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# **Standing Committee on Justice and Human Rights**

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**EVIDENCE**

**Wednesday, February 11, 2009**

**Chair**

**Mr. Ed Fast**

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## Standing Committee on Justice and Human Rights

Wednesday, February 11, 2009

• (1530)

[English]

**The Chair (Mr. Ed Fast (Abbotsford, CPC)):** I'd like to call the Standing Committee on Justice and Human Rights to order. Today is Wednesday, February 11, 2009, and this is meeting three.

You have before you the agenda for today. Please note that we're going to reserve approximately 30 minutes at the end of our meeting to discuss our committee work plan and other business going forward.

In accordance with the order of reference dated February 4, 2009, appearing before us today is the acting Director of Public Prosecutions, Mr. Brian J. Saunders. Mr. Saunders is the proposed appointee to the position of Director of Public Prosecutions, and he is available to answer questions you may have regarding his qualifications.

Mr. Saunders, welcome to our committee. You will have 10 minutes to introduce yourself to our committee, and then members will have an opportunity to ask questions of you.

I would ask that committee members restrict their questions to Mr. Saunders' qualifications for the position of Director of Public Prosecutions.

There is a point of order from Mr. Murphy.

**Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.):** You would ask us to restrict our questions to the qualifications of Mr. Saunders for the job, but not about the job itself?

**The Chair:** I don't believe Mr. Saunders is in a position where he should be discussing the process that led to his appointment.

**Mr. Brian Murphy:** No, that's not what I said. What I asked is this. Are we not allowed to ask Mr. Saunders how he envisions the job of DPP being done or how he observes it being done in other countries?

**The Chair:** No, Mr. Murphy, I didn't imply that. You'll certainly have an opportunity to ask him those questions as well, but we want to focus in on the qualifications and anything related to the job that he's already been undertaking for some two years.

Mr. Saunders, you have 10 minutes and then we'll move to questions.

**Mr. Brian J. Saunders (Acting Director of Public Prosecutions, Public Prosecution Service of Canada, As an Individual):** Thank you, Mr. Chairman.

It is an honour for me to have been nominated for the post of Director of Public Prosecutions. I am pleased to be here today to discuss my nomination.

This is an important and challenging post that was created in December 2006 with the coming into force of the Director of Public Prosecutions Act, which is part 3 of the Federal Accountability Act. The Director of Public Prosecutions Act makes transparent the constitutional principle of prosecutorial independence.

I have been the acting director since December 2006, and over the past two years I've witnessed the dedication and professionalism of the prosecutors and employees who make up the Public Prosecution Service of Canada.

I have submitted my curriculum vitae. Let me add a few details that are not mentioned in it and elaborate on a few that are.

[Translation]

I was born in Brandon, Manitoba. My father was in the military at the time and, like most military families, we moved every few years. I lived in five provinces before my family finally settled down in Edmonton, Alberta where I attended high school. I obtained a BA and an LLB from the University of Alberta and then undertook two years of post-graduate studies at Cambridge University where I obtained an LLM and a diploma in legal studies.

I then returned to Edmonton where I articulated with the federal Department of Justice. After being called to the Bar in 1978, I remained with the department for the next 28 years. From 1978 to 1985, I worked in the Edmonton regional office, and from 1985 to 2006 in Ottawa. In December of 2006 I joined the PPSC.

While in Edmonton, I worked as both a prosecutor and a civil litigator.

• (1535)

[English]

When I transferred to Ottawa in September 1985, I moved into the civil litigation section, where I focused primarily on human rights, the Charter of Rights and Freedoms, and public law cases. I did not conduct any prosecutions while with that section. However, I was from time to time involved in cases and issues that brought me into contact with the criminal law. For example, among the cases I handled were ones involving section 8 of the charter on the right to be secure against unreasonable search or seizure.

In 2000, I was promoted to the position of director general of the civil litigation section in Ottawa. The section had approximately 35 lawyers, many of whom conducted a national practice. I continued to conduct litigation while in the position. I also served on the department's national litigation committee, which, among other matters, has the mandate of reviewing all factums, in both criminal and civil appeals, that are to be filed with the Supreme Court of Canada.

In February 2006, I was appointed Assistant Deputy Attorney General of Canada in charge of the citizenship, immigration, and public safety portfolio. I had direct authority over the Justice lawyers working in the crimes against humanity and war crimes section as well as those assigned to work in the legal service units at the RCMP, CSIS, Canada Border Services Agency, Immigration, Correctional Services, National Parole Board, and Public Safety. I also had functional responsibility over those Justice lawyers conducting immigration litigation for the government throughout Canada.

[Translation]

And finally, as I mentioned at the outset, on December 12, 2006, I assumed the position of Acting Director of Public Prosecutions. On the same day, most of the employees of the Federal Prosecution Service of the Department of Justice were transferred to the Public Prosecution Service of Canada. This was a significant change, as many of them had spent their entire careers in the Department of Justice. Some questioned the need for the transfer. This hesitation has long since passed.

[English]

Employees see the value in the creation of the Public Prosecution Service. They now have an organization that is focused solely on its work, and more importantly, one that makes transparent the very principle that is central to the work, which is the principle of prosecutorial independence.

Over the past two years the Public Prosecution Service has made the transition from being a part of the Department of Justice to being an independent governmental organization. We've put in place a government structure and established our own capacity in such areas as communications, corporate services, access to information and privacy, and strategic planning.

Prosecutors play a key role in our criminal justice system. The system places a heavy responsibility on their shoulders. In every case they handle, they are called upon to decide whether a person should be subject to prosecution and placed in jeopardy of being fined or imprisoned. In prosecuting a case, they must represent the public interest and the community at large and must act fairly but firmly, guided by principle in the law. The PPSC was established to help ensure that there would be no improper influences in their decision-making.

If my nomination is confirmed, I will work to ensure that the constitutional principle of prosecutorial independence is respected, that prosecutors have the support they need to do their important work, and that we are accountable both for our work and for how we handle our resources.

Thank you. I'll be pleased to answer any questions you might have.

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

As agreed, we'll move forward with a questioner from the Liberal Party, Mr. Dosanjh.

**Hon. Ujjal Dosanjh (Vancouver South, Lib.):** Thank you, Mr. Saunders, and thank you for being here.

You've been at this work now for a couple of years. You said that the creation of this particular model was to make transparent the principle of prosecutorial independence, so that there's no improper influence. From your knowledge of the department, was there ever any improper influence on the prosecutors before?

**Mr. Brian J. Saunders:** No, there was not. And I think that was made very clear in the debates that led up to the enactment of the Director of Public Prosecutions Act. I believe it was Minister Toews at the time who appeared before a parliamentary committee and stated that the legislation was not being introduced to address a problem; it was being introduced to prevent problems from possibly occurring in the future.

**Hon. Ujjal Dosanjh:** I have not looked at the legislation, I must confess, but I'm assuming that this is modelled after something like the DPP in Britain.

• (1540)

**Mr. Brian J. Saunders:** It's closer to the legislation one finds in Nova Scotia and Quebec. But certainly, there were influences from England as well.

**Hon. Ujjal Dosanjh:** Yes.

Who are you accountable to, sir, in your capacity?

**Mr. Brian J. Saunders:** Under the legislation, the director is accountable to the Attorney General. The legislation does say that the director, under the authority and on behalf of the Attorney General, has the following roles and, it goes on to say, conducts prosecutions, gives advice, things of that nature.

**Hon. Ujjal Dosanjh:** So what are you accountable for? I recognize the prosecutorial independence, that you decide who to prosecute and who not to prosecute, what to submit to court or not submit, whether to charge or not charge; you make those kinds of decisions independent of the minister. But what are you accountable to the minister for?

**Mr. Brian J. Saunders:** The legislation sets out the nature of the accountability. In section 13 it states that we have to inform the Attorney General of cases of a general importance. So we are accountable to the Attorney General to keep him informed of cases of a general importance. That is there because under the legislation he has the authority to issue directives in respect of a particular case or in respect of general cases.

