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Chair

Mr. Anthony Housefather

Standing Committee on Justice and Human Rights

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● (1535)

[*English*]

The Chair (Mr. Anthony Housefather (Mount Royal, Lib.)): Good afternoon, everyone, and welcome to this first meeting of the new parliamentary session of the Standing Committee on Justice and Human Rights, as we continue our study of Bill C-75, an act to amend the Criminal Code, the Youth Criminal Justice Act and other acts, and to make consequential amendments to other acts.

[*Translation*]

It is a great pleasure to welcome our new clerk, Marc-Olivier Girard.

Mr. Clerk, it is a pleasure to have you with us.

The Clerk of the Committee (Mr. Marc-Olivier Girard): Thank you very much.

The Chair: I also want to take this opportunity to thank Julie Geoffrion, our former clerk, who did extraordinary work when she was with us.

It is also a great pleasure to welcome Mr. Deltell as a guest to our committee today.

Welcome.

[*English*]

Mr. Gérard Deltell (Louis-Saint-Laurent, CPC): The Tony Clement of the day....

The Chair: You're much better looking, though, better hair.

[*Translation*]

It is also a great pleasure to welcome the witnesses from the Department of Justice.

[*English*]

Today, from the Department of Justice, we have Carole Morency, who is the director general and senior general counsel, criminal law policy section, policy sector. Welcome.

We have Matthew Taylor, who is the acting senior counsel, criminal law policy section, policy sector. Welcome.

We have Shannon Davis-Ermuth, legal counsel, criminal law policy section, policy sector. Welcome.

[*Translation*]

We also have with us Paulette Corriveau, who is counsel in the Criminal Law Policy Section of the Policy Sector. Welcome to you.

[*English*]

From the office of the director of public prosecutions, we have Don Beardall, general counsel in the drug, national security and northern prosecutions branch. Welcome.

This is the only panel where they are not offering opening comments. They are simply here to take our questions on the bill.

We will move to our ordinary rotation. We will start with Mr. Cooper.

Mr. Michael Cooper (St. Albert—Edmonton, CPC): Thank you, Mr. Chair.

Thank you to the officials for being here.

One of the aspects of Bill C-75 limits preliminary inquiries. The purported reason for limiting preliminary inquiries is to save time and speed up the process.

I was wondering if the Department of Justice has calculations as to the reduction in court time that this particular aspect of the bill is anticipated to save. Are there any statistics to back that up?

Ms. Paulette Corriveau (Counsel, Criminal Law Policy Section, Policy Sector, Department of Justice): I'll take that question. Thank you very much.

The statistics provided by Statistics Canada, from the Canadian Centre for Justice Statistics, do not allocate time to any procedure throughout the criminal justice process. Unfortunately, there aren't any statistics with respect to time.

There are a few statistics based on the number of preliminary inquiries. Juristat of February 2018 provides that number, and it relates to charges rather than cases. There are 34,698 charges, which ends up being 3% of provincial court charges.

Mr. Michael Cooper: Thank you for that.

There are no statistics on the amount of time that it will save.

The minister has spent a lot of time saying that the government consulted widely with the provinces and with a number of stakeholders and actors in the criminal justice system. I was wondering if a list of the organizations and individuals consulted in the drafting of Bill C-75 could be tabled.

Ms. Carole Morency (Director General and Senior General Counsel, Criminal Law Policy Section, Policy Sector, Department of Justice): I can answer that question.

When the minister was here in June and received that question, she indicated that she had consulted significantly with her provincial and territorial counterparts. They were all very much engaged at the ministerial level. Officials along the whole FPT spectrum were involved.

I believe she also mentioned that, through her various criminal justice system review round tables, she had engaged with numerous stakeholders across the board on a range of issues that included how to address delays in the criminal justice system.

Certainly, the results of those consultations at the criminal justice system review round tables have been posted on the Department of Justice website.

I can provide the summary of what we heard to the clerk of the committee, if that would assist.

Mr. Michael Cooper: That would be a good start.

Ms. Morency, I want to follow up on a question I had posed at an earlier meeting to get a handle on the reclassification of some offences from indictable offences to hybrid offences. I had asked the question, but I am still not clear on what the answer is. Perhaps you might try to help.

For example, how was it arrived at that the offence of impaired driving causing bodily harm has gone from an indictable offence to a hybrid offence where the maximum sentence, instead of 10 years, would be two years less a day, whereas an offence such as operating a motor vehicle dangerously would remain an indictable offence?

Ms. Carole Morency: The question was posed in June, and yes, both offences are proposed for hybridization. In fact, all of the transportation offences that were addressed through what was Bill C-46 included impaired.... There was a reform of the offences so that you moved from simpliciter to the next level of offences involving causing bodily harm to offences causing death. All of the ones involving causing bodily harm were hybridized by Bill C-46, including the one you reference.

Bill C-46 also increased the maximum penalty on indictment for those offences. They went from 10 years, which is where they were before Bill C-46, to 14 years, and then on summary conviction, to two years less a day.

Bill C-75 proposes.... The bulk of the hybridization being proposed by the government has coordinating amendments to the same provisions that are in Bill C-46—again, depending on which bill might come into force first, but the effect is the same. It was already hybridized by Bill C-46. All transportation offences that cause bodily harm were hybridized, including subsection 249(3) of the Criminal Code, which I believe you mentioned in June.

● (1540)

Mr. Michael Cooper: Thanks for that clarification.

How much more time do I have?

The Chair: You have 20 seconds.

Mr. Michael Cooper: Thank you, Mr. Chair.

The Chair: Thank you very much. We can come back for shorter questions afterwards.

Mr. Fraser, go ahead.

Mr. Colin Fraser (West Nova, Lib.): Thank you, Mr. Chair.

Thank you all very much for being here today.

Ms. Morency, I want to ask a question that has already been discussed in some way at this committee. There is a perhaps unintended result from changing the maximum sentences for summary conviction offences from six months to two years, which is that agents—law students and articling clerks—will no longer be able to appear on those because the maximum will change.

Could you tell us whether there was any thought given to that unintended consequence and how we could remedy that issue?

Ms. Carole Morency: Sure. I can start, and then I'll ask my colleague to continue.

I'll just give you some background as to why the Criminal Code currently restricts who can appear as an agent in a proceeding. It flows from an Ontario Court of Appeal decision in Romanowicz and concerns—from the judiciary in particular, but also from the Ontario government and the Ontario law society—about agents being able to appear for the accused, particularly in cases where it attracts serious consequences, as six months' imprisonment would. Currently, there are already offences in the Criminal Code on summary conviction that carry a maximum of 12 months; some have 18 months. Bill C-46, as I just mentioned, would increase that for all impaired transportation offences to two years less a day.

So yes, as we worked through this with our provincial–territorial colleagues, thought was given to what impact it might have. There is also a provision in there saying that if there is a concern about who appears as an agent and in what capacity—and, as you've described, the effect is that it would prevent them—then each province and territory can address that immediately, if they haven't already, through an approved program that would allow an agent to appear.

For example, in Ontario, the Law Society of Upper Canada will have practice directions for articling students working under the direction of a lawyer. However, you still have those criteria in the Criminal Code unless a province chooses to do otherwise.

I don't know if my colleague would like to add more on hybridization and the agents.

Ms. Shannon Davis-Ermuth (Legal Counsel, Criminal Law Policy Section, Policy Sector, Department of Justice): Thank you.

One other thing for the committee to keep in mind on this issue, Mr. Chair, is that section 802.1 of the Criminal Code applies to agents without defining them. Right now that would allow anybody to appear on behalf of an accused; it's not specifically allowing law students and articling students. It would mean that a family member or somebody else could represent them as well. If the committee were considering any other ways to approach this, with respect, Mr. Chair, the committee would also have to keep in mind that the term "agent" isn't just for some of these other professionals or people being supervised by lawyers.

Mr. Colin Fraser: Just to follow up on that, is there any difference at all or distinction across the country between a law student or articled clerk appearing in court and a family member or ordinary agent, so to speak, or is it all the same right now?

Ms. Shannon Davis-Ermuth: The distinction right now would be that for the provinces that have orders in council with programs allowing certain people to do things, those programs would specify who it would be, whether it would be an indigenous court worker, a law student, an articling student, or a paralegal in Ontario. That could be different across the country. Right now, because anybody can appear on matters of up to six months, that would just apply to the summary conviction offences that have a maximum penalty of over six months.

Mr. Colin Fraser: I would like some explanation about hybridization, generally speaking. I think there is a lot of confusion in some circles, and perhaps for lay people who aren't familiar with how the criminal justice systems works in Canada, as to the difference between an indictable offence and a summary conviction offence. There is a lot of confusion that summary conviction offences are this new thing that this bill is bringing in. I'm hoping you can explain how a hybrid offence works, who gets to make an election, and how that actually goes through the system. Could you please explain that?

● (1545)

Ms. Shannon Davis-Ermuth: Summary conviction offences exist in the code already. They are generally intended for less serious conduct, such as causing a disturbance or trespassing at night, for which the current maximum penalty is normally a $5,000 fine and a maximum of six months in prison. However, as Ms. Morency mentioned, over the years there have been some higher maximum penalties for that.

Indictable offences tend to be offences that are more serious matters. An example would be aggravated assault, robbery, or murder, and the maximum penalties range anywhere from two years to life imprisonment. Sometimes those can be combined as a hybrid. In that case, the Crown would have the election.

If it's a hybrid, it would be the Crown that would determine whether to proceed on summary conviction or by indictment. When they proceed on summary conviction, they would be limited and not be able to ask for more than the maximum penalty on summary conviction. When they proceed on indictment, their maximums are different from when they proceed on summary conviction.

Generally, there are more procedural protections available for the accused when they proceed on indictment, such as jury trials and preliminary inquiries, and the process can take longer because they are more serious offences.

The amendments would hybridize any current indictable offences carrying a maximum penalty of 10 years of less. The amendments are intended to be purely procedural. In terms of the maximum penalty available to the prosecution, the indictable penalty would not change. The amendments in this bill do not intend to change the sentences that anybody gets for a given conduct. The principles of sentencing would remain the same, and a proportionate sentence for the given conduct and the offender in the circumstances should result in the same if Bill C-75 were to pass. Offenders should be getting the same sentences as they would get prior to Bill C-75.

I know you had a few aspects about explaining hybridization. Was there another part that I missed?

Mr. Colin Fraser: Most particularly, it's just that it is an election that the Crown makes in order to determine the best way forward procedurally for that particular case, but if I'm hearing you correctly, that has no impact on the sentencing outcomes similar to situations that existed before Bill C-75.

Ms. Shannon Davis-Ermuth: That's right.

Mr. Colin Fraser: Thank you.

The Chair: Mr. Rankin, go ahead.

Mr. Murray Rankin (Victoria, NDP): Thank you, Mr. Chair.

Thank you to all the witnesses for being here today. I have a couple of general questions, and then a couple of specific questions. I don't know if time will permit.

We have before us today two groups that have submitted briefs, the Aboriginal Legal Services and the Law Society of Ontario, suggesting that Bill C-75 might actually make the crisis of overrepresentation of indigenous people in incarcerated populations worse. The provisions they address are about bail and about reducing the ability for agent representation.

What measures were taken to ensure that the legislation is based on policy that would address this crisis of overrepresentation of indigenous people and not perpetuate their victimization?

Ms. Carole Morency: Perhaps I'll take that question. It might go back to my opening response to Mr. Cooper's question, which is that the minister engaged in a significant collaborative process with provincial-territorial ministers, two dedicated FPT ministers, to look at the issues. That work was informed through the FPT forum by a review of all issues that have been under consideration or have been flagged by different bodies.

For example, the Senate Standing Committee on Legal and Constitutional Affairs concluded a significant report with many recommendations for reforms that would address delay. That report was considered. The Supreme Court of Canada's decisions in Jordan itself, in Cody, and in jurisprudence that has followed since those cases have also flagged a number of issues that have called for reforms. There are, of course, various reports and studies that have been conducted. We looked at data, and the committee may hear from our colleagues at the Canadian Centre for Justice Statistics, which may help to address some of the concerns. For sure, starting with Jordan, FPT ministers identified six core priorities, areas where they felt a law reform package could make a significant impact on addressing those concerns.

● (1550)

Mr. Murray Rankin: I have before me an email from the Association of Justice Counsel, which is the lawyers in the Department of Justice, suggesting that there is no evidence the amendments before us will shorten trials. Ms. Corriveau seems to have confirmed the lack of data in this regard. For example, the PPSC, which is represented here today and is responsible for the prosecution of drug offences, criminal organizations, terrorism, and environmental polluters, as well as the North, states that the impact will be negligible. They say the federal government has failed to adequately resource the Public Prosecution Service of Canada, and while the provinces kept pace by hiring additional prosecutors, the federal government has actually underfunded the PPSC, the result of which is that most offices have had to cut their budget by 7.5% and effectively freeze hiring. That means fewer rather than more prosecutors, and no impact, if not a negative impact, in respecting Jordan.

I'd like your response to that.

Ms. Carole Morency: Perhaps I'll start with a general comment about the bill, and then my colleague Mr. Beardall may be able to speak for the director of public prosecutions.

To remind the committee of the minister's remarks before this committee in June, Bill C-75 proposes a very broad set of reforms, which, taken together, seek to address delays throughout the criminal justice system at different points in the continuum. I think everyone will recognize that in some jurisdictions, some reforms will have a different or a greater impact than in other jurisdictions. A comment has been made about the number of preliminary inquiries. They're not held very often in many cases, but they are held more often in some provinces than in others. Where there are reforms to restrict preliminary inquiries, those will have some impacts.

Mr. Murray Rankin: On that point, the Barreau du Québec is telling us that "[t]here is no evidence, apart from anecdotal events, to conclude that preliminary inquiries create undue delays in the justice system, or the need to change the current rules surrounding them." Do you disagree with that?

Ms. Carole Morency: I would harken back to the minister's remarks, which acknowledge that there will be a different impact of restricting preliminary inquiries. It will have different impacts in different parts of the country. That's part of the harmony of the federal and provincial criminal justice system. Federal law sets a framework; provinces then have flexibility within that framework to adopt practices and approaches that will more specifically meet their needs.

I recognize that there are witnesses who do take issue with whether preliminary inquiries in and of themselves will achieve significant savings in time. To the extent that there are fewer preliminary inquiries, particularly in those provinces that happen to hold more, that will have an impact. It will free up time in provincial courts.

Mr. Murray Rankin: Do you, then, reject the testimony of those who say that taking away preliminary inquiries will simply mean fewer plea bargains and less ability to sort things out before the full-meal-deal trial occurs? Do you accept that?

Ms. Carole Morency: I accept that they have a different view. I am saying that, at the end of the day, it may not be, in and of itself, the single most important aspect in the whole Bill C-75. It may be different for different provinces.

Mr. Murray Rankin: Which provinces would benefit from the reduction?

Ms. Carole Morency: If you look at who has the most preliminary inquiries to date, Ontario and Quebec have more, and the Maritimes have fewer. Ontario and Quebec are also good examples to look at because part of the harmony of our system is that they have adopted out-of-court processes that can help facilitate some out-of-court discovery, which provides another way to address some of the issues that are sometimes addressed through preliminary inquiries.

Sorry, I spoke more than my colleague.

Mr. Murray Rankin: No, that's fine. Thank you. I appreciate that it's not easy to answer questions quickly.

I'd like to ask you about clause 389 of this bill, which deals with human trafficking. Bill C-75 puts in force provisions of Maria Mourani's private member's bill, Bill C-452, which got royal assent in June 2015 but was never put into force by order of the federal government. Some of that bill is back before us today.

In your opinion, does the combination of consecutive sentences, with the presumption of exploitation, violate any charter rights?

● (1555)

Mr. Matthew Taylor (Acting Senior Counsel, Criminal Law Policy Section, Policy Sector, Department of Justice): I'll take that question. Thank you.

As the charter statement outlines, the combination of the mandatory consecutive sentencing that exists for human trafficking offences and the requirement of the former private member's bill, Bill C-452, to impose mandatory consecutive sentencing is where the charter concern arises. It's the result of the stacking of consecutive sentences, which are also mandatory sentences, that raises the charter concerns.

I think I answered your question, but you mentioned something about presumption as well.

Mr. Murray Rankin: That's right.

The Chair: You can come back to it in the next round.

Mr. Murray Rankin: Yes. Thank you.

The Chair: Thank you.

Mr. McKinnon, go ahead.

Mr. Ron McKinnon (Coquitlam—Port Coquitlam, Lib.): Thank you, Chair.

Thank you, all, for being here again.

My question is about peremptory challenges.

We know that Canada's jury selection process, particularly through some high-profile cases in the spring, has been a subject of discussion, particularly with respect to the issue of under-representation of indigenous persons and other marginalized Canadians on juries. Bill C-75 proposes amendments to improve jury selection and eliminate peremptory challenges.

Can you comment on the rationale behind these changes and how they are intended to create more representative juries?

Mr. Matthew Taylor: That will be me as well.

You mentioned some high-profile cases. Certainly those have brought to light the issue of peremptory challenges and representativeness in Canada's criminal justice system. It's important for the committee to know that the issue of peremptory challenges and the role they play in our justice system has been flagged for many years, many decades in fact, going back as far as 1991 and the Aboriginal Justice Inquiry, led by Senator Sinclair, recommending that peremptory challenges be abolished.

You asked about the rationale for doing so, and whether or not removing peremptory challenges would improve representativeness. Certainly the goal of the proposal to remove peremptory challenges is to ensure they cannot be used in a discriminatory way. Providing some form of peremptory challenges creates the possibility for their use in a discriminatory fashion. Abolishing them eliminates that possibility, and doing so is consistent with what other jurisdictions have done as well, including the United Kingdom, Scotland, and Northern Ireland.

Mr. Ron McKinnon: At least some lawyers, defence lawyers in particular, object to this because they feel they can get a more representative jury by challenging it. Can you comment on that as well?

Mr. Matthew Taylor: Certainly that is the position of some counsel. They have indicated that the use of a peremptory challenge can play a role in fostering representativeness on the jury. However, going back to my previous comments, while peremptory challenges are maintained, it still creates the risk of their discriminatory use in one particular case or another.

Mr. Ron McKinnon: Thank you.

I'm going to segue now into reverse onus.

I am referring to the brief by the Aboriginal Legal Services. One of their concerns is the reverse onus provision on bail applications for those charged with a domestic violence offence who have been convicted of such an offence in the past. They note that one of the circumstances that arise in cases of domestic violence is that one person will claim that the other person started it, and both end up being arrested. Sometimes both end up being convicted. According to the brief, one of the impacts of dual charging is that women end up with convictions for assault they should never have had. If these provisions go through and their partner alleges abuse once again, they may have trouble meeting the reverse onus. This means they will be detained, they will likely plead guilty, and the cycle will continue.

