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Chair

Mr. Anthony Housefather

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● (1600)

[*English*]

The Chair (Mr. Anthony Housefather (Mount Royal, Lib.)): Ladies and gentlemen, welcome to this meeting of the Standing Committee on Justice and Human Rights. We are resuming our study of Bill S-217, an act to amend the Criminal Code (detention in custody).

Today we have three witnesses before us. We will hear them as a panel before we ask questions. We have Ms. Shelly MacInnis-Wynn, as an individual; the Alberta Federation of Police Associations, represented by Mr. Michael Elliott, president; and the Canadian Council of Criminal Defence Lawyers, represented by Mr. William Trudell, the chair.

Ms. MacInnis-Wynn, on behalf of all members of the committee, all parties, and on a non-partisan basis, we want to express our deepest condolences to you for loss of your husband. I'm sure you've heard it over and over again, but just know that we say this with meaning as all members of Parliament from all parties.

We look forward to hearing your testimony today. Please, the floor is yours.

Ms. Shelly MacInnis-Wynn (As an Individual): It's been two years of what I'd like to call my journey of picking up the broken pieces. I call it this because that is exactly what has been left for me and my family to do, that is, to pick ourselves back up and try to put our lives back together, not only as a family but as individuals.

On January 17, 2015, our lives were torn apart in just four seconds, torn apart and left forever broken because of a career criminal, Shawn Rehn, who had been let back out onto the streets after a bail hearing, a bail hearing that didn't disclose his lengthy criminal record. These four seconds could have been prevented, and my husband would still be here today. Every day for the past two years, I have woken up and realized that Dave is really gone. I start each day crying in the shower. Every day I have to pull myself together and try to continue living and play the role of both parents —and that's not easy. Every day I have to watch my children grow and try to continue their lives without their father.

Every day we are reminded so many times that he is no longer here, and it breaks our hearts that we can't have those simple moments back that we had every single day with him. There were the moments of hearing the cereal bowl hitting the table in the morning and his asking who ate the last of his Froot Loops and the simple moments of hearing the teapot rattle and knowing that it was three o'clock because Dave was making afternoon tea. I even miss the moments of him complaining about how I made the bed in the morning. All those little moments add up during the day, and we are reminded every single moment that he is not there.

Our lives have changed in a way you would never understand unless you have walked the path. I am so grateful for the people I have in my life who have had to walk this path as well. We call it a bittersweet relationship because we're thankful for each other—but we wish we had never met. It's a life that we wish no one should have to live.

There is not enough time today to explain or tell you the struggles that we have to go through every single day of our lives and will continue to go through every single day. However, I'm going to share just one moment with you, one that happened a few weeks ago. This is a pretty significant moment.

When Dave was shot, he was taken to the Royal Alexandra Hospital in Edmonton. I had to go back there after this had happened, and I thought that first meeting would be the worst and that I'd get it out of my system, and that would be it. Just recently, I had to go there for work. When driving there, I was very anxious but was able to get through the day.

Just before I left, I caught a glimpse of the emergency entrance, and then I saw an ambulance. In those few seconds, I was taken back immediately to the night that Dave was shot and reminded of everything that we had to go through in those four days that followed. In those few seconds, I could feel everything, the chest pain, the anxiety, the feeling of not being able to breathe, and the uncontrollable tears that were rolling down my face. It was like it was happening all over again.

● (1605)

These are the things we are reminded of daily, and trust me, it happens every single day—not to this degree, but it happens every single day. We are constantly reminded of what has happened and that Dave is not with us anymore. This is so draining, not only emotionally, but physically. This affects not only me, but also my children. It affects Dave's mother and it affects his sisters. By changing this one simple word, another family can be saved from going through this heartache and torture that we have to go through every single day. This is something that absolutely no one should have to endure.

I ask you to, please, do the right thing. Make this change and make our streets a safer place to be, not only for our law enforcement, but for everyone.

This can affect the safety of every single person in our country, including you and your loved ones.

Thank you.

The Chair: Thank you very much, Ms. Wynn, for the very compelling testimony. Again, from everybody's perspective from across Canada, our hearts break for what you and anyone else in those circumstances have gone through.

Mr. Elliott, the floor is yours.

Mr. Michael Elliott (President, Alberta Federation of Police Associations): Thank you.

Good afternoon. My name is Michael Elliott. I have been a police officer for 12 years. I'm currently the president of the Alberta Federation of Police Associations. We represent approximately 4,500 municipal police officers across the province of Alberta.

