HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

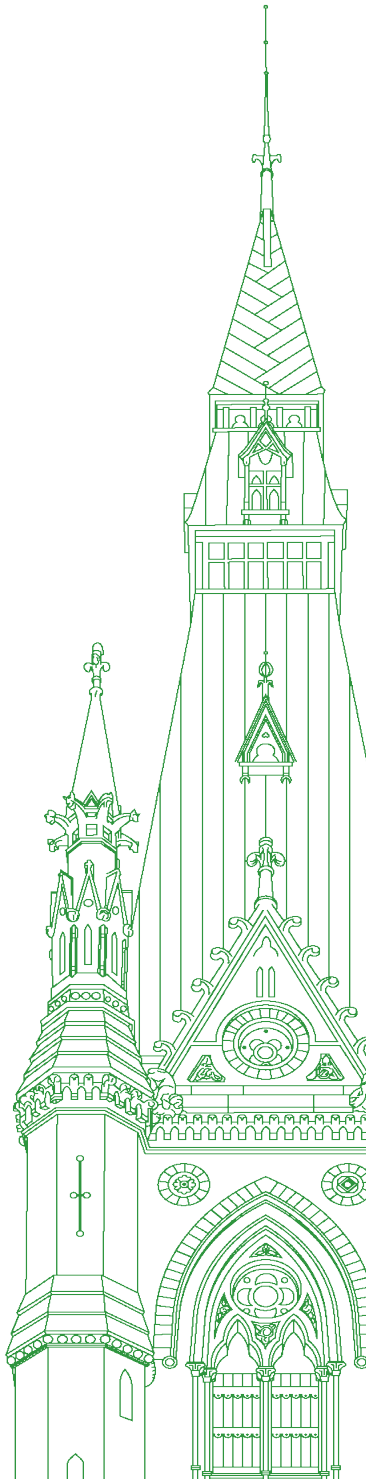
44th PARLIAMENT, 1st SESSION

Standing Committee on Justice and Human Rights

EVIDENCE

NUMBER 054

Monday, March 20, 2023



Chair: Mr. Randeep Sarai

Standing Committee on Justice and Human Rights

Monday, March 20, 2023

● (1535)

[*English*]

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

Welcome to meeting number 54 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'd like to make a few comments for the benefit of the witnesses and members.

Please wait until I recognize you before speaking. If you're on Zoom, please use the “raise hand” function, and the clerk and I will do our best to identify you and put you on the speaking order. For translation, those of you who are here can select floor, English or French. If you're on Zoom, please use the icon at the bottom and choose the same: floor, English or French. All comments are to be addressed to the chair.

I use queue cards. I don't like interrupting when you're down to 30 seconds, so I'll raise the yellow queue card. When you're out of time, it's the red card. I ask that you respect the time constraints.

I want to take a moment to say, on behalf of the justice committee.... I'd like to express my deepest condolences to the families, friends and colleagues of the Edmonton police officers, Constable Jordan and Constable Ryan, who lost their lives while serving in the line of duty. I know it means a lot to everyone. We need to remember them, and I thought I'd do that at the beginning of this meeting.

We are now resuming the study on Canada's bail system.

Appearing today are Tom Stamatakis, president, Canadian Police Association, and Boris Bytensky, treasurer, Criminal Lawyers' Association.

Welcome. I am told that, by the time both of you finish your opening remarks, the Honourable Bronwyn Eyre, Minister of Justice and Attorney General for the Government of Saskatchewan, should be here via Zoom. I believe she is in a committee, right now, and should be out shortly.

We'll begin with you, Mr. Stamatakis, for five minutes, with questions and answers after that. Thank you.

Mr. Tom Stamatakis (President, Canadian Police Association): Mr. Chair and members of the committee, thank you for inviting me to appear before you today on behalf of the almost 60,000 members of the Canadian Police Association. For those of you who might not be familiar, the CPA is Canada's largest law enforcement advocacy organization, with members serving in each of your ridings and representing local police associations from coast to coast to coast.

I want to extend my appreciation for your work in undertaking this important study, particularly as I appear here today less than a week after the horrible tragedy we recently witnessed in Edmonton with the murder of Constable Brett Ryan and Constable Travis Jordan, both with the Edmonton Police Service.

I will begin my remarks by generally agreeing with the previous testimony before your committee by our Minister of Justice, the Honourable David Lametti, where he expressed his confidence in Canada's justice system. Frontline police personnel play a crucial role in protecting the public and maintaining law and order. Our members have a unique and informed view of the many areas where our justice system works, as well as its occasional failings. From my perspective, it doesn't benefit anyone to pretend that there aren't exceptions within our existing system.

Unfortunately, some of those exceptions result in tragic circumstances, as was the case in September of last year when a dangerous individual murdered two people, including Toronto police constable Andrew Hong. The assailant had a lengthy criminal history and clearly continued to pose a serious threat to public safety despite being repeatedly released. Contrary to the belief of some, this wasn't an isolated incident. In fact, just three months later, Ontario Provincial Police constable Greg Pierzchala was shot and killed in Haldimand County by two attackers who also had lengthy criminal histories.

I don't raise these cases to try to armchair-quarterback past decisions but only to highlight the need for all partners in the justice system to come together to address the very specific problem that repeat violent offenders pose not just for police personnel but for all Canadians. We appreciate that bail reform is a complex issue, and we do not claim to have all the answers. We are, however, committed to working with the government, justice system stakeholders and community organizations to find solutions that are fair, effective and non-partisan. We have some specific suggestions that we would like to offer for your consideration.

Establish a specific definition of prolific or repeat violent offender to give Crown prosecutors, justices of the peace and judges a framework or a set of guidelines to work within when considering bail applications, particularly in situations where reverse onus provisions already exist.

Put stronger emphasis on obligations with sureties, and ensure that there are consequences for those who act as sureties, particularly when there is established evidence that they are aware of breaches of conditions taking place.

Increase resources both within the justice system, to provide for dedicated Crown prosecutors who are specifically trained to argue these particular cases and facilitate quicker access to trials for accused who are held without bail; and for police services across Canada, to target those offenders who are in breach of their conditions.

Increase the use of technology, particularly electronic monitoring of offenders on bail, to help maintain public safety in our communities.

Have better data collection to ensure that any policies that are developed are evidence-based and can be evaluated for effectiveness, and to better understand how frequently bail is breached.

I want to be absolutely clear here today that we're not asking for a tough-on-crime solution. As law enforcement officers, we're not asking for an approach that focuses solely on punitive measures. Instead, we ask for a more balanced approach that prioritizes prevention and rehabilitation as well. We believe bail reform could contribute to this approach by ensuring that those who pose the most significant risk to the public are kept in custody until their trials, while those who do not pose such a risk are granted bail with appropriate conditions where necessary.

The fact will always remain that bail is a fundamental right. The presumption of innocence is a cornerstone of our justice system. However, as law enforcement professionals, we are hopeful that this committee, as well as the government, can work collaboratively to identify potential evidence-based legislative and administrative changes to address the concerns that many of the witnesses who have appeared before your committee have outlined.

There are very few issues in Canada where there is consensus that includes every elected premier and provincial minister of justice and public safety as well as police personnel, police boards and police executives. This is certainly one of them.

I look forward to the outcome of the study. I'm certainly happy to take any questions you might have.

Again, thank you very much for the opportunity to appear before you today.

Thank you, Mr. Chair.

● (1540)

The Chair: Thank you.

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

Mr. Boris Bytensky (Treasurer, Criminal Lawyers' Association): Thank you, Chair.

Thank you to the members of the committee for inviting the Criminal Lawyers' Association and for having me address you on their behalf.

Our organization represents nearly 2,000 criminal lawyers in Ontario and, indeed, throughout Canada. Many of our members are on the front lines of bail courts every single day.

In addition to the work we do in bail court, criminal defence lawyers are typical, regular members of the communities in which we live. We join all of our neighbours in acknowledging the policemen and women who put their lives at risk to help this country thrive and to keep it safe. Tragedies like the deaths of Officer Grzegorz Pierzchala in December and, more recently, Constable Travis Jordan and Constable Brett Ryan in Edmonton remind all of us, including all criminal defence lawyers, of the enormous commitment all police officers make every day.

May one legacy of all of the police officers who are taken too soon from us be that they led our government officials, this committee included, to re-examine and produce a more just and fair system of bail, and not merely one that incarcerates more people who are presumptively innocent.

I've had the privilege over the last 20 years or so of litigating a number of leading cases in Ontario, Manitoba and at the Supreme Court of Canada regarding the issue of systemic bail court delays. I want to focus some of my remarks on that issue today, as it is an issue that I believe this committee can spend some time reviewing.

The position of the CLA can be summarized in a number of points. Others have spoken about the presumption of innocence, the ladder principle and the right to reasonable bail. In the interests of time, we won't repeat those principles, but of course we acknowledge them as the bedrock of our system of bail.

Legislative amendments to the Criminal Code are generally not required to address public safety or to help protect the public. All the tools are already in place to permit judicial officers to make appropriate bail decisions in every individual case, including decisions to detain those who pose an unacceptable risk to commit further violent crimes while on release.

Our judges are appointed following a rigorous selection process, and they are highly qualified to apply the legal principles as codified by legislation and explained by the Supreme Court of Canada. While some justices of the peace do not have legal training, many have become subject matter experts with respect to bail and have extensive experience in applying the law in this area.

Despite the expertise our jurists have, bad outcomes can still occur. This is not the result of bad laws but rather the simple fact that predicting future violence is very difficult. A standard of perfection can never be achieved, nor should it be the yardstick by which to measure whether or not our system of bail is working.

Bail courts in Canada are not lenient. I encourage everyone to recall the remarks of Dr. Nicole Myers, who testified before this committee on the last occasion and the statistics she cited in support of her proposition. It is not “easy” to get bail in Canada for serious offences.

