



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

44th PARLIAMENT, 1st SESSION

Standing Committee on Justice and Human Rights

EVIDENCE

NUMBER 052

Monday, March 6, 2023

Chair: Mr. Randeep Sarai



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• (1545)

[English]

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

Welcome to meeting number 52 of the House of Commons Standing Committee on Justice and Human Rights. Pursuant to Standing Order 108 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'd like to make a few comments for the benefit of the witnesses and members. Actually, I'll pass on that, as I think that all who are online are experienced members and the witnesses here all know how to use the Zoom functions.

For the first hour, we have the Honourable David Lametti, Minister of Justice and Attorney General of Canada. With the minister, we also have, from the Department of Justice, Matthew Taylor, a frequent visitor here, general counsel and director, criminal law policy section.

We welcome you both and are glad to have you here.

Minister, you have 10 minutes, followed by questions. The floor is yours.

[Translation]

Mr. Rhéal Fortin (Rivière-du-Nord, BQ): Mr. Chair, can you please tell us whether the sound checks have been done?

[English]

The Chair: Yes, all the witnesses and members have done their sound tests.

[Translation]

Mr. Rhéal Fortin: Thank you, Mr. Chair. I can leave now. My job is done.

Some hon. members: Oh, oh!

Hon. David Lametti (Minister of Justice and Attorney General of Canada): Thank you, Mr. Chair.

Thank you, as well, Mr. Fortin, for checking to make sure the proceedings flow smoothly.

First, I would like to acknowledge that we are on the unceded territory of the Algonquin Anishinabe people.

I want to thank Matthew Taylor, who is with me today.

I appreciate this opportunity to speak to the bail system in Canada and potential reforms to the system. I realize that it's an important issue and that Canadians are concerned. Ensuring that the laws are fair and effective, and keep Canadians safe while respecting the Canadian Charter of Rights and Freedoms is, of course, a priority for our government.

[English]

First, I would like to express my condolences to the families of Constable Greg Pierzchala, Michael Finlay and Katie Nguyen Ngo, and to all the victims of the disturbing incidents of violence across the country that we have seen in recent months. Each of these incidents has been a personal tragedy and a blow to our communities.

I'm pleased to see this committee undertaking a review of all aspects of bail in Canada. Canadians deserve to be and deserve to feel safe. We all have a role to play in protecting our communities.

I believe our bail system is strong and sound, but we are always open to suggestions for improvements, both in terms of law reform and ways in which we might better support the administration of justice and our police officers. The provinces have a key role to play in this issue. We have already seen British Columbia step up, and I am encouraged to see that Ontario and Manitoba are also taking steps to improve their systems.

I am looking forward to meeting with Minister Mendicino and with our provincial and territorial counterparts this Friday to discuss bail reform and how we can all work together, collaboratively, to make Canadians feel safe. I plan to present what we are considering at the federal level, and I hope to hear from my counterparts what they intend to do in their spaces.

In terms of the federal role, I want to reassure Canadians and emphasize that the law already tells us that, if individuals pose a significant threat to public safety, they should not be released on bail. There are no quick or easy solutions. That is why, at my direction, we began working on this issue months ago, again in collaboration with our provincial and territorial counterparts, to find solutions that will ensure the long-term safety of our communities.

It's important to note that there's a data gap that risks clouding the issue. On the one hand, we've heard the opposition cite data that crime is up, particularly from people released on bail. On the other hand, data from the Toronto police shows that between 2019-21, there was a decrease, both in the percentage of individuals granted bail and in the number of people rearrested while on bail.

[*Translation*]

Our government is always looking for ways to improve public safety and the efficiency of our justice system, so I feel it necessary to correct the considerable misinformation that has been put out regarding former Bill C-75.

An act to amend the Criminal Code, the Youth Criminal Justice Act and other acts and to make consequential amendments to other acts, which emerged from Bill C-75, is the product of lengthy and extensive co-operation with the provinces and territories.

It codified the bail principles set out in binding Supreme Court of Canada rulings. I want to reiterate that the legislation did not make any fundamental changes to the bail system. It did not change the criteria under which an accused can be released by the court or the basic rules of the system. On the contrary, it created a reverse onus provision, making it harder for offenders to be granted bail when charged with certain offences, including intimate partner violence.

The claim that the recent tragic incidents we've seen in Canada are due to the statute arising from Bill C-75 is just plain false. The issue is a lot more complex than can be addressed in a single piece of legislation, and to say otherwise is overly simplistic.

Our government's thoughtful examination of the bail system is ongoing, and we continue to work co-operatively towards solutions that will protect our communities.

• (1550)

[*English*]

One measure that we are contemplating, which aligns with the request in the letter from the premiers, is to establish a reverse onus for additional offences. A reverse onus means that the accused will be denied bail unless they can prove to the court that their release would not pose a significant risk to public safety or undermine the public's confidence. This work is well under way.

I also want to note that there is already a reverse onus on a number of firearms offences, including where an accused who is subject to a weapons prohibition is charged with a firearms offence. However, it is worth considering carefully whether circumstances in which we impose a reverse onus should be expanded. I look forward to discussing this further with the provinces and territories later this week.

We've also heard calls from law enforcement for reform. I was pleased to have met with chiefs of police from across the country in February. I'm grateful for their recommendations based on their frontline experience.

Work is under way to develop legislative and non-legislative options to address the particular challenges of repeat violent offenders. I will also be raising these ideas with my colleagues on Friday.

[*Translation*]

We know that it will take more than a legislative reform to completely fix this problem.

Police need the necessary resources to monitor offenders who are out on bail and to arrest those who breach their release conditions. We have already provided significant funding and we are open to providing more where needed.

Also necessary are supports and services for mental health and addictions treatment. A social safety net is needed. The previous government cut social programs, and now we are seeing the very real and serious consequences of those cuts. Our government has made unprecedented investments in mental health, including \$5 billion for the provinces and territories to increase access to care.

[*English*]

I commend our partners in British Columbia for the action they took on bail in November as part of their safer communities action plan, and in Manitoba for funding new prosecutors to focus on serious firearms offences and violent crime.

I encourage all provinces to use the many existing tools at their disposal to ensure that bail laws are applied safely, fairly and effectively. I've already connected with a number of my counterparts on this issue, as well as with leadership from national indigenous organizations. I look forward to our continued discussions and collaboration.

Addressing the particular challenges posed by repeat violent offenders requires a comprehensive approach that crosses jurisdictions and levels of government. We will be acting at the federal level, and I hope that my provincial counterparts will be willing to do the same. The only way to solve this problem is by working together.

I'm hopeful that together we can build on months of joint work by federal and provincial officials and agree on a comprehensive plan forward.

[*Translation*]

We know there is no easy solution to such a complex problem. We strongly believe that we need to protect Canadians.

[English]

At the same time, we must ensure that any measures taken will not exacerbate the overrepresentation of indigenous peoples, Black or racialized Canadians in our jails. We must not further marginalize vulnerable people, including those struggling with mental health issues and addiction. It's a delicate balance, but one the government is committed to getting right.

Thank you.

The Chair: Thank you, Minister.

We will now go to our first round of questions. We will begin with Mr. Moore for six minutes.

Hon. Rob Moore (Fundy Royal, CPC): Thank you, Mr. Chair.

Thank you, Minister and Mr. Taylor, for being here with us for this important study.

Minister, before I begin on bail, quickly, when you were here three weeks ago, my colleague Mr. Brock asked you about the very important matter of a charter statement on Bill C-39, which deals with your government offering medical assistance in dying to individuals who are suffering from mental illness.

Do you have that charter statement completed yet? At the time you said we would have it very soon.

• (1555)

Mr. Gary Anandasangaree (Scarborough—Rouge Park, Lib.): On a point of order, Mr. Chair, I think the issue of relevance is important here. The minister is here to talk about bail reform. He will be back at a later time to discuss any other matters pertaining to his portfolio.

The Chair: I will ask Mr. Moore to direct his questions to pertain to bail reform and trial.

Although you do have some liberty within that, try to stay—

Hon. Rob Moore: Thank you, Chair. This is the first time the minister's been back since that last statement. The minister can handle himself. He's an experienced parliamentarian. That's my only question on that matter.

Minister, is the charter analysis completed on Bill C-39?

Hon. David Lametti: I'm not sure what happened there. I'll come back to you on that, Mr. Moore.

Hon. Rob Moore: Okay. It's important.

Minister, I want to make sure that we're on the same page. I know that at times we're going to disagree on the right approach.

