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# Standing Committee on Justice and Human Rights

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**Chair**

Mr. Art Hanger

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## Standing Committee on Justice and Human Rights

Tuesday, October 31, 2006

• (1530)

[English]

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

We're continuing our examination of the estimates and the three programs that are on our agenda. We have witnesses from Legal Aid Ontario. Along with them will be the drug treatment court in the latter part of the session today.

Before the committee we have Mr. George Biggar, vice president of policy, planning, and external relations; and Mr. René Guitard.

Welcome to the committee, gentlemen. I thank you for making an appearance here. If you could make your presentations now, we'll then have some questions that we would like to ask you at the end.

The floor is yours.

**Mr. George Biggar (Vice-President, Policy, Planning and External Relations, Legal Aid Ontario):** Thank you very much, Mr. Chair and honourable members.

Speaking on behalf of Legal Aid Ontario, I'd like to advise you that we provide legal services to over one million low-income Ontarians per year, through our three programs—the duty counsel program, the clinic services, and the legal aid certificate system—when these clients have their safety, their homes, their families, their incomes, or their freedom in jeopardy.

The biggest program in terms of numbers of people served is the duty counsel program. We schedule lawyers in most of the provincial courts every day, where they provide triage services to unrepresented parties who are appearing in court that day. Criminal duty counsel assist with pleas of guilty, speak to sentence, conduct many of the bail hearings, and assist with setting dates for trial and other adjournments. Family court duty counsel assist with early appearances, simple document preparation, and consent orders, and they provide representation in simple motions. The duty counsel program assisted 760,000 Ontarians in 2005-06.

The community legal clinic program provides essentially poverty law services, including assistance with matters concerning housing and income security. The clinics also engage in public legal education initiatives, community development, and law reform work. My colleague Mr. Guitard will address the clinic system in more detail in a few moments.

The part of the legal aid program in Ontario that receives the most attention is the certificate system, through which services are

provided to about 110,000 Ontarians every year, in partnership with the private bar. Legal Aid Ontario provides these clients with a certificate that they can then take to the private lawyer of their choice. LAO then reimburses the lawyer's fees in the amount established by the tariff.

Certificates are issued in criminal matters where there is a likelihood that the accused will face time in jail; in family law matters involving custody, access, and support, primarily to women, many of whom have experienced domestic violence; and also to parents involved in child protection issues with the Children's Aid Society. Certificates are also issued in refugee matters and in certain other specified immigration cases. Occasionally we issue certificates for hearings before the National Parole Board; the Ontario Review Board, which deals with mental health issues under the Criminal Code; and the Consent and Capacity Board.

I'd like to turn to the financial eligibility criteria. Legal Aid Ontario serves really only the poorest of the poor. The financial criteria have not been increased for many years. In fact, they were dramatically reduced by 22% in 1995, to coincide with government cuts to welfare payments in Ontario that were introduced at that time. The rates have not been increased since that time. The result is that while the cost of living increases, more and more low-income people are ineligible for legal aid assistance.

In the way the Ontario financial eligibility criteria work, regardless of an applicant's actual cost for rent, transportation, and other living expenses, LAO has established maximum allowable limits for these costs. Every dollar of income above these allowable amounts is considered money that applicants can use to pay for a lawyer. These allowances are now unrealistically low and rarely cover the actual cost of the applicant's living expenses.

Most of LAO's clients are on some form of social assistance. The working poor, by and large, are not eligible to receive legal aid in Ontario. For example, a family of four earning \$29,000 per year likely would not qualify for legal aid in Ontario. For an individual, the cut-off is about \$18,000.

Our current financial situation is difficult and deteriorating. While LAO has received some project-specific funding in the last few years, we have not received an increase in our base funding since 1999.

•(1535)

In the intervening years, we have been absorbing over \$44 million in inflationary and salary costs and increasing service demands in the certificate and duty counsel systems. We have depleted all of our reserves and are now in a structural deficit position of \$10 million to \$15 million per year. This deficit will continue to grow if additional base funding is not received. Hard choices will have to be made very soon.

All indications are that demand for legal aid services will increase, and there are good reasons for that. All legal aid plans in the country are under pressure caused by demographics, population growth, changes in the age of population, social trends, and increasing numbers of criminal charges.

Federal law and policy have a significant impact on legal aid demand. Changes in federal law and policy that are ongoing include more criminal charges being laid, and that results in an increasing demand for legal aid certificates. For every nine criminal charges laid, one accused person will require a legal aid certificate. Recent mass prosecutions of alleged gang members are creating an enormous pressure on our certificate system. Cases in these mass prosecutions can cost as much as \$90,000 for each accused, compared to an average cost of \$1,500 for a normal criminal legal aid case.

Recent legislation eliminating conditional sentences for certain criminal offences relate to offences that make up 80% of the criminal services provided by certificates. A possible effect of this change in the law is that more people who are facing potentially harsher sentences will plead not guilty, so more time will be tied up in prosecuting them, and legal aid will be compelled to expend more funds in defending them.

Recent changes in minimum penalties for offences involving firearms will also likely result in more people in jail, and thereby increase demand by jail inmates for legal aid services.

These changes in criminal law and the resulting demand for criminal certificates mean there are fewer and fewer resources for other areas of law, in particular for family law clients. Most family law clients are women, many of whom are single mothers.

LAO estimates that over the next three years, the cost of these new federal initiatives to the legal aid plan will be approximately \$7.5 million.

I want to share with you that a large portion of the legal services that LAO provides involves areas of law that fall under federal responsibility. Criminal law, of course, is obviously a federal responsibility, but you may not all be aware that immediately above criminal law, in section 91 of the Constitution Act, is the federal power over marriage and divorce. Divorce law is therefore also a federal responsibility, and it significantly drives the cost and nature of services that are required by married family law litigants. Recent initiatives that have had significant effect on legal aid costs in this area include the child support guidelines, which are mandatory, and

more recently the spousal support guidelines. I would also like to make you aware that 44% of all clinic work deals with areas of federal responsibility or interest, such as employment insurance, the Canada Pension Plan, and housing, and almost 70% of the national applications for refugee status are processed in Ontario.

In closing, what I would like to tell you is that at legal aid, we think Canadians believe the justice system must be fair. We believe that Canadians support the Charter of Rights and Freedoms, and it has led to a court policy that there should be no conviction without representation. We believe that we must all see the justice system as an integrated whole—that if we are to put increasing resources into police and prosecution services, we must also, to be fair, fund the other side of the equation, and make sure that the defence is adequately funded to carry out its constitutional responsibilities.

Thank you.

•(1540)

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

Mr. Guitard, please go ahead.

[*Translation*]

**Mr. René Guitard (Director, Clinique juridique francophone de l'Est d'Ottawa):** Good afternoon. I am the director of the Clinique juridique francophone de l'Est d'Ottawa, which was the fifth legal aid clinic to open in Ottawa.

Existing services do not always meet our clients' legal aid needs. In Ottawa, we are doing everything we can to coordinate our services so our clients are not left to their own devices. There is currently very good collaboration between the legal aid office and the five community legal clinics.

The clinics also collaborate amongst themselves. They help each other when one clinic is overloaded and direct their clientele to whichever clinic specializes in a given area of the law. I am thinking of the University of Ottawa clinic, which offers services in small claims court with the help of law students who are supervised by a member of the Bar. However, the example I just gave does not necessarily apply everywhere in Ontario.

I would add that even though they try to meet their clients' needs every day, the clinics are often overloaded. Our clinic has been open since September 2003, and for the past year, our caseload had been as heavy as that of other clinics that have been operating in Ottawa for a long time.

Each legal clinic is responsible for a given geographic area. There is a clinic in central Ottawa, one in the south, one in the east and one in the west. Our clinic is in Ottawa east and has a special mandate to serve francophones, a group that is particularly affected by poverty. We regularly receive requests from other clinics to help francophones from all over Ottawa because those clinics are overloaded.

As the first point of contact for people who are not familiar with the workings of the justice system, we have found that there is a great demand for family law services, which are not covered by legal clinics, and only partly covered by legal aid offices.

Even people who are eligible financially often have trouble finding a lawyer because their area of the law is covered neither by the legal aid office or the legal clinics. This means there is a void in some areas of the law. There are also a lot of people who just miss meeting the eligibility criteria and who have a lot of trouble paying lawyers to help them.

I have worked in legal clinics for nearly 20 years, and, in my humble opinion, they are law offices that provide essential services to the most underprivileged people in our communities. This system costs less than paying lawyers in private practice.

I must say that legal clinics are currently at risk because the number of requests is increasing and Ontario's legal aid budgets are running a deficit.

Legal clinics specialize in legal representation in the area of housing law and income maintenance. This area includes many specialities, such as welfare, disability benefits, employment insurance, worker's compensation and the Canada Pension Plan. Some clinics, including ours, also specialize in immigration and assisting victims of crime.

The clinics also have a community development mandate that includes prevention of legal problems through community legal education and legislative reform in areas related to poverty.

Mr. Chair, hon. members of the committee, thank you.

• (1545)

[*English*]

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

I'm going to hold the committee members to five minutes on their questioning.

Go ahead, Mr. Bagnell.

