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Chair

Mr. Bernard Patry

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• (1530)

[English]

The Chair (Mr. Bernard Patry (Pierrefonds—Dollard, Lib.)): Good day, everyone.

Orders of the day are pursuant to the order of reference of Tuesday, March 27, 2007, Bill C-35, An Act to amend the Criminal Code (reverse onus in bail hearings for firearm-related offences). We have the pleasure today of having the Hon. Rob Nicholson, Minister of Justice.

Welcome, *monsieur le ministre*.

[Translation]

Also appearing before the committee today, from the Department of Justice, Ms. Catherine Kane, Acting Senior General Counsel, Criminal Law Policy Section, as well as Ms. Julie Besner, Counsel, Criminal Law Policy Section.

Welcome, Ms. Kane and Ms. Besner.

[English]

The floor is yours, Mr. Nicholson. You can start.

[Translation]

Hon. Rob Nicholson (Minister of Justice): Thank you very much, Mr. Chairman.

I'm very pleased to be here. This bill proposes to amend the Criminal Code to establish a reverse onus in the case of bail hearings for firearm-related and other regulated weapons offences.

[English]

The issue of providing a reverse onus for bail hearings for certain serious firearms offences is one of the government's criminal justice priorities. In my view, the legislative reforms proposed in Bill C-35 are appropriately tailored to the concern that has been expressed by many Canadians recently about the release from custody of individuals accused of serious gun crimes, who pose a threat to public safety.

Bill C-35 proposes a reverse onus for eight serious offences when committed with a firearm. They are the following: attempted murder, robbery, discharging a firearm with criminal intent, sexual assault with a weapon, aggravated sexual assault, kidnapping, hostage-taking, and extortion.

A reverse onus is also proposed for any indictable offence that involves a firearm or other regulated weapon if committed while the accused is under a weapons prohibition order. These indictable

offences are not limited to those that involve the actual use of a firearm or weapon. Furthermore, a reverse onus is proposed for the offences of firearm trafficking, possession for the purpose of trafficking, and firearm smuggling.

Bill C-35 contains another amendment, which is not a reverse onus proposal. It provides that the courts give consideration to the fact that a firearm was allegedly used in the commission of the offence, to decide whether or not the accused should be kept in custody, in order to maintain confidence in the administration of justice.

Finally, it proposes that the court also consider whether the accused faces a minimum term of imprisonment of three years or more for a firearm-related offence.

The presumption of innocence and the right not to be denied bail without just cause are both constitutionally protected rights in our criminal justice system. Bail, however, can be denied in certain circumstances, and the Criminal Code provides specific grounds upon which the courts are justified in keeping someone in custody before their trial. Bail can be denied when detention is necessary to ensure that the accused does not flee justice, to protect the public—for example, if there is a substantial likelihood that the accused will reoffend if released—or to maintain confidence in the administration of justice.

[Translation]

Normally, the Crown is the party that must show just cause for keeping the accused in custody before trial. However, in certain specific cases, the onus is on the accused to show that there is no justification for keeping him in custody.

• (1535)

[English]

The protection of the right to not be denied reasonable bail without just cause has led to a few important constitutional challenges, which were brought to the Supreme Court of Canada for decision.

It's worth noting that our Supreme Court has maintained that constitutional validity of certain circumstances triggering a reverse onus on bail. The Supreme Court of Canada acknowledged that this special bail rule is necessary to combat the pre-trial recidivism and absconding problems by requiring the accused to demonstrate that those risks will not arise.

It should be noted that there is unfortunately very little research available in Canada and elsewhere on the rate of reoffending by people out on bail. This is the case for offences in general and therefore also with respect to firearms offences specifically.

To date, the Canadian Centre for Justice Statistics has not gathered such data. Some police services gather statistics on whether a person newly arrested was previously under some form of supervision order; that is, whether they were on bail, prohibition, parole, or subject to a peace bond. I believe the data the department has on this issue was provided, as it had been requested during the technical briefing shortly after the introduction of this bill.

It's important to note, however, that the approach taken with several of the proposals in Bill C-35 is consistent with the principles that underlie the current bail regime. The reform proposed in Bill C-35 builds on the existing reverse onus scheme to specifically include certain serious firearms offences.

I think Bill C-35 is not only a very sensible and focused piece of legislation, but it also reflects much of the guidance provided by the Supreme Court on the bail regime. Bill C-35 takes a very similar approach to the bail regime that already exists, but it focuses on the current gun crime problem, particularly as it relates to serious firearms offences or offenders who ignore court orders not to possess weapons. It also recognizes that firearm trafficking and smuggling operations are similar in nature to drug trafficking and smuggling, in the sense that such illicit activities form part of a larger organized crime setting.

I hope the committee, after studying Bill C-35, will agree that this bill will improve the state of law and therefore greater protect Canadians from the threat of firearm violence.

Officials from my department and I would be happy to respond to any questions you may have. In that regard, I am pleased to have with me Julie Besner as well as Catherine Kane, both from the Department of Justice.

Thank you, Mr. Chairman, for allowing me those opening comments.

The Chair: Thank you, Mr. Minister.

We'll start now. According to our rules, it's seven minutes a round, and I'll be very strict.

We'll start with Mr. Murphy, please.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): Chair, in other committees involving justice it is quite strict as well, so we'll find no difference with that.