On the issue around bail and some of the entirely preventable tragedies that have occurred by repeat offenders who are inappropriately out on bail, you have said that Canadians deserve to feel safe. My concern is that I think Canadians deserve more than that. They deserve to be safe to the greatest extent possible.

Do you agree with me that Canadians deserve not just to feel safe but, in this country, to be safe?

Hon. David Lametti: Certainly, I've been saying publicly—I've just said it now—that Canadians deserve to be safe.

Hon. Rob Moore: You said that they should feel safe.

Hon. David Lametti: No, I said both. I can requote myself if you want, Mr. Moore.

I've said that they deserve to be safe and to feel safe. Measures that we are taking and that we have taken do their very best to ensure that. I have committed to working with the provinces and with all of you around this table to bring any necessary changes to the federal part of the bail regime in order for Canadians be safe and feel safe.

Hon. Rob Moore: Minister, on that, we hear your government and you in question period on this matter talk about the provincial role. The provinces though.... We need to make sure that Canadians are under no illusion. The Criminal Code is the determinant on the law surrounding bail in this country. All 13 premiers—this is rare—have unanimously called on the Prime Minister to take urgent action to make meaningful changes to the Criminal Code to fix the current bail system, particularly concerning firearms offences.

My concern is that, when we say that we all have a role to play, I think the big role here is your government's and its willingness to say that some offenders, for the protection of Canadian society, need to be behind bars and not out reoffending while they're awaiting their trial. The case of Constable Pierzchala was a preventable tragedy.

Are you listening to what the 13 premiers have to say when they say that your government needs to fix the Criminal Code?

Hon. David Lametti: We're most definitely listening. Criminal Code changes are one option, Mr. Moore, as you know. As you know, there are a number of reverse onus offences already within the Criminal Code, including for a number of firearm offences. We've certainly heard the suggestion that we try to focus on repeat offenders. I'm open to suggestions on repeat violent offenders, as I've said in my remarks.

It is highly oversimplifying to say that it is simply changes to the Criminal Code that will solve this problem. There is a challenge in working with the provinces and police forces in the administration of the bail system as well. We are open to working with our provincial and territorial counterparts, as well as police forces across Canada, to make sure that we do a better job there too. Those areas largely fall within provincial jurisdiction. The point here is that we have to work together.

Hon. Rob Moore: Minister, in 2019 you described the bail reform bill, Bill C-75 as “an outstanding piece of legislation that goes a long way toward improving the efficiency, fairness and speed...of our criminal justice system.”

You mentioned some of the stats. If we believe Statistics Canada—and I do—violent crime was up and gang-related murders were up in that time. In the last five years, Ontario police have seen a 72% increase in cases of serious violence involving accused persons reoffending while on release for a previous serious offence.

Minister, they lay the blame at the feet of your government and Bill C-75, which has made it more difficult to keep individuals and repeat violent offenders behind bars while they're awaiting trial. Do you accept the criticism that's coming unanimously from every premier in this country? They say that the Criminal Code changes that your government brought in had a negative impact on public safety.

• (1600)

Hon. David Lametti: I don't accept that. Bill C-75 basically enshrined a number of Supreme Court of Canada decisions, which were already the law before that came into account. Bill C-75 added additional reverse onuses in the case of intimate partner violence, again helping victims in that regard.

The experts will tell you that the best thing in terms of helping the bail system is to help the overall efficiency of the criminal justice system. The primary function of Bill C-75 was to make the whole criminal justice system more efficient. It hasn't had time to do its work yet. We're still working. We've had a pandemic in the meantime.

It doesn't mean that Bill C-75 can't be improved. That's why we're here now. Fundamentally, it is a good piece of legislation. It made it harder to get bail and didn't change any of the fundamental underlying premises for bail that the Supreme Court had laid out.

The Chair: Thank you, Mr. Moore.

We'll go to Ms. Diab for six minutes.

Ms. Lena Metlege Diab (Halifax West, Lib.): Thank you very much, Mr. Chair.

Again, welcome to you, Minister, and to Mr. Taylor, as we embark on studying bail reform.

I want to wish you, the public safety minister, and all the provincial and territorial ministers the very best as all of you meet on Friday. I've heard that you are also going to be speaking about what we're dealing with here today.

In terms of my question for you, I agree that in reforming the bail system there are many bodies and actors responsible for that and we all have a role to play. I just want to ask you to reiterate, re-emphasize or reclarify the different bodies and actors responsible for maintaining an effective bail system here in Canada.

Hon. David Lametti: Thank you.

That's an important question. Mr. Moore got to part of it, but I'm glad that you have effectively finished the question.

Of course, the federal government has a role in the curation of the Criminal Code and in criminal prosecutions of other federal of-

fences that may not be in the Criminal Code, and certainly we have a role in other certain specified offences in the Criminal Code and the prosecution of all offences in the territories.

Federal Crowns do that, but the provincial and territorial governments are responsible for the administration of justice in the Canadian system, so the vast majority of criminal cases are dealt with by provincial Crowns and dealt with in provincial court systems. The provinces have, as well, the administration of the superior court system. There's a great deal of work that is done by the provinces.

Of course, the police have a role, because the police initially arrest and detain. An officer has discretion to detain. Again, public safety is the primary criteria there—flight risk, public safety and, as you know, making sure that everyone feels safe. If the police do detain, then it's a judge or a justice of the peace who will hear the bail hearing on more formal grounds.

There is a large role that a number of different actors play and, of course, police have to enforce the bail provisions and conditions once they're put into place. If there's a breach in those conditions, then of course the police come back into play again.

There is a great deal of work that needs to be done collectively, working together. The position that I have taken, along with Minister Mendicino and our government, is that we all have to work together to make the system work better at all levels—again, in order for Canadians to feel safe and in order for Canadians to be safe.

• (1605)

Ms. Lena Metlege Diab: Thank you for that, Minister.

You also spoke about a number of initiatives the provinces are taking.

In November, British Columbia told Crown prosecutors to begin asking judges to refuse bail for repeat violent offenders awaiting trial on new violence or gun-related charges. Can you tell us if any other provinces or territories have implemented the same policies?

As well, in your opinion, when you meet on Friday with the provincial and territorial ministers, what would you be telling them? What can provinces and territories do further to complement the federal government's action on bail?

Hon. David Lametti: Thank you. That's a great question.

I will be there primarily in listening mode. I've had some interaction with my provincial counterparts already, but certainly we want to hear what they think. British Columbia has taken an initiative with respect to repeat offenders. That's critically important. That's something they've raised from the beginning, going well back to October of 2022. They are focusing on repeat offenders within the bail system. That's something we can certainly take on. I mentioned Manitoba moving ahead with additional prosecutors, particularly for violent crime and weapons-related crime in their bail system. I know that Ontario is thinking of measures. I don't have all the details yet. Hopefully, we will get all of that.

One of the main things we need is better data. Certainly, something that I've spoken to my provincial counterparts about already is getting better data, particularly from police and from courts, to the extent that it's possible, in order to get a more accurate picture. Right now we have competing data. They don't always go in the same direction. It will help us on a policy level to get better data.

After that, working with the provinces, we also need to coordinate efforts. If in fact it's repeat offenders, if that's a place where we can make some changes to the federal Criminal Code to specify... I don't know whether it's a reverse onus or whether it's additional restrictions; we'll see. We're open to any good-faith idea here with respect to repeat offenders. As I said, a number of weapons offences are already covered by reverse-onus provisions. Are there other things that we might consider there? We'll see, but we'll work with the provinces and build on their experiences on the ground in the administration of justice.

Ms. Lena Metlege Diab: Thank you, Minister.

As an Atlantic Canadian, I'm curious to know whether you've heard from the Atlantic provinces.

Hon. David Lametti: I have spoken to my counterpart in Newfoundland and Labrador. I look forward to hearing from the rest on Friday.

The Chair: Thank you, Ms. Diab.

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

[*Translation*]

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

Thank you, Minister, for being here today. I heard you say that the administration of justice is the responsibility of the provinces and Quebec, and on that, I completely agree with you. Obviously, that includes the building of courthouses, the hiring of judges and staff, and the managing of roles.

Nevertheless, the law work to address the challenges of the bail system must go hand in hand with the utmost respect for existing rules and legislation, namely, the Criminal Code. Do you agree with me there?

Hon. David Lametti: Yes, absolutely. The federal government has that responsibility, but obviously it's not a responsibility that we carry out alone. As I mentioned, former Bill C-75 was the product of co-operation with the provinces and territories, and so was the bill we passed to amend the Criminal Code in relation to the rules of criminal procedure.

