HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Justice and Human Rights

JUST • NUMBER 050 • 1st SESSION • 42nd PARLIAMENT

EVIDENCE

Tuesday, March 21, 2017

Chair

Mr. Anthony Housefather

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● (1600)

[*English*]

The Chair (Mr. Anthony Housefather (Mount Royal, Lib.)): It is a pleasure to call this meeting of the Standing Committee of Justice and Human Rights to order, as we commence our study based on the order of reference of Wednesday March 8, 2017, on Bill S-217, an act to amend the criminal code regarding detention in custody, otherwise known as Wynn's Law.

It gives me great pleasure to welcome our House sponsor of the bill, Mr. Michael Cooper, who is a member of our committee.

How proud we are to have you, Mr. Cooper. The floor is yours.

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

Thank you, colleagues. It is a privilege to be before you to testify on Bill S-217, known as Wynn's Law, named in honour of Constable David Wynn.

Bill S-217 is a straightforward bill. It seeks amendments to the Criminal Code that while minor could have saved Constable Wynn's life had they been enacted at the time he was shot and killed.

Before I go into details on Bill S-217, let me at the outset provide some background as to what led to Bill S-217, Wynn's Law. During the early morning hours of January 17, 2015, Constable David Wynn and Auxiliary Constable Derek Bond were inspecting licence plates outside a casino in St. Albert, my home community, as part of their routine policing. In the course of inspecting licence plates, they came across one in the name of Shawn Rehn, for whom there was an arrest warrant. Consequently Constable Wynn and Auxiliary Constable Bond proceeded into the casino to arrest Mr. Rehn. As they approached Shawn Rehn, Rehn began to shoot and shot Constable Wynn and Auxiliary Constable Bond. Tragically, Constable David Wynn died four days later, on January 21, 2015.

Constable Bond survived, but having spoken with him, I can tell you that his life will never be the same. Indeed his life is in many ways a living hell as he seeks to deal with the impacts of being shot at close range, both from a physical and from a psychological standpoint.

Constable Wynn's killer, Rehn, was out on bail at the time, notwithstanding the fact that he had over 60 prior criminal convictions, 29 outstanding charges—I said 38 before, but it was 29—and multiple failures to appear. It prompted RCMP Commissioner Paulson to ask how it was that such an individual was walking amongst us. It turns out that such an individual was walking amongst us because this individual's criminal history was not presented at the bail hearing, in part because of a loophole in the Criminal Code found at paragraph 518(1)(c). That loophole, a fatal loophole, provides that the criminal history of a bail applicant may be presented—may—notwithstanding that the criminal history of a bail applicant is always relevant and material for a proper determination on the question of bail. The essence, the cornerstone, the underlying purpose, of Bill S-217 is to amend paragraph 518(1)(c) to replace “may” with “shall” so that in all circumstances the criminal history of a bail applicant is presented at a bail application hearing.

● (1605)

The purpose of Wynn's Law is to ensure that all relevant and material information is presented. That didn't happen in the bail hearing of Shawn Rehn with lethal consequences.

Wynn's Law would ensure that relevant and material information is presented, but it would not interfere in any way with the discretion of a judge or magistrate to make a determination on the question of bail. Indeed, Bill S-217 would ensure that the judge or magistrate had all the relevant information before them so they could properly exercise their discretion in determining whether someone should be kept behind bars or let out into the community. Moreover, Wynn's Law would not impose any undue burden on the crown, on prosecutors. This type of evidence is almost always presented at a bail application hearing. Bill S-217 would formalize in law what is almost always done, and what should always be done at a bail hearing so that what happened to Constable Wynn and Auxiliary Constable Bond never happens again.

In addition to amending paragraph 518(1)(c) of the Criminal Code, there is also a secondary component to Bill S-217 and that is to amend section 515(10)(c). Section 515(10) is the section in the Criminal Code that sets out the grounds on which bail may be denied. There are three grounds set out in section 515(10). The first is at section 515(10)(a), which is in the case of an individual being a flight risk. The second is at section 515(10)(b), which is where public safety is at play and then the third ground, and this is the ground that this bill would amend as well, is section 515(10)(c), which deals with denying bail where confidence in the administration of justice would be compromised.

There are four sub-grounds that must be considered under that question of the administration of justice being compromised. What this bill would do is make minor amendments by adding three grounds in addition to the four that are already there, namely, past convictions, outstanding charges, and failures to appear. Again, the overriding purpose, the overriding objective, is the change to section 518(1)(c), which is to change “may” to “shall” so that the criminal history of a bail applicant is always presented at a bail application hearing.

In closing, Mr. Chair and colleagues, what happened to Constable Wynn and Auxiliary Constable Bond should never have happened. Unfortunately, we cannot turn back the clock, but as parliamentarians, I believe we have an obligation to close a fatal loophole so that this never happens again. We owe it to Constable Bond, to Constable Wynn. We owe it to Canadians.

Thank you.

● (1610)

The Chair: Thank you very much for your very compelling testimony, Mr. Cooper.

We're going to our first round of questions.

We will start with Mr. Nicholson.

Hon. Rob Nicholson (Niagara Falls, CPC): Thank you very much.

