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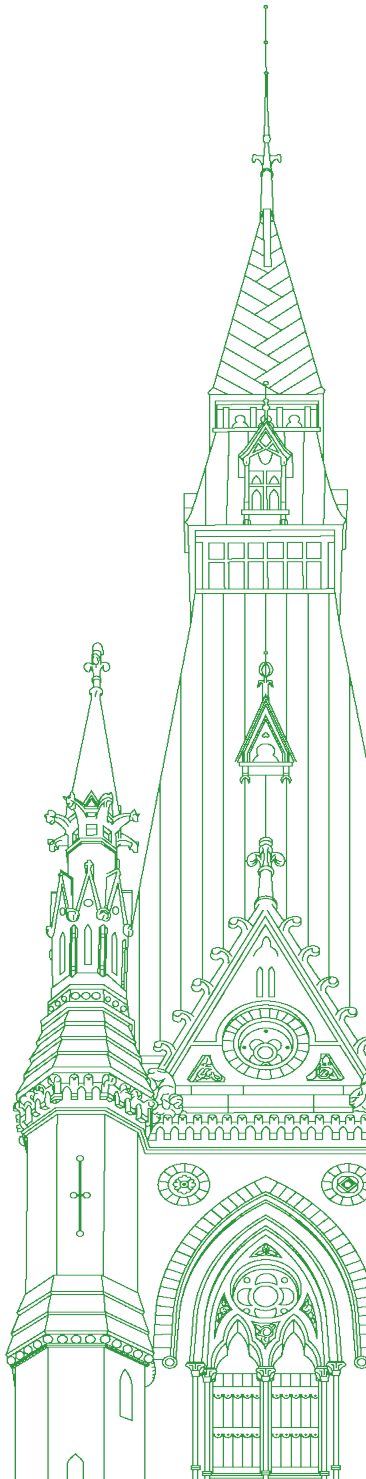

Chair: Mr. Randeep Sarai

Standing Committee on Justice and Human Rights

Wednesday, February 15, 2023

● (1630)

[*English*]

The Chair (Mr. Randeep Sarai (Surrey Centre, Lib.)): I call this meeting to order.

Welcome to meeting number 51 of the House of Commons Standing Committee on Justice and Human Rights. Pursuant to Standing Order 108(2) and the motion adopted on January 30, 2023, the committee is beginning its study on Canada's bail system.

Today's meeting is taking place in a hybrid format, pursuant to the House order of June 23, 2022. Members are attending in person in the room and remotely using the Zoom application. I won't go into details on that, because I think everybody knows the rules and all the members are in the House today.

I wanted to let Monsieur Fortin know that the sound has been checked for everyone. We are good to go with interpretation.

Mr. Rhéal Fortin (Rivière-du-Nord, BQ): Thank you so much, sir.

The Chair: You're welcome.

To begin this study on Canada's bail system, we have with us officials from the Department of Justice. We have Matthew Taylor, general counsel and director of criminal law policy, and Chelsea Moore, counsel in criminal law policy.

I want to welcome them here.

I also want to thank all the others—the analysts, clerks and interpreters—who worked so late last night, on Valentine's Day. I really appreciate all of your work. To the clerk and all of the staff back here, thank you so much.

Mr. Garrison, you have a question or a point of order.

Mr. Randall Garrison (Esquimalt—Saanich—Sooke, NDP): Thank you, Mr. Chair.

I trust that the minister is not here today due to a scheduling conflict, and that he has every intention of appearing, since we have six sessions. I know he's had the benefit of direct discussion with the premiers.

I'm just asking for confirmation that we will eventually see the minister as per these hearings.

The Chair: Thank you, Mr. Garrison.

My understanding is, yes, we have confirmation that he will be coming. I think it's right after the break, at one of the meetings then. I don't have in front of me the exact one, but we have confirmation that he will be attending.

I will give you 10 minutes, because it is a deep topic, unless your submissions are only five, but you have 10 minutes.

Mr. Matthew Taylor (General Counsel and Director, Criminal Law Policy Section, Department of Justice): I think we're somewhere in between, Mr. Chair. We targeted seven. If I talk quickly, it's five. If I talk slowly, it will be 10.

Thanks very much for the opportunity to be here today to support you and to participate in your study on Canada's bail regime.

[*Translation*]

Canada's laws on bail provisions are clear and define the framework within which the accused must be released or detained before trial for the offences they have been charged with committing.

As set out in subsection 515(1) of the Criminal Code, an accused must be released unless the prosecutor shows cause why detention is necessary. This starting point reflects our Common Law tradition, and the Canadian Charter of Rights and Freedoms guarantees the presumption of innocence and the right not to be denied reasonable bail without just cause.

Although the starting point is release, it is important to note that it is not automatically guaranteed and is not authorized if there is just cause for detention.

Subsection 515(10) of the Criminal Code sets out justification for detention in custody of the accused: to ensure his or her attendance in court; for the protection or safety of the public, having regard to all the circumstances including any substantial likelihood that the accused will reoffend; to maintain confidence in the administration of justice.

[*English*]

Each ground constitutes an independent basis upon which bail can be denied, and the decision on whether to detain under these grounds will be informed by the evidence available to the court, including the criminal record of the accused. For example, that the accused used a firearm or other weapon or that they have a history of violent offending may militate against their release on public safety grounds.

These same factors may also support a decision to detain someone on public confidence grounds, but public safety is not the only frame by which the public confidence ground applies. Other factors that matter in this context include the strength of the case against the accused, the seriousness of the alleged offence, and the circumstances surrounding its commission.

This public confidence ground is about balancing all relevant factors and recognizes that public confidence in the bail system is essential to its proper functioning and to the proper functioning of the justice system as a whole.

The grounds for detention anchor the bail system, and they do not change depending on who must show whether detention is warranted. They are not altered by the fact that a court must also take into consideration other factors, including the principle of restraint, which is found in section 493.1, or that the accused is indigenous or from a vulnerable population that is overrepresented in the criminal justice system.

In other words, a court is still required to detain someone if there is just cause to do so and there are no appropriate means of addressing the risk if the accused is released. Those appropriate means could include impositions of conditions as part of a bail plan—reasonable and relevant conditions.

Canada's bail laws provide clear guidance on who is responsible for demonstrating when detention is warranted. The default, as is the case for most aspects of criminal law, is that the state bears the responsibility to show why detention is warranted.

However, there are a number of cases where it falls to the accused to show why they should not be detained. These reverse onuses reflect Parliament's intention to make it more difficult for an accused to obtain release in certain situations that align with the grounds of detention—the grounds that I talked about earlier. As such, these reverse onuses may operate like a shortcut. Examples of reverse onuses include cases where an accused is charged with organized crime or terrorism offences, certain offences committed with firearms, or cases of intimate partner violence where the accused has been previously convicted for the same.

In the end, however, these reverse onuses don't guarantee detention. Detention must still be justified on the three grounds.

I think you're all aware, and I think I've heard you speak to this already, that the Prime Minister has committed to working closely with the provinces and territories to ensure that our bail system—meaning our bail laws in the Criminal Code and their implementation by the provinces and territories—is working effectively. This commitment followed a January letter that was sent to him by all premiers, advocating for a new reverse onus, amongst other things.

You may wish to note that FPT collaboration on bail is longstanding. Significant collaboration led to the development of the bail reforms in former Bill C-75. Since last fall—preceding the letter from the premiers—we have been working closely with the provinces and territories on bail issues, including how the bail system responds to repeat violent offending. This work continues.

Minister Lametti has recently called for a special meeting of justice and public safety ministers on bail. We expect that will occur in the next few weeks. The meeting will provide an opportunity for all jurisdictions to identify concrete ways to address current challenges to ensure that any solutions proposed do not negatively affect the achievement of other important objectives, and to affirm core principles.

● (1635)

That concludes our remarks.

We appreciate your attention and look forward to answering any questions you have.

The Chair: Thank you. That was great timing, only six minutes.

We'll go to our first round of questions, beginning with Mr. Caputo for six minutes.

Mr. Frank Caputo (Kamloops—Thompson—Cariboo, CPC): Thank you, Chair, and thank you both for being here. I apologize if I get to some nitty-gritty, but these are important questions.

If you look at section 515, and particularly 515(6) and 524 of the code, I take it you'd agree that generally anybody who is under release for one set of charges and is alleged to commit another offence, particularly a hybrid offence, is subject to a reverse onus. Is that correct?

Ms. Chelsea Moore (Counsel, Criminal Law Policy Section, Department of Justice): Yes, that's correct. Under section 515(6) there's a reverse onus if the allegation involves a breach of certain conditions of bail, a summons or any other court order.

Mr. Frank Caputo: Exactly.

Getting into a reverse onus is not a rare thing. Would you agree with that?

Ms. Chelsea Moore: I'm not sure. I think I'd have to look at the data before I would say if it's rare or not.

Mr. Frank Caputo: It's certainly not rare that somebody has a breach of bail before the courts.

Can we acknowledge that?

Ms. Chelsea Moore: Again, I can't confirm if it's rare. It does happen that someone comes before the court with a breach of bail.

Mr. Frank Caputo: I can't give evidence, but I can say it's a pretty regular occurrence that somebody is in a breach of bail situation.

I'm going to talk about three cases that have really changed the bail landscape. They are Antic, Zora and St-Cloud.

Are you familiar with all three of those cases?

● (1640)

Ms. Chelsea Moore: Yes.

Mr. Frank Caputo: Okay.

I want to get at a bit of a tension that we're looking at here. For reverse onus, if you read the reverse onus provision, it really should be such that a person who breaches generally should be detained, absent the accused showing cause why they shouldn't be detained. In other words, the accused must show a justification for release. Is that correct?

