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# Special Committee on Canada- China Relations

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Chair: The Honourable Geoff Regan





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• (1000)

[*English*]

**The Chair (Hon. Geoff Regan (Halifax West, Lib.)):** I call the meeting of the Special Committee on Canada-China Relations to order.

Good morning.

[*Translation*]

Our meeting this morning will consist of two parts.

[*English*]

The first hour, of course, will be on consular affairs, and the second hour will be on Canada's extradition process.

As colleagues know, tomorrow evening from 5:30 to 7:30 we'll meet and have Ambassador Barton.

On Thursday, the subcommittee will meet from 11 a.m. until noon.

Our first witnesses this morning, from the Department of Foreign Affairs, Trade and Development, are Heather Jeffrey, assistant deputy minister, consular, security and emergency management; and Mr. Brian Szwarc, director general, consular operations.

Good morning. I think you have a 10-minute presentation. Please go ahead.

**Ms. Heather Jeffrey (Assistant Deputy Minister, Consular, Security and Emergency Management, Department of Foreign Affairs, Trade and Development):** Thank you very much, Mr. Chair.

Members of the Special Committee on Canada-China Relations, I'm very pleased to appear before the committee today to provide a briefing on consular services, with a particular focus on the People's Republic of China.

My name is Heather Jeffrey. I'm the assistant deputy minister of consular, security and emergency management at Global Affairs Canada.

This is my colleague, Brian Szwarc, the director general for consular operations.

[*Translation*]

I will begin my presentation this morning by giving you an overview of the consular services provided to Canadians. I will then summarize the consular relationship with China, as well as our

cases and the consular trends in that country. I will conclude by telling you about some of our most high profile cases in China.

[*English*]

The Minister of Foreign Affairs is responsible for the provision of consular services to Canadians abroad. These services are delivered by Global Affairs Canada and are guided by the Canadian Consular Services Charter.

[*Translation*]

Canadian representatives provide consular services 24/7 through more than 260 points of service across 150 countries and through the Emergency Watch and Response Centre, in Ottawa.

[*English*]

In order to provide relevant information to Canadians during their travels abroad, Global Affairs Canada makes use of two tools. The department's travel advice and advisories provide information on safe travel to more than 200 destinations, and the registration of Canadians abroad service enables government officials to contact Canadians in emergency situations. The Canadian Consular Services Charter details the services that Canadian government officials can provide to Canadians abroad.

These services include, for example, helping in a medical emergency by providing a list of local doctors and hospital services, providing victims of crime with advice and contact information for local police and medical services, assisting in cases of missing persons or the abduction of a child to another country, and the replacement of passports. In cases of arrest or detention, authorities are obligated by the Vienna Convention on Consular Relations to advise foreign nationals of their right of access to a consular representative. Once Canada is notified of the detention of a Canadian citizen, the first priority of consular officials is to seek immediate access to that person to determine their safety and well-being.

In such cases, consular officials would advocate for equal treatment in accordance with local laws, liaise with family and legal representatives, and provide detainees with information on the local judicial and prison systems. Our officials offer consular support to all Canadian citizens, regardless of whether they carry another citizenship. However, many foreign states, such as China, do not recognize dual citizenship and might refuse to allow consular access to individuals they consider to be citizens only of their own country. This is a situation that consular officials deal with regularly in the Chinese context.

• (1005)

[*Translation*]

In total, about 175,000 new cases have been opened throughout our consular network in 2019. The vast majority of cases are of a routine or administrative nature, such as passport services or proof of citizenship applications, and they are generally addressed quickly by our missions abroad.

However, some 6,700 cases are more complex. In general, these are cases where Canadians need help dealing with a difficult situation abroad, such as a death, an arrest or a detention, a crime, a medical problem or issues with child care. The United States, Mexico and China are the countries with the largest number of those complex consular cases.

[*English*]

It is important to note that protecting the personal information of our consular clients is paramount. Consular officials are obliged to work within the parameters set by the Privacy Act. For this reason, the government is often very limited in what details it can provide publicly regarding specific consular cases.

With this overview of consular services offered by the Government of Canada, I will now provide some details specific to our consular services in China. Let me begin by giving a brief update on Canada's response to the novel coronavirus.

The current outbreak is of deep concern to Canadians in China, as well as in Canada. Actions are being taken to assist the impacted Canadians in Wuhan. As Deputy Minister Morgan informed you last week, Canada has secured a charter flight to bring Canadians from Wuhan, China to Canada, and we are finalizing arrangements with Chinese authorities to allow this flight to depart as soon as possible.

Global Affairs Canada is working closely with the Public Health Agency of Canada to provide relevant and timely travel and health information to Canadians in relation to the outbreak. Our travel advice was updated on January 24 to advise Canadians to avoid all travel to the province of Hubei due to the imposition of heavy travel restrictions in order to limit the spread of the virus. On January 29, we further updated the advisory to recommend against non-essential travel to China as a whole due to the outbreak.

Overall, in 2019 alone, consular officials opened 375 new cases in greater China. These include cases of arrest and detention, medical assistance, assault, well-being and whereabouts. There are currently 123 Canadians in custody in greater China. This figure is inclusive of Canadians in mainland China, Hong Kong and Taiwan. I want to stress that the number of Canadians in custody in China has remained stable over the last year.

The provision of consular services to Canadians in China is governed by a bilateral agreement signed by Canada and China more than 20 years ago. This agreement, which is available publicly, details the consular obligations and entitlements of our two countries in order to facilitate the protection of the rights and interests of our citizens.

[*Translation*]

I will now summarize some of the most high profile cases concerning China, which I think are of special interest to the committee.

Given the public nature of this meeting, I am limited by the provisions of the Privacy Act when it comes to personal information I can share.

The Government of Canada is extremely concerned by the cases of Canadians arbitrarily detained or facing the death penalty in China. Canadian representatives at all levels have raised those concerns with their Chinese counterparts, and they will continue to do so.

[*English*]

Canada opposes the use of the death penalty in all cases everywhere. Aligned with this principle, the Government of Canada seeks clemency for all Canadians facing the death penalty. Canada has raised with China our firm position on the death penalty, and we have called on China to grant clemency to Canadians facing this sentence.

In the cases of Michael Kovrig and Michael Spavor, the Government of Canada has been unwavering in its position and in calling for their immediate release and return to Canada. As you will no doubt be aware, Mr. Kovrig and Mr. Spavor were detained by Chinese authorities on December 10, 2018, accused of posing a threat to China's national security. They were formally arrested on May 6, 2019.

Officials at the Embassy of Canada to China have had regular consular access to Mr. Kovrig and Mr. Spavor since their detention in December 2018, conducting consular visits on an approximately monthly basis. The latest consular visit to Mr. Spavor took place on January 13, and to Mr. Kovrig on January 14, led by Ambassador Barton. The Government of Canada has been very clear that these two Canadians have been unacceptably and arbitrarily detained. We will continue to call for their immediate release.

Mr. Robert Schellenberg was detained by Chinese authorities in 2014 and charged with drug smuggling. He was initially sentenced to 15 years of imprisonment, but at a December 2018 appeal hearing, a Chinese court ordered a retrial. The next month a judge overturned the initial verdict and issued a death sentence. Mr. Schellenberg appealed the death sentence, and a hearing took place in May 2019. The verdict is pending.

Canada has strongly condemned the sentence of death imposed on Mr. Schellenberg at his retrial, and we expressed our extreme concern that China chose to arbitrarily apply the death penalty in his case. We have called on China to grant clemency to Mr. Schellenberg.

The particular cases that I've highlighted today represent only a few cases of the Canadian citizens in custody in China. While privacy considerations limit me from providing any details on specific cases, I want to stress that Canadian officials, both here and in China, are actively engaged on all of these cases and will continue to raise concerns with Chinese authorities.

Thank you for the opportunity to present this consular overview to the committee. We look forward to your questions.

• (1010)

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

Now we'll begin with the first round of questioning. We have Mr. Genuis.

**Mr. Garnett Genuis (Sherwood Park—Fort Saskatchewan, CPC):** Thank you, Mr. Chair. Thank you to the witnesses. It's a pleasure to be here at this important committee.

Maybe I'll start with a case that's been in the news recently, the case of a woman who's a permanent resident and is in Wuhan. I wonder if you could speak to the approach you take with permanent residents around the provision of consular services, and maybe walk out a little bit the decision not to include in the evacuation those who are permanent residents of Canada.

**Ms. Heather Jeffrey:** The situation in Wuhan was first raised just over a week ago, with the imposition of quite severe quarantine restrictions on a large province. The Chinese government imposed these measures in an effort to stop the spread of the coronavirus. With the imposition of those measures, Canadians and permanent residents in the province found themselves unable to depart. Commercial means of transportation were blocked.

Since that time, we have been working 24-7 to reach out to those Canadians and to find ways to assist them. Minister Champagne spoke yesterday about the measures being taken in terms of the evacuation flight. In cases of a humanitarian nature, such as those we see in Wuhan, our policy is to provide full services to all Canadians, permanent residents and their families, to the extent that we are able. However, the policy of the Government of China is that our consular access and services be restricted, in practice, to Canadian citizens and, in many cases, to Canadian citizens who entered China on a Canadian passport or travel document.

We've been working with the Chinese government to find a way to facilitate the exit of those Canadians on our evacuation flights. We've obtained the agreement of the Chinese government to allow permanent residents to accompany Canadian citizen children who need to evacuate that zone—which is some progress. We are continuing to advocate for others, but in the final analysis, it will be the decision of the Government of China whether they allow that. On our side, for the purposes of the Government of Canada, we are doing our best to offer those services to Canadians.

**Mr. Garnett Genuis:** Okay, just to be very clear, there's a story in The Toronto Sun about a particular case, a woman named Debbie Lu. What you're saying is that the Canadian government is prepared to support her evacuation and that of other people in that situation—that is, permanent residents without children—if the Chinese government allows it.

• (1015)

**Ms. Heather Jeffrey:** We're engaged in discussions with the Government of China about what restrictions they're placing on the evacuation operations. I'm not in a position to comment about where those discussions will end, but we are making some progress, and we will continue to work on this.

**Mr. Garnett Genuis:** Okay, thank you.

In a different vein, in the context of “the two Michaels,” as they're often called, there has been a lot of political commentary by prominent people connected with the governing party making suggestions. For instance, a prisoner exchange was what one former minister had suggested as a way to resolve this. Could you comment on the appropriateness of that kind of suggestion?

**Ms. Heather Jeffrey:** From the perspective of the Privacy Act, in order to protect the individual in question, it would not be advisable for us to comment on the strategies for any particular case.

What I will say is that we are working very intensively for the safe return of Michael Kovrig and Michael Spavor, and for the clemency of Mr. Schellenberg. We do that by assessing the variety of approaches we can take, the different channels. We consult.

In this case, where these cases are so evidently intertwined with broader bilateral considerations, we work across government and with other partners to pursue every possible avenue. That includes private and public advocacy. It includes bilateral engagement directly. It can also include joint approaches with other countries.

