not going to get into that debate again. The RCMP itself is charged with managing the affairs of the RCMP.

I think the member has raised an interesting point, a good point that needs some evaluation. I'd like to point out also that it's a complicated matter in the sense of, who takes the lead?

If the committee will indulge me just for a moment...when I worked as parliamentary secretary to the former Minister of Finance.... The Department of Finance is responsible for the administration enforcement of the Excise Act.

I'll just take the committee members back a moment, if I might. You will recall, a few years ago the government decided to take aggressive action against smoking, particularly smoking that involved young people. The idea was to increase the excise tax on cigarettes fairly aggressively but over time. One of the elements that was to be monitored was whether the incidence of smuggling started to increase. Then the Department of Finance would work with other agencies, the Canada Border Services Agency—now—and the RCMP, to see what action would be required.

At that same time, one of the incentives to smuggle cigarettes back into Canada was the fact that the excise tax at that time, before we introduced and passed law otherwise, was not put on the cigarettes at the manufacturing level. So what we had over time was that some—let's say 30% or thereabouts, I don't have the exact numbers in front of me—of the cigarettes that were going into the United States market were free of excise tax.

You may recall that as a result of that, there were various lawsuits taken up by the government against tobacco companies, because the market in the United States was clearly not the appetite and therefore did not account for 30% of those Canadian cigarettes. The cause of many of these cigarettes finding their way back into the Canadian market, being smuggled back in, was that they were free of the excise tax.

What the government did was change the legislation so the excise tax was imposed right at the plant level. In terms of the border, there were arrangements made with U.S. Customs and Canada Customs, as it then was, to allow a very small percentage, I think in the order of about 1.5% of cigarettes, to go into the U.S. market for legitimate Canadian users, the snowbirds down in Florida or whoever, but a very small amount. Now you had cigarettes going into the U.S. market with the excise tax fully on.

The understanding at the time was that as the excise tax was ramped up over time to try to discourage smoking, especially by young people, the Department of Finance would be monitoring the incidence of smuggling. It gets to a certain point where the excise tax becomes so high it starts to encourage activities in which people would try to circumvent that particular aspect.

Now, one of the considerations is that Canadians generally like Canadian cigarettes, Canadian cigarettes made with Virginia tobacco. I think it's useful to know, from Mr. Ménard, Mr. Marceau, the RCMP, and others, in what form cigarettes are coming into the market if they're being increasingly smuggled. If they're U.S. cigarettes or U.S. tobacco, that's one thing. Generally, you'll find Canadians don't like to smoke U.S. smokes.

• (1125)

When it gets to a certain level, the economics would say they could bring Virginia tobacco, for example, into a reserve to manufacture cigarettes that suit Canadian tastes and move it into the Canadian market illegally, or they could have offshore interests importing Virginia tobacco and making Canadian cigarettes that taste like Canadian cigarettes, and try to smuggle them in that way.

All that is to say that we need to better understand what is actually happening here. It's also understood that with the differential pricing between Canadian cigarettes, with the excise tax all in—even if it makes it into the U.S. market—and the pricing of other cigarettes, the economics start to coincide, and there might be incentives, then, just to bring in cigarettes directly. I think before we just rush into this—and this is being monitored as we speak—we need a better understanding of whether the incidence is growing and what the causes are.

One of the things that creates some complexity as well...first of all, this committee should not be directing the RCMP to run into Akwesasne or Kanesatake. Mr. Ménard knows full well the sensitivities around that. Whatever action would be taken would be a coordinated and integrated approach with respect to the Sûreté du Québec and also any local first nations police forces, for example, the Akwesasne Mohawk Police Service. I should point out also that the government has set up the integrated border enforcement teams—\$125 million was put into that particular exercise—and law enforcement is working very collaboratively.

I'm not trying to suggest there isn't a problem. There may well be a problem, and I think I'll take Mr. Ménard's word that there is increasing evidence of more smuggling of cigarettes going on. In the first instance, it's Finance Canada that deals with the compliance with the Excise Tax Act; and then if, in its judgment, based on the intelligence it is receiving, there is an increased incidence, the department would work cooperatively with the Canada Border Services Agency, the RCMP, the Sûreté du Québec, and the local police forces to see what action is required.

I think my problem is more with the wording of the motion. If the motion said there seems to be evidence of increased smuggling of cigarettes through these particular areas, that Finance Canada, working with others—

The Chair: Mr. Cullen, I'll ask you to wind up now.

Hon. Roy Cullen: I don't think I have any time limits, Mr. Chair.

The motion I would support would be something worded along those lines, that there seems to be an increased incidence of smuggling of tobacco products through the reserves, perhaps into Canada; that a coordinated review of this be undertaken by Finance Canada and various law enforcement agencies to learn the nature of the incidence, of the increase, and also to learn how it is being done.

If cigarettes are being imported offshore, that requires one particular solution; if the cigarettes are being manufactured on the reserve, that requires another type of approach. If in fact the economics are such and the price differentials are such that U.S. cigarettes are moving into the Canadian market or there is leakage at the plant level of Canadian cigarettes that are supposed to have the excise tax on them, that requires a different kind of prescription.

So that's essentially my problem. I think we need to be careful about directing the RCMP into specific areas. We'd have them running around if they in fact did that. They have to manage their resources. There are many competing areas of criminality, and the RCMP need to deal with those in a very holistic and strategic way.

The Chair: We have a number of people. We have Mr. Macklin, Madam Neville, Mr. Breitzkreuz, and then we have Ms. Sgro—and Mr. Thompson.