**Hon. Larry Bagnell (Yukon, Lib.):** Is your next round of funding agreed to for this year? Is that round increased? You named all the reasons your costs are going up, and there hasn't been an increase in years. Has this next round been approved? Are you finished negotiating it, and is there an increase?

**Mr. George Biggar:** Is that question directed to me or Mr. Guitard?

**Hon. Larry Bagnell:** It is to both.

**Mr. George Biggar:** Mr. Guitard's funding is included within the overall envelope of Legal Aid Ontario. I think Mr. Guitard's clinic is just starting their negotiation of funding for next year.

**Mr. René Guitard:** That's right, yes.

**Mr. George Biggar:** Most of the funding for Legal Aid Ontario is included in the provincial budget. It includes a significant transfer from the federal government pursuant to a contribution agreement.

There was a three-year funding agreement; it expired on March 31, 2006, and it was extended on precisely the same terms and conditions for the year, without any increase or reduction in the

amount of federal funding. The programs that are cost-shared by the federal government are adult criminal legal aid, young offender criminal legal aid, and the refugee services provided by the certificate bar.

**Hon. Larry Bagnell:** Given that this government has a whole slew of bills intended to incarcerate people for longer, and that your criminal funding therefore will make more people eligible, should they be successful—there will be far more people eligible for funding, because that's one of the criteria you mentioned at the beginning of your speech, that they could be incarcerated—what efforts has the government undertaken to negotiate higher contributions for you to cover this increased demand?

**Mr. George Biggar:** There have been some ongoing intergovernmental negotiations. I'm a representative of the legal aid plan and not of the Ontario government, so we're not always at the table for those discussions; we assist the province and support the negotiations of the cost-sharing agreement. But I am aware that the issue of funding for legal aid was discussed significantly at the recent meeting of the provincial-federal-territorial justice ministers conducted in October in Newfoundland.

I read the press release with interest and noted that all of the provincial and territorial justice ministers were unanimously in support of increased federal funding. But the silence of the federal justice minister was also observable in the press release.

**Hon. Larry Bagnell:** Or “deafening”?

I just have one more question. To quote you, you said most of the family law cases are women. That's precisely the problem for some of my constituents. Some men have come to me who have been having trouble with custody cases, saying they're not treated constitutionally fairly before the law, because women have access to all this funding that men don't.

**Mr. George Biggar:** That's an issue of the financial eligibility criteria, largely. It's unlikely that many of the men who apply for legal aid, if they're working, will be financially eligible, although we offer services irrespective of gender in relation to family law matters, so that if the men are financially eligible and are facing the same issues as a woman would be, we will provide the service.

**Hon. Larry Bagnell:** Do you have sufficient funding to ensure that every low-income person gets equal access before the law with high-income people?

• (1550)

**Mr. George Biggar:** Absolutely not; it's not close.

**Hon. Larry Bagnell:** Thank you, Mr. Chair.

**The Chair:** Thank you.

Mr. Ménard.

[Translation]

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

Basically, the committee members are trying to understand what the federal government's share of the cost of legal services should be and what kind of agreement we should recommend.

Regarding Ontario's budget, if there were an agreement whereby the federal government assumed half of the cost, how much would you receive and what would that mean for the services you provide? In terms of certificates, at what income level does a person qualify for legal aid services? How much does a lawyer who accepts a certificate—also known as a mandate in Quebec—receive?

[English]

**Mr. George Biggar:** The total budget of Legal Aid Ontario is about \$300 million a year. About \$230 million of that is received from the provincial government, and it includes the federal transfer of approximately \$50 million. Legal aid also receives revenue from client contributions and receives revenue as well from the interest on lawyers' mixed trust accounts, and that makes up most of the balance of the revenue.

If the government were to go to fifty-fifty funding, presumably the federal contribution would be increased by about \$100 million, if the budget were to remain the same.

[Translation]

**Mr. Réal Ménard:** Okay.

But if someone accepts a legal aid certificate, what does that mean in terms of the legal aid tariff? How much does the lawyer receive? What does that amount represent in terms of the service provided?

[English]

**Mr. George Biggar:** The legal aid tariff in Ontario has had only a very modest increase since 1987. It was increased by 5% in 2002 and 2003—to be precise, in each of those years. Currently, the lowest rate is about \$72 per hour; the medium rate, depending on experience and seniority, is about \$84 per hour; and the highest rate is \$92 per hour. This compares with rates for lawyers in private practice that begin at probably \$200—

**An hon. member:** And go well up beyond that.

**Mr. George Biggar:** The bar says that legal aid rates are essentially charity work.

[Translation]

**Mr. Réal Ménard:** Obviously, there is the satisfaction they get from working toward community goals, which is priceless. But I understand the reality you are describing.

It seems to me you are saying that there are some difficulties relating to criminal cases. Are you saying that a resident of Ontario can obtain representation in a criminal case only if there is a possibility of incarceration? You mentioned \$90,000 per person related to criminal cases. Can you clarify that for me? What are the eligibility criteria for criminal cases and what are the specific problems with this type of representation?

You are right. I have known lawyers who make \$200 or \$250 an hour. I do not want to name them, but I can see them from here.

[English]

**Mr. George Biggar:** It's certainly true that we receive a lot of benefit from lawyers who are doing legal aid work, partly out of the desire to serve the community, and I certainly want to acknowledge that.

Over the past five years the range of matters for which a criminal certificate will be issued has been restricted very significantly in order to try to accommodate increasing demand and increasing costs. Where it used to be that a certificate would be issued if the client were facing either the likelihood of incarceration or the loss of means of employment, in order to operate within our funding limits and within the budget we have had to restrict coverage to those cases in which there is now seen to be a probability of incarceration.

One of the kinds of matters that is putting a lot of pressure on legal aid is a new tendency of the justice authorities to prosecute large groups and large gangs of offenders. Trials involving multiple accused are significantly more expensive—these are essentially the gang-related prosecutions—vastly more expensive than the normal individual cases.

The average case cost for an individual charged with a criminal offence on a certificate is between \$1,500 and \$1,600. Some of the most expensive of the gang prosecutions are now costing Legal Aid Ontario as much as \$90,000 to defend, and this is creating enormous pressure.

A lot of it is in response to the federal amendments to the Criminal Code that provide for specific sections and penalties for gang membership.

• (1555)

**The Chair:** Thank you, Mr. Ménard.

Mr. Petit.

[Translation]

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

First, I would like to thank you for clarifying Ontario's Legal Aid Services Act for us. On behalf of lawyers in the province of Quebec—I work in private practice—I can tell you right now that legal aid pays more in Ontario than in Quebec.

Second, you have been talking mostly about Ontario, which is why you are here. As I understand it, you want to renew a 50/50 agreement between two partners, like the one that was in place in Quebec for a while. The same rules apply in both Ontario and Quebec. As you know, we are in pretty much the same boat in that respect.

You mentioned three major categories for low-income individuals. I am talking about those who are eligible for certificates, which we call a mandate. As you know, legal aid is a provincial responsibility under subsection 92(14) of the British North America Act. It falls exclusively under provincial jurisdiction, and there are federal-provincial agreements in place.

Let us suppose that, among your clients, there is a low-income francophone from Ontario—which happens, just as there are low-income anglophones in Quebec—who has the sort of problem that could affect any of us—say, a ticket in English. He is poor and needs to defend his rights. Is he eligible?

In Quebec, we accept immigration, employment insurance and social housing cases. We accept cases related to all federal legislation. Are there federal acts or criteria that say poor people cannot have access to this service to have their rights as francophones respected if they have received a ticket issued in English from the City of Ottawa?

**Mr. René Guitard:** Legal clinics are really the poor relative because there is a big difference between legal aid offices and us. In Ottawa, there is a clinic that handles contesting tickets. It might even be the University of Ottawa clinic.

Now, the people who provide services to clients at that clinic are law students working under supervision. They do not have much experience with the consequences of such cases. On the other hand, I understand they have a very good reputation at the provincial court, which is great. So there is access to that.

As a legal clinic, we do not do criminal law. We do not even deal with minor offences, because that is not in our mandate. Our mandate is to deal with cases relating to poverty, income maintenance, housing and so on.

I am talking about Ottawa, but there might be people in other parts of the province who do not have representation.

**Mr. Daniel Petit:** Is that because they do not meet the criteria, or is that because legal aid in Ontario does not cover language rights?

**Mr. René Guitard:** No, not language rights. But in criminal law, when there is no risk of imprisonment, a legal aid certificate may not be issued.

**Mr. Daniel Petit:** Like in Quebec. But I was talking about language rights.

**Mr. René Guitard:** Language rights—

**Mr. Daniel Petit:** Can a low-income person who wants to defend his language rights get representation in Ontario through legal aid?

**Mr. René Guitard:** For language rights exclusively?

**Mr. Daniel Petit:** Yes.

**Mr. René Guitard:** I think he would have a hard time getting it.

**Mr. Daniel Petit:** Okay.

I have no further questions.

•(1600)

[English]

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

As a point of clarification for me, do you have legal aid clinics and legal aid offices?

**Mr. George Biggar:** Yes. In some places they're together in the same building or side by side, but historically they are two separate systems that we are slowly working to bring closer together in order to serve the clients better.