**Mr. Garnett Genuis:** Right. Can I just dig into that point, though? Take it away from the particulars, then, and make it a hypothetical prisoner exchange of somebody lawfully detained in Canada for somebody arbitrarily detained in another country. Would you ever recommend that as a good approach for trying to resolve a consular case?

**Ms. Heather Jeffrey:** In terms of the consular services we can provide to people who are arbitrarily detained—and we call this case an arbitrary detention because of the timing of it, because of the decision to order Mr. Schellenberg's retrial, because of the public comments that were made by China's prosecutor general in terms of the circumstances of the detention—we are using every avenue available through our consular services to advocate for their well-being, to provide consular services directly through our visits, and also to develop the consular plans and strategies that inform the whole-of-government approach.

**Mr. Garnett Genuis:** I completely agree with you in the characterization of these people as being arbitrarily detained.

Is it fair to say that comments that suggest Canada should be releasing a person who was legally arrested by independent law enforcement agencies...? Is it fair to say that comments by politically well-connected people along those lines are very unhelpful to Canada in trying to actually make the case that these are arbitrary detentions in China?

**Ms. Heather Jeffrey:** I'm not going to speak to the views of others, Mr. Chair.

**Mr. Garnett Genuis:** That's fair enough.

**Ms. Heather Jeffrey:** I can only speak to the consular approach that we are taking on the ground, and I can assure you that we're working very intensively through channels at all levels of government.

**Mr. Garnett Genuis:** Thank you.

Could I just ask about the Celil case? Can you give us an update at all on the Celil case and what action the Government of Canada is taking around that case?

**The Chair:** Speak very briefly.

**Ms. Heather Jeffrey:** The Government of Canada is deeply concerned by the credible reports of detention and family separation of Uighurs in China, which run counter to China's human rights obligations. We've urged the Chinese authorities to release those who are detained.

In the case of Mr. Celil, we have not been granted consular access to him, but we continue to advocate and to call on Chinese authorities to do so.

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

We will go to Mr. Oliphant.

**Mr. Robert Oliphant (Don Valley West, Lib.):** Thank you, Mr. Chair.

I start by offering huge thanks from members of the Liberal caucus for your work. I think 2020 has been one of the most taxing years that I have seen with respect to consular services, with the downing of Ukraine International Airlines flight 752, which was hugely taxing for your small department, to be immediately followed by the coronavirus crisis. So, thank you for what you do, and for coming here. I thought you might have good excuses not to be here today.

You raised the issue that we have thousands of consular cases every year. We have hundreds of difficult ones and a hundred or so very complex cases. That work is ongoing. In the midst of this, the coronavirus has required that you be nimble. I'm just wondering how you started with the coronavirus plans. There has been criticism that we didn't have a plan from the government side, and I have seen some of those plans. What kind of planning process do you start with when you're facing early signs of a health issue like a pandemic-like coronavirus?

• (1020)

**Ms. Heather Jeffrey:** Mr. Chair, we began with reporting through our emergency watch and response centre, which is actually an emergency management tool that conducts a bit of a watch on what's happening globally around the world. We have situation reporting to inform people of developing situations.

In the case of the coronavirus, we began in January to track the spread of that virus. On January 26, we stood up an emergency response team when we saw the measures being taken by the Government of China to control the spread of that virus and the challenges

that it was putting in place for local residents in Hubei province in particular.

I would say that, at the time, the full extent of the Canadian presence in Hubei province was not immediately evident. We don't have a consulate in that province. At the time there was only a very small number of Canadians who were actually registered through the registry of Canadians abroad as being resident in Hubei.

I would say, generally, that when Canadians feel in a more secure or safe place they tend not to think about registering with the government when they travel. They do so, I think, in what they perceive as more dangerous or hostile areas. In this case, I think we had only about 38 Canadians registered. Now we know that there are many more—we're up to 565 Canadians registered in Hubei province. About eight or nine days ago we had no requests for consular assistance. Those requests have obviously escalated.

Currently, all the requests we have in Hubei are from Canadians seeking assistance to depart. We have no cases of Canadians who are ill with the virus who are looking for our help to leave the province. We've been working with the Government of China to obtain those permissions.

Obviously, a response and evacuation out of a quarantine zone in a country such as China poses some unique challenges. Every emergency response is different, and this one indeed has a lot of complexity to it. We immediately put in place a process to put together the evacuation flight and seek the necessary permissions. We required visas from the Chinese government, and we required overflight clearances from a number of countries, some of which have closed their airspace in recent days. All of those challenges have been met and overcome, and we are now not that far away from removing the first tranche of Canadians from that situation.

But it does require a very detailed response. We had to send a ground team into Wuhan, so we now have a consular team on the ground in Wuhan city. They are preparing the logistics for the departure. We've been working with local authorities, completing the manifests of passengers and also compiling all the details that are required for ground movements in an area under such severe quarantine restrictions. People have to inform us of their routings, about how they're going to get to the airport—

**Mr. Robert Oliphant:** Obviously we have a frayed relationship right now with China, and it has been difficult for over a year. In this instance, have you found this to be a normal exchange that you would expect with Chinese officials? Have they been co-operative or not co-operative? Are they seeking our assistance? Are we seeking their assistance?

It's an abnormal situation, but is this within the range of what you would expect for Canada-China co-operation?

**Ms. Heather Jeffrey:** In terms of the discussions we have had with the Chinese authorities in regard to the evacuation plans, these discussions have been constructive. We have been working. They have issued visas for our team. We are working through the details of some of the complex family situations that have been raised. We are continuing to have those dialogues, and they've been responsive to our requests to date.

**Mr. Robert Oliphant:** Thank you.

Thank you, Mr. Chair.

[Translation]

**The Chair:** Mr. Bergeron, go ahead.

**Mr. Stéphane Bergeron (Montarville, BQ):** Thank you, Mr. Chair.

I thank our witnesses for joining us today, especially in this busy context.

I want to start out with a very simple question. Do members have an exclusive line to discuss consular cases with Global Affairs Canada?

[English]

**Ms. Heather Jeffrey:** In the cases of members of Parliament, we do work directly in some cases. When families provide consent for members of Parliament to act on their behalf, we'll engage to the extent that families allow.

• (1025)

[Translation]

**Mr. Stéphane Bergeron:** Okay, but is there a direct line for members or is Global Affairs Canada in general called?

[English]

**Mr. Brian Szwarc (Director General, Consular Operations, Department of Foreign Affairs, Trade and Development):** If I may answer that, please, there is a process by which members can direct their inquiries to the office of the minister. They can raise those issues on behalf of their constituents. We have a very well-working process for those requests to be directed to—

[Translation]

**Mr. Stéphane Bergeron:** So the minister's cabinet is involved?

**Mr. Brian Szwarc:** Yes, exactly.

**Mr. Stéphane Bergeron:** Thank you.

I have a second question. In light of the consular cases you have brought to our attention, would you say that China has violated the Canada-China Consular Agreement?

[English]

**Ms. Heather Jeffrey:** The agreement that we have bilaterally between Canada and China, as I mentioned, is 20 years old. It was put in place to establish a minimum threshold for access in particular cases of dual nationality. Prior to that, there had been extreme challenges.

It lays out, I would say, what we consider to be the minimum standards, and we're always advocating to go beyond them.

[Translation]

**Mr. Stéphane Bergeron:** You are telling us that you were refused consular access to a Canadian citizen. Is that not a violation of the agreement between the two countries?

[English]

**Ms. Heather Jeffrey:** Under the agreement, China has agreed to provide us with access only to those Canadian citizens who entered China on a Canadian travel document. If you are a dual national of China and entered on a Chinese document, under the agreement, China has said that they will not provide us access.

[Translation]

**Mr. Stéphane Bergeron:** Was that provision on dual nationality part of the agreement between the two countries?

[English]

**Ms. Heather Jeffrey:** Our position as the Government of Canada is that all Canadian citizens have the right to consular access under the Vienna Convention, and we continue to advocate for that at every opportunity. There are many countries in the world that do not accept that position, but we continue to advocate despite that.

[Translation]

**Mr. Stéphane Bergeron:** Okay, but was that provision, more specifically, part of the agreement between the two countries?

[English]

**Ms. Heather Jeffrey:** The agreement was signed in part to respond to the fact that the Government of China was refusing to recognize consular access for any dual-national Canadians in China. It allowed us to make some progress in terms of accessing dual-national Canadian-Chinese citizens who entered China on Canadian travel documents.

We would obviously prefer, and we continue to advocate as a position of the Government of Canada, that we have access to all Canadians.

[Translation]

**Mr. Stéphane Bergeron:** Okay.

Generally speaking, how many consular visits have Mr. Kovrig and Mr. Spavor received? How long were those visits on average? In what kind of climate or conditions would you say those visits took place? What have you noted in terms of the detention conditions of those two Canadians?

[English]

**Ms. Heather Jeffrey:** As I'm sure the committee can appreciate, behind every one of these consular cases are the personal situations of Canadians in distress. To protect their privacy, and to protect the privacy of their families, we're not going to comment on the specific details of their conditions or their cases.

We continue to visit them, and we have had monthly access to both Mr. Kovrig and Mr. Spavor. Unfortunately, for reasons of the Privacy Act, and to protect the families and those individuals and the progression of their cases, I'm not going to comment on their personal situations.

[Translation]

**Mr. Stéphane Bergeron:** Okay, but would you say that you have adequate access?

[English]

**Ms. Heather Jeffrey:** I would say that we are continuing to advocate for greater consular access to Mr. Kovrig and Mr. Spavro and for their access to their families and to additional supports. We advocate for their well-being with local authorities, and we are continuing to find every possible way to support them in what are very difficult circumstances.

[Translation]

**Mr. Stéphane Bergeron:** Okay.

Here is a very simple question. If this committee's members potentially decided to travel to China for a visit, would you foresee any consular difficulties for them? Would that kind of a visit add value to this committee's conclusions regarding future relations between China and Canada?

[English]

**Ms. Heather Jeffrey:** Mr. Chair, the advice that we offer to all Canadians is our travel advice for China. At the current time, our travel advice is at level three, which is to avoid all non-essential travel to China.

[Translation]

**Mr. Stéphane Bergeron:** That visit would happen later.

• (1030)

[English]

**Ms. Heather Jeffrey:** We'll be continually reassessing the situation, and I'm sure we would be happy to engage with the committee in terms of the travel advice in the moment that you're considering.

In terms of the work of the committee and its mandate, I will respectfully leave that up to the chair and the members, but we remain at your service to answer questions and to support your work.

[Translation]

**The Chair:** Have you discussed the issue of visas? It may be useful for the committee members to know more about that. Does the witness think it would be difficult or not?

**Mr. Stéphane Bergeron:** I think this is a very interesting complementary question, Mr. Chair.

[English]

**The Chair:** Do you want to address that just for a second? I'm sorry to interrupt.

**Ms. Heather Jeffrey:** I can't comment on a hypothetical question. We would have to—

**The Chair:** Fair enough. Thank you.

Mr. Harris.

**Mr. Jack Harris (St. John's East, NDP):** Thank you, Mr. Chair.

Thank you to the witnesses for coming.