Congratulations to you, Mr. Cooper, for sponsoring this bill. I think this is a very important bill as it closes a gap that exists within our criminal justice system.

I'm sure you've read the comments on this bill. Some say that maybe we shouldn't support this because it would cause delays in the system. All of us want to make sure that our criminal justice system acts in an expedited way at every stage.

What is your response to those who are afraid that this may cause delays in seeing justice done?

Mr. Michael Cooper: Indeed, that has been one of the criticisms of the bill, that somehow this would cause a delay. I say in response to that, with the greatest respect to those who make that argument, that it simply doesn't hold water because this information is almost always presented. It's almost always presented because it's always relevant and material.

As something that's almost always presented, how could it reasonably suddenly cause endless delay? It's just not so, Mr. Nicholson and Mr. Chair, and so I reject—

Hon. Rob Nicholson: Mr. Cooper, the times have also changed. I remember starting to practice law myself and there were no computerization. I used to literally have to dig out the records of these guys here out of the files. Sometimes it was very difficult to get the information on people.

Wouldn't you agree that in this day and age, with computers, this should be very easily accessible in a very timely manner?

Mr. Michael Cooper: Yes, indeed.

Literally, this information is keystrokes away. This information can be pulled from CPIC. It takes literally a matter of minutes. If it's not available by computer, then it's certainly available by virtue of a phone call away from someone who can log on and access the system.

It is true that a long time ago, decades ago, sometimes getting this information would just not have been possible. That's not so today in 2017.

Hon. Rob Nicholson: You mentioned in your opening comments that you heard some criticism with respect to this. Have you heard from others who are supportive, or other groups that are interested in this bill that you have before us?

Mr. Michael Cooper: There has been very strong support for this bill. This bill has been supported by a number of law enforcement members and organizations, including the Canadian Police Association. It has received the support of victims rights groups. It has received the support of the former minister of justice in the province of Alberta, who oversaw the provincial response following the murder of Constable Wynn. It received the unanimous support of Liberal and Conservative senators when it passed the Senate. At second reading, it received overwhelming support, including the unanimous support of the Conservative Party, the New Democratic Party, the Bloc Québécois, the Green Party, and 27 Liberal MPs.

This is not a partisan issue. This is something people right across the spectrum can agree upon, because it's the right thing to do. It's the common-sense thing to do, and it's the needed thing to do.

Hon. Rob Nicholson: Thank you very much.

The Chair: Thank you very much.

Mr. Fraser.

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

Mr. Cooper, thank you very much for being here today and for your work in bringing this forward on the House side and getting it to committee.

I can tell you that the passion with which you speak of Constable Wynn and his loss, and of Constable Bond, is something that's not lost on this committee and not lost on me personally. I want to thank you for bringing it forward.

I think it's important for us to bear in mind, of course, what the bail provisions are all about, which is to ensure public safety is kept front of mind when determining judicial interim release and also to have an orderly justice system. Of course, at the foundation of that, though, is that individuals who are accused of criminal offences are presumed innocent until proven guilty. Therefore, the obligation is normally on the crown to prove that the person should be detained. It's important to bear that in mind when reviewing these provisions.

I'd like to start first with a provision in section 515, which you say is ancillary, I guess, to the main purpose of this: changing the wording from “may” to “shall” in section 518.

In paragraph 515(10)(a) is the first ground, I guess, that a person could be detained on. It's if they are a flight risk or if they're not going to appear in court. Paragraph 515(10)(b) is the ground that the crown can rely on to show the person should be detained because they are a risk to the public. It's that they may reoffend, or they may "interfere with the administration of justice".

The third ground, sometimes referred to as the "tertiary ground", in paragraph 515(10)(c), is what this bill is seeking to expand. The grounds that are being expanded upon in the proposed bill here would overlap considerably with what has already been determined in paragraph 515(10)(a), the flight risk, or paragraph 515(10)(b), public safety, by adding elements that were already considered in those first two, such as the person's criminal record or the person's failure to appear.

In my view, I guess the crown has already had a kick at the can, if you will, on paragraph 515(10)(a), to detain the person as a flight risk, or on paragraph 515(10)(b), because of their criminal record or their likelihood of reoffending.

I'm wondering why, then, you would see that an expansion is necessary when these things were already considered in the earlier provisions in this triage of elements to determine bail.

● (1615)

Mr. Michael Cooper: It's a fair question, Mr. Fraser. Thank you for that.

I would say that it's for a few reasons. First of all, the third ground had been characterized as a tertiary ground or a residual ground. In the Supreme Court St-Cloud decision, at paragraph 34, the court clarified that it's not a "residual" ground "but one that is separate and distinct". The court said it's not one that's used "as a last resort" per se, as it had been interpreted oftentimes in some lower court decisions in terms of its application.

The Supreme Court, in the St-Cloud decision, made clear, as did the Supreme Court in the Hall decision, that the four factors expressly enumerated in the Criminal Code are the factors that must be considered. They're the primary factors that are to be considered on the question of confidence in the administration of justice, but they are not the only factors.

In that regard, at paragraph 71 of the St-Cloud decision, the Supreme Court said that among the factors that should be considered, or often should be considered, is a "criminal record". In that regard, what this would do in some respects is codify what the Supreme Court has already said is relevant and material on the question of that third ground of public confidence in the administration of justice.