**Hon. Ujjal Dosanjh:** Are those directives made public?

**Mr. Brian J. Saunders:** They are made public, and that is the transparency that helps protect independence.

**Hon. Ujjal Dosanjh:** Which is, I believe, part of the British Columbia model of how it's done in-house.

**Mr. Brian J. Saunders:** That's right, yes.

**Hon. Ujjal Dosanjh:** But from my perspective as a former Attorney General, where actually you do many more prosecutions than the federal government ever does, I always believed that if you had the in-house prosecutions you were more accountable, because the minister could be asked questions about any prosecutions whatsoever in the house at any time, whereas this way, that accountability is removed by putting you under a separate act.

**Mr. Brian J. Saunders:** It comes down to a policy choice that is made, and I guess that in Canada the starting point for the adoption of this model, as opposed to the traditional model or the B.C. model, was the Marshall commission report, which said there should be a director of public prosecutions—in that case, for Nova Scotia—and that there should be some accountability. But they saw the accountability only being in respect of these important cases. They didn't see an Attorney General having to be informed or become involved in the vast number of cases.

**Hon. Ujjal Dosanjh:** Let me ask you, how many times have you met with the Attorney General since you took over?

**Mr. Brian J. Saunders:** Let me put it this way: we have an obligation under section 13 of our legislation to keep him informed of cases of a general importance. We do that in writing typically, and we send it up to the Attorney General.

In terms of meeting with the Attorney General, we met initially on a regular basis but have agreed to try to meet every two to three months, and I think we've met on that basis three times now.

**Hon. Ujjal Dosanjh:** And initially you met more regularly?

**Mr. Brian J. Saunders:** No, initially we met to discuss a directive. You will recall that there was a directive issued at the beginning, in March, telling us to use the federal service guidebook, a policy manual. So we met with the Attorney General—Mr. Toews, at that time—to discuss that.

**Hon. Ujjal Dosanjh:** And you are supposed to keep the Attorney General posted, if I can use that word, on major issues of public interest.

**Mr. Brian J. Saunders:** That's right.

**Hon. Ujjal Dosanjh:** Cases of public interest.

**Mr. Brian J. Saunders:** That's right.

**Hon. Ujjal Dosanjh:** Can you give us any examples of what cases you advised him on? I'm not asking for the advice; I just want to know what cases you have thought—

**Mr. Brian J. Saunders:** Yes, but I think that's a question of solicitor-client privilege.

What I could tell you, though—

**Hon. Ujjal Dosanjh:** Do you think so?

**Mr. Brian J. Saunders:** What I could tell you, though, is what type of case would be—

**Hon. Ujjal Dosanjh:** Let me ask you, why do you think that's a matter of solicitor-client privilege?

**Mr. Brian J. Saunders:** Because it's my accountability to the Attorney General, who is my—

**Hon. Ujjal Dosanjh:** I beg to differ. I'm simply asking you to tell us what particular cases you've seen fit to inform the minister about. I'm not asking you for the advice.

•(1545)

**Mr. Brian J. Saunders:** The types of cases we would give notice on would be major regulatory prosecutions, such as if we were about to commence a prosecution against a company for an environmental spill, or if we were to commence a major prosecution against the Hells Angels—

**Hon. Ujjal Dosanjh:** I appreciate that, but I'm asking you what particular cases they were. Give me the names of cases that you have actually discussed with the minister. I'm not asking to disclose the advice to us.

**Mr. Brian J. Saunders:** I can tell you that a case we have given advice on—section 13 notice on—was a case from British Columbia on the prosecution of Hells Angels.

**Hon. Ujjal Dosanjh:** Are there any other cases?

**Mr. Brian J. Saunders:** Of general importance would be Project Colisée in Quebec.

**Hon. Ujjal Dosanjh:** And I'm assuming that when you inform the minister of these cases, the minister simply hears you out, asks you questions and gives you no direction. I'm assuming this happens.

**Mr. Brian J. Saunders:** If the Attorney General wished to give direction on a case on which he'd been informed, he would have to do so in writing and it would have to be published in *Canada Gazette*. To date there has not been a directive issued in respect of a particular case, so your assumption is a good one.

**Hon. Ujjal Dosanjh:** I appreciate that.

**The Chair:** Mr. Dosanjh, you have about 15 seconds left. A very quick question, please.

**Hon. Ujjal Dosanjh:** Fifteen seconds? I'll let it go.

**Mr. Ed Fast:** Monsieur Ménard

[Translation]

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

I would like to welcome Mr. Saunders, whom we have already had the pleasure of meeting.

I am quite in favour of the idea of having a relatively independent public prosecutor's office. Indeed, Quebec has had a great deal of success operating in this manner. There is, at the same time, this idea of reconciling public interest through the election mechanisms found in Parliament.

I would like some clarifications on the following issue. As you already mentioned, you are obligated to inform the minister of important matters pertaining to the public interest. One might think, for example, that the issue of organized crime is an important matter, but I would like to know what would happen if ever there were a divergence of opinion.

I will give you a fictional example. Any links to something real would be the work of an imagination that I do not have. Let's say that a former prime minister was being sued and that, on the basis of your expertise, you felt that legal proceedings of this type were in order but the Attorney General of Canada did not agree. Under such circumstances, how would the arbitration mechanism work and who would make the final decision?

**Mr. Brian J. Saunders:** At the outset, you must understand that we are not the ones who do the investigations. The police investigate and lay charges. So this is not the responsibility of prosecutors. Even in Quebec, where they have a system whereby the prosecutors approve charges before they are laid by the police, it is not the prosecutors who decide whether or not someone should be charged.

It must also be understood that we do not intervene in all cases where crimes or offences have been committed. In Quebec, for instance, as you know, they intervene in most cases where charges or offences have been committed under the Criminal Code. That may be the answer to this question. In the case of a former prime minister suspected of having committed a crime, if this crime is under the Criminal Code, I would suppose that, in most cases, the Quebec prosecutor's office would be involved.

**Mr. Réal Ménard:** But you have skirted an important issue. You have to assess the evidence and provide justification, under federal legislation. Everyone here understands that the provinces have jurisdiction over provisions pertaining to the Code, but that it is the federal government that has responsibility for narcotics-related legislation. In this example, which I do recognize has some pedagogical virtues—and I hope that you agree with me—let's suppose that the RCMP—in this instance we are dealing with provisions requiring the participation of the federal government—conducts an investigation and you are called upon to evaluate the evidence. In this instance let's say that we are dealing with a federal government responsibility and arbitration is required. Could you oppose a decision like that, for example, if the Attorney General of Canada were to decide not to recommend legal proceedings whereas you feel that there should be? Would the Attorney General of Canada have the last word?

**Mr. Brian J. Saunders:** I would like to add a third aspect. If the offence pertaining to the RCMP investigation comes under our purview, our prosecutors would proceed as they do in any other case, namely, they would assess the evidence to determine whether or not, in this case, there would be a reasonable probability of conviction. If that is the case, they would ask a second question, namely whether or not public interest demands a prosecution. If the answer to these two questions is yes, we would conduct a prosecution. At the same time, we would provide the Attorney General of Canada with a notice under section 13. If he says that he does not want us to conduct a prosecution, there are two options.

• (1550)

**Mr. Réal Ménard:** Very well.

**Mr. Brian J. Saunders:** He can provide us with directives, but they must be published in the *Canada Gazette*, or he can take charge of the prosecution under section 14 of our act. However, if he makes such a decision, this too must be published.

**Mr. Réal Ménard:** That is interesting. You have answered the question perfectly. If this were an exam, you would get 10 out of 10.

So, if we were to proceed under section 14, it would be the Attorney General of Canada who would be taking charge of the prosecution by right of his special powers.

**Mr. Brian J. Saunders:** Pardon me, this would be under section 15.

**Mr. Réal Ménard:** So it would be section 15.

**Mr. Brian J. Saunders:** That's a detail.

**Mr. Réal Ménard:** I won't dock you any marks.

How would this prosecution go through the judicial courts?

**Mr. Brian J. Saunders:** We are talking about a hypothetical case now, but I would imagine that the Attorney General of Canada would apply the same test as we would. Indeed, the test pertaining to reasonable probability of conviction and public interest is applied by nearly every prosecution service in Canada—in Canada, that is for sure—and elsewhere in the world.