I did have one question at the beginning. I asked you about it earlier. You're listed as the ADM of the Department of Foreign Affairs,

Trade and Development. We keep hearing about Global Affairs Canada. I'm assuming they're the same thing. One may be more of a brand. Could you explain the difference?

**Ms. Heather Jeffrey:** I believe that the continuing legal name of the department is Department of Foreign Affairs, Trade and Development, but the working name that we use is Global Affairs Canada, so they're both correct.

**Mr. Jack Harris:** Thank you. I think knowing the difference might help some people on the committee and in the general public.

I also have some other questions, but I want to follow up briefly on Mr. Genuis's question about bringing permanent residents back to Canada. I didn't get a confirmation from you that Canada would be happy to bring permanent residents back to Canada as part of this evacuation, as long as there's consent from the Chinese government. Is that correct?

**Ms. Heather Jeffrey:** In terms of the provision of consular services brought under the Vienna Convention, that provision of consular services is focused on Canadian citizens in the first instance. However, in cases of natural disaster, humanitarian responses and evacuations such as what we see in Hubei, we try to preserve family unity and extend services to those Canadian citizens and permanent residents to whom we are able to. That has been the case, for example, in previous responses to hurricanes and in other emergency responses.

In the case of the particular situation in Hubei province, the Chinese government has made it clear that its position is initially that foreign nationals who are travelling on their foreign national travel documents would be facilitated to exit, and we have managed to work with the Chinese government—

**Mr. Jack Harris:** Excuse me, I don't mean to interrupt. I understand that. Mr. Genuis was speaking about a person who wasn't accompanying a Canadian citizen child but was a permanent resident of Canada. My question is this: Would the Canadian government assist in the evacuation of such a person, assuming that the Chinese government approved?

**Ms. Heather Jeffrey:** We have been working with all Canadians and permanent residents on the ground. We've been exchanging with them to determine their needs. At the moment, it is a hypothetical question. We're working with the Chinese government to see what is possible and how we can assist everyone who is on the ground there seeking to depart.

We recognize fully that it's an extremely difficult situation to be confined and not to have an opportunity for departure.

**Mr. Jack Harris:** I appreciate that, although I don't want to waste my whole time on this question. I thought it was a yes-or-no question. Obviously, it's not a yes-or-no question. There are people who want to come back who are permanent residents but are not being accompanied by children, and the answer is qualified. I understand that.

Can I ask about the bilateral agreement with China, about the Vienna Convention? Is China in compliance with the Vienna Convention? Was the 1999 agreement to add additional safeguards, or was it to try to get China to agree to abide by the Vienna Convention?

**Ms. Heather Jeffrey:** What I would say is that the Vienna Convention, obviously written many years before the prevalence of dual nationality, doesn't contemplate specifics in regard to many of the modern-day challenges that we face in terms of the provision of consular services. It's for this reason that we have been trying to work bilaterally with different countries to try to enforce the access that we need to serve Canadians abroad. The Vienna Convention provides a lot of different protections, both diplomatically and in terms of consular officials, but we are looking for more specific undertakings from governments in order to allow us to do our work.

**Mr. Jack Harris:** So your suggestion is that the bilateral agreement is inadequate for these circumstances.

**Ms. Heather Jeffrey:** I'm suggesting that we're continuing to advocate for greater consular access to Canadians than the Chinese government is providing us with.

**Mr. Jack Harris:** I think that does answer the question. Thank you.

We're advised that the current travel advisory for China indicates that Canadians should "exercise a high degree of caution in China due to the risk of arbitrary enforcement of local laws". This is from the notes provided to us as of January 24. Is that a new designation? How long has that been in effect?

• (1035)

**Ms. Heather Jeffrey:** The current travel advice, as I mentioned, is actually that Canadians should avoid non-essential travel to China because of the coronavirus and the measures taken to prevent its spread.

Last January, we did update the advice to highlight the risks of arbitrary detention, and there is a great deal of detailed information in the travel advice about the different areas against which we caution Canadians, and some of the things that they would need to consider. The decision whether or not to travel to a particular country is a decision of individual Canadians, and our efforts are to provide them with the information they need about what we have observed and some of the challenges that Canadians have experienced. Also, we provide information on local contacts so that they can take the best informed decision possible.

**Mr. Jack Harris:** It's always good advice to be careful, but my question is whether that is something new as a result of the developments with Michael Kovrig and Michael Spavor, or is that advice that you've always given? Is that always a concern in China, or is this a new concern that's being highlighted for a particular reason?

**Ms. Heather Jeffrey:** The level of the advice was at "exercise a higher degree of caution" prior to that, and we have brought up the level of that particular risk to the top of the advisory to draw the attention of Canadians to it.

**Mr. Jack Harris:** Do you have a list? In addition to the two who are top of mind, are there a number of Canadians who are, in the view of consular affairs of Canada, considered to be arbitrarily detained in China?

**Ms. Heather Jeffrey:** Arbitrary detentions take place in different countries across the world, but in relation to the Government of China, the two cases of arbitrary detention that we have highlighted are the two cases of Michael Kovrig and Michael Spavor, and also the sentencing of Mr. Schellenberg to the death penalty.

**The Chair:** Thank you very much, Mr. Harris.

Go ahead, Mrs. Kusie.

**Mrs. Stephanie Kusie (Calgary Midnapore, CPC):** Thank you, Mr. Chair.

It's great to see you both, my former colleagues. I was remarking to Brian that I was actually his assignment officer when he was in Mongolia, so I can't believe we've come full circle here.

Of course, coming from the position of a former diplomat, my strong core belief is that diplomats do only what their government asks them to do. My questioning is always to see where you receive your direction from, working for the government and working for your political masters. I'll start with asking where Kovrig and Spavor are currently detained in China.

**Ms. Heather Jeffrey:** I'm sorry but, as I explained earlier, due to the Privacy Act, I'm not going to comment on the particular circumstances of the cases.

**Mrs. Stephanie Kusie:** Okay, so we'll assume, for the sake of this, that they are detained in Beijing. You mentioned that there is the consular agreement between Canada and China beyond the provisions outlined in the Vienna Convention. Would we be able to table that document here within the committee?

**Ms. Heather Jeffrey:** Do you mean the consular agreement? It's available publicly on our website.

**Mrs. Stephanie Kusie:** Super.

Has there been a contiguous consul in Beijing since the time of their detention?

**Ms. Heather Jeffrey:** We have always had a mission in Beijing. We have had a chargé d'affaires, an ambassador, a head of consular section—

**Mrs. Stephanie Kusie:** Has there been one consul since their detention?

**Ms. Heather Jeffrey:** Do you mean in terms of the consular officer in particular?

**Mrs. Stephanie Kusie:** That's correct, like one consul.

**Ms. Heather Jeffrey:** We have a consular team.

**Mrs. Stephanie Kusie:** Could we get the name of the consul since their detention—if there has been more than one, the names of those consuls—and have those brought to the committee? That would very much be appreciated.

Who was the head of mission at the time of their detention?

**Ms. Heather Jeffrey:** At the time of their detention, it was our previous ambassador, Ambassador McCallum.

**Mrs. Stephanie Kusie:** Okay. Whom did the head of mission report to in Ottawa regarding these two cases?

**Ms. Heather Jeffrey:** Heads of mission are appointed by the Prime Minister and—

**Mrs. Stephanie Kusie:** Okay. Whom did they report to in Ottawa? Did they report to the geographic officer, or did they report to a more senior officer than the desk officer?

**Ms. Heather Jeffrey:** I'd like to explain that the consular strategy we apply in cases is developed by the consular team in consultation with our colleagues. We develop those strategies and consult, then, across the government and—

**Mrs. Stephanie Kusie:** I think it would be helpful if we could find out here in the committee whom the head of mission reported to in Ottawa at the time of the detention in these two cases and throughout these two cases.

Who was the deputy head of mission at the time of the detention of Kovrig and Spavor?

**Ms. Heather Jeffrey:** Our deputy head of mission is Mr. Jim Nickel.

• (1040)

**Mrs. Stephanie Kusie:** Was he the deputy head of mission at the time of the detention?

**Ms. Heather Jeffrey:** Yes.

**Mrs. Stephanie Kusie:** Okay. Excellent.

Which officers were assigned to Kovrig and Spavor during this time?

**Ms. Heather Jeffrey:** I'm happy to get.... I don't have all the details of the staffing of the embassy. We're happy to work with the clerk and the chair of the committee to provide that information.

**Mrs. Stephanie Kusie:** Okay. That's great.

I understand the privacy information that you provided previously, but during my time in the operations centre from 2004-05, I recall my colleagues specifically working on the case of Omar Khadr in an attempt to provide that information, certainly with redaction as necessary.

With that, I would ask if it would be possible for the committee to have all CAMANT notes tabled from the two cases, please.

**Ms. Heather Jeffrey:** The Privacy Act governs what we are able to release publicly. We'll work with the clerk of the committee to respond to whatever requests are made.

**Mrs. Stephanie Kusie:** Okay. I've asked for a lot here in terms of names and information, but certainly if we could receive this two weeks from today, Mr. Chair, whatever date that is, I would genuinely appreciate it.

Now, I'll move to the greater consular issue, which of course at this time is the coronavirus. I would like to know why our response lagged behind other nations so significantly.

**Ms. Heather Jeffrey:** I will say that we responded very quickly to the outbreak. We've been tracking it since it began. We have been tracking as well the needs of Canadians as they developed. As I mentioned earlier, we don't have a consular presence on the ground—

**Mrs. Stephanie Kusie:** Which consulate does Hubei province report to?

**The Chair:** The witness was just talking about the consular presence on the ground in Wuhan, but I'd like to hear the answer and then go on.

You've just heard the question Mrs. Kusie asked.

**Mrs. Stephanie Kusie:** Okay. Thank you, Mr. Chair.

**Ms. Heather Jeffrey:** As I mentioned, we do not have a consular presence in Wuhan. The area of Wuhan is under the governance of our consulate in Shanghai and we're providing consular services through the consular section there.

As reports came in that Canadians might be having difficulty leaving the area, we tracked those. We engaged with those Canadians, but actually it was not until the beginning of last week or mid-way through the week that it became apparent there was a systemic problem with a very large number of Canadians who were going to need assistance. We immediately took action to engage options to charter a plane or work—

**Mrs. Stephanie Kusie:** Perfect. Thank you. If we could get the consular plan from Shanghai tabled for the committee, that would be excellent as well.

Finally, who is currently leading the standing rapid deployment team out of GAC, please?

**Ms. Heather Jeffrey:** The rapid deployment teams are under my management at Global Affairs Canada. They are trained and dispatched through the emergency watch and response centre.

**The Chair:** Thank you—

**Mrs. Stephanie Kusie:** If we could get the plan from the rapid deployment team tabled, that would be great.

Thank you very much, Ms. Jeffrey.

Thank you, Mr. Chair.

**The Chair:** I'm sorry. I was getting around to the five-minute round, and I was thinking six minutes, so forgive me for that.

I do want to make sure of this. Perhaps the witnesses have appeared at committees before, but I want them to understand that when members have only a short time, sometimes they will be anxious to get in as many questions as they can. I've certainly experienced that myself on committee in the past.