Mr. Minister, thank you for coming. It's very good to see you. It's very good to have you here on a bill with which we largely will have no disagreement in principle. However, as you know, these committees are here for a purpose, to go through some of the technical aspects to ensure that due diligence has been given, not only, I am sure, at the departmental level, but obviously here at the legislative level.

Just by way of review, I think this department and you, Mr. Minister, are building on a number of amendments to judicial interim release, starting from the 1869 rule that it was always discretionary.

There were a number of reforms, particularly in the last 30 years, with the Bail Reform Act and others, that clamped down on the discretion for many types of offences.

Cutting to the quick, the department, I take it, would be relying on *Regina v. Hall* and *Regina v. Pearson*, two cases out of the Supreme Court that I've had a look at. I will not lie to this committee. I did not read them in their entirety—yes, I'm sorry, Mr. Moore, I did not read them from end to end. However, I was interested to note that they were not unanimous decisions and they certainly couldn't have dealt with the same type of offences, because this legislation wasn't in existence.

Those two cases dealt—particularly I'm thinking of *Pearson*—with drug-related offences. I can see that some of the principles are transferrable. I agree with that. However, there are some concerns in the dissent on which I would want assurance that from the legislative due diligence point of view they have been covered off.

Mr. Minister, this is without any due disregard for your own esteemed opinion, being a Queen's counsel and a member of the legal bar for some time, but the department must, I think, assure this committee and this side that the guarantee of the presumption of innocence, both procedurally and substantively, has been satisfied with the interplay of sections 11 and 7 of the charter in writing this legislation. Perhaps I could ask one of your assistants, or one of the other witnesses, Mr. Minister, to assure the committee that this will be free of the charter challenge if it scripts *Pearson* and *Hall* correctly and doesn't fall into the trouble that some of the people and the justices in the dissenting opinions put forward.

• (1540)

Hon. Rob Nicholson: First of all, I'll turn it over, of course, to Ms. Besner, if she'd like to make some comments.

This piece of legislation keeps in mind three decisions, two of which you've mentioned, that have taken place in the last 17 years, in which the Supreme Court of Canada has pronounced on that. I'm of the opinion, and I think it's very clear, that we are building upon the principles that were affirmed by the Supreme Court, and in one case—I believe it's the *Hall* case—we are clarifying the language in the bill.

Before I turn it over, I am pleased that you are supporting, I believe. I think you said “largely in support in principle”. As a former government House leader, it always makes me a little nervous that it doesn't seem like unqualified support, but certainly we'll be looking to build upon that support, and I'm sure you'll be just as convinced as I am that this is a worthwhile and necessary piece of legislation.

Ms. Besner, if you would like to make any comments, you're welcome to.

Ms. Julie Besner (Counsel, Criminal Law Policy Section, Department of Justice): Thank you.

One point, Mr. Chair, that Mr. Murphy made toward the end of his question was the comment with respect to assurances that this bill is free of charter challenges. It needs to be emphasized that no one can provide those assurances. “Charter challenges” simply means that—

Mr. Brian Murphy: Successful charter challenges.

Ms. Julie Besner: “Successful” charter challenges; I guess that’s the word that was not included there. I just wanted to clarify that charter challenges will indeed occur, probably....

Hon. Rob Nicholson: A charter challenge is always possible, of course.

Ms. Julie Besner: Yes.

In terms of some of the dissents in the Supreme Court rulings, specifically in Pearson—I believe Madam Justice McLaughlin was one of the dissenting justices in that decision, and she highlighted that the section should have failed because it didn’t distinguish between small-time drug traffickers and large-scale drug traffickers.

With respect to Bill C-35, I can indicate to the committee that the firearms trafficking and smuggling offences targeted under Bill C-35 are the more serious offences that target that kind of activity. There are lesser included offences in the Criminal Code; for example, “unlawful transfer”, which I believe is at around section 102 or 103. There is also an equivalent “illegal importing” offence, which doesn’t amount to as serious an offence as the smuggling offence.

The point I’m trying to communicate is that there are other offences that are available to address less serious breaches as criminal activity, though certainly where there is something that is of great concern to law enforcement, tools are available in the Criminal Code, and would be with a new reverse onus provision, for serious firearms traffickers and smugglers.

If you would like me to point out those offences in the code, I could. They’re all in the area between sections 99 and 103.

Mr. Brian Murphy: Not really, but how much time do I have, Mr. Chair?

The Chair: You have one minute, Mr. Murphy.

Mr. Brian Murphy: One minute.

It’s really all about the charter. I’m sorry for not making it clear that.... Of course, charter challenges can happen, and we know that. I was trying to make sure we had done our homework legislatively by asking the minister’s staff, from the department itself, whether these would likely be successful on challenge.

It was not only the current chief justice, but a very well-respected jurist from New Brunswick, Justice La Forest, who joined in that dissent with some certain reasons that you have now explained to me, I think to my satisfaction, will not persuade a majority of the court currently.

Is there a recent decision dealing with the interplay of section 11 rights and section 7 that would be useful to us? That’s what concerned me a little bit. I go back quite a ways. Wrapping up very quickly, could you just give us a citation of a more recent case? Hall and Pearson and the third one are from the 1990s.