I'd like some comment on why we need a reverse onus provision. What is the benefit of that? If you could comment specifically on this concern it would be helpful. Thank you.

Ms. Shannon Davis-Ermuth: There are two aspects to your question. One is in relation to what's referred to as “dual charging”: The police arrive, it seems that both people have engaged in violence, and both get charged. The brief you're referring to suggests that this is because there is no flexibility, so the police have to charge that way. This is something that is not affected as much by the Criminal Code amendments themselves, but is a matter that is often addressed by prosecution policies. It's a phenomenon that prosecution officers are aware of and have policies to address. It's dealt with differently in different jurisdictions.

In relation to your question about a reverse onus in cases of intimate partner violence, this is partially addressed in the charter statement. The rationale there explains its purpose in terms of the constitutionality of it. A reverse onus in bail departs from the general approach in bail. It presumes that bail should be denied and that the accused should be detained pending trial. It requires the accused to demonstrate, on a balance of probabilities, why he or she should be released pending trial, with regard for the statutory grounds for pretrial detention: flight risk, public safety, and public confidence in the administration of justice.

There are other existing reverse onuses in the bail provisions in the Criminal Code. In terms of why the government is proposing to amend the code and add a reverse onus in the case of intimate partner violence, first of all, by restricting it to cases where the offender has a previous conviction, it's curtailing it a bit so that it would apply to the most serious cases, to the offenders who have been convicted of this type of conduct and are again before the court, allegedly having done it again. As a group, these individuals have been found to pose an elevated risk of violence, escalating the risk of reoffending toward their intimate partners. Often, when charges are laid, it can be a very volatile time in a relationship, when an intimate partner can be at greater risk. This is being proposed to increase safety in those types of situations at these very charged moments in time.

● (1600)

Mr. Ron McKinnon: Thank you.

The Chair: Thank you.

By the way, I was remiss and didn't welcome Mr. Virani to the committee as the new Parliamentary Secretary to the Minister of Justice and Attorney General of Canada.

Welcome, Mr. Virani.

Mr. Arif Virani (Parkdale—High Park, Lib.): Thank you, Chair.

The Chair: I now want to check with members of the committee. Who has follow-up questions?

I have four people who have follow-up questions. I'm going to go in this order: Mr. Cooper, Mr. Fraser, Mr. Rankin, and Mr. Virani.

Mr. Cooper, go ahead.

Mr. Michael Cooper: I have a few questions, so I'll pack them into one.

The Chair: Try to do that.

Mr. Michael Cooper: I'll try.

I asked whether the department has any statistics with respect to limiting preliminary inquiries and reducing backlog. The answer, Ms. Corriveau, was that there were no statistics. Perhaps you could provide an estimate. Is there some analysis that has been done with respect to the anticipated amount of time that this would save, or is there really nothing in the way of evidence in that regard?

There is another area I want to ask a question on that's totally separate. It's with respect to how judicial referral hearings would work. Would they occur only when the prosecutor asks for one? Could you perhaps explain how that might arise? As I understand it, judicial referral hearings are aimed at reducing the number of administration of justice offences. Do you have any numbers or statistics in terms of the amount of court time that is taken to deal with administration of justice offences?

Ms. Paulette Corriveau: I'll take your first question.

To clarify for the committee, what I was suggesting earlier was not that we don't have any statistics on preliminary inquiries at all, but that the Canadian Centre for Justice Statistics does not track time—the hours that a preliminary inquiry or in fact any of the criminal procedures throughout the process would take.

There are a few statistics available to us. As I mentioned earlier, there are two issues of Juristat, one dated February 2018 and one dated June 2017, containing summaries of statistics based on different years.

For example, the February 2018 summary was an analysis of 2015-16 data relying on charges in provincial court and allowing for some information from superior court. Unfortunately, the Canadian Centre for Justice Statistics does not receive data from all superior courts, so there are limitations there. The committee might have interest in bringing in a member from Statistics Canada.

We also have JustFacts, a Department of Justice publication done by our research and statistics division. Again, it does not relate to the time in court that any process, such as the preliminary inquiry, takes, but it does refer to the number of cases, the number of charges, as well as how many preliminary inquiries have taken place in a given year.

● (1605)

Ms. Carole Morency: I'm happy to provide those to the committee, JustFacts and the two issues of Juristat.

Mr. Michael Cooper: I had a second question.

Ms. Shannon Davis-Ermuth: I can answer the second question.

There are two parts to that. The first is the operational aspect and how it would work. The amendments in the bill would operate so that when police officers come into contact with an accused who they believe has breached a condition in a bail order, they would have the option of laying a charge or issuing an appearance notice.

On the appearance notice, in the amended forms, there would be a box they could tick that would state that the accused is being referred to appear for a judicial referral hearing. It would have the same stuff it would normally have about what their alleged conduct has been and why they're going before the court. The police officer could refer them. Then they would appear in a court for this purpose. The Crown attorney would make the application before the court.

No new charges and information would have been laid, but they would be before the court, and the court would look at the situation and the conditions of release. If they had more than one set of conditions, they could all be pulled back and consolidated so they would be easier to follow. If the conditions were impossible to comply with, they could look at the situation and see what would be reasonable in the circumstance.

One thing that's important to remember with this is that there is an eligibility criterion for what type of administration of justice offences this could apply to. The criterion is that the alleged breach cannot have caused any harm to a victim, so it wouldn't be administration of justice type of offences that could implicate public safety, such as breaching a non-communication order with an alleged victim or something like that.

The other way it could happen is that a Crown attorney could see a file where police have laid a charge and the Crown attorney might have more knowledge about the case or the offender overall. If they felt that it would be more appropriate to proceed this way, they could also refer it to the court.

Does that answer your questions in terms of the procedural aspect of how it would work?

The Chair: Thank you very much, and the second part of your answer....

Mr. Michael Cooper: Yes, the second part of the second question....

Ms. Shannon Davis-Ermuth: In terms of statistics, over the years the number of individuals charged with administration of justice offences has been increasing, despite a consistent decrease in the volume and severity of crime in Canada. Statistics Canada reported that in 2014 the number of persons charged with an administration of justice offence had increased by 8% since 2004.

Mr. Michael Cooper: My question was specific to court time. I realize—

Ms. Shannon Davis-Ermuth: Sorry. In terms of court time, 40% of cases in adult criminal courts include at least one administration of justice offence.

The other thing is that, although I don't have the exact statistics on this aspect, indigenous people and individuals from vulnerable populations that are overrepresented in the justice system tend to have more administration of justice offences. They tend to be released on more conditions and are more likely to breach. It is believed that this is part of what perpetuates the revolving door of the justice system for some of these individuals. This is one of the measures in the bill that are intended to reduce overrepresentation in the criminal justice system.

● (1610)

The Chair: Thank you very much.

Mr. Fraser, go ahead.

Mr. Colin Fraser: Thanks very much.

I want to ask you about routine police evidence being admitted into court by way of affidavit without an automatic right to cross-examination. As I am a person who used to practise criminal law as a defence lawyer, that seems troubling to me, to be honest with you. I'd like to understand the rationale behind that provision, and also what “routine” means. How would we know what that means? When I practised, we would often come up with agreements about evidence that would go in without cross-examination or any need to have it tested in court, because it was generally considered between the parties to be uncontroversial.

How would this actually reduce delays if that stuff is already happening, and how would we know what the scope of “routine” is?

Mr. Matthew Taylor: I'll start, and maybe Mr. Beardall will finish.

In terms of why this is coming forward, or the context, this was another one of the many issues that were discussed in the context of FPT ministers responsible for justice at all levels, officials up to ministerial. It was viewed as another tool that could be used as part of all these other tools to address delays in the system.

You raised the point about admissions and that this happens as a matter of fact already in some cases, and certainly that's true. You're right that the idea of routine police evidence and what that means seems a bit nebulous. Could this include everything police officers do? I would draw the committee's attention to the factors that are articulated in the legislation as a way of guiding decision-making in terms of what kinds of evidence might be subject to an affidavit and admitted by all parties. In the legislation, we talk about things like “making observations”. That could include, for example, police officers swearing an affidavit as to what they observed at the crime scene when they arrived—i.e., “I arrived. There were other police cars. There were three police officers present.” It would be things of that nature. Another example is “handling evidence”. This is the chain of evidence that has come up in discussion already. Another enumerated point in the legislation is “other routine activities”, which might be something like the steps a police officer took to secure the crime scene.

So it will be context-specific. The factors that allow the judge to allow the evidence in by way of affidavit will determine the types of evidence that can be accepted. If it's central to an issue at trial, it will not likely be allowed through the affidavit of the police officer. If it's more peripheral and it's a voir dire, rather than going to the essential elements of the offence, then it may be admitted. The scheme itself provides the framework to help guide the decision-making. Ultimately, it will be a matter of practice in the system to see how the regime is applied.

Mr. Colin Fraser: Is there a concern that determining what is routine and what is not will actually take more time than allowing a defence counsel to cross-examine on that evidence in the first place?

Mr. Don Beardall (General Counsel, Drug, National Security and Northern Prosecutions Branch, Office of the Director of Public Prosecutions): The answer to that is essentially no.

You are quite correct when you say that the definition in the bill of what constitutes “routine evidence” is potentially very broad, but it is still qualified by the use of the term “routine”. As my colleague Mr. Taylor has pointed out, there are factors set out in the legislation for the judge to consider, which include a consideration of how central the evidence is to the prosecution case or, for that matter, the defence case.

You are also right, Mr. Fraser, when you say that oftentimes things such as continuity of the handling of evidence or routine observations made by police officers are the subject of admissions. However, the reality is that very often those admissions do not come until very late in the process. Often, on the day of trial, I will be told by defence counsel, “I will admit continuity of evidence.” Well, that's great, and I can send three police officers home, but they're already earning double time for having shown up in court.

This permits a mechanism for these issues to be dealt with at an earlier stage.

Here is the reality of the situation. It's always going to be up to the judge to decide whether or not the affidavit evidence will get admitted. No sane Crown is going to attempt to use these provisions for evidence that we feel will be in any way contentious from the perspective of the defence. Also, of course, we have to give notice to the defence of our intention to tender such evidence. If they object to it, they have to give me notice back.

If, in fact, I give that notice to the defence and it turns out that the defence does object—they have some articulable reason why they want the police officer to attend in court for cross-examination—I'm not going to try to litigate that. I'll just withdraw my notice. I think that this would pretty much be the reaction of any Crown, the sole exception being that if we think the defence is objecting to the admission of the evidence in bad faith, just to try to game the system, we might try to take him to the woodshed by bringing the matter before a judge. That would be the rare exception.

● (1615)

The Chair: Thank you very much.

Mr. Rankin, go ahead.

Mr. Murray Rankin: My question is for Mr. Taylor, based on our last exchange.

Two summers ago, two young men from Kitchener pleaded guilty to human trafficking and profiting from the sale of sexual services. They were selling young girls, ages 14 and 17, in hotel rooms in Windsor and London, Ontario. They're now appealing; it was announced last week that they're appealing their mandatory four-year sentence.

Professor Kent Roach, when asked about Bill C-75, said that all we needed to do was add a provision saying that judges can depart from mandatory minimums. He is quoted as saying, “It should be up to a judge whether a sentence of four years would be appropriate or not, but because the government has left mandatory minimums there [in Bill C-75], they're being challenged province by province, court by court.”

Why didn't you do anything about this?

Ms. Carole Morency: I will take that question.

That question was put to the minister when she appeared in June. It's a matter of policy. She spoke to the issue and said that the government is looking for an approach that would be able to stand the test of time for a broader response than just MMPs.

In the meantime, as the member notes, it's true that the Supreme Court has pronounced on some of these. Those cases are now providing guidance across the country in terms of how cases are proceeding, even in the context of prosecutions through the federal prosecution service of Canada.

Mr. Murray Rankin: Well, we have a charter challenge and we have the waste of time, and these two young men continue to be outside of jail for these horrendous crimes because you didn't want to fix it until you comprehensively got it together. Is that what I hear?

Ms. Carole Morency: I think I've answered the question, and I have nothing further to add.

The Chair: Mr. Virani, go ahead.

Mr. Arif Virani: Thank you for your contributions and for the work you've been doing.

I have two very straightforward questions, and I apologize if these are covered in any of the materials that I haven't gone through yet.

On hybridization, is the election of the Crown, currently or as contemplated by this bill, subject to any judicial oversight? Can the judge weigh in and disagree with the Crown on the election?

Second, for Mr. Beardall and Mr. Taylor, on the issue of routine evidence, if it does go in by way of affidavit, is there any back-end possibility of cross-examining on the affidavit itself, or is it either a routine proceedings affidavit or a live cross-examination in court?

Ms. Shannon Davis-Ermuth: On the first question, in relation to hybridization, currently the election of the Crown is solely at the Crown's discretion, and the judge cannot change that. The bill does not change that, either.

Mr. Don Beardall: Well, Mr. Taylor can correct me if my memory fails me, but I believe that the bill does contemplate that there could be cross-examination on the affidavit itself. I doubt that it would be used very often, because if you have to bring the officer to court anyway, you might as well put him on the stand and lead him through his evidence-in-chief. I suppose there might be exceptions to that, but the possibility that you contemplate does exist.

● (1620)

The Chair: Does anybody want to add anything?

Colleagues, I have one brief question, if I may. On the issue of hybridization, I've heard a number of commentators and individuals weigh in on how the selection is made when there are similar offences in the Criminal Code, with similar penalties, and on how some offences weren't hybridized and others were. I don't know if you've had a chance to read the brief from CIJA, for example. They talk about hate crime offences, terrorism offences, etc., that are hybridized, but other offences are not. Can you walk us through the criteria for that selection?

Ms. Shannon Davis-Ermuth: Certainly. The bill takes a purely procedural approach to hybridization. Some of the concerns that have been raised are based on the concern that hybridizing offences makes a statement about the severity of the offence. However, as the minister has mentioned, it's a purely procedural approach. It's looking at how to make courts more efficient. It took an entire category of offences, without looking at them offence by offence, and hybridized everything that currently has an indictable penalty with a maximum imprisonment of 10 years or less. That's the general approach.

The idea, as the minister has mentioned, is that it doesn't change the sentencing outcome, so it's not really based on the severity of the individual offences, but just on allowing the Crown the discretion to maximize the efficiencies of the court by choosing the right venue for a given case based on the severity.

One thing I didn't mention earlier when I mentioned the different types of offences is that a hybrid offence, generally, is an offence that's recognized as having a range of conduct that's possible. That's why it could be prosecuted in different ways. Now, with a number of the offences that are not hybridized, even if the Crown is seeking something in the summary conviction range, if it's clearly indictable, it has to proceed by indictment and the full range of procedural protections have to be available.

The Chair: I totally understand. The minister was clear about that. Are you saying that every single offence in the Criminal Code for which the penalty is 10 years or less is now hybridized? I keep hearing that they are not. I have seen multiple examples where they're claiming they are not hybridized in this bill. I haven't found something, so perhaps you could tell me if that was the intention.

Ms. Shannon Davis-Ermuth: That is the intention. With some of the ones that are not hybridized by the bill—and my colleague Mr. Taylor may want to elaborate on this—because this bill doesn't deal with mandatory minimum penalties, it may be complicated to hybridize some offences if, for example, the existing mandatory minimum penalty was higher than that in the summary conviction range. The decision was that those offences be not hybridized at this time, while the sentencing review continues.

Mr. Matthew Taylor: The only thing I would add is that, as you know, Bill C-51, which is in the Senate right now, proposes to repeal a number of offences that are obsolete or redundant to other offences of general application. I don't have the list in front of me. Those offences are not being hybridized in this bill either. If the committee is interested, we can give you the list of those specific offences that are being repealed in Bill C-51.

The Chair: Sure, please do.

Are there any other questions, colleagues? If not, I want to thank all members of the panel for coming before us and answering our questions. It's really appreciated.

I've been told by the clerk that they're having an issue with the captioning, so we're going to suspend for five minutes before we hear from the Barreau du Québec, while they attempt to fix that. The meeting is suspended for five minutes.

● (1620)

(Pause)

● (1635)

The Chair: Welcome back to the meeting of the Standing Committee on Justice and Human Rights as we continue our study of Bill C-75.

Before we go to our next witnesses, I want to mention to colleagues that two briefs submitted by witnesses appearing later today have come back from translation. I would ask colleagues to look at the briefs of Acumen Law and Ron Rosenes whenever they can.

[*Translation*]

It is a pleasure to welcome our witnesses from the Barreau du Québec.

With us today is Paul-Matthieu Grondin, the Bâtonnier du Québec.

Welcone, Mr. Grondin.

Mr. Paul-Matthieu Grondin (Bâtonnier du Québec, Barreau du Québec): Thank you.

The Chair: We also have Pascal Lévesque, who is the president of the Barreau du Québec's Criminal Law Committee.

Welcome.

Mr. Pascal Lévesque (President, Criminal Law Committee, Barreau du Québec): Thank you.

The Chair: We also have with us Nicolas Le Grand Alary.

[*English*]

He is a lawyer in the secretariat of the order and legal affairs.

[*Translation*]

Welcome to you all. We are very pleased to have you with us.

As a member of the Barreau du Québec, I am very happy to see its representatives here.

I know that Mr. Deltell is too.

Mr. Gérard Deltell: I am not a member of the Barreau.

The Chair: No, but I am sure that you are happy that the Barreau is represented here.

Mr. Grondin, the floor is yours.

[*English*]

Mr. Paul-Matthieu Grondin: I will be presenting in French, for those who might need to use an earpiece.

[*Translation*]

Mr. Chair, Vice-Chairs, distinguished members of the committee, my name is Paul-Matthieu Grondin and I am the Batônnier du Québec.

As the Chair has said, I am accompanied by Pascal Lévesque, who is the president of our Criminal Law Committee, an advisory committee, and Nicolas Le Grand Alary, who is a lawyer in the Secretariat of the Order and Legal Affairs.

We thank you for the invitation.

The Barreau du Québec is testifying before you today on Bill C-75 with great interest.

As a professional order, the Barreau du Québec's mission is to ensure the protection of the public. The Barreau is impelled to demonstrate this mission because of the significant amendments, both to criminal procedure and the administration of criminal justice in Canada.

With that said, we are grateful to you for inviting the Barreau to share with you its position on the subjects that follow.

First, the Barreau reiterates its opposition to minimum terms of imprisonment, except for the most serious cases, such as murder. Minimum sentences remove the flexibility in properly applying the principle of proportional sentencing from those in the front line, meaning prosecutors, defence counsel and trial judges. Consequently, the Barreau would have liked to see measures on mandatory minimum prison sentences in this bill.

