



House of Commons
CANADA

Standing Committee on Public Accounts

PACP • NUMBER 025 • 2nd SESSION • 39th PARLIAMENT

EVIDENCE

Tuesday, April 8, 2008

—
Chair

The Honourable Shawn Murphy

Also available on the Parliament of Canada Web Site at the following address:

<http://www.parl.gc.ca>

Standing Committee on Public Accounts

Tuesday, April 8, 2008

•(1100)

[English]

The Chair (Hon. Shawn Murphy (Charlottetown, Lib.)): I'd like to call the meeting to order and welcome everyone here.

Bienvenue à tous.

Colleagues, pursuant to Standing Order 108, this meeting today is on chapter 5 of the May 2007 report of the Auditor General of Canada, "Managing the Delivery of Legal Services to Government", in the audit of the Department of Justice.

Today the committee is very pleased to have with us the Auditor General, Ms. Sheila Fraser. She's accompanied by Assistant Auditor General Mr. Hugh McRoberts and Mr. Gordon Stock, principal.

From the Department of Justice, we have the accounting officer, Mr. John H. Sims. He's accompanied by the associate deputy minister, Yves Côté, and Mr. Terrance McAuley, the acting assistant deputy minister, management sector.

On behalf of the committee I want to extend to each and every one of you a very warm welcome.

I understand, Ms. Fraser, you have some opening comments. I turn the floor over to you now.

Ms. Sheila Fraser (Auditor General of Canada, Office of the Auditor General of Canada): Thank you, Chair.

We thank you for inviting us to discuss chapter 5 of our May 2007 report, entitled "Managing the Delivery of Legal Services to Government", an audit of the Department of Justice. It should be noted that our audit work for this chapter was completed in December 2006.

Accompanying me today, as you mentioned, are Hugh McRoberts, Assistant Auditor General, and Gordon Stock, principal of the public safety and justice audit team responsible for this audit.

The Department of Justice can be characterized as Canada's largest law firm, with approximately 2,500 lawyers and a budget for the 2006-07 fiscal year of close to \$1 billion.

The department provides legal services to the government and its departments and agencies. Many of its lawyers work on-site in the departments and agencies, providing legal advice and representing their clients' interests. They draft legislation and regulations and represent the government in court.

As noted in our report, our audit also included examining the management of prosecution services that were provided by the

federal prosecution service, a branch of the Department of Justice at the time. The service was transferred to the office of the director of public prosecutions with the coming into force of the Federal Accountability Act. Our findings and recommendations relate to the work now carried out by the office of the director of public prosecutions as well as the department.

•(1105)

[Translation]

Our audit looked at three primary areas: whether progress had been made since our last audit on this topic in 1993, whether management had assurance that it was delivering quality legal services, and whether it was doing so in a cost-effective manner.

We found that the department had made progress since our last audit in its management of litigation risk. Its lawyers regularly assess the likelihood and potential impact of an adverse outcome, and use this assessment to determine the level of management involvement required. The department also showed progress in its screening and supervision of its legal (Crown) agents for the Federal Prosecution Service, and had demonstrated its progress towards completing an action plan in this area. However, this progress did not extend to its use of civil agents in other areas of the department.

We also found that departments and agencies were satisfied with the quality of lawyers assigned to them, and that the department puts considerable effort into ensuring the quality of the services it provides. However, the department has not defined what it means by quality, does not have an overall quality management system to ensure that it is delivering consistent quality to its client departments, and cannot assess whether it is meeting its overall quality objectives.

We found that, while the department was responsive to the needs of government, its financial arrangements with client departments and agencies provided few incentives to control costs and manage the demand for increasing legal services. We found more than 100 financial arrangements in the eight departments and agencies that we examined. In general, they were inconsistent, poorly documented and inefficient to administer.

The department lacked basic information on its volume of work and the amount of time its staff needed to deliver services requested by departments and agencies. As a result, we found that it was not in a position to know whether it was delivering legal services cost-effectively. Without good information on costs and time spent on requests, it is difficult to manage and control the growing demand for legal services and to find more efficient ways of providing them.

[English]

In this chapter we mention that the department would benefit from having someone in a senior executive position to lead planned improvements. This person could play the role of a chief operating officer, helping to “manage the law practice”.

I find it encouraging that the department appears to be making progress in addressing our observations and recommendations. In some cases these improvements were initiated before we tabled our report.

While we have not reviewed an action plan since we completed our audit, or performed any further review, I understand that the department has improved its financial arrangements for the services provided to departments and agencies. As well, it has organized a number of its corporate functions under the assistant deputy minister for the new management sector. I believe that the department is on the road to making positive changes in the way it manages the delivery of its legal services.

The committee may wish to ask the department for further information on its plans for improving the management of its costs and on its plans to introduce a quality management framework.

Mr. Chair, thank you. This concludes our opening statement. We would be happy to respond to any questions the committee members may have.

Thank you.

The Chair: Thank you, Ms. Fraser.

Mr. Sims, I understand you have some opening comments, and I'd like you to present them now.

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

I'm pleased to appear before the members of the Standing Committee on Public Accounts to discuss chapter 5 of the Auditor General's report on managing the delivery of legal services to the government.

Joining me today, as you indicated, Chair, are Yves Côté, associate deputy minister, and Terrance McAuley, the acting assistant deputy minister for the new management sector.

[Translation]

Today, I would like to report to the members of the committee on what the Department of Justice has done over the last year, and what we continue to do, to address the observations and recommendations that the Auditor General presented in her May 2007 report on legal services.

[English]

To put all this into context, Mr. Chairman, the Department of Justice had more than 66,500 active files related to the provision of legal services to government in fiscal year 2006-07. Of these, close to 38,000 were litigation files and more than 25,000 were advisory files.

Department lawyers drafted 58 bills that were tabled in Parliament and drafted almost 600 motions to amend bills. So perhaps it is fitting to characterize us, as the Auditor General just did, as Canada's largest law firm.

Despite constant growth in the demand for legal services since 2003-04, the department's operating expenditures have remained stable, growing at an average rate of 3% annually.

In 2005-06 these expenditures represented only about 1% of government spending on operations, excluding grants and contributions and debt service charges.

• (1110)

[Translation]

This leads, Mr. Chair, to a discussion of the state of the department's management.

As deputy minister, I believe that the department overall is doing well. My belief stems in part from the results and feedback from Treasury Board Secretariat in its annual assessment of my department's management accountability framework.

[English]

The department received positive feedback in 2007 and was commended for its work in improving management in a number of areas. I believe that these results helped respond to several observations and recommendations for improvement raised in the audit report. For example, the secretariat's assessment notes that the department has made substantial progress in the area of business and corporate planning and has made good progress in implementing more robust performance management practices.

[Translation]

I am satisfied with this assessment, as I believe that it reflects the levels of effort that my department has made over the last years, while, at the same time, I recognize that more is required.

[English]

In addition to the management accountability framework, I consider the Auditor General's report itself, of course, to be an important tool, a tool that helps us ensure that the management practices and departmental operations are sound.

Mr. Chairman, providing quality legal services to the government is one of my top priorities as deputy minister. I was therefore very pleased to see the audit report recognizing that the department has a strong commitment to providing quality legal services to the government and that the department puts considerable effort into ensuring the quality of the legal services it provides.

I'm also pleased to note that our client government departments and agencies, to whom we deliver legal services, are satisfied with the quality of counsel assigned to them as well as with the overall services we provide. We will build on the elements of quality management noted in the report, and in fact work is already under way to develop a more complete quality assurance framework.

At the same time, the Auditor General's report made clear that we need to improve in certain areas.

[*Translation*]

For example, the department needs to complete its work on improving the management of legal agents. Although we have achieved good results in this area with respect to federal prosecutions, we are looking to implement lessons learned from that initiative to improve the management of civil legal agents.

[*English*]

The department is also working to better support departments and agencies in managing the demand for legal services. While our department can't control this demand, there is work we can and should be doing to assist departments and agencies, as noted in the report. For example, at the time of the audit the department was making progress in working with Treasury Board Secretariat to put in place a more consistent approach to managing the department's financial arrangements with departments and agencies, including a cost-recovery formula to reflect the full cost of legal services.

With Treasury Board's approval, on April 1, 2007, a uniform cost-recovery approach, which is applied to all legal services provided to the departments and agencies, was implemented across government. As a result, cost-recovery arrangements are now more consistent, appropriately documented, and efficient to administer. We've also extended timekeeping to all types of legal services provided to government. As a result, the department will have more robust information on workload and on the cost of all legal services.

Another issue that clearly requires the department's attention is the provision and use of financial information related to legal services. Our new law practice management committee has identified this matter as an urgent priority, and the department is committed to addressing this issue. Work will commence to identify information needs and requirements in partnership with departments and agencies.