•(1545)

[Translation]

The Chair: Ms. Besner.

[English]

Ms. Julie Besner: Indeed, Morales and Pearson dealt with paragraph (d) of section 11, which is the presumption of innocence; paragraph (e) of section 11, which is the right not to be denied

reasonable bail without just cause; and section 7. With respect to Morales, that was indeed the case—and section 9 as well, for unlawful detention.

Pearson dealt with section 9 and section 11, paragraphs (d) and (e). Hall focused more on section 11, paragraph (d) and (e), the presumption of innocence and the right not to be denied bail without just cause, and not so much with section 7.

What’s interesting about Hall, though, is that the court there had before it the issue of what was previously the “public interest” ground that was struck down in Morales, and five years later Parliament enacted what is currently the tertiary ground, which is the justification for the courts to deny bail if it’s necessary to maintain confidence in the administration of justice. It was quite a lengthy judgment, where the court upheld that ground as being sufficient for legal debate.

[Translation]

The Chair: Thank you, Ms. Besner.

Mr. Ménard.

Mr. Réal Ménard (Hochelaga, BQ): Good day, Minister. Good day, Madams.

It’s not so much the whole issue of the presumption of innocence that worries me. I believe the court has already ruled on that matter, so that’s not where the problem lies. I only wonder why this provision is necessary.

First of all, we have to remind ourselves that we’re dealing with bail through a judicial process. The Criminal Code already contains provisions whereby, in very specific instances, an accused cannot be released on bail. These include offences under section 469, and offences linked to organized crime or terrorist activities.

What I find intriguing is that the Minister notes that there are few statistics available on people who have been released on bail following a weapons-related offence. Yet, the bill focusses on this very matter.

How can the government draft a bill and not be able to provide us with concrete information? Given the way in which courts — or in Quebec’s case, justices of the peace — administer justice, is there any reason to think...At this stage of the process, the courts are not ruling on a person’s guilt.

How can you come before us without actual figures on the number of people who have been released on bail in the case of weapons-related offences, and at the same time ask us to adopt a bill that deals with this very issue? If your department has provided some figures, I haven’t seen them. I don’t know if any of my colleagues have seen them. I’d like you to provide us with data to back up the government’s bill and to confirm the system shortcomings it is attempting to correct.

[English]

The Chair: Mr. Minister.

Hon. Rob Nicholson: Thank you very much, Mr. Chair, and thank you, Monsieur Ménard, for your questions.

We believe these will strengthen the provisions in the Criminal Code that allow a judge to make a decision that is in the best interest of protecting the public. I indicated in my opening remarks that the types of statistics—and we've provided some statistics to committee members previously on this—to prove or disprove what you're asking us to do aren't available. I suppose if there were statistics on how to conclusively prove what human behaviour will do or not do is always a challenge.

On the other hand, Monsieur Ménard, we have to maintain that confidence in the criminal justice system, and a reverse onus, we know, is already part of the provisions with respect to bail right now. Extending this to other firearms offences, and serious firearms offences, I think is perfectly consistent with that. It's certainly consistent with the public's concern about the proliferation of firearms in our society. A week doesn't go by that people aren't either writing to me or talking to me about problems with firearms-related crime in this country. So giving judges more of an ability to protect the public seems to be a good idea and should stand on its own.

[*Translation*]

Mr. Réal Ménard: Minister, a question comes to mind. Obviously, we too are concerned about firearms use. That explains why we are defending rather more staunchly than you are controlling firearms through a public registry. However, there's one thing I don't understand. It may already be the case, but what reason do we have to think that the courts will release people who have committed firearm-related offences? There are those who maintain that in 90% of the cases, bail will be denied these individuals.

The situation is similar to that when the government tabled Bill C-9 concerning conditional sentences of imprisonment. Had we listened to your predecessor, we would have gotten the impression that this was a common phenomenon throughout the system, whereas as we moved forward with our study, we came to the realization that conditional sentences of imprisonment accounted for 3% of the sentences handed down by the courts.

Therefore, when a bill is drafted, I expect that there is data to back it up. What is it about the system that you want to correct? As Minister of Justice, do you have any indications that judges are granting bail to people who have committed firearm-related offences?

You're asking us to adopt a new law. We're prepared to do so, but you have to understand that we will act with the rigour that is expected of parliamentarians. I for one believe that you're speaking in generalities this afternoon, without data to back up your statements. Unfortunately, we cannot pass legislation on that basis. I hope that down the road, your department can provide us with more information.

•(1550)

The Chair: Mr. Minister.

[*English*]

Hon. Rob Nicholson: Thank you, Mr. Chairman.

I hope, Monsieur Ménard, that you and your party are going to support this bill. This does have widespread support, and with respect to the actions of justices of the peace—

Mr. Réal Ménard: You are popular, not the bill.

Hon. Rob Nicholson: Yes, we're popular too. I think our crime agenda is certainly contributing to the well-being of the government at the present time.

I think one of the things that should be underlined here is that the justices of the peace in your example ultimately have the right to make the decision they believe is in the best interest of the public. Giving them more tools or explaining to them the options they have, or indeed placing an onus on an individual who quite clearly, in my opinion, should demonstrate why they should be released, are steps in the right direction. But ultimately, if the justices of the peace in your constituency or others find that all these individuals should be released and that they're not satisfied that for the protection of the public, for people's respect for the administration of justice, or indeed if there's not a problem with individuals possibly reoffending, they have that right. They can release any or all of them, for that matter. But I think it's incumbent upon us as legislators to give them guidance in line with what I think most Canadians would think is very reasonable.