**The Chair:** This is an examination under the estimates. That's why we're here, and it was agreed upon by the committee to go this route and pick the legal aid program as one example. If this committee were to look at this issue, if they were to have an in-depth examination of legal aid delivery and the whole bit, what would we find? Would we find a lot of inefficiencies in the system? Would we find possible overbilling? What would we find?

**Mr. George Biggar:** Speaking on the legal aid side, on the certificate and duty counsel program, I don't think you'd find much inefficiency. You certainly wouldn't find much overbilling.

We are very careful to constantly be monitoring the amount of money that we pay to lawyers in general and to specific lawyers. We have a full-time investigator on staff, and we have a number of mechanisms that automatically trigger an investigation of a lawyer's accounts. For example, while we have recently implemented a very sophisticated computer method of paying the accounts and lawyers can submit those accounts electronically through the Internet, that system has a number of complicated checks and balances to make sure that only what is properly payable is in fact paid.

In addition, the system randomly selects about 5% of the accounts for a further detailed audit. If there are any questions arising from that detailed audit, then our full-time investigator steps in to make sure there aren't any improprieties. Every year, we do find some people who have perhaps been a little energetic or more energetic, and we take steps to recover those funds. As the lawyers who work on legal aid generally tend to do quite a bit of it, we are very successful in our cost-recovery programs. We are constantly monitoring the cost per case, the cost per certificate, and the funds being paid to the lawyers, and we are confident that area of the business is well under control.

On the administrative side, Legal Aid Ontario has a favourable ratio of administrative costs of just about 10%, which compares favourably with other similar programs in the country and other legal aid programs in the country.

We have a very diligent provincial oversight, and internally we are constantly reviewing our expenses to see if we can reduce our budgets, which is something we have had to do. That is, in fact, the only way in which we have been able to maintain service levels, notwithstanding that over the past few years we have had no increase in our base funding since 1999.

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

Ms. Barnes is next.

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

I'm sure that if we had the time to do an in-depth study on legal aid, it wouldn't be that area. It would be what happens to the unrepresented and what access to justice is being denied, especially in the civil side and especially in family law.

In the estimates there is something you didn't mention, that being public contributions in support of public security and anti-terrorism legal aid. Do you have any of that in Ontario?

**Mr. George Biggar:** Well, we do now. I think there was one case in the last several years, and then recently there has been a very well-publicized significant arrest of a number of young men. That case is proceeding in the Brampton courts.

**Hon. Sue Barnes:** Was that a special pocket of money set aside separately?

**Mr. George Biggar:** Yes. We have been advised that there is a special pocket of federal money set aside for these cases.

**Hon. Sue Barnes:** Okay.

Now, you mentioned a figure of \$7.5 million that you predict with some of these bills. Can you tell me which bills specifically you were looking at? How did you come up with the \$7.5 million for Ontario in legal aid? You must have made some assumptions.

•(1605)

**Mr. George Biggar:** Yes, we did. We did quite a bit of work on that. We have a business analysis department. We looked at the number of particular kinds of cases—firearms cases, for example. With the use of our computer records, we can break out smaller particular sectors of the certificate caseload, and we worked very closely with our provincial counterparts to come up with some agreed upon estimate of the percentage of cases that would be affected and what the probable effects were.

**Hon. Sue Barnes:** You said \$7.5 million per annum.

**Mr. George Biggar:** No, it's over three years.

**Hon. Sue Barnes:** Oh, okay. It's over three years. That's just for Ontario, though?

**Mr. George Biggar:** It's just for Ontario.

**Hon. Sue Barnes:** You must know your colleagues in the other provinces. Is there any legal aid plan that you would say is in great shape across this country?

**Mr. George Biggar:** Oh, no. We're all very challenged—very challenged.

**Hon. Sue Barnes:** There has been no increase since 1999.

The Legal Aid Ontario people have been in to see me over the summer, and I think this is a huge need. Can you comment on what happens to the costs in the court system and how efficiently the court does or does not work when you have unrepresented accused before the court?

**Mr. George Biggar:** I can speak based on my own experience, because I was a courtroom lawyer for thirteen years before I went to work at Legal Aid Ontario. Although the evidence is anecdotal, it's universally agreed that unrepresented parties in the courts make the courts much less efficient. It imposes a real extra duty on the judge to try to make sure the party understands what is going on in the courtroom. The judges often feel in some ways that they have to wade into the conflict in order to make sure the process is fair. It certainly makes proceedings much longer.

**Hon. Sue Barnes:** Is there any tracking when someone is turned down for legal aid? Do we know whether they then enter guilty pleas more often, or do they just stand up there and do an unrepresented trial?

**Mr. George Biggar:** We know that there has been some federal research into this. The Department of Justice conducted some

research on what happened to unrepresented parties in the system, and they found that to a very significant degree they do in fact just plead guilty.

On the civil side, we did a very tiny project in Legal Aid Ontario in Toronto with family law applicants who were refused. We found that they just abandoned their claim and didn't pursue it any further.

**Hon. Sue Barnes:** Is there any difference on those stats with an aboriginal population or a first nations population? Did they break that down?

**Mr. George Biggar:** I don't remember seeing anything that separates out the aboriginal clients in that regard.

**Hon. Sue Barnes:** Okay.

Again, what's the percentage of the contribution from the feds in Ontario right now?

**Mr. George Biggar:** Of the total budget, it's about 16%. The total amount of federal money going to Legal Aid Ontario is about \$50 million or \$51 million per year.

**Hon. Sue Barnes:** I know that percentage varies with other provinces. Do you know how much it varies? Could you give other...?

**Mr. George Biggar:** It varies a lot, depending on the.... I think the highest percentage is New Brunswick, which I think may be as high as 60%, but it's dramatically lower than that in all the other provinces.

**Hon. Sue Barnes:** What about the territories, where the federal government has—

**Mr. George Biggar:** The federal government pays the whole cost in the territories.

**The Chair:** Thank you, Ms. Barnes.

Mr. Norlock is next.

**Mr. Rick Norlock (Northumberland—Quinte West, CPC):** For the interest of a Canadian who may want to look at these proceedings to get a better picture of how Canada stands with regard to people who are represented or not represented by legal aid, could you go through the evolution of legal aid in Canada, and in Ontario in particular?

From a participatory standpoint, I'm aware of its progress since 1970, and I am proud that we are more and more able to represent people who have less ability to represent themselves.

I'm just wondering if you could give us a brief overview so that anyone who is accessing these hearings could have a picture of the progress we've made since just before we even had anything called legal aid.

•(1610)

**Mr. George Biggar:** Legal Aid Ontario was one of the earliest full-scale legal aid plans in the country. It was established by legislation passed in 1967; the other provinces passed legislation in the succeeding decade. I'm sorry that I can't tell you with any degree of accuracy how swiftly the other provinces joined in; I think Quebec, in particular, was early into the game with a comprehensive coverage system.



The plans at first grew quite slowly. Initially in Ontario, for example, we didn't provide much coverage in family matters. As the federal Divorce Act of 1968 kicked in, family law became a very significant—shall we say, growth—industry. There came to be a real demand and a real need for assistance to people involved in family breakdown, and Legal Aid Ontario responded to that by gradually expanding its coverage.

The plan has always struggled with funding. It has always struggled to meet the very significant needs expressed by the numbers of people showing up in the courts wanting help from duty counsel and showing up at the offices seeking assistance. Generally speaking, Legal Aid Ontario has been able to meet a significant part of the need.

We ran into a crisis on the certificate and duty counsel side in the early 1990s. There was a significant recession throughout the country in the early 1990s, and as unemployment doubled, for example, the number of applicants really doubled. We reached a peak in 1993-94, when about 236,000 certificates were issued by Legal Aid Ontario. This triggered a funding crisis that was followed by a political crisis and a change in the management of Legal Aid Ontario.

At the same time, the clinic system was building very slowly. Here my friend René will have to tell me, but my knowledge is that the first clinic was a joint project of the law society and of the Osgoode Hall Law School at York University. It was in Parkdale, a poor downtown district of Toronto. It was established in 1972.

Then there were three or four other clinics established, and there were two royal commissions on the clinic system, one led by Justice Sam Grange and the other led by Justice John Osler. Notably, Ian Scott was counsel for the Osler inquiry, and some of you may know that he died two weeks ago.

Their recommendation resulted in the establishment of a significant clinic system in Ontario to provide services of the kind that the law profession had basically not provided before to anybody—services in respect of welfare entitlement, public housing entitlement, pension plan benefits, and unemployment insurance, as it was then.

The clinic system grew gradually, basically through a process whereby local community groups would band together and decide that they should have a clinic, and then they would make application. There were about 60 clinics in the system until 1999. There were 14 counties in the province that did not have any clinic services available at all, so in 1999-2000 there was a further expansion, in which clinics were set up so that there were services available throughout the province.

**Mr. Rick Norlock:** Thank you.

Can I ask a follow-up question?

**The Chair:** Quickly, Mr. Norlock.

**Mr. Rick Norlock:** My experience commenced in the seventies, just after we actually began to have legal aid. I can recall where the courts would simply send the accused out and say they had a two- or three-week or sometimes six-week adjournment in order to obtain legal aid. The system has progressed, and we actually have duty counsel in the courts. And tell me if I'm wrong here, but most judges

will not even hear a guilty plea and in some cases won't allow the court to address the case, other than the actual remand, until such time as the person has spoken to legal aid or to duty counsel.