**Mr. Réal Ménard:** I understand. So, in the case of disagreement—and that can happen—it is reassuring to know that an elected official will ultimately have the final word. In addition, a special legislative provision enables this elected official to steer the prosecution through the court system. Who will prepare the file? Will it be someone from the Department of Justice just the same? And how will this prosecution be steered through the courts? This is a precedent. According to what you have said, this has never been done.

**Mr. Brian J. Saunders:** The Department of Justice must have lawyers capable of conducting such a prosecution. Or the minister can hire an authorized agent who will take on this responsibility.

**Mr. Réal Ménard:** All right.

[English]

**The Chair:** Thank you.

[Translation]

**Mr. Réal Ménard:** That was a very good answer. Thank you very much.

[English]

**The Chair:** Mr. Comartin, you have seven minutes.

**Mr. Joe Comartin (Windsor—Tecumseh, NDP):** Thank you, Mr. Chair.

Thank you, Mr. Saunders, for being here.

I want to pursue the points that Mr. Dosanjh was raising. Would the prosecutions we've had under the anti-terrorism legislation, here in Ottawa and in Toronto, be the types of cases you would have reported as being of general interest to the minister?

**Mr. Brian J. Saunders:** If they were cases of general importance, the answer is yes.

**Mr. Joe Comartin:** Were those specific ones of enough general importance to—

**Mr. Brian J. Saunders:** Yes.

**Mr. Joe Comartin:** Would the decision in the Toronto case to bypass the preliminary inquiry and go directly to trial have been an issue that would have been reported to the minister?

**Mr. Brian J. Saunders:** That was a decision that I took. Under the section of the Criminal Code, it says that the Attorney General or the Deputy Attorney General can make that decision. Under the law I'm deemed to be the Deputy Attorney General, so I took that decision.

**Mr. Joe Comartin:** The question was—

**Mr. Brian J. Saunders:** I don't recall whether we gave notice or not. The question becomes, under section 13, when you have a long-running case, do you give notice of every step you take in the conduct of the case? I think with respect to major steps in the case, we do give notice under section 13, but I can't recall if on that particular step we gave notice.

**Mr. Joe Comartin:** Just so we're clear, in one that is as large and significant as that one, there are periodic reports going in to the minister?

**Mr. Brian J. Saunders:** If major steps were to occur in the case, then before a major step was taken, we would likely give notice, depending on what the step was.

•(1555)

**Mr. Joe Comartin:** In that particular case or that incident or that decision, you don't know?

**Mr. Brian J. Saunders:** I just don't recall. I'm sorry.

**Mr. Joe Comartin:** Okay. Section 14 of the act allows the minister or the Attorney General to step in, either in first instance or on appeal. Since the office has been established, has any Attorney General done that?

**Mr. Brian J. Saunders:** That section is awkwardly worded. What it refers to is that the Attorney General may intervene in cases at first instance or in appeal, as you point out.

There are two types of cases that could fall within the scope of section 14. There are cases we conduct the prosecution of. It would be very unlikely that the Attorney General would intervene in a case that we're conducting the prosecution of—and that hasn't happened. And there are cases in which the provincial attorneys general are the prosecutors, and there's a section of the Criminal Code that's been challenged as being contrary to the charter, or there is an investigative technique that is an issue, for example protection of informant privilege. In those cases a decision has to be taken: should we intervene, as the DPP or the Attorney General, to in effect put our point of view before the court if we have something useful to add to the debate?

In those cases there's a tacit understanding we have reached with the Attorney General and the Department of Justice. In cases involving provincial prosecutions in which the constitutionality of the Criminal Code is at issue, it is the lawyers from the Department of Justice who typically will defend or will intervene to defend the code.

**Mr. Joe Comartin:** Could I stop you there? Quite frankly, that's not the route I want to go down. I really want to know if there was a prosecution undertaken by you, at your level, which the Attorney General indicated he was taking over.

**Mr. Brian J. Saunders:** The answer is no.

**Mr. Joe Comartin:** Okay. Have you conceived of a situation in which that would occur? Let me put it a different way: were there any cases you had in which you thought the Attorney General might intervene?

**Mr. Brian J. Saunders:** No.

**Mr. Joe Comartin:** In subsection 15(3), there's a provision here of your requirement, if an intervention has occurred, to advise through the *Gazette*. But subsection 15(3) allows for you as well as the Attorney General to delay that publication. Has it ever occurred that you held back doing that?

**Mr. Brian J. Saunders:** No. That section appears in the larger section dealing with where the Attorney General has assumed conduct of a case from us. That hasn't occurred.

**Mr. Joe Comartin:** Is there a policy or have you prepared a policy for under what circumstances subsection 15(3) would be applied from your vantage point—not from the Attorney General's but from yours?

**Mr. Brian J. Saunders:** No, we haven't yet. I might add, though, that in that particular case, if it's an ongoing prosecution and if the Attorney General were to assume conduct of the prosecution, it would become public knowledge the day the lawyers go to court and appear on behalf of the Attorney General.

**Mr. Joe Comartin:** How would that be obvious?

**Mr. Brian J. Saunders:** Because they'll be in court, in a public forum, saying, "I'm here on behalf of the Attorney General". The counsel for the Director of Public Prosecutions wouldn't be there. There would be a change of counsel.

**Mr. Joe Comartin:** Again, would that be back to section 7, where the Attorney General would draw on a special prosecutor?

**Mr. Brian J. Saunders:** No. Section 7—

**Mr. Joe Comartin:** Is separate?

**Mr. Brian J. Saunders:** It's separate. Section 7 allows the director to retain the services of private sector lawyers. It has nothing to do with the Attorney General's role.

**Mr. Joe Comartin:** So where does the Attorney General get authority to hire what I guess would have to be outside counsel if it's not coming from your department?

**Mr. Brian J. Saunders:** I guess that's a problem he has to address, but I would assume it's under government contract regulations, which say that the Minister of Justice hires all legal agents on behalf of the crown.

**Mr. Joe Comartin:** At the time this legislation went through, I think there was a general sense—I think I'm objective and fair in saying this—in the country that in the case of political corruption the prosecutor would be responsible for that, and there was a concern over the ability of the government of the day to intervene.

Again, let me ask you first whether you've faced this, where there was a concern either about an investigation going on or a prosecution about to commence. Have you faced this, where it involved a government member, meaning a member of Parliament, including up to the cabinet or a senior member of the governing party?

• (1600)

**The Chair:** That will be the last question.

**Mr. Brian J. Saunders:** I can't comment on any knowledge that we may have derived from investigations. Investigations are conducted by the police. It's their investigation. We can advise the police in an investigation, but it would be improper and inappropriate for me to disclose whether any investigations are ongoing.

**The Chair:** Thank you.

We'll move now to Mr. Norlock for seven minutes.

**Mr. Rick Norlock (Northumberland—Quinte West, CPC):** Thank you very much, Mr. Saunders, for coming here today.

This may be going somewhat down the same road as Mr. Comartin, but on a much more general basis. The reason I'm going to ask you this is very simple. To those in Ottawa who are in this bubble here, it may be seem to be pretty simple, but for the average person, when your job was being proposed, etc.—and this relates to some of the questions Mr. Comartin went through—the people who talked to me assumed that we were talking about a special prosecutor and the office of a special prosecutor, much like they have in the U. S. Of course, the job of the public prosecutor in Canada, your job, is not the same thing, at least from my perspective.

My question is more for people who will be watching these proceedings, so that they know exactly what your job is as it relates to their communities, because I think it filters down to federal crown prosecutors. What's your job? How does it differ?

For those good folks who watch parliamentary procedure, how does it differ from the way district attorneys investigate? We all watch *CSI* and those programs and we see how involved district attorneys are in investigations. Coming from the law enforcement field, I know that the crown is not generally as involved in this country, so could you describe what your job is and how it relates to the average person, the average Canadian, who would be watching this? Could you then describe how it's different from some of the things that happen south of the border, things that we're influenced by and sometimes confused by?