I would also add that the Supreme Court, in St-Cloud and other decisions, noted that the purpose of that ground is, of course, when public confidence in the administration of justice would be compromised, as it has stated, on its face. I would submit that there would not be an instance where public confidence in the administration of justice could be more badly compromised than seeing someone let out on bail when they have an extensive criminal record, outstanding charges, and failures to appear—exactly the record of someone like Rehn.

I would submit that in terms of that secondary ancillary component of Bill S-217 it is consistent with the pronouncement of the Supreme Court in St-Cloud and also consistent with the purpose of that ground as enunciated by the Supreme Court.

● (1620)

Mr. Colin Fraser: Okay, thank you for that.

In the proposed new paragraph 518(1)(c), you're suggesting that the third ground in the bill, here, is "to prove the fact that the accused has previously committed an offence under section 145", which is already there in the language.

But then you're adding:

> (v) to prove the fact that the accused has failed to appear in court on one or more occasions when required to do so;

It would seem to me that there is significant overlap between these two provisions, since section 145 is about failure to appear in court when required to do so. I'm wondering if you have some comment on what proposed subparagraph (v) may be referring to. I'm also wondering if it has anything to do with some evidence that the crown could adduce that a person has failed to appear in court when subject to a subpoena as a witness, or is this something else?

Mr. Michael Cooper: No. It certainly wasn't intended for that purpose. It is simply to clarify, again, that failure to appear would be one of the grounds.

Mr. Colin Fraser: Since it's already covered by section 145, which is a person convicted of a failure to appear or not having appeared when requested to do so by the court, why is proposed subparagraph (v) necessary?

Mr. Michael Cooper: From where are you saying it's duplicated?

Mr. Colin Fraser: Okay, so—

The Chair: If you look at proposed subparagraph (iii), that's what Mr. Fraser is referring to.

Mr. Michael Cooper: Right.

Mr. Colin Fraser: There are two things that seem to do the same thing. Reference to proving the fact that an accused has previously committed an offence under section 145 is already in there, and you're seeking to add the fact that the accused has failed to appear in court, which is already covered by 145. I'm just wondering why you are adding it if it's already covered.

Mr. Michael Cooper: I think it was simply to clarify that.

Mr. Colin Fraser: All right.

Mr. Michael Cooper: If there is a redundancy, there may be.

Mr. Colin Fraser: Okay.

I wanted to—

The Chair: You're exceeding your time right now.

Mr. Colin Fraser: Okay.

The Chair: Is it okay if I come back to you in the second round and we go to Mr. MacGregor now?—

Mr. Colin Fraser: Yes.

The Chair: Thank you.

Go ahead, Mr. MacGregor.

Mr. Alistair MacGregor (Cowichan—Malahat—Langford, NDP): Thank you, Mr. Chair.

Mr. Cooper, thank you so much for appearing today and for taking the time to sponsor this bill.

The very fact that you chose to sponsor the bill means you've obviously had some very deep and thoughtful conversations with Senator Runciman over the scope of this bill.

My first question is regarding this. In paragraph 518(1)(c), you inserted the phrase "the fact". I'm just wondering why that was. What purpose do you see that particularly serving?

Mr. Michael Cooper: That additional wording was recommended by the drafters, and it was incorporated into the bill for the purpose of expressly acknowledging that evidence only need to be led to prove the facts stated in the subparagraphs. That was the reasoning.

Mr. Alistair MacGregor: You are changing the wording for the prosecutor leading with evidence, from "may" to "shall". Leaving aside both of those words and what their implications are for the particular section, what is your understanding of how the current CPIC system operates in Canada, based on your helping shepherd this bill so far? You obviously have listened to some testimony from the Senate side.

Mr. Michael Cooper: Could you be more specific?

Mr. Alistair MacGregor: Does it function well? Are there delays, gaps, and so on? What's your understanding of it?

● (1625)

Mr. Michael Cooper: The CPIC system operates well, in the sense that a police officer can go on to CPIC and can obtain information on the criminal history of someone in a very short period of time.

I would note that John Muise, who has 30-plus years on the Toronto police force, gave evidence before the Senate legal and constitutional affairs committee that this information was keystrokes away, at most a phone call away. It was information that could be obtained in a matter of minutes.

I would also note that during the House of Commons debate, Glen Motz, the member of Parliament for Medicine Hat—Cardston—Warner, who has some 35 years of recent policing experience, gave evidence that it had been his experience that, between CPIC and local and provincial databases, information can be accessed, and accessed quickly.

Mr. Alistair MacGregor: Okay.

I want to follow up on what Mr. Nicholson asked you about. Some people have brought up the question of delays. Perhaps I could quote from the testimony at the Senate committee by David Truax, the Ontario superintendent:

> If these amendments contemplate the Crown leading evidence and proving the facts akin to a trial as opposed to obtaining relevant documentation from the police and presenting it to the court—for example, by reading in this information—it is conceivable that this evidentiary requirement may significantly lengthen bail hearings, with further added pressure on police resources, and create further adjournments that could prove to be counterproductive in a system that is already strained and operating at full capacity.