Mr. Chairman, while I recognize that more work needs to be done, I'm very pleased with the progress the department has made since the tabling of the Auditor General's report last May, and I look forward to a discussion with this committee.

Thank you.

The Chair: Thank you very much, Mr. Sims.

We're going to start now with the first round. That round will be seven minutes each, and we're going to start with Mr. Holland.

Mr. Mark Holland (Ajax—Pickering, Lib.): Thank you, Mr. Chair.

Thank you, Madam Fraser, for coming before committee again, and to the witnesses.

I want to start, if I could, Mr. Sims, with one of the last issues you were talking about, which is the standing agents. The Auditor General's report found there have been improvements to the procurement and management of standing agents hired for federal prosecution on an interim basis. But the Auditor General also found you were unable to provide any formal evaluations or any formal documentation of corrective action for poor performance.

I want to understand: on that basis, what procedures does the justice department have in place to evaluate standing agents who are hired for federal prosecutions? In the Auditor General's report we're left to wonder if there are any, so perhaps you can comment on that to start.

• (1115)

Mr. John Sims: Thank you.

I'll address my remarks, if I can, to the management of civil agents, which is now the responsibility of the Department of Justice, as opposed to agents on the criminal side.

In the last year we have spent a great deal of effort to put a framework in place that respects open procurement practices for the evaluation and finding and selection of agents, an approach that accords more with how banks and insurance companies do it, other big consumers of legal services. We make assessments at the front end on hiring such agents or recommending the retaining of such agents.

We do not yet have a formal evaluation system in place after the fact for civil agents. However, the nature of the agents we tend to hire in the civil matters makes this a bit difficult. I can explain that at greater length if you'd like, but we have taken many steps to improve the overall process for hiring civil agents since the report of the Auditor General.

Mr. Mark Holland: You say a formal evaluation would be important, and I understand it might be difficult. Can you tell us what your plans are to put that in place, to ensure that an evaluation does take place, and if you have a timeline for resolving that concern?

Mr. John Sims: We're working on that now. Our priority has been to address first the items the Auditor General had identified—namely, that although we had a fairly robust management system in place for the criminal side, we didn't have anything resembling that on the civil side. So over the past year we've addressed the front end of that process: how to respect modern procurement principles; how to ensure an open, accessible, fair, and transparent process; value for money; and so on.

Now it's time to move to the later stages of that process, and that's on our work plan. I don't know whether we have a timeframe formally decided, but it's in the next tranche of work to be done on that side.

Mr. Mark Holland: Madam Fraser, how essential or important do you see that as being? We're hearing that they don't have a timeline on this. How important do you think it is, and in what kind of timeframe would you like to see them take action on this?

I know that's difficult to answer, but I'd like to get some sense of the importance you attach to this review process.

Ms. Sheila Fraser: Obviously, Chair, we believe that the evaluation of the performance, be it for agents who are there for prosecutions or for civil cases, is important. We noted in the report that there had been a great deal of improvement in the management of the agents for prosecutions, and the department has committed to doing the same thing for the civil agents. But in both cases the evaluations of performance was lacking.

We note in the report as well that there was no requirement to have a documented evaluation on the files. We would, of course, like to see in the action plan that there be consideration given to having a formal policy that evaluations should be conducted and that then there be a reasonable timeframe put in place to bring this into practice.

We believe it is an essential part of ensuring that the services that were rendered were appropriate, that the department was satisfied with the services, and if not, that there be some consequence or some remedial action taken afterwards.

Mr. Mark Holland: I agree, and I think the committee would as well.

I want to move on to the issue of alternative dispute resolution. I commend the Department of Justice for incorporating alternative dispute resolution as a method of reducing costly litigation.

Unfortunately, the Auditor General's report found that these initiatives lack clear objectives and estimates around potential savings, and also that there was no project management structure or even a formal review of the outcomes.

In light of those findings, can you tell us how we can ensure that these alternative dispute resolution initiatives are effective in achieving favourable results for the government? How are we measuring this, and what plans do you have to begin measuring it on a go-forward basis?

• (1120)

Mr. John Sims: We agree with the Auditor General that it is important to have an evaluation process in place for alternative dispute resolution. It's too easy to talk favourably about ADR without knowing, necessarily, that it works.

We've taken that recommendation to heart. We in fact have plans to do a pilot project to evaluate some of the ADR processes we have underway now. We are also studying whether a mandatory mediation model could produce some benefits for the government—one form of ADR, of course—and as we study that, we're building in an evaluation component for it as well.

So I agree with the question and I agree with the report. We are taking it to heart and are starting to design the evaluation programs that need to be done to give us the data so that we can measure and see what—

Mr. Mark Holland: Do you have a timeline on this at all, or an idea of when we can expect that kind of analysis to be available?

Mr. John Sims: I don't know the date. I'll get it for you.

Mr. Mark Holland: Perhaps you could get back to me.

I only have one other question. Do I have time for it?

The Chair: You have time for one, but a very brief one.

Mr. Mark Holland: It will be very brief.

The other issue the Auditor General's report found that gave me a great deal of concern is that the Department of Justice is not reporting to Parliament the overall costs that are incurred across the government for legal services. This is of concern because it leaves Parliament in the difficult position of not knowing what these costs are.

I think it's extremely important that we know what your plans are to improve the reporting that is done to Parliament so that we can have a clear understanding of what these costs are. That's an information gap that causes me a great deal of concern.

Mr. John Sims: I agree it would be better if such information were available to Canadians and to parliamentarians. We now report fully on all the information that is within our control. Some of the information that I think the question addresses and that the Auditor General's report addresses is not within our control. It's money spent by departments in support of the on-site legal services that we have at all the departments and agencies across the system.

We agree, though, that it would be good to have that information available, and we stand ready to work with Treasury Board, which I think is probably the agency best placed to ensure that a system-wide system like that can be put in place.

The Chair: Thank you.

Monsieur Laforest, *sept minutes, s'il vous plaît.*

[*Translation*]

Mr. Jean-Yves Laforest (Saint-Maurice—Champlain, BQ): Thank you, Mr. Chair.

Ms. Fraser, in your opening statement, you said that one of the three objectives of your audit was to have assurance that quality legal services were being delivered. Later, you say that the Department of Justice has not defined what it means by quality services, that it has no overall quality management system and that it cannot assess whether it is meeting its overall quality objective.

How do you go about evaluating whether services are of appropriate quality, which is one of your objectives, while, inside the department itself, it seems that the mechanism does not exist? It must be more difficult for you. Can you say with some assurance that the services delivered are in fact quality services?

Ms. Sheila Fraser: In any system delivering professional services, whether they be legal or even auditing services, there first must be a definition of what is meant by quality. It could involve things like the time taken to respond to clients' needs, or knowing whether decisions were made that went counter to the advice given. There are different ways of doing it.

We noted in the report that the Department of Justice had several elements of a quality system. It devotes a lot of attention to the quality of the services it offers. We are looking for an overall system that can assure senior management specifically that its quality system is being followed up and that processes are in place. For example, it could involve reviews by senior personnel, or an assessment of the level of risk in each file. Systems must therefore be in place that consider the risk and the level of supervision required, and so on, as well as a system to check that the system is working as intended.

• (1125)

Mr. Jean-Yves Laforest: Without that in place, are you able to say that the services provided by the Department of Justice are quality services?

Ms. Sheila Fraser: We conducted interviews with clients, who told us that they were satisfied with the services. We also noted that several parts of a quality system are in place, but it must be improved. There must also be an overall system.

The department agrees with that and is working on it. It is to provide consistency above all, given the size of the department.

Mr. Jean-Yves Laforest: Thank you.

Deputy Minister Sims, in the pages that follow the Auditor General's report, in the departmental response, you say that you subscribe to each of her recommendations. Soon, in a month, it will have been a year.

Your statement that you subscribe to the recommendations aside, where are you with respect to quality, to appointing a person to be responsible for finances, to a better vision? Have you moved forward? Do you take this seriously?

People often come and tell us that they support recommendations, but, five years later, nothing has been done. Is it your intention to move more quickly?

Mr. John Sims: Yes, sir. We are going to act much more quickly than that. I may stumble a little because I am going to try to answer you in French using notes that are written in English.

We have done a lot since the Auditor General's report was tabled. We have made significant improvements in strategic planning and in linking operational plans to strategic plans. We have done a lot of work in managing our outside legal agents, in alternative dispute resolution.

As I just mentioned to Mr. Murphy, we have started pilots to assess the effectiveness of these projects. In reports to Parliament, we have integrated the DPR and the RPP. They are much more integrated than they were previously. We have created a sector to look after the management of the department and it brings together elements that were once scattered all over.