The next five minutes are going to be shared between Ms. Zann and Ms. Yip, I believe.

Ms. Zann, please.

**Ms. Lenore Zann (Cumberland—Colchester, Lib.):** I think Ms. Yip is going to go first.

**Ms. Jean Yip (Scarborough—Agincourt, Lib.):** Thank you for coming. I really have to commend the hard work that you and your team have done in response to the downing of flight 752 and the recent coronavirus.

Have Chinese authorities presented any evidence regarding the national security charges against Mr. Kovrig and Mr. Spavor?

**Ms. Heather Jeffrey:** I'm not going to comment on the details of the cases. Those cases are still under investigation by the Chinese authorities, according to what we've been told.

**Ms. Jean Yip:** Well, I'm going to give this another try. When are Mr. Kovrig and Mr. Spavor expected to be tried, and when they are tried, will they have access to effective legal representation?

**Ms. Heather Jeffrey:** The timeline for trial and sentencing is very flexible, and there are many opportunities generically in the Chinese system for extensions and adjustments. It wouldn't be appropriate for me to speculate on timing in any specific case.

**Ms. Jean Yip:** Are they receiving any legal advice now from the consular officials?

**Ms. Heather Jeffrey:** Again, I'm sorry. These are all details of their personal situations.

As I mentioned, I'm sure that the committee can appreciate that these are very difficult situations for Mr. Kovrig and Mr. Spavor and their families. They have asked for privacy. Under the Privacy Act, we're obliged, as consular officials, to respect that.

With respect, unfortunately I can't answer your question. I'm sorry.

• (1045)

**Ms. Jean Yip:** Thank you.

With respect to Robert Schellenberg, have Canadian consular officials had access to him since the ruling that he be put on death penalty?

**Ms. Heather Jeffrey:** Yes, we have been provided consular access to Mr. Schellenberg and we've visited.

**Ms. Jean Yip:** How many Canadians are on death row?

**Ms. Heather Jeffrey:** Due to the Privacy Act, I'm not going to comment on the cases of specific Canadians and their sentencing.

**Ms. Jean Yip:** Okay.

Would you like your time now, Lenore?

**Ms. Lenore Zann:** Thank you very much.

[*Translation*]

**The Chair:** Mr. Bergeron, do you have a point of order?

**Mr. Stéphane Bergeron:** Yes, Mr. Chair.

I understand our officials' reservations regarding details on ongoing consular cases.

However, this was a general question simply to find out how many Canadians are facing a death sentence. We just need a figure and not details. So it seems to me that the information can be shared with us.

**The Chair:** Thank you very much, Mr. Bergeron.

I understand that the witnesses want to make sure to respect the law. It is also clear that the committee members would like to get as much information and details as possible.

[*English*]

**Ms. Heather Jeffrey:** Thank you, Chair.

While I can't speak to the details of the cases, there are two Canadians—Mr. Schellenberg and Mr. Fan Wei—whose charges on the death penalty are public and available.

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

Ms. Zann.

[*Translation*]

**Ms. Lenore Zann:** Thank you, Mr. Chair.

[*English*]

Thank you for being here. Again, thank you so much for your hard work on behalf of Canadians. As has been said, we know you're under a lot of stress. The situation keeps changing, I'm sure, and you have to become pretty nimble to deal with it.

I would like to know a little more about the situation on the ground with regard to the coronavirus and the Canadians who are still in China. I believe they are being quarantined right now, everybody who is there. Is that correct? Also, what are you telling the Canadians there to do to protect themselves for their health?

**Ms. Heather Jeffrey:** Thank you.

The Government of China has taken different measures in different areas to respond to the spread of the coronavirus in an effort to impede its continued extension. Hubei province is the focus of attention because of the particular restrictions around travel in and out of that province. For example, it required special permissions for our consular team to enter Hubei province. It is closed to traffic. Canadians in Hubei province have been telling us in their conversations with us that they have been instructed to stay in their homes and to avoid gatherings.

Many of these types of measures to impede the spread of the virus—in terms of avoiding large groups and these types of things—actually would align with the advice that we take, which is given by the Public Health Agency of Canada as the expert body in Canada that advises us. We have been consulting with them. They've provided advice to us in terms of how to protect not only our staff but also Canadians on the ground. The measures are the same that they have spoken about here in Canada: frequent washing of hands, avoiding contact, self-isolation and these kinds of things. We've also provided advice on what to do to avoid exposing others if you have symptoms.

They've also advised us on the types of protective kit that we should be using. For our flights, we have very detailed medical advice on how those flights will take place. We will have a DND medical team on board the aircraft to provide medical assistance to Canadians who might need it in flight.

In terms of the evacuation, I would just underline that the Government of China will be conducting medical checks. Given the nature and the reasoning behind the quarantine, they have informed us that no one who is symptomatic will be allowed to depart Hubei province. They will be conducting medical checks on entry to the airport, inside the airport. We will also be conducting, through DND medical personnel, checks before Canadians board the aircraft, to ensure everyone's safety and security.

• (1050)

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

As I go to Mr. Albas, I hope you won't mind my suggesting that members of Parliament probably should wash their hands more than most, because I can't think of any other group that every weekend goes off to every part of the country, shakes lots of hands and comes back to Ottawa and shakes lots of hands.

Mr. Albas.

**Mr. Dan Albas (Central Okanagan—Similkameen—Nicola, CPC):** Thank you, Mr. Chair.

Thank you for the work you do. Obviously a lot of resources are given to your department and, like all of us, when you give someone resources, you expect people to use them wisely.

I would like to make a quick statement, especially for new members of Parliament, on embassies and consulates.

When members of Parliament could no longer contact the embassies and consulates directly on behalf of their constituents for routine matters—this occurred right after the Liberals took office in 2015—I have to say, from my own experience as a constituency worker, that it complicated things. It also insulates those consulates from the general public, as does, I believe, the Privacy Act. I believe it gives too much insulation for the government.

I would like to see a little more transparency from your department when it comes to these things, because ultimately all our salaries are paid for by the public, and it shouldn't take a crisis for people to start getting basic information specifically.

I'm going to be focusing largely on those matters today, Mr. Chair.

There are no publicly available statistics on the number of Canadians in China and the number of consular cases, so could you start by saying how many Canadians are currently in mainland China and in Hong Kong? Also, how do those figures compare to previous years?

**Ms. Heather Jeffrey:** Mr. Chair, I can respond to that in part. The Government of Canada does not track inside China the presence of Canadians. We don't track the travel of Canadians. This is an area where our figures—not just for China, but for the rest of the world—are not complete. We don't have a firm estimate about how many Canadians might be in China at any given point in time.

**Mr. Dan Albas:** Again, from a public interest standpoint, this insulates the government, because we effectively don't know if the government is resourcing our consulates in the correct regions that face the biggest challenges. I would simply say that a little more transparency needs to happen there.

Let's go to things that you can talk about. How many Canadian consular cases are active in China right now?

**Ms. Heather Jeffrey:** In 2019, there were 375 new consular cases in China.

**Mr. Dan Albas:** How many were routine or administrative in nature? How many would be considered more complex?

**Ms. Heather Jeffrey:** If I look at the overall number of cases the way we track them, there were 26,500 cases in 2019 in China: 4,500 of those were citizenship requests; 20,000 were passport-re-

lated; and there were 375 of what we term “consular cases”, which are more complex. Of those, 123 were cases of detention.

These are figures for greater China, so that includes Hong Kong and Taiwan. The arrest and detention cases are primarily related to drug-related crimes and to fraud. We had 135 cases of deaths abroad; 48 requests for well-being and whereabouts, with people looking for their family members; 36 requests for medical assistance; and 12 family-related children's cases.

**Mr. Dan Albas:** Obviously there is a fair bit of concern for Canadians who are detained abroad, particularly in China. Can you give us a total number? Again, I believe Mr. Bergeron asked a good question. I do think we should have a general number of how many Canadians are detained.

**Ms. Heather Jeffrey:** Do you mean globally?

**Mr. Dan Albas:** In China.

**Ms. Heather Jeffrey:** Currently, we have 123 Canadians who are detained in greater China. That includes China, Hong Kong and Taiwan.

**Mr. Dan Albas:** How many have happened in the past year?

**Ms. Heather Jeffrey:** I'm sorry. I'll have to—

**Mr. Dan Albas:** Would you mind maybe tabling it for the past few years, just so we can understand that better, just to see if there's an uptick? I think it's important to know.

For those Canadians, how are they able to access needed consular services? You explained it a little: that if anyone asks, then you have a duty to it.... That's not legislated, is it?

**The Chair:** You have 35 seconds.

**Ms. Heather Jeffrey:** Consular assistance in Canada is granted under the royal prerogative, and our consular policy is to offer consular service to all Canadians under the consular charter. We are typically notified by host governments of detention cases. If we are notified of them by other sources, we will proactively contact detention centres and local authorities and reach out.

Not in all cases in all jurisdictions are local authorities as assiduous in informing us as we would like, so we use all possible means. People don't have to reach out to us. We're actively looking for them in most cases.

• (1055)

**Mr. Dan Albas:** Thank you.

[*Translation*]

**The Chair:** Mr. Dubourg, go ahead.

**Mr. Emmanuel Dubourg (Bourassa, Lib.):** It is now my turn to greet you and to thank you for joining us.

I would like to come back to the cases of Mr. Kovrig and Mr. Spavor. I hope that you will be able to answer this question.

You said that consular representatives are allowed to visit those two prisoners once a month. I would like to know something if the law allows you to answer. Since their arrest, have those men's families been able to get in touch with them, either by telephone or by visiting?

[English]

**Ms. Heather Jeffrey:** I'm sorry, Mr. Chair, but, with respect, due to the Privacy Act and the wishes of the families, I'm not going to comment on the particular circumstances of their cases and their interactions. I'm sorry.

[Translation]

**Mr. Emmanuel Dubourg:** Okay, thank you.

I have other questions. You just told my colleague that 123 Canadians are currently under arrest, be it in China or in Hong Kong. We know that, last year, highly virulent protests took place in Hong Kong, more specifically. Were any Canadians arrested during those protests? If so, how many?

[English]

**Ms. Heather Jeffrey:** We did have reports of a number of Canadians who were detained related to those demonstrations. However, to my knowledge, all have now been released, and we have no Canadians currently detained.

[Translation]

**Mr. Emmanuel Dubourg:** Okay. I know that I don't have much time left.

When the risk level in a country is increased, as is currently the case in China, are you consulted? What is the procedure?

[English]

**Ms. Heather Jeffrey:** In deciding to raise the level of travel advice, we take input from a wide variety of sources. We look at the local circumstances on the ground, the reports of the mission, the consular caseload and trends that we see. We also consult with other partners who have different information on what's happening in the region, and we use the criteria for the different levels to apply the levels of risk.

It's evaluated on a 24-7 basis. Updates are made throughout the night. For example, in cases of natural disaster or sudden emergencies, it's very important that Canadians have that information as quickly as possible, so we are continually reviewing the travel advice for all countries. We look at specific regions within the country so we can target advice in areas of a country that might be, for example, at a higher level of risk than others.

