HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

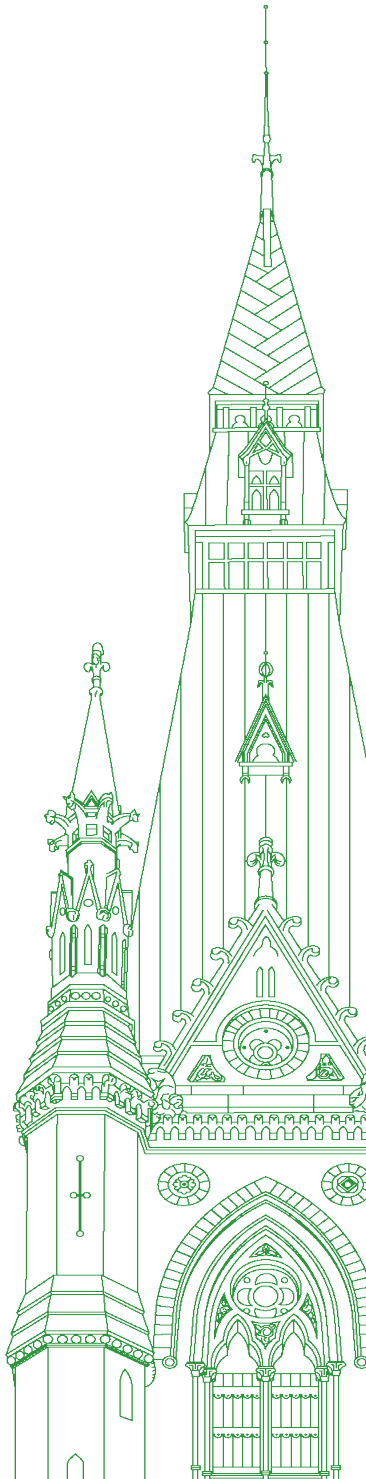
44th PARLIAMENT, 1st SESSION

Standing Committee on Justice and Human Rights

EVIDENCE

NUMBER 056

Monday, March 27, 2023



Chair: Mr. Randeep Sarai

Standing Committee on Justice and Human Rights

Monday, March 27, 2023

● (1545)

[*English*]

The Chair (Mr. Randeep Sarai (Surrey Centre, Lib.)): Welcome to meeting number 56 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 pursuing 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 and also using the Zoom application.

I have just a few remarks for the witnesses and members. Please wait until I recognize you by name before you speak. For those on Zoom, use the "raise hand" function to identify yourself if you wish to speak, and then activate your mike. Please mute yourself when you are not speaking.

Regarding interpretation, for those in the room, just make sure you put it on the choice you want—English, floor or French audio. The same goes for those joining via Zoom: Please select your desired channel.

I use a couple of cue cards just for those who don't know. When you're down to 30 seconds, I will raise the yellow 30-second cue card, so try to keep an eye out for that. When you're out of time, I'll raise the red one, and I'll just ask you to wrap up within a few seconds of that.

That being said, we have three witnesses in the first hour. We have Greg DelBigio from the Canadian Council of Criminal Defence Lawyers, online, I think. We have Garen Arnet-Zargarian, a member of the board of directors for the Criminal Defence Advocacy Society, here in person. We also have Melanie Webb from the Canadian Bar Association, criminal justice section, via video conference.

Welcome. You each have five minutes, beginning with Mr. DelBigio for five minutes.

Mr. Greg DelBigio (Lawyer, Canadian Council of Criminal Defence Lawyers): Thank you for the invitation to appear.

The study of bail is hardly new. In 1965, Professor Martin Friedland studied the problem of pretrial incarceration and published his results in his book, *Detention Before Trial*. The Charter of Rights and Freedoms came into force in April 1982. In that document, bail was guaranteed through paragraph 11(e), providing that any person charged with an offence has a right "not to be denied reasonable bail without just cause".

In 2012, the national symposium on reinventing criminal justice studied bail and published its report and recommendations. Under the heading "Symposium Recommendations Aimed at Reducing the Remand Population and Improving the Bail Process", the report states, "Symposium participants emphasized the importance of this early stage of a criminal proceeding and the need to allocate resources at the front end of the criminal justice process."

Bail was once again studied in 2016 by the steering committee on justice efficiencies and access to the justice system. In that 2016 report, the committee wrote:

> Accurate issue identification and effective reform depends upon a foundation of reliable evidence.... Our review of available data shows that there is a dearth of comprehensive, objective and reliable information about the bail process that would permit strong inferences or accurate conclusions about its operation.

> The absence of reliable, objective, comprehensive data about various aspects of the diverse bail processes across this country has hampered the accurate identification of issues and conversations about reform....

The report did note and make a recommendation about the benefits of bail supervision as opposed to incarceration.

Bail was considered by the Supreme Court of Canada in 2017 in the case of Regina v. Antic, a case I'm sure all of you are familiar with. In that decision, the court referred to Professor Kent Roach and his work, and to where he observed, "Although the Charter speaks directly to bail, the bottom line so far has been that remand populations and denial of bail have increased dramatically in the Charter era."

In Antic, the court also recognized that pretrial custody affects the mental, social and physical life of an accused and his family. It may also have a substantial impact on the result of the trial itself.

Again, in 2020, the Supreme Court of Canada considered bail in the case of Regina v. Zora. In that case, the court observed that judicial officials making bail decisions are required to give particular attention to the circumstances of the accused persons who are indigenous or who belong to a vulnerable population that is overrepresented in the criminal justice system and disadvantaged in obtaining release. In other words, the court recognized that there are people who are caught in the criminal justice system—who find themselves in the system—and are disadvantaged and overrepresented. As a result of the disadvantage, they are disadvantaged in obtaining release.

In Zora, the court observed that there is a culture of risk aversion that contributes to courts' applying excessive conditions.

I am not an elected official; I'm a lawyer. I can't comment on what might motivate elected officials to suggest that bail reform is needed, that streets might be unsafe, or that more people should be denied bail and held in jail while presumed innocent. However, to be clear, I am in favour and do recommend that informed discussions about important issues—as opposed to attention-seeking quotes and headlines—are always good.

I don't suggest that everyone charged with an offence should be granted bail. I do suggest that using jails to address what are often social problems arising from considerations such as homelessness, addiction, mental health challenges and poverty is regressive. I do say that frontline prosecutors are already well equipped to oppose requests for bail in appropriate circumstances. Frontline judges are well able to grant or deny bail as is appropriate. Appeal courts are well equipped to review bail decisions.

● (1550)

If reform is considered, I urge that it be evidence based and use statistics, not guesswork or impressions. How many people are currently in pretrial detention and for how long? Why are they detained? Is it the primary, secondary or tertiary consideration? How many people who are released on conditions breach them? What offences are they committing?

If people are released and offences are committed, was it because of a system failure, or does it reveal a gap in the existing law?

If there is a concern that people are being released and committing offences and that this is revealing a problem, I urge you to study the transcripts of their bail hearings so you can understand accurately what it was that took place and why the people are on the street.

Thank you.

The Chair: Thank you.

Now we'll go to Mr. Arnet-Zargarian for five minutes.

Mr. Garen Arnet-Zargarian (Member of the Board of Directors, Criminal Defence Advocacy Society): Thank you for the invitation to address this committee.

I'm a criminal defence lawyer in Vancouver, and I'm here on behalf of the Criminal Defence Advocacy Society, an organization of defence lawyers from throughout British Columbia.

This committee has an opportunity to meaningfully improve Canada's bail system, uphold constitutional rights and protect the long-term safety of our public. This should not be an either-or proposition; nor will it be a quick fix, but it is necessary.

As the honourable Minister Lametti has said, when making important decisions such as this, the devil will be in the details.

This committee has already heard some of those details, and I will not repeat all the statistics or all the data, but they are staggering. For the past 30 years, crime in our country has steadily declined, yet our pretrial jails have grown overcrowded with those presumed innocent. Even a few days in pretrial custody can jeopardize a person's employment, their housing and their community connections, and it can increase the risk of future offending.

The courts are bogged down with minor matters, administrative breaches and a culture of adjournment that has been described as “an entirely unacceptable threat to constitutional rights, a denial of access to justice, and an unnecessary cost to the court system”. There is a lack of legal aid funding for defence counsel and often an absence or sparsity of disclosure at an early stage. Community supervision resources are understaffed and underfunded.

Finally, indigenous people, racial minorities, the poor, the homeless, the drug-addicted and the mentally ill are all overrepresented in our jails. For the past three years, the pandemic has also eroded many of the social supports upon which people in these groups rely. It is perhaps no coincidence then that it is in this same time frame that these concerns regarding repeat violent offending have come to the fore.

These facts all combine for one troubling reality. Our court system is overwhelmed, and our society is in crisis. Reverse onuses will not solve that crisis. New rules and definitions for repeat violent offenders will not protect long-term public safety.

Bail decisions are inherently imperfect risk assessments. Reverse onuses do not tell a judge anything they don't already know about the caution needed when a defender who's facing newfound charges comes before the court. That person already faces an uphill battle to release, regardless of such a label. However, reverse onuses risk a one-size-fits-all approach that may threaten the right to reasonable bail.

A person who may otherwise be a consent-release candidate may face delays, even of a matter of days, to prepare a release plan. They may face pressure to agree to excessive conditions, and they may face pressure for a hasty and sometimes wrongful guilty plea. History suggests that unfortunately this will have the greatest impact on those same marginalized groups. Finally, adding reverse onuses would run counter to the clear direction from our Supreme Court of Canada in Antic and Zora.