Mr. Terry McAuley is the acting head of this group because the official in charge is ill at the moment. We have also created the Law Practice Management Committee, a group that previously did not exist, that will manage the provision of legal services. The report often mentions that there is no national system to provide these services, for example. The group has just begun to look at a framework of quality from which legal services will be delivered, including definitions of "quality".

The management of litigation risk is working very well, but progress has been slower in...

Mr. Jean-Yves Laforest: I would just like to ask one question, because I know that the clock is ticking.

I understand that you are taking steps. I come back to the matter of outside legal agents. The point has been made that, normally, when the Department of Justice engages outside lawyers to handle cases, it is because no lawyer has the necessary expertise in a specific area, or because, if there is one, he is not available.

Ms. Fraser, you said that these 21 situations occurred in three different regions of Canada. I seem to remember reading that somewhere in the report. Does that mean that the same sort of situations also exist in other regions? Have you also looked at the expertise of lawyers in the department to see if it would be possible to free them up rather than to hire lawyers from outside?

• (1130)

Mr. John Sims: Department lawyers have the necessary expertise in 90% of our cases. Sometimes, an area of expertise is not normally handled by the public service. We may have fewer services, or less expertise, in certain commercial matters. That happens quite rarely, however. It is not normal to have to hire another lawyer, or an area, in the public service. In some specific and rare cases, we hire someone from outside. Sometimes, there is a conflict. The background of a case can create a conflict even though someone in the department has the expertise. So, to avoid the conflict, we hire legal agents.

But on the other hand, if we realize that we are hiring legal agents too frequently in a certain area, we have to ask ourselves if it might not be appropriate to create that capability in-house. We do that. We go to outside agents for 1% of our cases.

Mr. Jean-Yves Laforest: Right. Thank you.

The Chair: Thank you very much, Mr. Laforest.

[English]

Mr. Williams, for seven minutes.

Mr. John Williams (Edmonton—St. Albert, CPC): Thank you, Mr. Chairman.

Good morning to our guests.

Mr. Sims, we have talked about quality. We have talked about the issues that have been raised by the Auditor General. One of the things I'm thinking about here is standards. Back in 1993, the last audit found, for example, "a lack of management information". Here I'm talking about paragraph 5.64 in the Auditor General's report.

In 1993 you agreed to bring in time management for lawyers, and you finally got it going by 2006. It took 13 years to move on a fairly simple administrative program that lawyers would keep time sheets so they could charge their clients for the work they were doing—13 years.

How long will it be, Mr. Sims, before we get the department working properly?

Mr. John Sims: Mr. Williams, 13 years is a long time—

Mr. John Williams: I know it's a long time.

Mr. John Sims: But I think, as I started to indicate in my answer to one of the previous questions, we have moved very rapidly to implement—or plan to implement—the recommendations of the last audit. Departments always say in their audit report that they agree and they'll do something about it. We're actually doing something about it. We've taken many active steps to address the issues that Ms. Fraser has raised, so I think we're not going to be taking an undue time to implement the remaining outstanding matters.

Mr. John Williams: Okay, so if I go to paragraph 5.57 in the AG's report and if we're talking here about your trying to do something, you actually drafted some standards with client departments so that you could actually interact with the departments, but these haven't been implemented. So you actually went through the exercise, but you didn't implement the standards that you'd agreed to and negotiated with the departments. Why?

Mr. John Sims: Paragraph 5.57?

Mr. John Williams: In the middle of the paragraph 5.57 it says that “Establishing services standards has been a work-in-progress at the Department since our 1993 audit.” That's another 13-year work-in-progress.

At the time of this audit, we found that not all of the portfolios, regions, and branches had service standards in place. Some standards were drafted with client departments, but had not been implemented.

So is this just another legal work to keep the lawyers busy so they don't have to do anything?

Mr. John Sims: No. I think part of the challenge in managing the Department of Justice, and this area, is that we work with a number of different clients. We see this issue—

• (1135)

Mr. John Williams: But all lawyers deal with different clients.

Mr. John Sims: And we've had service standards and financial arrangements developed in different pockets historically, over time.

One of the big challenges that's been identified, I think, in the Auditor General's report is to get global standards, uniform standards, national standards, and that's where the focus is now. So that's what we're bent on getting done in the next short period of time.

Mr. John Williams: Will that be 13 years?

Mr. John Sims: No.

Mr. John Williams: Okay.

In paragraph 5.56 of the Auditor General's report, she says they “found isolated instances where clients received more than one opinion on the same issue from different Justice Canada lawyers”, and then it goes on to say that “departmental officials had expected

and wanted a single national opinion from Justice Canada. We were told of one instance where the differing positions were played out in front of the client who then had to act as conciliator”, in deciding, well, do I go this way or that way? I've got two legal opinions: one says black and one says white.

Surely he asked the lawyers for a legal position, not a bunch of legal positions, so he could choose where to go.

Mr. John Sims: I think what the report says, as well, is that these are rare, isolated instances.

As I indicated in my opening statement, we have a huge volume of active files, 66,500 of them. We deliver services all over the country. We appear in court approximately 50 times a day nationally, and we have 2,500 lawyers servicing the vast machine of government, and most of the time—almost all of the time—we don't have inconsistencies. Lawyers disagree sometimes, but we have mechanisms to identify the disagreements and to find a way to reconcile the different points of view and to ensure that different parts of government and different interests are brought to bear in reaching a single point of view. So—

Mr. John Williams: But I think about the gun registry—and you may recall that situation—where the department had overspent the money that had not been appropriated by Parliament and found themselves in a bit of a pickle. They asked for a legal opinion, and the legal opinion was quite short and sweet, saying, hey, you've broken the law; you'd better get it fixed. And they said, well, gee, this is politically embarrassing. So in another convoluted, long, twisted process of splitting of hairs ten times over, they came up with a decision that said, oh, it's okay; it's perfectly legitimate to ignore Parliament and spend money that Parliament hasn't appropriated.

So do the lawyers provide advice that the clients want, or do they actually provide legal advice?

Mr. John Sims: I think I'd give the same answer, that the example you're pointing to, happily, is an exceedingly rare example. The mechanism—

Mr. John Williams: How often does it happen, though?

Mr. John Sims: I only know of isolated instances.

Mr. John Williams: One, three, ten, twenty...?

Mr. John Sims: The Auditor General's report talks of two. I don't know. I know it happens all the time that colleagues disagree at the beginning of the analysis of a file, but at the end of the day, I don't know of examples today of contradictory advice, beyond the ones identified by Ms. Fraser. In fact, I'm not sure—

Mr. John Williams: No, this was not contradictory advice. The department just didn't like the advice they had.

Mr. John Sims: As a matter of fact, I was going to contradict myself. I don't think, in fact, from memory, that the advice in the firearms matter was contradictory. The two lawyers were asked for advice on consecutive days and gave slightly different answers... slightly different questions. It wasn't caught in time that there were these two people being asked to give advice at the same time.

Mr. John Williams: I have to disagree with that, Mr. Chairman, because it was quite clear. I'm sure you will recall that we dealt with this fairly intensively at committee, where there was a single, short, clear, concise, definitive opinion that said the law had been broken and money had been spent that was not appropriated by Parliament. Subsequent to that, and certainly not the next day, there was another opinion that was long, convoluted, tortuous, to say, "If you look at it from this perspective, that perspective, turn it upside down, twist it around, you can actually justify the position". Now, this was a clear case of the department providing the opinion that the department wanted, rather than a legal opinion.

This is what I want to know: how often does this happen?

The Chair: Thank you, Mr. Williams.

Mr. Christopherson, for seven minutes.

Mr. David Christopherson (Hamilton Centre, NDP): Thank you very much, Chair.

Thank you all for coming today.

Another fine report, Auditor General.

Lawyers in the public realm are often not seen, notwithstanding the law clerk's current notoriety these days. For the most part, they really are not seen except by the politicians. I've been fortunate enough to serve at four different orders of government: city, regional, provincial, and now federal. I have to tell you that for the overwhelming most part, especially for someone with an extreme deficit in a formal education, I need lawyers more than most of my elected colleagues, and I need them to make sense in a way that I can understand, and then use it.

Chair, again, for the overwhelming most part, people who dedicate themselves.... It's like doctors who go into public health. Lawyers who choose to go into public service do so as opposed to going out and finding out how many millions they can squirrel away before they leave this place. So I just want to thank all the lawyers who make those decisions, because without them, quite frankly, nothing could happen.

The more of a role a country plays in the world, the more you need to have a respected legal foundation that comes into play. I'm learning that the more I'm here. I just feel compelled to put on the record that, for the most part, the unseen lawyers do a phenomenal job for the Canadian people, at all orders of government, and we thank you for that.

However, having said that, I'm one of those on the committee, for the most part, who takes great exception to and who has a lot of difficulty with audits that have been done in the past, and then we have another audit and yet another audit and we're seeing the same problems over and over. It drives us crazy. There is really no excuse once it has already been identified, and some deputy some day has said "Yes, we agree, and we'll do it", and then nothing happens.