**Mr. Brian J. Saunders:** Let me begin by talking about the role of prosecutors in Canada. There are 11 prosecution services in Canada, and I think we all play the same role. We conduct prosecutions after an investigation has been conducted by the police. We provide pre-charge advice to the police. But in this country the principle is that the police are independent in the way they conduct their investigations. The pre-charge advice that prosecution services give the police is necessary, because the law is complicated and the police

don't want to spend a lot of time investigating something if they've already run afoul of the law in gathering the evidence. But the point is, it is the police who decide who to investigate, how to investigate, and what charges to lay.

The role of the prosecutor comes to the fore after the charges have been laid. At this point, the prosecution service has a role in deciding whether the charges should proceed. This is seen as an important balance within the system. We allow the police to investigate, and they can lay charges if they have reasonable grounds to believe there has been a violation of the law. The prosecutor then comes in and conducts a detached and objective examination of the evidence. We look at the competence, the credibility, of the witnesses. We look to see whether there are any possible charter violations. We determine whether a prosecution should proceed, and this is seen as an important check in the system. The prosecutor bears a heavy responsibility. Police sometimes get accused of tunnel vision, and we tell our prosecutors to keep an open mind and evaluate all the evidence objectively.

In the United States, what we see on TV, and what we sometimes see associated with special prosecutors, is that the prosecutors have more of a role in the conduct of the investigation. This certainly wasn't the intent of the Director of Public Prosecutions Act, nor does it apply in other jurisdictions in Canada. British Columbia, in its statute, has a special prosecutor's provision that allows the Attorney General to appoint an agent, a private sector lawyer, to look into a case and to decide whether a prosecution should proceed. It is not an American-type example, in which the special prosecutor takes charge of the investigation as well.

I'll now move to what our role is to Canadians. Before we were established, there was within the Department of Justice a branch called the federal prosecution service. We took over their role. Our role varies from province to province and between territories. In the northern territories, we conduct all prosecutions of the Criminal Code and all federal laws. In the provinces, we conduct some Criminal Code prosecutions such as terrorism. We have concurrent jurisdictions with the provinces. We do some organized crime prosecutions, typically those linked with drugs. Our main line of business, if I can call it that, is the prosecution of offences under the Controlled Drug and Substances Act, and this would be familiar to most Canadians. Being Canada, we always have exceptions. In New Brunswick and Quebec, we conduct prosecutions only for those investigations carried out by the RCMP. Elsewhere in Canada, we conduct virtually all drug prosecutions.



We also conduct prosecutions of violations of all other federal laws. For example, if there's a charge from the Migratory Birds Convention Act, like the charge against Syncrude you might have read about in the papers a few days ago, it would be our lawyers who prosecute it. If there's a prosecution under the Fisheries Act or the Canadian Environmental Protection Act, it would be our lawyers. There are approximately 50 federal laws under which we conduct prosecutions. I forgot to mention the most prominent one, the Income Tax Act.

• (1605)

**Mr. Rick Norlock:** Thank you. I'll pass the next set of questions over to my friend Mr. Rathgeber.

**The Chair:** Actually, we have only one minute left, so it will have to be a short set.

**Mr. Brent Rathgeber (Edmonton—St. Albert, CPC):** Thank you.

I have a follow-up question with regard to the independence of your office. Prosecutions used to be held as a branch of the Department of Justice. Now, though, you're supposed to be independent of the Minister of Justice, but you report to Parliament through the Attorney General. In this government, the Attorney General and the Minister of Justice are the same individual, so I was wondering if you could provide some clarity on how this independence from government operates.

**Mr. Brian J. Saunders:** A good starting point is what we had before and what we have now. Before 2006 at the federal level we had what Mr. Stephen Owen, in a paper he prepared on prosecutions in 1990, described as a traditional model: the prosecution services are located within the department that is presided over by the Minister of Justice and Attorney General. There is a reporting hierarchy leading from the prosecutors to an assistant deputy attorney general in charge of prosecutions to the minister. Typically, there are policy guidelines.

With the establishment of the Public Prosecution Service of Canada, we have been moved out of the Department of Justice into a new organization. The prosecutors are appointed and receive delegations from the director, and only the director reports to the Attorney General. Then the director, to safeguard his independence, is insulated from any pressure from the Attorney General by, in part, this process here. In the statute there are a number of things.

Once he's appointed, it's a seven-year term. The salary can't be changed; he can only be removed from office by a resolution that is supported by the House of Commons. There can't be any pressure placed on the incumbent by virtue of those protections found in the law.

**The Chair:** Thank you.

I'll move on to the next questioner. Mr. Murphy, you have five minutes.

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

Thank you, Mr. Saunders, for coming here. I was on the accountability committee when this was all discussed in the past. The impression at that time, and this time, is that the Director of

Public Prosecutions is independent. I think that's what the meat of the accountability provisions in respect of this was.

When I hear you say, and we read the law, that you're accountable to the Attorney General and the Minister of Justice, it leads me to believe there is a bit of debate that's going to be worked out over your first term as DPP between ministerial responsibility on one hand and the preservation of prosecutorial discretion on the other.

So far you've given evidence that you report to the Attorney General in cases of general interest, occasionally, perhaps frequently in some cases. There's no really clear idea here, to me, to the public, that you are anything but the de facto Attorney General unless you were to tell me in your answer that you are frequently communicating with Minister Nicholson, that you frequently tell him there are cases we find of interest, and that he is monitoring and doing his job as Attorney General. Either you are accountable to him and inform him fully on what's going on with respect to prosecutions in this country, or you're the guy who makes all the decisions; and as they say, heavy is the head that wears the crown. You would be the person all of us would be looking to, for instance, if a prosecution of a public office-holder didn't or did take place, depending on which side of the fence politics likes.

Could you flesh out how much reporting you're giving to the Attorney General, Mr. Nicholson, whether he's ever asked specifically to meet with you on a case, for instance?

• (1610)

**Mr. Brian J. Saunders:** You have to put that in context. The legislation attempts to protect or make transparent the principle of prosecutorial independence by putting in safeguards. If the Attorney General wishes to intervene, he has to do so in writing.

In terms of accountability—and this is found, I might say, in the Nova Scotia legislation and the Quebec legislation—this derives from the report of the Marshall commission of inquiry and the works of the late Professor Edwards, who wrote extensively on the role of the Attorney General in law to the crown. The recommendations made at that time, which have been adopted, were that there should be some ultimate accountability to the Attorney General, because there had to be some political accountability. At the same time, they said the vast majority of cases would be conducted by the prosecution service without any involvement of the Attorney General. They thought it necessary in these cases of general importance that the Attorney General be informed.

**Mr. Brian Murphy:** You've had this since February 2006?

**Mr. Brian J. Saunders:** We've had it since December 2006.

**Mr. Brian Murphy:** How many times has there been written communication from the Attorney General, requesting—

**Mr. Brian J. Saunders:** Of cases?

**Mr. Brian Murphy:** Yes, how many times? Just to lay the foundation for that, that would give the public an idea of how on top of things the Attorney General is with respect to prosecution matters in the country. You know, what is he accountable for if he's only intervening a few times? Or if you're telling me it's a hundred times, then we'll go on the other tack, that he's too interventionist.

**Mr. Brian J. Saunders:** I don't have the number before me, but let me give you an example.

British Columbia has had the crown attorney act since 1990. It has a provision in it, similar to our section 10, that allows the Attorney General to give directives to the head of the prosecution service of that province in respect of a case. If the Attorney General disagrees with the decision that the prosecution service has taken, the Attorney General can give a written directive that has to be published. In 18 years, I believe five or six directives have been issued.

**Mr. Brian Murphy:** But in your case—

**Mr. Brian J. Saunders:** In my case, there have been none so far.

**Mr. Brian Murphy:** Zero.

**Mr. Brian J. Saunders:** Yes.

**Mr. Brian Murphy:** I thought you just said that you didn't know how many times the Attorney General—

**Mr. Brian J. Saunders:** No, I'm talking about how many directives have been issued.

**Hon. Ujjal Dosanjh:** I think you're asking a different question.

**Mr. Brian Murphy:** I am asking a different question; thank you, Ujjal.

I am asking about the Attorney General asking you, in writing, about the status of a case or—

**Mr. Brian J. Saunders:** I can't give you the number of times we have sent a section 13 notice to the Attorney General.