Legislative reform alone will not cure what ails this justice system; nor will it protect our society in the long term. As this committee has heard, effective bail reform requires a multidisciplinary approach to understand and, more importantly, prevent the root causes of criminality. CDAS encourages this committee to consider how the federal government can support the following measures: first, increasing community health resources and social services, particularly in rural and northern regions; second, creating non-police mental health crisis response teams; third, decriminalizing the possession of a small amount of drugs and providing a safe drug supply to those who are addicted; fourth, mandating timely disclosure at bail hearings; and fifth, continuing to uphold the direction from Antic and Zora that pretrial release is the norm and that detention is the exception.

In Antic, the Supreme Court of Canada opened its decision by describing the interrelation between the right to reasonable bail and an enlightened criminal justice system. An enlightened criminal justice system must be forward-looking and not overly swayed by the emotions and tragedies that are, unfortunately, its stock and trade.

● (1555)

On behalf of CDAS, I urge this committee to favour data over emotion, to favour progress over regression, and to favour the long-term safety of Canadians over short-term reactions to tragic events.

Thank you very much.

● (1600)

The Chair: Thank you, Mr. Arnet-Zargarian.

Now we'll go to Melanie Webb from the criminal justice section of the Canadian Bar Association.

Ms. Melanie Webb (Counsel and Communications Officer, Criminal Justice Section, The Canadian Bar Association): Good afternoon. Thank you for the opportunity to appear before you today on this important issue.

The Canadian Bar Association represents approximately 37,000 lawyers, students, academics and jurists across Canada. Our mandate includes seeking improvement in the law and the administration of justice. The criminal justice section is made up of a balance of Crown and defence counsel from every part of the country. Many of our members also frequently represent and provide advice to complainants and families of victims of crime during the course of criminal prosecutions.

I serve as the communications officer for the CBA criminal justice section, and I have been a criminal trial and appellate lawyer for the past 15 years.

In 2018 the CBA supported many of the amendments to the bail regime proposed in Bill C-75. The CBA submits that when considering any further proposals for bail reform a nuanced approach is appropriate. Any changes contemplated to the bail provisions must be evidence-based, consistent with constitutional rights, and consistent with the long-standing principles outlined in the lengthy line of bail cases from the Supreme Court of Canada.

It bears reminding that all persons who come before the court charged with an offence are presumed innocent until proven guilty. This is a constitutionally protected right. That presumption continues to apply no matter the subject matter of the offence and whether or not they have a prior record or outstanding charges. That presumption continues to attach to all persons at every stage of the criminal justice process, including the bail stage.

The culture of bail has often been referred to as being one of risk aversion, yet the Supreme Court has reminded us repeatedly that pretrial detention should be the exception and not the rule. That said, there will be times when detention is warranted, and detention is indeed ordered in bail courts across the country. Our jails are over capacity in many areas with people detained pretrial.

There have been calls to add more reverse onus offences on bail. There is already a long list of reverse onus offences in the Criminal Code, but regardless of whether or not a particular offence is a reverse onus or a Crown onus, Crowns are well equipped with the tools necessary to argue, where appropriate, that the accused should be detained or that the accused has not shown cause why they should be released. It is not uncommon for someone to be detained on Crown onus offences. Practically speaking, whenever serious violence is alleged to have been caused by the accused, and especially in cases involving firearms, the reality is that it is very much an uphill battle for an accused to be granted release, regardless of who the accused is.

It is by no means easy and by no means simply catch and release, as some have suggested.

Where the Crown is of the view that the lower court erred in granting release, the Crown may bring a bail review in short order to review that decision, and when an accused reoffends while on bail, the Crown may apply for the revocation of bail. These are not unusual or exceptional situations, and the Crown can successfully argue these cases where appropriate.

As the Supreme Court reminds us, the setting of bail is very much an individualized exercise. The law already provides for the consideration of a wide array of relevant factors that are taken into account by experienced judicial officers in every bail hearing. Modifying the language of the bail provisions of the code will not prevent tragic events such as the recent officer-related shootings or violent crime on the public transit system. Instead, a focus on addressing the root causes of crime, including providing greater resources to social supports that would help marginalized and vulnerable populations, would be more productive. We emphasize especially that this requires particular attention to those suffering from mental health issues, substance abuse issues, poverty and insecure housing.

Thank you for your time, and I look forward to answering any questions you may have.

● (1605)

The Chair: Thank you, Ms. Webb.

We'll begin our first rounds of questions. These are six-minute rounds.

We will begin with Mr. Caputo for six minutes.

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

For full disclosure, I've dealt with Mr. Arnet-Zargarian and Mr. DelBigio in my prior work. They're both obviously well-respected members of the bar, and I anticipate that Ms. Webb would also come with the label of being very well respected at the bar, given her work with the Canadian Bar Association.

Mr. Arnet-Zargarian, my sense is that you're on the ground a lot, if you will, and by that I mean that you're at 222 Main Street in Vancouver, which is known as a fast-paced court. Is that accurate?

Mr. Garen Arnet-Zargarian: Yes, and it's probably even faster paced at Surrey.

Mr. Frank Caputo: Yes, these are fast-paced courts that often deal with or triage bail hearings. This is part of your life.

Mr. Garen Arnet-Zargarian: Absolutely.

Mr. Frank Caputo: Before I get into the bail review, would you agree that Zora and Antic fundamentally changed how we look at bail? Would you agree with that?

Mr. Garen Arnet-Zargarian: I think that in many cases, they either changed it or reinforced what many were already practising, that the right to reasonable bail must be protected, and jealously so. I would say, yes, for some it did change that, and for many others it reinforced what we already knew.

Mr. Frank Caputo: As a defence lawyer, you see trends, obviously. You know different judges, and you see trends. Would you say that it's harder now to get bail or easier now to get bail post Zora, for instance?

Mr. Garen Arnet-Zargarian: I don't know that there is a trend of being harder or easier. I think really what the focus has become is what the least onerous conditions are. Some people who weren't going to get released before Zora probably still aren't going to get released. To answer your question very briefly, I don't think I've seen a specific trend of bail courts becoming more lenient. If anything, they've likely become more focused.

Mr. Frank Caputo: The consequence of that focus, though, for instance, might be six conditions instead of 12. Everybody doesn't get hit with an intoxicants provision and that type of thing.

Mr. Garen Arnet-Zargarian: That's fair, yes.

Mr. Frank Caputo: Part of that focus—and we could debate the rightness or the wrongness of this—has been to favour release, given Antic and Zora. Would you agree with that?

Mr. Garen Arnet-Zargarian: I think it's been a focus on reminding ourselves that we need to look at the conditions that are truly necessary for the specific grounds at issue. The one that we're most concerned about today is the secondary ground, protection of the public, so, again, it's been a matter of, first of all, are there conditions upon which this person could be released that will not put public safety substantially at risk? If so, what are the least onerous ones? In practice, it may end up being that, like you said, the person would be released without a blanket alcohol prohibition or without a blanket area restriction.

I don't think I have data to support every single point here, and I think that's one of the issues the committee has—that we don't have all this data on bail, but I don't think—at least in B.C., in the jurisdictions in which I most often practise—it's led to a trend of people being more likely to be released; it's just more focused conditions on those risks.

Mr. Frank Caputo: Thank you.

I'm going to ask you a bit about the Myers decision, which I'm sure you're familiar with. Myers was a decision that considered bail review sections, and those are automatic reviews on an indictable offence at 90 days. Do you agree with that?

Mr. Garen Arnet-Zargarian: Yes.

Mr. Frank Caputo: Generally, there's often a change in circumstance on the accused's behalf at that 90-day threshold, in that treatment is now available or has been lined up, something like that.

Mr. Garen Arnet-Zargarian: That is certainly part of the approach.

Mr. Frank Caputo: Your job as a defence lawyer is to set up that treatment or to arrange a surety, something like that. Is that correct?

Mr. Garen Arnet-Zargarian: It typically falls to the defence counsel to do all of the legwork. We'll, say, find a recovery house, find treatment and those kinds of things, yes.

Mr. Frank Caputo: Generally, a bail review, if there is an initial detention, is often successful where an initial application for bail wasn't successful. Would you agree with that?

Mr. Garen Arnet-Zargarian: I don't have statistics on that.

Mr. Frank Caputo: I'm talking about anecdotally.

Mr. Garen Arnet-Zargarian: Anecdotally, it's hard to say. It would really come down to the specific cases. Being very candid, in my own experience I haven't seen a trend of it being more or less likely. It all comes back to, obviously, what the issues are for that person. There are going to be some for whom it doesn't matter how many treatment centres they may have access to; they're just not going to be released.

Mr. Frank Caputo: That's fair enough.

I'm going to ask you a bit about.... You talk about data over emotion—

Mr. Garen Arnet-Zargarian: Yes.

Mr. Frank Caputo: —and I don't know about you, but I presume that everybody on this panel would agree that we're most concerned about public safety, and public safety is impacted by interpersonal violence and firearms. Those are two of the key aspects. I'm putting aside intimate partner violence for now, but those are two aspects. Would you agree?

Mr. Garen Arnet-Zargarian: I'd agree with that.

Mr. Frank Caputo: If the bail system is to be reformed.... We talk about data, and my understanding, sir, is that there has been a 32% increase in violent crime and almost a doubling in gang-related homicides, particularly with firearms.

If we talk about that data, I take it we can agree that if we're going to focus anywhere, that would be a place to say, "Do you know what? We're going to be dealing with violence and with firearms getting into the wrong hands."

Do you see where I'm going with that?

● (1610)

Mr. Garen Arnet-Zargarian: Certainly, and what we do for those extremely serious types of crimes has to be a focus of this committee.

I think that the difficult balance is going to be in striking the right approach of targeting those crimes, which are clearly dangerous to society, while not having what I'll call "bycatch", which includes the people who should not be included in those.