In my opening comments I said we're just building, basically, on the principles that are in the Criminal Code now that have been affirmed by the Supreme Court of Canada.

[*Translation*]

Mr. Réal Ménard: Sir, I don't doubt that you are acting in good faith, but from the standpoint of rigour, your bill is flawed because you cannot provide us with any relevant data.

For example, why isn't manslaughter or firearms-related criminal negligence included in the list of offences to be added to the existing list of offences subject to the reverse onus scheme? What reason did you have for singling out these particular offences? Why did you exclude criminal negligence and manslaughter from the list?

[*English*]

The Chair: Mr. Nicholson.

Hon. Rob Nicholson: There are some offences that are not included because they already go to a superior court. So what we are doing is adding other offences that can and should be subject to a reverse onus. That's not the total list, and it's not the exclusive list. There are other offences that will not end up in what we refer to in Ontario as provincial court or before a justice of the peace; they would go directly to a superior court judge.

Do you have anything to add on that?

[*Translation*]

The Chair: Ms. Besner.

Ms. Julie Besner: The scope of certain offences is very broad. This is true of manslaughter and or criminal negligence causing death. You may have noticed that these two offences were not included in Bill C-10, for example. The same model was more or less followed in terms of selecting offences with a limited scope.

It should also be noted that the reverse onus scheme applies in the case of a person who has been ordered by the court not to be in possession of weapons. Therefore, if such a person were to commit an offence with a firearm, the reverse onus provision would apply. Consequently, up to a point, this is included, but not from the outset, as is the case with the eight other offences.

• (1555)

The Chair: Thank you, Ms. Besner.

[English]

Madam Kane, did you want to add something?

No. *Merci*.

Mr. Moore.

Mr. Rob Moore (Fundy Royal, CPC): Thank you, Mr. Chair, and thank you, Minister, again for being here. It's becoming a regular occurrence with the justice committee and now on this legislative committee. It's good to have you here with this bill.

Minister, could you just talk a little generally about some of the other stakeholder support for this bill? There's been a big call for this type of legislation on firearms offences from stakeholders in the community who are interested in protecting Canadians from gun violence. We hear all too often about gun violence, and in many cases involving people who had already had some interaction with the law.

I'm wondering if there's some comment from some provinces, mayors, that would lend support for this initiative.

Hon. Rob Nicholson: I think you've made a very good point. This has actually received widespread support. Just before the question period I was over at the Canadian Police Association meeting. The CPA is very supportive generally of the initiatives we have taken as a government and are supportive of a bill like Bill C-35. We have heard back from provincial and municipal governments, prosecutors. Indeed, in my hometown of Niagara Falls I've been stopped twice on the streets recently by police officers who just wanted to tell me that they are supportive of the initiatives, including initiatives like this. My colleague, Mr. Dykstra, would know about the Niagara Regional Police; so many of those individuals have come forward and expressed a complete support for this.

So I think there is widespread support, and I have certainly been very pleased. Quite frankly, I'm actually encouraged by the possibility that we're going to be able to move forward on this. The Liberal Party have at various times expressed support for this. Today they said they're largely in support in principle, and I hope the devil isn't in the details. I'm hoping that the way it is now we're going to move forward on that. The New Democratic Party has indicated that it is supportive of this particular legislation, and I am hoping the Bloc will see the light and will come on board with this move to improve the criminal justice system in this country. I say to them that I'm sure that when they go home and explain this to individuals in their constituencies, overwhelmingly the people will tell them this is on the right track; it's a step in the right direction.

So in the end, Mr. Moore, I'm hoping this will have the unanimous support of Parliament, because the bottom line is that this can't or

shouldn't be a partisan matter. This is just improving the Criminal Code and making it better and safer for all Canadians.

Mr. Rob Moore: On the issue, Minister, of an individual who is already under a weapons prohibition, I think the current situation would come as a surprise to many Canadians. I'm wondering if we can walk through that a bit, the scenario where my understanding is that this person has already had a brush with the law and is under an order not to be in possession of a weapon, and then this bill contemplates that if the person is involved in an indictable offence that involves a firearm, they too would have a reverse onus.

Ms. Besner mentioned how the reverse onus is applied to the more serious firearms offences, firearms trafficking and possession. Is this also, do you feel, at that higher threshold? In this situation where the person is already under a firearms prohibition order and now they've gone out and used a firearm in the commission of an indictable offence, do you feel this also meets that charter requirement, that interpretation, that there be some distinguishing between a low-level and a higher-level offence?

• (1600)

Hon. Rob Nicholson: Certainly, you've hit the nail on the head. In the first instance, we added eight serious offences for which we say that when they're committed with a firearm there should be a reverse onus. But you quite correctly point out that there is another category, and what we're saying is that in any indictable offence in which a firearm or another regulated weapon is used, if the person accused of committing the offence did so while they were already under a prohibition order, the reverse onus should apply to them. It seems to me that's common sense. If the individual is already prohibited or is under a prohibition order and we find that they're being accused of a crime for which they're under that prohibition order, wouldn't it make sense to have that individual demonstrate to the court why they should be released?