You and I, of course, have taken the Liberal government to account because we know very well what the delays in our justice system are. In fact, recent media reports have shown that very serious criminal charges are being stayed or withdrawn. I'm wondering if you could respond to that testimony in light of how overburdened both you and I know our justice system currently is.

Mr. Michael Cooper: I would state that it's just not so that this bill would create any real delay, because again, this sort of evidence is almost always presented in court. It formalizes, in essence, what is almost always done.

I would note further that this bill does not in any way change the rules related to evidence at a bail application hearing. Those are set out, for example, in paragraph 518(1)(a), which says, among other things, that the justice may make such inquiries, on oath or otherwise, concerning an accused as he considers desirable.

Mr. Alistair MacGregor: Okay.

We know that poor people and marginalized people, people of colour and the mentally ill, are more likely to come into conflict with the law. That's a statistic that is very much known. Do you think Bill S-217 might have some changes in terms of the makeup of the remand population in provincial correctional facilities across the country? Do you think specific minorities might fall into the trap of being disproportionately affected by this particular legislation?

Mr. Michael Cooper: Thank you, Mr. MacGregor. It's a good question, and the answer to that is "no".

It's no because what this bill doesn't do is change the rules around bail. It doesn't interfere with the discretion of a judge or magistrate. All it does is ensure that information that should be presented is presented. It's up to the justice or magistrate, applying well-applied law, to make a determination as to whether or not someone should be let out.

Mr. Alistair MacGregor: Thank you.

The Chair: Thank you very much.

Mr. Bittle.

Mr. Chris Bittle (St. Catharines, Lib.): Thank you so much.

Thank you again, Mr. Cooper. I'd like to echo what my colleagues have said in terms of bringing this forward. This is clearly a tragic occurrence, and I do appreciate your efforts.

I'd like to dig down on some of the legal points within the bill, and I'd like to build upon what Mr. MacGregor talked about with regard to the term that's used, "fact". It doesn't appear anywhere else in the Criminal Code. I know you said that the drafters suggested it, but is there any further information you could provide to us on this? I'm wondering whether this would lead to any legal complexities and court challenges if a term is used in this particular section that isn't found elsewhere in the code.

● (1630)

Mr. Michael Cooper: First of all, the only reason this language was incorporated into the bill, based upon the recommendation of the drafters, was for expressly acknowledging that evidence only need to be led to prove the facts stated in those four, now six, paragraphs.

That was the purpose of that. The intent was not, for example, to change the evidentiary burden that must be made out at a bail hearing. To the degree that it is somehow found that the wording somehow does that.... That was not the advice we had received, but if that were the conclusion, then it should be removed because that was not the intention.

Mr. Chris Bittle: I agree with you. You mentioned that a lot of what you're bringing forward in terms of changes to the Criminal Code almost always happens, especially in terms of presenting an accused's criminal record. I've talked to prosecutors, defence counsel, and legal aid organizations. I've had a lot of conversations about it.

But what about issues like consent matters? Is the intention of the bill to still go through that process when the crown and the accused have come to an agreement keeping in mind all of these things, and might that build in some delay? It may not build in a lot of delay, but it still might build some delay into the court system itself.

Mr. Michael Cooper: Mr. Bittle, of course it is ultimately the judge or magistrate who makes the determination as to whether or not someone is let out on bail, and that includes in consent matters.

Mr. Chris Bittle: What about even in terms of prosecutorial discretion? I know, again, you are correct in that, in almost all cases, this is happening anyway, but are we going down a slippery slope in terms of what Parliament is telling prosecutors to do and infringing on their discretion, which is a constitutional principle in and or itself, and what the Supreme Court in the Krieger case referred to as “a term of art”?

Is it a potential slippery slope if Parliament is telling prosecutors how to do their jobs?

Mr. Michael Cooper: Right. Well, Mr. Bittle, I would submit that the duty of a prosecutor in the context of a bail hearing is clear, and that is to present the best and most attainable evidence about the criminal history of an accused seeking bail. That's precisely what Bill S-217 would do.

Mr. Chris Bittle: I know the intention is public safety. We have a tragic mistake by a police officer who was conducting the original bail hearing in the first place, which led to tragic consequences beyond. This bill doesn't provide for any punishment, not that I'm suggesting it should, but are we exaggerating the public safety message on this particular case, because these types of things still can slip through the cracks?

I know it's your intention to really crack down on that, but are we overstating the public safety value of this bill?

Mr. Michael Cooper: I would just submit that the purpose of this bill is simply to do what should always be done, which is to ensure that this type of information is presented. It removes any ambiguity that exists, by changing “may” to “shall”.

Mr. Chris Bittle: Thank you.

The Chair: I suggest we now go to shorter questions, so everybody can ask whatever questions they have.

Who has some questions?

Mr. Fraser, you didn't get to wrap up your last comments, so please go ahead.

● (1635)

Mr. Colin Fraser: All right, thanks very much.

Mr. Cooper, with regard to the paragraph 518(1)(c) provisions that you're seeking to change, if your bill passes, it will now be required to submit evidence of the accused's criminal convictions for a determination. What's your view on how that would be interpreted in light of pardons or absolute discharges that have been granted? Do you have a comment on that? I would imagine it wouldn't include that in the type of information that has to be presented to the court.