If you look at the wording of section 515(6), provisions under section 524 or I think it's section 512.3, on all of those provisions it appears that Parliament's intention was to create a burden—and a high burden at that—for release in the reverse onus.

Would you agree with that?

Ms. Chelsea Moore: Yes, they signal Parliament's intent to make it more difficult to obtain bail for the offences that are listed.

Mr. Frank Caputo: Certainly. If people are regularly satisfying the reverse onus, either people are getting good at satisfying the reverse onus or Parliament's intent isn't being followed.

Can we agree there?

Ms. Chelsea Moore: I'm not following. Do you mean in a specific case?

Mr. Frank Caputo: No, I mean just generally. The whole point of reverse onus is to make it more difficult for a person to achieve bail.

Perhaps I'll take a step back. The reverse onus or the application of reverse onus is meant so that people have a much higher burden to climb in order to achieve bail.

Is that correct?

Ms. Chelsea Moore: The burden is on the accused, as opposed to being on the Crown.

Mr. Frank Caputo: Yes. The point is that they have to show cause, not the Crown.

Probably before we get too deep into that line of thinking, I'm going to go to something a bit more germane, perhaps.

We have Bill C-75, and we have Antic, Zora and St-Cloud. Now, St-Cloud is a tertiary ground case, but it's a bail case. It's been a couple of years, but my reading of St-Cloud is that detention on the tertiary ground should not be rare. In other words, it is okay for detention on the tertiary ground to be frequent.

Did you take that away from the case, too?

Ms. Chelsea Moore: Yes. It shouldn't be limited to exceptional circumstance.

Mr. Frank Caputo: Exactly. It shouldn't be limited to the worst case, either.

For those following along, the “tertiary ground” is that it would shock a Canadian if this person were released.

Did I summarize that fairly, in basic terms?

Mr. Matthew Taylor: I think you're right. The court talks about the public's confidence and a well-informed citizen who understands the principles and objectives of the bail regime, but I think shocking the conscious is probably a good shortcut for describing those kinds of situations.

Mr. Frank Caputo: That's perfect. Nowhere in St-Cloud does it say that detention should be exceptionally rare on that tertiary ground.

Do you agree with that? It says the opposite.

Mr. Matthew Taylor: I think [*Inaudible—Editor*] your earlier point is that it is its own ground. It's not reserved for exceptional cases.

Mr. Frank Caputo: We have Bill C-75 and we have Antic and Zora. I'm not going to get into the nitty-gritty here, but the gist of Antic and Zora is to say that detention should be very rare. That's how I read those cases.

Do you agree with that?

Ms. Chelsea Moore: I read those cases as saying sort of the cardinal rule that the Supreme Court talks about, which is that release ought to be the norm and detention ought to be the exception. There's a presumption in most cases that an accused ought to be released.

Mr. Frank Caputo: Do you see there being a conflict there, between St-Cloud and those other two cases I mentioned? Detention shouldn't be rare in the one case, but in the other case, they're saying bail should be the rule, not the exception.

Do you see how there's a tension there?

Mr. Matthew Taylor: If I may, Chair, I'm not sure there's a conflict per se, as our opening remarks tried to convey. The grounds for detention are the grounds for detention, so I think that with the ladder principle and the principle of restraint and these other important concepts to the bail regime, the idea is that all of these are signposts, essentially, to the court.

You have to take into consideration what is the least restrictive measure on liberty to assure attendance in court, to protect public safety and to maintain confidence in the administration of justice, so the fact that there is a principle of restraint, or that there is the requirement that consideration be given to the specifics of indigenous or marginalized accused, doesn't mean detention is off the table. It's about the process through which a decision is taken, rather than favouring one outcome over the other—

● (1645)

Mr. Frank Caputo: Perhaps—

The Chair: Thanks, Mr. Caputo.

We will now go to Mr. Naqvi for six minutes.

Mr. Yasir Naqvi (Ottawa Centre, Lib.): I'm going to start where you left off, sir, so we're all good. The only place I differ from you is that you jumped into reverse onus right from the get-go. I think we need to have the basic principles discussion first before we get into the exceptions to the principles.

Thanks, both of you, for being here.

Let's start from the top. You alluded to this in your introductory comments, so let's start with common law. What does common law tell us when it comes to bail?

Ms. Chelsea Moore: We have a number of Supreme Court of Canada decisions that have been released over the past decade talking about what we just talked about, which is the cardinal rule that release ought to be the norm and detention ought to be the exception.

That principle really derives from the structure of the code as it stands right now, as well as the charter, but if you look at the structure of the code, the principle of restraint is actually embedded within subsection 515(1) of the Criminal Code. It's the starting point. It basically says that the justice shall release the accused unless the prosecutor shows why the accused ought to be detained. That's the starting point.

Then, under subsection 515(2), we have the ladder principle, which the common law has discussed at length recently in the Antic decision, as well as the Zora decision—

Mr. Yasir Naqvi: I'm going to ask you to stop there, because I want to come to the ladder principle.

Can you just interweave in this the constitutional...the charter guarantee in terms of bail?

Ms. Chelsea Moore: Sure.

Under section 11(e) of the charter, there's a right not to be denied bail without just cause, so there are two aspects of this.

There's the just cause aspect of it. Bail can be denied only in narrow circumstances that are tailored to the specific purposes of bail, the proper functioning of the bail system. Public safety and reoffending are considered purposes that have been accepted and linked to the proper functioning of the bail regime.

The second one was “reasonable”, so bail must also be reasonable. That really ties into what we're talking about here with the ladder principle and ensuring that an accused is released on reasonable conditions that are necessary and tied to the specific risks that an accused poses if they are released.

Mr. Yasir Naqvi: Fantastic, and now let's talk about the ladder principle, because that's a very important part of the common law, and it comes out of the charter jurisprudence as well.

Imagine, Ms. Moore, that we're in first-year criminal law class and we're fresh young law students—

Voices: Oh, oh!

Mr. Yasir Naqvi: —and you're describing the ladder principle to us.

Ms. Chelsea Moore: The ladder principle sets out a presumption for most bail hearings that an accused ought to be released on the least onerous terms and form of release. We're really looking at subsection 515(2) of the Criminal Code. You will notice that from paragraphs (a) to (e) it progressively gets more restrictive.

As you go down each paragraph, the form of release becomes more restrictive. At paragraph 515(2)(e), there's an automatic condition of a cash deposit as well as an optional surety, and that's available only to accused who reside more than 200 kilometres away or out of province. It's the most restrictive form of release that we have.

We have subsection 515(2.01) of the Criminal Code, which says the starting point is to release on a release order with no conditions. Then, for each more restrictive term that's added to the release order, the prosecutor needs to justify why a more restrictive release is necessary. They really need to link it back to the specific risks that an accused poses.

For example, if we're dealing with someone who might be a flight risk, there are conditions that can be imposed, such as a cash deposit or the deposit of a passport. If someone is at risk of reoffending, there are other conditions that can be imposed to ensure they are following the conditions.

Mr. Yasir Naqvi: You went through the Criminal Code, which articulates the ladder principle, which is in compliance with both the charter and the common law. Is that correct?

Ms. Chelsea Moore: That's correct.

Mr. Yasir Naqvi: Again, we're going to basics 101: Who is responsible for implementing those provisions, and particularly the ladder principle?

Ms. Chelsea Moore: For implementing them, the judge or justice at the bail hearing is the one who ultimately decides what type of release the accused should be released on. Typically, in a bail hearing, the Crown will make submissions on what conditions are reasonable; the defence will also make submissions; the judge will decide and then the accused needs to follow their conditions.

What's important to note is that if the accused breaches a condition of bail, they're liable to up to two years in prison, so it's a significant—

● (1650)

Mr. Yasir Naqvi: And the administration of justice is the responsibility of...?

Ms. Chelsea Moore: The provinces and territories.

Voices: Oh, oh!

Mr. Yasir Naqvi: The provinces. Thank you. I just wanted to make sure we have the foundations right.

I know you are a federal Crown at the Department of Justice, but I'm sure you have a fairly sophisticated understanding of how provinces operate. What methods do provinces use to inform their Crowns when it comes to the implementation of various things, such as the bail process?

Mr. Matthew Taylor: One way that you are probably all quite familiar with is the directives that are issued by attorneys general in the provinces. We know, for example, that Ontario issued a directive on bail matters in the context of the COVID pandemic, and British Columbia has recently issued new guidance to its prosecutors on bail matters involving repeat and violent offenders.

To piggyback on the federal perspective, the federal Public Prosecution Service of Canada is responsible for prosecuting in the territories and for certain federal criminal offences in the provinces. It also issues guidelines that can be looked at in its deskbook, which is on the PPSC website and provides information on the relevant considerations in bail matters.

Mr. Yasir Naqvi: Is it—

The Chair: Thank you, Mr. Naqvi.

We'll go to Monsieur Fortin for six minutes.

[*Translation*]

M. Rhéal Fortin: Thank you, Mr. Chair.

Good afternoon, Mrs. Moore and Mr. Taylor.

All of that is interesting. Law enforcement is a provincial jurisdiction. I will obviously not ask you to elaborate on those issues, but I would like to hear what you have to say about the major principles that are your daily bread, more or less.

For example, we know that one of the criteria is public safety. We want to ensure that when a person is released, we are not putting public safety at risk.

What criteria are used to establish that? How do we determine whether a person might put public safety at risk?

Mrs. Chelsea Moore: Thank you for your question.

During a bail hearing, the judge often has a copy of the offender's background. It is a way to truly see whether...

If I may, I will continue in English.