We are going to continue on that path. It's also important to consider the resources that the provinces have to do the work. Clearly, we are open—

• (1610)

Mr. Rhéal Fortin: My apologies for interrupting, Minister. I realize it's not polite, but you know how this works. We have a very limited amount of time.

I gather, then, that you agree with me: the provinces, including Quebec, and the territories must administer the justice system with the utmost respect for the Criminal Code and its provisions.

You said that former Bill C-75 was the product of co-operation with the provinces and territories. That's well and good, but it's still a federal responsibility. Your government introduced Bill C-75 and carries the weight of the Criminal Code in its entirety. I assume the code reflects what your government believes to be the best rules for administering criminal justice.

Am I wrong?

Hon. David Lametti: No, not at all. You're right, and as I said, we do not carry out that responsibility alone.

Mr. Rhéal Fortin: I understand, Minister, but we are here to discuss the bail conditions laid out in the Criminal Code.

Forgive me, but with all due respect, when you say that it's a shared responsibility, I wonder whether you aren't trying to avoid the question. The provinces and territories are the ones who administer the law. There are all the people whose job it is to do just that. Fine, but they merely apply the rules that you lay down, Minister.

That's why I think it's important to look at what those rules are. Today, we are discussing potential reforms to the bail system. Over the last little while, we have seen your government relax those rules, as illustrated by former Bill C-75, which became an Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts. The legislation introduced the principle of the least possible interference with freedom, whereby the judge must release the accused at the earliest opportunity, subject to certain conditions. All right.

Then, you did away with minimum sentences for a number of offences, including discharging a firearm with intent. With the minimum sentence being eliminated, accused came to the conclusion that lawmakers saw this crime as less serious.

The same goes for sexual assault, a crime for which conditional sentences are now permitted.

In my humble opinion—and correct me if I'm wrong—what all of that does is create a freer and less restrictive environment for individuals charged with criminal assault. Once you take all that into account, don't you think you should do the opposite? I mean restricting access to bail a bit more and expanding access only reluctantly. Don't you think you should bring back certain minimum sentences and conditional sentences to keep things from going off the rails as they have in recent months?

Hon. David Lametti: Thank you for your question.

I'm quite glad to have the opportunity to correct you.

Minimum sentences didn't work, actually. They were a total failure on the part of the Conservative government. Conditional sentences exist to address the overrepresentation of Black and indigenous people in the justice system. Serious crimes always deserve serious consequences, but in our system, we give judges some discretion in applying the law.

The principle whereby a person is presumed innocent until they are convicted does not come from An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts. That principle goes to the heart of the right to be presumed innocent for the purposes of bail, as per the Supreme Court. The purpose of the act was to provide a framework for common law and charter principles, as interpreted by the Supreme Court of Canada. It did not change the foundation of the bail regime or even the majority of bail rules.

• (1615)

Mr. Rhéal Fortin: Thank you, Minister.

[*English*]

The Chair: Thank you, Minister Lametti and Monsieur Fortin.

Mr. Garrison, you have six minutes.

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

Thank you to the minister for being here.

I've said before that I think we have three different levels of concern that we're talking about with the bail system. Obviously, we're talking about legitimate public concern about violent offenders who reoffend while on bail. We're also talking about a lot of low-level repeat offences, or what I call public order offences, that legitimately threaten some people's safety. The third one, which I don't think we talk about, is the overrepresentation of marginalized people, including indigenous people, in detention before trial. In six minutes, I can't ask you about all three. I think we'll get lots of other witnesses who can talk about how the lack of mental health programs and addiction programs causes a lot of the low-level public order offences, so I want to ask you about the other two.

In terms of your openness to creating more reverse-onus offences, one that strikes me that currently does not have reverse onus is the unlawful possession of a firearm, along with ammunition, that is restricted and prohibited. In common language, having a loaded prohibited or restricted gun in public is not a reverse-onus offence. Would the government be prepared to add that to the list of reverse onuses for bail?

Hon. David Lametti: Thank you for the question.

Certainly we'd be willing to consider that. We're going to meet with our provincial counterparts in good faith and see where we might make changes. Remember that we're working in the context of the charter. If everything has a reverse onus, it's quite likely that at some point we will pass a tipping point where the courts will not find favour because they will say the person's right to bail has been breached, but we're certainly willing to look at that in good faith.

Mr. Randall Garrison: The courts have upheld reverse onus in all the cases that have been tested so far, I believe.

Hon. David Lametti: That's right, but as I said, at some point we may reach a tipping point.

Mr. Randall Garrison: Okay.

At the other end of things, we do see the overrepresentation in detention of marginalized people, and I think sometimes people forget, first of all, that people are innocent and haven't been convicted of anything. Second, when they're in detention before trial, there are no programming options available to people generally. There's no counselling, no addiction programs. There's nothing while they're awaiting trial, and because of the ways in our system, that can take literally months and months.

I know this is not a solely federal responsibility, but I think we have a problem here of a lack of community-based bail supervision programs that would allow people to be out who shouldn't necessarily be in, to keep their employment, keep their housing and keep their custody of their children if they could have proper bail supervision. How does the federal government feel about that lack in many, especially rural and remote, communities?

Hon. David Lametti: Again, we're certainly willing to work with provincial and territorial governments to look at those kinds of options moving forward.

When I talk about the system, we need to be looking at all parts of the system. Most people incarcerated are actually awaiting trial. Those people are all legally innocent at that point. A number of them are not factually innocent, necessarily—we know that—but a large number are and a large number are legally innocent. We do have a responsibility to work to create that kind of programming.

Again, you're not supposed to get bail if you represent a flight risk, if you represent a threat to society, or there's some other reason that would bring the administration of justice into disrepute. Most people do not fall into that category. Therefore, we need to work together with the provinces and territories to ensure that we have a system that works, not just in terms of the bail parts themselves but also for the people who are awaiting trial who are within their communities, trying to keep them integrated in their communities in a way that's safe for everyone and productive moving forward.

Mr. Randall Garrison: One of the things that Bill C-75 did was try to establish a better link between conditions for bail and the actual offences.

One of the things we see quite often is that bail conditions lead to an offence because of that breach that brings people into the system ever more tightly each time this happens. Quite often still, abstinence from drugs or alcohol is listed as a condition for bail, and we know that people with addictions can't possibly meet that condition. How do you think we might be able to address that problem in that Bill C-75 started down that road?

Hon. David Lametti: I think we need to continue trying to implement Bill C-75. Part of Bill C-75 was precisely to make sure that bail conditions were linked to the goals that we had in the system of keeping Canadians safe and preventing recidivism. We need to continue in that light.

We also tried to make sure that the so-called administration of justice offences didn't become a reason for someone to enter into the revolving door of the bail system and the carceral system in a way that in no way protected the safety of people. It did have an impact on indigenous and other racialized Canadians in that regard.

It's going through with the reforms in Bill C-75 as the first step and then re-evaluating and seeing where we are.

• (1620)

Mr. Randall Garrison: Great. Thank you.

The Chair: Thank you, Mr. Garrison.

We'll go to the next round for five minutes with Mr. Caputo.

Mr. Frank Caputo (Kamloops—Thompson—Cariboo, CPC): Thank you, Mr. Chair.

Thank you, Minister, for being here. It's always a pleasure to have you here.

Do I have it right that your testimony before committee today is that you believe that Bill C-75 made it harder for people to get bail? Do I have that correct?

Hon. David Lametti: It framed a number of Supreme Court decisions that already existed, and it made it harder for people to get bail in cases of intimate partner violence.

Mr. Frank Caputo: Okay. Are you saying then that fewer people should have been getting bail based on Bill C-75? Is that your position?

Hon. David Lametti: No, in terms of serious offences, Bill C-75 didn't change anything. It made it harder for people in cases of intimate partner violence.

What Bill C-75 tried to do was.... In the case of administration of justice offences, like missing a bail hearing, those kinds of minor offences were meant to not be a larger point of entry into the criminal justice system.

Mr. Frank Caputo: Right, but when it comes to serious offences, we can agree that since Bill C-75 and in the last five or six years—seven or eight years, really—more people are getting out on bail for serious offences.

Would you agree with that?

Hon. David Lametti: There are contrary statistics. Toronto's police statistics from 2019 to 2021 are, I think, pretty accurate.

Mr. Frank Caputo: Okay, you did cite those. They're accurate, but there was also a pandemic at that point, Minister. Jails were overcrowded and people were worried about getting COVID in jails. We have to compare apples to apples here. If we're talking about a pandemic, that's a lot different.

Have any police officers told you it is easier to keep violent criminals detained? Has any police officer told you that in the last few years?