Mr. Frank Caputo: You'll get no argument from me. There's definitely a difference in somebody who's a chronic shoplifter or breaking into cars, as opposed to somebody who possesses a weapon as a tool of the trade.

Mr. Garen Arnet-Zargarian: That's right.

Just to briefly conclude on this point, one of the proposed reverse onuses is for section 95(1) offences. The courts have clearly said, at that spectrum of the offence, that a tool of a criminal's trade is a serious and dangerous offence, but not every offender will be in that.

That's one of the examples of the risk, where we could catch someone who should not be involved.

Mr. Frank Caputo: If you are carrying a loaded firearm, generally it is a weapon and is a tool of the trade, I would argue. In any event—

Mr. Garen Arnet-Zargarian: Maybe I would just point to paragraph 82 of the Nur decision, which talks about the other end of that spectrum, which is the responsible gun owner who would fall under that, but—

Mr. Frank Caputo: You wouldn't get any argument from me on that paragraph.

The Chair: Thank you, Mr. Caputo.

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

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

Welcome to our witnesses. Thank you for coming today as we continue our study on bail reform. It may be one of our last sessions today, so we very much appreciate the immense experience that you all have and that you're all sharing with us.

Ms. Webb, I want to ask you, as you have 15 years experience yourself personally, but also with the Canadian Bar Association, among its various members who would have tremendous experience. You said the Canadian Bar Association supported Bill C-75. I wasn't there at that time.

Can you describe what Bill C-75 did and the impact it had on our bail system, in your opinion?

Ms. Melanie Webb: Yes. Bill C-75 implemented a number of changes, not only to the bail regime but to many other aspects of the criminal justice section. We made extensive submissions on this. We supported many of the amendments on the bail regime. We felt that they would lead to more expedient hearings, while still being consistent with the existing case law and constitutional concerns.

For example, we supported the codification of the restraint principle—the ladder principle—which was already codified in the Criminal Code, as well as section 493.1, which directs the judicial officer to give primary consideration to releasing the person at the earliest reasonable opportunity and with the least onerous conditions appropriate in the circumstances. I'm referring again to the restraint and to the ladder principles.

Section 493.2 required consideration of the overrepresentation of indigenous people on trial, as well as other vulnerable populations that have been overrepresented and disadvantaged in the criminal justice system.

We also supported changes that would explicitly discourage the use of cash deposits and sureties. That's based on many judgments and reports over the years that have commented on the overreliance on surety bail as a form of release.

We also supported the diversionary mechanisms, including judicial referral hearings. I should note, just based on my own experience, that I don't think we have seen that used as much as it could have been.

We also supported, in particular, the expansion of police powers, which would allow police to release an accused on arrest. This would reduce overall the number of bail hearings and, hopefully, the number of people in detention and custody.

We also noted that Bill C-75 made it a bit more difficult for people charged with domestic violence-related incidents who already had a record for such violent offences. That was something we made submissions on as well.

That was the overall import of the changes to the bail regime as a result of Bill C-75.

Ms. Lena Metlege Diab: Thank you very much for that. It's very helpful to have all of that clarified.

You said, and other witnesses have said, that any amendments that are to be made need to be made based on evidence and on statistics.

My question to you is, do you have evidence from the Canadian Bar Association or from anywhere else that you or others would have gathered that suggests to you that we should be making amendments? If so, what types of amendments should we make?

● (1615)

Ms. Melanie Webb: The Canadian Bar Association, as far as I'm aware, does not collect statistics. We have in our submission made reference to statistics from Statistics Canada, which are accessible online. We included those specifically to provide some clarity regarding whether or not there has been an increase in crime and, if so, in what kinds of crime and what the reasons might be.

I can't speak specifically.... I'm not a criminologist. I'm not a statistician either. I am simply a criminal defence lawyer and someone who participates quite actively in issues on law reform and advocacy.

However, we would suggest that if there are going to be changes to the bill regime, we do not react. Again, I would echo the words of my colleague, Mr. Arnet, that we do not react based on emotion and that we do not react instinctively to very tragic and emotional events, but that we look at the literature. For example, I felt that the brief submitted by Dr. Nicole Myers earlier on in these committee meetings was very helpful. I felt that might be a very good source as a starting point.

Ms. Lena Metlege Diab: Thank you for that.

Mr. Greg DelBigio, can I ask you the same question? You also alluded to the fact that it should be evidence-based.

I appreciated that you started with how the study of the bail system is not new, that, in fact, it's decades old.

Do you have any recommendations for us on this committee as to what amendments we should make? What kinds of evidence or stats have you or people around you seen, based on your experience?

Mr. Greg DelBigio: We don't keep statistics. We're just not equipped to do that.

In my experience, sitting on various committees and attending various meetings where these issues are discussed, it's always the government's institutions that are best able to gather statistics. Of course, what is kept depends upon what you want to measure. It takes time to gather statistics, and it takes competence with respect to how to do it.

However, I think these issues.... We're talking about people's liberty. If you are thinking that more people should be in jail while presumed innocent on a pretrial basis, and if it's suggested that there is a need for that, I suggest that this justification should not be found on impression. It should be found on demonstrated need as found in statistics.

The Chair: Thank you.

Thank you, Ms. Diab. We're out of time.

Ms. Lena Metlege Diab: Thank you very much.

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

[*Translation*]

Mr. Rhéal Éloi Fortin (Rivière-du-Nord, BQ): Thank you, Mr. Chair.

To begin, I would like to thank the witnesses for being here. As my colleague Ms. Diab said, we are very grateful. We are studying a very important matter and this could be our last meeting to hear from witnesses, so your testimony is important.

There are two ways of looking at things, as you may know, since you are important players in the judicial system. According to the basic doctrine, release is the rule and detention the exception. Some people maintain that detention is necessary in certain cases because releasing the individuals would be dangerous.

I believe it was Mr. Arnet-Zagarian who said earlier that use of a firearm in the commission of an offence is an important factor. Similarly, it is difficult to justify the release of repeat offenders because of their risk to reoffend.

In my opinion, detention is necessary in some cases, while in others, individuals should be released. Those are my thoughts so far. I heard earlier that it is really a case-by-case approach and that the court has to decide in light of the evidence submitted. I think that is wise.

That is a long preamble to my question, which pertains to the fact that the court's decision may vary over time based on a number of elements and the legislation adopted.

For example, the Parliament of Canada recently enacted Bill C-5, which abolishes minimum mandatory sentences for certain offences, specifically those involving a firearm. The minimum mandatory sentence imposed for the deliberate discharge of a firearm has therefore been abolished. There is of course still a maximum sentence, and a stricter sentence can still be imposed, but as legislators we decided that the minimum sentence would no longer apply to this type of crime.

Mr. Arnet-Zagarian, in your opinion, will that impact how the court rules on releasing an individual or not?

● (1620)

Mr. Garen Arnet-Zargarian: Thank you very much for the question.

To make sure my answer is clear and coherent, I will answer in English.

[*English*]

I'm glad you asked this question. I heard you ask this question of another witness earlier, and I thought it was a very important one.

You address the issue of bail hearings being very much case by case. Different facts will impact the outcome. I think the abolition of mandatory minimum penalties has focused each sentence on the case-by-case issues.

To briefly answer your question, no, it has not been my experience that removing mandatory minimums has led to less harsh sentences or to judges treating certain crimes as less serious. The common law already explains that the way judges must treat this is by examining the maximum sentence. Removing mandatory minimums does not, in my sense, send any messages that certain crimes are not as serious as they were before. It recognizes only that a different array of circumstances can lead to the commission of an offence.

To use the example of possession of a prohibited firearm, it is very unusual to see any sentences well below the previous three-year mandatory minimum. That still, in effect, is being treated, at least in B.C., as a de facto mandatory minimum.

[*Translation*]

Mr. Rhéal Éloi Fortin: Would you not agree that the legislator has nonetheless sent a message to the courts by abolishing minimum sentences? Abolishing them means something. It was done for a reason.

In recent months, particularly in Quebec, there have been cases in which the judge has sought the lawyers' opinion on the abolition of the minimum sentence. The defence will of course argue that this means that the offence is not as serious as it was before, while the prosecution will say the opposite.

Does abolishing minimum sentences not have an impact? Does it not send a clear message to the courts? If not, what was the purpose? In your opinion, why did we abolish these minimum sentences if there is no impact?

[*English*]

Mr. Garen Arnet-Zargarian: The impact is that it recognizes the different circumstances that can lead to that offence. It's not at all saying that broadly this offence is less serious. It's explaining that, depending upon the circumstances leading to this commission, including the actual facts that led to it and the facts of the specific offender, a different sentence will be appropriate.

In my respectful view, and based on my experience, it's not at all sending the message that a crime is less serious.

[*Translation*]

Mr. Rhéal Éloi Fortin: If I understand correctly, Mr. Arnet-Zagarian, you are a defence lawyer. Let's assume you were representing an individual charged with a firearms offence. Appearing before the judge, you seek bail for your client, while the Crown prosecutor argues that it is a serious crime, that a firearm was used, and that your client must be detained in the interest of public safety.

Would you not remind the judge that there is a trend in rulings and that the legislator has decided that minimum sentences are no longer applicable in such cases? Would you not make that case?

[*English*]

Mr. Garen Arnet-Zargarian: No. I don't think I'd be very successful if I were to do that. I'll say that.

The Chair: Be very brief.

Mr. Rhéal Éloi Fortin: You might not be very successful, but would you plead that?

Mr. Garen Arnet-Zargarian: No, I would not. I don't think so.

The Chair: Thank you, Monsieur Fortin.

Next is Mr. Garrison for six minutes.

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

I'm glad to have the opportunity to drag us back to the topic in front of us, which is actually bail and not mandatory minimums.