[*English*]

It helps the court to see if there are any past convictions of violence on the accused's record and to look at whether there's been a pattern of criminal behaviour. That's something that's very important when they're looking at the secondary ground: protection of the public.

They're also looking at whether the person was on bail or probation at the time of the offence. Often, they look at the personal circumstances of the accused. Is this someone who's a stable person, or is this someone who's likely to resort to crime again if they're released? Does this person have a steady job? Often, there will be a surety who might testify about the personal character of the accused or what they're doing in their life. All of this could be relevant to the secondary ground when looking at protection of the public.

There are a number of other provisions in the code under the bail provisions that also address public safety. I can discuss those if you want.

[*Translation*]

Mr. Rhéal Fortin: Tell me if I am mistaken, but I believe that the type of charge facing the accused will be taken into account.

For example, if it is a gun crime, I gather that would have an impact.

I would like you to elaborate on that.

At what point should that have an impact and what distinctions should be made among all the gun crimes?

[*English*]

Ms. Chelsea Moore: Absolutely. Under the tertiary ground, the court must consider the circumstances surrounding the offence, including whether a firearm was used. It signals to the court that the tertiary ground is relevant to the case when there's a firearm being used.

We have a reverse onus at bail, which is quite broad, for any offence when the subject matter involves a firearm, if the person has already been on a prohibition order. As I said before, Parliament has signalled that it ought to be more difficult for someone charged with a firearms offence in that situation to obtain bail. The presumption is reversed. The presumption is that they ought to be detained unless they can prove to the court on the balance of probabilities that they should be released.

There are also a number of conditions that a judge has to consider imposing for offences involving violence or involving a firearm. It's a mandatory prohibition on weapons and their use, if the offence is alleged to involve a firearm. They have to look at imposing conditions that would protect the safety of any victim or witnesses.

● (1655)

[*Translation*]

Mr. Rhéal Fortin: I imagine that you followed the legislative process. Recently, Bill C-5 repealed certain minimum sentences, including some for gun related offences.

I do not know them by heart, but I remember the offence where a person discharges a firearm with the intent of causing harm or injuring another person, or something to that effect. That seemed rather odd to me. Honestly, I had a bit of a hard time accepting that.

Do you not find it a bit surprising that if we repeal minimum sentences for gun related offences we might, in the case of parole, reverse the burden of proof and tell an individual that we are putting him in prison unless he can prove that he is not a danger to the public?

All together, are these two principles not a bit paradoxical?

Mr. Matthew Taylor: It is hard to say if it is paradoxical. However, I think the considerations are different in the context of a minimum sentence. I will give you an example.

[*English*]

In the bail context, the reverse onuses that relate to firearms are very closely tied to the grounds for detention. A crime that is alleged to have involved the use of a firearm in a robbery or a sexual assault is presumptively seen as something that poses a public safety risk. It's closely linked to that just cause...the three grounds of detention.

There may be a tendency to want to try to make comparisons between considerations at the bail stage and considerations at the sentencing stage. The charter rights are different in those stages, and the purposes of those different processes are different.

The Chair: Thank you.

Thank you, Monsieur Fortin.

Mr. Garrison, it's over to you for six minutes.

Mr. Randall Garrison: Thank you very much, Mr. Chair. I'm going to ask the committee and officials to give me a little latitude here at the beginning.

Mr. Naqvi, I think we have to make it clear exactly what it is that we're talking about. I think the study actually deals with four separate problems.

Two of those have been very high profile and public, and certainly the premiers have been raising those: the problems for public safety caused by repeat violent offenders who achieve bail. The secondary problem there is the public order problems caused by repeat low-level offenders who receive bail.

Those are two things that are very high profile. They are legitimate concerns, and they're part of this study, but we have a bail system that is kind of contradictory. In fact, we detain way too many people before trial. When you look at the numbers of people in provincial institutions at any one time, you see that most of them haven't been convicted of anything. They're awaiting their trial dates. What we find, if we look at that problem, is that those are disproportionately indigenous people, racialized Canadians and people with low incomes. That's a third problem, I think, that's here.

A fourth problem, then, is that when people achieve bail, it's quite often more difficult for some people to meet what are thought of as non-onerous conditions of bail, and they end up with a public administration of justice offence, even though they haven't been convicted of anything.

I think there are actually those four different problems. I'm going to be calling witnesses on all four of those—if I get enough witnesses—and I'm going to be asking you some questions about those.

I want to start with repeat violent offenders.

I'm not going to try to lead you into saying this. I'll just say it: I think there's a consensus that, somehow, sometimes, our system fails to detain people and maybe we need to tighten that up somehow.

One of the things that came forward in a previous Senate bill was section 518, which says that prosecutors “may” present evidence in a bail hearing on previous convictions or if people are awaiting charges or they've breached conditions before or failed to appear in court. The operative word in that section is “may”, so I'm wondering if we sometimes have judges who are making bail decisions without that information always having been put before them. If we were to change the wording in that sentence from “may” to “shall”, we would guarantee that they had that evidence in front of them.

That was in a previous Senate bill, and I think it's a reasonable thing for us to look at. I want to know what you would have to say about that.

● (1700)

Mr. Matthew Taylor: I think it's a good thing to look at. Our one initial comment on that would be that changing a “may” to a “must” or a “may” to a “shall” in the bail process could have efficiency implications, and I expect you would have expected that as an answer. I mean, I can't tell you or the committee that this is a reason not to look at it.

I think it's something that provincial prosecutors and people who are in the courts would have better experience in and a better understanding of as to whether that would be a real impact that would meaningfully result in delays or in bail hearings being put off or things of that nature.

Mr. Randall Garrison: Anecdotally, and certainly in the media, we have heard of decisions where the judge appeared not to have the full information on the offender because it wasn't presented at the bail hearing.

Apart from efficiency, I'm looking at the other end. Tightening it up might actually have public safety advantages if we were to do that. Obviously, we're always weighing efficiency, and if we're talking about detaining too many people, of course, we're weighing costs against other impacts.

When it comes to, again, the low-level offenders, that's the second problem. I wonder if we have any statistics, if they're really collected—I have the feeling they're not, because provinces administer the justice here—about just how many offenders are being released multiple times on similar offences. I certainly haven't seen anything on that. I wonder if you have any information about how often that happens.

Ms. Chelsea Moore: We don't have any national statistics with respect to bail at this time. Individual provinces and territories, as I'm sure you know, are responsible for collecting criminal justice system data, including bail data. Sometimes they publish this data on their websites.

Statistics Canada provides provinces and territories with the opportunity to report their bail data so that a national dataset can be available, but not all jurisdictions are currently contributing to that.

Through its integrated criminal court survey, Statistics Canada is able to combine various sources of information to create what they call “composite indicators”. Basically, this is combined information on the occurrence and outcomes of bail hearings for seven jurisdictions that report, but sometimes they report differently, so it can be challenging to analyze that data.

Justice officials are currently working with Statistics Canada on a special data request to review and analyze the available data.

Mr. Randall Garrison: Something we have heard from the police quite often—and certainly I have in my riding—is that this does happen, but it involves a very small number of people. I wonder if there's any reaction from Justice about our trying to reform the bail system when we're dealing with not the majority but a very small number of people who go through it.

Mr. Matthew Taylor: We've heard that information as well, that a small percentage of people are committing a significant number of non-violent offences, often, as you said, Mr. Garrison, related to addictions or things of that nature.

I think it is worth dividing up the issues in the way you have. It is important to think about it in all of those terms. Is there a public safety concern in those situations? Perhaps there is not, but maybe there's a confidence concern there that needs to be thought about and looked at in greater detail.

To the extent that we have any information on chronic offending, we'd be happy to provide it to the committee.

Mr. Randall Garrison: Thank you.

The Chair: Thank you, Mr. Garrison.

We'll go to the next round for five minutes each, beginning with Mr. Van Popta.

● (1705)

Mr. Tako Van Popta (Langley—Aldergrove, CPC): Thank you, Mr. Chair, and thank you, witnesses, for being here.

We are here at the justice committee studying bail reform and the need for it. One of the reasons we're doing this is in response to a letter the 13 premiers wrote recently to the Prime Minister, and I have a copy of that letter here in front of me. I just want to read a couple of sentences from it and ask for your comments. They say, “We write to urge that the federal government take immediate action to strengthen Canada’s bail system to better protect the public and Canada’s heroic first responders.”

We all remember with great sadness and shock, really, Constable Greg Pierzchala being murdered by a person who was out on bail after being accused of firearms-related crimes, so it is very urgent that we look into this and ensure that the public remains confident. Otherwise the administration of justice could be brought into disrepute.

Here's the problem that I see. The premiers go on to say, “The justice system fundamentally needs to keep anyone who poses a threat to public safety off the streets.”

Well, we all agree with that, but how does a judge determine in advance whether a person is a threat? In hindsight, we all know that the person who murdered Pierzchala was a threat, but did the judge know it ahead of time?

Ms. Chelsea Moore: As I mentioned, a risk assessment is done at the bail hearing. There is a provision under subsection 515(3) of the Criminal Code that was added through former Bill C-75 and that now requires judges, before making any bail decision, to look at the criminal record of the accused and at whether the accused was charged with domestic violence. I think the criminal record is really key to getting the history of offending and whether there's a pattern of violence there that is likely to be a risk to the public.

Often the Crown introduces occurrence reports if there have been charges laid but no conviction entered, and the Crown can have an officer testify about these reports to say there's been a pattern of behaviour.

Mr. Tako Van Popta: I'm just going to stop you there. I forget what the accused person's name was, but it doesn't matter. I'm assuming all of that procedure was followed with the person who murdered the police officer. Yet, in retrospect he was a threat to the public.