The suggestion made by some to increase the number of offences that are subject to a reverse onus provision is not, in our view, likely to have any significant impact on any future case and will not help to better protect the public. Unlike some who trace this to the presumption of innocence, I simply rely on the de facto realistic outcome in bail court that everybody facing these types of charges—possession of handguns, for example—is already facing a de facto reverse onus situation, even though the law may not call it that. Every single lawyer who represents a client in bail court on these types of charges comes prepared to argue why their client should be released regardless of what the onus in the Criminal Code actually says.

We agree that estreatment of bail perhaps should be pursued more commonly than we see today. While we believe most sureties take their roles extremely seriously and do their best, there are some who do not, and the fact that estreatment proceedings have been rarely pursued, at least in Ontario during my professional career, may well make some believe that pledging their assets is a risk-free proposition. Estreatment provisions are already included in the Criminal Code. Having said that, it is critically important to ensure that any increased use of this power is paired with a commitment to only impose conditions that are truly necessary and to not overuse sureties: two very real problems of our current system.

Respectfully, it is our submission that the best way to actually protect public safety in the big picture and overall is to release more people on bail with fewer conditions and to do it more efficiently and quickly. While this may seem counterintuitive, for reasons explained by other witnesses before this committee, studies clearly show that short-term gains that are realized by keeping an individual in custody without bail are outweighed by the increased risk to public safety that will relate to the very same individual when he or she is eventually released.

● (1545)

If our system of bail and bail reform is evidence-based and not merely reactionary to 280-character posts on social media, we will prioritize longer-term gains to public safety over the shorter-term view.

Bail delays and the phenomenon of matters not being reached continue to plague bail courts throughout Canada. They are directly responsible for enormous harms caused to many people, not just to those accused but to their family members and those who would stand to be sureties. It also has a disproportionate impact on racialized and especially on indigenous communities.

I invite everybody to read the decision of Justice Martin of the Manitoba Queen's Bench—as it then was—in the Balfour and Young case, which is cited in the written submissions I have provided as part of my presentation. We encourage every member of the committee to note what happened in those cases and the real-life impacts that it has.

We have a very conservative approach to bail. Proceeding more efficiently and more quickly will allow judicial decision-makers to have more time to deal with the serious cases, to deal with them more appropriately, to deal with them more fairly and to deal with them based on better information in a more fair way.

At the end of the day, consequences from cases not being reached are very severe, and they have a tremendous effect on all cases, including the serious ones that will eventually be litigated.

● (1550)

The Chair: Mr. Bytensky, I'm going to have to stop you there. I'm sorry.

Mr. Boris Bytensky: Thank you very much, Mr. Chair. I'm sorry about that.

I welcome any questions.

The Chair: We'll begin the first round for six minutes.

I've been informed that Minister Eyre will not be able to come now, but we're going to try to have her at 4:30 for the next round.

We'll begin with Mr. Moore for six minutes.

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

Thank you to our witnesses who were able to join us today. We appreciate your testimony here and your taking the time to meet with us.

Mr. Stamatakis, we've heard and seen it over and over. We've listened to the calls from provincial attorneys general and provincial premiers unanimously calling for bail reform. You made an interesting point when you spoke about not wanting just a blanket, tough-on-crime approach but a targeted approach.

I think what is on everyone's mind—or should be on everyone's mind—are repeat, violent criminals who use guns and who have been able to quickly get bail repeatedly. Unfortunately and tragically, but also, I feel, preventively, they have committed crimes while on bail.

Can you expand on what a more targeted approach would look like?

We've heard from the Toronto police some alarming statistics about individuals who receive bail for a firearms offence and, while on bail, commit another firearms offence, and they received bail again for that offence. At some point, we need to draw a line for repeat, violent firearms offenders.

What would a targeted approach look like to you? If I may, what are some of the areas you would like us to focus on if we were to take a targeted approach?

Mr. Tom Stamatakis: Thank you for the question.

That's why one recommendation of ours is to somehow define what a repeat violent offender is and to create that framework that adjudicators presiding over these bail hearings can operate within, so we are addressing that specific concern.

I want to emphasize that we are talking about repeat violent offenders. We're not trying to suggest that we should take a blanket approach to anyone who's been charged with an offence in a bail proceeding.

I agree with my friend that underlying all of this.... That's why you'll see from my submissions that I'm careful not to use the term “bail reform” or point to one specific change that will resolve the problem. Underlying all of this, I think, is a resource challenge. It's a resource challenge in the courts and I think it's a resource challenge for the police when it comes to following up on people who are released on bail with conditions and then breach those conditions. It's not having the capacity track those individuals to make sure something's done about what they're doing in the community.

I think it's about defining what a repeat violent offender is. I think it's creating a framework around that, so we can give some guidance to justices of the peace or judges who are presiding over these bail hearings. It's about providing the resources so the Crown can properly prepare for these cases, so we are using the existing provisions more effectively and not releasing people like you described.

Every police service in most major cities across this country can provide you with those same kinds of examples. My home service is in Vancouver. I was having conversations in advance of this appearance. Vancouver can also provide you with a list of similar examples where people were released on bail, offended, were before a judge again, were released on bail and offended again. That's what we're trying to address.

● (1555)

Hon. Rob Moore: Thank you.

I want to delve into something you mentioned. It is this idea of.... Sometimes people reading the paper will see that the person's been released on bail and there are all these conditions. They take some comfort in the conditions that are set out in the release, but those conditions are only as good as the ability we have to enforce them.

Could you speak a bit to your experience or the experience of your association members when it comes to the resources to follow up on some of these bail conditions that we see?

From what we've seen and heard in the testimony of others, all too often there are not the resources to enforce those bail conditions.

Mr. Tom Stamatakis: There are not the resources. There is no police service right now that has the capacity to, in a meaningful way, track a violent offender released on bail to ensure they're complying with their conditions. To do that requires a significant allocation of resources and it has a significant impact on budgets. You're allocating resources you now can't use for some other important service you're providing to the community, or you're not responding to something else because you're reallocating resources.

It does happen, on occasion, that surveillance teams are assigned to track a particular offender when there's a significant risk to the community, but there are huge implications to that.

Hon. Rob Moore: Absolutely.

Thank you.

The Chair: Thank you, Mr. Moore.

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

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

Thank you to both of you for coming today to testify. I'd like to start with Mr. Bytensky.

My first question is regarding your testimony. You said bail courts are not lenient in Canada.

Can you provide us with some examples, please?

Mr. Boris Bytensky: I simply rely on the fact that, in Ontario, almost 77%, I believe, of the people who are in our provincial jails have not yet been convicted of any crime. They're people who either are waiting for bail hearings or have been denied bail.

Throughout Canada, that number is a little lower, but still it's close to 70%. I can tell you from years of on-the-ground experience.... I mean, I appreciate some of the statistics that have been cited by police forces throughout this committee, which seem to suggest something different, but that is not my experience and it's not the experience of most of our members.

People facing allegations of violating their bail and having committed another serious crime while on bail for a serious crime have a real uphill battle to obtain bail. We tend to overcondition. We have something in the range of eight conditions on average that we impose on an individual when he or she is granted bail. We overuse sureties—although they don't in Saskatchewan. You may ask the attorney general who's testifying after me about how they're so successful in avoiding that.

Generally speaking, we make it very difficult for people to get bail, notwithstanding some of the public dialogue on the subject.

Ms. Anju Dhillon: That's like what you just said.

We've heard a lot of testimony about repeat or violent offenders. Would you say that a lot of people who are preventatively incarcerated or detained—not given bail—are first-time offenders or mostly repeat offenders?

Mr. Boris Bytensky: It can be both. Certainly, some people charged with very serious crimes are not granted bail, even without a prior record. We can think of people accused of murder and other very serious crimes, who may be denied bail even without a prior record.

However, the reality is that people accused of crimes and who have a record or outstanding bail orders.... The Criminal Code provides that bail will be granted, unless there's a substantial likelihood of reoffending. Some people undoubtedly constitute a substantial likelihood of reoffending. They are mostly, and certainly should be, kept in custody without bail. I don't think any criminal lawyer suggests that everybody should be released on bail.

The standards are already in the Criminal Code. They don't require revision. It's a case-by-case application. When a person's liberty is at stake, we should trust our jurists to apply the law fairly.

Ms. Anju Dhillon: You spoke about racialized Canadians being detained or overincarcerated. Are they overincarcerated at the bail stage, or is it after they've been convicted? Are even first-time offenders still incarcerated for minor accusations?

● (1600)

Mr. Boris Bytensky: My understanding is that it's both. There are figures that.... Again, I believe Dr. Myers, who testified, had figures for you in this regard. Certainly, in my experience and in the cases I've done....

The Balfour and Young case is one I litigated in northern Manitoba. It dealt with mostly aboriginal defendants and was a very shocking and eye-opening experience regarding bail challenges. It was specifically about bail. I should say that was a situation where everybody in the system was doing their utmost, working very hard and in absolute good faith. However, there was such a significant under-resourcing issue that the impact, the inability to receive timely justice, mostly for indigenous accused, was felt throughout the community in a very disproportionate way.

Ms. Anju Dhillon: What would you say about limiting the judicial discretion to impose individualized bail conditions, from what you've seen and in your experience and practice?

Mr. Boris Bytensky: Every accused is different and every crime is different. There really isn't.... It's not easy to come up with one-size-fits-all justice.

We came up with guiding principles, which are likelihood or the confidence that a person will attend in court for their hearing, lack of substantial risk of reoffending and a general public confidence criterion, which judges can apply depending on the facts of the specific case, whether or not it's a strong Crown case, whether or not there are serious allegations, strong evidence and a host of other related factors. These are applied on an everyday basis by judges and justices of the peace, who are trained to do exactly that.

Ms. Anju Dhillon: Thank you for that.

Can you tell us about the impact on the judicial system when somebody who may be innocent is accused nonetheless and detained without bail? Can you talk to us a bit about that, please?

Mr. Boris Bytensky: Sure. When somebody is taken into custody, they will often face loss of job, relationship, children—if there's any kind of ongoing family law court proceeding—and housing.