Right here on page 3 we've touched on some of this. I want to revisit it a bit. This is the Auditor General: "Much of what we found had been identified in our 1993 audit as weaknesses", meaning what they found in this audit was similar to what they found in the 1993 audit. My good friend Mr. Williams has already referenced that.

Give me a quick two or three points on that, Auditor General. What are the three things that stand out in your mind that are still unresolved, that were there in 1993?

• (1140)

Ms. Sheila Fraser: If I could, Chair, to be fair, we have to point out that the department has made progress on a number of issues. The second sentence notes "managing legal risk, managing legal agents", which I know is not an easy thing to do, and they began to introduce time-keeping. So we do have to give them credit for work that has been done.

I would say the two main areas in which we believe improvements are needed are information systems on workload and human resources and financial arrangements with client departments. Those are two issues that were present in 1993 and have still not been resolved.

Mr. David Christopherson: Did you hear an adequate explanation as to why it didn't happen?

Ms. Sheila Fraser: As the deputy has mentioned, in terms of the financial arrangements it was certainly due in part to the complexity and the size of the department, and the fact that most of this is decentralized as well. To bring in uniformity across the department is a challenge and does take time.

Department-wide information on workload and human resources goes back again to the whole issue of timekeeping and better information systems, which I think we've seen from other audits is an issue that is not unique to this department.

We certainly do sense that the department is committed and has begun to take action on many of these, so we are cautiously optimistic that the follow-up audit, if it were to be done, would be positive.

Mr. David Christopherson: Good. Thank you.

Deputy, you know this question is coming. What assurance do we have from you now that is going to make a difference from the assurances that were given by a deputy then?

Mr. John Sims: Speaking for me and what we're doing now, we are determined to address the questions the Auditor General has raised.

The whole management of the public sector is, I think, more rigorous and vigorous than it has been in the past. It's in our self-interest to get these systems right and to be able to generate the information and the data so that we can tell our story. We have a good story to tell, we think, and we'd like to be able to tell it effectively by recourse to the data and information that will allow us to do that.

We want to manage properly. We have enormous challenges that we can't face effectively with systems that let us down, so it's in our interest as well as for any other reason to give this a priority, and that's what we're doing.

•(1145)

Mr. David Christopherson: Thank you.

This is about the point at which I would really home in on it and go for broke, but I've got tell you that a lot of the problems are being addressed, notwithstanding some of the concerns around section 5.93.

Deputy, here's what I want to do. I have only a few moments left, but would you just quickly point out the stages of the process? When your department gets a phone call from somewhere—another ministry, another department—what are the main steps that happen? As well, I'm going to call on your talents—and obviously you would be honest—to identify for me in as frank a way as you can areas where there were criticisms, and then identify what you're doing to correct them, so that I can end my few moments with you knowing that the whole thing has been thought through and that you've identified the key areas—not only just in a good report, but in a practical, common sense, everyday way. Would you do that, please, deputy?

Mr. John Sims: Just to understand your question, you're picturing a client calling the Department of Justice and wanting—

Mr. David Christopherson: Yes. For us and for anybody who is watching on TV, exactly what is the process? You get a call from someone who needs legal help; after that, what are the key steps, without going into any great detail? When the Auditor General has made recommendations on those steps and you're going to act on them, at what points in those steps have you been less than ideally effective?

Mr. John Sims: So a client speaks to one of our lawyers, probably a lawyer who is co-located with the client in one of the departmental legal services units. Let's imagine it's at the Department of Fisheries. Because it's a lawyer the client has a lot of dealings with, the first thing the lawyer will do will be to try to identify with the client what legal questions this raises. Chances are high in the Government of Canada that the issues will touch more than just the Department of Fisheries. It may well touch the Department of Indian Affairs, for example, if it's about a shared fishery involving aboriginal fishers, and so on. There may be constitutional issues.

So the lawyer, at the first instance, will try to figure out what all the legal issues are that have been raised and ensure that all the parts of the Department of Justice that ought to be brought to bear have a chance to feed into the analysis of this question. And by the same token, the lawyer will make sure other affected and touched client departments are also made aware that this issue is arising and they are given a chance to come in.

One of the issues that the Auditor General mentions in her report is that what we have not done in the past is, at an early stage in this process, sit down with the client to say, "Okay, we can now ballpark that it's going to take so many hours to get this piece of work done, and we estimate it's going to cost so much money for us to continue to do this work", and have a conversation about whether the department, the client, wants the work to continue or whether, knowing that's the cost, it might make a decision not to go ahead with it at this time.

Much of the work we do, of course, is not discretionary. Much of the work the government faces involves legal issues that arrive on its doorstep. It didn't go looking for them. So it may have no choice but to proceed, but we haven't in many cases in the past had that kind of conversation, unless the file is really big. If the issue is enormous, we have had those conversations, but for smaller kinds of files, we have not done that.

We've developed tools, which are referred to in the audit report, in particular the legal risk management as an approach for analyzing the degree of risk in the issue that's been brought to the attention of the lawyer. So we would assess whether a bad outcome is likely to occur and, if that bad outcome does occur, precisely how bad it would be for the Government of Canada. So there's a problem, but it's almost certainly not going to happen, and if it does it's minor anyway. If you make that assessment early on, you're not going to spend much time on the file. If it is going to happen for sure and there's going to be a big, bad, adverse outcome for the government, then you'll spend a lot of attention on the file. You'll make sure that more resources are devoted to the management of that issue. That kind of analysis is made at the same time.

•(1150)

The Chair: Mr. Sims, we're going to go to the next questioner. Thank you very much.

Thank you, Mr. Christopherson.

Mr. Wrzesnewszky, you have seven minutes.

Mr. Borys Wrzesnewszky (Etobicoke Centre, Lib.): Thank you, Chair.

Mr. Sims, I understand your department's budget is approximately a billion dollars. Is that correct?

Mr. John Sims: It was a billion dollars at the time of the audit, but since then the office of the Public Prosecution Service of Canada has left, taking money with it, so the budget is closer to \$600 million.

Mr. Borys Wrzesnewszky: Now, between the period of 1998 and 2005, the report notes that your operating expenses basically doubled. Is that correct?

Mr. John Sims: Yes.

Mr. Borys Wrzesnewszky: Madame Fraser, would you be aware of any other major government department whose operating expenses would have doubled during that same timeframe, or is this a one-off?

Ms. Sheila Fraser: I'm sorry, Chair, I don't have that kind of information.

Mr. Borys Wrzesnewszky: But I think most likely it would come to our attention in this committee. In fact, if all major government departments' budgets, operating expenses, had doubled during that 1998-2005 period, most likely we'd be rocking the fiscal foundations of the country. So I find it quite strange that this particular department would have a doubling of its expenses. Have we seen that in any other sectors?

Mr. Sims, have we seen a doubling of budgets in your provincial counterparts' departments? Have we seen it in the corporate sector, or is this just specific and unique to the Department of Justice federally?

Mr. John Sims: I don't have that information. I have some information from other sectors that goes to a recognition that the nature of legal problems in the last period of time has increased in complexity tremendously. Certain court processes now take more time and court days than they used to, and so on. There is data like that.

Mr. Borys Wrzesnewskyj: So your explanation seems to be that society has become more litigious during the last seven years. But I note, in the actual report, that there are other issues raised, just simple accounting issues, such as substandard timekeeping by your lawyers. Are those sorts of issues now being addressed? Also, is it a reflection, perhaps, of ineffective alternative dispute resolution? There were some questions as to the effectiveness of those processes.

Is it just because everyone is more litigious, or is it because of lack of controls within your department?

Mr. John Sims: I think you ask a really interesting question, and I don't think I have a complete answer. I'm not sure if anybody does. First of all, it's important to recognize that we respond to demands for service. So we were getting bigger—we're not now—in response to increased demand from the departments that run programs that were suddenly attracting many legal issues. The classic example, I suppose, would be at the Department of Indian Affairs during the period when there were 13,000 or 15,000 cases coming out of the Indian residential schools. That created a bubble of work, an enormous amount of work, both from INAC and the Department of Justice, as they tried to deal fairly and expeditiously with those cases.

We've seen the whole phenomenon of class actions growing in recent times, which is a factor that affects society as a whole. We had only a handful some years ago. They were virtually unknown. And now we have 150 class actions, I believe, against the federal government. By their nature, they are very time-consuming.

We have a number of public inquiries, which you would know about very well. Public inquiries have a way of demanding a great deal of attention from the Department of Justice.

But the Auditor General makes a point, which I think we really have to understand well and try to think through, which is whether we can design incentives for the departments that give us the work or ask for our services to help them, together, find ways to control the demand. I don't create the demand. They do. Can I help them find an incentive mechanism that will hold this down?