Ms. Chelsea Moore: Any law that has discretion built into it is going to, unfortunately, result in situations that you simply cannot predict. We can't legislate to remove any and all risk unless we detain all the time. The thing is that the charter says there must be just cause to detain someone; they can't automatically be detained. However, in some cases there can be a presumption of detention, and I talked about the reverse-onus situations.

Ultimately, if the judge does get it wrong, there is an appeal process that's available under section 520 of the Criminal Code.

Mr. Tako Van Popta: After the person is murdered....

Ms. Chelsea Moore: In this particular case, I believe there was a warrant out for his arrest at the time.

Mr. Tako Van Popta: The premiers' letter goes on to suggest, “A reverse onus on bail must be created for the offence of possession of a loaded prohibited or restricted firearm in s. 95 of the Code.”

I know that under section 515 of the Criminal Code there are some reverse onus provisions, which, I understand, have withstood charter challenges. Would adding “possession of a loaded prohibited or restricted firearm” survive a charter challenge, in your opinion?

Mr. Matthew Taylor: That's a difficult question to answer. Maybe I can answer it in a slightly different way. That specific proposal is something that we're looking at in collaboration with the provinces and territories, as you would expect.

Section 95 is a broad offence. For those of you who will remember the newer decision, there was another Supreme Court decision, MacDonald, that involved an otherwise law-abiding gun owner who stored their prohibited or restricted firearm in a second residence. Their licence authorized them to store it in their primary residence, but they stored it in their second residence.

In constructing a reverse onus for an offence of that nature you have to take into consideration the types of situations that would be captured and whether those situations, which may or may not pose public safety risks, warrant a reverse onus.

On the charter question, I would say two things.

Justice Canada's website includes a dedicated resource on all articles of the charter. It includes detailed information on the bail provisions, including on the reverse onus. I think what a court would want to see in terms of assessing the charter viability of a reverse onus in that space is if it is linked to grounds of detention. Is there a just cause associated with it?

As you say, reverse onuses have not been struck in the bail regime by the Supreme Court of Canada.

● (1710)

The Chair: I think your time is up. Thank you.

Next we'll go to Mr. Naqvi for five minutes.

Mr. Yasir Naqvi: Thank you, Chair.

I think we still have to get through some basics here, because we have you, and I just want to make sure we have all that.... I know people are getting you into the nitty-gritty, and rightly so, but I feel like I'm in first-year law school right now.

Let's talk about reverse onus. Describe the concept of reverse onus to us, in general, and then how it applies to bail in particular.

Please and thank you.

Ms. Chelsea Moore: Reverse onus departs from the general approach to bail in two respects.

First, there's a presumption that the accused ought to be detained, and second, the accused has to prove, on a balance of probabilities, that they ought to be released having regard to the statutory grounds. They have to prove to the judge that they're not a flight risk, that detention is not justified to protect the public, and that detention is not justified for confidence in the administration of justice.

Those provisions, set out in 515(6) of the code, signal Parliament's intent that it ought to be more difficult to release an accused in those circumstances. We have reverse onuses, as I said, for accused who are alleged to have breached their bail conditions. We have a reverse onus for intimate partner violence, where someone has already been convicted of intimate partner violence, and we have reverse onuses for more serious offences like firearms offences, where they're already on a prohibition order.

I think that's it for the reverse onus.

Mr. Yasir Naqvi: There are a variety of types of offences in the Criminal Code, then, that fall within a reverse onus requirement for bail. Again, the determination of whether or not that onus is met is up to a justice of the peace or a judge who is presiding over that bail hearing.

Ms. Chelsea Moore: Yes. The code says “justice”, but “justice” is defined under section 2 of the code to include a judge of a provincial court, so it could be a justice of the peace or a judge of the provincial court.

Mr. Yasir Naqvi: Okay. I think either you or Mr. Taylor touched on the notion of directives at the provincial level. Am I correct to understand that there is still some latitude of capacity with the Attorney General at the provincial level to issue a directive that asks the Crown to take a particular position, let's say, to always seek a refusal of bail, for instance. Does that latitude still exist?

Mr. Matthew Taylor: Yes. For example, I spoke to the directive of the updated guidelines that B.C. provided. They provide fairly clear instruction on when provincial prosecutors in British Columbia should request that bail be denied based on certain criteria—repeat violent offending, safety risks. It's set out in some detail.

Mr. Yasir Naqvi: Can you expand a bit on what British Columbia just recently did?

Mr. Matthew Taylor: I don't know if I can expand. I think Mr. Garrison probably knows quite well also.

As I referenced in my opening remarks, British Columbia has for some time been concerned about the situation of repeat violent offending. This is something we have been working on with them collaboratively in terms of whether we make amendments to the bail regime to address this issue.

Within their area of responsibility as administrators of justice, they have updated their guidelines to provide guidance to their prosecutors when dealing with accused persons who have been charged with offences of violence. I think those guidelines also speak to other circumstances—specific considerations of indigenous accused, for example.

We can provide those guidelines; it's publicly available information.

● (1715)

Mr. Yasir Naqvi: Are you aware of any other province besides British Columbia that is taking similar steps?

Mr. Matthew Taylor: I know Ontario has issued guidelines on bail. I think they were specific to the COVID context.

I have not done, and I don't believe our unit has done, a comprehensive search of every jurisdiction.

I can point you to British Columbia and, at the federal level, the *Public Prosecution Service of Canada Deskbook*, which provides information on bail hearings.

Mr. Yasir Naqvi: Does the reverse onus exist when the accused has been charged with offences involving firearms, where the accused is subject to a weapons prohibition order?

Ms. Chelsea Moore: Yes, there is.

Mr. Yasir Naqvi: Can you refer to the section in the code?

Ms. Chelsea Moore: It is found under subparagraph 515(6)(viii). Actually there are two reverse onuses that link to firearms. Subparagraph 515(6)(vii) says, “an offence under section 244 or 244.2...that is alleged to have been committed with a firearm”.

Then, under subparagraph 515(6)(viii), it's quite broad. It's any offence that's “alleged to involve, or whose subject-matter is alleged to be, a firearm...while the accused [is already] under a prohibition order”, as defined under subsection 84(1).

Subsection 515(5) deals with reverse onus as well.

The Chair: Thank you, Mr. Naqvi.

Now we'll go to two rounds of two and a half minutes each. We'll start with Monsieur Fortin.

[*Translation*]

Mr. Rhéal Fortin: Thank you, Mr. Chair.

Mr. Taylor and Mrs. Moore, I have two minutes left and I would like to come back to firearms.

I understand that there are specific provisions for certain crimes committed with firearms. What is more, as I was saying earlier, not so long ago we legislated to repeal minimum sentences for certain gun related crimes. I am thinking specifically about discharging a firearm with a specific intent; we repealed the four-year minimum sentence for that offence.

We have to assess the seriousness of the crime. A defence lawyer might say to the judge that in today's society, the crime in question is clearly much more serious than it was 10, 20 or 50 years ago. He might use that type of argument since the legislator repealed the minimum sentences.

In your opinion, is it not worrisome that this type of argument could be used?

Mr. Matthew Taylor: A lawyer can always try to convince a judge that one offence is more serious than another. The repeal of mandatory minimum sentences is not a—

[*English*]

It's not only an acknowledgement that an offence is less serious. The decision to repeal mandatory minimum penalties was based on the importance of restoring discretion to judges to impose fit sentences in all cases.

[*Translation*]

Mr. Rhéal Fortin: Okay, but this leaves room for the judge to not impose a prison sentence.

Recently in Quebec news there was a case where the person had firearms at home, but it was decided that the person would not get a prison sentence.

A minimum sentence is an indication of the seriousness of the crime. The legislator does not talk just to fill the air. If a four-year minimum sentence is repealed that must mean that the legislator considers the crime to be less serious. Am I wrong?

[*English*]

Mr. Matthew Taylor: I will say what I've said previously. I think judges and the Criminal Code provide a structure; offences involving firearms are punishable by significant maximum penalties of imprisonment. The Supreme Court, in some of its recent jurisprudence, has reaffirmed the principle that a maximum penalty, provided for in law, provides clear guidance to the courts on the seriousness of the offence.

With regard to the example you cite in terms of the decision in Quebec, we're aware of it. There are routes of appeal for these matters.

I understand your point. The important piece to remember, again, is that the law, as it operates, provides clear signposts. In the way the law is implemented, there are situations in which the outcomes are, perhaps, what one would expect, but there are checks and balances within that system in terms of appeal rights, etc.

● (1720)

The Chair: Thank you, Mr. Fortin.

Mr. Garrison, you have two and a half minutes.

Mr. Randall Garrison: Thank you, Mr. Chair.

I'm in the back-to-basics section again.

If we keep in our minds that the purpose of the bail system is to protect the presumption of innocence at the same time as we protect public safety.... I think that's the frame we're in. The trick in the legislation and in procedure is to figure out who to detain in that.

I guess I'm back to a lack of statistics. Can you tell me what we know about the number of people who are being detained before trial and how long they're being detained?

Mr. Matthew Taylor: Ms. Moore will look something up.

What we don't have is a breakdown of, for example, the percentage of people being detained in custody pretrial versus the percentage of people being detained in custody pre-sentencing. Some of the statistics that we have speak to both those ideas of detention. We can't parse out which of those are a remand, but we do have some limited datasets.

Mr. Randall Garrison: Could you give us some indication of magnitudes here? We see reports in the media about the large number of people, and the implication is that they're on remand. I appreciate the distinction you've made: that some are awaiting sentencing. Do we have any magnitude or percentage estimates of how many people? People who are detained before they're convicted do suffer. It has an impact on employment, both on whether they can go to work and on what their employers think about them. It has impacts on families, and it has impacts on things such as drug and alcohol treatment programs.