One need do no more than read the Balfour and Young decision, which talks about some of the horrible consequences. In Balfour and Young, there were two defendants. The charges were stayed against one and the other was acquitted. This was a post-trial proceeding, which was just a “cost against the Crown” application. It was, in effect, a public inquiry conducted into the bail system in northern Manitoba after both accused were already finished with their trials. Neither of them was guilty. Both faced horrible consequences, as do many others when they're denied bail and the charges are ultimately withdrawn or when they're found not guilty.

Ms. Anju Dhillon: Thank you so much.

I think I'm out of time.

The Chair: Thank you, Ms. Dhillon.

Ms. Anju Dhillon: Thank you, Mr. Chair.

The Chair: That was perfect timing.

Next, we'll go to Ms. Normandin.

Welcome to the committee today, Ms. Normandin.

[*Translation*]

Ms. Christine Normandin (Saint-Jean, BQ): I'd like to thank both witnesses for being here.

Mr. Bytensky, I'd like to hear your comments on Mr. Stamatakis' proposal to come up with a definition for “repeat offender”. Would there really be any advantage to that, given that at every bail hearing, judges already have a list of the person's priors and current cases? That's also the only context in which reputation evidence can be heard.

[*English*]

Mr. Boris Bytensky: I don't know that it will change anything simply because of the fact that a reverse onus bail or a Crown onus bail in, let's say, a gun case really doesn't change the outcome. We'll have to prepare the same, and judges will more or less apply the same principles.

If you have somebody who does or doesn't meet a definition that we can establish, a judge or a justice of the peace will still know that person has a lengthy history of prior offending. However we come up with a definition, it's probably going to involve some degree of prior offending for violent crimes.

If you have a bail hearing involving that type of individual, most judges are going to take the risk of reoffence very seriously and you'll be hard-pressed to come up with bail for that person unless you have an excellent plan in place and can satisfy the court that the individual is not a substantial likelihood to reoffend. It doesn't matter, honestly, whether it's a Crown onus or a reverse onus because my job as a defence lawyer will be exactly the same and the submissions I'll make will be exactly the same.

Having a definition in place I don't think will solve anything, although it may help people in the public understand a little bit about how judges do their work, which does have a benefit in terms of public awareness. I'm not sure it will have a benefit for public safety.

● (1605)

[*Translation*]

Ms. Christine Normandin: You talked about delays in getting bail hearings. How long is the delay in Ontario right now?

[*English*]

Mr. Boris Bytensky: Unfortunately, one of the real problems we have throughout Canada is gathering data that's reliable. Data has been notoriously poor, but I can tell you from the cases that I've litigated, only, and some of the cases we know of. We have two cases in Ontario. I did one and it was a 24-day delay. We have the Simonelli decision, where criminal organization charges were stayed for approximately about the same. I think it was a 23-day delay in getting bail hearings.

Another case that I did was an eight-day delay in getting bail hearings, and just so it's clear, it's not people who are adjourning their matters because they aren't ready. It's for people who come to court ready to proceed, and the court says, sorry, we don't have time. In the Manitoba cases, such as in Balfour and Young, you had delays in the six-week range in some cases, which are not uncommon.

It is absolutely typical to be unable to proceed on the day that you want to proceed. I'm not talking about the serious gun case. I'm talking about the regular, routine case. In most jurisdictions in Ontario that I'm aware of, it's a real challenge to get a same-day bail hearing if you're ready to go. You're often told to come back the next day, and even 24 hours in custody for those individuals is a very big price to pay, which is why one of the suggestions we made that you might consider is some form of interim bail provision, which is totally out-of-the-box thinking but it would help even the playing field if it were ever adopted.

[*Translation*]

Ms. Christine Normandin: I imagine there must be more habeus corpus applications in connection with that, given the steady increase in delays in getting bail hearings.

Thanks to the former Bill C-75, police officers have more flexibility in terms of release. Is this tool being used properly? Professor Myers recommended that police officers be given more resources to make better use of it. That would also take some pressure off the justice system.

I'd like to hear your thoughts on this.

[*English*]

Mr. Tom Stamatakis: From my perspective, police officers are using that tool. We are exercising those authorities more frequently now than ever before, but we're talking about a type of offender who's different from what I've made submissions on. I accept my friend's submissions with respect to being careful not to create situations where people lose their jobs or that have a significant impact, but that's not what I'm talking about here. We're talking about repeat violent offenders who have demonstrated over and over again that they have no regard for public safety, whether we're talking about police officers or Canadians, and they're being released. We need to do something different.

I'm not going to sit here and suggest that I have all the answers, but if we came up with a definition, for example, maybe we could deal with the issue that comes up out of Bill C-75, for example, where for administration of justice offences there is no record for that. A judge, in fact, dealing with a person who repeatedly breaches conditions may not know that person has repeatedly done that over and over again. I don't know.

All I'm saying is let's create some kind of better guidance for the people who are dealing with these difficult cases so that we are targeting the right people, those repeat violent offenders, not someone who has made a mistake or has not demonstrated a complete disregard for public safety or the rule of law in this country. That's the point I'm making.

Can we come up with something, for example, where a judge would be informed with respect to the impact on victims and those kinds of things? I can give many examples. We've talked about the police officers who were killed in the last number of months, but how about the police officers who were shot? How about the co-workers who are affected? How about the dispatcher or the communications operator who is never going to come back to work because of feelings of guilt, and all of the other ramifications of dealing with those issues.

It's not just with respect to police. What about those people who are dispatching when citizens are killed or seriously harmed? There is a huge impact, and we have to get ahead of it somehow.

The Chair: Thank you.

Next, we'll go to our six-minute round with Mr. Garrison.

You have six minutes.

● (1610)

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

Thank you very much to both witnesses for being here today.

I want to start with Mr. Stamatakis.

I have to say, you must have become the longest-serving president of your association in its history by now. I don't know if that's true or not, but I certainly appreciate all the time you've devoted to advocacy on public safety issues.

I think your suggestion on guidelines is very interesting. I wonder how you envision that working, since guidelines aren't normally legislated. Who would do that? Would we end up with 13 different sets of guidelines? How do you envision that working?

Mr. Tom Stamatakis: I'm not suggesting it would be easy. I realize that the federal government has a role and that provinces also have a role. That's one of the challenges in this country, generally speaking. My friend here alluded to it in terms of data collection, so that we can better understand the scope of the issue and what the issues are.

We see it right across the whole criminal justice space but also the policing space, in terms of how we collect data nationally that can better inform what we do, whether it's in a policing context or whether it's in the context of the criminal justice system and how we're prosecuting and managing bail hearings, for example.

I don't think it's going to be easy, but I think we can get together and somehow come up with something that will help address what I see as a gap, a shortcoming, for a very specific type of offender. I'm not talking about a broad-brush “let's treat everybody this way”. I'm talking about people who are wreaking havoc in our communities and where there's a real cost.

Mr. Randall Garrison: Would you see, perhaps, having federal and provincial ministers sit down together to write a standard or a model definition that could then be applied in each jurisdiction after that?

Mr. Tom Stamatakis: It could certainly be something that could flow from our federal, provincial and territorial ministers' meetings. They meet regularly. They do come up with policy direction from those meetings. People smarter than I am could come up with some kind of a legislative amendment.

This is something that we can do, whether it's with respect to what I suggested around creating a definition or it's using the existing provisions around sureties and making sure that there is a consequence so that it's not a free pass, particularly where they know these breaches are occurring. I think it's a combination of things. There's not just one simple solution to this problem.

Mr. Randall Garrison: You've raised, once again, the question of monitoring conditions for those who are on bail. I accept your argument about resources. As a former police board member myself, I know that police never have resources for this.

Are there other alternatives that we could and should be using to supervise those who have conditions placed on their bail? Are those widely available?

Mr. Tom Stamatakis: Absolutely. Electronic monitoring is an area in which I think we could do a better job. Electronic monitoring is used differently by different provinces, with varying degrees of success. There's lots of technology out there that we can now utilize better to track and to ensure that people are complying with conditions when they are released on bail. That's one area for sure.

We can do a lot of education, for example, around...and I'm just spitballing here because you asked me the question. We have Crime Stoppers right across the country. We could do a lot of education around better reporting when people who are released on bail breach a condition.

There are a number of things that can be done to better educate the public, which my friend suggested as well. They would all have a positive effect in terms of making sure that people who should be on bail are on bail, and that those who shouldn't be aren't.

Mr. Randall Garrison: I'll turn to Mr. Bytensky on the same topic.

One of the things that happen in Ontario is community-based bail supervision programs. What's your experience with those? Are those helpful in getting more people released?

Mr. Boris Bytensky: They're outstanding, but they're limited in terms of the number of places that offer them and the number of people they can supervise. With declining budgets, there are fewer and fewer people who qualify. The eligibility criteria become tougher and tougher to meet.

The short answer is that they're wonderfully successful. The track records of these programs are very strong. They would be very useful. If I can make one point from an economic perspective, it would be how we fund the resources. I agree that the resources are a major problem.

In Ontario, approximately 7,500 people, give or take, right now are in pretrial custody. If we were to reduce that number by 25%, we could save about $150 million a year. That money could be reallocated to community-based programs that would help people stay out of the life of crime to begin with or, even if you want to ignore that aspect of it, you could dedicate that money to increasing police budgets for supervising bail or for doing all sorts of things.

We can put people in the community for a lot less money than we can put them in jail. The money that we would save by helping decarcerate our pretrial detention facilities could be used either for bettering the community or for supervising people on bail, or both. We would still come out many millions of dollars ahead.

● (1615)

Mr. Randall Garrison: In your presentation you talked about the longer-term public safety benefits from having more people released earlier with fewer conditions. Could you expand on that point?

Mr. Boris Bytensky: Sure. Jail is highly criminogenic. You spend a day in jail and you're going come out worse off than the day before you went in. You're going to become “hardened”, to use a word that may not fit everybody.