• (1155)

Mr. Borys Wrzesnewskyj: Mr. Sims, unfortunately in this committee we are under a time clock, so I will move on.

You just said that by their nature many of these demands are quite time-consuming. The Auditor General raised the serious issue of timekeeping for services. There doesn't seem to be adequate control over that. I'd be curious to know what has been done.

Over the last couple of years departments have had comptrollers come into their departments. Do you now have a comptroller within your department, and is he or she addressing the aspect of controlling costs before we even get into the secondary aspect of this, which is finding or providing incentives to control costs? Is

there a comptroller? Has he or she looked at the issue of timekeeping?

Mr. John Sims: I'm asking my colleague, Mr. McAuley, for the term of the officer who is responsible for such matters in the Department of Justice. I'll ask for that title in a moment.

We have timekeeping now.

Mr. Borys Wrzesnewskyj: Since when?

Mr. John Sims: I'll get that date for you in just a minute. We have had timekeeping for the last short period of time. This will allow us to build information on how much money is being spent on different classes of files. We will be able to do trend analysis with clients. That data is accumulating now. So we can sit down with clients and say that we detect that there's a certain class of issue, a certain kind of case, that is costing them so much money, and then ask if they want to continue to deal with it in this way or find some other way to handle it.

Maybe the legislation out of which the disputes arise, which generates all the work, could be amended. There are things we can do. There are already tools for legal risk management that allow us to find ways to control the demand.

The officer, of course, would be the chief financial officer. And we have had full timekeeping since December.

Mr. Borys Wrzesnewskyj: So there is no comptroller in place at the present time.

As a deputy minister, I would assume that, especially in a department that's doubled its operating expenses, you'd be aware if a comptroller had been put in place in the department. So is there a comptroller or is there not?

Mr. John Sims: Yes, there is. I'm sorry if my answer seemed confusing. It's not called a comptroller; it's the chief financial officer. Of course we have a chief financial officer, and timekeeping has been in since December 2006.

The Chair: Mr. Sweet has seven minutes.

Mr. David Sweet (Ancaster—Dundas—Flamborough—Westdale, CPC): Thank you, Mr. Chairman.

I want to go back to a question Mr. Holland raised, because your answer about reporting to Parliament was that individual departments have their own expenses for legal services.

I was looking through this report and I was under the impression you billed other departments for the services you provide. Is that correct? If you do, then why is it impossible for you to aggregate all those numbers and put out a report?

Mr. John Sims: The lawyers who provide the legal services to departments and who are co-located with them work for the Department of Justice. I have their data and I report it now to Parliament. But some of the costs, which are related to the full delivery of service, would include the cost of accommodation, in some instances the cost of support staff, computer equipment, and that kind of thing. Those kinds of costs are provided by the department. We supply the lawyers and they supply these other costs. And I don't have access to those other costs from the Department of Justice.

Mr. David Sweet: You also mentioned in your answer that you had been talking to Treasury Board, and it's your understanding that there are plans for Treasury Board, because they have access to those numbers, to have an aggregate report. Is that correct?

• (1200)

Mr. John Sims: I'm saying I think this is something we should be discussing with Treasury Board to ensure it is addressed.

Mr. David Sweet: On a number of occasions throughout the report the Auditor General refers to human resources—for instance, page 9 and page 17, 5.45, 5.46

We have a corporation in Hamilton called Dofasco. They run an ad that says "Our product is steel. Our strength is people." It's a nice little jingle, but it makes the point that if you're not training consistently and you don't have any way of monitoring the competencies of your staff—and it has been mentioned that there is a legal staff of 2,500 in your department—how can you possibly meet the challenges you're going to face in the future?

As Mr. Wrzesnewskyj said, we're continually getting into an environment of increased litigiousness. So I'm wondering, have you addressed that concern? What are you doing to make sure all your staff are getting the minimum amount of training they need?

Mr. John Sims: I think the Auditor General's report mentions that we've had a policy for some time that all professional staff must spend five days training. But what we have not had is a software program, some way of keeping track of whether that's taking place.

Recently we've also had individual learning plans, which we've had in the department for a while and which the clerk has been strongly urging all departments to adopt as well, which call for a conversation each year between each professional and his or her manager in which they discuss training needs. Basically a bargain is struck that the manager agrees that this employee needs this kind of development, which will have this kind of cost, and they agree that's going to take place. That's been going on for some time at an individual level.

What we've been missing is the tool the Auditor General correctly points out we're lacking; that is, can we push a button at the centre of the department and make sure it's happening as it should? We're working on that now. We're testing a software program that will allow us to keep track of it.

We take training very seriously. We do a lot of it.

The other thing I should quickly add is that as a result of a change in the costing formula for the delivery of legal services, we now have built in a training element. So part of the hourly rate for each lawyer now includes an amount for training, which means we're going to be

assured of a proper fund to make sure all people get the training they need.

Mr. David Sweet: Could you give me an idea? You know that time has been a concern here. You're saying you're working on it, so you're talking about an enforcement mechanism to make sure the staff get the minimum amount of training. When is that going to be completed?

Mr. John Sims: I don't have that at my fingertips. Perhaps as the questioning goes on, one of my colleagues can give me the date, and I'll give it back to you.

Mr. David Sweet: On page 25, paragraph 5.81 to 5.85—it's been discussed a little bit here—there is mention of variable arrangements from department to department. There's a whole slew of them—a hundred, for goodness' sake. What work has been done to pare that down specifically? Is your end goal to make sure that there is one standard from department to department, barring, of course, the fact that there may be some significant—how would I say it?—idiosyncrasies of one specific department so that you have to modify it a bit?

Mr. John Sims: There are two parts to your question, I think. One is why do we have so many agreements, and then the second part is why do we have different agreements. We have a large number of agreements in some cases because we respond to the accountability requirements of the client with whom we're dealing. Some clients we work with have a very decentralized way of doing business, and they didn't want us to have one macro agreement with the entire department; they wanted us to enter into agreements with each of the major units that make up that department. So we responded to their request of us in that fashion. Of course we would like nothing better than to have these reduced to a more sensible number than a hundred, or whatever the figure was in the report, which seems excessive.

The other problem we're working on is that we've also had different clauses, and that's partly because historically we sat down and lawyers would respond to the individual needs of each client and work out something that was tailored to their needs. Then when you tried to roll it out, of course, you'd have a wide variety, and that's not efficient and effective. We're trying to reduce that. One of the major projects that the new law practice management division is working on is uniform agreements that we can roll out so we won't be into the business of negotiating a wide variety of different clauses every year.

• (1205)

The Chair: Thank you, Mr. Sweet and Mr. Sims.

That, colleagues, concludes the first round. What I propose we do is adjourn the meeting at approximately 12:45. There are a couple of items in committee business that I want to deal with in camera.

We're going to go to the second round now, and we're going to have three-minute rounds. Before we do that, I have a question to you, Mr. McAuley, and this deals with the whole issue of appointment of outside standing agents and contract civil agents on a case-by-case basis.

As the Auditor General said in her report, there's no documented rationale for the selection of these agents. When I was a lawyer on the street for 25 years, there was a very clear rationale back then, and that was called "patronage". Successive Liberal and Conservative governments were shameless in the way these agents were picked. Please don't say it wasn't done that way, because everyone watching TV knows it was done that way. It really had little to do with the ability or the quality of legal services. It mainly had to do with the affinity of the party in power and how close you were to the existing political minister.

When a government changed, these legal agents would change automatically. In fact, in the middle of a case, one old lawyer in the community that I come from described it best when he said, "When the gravy train stops, not a drop spills over". I think that clarified the whole issue.

My question to you, Mr. McAuley, is could you perhaps describe the current role of the political minister in the province? Do you get lists? Do you or your department communicate with the politicians involved—it's not all the MPs, but it would be the political minister—in the choosing of these lists and the selection of these agents? Could you describe the system?

Mr. Terrance McAuley (Acting Assistant Deputy Minister, Management Sector, Department of Justice): Perhaps I could begin by explaining the new process, and then I'll turn the final part of the question over to the deputy.

What we've done now is attempted to create pools of individual lawyers, so we have gone out into the legal community, and we've asked the legal community to express an interest in participating with us. With that in mind, we now create pools of candidates with various expertise that we can go to. As a legal issue comes into the office and there is one of those rare instances when we do use counsel from an outside source, we look, then, to that pool in terms of choosing the candidate who will proceed with the legal issue that's before us. That begins the process. It creates a neutral field of putting the best legal mind to the issue at hand.

Perhaps now I can turn it over to the deputy to speak to the second part.

The Chair: Hold on, though, Mr. McAuley. Are you saying that the political ministers have nothing whatsoever to do any more? Is that your evidence before the committee?

Mr. Terrance McAuley: The minister makes the final decision, so we push the matter to the minister.