**Mr. Brian Murphy:** How many times has the Attorney General asked you about cases that are going on?

**Mr. Brian J. Saunders:** I have briefed him four or five times on cases. We've discussed cases.

**Mr. Brian Murphy:** You've briefed him—

**Mr. Brian J. Saunders:** Yes.

**Mr. Brian Murphy:** —when he's asked.

**Mr. Brian J. Saunders:** Well, the Attorney General would be hard-placed to.... We have to tell him about the cases. He wouldn't know about the cases until we told him.

**The Chair:** That's the end of questioning.

The next question will be from Monsieur Lemay, for five minutes.  
[Translation]

**Mr. Marc Lemay (Abitibi—Témiscamingue, BQ):** I listened to you carefully, Mr. Saunders. I have a few practical questions for you.

For example, if someone in Quebec were to be prosecuted under the 1994 Migratory Birds Convention Act, which is a federal law, the Attorney General of Quebec would be the one to initiate proceedings, if this person were to challenge the constitutionality of certain sections. For example, let's say that the person claimed to

be an Indian and had hunting rights—I don't have to talk to you about Supreme Court jurisprudence—would you intervene?

•(1615)

**Mr. Brian J. Saunders:** If this were a lawsuit under the purview of the province of Quebec and it challenged the constitutionality of a federal piece of legislation, generally speaking, the Attorney General of Canada, with the Department of Justice, would intervene.

**Mr. Marc Lemay:** I read your CV which, by the way, is quite impressive. The *ratio decidendi* is constantly increasing, so long as the case is not before the Supreme Court. It does happen from time to time that the decisions rendered by the appellate courts in Ontario, Quebec and British Columbia are different.

As the director, will you provide your attorneys with instructions as to which cases must be brought to the Supreme Court?

**Mr. Brian J. Saunders:** If they are cases that come under our jurisdiction—

**Mr. Marc Lemay:** I am referring to matters under your jurisdiction.

**Mr. Brian J. Saunders:** All right. We have struck a committee that sits on a regular basis to review similar cases and to provide guidelines to the directors regarding the decision to appeal cases.

**Mr. Marc Lemay:** Who are the members of this committee?

**Mr. Brian J. Saunders:** These are experienced lawyers from our organization who come from all regions of Canada.

**Mr. Marc Lemay:** If a case pertained to Quebec, Ontario or British Columbia, would these lawyers come from these three provinces or is this really a committee comprising—

**Mr. Brian J. Saunders:** The committee is composed of members coming from all jurisdictions in Canada.

**Mr. Marc Lemay:** Fine.

**Mr. Brian J. Saunders:** For example, if the Quebec Court of Appeal and the British Columbia Court of Appeal made different rulings about a given case, this committee must make recommendations to the director about whether or not it is necessary to appeal and about the position that he must take before the Supreme Court.

**Mr. Marc Lemay:** So you're the one who intervenes, as the last resort, as the Attorney General.

**Mr. Brian J. Saunders:** Yes.

**Mr. Marc Lemay:** With respect to aboriginal files, files that are tremendously sensitive, who has the final word? These files are part of your jurisdiction. Whether the case takes place in Kelowna, Caledonia or elsewhere, who has the last word, who can suggest that the matter not be pursued because of certain risks?

**Mr. Brian J. Saunders:** In cases such as these, we, as the prosecutors, make the final decision. We can consult lawyers who are experts in aboriginal matters. Such cases often involve lawsuits with damages and civil litigation that often raise the very same aboriginal rights issues that are raised in criminal prosecution.

In such cases, we can consult, but in the final analysis, according to the procedural guide that the Attorney General has asked us to follow, it is clearly stipulated that the prosecutors are the ones responsible for deciding to conduct a prosecution.

[English]

**The Chair:** Monsieur Lemay, your time is up.

[Translation]

**Mr. Marc Lemay:** Already?

[English]

**The Chair:** We are moving on to Monsieur Petit.

[Translation]

**Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC):** Thank you, Mr. Chairman. I will continue on the same topic.

Good afternoon, Mr. Saunders. I am pleased to see you testifying before us. For about the past eight months or so, we have been waiting for your testimony. Meanwhile, a few incidents have occurred.

I would like to discuss the following issue, which I will try to summarize briefly. I come from the province of Quebec. As you said, the way that the Criminal Code is administered is sometimes different. For example, the police conducts investigations in Quebec, but it is the attorney assigned to the file who authorizes the prosecution. The procedure is a bit different in Ontario.

As far as drugs are concerned, the federal government has delegated power to the provinces. In some instances, private attorneys conduct drug prosecutions. In certain provinces, this does not happen. It is the provincial attorneys who do this.

I would like to ask a very specific question and I would ask that you answer it only if you can. Your attorneys are supposed to accompany ours or those individuals in charge of administering the Criminal Code in the case of economic crimes. For example, you know what happened in the case of Vincent Lacroix. In Quebec, this was a serious economic crime.

How do your lawyers intervene and provide advice? The crime may occur in several provinces. Are you able to explain what your role is? I am under the impression that the criminal prosecution service did not intervene in this file.

• (1620)

**Mr. Brian J. Saunders:** No, that is not quite accurate. The investigation was conducted by the RCMP integrated team, which in English is known as the IMET, Integrated Market Enforcement Team. Our lawyers provided advice to the RCMP IMET during the investigation. The prosecution was then carried out by the office of Mr. Dionne, the director of Quebec criminal prosecutions. We assisted him throughout the prosecution by providing him with a lawyer who worked with the Quebec team. That is how we were involved.

**Mr. Daniel Petit:** Explain something to me. I do not want to get into all the details of the case, but I'm simply trying to understand it. The prosecution was conducted under the provincial legislation of the AMF but you provide counsel on Criminal Code matters.

**Mr. Brian J. Saunders:** When I referred to our involvement in the Norbourg case, I was alluding to charges laid under the Criminal Code.

**Mr. Daniel Petit:** Very well, I didn't understand that.

I would like to raise one final issue, if I still have some time remaining, and I would like you to answer me quickly.

Mr. Lemay raised a matter of interest to me. You seem to be the last intervener at the Supreme Court level. For example, a case is prepared in a province, and this could be British Columbia, Quebec or somewhere else, and it goes through the various levels such as the Superior Court or the Supreme Court, depending on what these courts are called in the various provinces, the Court of Appeal and, finally, the Supreme Court. You told my colleague that this was in fact when you stepped in, namely, at the Supreme Court, and that you decide to represent the interests of the provincial crown with respect to the interests of the federal crown.

**Mr. Brian J. Saunders:** Pardon me, but I did not express myself clearly. The question pertained to a scenario where the prosecutions were conducted by the provincial prosecution services, in Quebec and Ontario. We were not involved in these prosecutions.

However, when the prosecutions get to the Supreme Court, it does not become our prosecution, but we can decide to intervene if we believe that we have something to add. We can therefore help the court make a ruling. In this case, our committee makes a recommendation to the director, and then I decide, as the acting director, whether or not to intervene.

[English]

**The Chair:** Thank you.

[Translation]

**Mr. Daniel Petit:** Thank you, Mr. Chairman.

[English]

**The Chair:** We've moving next to Monsieur LeBlanc.

**Hon. Dominic LeBlanc (Beauséjour, Lib.):** Thank you, Mr. Chairman.

Thank you, Mr. Saunders, for coming today. I think you were ready to appear before this committee at some previous meeting, but the meeting ended in a bizarre way and you weren't able to appear, so we're glad to see you here today.

Perhaps, Mr. Chairman, I could follow up on the questions my colleague Brian Murphy was getting at, and perhaps it wasn't clear.

Mr. Saunders, I think what Brian was asking you was not how many times your office would have sent a section 13 briefing to the minister, or not how many times you would have met face to face with him or his staff to discuss those briefings, presumably, or the notes you were sending. How many times would the minister or his staff, unprompted by you—in other words, not as a result of a notice or a memo you've sent—have asked you for information on a particular prosecution?

• (1625)

**Mr. Brian J. Saunders:** I just can't give you a number. It wouldn't be very often, I can tell you that.

**Hon. Dominic LeBlanc:** Can you give me a range? Is it one to five? Is it one to three?

**Mr. Brian J. Saunders:** Sometimes the request would not come to my office. I have two deputy directors, one of whom has more contact with the Attorney General's office, so I don't know whether she has been contacted or my other deputy director has been contacted either.