Hon. David Lametti: Again, there are countervailing statistics and countervailing narratives—

Mr. Frank Caputo: I'm not talking about statistics, Minister.

Hon. David Lametti: I have mentioned that I think an important priority is that we get better data. We're working with the provinces to get better data.

Mr. Frank Caputo: I'm asking about what's happening on the street. If you want to know what's happening, you ask the people who are impacted.

Are the police officers on the street telling you, the Minister of Justice, that it is now harder to get bail than it was five years ago?

Hon. David Lametti: I expect to hear a certain narrative from police officers, who do their jobs very well. There are other actors in the system who also give a countervailing narrative.

Mr. Frank Caputo: Minister, I'm not asking you about narratives. I'm asking you what police officers are telling you.

Are the people who put their lives on the line every day to keep us safe not telling you that it is too easy? People are getting bail who should be detained. Are they not telling you that?

Hon. David Lametti: We are listening to the police leadership across Canada. They have recommended a number of options.

They've also recommended some things—reverse onuses—that are already in the Criminal Code. We're very much listening, and we're working collaboratively to get to a solution.

Mr. Frank Caputo: Minister, here's the problem. Constable Pierzchala was killed on December 27. Before that, for months in the House of Commons, it was raised day after day that catch and release wasn't working. Then you come to the committee today and say that you're working on this.

I put together Bill C-313 in about two weeks after that. You have an army of lawyers behind you and policy advisers, yet you still haven't acted. I find that disheartening.

When it comes to Bill C-313, Minister, I know that you said you were prepared to work with me. Just for the record, I haven't received my invitation. Are you prepared to provide an invitation to opposition parties to work with you on this point?

Hon. David Lametti: Yes.

Let me answer the other part of your question, since you raised it. It is categorically wrong to say we have not been working on this. Since October, at the deputy minister level, we have been working with the provinces and territories on bail reform to look at what we might do.

Yes, Constable Pierzchala's death was a tragedy. It was a tragedy particularly because the offender was out on a bench warrant, so he had breached—

• (1625)

Mr. Frank Caputo: He was out on a bench warrant after a bail review. Let's not split hairs here. He was released by a judge.

Hon. David Lametti: Will you let me answer the question?

Mr. Frank Caputo: Well, no, we have to talk with facts.

Hon. David Lametti: Yes, there were a number of different hearings. He did materially breach the last order that he had, and it's sad that this tragedy happened.

Mr. Frank Caputo: It's more than sad.

Hon. David Lametti: It is categorically wrong, Mr. Caputo, to say that we have not been working on it. We have been working on it. We have been working on it with the provinces and territories. In fact, we're going to meet on Friday.

Mr. Frank Caputo: I have 30 seconds left, Minister. I will ask you this: When was the last time you personally sat in bail court to watch bail hearings take place, so you could see what was happening on the ground?

Hon. David Lametti: That's an irrelevant question.

Mr. Frank Caputo: No, it is completely relevant, Minister.

Hon. David Lametti: I currently have a role as a member of Parliament, as the Minister of Justice and as Attorney General. I have a number of different things that I have to do. I rely on the expertise of people within my department.

Mr. Frank Caputo: You're the Minister of Justice. You should be watching for yourself, sir.

Hon. David Lametti: I am watching very carefully, Mr. Caputo.

The Chair: Thank you, Mr. Caputo.

We now go to Madame Brière for five minutes.

[*Translation*]

Mrs. Élisabeth Brière (Sherbrooke, Lib.): Thank you, Mr. Chair.

Good afternoon, Minister. It's always a pleasure to have you here.

You were right when you said earlier that there was no easy answer to such a complex issue. I'm especially concerned about protecting victims and keeping them safe, as well as all Canadians.

I'd like to discuss a few aspects. First, can you tell us what former Bill C-75 did and how it brought the law in line with Supreme Court jurisprudence? Second, in response to an honourable member, you said it was important to remember that we were working in the context of the charter. Lastly, we haven't talked much about the presumption of innocence.

Hon. David Lametti: Thank you for your question.

As I said, Bill C-75 was the product of extensive co-operation between the federal government and the provinces and territories. We brought together the best ideas out there for reforming the criminal justice system, including the bail system. Thanks to the bill, we were able to establish the framework for a number of Supreme Court decisions relating to bail. In that sense, the bill did not alter the foundation—the architecture, if you will—of the system or the most important rules and regulations. What it did was provide clarity around the principles set out by the Supreme Court of Canada.

We also had to address the overrepresentation of indigenous and Black people in the justice system, especially in regard to minor offences. That includes administration of justice offences such as an individual missing a meeting or a hearing because of distance. We adjusted the requirements and conditions to match the real problems. The provinces and territories welcomed the reforms at the time.

Obviously, some of the situations that have been mentioned pose a challenge. We are prepared to take another look at the whole thing to see what we can do to make the legislation better.

Mrs. Élisabeth Brière: Thank you. What do you say to someone who argues that Bill C-75 weakened the bail system?

Hon. David Lametti: That is simply not true. As I said, we established a framework for the principles set out by the Supreme Court, especially for serious crimes involving firearms. The reverse onus already applied to those cases, and we applied it to intimate partner violence offences as well. For serious cases, it was hard for the accused to be granted bail before the reforms, and now it's even harder.

I think the legislation brought positive and worthwhile change. Now we are trying to figure out whether we can make it better.

• (1630)

Mrs. Élisabeth Brière: What is the government doing to address intimate partner violence and protect victims from violent partners?

Hon. David Lametti: Former Bill C-75 introduced a reverse onus provision to help victims and make it harder for accused to access bail.

We were looking into other options as well, so we also provided more clarity around certain definitions of sexual violence in former Bill C-51. In addition, through former Bill C-3, we ensured that judges would receive better training on how to deal with matters involving intimate partner violence and sexual assault.

We fully support victims all over the country through our programming, and we remain open to making further changes to address intimate partner violence. I know that one of the members here today put forward a bill on coercive control, and I announced publicly my support for the bill. It's also very important to define offences in a way that is understandable to the victims in those situations.

[English]

The Chair: Thank you.

[Translation]

Mrs. Élisabeth Brière: Thank you.

[English]

The Chair: Thank you, Madame Brière.

Next, we'll go to two two-and-a-half-minute rounds, beginning with Monsieur Fortin.

[Translation]

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

I have two and a half minutes, Minister.

First off, I fully support the principle of giving judges some latitude. I have confidence in our justice system. I'm very glad that we've already passed provisions to improve the training judges receive on various aspects. It's like apple pie. Who can be against that?

The fact remains, however, that Parliament is sending messages to the courts. In applying provisions of the law, judges rely on what lawmakers have said and written on the subject. You know as well as I do that judges have to interpret legislative instruments all the time.

As I said earlier, we are in an era when the government is relaxing certain rules. The passage of Bill C-5 brought with it the elimination of minimum sentences for serious crimes such as discharging a firearm with intent. Minimum sentences for sexual assault offences were also eliminated. The message that sends the courts is a bit counterproductive, in my eyes.

Don't you think it would be a good idea to reinstate minimum sentences for those offences? That could eliminate conditional sentencing and sentences served at home for accused in sexual assault cases, while giving judges the discretion to depart from mandatory minimum sentences in exceptional circumstances. Courts would have to explain what those exceptional circumstances were and

why the sentence departed from minimum sentencing principles. That would avoid conditional sentencing, reassure the public and send the courts a clear message: lawmakers take these offences very seriously.

Wouldn't that also improve things in relation to parole, helping judges gain a better understanding of the scope of the offences committed?

Hon. David Lametti: Thank you for your questions.

A judge is never required to hand down a minimum sentence. They can go to the other end of the spectrum. It's the same for—

Mr. Rhéal Fortin: A judge can't hand down anything less than a minimum sentence, Minister.

Hon. David Lametti: No, but they can go in the other direction.

Mr. Rhéal Fortin: Yes, but that's not what we are talking about.

Hon. David Lametti: No, but it needs to be understood.

Mr. Rhéal Fortin: I only have a few seconds left, Minister.

Hon. David Lametti: It's serious. The changes we made capture offences involving hunting weapons. There were no changes to offences involving prohibited weapons or organized crime. That message is crystal clear, and with Bill C-21, we are even increasing maximum sentences for firearms offences involving organized crime. It's only a small number of offences involving hunting weapons.

I think the message is pretty clear. Serious crimes deserve serious consequences, and that option is always available to judges.

• (1635)

[English]

The Chair: Thank you, Mr. Lametti.

Thank you, Monsieur Fortin.