[Translation]

**Mr. Emmanuel Dubourg:** Okay.

My last question is about the coronavirus. We know that Canadians will be brought back home quickly. It seems that a second airplane is planned.

If Canadians are in China but not in Wuhan, will they also be brought home? Are they on a list? If those people have contacted consular representatives, will they be part of the upcoming departures?

[English]

**Ms. Heather Jeffrey:** Our policy is to target our assistance to the needs of Canadians. In cases where there are commercial options to depart from a particular area, those provide the most expedient and easiest way to depart. Our evacuation support is restricted only to those cases in which Canadians really have no other options for leaving a particular area.

Each circumstance is different. In the case of Wuhan, obviously, we have a large concentration of Canadians who have made their needs known, and we're responding to those. There continues to be regular commercial traffic to and from the rest of China, and we will be monitoring the needs of Canadians as the situation progresses.

**Mr. Emmanuel Dubourg:** Thank you.

**The Chair:** Ms. Yip, you have the last minute.

**Ms. Jean Yip:** With respect to the coronavirus, is there adequate consular staff and planning to support the number of Canadians in the affected areas as well as the non-affected areas elsewhere in China?

**Ms. Heather Jeffrey:** Yes. You will have seen earlier this week that non-essential staff were drawn down from some of the missions in our China network. However, for us essential service—and the primary essential service in this context in China—is to provide consular services to Canadians.

We are increasing our consular staff and consular support in the China network, and full services remain available. We have a call centre staffed with over 50 people receiving calls on a 24-7 basis, and our emergency watch and response centre has been working shifts since the beginning of this crisis, fully staffed to respond to needs.

Calls come into the response centre, and we triage them so that our missions on the ground can respond to the most sensitive and difficult cases. We respond to requests for information through the call centre so that everyone can have consistent and timely information.

It's a network that we're using to support, and it isn't just within China. It's also through our standing rapid deployment team, which is increasing the number of consular officers in China. We have also deployed on the ground to Wuhan, so actually our consular support is much more extensive than it was before this outbreak.

• (1100)

**The Chair:** Ms. Jeffrey and Mr. Szwarc, thank you so much for appearing this morning.

We will now suspend and allow the witnesses to depart and the next set of witnesses to take their places.

The meeting is suspended.

• (1100) \_\_\_\_\_ (Pause) \_\_\_\_\_

• (1100)

**The Chair:** We'll come to order for our second hour.

We have witnesses from the Department of Justice to talk about extradition. We have Mr. Owen Rees, deputy assistant deputy attorney general; and Ms. Janet Henchey, senior general counsel and director general, international assistance group.

• (1105)

**Mr. Robert Oliphant:** Mr. Chair, on a point of order, could I ask the members to actually take their seats so we could hear the testimony?

Thank you.

**The Chair:** Thank you.

I think members are now taking their seats, so I'll ask the witnesses to begin their 10-minute presentation.

**Mr. Owen Rees (Deputy Assistant Deputy Attorney General, Department of Justice):** Thank you, Mr. Chair.

Good morning.

Thank you for your invitation to provide a technical briefing to the committee on the extradition framework in Canada.

My colleague, Ms. Henchey, is senior general counsel and director general of the criminal law operations section. Ms. Henchey and her colleagues at the international assistance group are responsible for the administration of the Extradition Act and the Mutual Legal Assistance in Criminal Matters Act on behalf of the Minister of Justice.

The IAG reports to the assistant deputy attorney general of the national litigation sector, whom I support. The national litigation sector is responsible for the conduct of litigation involving the Government of Canada or any department.

You'll see we've distributed a deck, which may assist you in following our presentation this morning.

Extradition is the process—

**Mr. Robert Oliphant:** Just one moment.

Mr. Chair, do we have that deck?

**The Chair:** I certainly do. I think members may find it in the folder that's in front of them. I see you have it, Mr. Oliphant.

**Mr. Robert Oliphant:** Thank you. Sorry.

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

Carry on, please. We'll try not to have any further interruptions.

**Mr. Owen Rees:** Extradition is the process by which an accused or convicted person located in one country is surrendered to another country, pursuant to a request by an extradition partner, to face trial or the imposition or enforcement of a sentence. Extradition is an important tool of international cooperation used by Canadian and foreign police and prosecutors to fight serious crime at a global level.

The Minister of Justice is responsible for the administration of the Extradition Act and the implementation of Canada's extradition agreements, and for dealing with requests for extradition to and from Canada. At the surrender stage, the minister must personally determine whether to order the person surrendered to the requesting state. The minister's authority under the Extradition Act is otherwise, in large part, delegated to legal counsel in the international assistance group, or IAG, a group within the Department of Justice. The IAG receives the request for extradition and the request for provisional arrest warrants, which are used in urgent circumstances to arrest a person before the extradition request is received. The IAG determines whether to seek a provisional arrest warrant and whether to proceed with an extradition request. In this function, the IAG's role can be likened to prosecutorial discretion and is not subject to political influence.

Canada may extradite only to an extradition partner, which is defined in the Extradition Act as a state or entity with which Canada has a bilateral or applicable multilateral treaty, with which Canada has entered into a specific agreement, or whose name is listed in a schedule to the act. Canada has 51 bilateral extradition treaty partners, and there are 34 designated partners identified in the Extradition Act. Canada is also party to several multilateral conventions containing provisions on extradition, such as the United Nations Convention against Transnational Organized Crimes, the United Nations Convention against the Illicit Trafficking in Narcotic Drugs and Psychotropic Substances, and the United Nations Convention against Corruption.

There are three key stages to the extradition process in Canada. First is the issuance of the authority to proceed, the decision by the IAG exercising the delegated function of the minister to authorize the commencement of extradition proceedings before the Canadian courts. Second is the extradition hearing, which is also referred to as the judicial phase of the extradition process. Finally, there is the ministerial phase. This is the decision of the minister on whether to order the surrender of the person sought for extradition to the requesting state.

Having provided that general overview, I'll hand it over to my colleague, Ms. Henchey.

• (1110)

**Ms. Janet Henchey (Senior General Counsel and Director General, International Assistance Group, Department of Justice):** We started by mentioning that there are three phases, but there is a possible preliminary phase, which is a request for a provisional arrest warrant. The Extradition Act and Canada's extradition agreements allow parties to apply for provisional arrest under urgent circumstances in order to avoid the flight of a particular person.

In such circumstances, the provisional arrest, if it's approved through the issuance of an authority to arrest, precedes the other three steps. The material submitted to Canada by the requesting state in support of a request for provisional arrest is reviewed by the IAG, the international assistance group, acting on behalf of the minister. The IAG determines whether there is sufficient basis to proceed with this provisional arrest request and, if so, proceeds to request from a judge the issuance of a warrant.

A provisional arrest warrant may be issued by a superior court judge if he or she is satisfied that there are grounds of urgency, the person is in Canada or on their way to Canada and a warrant for the person's arrest has been issued in the requesting state. Where a person has been provisionally arrested, the requesting state must submit a formal request for extradition within a specific period of time following the provisional arrest, and that period is specified in the applicable treaty. Otherwise, the person must be discharged from the extradition process.

When a formal extradition request is received, it is reviewed by the IAG to determine if it meets the requirements of the Extradition Act and the treaty. In assessing whether an authority to proceed should issue, the IAG will check that the request concerns extraditable conduct within the meaning of section 3 of the act. This means that the party seeking detention is an "extradition partner"; that the person is being sought for prosecution or for the imposition of a sentence; that, subject to a relevant extradition agreement, the foreign offence in respect of which the extradition is requested is punishable by the extradition partner by imprisoning or otherwise depriving them of their liberty for a maximum term of two years or more; and that the alleged criminal conduct, had it occurred in Canada, would have constituted an offence in Canada.

As a matter of practice, the IAG also examines whether the request is likely to be successful at the extradition hearing and before the minister by looking at factors that are taken into consideration at those stages, such as the sufficiency of the evidence and the country conditions in the requesting state. If the IAG does issue the authority to proceed, this authorizes the commencement of the extradition proceedings before a superior court judge in the province where the person is located. The authority to proceed constitutes the authority of the judge to embark upon the hearing.

The extradition hearing, which is also known as a committal hearing, takes place before a superior court judge, who must decide whether to commit the person for extradition based on the evidence provided by the requesting state. Counsel for the Attorney General of Canada will file this evidence before the court at the hearing, normally in the form of something called "the record of the case", which is a certified summary of the evidence available in support of extradition. This is also provided to the person sought, in advance of the hearing. As Canada has an open court system, all materials filed before the courts are generally available to the public unless otherwise ordered by the court.

At the hearing, the judge decides if the evidence presented on behalf of the requesting state by the Attorney General of Canada would justify a committal for trial in Canada had that conduct taken place here. This is known as the double criminality test. If the judge is satisfied that the evidence meets this test, he or she will order the person committed for extradition and the matter will move on to the ministerial phase. If the judge discharges the person from the extradition process, that concludes the proceedings.

At the committal hearing, the counsel for the person sought may bring various motions, raise objections and seek additional time to prepare, all of which makes it difficult to predict how long any given extradition hearing will take to run its course.

Once the extradition hearing is concluded, if there's a committal it moves on to the ministerial phase, where the Minister of Justice must personally determine whether to order the person surrendered to the requesting state. The grounds on which the minister may order or refuse surrender derive from three sources: the Extradition Act, the relevant treaty or agreement and the Canadian Charter of Rights and Freedoms. Counsel for the person sought for extradition may choose to make written confidential submissions to the minister to assist him in making his decision. These submissions may be in respect of any ground that might justify a refusal of surrender or justify placing a condition on an order of surrender.

• (1115)

The submissions made to the minister are not public, unless the minister orders the person's surrender and that person then seeks a judicial review of the decision. Then it would be filed in court.

**The Chair:** You're at the 10-minute point. I'm going to ask you to try to wrap up relatively quickly, please.

**Ms. Janet Henchey:** Thank you.

The minister's decision balances the interests of the person sought against Canada's international obligations. He applies the mandatory and discretionary grounds of refusal in the Extradition Act. If the minister orders surrender, his decision is subject to judicial review in the provincial court of appeal. The decision of the extradition judge is also subject to appeal in the provincial court of appeal.

Finally, if the committal and the surrender order are upheld by the courts, it's possible to seek leave to appeal further to the Supreme Court of Canada.

That's a basic overview of the process.

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

[*Translation*]

Mr. Godin, did you have a point of order?

**Mr. Joël Godin (Portneuf—Jacques-Cartier, CPC):** Yes, Mr. Chair.

As Canada is a bilingual country, all the documents in committee must be distributed in both official languages. However, I have received a document titled "Extradition in Canada". Perhaps a handling error has occurred, but unfortunately, I don't have the French version.

[*English*]

**Ms. Janet Henchey:** That document is available in French. I believe we provided it in both languages.

[*Translation*]

**The Chair:** Thank you very much, Mr. Godin.

I don't see a French copy in my documents. I must advise the witnesses and all future witnesses that, if they want their documents to be distributed, they must provide them in both official languages. Documents should not be distributed if copies in both languages are not available.