I might add, though, when you talk about staff—and I mentioned the section 13 notices—when we meet to discuss issues of prosecution, we do not involve the minister's staff; we meet with the Attorney General.

**Hon. Dominic LeBlanc:** I appreciate that, but if the minister or his staff had talked to one of your deputies, would you automatically have been informed that a request had been made?

**Mr. Brian J. Saunders:** Yes, but I'm just going back in memory and offhand I can't recall. But I wouldn't be surprised if it occurred on a few occasions.

**Hon. Dominic LeBlanc:** I want to make sure I understand. You are saying that from time to time, unprompted, the minister or his staff would ask for information on a particular prosecution.

**Mr. Brian J. Saunders:** Not his staff.

**Hon. Dominic LeBlanc:** The minister directly would.

**Mr. Brian J. Saunders:** That's it; I don't recall. I've never been contacted by the Attorney General asking for information on a particular prosecution.

**Hon. Dominic LeBlanc:** Are you aware of anybody else who has been?

**Mr. Brian J. Saunders:** I said I left the door open in case it did occur, but I tend to doubt that it would have occurred, because if we wanted to discuss such a thing, we would have raised it at the meetings we have, the occasional times we do meet.

**Hon. Dominic LeBlanc:** Okay, but in those meetings, then, he never, as a result of a notice you'd given, said, "Oh, and by the way I want to ask you about another case"?

**Mr. Brian J. Saunders:** I prefer not to talk about those discussions. We discuss cases of interest. Can I just leave it at that? That is a question of solicitor-client privilege as to what cases we discuss, because sometimes they are cases before the courts and sometimes they are cases that we might want to intervene in.

**Hon. Dominic LeBlanc:** But then he would not necessarily restrict himself only to the cases for which he's been briefed or that he's come into knowledge of as a result of your memos, your notices under section 13.

**Mr. Brian J. Saunders:** He could, if he wished, raise other cases he's heard of, but I think we do a fairly good job of bringing to his attention those cases of general importance that are within our competence of which he should be made aware.

**Hon. Dominic LeBlanc:** Thank you.

Mr. Saunders, I'm curious to see how you would define cases of general importance, or within what parameters you would understand a case to be of general importance that might require briefing the minister; for example, a prosecution under the Canada Elections Act, which would obviously generate all kinds of media attention.

**Mr. Brian J. Saunders:** We would not give a notice under the Canada Elections Act. It's excluded from the definition of prosecution in our statute.

**Hon. Dominic LeBlanc:** Okay. Give me an example, then, of another kind of case where you feel there would be general importance.

**Mr. Brian J. Saunders:** I mentioned the Project Colisée in Quebec, which is a major prosecution of members of the Montreal mafia that is in part terminated. There was a war crimes prosecution in Montreal, Munyaneza, which has gone on for some time. That would have been obviously a case of general importance.

**Hon. Dominic LeBlanc:** Do you look to cases that would generate media attention or cases that...? When you look at your upcoming cases or potential prosecutions, what sorts of things do you look for to say there's one of which you should give notice to the minister?

**Mr. Brian J. Saunders:** There are cases of public interest, cases where the law has been challenged or an investigative technique has been challenged. For example, if in a case that we're prosecuting there is a challenge to the criminal organization provisions of the Criminal Code, we would give notice that this is an issue.

**The Chair:** Your time is up. Thank you.

Mr. Brown, you have five minutes.

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

A few years ago I was on the justice committee when we first started talking about a Director of Public Prosecutions. I want to see whether you can share with us some of the things you view as having been successful in the last two years. Are there any successes that would illuminate the importance of the role you play within the justice system which you can highlight for the committee?

• (1630)

**Mr. Brian J. Saunders:** The work continued after we were formed as it had done before. Our prosecutors continued to prosecute cases in an efficient and professional manner after the establishment of our organization, as they had done before when they were members of the Public Prosecution Service. From our perspective, what has changed—and this, as I mentioned in my opening, is something I can see from having met with many of the prosecutors in visits to their offices—is a sense that they have an organization, for example in Quebec and Nova Scotia, that is focused on the prosecution arm of the criminal justice system; that in effect values the contribution they make on a daily basis to the criminal justice system; and that, as I mentioned as well, makes more transparent the principle of independence.

As for individual successes, that would require talking about some of the contributions our staff have made to the criminal justice system across Canada, and we've set these out a bit in our annual report. If there's any contribution I'd like to mention, I guess it is the contribution.... I don't want to offend any members who aren't mentioned by this, but I've always been impressed by the dedication of those prosecutors who work in the northern territories. For example, in Nunavut they service 25 communities scattered over two million square kilometres, and they do so by going on circuits. They can go away from the family for a week or two. Sometimes they are snowed in because of bad weather conditions. It's not an easy life; it's a very hard life for them. And they're dealing with a different culture. We try to give them training to deal with that. They usually try to meet with the local justice community to explain the system to them and obtain the local community's views on what is happening.

I would like to signal the contribution these prosecutors have made. It's a tremendous contribution they make to bringing justice to the northern part of Canada, where unfortunately the crime rate is a bit higher than elsewhere. They have to work under very difficult conditions.

**Mr. Patrick Brown:** I understand you have an impressive academic and litigation background. Could you share your litigation and academic history with the committee?

**Mr. Brian J. Saunders:** I guess in my CV I put out some of it, but I mentioned in it, and at the outset, that I went to Cambridge. I obtained a master's in law and also did a thesis to get a second degree, a diploma in English studies.

After that, in joining Justice, I guess I was in Alberta during the time the economy was moving much like it is now. It was considered among many friends not to be the place to go to earn money, but in terms of getting a career, over the years I've been involved in some of the more interesting cases that have come forth. If you want me to mention a few cases, on the human rights side there were two cases involving women's rights that I'm particularly proud of. One was whether women should be involved in combat roles in the military, and the other was whether or not women should be able to serve as guards in male penitentiaries. The latter went to the Supreme Court of Canada. I think I mentioned it in my CV, where section 8 and section 15, equality rights, were involved.

I've litigated for 28 years, and I've done everything from environmental law to human rights, the charter. There isn't very much in the federal sphere that I have not been involved in litigating over the years. I've tried as well to keep a hand on the academic side. I publish an annual book on Federal Court rules, which I'm beginning to wonder if I might have to abandon should I receive this position. I'm getting a bit distant from the Federal Court rules. I was thinking of doing another book on the crown liability act, but I think I'll abandon that and redirect my energy to something more in the criminal sphere.

**The Chair:** Time is up. Thank you, Mr. Brown.

We'll move on to Mr. Moore, for five minutes.

**Mr. Rob Moore (Fundy Royal, CPC):** Thank you, Mr. Saunders, for being here today. It was a long time coming, but we do appreciate your testimony here.

We haven't talked a lot about the staff under your charge. How many full-time staff are there now in the federal prosecutor—

•(1635)

**Mr. Brian J. Saunders:** Eight hundred and fifty.

**Mr. Rob Moore:** In terms of agents who are out there, who are brought on to conduct prosecutions, in rough numbers how many would there be?

**Mr. Brian J. Saunders:** There are about 700, but they don't work on a full-time basis.

**Mr. Rob Moore:** On some of the cases we're hearing about, there are intense manpower needs—on some of these so-called megatrials, with the organized crime, gangs, terrorist prosecutions. Can you talk a bit about the demand of something that is not typical, is not day to day, that comes out and all of a sudden has to be dealt with? How do you deal with that with regard to staffing?

Also, on the relationship you have with provincial attorneys general and provincial prosecutors, when it comes to a case that unfolds, that may cross jurisdictional boundaries and may be a little grey as to who would have carriage of the case, how do you go about sorting that out with your provincial counterparts?