Would you agree with me that we have had, through the courts, significant progress in the availability of representations in the court for persons? As a matter of fact, we've seen a gradual move toward ensuring that anyone who appears before a judge has at least the availability of duty counsel to advise them as to a plea or the next step they need to take in the system.

•(1615)

**Mr. George Biggar:** That's correct, and the duty counsel program has been strengthened significantly over the last few years in Ontario. We've put resources into it, and we have actually required it to look after more people because we haven't been able to give them certificates. We've been restricting the coverage for certificates.

The difficulty is that duty counsel can't represent people at trials, so if you are in that group of people who are financially eligible, facing a fairly serious charge, and might lose your employment, for example, you're no longer eligible for a certificate and all we can do is offer you help with a guilty plea. But if you're innocent, we can't offer you help, and that is a significant gap in our services in Ontario.

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

Mr. Brown.

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

I wanted to know if you had any stats in terms of those who have used legal aid more than once. Do you have any information?

**Mr. George Biggar:** No, I don't have any statistics on that. There are certainly people who use legal aid more than once. Generally speaking, if they're people who are facing charges and have previously faced charges, they're likely at a significantly increased risk of incarceration as a penalty. Therefore, they are significantly more likely to receive legal aid and, in the view of many people, significantly more in need of legal aid.

**Mr. Patrick Brown:** You mentioned previously that legal aid, because of the lower rates of billing, is essentially charity. I'm curious about that statement in terms of how much a lawyer who billed the most he could, if he billed the maximum hours to legal aid, would be able to make in a year. What is the maximum cap? Is it below the poverty line?

**Mr. George Biggar:** No, there is a cap on the number of hours a lawyer can bill Legal Aid Ontario. I think it's 2,700 or 2,750. At the highest rate, that works out to be just above \$200,000. There are perhaps a dozen lawyers who do that well, who get up to that cap in Ontario. You have to remember that is a gross figure, though, because they have to pay for all the costs of operating their offices, their secretaries, their accountants, and support staff out of that.

**Mr. Patrick Brown:** Are they allowed to take other clients, too, cash clients, at the same time?

**Mr. George Biggar:** Yes.

**Mr. Patrick Brown:** What amount do you think would be adequate for lawyers to bring it beyond the charity level?

**Mr. George Biggar:** If I could just correct your question—or perhaps my answer wasn't sufficiently clear—what I said was that some of the lawyers who do the work regard it as charity work. There are many lawyers who are quite dependent on the legal aid program. We don't know and can't track in Legal Aid Ontario what the average net income of a legal aid lawyer is, but we hear anecdotally that there are a lot of lawyers who are really netting between \$40,000 to \$60,000 a year from full-time legal aid practices.

**Mr. Patrick Brown:** Could you give me an idea of what percentage of lawyers you believe rely solely on legal aid billing, compared to those who bill both legal aid and cash? Would it be the majority?

**Mr. George Biggar:** I don't think so. In Ontario, you have a legal profession of 30,000 lawyers, of whom about 22,000 are in practice. Of those, I don't know what the number is, but most lawyers never go to court. What we do in Legal Aid Ontario, of course, is fund lawyers in courts. So we're getting services from only a small fraction of the practice as a whole.

From my own experience, and anecdotally, my sense is that if you are practising criminal law, quite a bit of your practice is likely to be legal aid, with some notable exceptions. But if you're practising family law, for example, you're much more likely to have a mixed practice, where you have some legal aid clients and some cash clients.

•(1620)

**Mr. Patrick Brown:** Do you have any information on how Ontario stacks up when compared to other jurisdictions internationally, in terms of what we provide financially for public defenders?

**Mr. George Biggar:** I'm most familiar with the English legal aid plan. Although Ontario has a relatively large and well-funded plan when compared to other Canadian provinces, we are nothing like the English plan. The English plan is the grandmother of all plans. We all look to it with admiration.

**Mr. Patrick Brown:** Thank you.

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

Mr. Murphy.

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

I've been a practising member of the New Brunswick and Ontario bars and a member of the law societies there for more than twenty years. I'm not a legal aid lawyer; I've done very little of it except at the beginning of my career. It seems to me that despite the talk about improvements here—and I know you're working with an interesting system—the general coverage of legal aid has decreased over time, certainly in my province of New Brunswick, which is where I practise mainly.

Also, there has been an increased demand or recognition of demand from the law societies involved in that time. The law societies, I believe, have stepped up to the plate in terms of contributions and moral suasion regarding representing clients and so on. That's my general view, and I'd ask you to comment on that.

But the bigger question I have hasn't been covered, which is why I'm covering it. With respect to civil legal aid in support

enforcement, not so much custody, because I believe that a review nationally would show that exigent custody situations might get covered one way or the other, when it comes to support obligations not being met primarily by defaulting husbands—let's call it straight—the provincial response through enforcement mechanisms is not always the best. And this cuts across all legal and partisan lines. It's a growing problem that women who have gone through a divorce or a separation are unable to get sufficiently good representation to get the money they're owed for their family, for their children. What have we done for that specific problem, and what can we do better for those members of our society?

**Mr. George Biggar:** I can only speak for Ontario. You certainly have identified a problem that has been identified in Ontario as a significant problem. We have had in Ontario, for about the last fifteen years, a government program now called the Family Responsibility Office. It's a department of I think the Ministry of Community and Social Services, and it seeks to enforce support and custody orders. But the volume of work is daunting and the compliance rates by payors still leave quite a bit to be desired, according to the press reports. But it's not an area where legal aid is actively involved in Ontario.

**Mr. Brian Murphy:** But in terms of civil legal aid, in a blue sky sense, is that an area you would see yourself expanding into? I don't know if you feel it is, but I feel it's a growing problem.

**Mr. George Biggar:** Because of the existence of this other provincial agency in Ontario, it wouldn't be a high priority for Legal Aid Ontario.

**Mr. Brian Murphy:** Is it funded 100% by the province?

**Mr. George Biggar:** Yes.

**Mr. Brian Murphy:** Is there an outcry about them not having enough resources?

**Mr. George Biggar:** Yes.

**Mr. Brian Murphy:** Thank you.

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

Mr. Lee.

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

I was pleased to hear that the duty counsel program in Ontario seems to be going fairly well. I don't know what proportion of your budget goes to the duty counsel program, but dare I presume it's just a fee for service per hour for a duty counsel?

**Mr. George Biggar:** It's about 12% of the budget for the duty counsel program as a whole. The services are provided by about 2,000 per diem lawyers in the province. The program is anchored by about 100 or 110 full-time duty counsel, most of whom we call supervisory duty counsel, who work as the lead hands to coordinate the per diem part of the service.

•(1625)

**Mr. Derek Lee:** And are they paid out of the legal aid program as well?

**Mr. George Biggar:** Yes.

**Mr. Derek Lee:** They are.

Going back to trying to figure out where the legal aid programs came from, I went to the charter, of course. There is a right to retain and instruct counsel if a person is in custody or under arrest. Other than that, there does not appear to be an actual absolute right, although the courts have given signals that accused and perhaps those in some other contexts might require some representation. In some cases a judge may actually insist on it, presumably foisting that burden on the provincial legal aid plan when that happens.

I don't know how prosecutors respond, but assuming some of that happens and pops up from time to time, I was curious about your reference to the refugee component. As far as I understand it, these individuals would not be residents of Ontario or a particular province. Are they served by duty counsel, or would they actually have the ability to obtain a certificate?

**Mr. George Biggar:** They have the ability to obtain a certificate. The duty counsel model is not appropriate for refugee cases. It doesn't work, so you have to use the certificate model or staff lawyers, and we have both in Ontario. We have a few staff lawyers, but mostly it's done through the certificate program. I believe that is pursuant to a Supreme Court of Canada case that was decided twenty years ago. I think the Singh ruling said that refugee applicants, once they reached Canada, were in fact residents of whatever province they were in and were entitled to legal services.

**Mr. Derek Lee:** If they're not residents, they're certainly here. They're certainly present.

It seems odd to me that, in terms of priorities, a refugee claimant who happens to be here for a couple of days would have priority over the guy who has four kids, is making \$29,000 a year, and can't get a certificate. Do you subject the refugee certificate applicants to the same financial means test?

**Mr. George Biggar:** Absolutely.

**Mr. Derek Lee:** Of course, they probably don't have a record of earnings at all, do they?

**Mr. George Biggar:** Right, and in some cases they're not allowed to work.

**Mr. Derek Lee:** Good point.

**Mr. George Biggar:** They generally tend to arrive penniless, and the consequences for them in these hearings are very significant.

It's an ongoing debate about priorities for legal aid, and well-meaning and intelligent people can disagree about those priorities. In Ontario, we've had fairly stable percentages of the program devoted to family and criminal and refugee over the past decade.

**Mr. Derek Lee:** Could you just flag those percentages again for us, if you have them at hand?

**Mr. George Biggar:** I think we spend about \$175 million on certificates, of which about \$90 million is criminal. On family, we spend about \$50 million. For refugees, it's about \$13 million to \$14 million. And then there's still a residue of some other civil legal aid, particularly Consent and Capacity Board matters for people who are suffering from issues related to their mental health status.