Anybody who spend six months in jail without bail is not going to commit a crime for those six months, but they're going to come out of it more dangerous than they were when they went in. As a result of that, as an overall society, we don't measure public safety only for the six-month period in time when one person is jailed for a set of charges. When that person's experience or journey through the criminal justice system ends, somebody else's begins.

Overall, if we talk about public safety and protecting lives, we will save more lives by giving more people community-based release plans than by incarcerating them and making them more dangerous to begin with...than any gains we realized from keeping that person behind bars for six months.

The Chair: Thank you, Mr. Garrison.

We'll now go to our next round of five minutes, beginning with Mr. Caputo.

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

Thank you, Mr. Stamatakis, for your service and for appearing today.

Thank you, Mr. Bytensky. As a one-time defence lawyer, I know it's not always the most popular seat to be in. You probably get a lot of commentary. I do appreciate the fact that you're prepared to take the time here to tell us where you stand and your views.

Mr. Bytensky, I want to talk about something we haven't talked at all about here in committee. It's the principle of bail review. If you want to look at the Constable Pierzchala case, my understanding was that it was actually a bail review, although I haven't referred to it.

I'm going to summarize, and you can tell me if I'm accurate. You'll initially have a bail hearing when somebody comes into custody and the Crown seeks that person's detention. That has to happen by law, absent some nuanced circumstances. It's suppose to happen within 24 hours. Is that accurate?

Mr. Boris Bytensky: That's one of the main areas I spoke about. Yes, you're right. It doesn't happen nearly as often as it should.

Mr. Frank Caputo: Legally, it should happen. Sometimes there might be a remand for disclosure. In British Columbia, that was the case in what you were talking about, which I think everybody would agree is an unsatisfactory case, where there's not enough court time to deal with it. You have 20 cases on the docket. Twelve get heard and eight get bumped to tomorrow. It's something that happens, because I assume, in Ontario, adjournments are built into the estimate. Do you get what I mean by that? We assume the cases will collapse.

Mr. Boris Bytensky: I actually think that adjournments happen because we have a culture of adjournment in Ontario. People default to adjournment for all sorts of reasons. It's a complex issue, but ultimately it's a failure of the state to provide the resources to have timely bail hearings to the people who want them.

Mr. Frank Caputo: The system as a whole.... We heard in the Jordan decision about that culture of complacency, which I believe Jordan was.... It's many years old now, but from what you're saying, this still exists.

Let's say somebody has been denied bail by a judge. That means they have been detained pending trial. One thing we haven't really discussed here is how section 525 of the Criminal Code operates. Correct me if I'm wrong here: A person who is detained on a summary conviction offence is automatically reviewed at 30 days of detention. A person who is alleged to have committed an indictable offence is automatically reviewed at 90 days. There is a positive obligation on the jailer and the Crown to bring this forward.

Do I have that correct?

Mr. Boris Bytensky: Yes, it doesn't happen in my experience correctly in the summary conviction arena. We don't do a very good job of keeping those timelines in place. It definitely does happen and really is as a result of the Myers decision by the Supreme Court of Canada for indictable offences. It is common to convene bail proceedings, or at least bring them before the court, for those charged with indictable offences after 90 days.

● (1620)

Mr. Frank Caputo: Myers really changed this, because in the past, people would have to, in my experience anyway, go to great pains to get their matter scheduled. There's probably been a fifty-fold increase since Myers on these section 525 bail reviews.

Would you agree?

Mr. Boris Bytensky: Yes.

Mr. Frank Caputo: When we're talking about bail and the issues of bail, I suppose the bail hearing is really the first step. The whole point that Myers pointed out, and this is going back a while since I've read the case, is that the whole point of section 525 is that people don't languish in pretrial custody.

Do you share that sentiment?

Mr. Boris Bytensky: That's the philosophy behind Myers, to make sure we haven't forgotten about you while you're in jail and that your case is moving through system. That's the backbone of that 525 power.

Mr. Frank Caputo: Right, and any reasonable defence lawyer is going to get a transcript of the initial bail hearing and they're going to look at the reasons for detention. Part of your job is to advocate for your client, so you're going to look at that and say, “Where were the deficiencies in the bail plan?” Is that accurate?

Mr. Boris Bytensky: To be perfectly candid, if there are deficiencies in the original decision, I don't need to wait for a 525 hearing. I can bring my own bail review, and I won't wait for a 525 hearing to be convened. To be perfectly blunt, 525 hearings are not regularly used to review and change bail outcomes.

Mr. Frank Caputo: When I said “deficiencies”, I meant deficiencies in the application, as in the accused didn't have a treatment that.... A lot of the time, when somebody does do a 525 hearing, their bail plan is much more beefed up. Is that accurate?

Mr. Boris Bytensky: No, because 525 hearings are not properly funded by legal aid almost entirely throughout Canada, and lawyers don't have the resources in most cases, or detained people don't have the resources, to put together great plans. The better plans come through the defence-initiated 520 bail reviews that the defence can bring at any time. I think that's when the better plan comes to fruition. It's not so much in the 525.

Mr. Frank Caputo: That's interesting. To clarify....

Am I out of time? I'm sorry.

The Chair: Thank you, Mr. Caputo.

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

Mr. Yasir Naqvi (Ottawa Centre, Lib.): Thank you very much, Chair.

Thank you to both of you. It's a very important discussion, and it's fascinating to have your respective perspectives on this.

I'll start with you, Mr. Bytensky. I take it that you practice here in Ontario, so obviously your views will be based on your experience here in this province.

Do you have a sense of whether the bail system is lenient or not properly functioning—let's just say that—from your perspective? How would you define or classify the current bail system?

Mr. Boris Bytensky: I think the bail system can do a lot to do better. I'm trying to find the right words to say it politely. In many ways, the bail system is broken, but not in the way that I think much of the public thinks it is. It's not broken because dangerous criminals continue to get bail. That may be something that people have a legitimate right to complain about, but, in my respectful view, the bail system's broken because it can't get timely bail hearings to most people who want to have timely bail hearings. They sit in jail waiting for their day in court and can't get one because we don't have the necessary resources to provide them that. That is a significant failure of the bail system in my view.

Can we be more lenient? Yes. Should we release people without sureties more often, at least in Ontario? Yes. We can do a lot better in some smaller ways, but timeliness of bail proceedings is an incredible black eye in my view. It's not just an Ontario problem. It's a problem throughout the country, whether it's the 24-hour hearings that were the subject of the Supreme Court's commentary in the late 1990s from Newfoundland and Labrador or the same problem continuing in Alberta and more recently in Manitoba and Ontario. I can't speak for every province and territory, but my understanding is that it really hasn't been fixed anywhere.

Mr. Yasir Naqvi: The challenge you're highlighting—and I think you've said this before—is a challenge around resources, and that's around the administration of justice, which is a provincial domain rather than a federal responsibility. I'm hearing that the issue is more how quickly a bail hearing can take place versus the actual decision that comes out of a bail hearing.

Mr. Boris Bytensky: Yes. They're tied together, though, because what happens today—and it happens almost always in Crown onus offences—is that a prosecutor will say to an accused, with a complete absence of a balance of power, "We will agree to bail on the following terms," and they will ask for a series of conditions that the accused is asked to agree to in order to be released that day. An accused faces the choice of staying in custody to wait for their bail hearing when they can seek more appropriate or lenient bail conditions, or they can agree to something that's being proposed and offered to them as a "consent".

When the system is imbalanced, we get bad bail outcomes even on consent matters, because really we don't have true equality of bargaining power in those circumstances.

● (1625)

Mr. Yasir Naqvi: We'll go to Ontario. In the prosecutorial guidelines, the Antic decision and the ladder approach were codified. "Codify" is a strong word, but it was stressed that the Crown follow that approach. Do you see that happening in practice?

Mr. Boris Bytensky: It's not happening as often as it should. It's codified in the bail protocols that Ontario drafted as a result of the COVID pandemic, but they continue in place today. It specifically incorporates the ladder principle, as of course Antic does, as does the Criminal Code.

Bail court practice is based on what bail court has always done in the past. The number one rule about what happens in bail courts is how we've always done it. It's not so much what the law says. It's not so much what any particular case says. It's inertia. We don't change things that we've always done, because we've always done it that way. Unfortunately, that's what we end up with. We don't have the ladder principle applied as evenly as it should be. I don't have statistics, unfortunately, but that's my experience from watching bail courts for almost 30 years now.

Mr. Yasir Naqvi: Thank you.

Mr. Stamatakis, some time ago there was also an issue raised that there was very little conversation taking place between police officers who were responsible for laying charges and the Crown as to whether appropriate charges were being laid and whether the evidence was sufficient or not.

There was a pilot that was done in Ottawa whereby a duty counsel was placed at the police station on Elgin Street so that there could be more upfront conversations and appropriate charges laid, which would help to facilitate the entire process, including bail. Do you have any thoughts on that type of upfront process and whether we've seen a positive impact on decision-making by police and by Crowns?

Mr. Tom Stamatakis: I'm not familiar with the Ottawa situation that you're describing, but in my own service, we had a Crown embedded in our service for that specific purpose, in Vancouver. In my experience, it was hugely beneficial. You ended up with better outcomes because you had communication.

I know that the Province of British Columbia just made an announcement around putting together police officer, Crown and probation officer teams to better manage these issues, and that is a step in the right direction. We get better collaboration and more continuity around how these matters are dealt with when we have dedicated Crowns, dedicated police officers and dedicated probation officers managing these important issues.

The Chair: Thank you—

Mr. Yasir Naqvi: Excuse me, Chair.

I just want to say very quickly, Mr. Bytensky, that I saw you nodding in approval. I take it that you agree with that assessment.

Mr. Boris Bytensky: Yes, I do—

Mr. Yasir Naqvi: Thank you.

That's appropriate. A yes-or-no answer, please.

Mr. Boris Bytensky: I'm a lawyer. I can't say yes-or-no answers.

Voices: Oh, oh!

The Chair: Thank you.

On behalf of the justice committee, I want to thank you for your testimony and your time with us today.

I'm going to suspend for a few minutes. We're going to have our next witnesses sound-checked and brought in. We'll also have with us the witness who we were not able to have in the last round.