So it certainly is a broader category and it captures more offences. But I think it's perfectly reasonable under the circumstances that we ask that individual to show why he or she should be released. Again, I think it expands the areas of a reverse onus for bail within that, but it's certainly consistent with the present legislation and it's certainly consistent with what we talked about in the last election with Canadians.

The Chair: That's fine.

Mr. Lee.

Mr. Derek Lee (Scarborough—Rouge River, Lib.): I just wanted to confirm for the minister that I'll be supporting the bill, and my party is supporting the bill, but we do have work to do here.

Hon. Rob Nicholson: Hear, hear! I've always said good things about you, Mr. Lee, all these years I've known you.

Mr. Derek Lee: I want to focus on two areas. The Library of Parliament produced a document reviewing the bill. It indicated that according to one law faculty study, in 90% of gun crime cases, bail is already refused. That's probably a good thing. This bill merely statutorily brings up the rear and codifies what was probably happening for the greater part of cases, but not all.

I want to ask about two things. They don't have anything to do directly with the principle of the bill. This will increase in theory, marginally, bail detentions, even though, as I pointed out earlier, 90% of the gun crime situations don't result in bail. This will increase the amount of what is called two-for-one or three-for-one time that the inmates serve. If that is true—and I'm sure it was not an intended result—we're going to have a lot of these individuals who are kept on the two-for-one time.

Two-for-one time or three-for-one time refers to the court's recognition of pre-conviction detention time as being worth either double or triple that of a post-conviction sentence. The courts have confirmed that. So we're going to end up with a lot of individuals who are serving pre-detention time and who will then be convicted and sentenced, and a lot of them will move right to release or very close to release without the benefit of the conditional release that imposes restrictions on them when they're released.

I'm just wondering if the department has taken that into consideration, because this may be an unintended result. Some of these individuals maybe should have some post-detention conditions imposed on them, significant ones.

Hon. Rob Nicholson: I think you've covered a fair amount of ground, Mr. Lee. You indicated that it's possible, and there are many cases in which people who are charged with serious firearms offences are already detained. As you indicated in your comments, this certainly gives the tools and the direction, and it sends a message out with respect to bail. And there can and there undoubtedly will be more individuals who will not make bail when we bring in changes.

You've pointed out the credit system that applies in this country or in our criminal justice system with respect to individuals who serve time prior to their conviction. I would say to you that ultimately there is great discretion by judges with respect to the maximum sentence of individuals. At the sentencing portion of that, judges can and should make sentences—and I'm sure they will—that are commensurate with the crime that's before them.

So I don't share your concern that there is going to be some sort of a large impact or that these individuals are going to be soon set free. My guess is that somebody who gets convicted of using a firearm in attempted murder is not somebody who is going to be released in any hurry even if he or she gets credit for some of the time served prior to the trial.

I don't see this as a major problem, but I'm certainly always interested in hearing your comments and your take on these things.

• (1605)

Mr. Derek Lee: My last question has to do with the fact that we're changing in a significant way the bail arrangements, which are charter protected. I'm wondering why the government didn't prepare a preamble for the bill that would allow Parliament to dialogue with and send a message to the courts for that time when inevitably they're going to have to deal with this in the courtroom in terms of a charter challenge.

We've used preambles before. Wouldn't it have been better for us to actually craft one? And since we haven't, could I suggest that we might be able to craft one here at the committee to explain to the courts why we believe this change in the law is important?

Hon. Rob Nicholson: I'm not anticipating an unfavourable charter challenge. It seems to me that, first of all, we wouldn't have brought forward the legislation in any case if we didn't think it would withstand a charter challenge. That's the one thing.

As was indicated in response to an earlier question, the department looked very carefully at the decisions of the Supreme Court of Canada in this area, particularly the last three that have been rendered by the Supreme Court in the last 17 years. In one case, we even picked up on the dissenting opinion—as was pointed out by Ms. Besner—that we help codify within the bill itself some of the language that was raised in the Supreme Court. We clarified that to make it much clearer.

I'm not worried about this, in the sense that this builds on other reverse onus provisions with respect to bail. We're just building on that, and we're adding to that. I know those sections have withstood scrutiny up to this point in time, so I fully expect and wouldn't see any problem with our continuing on that. I'm sure that's one of the reasons why your party is supporting it.

The Chair: Thank you.

Mr. Hanger.

Mr. Art Hanger (Calgary Northeast, CPC): Thank you, Mr. Chairman.

Mr. Minister, thank you for the introduction of this information and for appearing in front of the committee.

I was a police officer during the time when reference to the onus being on the accused, at least to prove certain situations, was very prevalent. The Bail Reform Act changed all that. One of the provisions back then was that there was a necessity to have the trial expedited. Many times the accused pleaded guilty rather than going through a pre-trial portion of detention, which was not at that time factored into any sentencing provisions. Most of the time they were given a sentence upon conviction or a guilty plea.

The courts are very different now, and there's a real backlog when it comes to these detention issues. I don't imagine that's going to change any. There may not be a big increase—I agree—and this may not affect a whole lot of people. The detention side, when it comes to pre-trial, is not going to be an issue here.