The Chair: That clarifies it. Thank you very much. I think that clarifies a lot.

I think I got an answer to my question, but if you want to elaborate, Mr. Sims, go ahead.

Mr. John Sims: I would just like to say that at the level Mr. McAuley was describing, the expression of interest and the establishment of the initial pool, which is between 300 and 350 lawyers, it's done by officials of the Department of Justice. We invited firms all across the country to express an interest, and the assessment of the qualifications of the lawyers required for these rare cases where agents are hired is done by Department of Justice lawyers, who make a recommendation to the minister.

We think it's appropriate that the minister at the end of the day make the decision, because there's a subjective element to choosing a lawyer. He has to have confidence that the lawyers who will represent him personally in courts have the required qualifications. But that whole pool has been generated by the outsiders expressing an interest and justice department officials doing the vetting. Then from that list a recommendation is made to the minister.

● (1210)

The Chair: I think the point has been clarified.

We'll go to the second round. It has been brought to my attention that we may have time for four minutes. We'll see how we're getting along, but I'm going to be brutal with the time and I will interrupt.

Mr. Hubbard, you have four minutes.

Hon. Charles Hubbard (Miramichi, Lib.): Thank you, Mr. Chair.

When you talk about 2,500 lawyers, do you mean there are 2,500 full-time lawyers working within the department, Mr. Sims? Is that correct?

Mr. John Sims: Yes, it's approximately right. I can get the exact figure, but that's about right.

Hon. Charles Hubbard: But in terms of the questions that were asked about our being a big legal firm.... Most legal firms you deal with have costs associated with each lawyer. In other words, if I were to call a lawyer, depending upon the quality and the experience that the law firm had for my case, each of those lawyers would have an hourly rate.

Has your department considered an hourly rate? When you call Mr. Côté, does it cost me \$400 an hour to talk to him, or maybe \$1,000 an hour, if he's had a lot of experience? Is that an avenue you have looked at in terms of costing to departments?

Mr. John Sims: Yes. We have an hourly rate, and it varies by the seniority of the lawyers involved. We arrived at this rate in conjunction with the Treasury Board, and it's adjusted annually—and we've adjusted the formula for this hourly rate recently. But we definitely have an hourly rate.

Hon. Charles Hubbard: Of the 2,500 lawyers, how many are directly involved with providing legislative services to government? We have bills come to the House every week, nearly, and they come from your department. Are there 200 lawyers working on legislation?

Mr. John Sims: My colleague is looking in the RPP now to see whether we can find that figure quickly. If we can't, I'll get it for you, sir.

Hon. Charles Hubbard: One of the big costs that seems to be spoken about, from your statements today, is the cost involved with legislation that needs to be judged. The Charter, for example, has been a big cost to your department since its start.

We have had considerable concerns with some bills that come to us as parliamentarians. For example, Bill C-2 was done, I think, quite hurriedly—a very complex bill. When your legal group presents that to Parliament, are you satisfied that it's good legislation, the best legislation, legislation that will be held up in a court of law; or are you creating some legislation that would present great problems and great costs to our departments in the future?

Bill C-10 is another one we are concerned about. There is fisheries legislation; we referred here a few minutes ago to the fisheries department and the fact that a new bill is being presented to Parliament. In fact, it's there and is probably going to committee at second reading.

As lawyers, in presenting legislation—and I go back to Bill C-2 in particular.... You must have made great efforts, to present Bill C-2 to Parliament as quickly as it came. It's very complex legislation. Eventually it got through, though it was held up for a time in the Senate, as was Bill C-10.

Are we guaranteed as parliamentarians that you as a department have not only done your work but also probably have consulted some outside legal opinions, so that the legislation you come with is as perfect as possible in terms of what our country needs within its justice system?

Mr. John Sims: That's a really interesting question, and I'd like to answer it in parts.

First of all, for every bill the Government of Canada tables, we must certify if it's not constitutionally sound. There isn't a bill that the government tables that has not been analyzed by Department of Justice lawyers to ensure compliance with constitutional and charter principles. Whether it is the policy that Canada needs, of course, is another question. The policy content comes from the government, not the lawyers analyzing the legality and the constitutionality of the proposal.

I don't want to talk about Bill C-2 or Bill C-10, but if we imagine the hypothetical, it frequently happens that a department sits down with its lawyers and says they want to go north. The lawyers say, "Constitutionally, that's a problem. I can get you northeast, if you modify your travel plans a bit. If you're prepared to take a train instead of a plane, I can get you northeast." You have that conversation all the time. It's a dynamic dialogue between the lawyers giving advice, doing a legal risk analysis, and helping the policy centre to try to achieve its goals for the greater good of Canada. That's the process.

I'm being given data on the number of lawyers. There are 2,000 lawyers in the Department of Justice at the moment. About 500 of them work on policy, programs, and management. We think there are about 125 lawyers doing legislative drafting, but I'll confirm that number for you.

• (1215)

The Chair: Thank you very much, Mr. Hubbard.

Thank you, Mr. Sims.

Mr. Fitzpatrick, four minutes, please.

Mr. Brian Fitzpatrick (Prince Albert, CPC): Thank you, Chair.

I want to focus on billable hours and the hourly rates with the civil agents.

Being Irish and a lawyer and a politician, I think I belong to the three groups that are still open for humour in this day and age. There is an old story about a lawyer who passed on and was at the Pearly Gates. St. Peter asked him how old he was, and he said he was 75 years of age. St. Peter looked at his book and said, "There must be some mistake. I have you down for 100 years on billable hours."

If there's a weakness in government, it's that people are always spending other people's money. I practised law for 25 years, and you have to get into your client's wallet to get your money. It's a different parameter when you send the bill to somebody else to pay for your time and effort.

I guess what I'm really getting at is what kinds of controls or system you have in place to put some controls on the billable hours and the hourly rates that lawyers charge. I know lawyers would all like to charge \$1,000 an hour if they could, but let's get real.

Mr. John Sims: There are two hourly rates that we're talking about.

Mr. Brian Fitzpatrick: Out of curiosity, what are those rates?

Mr. John Sims: I'm sorry I can't tell you the internal justice department rates, but I'd be pleased to send you the chart that shows the hourly rates for the different levels of justice department lawyers.

On the outside agent side, we negotiate rates on behalf of the government with outside agents. For years we have successfully retained the top-flight litigators in Canada at a very low hourly rate compared to what they would ordinarily charge their clients in the private sector. It's very, very favourable.

The work we've been doing over the last year following the Auditor General's report to put in place these new and more rigorous procurement practices and so on has been to try to use market competition techniques as best as possible to ensure we're getting a competitive look at the lawyers who are prepared to work for the Department of Justice. And we're again getting very good rates.

Mr. Brian Fitzpatrick: I want to pursue the auditor's recommendation about the total quality management system in place. Those systems, by and large, are focused on the product or the services delivered to an ultimate customer. It's meeting and exceeding their expectations, if I understand it, and you have a system that tries to do that.

In the practice of law it seems to me it's giving advice and then getting the results that were identified in your advice. It basically boils down to something as simple as that, and that really gets into measuring performance by individuals. They are people who consistently give advice and you get the results you get from that advice.

What would you think would be the main ingredients of a total quality management system for outcomes for legal services? I assume winning is at the top of the list. You don't want losing to be your number one goal.

• (1220)

The Chair: Perhaps we could have a brief answer, Mr. Sims.

Mr. John Sims: I think the issue I take most to heart from the Auditor General's report is she says we have many elements of high quality assurance now, but what we haven't had is a system to ensure the guarantee we're getting, the quality we need in every case.

We have many, many elements of high quality now. We have peer review, for example, of the litigation that goes to senior courts, which is the best way to judge whether the legal advice and the stance we're adopting is accurate, is correct, is wise. We use legal risk-management techniques, which we discussed earlier, to analyse the risks and the advantages, but what we've lacked is an entire framework. That's what we're trying to put in place now, and the law practice management division is helping us to have that overall framework that will tie it all together.

We need to pay attention to the point the Auditor General refers to, which is we haven't defined "quality". We think we recognize it when we see it, but we haven't defined it, and we should do that, because we think it will help. That's what we're working on.

The Chair: Thank you, Mr. Fitzpatrick. Thank you, Mr. Sims.

Monsieur Lussier, *vous disposez de quatre minutes*.

[Translation]

Mr. Marcel Lussier (Brossard—La Prairie, BQ): Thank you, Mr. Chair.

Ms. Fraser, in paragraph 4 of your presentation, you set out your three primary objectives. I would like to focus on the third, which was to determine whether the services were cost-effective. In paragraph 8, you say that the department was not in a position to know whether the legal services it was delivering were cost-effective.

What parameters were you looking for in order to assess the department's cost-effectiveness? Were the financial arrangements with other departments one of the ways in which the Department of Justice could have delivered cost-effective services?