● (1625)

_____(Pause)_____

● (1630)

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

We're welcoming Jillian Rogin, assistant professor, faculty of law, University of Windsor, via video conference. We have Ms. Marie-Pier Boulet, Association québécoise des avocats et avocates de la défense, also via video conference. We have Catherine Latimer, from the John Howard Society of Canada. We have the Honourable Bronwyn Eyre, Minister of Justice and Attorney General.

I'm glad to have you here for the next round.

We will begin with Ms. Rogin for five minutes.

● (1635)

Professor Jillian Rogin (Assistant Professor, Faculty of Law, University of Windsor, As an Individual): Thank you so much for inviting me to speak today.

In addition to being an assistant professor who writes about the bail system in Canada, I'm also a criminal defence lawyer. I worked as duty counsel in the criminal courts in downtown Toronto for a number of years.

If restrictive bail measures, pretrial custody, prisons and policing were capable of ameliorating crime, we would live in a crime-free society. The reality is that all of these things create criminality rather than alleviate it.

We have 40 years of data, reports and jurisprudence indicating that Black and indigenous people in this country disproportionately bear the brunt of harsh and punitive criminal laws, including bail laws. Making bail laws more restrictive will work to further entrench systemic racism in the bail system and will cause more harm and further exacerbate the pretrial mass incarceration crisis that we are currently experiencing in Canada.

Pretrial custody itself causes harm and violence. In fact, it is so dangerous that it is literally a matter of life or death. Since 2010, 280 people have died in pretrial custody. Imagine what our bail laws might look like if each and every time one of those people died, Parliament convened a committee to discuss bail reform.

There were 711 deaths that involved police use of force between 2000 and 2022, which is more than 30 deaths per year on average. We have to ask ourselves why this committee is considering bail reform now. Whose lives matter and what are our priorities?

The approximate cost of keeping people in provincial and territorial jails is $259 per day, per inmate. That's approximately $94,000 per year, while the amount provided to an Ontario disability support program recipient is just over $1,000 per month or approximately $13,000 per year. Again, what are our priorities and whose lives matter? Victims of crime should be outraged that we invest so heavily in prisons and restrictive bail laws that do nothing to alleviate crime or violence, but rather cause it.

Restrictive bail laws will equal more prisons and more investment in prisons and policing. Indigenous, Black and racialized people, people with mental health issues and people who live with substance abuse issues will be disproportionately impacted by any such changes to the bail laws.

We know this, as my colleague Professor Jones has already explained it to this committee. In fact, the way he was treated when he did so was emblematic of the way the bail system itself operates. It treats indigenous and Black people as presumptively suspect, untrustworthy and not credible.

I implore you to base any decision you might make on the wealth of reports, data and jurisprudence we have that indicate that restrictive bail laws cause harm. The Manitoba justice inquiry, the Commission on Systemic Racism in the Ontario Criminal Justice System, the CCLA report, John Howard Society reports, the Ouimet report, the Wyant report and the “Broken Bail” report, which were conducted by experts in their fields and based on research, all indicate that restrictive bail causes harm.

We have swaths of evidence about racism in the criminal legal system, including the bail system. Black, racialized and indigenous people are subjected to racial profiling, are overcharged and are more likely than their white counterparts to be denied bail and be subjected to onerous conditions of release. Any bail reform that aims to make bail laws more restrictive will further entrench the existing racism. We know this.

There are changes to the bail system that could be made that will alleviate violence, as Mr. Bytensky indicated. Investing in affordable and adequate housing, investing in health care, investing in the creation of livable wages, increasing social benefits—investments in social infrastructure will make us safer.

Of the people who are currently in prison on remand, 70.5% have not been convicted of any crime. In law, they are entitled to the presumption of innocence. In many ways, I find it an affront to the constitutionally enshrined right to the presumption of innocence that this parliamentary committee is considering bail reform in response to a horrible tragedy but one where there has been no trial, no conviction and no understanding of the circumstances that led to the tragic death of Constable Pierzchala.

The fact that we're here today speaks volumes about the problems that plague the bail system.

Thank you. I will end there.

● (1640)

The Chair: Thank you, Ms. Rogin.

Now we'll go to Ms. Boulet for five minutes.

[*Translation*]

Ms. Marie-Pier Boulet (President, Association québécoise des avocats et avocates de la défense): Esteemed members of the Standing Committee on Justice and Human Rights, thank you for inviting me to participate in this study you are conducting on the Canadian bail system.

As president of the Association québécoise des avocats et avocates de la défense, or AQAAD, I'd like to tell you about the judicial experience of AQAAD's members, who practice criminal law across Quebec.

Based on our judicial experience, we can confirm that we have struck a balance when it comes to bail. The higher courts, including the Supreme Court, review the enforcement effect of the criteria in the Criminal Code on a regular basis, almost every two years. One need only think of the Zora, St-Cloud and Antic decisions, among others. Almost like clockwork, they check to see whether decisions made in a lower court have the desired effect. My comments so far have been on the adjudicative side. The procedural perspective is something else and I will come back to that later.

In reviewing a brief submitted to you by Families for Justice, I note that the situations reported therein do not reflect the problems with the pre-trial release system. These situations should not be used to generalize or make those in the system feel guilty. We need to look at the real numbers. By the way, I especially like what my colleague Ms. Rogin said earlier and the fact that my colleague Mr. Bytensky always refers to the numbers.

I don't wish to talk about the numbers today, because the AQAAD really wants to share its knowledge about realities on the ground. At the same time, we strongly doubt that these numbers show that people on bail are committing more crimes, including crimes as serious as those described in the brief. The AQAAD doubts that and also points to the timeliness of the data reported in Professor Myers' brief, which reveals a scourge of excessive pre-trial incarceration.

Society clearly wants to see criminals incarcerated, that is, it wants people to be found guilty of a crime. However, that same society should not want to put innocent people in prison.

In St-Cloud, the current chief justice of the Supreme Court of Canada reiterated what the higher courts have been saying since 1990:

> With respect to the perception of the public, as we know, a large part of the Canadian public often adopts a negative and even emotional attitude towards criminals or [potential] criminals. The public wants to see itself protected, see criminals in prison and see them punished severely. To get rid of the criminal is to get rid of crime. [Is that truly an equation?] It [unjustifiably] perceives the judicial system … and the administration of justice in general as too indulgent, too soft, too good to the criminal. This perception, almost visceral in respect of crime, is surely not the perception which a judge must have in deciding the issue of interim release. If this were the case, persons charged with certain types of offences would never be released [as opposed to others]. Therefore, the perception of the public must be situated at another level, that of a public reasonably informed about our system of criminal law and capable of judging and proceeding without emotion that the application of the presumption of innocence, even with respect to interim release [an expression that must be repeated incessantly], has the effect that people, who may later be found guilty of even serious crimes, will be released for the period between the time of their arrest and the time of their trial. In other words, the criterion of the public perception must not be that of the lowest common denominator.

So that portion of society has no new ways of thinking or new reflexes in that area. The system must be able to withstand direct attacks on the presumption of innocence, a principle that leads to nothing less than the miscarriage of justice if it is challenged. We're talking about someone doing prison time for nothing here, because they will end up being found not guilty.

In our view, and based on judicial experience, the best thing to do if we're looking to secure public safety is to verify, or rather monitor, that the interim release conditions are met. It's clear to us that this are not adequately monitored, if it is at all, compared to those that come with a conditional sentence, for example.

● (1645)

Therefore, when the court issues conditions of release, they literally do nothing to protect the public if law enforcement doesn't check to see if the conditions are being met—

[*English*]

The Chair: Ms. Boulet, I'm going to have you wrap up quickly.

[*Translation*]

Ms. Marie-Pier Boulet: The same thing goes for checking up on plaintiffs, as we discussed earlier.

This concludes my opening remarks. Thank you for your attention.

[*English*]

The Chair: Thank you, Ms. Boulet.

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

Ms. Catherine Latimer (Executive Director, John Howard Society of Canada): Thank you very much.

It's a welcome opportunity to present the views of the John Howard Society on bail issues in our country. We regret the tragic death of the police officer at the hands of someone who had been released on bail and was not respecting the conditions.

Criminal law reform, however, that is motivated by a single tragedy incident too often does not address the real problem. In our view, another reverse onus provision will not fix our broken system. It is our hope that the death will be the impetus for a comprehensive reform of the dysfunctional pretrial release and detention system in Canada.

Our hope is that the reforms are empirically based and address both the respect for the presumption of innocence and the right to reasonable bail while serving to protect the public over the short and long term. It appears our current system is failing on both fronts.

The presumption of innocence has been a principle of our criminal justice system since the Magna Carta. Most first world justice systems include this presumption and the attendant right not to be punished prior to the conviction of a crime.

High pretrial detention rates raise concerns among international human rights bodies and others that rights are being violated in a country's justice system. Compared to other countries, Canada's proportion of pretrial detention prisoners to total prisoners is shockingly high. In England and Wales it's 11.7% and in the United States it's 22%, while Canada's pretrial prisoners amount to 38.7% of the total prison population, according to 2017-18 data. Compared to other developed countries, that proportion jeopardizes Canada's reputation as a country that takes the presumption of innocence and rights to reasonable bail seriously.

Hopefully this study of bail will get an explanation of why the legislative provisions lead to such high rates of pretrial detention. Delays and inefficiencies in the system could lead to prisoners being detained for longer periods of time than in other developed countries. That is a serious deprivation of liberties. Delays in the system could also be leading to people who are released on bail being subjected to liberties-limiting conditions for longer periods than necessary.

Trial processes may be taking too long in Canada. Courts are bogged down with low-level offences, including administration of justice offences. Most effective alternatives to the criminalization of addiction, mental illness, homelessness and poverty would make the criminal justice system more efficient and allow it to focus on the more serious offences.