Mr. DelBigio, you mentioned bail supervision programs being recommended since 2016. I wonder if you could talk about what you believe the impacts would be of having more bail supervision programs available.

● (1625)

Mr. Greg DelBigio: Bail supervision programs can help address risk. To the extent that risk arises because of instability in a person's life, either through housing issues or addiction issues or poverty issues, all of those things can be addressed through bail supervision rather than jail.

Jail is a very, very blunt tool through which to address risk, and it should be an absolute last resort. It's not cost-free. It's not financially cost-free. It's not socially cost-free. I think there are people who have done cost comparisons of monitoring people in jail as compared with out of jail. I suspect that the out-of-jail monitoring costs less financially. It's certainly socially advantageous.

Mr. Randall Garrison: Would you believe that a greater availability of bail supervision programs would help address the overrepresentation of indigenous people and marginalized people in pretrial detention?

Mr. Greg DelBigio: I have no doubt, because part of a submission on bail, as a defence lawyer, is to propose a plan that is going to give a judge comfort that a person is going to be stable in their lifestyle, such that they can abide by bail conditions. If that stability does not otherwise exist, and if it could be provided through bail supervision, then that is going to increase the chances of people getting bail and being successful while on bail.

Mr. Randall Garrison: Thank you.

I want to turn to Ms. Webb.

We've had some before the committee.... Certainly in the media there have been some allegations that judges or Justices of the Peace don't always have full information about the person being charged when they're making bail decisions.

Can you comment on whether that's been your experience or the Bar Association's experience? Do judges actually have the information they need, and does that include administration of justice offences?

Ms. Melanie Webb: Yes.

I'll speak as a defence lawyer having had experience in bail hearings. Certainly in Ontario the practice is that a Crown in a bail hearing will invariably supply the court with a list of the accused's criminal record, a list of any outstanding charges. We even have Crowns who will supply occurrence reports, which may go to establishing a pattern of continuing criminal conduct, and that, of course, can be a bit controversial, obviously, to the defence.

It is not unusual for judicial officers, Justices of the Peace or judges on bail review to make various inquiries of the Crown and the defence during a hearing to satisfy themselves of any lingering concerns or questions that they may have.

We allude to this in our written submission, but we're not aware of any evidence that there is some kind of widespread problem that judicial officers are routinely receiving less than adequate information or that this is an issue that requires specific correction in the code.

Mr. Randall Garrison: Is there any indication that administration of justice offences previously would not be available when it's appropriate to the person making the decision on bail?

Ms. Melanie Webb: That, of course, would all be known to the Crown as well, and certainly that often figures prominently in Crown submissions. Administration of justice offences will show up on a criminal record.

Of course, I don't think I need to remind this committee of the discussion that's made by the Supreme Court in, for example, the Regina v. Zora decision, which talks about the issue of administration of justice offences that can actually make it far more difficult for people to attain bail.

We don't actually see any indication that this is some kind of significant issue that causes problems for judicial officers in making informed decisions.

Mr. Randall Garrison: Thank you very much for clearing that up.

I want to go to Mr. Arnet-Zargarian. I want to go back to the question of bail supervision programs and their impact, both on individuals and on community safety, and ask you a similar question to what I asked Mr. DelBigio before.

Mr. Garen Arnet-Zargarian: Is that about whether this would help reduce the rates of overincarceration?

Mr. Randall Garrison: It's both overincarceration and the contribution to public safety and to public views about confidence in the justice system.

● (1630)

Mr. Garen Arnet-Zargarian: My short answer to those is yes to both.

I'll say that in B.C. we don't have quite the robust kinds of programs that we have in Ontario, with the John Howard Society. Just to speak anecdotally for a second, I've had the privilege of liaising with the John Howard Society for a client who's based out of Toronto, with B.C. charges. I was resoundingly impressed with how comprehensive their services are and the kind of assistance they could provide to other similarly situated accused, who have no resources and perhaps mental health problems and addiction problems.

Some of the challenges we see in forming a bail plan that, first, is realistic and, second, will actually protect public safety are issues such as overcrowding in recovery houses, a lack of availability of those houses, and a lack of supervision. In other words, you're left in this predicament whereby you're presenting to the court what may be an ineffective plan. These types of programs could certainly greatly assist that.

The Chair: Thank you, Mr. Garrison.

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

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

I think this will be a question for Mr. DelBigio, but perhaps some of the others would comment as well.

You noted that there is a lack of data around pretrial incarceration. We heard that from other witnesses as well, and I would like to have your comments on that. What sorts of statistics and data should we have that we do not have at the moment? I know some of our earlier witnesses pointed out that more than half of the people who are incarcerated at the moment are in pretrial incarceration.

I'm wondering how long they are there and how many people eventually get bail. We've also heard evidence about a culture of adjournment. How much of that is the cause of lengthy pretrial incarcerations?

My question, generally, is this: What data should we have that is missing at the moment as we parliamentarians try to establish public policy around this?

Mr. Greg DelBigio: Certainly there is some data with respect to how many people are held pretrial, but if you're trying to drill down into public safety, I think it's a different kind of data, particularly if it's about public safety with respect to what happens when certain people are released on bail. Really the data you would need is about whether, upon rearrest, the system was operating as it should, and whether the new arrest is simply an unforeseeable risk, or reflects some sort of problem with the original bail hearing that maybe could have been corrected by way of an appeal, or reflects a gap in the existing laws governing bail.

Certainly I suggest that the existing laws governing bail give prosecutors all the tools they need to oppose bail in serious cases. When people are out on bail and they are picked up and charged with new offences, that does not necessarily mean the existing laws aren't working.

How do we measure that? Again, because I'm a lawyer and not a criminologist or a statistician, I can only guess with respect to how best to measure that, but I think there are people who are in the business of measurement who could probably answer that question better than I can.

Mr. Tako Van Popta: Just to be clear, I was not asking you for the measurements but only for what sort of data is missing—what the gaps are.

Maybe I could go over to Mr. Arnet-Zargarian. Can you comment on that?

Mr. Garen Arnet-Zargarian: It's hard to say what's missing. It's a difficult question to answer. I would repeat some of the points you raised, such as knowing how long a person on average will spend in pretrial custody.

I think, importantly, we talked about the culture of adjournment. That and the question of who is responsible for that have been the subject of some discussion here. It's a difficult debate to engage in. I think it misses the issue. Instead of pointing fingers, we should be looking at why a case is being adjourned. Is it because of a lack of court resources? Is it to find housing? Is it to find treatment? Is it defence unavailability or Crown unavailability? That can help us focus on where we can eliminate one of the barriers to accessing justice—that being the right to reasonable bail in a reasonable time.

● (1635)

Mr. Tako Van Popta: Thank you, Mr. Arnet-Zargarian. I have another question for you.

You said in your testimony—and I've also read some of what you've written—that any policy we would introduce on bail reform must align with a consistent direction from the Supreme Court of Canada that reasonable bail is the norm and detention in jail is the exception, but certainly there is room for some exceptions.

I'm thinking of the person who has now been accused of murdering Constable Pierzchala. He was a repeat violent offender. He had been charged and, I believe, convicted of intimate partner violence in the past. He was out on bail pending trial on similar types of charges. Certainly that should have been an exception.

What are your comments on that?

Mr. Garen Arnet-Zargarian: I think I want to come back to one way in which I have described the bail hearing—it's not my own description, but it's a common description—that it is an imperfect risk assessment. I tried to find the actual transcripts, but I couldn't find them before this. As I understand it, and I may be paraphrasing, it was described as iffy or as a close call on the bail review that led to that release.

What does that tell us? It tells us that this individual did not necessarily need an additional reverse onus to be detained. That may not have made the difference. It was already very close. Without knowing what the specific judge was looking at in that case, it's hard for me to say that, well, this would have led to circumstances that could have saved the officer's life.

The challenge we face in bail is that we're not able to say whether this was a right or wrong decision. It's a risk assessment. What the judges are all striving to do is achieve that balance of protecting the public but upholding our constitutional rights.

Mr. Tako Van Popta: Thank you.

The Chair: Thank you.

Next we will go to Ms. Brière for five minutes.

[*Translation*]

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

Hello to all the witnesses. Thank you for being here for what is probably our last meeting on the matter.

Mr. Arnet-Zagarian, I have concerns about public safety issues and the constitutional right to bail.

British Columbia's attorney general recently issued a directive to amend the B.C. prosecution service's policy on bail. Among the key changes to the policy is the removal of a provision advising Crown counsel not to seek detention unless an appropriate sentence upon conviction would include incarceration.

I would like to hear your thoughts on that: will this improve the bail system?

[*English*]

Mr. Garen Arnet-Zargarian: Just for reference, there was a previous policy whereby the Crown prosecutor would consider, if someone were unlikely to face a jail sentence, whether they should seek detention. I would say that this should give us some concern. The fact that someone could be detained on extremely minor matters, or relatively minor matters, simply because they are a public safety risk gives us some concern. In my submission, it's not consistent with the theme of the guidance from the Supreme Court of Canada, and it leads to the obvious problem that someone could serve a longer time in jail than they would ever be sentenced to.

[*Translation*]

Mrs. Élisabeth Brière: Thank you.

What leads people to breach their bail conditions? What could be done to ensure better compliance with bail conditions?

[*English*]

Mr. Garen Arnet-Zargarian: I think it's such an individual exercise to see who will follow their conditions, and how and why. One of the challenges that I think will face this committee is that a lot of this is in the provincial jurisdiction, but what we need is cooperation between governments, because this issue is simply too important.

We need to look at providing these resources that we know can address the underlying root causes of criminality. Housing, drug treatment, mental health treatment—all these aspects are very broad. They are broad terms, but we need to dedicate our resources to preventing this from ever happening. As part and parcel of that, it will help prevent future breaches, including increased supervision and increased access to treatments, hopefully before they are involved in the criminal justice system, but afterwards as well.