Mr. Michael Cooper: That's correct, Mr. Fraser.

In terms of pardons and conditional and absolute discharges, that sort of evidence would not be presented. In fact, in terms of pardons, information on prior convictions that are pardoned are removed pursuant to paragraph 2.3(b) of the Criminal Records Act. Discharges are similarly removed pursuant to section 6.1 of the Criminal Records Act. So no, that type of information would not be presented in the case of pardons and conditional and absolute discharges.

Mr. Colin Fraser: Thank you. I have a couple other quick ones, but I don't know if Mr. Falk had a question. Do you want me to finish?

The Chair: Why don't you ask your couple and then we'll go to Mr. Falk.

Mr. Colin Fraser: I'll be brief.

Since the requirement will now be on the crown to lead this evidence, if this bill is passed, rather than suggesting that they can do it. This might be a strange question, but when they're proving a fact or submitting the evidence, the fact that the accused has previously been convicted of a criminal offence, would it never come up since it was “may”? Now that it's a requirement to do so, does it make sense to specify that it be a criminal offence committed in Canada, or is this any criminal offence having been committed that the crown is now required to adduce evidence on?

Mr. Michael Cooper: It would be based upon criminal evidence, any evidence that is attainable and available to be presented, so yes.

Mr. Colin Fraser: What would happen though if evidence of a criminal conviction in the United States, for example, was not presented because at the time it wasn't obtainable? What would happen to the decision made by the court at that bail hearing? Could it be vitiated by a further proceeding?

Mr. Michael Cooper: The intent of the bill is to maintain the type of evidence that is almost always presented and to codify that by making it a requirement. That is the purpose of the bill. It is to ensure the types of evidence typically presented, almost always presented, in court are readily and easily attainable, respecting the criminal history of the accused being presented.

Mr. Colin Fraser: Do you see that including trying to find out if there's any international information that could be relevant to that person's record?

Mr. Michael Cooper: Obviously, if that information was readily attainable and available, then it should be presented. But in most cases, I presume, it wouldn't be readily attainable.

Mr. Colin Fraser: Do you think there would be any use in adding the words “of a criminal offence in Canada”?

Mr. Michael Cooper: Perhaps that is something the committee could look at.

Mr. Colin Fraser: Thank you.

The Chair: Thank you.

Mr. Falk.

Mr. Ted Falk (Provencher, CPC): Thank you, Mr. Chairman, and thank you, Mr. Cooper, for presenting to committee. Not often do we get the opportunity to have you at the other end of the table. It's probably a delight for most people.

Back in my home province of Manitoba, I was speaking with the Manitoba safety accident investigator in the course of an investigation of an accident. We were talking about it, and I said, “What kinds of things are you looking for?” He said, “I'm looking to see if the individual was trained properly, if there was a proper work procedure for what was supposed to happen, whether the employee followed the procedure, and whether something was missing.” He said, “At the end of the day, we're looking for links in the chain that are missing.”

When I look at proposed paragraph 518(1)(c), you've changed the wording from “may” to “shall”. It seems to me when I look at the situation with Constable Wynn and Auxiliary Constable Bond that the tools were accessible and readily available to them, but it wasn't necessarily prescribed that they use them as far as a police officer conducting a bail hearing. He obviously didn't use all of the resources that were available to him.

It seems to me that the intent of this bill is to make sure the link in the chain that was missing is now put back in to make the chain complete. Would that be your understanding?

● (1640)

Mr. Michael Cooper: That's a fair point, Mr. Falk. It's about ensuring the information that is available, accessible, and attainable is, in fact, presented as it should be.

Mr. Ted Falk: Are you also aware, in your study and support of this bill, if there were any other situations similar to this, where had the information been provided at a bail or bond hearing, it may have made a difference to someone, either a law enforcement officer or an individual in the public?

Mr. Michael Cooper: I guess we will never quite know how many cases there are where this information isn't presented. We certainly know about this case. It resulted in the most serious of consequences possible, including the loss of life of a brave police officer, and an auxiliary constable whose life has been turned upside down as a result.

Mr. Ted Falk: Yes, I think you're right. It certainly would have made a difference in this one.

Thanks, Mr. Chairman.

The Chair: Thank you very much.

Mr. MacGregor is next, and then Mr. Boissonnault.

Mr. Alistair MacGregor: Mr. Cooper, I just want to quickly revisit the state of record-keeping in Canada. I was going back over the transcripts from the Senate committee. Senator Runciman, in his Q and A session with members of the committee, noted that they've been talking about trying to get the Ontario system away from a paper-driven system for many years—he mentioned that we're going back 15 or 16 years—and that there has been very little progress and millions of dollars spent.

Leaving aside the intent of this bill, I'm wondering this. If we have what amounts to a patchwork quilt across Canada and don't have that up-to-date record system, do you think it might be better for the government to concentrate its resources on making sure that we have a nationwide, up-to-date computer system whereby a magistrate has information at his or her fingertips, so that you're not really putting the onus on the prosecutor anymore, because that information is available before the magistrate?