Ms. Sheila Fraser: I think that the entire system of timekeeping underlies the evaluation of cost-effectiveness. That would tell us how the lawyers are spending their time. As the system was not in place throughout the department, this information on human resources, which clearly are the department's greatest expense, was not fully available.

As the deputy minister pointed out, it is important for people to know that analyzing this information can determine whether there are trends, can identify the type of case that costs the most, can point out if there are other ways of delivering these services and other ways of handling the cases. As Mr. Sims also mentioned, when a certain kind of case is identified as a trend, we can decide if the legislation should be changed. This is the kind of analysis that we feel is necessary for the department to be well managed. Since they

started with no data on how time was used and what different projects cost, management was difficult, by and large.

Mr. Marcel Lussier: Agreed.

Mr. Sims, the report mentions that, in 2005, the department operated with a budget of about \$500 million. In these documents before us, the figure is now a billion dollars.

Could you paint me a quick picture of how, for example, that billion dollars is divided up among the employees, the 2,500 lawyers, that is, and the outside agents? In that billion dollar budget, do the 100 financial arrangements with other departments represent income for your department?

Mr. John Sims: Forgive me, but I did not understand the second part of your question.

Mr. Marcel Lussier: Do those 100 financial arrangements with other departments represent funds coming into your department that would have an effect on the billion dollars mentioned in the document?

Mr. John Sims: The amount spent on outside legal agents has recently gone from \$30 to \$25 million annually. This means that out of \$600 or \$700 million, only \$25 or \$30 million are spent on outside agents. For the distribution through the various parts of the department, we can refer to the report on planning and priorities.

• (1225)

Mr. Yves Côté (Associate Deputy Minister, Department of Justice): The budget has been mentioned at about a billion dollars. Earlier, we told you that the Federal Prosecution Service had moved out of the Department of Justice. This involved about \$250 million. Then, from the funds that the department receives, a significant portion, about \$330 million, is assigned each year to grants and contributions. So between \$550 and \$600 remain for the department's operational expenses.

Mr. Marcel Lussier: Do the financial arrangements with other departments represent revenues?

Mr. Yves Côté: Starting this year, with the net credit system, the amounts that come from departments are included in our budgets. When we have arrangements with them on funding projects, or when there are cases that we look after for them, those sums become part of the amount that the Department of Justice can spend.

The Chair: Thank you very much, Mr. Lussier and Mr. Côté.

[English]

We'll have Mr. Lake for four minutes.

Mr. Mike Lake (Edmonton—Mill Woods—Beaumont, CPC): I want to follow up, if I could, on Mr. Sweet's line of questioning regarding what gets charged to departments versus what gets charged to the Department of Justice.

You were talking about departments paying for related costs, such as accommodation and support staff and computers. I'm just curious, though. You were referring to costs for access to lawyers. Can you clarify whether some of those costs are also paid for by departments?

Mr. John Sims: Yes, in some instances they would pay for agents. They would be paying for some of that \$25 million to \$30 million that is being spent on agents.

Mr. Mike Lake: There is \$25 million or \$30 million spent on agents. So you can say, then, that on top of the justice department budget, there's \$25 million or \$30 million spent on lawyers only, on top of what's within the justice department budget. Or is there more than that?

Mr. John Sims: I'm sorry, what was the last part of your question?

Mr. Mike Lake: In terms of what's actually spent on lawyers by departments or by anybody within government, obviously most of it would fall within the Department of Justice budget. What amount of money would the federal government spend on lawyers that doesn't fall within the justice department budget?

Mr. John Sims: I don't know. I'll try to find out for you. I think we know, but....

Mr. Mike Lake: I guess that's the point. You should be able to tell us that, because from my understanding, you would know when your lawyers are being used, and I think that's the crux of the matter for us. Any of us would expect that if any department would have a systematic approach to these things, it would be a department filled with lawyers, I would think. Maybe I'm assuming too much.

When you come before our committee and we hear that your expenses doubled between 1998 and 2005, we should be able to get a precise accounting for that. We would expect to get a precise accounting of where that came from, not sort of a general, well, you know, we're a more litigious society. That really doesn't cut it. We would expect more accounting.

Mr. John Sims: Let me try it this way. We know exactly how much money is spent on lawyers in the Department of Justice. I think we know exactly how much money is spent on agents, and we know that because it's the Minister of Justice and the Department of Justice that retains every agent, even if it's being done on behalf of another department. We see all the bills that come in. Every year there is an ATIP request that asks the department about the total amount of money spent on agents, and we know. But where that actually appears in the accounts for the department, I don't know as I'm sitting here right now. I'll find out for you.

But we know exactly how much money is being spent on justice department lawyers and on legal agents. We know that. It's \$25 million to \$35 million, and it's \$600 million in the RPP this year.

Mr. Mike Lake: It's \$630 million in total.

Mr. John Sims: We're now making a difference between lawyers and other expenses in the RPP.

Mr. Mike Lake: I'm asking specifically about lawyers. Obviously that would be the bulk of your expenses. I'm talking about legal expenses.

Your terminology tells a lot in itself. You use the terminology "we think we know". In my view, you should know you know. In most

Canadians' view, they would expect you to know that you know what the amounts are.

• (1230)

Mr. John Sims: I do know, but I don't have it at my fingertips. How much money we're spending on lawyers is in the RPP.

Mr. Mike Lake: If you could produce that for us that would be great.

I want to move on to paragraph 5.66.

The Chair: Is there an undertaking here that they will produce it?

Mr. Mike Lake: They're going to produce an accounting for the costs spent on lawyers, whether they're paid for by the Department of Justice or other departments.

The Chair: Mike, you're out of time.

Mr. Mike Lake: I'll finish on paragraph 5.66, because I'd like an explanation of this.

We found the department had taken some steps since 1993—and I know this has been talked about a little—to improve collection of detailed timekeeping. The department informed us it introduced the timekeeping in 1996, so it took three years to introduce it. By 2003 timekeeping was used by most counsel, although not consistently. That's seven more years, so that's ten years in total. It took until 2006 for you to make it mandatory. With three more years, that's thirteen years.

I would like an explanation as to why it could possibly take that long to come up with these answers. I'm wondering what we should expect from this most recent report in terms of action. I'm hoping it won't take three years just to start introducing preliminary steps and then ten more years to complete the process.

I'd like an answer if I could.

The Chair: You can answer very briefly.

Mr. John Sims: All lawyers have been on timekeeping since December 2006. I don't know what happened between 1993, 1996, and 2003. We're working actively to implement a very good report by the Auditor General. We have action plans and we're at work on that now. We're going as fast as we can to implement these kinds of reports, as I've indicated.

The Chair: Thank you, Mr. Sims.

Mr. Christopherson, for four minutes.

Mr. David Christopherson: Thank you very much, Chair.

I thought for a minute Mr. Lake was going to get into a Rumsfeld explanation of knowns and unknowns and unknown unknowns.

To wrap up, as I've time for one question, could you help me understand the lack of a human resources strategy? Given the four years I've been on this committee, more and more one of the important elements of managing complex, especially professional staff who are specialized is a human resources strategy, particularly where there's competition elsewhere for them. We know there are growing pressures on legal services. We also know there are a lot of specialized legal services in government.

I'm not hitting hard. I'm going to ask the question and sit back, sir, and let you answer. I'm having trouble understanding how you could have gone so long. I know you're working on it, and it's not that, but how did we get to the point where a department like this, with all the issues I've just mentioned, could go so long without a human resources strategy, given that the individual skills of your employees is your product? I don't know how you managed over the last 15 or 20 years without one. Could you help me understand that at a practical level? How could a department as important as yours go so long without a human resources strategy?

Mr. John Sims: We have a human resources strategy. It's sitting here on the table in front of me. It covers three years. We have priorities and active plans—

Mr. David Christopherson: I'm sorry, when was that brought forward?

Mr. John Sims: In July 2007.

Mr. David Christopherson: Let's pretend I'm asking a whole year ago and put the question then. How did you get to the point where you went so long, until last year, and you didn't have one?

Mr. John Sims: I don't remember what instruments or tools we had before we had this human resources management plan. I obviously agree that one has to be strategic in managing people. People are critical, as you said in your preamble. We have always treated them as a prized resource. This brings the strategic element to ensure we're addressing things like succession planning and so on. This is a good plan, and we're working it.

Mr. David Christopherson: I had hoped for a little more, but I accept that, deputy.

Thank you.

The Chair: Thank you very much, Mr. Christopherson.

Thank you, Mr. Sims.

Mr. Hubbard, you have four minutes.

Hon. Charles Hubbard: Thank you, Mr. Chair.

We're looking at a 35-page report, and there's hardly a page where there isn't a suggestion or a concern expressed about it. I've spent most of my life trying to evaluate things. If I were to read this report, I would have great concerns.