Up until the early nineties, we had a significant amount of civil litigation being funded through Legal Aid Ontario, but that has

virtually all been eliminated over the succeeding decade. At the height, \$25 million a year was being spent on other civil litigation, and it's now down to a million or two million dollars.

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

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

**The Chair:** I have one quick question, and that will bring us to the conclusion of our session here.

Is there a policy in legal aid to support Canadians who are charged outside of the country?

• (1630)

**Mr. George Biggar:** No, we do not provide legal aid to people charged outside the country, period. Legal Aid Ontario restricts its services to residents of Ontario, and I believe all the other legal aid plans do the same as well.

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

We'll suspend for about one minute.

• (1630)

\_\_\_\_\_ (Pause) \_\_\_\_\_

• (1635)

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

Now we have the issue of the drug treatment courts for further examination. We have two witnesses appearing in front of us: Mr. Richard Coleman, the coordinator of the Toronto Drug Treatment Court; and Mr. Kevin Wilson, senior counsel with the Federal Prosecution Service.

Mr. Wilson, I believe you are going to provide us first with an overview.

**Mr. Kevin Wilson (Senior Counsel, Federal Prosecution Service, Department of Justice):** Yes, thank you, Mr. Chair. My thanks to the members of the committee for giving us the opportunity to appear here this afternoon to discuss how drug treatment courts operate in Canada. My colleague Mr. Coleman and I will speak from the perspective of the Toronto Drug Treatment Court, but there are substantial similarities between our court and the other courts across the country.

The Toronto Drug Treatment Court is an intensive, court-supervised program of drug treatment designed to deal with addiction-driven, non-violent criminal behaviour. It's a partnership between the criminal justice system, the treatment system, and the community. Mr. Coleman will talk more about the treatment and community components and I'll restrict myself to the criminal justice system.

The criminal justice system goal of a drug treatment court is increased public safety through reduced crime by way of reduced recidivism. The idea is to identify people who are facing criminal charges and whose criminal conduct is driven by addiction to, in our court, cocaine, methamphetamine, or opiates, including heroin, and to deal with the criminal conduct by dealing directly with the underlying addiction.

Participation in the court is voluntary and the criteria for eligibility are quite strict. Applicants to the court are screened out for violence, for commercial drug trafficking, residential break-and-enters, involving someone under 18 in the commission of their offence, or committing a drug offence at a school, park, or other place ordinarily frequented by young persons. Applicants to the court are typically facing a fairly significant jail term if they are convicted and sentenced in the regular court system, but if they successfully complete the program, they generally receive a suspended sentence and a period of probation.

The typical Toronto Drug Treatment Court participant is what we refer to as an addict-trafficker, someone who sells small amounts of drugs just at the subsistence level to support their addiction or someone supporting an addiction by shoplifting or committing small-scale break-and-enters into businesses or vehicles.

I think the committee was left with the impression on October 18 that all trafficking charges are ineligible for the Toronto Drug Treatment Court. That's not actually true. People who traffic for profit are certainly not eligible, but we actually have quite a few subsistence-level addict traffickers participating in our program.

Participants plead guilty before being accepted into the program. It's a post-plea system. They get the advice of private defence counsel or duty counsel before doing so. They are released on stringent bail conditions, including a specified residence, a 7 p.m. to 7 a.m. curfew seven days per week, random urine screens, and a strict honesty requirement, among other conditions. Dishonesty about their substance use in the program can result in their bail being revoked, or even in the participant being expelled from the program. Honesty is a key component of a drug treatment court.

When participants first enter the program, they're required to attend court every Tuesday and Thursday, and to attend treatment at least three times a week to begin with. As they progress in the program, their court attendance is gradually relaxed, and if they're doing well, their curfew may be relaxed as well.

Procedurally, each participant's case is discussed at a closed, pre-court meeting of the court team prior to each sitting of the court, and the participants then come before the court and report on their progress themselves, including admitting any drug or alcohol use since the previous court appearance. Serious breaches of the drug treatment court bail, such as lying about their substance use, missing court without, say, a medical note or some other valid reason, or missing one of the random urine screens without a valid reason, often result in the participant's bail being revoked temporarily. Less serious breaches of the bail—for example, perhaps missing a treatment session—often attract a sanction of community service hours. If somebody misses a two-hour treatment session, they generally get four hours of community service that they have to perform.

The program takes about a minimum of nine months and usually more than a year. In order to graduate from the program, there are formal graduation criteria.

The participant has to abstain from their drug of choice—that would be cocaine, the opiate, methamphetamine—for at least four consecutive months; have stable housing; have regular employment or be at school full-time, and if that's not possible for some reason such as a disability, then at least be participating regularly in some sort of volunteer activity.

Graduation from the program is formally the participant's sentencing hearing, where the period of probation is imposed. The conditions of that probation always include a requirement that they come before the court on the first Tuesday of every month to report on their continuing recovery. So there is that additional support after the more formal treatment part of the program to ensure that they're not simply completing their treatment and then being let go.

Mr. Coleman can go more into the treatment and community side.

• (1640)

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

Mr. Coleman.

**Mr. Richard Coleman (Coordinator, Toronto Drug Treatment Court, Centre for Addiction and Mental Health):** I don't want to take up too much of your time. I think Mr. Wilson has given you a fairly clear picture.

What I would like to add is that our typical participants in drug treatment court programs are people who are severely marginalized individuals. They are also very expensive citizens. They are heavy, heavy consumers of resources within the community. They are often in and out of jails. They have no housing. About 85% of our participants are without housing when they enter the program.

We're looking at a type of person who commits crimes. There are policing costs involved in bringing them before the courts and the cost of prosecuting them. They're jailed, then they get out, and they're generally housed within the shelter system until such a time as they commit another crime and the whole process starts again.

These people haven't had jobs for many years. Their income is primarily provided by social services and through their criminal activities. They can commit substantial amounts of crime, even at small levels. A person with a \$500-a-week crack cocaine habit will support that habit, if they're shoplifting, for instance, by stealing approximately \$5,000 worth of goods, because they get about a 10% commission from the people they're selling to.

We're also dealing with people who don't have family doctors, so most of their health care is occurring through accessing emergency departments in hospitals. I consider them to be very expensive citizens.

When they come into the drug treatment court, the system is supported, not just by justice and the treatment provider, but also by the community. In Toronto, we have the benefit of approximately 50 community partners on our advisory committee and many more that provide direct services to our clients.

We use the court to start coordinating the delivery of services for these people. We're getting them into community health centres and substantially reducing their health care costs from the get-go. We're hooking them up with community colleges and getting them back in school.

Ultimately, the goal of the program is to get people engaged in the community, to end the criminal behaviour that's associated with supporting their drug use, and then to get them employed. At the end of the day, that means a successful drug treatment court participant is paying taxes and actually returning some of the costs that were initially borne by the program.

Beyond that, I would leave things for your questions.

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

Ms. Barnes.

**Hon. Sue Barnes:** Thank you very much.

Recently this committee, on Bill C-9, conditional sentencing, reduced the scope.... I want to know, if conditional sentencing had not been available to some of these people who, say, take crystal meth or Ecstasy or heroin or crack, what impact that would have had on the drug treatment courts.

**Mr. Kevin Wilson:** The conditional sentencing system really doesn't interact with the drug treatment court system at all.

People who are coming into drug treatment court are typically facing a period of custody. They're often people with very lengthy criminal records for similar offences such as trafficking. These are people who would not ordinarily be released on bail because they've accumulated a large number of convictions for things like failing to attend court, or failing to comply with probation orders or bail conditions. They tend not to be people who are looking at a conditional sentence anyway. And also, the conditional sentence is not used as a sentence in the drug treatment court.

•(1645)

**Hon. Sue Barnes:** With the Gladue courts it is.

**Mr. Kevin Wilson:** Yes, it is used quite a lot.

**Hon. Sue Barnes:** Maybe I should have said that, because that is using it for drugs, and the Gladue courts use that.

**Mr. Kevin Wilson:** That's right. In the drug treatment court they virtually always receive a suspended sentence and a period of probation at the end.

**Hon. Sue Barnes:** Let's talk about commercial trafficking. Like an organized crime offence, commercial trafficking would be eligible.

**Mr. Kevin Wilson:** Organized crime would not be eligible.

**Hon. Sue Barnes:** I guess I should have said that the other way then.

**Mr. Kevin Wilson:** We don't have to get to that point. In our court and in most of the courts the Crown does the initial wave of

screening. We have a six-stage screening process. In the first stage the Crown looks at the application, the synopsis of the offence, the criminal record, and any recommendations from the police. On the divide between an addict trafficker, who is just trafficking at the subsistence level to support their own addiction, and the commercial trafficker, it's more art than science.

For example, I will look at the quantity of drugs and the role the person played in the transaction. Typically, someone who gets screened in through that first stage in our court is out on the street, makes the initial contact with the police undercover officer thinking the officer is a customer, but then has to go to someone else to get the actual drugs to complete the transaction. That's somebody we call the front end, in the vernacular, as opposed to the back end, who is the person actually holding the drugs.

**Hon. Sue Barnes:** Let's talk about success rates. You've been in operation for a little while now, so how do you measure success?