In 2018-19, of the 310,000 cases of decisions in adult courts taken across Canada, about 119,000 were not guilty findings. How many of those were subjected to pretrial detention or had liberties restrained due to bail conditions? While those detained and convicted tend to have the days in pretrial custody deducted from the proportionate sentence, there is no offset for the innocent for their deprivation of liberty prior to the charges being dropped or being found not guilty.

Would the number of cases clogging down the system that result in acquittals and charges being dropped be reduced if Crown attorneys rather than the police lay the charges? The issue does not seem to be the need to keep more people detained in pretrial detention but the need to focus detention on those who pose a flight risk or an immediate risk to public safety.

On principle, the John Howard Society opposes reverse onus provisions. If a person is to be denied liberty, it should be the state that persuades the judge that it is necessary. Risk of future criminality is very difficult to predict accurately, and while past conduct is one of the better indicators of future behaviour, studies show that after five years of being crime-free after completing the sentence, the risk of a person with a criminal record committing another offence is about the same as the risk posed by someone who's never committed an offence.

There is undoubtedly a risk posed by people who are in an active violent crime cycle. The person—referred to by your witness Robert Davis—who breached his current bail conditions, was in possession of a handgun and was nevertheless re-released on bail, should be studied to find out why. Did the Crown fail to persuade the court to detain? What evidence was presented? Was there a reverse onus that was applicable?

On the other hand, how many are defaulting into pretrial detention due to homelessness, mental illness, addiction, no access to counsel, no surety and no community bail supervision or alternative programs. Courts are bogged down with low-level crimes and administration of justice offences and offences connected with mental illness and addictions.

● (1650)

Community-based alternatives would provide greater efficiencies, and we know that the community-based bail verification supervision programs work well, are less expensive than detention and counter the systemic discrimination against the marginalized in the criminal justice system. There should be greater investment in them.

Studies are clear that time spent in pretrial detention increases the risk of future crime. Even short periods disrupt stabilizing employment, housing, health and treatment regimes, child care responsibilities, education, social networks and families. Custody in provincial jails, pretrial, expose people to violence, deny them access to rehabilitative programming and often limit their access to medical treatment. It is a harsh experience. Too many people die in pretrial detention.

In conclusion, John Howard hopes there is a comprehensive reform to our bail system.

Thank you.

The Chair: Thank you, Ms. Latimer.

Lastly, we'll go to the Honourable Bronwyn Eyre, Minister of Justice and Attorney General, via video conference.

We're glad to have you back. The floor is yours for five minutes.

Hon. Bronwyn Eyre (Minister of Justice and Attorney General, Government of Saskatchewan): Thank you, Mr. Chair, and thank you very much for graciously accommodating me this afternoon.

First, I would like to say that I was certainly very pleased to participate on behalf of Saskatchewan, with my colleague Minister Tell, in the federal-provincial-territorial meeting on bail reform 10 days ago, chaired by Minister Lametti and Minister Mendicino.

As Saskatchewan, we were pleased to hear federal Justice Minister Lametti announce a commitment to “move forward quickly on targeted reforms to the Criminal Code on bail”. We are also pleased that he called his commitment the result of “good faith collaboration by all levels of government to address the needs posed by repeat violent offenders.”

Certainly, we agree. The bail system, specifically around repeat violent offenders—let's be very clear about that—is in need of reform. As we know, the primary purposes of bail are maintaining public safety and public confidence, and these risk being undermined. Only one-third of Canadians now have confidence in our criminal courts. Police chiefs across the country are calling for reform. Sheriffs are being deployed to cities' downtowns. Provinces are having to devote and deploy additional resources to community safety. States of emergency are on the rise on reserves in Canada.

There is no question that social disorder and crime are on the rise. Of course, we have seen some tragic deaths—a number of people have referenced that of Ontario provincial police officer Pierzchala—over the past few months. In that case, as we know, the judge had serious concerns about release, and about which it's been written that even a bleeding heart could turn to stone considering some of the offences that had previously been committed in that case by that offender.

What's known as “catch and release” bail is part of a broader problem. The numbers point to that. In Saskatchewan in 2021, according to data from Statistics Canada, there were 15,274 incidents of bail violations. This is a 9% increase over the number of bail violations in 2020, which was 14,000, and a 30% increase from the number of bail violations in 2018.

Saskatchewan has expressed concerns with federal Bill C-75 passed in 2019, which established a principle of restraint that favours release on bail “at the earliest reasonable opportunity and on the least onerous conditions”.

At the FPT 10 days ago, I challenged these provisions in Bill C-75 and put forward potential amendments to the Criminal Code that would hold repeat violent offenders accountable, improve public safety and restore Canadians' confidence in the justice system.

Also, leading up to the most recent ministers meeting, Saskatchewan, with Manitoba, called on the federal government to expand reverse onus provisions in bail for crimes using knives and bear spray. As well, all Canadian premiers leading up to the FPT, including Saskatchewan, called for reverse onus on bail for those charged with violent gun crimes, as well as a broader review and bail reform. Certainly, provinces were united going into the recent ministers meeting that it is time to correct the balance.

As I referenced, Saskatchewan proposed a number of specific changes creating reverse onuses on bail for repeat violent offenders, strengthening language around the importance of community safety and requiring judges to provide written consideration of the impacts to public safety when releasing violent offenders on bail.

Our specific proposals, which were also provided to Minister Lametti at the FPT, include the following as they relate to Bill C-75 and section 493.1 of the Criminal Code.

We proposed changing the wording as follows. After “In making a decision under this Part,” we would add, “firstly taking into account the need for public safety,” and then carry on with “a peace officer, justice or judge shall give consideration”, removing the word “primary”. Then, after “to the release of the accused”, we would continue with the wording.

We also proposed changes to subsection 515(10) that there be included an express reference to “use of weapons and repeat violent offences, with or without a weapon, as grounds for consideration of detention”.

● (1655)

Finally, on reverse onus, we proposed, first, that a new reverse onus be created for weapons offences and a new reverse onus that targets violent offenders who have previously been convicted of a violent offence, with or without a weapon. Second, we proposed that the tertiary ground be amended, in subparagraph 515(10)(c)(iii), to include the use of “any weapon” as grounds for consideration of detention. Third, we proposed codifying the definition of weapons “prohibition order” to include a clause in a release order.

Fourth, and finally, we proposed requiring judges, when releasing someone accused of violence or weapons, to make a statement on the impact to community safety and consideration towards victims.

I'll leave it there, Mr. Chair.

The Chair: Thank you.

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

Mr. Frank Caputo: Thank you, Mr. Chair.

Thank you to all of our witnesses, whom we have both virtually and in the room. I know they're taking a lot of time on a very important issue.

Minister of Justice, I have to confess that I went to the University of Saskatchewan. That's where I met my wife and did my law degree, so I hope you enjoy that area as much as I did. I'm going to focus my questions on you.

Minister, the reality is that the 13 premiers of the 10 provinces and three territories have all, unilaterally, asked for bail reform. Is that correct?

Hon. Bronwyn Eyre: Yes, it is.

Mr. Frank Caputo: Those governments represented span the range of the political spectrum. By that, I mean we have an NDP government in British Columbia asking for bail reform. We have Conservative governments in Ontario and Alberta still asking for bail reform. This isn't something that appears to have been a partisan request from the provinces.

Would you agree with that?

Hon. Bronwyn Eyre: Yes, I would absolutely agree with that.

I think it was a very united message from not only the premiers in their letter to the Prime Minister, but also justice ministers across the country 10 days ago. Again, it's an all-government stand. Certainly, different partisan affiliations came to the meeting. It was a very united message. It's absolutely fair to say that was the message.

I think that message was very graciously received by Minister Lametti and Minister Mendicino. There was acknowledgement that a collaborative effort would ensue, coming from all levels of government. That there was an undertaking for—as Minister Lametti put it—a quick look at this is very important. We must not lose sight of the repeat violent offenders' subtext that both levels—premiers and ministers—were certainly trying to impart to their federal counterparts. That's the main subtext here.

● (1700)

Mr. Frank Caputo: Thank you, Minister.

You referenced a letter from the premiers to the Minister of Justice. Do you recall the approximate date of that letter?

Hon. Bronwyn Eyre: It was actually to the Prime Minister.

Mr. Frank Caputo: It was to the Prime Minister. I'm sorry. Did I misspeak? I apologize.

Hon. Bronwyn Eyre: It's all good.

Yes, I believe it was in January, but I don't know the exact date. It was quite recent.

Mr. Frank Caputo: I couldn't recall it off the top of my head.

That letter was the culmination of what premiers have been calling for, for some time. Would you agree with that?

Hon. Bronwyn Eyre: Yes, I would.

In that case, I believe, the letter was—if you like—spearheaded by Premier Ford, although, as I said, it was signed by every premier. It followed on the tragic death we referenced of the Ontario Provincial Police officer. Everyone acknowledged that was a particularly tragic symbol and reality of the bail situation in the country. I think the sense, in writing that letter, and also among ministers who went to Ottawa 10 days ago, is that, if the bail system isn't broken, it's getting close to being broken.

Bill C-75 in 2019, which is obviously relatively recent, was something that swung the pendulum too far. There needs to be a correction. Of course, everyone understands the underpinnings of the presumption of innocence, the reasons for bail and issues around remand and overpopulation. All those things are top of mind and of concern.

I think it's fair to say the ministers felt—and the premiers in penning their letter—that particularly around Bill C-75 and the "principle of restraint" language that it codified.... The language is very clear that it codifies. Tragically, in the case of the Ontario Provincial Police officer, dealing pre-that with the bail release, some of those precise sections arose and had to be grappled with by the judge. We know, in this case, there was a pretty tragic outcome.

Mr. Frank Caputo: I have two more quick questions for you, because I know I have about a minute left.

This issue of bail reform didn't simply arise on December 27. It was something that really brought it to the forefront, but the issue of bail reform had been on the radar of most of the premiers for at least the 18 months before that. Would you agree with that statement?