I'm wondering whether that might in your opinion be a way that we could solve this problem and also make sure that a tragedy such as what happened with Constable Wynn doesn't befall anyone else.

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

I would submit that there really are two separate issues. One is with CPIC, which is accessible right across Canada but I understand there are some issues in terms of how quickly the data is entered and of backlogs and delays.

That situation is frankly unacceptable. It's absolutely unacceptable that CPIC isn't fully up to date in all cases. The fact that there may be some backlog in CPIC does not change or impinge upon the fact that the criminal history of someone should be presented at a bail application hearing. After all, such information, as I mentioned, is always relevant and material. Indeed, often it is about the only evidence that is relevant and material at a bail application hearing.

What I would submit is that we should amend the Criminal Code to close this loophole and continue to put on pressure, as there has been pressure put, to get CPIC fully up to date.

Mr. Alistair MacGregor: I guess what I'm saying is that it may not even be a loophole, if we were to tackle the quality of the information readily available. That may be one way of looking at it.

Mr. Michael Cooper: It is a loophole, if the information isn't presented. You could have a perfect CPIC system and not have the information presented. In this particular case, the status of CPIC would not have changed the fact that the information wasn't presented—information that was readily available, information that was on CPIC, and information that, had it been presented to a judge or magistrate, almost certainly would have kept Shawn Rehn behind bars and Constable Wynn alive today.

Mr. Alistair MacGregor: Thank you.

● (1645)

[*Translation*]

The Chair: Thank you.

Mr. Boissonnault, you have the floor.

[*English*]

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

Mr. Cooper, thank you very much for your work on this important consideration of our Criminal Code, and I appreciate your taking the time today to speak to us about Bill S-217.

I have some questions and some concerns about the proposed legislation, and I'm hoping you can shed some light on those concerns. I think it's important to note that there isn't a single parliamentarian who doesn't acknowledge the tragic circumstances that led to the thinking behind the loops that may be closed by S-217.

My concern is three-fold, so I have three questions. One is related to the delays that will invariably be introduced in the system should this legislation become the law of the land, including in non-contested hearings. If this passes, it would have to be considered in a non-contested hearing, and if that only added five minutes, doing 30 to 50 bail hearings a day, the system of justice would slow down. You are on record as well as having said we need to do better to speed up the wheels of justice. Our government has done its part, in part, by having 12 judges nominated in Alberta. I see a dichotomy here between, on the one hand, wanting to speed up the wheels of justice, and on the other hand, introducing potentially serious consequences at bail hearings if S-217 should pass. That's one concern.

The second concern I have is that I think this tries to legislate human error. As much as I think there's legislation we'd like to see in the Criminal Code that could legislate human error, I'm not sure how that's possible and how we could have that come out of the system.

Third, the Alberta bail review conducted by former federal prosecutor Nancy Irving raises serious concerns and strong objections to the practice of some 3,000 police officers being able to represent the crown at bail hearings. I know that's under consideration in Alberta right now. If we had crown prosecutors at bail hearings instead of police officers, crown prosecutors who are better trained and understand the nuances of this, wouldn't that obviate the need for S-217?

I think it's important to note for the record that it was the Conservative government in 2015 in their budget that cut CPIC by 10%. I also think it's important to note that the last AG's report said very clearly that the delay in getting information from conviction into CPIC is 14 months in English Canada and 36 months in French Canada. I believe this compounds the issue we already have, and that's why I have grave concerns.

Mr. Michael Cooper: Mr. Boissonnault, first and foremost, it is the judge or magistrate who makes the determination as to whether or not someone should be let out on bail. Consequently, the information about the criminal history of an accused seeking bail remains relevant and material even in the context of a consent application.

Second, with respect to the Alberta bail review, I would note that the Alberta bail review takes for granted that this type of information should always be presented at bail application hearings. I would draw your attention to page 3 of that report, wherein the author states that there was virtually unanimous agreement from all of those consulted on four issues, including all participants in the bail application process. The report also states that a judge or magistrate should have access to complete and accurate information, and that convenience and efficiency should not be allowed to trump the integrity of the process.

I would also draw your attention to recommendation 25 of the report arising from the Alberta bail review wherein it was stated that before a bail hearing the police should provide the crown counsel with the following information at a minimum: an up-to-date criminal record, including both a CPIC printout and a JOIN sheet in Alberta; and information on outstanding charges together with copies of forms of release on those charges.

With respect to police officers conducting bail hearings, that is done and has been done in Alberta, British Columbia, and Saskatchewan. We have, as a result of a reference put before the Alberta Court of Queen's Bench, a decision of Chief Justice Wittmann who made certain findings having to do with the jurisdiction of police officers to conduct bail hearings in Alberta.

● (1650)

Mr. Randy Boissonnault: I appreciate that. I just think it's really important to note in this discussion that it's a practice that across the country is strongly opposed by those in the justice system. I know it would cost more money if we had crown prosecutors instead of police officers doing it. It could be a more just approach to follow Crown Prosecutor Irving's recommendations. However, I would like you to address my particular question around this slowing down the wheels of justice.

There are only so many hours in the day, Mr. Cooper, and I do not yet understand how passing S-217 is going to make the justice system faster and more efficient in the course of meting out justice.