**Mr. Brian J. Saunders:** I'll deal with the second part of your question first.

We have very good relations with the provincial prosecution services. There is a committee, which the director of the Public Prosecutions Service co-chairs, called the Federal-Provincial-Territorial Heads of Prosecution Committee. We meet twice a year. It has a very collegial atmosphere, is very results-oriented, and tries to address our common problems. We enter into arrangements with provincial prosecution services that we refer to as "major-minors", whereby if someone is accused of an offence that falls within our jurisdiction and an offence that falls within provincial jurisdiction, we sort out which prosecution service is to conduct the prosecution.

Typically, if the more serious offence is a federal prosecution, we will conduct the federal prosecution and the provincial prosecution. Conversely, if the provincial prosecution or provincial offence is more serious, they will conduct the prosecution of both offences, federal and provincial.

That said, we also enter into agreements with the provinces at times to conduct joint prosecutions. I mentioned the Norbourg case in Quebec. Our prosecution office in Manitoba recently conducted a major prosecution of Hells Angels with the Manitoba prosecution service. Our prosecutors led the prosecution and were assisted by some counsel. This is to address the very problem you have indicated; that is, cases are becoming longer and more resource-intensive. We estimate that we do about 1.5% to 2% of our cases in-house. These take up about 21% to 22% of the time of our counsel, to give you some indication of the demands placed on our service by these large cases.

The first part of your question dealt with how we plan for these things. We have offices in most provinces, and we encourage the heads of our regional offices, whom we call chief federal prosecutors, to meet with their counterparts at the provincial level, to meet with the municipal and provincial police forces—usually, except in Quebec and Ontario, it's the RCMP who are the contract police—so that we can do some planning as to demands we can anticipate being placed on our service in the future by changes in priorities.

That said, it can be difficult, because there are times when there could be a change of focus by a municipal police force and we don't receive additional resources. If, for example, the City of Vancouver—or Calgary or Montreal—decides to crack down on guns and gangs, typically gangs are involved in the sale of drugs, so they might crack down on that and there might be more prosecutions arising. Sometimes we're not as quick in getting the resources. It's their decision, provincially and municipally, to put more resources there, but they don't give any resources to us to conduct the prosecutions. That's something we have to adjust to.

We have a planning cycle wherein we attempt to take into account the future pressures we expect as an organization, taking into account past experience and the information our chief federal prosecutors can glean on a regional basis about what they'll be facing in the forthcoming year.

**The Chair:** Thank you.

We'll move to Mr. Rathgeber.

**Mr. Brent Rathgeber:** Thank you, Mr. Chair.

I'd like to ask a couple of questions about these contract agents who work under your auspices. I see you're a member of the Alberta Bar, as am I. As you probably know, in a city such as Fort McMurray there is a significant problem with controlled substances. Given the amount of money that's involved in that trade, individuals who defend suspects who are charged are very handsomely compensated. I'm curious as to how the Director of Public Prosecutions can find qualified agents to do battle with the defence lawyers in that type of setting.

● (1640)

**Mr. Brian J. Saunders:** We recently received approval from Treasury Board to increase the rates paid to our agents. You will see under our legislation that although the director has the power to retain agents, the fees that are paid the agents have to be approved by Treasury Board. Originally, the fees were set back in 1990 and remained the same from 1990 until just last year. They're still low, I

guess, in respect of some agents, but they went up to a maximum of \$120 an hour, recently adjusted to \$121 or \$122.

There is authority, however, that rests with the director to provide what we call enhanced fees. In other words, we can give an hourly rate greater than \$120. In situations such as Fort McMurray, where we might have difficulty finding a qualified agent because the economy is...I don't know whether it's still booming, but the economy is largely booming, and the salaries are much higher than elsewhere in the country.

**Mr. Brent Rathgeber:** As a supplementary to that, has there been any change in the appointment process for federal agents since they're no longer contracted to the Department of Justice and are now contracted to the Director of Public Prosecutions?

**Mr. Brian J. Saunders:** Yes, there have been a couple of changes. The agents are appointed by the office of the director. There is no involvement by the Department of Justice or by the Attorney General in the selection or the appointment of agents.

We have recently decided to change the term of the contracts awarded to agents. This was in line with increasing their rates. We thought in the past that agents were in effect appointed on an indeterminate basis but could be dismissed at will, and we thought it more appropriate to allow more firms to have the opportunity to compete for these jobs and make it a bit more transparent, so we're introducing a system of five-year contracts for our agents. That doesn't mean that an agent who has a contract won't have the contract after the five-year period. It's simply that the agents would have to compete and prove to us they are the most meritorious firm to handle the work for us.

**Mr. Brent Rathgeber:** Am I to assume from that answer that contracts will be awarded to firms, not to individuals?

**Mr. Brian J. Saunders:** I guess I misspoke myself. We have 700 agents representing 210 firms, but typically we appoint individual lawyers. They receive the delegation to act as agents.

**Mr. Brent Rathgeber:** Thank you, Mr. Chair.

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

We've finished the first two rotations and we have some time left. Mr. Dosanjh wants to ask a question, and then we'll move on to Monsieur Ménard.

[Translation]

**Mr. Réal Ménard:** I would like to make a motion, Mr. Chairman.

[English]

**The Chair:** I understand we have some motions to deal with. You have some.

[Translation]

**Mr. Réal Ménard:** No, this is a motion to...

[English]

**The Chair:** That is after we finish questions.

We'll go to Mr. Dosanjh, then Mr. Comartin.

**Hon. Ujjal Dosanjh:** Mr. Saunders, I have the same question as my other two colleagues asked. I was listening quite attentively. I didn't hear a clear answer.

The question is simple. I'm an ESL kid, so I'll explain it in very simple language. It has nothing to do with your notice or your desire to brief the minister. The question I have and my colleagues had is if the minister, to your knowledge, has ever asked your office, through you or any of the other people in the office, to advise him, or to seek a brief on a particular case from you unprompted by you.

**Mr. Brian J. Saunders:** I cannot recall a case where that has happened.

**Hon. Ujjal Dosanjh:** Can you tell us the name of the case?

**Mr. Brian J. Saunders:** No, I cannot recall that. I do not think that has occurred.

**Hon. Ujjal Dosanjh:** You can't recall that this has occurred. Can you say for certain it has not occurred?

**Mr. Brian J. Saunders:** I do not think that has occurred is what I'm saying.

**Hon. Ujjal Dosanjh:** Can you say for certain it has not occurred?

**Mr. Brian J. Saunders:** I'm almost certain. The reason I'm hesitating is that I would have thought the two deputy directors would have told me had it occurred. They haven't told me, so I am assuming they have not been contacted in respect of a particular case.

• (1645)

**Hon. Ujjal Dosanjh:** Thank you.

**The Chair:** Mr. Comartin.

**Mr. Joe Comartin:** I'm a bit surprised, Mr. Saunders, you would think that would occur. I would assume that based on the legislation the Attorney General would only be speaking to you directly if he or she were asking for that type of opinion from your office.

**Mr. Brian J. Saunders:** I'm not always in the office, and it would be open to the Attorney General in my absence to contact a deputy director. The legislation does provide that the deputy director acts for the director in the director's absence.

**Mr. Joe Comartin:** You have not established any policy whereby they are then to report to you that a request has been made.

**Mr. Brian J. Saunders:** They would report to me. I can't recall their ever doing so. I'd like to say with certainty that it has never occurred, and I could, if you wish, ask them and report back to this committee, if that's a satisfactory resolution.

**The Chair:** That would be helpful.

**Mr. Joe Comartin:** You indicated that on four or five occasions you've given verbal briefings to the Attorney General. Is that correct?

**Mr. Brian J. Saunders:** Yes.

**Mr. Joe Comartin:** In the course of those briefings, was any request made by the Attorney General for you to alter or in some fashion change the course of conduct of the prosecution of a case?

**Mr. Brian J. Saunders:** I can say no. I think that probably I've just violated solicitor-client privilege—

**Mr. Joe Comartin:** I'm not asking about any specific one.

**Mr. Brian J. Saunders:** —but had there been any case where that occurred, the response is simple: if he wishes to give direction in respect of a particular case, the Attorney General knows that it has to be in writing and published in the *Canada Gazette*.