**Mr. Kevin Wilson:** If you measure it by graduation—and you ought not to—the graduation rate in the evaluation report for the first five years of the Toronto Drug Treatment Court was a little over 15%. I'm told by treatment people that's about the same as or maybe even a little better than the success rate of people in standard, non-coercive, more voluntary cocaine treatment programs. Considering the fact—as Mr. Coleman pointed out—that we're dealing with a population that is much more marginalized and criminally involved than might be found in a typical cocaine treatment program, it seems we're doing extremely well.

**Hon. Sue Barnes:** What about a person charged with any violent crime, or an offence involving a child, firearms, or a motor vehicle?

**Mr. Kevin Wilson:** Those are screened out.

**Hon. Sue Barnes:** They're totally screened out.

**Mr. Kevin Wilson:** Yes.

**Hon. Sue Barnes:** That's good.

What about a robbery or home invasion?

**Mr. Kevin Wilson:** Those are screened out. If it's technically a robbery that really breaks down to more of a theft and a shove, there's a bit of discretion to let something in if the violence component is really innocuous. My colleague with the provincial crown office who screens most of the Criminal Code offences is very careful about that, and is obliged to be very careful.

**Hon. Sue Barnes:** But there's a difference between some robberies and other robberies. Some at the lower end would be eligible and some at the upper end obviously wouldn't.

**Mr. Kevin Wilson:** Something like a home invasion would absolutely not be eligible. Even a residential break-and-enter when there's nobody home would not be eligible. Only vehicular and commercial break-and-enters are eligible.

**Hon. Sue Barnes:** Repeat offenders are eligible for your program.

**Mr. Kevin Wilson:** Yes, but repeat participants in the court are a little less eligible. We established a policy within the court, after discussion with duty counsel, the judiciary, treatment, and so on. Previous graduates from the program are not allowed to participate in the program again. After they complete the program and graduate successfully, they don't get a second shot. People who do not successfully complete the program may not reapply for two years after either withdrawing or being kicked out. After that they may be at a better point of readiness in their lives and may get another chance.

• (1650)

**Hon. Sue Barnes:** Thank you.

**The Chair:** Thank you, Ms. Barnes.

Mr. Ménard.

[Translation]

**Mr. Réal Ménard:** Thank you. My question is for Mr. Coleman.

A you know, you are here today because we are studying the government's estimates. If I understand the documents correctly, the transfer payments for drug treatment courts will be cut by \$638,310.

In my opinion, you provide a very good service in terms of offering alternatives.

When I was a member of the committee that studied the issue of non-therapeutic drug use, you appeared before us. I think you were there, but Mr. Wilson was not. I find that you have a good record, no doubt about it, especially since you are operating under such strictly defined conditions.

I would like you to tell us a little more about the budgetary reality you deal with. How much does the kind of intervention you do save in terms of costs? What do you think would be the impact of this budget cut, as far as you can tell? I imagine you have worked it out, given that the budget will be cut by \$638,000, which is substantial.

[English]

**Mr. Richard Coleman:** In terms of savings, we've had a very difficult time measuring all of the savings that drug treatment courts effect, because the people we're dealing with are already consuming many of the services that are being delivered. However, they're doing it in a rather haphazard fashion.

The beauty of a drug treatment court is that we have these regular appearances before a judge. We're able to begin the case management process and use the courts to better assign the use of the services within the community that are already being accessed by an individual. We could have, for instance, one person accessing similar services at four or five different agencies not involved with the drug treatment court system. Once they're involved with the drug treatment court, there are the regular appearances in court, the regular attendances at treatment, and visits with their case manager,

so we know exactly where they're going and we can then better coordinate the delivery of those services.

As I mentioned earlier, some of the costs are very difficult to capture. In Toronto, we followed one man—this was not through the drug treatment court, but through one of the shelters I managed before my involvement—through his health card and discovered that he had consumed \$350,000 worth of emergency room visits in a one-year period. If we can have a person who is getting their medical care through a community health centre instead of at emergency, there is a significant savings there. Again, though, this is very difficult to capture because we're trying to get information from systems that are not willing to readily share the information because of Freedom of Information and Protection of Privacy Act issues.

**Mr. Kevin Wilson:** I would add that it's very difficult to quantify what the savings are and what the costs are. I think I saw one American study that said that for every dollar you spend on a drug treatment court, you save up to seven dollars. They were taking into consideration things like all of the break-and-enters that this person did not commit that they would otherwise have committed over the rest of their life had they not been through the program and overcome the addiction.

I believe Ms. Merriam, who testified here on October 18, is providing to the committee the executive summary of the evaluation report of the Toronto court. That report certainly does have some numbers in it, but very deliberately steered away from trying to come up with a cost-benefit analysis, because it's simply so hard to quantify.

[Translation]

**Mr. Réal Ménard:** Do I have time for another question? Thank you.

What is the process for selecting people who are eligible to appear before a drug treatment court? You mentioned holding something like what might be called a preliminary hearing in legal terms. So there is an initial screening to assess people's motivation. How do they decide who gets to benefit from these services?

• (1655)

[English]

**Mr. Kevin Wilson:** As I said, there's a six-stage screening process. Part of it has to do with screening people out for things like violence, commercial trafficking, and using young persons. There's also quite an in-depth treatment screening to go into the addiction history and to ensure as much as possible that the person is someone who really is in need of drug treatment. There's also a stage in the screening when the drug treatment court judge actually has a dialogue in court with the applicant, to try to test the person's motivation for picking this point in their life to come into the court. So there are a number of ways that we try to see—

[Translation]

**Mr. Réal Ménard:** Do I have any time left?

[English]

**The Chair:** No. Thank you, Mr. Ménard.

Mr. Petit.

[Translation]

**Mr. Daniel Petit:** Thank you, Mr. Chair. My questions are for Mr. Wilson and Mr. Coleman.

I understand from your presentation that the courts you deal with are located mainly in Ontario.

I also understand that there are no such courts in Quebec. Is that the case? Are there Gladue courts in Quebec?

[English]

**Mr. Richard Coleman:** If I may, there's interest in Quebec. Justice Céline Pelletier and I have been having conversations for several years now. She would like to start a drug treatment court in Montreal. However, there has been very limited support on the part of the province until recently. My understanding is that her chief justice has given her permission to go ahead and form a committee that will do some of the preliminary investigations around starting a drug treatment court in Montreal. We've been offering her as much support as we can through the Toronto court, and if requested, we'll give her all the assistance she needs.

[Translation]

**Mr. Daniel Petit:** Earlier, you said that there are six steps to determining who is eligible for the program. We do not have Gladue courts in Quebec, so we have to send people through traditional criminal courts.

Here is an example that got a lot of media attention in Quebec. A Chief of Staff spent \$37,000 on cocaine. He did not sexually assault minors. He had a good job as a Chief of Staff. Yet he spent \$37,000 on cocaine and used false documents to steal public funds to pay for his addiction.

Would he be eligible for your program?

[English]

**Mr. Kevin Wilson:** I'd have to know more about the situation than that.

**Mr. Richard Coleman:** I would say you could certainly benefit from a drug treatment court program. Generally speaking, with the type of profile you've mentioned, obviously, the individual would benefit from treatment. We've found the addition of court supervision is a very important component in this type of program that increases the likelihood of success over just treatment alone, especially when there's some criminal activity involved.

**Mr. Kevin Wilson:** It's important to keep in mind too that people come into the drug treatment court because they are already in the criminal court system. So it's not enough to say that this person who worked for the cabinet would have a drug problem and use public funds and so on. But if he were charged criminally with something arising out of that and then brought before the criminal courts, then we'd have a look at the nature of the charge, the nature of the addiction, whether there were some other reasons for screening the person in or out, and make a decision from there.

[Translation]

**Mr. Daniel Petit:** Do I still have some time?

[English]

**The Chair:** One more.

[Translation]

**Mr. Daniel Petit:** I am trying to draw your attention to a case that the media were really interested in. This was the Chief of Staff to Mr. Boisclair, leader of the Parti québécois. His Chief of Staff was charged with and pleaded guilty to using cocaine and stealing \$37,000 from the government.

I would like to know if a person has to have received a prior conviction to have access to a court like yours in Ontario. We might have such courts in Quebec one day.

● (1700)

[English]

**Mr. Kevin Wilson:** It wouldn't be about having a conviction; it would be about having a charge before the courts.

In our court, typically, many of our participants have long criminal records, but sometimes we'll get someone who applies who has no criminal record. Whether they have previous convictions or not is not going to determine whether or not they get access to the program.

**The Chair:** Thank you, Monsieur Petit.

Mr. Bagnell.

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

You said a lot of the clients were homeless, indigent, when you got them. If one of the conditions is they have to be home after 7 p. m., where do they go if they don't have a home?

**Mr. Richard Coleman:** Before we release them from custody, I have two staff in the court, called court liaisons, who are part of the assessment process. After they've interviewed the individual and determined that there's an issue around housing—even for people who do have housing but it's deemed unsuitable because there may be other people living there who are drug users—this is where we rely on the community network that's a part of any functioning drug treatment court.

Our community service providers offer not only medical services but housing, shelters, and all sorts of ancillary services. So we would be securing an address to release the individual to. That would be part of their bail. Their bail might say they are to reside at this address and they'll have a curfew between certain hours, and then that will be modified over time.