Mr. Michael Cooper: Again, I reiterate that I don't see how this is going to slow down the process to any degree, and to the degree that it does slow down the process so that someone like Shawn Rehn isn't out on bail and on the street, so much the better.

The Chair: Mr. Nicholson, go ahead.

Hon. Rob Nicholson: I'll just follow up on Mr. Boissonnault's comments. He said that with the enactment of this bill we could be adding an extra five minutes to every bail hearing, and I guess in Toronto they might have 30 hearings every morning or something. That being said, in your examination of this issue, this is information that they present all the time anyway. What we are talking about, that five minutes, would be the exception to the rule—when the crown, the police, or whoever is conducting the bail hearing doesn't give this. I think you've made it very clear that it's very seldom that they don't present this information.

I am completely at a loss to say how every bail hearing now could be extended by five minutes, because they're reading in information that is generally before them in every case in any case.

Mr. Michael Cooper: It just doesn't make sense, Mr. Nicholson. It is not supported by the evidence before the Senate Standing Committee on Legal and Constitutional Affairs, and it is not consistent with the representations that have been made by the law enforcement community, which has overwhelmingly supported this bill. When we talk about five minutes, I would say that Constable Wynn's life was worth five minutes.

Hon. Rob Nicholson: Right on.

Mr. Michael Cooper: His life, in fact, was worth a lot more than the five minutes it could have taken to dot the *i*'s and cross the *t*'s to make sure that someone like Shawn Rehn was not let out.

Hon. Rob Nicholson: Thank you.

The Chair: I have a couple of questions. I'll go last.

Mr. McKinnon, go ahead.

Mr. Ron McKinnon (Coquitlam—Port Coquitlam, Lib.): It seems the thrust of this bill is about public safety, although our notes state that it is about maintaining "confidence in the administration of justice". Your remarks are fundamentally all about safety, yet we don't know that, had this information been presented in the case of this individual, he would not have been given bail in any case. Hindsight is 20/20, but it's hard to say that he would not have been given bail anyway.

I guess I'm struggling with the notion that this really does advance public safety. Some of these provisions.... For example, the individual's propensity for not showing up in court certainly speaks to the likelihood of his not coming back, in this case as well, but that doesn't necessarily speak to him as a public safety risk. Similarly, the fact that he might have had previous criminal convictions or a criminal record.... You would need to speak to the nature of those criminal offences to decide whether or not he was a public safety risk in those cases.

While I accept that this would encourage a tighter view of an individual as to whether or not he will in fact show up when he is supposed to, I am not seeing that this necessarily speaks to public safety.

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

I would say, in response, that in terms of what happened to Constable Wynn and what happened at that bail hearing, we will never fully know. What we do know is that it wasn't presented. We know that there is this loophole in the Criminal Code, and that's what this bill seeks to close because, again, this information is always relevant. In fact, when we look at the three grounds that are set out in the Criminal Code in subsection 515(10) in terms of grounds or justification for detention, criminal history is relevant in all three cases. I think it certainly goes to public safety in terms of ensuring that a judge or a magistrate has information to know whether the person has an extensive criminal history, whether they are a flight risk, and whether they have an arm's length of outstanding charges.

Of course, it's still up to the judge or the justice of the peace to make the final call as to whether or not that person is suitable for bail, and if so, what the conditions should be, if any.

● (1655)

Mr. Ron McKinnon: Can I have one quick one?

The Chair: Yes, of course.

Mr. Ron McKinnon: Continuing on with regard to the distinction between "shall" and "may" in this amendment, we change the word to "shall", so that these things "shall" be presented. As Mr. Boissonnault pointed out, it looks like we're trying to legislate against human error. These data, as you have testified, are almost always presented.

What is the significance of putting the word "shall" here? It doesn't stop someone from making a mistake. If someone fails to follow through on this—it says these "shall" be considered—and they release the person anyway, what is the consequence of that?

Mr. Michael Cooper: It removes any ambiguity. That's what it does.

There's absolutely no basis for it to be made, because this information needs to be presented in order for a bail application hearing to be properly conducted. Why would we leave a word that is ambiguous, such as "may" and not change it to "shall", to close the loophole, to make it clearer?

Mr. Ron McKinnon: I recognize that as a legalistic thing, but in practice, if someone fails to do this and the individual is released, what then happens? The fact that we've changed it from "may" to "shall" would have no effect in the case of human error, right?

Mr. Michael Cooper: In the case of human error, yes. I mean, there could be human error. You can never prevent human error. I agree that you can't legislate against human error, but you can minimize the likelihood of something like this happening. One way to minimize it is to remove the ambiguity by closing the loophole.

Mr. Ron McKinnon: Thank you.

The Chair: Thank you very much.

Mr. Fraser.

Mr. Colin Fraser: Thank you.

I thought of one thing in listening to the other questions and answers.

On the delay aspect, I take what you said with regard to the criminal records being presented, and that should happen as the normal course. With regard to one of the grounds that you're adding, and that is, "to show the circumstances of the alleged offence, particularly as they relate to the probability of conviction of the accused," that evidence would now need to be presented to the court. It's not a suggested thing.