Hon. Bronwyn Eyre: Yes, I would. I think that was a culmination and an impetus in terms of the tragic events involving Officer Pierzchala, but I believe it certainly has been on the radar. In my remarks, I pointed to some of the statistics we're seeing in Saskatchewan around bail violations—a massive increase. I think it's fair to say that, while numbers range among provinces, there is an absolute acknowledgement, particularly post-2019 and Bill C-75, that the numbers have gone up exponentially. I think that is something we have to deal with, so—

Mr. Frank Caputo: Thank you.

I'm sorry. I didn't mean to cut you off.

I'll just ask you this very briefly. I have tabled Bill C-313. You talk about section 493.1. In my private member's bill, Bill C-313, we talk about what I would call a ratcheted-up reverse onus that, for serious gun offenders, would eliminate the principle of restraint.

Is that something you could see yourself getting behind?

Hon. Bronwyn Eyre: Yes. As I've said, I think for both the premiers in the letter they penned and the justice ministers in treaty to their federal counterparts, it really was around repeat violent offenders, repeat violent offences with weapons and against the person, and, in particular, where there has been a release on bail in those circumstances. Those are of perhaps foremost attention. I think that is a fair characterization. That was probably the leading concern leading up to the letter and post the letter.

● (1705)

Mr. Frank Caputo: Thank you for your time.

The Chair: Thank you, Mr. Caputo.

Ms. Diab, you have six minutes.

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

Welcome to all our witnesses.

Let me start off with you, Minister.

First of all, congratulations on being Minister of Justice and Attorney General. It's a role I occupied once. Good luck as well.

You were in attendance at the FPT meeting, as you mentioned, 10 days ago. You talked about collaboration. I have a question for you on data. You had some data here for us today. Can you tell us how data is collected in Saskatchewan? Where can we find this information? Can you make it available to us?

Hon. Bronwyn Eyre: Yes, absolutely. The data I referenced was from Statistics Canada in 2021, and then I went on to cite the incidents of bail violations. I'm happy to provide that, by all means.

Ms. Lena Metlege Diab: That's great. We appreciate that. It would be helpful, I think, for the committee.

Can you also tell us what steps Saskatchewan is taking to improve the bail enforcement?

Hon. Bronwyn Eyre: Since the FPT two weeks ago, we've released an updated provincial bail policy. That builds on existing practice. It builds on existing policies that Crown prosecutors must, of course, already consider—where public safety is at risk, including high-risk offences and those involving intimate partner violence, children, vulnerable adults and so on—and, of course, while respecting prosecutorial discretion above all. I have also requested, and B.C. did something similar in November, that the new policy explicitly emphasize that, where any of the conditions for refusing bail are met, prosecutors should advocate for the detention of repeat violent offenders, in particular, awaiting trial. That's one area we have built on.

Ms. Lena Metlege Diab: Thank you very much.

Let me move to Ms. Latimer, since she is here. Welcome to the room with us.

Based on your experience and on your organization's experience, can you describe the national landscape of bail and pretrial detention and the trends you have seen in recent decades?

Ms. Catherine Latimer: I think the proportion of prisoners who are held in pretrial detention is actually increasing in Canada. It tends to be a reflection of the marginalized people in Canada who are more likely to be detained in custody. It's people who are homeless or suffering from mental health problems. They may have addiction issues. They don't have strong community and family supports. They're the ones who have difficulty getting released into the community on bail supervision.

Ms. Lena Metlege Diab: Here's a question for you and probably for others.

If you were in our position, how would you talk to your constituents who feel that bail is too lenient right now in Canada and are concerned about public safety?

Ms. Catherine Latimer: I think all of us would acknowledge that those who are in an active violent crime cycle and are charged with an offence need to be constrained in order to protect the public, but for a lot of people—I would say the majority of people—who are finding themselves in custody prior to their trial, the risks they pose in the community for flight or for committing another offence can be managed with community-based programming, which is a lot less expensive and a lot more effective over the long run in terms of reducing long-term risk to public safety.

Ms. Lena Metlege Diab: Professor Rogin, can I ask you that same question?

Prof. Jillian Rogin: Could you repeat the question?

Ms. Lena Metlege Diab: If you were a member of Parliament and sitting in our position here today, how would you talk to your constituents who are concerned that the bail system is too lenient in this country?

● (1710)

Prof. Jillian Rogin: I think I would respond by saying that the bail system actually causes harm and causes violence. Anyone who is concerned about violent crime needs to really think about what we need to do in order to prevent it, and there's just no evidence that says putting people in jail and warehousing people in deplorable conditions prevent harm from occurring. It's just not based on any kind of research or data. The data says the opposite. What we need to be doing is investing in the solutions that actually have been shown to minimize violent behaviour.

Ms. Lena Metlege Diab: Can you describe, in your opinion, what Bill C-75 did and the impact on the bail system?

Prof. Jillian Rogin: I think that we don't know yet. I don't think that we have any.... Bill C-75 is in the last number of years, and we really don't have much of an understanding of how it has operated. We know that there are certain aspects that I don't think are being made use of. Judicial referral hearings, for example, are not being made proper use of.

We don't know the impact of section 493.2 yet. The jurisprudence is still developing. It's very early to be considering further bail reform when a massive reform in Bill C-75 has just occurred not too many years ago.

Ms. Lena Metlege Diab: Thank you very much.

That's my time.

The Chair: Thank you, Ms. Diab.

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

[*Translation*]

Ms. Christine Normandin: Thank you very much, Mr. Chair.

I'd like to thank all the witnesses for being here.

Ms. Boulet, I will direct my questions to you. We have to look into reforming the bail system and there are two ways we can look at this.

The first is the legislative perspective. Here, we run the risk of feel-good legislation, which doesn't work even though it may sound reassuring. You seemed to insist that we may already have all the legislative tools needed for a good bail system, but we lack the tools to enforce it. I'd like to hear your comments on that.

Ms. Marie-Pier Boulet: That's exactly right, because section 515(1)(c) of the Criminal Code specifically mentions the public interest. That interest is going to evolve over time, and that will help the courts remain vigilant.

The problem I raised at the end of my speech is that practical experience tells us that no one checks to make sure that conditions of release are met. Take the curfew, for example: It's all well and good to impose one, but if no one is checking that is being met, in my view, we're failing in our duty to identify delinquents or people facing charges who are undermining the intended effects of pre-trial release.

Earlier, I heard statistics on failure to meet conditions. In my opinion, keeping statistics on failure to meet is really getting it wrong. If you don't meet a condition, you are breaking a condition of release. For example, imagine someone forgetting to inform the court of a change of address. That type of statistic overlaps with many offences that aren't even violent. This can often be a problem for people struggling with social housing issues, among others.

Ms. Christine Normandin: Thank you very much.

Since you're a practising attorney, I'd like to know how your clients feel about not getting a slap on the wrist if they don't meet the conditions imposed on them, because no one will check if they are meeting them. Could that lead to them not caring about conditions?

Ms. Marie-Pier Boulet: Thankfully, those of us who practice law don't convey that message. I'm sharing this with you today because you're interested, but legal practitioners are not going to spread that message among litigants. Otherwise, it could be a problem if clients knew that. As legal practitioners, we make sure we don't convey that message, even though today I'm doing it indirectly.

Ms. Christine Normandin: Thank you very much.

At the end of your opening remarks, you mentioned the fact that there seems to be a difference between supervising someone on bail and supervising someone on a conditional sentence. What works in a conditional sentence case that doesn't work in a bail case? What can we do better?

● (1715)

Ms. Marie-Pier Boulet: In conditional sentence cases, the person under house arrest is assigned to an official probation officer and subject to a concrete supervision plan. The probation officer takes charge of the inmate, a term they continue to use even if the person is serving their sentence at home.

Where the police are concerned, it goes back to other comments about communication. Once the inmate is released, no one is assigned the file for supervision, not even the investigator in charge of the file. Therefore, there is no concrete plan to guarantee that conditions are fully met.

Ms. Christine Normandin: I'd like to hear your thoughts on the success of supervision plans in bail cases. Are there as many problems with conditions being met? Are these plans more successful in conditional sentence cases than bail cases?

Ms. Marie-Pier Boulet: We talked about this earlier. According to the statistics, conditions are not met in a great number of bail cases. However, it's not even the same order of magnitude in conditional sentence cases. If an inmate with a conditional sentence breaks the conditions imposed on them, they face direct consequences because they lose their house arrest privileges and must serve their sentence in prison.

If someone released on bail doesn't meet the conditions imposed, it should have the same effect and that person should be incarcerated. The burden of proof will be reversed. The system strikes this balance, allowing the burden to be reversed in situations where the person must prove that they pose no risk.

Ms. Christine Normandin: Thank you.

I'd like to ask you the same question I asked Mr. Bytensky earlier: How long does it take to get a bail hearing in Quebec?

Ms. Marie-Pier Boulet: That's another can of worms. If you open it, you'll see that there are long delays. The law says three days, but if the bail hearing continues for a while, it can go beyond three days.

In my opinion, the government needs to invest in supervision and enforcement right now.

Ms. Christine Normandin: I only have 20 seconds left and you won't have time to answer another question.

Thank you very much, Ms. Boulet.

[*English*]

The Chair: Thank you.

Next, we'll go to Mr. Garrison for six minutes.

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

Thanks to our witnesses for being here today.

I want to go to Professor Rogin. Since Bill C-75 was raised by other witnesses, can you talk a bit about why Bill C-75 was necessary in light of Supreme Court decisions in terms of the presumption of innocence?

Prof. Jillian Rogin: I think the presumption of innocence, among many other constitutional issues, including the very right to reasonable bail in section 11(e), were at stake.

Prior to Bill C-75, the Supreme Court decisions really didn't introduce any new ideas. They confirmed codified language and existing jurisprudence. It was necessary because issues still persist post Bill C-75 such as delays in bail courts, onerous conditions and excessive overuse of sureties. All of these issues continue to plague us, I think, in our system. That's why Bill C-75 tried to at least send a strong message to justices, justices of the peace, Crowns and all of us that something needed to change.