Mr. Matthew Taylor: Maybe I can give you one data point, and then we can undertake to provide additional data with regard to your question.

It's a statistic that we were provided by the Toronto police. It's in a report from 2022, and it's specific to firearms offences. According to the Toronto police, in terms of the data they're keeping, the percentage of individuals charged with a firearms offence who were granted bail decreased from 63% in 2019 to 58% in 2021. The percentage of individuals charged with a firearms offence who were rearrested for a criminal offence after being granted bail decreased from 44% in 2019 to 19% in 2021. It's very limited data.

Mr. Randall Garrison: It's helpful data.

Thank you.

The Chair: Thank you, Mr. Garrison.

Next we'll go to one more five-minute round, beginning with Mr. Brock and ending with Ms. Diab.

Mr. Larry Brock (Brantford—Brant, CPC): Thank you, Chair, and thank you to the witnesses.

I didn't think I was going to get a round, so this is an honour.

You obviously know my background. I'm not going to mention my background, because whenever I mention my background, I get my colleague Mr. Naqvi, who was my former boss, chiming in and adding his editorial.

I can inform you, sir and ma'am, that I come at this study with a completely different lens and a different perspective. Unlike my colleague and another prosecutor, Mr. Caputo, I spent a substantial amount of time—15 to 20 years—in bail court on a regular basis.

I want to know whether or not you agree with my assessment.

Prior to the release of Antic.... I don't know. Maybe the two of you weren't even lawyers at that point yet. I've been around for a long time. Prior to Antic, there was a general consensus that the overall pendulum with respect to serving the needs of the public, protecting the public and highlighting the protections under the charter for the accused was not balanced and that far too many people were being detained for really minor offences. There was a lack of focus in prosecutors around this country to argue for detention only on those serious cases that posed a risk, not only to a community's safety, but to that of the victim.

Antic tried to reinforce that the pendulum had shifted too far to the protection of society and the public. In my view, it moved that pendulum a little closer to the rights of the accused.

We then had Bill C-75, and we had another Supreme Court of Canada decision in Zora that reinforced those principles. Now we're left with this perception that the public has that this system we call the criminal justice system is not in balance.

Is that the theme? Is that a focus that you are hearing? Are you reading studies about this, and hearing experts and stakeholders talk about this? Is it a concern at the Department of Justice?

● (1725)

Mr. Matthew Taylor: Yes, I think it's a very good comment, Mr. Brock.

Let's start with the public concern.

When we see stories in the news of the tragic cases that we're all aware of and that motivated your decision to undertake this study, the public is going to be concerned. We understand that. The minister understands that. We're supporting the government in looking at solutions. That's why Minister Lametti has called the special meeting with his provincial counterparts.

The other thing we're hearing, and perhaps it's implicit in what you're saying, is that the bail system is fundamentally sound in that it provides clear grounds for detention that are well understood. However, there are concerns that perhaps, as you've said, the pendulum shifts one way or another way.

It is about trying to find that balance. It's not an easy thing to do.

Mr. Larry Brock: I'm going to stop you right there, because I have limited time. I thank you for that.

Do you share this belief?

I've talked with many judges—provincial court judges—and I've talked to many justices of the peace. We all acknowledge that the vast majority of JPs, for short, in Canada do not have a legal background. There's no requirement for them to have a legal background. However, both those JPs and judges feel that Bill C-75 really shackled their discretion. Bill C-75, in addition to the two Supreme Court of Canada decisions in Zora and Antic, has really forced them to consider release, regardless of the circumstances of the predicate offence, regardless of the criminal background and regardless of the number of "failed to attends" and the number of breaches. Default is the overriding principle.

Is that an issue for the department?

Mr. Matthew Taylor: Yes. In our opening remarks, we tried to speak to that point directly, which is that the Supreme Court cases you talked about and the reforms that were enacted in former Bill C-75 are principles that inform a process. They don't dictate an outcome. The outcome, in terms of detention versus release, is very clearly set out. You should be detained. A JP or a judge should deny bail if one of the three grounds has been established.

Mr. Larry Brock: There's always a fear of being appealed. JPs have those concerns. I'll be very blunt with you: Sometimes they err on the side of not being appealed. They release, pray and cross their fingers there are no consequences. However, we know that across this country, every day, there are significant, serious and fatal consequences based on decisions that JPs, provincial court judges and—in the most recent case—superior court judges make on bail reviews.

Is that correct?

Mr. Matthew Taylor: Yes.

Mr. Larry Brock: Yes, and I think—

The Chair: Mr. Brock, unfortunately we're out of time.

Ms. Diab, you have five minutes.

Ms. Lena Metlege Diab (Halifax West, Lib.): Thanks very much, Mr. Chair, and thanks to our witnesses.

It is an important study. Obviously, we're studying it. There's a lot of public concern in Canada, but there are also a lot of discrepancies in how different provinces and territories are using this. It makes absolute sense for us, as parliamentarians, to take a look at this. I think we are all in favour of this study. I appreciate it, because I didn't do criminal law. I appreciate the "Criminals 101". I did law school, but that was a long time ago.

I will start off with Bill C-75, which is where you ended with Mr. Brock, just now. It made certain reforms to the Criminal Code.

I know it's only been around for a couple of years, but my question to you is this: Can you tell us—continuing with your response—how it brought the law in line with Supreme Court of Canada jurisprudence? In your opinion and expertise, what has it done, and has there been enough time to assess it, since it's only been a couple of years?

● (1730)

Mrs. Chelsea Moore: As you may or may not be aware, bail provisions in the Criminal Code had not been comprehensively amended since the Bail Reform Act of 1972. There were a lot of inefficiencies in the bail system, with police release or the forms of release, so Bill C-75 tried to improve some of those inefficiencies in the bail process. One of the provisions enacted, as we discussed, was the "principle of restraint" under section 493.1. This requires judges and courts to "give primary consideration to the release...at the earliest...opportunity and on the least onerous [grounds]". They also have to consider the circumstances of indigenous accused in making any bail decision, as well as accused from marginalized populations.

There had been many calls for reform, and many studies done on inefficiencies in the bail system. The Standing Senate Committee on Legal and Constitutional Affairs did quite a comprehensive study on delays. They looked at the bail issue in their report, "Delaying Justice Is Denying Justice". They specifically recommended the Minister of Justice prioritize reducing the number of persons on remand across Canada. The principle of restraint responded directly to that recommendation. There were also calls for reform from the Steering Committee on Justice Efficiencies and Access to the Justice System, as well as in several reports conducted.

The bail amendments were significantly informed by Supreme Court of Canada jurisprudence as well. We talked about the decision in Antic, but there was a history of decisions made. In Antic, specifically—which was a unanimous decision of the Supreme Court—now Chief Justice Wagner wrote, in that decision, that there was "widespread inconsistency in the law of bail". He stated, "the bottom line [is] that remand populations and denial of bail have increased dramatically in the Charter era". You'll see some data in the Senate report with respect to the remand situation. They heard from a witness from Saskatchewan, who said the remand population went up 97% over several decades. That's quite significant.

I could refer you to the legislative background around Bill C-75, which is available online if you have questions about it.

With respect to the implementation of Bill C-75 reforms, these came into force in 2019. In particular, the bail reforms came into force nine months after that, I believe, so the implementation coincided with the beginning of the pandemic. As you know, there were many disruptions to the court system during the pandemic. Many jury trials were adjourned. Officials are continuing to find ways to look at the data in order to try to measure implementation efforts.

There are a number of ongoing research projects by officials from the research and statistics division at Justice Canada. If you'd like more information on those, I can certainly provide them.

Ms. Lena Metlege Diab: The data is an important point, and I think Mr. Garrison was trying to get that.

I can appreciate that you responded by saying there's data available, but it doesn't break down pretrial and pre-sentencing. I'm not sure why; perhaps you can tell us why.

However, the question is on data collected on the bail system. Can you tell us what is collected and what is publicly available?

Mr. Matthew Taylor: Further to what we committed to with Mr. Garrison—I know we don't have a lot of time—we'll provide you with a list of what we have.

We have limited data from seven jurisdictions. As Ms. Moore said earlier, the way it's collected is not consistent across jurisdictions, so we'll provide that to you along with an explanation of the methodology around it.

The Chair: Thank you very much.

I want to thank both of you. We have a lot of lawyers in the room—a few former AGs—so they have a lot of legal questions. I really appreciate your comprehensive and strong answers.

We'll suspend until our next witness comes on, so give it a couple of minutes.

● (1735)

_____(Pause)_____

● (1740)

The Chair: Welcome back.

I'd like to welcome our next witness, the commissioner of the Ontario Provincial Police, Thomas Carrique. We're glad to have the commissioner here with us.

You have five minutes, but you have the liberty to take another minute or two, since you're the only witness today. We'll have a round of questions right after.

It's over to you, Commissioner Carrique.

Commr Thomas Carrique (Commissioner, Ontario Provincial Police): Thank you, Mr. Chair and committee members.

I really appreciate the opportunity to speak about the concerns I have raised, and will continue to raise, over the preventable circumstances related to the murder of Ontario Provincial Police constable, Greg Pierzchala.

One of the individuals responsible for the death of Constable Pierzchala and charged with first-degree murder, Randall McKenzie, is a repeat violent offender who has been convicted of violent weapons-related offences. Despite showing a concerning pattern of non-compliance with previous weapons- and firearms-related prohibitions and other court-imposed conditions, he was released on bail while awaiting trial for additional violent weapons-related charges, including assaulting three victims—one of whom was a peace officer.