I would see this ground as being the one that would perhaps cause more delay, because the extent to which that evidence needs to be adduced could be different case by case. In some circumstances, it could require extensive evidence to satisfy the court as to whether the probability of conviction of the accused would happen. If a police officer weren't available, perhaps the bail hearing would have to be set over. It's this ground that I would see being problematic with regard to delay, more so than the criminal record being adduced or failures to appear.

Can you comment on that?

Mr. Michael Cooper: It's a fair point.

I don't see it in most circumstances causing delay. Of course, depending on the particular circumstances surrounding the individual application, there are always times when bail applications are put over. I don't think that in the normal course of things it would significantly or in any real substantive way impact upon how long a bail application would take to be heard and determined.

Mr. Colin Fraser: Okay.

Mr. Michael Cooper: It's always possible that in some cases you're going to have certain facts or certain circumstances in which there may need to be an adjournment. That's the case presently in the case of bail hearings.

● (1700)

Mr. Colin Fraser: Okay.

With regard to the extent of the evidence, right now it could be determined quite quickly that in this case we don't really need to get into the details of the circumstance of the offence because it's not as grave an offence. However, this requires it for all bail applications regardless of the offence.

In the more simple cases, it could add to the time it would take to determine that bail hearing on an offence. Normally, that third ground for bail detention wouldn't be the ground that the person would be held on, but they'd be required to produce that evidence anyway.

Mr. Michael Cooper: Mr. Fraser, I take your point. I just don't see in the normal course that it would cause a substantive amount of delay or a whole new layer to the process.

Mr. Colin Fraser: All right. Thanks.

The Chair: Thanks very much.

Anyone else? If not, I have a couple of small questions.

First of all, I wanted to thank you for presenting not only the bill but also the passion with which you advanced the cause of your own constituents, the families of Constable Wynn and Constable Bond. I think we all appreciate both your and Senator Runciman's work on that.

I see the bill in two layers. I see the change to section 518 and the "may" to "shall" as being one layer of the bill, which I think you, Mr. Cooper, have suggested is the most important layer of the bill. It's not a question of trying to remove the fact that there are going to be errors. We all know there may be errors. If somebody says "shall" and he or she doesn't do it, there still may be an error in not presenting it, but it takes away their purposeful failure to present it. I see that as being the difference.

I think it has been bandied about a couple of times. What would happen in the event that we say "shall" and the prosecutor fails inadvertently to do this? What would happen to the result of that bail hearing? Would the bail hearing have to be reconsidered?

Mr. Michael Cooper: In that particular circumstance, it might have to be reconsidered if the information wasn't available. What would happen to a prosecutor? Obviously, there is no penal consequence; no punishment is set out in the Criminal Code. If the prosecutor doesn't do what is required of him or her, then obviously there are certainly consequences for that prosecutor, but not Criminal Code consequences.

The Chair: Right, understood.

I was more concerned about what would happen to the person who perhaps would be let out on bail. Would this be revisited if somebody said the crown didn't present this? Would we have people showing up in the system multiple times because of errors, or do you see that there's going to be an error, it goes ahead, the decision....

Mr. Michael Cooper: I would think that in the normal course the decision is made based upon the attainable evidence before the judge or magistrate.

The Chair: That's fair enough.

My second question relates to proposed paragraph 515(10)(c). Again, I come at it that there are two different layers. One is changing "may" to "shall" and then there are the other additions to the bill, some of which I view as unnecessary.

In looking at the proposed change to subparagraph 515(10)(c)(vi), I understand that the court has said that the criminal record of the accused is one of the areas already under paragraph (c) that they would see as being a general thing that you would look at. The criminal record would not include whether somebody has been charged with another criminal offence and never been found guilty. While I understand the purpose of saying somebody didn't show up in court, somebody has been found guilty. Why would we be introducing the fact that somebody has simply been charged with another offence when we're presuming they're innocent until proven guilty?

Mr. Michael Cooper: That again is information that would be in the mix already. In the Alberta bail report, that type of information was expressly noted as to always be presented and always available. It's not determinative.

When we look at paragraph 515(10)(c) the test is to look at all the factors that are expressly enumerated and other factors that may be applicable. In the Hall decision and the St-Cloud decision, the Supreme Court has been clear. No one factor trumps another. It's not a matter of taking one and basing it on one. It's a matter of looking at all the circumstances in the individual case.

● (1705)

The Chair: I have one last question, Mr. Cooper.

When I look at paragraph 515(10)(b), which is the public safety element of subsection 515(10), that talks about why the detention of an accused is justifiable. Would you agree that if the prosecutor does not introduce the evidence under paragraph 518(1)(c), then it is difficult for the magistrate to draw a proper conclusion under paragraph 515(10)(b)?

Mr. Michael Cooper: I would agree. You couldn't make it.

The Chair: Yes, I agree.

Are there any other questions from anyone? If not, first of all, thank you very much, Mr. Cooper, for your very cogent testimony. It is much appreciated.

If I may, could I ask that we stay behind and go in camera to talk about future witnesses under the bill and how many meetings we'd like to have?

Some hon. members: Agreed.

The Chair: Perfect. The meeting, for the moment, is suspended.

[*Proceedings continue in camera*]