Imposing minimum punishments may, in the short term, provide some sense of security for the public. In the long term, however, these measures are counterproductive for the justice system. Prosecutors lose an incentive to bring an accused to plead guilty when the circumstances surrounding the commission of an offence justify a punishment that would be under the mandatory minimum. Conversely, when the prosecution asks for a sentence in cases where it would be justified to impose slightly more than the minimum sentence, the courts tend, in those cases, to keep to the minimum sentence.

The bill would have been a good opportunity to abandon those types of punishments, which do not promote an efficient and flexible administration of the criminal justice system. Unfortunately, we acknowledge that we will have to wait for next time.

The Barreau du Québec believes that it is urgent for the government to amend the Criminal Code to give courts the residual discretionary power to not impose a mandatory minimum punishment.

But we note the introduction of two bills that seek to give this discretion to the courts. These are Bill S-251, An Act to amend the Criminal Code (independence of the judiciary) and to make related amendments and Bill C-407, An Act to amend the Criminal Code (sentencing). The measures in these bills could be included in Bill C-75 to address the issue of mandatory minimum punishments.

Persons before the court have the right to this constitutional protection. In addition, each accused or each party would no longer have to bear the heavy burden of a constitutional challenge right up to the Supreme Court.

Mandatory minimum punishments can be profoundly unfair in some cases. This is because the only possible penalty is imprisonment, while sometimes other solutions may encourage rehabilitation and thus reduce the risk of reoffending. Judges must be trusted to apply the law in a fair and equitable manner, ensuring that sentences are proportionate to the seriousness of the offence and the degree of responsibility of the offender.

Our second subject is the removal of the preliminary inquiry. The bill proposes to restrict preliminary inquiries to offences punishable by life imprisonment. It also strengthens the power of justices to limit the issues explored to specific matters and restrict the number of witnesses who may be heard.

The Barreau du Québec opposes this amendment. By limiting the use of preliminary inquiries, some argue that we can speed up the judicial process and thus reduce delays. We believe that limiting preliminary inquiries in this way would be ineffective or even counterproductive.

It is important to realize that, according to Statistics Canada, only 3% of eligible cases were the subject of a preliminary inquiry. Of the cases that caused delays beyond the thresholds established by the Cody and Jordan decisions, only 7% included a preliminary inquiry. Apart from anecdotal events, there is no evidence to conclude that preliminary inquiries create undue delays in the justice system, or the need to amend the current rules.

It is also important to mention that, in some cases, preliminary inquiries can test the strength of each party's position. This encourages the settlement of cases, thus avoiding trials on the merits and contributing to the reduction of delays. For example, evidence of an offence may be based on proof by testimony. A preliminary inquiry may be of benefit to both the accused and the prosecution, as they may be able to assess the credibility of those witnesses. This may encourage one or other of the parties to want to settle the matter by pleading guilty or by withdrawing the charges.

We are aware that some may abuse this step and thus unduly lengthen procedures. However, the Barreau du Québec wishes to point out that judges already have many powers of case management. The Supreme Court has invited them to use those powers time and time again. They must be used to define the scope of the inquiry and prevent abuse. Otherwise, we risk abandoning a stage of the criminal proceeding that remains relevant to the search for more efficient justice.

In addition, the Barreau du Québec is proposing an additional measure. It is all well and good to point out problems, but sometimes, we must also talk about solutions. This additional measure involves adding to the Criminal Code the possibility, with the consent of the accused, of replacing preliminary inquiries with our-of-court questioning. Pilot projects in this area have been set up in several judicial districts in Quebec and have proven their worth. This means not having to deal with the cumbersome legal system. Codifying these practices will allow them to extend across Canada, help to reduce delays in criminal practice and improve the efficiency of the justice system.

I will now deal with the elimination of peremptory challenges in jury selection.

The bill abolishes the peremptory challenging of jurors. This measure appears to be inspired by a highly publicized trial in Saskatchewan, where the jury selected did not reflect the diversity of the community where the trail was being held.

The Barreau du Québec considers that the measure proposes in the bill misses the mark. Of course, we find it deplorable that—as sometimes occurs—some lawyers use peremptory requests as a tactic to systematically disqualify prospective jurors for discriminatory reasons such as race or ethnicity.

However, we consider that simply abolishing peremptory challenges is not the answer. Peremptory challenges are always useful for litigants who are familiar with jury trials. Here is why. Lawyers can perceive, through the appearance, the words and the non-verbal language of prospective jurors, that they will not have the capacity to listen sufficiently objectively to the evidence to be presented and to make an impartial judgment on that evidence. They also ensure that the accused accepts the legitimacy of the jury and, by extension, the verdict and the sentence that will be pronounced. It is also important to mention that peremptory challenges are often made with the consent of both parties. That is important to keep in mind.

The Barreau de Québec agrees, however, that the composition of jurors must reflect the diversity of Canadian society. We therefore propose that the Criminal Code be amended so that one party or the other may request the judge to steer the composition of the jury when one party appears to be making peremptory challenges in bad faith, or when the jury, for other reasons, is not representative of the community. By holding a hearing to that effect, could appoint jurors to ensure that some members come from diverse backgrounds. Once again, I feel that it is important to mention that, when peremptory challenges are used, the vast majority of lawyers use them in good faith.

I will now talk about the impacts of the amendments to the Superior Court of Appeal.

The Barreau du Québec is afraid that significantly increasing the number of hybrid cases and imposing a one-year limitation period on summary conviction offences may have potential impacts on appeals in Superior Court.

We therefore want to make sure that there will be more resources for superior courts so that they will be able to handle the increased volume of cases without increasing the delays that we actually want to reduce. But I feel that it is important to emphasize that we are in general agreement with increasing the number of hybrid cases. That is a very good thing.

As for replacing some of the terms in the constitutive provisions of offences, we note that, for a number of offences, the adverb “wilfully” or the expression “with intent to” have been replaced by “knowingly”. We question the scope of these changes.

Is this a simple exercise in semantics, as in *R. v. Sault Ste. Marie*, which uses “wilfully” and “knowingly” as synonyms? Or is rather a desire to change these offences so that they go from specific intent offences to general offences?

The change in wording suggests that the intent is to change the applicable criteria, since, as the Supreme Court has stated, “the legislator does not speak for nothing.” The amendments are therefore likely to cause both difficulties in interpretation and disputes.

I will now address the proposal to permit only prosecutors from filing charges.

In addition to what is provided for in the bill, the Barreau du Québec recommends that charges for Criminal Code offences should be filed only by prosecutors. It is often the case that charges are dropped for lack of evidence or because of exculpatory evidence brought to the attention of the authorities. In addition, charges may be laid despite their technical or unimportant nature, despite the fact that it may not be appropriate to do so in the interests of justice. To reduce this risk, British Columbia, New Brunswick and Quebec have chosen to grant the power to lay charges to prosecutors only.

In Quebec, this measure is all the more effective because prosecutors have discretionary power, when circumstances warrant, to apply an alternative, such as to handle the case non-judicially, or with alternative measures, when a person admits responsibility.

So pre-charge screening by prosecutors reduces delays by unclogging the system of some of the cases that can be handled alternatively without harming the public interest, or that would likely would not have been successful at trial. As the Supreme Court of Canada stated in *R. v. Sciascia*, this practice assists the extremely overburdened justice system.

With the agreement of the provinces and territories, since we are dealing with the administration of justice, this rule should be enshrined in legislation to standardize the practice across Canada. At very least, it should encourage the use of pre-charge screening, as does subsection 23(1) of the Youth Criminal Justice Act.

Mr. Chair and members of the committee, that is an overview of the principal issues that the Barreau du Québec wanted to discuss with you as part of the consultations on Bill C-75. The brief we have submitted to you contains more detailed explanations of the various issues we have just presented. The brief is also available on the Barreau's website. We hope that our presentation will provide you with food for thought.

In our reflections, we have deliberately highlighted the parts of the bill that we would like to be amended. But I would still like to point out that the bill contains a lot of good things. However, to channel the discussion and to use our time effectively, we have focused our thoughts on the places where we believe that amendments should be made.

We are now able to answer your questions.

Thank you, Mr. Chair.

● (1645)

The Chair: Thank you very much.

Your brief clearly specifies the parts of the bill that you support.

Mr. Cooper, you may start.

[*English*]

Mr. Michael Cooper: Thank you, Chair.

Thank you to the witnesses.

Mr. Grondin, you touched upon preliminary inquiries. You noted that the percentage of cases involving preliminary inquiries is only around 3%. In other words, it's a very small piece of the larger criminal justice system in terms of court time. You went on to suggest that there isn't evidence that preliminary inquiries are part of the problem in terms of backlog.

I agree with you, but would you agree that by limiting the scope of preliminary inquiries, rather than reducing delays, we may in fact cause an increase? One of the concerns that has been cited, for example, is regarding the discovery process with respect to motions before trial. With the virtual elimination of most preliminary inquiries, that's now going to be pushed over into trial, which could result in trial delays.

● (1650)

[*Translation*]

Mr. Paul-Matthieu Grondin: You ask a very good question. Clearly, we asked ourselves that question too: if only 3% of cases have preliminary inquiries, why not eliminate them?

What we have to recognize is that preliminary inquiries have a positive side, in that they often encourage settlements. In addition, no empirical study allows us to say that certain measures would reduce the number to 2%, or to any percentage. Something else really enters into this equation. Keeping preliminary inquiries often encourages a settlement earlier in the process. To what extent is that the case? Quite honestly, it is difficult for us to say.

Whatever the case, with preliminary inquiries, we wanted to warn you to be careful. We suggest not throwing out the baby with the bathwater.

[*English*]

Mr. Michael Cooper: I'd like to ask you about the position of the Quebec bar on routine police evidence. Perhaps you'd like to comment on that.

[*Translation*]

Mr. Pascal Lévesque: As for routine police evidence, Mr. Cooper, we understand the desire to make police work easier. But when our committee considered the notion of routine police evidence, we were of the opinion that it could lead to confusion as to what is being requested and what that implies. The people around the table who were looking at this from the point of defence counsel said on a number of occasions that there could be endless debates. The prosecution could say that something is quite routine and there is no problem. But this goes against the rule requiring witnesses whose testimony relies on their own documents to come to testify with those documents. It is not enough to enter a document into evidence, because a document cannot be cross-examined.

Our committee felt that defence counsel would certainly perceive things differently and that they would tend to limit the interpretation of what constitutes routine evidence. We also felt that courts might well wonder what the routine evidence includes, and that there would be an affront to the basic principle that those who come up with the documents should be present to testify about them.

One might also wonder what is kept as routine evidence. For example, in a traffic stop, when a person is given a breathalyzer test, is the way of dealing with that person routine evidence? During a police operation, what is routine evidence for the officers? They have to come and testify.

We understand the intent behind this, to facilitate the work of police officers, who often have to appear in court. We want to make their task easier and make justice more efficient. On the other hand, that may cause a risk.

[*English*]

Mr. Michael Cooper: But it seems to me, Mr. Lévesque, that this is a solution in search of a problem that doesn't exist. As much as it will in fact create a new hurdle in terms of requiring seeking leave, when I look at the factors that the court would consider, it would include such things as the nature of the proceeding, the extent to which evidence is central or peripheral, whether and the extent to which that evidence is expected to be contested, the accused's right to make full answer and defence, and so on. It seems like there could be a whole lot of litigation involved in sorting that out.

[*Translation*]

Mr. Pascal Lévesque: That might happen. If I look at it from the other side, someone could also say that defence counsel will not do that systematically for each case. Some basic information from the officer will probably still be considered. However, you know as well as I do that only a very small number of cases involve major legal debate, and they are the ones likely to clog the system.

We also wonder why we are only talking about routine police evidence. Could this not involve an accountant, for example, an expert like that, a person in another field?

It is difficult for us to say now how this provision will play out if Parliament decides to adopt it and bring it into effect. We do not know how it will be used. However, we suspect that, in certain cases, the prosecution will have its idea on what constitutes routine evidence and the defence will have its idea, and they will not necessarily be in agreement.

● (1655)

The Chair: Thank you, Mr. Cooper.

Mr. Boissonnault, you have the floor.

Mr. Randy Boissonnault (Edmonton Centre, Lib.): Thank you, Mr. Chair.

My thanks to all the witnesses for joining us today.

My question is rather philosophical, but it deals with the fundamentals of democracy. You are the first representatives of a law society that we have had with us for this study. In your brief, you say this:

> …the Barreau du Québec welcomes any legislative initiative that has the effect of strengthening the independence of the courts, fostering judicial discretion, and ultimately, giving full effect to the principle of proportionality of sentencing.

Why does the Barreau du Québec feel that those three factors are so important, even critical?

Mr. Paul-Matthieu Grondin: It has been that way for a long time. It is also a constitutional matter. Many of these factors are common to the Barreau du Québec and to other law societies in Canada. It must be said that we acknowledge that our system of justice is complex and expensive. We are always trying to improve ourselves in that respect. However, something we do very well in Canada is to have an impartial and independent judiciary.

As for minimum sentences, judges must be given the discretion to impose penalties that are not minimums, penalties that deliver justice and that help the accused with rehabilitation. Judges have that subtle knowledge of the cases. This is the proportionality of sentencing. Judges are in a better position to apply the principle because they hear cases every day. They are very experienced in the area. In general, Canada and Quebec have great statistics on the matter.

It is very good to try to improve our justice system, which, again, I describe as complex and expensive. There have been some great plans along those lines. That said, the one thing that we do very well throughout our entire justice system is to make sure that the judiciary is independent and impartial.

That is one of the reasons why we use those words.

Mr. Randy Boissonnault: In your view, why is it important for our citizens that courts be independent?

Mr. Paul-Matthieu Grondin: Clearly, that is one of the bastions of our democracy. I cannot stress the importance of that impartiality enough. Sometimes we take it for granted, but others cannot. That is why it is important to preserve the impartiality.

Mr. Randy Boissonnault: Thank you. You may even have a neighbouring province in mind, but let us move on.

Why is it important for the bill to repeal section 159 of the Criminal Code, which discriminates against young man in terms of the consent of those of the same sex?

Ms. Nicolas Le Grand Alary (Laywer, Secretariat of the Order and Legal Affairs, Barreau du Québec): We support this measure, which was proposed in two previous bills. It was withdrawn for reasons of parliamentary efficiency. This is a section of the Criminal Code that has been declared unconstitutional by several courts of appeal in Canada including the Court of Appeal of Quebec in *Roy v. R*. The discriminatory nature of the section is clearly the issue. We certainly support the repeal of section 159 of the Criminal Code.

Mr. Randy Boissonnault: Great. So, according to the Barreau du Québec, the bill must address the issue of equality.

Ms. Nicolas Le Grand Alary: Yes. As the courts have found, the problem with this section is the discrimination against homosexual men.

Mr. Randy Boissonnault: Great.

You are in favour of a hybrid offences. Can you tell us why the new hybrid offences work to the advantage of people before the courts?

Mr. Pascal Lévesque: Broadening the scope of hybrid offences gives more flexibility to front-line justice workers, especially to crown prosecutors.

New hybrid offences offer prosecutors certain possibilities. Let's say that an offence is considered a criminal act, but defence counsel is ready for the client to plead guilty if it becomes a hybrid offence. If the facts warrant, that provides some flexibility. Of course, we are not talking about very serious facts that would get the accused a significant term of imprisonment. If the facts warrant, the limitation period can be waived and the prosecutor can then agree to an offence punishable by summary conviction upon a plea of guilty. At that point, you go before a judge and find common ground as to a penalty to suggest to the court. That helps to unclog the system, while still working in the public interest.

Basically, the Barreau is in favour of all measures that provide flexibility to those in the front lines.

● (1700)

Mr. Randy Boissonnault: So hybrid offences allow for more fairness and for more offences to be dealt with.

Mr. Pascal Lévesque: Quite so.

The Parliament of Canada's role is to define criminal law, but it cannot foresee every scenario that might arise as the law is being applied. So it is up to those working in the justice system, who come under provincial responsibility, to try to apply it as fairly as possible.

Let me give you an analogy that is often used. We must be as fair as possible in terms of penalties or offences. It has to be custom made as much as possible. There are also unique local factors. In remote areas, the judges end up knowing the people who come before them. The more tools we give to those in the first line, meaning crown prosecutors, defence counsel, probation officers and police officers, the more help we are providing to judges to ensure a more just society.

[*English*]

Mr. Randy Boissonnault: So providing hybrid defences allows for more exact not just sentencing but also charging of offences. Section 159 removal is an equality move. Ensuring the independence of the judiciary is fundamental to democracy, and then we can bring everything into the 21st century with video conferencing.

[*Translation*]

Why is it important to be able to use video conferencing?

Mr. Paul-Matthieu Grondin: It certainly is important. It is even a way of delivering justice in a territory or region. All these things are very important. Of course, if we were in 1950, we would perhaps not be having this discussion, but now the technology allows it. So, my answer to your question is a general yes. It is still important for some hearings to be held in person, but I say yes in general to video conferencing.

Mr. Randy Boissonnault: Thank you, gentlemen.

The Chair: Thank you, Mr. Boissonnault.

Mr. Rankin, the floor is yours.

Mr. Murray Rankin: Thank you, Mr. Chair.

Welcome to the gentlemen from the Barreau du Québec. My congratulations on your brief, which is very useful for the committee. Well done, and thank you.

I have two questions.

The first is about the removal of the preliminary inquiry. On page 6 of your brief, you say:

> In addition, the Barreau du Québec proposes an additional measure, to add to the *Criminal Code* the possibility of replacing, with the consent of the accused, the holding of a preliminary inquiry with out-of-court questioning. Pilot projects in this area have been set up in several judicial districts in Quebec and have proven their worth.

What are the results of those pilot projects? Did they really save time and protect the rights of the accused simultaneously?

Ms. Nicolas Le Grand Alary: Here is how it works. The accused agree to be committed for trial automatically, meaning they do not go to a preliminary inquiry. The questioning is then held outside court. It is important to note that the questioning is done in places other than courthouses, so without the accused present. In appropriate cases, cases with testimonial evidence, you can gather testimony that can be used at trial. This often means that delays are reduced and cases are better prepared.

Since the pilot projects are still underway, we do not have a complete picture and have not yet compiled the statistics on those cases to find out how many have been settled. In the places where this is being done, our members are finding that it is an excellent idea and a good way to replace, or at least complement, preliminary inquiries.

Mr. Murray Rankin: Thank you.

My second question is on page 8, where you talk about the definition of “intimate partner”. It says this:

> We believe that awareness and information campaigns must continue to be organized to inform victims of domestic violence about the resources that exist to help them. Community resources, in turn, should encourage victims to report their abuser to the police. Finally, to prevent acts, or at least recidivism, we must also look at developing resources for people who have difficulty managing their aggression. Domestic violence, as a societal problem, should be everyone’s business.

I agree with that.

Which resources do you have in mind? Are they preventative measures? If so, are they in federal jurisdiction or do they come under the administration of justice provincially?