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

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

I thank the minister for his expression of support for my private member's bill, Bill C-202, on coercive and controlling behaviour. I've also been working very closely with the member for Victoria, Laurel Collins. Our commitment, as New Democrats, is that we will get this bill before this Parliament soon, one way or the other. I thank you for mentioning that.

I want to return to the issue of bail hearings directly. One of the things I hear anecdotally is that, often, those who are asked to make the decisions don't have the full information in front of them. Section 518 of the Criminal Code allows prosecutors to present evidence about previous offences and other relevant circumstances, but it doesn't require presentation of that kind of evidence.

Again, one of the suggested reforms is that we amend the Criminal Code to require in every bail hearing that the judge has in front of them information about previous offences by the person who's seeking bail. Is that the kind of thing the government would be prepared to consider in reforming the bail system?

Hon. David Lametti: It certainly would be. Anything that helps a better decision to be taken, particularly when the security of the public is at risk.... Another thing that I'd also be interested in is whether there's a role for victims to play in the determination of bail in the evidence that's tendered.

Again, what we are trying to do is to keep an open mind to positive reforms that can be made in order to keep the public safe, to prevent recidivism and to protect victims and communities, but also to not incarcerate someone who doesn't present any of those risks to society.

Mr. Randall Garrison: Again, we have, certainly in my community, lots of anecdotal evidence about conditions still being imposed like a curfew, not being in certain parts of town or not associating with certain people, which sets conditions, in particular for those who are homeless or with mental health issues, that they can't possibly meet.

I have a staff member who was formerly a case support worker for someone whose mental health problems literally didn't allow them to tell time correctly, yet they were forced to report at a certain time every day. We still have those kinds of conditions being imposed, which lead to further involvement in the justice system.

Hon. David Lametti: The spirit of Bill C-75 is that those conditions should not be imposed. There shouldn't be anything there that is not in any way linked to the crime or those other standards like recidivism, public safety, etc.

We need to keep working at the *mise en oeuvre*, the implementation of the bill.

The Chair: Thank you, Mr. Garrison.

Thank you, Mr. Lametti and Mr. Taylor, for coming. Once again, it's always a pleasure to have you.

We'll now suspend for a minute or two while we get our next witnesses. I believe that one is online and two are in the back.

• (1635) _____ (Pause) _____

• (1640)

The Chair: We are back to continue the study on Canada's bail system.

I would like to welcome Chief Superintendent Sydney Lecky, commanding officer of G Division, Royal Canadian Mounted Police. I think you're joining us by video conference out of beautiful British Columbia. No, I'm sorry—you're in the Northwest Territories. That's my bad. I was a little excited that it was British Columbia, but that's E Division. You're G Division.

We have the chief of the Brantford Police Service, Robert Davis. Thank you for coming.

We also have the chief of the Six Nations Police Service, Darren Montour. Welcome.

We're all glad to have you here. You each have five minutes, followed by the usual round of questions.

I'll begin with Chief Superintendent Lecky, the commanding officer from the Northwest Territories.

Chief Superintendent Sydney Lecky (Commanding Officer, G Division, Royal Canadian Mounted Police): Thank you, good afternoon.

Thank you for the invitation to appear before this committee today along with my law enforcement colleagues as you study Canada's bail system.

I am Chief Superintendent Syd Lecky, a member of the Royal Canadian Mounted Police and commanding officer of G Division in the Northwest Territories. As a member of the Peskotomuhkati Nation, I would like to acknowledge that I join you today from Chief Drygeese territory of the Yellowknives Dene First Nation.

I have been in my current role since October 2022, prior to which I was the officer in charge of the Kamloops RCMP detachment with responsibility for policing services to the city of Kamloops but also a large rural area including three first nations communities.

The RCMP is supportive of a balanced approach to bail reform that considers community and officer safety, overrepresentation of racialized people in prisons and the rights of the accused to be presumed innocent until proven guilty. I am here today to share some of the impacts on our communities that highlight the need for bail reform to address not only public but the officer safety risks caused by releasing violent and repeat offenders in our communities on bail while awaiting trial.

The RCMP is all too familiar with the incidents and the risks chronic violent offenders can have to public and officer safety. In the past decade, the RCMP has seen the murder of Constable David Wynn and, more recently, Constable Shaelyn Yang by chronic violent offenders.

Information obtained from one of our 11 divisions that provide frontline policing found that of the 91 homicides in that division in the past three years, 48% of the individuals accused were subject to police- or court-imposed conditions.

Just over a week ago, a member was shot at during a police traffic stop and exchanged gunfire with the suspect. The accused had been released two weeks prior on a \$1,500 cash bail with a condition not to possess a weapon. The outstanding charges included violent crime and four firearms offences.

While not to diminish from the focus on violent crime, it is the effect of what is commonly referred to as low level or property crime that has been the most impactful to citizens in many of our communities.

Having met with mayors, first nations councils, business improvement associations and community groups, they express a feeling of lawlessness. They regularly question why offenders are being arrested and released multiple times only to reoffend. The term “catch and release” is often used to describe the cycle. The prevailing message is that what has been considered low-level crime for some is not for many who are victimized repeatedly. This is often at significant expense to the business community, which expresses anger and feels let down.

This repeated cycle of arrest and release has had a significant impact on many involved in the justice system, adding workloads to police, clerical staff and all participants who would handle the volumes of documentation that follow. Many of these policing costs are borne by the community.

I have also observed that the administration of justice charges that accompany repeat offenders are seldom prosecuted when recommended by police. These include breaches of undertaking, breaches of probation and failure to appear charges. These are key grounds allowed for in the Criminal Code to show cause for detention. In one city, 50% of failure to comply with undertaking charges have been stayed, withdrawn or dismissed in the past three years.

As highlighted in recommendations from different police associations, bail reform offers opportunities to consider tightening the rules on the use of sureties, expanding the use of reverse onus conditions for offenders and expanding the use of electronic monitoring where practical.

Under the police service agreements, the RCMP provides front-line policing for about 22% of Canada’s population in about 75% of Canada’s geographic land mass. This includes policing services for many of our indigenous communities. With this in mind, the RCMP would welcome a holistic, trauma-informed approach to bail reform. From experience, it is often our indigenous and marginalized community members who are most at risk from violent offenders, often in remote and isolated communities.

Thank you, and I look forward to your questions.

● (1645)

The Chair: Thank you, Chief Superintendent Lecky.

We'll go to Chief Robert Davis for five minutes.

Chief Robert A. Davis (Chief of Police, Brantford Police Service): Thank you very much for the opportunity to be here today on the very important topic of bail reform.

My name is Rob Davis. I'm the chief of police for the Brantford Police Service. I am very proud to be a Mohawk from the Six Nations of the Grand River. That's where I was raised.

Throughout my policing career, I have had the opportunity to serve in several police organizations across Ontario, in the far northwest, in the isolated communities of Nishnawbe Aski Nation. As well, my career has taken me to Alberta, where I served in the Lethbridge regional police service before I returned to Ontario. I was also seconded to the RCMP for five years. That took me across the country to train police leaders. Throughout my career, I have had a unique lens on how the justice system has rolled out in different provinces.

I have also consciously, in every move I have made, gone to positions where I could stay very involved with indigenous policing, whether it be on reserve or in an urban setting. I bring that experience here because, as we talk about bail reform, I have witnessed first-hand how Gladue considerations, which were initially to be used for sentencing, are now impacting the bail system and, I would say, to be quite candid, are being exploited. It's far too easy for an accused to claim that they have indigenous heritage and thereby be given consideration. I have also observed that in the bail system there is a lack of scrutiny on the sureties that are put forward, quite often, which has become problematic.

The events of Constable Greg Pierzchala's death are very tragic. In the earlier session, Mr. Caputo asked what the officers on the street were saying. I'm going to provide you with an example of what's happening. You can hear it from this officer.

On February 12 in Brantford, Ontario, the community I serve, our officers were sent to an innocuous call—somebody was passed out in a taxicab—at 4:45 in the morning. When they arrived, they woke up the individual. They identified the individual and found out that they were on a release order from January 12, 2023. The individual was to be in the residence at all times, with their surety, and they were blatantly violating it. When they were searched subsequent to the arrest, a loaded firearm was located in their pocket. It was fully loaded, with extra ammunition readily available. The person was held for bail. The latest update I have is that he has since been released.

What really sent chills up my spine was that this location was literally 35 kilometres from where Greg Pierzchala was killed. It would be a 20-minute drive—a 10-minute drive, with lights and sirens, if we were lucky. It's disgusting that this event happened 47 days after his death.