[English]

On the same point of order, Mr. Albas.

**Mr. Dan Albas:** It just seems to me, because I have two English copies that have been supplied here, that Mr. Godin's concerns are well founded.

**The Chair:** So do I. I presume that's an error, but I want to highlight again to witnesses that it's essential that if you want documents distributed, they have to be in both languages. We have the deck in both languages—I realize Mr. Harris is holding up the French language deck—but this document is only in English, as far as I can see. I think that's perhaps an error.

[Translation]

**Mr. Owen Rees:** Mr. Chair, I think it is an error. I thought that the documents were submitted in both official languages. We will look into this for the committee.

**The Chair:** The chair will ensure that no document is distributed until copies in both languages are available. That is paramount.

Thank you very much, Mr. Godin. Go ahead.

**Mr. Joël Godin:** Mr. Rees, I appreciate your comment. I understand that, under the circumstances, there may be handling errors, and that is entirely legitimate. However, I want to let the committee and all the other committees know that I am making it my duty to preserve and defend the French language. At every opportunity, I will raise the flag to ensure that this request and rule in Canada is respected.

**The Chair:** We will now continue with Mr. Oliphant.

**Mr. Robert Oliphant:** Mr. Chair, may I ask that all the committee members return to the clerk their English copy of this document and that we continue with the two others until the document in question has been made available in French? It is not acceptable to have a document only in English.

**The Chair:** Are we agreed to give the clerk copies of the document that was distributed only in English?

[English]

**Some hon. members:** Agreed.

**The Chair:** We're agreed on that, then. Thank you.

Mr. Albas, is this another point of order?

**Mr. Dan Albas:** I would just raise that there's an expectation that, when witnesses come, we try to have this. When it's the Government of Canada, and these are obviously documents that have been well vetted and whatnot, they should be sent ahead of time to make sure this doesn't happen. I do expect the Government of Canada to be able to meet our own standards here.

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

We'll begin with the questions.

Mr. Warkentin, go ahead for six minutes.

**Mr. Chris Warkentin (Grande Prairie—Mackenzie, CPC):** Thank you.

I appreciate your coming today. I appreciate your opening statement. We'll have a few questions for you.

Obviously we've talked broadly about the extradition process, but the extradition process in Canada is highlighted because of one case in particular, that of Ms. Meng, whom the majority of Canadians have heard of and a significant number of Canadians have opinions on.

I just want to clarify that in terms of her case, we are effectively at phase two of the process. Am I correct in that?

• (1120)

**Ms. Janet Henchey:** That's correct.

**Mr. Chris Warkentin:** Up until now, just to clarify, the process has been undertaken without any ministerial intervention. Is that correct?

**Ms. Janet Henchey:** The ministerial aspect of it is delegated to officials, and officials have conducted the analysis that led to the authority to arrest and the authority to proceed.

**Mr. Chris Warkentin:** So your testimony here today is that no government political intervention has been undertaken in the process up until this point.

**Ms. Janet Henchey:** I can indicate that the authority to arrest and the authority to proceed were issued by officials without consultation directly with politicians.

**Mr. Chris Warkentin:** John Manley, the former Liberal minister, has spoken about his opinion that a prisoner exchange should be undertaken in this case. Has your department ever advised the government in consideration of any prisoner exchange at any point in history that you know of?

**Ms. Janet Henchey:** I can't testify to legal advice, but I can tell you that prisoner exchanges are a matter for the Department of Public Safety.

**Mr. Chris Warkentin:** Your department, I would assume, would be consulted with regard to the legalities of such a suggestion. I would be curious, and I appreciate that the final decision would rest with them or that the request would rest with them, but has your department, to your knowledge, ever been consulted with regard to a suggestion of a prisoner exchange?

**Ms. Janet Henchey:** I repeat that I can't discuss legal advice.

**Mr. Chris Warkentin:** In this case, who would suggest a prisoner exchange? You say it would be the Department of Public Safety. If a prisoner exchange was contemplated in a hypothetical case, who would initiate that discussion within government? These things don't just materialize. Somebody would suggest it. Where would that come from?

**Ms. Janet Henchey:** There is a piece of legislation related to the transfer of offenders. It applies to circumstances in which people are actually convicted of offences and serving sentences. That offender can bring an application to have their sentence transferred to be served in another country.

Prisoner exchange as a concept doesn't really exist in the law.

**Mr. Chris Warkentin:** I don't expect you to give me legal advice in this public setting, but now I'm going to ask for it.

If I were the minister contemplating a prisoner exchange in the case of somebody who was mid-extradition process, someone who had not yet been charged in Canada but was possibly going to be considered for extradition to another country, what legal advice would you give me if I were the minister asking to see if that could be contemplated?

**Ms. Janet Henchey:** I can't give you legal advice. To be fair, I have no expertise in prisoner exchange.

**Mr. Chris Warkentin:** I'm no lawyer and I'm no expert in terms of extradition or prisoner exchanges, but to me there appears to be no portion of the process that would allow for prisoner exchange to be considered for somebody who is mid-extradition. What would that do to the entire framework on which extradition is built? If we all of a sudden started to determine that we were not going to complete or fulfill our obligations under the treaties, what would that do to future extraditions? What would that do to the treaties?

**Ms. Janet Henchey:** First of all, the Extradition Act is what we call "complete code". It has all of the information in it that is required to begin and complete an extradition process. There is no reference in the Extradition Act to prisoner exchange, so it's not a concept known to extradition law. If we chose to put an end to an extradition proceeding in a way that was not contemplated by the treaty or the Extradition Act, that would be violating our treaty obligations.

• (1125)

**Mr. Chris Warkentin:** What would be the repercussion for Canada if we didn't fulfill our obligations under the treaty?

**Ms. Janet Henchey:** I couldn't say for certain what the repercussion would be, but there would be a risk that it could bring the treaty to an end. It could vitiate the treaty.

**Mr. Chris Warkentin:** Okay.

It's strange to me that Mr. Manley would propose such an idea. He's a former minister of the Crown. That's interesting.

I appreciate your testimony.

**The Chair:** Thank you very much, Mr. Warkentin.

We now have Mr. Fragiskatos.

**Mr. Peter Fragiskatos (London North Centre, Lib.):** Thank you, Mr. Chair.

Thank you to our witnesses.

Mr. Chair, my colleague used the word "strange". What is strange is that the opposition, now in referencing Mr. Manley and earlier, I think, although he wasn't mentioned, Eddie Goldenberg, the former chief of staff to Prime Minister Chrétien.... Mr. Manley was a minister when I was in high school. Mr. Goldenberg was chief of staff when I was in grade 6 or 7.

Let's stick to the facts. The facts, I remind my colleagues across the way, are that the Prime Minister has been unequivocal and our government has been unequivocal that a prisoner exchange is not something that is being considered or would be considered for a number of reasons. First and foremost, as Mr. Warkentin alluded to in his comments—he actually opened the door to this—it would set an awful precedent, so why would we go down that path? Individu-

als are free to write op-eds and contemplate different scenarios. If we're serious about policy, it matters what the Prime Minister has said. It matters what the government has said. The government has been very unequivocal in all of this. I think it's important to recognize that.

To the witnesses, I'm interested in the technical issues surrounding extradition. Perhaps you could go through a few things for us non-lawyers on the committee just so we can understand them better. What type of information is typically sought in mutual legal assistance requests? You opened the discussion on that. What sort of information are we talking about?

**Ms. Janet Henchey:** Mutual legal assistance is to assist prosecutors in different countries to access evidence for criminal prosecutions. There's a wide variety of things that could be sought to be of assistance in pursuing a prosecution. It could be witness testimony; it could be documentary information. A lot of the time it involves Internet service provider information, such as telephone records, texting records and email records. That's increasingly important in criminal prosecutions. It may be access to a particular item—a murder weapon, for example—that could be transferred across the border pursuant to a mutual legal assistance request.

Those are the general types of things. It could be anything, basically, that is relevant as a piece of evidence in a prosecution.

**Mr. Peter Fragiskatos:** Okay.

I'm looking at the slide deck. Maybe the answer is obvious, but I still think it's interesting. On page 10, there's a wide gap, year over year, between the number of requests received and the number of requests made. Is there any information you could pass along as to why there is that gap? Is it just a matter of how the treaties work out?

**Ms. Janet Henchey:** I think it's just a question of population. Canada is big geographically but relatively small in population. We have treaties with countries all around the world. If we add up all the crimes being committed around the world versus the crimes being committed in Canada, there will be more requests coming to us than requests that we'll be making.

**Mr. Peter Fragiskatos:** I thought so, but it's good to get that on the record.

Obviously, you cannot comment on the case of Ms. Wanzhou. I understand that, but Canadians are still following this issue along and do have questions. The issue of double criminality, that requirement, has come up. Can you tell the committee the purpose of this requirement in our law and about cases where the courts have said it is not satisfied?

• (1130)

**Ms. Janet Henchey:** The purpose of double criminality is the basic principle underlying extradition. A country does not want to send somebody from their territory to another territory to be prosecuted for something that they don't consider to be criminal. If a country has an offence that we would not recognize in criminal law, we wouldn't extradite somebody for it, and vice versa. This is applicable all around the world. All countries apply this principle of double criminality to extradition. It doesn't matter if you have exactly the same offence; it's the conduct we look at. If what the person did would be considered criminal in your country, then that will satisfy double criminality and will allow for the possibility of extradition.

**Mr. Peter Fragiskatos:** With one minute left, could you tell us of cases where the courts have said that this has not been satisfied?

**Ms. Janet Henchey:** I don't have any examples directly in mind.

It happens very rarely, simply because we assess the evidence before we bring it before the court. We don't bring cases before the court if we think there's insufficient evidence for the judge to find double criminality.

Occasionally there might be a gap in the evidence where it doesn't quite meet the test for a particular offence. But as I said, it doesn't happen frequently.

**Mr. Peter Fragiskatos:** Okay.

**The Chair:** In the 20 seconds left, can I just ask this? In the course of a decade, how many people does Canada seek to extradite to other countries?

Then we'll go to Mr. Bergeron.

**Ms. Janet Henchey:** That's a good question, which I'm not sure I can answer.

**The Chair:** Perhaps you can get back to us on that.

**Mr. Dan Albas:** Could I get the breakdown of countries [*Inaudible—Editor*]?

**The Chair:** Mr. Albas is also asking, if you have it, for the breakdown of countries that we've requested extradition from. If that's possible, please give that to the clerk later on. Thank you.

Monsieur Bergeron.

[*Translation*]

**Mr. Stéphane Bergeron:** I am interested by this concept of reciprocity regarding crimes committed in a foreign country, to potentially have an equivalent in the Canadian justice system. That of course applies to extradition cases, but also to cases of visa issuance or entry allowances for Europeans, among others.

For example, we had the case of President Puigdemont of Catalonia, who was refused entry into Canada under the pretext that he was accused of a crime that, frankly, on a global scale, is a bit outdated: the crime of sedition. The authorities are apparently checking whether there is an equivalent in Canadian law.