● (1705)

Ms. Nicolas Le Grand Alary: We mention this in the brief. In the past, we have taken part in hearings for the *Plan d'action gouvernemental en matière de violence conjugale 2018-2023*, which is a provincial initiative.

Spousal violence, or domestic violence in the broader sense, must be everyone’s business, both at provincial/territorial level and at federal level.

While respecting constitutional jurisdictions, each level of government should take measures to facilitate this. It can be either by funding groups or through more structural measures such as Bill C-78, which amends the Divorce Act and contains a whole section on domestic violence. That is a federal government measure in an area of law other than criminal law. But the fact remains that the federal level certainly has its place together with the provinces and territories.

Mr. Murray Rankin: Thank you.

The Chair: Thank you very much, Mr. Rankin.

We now move to Mr. Fraser.

Mr. Colin Fraser: Thank you, Mr. Chair.

Thank you all for being here today, and for your brief, which is very useful for the committee.

I read in your brief that you are in favour of reclassifying certain offences. Can you explain to us why prosecutors will choose to proceed by summary conviction? Why is that option useful for prosecutors? I hope you will agree that it will reduce delays in our current system. Can you comment on that?

Mr. Pascal Lévesque: I'm going to go back to what I was saying earlier. Suppose a prosecutor is in a situation where charges were laid by indictment and the six-month time limit has elapsed. There could also be cases where the deadline has not expired, but where you are dealing with an offence for which the only option previously was to proceed by indictment. If you proceed in that way, the procedure is different. This implies that if the accused decides that he wants to have his case heard in superior court, it will be. However, in the regions, the superior court does not hear criminal cases every day. By having the possibility of proceeding either by summary accusation or by indictment, the prosecutor can decide, even if the offence is a serious criminal act, to entrust the case to the provincial court, if the facts warrant that.

As I was saying earlier, it is possible to go back to the other option. If the deadlines have passed, the defence lawyer can waive the time limitation, in exchange for which they would come back to the summary proceedings, in order to give the provincial court judge the jurisdiction. That is another possibility.

In doing that, we are giving the crown prosecutor an additional tool which can modulate the type of charge according to the facts of the case. When he has that discretionary power, he may lay a criminal charge or proceed by summary conviction. However, when the superior court has to have jurisdiction, that discretionary power is somewhat limited.

Mr. Colin Fraser: Do you think there will be repercussions on sentencing, even if the facts and the criminal code sentencing principles remain the same? Do you think there will be changes? Some people say that even given the same facts, the sentences will be lighter. Does that concern you?

● (1710)

Mr. Pascal Lévesque: Mr. Le Grand Alary may want to add some comments on this, but personally I would say that if the basic facts and principles regarding aggravating and extenuating factors are the same, the sentences will remain the same. Regarding sentences, obviously the superior court judge has greater powers than the provincial court judge. That said, if the prosecutor is convinced that the provincial court judge has jurisdiction to impose sufficient sanctions, and uses his discretionary power to have the case handled through summary conviction, I don't think this will change sentences very much. However, the process leading up to sentencing will be different.

Mr. Colin Fraser: Thank you.

Do you have an opinion on the problem one of the changes might cause, or on the repercussions for students and articling clerks, as well as paralegals, who will no longer be able to represent clients indicted by summary proceedings?

Is there something we can do to deal with that problem?

Mr. Paul-Matthieu Grondin: That is a very good question.

Since the matter of students, paralegals and representation concerns other provinces mostly, in particular Ontario, the Barreau du Québec chose not to comment on that.

Perhaps Mr. Le Grand Alary would like to add something.

Ms. Nicolas Le Grand Alary: I'd simply like to say that we were apprised of this problem as we followed the evolution of the bill. However, this does not affect Quebec, given the nature of the legal profession and the way we are organized. That is why we did not study this aspect of the matter.

Mr. Paul-Matthieu Grondin: Paralegals do not have licences in Quebec; that does not exist.

Mr. Colin Fraser: Thank you very much.

The Chair: Thank you.

Would any other colleagues like to ask a question?

Let's start with Mr. Deltell.

Mr. Gérard Deltell: Thank you very much, Mr. Chair.

Gentlemen from the Barreau du Québec, welcome to your House of Commons. It's a pleasure to meet you. This is very interesting. I'm quite pleased to be replacing the member for Parry Sound—Muskoka. It will be my pleasure to replace him anytime. This is really interesting.

There are two points I'd like to raise with you: minimum sentences are one, but first of all I'd like to touch on Canadian diversity.

It goes without saying that we are in favour of the principle of Canadian diversity, but the issue remains as to how that should be applied. What do you suggest? Do we apply the statistics on Canadian diversity throughout Canada, or by district?

According to Statistics Canada, a little more than 20% of Canadians were born outside of Canada, but in Toronto that percentage is over 50%.

Should we reflect the local, provincial or national reality?

Mr. Paul-Matthieu Grondin: That is a very good question, Mr. Deltell.

In our brief, we suggested that this be left to the discretion of the presiding judge. He or she is in the best position to be knowledgeable about Canadian reality, certainly, but also the local reality. It is up to the presiding judge to make that decision. We have no suggestions to make as to the guideline itself. If we had gotten into that, we would have been heading into troubled waters, honestly.

If there is no representative diversity, or if parties act in bad faith by using the peremptory challenge to exclude a given category of Canadians, we would like one or the other party to be able to request that the judge provide guidelines so that there may be greater diversity on the jury.

Ms. Nicolas Le Grand Alary: I'd like to add that that rule has to have a certain flexibility. For instance, we could decide to reflect the diversity of the district or the local community, but the trial could be held elsewhere than in the location of the offence or in the accused's hometown. Consequently, there has to be some leeway.

The objective is to reflect diversity in circumstances where there is clearly a lack of good faith or where there is a lack of diversity in a given location. The purpose is to allow the judge to solve the problem by holding a hearing and appointing one or two jury members from diverse communities, rather than proceeding simply according to tables and statistics. This would be a better solution to the problem.

Mr. Gérard Deltell: In your opinion, should this decision be based on the identity of the accused?

● (1715)

Mr. Paul-Matthieu Grondin: That is probably what we are trying to avoid, in a sense. We are trying to avoid a situation where a diversity issue gives one or the other party an advantage or disadvantage. You must remember that jury members, whatever their origins, can certainly act in good faith.

These are difficult issues, Mr. Deltell, and we understand that. That is why we want the decision to be made by the presiding judge.

Mr. Gérard Deltell: I understand your caution very well. As you said, these are troubled waters; we know what you are referring to.

You are giving the judges the freedom to act, but do they not already have that freedom? So, what does this change?

Ms. Nicolas Le Grand Alary: Mr. Lévesque, correct me if I'm wrong, but the accused may already make such a request of the judge if the prosecutor is using the peremptory challenge to exclude a certain community or category of Canadians, as Mr. Grondin mentioned. We are basically proposing that that mechanism be extended to both parties, depending on circumstances. This gives more leeway than if we only considered the situation and origins of the accused, or those of the victim, or other such circumstances.

Mr. Gérard Deltell: I understand from what you have said that you are giving judges all of the necessary freedom to steer the choice of jury members while respecting Canadian diversity.

Mr. Paul-Matthieu Grondin: Normally, judges are reserved on these matters. Lawyers use the peremptory challenge. This issue would not come up all the time, but, when needed, we could ask the judge to use his discretion.

Mr. Gérard Deltell: Suppose an accused is a member of a particular racial group and that among the 12 jury members, none are from that particular community, or all of them are from that community. Who would have precedence?

Mr. Paul-Matthieu Grondin: That is a good question, Mr. Deltell.

On this, and I will say it openly, you'll have to allow me to punt the ball. These are indeed questions that are difficult to answer. That is why we are asking that one of the parties be allowed to ask the judge to take that diversity into account and make the decision. It's very difficult for us to use a typical case and we avoided doing so deliberately.

Mr. Pascal Lévesque: Before we get to that point, there is a jury selection process. According to our suggestion, if after the sixth or seventh jury member is chosen, people realize that they are going to have a jury that will not be representative of the community or another component of the file, one or the other party should be able to let the judge know that the constitution of the jury is heading in a certain direction, and ask him to guide the jury selection with regard to the two, three or four last candidates, for instance, to ensure that there is someone who will represent that part of the community.

A jury member doesn't just...

The Chair: I apologize but I must now give the floor to Mr. Rankin.

Mr. Murray Rankin: I have a brief question.

Once again, I'd like to discuss the removal of the preliminary inquiry.

On page 6 of your brief, you came to the following conclusion:

> There is no evidence, apart from anecdotal events, to conclude that preliminary inquiries create undue delays in the justice system or the need to change the current rules surrounding them.

May I conclude that the Barreau du Québec is opposed to the proposed changes in this regard in the bill, and does not support the elimination of the preliminary inquiry? If that is the case, could you elaborate?

Mr. Paul-Matthieu Grondin: The short answer is yes. That is what we say in the brief. That being said, we propose a solution. It's all well and good to highlight what we feel needs to be changed, but we also have to propose a solution. That is what we explained earlier.

At this time, there are several pilot projects ongoing in Quebec where if an accused agrees to a trial, examinations are held prior to the trial to test the evidence and the credibility, among other things. We suggest that change and we will soon have statistical data on that.

Only 3% of eligible files were the subject of a preliminary inquiry. Of the cases that caused delays beyond the thresholds established in the Jordan case, only 7% included a preliminary inquiry. We don't want to say that the issue is larger than it is in reality, all the more so since the preliminary inquiries allow delays to be reduced in cases where a guilty plea is filed afterwards or charges are withdrawn. Preliminary inquiries exist for a reason. However, we also do not know to what extent they improve the system. So we need to be careful.

● (1720)

Ms. Nicolas Le Grand Alary: Historically, the preliminary inquiry was held to allow for the disclosure of evidence, but now, given the rules surrounding the disclosure of evidence handed down by the Supreme Court of Canada, it is no longer important in that regard. However, the preliminary inquiry is important in another way, as mentioned by the president of the Bar, and that is to encourage guilty pleas.

The preliminary inquiry had its raison d'être, and that historical reason may not exist any longer, but there are other reasons to keep it.

Mr. Murray Rankin: Okay, thank you.

The Chair: Thank you very much, Mr. Rankin.

I have a question to follow up on Mr. Deltell's question on peremptory challenges.

The Department of Justice representatives told us that this could be used in a discriminatory manner, and that the peremptory challenge had been eliminated in the United Kingdom, for instance. Be that as it may, I am sure that today potential jurors could still be excluded for valid reasons.

What are the reasons why a potential jury member could be excluded, aside from valid causes? What means could a defence lawyer or a prosecutor use if there were no specific grounds to exclude a potential juror? Why is it important to keep that?

Mr. Pascal Lévesque: Based on his experience and instinct, a lawyer may not want a certain juror, without however being able to identify the problem or being able to explain exactly why to the judge. Sometimes, it is something in the person's body language, or the way in which he or she answers or behaves that tells him that that person will not have the necessary attention span to follow the upcoming jury trial. That is why we use peremptory challenges.

It may happen that later, the lawyer can articulate the reason why he or she used the peremptory challenge. That said, jury selection often proceeds quite quickly, and that is one of the reasons why the peremptory challenge is useful to attorneys, especially those who only practice in the context of jury trials.

The Chair: I don't know if you watch this in French, but there's a new televison program called *Bull*, in which one person is responsible for a group who chooses jury members. In this program, the perception is that certain people will not be sympathetic to the cause, for instance of women; or, some people don't like the colour red, and for that reason they are not wanted on a jury.

Do such reasons really exist in practice, or do defence lawyers provide much more narrow and objective reasons to refuse potential jury members?

Mr. Pascal Lévesque: The United States is very advanced when it comes to the study of potential jurors. In Canada, we are not there yet. The image of the law that is presented by popular culture often comes from the United States. But there are nuances when it comes to the law in Canada.

You may think that people of a certain age will be less receptive to a particular type of case, for instance, but it's often a matter of instinct. The decision is made rapidly. There is no advanced analysis or sociological study from a university sociology department that will determine that a given candidate will be more receptive. No. Normally, the lawyer listens to his instinct.

Take the example of a person who told the judge that he could without any issue perform this task, but who is looking at his feet and speaking in a very low and grumpy voice. That person may not really want to be there.

Ms. Nicolas Le Grand Alary: Regarding the program you are referring to, I would say that a large number of the examples seen there are inspired by what is done in civil cases in the United States. In Quebec and Canada, there are very few juries in civil matters, and in criminal matters, there are some quite specific guidelines for jurors, and so the American examples likely apply less. You could summarize by saying that it is in large measure the lawyer or prosecutor's instinct that is the determining factor. Mr. Lévesque was talking about a person who looks at his feet while talking. That is the sort of factor that is taken into account.

As for peremptory challenges, a jury trial may be an imperfect process. Non-lawyers will have to decide on the substance of a case, on a charge that may determine a person's freedom, and that is why it is important to ensure that the accused and society accept the legitimacy of the jury and of the ultimate verdict.

● (1725)

Mr. Paul-Matthieu Grondin: For greater clarity, I would say that TV programs or series about lawyers such as the series *Suits* very rarely represent the reality of the practice. I understand why you would choose an example from a program of that type, but the fact remains that we often have to fight against the image presented by the arts and literature.

I thank you for the question, sir.

The Chair: I simply wanted to raise this issue, because, in my opinion, people have a bad impression of peremptory challenges because of that.

I want to thank all of you. This was very interesting. I think we were all very pleased to read your brief and listen to your testimony.

Thank you very much.

Mr. Paul-Matthieu Grondin: Thank you very much.

[*English*]

The Chair: I'm going to do a brief recess while we ask the next panel to please come forward.

● (1725)

(Pause)

● (1730)

The Chair: We will reconvene our hearing on Bill C-75.

We will now move to Acumen Law Corporation, our next witness, represented by Mr. Paul Doroshenko and Ms. Kyla Lee. The Canadian Civil Liberties Association is represented by Ms. Abby Deshman, the director of the criminal justice program.

Welcome, everyone.

I know this panel may have to catch a flight right after this, so I want to let it start as soon as possible. I'll turn the floor over to Acumen Law.

Mr. Paul Doroshenko (Barrister and Solicitor, Acumen Law Corporation): Good afternoon. Thank you very much for permitting us to testify at this panel. My name is Paul Doroshenko. I'm a criminal defence lawyer in Vancouver. Kyla Lee is my colleague and is probably the busiest impaired driving lawyer in British Columbia, and the head of the Canadian Impaired Driving Lawyers Association.

There are three things we are in a position to speak to today and that we would like to give evidence about. The first is the change in the onus for bail in circumstances of individuals who are charged with domestic assaults. The second is the change to the limitation period to lay a charge with respect to summary offences from six months to one year. The third, which we've already heard is quite contentious, is the matter of police officers providing evidence by way of affidavits. This is a significant concern for us, because when we look at it, as far as we're concerned, it appears that the police can basically put their whole case in by way of affidavit.

If you take a look at the thing that's already been mentioned, routine police evidence, there is a definition of that that's supposed to guide a judge and, I guess, prosecutors and defence lawyers, with respect to making those applications and putting things in by way of affidavit. If you look at what is actually listed in there as routine police evidence, it is the entirety of a police investigation: collection of evidence and observations of the police officers. That's what happens in most summary offence investigations. If you're dealing with, for example, an impaired driving case, it's routine police evidence for a police officer to pull somebody over and make an ASD demand. It's routine police evidence for a police officer to get a fail on an ASD roadside breath tester. It's routine police evidence to make observations of evidence about a person's status, such as whether or not their speech is slurred. This is all routine police evidence.

My particular concern is that putting in evidence in this way is going to lead to wrongful prosecutions, particularly in cases where people are self-represented accused and they don't know about this whole procedure to try to make an application to courts to oppose the Crown's application to rely on affidavit evidence. From a defence lawyer's perspective, obviously this is something that we're going to challenge, but since I read this section I've been trying to think of a single case in my career—and this is 18 or 19 years—in which a police officer has testified in a trial and I did not have questions for that police officer on the basis of their testimony. I'm trying to think of a case in which routine police evidence is going to arise in such a circumstance that it's not going to be contentious in any way or not going to build on, in some manner or another, the case that I want to use for the defence of my client.

Really what it comes down to—here's one of the fundamental problems with it—is that we have to put our client's argument to the court. We have to put our version of events to the witnesses who are presented in court. So if the Crown shows up and they proceed by way of this affidavit only, how do we put our version of events to that person? How does the judge make a finding of fact? How do they assess credibility in circumstances where all they have is an affidavit of a police officer? Well, there are two different ways they can go. As a judge, they can say they're just going to accept everything that police officers put in this affidavit, which, I can tell you, I don't think is going to happen. The other is that they're just going to say, well, okay, somebody else is testifying that something didn't happen that way. The police officer hasn't been there to testify. There's been no cross-examination or testing of that evidence, so ultimately, they're just going to accept the evidence that they've heard from the people who are giving evidence that contradicts what the police officer has in that affidavit.

This is something that we've already seen in British Columbia with respect to the immediate roadside prohibition scheme, and that's something that Ms. Lee deals with all the time.

Do you want to go ahead?

● (1735)

Ms. Kyla Lee (Barrister and Solicitor, Acumen Law Corporation): Yes.

In British Columbia, we've seen the erosion of cross-examination through our immediate roadside prohibition scheme. I have personally dealt with cases in the Supreme Court of British Columbia on two occasions where police testimony by affidavit, through that mechanism, has led to findings of a superior court where an officer either has been providing evidently false evidence or has committed apparent perjury—interestingly, the same officer in both cases.

I've also had the opportunity to cross-examine officers outside the immediate roadside prohibition context on the affidavit of evidence that they've submitted in immediate roadside prohibition cases for charges that arise collateral to the immediate roadside prohibition, namely, “driving while prohibited” cases. In those cases, when confronted with things that would constitute evidently false and apparent perjury in the police evidence, the police witnesses have realized the error of their ways only through my cross-examination, and sweeping changes to police practice in filing this affidavit evidence have been made as a result of the cross-examination that occurred. If you eliminate cross-examination, you eliminate the opportunity for police to learn that what they are doing doesn't meet the standard of truthfulness that's required of them.

In our brief—and I appreciate this committee only got it this afternoon and probably many of you haven't had the opportunity—

The Chair: Ms. Lee, can I ask you to slow it down a bit? The interpreters are having trouble.

Ms. Kyla Lee: Yes. I apologize.

Mr. Paul Doroshenko: Ms. Lee conducts these hearings over the phone. They're 30-minute hearings and she has to speak very quickly.

The Chair: Of course.

Voices: Oh, oh!

Mr. Paul Doroshenko: She has become accustomed to basically making her argument very rapidly. Both of us have to do that.

Ms. Kyla Lee: In our brief, I included a quote from the Supreme Court of Canada's decision in Innisfil Township v. Vespra Township about the importance of cross-examination. It's on page 9 of our brief.