McKenzie has a violent past, with criminal convictions for armed robbery using a firearm, assault with a weapon, possession of a weapon and assault. He had been subjected to a five-year weapons prohibition in 2015, a 10-year weapons prohibition in 2016, and another 10-year weapons and lifetime firearm prohibition in 2018. At the time of Constable Pierzchala's death, he was under bail conditions prohibiting him from possessing a weapon and ammunition.

As noted by the Superior Court justice in the bail review decision releasing McKenzie from custody on June 27, 2022, McKenzie had a record of five previous convictions for failing to comply with court orders.

Despite all of this, he was released on bail, even though in the past, he had not complied with the conditions ordered, including discarding a GPS ankle-monitoring device that he was ordered to wear while under the supervision of a surety. This ultimately led to the murder of Constable Pierzchala.

Regrettably, incidents of repeat offenders with a violent history being granted judicial interim release and committing further violent criminal acts thereafter are not rare. In fact, in 2021 and 2022 the OPP charged 587 repeat violent offenders for failing to comply with bail conditions. Of these 587 individuals, 464 were involved in serious violent crimes while out on bail, and a shocking 56 of these crimes involved a firearm.

In many cases, incarceration is the only effective means by which to protect the public from repeat violent offenders. The public's right to be protected from these offenders must be given far greater weight than is currently the case when bail matters are considered.

Consistent with a 2008 resolution from the Canadian Association of Chiefs of Police, many police leaders throughout Canada are currently focused on enhancements to paragraph 515(10)(b) of the Criminal Code, which would result in conveying the will of law-abiding Canadians and compelling courts to consider factors that must be weighed against the release of an accused.

These factors include preventing the commission of a serious offence; the prior commission of a serious offence while on bail; the prior commission of an offence while using a weapon, in particular a firearm; and the extent of the number and frequency of previous convictions of the accused for serious offences, including persistent offending by the accused. These also include the nature and likelihood of any danger to the life or personal safety of any person or to the community that may be presented by the release of a person charged with an offence punishable by imprisonment for a term of 10 years or more.

I strongly believe that our officers, the very ones who protect our families, communities and Canadians alike, deserve to be safeguarded against repeat violent offenders who are charged with violent, weapons-related offences while those offenders are awaiting trial.

In closing, I would like to express my appreciation to the Standing Committee on Justice and Human Rights for this study. Together, with a commitment to actioning meaningful and responsible legislative change, we can and must expeditiously ensure that appropriate weight is given to public safety concerns when considering the interim release of a repeat violent offender, thereby improving the safety and security of Canada and Canadians.

Thank you. *Merci*. *Meegwetch*.

● (1745)

I welcome questions, Mr. Chair.

The Chair: Thank you, Commissioner.

We'll now go to our first round of questions, beginning with Mr. Brock for six minutes.

Mr. Larry Brock: Thank you, Chair.

Welcome, Commissioner. It's always a pleasure to have you attend at committee. I'm looking forward to your evidence. I'll get right to it.

Unfortunately, the most recent events have not only been tragic and disturbing but also in my view galvanized public opinion. This has galvanized police services. It has galvanized police services, police associations, police chiefs, advocacy groups and the Canadian public. There is a serious problem with the bail system here in Canada. Would you agree with me, sir, given your recent statements in the last few weeks?

You've been extremely critical of our bail system. Do you agree, Commissioner, that our system is broken?

Commr Thomas Carrique: I definitely feel that our system is in desperate need of some very meaningful change—change that will ensure that repeat violent offenders who have shown a propensity for using weapons against victims are held accountable and held in custody so they can't further victimize innocent community members and risk the lives of police officers. Change is needed.

Mr. Larry Brock: We clearly both agree that the vast majority of Canadians charged with criminal offences exercise—rightfully so—their constitutional rights to be presumed innocent and to be released on bail. This study is not about those individuals.

This study is about the individuals you just quoted in your statistics. I didn't do the math on a calculator, but by my count, we're talking about the 80% who are repeat offenders and the OPP is charging on a regular basis. Of that 80%, we have individuals who are using firearms.

Do you agree with me, sir, that firearms, not only in Ontario but across this country, have seen a considerable spike in terms of usage in the commission of crimes over the last several years?

● (1750)

Commr Thomas Carrique: I would absolutely agree with that statement. Day in and day out, my officers are seizing more firearms than we ever thought would be available in communities across this country.

Just three days ago, we had an offender who had been released on bail for possession of a firearm and who, within days of being released on bail, was arrested in the possession of numerous firearms yet again.

Mr. Larry Brock: Would you agree with me that a hundred per cent—or pretty close to a hundred per cent—of all criminals who freely use guns in the commission of an offence are those very same individuals who treat bail release papers as a piece of paper only, with no obligation to comply?

Commr Thomas Carrique: I would agree that we see a higher rate of violation of bail conditions for those who use firearms in the commission of violent offences.

Mr. Larry Brock: We both agree that the senseless murder of OPP officer Pierzchala did not have to happen and would not have happened if the system had worked as planned. Is that correct?

Commr Thomas Carrique: That is correct.

Mr. Larry Brock: There was a breakdown in terms of the decision that the justice made at the bail review stage.

There was a breakdown in the level of supervision that his own mother was providing to this individual.

This individual, you would agree with me, was released on the highest rung of that proverbial ladder that the Supreme Court of Canada references in Antic: house arrest, electronic monitoring, not possessing any weapons and not being out at all unless he is with his mother for court appearances and attendance at his lawyer's office.

You couldn't get a stronger release than what the justice released that individual on. Would you agree?

Commr Thomas Carrique: I would agree.

Mr. Larry Brock: Yet that very same individual disregarded everything the justice had said, including not attending his very first court date.

Commr Thomas Carrique: That is correct, sir.

Mr. Larry Brock: With the little amount of time that I have, I'm going to ask you specifically: What reforms and what amendments would you like this committee to consider, sir?

Commr Thomas Carrique: Thank you.

To expand the reference I made to paragraph 515(10)(b) in my opening statement, on those public safety considerations that need to be given due weight and consideration, I would like to see expansion of reverse onus provisions for firearm possession offences as they relate to repeat violent offenders or serious prolific offenders; a definition of "serious prolific offender" or "repeat violent offender"; codified public safety considerations before bail is granted; and greater surety accountability for those who take responsibility for those who have been released.

Mr. Larry Brock: Thank you.

Mr. Chair, I'm going to cede my last 30 seconds to my colleague.

Mr. Frank Caputo: Thank you, Commissioner, and I believe everybody on this committee sends their condolences on the loss of your fallen officer. It's people like you and people like him and all of you who keep us safe, so thank you.

Commissioner, I recently tabled Bill C-313. Have you had a chance to review that bill?

Commr Thomas Carrique: I have, sir, yes.

Mr. Frank Caputo: Are you able to provide any commentary on that to this committee in a few seconds, or on your position on it?

Commr Thomas Carrique: It is very consistent with the recommendations you have heard from me thus far before this committee, and very consistent with the recommendations I'm hearing from other police leaders right across this country.

Mr. Frank Caputo: Thank you.

The Chair: Thank you, Mr. Caputo and Mr. Brock.

We'll next go to Ms. Brière for six minutes.

● (1755)

[*Translation*]

Mrs. Élisabeth Brière (Sherbrooke, Lib.): Good afternoon, Mr. Carrique.

Allow me also to express my condolences to you following the death of your colleague. I also want to thank you for ensuring the safety of the people of Ontario.

I have listened to your comments. You talked about important and responsible changes. You answered questions asked by my colleague, Mr. Brock.

Could you elaborate on the important changes you are proposing?

[*English*]

Commr Thomas Carrique: Thank you.

The changes I am proposing you will find in my opening comments as they relate to codifying what needs to be given weight as public safety considerations: the expansion of reverse-onus provisions as they relate to firearm-related offences and repeat violent or serious prolific offenders, and greater surety accountability.

[*Translation*]

Mrs. Élisabeth Brière: Do you believe that it is out of a lack of information that judges sometimes make unfortunate decisions?

[*English*]

Commr Thomas Carrique: No, I don't believe it's as a result of a lack of information. I believe it is the interpretation of the legislation that is currently provided to them to work within, and I think there's an opportunity to modernize that legislation to ensure that appropriate weight is given to not only upholding the Canadian Victims Bill of Rights but ensuring public safety. There's definite direction that is required in legislation. As currently written, the legislation is, for the most case, being appropriately interpreted, but further direction needs to be codified.

[*Translation*]

Mrs. Élisabeth Brière: Do you have confidence in our judiciary and those who make decisions on parole?

[*English*]

Commr Thomas Carrique: I think every case has to be weighed on its own merits. I believe that there is reform that can take place that will assist those who are entrusted with those very difficult decisions, so that they have the appropriate legislation to assist them in making decisions that are in the best interests of public safety.

[*Translation*]

Mrs. Élisabeth Brière: You also know that the accused's release is the rule and detention is the exception.

Do you think that your proposed changes would somewhat counter the presumption of innocence and the constitutional right to be released while awaiting trial?

There are two components to my question: the presumption of innocence and the possibility of being released until trial.

[*English*]

Commr Thomas Carrique: That's a very important question.

I do believe in the presumption of innocence under the charter, and in being entitled to reasonable bail at the earliest opportunity and on the least onerous terms unless justified otherwise. However, reverse-onus requirements are absolutely essentially needed for repeat violent offenders who use weapons in the commission of violent offences. In those cases, the onus clearly should be on the accused to show why they ought not to be detained and that public safety is given the appropriate consideration and weight so that we don't see more violence in our communities at the hands of these offenders.