As the author of this report, "Managing the Delivery of Legal Service to the Government", would you give it an A, an A-minus, a B, or a C? In all fairness, we should have some ranking of how this report rates in terms of what we should receive. Somebody back home reading it would think that the darn thing would soon be falling apart, if it hadn't already. But is it an A report in terms of the evaluation that was done, or does it get an A-minus, an A-plus, a B, a C, or a failing grade?

In all fairness, we should try to find out what an A report is, Madam Fraser, or a B.

•(1235)

Ms. Sheila Fraser: I really hate to do As and Bs. It is certainly not what we would consider a bad report. There are many areas where improvements are needed. Many of the issues we are raising are really kind of about management. As we note in one of the last conclusions, we think the department needed better professional management.

With all due regard to the lawyers in the room, I don't think lawyers are always necessarily known for being the best managers, though some are. The current deputy has certainly indicated throughout the audit and since the audit that he is concerned about good management and has taken a number of steps. That's what our audits are really about—trying to improve the management within departments.

Hon. Charles Hubbard: So maybe it's a C-minus. It's just a barely passing grade.

Ms. Sheila Fraser: I think it's better than a C-minus.

Some hon. members: Oh, oh!

Hon. Charles Hubbard: Is it a C-plus?

I find it somewhat difficult. The deputy has said here, "As deputy minister, I believe that the department overall is doing well". At the same time as your report was issued he said, "My belief stems in part from the results and feedback from Treasury Board Secretariat in its annual assessment".

Now, if Treasury Board Secretariat made an annual assessment of your department at the same time this was published, did you get an A from Treasury Board? We've seen articles in the paper about people near the top getting bonuses for doing good jobs. Did your people get bonuses to reflect that they were doing A work? I had trouble getting better than a B from what Auditor General said.

Mr. John Sims: I lose track of the years, but on the last year's assessment of the management accountability framework we met or exceeded government standards on 16 out of the 20 core tests. Compared to the average of all other departments, we met or exceeded other government departments 19 out of 20 times.

Hon. Charles Hubbard: So we'll give you an A-minus then.

Thank you, Mr. Sims.

The Chair: Thank you very much, Mr. Hubbard.

Thank you, Mr. Sims.

The last questioner is Mr. Fitzpatrick, and I understand he's going to flow over to Mr. Sweet for a brief point of clarification.

Mr. Fitzpatrick.

Mr. Brian Fitzpatrick: I want to go back to what Mr. Williams was approaching, the two different legal opinions of the appropriation of funding for the firearms registry. I'm going to be very blunt about this. We were on that committee. We saw the opinions. I'm a lawyer, I saw the opinions, and I think there's real argument about whether they were much the same.

The impression I have is that we had a group of people huddled together saying, "My goodness gracious, we're in a lot of trouble. Not only might we have violated the Treasury Board guidelines, which will get us the wet noodle treatment, but we might have actually broken the law under the public administration act. Worse yet, we might have violated the Constitution of Canada." Within hours, they found a lawyer somewhere who came up with the legal opinion that backed up the decision they had made and got into very exotic technical points, contingent liabilities and so on. It was a very detailed report.

I guess that's the difficulty I have, what I saw happen on that. It's as though department heads can phone over to the justice department and find some lawyer to cover their tracks for them when they get themselves in difficulty.

The only further comment I have on that, sir, and then I'll turn it over to Mr. Sweet, is that a couple of lawyers, one of them a Canadian lawyer, got entangled in a very major trial in Chicago last year, and found out where that can get them if they want to walk down that line.

I guess a lot of us had concerns about this matter. I'll just register that with you. I have suspicions about the whole matter, I'll be 100% honest on that. The Auditor General's report, by the way, at the end of the whole exercise came back and reconfirmed the position given by the original lawyer.

Obviously we don't agree on that point. That's why I'm making a comment rather than asking a question. If you want to make a comment, go ahead.

•(1240)

Mr. John Sims: I think it is important that I do comment.

As I indicated in answer to the questions dealing with tabling legislation and whether or not the legislation that goes into the House of Commons is constitutional, we take our duties under the justice act very seriously. We believe fervently in the rule of law. We see it as our duty to give honest, fearless advice to the Government of Canada on all legal matters, and we do.

I think the example we're all pointing to is an isolated example of a situation where these two opinions suddenly arose. I know the lawyers in question, and I believe them to have acted in utmost good faith—each of them. We're not in the business of giving comfort opinions. We give our best advice as fearlessly and as honestly as we can.

I'm sorry that you and I disagree, but I believe very deeply what I just said.

The Chair: Thank you, Mr. Sims.

Mr. Sweet, you have a question.

Mr. David Sweet: Mr. Chairman, I believe one of the points that Mr. Hubbard was trying to make in his last round of questioning was that in this report there is a long litany of things that play out to less than effective management.

Right at the end of the report, the Auditor General summarizes—if I'm misrepresenting, please feel free to intervene—with three specific recommendations. One is about information and workloads. One is about financial arrangements, which I questioned already. The last one is very specific: to "ensure that a senior manager with the necessary authority leads the improvement of management practices at the Department and oversees implementation of these changes".

The response from the department is not as specific as I would like it to be. We are a committee of accountability, not management, and I understand that. But if they're not going to hire someone, or put someone in a position as suggested by the Auditor General, I would like to have more comfort than, shall I say, just a sentence saying that we're going to work on management practices that will be strengthened.

Am I representing that recommendation properly, Madam Fraser?

As well, could I get a direct answer from Mr. Sims on whether they intend to put that senior person in—that is, a professional manager and not, per se, a lawyer?

Just for your reference, the pages are 27 and 28.

Mr. John Sims: We take very seriously the need to professionalize management. As I have tried to indicate, we have taken a number of important steps to create a very powerful management sector that puts in place a structure that we think will allow us to manage effectively.

Mr. McAuley is not just a lawyer. He has an extensive experience in recent years managing some very significant projects for us.

Some justice department lawyers are also very good managers; it doesn't follow that because one is a lawyer, one cannot manage. I take the point that not all lawyers manage absolutely, but to say that justice department lawyers can't manage is clearly not true. Some of our best and brightest are sought out by other government departments around town to come over and run big things, and they run them very effectively.

Mr. McAuley is an excellent manager, and I have every confidence that he is doing a superb job. We have the structure, we have a good person in place, and we are taking the recommendations of Ms. Fraser very seriously.

The Chair: Thank you.

Mr. David Sweet: Mr. Chairman, I did not mean to denigrate the legal profession or imply that they couldn't manage, but is Mr. Sims saying that Mr. McAuley is actually fulfilling the role that was identified in the Auditor General's recommendation?

•(1245)

Mr. John Sims: Yes.

The Chair: Thank you, Mr. Sweet.

Thank you, Mr. Sims.

That concludes the questions. On behalf of the committee, I want to thank all the witnesses for appearing here today.

I'm going to ask the Auditor General now if she has any closing comments or remarks.

Ms. Sheila Fraser: Mr. Chair, I'd just like to thank the committee for their interest in the report. I noted throughout the hearing that several members had questions around specific actions and timelines. I'd like to suggest that perhaps you would want to ask the department for their detailed action plan, which would give you that information.

Thank you.

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

In following up, I'm going to turn the floor over to you, Mr. Sims. Perhaps you could address that question and perhaps also the action plan that was talked about. Could you tell us if you are prepared to file that with the committee at this point in time?

Mr. John Sims: Yes, I am. I'd be pleased to do that. In light of the questioning, that's a very appropriate response. I'd be pleased to do that.

Members also asked a number of other questions for which we didn't have detailed answers, and we'll give that to you quickly.

The Chair: Will that be within two weeks, sir?

Mr. John Sims: Yes.

Thank you.

The Chair: Again I want to thank you for appearing here today.

The committee has a couple of other items that we're going to discuss in camera, so I'm going to suspend this meeting right now; we will resume in about 60 seconds.

[Proceedings continue in camera]

Published under the authority of the Speaker of the House of Commons

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

**Also available on the Parliament of Canada Web Site at the following address:
Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante :
<http://www.parl.gc.ca>**

The Speaker of the House hereby grants permission to reproduce this document, in whole or in part, for use in schools and for other purposes such as private study, research, criticism, review or newspaper summary. Any commercial or other use or reproduction of this publication requires the express prior written authorization of the Speaker of the House of Commons.

Le Président de la Chambre des communes accorde, par la présente, l'autorisation de reproduire la totalité ou une partie de ce document à des fins éducatives et à des fins d'étude privée, de recherche, de critique, de compte rendu ou en vue d'en préparer un résumé de journal. Toute reproduction de ce document à des fins commerciales ou autres nécessite l'obtention au préalable d'une autorisation écrite du Président.