It refers to the fact that “the adversarial system, founded on cross-examination and the right to meet the case being made against the litigant, civil or criminal, is the procedural substructure upon which the common law itself has been built”. The court goes on to say, “For two centuries past, the policy of the Anglo-American system of evidence has been to regard the necessity of testing by cross-examination as a vital feature of the law.” This has to remain a vital feature of our justice system.

The mechanism being proposed in Bill C-75 to deal with the testimony of police through affidavit fails to even set up a system by which you can determine whether cross-examination is necessary. It identifies factors to be considered, but it puts no time limits on notice and whether that's going to come on the day of trial, the day before trial, responding to that notice, or when applications for cross-examination are to be heard. Whose application is it? Is it the Crown's application to not have the officer testify or the defence application to have the officer testify? None of that is made clear. At the very least, if the ability, the right, of cross-examination in a criminal trial is going to take place, very clear guidelines need to be set out in the legislation for when that can be avoided so that defence lawyers know what is going on.

The last point I'll make very briefly is with respect to the reversal of the onus in these bail hearings involving spousal assaults. I think this bill neglects the impact that's going to have on families, and not only in separating people from their children and the negative impact that will have on those familial relationships. It also neglects the impact that it will have on the reporting of domestic abuse. We've seen similar circumstances in the United States, in incidents cited in the brief, where the jailing of domestic offenders has led to under-reporting because people are concerned about losing the primary source of income or the mother or father to their children as a result of jailing individuals. The impact on families cannot be understated.

Both my colleague and I welcome any questions this committee has.

● (1740)

The Chair: Thank you very much.

Let's go to the Canadian Civil Liberties Association.

Ms. Abby Deshman (Director, Criminal Justice Program, Canadian Civil Liberties Association):

Thank you very much for the opportunity to appear before you today. This is a lengthy bill, so in the interest of time I will dispense with the intros to my organization and myself.

We support the goals of Bill C-75 and applaud the government for taking steps to address many issues in the justice system that are crying out for reform. We particularly welcome the attention to the deluge of administration of justice offences that are appearing before our criminal courts; to our bail system, which is overly risk-averse, detaining and releasing too many people on too many restrictive conditions; as well as to racial discrimination in the jury system and the deep unfairness of the mandatory victim surcharge. In our view, reform in many of these areas, as well as in others, is overdue.

My submissions today will focus on the bail and administration of justice offences, just because I think this is an area where you may not hear as much from various witnesses. We do support the goal of these amendments, but we think they don't go far enough. A lot of the amendments' proposed changes codify existing law. Lawyers and judges and justices of the peace should know what the existing law is. It's useful to write that down in statute, but really, to make serious changes to our bail system and how that's operating, we think more fundamental reforms are necessary. I'll go over a number of those in my proposed submissions.

Before getting there, though, I do want to outline three areas of this bill that we have deep concerns about: the treatment of police evidence, the proposed new maximum sentences for summary offences, and the restrictions on the availability of preliminary inquiries. I'll be very brief, but I'm happy to take questions on these.

First, clauses 278 and 294, which streamline the admission of police testimony, are, in our opinion, at best superfluous. There are already provisions in the Criminal Code that allow for agreed statements of facts to be put before the court. At worst, they are a serious affront to the presumption of innocence and the right to a fair trial. They should be removed in their entirety.

Second, with regard to increasing maximum sentences for summary offences from six months to two years less a day, I do not believe the government intended to increase the severity of penalties available in the Criminal Code. We're very concerned that the collateral impacts of this sentencing change will do just that. There are serious immigration consequences that come with increasing maximum sentences. Due to the definition of “serious criminality” in the Immigration and Refugee Protection Act, this would drastically increase the legal jeopardy for people charged with summary conviction offences. It also means that a whole new class of individuals may be inadmissible to the United States based only on the maximum sentence. We do not think these sentencing changes should go forward without complementary adjustments to at least the Immigration and Refugee Protection Act.

Finally, we've looked at the evidence in favour of eliminating preliminary inquiries, and in our view it's mixed. There are some who say it will have an impact. The most recent published academic study said there would be no impact to efficiency in the criminal justice system by eliminating preliminary inquiries. We've listened to our experts in the defence bar. We've listened to the submissions of the Criminal Lawyers' Association. We are concerned about the impacts on wrongful convictions and failed trial processes for eliminating this particular portion of the justice system. It operates differently in different provinces, so the impact will be different depending on where people are practising. We just don't believe that the evidence of the benefit is worth the risk to the trial process.

Having said that, I'll use the rest of my time for the bail and administration of justice offences. I have eight specific amendments, some of which I'll deal with only briefly, that we think will have a larger impact on bringing back fairness, presumption of innocence, and reasonable bail in Canada.

First, we'd urge a greater systemization of the language in this bill. The law is quite clear that restrictive forms of release and conditions may only be imposed when they are necessary to address the statutory grounds of detention. But if we look, for example, at the police provisions on when conditions may be applied by police in this bill, we see that police can apply conditions “to prevent the continuation or repetition of the offence or the commission of another offence”. That is much, much broader than the existing statutory grounds for detention. I would hope it was not the intent to broaden when police can impose conditions when releasing an accused. That is a very, very broad power to impose restrictive conditions.

● (1745)

There are other instances in this bill where it says conditions may be imposed when it is desirable. That type of language needs to be systematically brought into line with charter jurisprudence and the Supreme Court of Canada's holdings on when conditions are legal, in light of the charter right to reasonable bail.

We also think that significant enhancements can be made by addressing the procedure of bail hearings. In Ontario, for example, it is routine for there to be an assumption that a surety is required, and when defence counsel go into a contested bail hearing, they frequently feel the need to call a potential surety before they know what the appropriate form of release is, even when it's a Crown onus, because if they don't call a surety and the assumption is that a surety is required, then their client will be detained.

There was a decision from February, the Tunney decision, that put the Supreme Court's decision in Antic into practice and said that a bifurcated bail procedure is necessary in our courts in order to maintain the latter principle on bail. This means that before defence is required to call a surety, the justice must rule on what form of release is required. In Crown-onus situations, the Crown actually has to come and prove that it does need a surety for this person to be released, and only then is the accused required to bring, or it is suggested that the accused bring, evidence about what surety is appropriate.

This is a big change for Ontario bail courts. The change is slowly making its way across the province, but change is difficult, especially in the bail arena. This committee has an incredible opportunity to significantly strengthen that practice and make real changes, particularly for Ontario, in terms of how bail is adjudicated.

Third, I would urge this committee to address circumstances in which individuals are likely to be held in pretrial detention for longer than they would be convicted if they were sentenced. It is not uncommon for a person in pretrial detention to face a choice. They can sit there. They can wait for their trial. They can wait for a contested bail hearing, or they can plead guilty and they can be released sooner. That's a situation that nobody should have to face. Our pretrial process should not be more punitive than our sentencing structure. Right now there are no provisions in the Criminal Code to address this situation. There are submissions from Professor Marie-Eve Sylvestre, who suggests that we need to add a provision saying that if a person is likely to be sentenced to a certain amount of time, they shouldn't spend more time in pretrial detention than they would receive on a sentence.

We have two suggested amendments—and I do have a written brief, which I'll circulate after—that we think would really address the situation and increase the fairness for those individuals.

Fourth are the secondary grounds of detention. These are the grounds of detention most frequently associated with public safety. In Morales, the Supreme Court looked at the right to reasonable bail and said that secondary grounds of detention have to be interpreted narrowly in order for charter rights to be upheld. It's not any risk to public safety. It's not any risk that a person will commit a criminal offence that will justify keeping somebody in detention or imposing restrictive conditions. It has to be a substantial risk that a person will commit another offence, and a substantial risk that this will impact public safety or the safety of an individual.

The secondary grounds, however, are interpreted quite liberally when in bail court, so there is a temptation—and I think we see this, actually, in the text of this bill, in the police release conditions— to say that any risk that someone will go out and commit another offence is a justification for the imposition of restrictive releases or restrictive conditions. We think that language can be tightened in the Criminal Code to more accurately reflect the charter as well as the Supreme Court's holdings on this matter, and we have some suggested language for that.

I'll go through the rest briefly. We think expanded scope for bail reviews would be extremely helpful. Right now there's a relatively restricted scope for defence to challenge bail decisions. With regard to the reverse onuses in the Criminal Code, many have suggested that those reverse onuses should be repealed. This bill does not do that. It introduces a new one that is quite problematic from our perspective. We'd like to see increased flexibility to where an accused can be remanded after the first appearance. It would just give the provinces more flexibility when dealing with people from remote communities.

● (1750)

We'd like to ensure that a previous conviction is not an elevated factor in the consideration of bail by removing proposed paragraph 515(3)(b), which enumerates specifically that a previous conviction must be considered upon a bail application as one of only two factors that are singled out.

I'll leave my submissions there. We'll circulate my written brief; I realize these were detailed.

I'd also be happy to answer questions on the administration of justice parallel procedure, which I didn't get to but we have some significant concerns about.

The Chair: Thank you very much to the witnesses for their testimony.

Mr. Cooper.

Mr. Michael Cooper: Thank you, Mr. Chair.

Thank you, witnesses. I have not had the benefit of reviewing your brief but look forward to doing so.

I want to touch upon routine police evidence. Ms. Deshman, you noted that it goes to the right of cross-examination. It goes to the heart of trial fairness. The Minister of Justice has stated that in her view this change is charter compliant. Do you agree?

Ms. Abby Deshman: No. I've read the government's charter statement. It's obviously not a very detailed or fulsome explanation of how they believe this comports with the charter. The factors they point to, for example, on clause 294, are that an accused would have had an opportunity to be present during previous cross-examinations on preliminary inquiries or voir dires. Those are two processes that are fundamentally different from a trial on the merits of a charge.

To cross-examine on a voir dire, you're going to be focused on a very narrow set of issues. That may be a charter violation or a search-and-seizure issue, or it may be about the voluntariness of a statement. Police testimony on that point is going to be relevant to a wide range of issues at trial that were not at all present or relevant at a voir dire. Similarly, a preliminary inquiry is designed for a specific purpose. It does not test the credibility of the Crown's witnesses.

Credibility is frequently going to be an issue at trial. We should not think that cross-examination at these distinct pretrial procedures is at all relevant to cross-examination at trial. Because we already have a mechanism to admit agreed statements of fact, the only time I can imagine that a procedure like this would be used is where the defence does not agree that these facts are uncontroversial and does want to cross-examine, in which case I think it is actually a serious limitation on charter rights.

Mr. Michael Cooper: Not only a serious limitation on charter rights, but the purported objective of the bill is to increase efficiencies and reduce delays.

Mr. Doroshenko, you've noted that in terms of the definition of what constitutes "routine" police evidence, it's very broad in scope, covering virtually almost anything.

You noted, Ms. Deshman, that when there isn't agreement with respect to something like an agreed statement of facts, you now could have this leave requirement before the court.

Then, when you go through the bill and look at all the different factors that are to be litigated, how in the world does that increase efficiencies?

Ms. Abby Deshman: I think it's a very good question. I haven't seen any evidence that contested police evidence is unduly delaying trials.

As I've noted, we already have a process, and I do think that the breadth of routine police evidence and the vagueness of these provisions will lead to more litigation and be more time-consuming in the trial process.

● (1755)

Mr. Michael Cooper: Turning to another matter, I don't think any of the witnesses touched on it, but I would be interested in your thoughts on the elimination of peremptory challenges and whether or not you foresee any unintended consequences as a result of eliminating them altogether.

Ms. Kyla Lee: I do. I don't deal with jury trials in my practice, but I did pay a lot of attention to the controversial trials last spring. I've also paid some attention to the peremptory challenge process in the United States and what takes place there in relation to peremptory challenges. I think we would be doing a very big disservice in our justice system to eliminate peremptory challenges and to simply pick the juries from who shows up, remembering that when you're in small communities or communities with large indigenous populations in particular, the likelihood of people responding to their jury summons, the likelihood of people showing up for that, and then getting seated on the jury is very different than it would be if you were in a major urban centre where the notices are going out to a more diverse group of people.

There are different challenges that keep indigenous people from responding to those summonses and showing up to sit on juries. Eliminating the ability of defence counsel or Crown counsel, as appropriate, to ensure that juries are more representative, through careful use of peremptory challenges, is hugely problematic for creating diverse juries because of those additional societal roadblocks that keep people from showing up. We could look to some examples in the United States where judges have the power to question counsel about their use of peremptory challenges if it appears that they are trying to racially stack a jury, or trying to stack a jury in some economic way, or whatever the case may be. It may be more appropriate to give more power to judges to look at the motives behind peremptory challenges if it appears that something is being done in bad faith rather than eliminating that ability all together.

Mr. Michael Cooper: Okay.

Just to follow up on that, there are some who say instead of addressing the issue of diversity, that by eliminating them all together, the opposite may occur. I know Michael Spratt, for example, is taking that position.

Would you agree?

Ms. Kyla Lee: I do agree. I have a lot of respect for Mr. Spratt.

It does have the effect of eliminating diversity, because you can't use your challenges to create a more diverse, integrated jury and to create a jury that better represents society when you have a selection from people who are showing up only as a result of their socio-economic circumstances.

Ms. Abby Deshman: In our view, this points to broader problems. The fact that peremptory challenges are one tool that we're holding out to try to create equal juries isn't itself a problem.

For us, this doesn't mean that this particular reform needs to be walked back. It actually means that we need to do more in this bill. There are other legislative tools that we can put in place. Professor Kent Roach, I thought, had a fantastic brief, which he submitted to this committee, about further reforms that need to be made to actually address the underlying problem. If all we do is eliminate peremptory challenges, we are neither addressing nor solving the problem.

The Chair: Thank you very much.

Ms. Khalid.

Ms. Iqra Khalid (Mississauga—Erin Mills, Lib.): Thank you, Chair.

Thank you, witnesses, for your testimony today.

I want to talk specifically about delays in the justice system and bail reform, which has been a conversation for a very long time in the courts and among people like you.

Paragraph 11(e) of the Canadian Charter of Rights and Freedoms guarantees accused persons the right to not be denied reasonable bail without just cause. It is a protected right, but according to Stats Canada, there's been a notable—35%—increase in the number of accused persons detained on remand in the last 10 years. Over this period, the remand population has consistently exceeded the sentenced population in provincial and territorial prisons.

Can you explain why we are experiencing such a delay?

Ms. Deshman, I think you touched on it in saying that Bill C-75 does not go far enough. I think you do have some proposed amendments with respect to how we can really tackle the bail issue and unclog the system, which I think is the objective of the reform that's in the bill.

Could you speak to that?

● (1800)

Ms. Abby Deshman: If you look at the studies about what is actually happening in bail court—and we ourselves did a study where we observed bail courts across the country—you see that there is practice happening on the ground that is not in line with the law. We've now had several Supreme Court pronouncements very clearly setting out what the law of bail is. We have had a ladder principle entrenched in statute for decades, yet our bail courts continue to require sureties out of hand in Ontario or, in Alberta, to require cash bail, not in compliance with the statute. Most bail proceedings proceed on consent. They are quick affairs. They do not generally have accused that are represented by private counsel. Most accused will say just about anything to be released from bail that day.

Really, what we're dealing with here is a practice that has departed quite considerably from the law, so when I see a legal reform that entrenches the law and makes it more clear, I'm concerned that it doesn't address that culture and that practice. If you read Professor Webster's suggestions about what actually needs to happen to change the law of bail, which draw on her experience in youth criminal justice and were incredibly successful in reforming the youth criminal justice system, you see that it was a wholesale reset of the entire culture, which required a new legislative slate and actually going out and saying, no, things are different now.

I do think that some of the amendments we've proposed could make real differences on the ground, because they would be real, substantive changes, but when I talk to duty counsel about whether Antic has made a difference on the ground, for example, they say no. They say that the justices of the peace say this was already the law and they're already applying the law. They agree that this is the law and they don't need to change, and things continue on as they have. Just reinforcing what the law is, I think, is unfortunately not going to be enough. We really need to send stronger signals and some more practical tools to address the power imbalances that happen in bail court.

Ms. Iqra Khalid: Thank you.

Ms. Lee, you also touched on charter section 11(e) in your brief. I haven't had a very detailed look at it yet. Could you please explain what your argument is? I think you're speaking specifically of the reverse onus piece. My concern is that if we're scared of making this into legislation and saying, yes, there is a reverse onus for repeat offenders, for abusers, for intimate partners who are charged with or convicted of abuse, then what measures can we take? If this is an infringement, do you not think there is just cause to infringe upon it if there is a prior conviction?

Ms. Kyla Lee: I don't think so, because you have to take into consideration the nature of the underlying allegation and the prior conviction, and how serious the previous conviction was in relation to the second incident—whether it's an escalation of behaviour, what role the complainant had in it.... It's an unfortunate thing, but a lot of the cases that we see involving domestic violence are cases where both parties have some role to play in it. That's not saying that anybody is at fault for it, but often it's fuelled by alcohol and by some type of a relationship-based disagreement that leads to this.

If you treat all people as though they're—to speak colloquially—the serial wife-beater and treat all people like that dangerous person who probably should be held in custody because of their propensity towards that type of violence, that is what undermines the section 11 protection that is aimed at reasonable bail.

I think one thing that we do in British Columbia that is really helpful is that we deal with these administration of justice offences and breaches through a provincial practice directive that they be set for trial within 60 days. That helps to clear a lot of the backlog because they're heard very quickly, and then, if people are acquitted of them or if the charges are later dropped, bail reviews can take place. We're not having as many people sitting in custody awaiting their substantive charges because there have been these allegations of breaches. I think that setting some clearer timelines for the speed with which these types of offences must proceed might help to assist with some of your concerns that you've expressed about the number of people in custody.

Ms. Iqra Khalid: Thank you. That's all I have.

The Chair: Thank you very much.

Mr. Rankin.

Mr. Murray Rankin: Thank you for being here, everyone.

Because the issue of peremptory challenges came up, I'd like to start by telling you what the Criminal Lawyers' Association has recommended in order to find more representative juries. They simply suggest that we add to section 629 of the Criminal Code the following:

> The accused or the prosecutor may also challenge the panel on the basis that it is not representative of the community from which it was drawn.

What was your reaction to that? Would that do the trick?

● (1805)

Ms. Abby Deshman: I think it would be an enormous help. That suggestion is echoed in slightly different words in Professor Roach's submissions as well.

Mr. Murray Rankin: Mr. Doroshenko.

Mr. Paul Doroshenko: We're looking for a simple solution here. The simple solution that is offered in this bill is just to eliminate it. I think we can be a little bit more creative than that. The solution that's proposed makes sense, so why not?

Mr. Murray Rankin: I have a lot of questions, so I want to make sure I have the opportunity to ask you some of them.