We're never going to be able to help every single person prevent any breach, but that will go a long way.

● (1640)

[*Translation*]

Mrs. Élisabeth Brière: Thank you.

I agree with you: the more services there are to help those people, the better it will be for everyone.

What is the impact of detention, regardless of the duration, on individuals with addiction or mental health issues, for instance?

[*English*]

Mr. Garen Arnet-Zargarian: That's an excellent question.

Previous speakers, Dr. Nicole Myers and others from various organizations, have talked about the statistics and the impacts of pretrial detention. For individuals with those types of concerns, pretrial detention centres are harrowing places. They are for anyone, but particularly for them. Going through withdrawal symptoms in that kind of an environment or undergoing a mental health episode is a threat, not only to their own safety but also to the safety of all the others in there, whether staff or fellow inmates.

It's not going to be a solution to the problem. It will likely make matters worse for that individual, for others and, just as importantly, for our society when they come out.

[*Translation*]

Mrs. Élisabeth Brière: Thank you.

[*English*]

The Chair: Thank you, Ms. Brière.

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

[*Translation*]

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

Ms. Webb, in your opinion, in the case of firearms offences, should we be stricter with regard to bail? If so, what criteria should the courts consider in such cases?

[*English*]

Ms. Melanie Webb: Fortunately, the Criminal Code already has specific provisions for offences that involve firearms. That is actually codified in the bail provisions.

I know that one of the proposals—I think, at large, this may have been alluded to in the premiers' letter more generally—is whether or not there should be another reverse onus, for example, on possession of a firearm. Without specifically coming down one way or another as to whether or not there should be a reverse onus on that specific offence, we address in our submission the fact that the circumstances of possession offences can actually vary. There can be cases in which it's fairly clear cut that someone may be responsible, certainly, for possession of a firearm. There are others in which there is a much more tenuous connection between the person charged and the actual item. The person may simply be an occupant in a vehicle, for example. The person may simply be an occupant of a household.

Generally speaking, I think it's fair to say that any time there are accused persons who come before the court and are charged with crimes of violence, crimes involving offences in which there has been use of a firearm, it is very much an uphill battle for that person to be released.

I would just strongly encourage this committee not to be swayed too much by anecdotal evidence that has been suggested, I think, in prior meetings. Generally speaking, if you were to go into bail courts in Toronto, for example—Toronto and Peel are very, very busy bail courts—you would see that, day in and day out, experienced judicial officers are very well aware of the principles of bail. They are very well aware of the need to balance public safety and confidence in the administration of justice. By and large, they carry out that responsibility very well.

The Chair: Thank you.

[*Translation*]

Mr. Rhéal Éloi Fortin: Thank you, Ms. Webb.

[*English*]

The Chair: Thank you, Mr. Fortin.

Mr. Garrison, you have two and half minutes.

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

I want to go back to Mr. Arnet-Zargarian.

In a lot of the public debate on bail, there's been discussion about so-called repeat violent offenders and their ease in getting bail. Of course, I think you will probably agree with me that there is no such category in the law. That makes it hard.

● (1645)

Mr. Garen Arnet-Zargarian: No, there is not.

Mr. Randall Garrison: However, in your experience with regard to those who might colloquially fall into that category, do you find that it's easy for them to get bail?

Mr. Garen Arnet-Zargarian: Certainly not. To put it bluntly, that's really not the case. You have to come with a comprehensive plan. Again, these things are always on a spectrum. If you have someone who has a series of recent serious violent charges, that's more than an uphill battle to release. That's almost a foregone conclusion of being detained.

Mr. Randall Garrison: I would ask Mr. DelBigio the same question.

Mr. Greg DelBigio: In my experience, these people are being detained.

Listen, transcripts are available from bail hearings. If people can point to specific bail hearings and say “this bail hearing illustrates a problem”.... I urge people to get the transcripts to understand concretely what it was that took place at the bail hearing and why a person was released. These kinds of decisions should not be made on the basis of impressions, emotions or guesswork when data is available. The data of transcripts is available. I urge those who suggest that there's a problem to obtain and present the transcripts that illustrate a problem.

Mr. Randall Garrison: Finally—I know I'm almost out of time—I want to go to Ms. Webb.

We've heard a lot of talk about how the Supreme Court has said people should be released at the earliest opportunity, on the fewest conditions. How do we square that with the very large number of people in pretrial detention in this country?

Ms. Melanie Webb: Thank you for that. I realize that I have very limited time to address that question.

There's one thing I want to note, which I don't think was mentioned earlier. During the early days of the pandemic in 2020, there was a great, concerted effort between the Crown and the defence bar to try to consent to release and to fashion conditions that were reasonable to try, particularly when there was a lot of uncertainty. There was no vaccine available, and the conditions of jails, aside from being very poor generally, were certainly not amenable to people who were residing in closed spaces and unable to self-isolate.

I would say that after the initial months of 2020, there has been a bit more of a reversion back to greater opposition to bail and opposition under reasonable conditions, so maybe I'll just suggest that I think we are seeing a bit of a swing. I can't speak to all jurisdictions in the country necessarily, but I have seen that, and again, I'd really refrain from making anecdotal remarks, but that has been the general experience, certainly in the golden horseshoe area in southwest Ontario.

Thank you.

The Chair: Thank you.

Thank you, Mr. Garrison.

That concludes the first panel.

I want to thank all three witnesses, especially the ones from Vancouver. Thank you for appearing and for coming down.

I will now suspend for about one minute to do a couple of sound checks, and then we'll begin the second round.

● (1645)

_____(Pause)_____

● (1650)

The Chair: We're back for the second hour of the study on the bail system.

I want to welcome our witnesses.

We have Michael Spratt as an individual. He is a partner at Abergel, Goldstein and Partners.

We have Sylvie Bordelais, attorney-at-law, from the Association des avocats in Quebec.

We have Kevin Davis, mayor of the city of Brantford.

Welcome.

For those who didn't hear me before, I use cue cards, so when you are down to 30 seconds, I will raise this one, and, when you're out of time, I'll raise the red one. Just be mindful of time.

Hopefully you will put your headphones on the right channel so you can hear and, on Zoom, Ms. Bordelais, just make sure you have your interpretation to the right language so you can hear everyone.

Monsieur Fortin, I've been told that the sound checks have been done, so we'll begin.

Mr. Rhéal Éloi Fortin: Are they okay?

The Chair: I've been told that they are okay.

Mr. Rhéal Éloi Fortin: Thank you.

The Chair: We will begin with Mr. Spratt, for five minutes.

Mr. Michael Spratt (Partner, Abergel Goldstein & Partners LLP, As an Individual): Thank you.

My name is Michael Spratt. I'm a specialist certified by the Law Society of Ontario in criminal law. I'm a partner at AGP Law here in Ottawa. I have been practising exclusively criminal law since 2005.

Every discussion about our bail system must start with the fundamental constitutional principles that have been enshrined in the Charter of Rights and Freedoms, the presumption of innocence and the right not to be denied reasonable bail without just cause.

We must remember that people denied bail are presumed innocent. We should not seek to punish people before they have been found guilty. Pretrial detention is punishment of the worst kind.

I want you to imagine a jail so devoid of humanity that guards stand idly by while a pregnant woman gives birth in her cell, a jail so lawless that guards can brutalize inmates and then cover up the abuse with impunity, a jail so overcrowded that inmates are forced to sleep in a damp shower cell, a jail so dirty that clothing and bedding are stained with urine, feces and blood, and where there are bedbug infestations and other unsanitary conditions that lead to untreatable infections. This isn't hyperbole. This is reality.

More than 70% of Ontario's jail population is made up of individuals awaiting trial. We lock people up because they are poor, homeless, addicted, sick or marginalized. Sadly, rehabilitation programming, addiction counselling and mental health treatment are non-existent for most of inmates on remand.

The dirty secret of the justice system is that people usually come out of jail in worse shape than when they went in.

Our jails are increasingly expensive factories of suffering that interfere with rehabilitation, cut accused people off from family and community support, result in homelessness and unemployment, and make our communities less safe.

Most disturbingly, pretrial detention results in a perverse incentive to admit guilt to escape those horrendous jail conditions, rather than wait months for a trial. I've seen this on many occasions.

Any study of the bail system should examine these issues. We do need to talk about reform, but I expect that's not the type of reform or the types of questions you'll be asking me about.

The current discussion about bail and firearm offences has been driven by some very high-profile tragedies, like the killing of OPP officer Pierzchala, and most recently the shooting deaths of the Edmonton police officers, constables Jordan and Ryan.

It can be easy to ignore important facts in the face of such tragedy, so I briefly want to start with some facts.

The first fact is that crime statistics are very complicated.

The second fact is, historically speaking, that we live in one of the safest periods in Canadian history. Violent crime rates have been declining for years, and we've seen an 11% drop over the last 20 years.

There has been an increase in the rate of firearms-related offences since the year 2000, but the use of firearm offences in homicides has remained relatively stable over the last 20 years. According to StatsCan, there was a decrease of almost 10% in gang-related homicides in 2020 and a 5% decrease in firearm-related violent crime in 2021.

The third fact is that there is not an increasing trend of on-duty police deaths.

The fourth fact is that pretrial detention increases rates of recidivism.

The fifth fact is that Bill C-75 did not contain catch-and-release bail policies. There is no such thing. This type of language is a political grift.

Bill C-75 legislated recent decisions from the Supreme Court, like the principles of restraint, and actually let police officers impose stricter bail conditions when they release individuals. It also reversed the bail onus for many offences that involved intimate partner violence.

The sixth fact is that firearm offences are taken very seriously in our courts. In my experience, the police rarely release those accused, unless the accused is a fellow police officer; Crowns rarely consent to that release, and bail hearings are always lengthy and hotly contested.