Be that as it may, let's come back to the specific case we are discussing. I know that the first step is the International Assistance Group, which is in charge of determining whether a tentative order for arrest should be issued. In its assessment, does that service try

to figure out what the equivalent in Canadian law is or does it simply receive the country's extradition request and decide whether it is justified, in which case it would go ahead with the extradition?

[*English*]

**Ms. Janet Henchey:** I can advise that when we receive a provisional arrest request, they provide us with a summary of the evidence. We don't get the actual evidence at that stage, just a summary. We assess whether or not, in our view, it would meet the criteria for double criminality. If it doesn't, then we wouldn't proceed to seek a warrant for provisional arrest.

[*Translation*]

**Mr. Stéphane Bergeron:** Okay. It will be looked into. That is what I understand.

[*English*]

**Ms. Janet Henchey:** We assess it before—

[*Translation*]

**Mr. Stéphane Bergeron:** Okay.

[*English*]

**Ms. Janet Henchey:** The first step is to assess it and be satisfied that we think it's possible that this evidence is going to justify the issuance of an authority to proceed down the road and whether it meets the criteria for urgency that would allow a judge to issue a provisional arrest warrant. We review it, and in some cases we refuse to seek the warrant.

[*Translation*]

**Mr. Stéphane Bergeron:** So the International Assistance Group looked at the fact that Meng Wanzhou is being accused of having violated U.S. sanctions against Iran, sanctions that Canada does not even apply. Under the circumstances, on what basis was it decided to follow up on this request of the United States?

• (1135)

[*English*]

**Mr. Owen Rees:** We can't discuss a specific case.

**Ms. Janet Henchey:** But we can tell you that there was an authority to proceed issued, because that's public record.

The authority to proceed identifies an offence that we believe was made out on the evidence provided by the foreign state. The authority to proceed in the Meng case identifies the offence of fraud.

[*Translation*]

**Mr. Stéphane Bergeron:** Okay. If I understand correctly, it is decided which of the charges provided by the country submitting the request could potentially apply under Canadian criminal law. I see that is a yes. So if some charges do not apply, but others do, a decision is made to extradite despite everything.

[English]

**Ms. Janet Henchey:** Yes. We only have to be satisfied there is a Canadian offence that could be made out on the facts. We don't have to match all of our offences with the foreign offence. We look at the conduct and we ask, "Is there a Canadian offence that arises from that conduct?" If so, we identify it and put it in the authority to proceed.

[Translation]

**Mr. Stéphane Bergeron:** Mr. Chair, if I have enough time, I want to come back to the issue of the proposal to exchange prisoners.

I would like to remind our friend and colleague Mr. Fragiskatos that, when he talked about the opposition, I would have preferred if he had specified that it was the official opposition. Obviously, neither my colleague from the NDP nor I are associated with the comments that have been made so far. However, the fact still remains that this is a relevant issue insofar as, first of all, that idea seems to me totally unacceptable for at least three reasons.

First, they want to make a two-for-one exchange. That on its own seems totally unacceptable to me.

Second, since the beginning, Canada has consistently claimed that this process has to do with the rule of law. Since we are now in the second stage, which is the judicial stage, how could we bypass the judicial process in a so-called rule of law to reach a political agreement between the two countries? That is my second concern.

Third, it should be recognized that, on the surface, such an agreement between China and Canada would practically be an invitation to all authoritarian regimes of the world to imprison Canadians and then potentially have a prisoner exchange.

I know that this idea may have been stealthily considered by the government, although it has been categorically rejected since. I recognize this. Clearly, this idea seems totally unreasonable to me.

Does my analysis make sense to you?

**The Chair:** Your time is up, Mr. Bergeron.

[English]

**Ms. Janet Henchey:** I can't really comment on that, but as I indicated earlier, the Extradition Act does not contemplate prisoner exchange.

[Translation]

**The Chair:** Thank you very much, Mr. Bergeron.

[English]

Mr. Harris.

**Mr. Jack Harris:** Thank you, Chair. I have a series of technical questions.

You talked about three different phases, but as I see it, there are five processes going on: the decision whether to arrest somebody provisionally; the decision whether to issue an authority to proceed; the extradition hearing itself, which decides whether or not there's sufficient evidence to stand trial if it were an offence in Canada, which I call the preliminary inquiry standard; the decision by the

Minister of Justice whether to surrender the individual; and an overriding process, which I call number five, which is the act that allows the minister to withdraw the authority to proceed "at any time" and stipulates that "if the Minister does so, the court shall discharge the person and set aside any order made", under either "judicial interim release or detention".

Of these five processes, I take it that number one, the decision on whether to issue a warrant for arrest, is under the advice of the IAG, the internal group, not the minister. There's no political involvement even possible.

On the second one, the decision to issue an authority to proceed, you're saying that it's delegated by the Minister of Justice to departmental authorities. Is it true that the minister would have no opportunity to intervene or say anything about that? I understand that the officials carry out this assessment and make a determination, but is there no role for the minister even possible?

• (1140)

**Ms. Janet Henchey:** If I can go back to your first comment about the arrest, that is a decision made by the court. We bring an application to the court for a warrant.

**Mr. Jack Harris:** Fair enough, yes, but the decision to ask for the warrant is made internally, is it not?

**Ms. Janet Henchey:** That's right.

**Mr. Jack Harris:** The minister doesn't decide whom to arrest, whom not to arrest or whom a warrant should be sought for.

**Ms. Janet Henchey:** That's right, but the arrest can happen in one of two ways.

**Mr. Jack Harris:** I understand. Let's say we have someone arrested. Between the arrest and whether or not something proceeds, there's this question of the authority to proceed.

**Ms. Janet Henchey:** That's what I'm trying to explain. The authority to proceed sometimes precedes the arrest.

**Mr. Jack Harris:** I understand that too, but that hasn't happened. If you have the provisional arrest, which we did in the particular case of Ms. Meng... There was a decision, after she was arrested, as to whether to seek an authority to proceed or whether the authority to proceed would be issued.

There was a period of time, I think some 10 or 12 days or maybe more, during which we did hear from President Trump about some comments that he made. Between the time of the arrest and the time of issuance of the authority to proceed there was a period of time during which the authority to proceed was issued. You're saying that authority is delegated, but is that delegated in the sense that the minister cannot have any say in it whatsoever?

**Ms. Janet Henchey:** As a matter of practice, everything has been delegated in the Extradition Act. All the minister's discretion has been delegated to officials, with the exception of the decision to order surrender. That is done to insulate the minister for that very important decision he has to make at the end of the process and to ensure that he doesn't prejudice the outcome of that important decision.

For that reason, the minister is not involved in the issuance of the authority to proceed and has never been involved in the issuance of authority to proceed.

**Mr. Jack Harris:** Is that a consistent practice?

**Ms. Janet Henchey:** It's a consistent practice.

**Mr. Jack Harris:** That's important to know. I think we need to establish that.

The first involvement of the Minister of Justice.... We're talking about the Minister of Justice here and not the Attorney General. They are two different hats, but the same person. We're talking about the Minister of Justice role. After the extradition hearing—which takes place if a decision is made that there's sufficient evidence to convict with a properly instructed court, etc. within Canada—the Minister of Justice has the decision to make as to whether to surrender the individual. That's a ministerial decision. Then what I call the overriding involvement or potential involvement is the act allowing the minister to withdraw the whole case.

Both of these decisions are, in the end, made by the Minister of Justice. Am I correct?

**Ms. Janet Henchey:** No. You're correct about how you characterize the minister's decision. After the committal, if there's a committal at the extradition hearing, it goes to the minister. The minister then makes the decision about whether to order surrender, and it's the surrender order that will allow the person to be transferred to the foreign country making the request.

The withdrawal of the ATP is relevant only before the decision of the extradition judge. Once the extradition judge has ordered surrender, the ATP is used. It has been decided upon.

The withdrawal of the ATP is also delegated to officials, and that power exists in case something changes between the time the authority to proceed is issued and the time the extradition judge makes a decision on whether to order committal.

For example, if the extradition partner withdrew their request after the proceedings had commenced, we could withdraw the authority to proceed and recognize that there was no longer a basis...or if something happened to the evidence that we had reviewed in order to issue the authority to proceed, and we no longer had confidence that there was sufficient evidence to justify a committal, we could withdraw the authority to proceed. That action is taken by officials in my department, in the international assistance group; it's not taken by the minister.

**Mr. Jack Harris:** Can I ask an important question?

**The Chair:** Mr. Harris, I'm sorry, but your time is up. I hope we will get back to you.

**Mr. Jack Harris:** It's the most crucial question.

**The Chair:** Absolutely, and in fact I'm almost tempted—I wouldn't dare—to comment favourably on having another lawyer on the committee, but I'd better not do that.

**Mr. Jack Harris:** I tried to slow her down, Mr. Chair. You saw that.

**The Chair:** Thank you.

Mr. Albas, go ahead for five minutes.

● (1145)

**Mr. Dan Albas:** Thank you.

Mr. Chair, could I give a minute of my time just so I could hear Mr. Harris? I was going to go into this line of questioning.

**The Chair:** Mr. Harris.

**Mr. Jack Harris:** Thank you very much, Mr. Albas.

The question was simple. You're suggesting that the overriding power of the minister, which says "at any time", is actually spent once the hearing is complete. The question then is, has that power, to your knowledge, ever been used?

**Ms. Janet Henchey:** That's a yes to the first part of your question. Once there's a committal, you can't withdraw the authority to proceed, but the minister still has the power to end the proceedings by discharging at his stage. The withdrawal of the authority to proceed is handled by officials, and that's prior to the committal decision. Then, once there has been a committal decision, the minister is making a decision on surrender. His decision could be to surrender or to discharge, and a discharge would bring the proceedings to a close.

**Mr. Jack Harris:** Has it ever been used?

**Ms. Janet Henchey:** Yes, the minister has discharged, and yes, officials have withdrawn an authority to proceed in circumstances as I've described: where the evidence is no longer available or where the case has been withdrawn by the requesting state.

**The Chair:** Mr. Harris encroached a tiny bit on Mr. Albas's time, but I think Mr. Albas is okay with that.

**Mr. Dan Albas:** Yes, I'll overlook that.

Thank you very much for your presence here today.

In regard to that, could you supply the committee with the last time that kind of discharge process happened, just so we can see whether this has been used recently or if it's something that has happened only rarely in our history?

I'd like to ask a little question about the Minister of Justice component. Obviously we are talking about the Minister of Justice and not the Attorney General, and therefore Shawcross doesn't apply in this case. Is that correct?

**Mr. Owen Rees:** Mr. Chair, I'm not sure how to answer that question. We wouldn't be in a position to provide you with legal advice on the application of the Shawcross principle. I think I'll leave it at that.

**Mr. Dan Albas:** Well, the treaty specifically in this process says, “the Minister of Justice in his or her capacity”, not as Attorney General, or else it would say “Attorney General”. In addition to the Minister of Justice receiving the decision of the court, when it moves to the ministerial phase can the Minister of Justice, in his or her capacity, be lobbied by other members of cabinet?