Commissioner Carrique has said that Greg's death was preventable, and here, 47 days later, my officers were responding to the call at 4:45 in the morning in a city that is a commuter town to the GTA. There are a lot of people up and mobile at that time of day, and here was somebody, whom the justice system allowed to be out on bail, carrying a firearm fully loaded. Let's not lose sight of the fact that their lengthy criminal history included numerous firearms offences, violence and a lifetime prohibition. The circumstances of this individual are eerily similar to the circumstances of McKenzie and Constable Pierzchala.

Mr. Caputo, you asked earlier what the police officers are saying: The system's broken. People like this are getting out on the street and are being released when being held for bail. As the police, we are doing our job—trying to do our job—and then, when we have them put before the courts for bail, to be held in custody, they are being repeatedly released.

What is also concerning is that the people see this. The citizens see this. The taxpayers of this country see this. They are losing faith in the system. I hear from citizens all the time that they are losing faith in the justice system. My biggest fear is that this may eventually lead to vigilantism, where people take measures into their own hands to feel safe.

I look forward to your questions.

• (1650)

The Chair: Thank you, Chief Davis.

Next we will go to Chief Darren Montour for five minutes.

Chief Darren Montour (Chief of Police, Six Nations Police Service): Thank you for the invitation to appear before this committee.

I echo a lot of what Chief Davis said, wholeheartedly. Chief Davis and I police together on the Six Nations territory. I grew up there. My whole career has been spent on Six Nations of the Grand River. I am Mohawk. I am of the wolf clan. I am very passionate about keeping my community safe. As Chief Davis and Mr. Caputo said, the system is broken.

I look at December 27, 2022, and the death of Greg Pierzchala. I didn't know that young man, but he policed with my junior officers. One of the officers working that day was my nephew. He had just started policing on the Six Nations of the Grand River territory. He worked his way up to become a police officer, from his teenage years. The son of our acting deputy chief was also working that day. It could have very easily been a Six Nations officer who lost his life that day in such tragic circumstances.

I'll go to the Gladue factors, as well. Don't get me wrong. Looking at the history of Gladue, it does work in certain circumstances. However, I'm going to quote here. For repeat violent offenders seeking bail, and in light of everything going on—speaking with Chief Davis about the latest individual released—Gladue factors are outweighing public safety. Going forward.... I hear that from my community and elected council members. They look at Gladue as the “get out of jail free” card.

I've said this to the media on a few occasions. In my opinion, race should not play a factor in the bail conditions of repeat violent

offenders. I'll pose a question: If Randall McKenzie were not indigenous, would he have been released that day? I don't know. I cannot answer for the justices involved, but in my opinion and seeing his criminal record.... He was to reside on Six Nations of the Grand River territory. His surety wasn't the utmost choice I would have made. Again, those decisions were beyond my control. My officers responded to calls when he tampered with his ankle bracelet, then was gone into the wind. The response time was 25 minutes. By the time we got there, he was gone.

Jump ahead to October, when he was again wanted by the Hamilton Police Service for other serious offences involving a firearm and a domestic. We checked and knocked on the door again at his surety's place in Ohsweken, on the territory. His mother advised us that she had not seen him since he cut his bracelet off in July 2022.

Jump ahead to December 27, and we have the shooting of Constable Pierzchala. To me, that really hit home, based on what I told you earlier about who was involved. I was on the ground that evening, geared up in my uniform and with my firearm. My fellow officers helped the OPP effect the arrest of this individual. It is heartfelt for me. It is close to home. I hope something changes.

As I said, Chief Davis and I are friends. I know a lot of members of the OPP and Haldimand County detachment are having a very emotional time right now. To me, that is totally warranted, because this has to change. Something has to be fixed.

Thank you.

• (1655)

The Chair: Thank you, Chief.

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

Mr. Larry Brock (Brantford—Brant, CPC): Thank you, Mr. Chair.

Thank you, Chief Davis, Chief Montour and Superintendent Lecky for your attendance today. This is an extremely important topic. We are trying to produce a report, so the House of Commons can effect change. It's near and dear to my heart, given my previous career.

I'm going to try to split my time as equitably as possible. I will start my time with you, Chief Davis.

We've heard from the Minister of Justice—also known as the Attorney General, or Canada's chief lawyer and prosecutor—who made, in my opinion, some pretty inflammatory comments that could only come from an academic. That's his background—academia. He taught law. He did not practise law in the trenches. We have a couple of prosecutors on this Conservative team right now. I want to separate theory and academia from reality.

Some topics, or some lines the minister has used, are as follows. He said that our bail system is sound and strong; that there's a law that already tells us that, if the accused is a threat to public safety, they should not be released on bail; that it's erroneous to attribute recent events such as the killing of the OPP officer to Bill C-75; that Bill C-75 made it harder to receive bail; and that individuals are not supposed to get bail if they fall within the enumerated classes under section 515 of a flight risk, a danger to the community and where the administration of justice will be brought into disrepute, known as the tertiary grounds.

That's theory. Let's talk about reality. What do you say?

• (1700)

Chief Robert A. Davis: Thank you, Mr. Brock.

The example I gave, I think, speaks volumes. Greg Pierzchala was killed on December 27. The individual in the example I gave had committed an offence, was held for bail on January 12, was released, violated his bail when the officers in Brantford dealt with him on February 12, had a lengthy record for violence and firearms and a conviction for manslaughter, but was out on bail. The reality is that it's not working.

The focus is on police officers now because of the death, and I get that. However, in this situation, this was a person passed out in a cab, so what about that poor cab driver who was out there trying to make a living and the risk to their safety and the average citizen's safety in this country?

Mr. Larry Brock: I'll say quickly that, in my previous career, I often heard it said that the accused know how to game the bail system. Can you elaborate on that in the context of the application of Gladue?

Chief Robert A. Davis: Quite candidly, people through their lawyers will shop for a justice of the peace who's going to be very lenient with respect to the Gladue considerations, and the minute someone identifies as indigenous, there's a very high likelihood they're going to be released with minimal conditions. You see this shopping quite regularly.

Mr. Larry Brock: I'll go over to you, Chief Montour. I don't know if this was attributable to you or to Chief Davis, but Gladue is being exploited. Please expand upon that from the perspective of the accused but more importantly from the perspective of the community.

Chief Darren Montour: From the perspective of the accused, as Chief Davis said in his opening statement, there's no requirement for these offenders to prove they are indigenous. They're taken at their word, and there are individuals—

Mr. Larry Brock: Can you elaborate on that, please? What does that mean, that they are just taken at their word?

Chief Darren Montour: They provide no proof that they are indigenous. They could have great-grandparents who are indigenous, and that factors into whether or not they receive bail based on the Gladue considerations. I have to ask how many generations after residential school factors into those people undergoing intergenerational trauma. Some people are using this as a crutch, and to me that hits home because of the people we deal with on the territory. We know our community. We know who grew up there. I know

practically all of the people my age. If I don't know someone, the younger generation does, yet we hear of these people explaining to justices of the peace, through their lawyers, of course, that they are indigenous.

I scratch my head and wonder why we are not asking for proof or asking them to provide some sort of background information on their ancestry.

Mr. Larry Brock: Thank you.

I'll turn it over to you for my time remaining, Superintendent Lecky. I was quite interested in your commentary with respect to the number of breached charges—undertaking, recognizance, breach of probation, failing to appear—key grounds that will allow any justice or judge to detain an individual. You cited that in one particular city 50% of those charges were being stayed, withdrawn or dismissed. What does that say? What kind of communicative piece is that giving to offenders across this country, but particularly in your jurisdiction?

C/Supt Sydney Lecky: Thank you for the question.

One of the frustrations that police officers have expressed in my time with the Association of Chiefs of Police, as have many other colleagues we work with, is that quite often the charges that are proposed, such as for failing to appear or for many breaches are either dealt away or stayed. It's very frustrating, because those are the very charges that are used to support holding and detaining a client in custody. It becomes that much more difficult to be able to proceed if you can't use some of the very grounds that we would use when all the other tools have been reduced and/or taken away. That's just another tool that's been made less effective, which means that offenders will not have that on their criminal records when judges or JPs look at those for consideration and bail. It exacerbates the problem of what we would consider the repeat offenders being released and rearrested.

• (1705)

Mr. Larry Brock: Thank you, Chair.

The Chair: Thank you, Mr. Brock.

Next we'll go over to Madame Brière for six minutes.

[*Translation*]

Mrs. Élisabeth Brière: Thank you, Mr. Chair.

[*English*]

I will ask my questions in French. Do you have the translation?

Okay.

[Translation]

Dear witnesses, I would like to start by extending my deepest sympathies following the loss of your colleagues. It must be difficult to work under such circumstances, and I thank you for all that you do.