The seventh fact is that reverse-onus bail for firearms offences is most likely constitutional and might prevent some offences.

The eighth fact is that it won't deter offences, just as increasing sentence length doesn't deter offences.

The ninth fact is that reverse-onus provisions in firearm bail would not have prevented the deaths of Officer Pierzchala, Officer Jordan or Officer Ryan.

The solutions to be found are not in changing bail law but in looking at increased funding for access to justice, upstream social supports and bail enforcement.

● (1655)

There is a crisis in our bail system, but not the one that you think. Our bail system is not overly lenient. The catch-and-release slur is not true. Recent legislation did not cause the recent tragedy, and I urge you to look at the realities and the evidence and not use the criminal justice system as some sort of political wedge.

The Chair: Thank you, Mr. Spratt.

We'll go next to Madame Bordelais for five minutes.

[*Translation*]

Ms. Sylvie Bordelais (Attorney-at-Law, Association des avocats et avocates en droit carcéral du Québec): On behalf of the association of prison law lawyers of Quebec, I wish to thank the committee for inviting us.

In Quebec, prison law lawyers are a small group who, for more thank 30 years, have represented persons in detention, in prisons and penitentiaries alike.

Today, I will focus on individuals in detention awaiting court proceedings, because these are people who have been denied bail or who have waived bail. So as not to repeat what our defence colleagues have already explained, I have decided to focus primarily on what happens in detention facilities when persons presumed innocent are detained.

The following figures are from the website of Quebec's ministry of public safety. They provide an overview of the situation and its evolution over time. I must point out, however, that as a result of COVID-19, the numbers for 2020-2021 are much lower because the authorities tried to limit the spread of the virus by not overcrowding jails. So I will not review all the data since you certainly have access to it.

The figures for 2020-2021 show that 26,139 people were incarcerated, or roughly 378 out of 100,000 residents, of which 50% were defendants, 10% had mental health problems, more than 37% were on prescription drugs, 11% were women, just over 4% were indigenous, and close to 3% were Inuit.

In 2018-2019, before the pandemic, 25,555 people were incarcerated, of which 12% were women, 4.4% were indigenous, and 3.5% Inuit. Among them, 8% had physical health problems, 11% had mental health problems, 35% were on medication and 2.6% were at risk for suicide. Ninety-one percent were unmarried, 76% did not have a diploma, 59% lived alone and 36% had a criminal record.

The most common offences leading to incarceration were breaking and entering and breach of bail or probation conditions, drug possession and trafficking, and theft over $5,000. In 55% of cases, they were acquitted, 43% of the defendants remained in custody after a trial or a guilty plea, and 2% received a sentence in the community.

The average length of stay in pretrial detention was 55 days, specifically, 24% and 22% at the two institutions in Montreal and 12% at the Quebec City prison.

While the death of incarcerated persons is not always publicized, we must not forget the case of a young man who was supposed to be released after a judge granted bail but instead died on Christmas Eve 2022 while in the custody of Quebec's correctional services. A bit earlier that same year, another individual in the pretrial custody of Quebec's correctional services was killed by a fellow inmate. This highlights the particularly difficult detention conditions in certain provincial facilities.

According to the data obtained by TC Media, there were 73 violent deaths in Quebec correctional facilities between 2010 and 2015, with suicide being the main cause of offender death. According to figures I mentioned, in 2022-2023, 43 individuals had attempted suicide and 7 individuals had died as of October 21, 2022.

I was unable to determine whether this occurred equally among inmates and those awaiting trial, but this happens at all detention centres, including women, regardless of the prison population. This points to the profound distress of individuals placed in prisons, particularly in view of staff shortages, leaving the inmates in conditions that are akin to torture. I would also remind you that class actions pertaining to solitary confinement have been been won, in particular because this kind of treatment, which is akin to torture, is still used in some provincial prisons.

● (1700)

Currently, judges are selected on the basis of their expertise. That is why I maintain they must be given the necessary latitude to decide who should and should not receive bail.

[*English*]

The Chair: Thank you, Ms. Bordelais.

Now we'll go to Mr. Davis, mayor of the city of Brantford.

Mr. Kevin Davis (Mayor, City of Brantford): Thank you very much, Mr. Chair. I thank you for inviting me to this committee hearing.

I am the mayor of the city of Brantford. I was elected in October 2018, after having practised law for 38 years.

I was a civil litigator. I did not practice criminal law, so I'm not coming to you as an expert in criminal law. I don't pretend to be.

However, I'm here to speak on behalf of my community and many of the residents in my city, who are very concerned about what they see as a deterioration in social order and what they're experiencing in their daily lives. Fortunately for most, it does not involve exposure to violent crime. We read the headlines. We see it. There is violent crime that occurs in our community, but what most residents see in their daily lives is a very visible increase in what I'd call non-violent crime.

They see their cars being broken into multiple times. Their homes and property are being vandalized and stolen. They see open drug use and open drug dealing. They see our local police service—led by Chief Davis, who I believe testified at this committee earlier this month—doing an excellent job investigating and making arrests. We're a relatively small city, so people are generally known. They're seeing the people who commit these types of crimes being released multiple times, even in the face of many prior breaches of probation and breaches of prior release orders.

I can give you a couple of examples. I know the committee has distributed some of these slides, which are actually from Chief Davis and the Brantford Police Service. They refer to 10 of what the police service calls the most prolific offenders. There are a couple there.

There's an example of one who had, at the time this survey was done, 73 substantive charges, nine failures to comply, 25 breaches of probation, multiple releases—in excess of 20—but continued to commit admittedly non-violent offences.

It was interesting. Last year we had an individual in the court system who pleaded guilty to several break and enters. He actually remarked during his sentencing that he had been arrested eight times in the previous 12 months. He felt the system bore some responsibility for his crime spree, for failing to keep him in custody. An offender mentioned that.

We had another individual in our downtown—seen on multiple surveillance videos across social media—who destroyed $70,000 in plate glass windows. He was arrested very quickly. He was then very quickly released. He then went out to destroy another $20,000 worth of plate glass windows later in the day. He was rearrested and released, but then his spree was brought to a halt because he committed a more serious criminal offence, so he was detained.

I realize I'm giving you ad hoc incidents, but this is what citizens are experiencing on a pretty much weekly and daily basis. They're becoming disillusioned with the judicial system. They're losing confidence in the judicial system. Yes, they use words like “revolving door of justice”, but that reflects a perception that the judicial system is not protecting them and not protecting their property.

I'm very much concerned, as a lawyer, about what that will do over time. It's a gradual erosion of the value of the rule of law and of the fact that the law applies to everyone equally, that there are consequences for those who break the rules, and that people should not take the law into their own hands.

In fact, Chief Davis just commented in a newspaper article this week in Brantford that he's very concerned about this growing frustration that residents have with the judicial system, and bail in particular. He's very much concerned that there's talk on social media of vigilantism. He's very much concerned that over the course of time, if the erosion continues—of the faith people have in the judicial system—it could lead to that. We would obviously hope not.

Now, I'm not advocating for people to be kept in jail more often and more frequently. I have some other suggestions, albeit provided in a non-expert fashion, that I'd be happy to provide if asked questions.

● (1705)

I'm running out of my five minutes, but I wanted to, in my first five minutes, convey to you a general feeling from across my community. It's the number one complaint and inquiry I have gotten in the Office of the Mayor week in, week out over the four to five years that I've been mayor. There's no other issue that causes as many comments and directs so many comments to the mayor's office, asking that we do something.

The Chair: Thank you, Mayor Davis.

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

Hon. Rob Moore (Fundy Royal, CPC): Thank you, Mr. Chair, and thank you to our witnesses on this panel for your valuable input into this important study.

Mayor Davis, I'm going to begin by asking you a question.

I also bring greetings from your member of Parliament, Larry Brock, who's a regular member of this committee.

You've heard today that we've heard from some individuals who seem to take the approach, “Nothing to see here. There's no problem.” Incredibly, I heard a witness say there is no catch-and-release. I don't know what you call it when someone is caught and then released, other than catch-and-release.

Screaming from the headlines, in your own community, I see a release from the Brantford Police Service just today, Thursday, March 23, 2023. They say there was a home invasion robbery, and, “Investigation revealed that four male suspects, armed with firearms, entered [a] residence...assaulted, robbed, and forcibly held two...victims before fleeing the scene in a vehicle driven by [another] suspect.” Of the five suspects, four are in violation of a number of judicial release orders, including multiple firearms prohibition orders.

This is at the crux of the problem your community is rightly talking to you about and my community, in New Brunswick, is talking about. We're not talking about a vast number of offenders. We're talking about a small number of offenders who come into contact with the system, are irresponsibly let out on bail when they should be held in the interest of public safety, and then go on to commit another crime.

The Toronto Police Service provided us with statistics about individuals who are arrested on a firearms offence, receive bail, are arrested again while on bail for a subsequent firearms offence, and receive bail again.

When you talk about a revolving door—and I agree with you 100%—I wonder if you can expand on that. You may not want to go into details, but speak to this issue I just raised. Is this the type of thing your community is concerned about?

● (1710)

Mr. Kevin Davis: Our community is very concerned about it. You heard previously from Chief Rob Davis and Chief Darren Montour from Six Nations. They're both very concerned about it in terms of public safety, and I think their concern is justified.

Has the system drawn a proper balance between protecting the public and protecting the rights of individuals who have not yet been convicted? There's a growing perception in the community—certainly in mine and in the surrounding area—that the balance is out of kilter, and that the interests of those who are clearly of a criminal bent, from their records, are receiving greater consideration than the interests of those who want to see themselves protected by the system.