First of all, Ms. Deshman, for the Civil Liberties Association, I just want to be clear about your perspective on preliminary inquiries. You said, "On the one hand..., but on the other hand", as I understood it. You said it's different in Ontario, where it appears that process is used more than in other provinces. Maybe I misunderstood. That's what we were told by a justice department official earlier today.

Is it the position of the CCLA that the preliminary inquiries ought to remain or not?

Ms. Abby Deshman: I do think they ought to remain. If I were convinced that there was a significant benefit to eliminating them for efficiency, I think it would be a harder question. In part it's that they are used so differently across the country. I do not see the evidence that eliminating them would help the justice system in a meaningful way.

Mr. Murray Rankin: I'd like to now talk to the brief, the very provocative and very hard-hitting brief that the Acumen Law Corporation provided.

You start by talking about bail hearings, summary conviction proceedings, and limits on cross-examination, which you say are overly broad and severely limit the rights of an accused, and you say that the "proposed amendments will disproportionately affect marginalized groups and people of colour, while also discouraging reporting of domestic violence cases". You say that these amendments "are unlikely to withstand scrutiny from the Courts and are unlikely to be saved by s. 1". It's a pretty hard-hitting indictment of this legislation.

I'd like to specifically, then, drill down on the "reverse onus in bail hearings" provision. You say that in the American experience, the barriers to reporting, which involve distrust of law enforcement and poverty, lead you to conclude that these provisions will be regressive and will actually make women less safe. I'd like you to elaborate on that.

Ms. Kyla Lee: One of the studies that I cited there came from the U.S. National Resource Center on Domestic Violence, the Women of Colour Network, which looked at the issue of incarcerating people accused of domestic violence and found that it did lead to underreporting. That's because in lots of those situations—to oversimplify the issue significantly for the sake of brevity—you have a power imbalance in the relationship, such that the person who is accused of being the aggressor is also the person who's the breadwinner for the family, the person who has the job. You have the so-called abused spouse either at home, maintaining the home and dealing with child care obligations, or having severe limitations placed on their freedom by the abusive spouse.

In order to look after the family, and especially given people's intense desire to protect their children, they're more likely to put themselves in situations of harm or danger in order to maintain the financial resources they need for their children so that they aren't homeless, so that they can feed their children, so that they can make sure their children have shoes for school. Without naming anyone specifically, I can think of some very powerful women I know who have been in that very position, who have let themselves be victims of domestic violence, silently for years, for fear of losing that.

Mr. Murray Rankin: I'm very intrigued by the other part of your brief, which was the routine police evidence provision. You define it. You say it's overly broad. After the four factors, you conclude, "This encapsulates the whole of a police investigation." You then make a plea, I think quite eloquently, for the role of cross-examination. You alluded to, in your remarks just now, the roadside prohibition cases in our province of British Columbia, where I think you made some very strong conclusions.

What's the bottom line? Can the police evidence provision be amended, or in your opinion should it simply be removed completely?

● (1810)

Mr. Paul Doroshenko: I think it should be removed completely. We already have the scheme, in British Columbia, in which police officers provide an affidavit with respect to a 90-day driving prohibition when the person is being charged with impaired driving, or for over 0.08 or refusal cases. We get that affidavit. We look at that affidavit. Then months later we end up going to court, and we have that affidavit from one process that we're then going to use in court during the trial of the substantive charges.

It's very common for us to find that the police officer has given evidence that is misleading to the tribunal, is outright wrong, or sometimes is what we would consider, personally, perjury. The police officer understands their obligations. They feel framed in with what they have to say, or they have a supervisor, or what have you. It is exceedingly.... It happens to us all the time that we get evidence that's been provided in an affidavit form in one venue, and then we have it in the criminal case. We can see that this is what's happened, so we think it should be turfed. It just doesn't—

Mr. Murray Rankin: In your brief you actually gave examples, which I thought were great, of where there has been "misinformation", to be polite, in search warrants and other things. You gave an example from Justice McEwan in Kenyon v. British Columbia, where he says, "The fact is, however, that if you create a document-only regime with no opportunity to cross examine, you create a regime where [tailoring a story] may be possible." He goes on to say that the limitation makes it "impossible, on a principled basis, to determine...what happened. Whatever the presumed efficiency of this form of hearing is, its drawbacks are intrinsic as well."

I assume that what you're saying is that this very analysis would apply to the routine police evidence provision.

Ms. Kyla Lee: Yes, absolutely.

Mr. Murray Rankin: Okay.

I have one more question, Mr. Chair, if possible.

The Chair: You're running a little bit over, but it's okay.

Mr. Murray Rankin: This is an open-ended question. I'll ask it because Ms. Deshman invited us to.

You didn't have time to talk about the parallel procedures and administration of justice provisions. I'd like to hear your thoughts on that.

Ms. Abby Deshman: I really appreciate the intent of this. I understand that the intent is to create a procedure where administration of justice offences would be dealt with in a form where you wouldn't end up with a criminal charge or a criminal conviction. What really concerns me, though, is that we're introducing this procedure against the backdrop of a risk-averse system. We know that one of the main problems is that police are risk-averse in terms of their release decisions already. Bail courts are risk-averse in terms of the conditions they impose, the forms of release and the detention orders. Nothing in this procedure would push people who are already subject to arrest and criminalization into this alternate process. It's entirely within the discretion of police and Crown prosecutors when to trigger this process.

My real concern is that without something to push people down the criminalization ladder, this will be net-widening. We have police officers who release people with warnings now. They say, "You're out past curfew. This is minor stuff. Just go home. Don't do it again. I don't want to see you out past curfew." Well, now they have another tool. They can say, "Okay: I don't want to see you again. I'm not going charge you, but I'm going to send you back to appear before a justice of the peace to have your bail reconsidered. Then we're going to ramp up your conditions."

Without anything to tackle risk aversion, this will channel more people into the bail process and more formal adjudication rather than less. We really think the problem here is over-criminalization of relatively harmless behaviour. We need to tackle not the processes but actually the administration of justice charges themselves. Narrow the scope of those criminal offences to when there's a risk to another individual or there's a threat to another individual. Stop criminalizing people for routine behaviour, for conditions that should never have been imposed, or for behaviour that does not really put in jeopardy anybody else or the administration of justice.

The Chair: Excellent. Thank you very much.

We now go to Mr. Ehsassi.

Mr. Ali Ehsassi (Willowdale, Lib.): Thank you, Mr. Chair.

Thank you to the witnesses for being here. This has been very helpful.

Perhaps I could start off my questioning where Mr. Rankin essentially left off. He said that the submission you made was quite "hard-hitting". Now, there were certain things you took issue with. As you know, the purpose of this bill is to address the issue of lengthy court delays. Is there any aspect of this bill, in your opinion, that will assist in alleviating that problem?

● (1815)

Mr. Paul Doroshenko: That's interesting, because I don't think the provisions we're really equipped to speak about, such as extending the limitation period to prove a charge in a summary offence, will do it. I mean, that's sort of the cynical way of trying to get around Jordan. This is all basically an attempt to get around Jordan.

Right now you have a six-month limitation period. We see in British Columbia that it's not uncommon for five months and two weeks to go by before a police officer submits their police report in an impaired driving case. You have your client wondering, "Am I going to be charged? Is this thing ever going to go to court?" Now it's going to be 11 months and two weeks before the file gets submitted, because you're just extending it and giving them this extra opportunity. For what? Why are you doing it? It's because you're trying to pull a fast one on the court. You're trying to say that you're within this Jordan timeline, because the Jordan timeline starts at the charge approval stage, not at the time of the incident.

I'll tell you right now that the court will see through that in a fairly short period of time and come up with another date. I mean, the Jordan timeline is an arbitrary date. It's an arbitrary period that they picked. They picked it because they were sick and tired of seeing these delays. They basically thrust an arbitrary date on us, and they'll just thrust another arbitrary date on us that will start from the time of the incident. I mean, one year to wait to find out whether or not you're charged with an offence...? You have to put your school on hold or put your career on hold or what have you because you allegedly committed an offence. It's months and months and months after that before you get your chance to go to court.

Is this an attempt to actually, in a genuine way, deal with delay? No. It's not.

Mr. Ali Ehsassi: So nothing in this bill, in your opinion...?

Mr. Paul Doroshenko: I wouldn't say nothing in this bill. That's going beyond my scope of knowledge of the bill. I have to tell you that this is an omnibus bill, and you sit down and read the things that shock you. That's why we're here.

Ms. Kyla Lee: I would have to say that I think some of the hybridization is actually a good thing that will decrease delays, particularly when it comes to my practice area of impaired driving causing bodily harm offences. It's more likely to lead to resolutions, I think, in circumstances where there are offences that were once straight indictable offences and are now hybrid, because it increases the availability of different types of sentences.

It's always frustrating to me, in having an impaired driving causing bodily harm case where somebody broke a wrist versus the woman who has been in a coma for four months, to know that the range of sentences is not very good. Hybridization makes it more likely that I can negotiate something out and avoid trial on a matter that would otherwise take several days or weeks of court time.

Mr. Ali Ehsassi: Just out of curiosity, given that this is not a hypothetical thing in terms of either the Cody decision or the Jordan decision, are there any suggestions you would have in terms of reducing delays that have not been contained here?

Mr. Paul Doroshenko: We don't have a delay problem in B.C. One of the reasons why we don't have it is that charge approval is done by Crown prosecutors. I've done cases in Ontario and Alberta where charge approval has been done by police officers, and there were cases that shouldn't have had charge approval. If those cases had gone before a lawyer and a Crown prosecutor's office in B.C., they would have looked at them and turfed them. They wouldn't have proceeded with them, or they would have proceeded with some different charges.

It's a fundamental problem in provinces where they don't do that and where police officers are doing charge approval. Police officers have one view of things: the guy is guilty. Prosecutors look at it and ask themselves what the state of the law is, what they can prove, and what is admissible and what's not, and they make a determination.

It's much smarter to have prosecutors using the standard we have in B.C., which is that there's a substantive likelihood of successful prosecution. They're not going to approve a charge otherwise. You're wasting tons of court time running trials and things where there's no significant likelihood of success. As well, it's wrong to put an accused through that. Not only is it about the likelihood of success, but how fair is that to our fellow Canadians that we're going to put them on trial when there's no likelihood of succeeding?

Mr. Ali Ehsassi: Thank you.

If we could touch on and return to another issue, it's about the peremptory challenges.

Ms. Deshman, we heard from Ms. Lee about that. As you know, there are various options. One option that has been suggested is that the judge be provided the power to steer the committee. Do you think that would be acceptable?

Ms. Abby Deshman: I'll just say that this is not my area of expertise, and unfortunately I haven't studied it enough to have a position on it at this time.

● (1820)

Mr. Ali Ehsassi: Okay.

The other issue you touched on, which I hadn't heard of before but was quite shocked and dismayed by, is that you were talking about people who go through pretrial detention that has on occasion has been longer than what they could conceivably have been sentenced to. How commonplace is this?

Ms. Abby Deshman: We don't actually have data on how common it is. Most people faced with that situation will just plead guilty.

What we do know, and what we regularly hear from duty counsel, is that they will not participate in guilty pleas where they don't think the facts support that plea. That is very common. You can ask duty counsel how often they have to step back from assisting a person who wants to plead guilty because they don't think the facts support a guilty plea. That happens frequently. We know this pressure is operating in our justice system. We know that people are just pleading out.

There are instances where people will insist on their right to a fair trial. They say, “No, I did not do it, and I will sit here and wait for my trial even though it will mean more time behind bars than I am likely to be sentenced to.” But that's extraordinary. It should not occur.

Mr. Ali Ehsassi: Thank you very much.

The Chair: Colleagues, we have about eight minutes left with this panel. Does anybody have any short questions?

We'll have Mr. Fraser, Mr. Rankin, and then Mr. McKinnon.

Mr. Colin Fraser: Thank you very much for being here. I appreciate your testimony.

Mr. Doroshenko, on the last point in my friend's questioning regarding the limitation period, you said that you see increasing the limitation period from six months to one year for summary conviction offences as a way around Jordan and that it doesn't help at all in the delay. I'd like to put it to you, though, that oftentimes in the criminal justice system we see that the Crown is out of time to proceed by summary conviction and therefore has to proceed by indictment. The more proper venue is most likely a summary conviction procedure; however, they don't have that option because of the limitation period.

Wouldn't you agree that extending the limitation period to one year offers the Crown more opportunity to proceed in the more correct procedure by summary conviction, rather than having to go by indictment just because of the limitation period, and that by proceeding summarily they actually do save court time?

Mr. Paul Doroshenko: In 19 years of doing this, I've had one occasion where the Crown was beyond their six months and they approved a charge by indictment. By agreement, we decided to proceed summarily. We decided to forgo the limitation period because we knew we could do it by agreement. That was the only occasion. I do 50 to 100 impaired driving cases a year, so we're talking hundreds and hundreds of cases. How often do they miss the timeline? Almost never. When I had to hand in a paper in university, I was usually writing that paper the night before and that's what we see with police officers, on occasion. It's not every officer. A lot of them will get it in right away.

However, if you extend that time period, all you're going to do is extend it for a longer period of time, and I'll tell you right now the evidence does not get better with more time passing. If you stretch it out to a year, you're just going to have a worse case for the Crown, and you're handing more ammunition to us as defence lawyers because we're just going to put it to those witnesses when we get to 24 months down the road for the trial. Memory fades and you don't remember as well.

You're giving some advantage to defence lawyers. You're doing a great disservice to the people who are accused. All you're doing is putting something off that you're supposed to do correctly in the first place, which is to get your case together and approve a charge, if that's appropriate.

The Chair: Thank you.

Mr. Rankin.

Mr. Murray Rankin: Thanks.

Ms. Deshman—and I'd also invite others to chime in—you talked about the impact of increasing the maximum offence from six months to two years less a day. You talked about so-called collateral impacts. I was curious about a couple that you mentioned that frankly I hadn't been aware of: the increased legal jeopardy under IRPA and also the inability to go to the United States, the possibility of their now being inadmissible. I'd like you to speak a bit more about that.

Also, we've been told that section 802.1, with the maximum penalty going up, will mean a lot of law students and paralegals will not be able to represent the accused. In my province of British Columbia, the latest provincial court annual report said that 21% of all criminal accused had no lawyer. They were self-represented. Isn't this another concern?

● (1825)

Ms. Abby Deshman: Yes, absolutely, and it should have been the third bullet in my list, but I was rushing through. The immigration consequences have not received an enormous amount of attention, but I think they are quite serious. Under the Immigration and Refugee Protection Act, if you are convicted of an offence and your sentence is over six months, that's considered serious criminality. That was lowered by a previous government and it has enormous impacts. You can have your permanent residency stripped and you can be deported much more easily.

Increasing the maximum penalty upon sentence doesn't mean that people will get sentences of over six months, but it enormously increases the jeopardy for everybody who is subject to a summary conviction offence. Given the number of unrepresented accused, given the number of people who plead out to time served and maybe with credit for pretrial detention that adds up to over six months, there are already many cases where represented accused don't realize the full implications on the immigration side of things. There are appellate courts that have said, because of that six-month limit, you couldn't deport this person, but there were multiple charges and the sentencing judge didn't fully appreciate the immigration consequences. That six-month limit has a real impact. We are taking away a protection for people that has very serious consequences. I don't think that's been fully explored.

I'm not an expert on the U.S. admissibility but you do have a brief from an immigration lawyer on this, and the crime of moral turpitude has an exemption in U.S. law. You're generally not admissible if you've committed certain crimes in Canada, but one of the exemptions under U.S. law is if the maximum penalty was not greater than six months.

That is a chunk of our Criminal Code offences, and we are now eliminating for ourselves that exemption under U.S. law and we are drastically expanding the category of people who are presumptively inadmissible to the United States. That is not easy to change. I think we could address the other two through amending IRPA as well as the Criminal Code. I've suggested if you want to go ahead, make those amendments to those other statutes, but even if you do that, don't bring this section, these changes, into force until you've negotiated something with the U.S. government to mitigate these consequences.

The Chair: Thank you.

Did you want to continue with that?

Mr. Murray Rankin: I just wanted to ask if you might add anything else?

Mr. Paul Doroshenko: There is lots we might add, but I think we're out of time. We have a flight to catch. Thank you very much.

The Chair: We have one last questioner, Mr. McKinnon.

Mr. Ron McKinnon: Yes, my question is for Ms. Deshman. I'd like to follow up on Mr. Ali Ehsassi's question regarding pretrial detention longer than the sentence. That's quite disturbing, and the fact that it leads to false pleas is also disturbing. People are getting criminal records for things that they probably shouldn't. I'm wondering if you have a solution for this. Go ahead.

Ms. Abby Deshman: Yes, I have two proposed amendments. One would simply state that if there is little to no prospect that a person would be sentenced to jail time upon conviction, they should not be detained pretrial. Our pretrial process should not be more punitive than the sentence that someone would face upon conviction.

The second one is to amend section 525 of the Criminal Code. That's a review process for people who are in pretrial detention. If somebody is sitting there for three months and they're approaching the most likely sentencing range for their offence, they could apply to the court, a form of habeas corpus, to essentially say, this is about as much as you would be able to punish me if you proved all the underlying facts in my case, and I should not be in jail anymore waiting for a trial on this matter.

At least the first one was actually part of the original bail reform package. It was a problem. It continues to be a problem. It is not a new idea, but it really absolutely needs to be addressed.

Mr. Ron McKinnon: Would you say, in regard to those amendments to section 525, that if you're in remand for a period that is likely as much as or perhaps more than you might be sentenced, the charges should then be automatically dismissed or discharged in some way?

Ms. Abby Deshman: No, I don't think it has to go that far. I think there should be a recognition that you've been in a punitive environment for as much as you were likely to be sentenced to, but those charges could remain. It's still important, I think, to find out if somebody is guilty or not.

One remedy would be to stay the charge, but I think, actually, you could just release the person from jail pending their actual trial, and it would be a little less of an interference with the criminal justice procedure.

● (1830)

Mr. Ron McKinnon: If you could release this person in advance of a trial because you would expect them to show up at the trial, why were they held in remand in the first place?

Ms. Abby Deshman: Presumably that person is being held in remand because there were concerns about their showing up for the trial. But at the end of the day, if they don't show up for the trial they will be found guilty presumably. They're not presenting evidence and they will have already been punished for the crime that they were found guilty of committing because they spent the appropriate amount of time in jail already. I don't see it as an enormous impact on the actual fairness of the trial.

Mr. Ron McKinnon: Thank you.

The Chair: Thank you very much.

I want to thank all our witnesses. I wish you a good flight back home. It's much appreciated, your coming and your offering testimony.

Colleagues, we're going to take a brief recess. I'd like to invite the next round of witnesses to come up.

● (1830)

(Pause)

● (1835)

The Chair: We will recommence. It's a great pleasure to resume our study on Bill C-75 with our fourth panel of the day.