We didn't notice you, sir, but we'll all have a fair chance to comment.

• (1130)

Hon. Judy Sgro: I have a point of order, Mr. Maloney.

Our meeting was scheduled to stop at 11. You asked for three minutes to deal with Mr. Marceau's motion, and now we're at 11:35 and into an issue that's very important. I suggest that this issue be dealt with at our next committee, discussed for a further—

Mr. Garry Breitzkreuz: Can I make a quick comment?

The Chair: Yes, go ahead.

Mr. Garry Breitzkreuz: I too have concerns that we're micro-managing here.

I have to admit that in the last few days, since this was tabled, I have not had a lot of opportunity to investigate this matter. I have been very busy; I don't know about other members of this committee. My concern is that if we pass too many of these motions, we may lose credibility.

I was wondering if we could somehow maybe get a report by the RCMP on this matter. I would like some more information. Is it possible to table this for the time being and come back to it, when we have a little more time to investigate it? I would like to hold off on this. I have not discussed this with Mr. Ménard—I'm blind-siding him with this—but I would like to give it a little more thought at this point.

Would the committee be willing to move in that direction, so that we can get more information?

The Chair: Is there consensus?

Mr. Garry Breitkreuz: It says in here “initiate a campaign”. I don't even know if they're working in this area. Are they doing nothing here, that we need to initiate a campaign?

I want to get the RCMP to maybe report to us.

The Chair: On this issue, Mr. Cullen.

Hon. Roy Cullen: If we could maybe stand this motion, without going into reworking motions, I would undertake to bring this issue forward, work with Finance Canada, work with the Canada Border Services Agency, and come back with a report in the sense of whether this is on target, what's happening, what seems to be the problem, and what actions are contemplated.

The Chair: Mr. Ménard.

[Translation]

Mr. Serge Ménard: You can see the resolution is very general as regards the actions the RCMP should take. I doesn't state the number of people it should assign to this case.

In fact, we essentially want to point the problem out to them. Moreover, they've already begun to address it. But what's important is that they pass on the information to us in case we have to make a decision on the excise tax.

What you're saying is true: people have gotten into habits. The most deeply rooted habit, however, is the need for nicotine. If we put people in a situation that gradually leads them to change their habits and find another tobacco, we'll solve nothing.

Consequently, it's very important that we be informed. That's why the first paragraph was drafted in as general a manner as possible. Even at that, when I submitted my resolution, I was told it was too specific: you can't talk about agencies that don't fall under our committee's responsibility. So I deleted them from the resolution, and now you're suggesting I should add more.

You'll note that I don't object. It's obvious in our regions. We know even more about it, and we're essentially getting our information from the RCMP: not only do we know that cigarettes manufactured in the United States, near Akwesasne, are at our door, but we also know that full containers of tobacco from China have been seized elsewhere, which is a completely new feature of the cigarette problem.

But an urgent problem has been observed in the field by the members...

[English]

The Chair: Excuse me, Mr. Ménard, but I think we're back debating the merits of the motion as opposed to the suggestion that we postpone—

[Translation]

Mr. Serge Ménard: I don't have any objection. Postpone it until when?

[English]

The Chair: If there's no agreement, then we can call the question.

[Translation]

Mr. Richard Marceau: All right, but we have to set a date to postpone it to.

Mr. Serge Ménard: Can it be soon? I'll see about giving you more information, and perhaps about rewriting the first paragraph, if it bothers you.

[English]

The Chair: Mr. Cullen.

Hon. Roy Cullen: If we stand this motion for the time being, I will undertake to pull together—in government language—a *diagnostique*, while working with the different agencies, that shows what increased incidences are being perceived, where the cigarettes are coming from, how this impacts the excise tax, and possible plans.

In terms of timing, I can't really commit, but I think in the next couple of weeks we could have something.

• (1135)

The Chair: Mr. Thompson.

Mr. Myron Thompson: On a point of order, Mr. Chairman, I just want to point out that recently I was down in that area with some of my colleagues, who were called in to talk with Mohawk reserve people who are quite concerned about smuggling in general. Apparently there's an increase in drug smuggling, and everything is getting quite excessive.

I really think we're making a mistake if we just concentrate on cigarettes. I think it needs to be a bigger picture, and we need more time to address the smuggling problem as a whole.

So I would recommend that we table this, that we schedule a special meeting to deal with smuggling in general, and that we wait for a report from Mr. Cullen with regard to where they are in dealing with smuggling in that particular area. I would move that.

Some hon. members: Agreed.

The Chair: We have another motion here, but you are in agreement to coming back in 14 days, two weeks, to deal with this matter?

Hon. Roy Cullen: Yes, we'll have something.

Mr. Myron Thompson: Can it include things other than cigarettes?

The Chair: Do we have any difficulty?

Mr. Ménard, it's your motion. What do you feel?

Mr. Myron Thompson: Smuggling is a problem down there. I've been there, and I know it is.

[*Translation*]

Mr. Serge Ménard: I think that's going too far. The cigarette problem is an urgent one, as we've already seen, but it's also very dangerous from a public safety standpoint. Don't forget the Oka crisis in 1990.

[*English*]

The Chair: All right. We'll deal strictly with the tobacco situation. Mr. Thompson can bring a subsequent motion to perhaps expand it another time.

Mr. Myron Thompson: It's a waste of time. If we're going to put something in there, we should just spread it out.

The Chair: Thank you very much.

The meeting is adjourned.

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

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