When people lose confidence in the system, you see the broken windows of policing. If people see that there aren't consequences, they begin to question whether they should follow the rules, because that's what the rule of law is all about. If we depend on a rule of law system that says to somebody that you....

Let me get this straight. The rule of law depends very much on most citizens obeying the rules and acting as lawful, proper, responsible citizens. As soon as you have to police everyone, your system's going to break down. That's my concern. We are seeing a general increase in this kind of activity, whether it's very violent or whether it's non-violent, and it's causing people to question the administration of justice.

I wonder what's happened to paragraph 515(10)(c). Isn't that one of the three grounds? You never hear any conversation, or you hear very little conversation about that, but there seems to be lip service paid to it.

I'd suggest it would be worth it for the committee to look at that paragraph. Is there a need to expand the subsections to enhance it, so that it has greater importance and is a consideration?

Also, we've experienced in our community many problems with a surety system. Chief Davis, in the same article, talks about the prospect of professional sureties. The issue with sureties.... I think over time, the system has replaced incarceration with sureties who are supposed to monitor and control the behaviour of the accused. You have many sureties who don't take the responsibilities very seriously, because there really are no consequences in the system for those who do not do what they're supposed to do as a surety.

I certainly encourage the committee to consider tightening up the rules when it comes to sureties, to make that system more effective and more responsible.

Hon. Rob Moore: Mayor, you're not alone in this, in that we've seen all 13 premiers from across the country—they involve every party; this is not a partisan issue—at the provincial level, calling on the federal government to play its part in addressing what I consider to be a broken bail system. It's one that would allow repeat, violent offenders, particularly when it involves gun crime, to be back on the streets of your community and others across the country.

Your police have done research. They've looked at some of the individuals. You said it in a way that it hasn't been said before. We rely on most people doing the right thing in Canada. No one is suggesting at this committee—that I've heard—that most people are doing the wrong thing. What we're saying is that there's a small number that has to be addressed, but that small number can have devastating consequences, for example, with Constable Pierzchala, who was killed over the recent holidays.

Do you want to speak a bit more to some of the suggestions or data that were provided around the prolific offenders you find in your community and what we can do to address that at the federal level?

● (1715)

The Chair: Unfortunately, Mr. Moore, we're over by a minute, but I'll give you 10 seconds.

Hopefully, in the next round, you'll be able to answer that.

Mr. Kevin Davis: In 10 seconds, in terms of violent offenders, I believe Chief Montour and Chief Davis have both spoken extensively about that. They're better qualified than I am, and they're more experienced than I am to comment on that.

I talk about the interaction I have with residents on a weekly basis about what's happening in their lives—most of them—and what it is they're experiencing. What they're telling me is what they think about the justice system.

The Chair: Thank you, Mr. Moore.

We have Ms. Dhillon for six minutes.

Ms. Anju Dhillon (Dorval—Lachine—LaSalle, Lib.): Thank you, Mr. Chair, and thanks to our witnesses for being here.

I'm going to start with Mr. Spratt.

You gave quite a horrific description of jail conditions—and this is in Canada. Can you talk to us a little more about what you mean by people coming out worse off when they are incarcerated?

Mr. Michael Spratt: Sure. I'm not a criminologist. I know you've heard from Dr. Myers and likely from some other criminologists who can provide the data that suggests that it is the case, but what we see in jails is a dehumanizing system that leaves people broken. Someone who is denied bail will lose their job, their housing and their connections with family. They are unable to maintain those connections, because it's expensive to make collect phone calls from jail. They're unable to set up treatment and counselling when they're released from jail, because they don't have those primary supports.

When you combine that with an utter lack of rehabilitative services for people on remand, it means that people who are held in custody.... We've known this for decades. From the Ouimet report, we know that we are risk averse when it comes to releasing people. What that means is that if bail is made too hard to get, if it's made too onerous, and if we use isolated tragedies to craft general legislation that applies to everyone, that's not the way we should be doing it.

We need to legislate generally and have that apply specifically, looking at the nature of the allegations, looking at the person's circumstances and looking at the supports available to them—because when you get it wrong on bail, the community suffers. If you're conservative and you're interested in dollars and cents, and we're looking at paying $80,000 a year to have someone in provincial remand, that should be troubling.

If you're someone who just cares about humanity, as I'm sure everyone does, it should be troubling that we treat people that way. If you're just worried about what your constituents and what the people in your community think, you should be concerned, because someone coming out of jail after those conditions puts your community in danger.

Ms. Anju Dhillon: Thank you for that. I'd like to follow up on your comment about not making generalizations about the entire population because of some very specific, tragic cases.

Could you tell us a bit about the positive impacts of letting somebody out, an accused, rather than keeping them detained during the entire bail process?

Mr. Michael Spratt: I'll just go one step further. The problem about making generalizations based on specific cases is we don't even seem to have people who care to get the primary facts right about those specific cases.

On the tragic death of Officer Pierzchala, reverse onus would fix this, except it was his bail review. It was already his onus, so reverse onus wouldn't fix that.

If we're really interested in fixing it, we need to look at some larger systemic issues. When you have someone who's out on a well-supervised bail, that could be monitored by the police, that could be supervised via a bail program that has the access to justice resources that allow check-ins and support. That is a perfect way—while someone is presumed innocent, mind you—to assist in the rehabilitation. This is because it can be supervised; it can be monitored.

Rest assured, from everything that we've seen in court, our courts take serious violent offence seriously. When we look at prolific offenders and people with long records, we see that that is taken very seriously. Bail is the perfect time to make sure people aren't set back; in fact, it's a time to help people take a step forward.

● (1720)

Ms. Anju Dhillon: Can you please talk to us about racial bias and the impact of that? You spoke about it during your opening statement.

Mr. Michael Spratt: Yes. We've seen this in bail cases like Antic; but we've also seen it in cases from the Ontario Court of Appeal, in R v. Morris, and the Nova Scotia Court of Appeal, in R v. Anderson. There are systemic issues with respect to overcriminalizing and overincarcerating racialized individuals, especially indigenous individuals. When we look at firearms specifically, we see it's easy to come at it from a downtown urban setting, although in many of those urban settings we've actually seen some decrease in gun offences over the last little while.

As I said, statistics are dangerous, and you have to be careful of small sample sizes.

I just got back from a circuit in the Northwest Territories, where the use of firearms, the culture of firearms and the types of people who have firearms are very different than down south.

If you have one-size-fits-all rules, it can lead to injustice for some people who don't and haven't traditionally fit into what we imagine the criminal justice system should be.

Ms. Anju Dhillon: My follow-up question to that is, have you seen, let's say, those who were indigenous or of the Black community...? What they are accused of is less severe, yet they are still denied bail compared to more violent crimes.

Mr. Michael Spratt: Yes. Our courts have been very clear at the bail stage and at the sentencing stage. If you are charged with a serious crime, just because you're racialized or indigenous, there isn't a “get out of jail free” card. In fact, there are very harsh punishments, but we do see a system bias.

If you are a rich, white kid from the Bridle Path or from Rockcliffe Park, your parents can set up private treatment. They can put down a large amount of money. They can take a day off work to come and bail you out. If you are a poor kid with a working class family, you don't have the same advantages, and we see that trickle down into the disproportionate incarceration of a variety of groups.

Ms. Anju Dhillon: Thank you so much.

The Chair: Thank you, Ms. Dhillon.

We'll now go to Mr. Fortin for six minutes.

[*Translation*]

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

I want to thank the witnesses for being here today. This is an important matter, and I do not think we will ever have heard too many points of view.

Ms. Bordelais, I listened to your description of the horrors of detention. You are not the only one to mention this, as Mr. Spratt and other witnesses also talked about it. I recognize that prisons are far from being a safe place where people can thrive. Clearly, that is not their purpose. I also recognize that there is a lot to be done to truly make prisons centres for rehabilitation.

That said, a large segment of the population is appalled by the rate of recidivism. We have to make sure that individuals who receive bail after being charged with serious offences, such as firearms offences, do not reoffend. I will spare you the stories of repeat offences, since you are probably as familiar with them as am I. This risk is worrisome to the public. My colleague Mr. Moore said earlier that all the provincial premiers are calling on the federal government to take action on this.

If we do not increase the number of individuals in pretrial detention, how can we address this demand from the premiers? We want to assuage public concern and make the facilities safer, without being stricter with people accused of serious firearms offences, among other things.

Ms. Sylvie Bordelais: Thank you very much for the question.

To begin, I agree with Mr. Spratt's earlier comments since the reality in Quebec is indeed the way he described it.

Let me now provide a more specific answer. I think the importance of information is overlooked, that is, that there is unfortunately a tendency to focus on specific cases. That said, I am not suggesting that those are not serious cases. I do not in any way wish to minimize the pain of those who have lost a loved one or who are the victims of violence. Yet, there is a tendency to focus on this type of thing, creating the impression that the majority of those who commit serious offences are repeat offenders. That is not the case though, on the contrary, in fact.

Judges and Crown prosecutors are well aware of the public's concerns. Individuals with a history of violence are treated much more harshly, and much greater attention will be paid if the person could get bail. So to answer…

● (1725)

Mr. Rhéal Éloi Fortin: I'm sorry to interrupt you, Ms. Bordelais, but my speaking time is very limited.

So would you tell the provincial premiers that federal legislators cannot or should not make any changes?

Ms. Sylvie Bordelais: No, that is not what I would tell them.

I would say they have to do two things. First, they have to take stock of the reality of the situation. Second, they have to be sure about what can be done up front. The individuals facing such charges have a record that needs to be considered. If applicable, and if the focus is on prevention above all else, perhaps…

Mr. Rhéal Éloi Fortin: I'm sorry, Ms. Bordelais. I do not want to be rude but I have just six minutes and more than half of that has been used up. Thank you.