**Hon. Larry Bagnell:** If you take one of these people who's just on the line, such that they might be allowed in or might not, in the real world, if they don't get allowed in, what are your experiences as to the treatment they get? Do they get treatment that's just as good and the same number of hours of treatment as a person who is allowed into your courts?

**Mr. Richard Coleman:** Essentially, the program we offer is the same program that's available to people who aren't involved in the drug treatment court program. However, one of the added benefits of the drug treatment court is that people have immediate access to treatment. They'll be released from court to the address we've secured for them, they'll be reporting to treatment the next day, and the treatment starts then. It's generally 24 hours.

**Hon. Larry Bagnell:** So you're saying an incarcerated person would not get the treatment that quickly, but they have access to the same treatment.

**Mr. Richard Coleman:** No, the incarcerated person will actually get the treatment more quickly.

**Hon. Larry Bagnell:** The person who doesn't go through the drug courts?

**Mr. Richard Coleman:** A person who's just coming in, who doesn't have any charges and wants access to treatment, would be going through the standard process. They might wait six to eight weeks in Ontario.

**Hon. Larry Bagnell:** What I'm talking about is the violent offender, someone who can't go through the drug courts but has the same addiction. Do they get the same amount of treatment in the prison system, and as quickly, as if they go through the drug courts?

**Mr. Richard Coleman:** I can't really speak to the prison system. They would be eligible to enter treatment once they've completed their sentence, certainly, and I know there is some treatment available within the prison system. However, I'm sorry, I'm really not familiar with how much is available and what the waiting period is.

**Hon. Larry Bagnell:** Could you talk about any experience you have with FAS, fetal alcohol syndrome, and how you might deal with those people differently?

**Mr. Richard Coleman:** In Toronto, we haven't seen really significant numbers of applicants with FAS or FASD. Our staff have been trained, are aware of, and certainly look for any indicators of FASD. We would certainly then be looking to specialize the treatment to accommodate those individuals, including some of the ways in which their court appearances would work, because there are some cognitive and behavioural issues that could come up in court.

So we are aware of it, but it's not an issue in our community. In some of the other drug treatment courts, they deal with a much higher incidence of FASD than we do.

**Hon. Larry Bagnell:** Mr. Wilson, what about other parts of the province? Is it more first nations people?

**Mr. Kevin Wilson:** We don't see a lot of first nations people in our court. We've had a handful, but our courthouse, the Old City Hall court in Toronto, also houses the Gladue Aboriginal Persons Court, which has a specialized clientele of first nations accused. In my experience, that's the court that first nations accused tend to go to, rather than to our court.

• (1705)

**Hon. Larry Bagnell:** On the whole point of my question about the other person who is incarcerated, if the goal is to make things safer through less recidivism, my first question is whether that's the result you're getting. Is there less recidivism? Second, if you're eliminating all these robberies and violent people, then the people who need it the most are the ones who are going to have the most dangerous recidivism. We're denying them treatment that could make communities safer.

**Mr. Kevin Wilson:** It's not so much that they're being denied treatment; they're just being denied this particular avenue of treatment. Whenever someone applies to the court, comes in, and then isn't successful or is screened out, they always have the opportunity to seek treatment elsewhere. I'm afraid I can't speak to

what treatment is or is not available in either the provincial reformatory systems or in the federal penitentiary system.

In terms of actual recidivism, it might interest the committee to know that the research and statistics division of the Department of Justice recently published a study specifically on drug treatment courts and recidivism. It was a meta-analysis of reports from the U.S. and Canada, and it reached the conclusion that drug treatment courts do decrease recidivism.

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

Mr. Lemay.

[*Translation*]

**Mr. Marc Lemay (Abitibi—Témiscamingue, BQ):** Good afternoon. I have several years of experience in criminal law. You are doing exceptional work. When I was practising in Quebec, I had clients from Ottawa and Toronto who had committed offences in Quebec, and we were able to send them to your program. I think this is an extraordinary program.

I just want to understand certain parts of the program better. If I am not mistaken, when an individual agrees to go through your treatment program, he does not have to go to prison. How does that work? He appears in court, then goes directly into treatment. That means he makes a commitment to stop using. How do you determine whether the person is using? Do you run tests? Does the person have to undergo periodic—say, weekly—screening? I do not understand that part of what you do.

[*English*]

**Mr. Richard Coleman:** Once the person enters into the program, the treatment is provided within the community. The person is released into the community on a special bail, but we initially will be dictating the address they can live at.

In addition to receiving treatment immediately, they're also returning to court twice a week. Each person in the program is assigned a colour for the purpose of random urine screens. They have to call a 1-800 number every day—in case they don't have a quarter, they can call from a pay phone—and if their colour comes up that day, they have to go to the centre where treatment is provided and provide a urine screen. We know whether they're using based on their random urine screens. The screens are frequent enough. On average, a person is screened a minimum of once a week, but more usually twice.

When they come into court twice a week, the judge is going to be asking them, "How have you been doing? Did you use today, or did you use since your last appearance?" If they say they didn't and we find out otherwise, there's going to be a sanction applied by the court. If they state, however, that they did use, then we work with them to reduce the frequency with which that happens, to the point where they are abstaining and carrying on with the other activities that are part of the program, like going back to school, becoming employed, and maintaining stable housing.

[*Translation*]

**Mr. Marc Lemay:** Does that person have the right to a lawyer? This is, after all, an unusual system.



Mr. Chair, just as an aside, I think it would be interesting to see first hand how this program works. I would like to see how it works because we do not have anything like it in Quebec. I think it is a very good system.

What I want to know is this: Does a lawyer keep working with the individual or does that relationship end once the lawyer has defended the client, the client has appeared before the drug treatment court, and the job is done? Does the lawyer's mandate remain in place until the end of treatment?

• (1710)

[English]

**Mr. Kevin Wilson:** A Legal Aid Ontario duty counsel is in the drug treatment court every Tuesday and Thursday. That counsel participates in the closed pre-court sessions and represents the interests of the participants in exactly that adversarial way. It's a modified adversarial process when something is contentious. If I'm asking for someone's bail to be revoked, then duty counsel will say, "Why don't we try something short of revoking bail?" But within the team process, we still have our distinct roles, so the person always has an advocate there in court.

If participants want their own private defence counsel to be there, that's open to them. Sometimes when people do want their own counsel, that counsel is present when they enter their guilty plea at the beginning of the program. If there's a conflict that comes up, if they're about to be expelled from the program, their own private lawyers may attend for that. Otherwise, the duty counsel is there to represent them.

**The Chair:** Mr. Coleman.

**Mr. Richard Coleman:** Speaking as an outsider to the justice system—my background is in psychology—my impression of these courts is that they are far less adversarial than those within the traditional court system. I would encourage you to go see one. There's one here in Ottawa, and if you'd like to visit us in Toronto, we'd welcome you.

[Translation]

**Mr. Marc Lemay:** Thank you.

[English]

**The Chair:** The issue of recidivism was brought up at the beginning of your presentation, Mr. Wilson. How do you calculate recidivism? How do you define it?

**Mr. Kevin Wilson:** It's a bit hard to quantify. Coming to this as a criminal justice system participant, I would define recidivism in terms of a subsequent conviction for a criminal offence. I think the presumption of innocence obliges us to treat it that way. However, the report that the research and statistics branch of Justice has just released, which relies on reports from across the United States and Canada, as well as two reports from Australia, defines recidivism not just in terms of subsequent convictions, but also in terms of subsequent charges. I have a little difficulty with that conceptually, because of the presumption of innocence. But I don't think the research has been consistent. I'm not an expert in how the research is being done. I think the best I could do is direct the committee to this recent report from the research and statistics branch.

**The Chair:** Yes, it would be good to see that report.

**Mr. Kevin Wilson:** I have a copy of it with me. You're welcome to have my copy if you like. I can provide it to the clerk afterward. I'm sure I can get another copy.

**The Chair:** I'd like to know more about the expansion of the drug treatment courts to four new cities. There are now six cities in which drug treatment courts are operating. Was this report instrumental in the decision to expand the treatment courts?

**Mr. Kevin Wilson:** Which report?

**The Chair:** The one you're speaking of today. What reasons were behind the expansion of the drug treatment courts to four other cities?

**Mr. Kevin Wilson:** The funding for the four additional courts was announced, I think, in 2004. There was a lengthy application process that led to the decision to fund the new courts in the four new cities where they're now being set up: Edmonton, Regina, Winnipeg, and Ottawa. As for the reasoning behind the government's decision, I'm afraid I'm not in a position to know.

• (1715)

**The Chair:** Mr. Lee.

**Mr. Derek Lee:** About three or four years ago, I and several members of the House on the Special Committee on the Non-Medical Use of Drugs had an opportunity to visit the Toronto court. All of the parties were very impressed with the way the court was being run. It wasn't your typical criminal court at all. It struck us that there was a fair bit of infrastructure in the court—public, taxpayer paid, some volunteers. It was professional infrastructure, all of which cost money, but it appeared to be well worth it.

I would say that the drug treatment courts aim for and obtain better outcomes for individuals than they would receive from the traditional courts. In the traditional system, they are processed, classified, put in jail for eight months, and then sent back on the street to steal somebody else's car. Would you agree that there are consistently better outcomes in the program managed by the drug treatment court?