The other problematic aspect when it comes to court is that many gun-related offences—and this still happens today—are being dealt away with prior to maybe a guilty plea. You'll never see a bail order or a violation of any bail order, and you'll never see a probation order. I'm curious how, if at all, those aspects are going to be dealt with.

• (1610)

The Chair: Mr. Minister.

Hon. Rob Nicholson: Are you talking about the plea bargaining system?

Mr. Art Hanger: If you want to call it plea bargaining, sometimes it's called that, but sometimes it is a negotiation in which offences that sit right in the lap of the prosecutor and the defence are decided on to expedite the situation in the court.

Hon. Rob Nicholson: Certainly, we want the courts to have the resources to be able to hear these cases. This is why I spend part of my time as Minister of Justice—and it is my responsibility to do so—on the appointment of superior court judges, to make sure that our courts are staffed, and that they are able to hear the cases that are brought before them.

Again, this bill doesn't address the subject you're talking about. There are negotiations that take place. You were involved with the criminal justice system in a previous incarnation before becoming a member of Parliament. As a lawyer practising criminal law back in the 1980s, in representing my clients, certainly on many occasions I sat down with the crown attorneys and talked to them about the possibility of moving ahead on some charges and not on others. It seems to me that's a component that exists within our criminal justice system. But it's important that there be judges in place, that there be courts in place, and that there be resources in place to adequately deal with these issues.

Many of these issues, as you know, are administered at the provincial level. Our job at the federal level is to set the law as we see it should be for Canadians, and basically that's what we're doing. We're making a statement about how we think people should be treated and how we can best protect the public. It's a balancing act, Mr. Hanger, and this bill does what it's supposed to do.

Mr. Art Hanger: I think it is going to improve things, there's no question. I see that there are sometimes logistical issues, too, that factor into the impact this bill should have and sometimes really interfere with it.

You have an offender who has committed a firearms offence a second time. The first time he was given a probation order. He's past the probation order. Does it apply?

Hon. Rob Nicholson: Does he have a prohibition order?

Mr. Art Hanger: Yes, he has a prohibition order, and he is past that prohibition time. Does it apply?

Ms. Julie Besner: I'm sorry, are we talking about a prohibition order meaning that they have a conviction for which they were ordered by the court not to possess?

Mr. Art Hanger: Yes, there was a previous conviction with a prohibition order, and that prohibition time has expired. Then he commits another firearms offence.

Ms. Julie Besner: If the prohibition order has expired, then it's no longer in force. The individual would not be subject to a prohibition order—

Hon. Rob Nicholson: Or the reverse onus on bail.

Ms. Julie Besner: That's right. If that were the scenario—

Hon. Rob Nicholson: Unless it were one of the offences that we've specifically included.

Mr. Art Hanger: Right. Okay. Thank you.

[Translation]

The Chair: Thank you.

Ms. Freeman.

Mrs. Carole Freeman (Châteauguay—Saint-Constant, BQ): Thank you for joining us today, Mr. Nicholson. I have a question for you concerning the reverse onus scheme. Can you tell us exactly how this scheme would work? Would someone raise reasonable doubt, on the basis of the preponderance of probabilities, or will someone have to establish proof beyond a reasonable doubt? Reverse onus is being proposed, but what must be done to convince the judge that the person should remain out on bail?

•(1615)

[English]

Hon. Rob Nicholson: It's done on the balance of probabilities, Madam Freeman. It's not something they'd have to prove beyond a reasonable doubt, which is the ultimate test of whether an individual is guilty of a criminal offence. The same tests that basically apply now to other reverse onus sections—and there are a number in the Criminal Code at the present time—would apply in this particular case. It's always open to that individual to make the case that they should be released.

We've come a long way in this area, and I've supported the changes over the years. I think Mr. Murphy indicated what a major step forward it was with the introduction of the Bail Reform Act in this country, but there have been a number of modifications, and we've had opportunities to have a look at the way it works. I see this as part of that process in which we are massaging, if you will, the Criminal Code, particularly now with respect to its provisions on bail. I think this is a step forward. It's not changing the test in any way that applies.

[Translation]

The Chair: Ms. Freeman.

Mrs. Carole Freeman: Please know, Mr. Nicholson, that I appreciate a great deal the small steps that you are taking to improve the system. Both your preamble and your statement reflect your concern about crime. However, your stand on the Canadian gun registry is inconsistent with your position on the reverse onus proposal in the case of weapons-related offences. The two don't quite jibe.

[English]

Hon. Rob Nicholson: Some people might say we've got it right, Madam Freeman. I believe your position is that you support the existing firearms registry, but you're against toughening up the provisions with respect to people who are accused of committing a crime. Maybe you are. I hope you are supportive of this bill.

[Translation]

Mrs. Carole Freeman: Please don't put words in my mouth. What's more, you haven't really answered my question. Sir, as it now stands, your bill is not based on any data, but merely on the fact that you met with two individuals in Niagara Falls who supported your position. Correct? To my mind, that's not much to go on.

[English]

Hon. Rob Nicholson: I think the support we have is a little broader than that. Across this country I think people are in support of what we are doing. I know you have your position with respect to the firearms registry. We have been very clear about the waste that we believe was incurred. We believe the whole firearms registry had less to do with fighting crime and more to do with creating bureaucracy. So we have some serious concerns with respect to that.