**Mr. Joe Comartin:** So that would have been your response, had you been asked—

**Mr. Brian J. Saunders:** Had I ever been asked to do something, yes, that's my response.

**Mr. Joe Comartin:** Okay.

I go back to the question I asked earlier about subsection 15(3). You said you had no policy in place as to how to deal with the situation of delaying publishing in the *Gazette*. I have to question, Mr. Saunders, why not. It would seem to me—you've been in the position for over two years now—that it would be appropriate for some policy to be in place concerning how to deal with that situation, extraordinary as it may be.

**Mr. Brian J. Saunders:** The reason is, I guess, that it is an extraordinary situation. We're talking in subsection 15(3) about a case where the Attorney General decides to assume conduct of a prosecution—in other words, take over a prosecution that is being held by the Public Prosecution Service—and not only that, wishes to delay public notice of the fact that he or she has taken over that prosecution. We looked at our priorities and thought this event is very unlikely to occur. As a result, we didn't think it was a priority.

We have decided to rewrite *The Federal Prosecution Service Deskbook* to reflect the fact that we are now a separate organization, and this is one of the things that will be looked at. We had hoped to start the rewriting last year, but we were unable to do so. We have a competition ongoing to retain a senior lawyer whose task will be to address all of the policies in the deskbook that touch upon our practice. It will also be that person's responsibility to deal with items in the act that we have to deal with.

For example, we've been talking about when section 13 notices should be given. We know generally when they should be given, and I think there's an understanding of what a case of general importance is, but we want to devise guidelines in that area as well, so that our people who work in the regions will have some indication of what is meant by "a case of general importance" from our perspective, so that there can be no misunderstanding. But that is a project we have not yet launched.

**The Chair:** Mr. Comartin, you can have one very short question; you have half a minute.

**Mr. Joe Comartin:** Okay. I'll switch, then.

You've been asked this in various ways today.

Coming away today, I have no sense of how many files have been referred to the minister by way of information because of their general interest, under section 13. Can you give us a ballpark figure for how many files—not how many times you reported, because there may be ten times on one file, but how many files—have been sent to the minister for his information?

• (1650)

**Mr. Brian J. Saunders:** I see them on a fairly regular basis: 20 to 30. That's from December 2006. It could be as high as 40.

**The Chair:** Okay, thank you.

We'll move on to Mr. Murphy and then to Mr. Moore.

**Mr. Brian Murphy:** I just want to get this straight. When you speak to the Attorney General, is much, or all—that's a question—of what you discuss covered by solicitor-client privilege?

**Mr. Brian J. Saunders:** We discuss prosecutions, yes.

**Mr. Brian Murphy:** Leaving any discussion you have about favourite hockey teams aside, the work plan of your meetings is the discussion of prosecutions across the country, and you feel that solicitor-client privilege prevails.

**Mr. Brian J. Saunders:** Yes.

**Mr. Brian Murphy:** Would that not imply that your client is the Government of Canada, represented by the Attorney General?

**Mr. Brian J. Saunders:** No, it implies, under the statute, that the Director of Public Prosecutions works under and on behalf of the Attorney General and that there is a common privilege. That we should not be discussing prosecutorial decisions in public is what I'm saying.

**Mr. Brian Murphy:** That applies to any discussion you might have with prospective prosecutions. You can't discuss prospective prosecutions for the reasons you set out—the property of the investigation, and the ongoing aspect—but in terms of prosecutions under way, you're saying that you can't discuss them at all because you have a duty to the Attorney General not to.

**Mr. Brian J. Saunders:** When we discuss prosecution, we're discussing perhaps what steps to take in a prosecution. It's not simply a question of saying there's a prosecution. It could be we're going to take a step.

**Mr. Brian Murphy:** That's a better answer, frankly. I inferred from the previous answer—

**Mr. Brian J. Saunders:** Yes, I'm sorry.

**Mr. Brian Murphy:** —that when you talked to the Attorney General, what you discussed was covered by solicitor-client privilege, as if it was some blanket. But if you discussed with him the fact that you might have a better way of streamlining outside hirings for prosecution services, that's not part of solicitor-client privilege.

**Mr. Brian J. Saunders:** No, I agree with you. Typically when I meet with the Attorney General we meet to discuss cases, and that's what we discuss—just cases.

**Mr. Brian Murphy:** Solicitor-client privilege relates to cases ongoing or prospective.

**Mr. Brian J. Saunders:** Yes.

**Mr. Brian Murphy:** All of your other discussions are not covered by solicitor-client privilege. There's no solicitor-client relationship between you and the Attorney General.

**Mr. Brian J. Saunders:** No, but you were asking me if, when we discuss cases, I can tell you what is discussed, and I am saying no. But when we discuss our budgetary requirements for the Attorney General and his staff, then yes, because I don't see that as—

**Mr. Brian Murphy:** That's not covered by solicitor-client privilege.

**Mr. Brian J. Saunders:** I wouldn't think so, no.

**Mr. Brian Murphy:** You see, I was hoping you would say there was solicitor-client privilege; he's the client; he can direct you to do you whatever he wants, give you instructions. But you didn't answer it that way, so that's good. I feel safer now.

Thank you.

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

Last question, Mr. Moore.

**Mr. Rob Moore:** I'm glad Mr. Murphy feels safe. There seems to be a bit of a divide. I guess on this side we understand solicitor-client privilege a bit, but I'm a little surprised at some of my colleagues over there—

**Mr. Brian Murphy:** From your years of experience, no doubt, Rob.

**Mr. Rob Moore:** From my years of experience, that's right.

Mr. Saunders, you did mention one thing that I found interesting, and it's specific to New Brunswick. Whether it's an RCMP or municipal force bringing a charge, that determines in some cases—it could be perhaps an identical facts scenario—whether your group or a provincial body prosecutes the case. It's kind of an interesting scenario, and I'm wondering if you can give me a bit of the history on it.



I'm thinking of areas near where I live, let's say Kings County. We have some municipal forces and we have an RCMP force as well. Criminals know no boundaries, and there is certainly an overlap there of prosecutorial responsibility for agents who are on the ground there. I'm wondering how that plays out. We do have RCMP policing in New Brunswick as well as several municipal forces. Why that unique situation, and how does it work in practice?

• (1655)

**Mr. Brian J. Saunders:** It's not a unique situation; the situation also obtains in Quebec. It's a situation that we inherited. It flows from the definition, under the Controlled Drugs and Substances Act, of Attorney General, defined as the Attorney General of Canada or the Attorney General of a province if the province conducts the prosecution or commences the prosecution.

The practice arose, I think, in Quebec and New Brunswick, where the municipal police authorities, or in Quebec the QPP, would go to the provincial prosecution services to conduct prosecutions of drug offences that they had investigated. The RCMP would come then to the federal prosecution service and now to us.

I might add that in New Brunswick I've been having discussions with Mr. Abbott, who is the head of the New Brunswick prosecution service. We have decided to deal with the very situation that you have raised. We will attempt to set out an agreement between the two organizations on the division of responsibilities so that it's clear to the law force agencies involved.

**Mr. Rob Moore:** Thanks. That answers my question. And thanks for being here today.

**The Chair:** Thank you, Mr. Saunders, for attending and sharing with us. We wish you well as you continue to serve Canadians.

**Mr. Brian J. Saunders:** Thank you.

**The Chair:** As a follow-up, typically there's a motion.

Monsieur Ménard.

[*Translation*]

**Mr. Réal Ménard:** I would like to present the following motion, Mr. Chairman, if it is the will of the committee:

That pursuant to the order of reference of February 4, 2009, and Subsection 4(4) of the Director of Public Prosecutions Act, the proposed appointment of Brian J. Saunders to the position of Director of Public Prosecutions be approved and that the Committee report such to the House.

[*English*]

**The Chair:** We have a motion on the table.

Is there any discussion?

Mr. Comartin.

**Mr. Joe Comartin:** I'm going to be voting against the motion, but because I sat on the review committee I am not in a position to explain why I'm doing that. I don't really think there's anything more I can say in that regard, but I will put that on the record.

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

Is there anyone else? Seeing no one, I'll call the question.

(Motion agreed to)

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

**Some hon. members:** Hear, Hear!

**The Chair:** Right now we'll suspend and go into in camera. We'll allow five minutes for the room to clear.

[*Proceedings continue in camera*]

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