[*Translation*]

Mrs. Élisabeth Brière: Do you think that depending on the nature of the crime some people should not be incarcerated and instead benefit from rehabilitation in the community or a similar option to avoid recidivism?

We know that detention can be conducive to people committing crime after their release.

[*English*]

Commr Thomas Carrique: Absolutely. I believe in the principles of the charter and the principles on which bail is constructed. However, we are talking about a very select number of repeat violent offenders who have a criminal history of committing violent crimes and using firearms in the commission of those offences. My scope is very narrow, very responsible, very impactful and extremely essential to public safety.

[*Translation*]

Mrs. Élisabeth Brière: Thank you.

As far as public safety is concerned—something that concerns me deeply—what can we do to better protect the victims?

Obviously, you will tell me to keep people detained. However, what can we do in a broader sense?

● (1800)

[*English*]

Commr Thomas Carrique: I would not give a blanket answer on people in detention, save accepting the advice that I have already provided.

Repeat violent offenders are serious, prolific offenders who continue to victimize communities and who use weapons and firearms in the commission of an offence. Those offenders need to be detained in custody until they have had their trial.

[*Translation*]

Mrs. Élisabeth Brière: Perfect. Thank you.

[*English*]

The Chair: Thank you, Ms. Brière.

Next we'll go to Monsieur Fortin for six minutes.

[*Translation*]

Mr. Rhéal Fortin: Thank you, Mr. Chair.

Thank you, Mr. Carrique, for being here with us.

I also want to offer my condolences on the death of your colleague. These are things we hope never to have to experience in life.

As far as the matter of bail before us today in committee, I would like your opinion on the repercussions of certain other legislative moves.

I touched on it with the previous group of witnesses.

No so long ago, we adopted Bill C-5, which repeals minimum sentences for certain offences, including firearm related offences. We are talking about discharging a firearm with intent, which seems like a relatively serious crime to me, and for that type of offence, Bill C-5 provides that there is no longer a minimum sentence.

In your opinion, does such a decision by a legislator have an impact on a judge's assessment when it comes to releasing the accused on bail?

In your experience, will there be consideration for the fact that the crime the individual is accused of committing is possibly less serious since the legislator just repealed the minimum sentence for that very crime?

[*English*]

Commr Thomas Carrique: Thank you for expressing your condolences.

I don't know that I am qualified to speak to what a judge may take from those legislative changes, but as a police officer I can tell you that it sends a message that those offences are deemed less serious when minimum penalties are abolished. The minimum penalties send a strong message that these are among the most serious offences that require the most consequences and justice to ensure the protection of Canadians.

[*Translation*]

Mr. Rhéal Fortin: Likewise, Mr. Carrique, some prohibitions have been repealed. For example, some sentences can now be served in the community for offences where that was previously not possible.

These are called conditional sentences. They are sentences that individuals will serve in the community instead of in prison.

Some of these sentences could not previously be imposed for certain offences, but can now, including in cases of sexual assault. A person who commits a sexual assault offence can receive a conditional sentence.

Do you think that this is something that might be considered by the court?

For example, an individual is charged with sexual assault and there is a hearing for a conditional release. Is this not a way of saying that since sexual assault is now assigned a sentence that can be served in the community there is no need to detain the individual before his trial?

What is your opinion on that?

[*English*]

Commr Thomas Carrique: If I understand the question correctly, sir—please forgive me if I'm losing pieces of it—I believe that where the sentencing restricts a judge in what they can impose in terms of sentencing if the accused person is convicted, it will have an impact on decisions made related to bail and judicial interim release conditions.

[*Translation*]

Mr. Rhéal Fortin: Thank you.

You are a police officer. Using your experience as a police officer, I would like you to talk about the consequences of these decisions in the criminal world.

For example, are people going to take this type of offence less seriously? Are they potentially going to commit these offences more lightly than they would have when the legislator provided minimum sentences for this type of offence?

● (1805)

[*English*]

Commr Thomas Carrique: I can rely on the statistics that are available to us.

Between 2018 and the end of 2022, we saw a 72% increase in cases of serious violence involving accused persons reoffending while on release for previous serious offences. I think those statistics speak for themselves.

[*Translation*]

Mr. Rhéal Fortin: Okay.

You do have recommendations. Could you sum up in a few seconds what we should do immediately to eradicate this problem and ensure that dangerous criminals are not released?

[*English*]

Commr Thomas Carrique: I think we can very quickly make the legislative amendments that are required to expand on reverse onus provisions and to codify what public safety considerations need to be weighed when considering interim release. These are very straightforward. A number of private members' bills have been introduced. There are recommendations from the chiefs right across the country.

They are not wide-spanning changes that are required. They are very responsibly focused. I think they can be done very effectively and very immediately.

I will draw your attention to a 2008 resolution from the Canadian Association of Chiefs of Police, almost 15 years ago, that made these very similar basic recommendations. If we reflect on the amount of victimization that could have been prevented had somebody taken responsibility to make those changes 15 years ago, we could have saved a lot of victims and a lot of families a lot of heartache.

[*Translation*]

Mr. Rhéal Fortin: Thank you, Mr. Carrique.

[*English*]

The Chair: Thank you.

Next is Mr. Garrison for six minutes.

Mr. Randall Garrison: Thank you very much, Mr. Chair.

Thank you to the commissioner for being with us today.

I want to join my colleagues in expressing my condolences to the force for the loss of a member. I know, as a former police board member municipally, that any time the members suffer serious violence or death, it has a major impact on the force.

I wonder if you could say a little about how you feel this has impacted the OPP.

Commr Thomas Carrique: Thank you, sir, for expressing your condolences, and thank you for previously serving on a police services board.

It has dramatically impacted our members and Greg's family. Their lives are changed forever. We will have police officers who will never come back to work because they have been so dramatically impacted by this. We have others who will live in fear of every radio call and every traffic stop they make. We have their partners and their children living in fear every time they walk out the door to go to work.

These are not conditions that those we rely upon for the sanctity, safety and security of our communities should have to face. We, as officials, have the ability to make some meaningful change that will bring some peace to them, some resolve, and ensure that we have their best interest and safety in mind.

There's no other profession in which each and every day they risk not only their personal safety but also their psychological well-being, and the sanctity of their families, for our safety and well-being.

Mr. Randall Garrison: Thank you for making that clear to all of us.

I want to ask a question about the person who is charged with Constable Pierzchala's murder. I always make it a practice never to say the offender's name in public, because some of them seek that notoriety.

Do you believe the judge had full information on the previous misdeeds of this offender when the judge was making the bail decision?

Commr Thomas Carrique: Yes, I do.

Mr. Randall Garrison: In that case—and I appreciate that you said you're taking a narrow scope here—would the reverse onus of the conditions of bail have led to a different outcome of that bail hearing, in your opinion?

Commr Thomas Carrique: I think they very likely could have, not only the reverse onus conditions but the codified public safety considerations that need to be weighed against the other very meaningful circumstances that a judge or a justice must take into consideration. Codifying those public safety considerations would be very helpful, I believe, moving forward.

● (1810)

Mr. Randall Garrison: By that, do you mean having an explicit list in the Criminal Code of things that must be considered in terms of public safety?

Commr Thomas Carrique: Yes, sir.

Mr. Randall Garrison: You also spoke about a definition of a prolific violent offender. I think that's what you called it. Is that the second thing you're calling for? Would that mean specifying the number of offences and kinds of offences in the Criminal Code?

Commr Thomas Carrique: That's exactly what that would entail, sir, yes, specifying the types of offences and, in some cases, the number of offences that one would have previously been convicted of in order to be defined as a repeat violent offender or a serious prolific offender, deciding on one of those two definitions and what that definition would be.

Mr. Randall Garrison: I appreciate the very practical suggestions that you're making for the committee. Quite often we have lots of rhetoric but not so much on the practical end. Thank you for that.

Also, again, you said a very narrow scope, and I think it's important for us to keep in mind that there are—I don't know the exact number—probably somewhere between 50,000 and 70,000 people who achieve bail in Ontario in a given year. When you talk about 587, that's obviously too large a number, but, of the bail system as a whole, it's a very small number of the cases. Would you agree with that?

Commr Thomas Carrique: It is a small number of the cases, and I know there are many former Crown attorneys around this table, or a number anyways. We know it's a small number of offenders who commit the majority of violent offences, and it is those prolific offenders that we are focused on.

Mr. Randall Garrison: In my own community, we have a different concern, and that's about repeat and prolific non-violent offenders and their impact on, in particular, small business and public safety fears in downtown areas. I think that's a different issue, but I think it's one we also have to look at in this committee.

Could you give us some of your thoughts on that problem, which is a different problem but a real problem that we need to tackle?

Commr Thomas Carrique: It is a different problem, but it is a real problem and one that certainly is of great concern to us. There are fraud offences that victimize seniors' life savings—those types of very dramatic financial impacts to communities and to businesses—and I think it comes down to meaningful consequences and true rehabilitation.

That's something I would be hesitant to provide any meaningful and direct feedback on, but I would welcome an opportunity to sit down as part of a larger group and have some meaningful discussion on it, because I think there are some solutions that collectively we could contribute to.

Mr. Randall Garrison: Do you think the recent spike in random violence incidents, for instance, in the city of Toronto and on the transit system...? Do you think any of that could be related to the bail system? Have you seen evidence of that, or is that not the case?

Commr Thomas Carrique: I believe it could be related to the bail system.

I can't specifically relate to the violence on public transit, but the overall violence.... Chief Myron Demkiw of the Toronto Police Service would tell you that he has statistics that are absolutely alarming about the number of people who are released on bail who fit the definition of a repeat violent offender using a firearm in the commission of an offence, who then reoffend and reoffend and reoffend, up to three times; 17% of Toronto's homicides fit into that category.