You ask, how can we be consistent and be against crime? Well, I think we are being consistent. Bill C-35 as well as other pieces of legislation that you presently have or have had before this committee are all part of our efforts to make our streets safer, to protect our communities, and quite frankly, to increase people's confidence in the criminal justice system. That's always a concern to me, as I think it should be to all Canadians. We want people to believe that the system works and it works to protect them.

Indeed, you would be aware that I announced several weeks ago the creation of the victims ombudsman, so that we have an individual and an office that is specifically tasked with the concerns and the issues of the victims of crime. I think you would agree with me that sometimes they are the forgotten ones in the process. I'm very comfortable that with the legislation we are moving forward on, as well as some of the other initiatives, we are directly targeting crime. But you and I will perhaps have to agree to disagree on the firearms registry.

[Translation]

The Chair: Thank you, Sir.

Mr. Petit.

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): Thank you.

Good day, Mr. Nicholson, Ms. Kane, Ms. Besner. I have a question I'd like to ask in an effort to get some idea of where we are heading with Bill C-35. I want to be certain that everything is clearly understood. In the background material given to us by the Library of Parliament analysts, a criminologist by the name of Gary Mauser notes that according to the statistics on violent crime quoted by the Government of Canada, of the nearly 1,000 crimes committed in Toronto in 2006 with firearms or restricted weapons, nearly 40% were committed by a person out on bail, parole, temporary leave or probation. Therefore, according to law enforcement officials, 70% of the people charged with homicide in 2006 were under some kind of court order when the offence was committed.

The findings for Toronto, a city of three to four million, can also be applied to Montreal, which is grappling with the same problem, despite what everybody says. Gangs are very active in the riding of Hochelaga-Maisonneuve. People are shooting at one another on street corners and we're dealing with many problems. When you collected this data, did you...

• (1620)

Mr. Réal Ménard: On a point of order, Mr. Chairman.

There are no street gangs in Hochelaga-Maisonneuve. Contrary to the inane comments you made on the radio...

[English]

Mr. Rick Dykstra (St. Catharines, CPC): That's not a point of order.

Mr. Réal Ménard: You are not the chair. It's a point of order.

Mr. Rick Dykstra: I can disagree with you.

[Translation]

The Chair: Please continue, Mr. Petit.

Mr. Daniel Petit: Minister, I want to be certain that I understand everything clearly. Does Bill C-35 with its reverse onus proposal in fact address a genuine need? Legislation must ultimately meet a need and according to what Mr. Mauser told us, there was in fact a problem in 2006.

Can you apply, as I have done, the situation he is describing to cities like Montreal or Vancouver? Could Bill C-35 minimize the chances of having many people who are on probation or otherwise have been released commit offences?

The Chair: Minister.

[English]

Hon. Rob Nicholson: Certainly, Monsieur Petit, the bill is designed to address problems of the type that you've set out, without getting into where gangs are a problem or where they're not a problem. Certainly when offences of the type described in Bill C-35 are committed, the public, whether they be in Montreal, Toronto, Vancouver, or indeed any other community within Canada, have a real right to be concerned, and they look to people like you and to this committee to try to respond to those concerns.

Quite frankly, that's why I believe this bill does have widespread support right across this country; it does address one of the concerns. Is it the only concern of the Criminal Code? No. I have other concerns with respect to the Criminal Code, and you, as a committee, are dealing with the legislation that reflects the government's concerns and the priorities that we talked about with Canadians during the last election.

Again, it's one more component of bringing our Criminal Code into line with the hopes and the aspirations of Canadians. I'm very pleased to be associated with it, and I hope all the members of this committee can take some satisfaction and some pride that we're moving ahead with these improvements.

[Translation]

The Chair: Thank you.

[English]

Mr. Bagnell, please.

Hon. Larry Bagnell (Yukon, Lib.): Thank you, Minister, for coming.

As you know, we're supportive of the bill. In fact, I'd be happy to do clause-by-clause right now if we had unanimous consent.

Hon. Rob Nicholson: Yes, please do.

Hon. Larry Bagnell: I do have a question.

You said we had support right across the country—you just said that—and I'd like to ask the department what surveys, in researching this bill, they have done to ask people across the country about their views on this bill.

Ms. Julie Besner: I missed the beginning part of your question. What support exists across the country?

Hon. Larry Bagnell: Yes. What surveys have you done, and what mechanisms did you use to determine support or non-support for the bill?

Ms. Julie Besner: We had an FPT working group studying firearms issues in the development stage of this bill, so it was largely discussed with provincial attorneys and with general representatives across the country. They communicated with their local police agencies to assess their views. Those discussions took place in that kind of an FPT forum.

• (1625)

Hon. Larry Bagnell: So it was just attorneys general and police basically?

Ms. Julie Besner: That's correct.

Hon. Larry Bagnell: Has the department had any other feedback, for or against, from citizens, or from any other group?

Hon. Rob Nicholson: I indicated that in terms of correspondence and people—but with respect to Monsieur Ménard and Madame Freeman, that's not exactly scientific. It certainly confirms what we believe: that there is widespread support among Canadians. In terms of the provincial attorneys general and their consultation, I think they've got it right on this, that people within their jurisdictions are very supportive of this.