Mr. Lecky, in your opening statement, you provided some statistics about one of the 11 divisions that are involved in frontline police services. Do you have any statistics concerning the other divisions?

[English]

C/Supt Sydney Lecky: Thank you for the question.

The short answer is that the RCMP is in the process of collecting and collating information as we speak. That information will be supplied to our public safety minister to assist him and the justice minister as they move forward in the bail reform process.

I don't have any others at this time.

[Translation]

Mrs. Élisabeth Brière: Alright, thank you.

Earlier, the minister stated that it was necessary to not only make legislative changes, but also to improve mental health supports and addiction programs.

Mr. Davis, can you talk about the effects of being held on remand on people who are suffering from mental illness or addiction?

[English]

Chief Robert A. Davis: Can you clarify the question? Is it the impact on the offender or for...? Can you clarify that, please?

[Translation]

Mrs. Élisabeth Brière: My question is about the person being held on remand.

Can you talk about the effects of remand on a person who is suffering from mental health or addiction issues?

[English]

Chief Robert A. Davis: A comment was made earlier that there is a lack of services available while people are being held in pretrial custody, and I would suggest that this is accurate. That's an accurate statement. It's also been my observation that, even if a person is convicted, there's still a shortage of services in the institutions. The impact on the offender is that they're still in crisis, if you will, having to deal with the addiction issue or the mental health issue.

Incarceration is not necessarily the answer. It has to be done on a case-by-case basis. We have to do the analysis on a case-by-case basis. That's where we have to always put public safety and the risk to the community.... That has to be paramount.

[Translation]

Mrs. Élisabeth Brière: Thank you very much.

Chief Montour, do you have anything to add?

[English]

Chief Darren Montour: I echo Chief Davis's comments.

We look at the mental health stability of a person upon arrest, if that's the case. If it's more stringent that they seek professional medical help for their mental health status, we ensure that they go for a mental health assessment first.

As far as the addiction issue goes, we arrest and we charge. I know first-hand from dealing with certain individuals that the addiction is still there. To me, this becomes a community initiative where agencies—I'm speaking specifically for Six Nations of the Grand River—have to work together.

Enforcement is one spoke in the wheel. We enforce the laws, charge accordingly and ensure the safety of the community, whereas social services, health, Six Nations mental health come into play here, having a community-type process where we can actually help those individuals. Obviously, they are in a crisis at the time we deal with them, and we want to ensure that the public is safe, for one thing, as well as those individuals.

As Chief Davis said, every situation is unique.

• (1710)

[Translation]

Mrs. Élisabeth Brière: Thank you, Mr. Montour.

Mr. Lecky, do you have any comments on the effects of incarceration, even if it is temporary, on people suffering from addiction or mental health issues?

[English]

C/Supt Sydney Lecky: I'm sorry but I don't quite understand the question.

[Translation]

Mrs. Élisabeth Brière: How is a person suffering from mental health issues or addiction impacted by being kept in custody?

[English]

C/Supt Sydney Lecky: Thank you for the question.

There is no question that the underlying issues that have led to bringing people into the police realm and the justice system have to be addressed. If we don't deal with the social issues, including mental health and whatever other circumstances people find themselves in, then clearly we're not getting to the root of the problem and we can expect that it will continue. Sometimes the advantage of being in custody for those people is that it's the only opportunity for them to get the treatment they deserve.

It's an unfortunate situation, but especially here in the Northwest Territories and the territories throughout the north there is a lack of adequate supports in some rural and isolated communities. While we try to solve some of our issues in the southern parts and in bigger cities, my goal is to make sure we don't forget that what may work in the south may not always work in some of the rural northern parts of provinces or certainly the territories.

The Chair: Thank you, Madame Brière.

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

[*Translation*]

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

Mr. Davis, Mr. Montour and Mr. Lecky, thank you.

The former Bill C-5 repealed a certain number of mandatory minimum sentences. In Quebec, people have invoked these changes to question the seriousness of the charges that they are accused of. This issue is front and centre for me as we talk about offenders being released on bail.

Moreover, you spoke about the fact that a number of people will use the Gladue principles to try and influence the sentence that they may receive, but also to be released on bail. Obviously, we are talking here about indigenous persons, but some other people may invoke the Gladue principles.

In your opinion, doesn't the combination of all these factors influence the work of the courts who look at all the evidence provided when a decision must be made concerning possible release on bail?

[*English*]

Chief Robert A. Davis: Absolutely. If I'm understanding the question correctly, you're asking whether having a scrutiny system in place, some sort of mechanism to scrutinize one's claim of being indigenous, would impact the courts. Absolutely it would be quite labour intensive, but I agree with Chief Montour's comments that there's nothing in place right now. To my earlier comment, once people identify they will compound that by shopping for a JP with a reputation for releasing people on Gladue considerations.

[*Translation*]

Mr. Rhéal Fortin: During certain trials, it has happened that the judge asks counsel to present their arguments and take into account the fact that legislators have repealed the pre-existing mandatory minimum sentence. During the sentencing hearing, the judge informs the lawyers that legislators have abolished the mandatory minimum sentence and asks for their views.

When we're talking about release on bail, is this still relevant? Aren't we finding ourselves in situations whereby the courts will say that because of a decision made by legislators, the act of discharging a firearm with intent is no longer punishable by a minimum sentence? Isn't there also an impact on the courts when it comes to making a decision regarding release on bail?

• (1715)

[*English*]

Chief Darren Montour: I think I understand your question, sir.

Looking at the way the courts work on bail and mandatory minimum sentences, as far as Gladue goes, we go to the bail first and they take into consideration the background of the person specifically if they are indigenous. Previous charges, criminal records and all of that play a role in whether or not release is going to be granted or in conditions where the person remains in custody.

As far as mandatory minimums go, from previous investigations I've been part of with mandatory minimums for firearms trafficking, say, there has to be some sort of deterrent. I know that as of late there have been conditional sentences imposed for firearms offences. I don't agree with that, because then we have a repeat of certain serious crimes involving a firearm, and we've both brought forth examples of individuals who committed crimes with firearms and violence in the past being released to commit the same sorts of offences on bail conditions going forward.

I hope that answers your question, sir.

[*Translation*]

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

Since you are both indigenous, if I have understood correctly, I will ask you this question.

Earlier, when I spoke about the former Bill C-5 which repealed minimum sentences, the minister stated that the government had done so because there were too many racialized or indigenous people in prisons.

We are obviously all sensitive to the fact and no one wants to have a discriminatory system. However, the statistics don't lie: it is true that proportionately, there are more indigenous than non-indigenous people in prison. I find myself asking why this is. Is it because the police are targeting these people too harshly? Is it because the judges are too strict? Is it because of a lack of services in the communities that could help these people?

As I am not indigenous, I've always had trouble understanding why this is so, but we are continuously being fed this argument and I would like to hear your point of view on the issue.

[*English*]

Chief Darren Montour: Thank you for the question, sir.

I agree that there is that overincarceration of indigenous and other marginalized peoples in custody, but to me that stems from a societal issue in the case of indigenous people, with the residential school system that was in place for over 100 years. I speak specifically about the Mohawk Institute in Brantford, which opened in 1831 and closed in 1970.

There is that intergenerational trauma that has been passed down. The language was lost. The traditions were lost. People forgot how to say "I love you". That's coming from survivors I have spoken with who were in the Mohawk Institute. That leads to addiction, poverty and lack of education, and then those affected by that turn to crime. It's sad to see, but we still have a responsibility to ensure the public safety of our communities, because 99% of the time the offender is indigenous and so is the victim.

The Chair: Thank you.

Thank you, Monsieur Fortin.

Next is Mr. Garrison for six minutes.

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

I'd particularly like to thank Chief Davis and Chief Montour for reminding us of the impact of incidents like murder of Constable Pierzchala on serving members and their families. I think it's important for all of us to remember that, while these may seem exceptional, they're not exceptional to those in the policing community. Thank you for that important reminder today.

I think most of us around the table have accepted that there's a need to tighten the bail system for certain people—that certain people get bail who should not. One of the things I've been looking at, certainly, is the question of reverse onus on possessing a loaded firearm, because currently that's not a reverse-onus offence for bail.

Chief Davis, you gave us the example of someone who was found passed out, had a loaded weapon and ended up getting bail after that. If we reverse the onus on section 95, it would make it much more difficult for people like that to get bail. Do you think that's one of the things we could do to help tighten this up?

• (1720)

Chief Robert A. Davis: Absolutely, yes. That's absolutely a consideration that needs to be taken seriously and implemented: to have that reverse onus.