It's a great pleasure to introduce, from Aboriginal Legal Services, Mr. Jonathan Rudin, who is the program director. Welcome.

From the Law Society of Ontario, we have Mr. Malcolm Mercer, who is the treasurer, or president; and Ms. Suzanne Clément, who is a lay bencher. Welcome to both of you.

We want to know what the term "lay bencher" is in French.

[*Translation*]

Ms. Suzanne Clément (Advisor, Law Society of Ontario): It's “bencher”.

[*English*]

The Chair: Perfect.

As an individual, we have Mr. Ronald Rosenes, who is a community health advocate and consultant. Welcome.

We're going to go in the order of the agenda, so we'll start with the Aboriginal Legal Services.

Mr. Jonathan Rudin (Program Director, Aboriginal Legal Services): Thank you very much.

We are very pleased to have this opportunity to speak and provide our perspective on Bill C-75 to the Standing Committee on Justice and Human Rights. In the interests of time I will not speak extensively about Aboriginal Legal Services, except to say that our Ojibway name is Gaa kinagwii waabamaa debwewin, which translates as “All those who seek the truth”.

The focus of our submissions today will be on four aspects of the bill that we think are steps forward, two that we see as significant steps backwards, and one glaring omission that represents a broken promise to indigenous people.

Let me start with the four provisions of the bill that we endorse. First, we are completely supportive of the elimination of peremptory challenges in jury trials. We have worked extensively on the issue of indigenous jury representation, or more precisely under-representation, for over 10 years. Government neglect and the use of peremptory challenges have had a corrosive impact on efforts to encourage indigenous people to act as jurors. We know that the committee will hear tomorrow from Professor Kent Roach on this matter and, having read his submissions already, we want to say that we support them wholeheartedly.

For that reason, we will leave peremptory challenges and move to the second area where we feel the bill provides a step forward, and that's effectively decriminalizing many administration of justice offences. Study after study has shown that indigenous people are significantly overrepresented among those charged with administration of justice offences. Penalties for these offences often result in jail.

As significantly, these convictions themselves are often bars to release on bail on subsequent arrest. This then leads to people pleading guilty to offences they did not commit just to get out of pretrial custody. You heard about that in the last session. The root problem in this area is the overuse of unnecessary bail conditions by judges and justices of the peace, at the urging, it must be pointed out, of Crown attorneys. Hopefully, the use of these conditions will diminish when and if it becomes clear that breaches of them will no longer result in further criminal convictions or jail.

Speaking of bail, that brings us to the third amendment we are very supportive of, and that's the amendment that enshrines the application of the Gladue principles to bail. Although courts in most parts of the country have arrived at this conclusion on their own, this will ensure that the law is applied evenly everywhere.

Finally, with regard to the victim fine surcharge, returning discretion to judges with regard to the imposition of the surcharge is long overdue. It is an important and much-needed change.

Now I will go to the two provisions that we feel should be rethought. The first is the reverse onus provision on bail applications for those charged with a domestic violence offence who have been convicted of such an offence in the past. ALS takes the issue of domestic violence very seriously, and we are all too aware of the impact of this violence on indigenous women and girls.

At the same time, we are also very aware that many well-meaning attempts to address the scourge of domestic violence not only fail but have unintended consequences that can be damaging to the very people they are supposed to help. In this context, we would point out the phenomenon of dual charging, which occurs when a man charged with domestic assault insists that his partner started it and should be charged. That has led to more and more women becoming enmeshed in the criminal justice system. One of the impacts of dual charging is that women end up with convictions for assault that they should never have had. If these provisions go through and their partner once again alleges abuse, then they may have trouble meeting the reverse onus. This means that they'll be detained, they will likely plead guilty, and the cycle will continue.

We need to be aware that over 40% of women in custody today in Canada are indigenous. The provision of this bill will make a shameful situation worse. If someone has a prior conviction for domestic assault and they are charged again with a similar offence, and then if there are concerns for public safety, whether for a particular individual or the community, bail should be denied. There is no need to resort to a reverse onus that will not end up accomplishing what its proponents hope, but will have dire consequences for indigenous women.

Our second concern relates to the increase in the number of what are now called super summary offences. We know from over 25 years of working in the criminal courts with indigenous people what will happen if the maximum penalty for summary conviction offences are raised. What will happen is that Crowns will insist on higher penalties and judges will impose those higher penalties, and one of the justifications for the higher penalties will be that it reflects the will of Parliament.

● (1840)

This is a perfect example of what criminologists call “net widening”. If there is a need to have some super summary offences where straight indictable offences now become hybrids—and I stress “if”—then perhaps their use can be justified. However, as it stands now, the promise of increased hybrid offences is being used as a Trojan horse to lead to widespread and unjustified increases to the maximum penalty for summary offences.

Finally, let me address what's missing from the bill. Given how comprehensive this bill purports to be and how many issues, big and small, it addresses, it is baffling to us how it avoids the issue that has to be the elephant in the room: the proliferation of mandatory minimum sentences and unjustified restrictions on the access to conditional sentences. This is the single largest change that's happened in our criminal justice system in the 21st century.

This government knows that mandatory sentences, minimum sentences, don't work. The Minister of Justice has spoken on this issue. Almost a year ago exactly, on September 29, 2017, to be precise, this is what the minister said about mandatory minimum sentences:

> There is absolutely no doubt that MMPs have a disproportionate effect on Indigenous people, as well as other vulnerable populations.... The data are clear. The increased use of MMPs over the past decade has contributed to the overrepresentation in our prison system of Indigenous people, racialized communities and female offenders. Judges are well-equipped to assess the offender before them and ensure that the punishment fits the crime.

One of the purposes of this bill is to increase efficiency and unclog the courts, yet there are many, many charter challenges currently under way and more being contemplated to mandatory minimum sentences. Having been involved in a number of those challenges, I can tell you that they take a lot of court time. Every day that the government fails to address the impact of mandatory minimum sentences, people are sent to jail who don't need to go there—every day.

How do mandatory minimums affect indigenous people? You can look to see the number of challenges brought to mandatory minimums by indigenous people, and you can listen to the words of the Minister of Justice. This government pledged to enact all the calls to action of the Truth and Reconciliation Commission that fell within its ambit. Call to action 32 reads, “We call upon the federal government to amend the Criminal Code to allow trial judges, upon giving reasons, to depart from mandatory minimum sentences and restrictions on the use of conditional sentences.”

Members of the committee, it is past time to heed this call to action. If this bill is not amended to address the issue of mandatory minimum sentences and lack of access to conditional sentences, then it won't happen before the next election. If it doesn't happen before the next election, it will be years before it happens.

This government does not believe in the utility of mandatory minimum sentences. This government believes that they're not only ineffective, but that they contribute to inequality in the justice system. This government is completely right in those beliefs. There can be no excuse for waiting. There can be no justification for waiting. We all know what the right thing is to do, and we need to do it.

Thank you. *Meegwetch.*

● (1845)

The Chair: Thank you very much for your testimony.

We will now move to the Law Society of Ontario.

Mr. Malcolm Mercer (Treasurer and President, Law Society of Ontario): Thank you.

As indicated, I am the elected head of the Law Society of Ontario. Ms. Clément is an appointed bencher. Behind me is John Callaghan, who is an elected lawyer bencher. We thank you for letting us speak today.

The Law Society of Ontario regulates more than 53,000 lawyers. We regulate 8,500 licensed paralegals. We have a statutory duty to protect the public interest, to maintain and advance the cause of justice and the rule of law, and to facilitate access to justice. We are a public interest regulator of legal services.

Bill C-75 is very broad in scope, but our comments are focused on the issues within our authority as a law society and our independence. They are focused as well on the potential adverse impacts on access to justice, which we consider to be significant. We think the issues we raise are inadvertently caused by what is proposed in Bill C-75, and we think they are capable of correction.

As you know, agents are entitled to appear on summary conviction offences under the Criminal Code. That's why, in Ontario, paralegals have been regulated for the last decade. The Ontario Court of Appeal recognized the importance of doing that many years ago, and that was acted on in 2007.

Paralegals, law students, articling students and licensing candidates are agents. They can appear on summary conviction offences. However, section 802.1 limits the rights of agents to appear on offences that carry up to six months' potential penalty. As a result, we have what was described by Mr. Rudin a moment ago: super-summary offences on which agents can't appear, and the ordinary summary offences of up to six months' sentence on which agents can appear.

As you also know—it's been said to you by this and the preceding panel—eliminating the six-month category of summary offences and moving everything up to two years less a day has what we think is the unintended, but certainly very significant, effect of eliminating the ability of law students, articling students, licensing candidates, paralegals, and agents in other provinces to appear for people who are accused of summary conviction offences.

In Ontario, regulated agents play a significant role in the criminal law system. Paralegals are independent legal professionals who are licensed and regulated by the Law Society of Ontario. They provide a defined set of regulated services, including acting in criminal summary conviction matters. Overall, criminal and quasi-criminal law accounts for the largest area of legal services provided by paralegals in Ontario. Many report that they dedicate a significant portion of their practice to representing clients in criminal summary conviction matters.

Articling students and law students are involved in court appearances. Articling students frequently attend court or tribunal hearings to speak to routine administrative matters—for example, unopposed adjournments, uncontested and consent motions, and set dates. Articling students conduct permitted hearings or trials regularly or frequently. These activities include participating in summary conviction matters. Whether or not these services can continue to be provided by the people who are providing the service is very important.

We acknowledge the common cause of the government and everyone here, which is to advance access to justice, reduce judicial delay and enhance fairness. We recognize that the bill includes provisions with that in mind and with that effect. However, this provision, the increase from six months for these summary conviction offences to two years less a day, raises three significant issues.

Ms. Clément will address the first two.

● (1850)

[*Translation*]

Ms. Suzanne Clément: First of all, since sentences may potentially be longer in summary conviction cases, we are reducing the options for representation, which impedes access to justice.

Currently, Ontario citizens who cannot afford a lawyer and are not eligible for legal aid can choose a more affordable option by being represented by a paralegal, a law clerk or a law student from a legal clinic. If that option is eliminated, it is likely that the most vulnerable people, who are facing longer sentences, will not have representation. Not only does this reduce access to justice, but because accused persons without representatives generally are less familiar with legal procedure, they tend to slow things down, which adds to the delays in the justice system.

Secondly, the proposed change could have an adverse effect on aboriginal and racialized groups, as our colleague mentioned earlier. These groups are already overrepresented in the justice system.

Research shows that when Parliament increases sentences, the courts conclude that this means that they should impose longer sentences. That is worrying, given that aboriginal and racialized persons already have much higher rates of incarceration.

[*English*]

Mr. Malcolm Mercer: I'd like to make this a little bit real. My daughter was a law student a year ago. She represented a person who was accused in a summary conviction matter. They were accused of switching a label on a bottle of hair shampoo, and they were accused of theft under.... My daughter, being a legal aid student in the clinic, was able to provide legal services to this person that would not otherwise have been available. If a law student cannot do that, if an articling student cannot do that, if a paralegal cannot do that, there is a real risk that people in those situations, who are not able to get legal aid and who are not able to afford a lawyer, will be rendered unrepresented in the criminal law system.

To take the point on immigration made in the previous panel—and this would be unlikely for these particular facts—if there were a seven-month instead of a six-month sentence imposed, that person would not be able to appeal to the immigration appeals division regarding a removal order. They would lose that right.

We have a system that, in the summary conviction area, has less serious and more serious offences. The risk here is taking away representation and increasing the consequences for that set of less important but nonetheless still important offences.

In Ontario we have a special concern as well. We have designed and implemented a system of paralegal representation. We have designed, based on the six-month maximum, education, training, and licensing conduct. We have created a system whereby licensed paralegals are able to provide these services, whether or not the licensing regime is based on the six-month limit. If we were to design a system for a two-year limit, in which everyone who was charged with an offence punishable by summary conviction had the risk of up to two years, we would have to revisit—or the provincial government, if it were given that authority, would have to revisit—the entire paralegal system in Ontario to be able to provide proper representation.

We consider it very important that, unless there is very good reason, people not be deprived of representation, that vulnerable people not be put in great risk, and that a well-established system that works not be disrupted for no apparently good reason.

We recommend essentially that the status quo be preserved by maintaining a set of offences that are punishable by up to six months and not more. We think that nothing you're trying to do to reduce delay is harmed by that. We think nothing that you're intending to do, from a public policy perspective, would be harmed by that. The status quo would permit good things that are now being done for people in the criminal justice system to continue.

● (1855)

The Chair: Thank you very much.

We'll now go to Mr. Rosenes.

Mr. Ronald Rosenes (Community Health Advocate and Consultant, As an Individual): Thank you and good evening. I really appreciate the invitation to be able to speak to you this evening.

[*Translation*]

I would like to thank the members of the committee for this invitation.

[*English*]

I will be speaking in English.

I'm really here tonight to speak very specifically about the impact of the bawdy house law on LGBTQ people over many years. While I applaud the proposed repeal of anal intercourse from the Criminal Code, it was certainly not the only law that was used to unjustly target LGBTQ people in my community.

I'd like to begin by telling you a story. I'd like to take you back to the night of February 5, 1981, which remains seared in my memory, despite my very best efforts to put what occurred behind me.

That night, I found myself at the Roman baths on Bay Street. For those who don't know, that's a club for men seeking to meet other men for consensual sex. It's a place that I had visited on several occasions as a 34-year-old out gay man seeking to enjoy my new-found sexual freedoms in a supposedly safe space. However, what happened that night really was my first-ever encounter with the state and a police force that took it upon itself to enforce the archaic bawdy house law that still exists on the books and in the law to this day. It's a law I would very much like to see repealed in Bill C-75.

That night, we were rounded up brutally. We were called “dirty faggots” and arrested as “found-ins in a common bawdy house”. The police may have suspected that money was being exchanged for sex, but this was never proven in court. The premises were ransacked at all of the city's bathhouses that night, and several closed their doors permanently as a result.

In his apology last fall to the LGBTQ community, the Prime Minister specifically mentioned the bathhouse raids and the bawdy house law in his apology, but those of us arrested using these provisions were left out of the most recent bill, Bill C-66, which was the expungement legislation. I again provided witness testimony to the senators, who seemed reluctant, in retrospect, to tackle the issue, perhaps—this is something we can discuss—out of concern that the bill would not get passed before the summer break. For us and for me, Bill C-66 became a lost opportunity in terms of providing an opportunity for the repeal of the bawdy house law.

I'd like to also remind everyone that more than 1,300 men were charged with this offence for being in a gay bathhouse between the years of 1968 and 2004. I feel as though I carry their voices into this room with me.

We were dragged through the courts and publicly humiliated. I ended up being put on the stand, where I admitted that I had been at the Roman steam baths that night—yes, I got on the stand and I told the truth—and I became one of some 36 men, out of over 300 who were arrested, who were actually convicted, and I was made to pay a fine. In my case it was an insignificant amount. It was insignificant, really, compared to the sense of shame that I and many other men were made to feel as our names were read out in open court and dragged through the press at the time.

In my case, I was fortunate. My own self-esteem has remained intact. I have benefited from a number of advantages—a loving family, loving partners, a good education—but I can never forget what happened that night. I was wrongfully arrested and convicted, having committed no crime.

● (1900)

Others were not so fortunate. Many lives were ruined that night by exposure in court and the press. Bathhouses at the time were often frequented by men who went home to families who were unaware of the sexual orientation of their spouse, their father, or their brother, and many were from cultures in which homosexuality was frowned upon.

Those of us who were arrested in the bathhouse raids are now dependent on the repeal of the bawdy house law. To this day, it shocks me how traumatizing and stigmatizing that night was and the bathhouse raids proved to be. At least two men are known to have taken their own lives. To this day, I'm one of the few people among those who were arrested who is willing to talk about the bathhouse raids and that night publicly.

The unrelenting power of stigma continues to cast a shadow over many lives. For that reason, I'm here today to appeal to the legislators to ensure that people like me with records, people who were wrongfully convicted of being found-ins in a common bawdy house, are treated on an equal basis in the proposed legislation. We missed out on Bill C-66, but I would like to be treated no differently from all of my LGBTQ sisters and brothers who were either hounded out of the civil service or dishonourably discharged from the military.

Now we are dependent, as I said, on repeal of the bawdy house law in order to apply for expungement of our wrongful convictions and, in some cases, criminal records. Certainly it was clear from Bill C-66 that an offence had first to be repealed before it could be added to the list of offences that qualify for expungement, so the law needs to come off the books.

It came to me as quite a surprise, through a request for information from the Toronto Police Service in December of 2017, that a record of my arrest and a supplementary report could still be found in their files. I suspect that if this is true for me, it's true for others. Therefore, I'm here today really on behalf of all of us to ensure now that we're included in Bill C-75. People who were wrongfully arrested in the bathhouse raids, I believe, have every right to request inclusion under the same law that offers expungement to others and to feel part of the government's apology. The bawdy house laws were among the laws used, in the words of MP Randy Boissonnault, “to victimize LGBTQ2S+ people systematically”, to give you the proper quote.

Bill C-75 now gives you the opportunity to correct this oversight. I think it would be a grave miscarriage of justice to ignore this opportunity and to deprive us, all of us, of our right to equal justice under the law. I think it's time to put 19th century notions of indecency behind us. Only those acts that are non-consensual or that cause harm to others should be prosecuted under more appropriate sections of the Criminal Code.

Also, I would like to say that I stand in solidarity with people in the sex-work community because I understand first-hand the harm that was caused by the bawdy house law. I also stand with others in recommending that the bill be amended to repeal laws that have been unjustly used against our communities, including laws related to obscenity, immoral theatrical performance, indecent exhibition, and nudity. I know that next week my colleagues will be speaking further to some of these issues.

It's essential, in my view, that we create some closure around these painful moments in our history. There are those who will say the raids came about as a result of attitudes and opinions—that is to say, prejudice against and fear of homosexuals and homosexuality that were prevalent in society at the time and persist to this day. Laws do not necessarily change prevailing attitudes, but they are absolutely necessary, in my view, for the protection of our human rights. They represent a necessary step in the ongoing struggle to promote tolerance and respect for difference in Canadian society.

● (1905)

While you're addressing delays in the judicial system and looking at the matter very broadly through this legislation, I hope you will take this opportunity to remember those of us who were arrested back in 1981 and over the years from 1964 into the 2000s, and that you will ensure this time around that the bawdy house law is repealed in Bill C-75.

Thanks very much.

The Chair: Thank you very much for coming here, telling us that poignant story, and having the courage to do so.

We will now move to questioning from Mr. Cooper.

Mr. Michael Cooper: Thank you, Mr. Chair.

My question is for Mr. Mercer or Ms. Clément with respect to what I think is a serious issue in terms of paralegals and law students, who would be precluded from acting in virtually all criminal matters as a result of the changes that are in Bill C-75. I just want to get my head around the scope of this situation. In the province of Ontario, how many paralegals and law students are there who are currently representing individuals who are facing criminal charges?