**Mr. Richard Coleman:** I would agree, based on my own experience in working within the treatment field and in social services. I remember your visit.

I feel that a participant in a drug treatment court program in Canada is probably one of the most closely supervised people in the country, perhaps even more so than somebody in custody. They're in court regularly; they have to provide urine screens on a random basis; and they're in treatment and seen regularly. It's better than just sending people to jail and then turning them loose with little or no supervision at the end of their sentence. It's certainly preferable to the courts. They just order an individual to seek treatment, which is very difficult to track. We've got a well-coordinated system that has the support of the community. It's a holistic approach, so we're working on all aspects of an individual's life—not just treatment separate from the criminal behaviour, not just education and employment, but all of it together. Our participants, our graduates, are probably our best advocates. What we see are people whose lives are improved immeasurably as a result of their involvement with the program.

**Mr. Derek Lee:** The federal allocation for this is only \$2.3 million. I presume the provinces are kicking in large bucks as well. The \$2.3 million wouldn't run a lot, with half a dozen courts across the country. So how do you relate to the estimate that we have here for the year—\$2.3 million—in Toronto? Do you get \$800,000 of it? Or do you know?

**Mr. Richard Coleman:** Actually, I do know the exact amount and I can't remember it. Basically, there's a cap on what any court can receive, and we are receiving at that level. But it's pretty much equal to what another court in a similar-sized city would be getting.

**Mr. Derek Lee:** But the provinces must be resourcing these courts as well, big time.

**Mr. Kevin Wilson:** They are not in terms of actual budget contributions, but they are in in-kind contributions, certainly.

**Mr. Derek Lee:** You mean the court room.

**Mr. Kevin Wilson:** I mean the court room, the judge, court staff, Ministry of the Attorney General prosecutor.

**Mr. Derek Lee:** That includes the social worker....

**Mr. Richard Coleman:** Health care costs.

**Mr. Kevin Wilson:** Probation.

**Mr. Richard Coleman:** As I said, these are existing services that these people are accessing, albeit in a very uncoordinated fashion. So a person is entitled to receive treatment in Ontario. Ontario pays for that, so we're utilizing that same treatment. It's just that we're doing it more efficiently, using the hostel system and supportive housing providers and getting them back into a community college program. These are all costs that are picked up somewhere along the way, but they're all costs that people would be entitled to without our support and supervision.

• (1720)

**Mr. Derek Lee:** Sure, and I don't quarrel with that at all. It's certainly value for money. I just think the federal government is getting a rather good deal in that its money, spread across six drug treatment courts—\$2.3 million is not a huge contribution for what's probably a very innovative, effective court system.

Thank you, Mr. Chairman.

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

Mr. Petit, go ahead, please.

[*Translation*]

**Mr. Daniel Petit:** Thank you, Mr. Chair. My question will be brief.

You mentioned earlier that the person has to go in at various stages during the treatment to go through the program you described.

If the person fails—that is, if he or she does not meet the conditions you impose—does he or she have to go to another court? You do have criminal courts in Ontario after all, just as we do in Quebec. Do you send the person to criminal court?

If so, do you tell the judge that the person made a mistake by opting for your program in hopes of lightening the sentence, or do you just drop the case?

[*English*]

**Mr. Kevin Wilson:** The person has never left the criminal court. The drug treatment court is not the Gladue court. The Gladue court is a separate aboriginal court. The drug treatment court is still a criminal court. It's still presided over by a criminal court judge. We have a 30-day assessment period when someone pleads guilty and comes into the program. Within the first 30 days, they're getting a sense of us and we're getting a sense of them. Within the first 30 days, if they decide the program is not for them, they may have their guilty plea struck and go back into the regular criminal process—start all over again, have a trial, do it however they want to.

Once the 30 days are up, they're put to the choice: do you want to stay with the program or go? If they choose to stay, then the option of having the guilty plea struck is gone. If they then do not satisfactorily complete the program, or if they don't satisfy all the conditions for graduation, they will proceed to sentencing before the same drug treatment court judge who took their guilty plea initially. They will not get treated more harshly on sentence for having tried our program and failed. They may get a benefit from the judge for having tried at all.

But when they come in, I, as the Crown, say, “This is the sentence that I’m looking for if they do not complete the program”, and I’ll put a sentence position on the record. Unless there’s something that changes dramatically, that’s the sentence position the Crown takes, if they then end up not successfully completing the program and being sentenced. It’s still open to the judge, then, to give them a lesser sentence in part in recognition that they tried the court. But they certainly would not be treated more harshly because they didn’t succeed in the court.

[*Translation*]

**Mr. Daniel Petit:** A lot of people with drug problems come to you. In Ontario and Quebec, many people who had been living in psychiatric hospitals were sent home. Many of them ended up on the streets. Should it not be up to doctors, not the courts, to look after them?

The courts are designed for criminals who are mentally competent. In many cases, your clients—I will call them your clients—are people who are really sick from a psychiatric point of view, who are taking drugs, and they are sent to your courts or your program. Normally, they would be in psychiatric hospitals, not in the courts.

• (1725)

[*English*]

**Mr. Richard Coleman:** In Toronto, we have the benefit of also having a mental health court. If people were suffering from such a profound psychiatric disability that they were unable to function within a drug treatment court, a referral would be made to the mental health court in Toronto. However, that being said, we are willing to work with people with psychiatric illnesses, where appropriate. We have access to a concurrent disorder program, which is a treatment program geared toward individuals who have both an addiction and an underlying psychiatric disorder. So it is possible for people with a psychiatric illness and an addiction, who are committing crimes, to benefit from treatment specialized to their needs, while participating in the drug treatment court program.

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

Ms. Barnes.

**Hon. Sue Barnes:** Thank you very much.

I saw one television program about the Vancouver court, and I know there’s terrific support. I’d like to give you an opportunity—one or both of you—to talk about the level of community support that has to surround these courts for them to be successful. If you can give some specific detail, I’d appreciate that also.

**Mr. Richard Coleman:** Speaking to Toronto, we have the benefit of a very broad spectrum of community services that are committed to the program, everything from harm reduction providers to a client card that our graduates made up that is provided in the safe crack pipe and needle distribution kits to increase awareness about the program. We have housing providers, we have schools, but the community also provides governance to the program. We have a community advisory committee and numerous other subcommittees looking at the specific needs of our participants that the community is part of. So they have some direct involvement in how the program evolves. It’s a unique partnership because they are partners in governance as well as in providing services to the program. There

needs to be really broad-based community support for these to be successful. In Toronto we’ve been lucky that we have that broad support.

This program started as a three-part partnership—treatment, justice, and the community. We were all there in the consultations that led up to the program. Eight years later, the community is still every bit as involved as it was before we started our original consultation process.

**Hon. Sue Barnes:** Mr. Wilson, did you want to add anything to that?

**Mr. Kevin Wilson:** No, Mr. Coleman has covered it nicely.

**Hon. Sue Barnes:** I want to ask, is there any demographic you would see more often than others? Are older people, all ages, or younger people getting the benefits of this program?

**Mr. Richard Coleman:** I would put the median age somewhere around 37 or 38, although we’ve had participants in their late teens, early twenties, and people in their late sixties, close to 70 years old, participating in the program. Currently, we have more men than women in Toronto, but that’s a dynamic that changes. We’ve also had six women who were participating in the program give birth to drug-free babies while in the program. The last two were doing well enough that the children were able to go home with their mothers.

**Hon. Sue Barnes:** I noticed in this program—and I wish I had had the advantage of my colleague, having visited.... It seemed to me there was a really intimate knowledge of the people in the program and the players in the courtroom setting. The judge seemed to know these people and seemed to be encouraging their development. It struck me as highly unusual from the courts that I used to go to. When I did drug court in my city years ago, it certainly wasn’t like that. It was in and out fast in the court I was in, and nobody cared what your name was, barely. This is a completely different environment, and maybe Mr. Wilson could talk about the atmosphere and the support mechanisms and the knowledge of the individual. Again, when there was a slip-up or something, it seemed as if it were being dealt with in a much more empathetic manner, and it obviously worked for some people.

**Mr. Kevin Wilson:** I think you've touched on a couple of things that are really important about the court. One is the continuity of personnel. There is a main drug treatment court judge, Mr. Justice Bentley, and a small number of backup judges. I am the main federal prosecutor with the drug treatment court. There is one main prosecutor from the province. We have a very small number of backup prosecutors. The two court liaisons who Richard mentioned earlier from the Centre for Addiction and Mental Health are constant.

So when we have the closed pre-court meetings, everyone knows who the participants are. Everyone know who's been struggling and who's been doing really well. It's the same when we come into court. Everyone knows everyone by name.

If you had a lot of turnover of any of the players—the judiciary, the prosecutors, or the treatment providers—you would lose some of

that. That results in very much of a team approach. We still have adversarial roles between the Crown and the defence, and the judge is still the decision-maker, but it's not as aggressively adversarial as in a traditional criminal court. It's much more of a team approach, where everyone's goal is to see this person succeed in their recovery.

• (1730)

**The Chair:** Thank you, Ms. Barnes.

I want to thank the witnesses for appearing. Mr. Coleman, and Mr. Wilson, thank you so much for your presentations here. They have certainly enlightened the committee on the drug treatment courts.

The meeting is adjourned.

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