Mr. Randall Garrison: Thank you very much, Mr. Chair.

The Chair: Thank you, Mr. Garrison.

We'll go to our next round, beginning with Mr. Van Popta for five minutes.

Mr. Tako Van Popta: Thank you, Chair, and thank you, Commissioner, for being with us here today.

I'm going to join with all my colleagues in expressing my condolences and the condolences of people in British Columbia for the tragic death of Constable Greg Pierzchala. You're outraged. We're all outraged by it. In British Columbia, it's also still fresh for us that Constable Shaelyn Yang of the RCMP was murdered while on active duty. It's heartbreaking.

It's an important study that we're undertaking on bail reform, and you were quoted as saying, “We as police chiefs, right across this country, are asking for a narrow, very narrow scope that deals with the most dangerous of offenders and will ensure the safety and security of police officers and citizens alike.”

I'm going to ask you—and I'm perhaps repeating a bit what Mr. Garrison was asking about—how you define “narrow, very narrow”.

Commr Thomas Carrique: I define “narrow” and “very narrow” by being very specific in relation to the types of offences and what would constitute a repeat violent offender. It is a distinct pattern of violent criminal behaviour that has led to criminal convictions before the courts, and evidence of convictions of having used weapons and/or firearms in the commission of those offences. That is how I would articulate a “narrow” scope that will have the greatest impact on public safety.

● (1815)

Mr. Tako Van Popta: That's good. Thank you.

Now, you've mentioned “repeat offenders”. Of course, this study is about bail reform, which is narrower than just the broader topic of repeat offenders. Is our study too narrow? Should we be talking about other issues that perhaps could be introduced to restrain or to reduce the occurrence of repeat offences?

Commr Thomas Carrique: I don't think your study is too narrow. My reason for that is that change is needed immediately. If you stop and talk to any police officer in any community across this country, they will tell you their top priority is to see bail reform. We owe it to each and every one of them; we owe it to victims of violence crime, and we owe it to victims of intimate partner violence to make these changes now.

My challenge to all of us would be to expand on that scope after those changes have been made. If you make your scope too large in this study, it will take too long to make that change, and the time for change is now.

Mr. Tako Van Popta: I understand, and I appreciate that. However, Greg Pierzchala was murdered by somebody who was out on bail for a previous firearms crime, whereas Constable Yang was murdered by a person who was not out on bail but in an environment where there was a lot of repeat crime. I appreciate what you're saying—let's narrow the focus, let's study this—but there's more work to be done.

Commr Thomas Carrique: Absolutely, there's more work to be done. It takes a holistic approach, which requires very detailed and critical-systems thinking. However, we cannot let that stand in the way of progress. We can't stop with these changes, but we need to start somewhere. I think this is a very appropriate and responsible place to start.

Mr. Tako Van Popta: I'm going to ask you a question about statistics. You shared some statistics with us.

I don't know if this is available, but I would like to know the impact that Bill C-75 had on policing work in Ontario and across the country. Bill C-75 has been with us now for about four years. I think it received royal assent in June 2019. It amended some of our bail rules.

Do we have statistics on what policing work was like before and after that date?

Commr Thomas Carrique: One of the statistics that I've already referenced would be a helpful context in looking at various bail reform initiatives in the province of Ontario. We identified that between 2018 and 2022 there was a 72% increase in violent crimes committed by serious, prolific or repeat violent offenders. I think we—

Mr. Tako Van Popta: Who were on bail?

Commr Thomas Carrique: Who were on bail, yes.

Mr. Tako Van Popta: That's good.

Thank you. I don't have any more questions.

The Chair: Thank you, Mr. Van Popta.

We'll next go to Ms. Dhillon for five minutes.

Ms. Anju Dhillon (Dorval—Lachine—LaSalle, Lib.): Thank you, Mr. Chair.

Thank you, Commissioner Carrique, for being here.

For us, as well, we were heartbroken when we saw the news about the officer being murdered in this manner. It's always tragic. It's very hurtful to see that, because police officers are out there protecting us, trying to keep our communities safe, and when this happens to a young man like that, it's heartbreaking. We offer our condolences as well.

I'd like to start with some of your testimony, your answers.

You spoke about having the interpretation of the legislation further codified, some direction. I know we're short on time, so everybody asks questions quickly. Perhaps you can elaborate as much as possible, please.

Thank you.

Commr Thomas Carrique: Certainly. Thank you for your condolences.

If you don't mind, I will take you back to some of the recommendations I cited in reference to paragraph 515(10)(b) of the Criminal Code.

We're actually identifying things that need to be given appropriate weight as they relate to public safety before considering the release or while considering the release of an offender. These include preventing the commission of a serious offence; the prior commission of a serious offence while out on bail; the prior commission of an offence while using a weapon, in particular a firearm; and the extent to which the number and frequency of any previous convictions of the accused for serious offences indicate a persistent, serious offending by the accused. Then, what is very important is the nature and likelihood of any danger to the life or personal safety of any person or danger to the community that may be presented by the release of a person charged with an offence punishable by imprisonment for a term of 10 years or more.

I think that type of codified instruction as to what ought to be or needs to be weighed would be extremely helpful in achieving public safety.

● (1820)

Ms. Anju Dhillon: Thank you for that.

Can you describe the responsibility of police forces during the bail hearing and their enforcement of the conditions?

Commr Thomas Carrique: We have an obligation to assist in the prosecution of an offender, which would include a bail hearing. We would work with the Crown attorney on making any met recommendations as they relate to conditions of release and/or are specific to secondary grounds to be considered upon release.

Once an offender is released, the police have the ability to check on compliance for bail conditions. These aren't always necessarily evident to the police. I'm visiting Ottawa today. If I were charged and released on bail, and I went back to Toronto, where I reside, the Toronto Police would have no idea that I'm residing in their community. There are no means by which to identify me, until they come into contact with me, as an offender residing in their community. There are initiatives on the way to ensure that information is shared.

One thing that is important to realize is that there is only one person responsible for abiding by conditions when on bail. That is the offender, who has entered into an undertaking with a justice.

There may be a second person, who is the surety. They have taken responsibility for their adherence to those conditions. Those sureties also need to be held accountable when they do not fulfill their obligations. It is extremely rare that any form of deposit is ever forfeited. There are professional sureties out there that are putting up monies without deposits for numerous offenders and not fulfilling their obligations. They are called “professional sureties” in the police world.

Ms. Anju Dhillon: In this vein, can I ask you about bail supervisors, please? Could you talk to us about their role?

Commr Thomas Carrique: Most police services have high-risk offender units or other units of that type. We call ours the “crime abatement strategy”, in which we do our best to identify offenders who are out on bail and pose the highest risk to the community. We'll do proactive compliance checks to ensure that they are complying with those conditions. When they are found not to be in compliance, the appropriate course would be to arrest them, if you can locate them.

I will highlight the case when Constable Pierzchala was killed. Mr. McKenzie cut off his GPS device. He was nowhere to be found. Where does a police officer even begin to look for somebody who does not want to be located and has disregarded a GPS monitoring device that was part of their conditions?

Extensive efforts were undertaken by two police services of jurisdiction, including taking out two warrants for the arrest of Mr. McKenzie. Prior to their being able to apprehend him, despite extensive efforts, he had the opportunity to murder my officer, because he was released from custody.

The Chair: Thank you, Ms. Dhillon.

Next, we'll go to Monsieur Fortin for two and a half minutes.

[*Translation*]

Mr. Rhéal Fortin: Thank you, Mr. Chair.

Mr. Carrique, I would like to briefly come back to a topic I touched on earlier.

In your opinion, is there a direct link between a conditional release, the repeal of certain minimum sentences and authorizing conditional sentences for crimes such as sexual assault, for example?

Is there a connection here? Does this complicate your work or increase the crime rate?

[*English*]

Commr Thomas Carrique: Without having looked statistically at the components other than bail release, I can't say conclusively, but I can tell you anecdotally that my professional opinion is yes.

[*Translation*]

Mr. Rhéal Fortin: Thank you, Mr. Carrique.

I have no other questions, Mr. Chair.

[*English*]

The Chair: Thank you, Monsieur Fortin.

We'll next go to Mr. Garrison for two and a half minutes.

● (1825)

Mr. Randall Garrison: Thank you, Mr. Chair.

It's always a difficult line of questioning to somebody who supervised an officer who died.

How have you found the response of people like us who you've been talking to? Do you feel like you're being heard in your demands for change?

Commr Thomas Carrique: Absolutely, I do. I think this is testament to the demands for change being heard.

This is the second standing committee that I have appeared before in the last two weeks. There was a provincial standing committee prior to this.

For the first time, to my knowledge, in the history of our country, we had all premiers unite in a single piece of correspondence to our Prime Minister, asking for bail reform.

I think Canadians, overwhelmingly, are supportive of the changes we are asking for. They overwhelmingly support our police and recognize how difficult a job they have. They know they need the proper judicial infrastructure in place to maintain their safety and security.

Mr. Randall Garrison: Thank you. I'm very glad to hear that.

Of course, you know that all parties here on the justice committee agreed that this was a problem that we needed to deal with and deal with quickly.

Thank you for being here tonight.

Commr Thomas Carrique: Thank you for the opportunity.

The Chair: Thank you, Mr. Garrison. That concludes our round.

I also want to express my condolences on your loss. For me personally, my brother-in-law is a police officer; my two best friends are police officers, and I grew up in a family with police officers all over. We can only imagine the pressure. We are all here together to figure out a way to make sure this doesn't ever happen again.

We thank you for your testimony and your very clear and concise opinion and message on this. Thank you.

That concludes the meeting. We are now adjourned.