Mr. Malcolm Mercer: It would be nice to be able to give you good, reliable statistics. One of the things that is unfortunate about our system is that we don't have great statistics.

We know that articling students are very commonly used by criminal lawyers in the defence bar. I'm confident that a very significant amount of work that is done in respect of set dates and other matters is done by students now.

We know that there are significant and very valuable legal aid clinics, student legal clinics, that are established at all of the Ontario law schools: Toronto, Osgoode, Windsor, Western, Queen's, Ottawa, and Lakehead. I hope I haven't missed one, but just by that, you can tell what a number of really valuable services are being provided by law students under the supervision of lawyers.

We have 100 to 150 paralegals who say that a significant portion of their practice is criminal law. What I'd like to be able to tell you is exactly what they do, but our data is not good enough to answer that question.

We certainly think anecdotally that students and paralegals together have a significant effect. I can't give you more than that.

● (1910)

Mr. Michael Cooper: Thanks for that.

I presume that if we don't address the issue with section 802.1, one of the consequences you've cited is reduced access to representation, but also, from the standpoint of backlogs and delays, I presume every law student who is acting on a matter would have to go to court and apply to withdraw, so you would have that issue as well, would you not?

Mr. Malcolm Mercer: The most significant issue—and of course I agree with you—is that if you talk to judges, you find that self-represented persons, whether they're in the criminal law system or the civil law system, cause problems in the system. They cause delay. That's just clear. Not only are they not able to get as just a result, because we know that's true, but they clog up the system, waste time, and waste court resources that could otherwise be available. It seems entirely ironic that in an attempt to deal with delay, we would take away the representation that in fact makes the system more efficient.

Mr. Michael Cooper: It's the position of the Law Society of Ontario that the status quo be maintained—in other words, we would set aside a category of summary conviction offences for which the maximum sentence would be six months. I understand your position in that regard, and recognizing that you prefer that option, would a second option be to amend section 802.1 to provide that agents who are acting under the supervision of the practising lawyer can represent clients in criminal matters?

Mr. Malcolm Mercer: That would be not a preferred option at all, because effectively you would be moving independent paralegals who are separately regulated and separately trained into the supervision of lawyers. Why one would do that is entirely beyond me.

Mr. Michael Cooper: Right.

Mr. Malcolm Mercer: It is true that students are under the supervision of lawyers, so that option would address that aspect, but what we've had is long-standing use of paralegals—previously unregulated, now regulated—and you would eliminate that representation.

Mr. Michael Cooper: I take your point, and I agree with you. I raised it simply because in a number of the briefs that was a recommended amendment.

To that end, if we leave the one year for the offences up from six months, do you have any suggestion or proposal of an amendment that could be put forward that would allow agents to continue acting on behalf of clients on criminal matters?

Mr. Malcolm Mercer: As long as the Criminal Code limits agents' use to six months and there are no six-month offences, there's no good way through that.

The only possibility is having separate provincial regimes, but that doesn't work for a few reasons. First of all, as a law society, we believe in independence of the legal professions, and we think it would be wrong for the province, which is the prosecution arm, to also be the decision-maker on the scope of practice for the defence.

I used to think that our focus on independence of the bar didn't matter all that much, because we have a great, free and democratic society. As we look around, I think we should take greater concern about the frailties of our democratic freedoms and I think we should continue to focus on the independence of the legal professions from the state.

It would be possible to have the law society address who should be able to practise in the two-years-less-a-day category if you kept only that category. The problem is that we have designed a licensing regime, a training regime, for licensed paralegals that is based on offences up to six months, so the provincial government would have to rethink whether you change the nature of licensing, whether you have to have specialist licensing, whether you have to change education.... A myriad of different things would be necessary if the risk to the person was two years less a day as opposed to six months.

There would be the difficulty, and it may not be a surmountable difficulty, of creating a new class of paralegals who could do that work, but the other question is, why would you? There's no problem that needs to be addressed. We have a good system that works for the six-month category.

● (1915)

Mr. Michael Cooper: Thank you.

The Chair: Mr. Boissonnault is next.

Mr. Randy Boissonnault: Thank you, Mr. Chair.

Ron, thank you very much for coming here. I'm really glad that the country has seen fit to honour your service with the Order of Canada, not only for your great work in the HIV/AIDS space but for channelling the love and passion for your partner, Kimble, into a whole life's work on behalf of the community. Thank you.

I know you're an activist, and activism doesn't stop, does it? So you need to be here again. I appreciate that.

I want to ask you a technical question.

There are legal scholars who say that if we could do a carve-out vote for the LGBTQ community, we'd have thought of it already, and that if we repeal bawdy house provisions, we would also repeal some parts of that law that still have an application in today's society.

What would you say to people who say we have to hang on to bawdy house provisions and we can't figure out the terminology to do a carve-out for LGBTQ people?

Mr. Ronald Rosenes: I'm going to start by saying I'm not a lawyer.

It does seem to me, though, that the law has become archaic through lack of use and application. I think the bawdy house laws in the last two years have only been used once or twice.

I would ask this question, and probably throw it back to you: What other remedies exist in the law?

When we look at other areas that I'm involved in, such as criminalization, we really see the broad overuse of the law. I personally think that we need to ensure that the laws we use are only those that can be put into effect in situations with true cause—consent is not given, harm occurs, there is non-consensual activity, and so on. I really don't see much use for the law as it relates to sex work anymore, but I do see a place for other laws, including possibly aggravated sexual assault for areas of non-consent.

I'm not sure if I've answered your question, but I think that there are other laws on the books that can be used and that this archaic law needs to be made to go away.

Mr. Randy Boissonnault: You have indeed answered the question, so I appreciate that. Now I want to ask you a personal question, and then I'll get back to the technical pieces.

What would it mean for you to have that record from the Toronto Police Service removed and expunged?

Mr. Ronald Rosenes: It would remove a very difficult and distant memory for me, but I really come to the table saying it's not about me. I'm carrying all these other voices with me. It's on behalf of a much larger group who were wronged, and in many cases had their lives ruined. It's really not about me. It's about a much broader group of people who suffered far greater harm than I did personally.

I take my responsibility to the community seriously, inasmuch as I can support the LGBTQ community. I also understand that among people who work in the sex trade there are also many LGBTQ people who would benefit from the repeal of the law.

Mr. Randy Boissonnault: You raised two issues. One is the repeal of the law, which is part of it, but let me ask you a question about expungement, because I know you've chatted with many colleagues about this and I know we'll hear from Gary Kinsman and others next week.

If we are able to repeal the law and get expungement legislation drafted, would it be important for you and the people you've spoken with for the posthumous provision to be there as well, so that a family could apply on behalf of somebody who was charged in the past but is no longer alive?

Mr. Ronald Rosenes: I think there are two things that are important. I think the posthumous provision is important. I would support that without question.

As well, I've done a lot of work with historians, who will be presenting in the future. When we presented on Bill C-66, I also said, “Look, I don't want to have my record at the Toronto Police Service or the Scarborough Court anymore, but I don't want to see my records disappear off the face of the earth, because I think it is important to preserve our history”, so I would also add to your point that I would very much like to see the preservation, with my express permission and with agreement, of our documents in the historical archives of such places as the Canadian Lesbian and Gay Archives in Toronto.

That is just one example. I would like to see the records preserved in that way, if possible, and under our express permission.

● (1920)

Mr. Randy Boissonnault: So noted. That is one way to do it, with express permission from people, if that's in the legislation. The other way to do it with existing provisions is for an access to information request to occur before the record is expunged, and then you have both sets of data. That would require no legislative change in the current present form.

Thank you, Ron. I really appreciate your testimony.

Mr. Chair, do I have a minute? I need to go to Mr. Rudin.

Mr. Rudin, I want to understand how decriminalizing the administrative provisions is so helpful to the community from the Aboriginal Legal Services' perspective. Also, with regard to applying the Gladue principles to bail, in which jurisdictions will that be able to be evenly applied? I'm referring specifically to administration of justice offences.

Mr. Jonathan Rudin: There are two points.

One of the things we know is that there's a huge use of unnecessary bail conditions. One of the most prevalent is the condition that prohibits someone who is an alcoholic from drinking.

As Ms. Deshman said, people will say anything to get out of jail. They're given conditions that don't actually relate to concerns about public safety and are not related to the offence itself but that allow them to continually be picked up and accumulate greater and greater criminal records. As I've said, the data shows—and there's a lot of data—that aboriginal people not only face more and more restrictions, but they are picked up for those restrictions. If we take away the jail option, then that makes a big difference. Ultimately, what I would hope would happen is that people would stop imposing conditions that are foolish.

In terms of the Gladue provision, there is recognition in some but not all provinces that Gladue provisions apply to bail. There is a division in the court in Saskatchewan about its application. It's not clear in Quebec. There has not been a major court case on that in Quebec either. This would clear up that issue. It would be very significant, because do know that in Ontario, where Gladue clearly applies to bail, indigenous people do receive bail because things like prior administration of justice offences are not held against them.

Mr. Randy Boissonnault: Thank you very much.

The Chair: Thank you.

Mr. Rankin is next.

Mr. Murray Rankin: Thank you very much.

Mr. Rosenes, I don't have a lot of time, because we're running late, but I also want to salute you for your bravery. I want to congratulate you for your remarkable advocacy that led to your getting the Order of Canada, our nation's highest award. Your testimony today I found very moving and very effective.

I should say, however, that I'm very concerned about the ability of this committee to do what you properly ask us to. It would be my hope that we can recommend the repeal of subsection 210(1) of the Criminal Code. Indeed, clause 75 of Bill C-75 talks about that as an offence reclassified to two years less a day. You'd think we would be able to do what you suggest, or at least to recommend it. I'm advised by legislative counsel that it may be inadmissible for us to do that, so we're going to be looking to the chair to see if we can indeed do what you properly recommended.

I'd like to spend the time available with Mr. Rudin, if I could.

I found your testimony on the reverse onus on bail, particularly the dual-charging phenomenon that you told us about, to be very powerful. I have to repeat what you said: Over 40% of women in custody today are indigenous. You say this provision of the bill "will make a shameful situation even worse."

That's a shocking thing to tell us. We therefore have to fix it. How would we do so?

Mr. Jonathan Rudin: This issue has come up repeatedly, and certainly the commission into murdered and missing indigenous women and girls has heard a lot of evidence about the impact of dual charging. We see this in our work all the time.

A man is charged. He says, "Oh, she did it too", and then the woman is charged as well. If the woman doesn't have access to legal resources, if she has a prior criminal record, if she doesn't want to stay in jail, she will plead guilty and then what hangs over her is that any time a partner wants to allege that she was violent, she will now face a reverse onus. It will be incredibly hard for her to get out.

That's the reality. It's the reality that we don't think of when we have mandatory charging policies. Many police services have a mandatory charging policy on domestic violence. We put that in because police were not charging men, but what happens as a result is that whenever the man says she hit him, the police don't investigate; they charge. It's charge first and let the courts figure it out later, but if you don't get out of jail, if you're kept in custody, then the courts won't figure it out later because you're not going to wait that long.

● (1925)

Mr. Murray Rankin: Therefore, what is your recommendation for how we deal with this provision?

Mr. Jonathan Rudin: I don't think you need the provision. There are already provisions.

The secondary ground is whether the person is a danger to an individual or to the community at large. If someone has a prior conviction for domestic violence, then the Crown can say that they oppose the person's release because they've had a prior conviction. They don't need a reverse onus to accomplish that. They just need to do the work that Crowns should be doing.

Mr. Murray Rankin: Another very poignant part of your testimony today was what you termed—using your words—"the proliferation of mandatory minimums". You referred to it as the elephant in the room in this bill, pointing out, I think, that the mandate letter of the Minister of Justice required her to be addressing this issue. We see nothing in this bill to deal with it, and then you quoted her virtually a year ago acknowledging...essentially making the very same points you did about its impact on racialized communities and particularly indigenous people.

The Honourable Irwin Cotler, who was the Liberal Attorney General, in 2015 suggested that there be what he termed an escape valve section, which simply gave judges the discretion, if they saw something for which that the imposition of mandatory minimums would shock the conscience of Canadians, with written reasons provided, to review that mandatory minimum and impose some more reasonable mandatory minimum sentences.

Would that be something you could support?

Mr. Jonathan Rudin: That certainly would be something we could support.

The advantage of that approach is that because they're written reasons, there would be appellate review. That, in fact, is the standard that judges are using when they are striking down mandatory minimums now. The difficulty we have now is that we're striking mandatory minimums down one at a time. That works for the one that's struck down, but all the ones that remain are still in force.

Mr. Murray Rankin: I believe we heard today from justice officials that they want to wait until it's all ready and there's a big bang theory or something, whereas we could do justice now, but they don't seem to want to go there.

Mr. Jonathan Rudin: We can't wait. This is the thing; we have clients every day who are facing mandatory minimums who shouldn't be going to jail. How long do we wait?

Mr. Murray Rankin: I think it was very powerful. You quoted the Minister of Justice's very words to that effect, and yet here we are.

I appreciate your testimony.

Mr. Mercer, what you said about section 802.1, about the inability of paralegals and legal students to represent people, I believe was not intended by this bill, but it nevertheless has a dramatic impact, as you say. I can remember when I was a law student at the University of Toronto how many people we were proudly able to assist, but now we can't anymore, thanks to this bill. It can't be what the government intended. Surely we can find a way to fix it.

I agree with you that it can't be left to the law society. That's just wrong in terms of an independent bar, so we have to do our job to fix what I think was an oversight in this bill. I can assure you that in the province of British Columbia—we'll be hearing testimony later—the exact same issues come up and have been brought to my attention as well, so thank you for speaking to that point today.

Mr. Malcolm Mercer: Thank you.

The Chair: Thank you very much.

Mr. Virani is next.

Mr. Arif Virani: How much time do I have, Mr. Chair?

The Chair: You have six minutes.

Mr. Arif Virani: Six minutes is perfect. Thank you.

Thank you and welcome to everyone. I apologize that I missed some of the oral testimony, but I've read many of the briefs.

I want to welcome a constituent. Mr. Mercer, thank you for being here and for your submissions.

Mr. Rudin, we heard some testimony earlier today about peremptories. Your brief says getting rid of peremptories gets a thumbs up in terms of what this bill is proposing. Every lawyer in the country knows the CCLA. It told us to get rid of peremptories—thumbs down.

Can you explain to us why it's important to the indigenous community you serve to remove peremptories?

● (1930)

Mr. Jonathan Rudin: We know that indigenous people are under-represented on juries. They don't appear on juries for lots of reasons, but one reason is that when they show up for a trial they would like to be involved in, they're kicked out because they're indigenous. We know that not just because of the recent Gerald Stanley trial, but we know that from the 1980s, the trial of the individuals who were charged with killing Helen Betty Osborne. The Aboriginal Justice Inquiry of Manitoba specifically recommended the elimination of peremptory challenges in 1991 for that reason. You can't get people to want to participate in a court process if they feel they're going to be kicked off the jury whenever they may have an interest because someone is alleged to have done violence against an indigenous person.

Mr. Arif Virani: Would your support of the removal of peremptories extrapolate to other racialized communities, particularly the black Canadian community, which is equally over-represented?

Mr. Jonathan Rudin: If you've ever watched people use peremptories.... I've seen them used to kick every black person off a jury. The Crown will say no to a black person. What you can never do is kick white people off a jury. You can't do that because there are too many of them, but you can kick off everybody else, so the idea that peremptories somehow lead to diverse juries is not true.

Mr. Arif Virani: Could I ask you a question that may be zooming out a bit on the issue? Do you have any creative ideas about the diversification of the jury pool?

Mr. Jonathan Rudin: Kent Roach is going to be talking about this a lot. The jury pool issue is often provincial, so it's the rules in each province that often lead to this problem.

In Ontario the problem was that to be on the jury, you have to be on the municipal assessment rolls. First nations people aren't on municipal assessment rolls, so an alternate system had to be created, and it didn't work. That is an issue that each province has to look at, but I think—and Kent will talk about this tomorrow—there are things that judges can do, that we can do, to try to ensure we do have representative juries and force jury panels to be more representative.

Mr. Arif Virani: I apologize if you covered this in your testimony, but we heard a lot earlier this afternoon about police officers and routine evidence going in via affidavit as opposed to cross-examining the officer in a criminal proceeding. Do you have a perspective on that from the indigenous clients you serve or other racialized communities?

Mr. Jonathan Rudin: We certainly share those concerns about routine evidence. If you can cross-examine officers, lots of information comes out that you won't necessarily be able to get at in the routine evidence process: Why did you choose to stop this person? Why did you search this person, etc.?

Mr. Arif Virani: Okay.

The Chair: You have another minute and a half, if you want it.

Mr. Arif Virani: Thank you.

In this last minute and a half, I'll confess that it's a bit intellectually challenging, but on the reverse onus and what we're trying to do in terms of addressing intimate partner violence head-on, it's a big commitment of our government. It's a big commitment in what we're trying to do in this legislation. As Mr. Rankin pointed out, what you're saying is that there will be this big unintended consequence. I hear you. I hear what you've just said, and I've read your brief.

You've talked about the concept of dual charging. My understanding of the bill, however, is that the reverse onus would kick in if there was an earlier conviction. There's a subtle difference between being charged versus actually being convicted, but in this world of mandatory charging, would you say that the women who are charged are therefore also gathering a conviction, which is leading to their bail potentially being denied on the back end, on a second go-round?

Mr. Jonathan Rudin: That's exactly right. In the last panel, you heard from Ms. Deshman. For many indigenous women, just getting bail is a challenge.

Think about it. You have a prior record for something else. You're charged with an offence. You're charged with assault, along with your partner. You're not going to get bail. What do you do? Well, you plead guilty, because you want to get out of jail, but now you have a domestic violence charge against you. If you want to allege violence against your partner the next time, if there is a next time, he can say, “Oh, she did it too.” You now have a reverse onus facing you. You're never going to get out of that cycle.

The difficulty with reverse onuses is that in many ways they're lazy. I mean, do the work: If there's a concern for public safety, then make that point. Reverse onuses make it too easy to keep people in jail, and again, they're often the wrong people. This is the whole history of all the attempts—very well-meaning attempts—to deal with domestic violence. They've led to more and more indigenous women being caught up in the justice system. We have to stop and actually think about what the real impacts of this will be on the ground. From our perspective, those will be quite damaging to indigenous women.

● (1935)

Mr. Arif Virani: Thank you.

The Chair: Thank you very much.

Given the time—we're past 7:30—I want to thank the members of the panel for coming before us today. Again, it was incredibly helpful.

Colleagues, thank you for your patience today. We will resume this study in our next meeting tomorrow at 3:30.

The meeting is adjourned.