Hon. Larry Bagnell: If this bill had come into place a year ago, roughly how many people over the last year would have been in the position of being before a bail hearing, under the crimes that have been listed?

Hon. Rob Nicholson: We can tell you, Mr. Bagnell, how many individuals. Regarding the first part of it, the reverse onus for the eight charges that we're adding, there were 475 cases in Canada.

Hon. Larry Bagnell: That was last year?

Ms. Julie Besner: That would have been in, I believe, 2002-03.

Hon. Larry Bagnell: Okay, that's good.

Hon. Rob Nicholson: Regarding the reverse onus for indictable offences involving firearms, there are approximately 8,500 cases. If those were committed while the accused was under a prohibition order, then we're talking about 35,000 individuals who are under a prohibition order.

Ms. Julie Besner: To add one point with respect to those two statistics, it's not possible to provide an interface between them. In other words, what is known is the number of offences with respect to firearms or other weapons and how many prohibition orders are enforced at a particular time, but not those two combined together. I would just clarify that point.

The Chair: Thank you.

[*Translation*]

Mr. Dykstra.

[*English*]

Mr. Rick Dykstra: Minister, one of the things sort of touched on, from both a question perspective and in response, was the building up of this, the follow-through of this legislation, versus where we are with reverse onus on other issues, such as certain drug trafficking and smuggling offences, which I guess are pretty much based on the same rationale as this legislation. A couple of others include legislation on organized crime in 1997 and the 2001.... The former anti-terrorist act actually had reverse onus.

I wonder if you can speak a little about the basis upon which this legislation is built. Obviously there's a precursor to the direction we're taking. It certainly isn't something new to this government or this country.

Hon. Rob Nicholson: I think that's a very good point. In the Criminal Code, subsection 515(6) sets out in some detail when a reverse onus would apply. I indicated, in reply to one of the earlier questions, that for some offences that are heard before a Superior Court judge there is a reversal. If you're charged with murder in this country, there is a reverse onus right now. So I believe that what we are doing is perfectly consistent with what's already in the Criminal Code, and it's perfectly consistent with the decisions and analyses of the Supreme Court of Canada. So I think we're on solid ground on both cases.

Mr. Rick Dykstra: As was pointed out by the Bloc in terms of statistics, is it normal in this country, when it comes to dealing with matters of justice, that we only rely on statistics when we determine laws that deal with criminals, that deal with our justice act?

Hon. Rob Nicholson: In many ways it would be a challenge if you couldn't make changes to the Criminal Code unless you could statistically prove people's behaviour one way or another. Our challenge is to update the Criminal Code to make it more responsive and basically to listen to what Canadians are telling us. For instance, I would never be able to come up with statistics to tell you how many Canadians will become disappointed with the Canadian justice system and start to give up on it, in their belief that it may not protect them.

I certainly know what happens in other countries when people lose confidence in the criminal justice system. We can see very clearly what happens to society. But I don't think we'll ever have statistics to say how many thousands or millions of Canadians will lose confidence in the criminal justice system if we don't go ahead with changes to the Criminal Code. We have to trust in the collective wisdom of Canadians, as interpreted by members of Parliament, attorneys general, or other people who have a vital concern and interest in our criminal justice system, that they've got it right. There is no doubt in my mind that, just like other legislation, we've got it right and Canadians want this.

•(1630)

[*Translation*]

The Chair: Thank you.

[*English*]

Mr. Minister, I'd like to ask you a question. I'm not often on justice committees; it's the first time in 13 years. For certain specific offences, the Criminal Code now provides that the accused must remain in custody pending trial. The accused may, however, be released if he or she can show cause that detention is not justified in the circumstances.

For these specific offences, do you or the department have any statistics or percentages on people accused who were released while waiting for their trials?

Hon. Rob Nicholson: Are you asking how many people on each offence get detained?

The Chair: Yes, and they can be released on bail while waiting for their trials.

Ms. Julie Besner: I believe in the minister's opening remarks he indicated that the Canadian Centre for Justice Statistics does not currently keep data on the rate of release on bail for offences under the Criminal Code. I believe they have a project under consideration to do that, but it is still a little while away.

[*Translation*]

The Chair: Thank you.

[*English*]

They will come as witnesses, so we'll ask them the question.

Mr. Hanger.

Mr. Art Hanger: On the gathering of stats, we've had the Canadian Centre for Justice Statistics before the justice committee several times, and it's actually kind of alarming that even though the data is there, nobody seems to collect it or interpret it. I'm wondering if there are some other points that can be raised by the ministry to maybe change some of that. Is that possible?

Ms. Julie Besner: My understanding—and we did make inquiries—is that the data is not there. If it were there we would certainly have asked for it to be analyzed.

Mr. Art Hanger: But you can collect it.

Ms. Julie Besner: The data not currently being collected resides in police and crown files, so that's the nature of the work it would involve. They have acknowledged that there is a need for this information. They have a project assessing the viability of doing that, but it involves gathering data that's not already in a databank. They've been approached about that. I won't speak for them, but they acknowledge the need for such data.

Mr. Art Hanger: In other words, something is being done.

Thank you.

[*Translation*]

The Chair: Thank you, Minister, Ms. Besner, Ms. Kane.

[*English*]

The meeting is over.

Thank you.

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