**Ms. Janet Henchey:** I can't speak to whether cabinet can lobby, but what I can tell you is that there are very limited matters that the minister should be considering in making his decision, and those are issues relevant to the extradition process: the treaty, the Extradition Act and the Charter of Rights and Freedoms. Extraneous issues that are relevant to the government in other contexts would not be relevant to the decision on an extradition case.

**Mr. Dan Albas:** Again, though, to that, is it a cabinet order? Can the minister take the decision of the court to cabinet to solicit feedback in a formal mechanism? Or must the Minister of Justice, through another mechanism, like the Canada Gazette or something else, make that decision independent of cabinet?

**Ms. Janet Henchey:** The decision is made independent of cabinet and it's pursuant to the Extradition Act. The minister issues an order of either discharge or surrender. It doesn't go through the Gazette and it doesn't go through cabinet.

**Mr. Dan Albas:** Okay.

I only have a moment here. Media reports say that the Chinese government first found out about Ms. Meng's arrest from Huawei rather than the Canadian government. Can you comment on that?

**The Chair:** You have 55 seconds.

**Ms. Janet Henchey:** No. I think that would be a question for Global Affairs.

**Mr. Dan Albas:** That would be a question for Global Affairs, and we just had them here. Okay.

Thank you, Mr. Chair.

**The Chair:** I think we'll have them again, of course, some people from Global Affairs—

**Mr. Dan Albas:** You know what, Mr. Chair? I think that's a great idea.

**The Chair:** Thank you. I mean that we'll have some people, whether it's those or others, but we'll figure that out, I'm sure.

**Mr. Dan Albas:** I'm just glad to see that we have some multi-party support for that.

**The Chair:** Mr. Oliphant.

**Mr. Robert Oliphant:** Thank you.

I'm going to actually pull on what Mr. Harris and Mr. Albas were questioning. I'm not a lawyer, so it takes me a little longer on this issue. I understand the ministerial decision on surrender and the basis on which that would be made under the act, under the particular bilateral treaty and under the charter issues, after a superior court has rendered its decision. That's one process.

On the ability of the minister after the authority to proceed, between that and the ultimate court decision, it sounds like if circumstances change, or if new evidence is presented, or an extradition request is withdrawn, that then allows the minister to stop the pro-

ceedings. I just want to make sure that I understand two things. What criteria are involved? What precedents are involved? Where does the burden lie on understanding how that decision would be made? Who makes that case and how does it happen?

• (1150)

**Ms. Janet Henchey:** The ability to withdraw the authority to proceed is provided for in the legislation. It has been delegated to officials in the international assistance group. The considerations are the same considerations that would exist in issuing the authority to proceed in the first instance. We would consider whether there's sufficient evidence and whether it meets the requirements of the particular treaty before we issue an authority to proceed.

If the considerations that were taken into account in issuing the authority to proceed change, and no longer exist the way they did at the time the authority to proceed was issued, that would be the basis for withdrawing the authority to proceed.

**Mr. Robert Oliphant:** Is that a delegated decision as well, or is there nuance of difference between the delegation on the authority to proceed and the subsequent authority to not proceed?

**Ms. Janet Henchey:** No, they're both delegated to officials.

**Mr. Robert Oliphant:** Okay. That's the part that I've kind of been getting.

Is that delegation by convention or is that the understanding our treaty partners have? Where does that lie?

**Ms. Janet Henchey:** It's not an issue for treaty partners; it's an internal justice issue. That was determined when the legislation first passed. A decision was made that all of the discretion that was vested in the minister would be delegated to officials, with the exception of a decision on surrender, in order to insulate the minister, as I said earlier, so that he can be as independent as he possibly can be at that stage of the proceeding.

**Mr. Robert Oliphant:** I understand.

After the final decision, to add a sixth thing to what Mr. Harris said, there's the potential appeal of the decision to the Supreme Court. It could go even six stages. Am I correct on that?

**Ms. Janet Henchey:** There are two levels of appeal. There's an appeal “as of right” to the court of appeal of the province. It could be the British Columbia Court of Appeal or the Ontario Court of Appeal, depending on where the case is. That's an appeal from the committal. There's also a judicial review of the minister's decision. Those two things are heard together if they're both brought before the court of appeal. If the court of appeal upholds the decision, leave can be sought from the Supreme Court of Canada for a final appeal. Leave is rarely granted. It's granted only in cases of national importance.

**Mr. Robert Oliphant:** This might be my last question, and I think I know the answer to it. Does the requesting country have any standing in any part of any of those six or seven processes? Do they have any rights in terms of making presentations?

**Ms. Janet Henchey:** No. The requesting country does not appear in court in extradition cases.

**Mr. Robert Oliphant:** Anywhere?

**Ms. Janet Henchey:** No.

**Mr. Robert Oliphant:** So their only time is that under the treaty they request an extradition, and then it is up to our processes, following Canadian jurisprudence, following Canadian rule of law and following all of those things.

**Ms. Janet Henchey:** That's correct.

**Mr. Robert Oliphant:** Okay.

I have 18 seconds.

**The Chair:** No, no, we have a minute....

Sorry, I'm mistaken. There isn't a minute.

**Mr. Robert Oliphant:** I'm very good at keeping to my limit.

I suggest that to all members.

**The Chair:** Well done. Thank you for assisting the chair and helping to keep me somewhat out of trouble.

Mr. Genuis.

**Mr. Garnett Genuis:** Thank you, Mr. Chair.

There's one issue that hasn't been discussed yet that I want to drill into a little bit. In 2016, the Prime Minister posted a joint statement suggesting that Canada had agreed to negotiate an extradition deal with China. That was partially walked back. There was some confusion, I think, in the discussion about whether the government at the time intended or did not intend to negotiate an extradition agreement with China.

Could you just share with the committee whether there was a plan at the time? What was the context for the Prime Minister saying that they were considering negotiating an extradition agreement with China?

• (1155)

**Ms. Janet Henchey:** Of course, I can't speak on behalf of what the Prime Minister meant, but I can tell you that there was an agreement with officials that we would consider the possibility of an extradition treaty. It was something less than agreeing to negotiating a treaty. There were discussions undertaken to consider whether we would negotiate a treaty.

**Mr. Garnett Genuis:** Okay. This is maybe where.... There were discussions to consider. Did those discussions to consider involve discussions between Canadian officials and Chinese officials to start to map out what that agreement could or would look like?

**Ms. Janet Henchey:** There were discussions between Canadian and Chinese officials about the Chinese interest in negotiating a treaty.

**Mr. Garnett Genuis:** Okay. They were interested in a treaty. There were discussions between Canadian and Chinese officials about it, and the Prime Minister said, according to the statement, that we would be willing to negotiate this treaty. Meetings took place after that, I assume, between Canadian and Chinese officials. What happened next in terms of those discussions?

**Ms. Janet Henchey:** Again, I can't speak to what the Prime Minister said or didn't say. I can tell you that there was an agreement between officials that there would be discussions, and discussions took place. Where that fits into what you're describing as a statement from the Prime Minister, I can't tell you.

**Mr. Garnett Genuis:** Okay. After that agreement, there were discussions between officials about this. There weren't just discussions about having that statement, but there were discussions after the statement about next steps. That's what I understand you're saying.

**Ms. Janet Henchey:** There were preliminary discussions about whether we might be interested in negotiating a treaty. No treaty has been negotiated.

**Mr. Garnett Genuis:** Right. Are those discussions still going on?

**Ms. Janet Henchey:** They were not formal discussions, so they didn't formally commence or formally end. It would be possible to continue to have discussions.

**Mr. Garnett Genuis:** So you haven't at any point gotten policy direction from the government to cease to have those discussions.

**Ms. Janet Henchey:** This wasn't a policy direction from the government. It was an agreement between officials to have a discussion. There was no formal mandate from the government to negotiate a treaty.

**Mr. Garnett Genuis:** Okay, but the Prime Minister said publicly that this was happening. Of course, you can't answer for what he said or didn't say, but presumably officials note it when the Prime Minister makes a statement like that, and it shapes what actions are then taken.

Is it your understanding that the rules of engagement vis-à-vis that extradition agreement as they existed in 2016 continue to apply, or have there been subsequent statements from the political level contradicting that or changing that direction?

**Ms. Janet Henchey:** There's never been any formal mandate to negotiate a treaty with China. That hasn't changed.

**Mr. Garnett Genuis:** Okay, but an informal mandate to have conversations.... I'm just trying to understand this so that people watching at home can get a sense of it, because the Prime Minister did say.... There was a joint statement, and clearly when there is a joint statement saying that we're prepared to move forward with this, that influences what next steps are taken or not taken by officials.

**Ms. Janet Henchey:** I don't have anything more to say, other than that we don't require a formal mandate to have preliminary discussions about whether a country might be interested in a treaty. These kinds of discussions happen among officials, between Canada and a number of different countries—

**Mr. Garnett Genuis:** Okay, but—

**Ms. Janet Henchey:** To negotiate a treaty, we would require a formal mandate, and we don't have one.

**Mr. Garnett Genuis:** When was the last time that informal conversations happened between Canadian officials and Chinese officials on the possibility of an extradition agreement between the two countries?

**The Chair:** Very briefly, please.

**Ms. Janet Henchey:** I'm sorry. I don't have that answer.

**Mr. Garnett Genuis:** Could you come back to the committee with an answer in writing? Is that part of the...?

**Ms. Janet Henchey:** I'm not sure if I can even get you an answer, because the discussions could have taken place between officials from my department or they could have taken place from officials in Global Affairs.... I'm not sure I can give you a—

• (1200)

**The Chair:** Ms. Henchey, perhaps you could check on it. I'm going to ask you, if you can, to do so.

Mr. Albas, you have a point of order, perhaps, because we are at the end of the time.

**Mr. Dan Albas:** I do realize that, Mr. Chair.

It's just that you had asked earlier about a breakdown of extraditions by country and how many get done. If it's possible, could the department also include how many extradition agreements of those lists are with countries that have the death penalty? I think that would be reasonable.

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

Mr. Fragiskatos.

**Mr. Peter Fragiskatos:** Mr. Chair, I do have a point of order. Just to add to the comments or the questions put forward by Mr. Genuis—

**The Chair:** Is it a point of order or debate?

**Mr. Peter Fragiskatos:** Perhaps this would add to our understanding. According to a 2016 National Post article—

**The Chair:** Mr. Fragiskatos, this is not a point of order. It sounds like it's debate, and I think we're.... We may have occasions to de-

bate in the future, but I'm sorry, I don't think it's a valid point of order.

[*Translation*]

I would like to point out that the committee members have now received copies of the document “L'extradition au Canada”, which the clerk had distributed in only one language today.

However, I must advise future witnesses that, if they want documents to be distributed, they will have to provide them in Canada's both official languages.

**Mr. Owen Rees:** Thank you, Mr. Chair.

[*English*]

**The Chair:** I want to thank our witnesses very much for appearing today.

I also want to remind colleagues that we're meeting tomorrow night from 5:30 to 7:30 with Ambassador Barton. I especially want to bring to your attention, just as a reminder, that we're meeting tomorrow night in room 415 in the Wellington Building, because, of course, we might otherwise come by mistake here, where we've been meeting regularly.

Thank you very much.

The meeting is adjourned.





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