In many ways, the law isn't followed. The bail laws in the code that are codified are often ignored, in my experience of appearing in the bail courts, blatantly ignored in many ways. We have yet to see whether Bill C-75 has had an impact on that. My understanding from many colleagues is that it hasn't necessarily, as Mr. Bytensky pointed out. I think, in his words, the law from above doesn't necessarily translate into what happens day to day in the bail courts.

Mr. Randall Garrison: Thank you.

I want to turn to Ms. Latimer.

I know the John Howard Society has extensive experience in running community-supervised bail programs. Can you talk a bit about the impact of those programs both on the offenders or potential offenders and on the communities?

Ms. Catherine Latimer: The bail supervision and verification programs that are run by the John Howard Society have been very successful in terms of helping people to keep out of dire circumstances, which includes being detained, and to get the support in the communities they need during this period so that they can show up for their trials and participate constructively in the process.

I think what's very important is that, generally, those who are disadvantaged in the current bail system are marginalized people, whether they're economically marginalized, they're struggling with mental health issues or there's some prejudice because of racial discrimination. These kinds of programs actually help, because they take away some of that privilege that those who can afford good counsel and whatnot have in the bail process.

I think they're a great leveller in terms of trying to overcome some of the more negative elements of the bail system, but there aren't enough of them. There needs to be many more such programs.

● (1720)

Mr. Randall Garrison: Of course, it's not up to the John Howard Society to offer them everywhere.

Ms. Catherine Latimer: No. We're very fortunate when governments choose to do this. I think it's economically to their advantage, as someone pointed out, in terms of the costs of detaining someone in custody. The programs are much less expensive than detaining someone in custody.

Mr. Randall Garrison: Can you talk a little bit about your experience with the impacts on those who are held in custody before trials? We've had several witnesses talk about that, but I know the John Howard Society has intimate experience with the impacts of overdetention on families in the community.

Ms. Catherine Latimer: It's extremely disruptive for people.

I think there are even greater levels of anxiety and mental health challenges for people prior to a conviction than before, because they don't really know what's happening. Some of them have had little to no exposure to the criminal justice system before. They don't know how to interact with other people who are detained in provincial facilities.

Provincial facilities are known by prisoners as “the buckets”. They're considered to be a very bad place to be detained. There's no programming. If you have an addiction, you're going to be coming off your drugs without much medical help. They're very stressful and difficult places for people to be.

Even if you're there for a short period of time, it's going to disrupt your housing, your employment opportunities and your relationship with your family. It's a very negative experience for people.

Mr. Randall Garrison: When we talk about that, sometimes I think maybe to members of the public it sounds a bit counterintuitive to say that it will increase public safety if we decrease the detention. Can you connect the dots for those people?

Ms. Catherine Latimer: I think it is a hard sell. It is counterintuitive, but the evidence is sufficiently clear that, if you are placed in pretrial detention, the likelihood that you're going to be exposed to criminality, lose confidence in yourself and have sufficient social barriers placed in front of you because of that predisposes you to be more inclined to be engaged in criminality than before.

If you can keep people out of pretrial detention, you're going to reduce potential criminality. It's actually a benefit to public safety in the long run.

Mr. Randall Garrison: With my last seconds, I'll ask the Minister of Justice from Saskatchewan a question.

We've heard from many experts that community-based bail supervision programs are very effective. Are those programs available in Saskatchewan, and if not, are you actively considering implementing them?

Hon. Bronwyn Eyre: Thank you.

Unfortunately, I'll probably have to go. I have to be back in the House in a few minutes, so if I suddenly disappear, you'll understand why. I apologize for whispering, too. I feel terrible about that. I wasn't on mute.

Before I answer about the programs, to your question, there was of course the Supreme Court case that Bill C-75 codified, and we discussed that at FPT. Of course, Bill C-75 was very broad, so the concern that was raised by ministers across the country was really specifically around the principle of restraint as it impacts repeat violent offenders, offences with weapons and random attacks.

Section 493.1, in codifying that principle of restraint in those cases, made the pendulum swing too far. As I say, we'll have read how the judge grappled with that in the Ontario provincial officer case, where he knew it was iffy based on the repeat violent offending but was sort of bound by 493.1 in that case too.

In terms of programs—

● (1725)

Mr. Randall Garrison: Minister, we're actually out of time, so I'll ask you one of those yes or no questions.

Are you actively considering community-based bail?

Hon. Bronwyn Eyre: Yes, absolutely. We have many successful programs.

Mr. Randall Garrison: Thank you.

The Chair: Thank you.

Next, we'll go to Mr. Van Popta for four minutes.

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

Minister, I hope I still have you for a couple of minutes. Thank you for being here.

In your testimony, you gave us some details about proposed amendments to the Criminal Code relating to bail provisions. I know that the Province of Saskatchewan is also working on updating provincial bail policy.

Could you tell us a bit about that? We only have a couple of minutes.

Hon. Bronwyn Eyre: I did make a few comments about that earlier, so I won't repeat myself. In the bail policy, which has now been made public, we state explicitly that it's not only appropriate, but necessary, that Crown counsel, in certain circumstances, take a more stringent approach to bail.

It says, “When a repeat violent offender is charged with an offence against a person or involving a weapon, Crown Counsel must seek that person's detention”—there's very similar language in B.C.—“unless they are satisfied, having regard to all of the circumstances, that the risk to public safety posed by the accused's release can be reduced to an acceptable level by bail conditions”, and so it goes.

It's important to point out that this builds on what is already considered in bail circumstances. The question, as I've said a number of times, is really about that repeat violent offender circumstance. That's really been the focus over the last few months, if not years, in terms of looking at that specifically, in relation to Bill C-75 and sections 493.1 and 493.2.

That's really been the concern. It was pretty united across the country that there was going to be a range of numbers, but overall, since that time, bail violations, as it were, have increased very significantly.

Mr. Tako Van Popta: We've heard from other witnesses that the perceived problem with so many people being incarcerated in pretrial detention is the lack of.... One witness called it a culture of adjournment. He pointed to a lack of resources in the court system.

Could you comment on that? What is the experience of Saskatchewan?

Hon. Bronwyn Eyre: That's an interesting question. From the federal perspective, in terms of Bill C-75.... Bill C-75 is very broad. There are a number of aspects that it touches on. In terms of the concerns and focus that we raised at the federal-provincial-territorial meeting, it was—as I've said a number of times repeatedly—more around the issue of repeat violent offenders as it relates to section 493.1 and the principle of restraint.

Bill C-75, as members will know, did also.... A part of its purpose was to address Jordan and the Jordan principle and, as you say, the adjournment pattern. I understand that. That's also a factor.

There are many factors in this discussion, many things to consider and many balances to weigh. That's certainly clear when it comes to bail and consideration of bail.

Our main focus, as provinces, was with repeat violent offenders, offences with weapons and random attacks, which are absolutely on the rise, and addressing them through the prism of Bill C-75, which is a very recent bill, and the effects it has had in that narrow area.

The Chair: Thank you, Mr. Van Popta.

Next, we'll go to Mrs. Brière for four minutes.

[*Translation*]

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

I'd like to thank and say hello to all the witnesses with us this afternoon.

Ms. Boulet, in the first hour of this meeting, we learned that all the tools were already in place, that legislative changes may not be necessary, that our judges are appointed after going through a thorough process and they are highly qualified, and that defence counsel are prepared to challenge bail hearings related to the presumption of innocence for individuals who have committed serious crimes.

Do you share these views?

● (1730)

Ms. Marie-Pier Boulet: Are you referring to the view that we are prepared to challenge releases for serious crimes?

Mrs. Élisabeth Brière: I'm talking about the view that all the tools are in place and that we don't necessarily need to make legislative changes.

Ms. Marie-Pier Boulet: Particularly with respect to section 515 of the Criminal Code, all the reasoning is indeed in place for judges to rule on a case-by-case basis. At the end of the day, it will always be case by case, even when there is no reverse onus or when the onus is on the Crown. It is standard for an exit plan—a life plan—to still be presented to the judge. Everything is in place to rule later on the efficiency and sufficiency of the process within that framework. The legislative aspect is covered.

With respect to release for serious crimes, when we say that we will be prepared to challenge them, it's about wanting to always have access to the possibility of interim release. We understand that, in those cases, there is quite an uphill battle. It's important to know the current law well, because it already provides for a reverse onus.

Regarding former Bill C-75, we did not at all feel that there was a wave of sudden releases in cases of serious crimes. Instead, the result was to eliminate unnecessary bail hearings where it was clear that the person could be released on conditions. It cleaned up the process and freed up more time to deal with more serious cases, such as serious crimes.

Mrs. Élisabeth Brière: Thank you. Do you know what is considered in determining whether an accused is entitled to release? For example, how is the dangerousness of the accused assessed?

Ms. Marie-Pier Boulet: The criminal record will inform the assessment of dangerousness in a very objective way. The person's criminal history will be one of the factors considered, as well as the nature of the crime, the circumstances surrounding the crime, the use of a firearm and therefore access to weapons, or the person's associates. In fact, the list can be endless, since the prosecutor could use his or her imagination and make suggestions to the judge of what should be considered in assessing the dangerousness of the person.

Mrs. Élisabeth Brière: We heard Ms. Latimer speak briefly about the impact that detention, no matter how short, has on a person's life. I would like to hear from you on that.

Ms. Marie-Pier Boulet: Practically speaking, interim release actually prevents us from doing our job well. As defence counsel, representing an accused is the first step toward a guilty verdict for us and for that person. Even the prosecutor will have a totally different approach with us, knowing that he or she now has that person's freedom in their hands, which makes us vulnerable in working toward our objectives.

Excluding the more serious categories of crime where there is no expectation other than pretrial detention, discouragement is what we are seeing now from the people involved. It is clear to me that some people plead guilty even though they are not, because of the psychological consequences of remand.

[*English*]

The Chair: Thank you.

Thank you, Mrs. Brière.

Thank you to all of the witnesses, once again, for taking the time to contribute to this bail system report. We look forward to seeing you guys again sometime for further studies.

That concludes today, and we will now adjourn.