Mr. Randall Garrison: Chief Montour, would you agree that this would make a real difference in the field if we made it a reverse onus for loaded firearms?

Chief Darren Montour: Yes, it would, because more and more we're seeing mainly those trafficking in illicit drugs possessing handguns. I grew up in a society where hunting was a way of life for indigenous people—long guns, rifles, shotguns. As of late, in the last year, maybe two years, every time our drug officers executed a search warrant under the Controlled Drugs and Substances Act, there was a loaded firearm there, and it was a handgun. They're easily hidden in the waistband of those who are accused.

I agree there should be a reverse onus on that section, because we don't need those individuals walking the streets in our communities with loaded firearms, especially if they're under the influence of drugs or alcohol.

Mr. Randall Garrison: I think a second very important point you raised today is the use of sureties. I don't like to personalize things, but if you'd asked my mother whether I should be out of jail, she'd make sure I didn't do anything wrong and her answer would have been yes.

I think the problem, certainly in my own community, is that we often lack any alternatives, so we don't have good, community-based bail supervision programs where a neutral party who was professionally trained could do bail supervision.

I'll start with Chief Superintendent Lecky. Do those kinds of bail supervision programs exist in the Northwest Territories?

I'll ask each of you to respond to that.

C/Supt Sydney Lecky: Thank you for the question.

They do exist, although not as often used as could be. When we talk about sureties, a financial surety, that can be a hardship for

some of the folks in our communities. When you have other people who will step up as sureties, that is one area where my colleagues and I have noticed and expressed that there are opportunities to improve and perhaps tighten up some of the rules. Currently there really is very little consequence when people don't comply while out on a surety. There are opportunities there to make that better, and that's certainly one of the areas, as noted in my opening comments, that is available and supported by all of our colleagues.

Mr. Randall Garrison: Chief Montour, in your case are those programs available and used?

Chief Darren Montour: In cases involving offenders from the Six Nations of the Grand River community, for those who are brought up for sureties, as the superintendent said, there's hardship. There's no cash deposit made. Some of those folks who are designated as sureties should not be.

There needs to be more consultation, mainly with the police service of jurisdiction.

Mr. Randall Garrison: Is there any kind of community-based bail supervision program available?

Chief Darren Montour: No. We don't have the manpower or resources to do that. I'll allude back to the commissioner's statement in the Ontario legislature. I feel, as Chief Davis does, that the onus is on the offender to ensure they're abiding by the conditions. They made that promise prior to being released. Society looks at police.... We're not babysitters.

Mr. Randall Garrison: However, in terms of public confidence I think we do see the public saying, "Nobody is looking." Even if the public understands police don't have the resources to do that and they don't have that expectation, I think certainly we're hearing from a lot of people that somebody should be.

Chief Davis.

Chief Robert A. Davis: Thank you.

Absolutely. What we've seen with the increased release of people on bail conditions is effectively a downloading to the police services of jurisdiction to become professional babysitters where there's a need.

If we want that true supervision, there needs to be an entity, a body, whether that is community-based or similar to the marshals in the United States. There needs to be some sort of body where that's their full-time job: enforcing compliance, checking on compliance and then, when there are violations to compliance, ensuring that the breach charges are laid.

Mr. Randall Garrison: Do you think that would help with public confidence in the bail system overall?

Chief Robert A. Davis: I believe it would, because right now society knows we can't be babysitters and we can't be everywhere at once. We have other competing demands that require us to respond.

• (1725)

Mr. Randall Garrison: Great. Thanks very much.

Thanks, Mr. Chair.

The Chair: Thank you, Mr. Garrison.

In the interest of time, we're going to condense the round a little bit. It will be Mr. Van Popta next, and these will be two- to three-minute rounds, if that's okay.

Mr. Tako Van Popta (Langley—Aldergrove, CPC): Thank you.

Thank you, gentlemen, for being here.

Chief Davis, Chief Montour and Chief Superintendent Lecky, we really appreciate the work that you and your colleagues are doing. Frontline work can be very dangerous. I'm thinking of Shaelyn Yang from the RCMP in Burnaby, which is close to where I live. I didn't know her personally, but I know of people who knew her or who trained with her, so it hits close to home.

Chief Davis, in your testimony you told us what it's like for police officers and people on the front line—about how dangerous and how demoralizing that work can be. However, you were quoted as saying—I think it was one of the local newspapers—that it's not the judges' fault; they're simply applying the Gladue rules.

Now I refer to the McKenzie case. This is the person who is now accused of murdering Pierzchala. The judge said, "I am confident the public would conclude that the current strict plan of house arrest, supervised by the accused's mother, with independent monitoring and counselling is a reasonable restraint on the accused's liberty until trial."

Clearly, in retrospect, that was a bad decision, but was the problem with the Gladue principles or with the way the judge applied those principles?

Chief Robert A. Davis: Respectfully, Chief Montour knows a lot more detail on this. I'm going to pass this over to him first, if you don't mind.

Mr. Tako Van Popta: That's fair enough. Let's go to Chief Montour then.

Chief Darren Montour: Thank you, sir.

It's kind of both. I've sat before Justice Arrell in his court before. He's a very competent judge.

As far as the Gladue factors, I know the Supreme Court has made this case law for sentencing, as well as for bail. It's quoted as "Aboriginal offenders" in the code.

I'll refer to my question in my opening statement: If Randall McKenzie was not an indigenous male, would he have been released from custody? I think not, based on his criminal history. He

had a robbery with a firearm conviction, where he assaulted the owner of a restaurant in Hagersville, who I know as well. He had other firearms offences. He assaulted a police officer in Hamilton and he committed other crimes involving firearms.

Again, I say that race should not factor into repeat serious offences such as that for those offenders who are committing those crimes.

Mr. Tako Van Popta: Thank you.

The Chair: Thank you, Mr. Van Popta.

Next we'll go to Mr. Zuberi for three minutes.

Mr. Sameer Zuberi (Pierrefonds—Dollard, Lib.): I'd like to thank all the witnesses for being here today. I want to share with you that I was in the military and served in uniform once upon a time, so I respect what you do and the challenges you must be facing on the ground.

I want to pick up on the line of questioning brought up by a colleague from the Bloc around the high levels of indigenous people in incarceration. We talked a little bit about the policing side. We touched upon the administration of justice and judges.

Where are judges at with respect to understanding who indigenous people are and the challenges they are facing, in particular around your domain when it comes to the administration of justice?

Chief Darren Montour: To me—and I'm not being detrimental to the justices when I say this—there needs to be more education on their part to understand specifically the community of Six Nations.

There are a couple of judges who sit in Brantford—Justice Edward and Justice Good—who are both of indigenous background and they understand it. I don't get called to the indigenous peoples court that is running in Brantford as much as I used to. I see that as a good thing. It's working.

For more serious offences, like I said earlier, the Gladue factors need to weigh less and public safety needs to be increased. That's our job. As you know from wearing a uniform as well, public safety is paramount. I've always said that. I've always said to Justice Edward—he and I have had some debates in the past—that offenders have the Gladue case law, but what do the indigenous victims have in this community?

• (1730)

Mr. Sameer Zuberi: I hear what you're saying around Gladue. I appreciate that generally these types of conversations are with jurists and those who are legally trained, but you do work within the justice system.

My understanding of Gladue is that it's not an automatic given that, just because somebody claims systemic discrimination—be they Black, indigenous or from other backgrounds—that Gladue principles will lead to a lighter sentence. Isn't there some sort of analysis and filter that should be done?

I know lawyers generally probably would dive deeply into this. From your understanding, wouldn't there be some level of analysis to see if it applies?

Chief Darren Montour: I know that once a conviction is imposed, the judge will order a Gladue report, where a Gladue writer will meet with the victim, the offender's family and the offender themselves to get the background.

Don't get me wrong. As I stated before, Gladue does work in certain cases. It does. I've seen it. There are people with addictions and mental health issues who have gone through the system and they're allotted time prior to being sentenced where they seek the help they need. It works.

Mr. Sameer Zuberi: I just wanted to ask if there would be some level of analysis—

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

I want to thank the witnesses. All of you are in law enforcement and first responders. We really admire your service and we take it very seriously. Thank you very much.

I have a bit of housekeeping for members. I think the travel budget we submitted regarding the trip has been given to everyone. I see a nice smile from Mr. Garrison and I'm always appreciative of that. I just want to see if you're okay with that.

The second one was the budget for the study on the bail system. It's the proposed budget for the study. Can I see some heads nodding to show we're okay with this? Thank you.

Thank you. We'll see you on Wednesday, I believe.

We're adjourned.

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