Mr. Davis, I have the same question for you. As legislators, what should we do to respond to the premiers' demand and assuage the public's concern?

[*English*]

Mr. Kevin Davis: As I said previously, I'm here to speak to the concerns that my community has and to a subject I don't think the committee has heard much about. That is non-violent crime and what's happening with respect to non-violent crime.

Lots of witnesses have talked about violent crime and gun-related crime. I don't have much to add to that beyond what you've already heard from our chief and the chief of the Six Nations Police Service.

[*Translation*]

Mr. Rhéal Éloi Fortin: Thank you.

[*English*]

Mr. Kevin Davis: I'm talking about a subset of that. My concern, as a lawyer, is people losing confidence in the administration of justice. Part of this is through the headlines they read in terms of violent crime—

[*Translation*]

Mr. Rhéal Éloi Fortin: Thank you, Mr. Davis.

Let me ask you another question quickly, if I may. In Ontario, your government recently spent $7.6 million on a special team to ensure that individuals accused of violent firearms offences are not granted bail.

In your opinion, should the federal government follow suit so that all provinces take the same approach? If not, should that approach be used in Ontario only?

[*English*]

Mr. Kevin Davis: If it's successful and it is having an impact on reducing violent crime, obviously you would hope it would be used across the country. You can't argue with success.

[*Translation*]

Mr. Rhéal Éloi Fortin: Thank you, Mr. Davis.

[*English*]

The Chair: Thank you, Mr. Fortin.

Mr. Garrison, you have six minutes.

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

I want to turn to Madame Bordelais.

You talked about quite disturbing conditions in pretrial detention in Quebec.

I wonder if you could maybe address the obvious: What impact do you think those conditions in pretrial detention and the large number of people in pretrial detention have on public safety?

[*Translation*]

Ms. Sylvie Bordelais: I would like to pick up on what Minister Lametti said about a commission that would review applications from individuals who claim they are the victims of a miscarriage of justice.

When a person is in a situation they want to get out of, they will plead guilty to any favourable offer, even if they did not commit the offence in question. That is probably what I find most bothersome and disheartening. Racialized persons, Inuit and women are more likely to plead guilty to offences that they did not necessarily commit, simply to get out the chaos they find themselves in. As a member of the public and a lawyer, I find this particularly problematic.

● (1730)

[*English*]

Mr. Randall Garrison: In your experience with the system, what do you think would be the best ways to reduce the overincarceration of marginalized and racialized people in the system? How can we get at this problem that seems to contradict the Supreme Court's decisions?

[*Translation*]

Ms. Sylvie Bordelais: Looking at racialized and indigenous persons and women in particular, they are not necessarily the ones who commit the most violent crimes. As to the Black community, firearms are sometimes involved. I will not elaborate on that however.

Let us begin with the facts. In the figures I mentioned, we see that reincarceration is most often the result of non-compliance with bail conditions. For example, if a person is asked to abstain and they do not abstain, they will ultimately be sent back to prison, even if there was no significant offence. If we began by considering prospective bail conditions, that might reduce the rate of reincarceration, especially if there is no repeat offence as such, but rather a breach of conditions.

[*English*]

Mr. Randall Garrison: Are bail supervision programs widely available to marginalized people in Quebec?

[*Translation*]

Ms. Sylvie Bordelais: I'm not sure I can answer that question.

I can tell you, however, that a person of no fixed address, with little money and who is unable to communicate easily with their lawyer will be at greater risk of breaching their bail conditions and failing to appear in court. As a result, that person will at some point breach their conditions and be incarcerated. This vicious circle means that the most marginalized, the poorest and those with the least education are those who are most often reincarcerated.

[*English*]

Mr. Randall Garrison: Thank you.

I want to turn to Mr. Spratt, along the same line of questioning, about the impacts of these conditions in pretrial detention on public safety. Maybe you can say a bit more about what you have observed.

Mr. Michael Spratt: One of the most disheartening things I've seen—and I think every criminal defence lawyer has seen—is individuals who are pleading guilty not because they're guilty or remorseful but because they will do anything to get out of jail. I think I would, given what I know about those conditions.

It's that sort of perverse incentive, which has been well studied in the context of minimum sentences, that is most concerning, because now you not only have individuals who have lost confidence in the justice system because of how they were treated, what they were forced to do and the conditions they were in, but individuals who, unfortunately, we disproportionally see as racialized and marginalized, and who now have criminal records, which makes it all the more difficult to get a job, to reintegrate into society, to volunteer and to be the prosocial individuals we and they want them to be.

It's this cyclical and self-fulfilling prophecy that really needs to be stopped. We need to do that through funding things like treatment, through bail supervision and through insisting that our municipal and other police forces allocate resources like that responsibly, so that if there is a bail breach and someone doesn't show up to court, we're alerted before there's a tragedy.

Mr. Randall Garrison: Mayor Davis has raised this question of the non-violent offences, repeat non-violent offences. What you're saying to us is that the system we have now actually contributes to that repetition rather than helping to solve it.

Mr. Michael Spratt: It does, and perception is something too. When we don't have grown-up conversations that actually deal with the facts and the underlying issues, and we reach to the Criminal Code for quick solutions, the public sees things as bleak and dangerous, when in fact we know from the statistics, especially when it comes to those minor crimes, that we have never been safer.

Mr. Randall Garrison: Thank you.

The Chair: Thank you, Mr. Garrison.

We'll now go to our second round. In the interests of time, we're going to do them for three minutes, if that's okay.

Mr. Van Popta, you have three minutes.

Mr. Tako Van Popta: Thank you, Mr. Chair, and thank you to the witnesses for being here.

Since we have only three minutes, I'm going to focus on Mayor Davis.

Thank you for being here, sir, and for your earlier testimony.

Coming out of the Brantford City Council, there were a couple of motions recently. One was urging the federal government to strengthen the bail system. The other was to do with provincial initiatives. Perhaps you could expand on those.

● (1735)

Mr. Kevin Davis: That's right. It was two-pronged. One was directed to the federal government Department of Justice. In particular, it referenced some of the cases I talked about earlier and asked the federal government to consider changes to section 515, which I spoke about earlier, tightening up some of the rules in respect to sureties and also giving greater consideration to the third ground.

It wasn't focused solely on the federal government. There was also a resolution directed to the provincial government, asking for greater resources to be spent on the judicial system to reduce the delays that can create much of the prejudice and inequities that other commentators have mentioned. It was an encouragement to the provincial government to look at the policy that it gives the Crowns with respect to bail hearings, but, more importantly, to spend more money on the system to improve it.

It went two ways.

Mr. Tako Van Popta: Thank you for that.

The person who has been charged with murdering Constable Pierzchala was subject to strict surety supervision requirements, but he just didn't abide by them.

We had Chief Montour of the Six Nations Police Service here. They were responsible for supervision, but he told the committee that they just did not have the resources. Could you comment on that?

Mr. Kevin Davis: Yes. I've talked to Chief Davis about that.

I didn't want to give the impression that I'm not concerned about violent crime. I am, and I certainly support the position that Chief Davis advanced before the committee and the concerns he has. As for those who talk about the reverse onus for those kinds of crimes, I would support that.

As I said, I thought my role here was to talk about something that I don't think has been talked about that much, and to me it's another aspect to this that should be addressed.

Mr. Tako Van Popta: I agree with that. [*Inaudible—Editor*]

The Chair: Thank you, Mr. Van Popta.

Ms. Brière, you have three minutes.

[*Translation*]

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

I would like to thank this second panel of witnesses.

Mr. Spratt, thank you for your comments. We could have spent at least six minutes on each of the points you made.

We heard Mr. Davis say that we have not found a balance between public safety and the accused's right to release. I would like to hear your thoughts on that.

[*English*]

Mr. Michael Spratt: I think we strike a very good balance. That's not to say that the system is perfect. Striving for a perfect bail system has resulted in what we found in Ontario. I saw Mr. Naqvi here. When he was attorney general, he launched a number of studies and found that when we're too risk averse and strive for perfection, we end up detaining people inappropriately. That can lead to, as I've described, some bad consequences.

It's not that the system will ever be perfect. People will breach while on release, but we have to do our best to try to mitigate that. Part of that is making sure the police allocate their resources properly to do compliance checks. Part of that is making sure we have good bail supervision and other programs.

I can assure you that for serious offences, the courts balance—it's a secondary factor—the security and safety of the public. They look at an individual's record. They look at the history of non-compliance. They look at a plan. Sureties are cross-examined. Hard questions are asked. This balancing is done. If it is not done properly, then there's always the ability for the Crown to appeal that.

We have this balance that takes in all those factors, looking at the specifics of the allegations and the specifics of the individual. It's really when you try to strive for perfection, when you look at examples and don't necessarily, in an intellectually honest way.... Look, if the solutions you're proposing had actually affected that particular example that you look at, it's then that we get into problems of really eroding the fundamental purposes of bail and how it interacts with the protections that we have under the Charter of Rights and Freedoms.

● (1740)

[*Translation*]

Mrs. Élisabeth Brière: Thank you very much. That is very interesting.

You said earlier that pretrial detention increases the risk of recidivism. I would like to hear your thoughts in connection with what you just said.

[*English*]

Mr. Michael Spratt: It's well documented, not only in the context of bail but in the context of sentencing as well. It's not strict bail that is going to stop someone from committing an offence, just as it's not a long sentence that will deter someone from committing an offence. If we think there's that level of precognition and planning if someone has mental health or addiction issues, then we're deluding ourselves. That's borne out in the evidence.

The Chair: Thank you.

Thank you, Ms. Brière.

That concludes our panel. I want to thank you guys for attending.

I think that's our last bail meeting, too. We'll be working on it later.

Thank you once again.

The meeting is now adjourned.