I wish to thank the committee for the opportunity to speak in regard to BillS-217, an act to amend the Criminal Code (detention in custody).

Before I begin, I would like to provide a brief synopsis of the terrible event that has brought the attention to bail hearings.

On January 17, 2015, RCMP officer Constable David Wynn was serving his community and his country. Constable Wynn encountered a stolen vehicle parked at a casino in St. Albert, Alberta. Constable Wynn identified a suspect, Shawn Rehn. Upon making contact, the suspect proceeded to shoot Constable Derek Bond in the arm, and then shot Constable David Wynn in his face. Constable David Wynn succumbed to his injuries a few days later in hospital.

Who was Shawn Rehn? Shawn Rehn was a career criminal with at least 100 offences over a period of two decades. Between 2010 and 2015, Shawn Rehn was sentenced to a total of 10 years in jail. His charges included a variety of offences, such as break and enter, theft, dangerous operation of a motor vehicle, possession of property under $5,000, house break-in and the commission of theft, obstructing a police officer, failing to attend court, assault with a weapon, and possession of property obtained by a crime over $5,000. The list goes on.

You may have an attachment in front of you that provides a list of the charges he was subject to, what he was convicted of, what he was released on, and the charges that were before him, unfortunately, during the event that unfolded.

Mr. Rehn also had a history of firearms-related offences. He had been prohibited from possessing firearms for life. He was on conditions prohibiting him from possessing ammunition and firearms. Shawn Rehn had a total of 29 Criminal Code outstanding charges before the courts while he was on bail.

This brings us to bail hearings. Many questions were raised about why Shawn Rehn was released on bail via a justice of the peace. We can sit here today and discuss what or what wasn't provided. The bottom line is that not all of the information was produced.

You may ask what is required at a bail hearing. As a police officer in Alberta, I provide the just cause for detention. When a person is arrested, I have to provide a bail package. This information is provided in three levels to a justice of the peace to determine if the accused is granted bail or remanded.

The first level in the bail package is what we refer to as the “primary grounds”. I provide information to ensure that the accused will or will not appear in court to face his or her charges. The criteria include the nature of the offence, the strength of the evidence, the accused's criminal record, previous court orders against the accused, and his or her behaviour when arrested.

The second level of the bail package is what we call “secondary grounds”. This is for the protection and safety of the public. The criteria include the accused's criminal record and compliance with previous court orders, whether the accused is already on bail or probation, the nature of the offence, and the stability of the accused.

The third level of the bail package is what we refer to as “tertiary grounds”. This information is to maintain confidence in the administration of justice. The criteria include the strength of the case against the accused; the severity of the offence, such as whether a firearm was used; the criminal record of the accused; and finally, the potential sentencing of the accused if convicted.

The judicial system relies on all the evidence and information to make an educated and well-informed decision. When matters are before the court, disclosure and evidence are paramount to a fair and equitable outcome. The problem is that not all of the information is provided at bail hearings, as the Criminal Code states that information “may” be presented.

After Constable Wynn's death, a review of the bail system in Alberta was conducted. The following is an excerpt from the study:

> The bail system can also suffer from a perception that bail hearings are less weighty and perhaps less consequential than other steps in the judicial process. The rules of evidence are more relaxed, the burden of proof is less onerous, and bail hearings do not generally involve the testimony of witnesses and experts. Most who work in the bail system, however, would be more likely to agree with the prosecutor who told this Review “a proper show cause hearing needs to have the same sense of importance and urgency as a murder prosecution.” The stakes for the accused and the public can be that high.

A study by Ms. Nancy Irving recommended the following, and provided strong evidence of the importance of implementing Bill S-217. It would make a small but significant change to section 518 of the Criminal Code. The recommendations are as follows.

● (1610)

Before a bail hearing, a police officer should provide the crown counsel with the following information, at a minimum: a copy of the information setting out the criminal charges, an accurate synopsis of the allegations and circumstances of the offences, an up-to-date criminal record including both a CPIC printout and JOIN sheet, information on outstanding charges, and copies of forms of release of those charges, and, finally, details of the accused's personal circumstances such as residence, employment, and ties to the community.

Changing the wording in section 518 of the Criminal Code from “shall” to “may” by implementing Bill S-217 is the correct way to proceed for the judicial system and the Criminal Code. Bill S-217 would not overburden the system, in my opinion. Bill S-217 would not create any financial hardships on any level of the government.

The requested information, in my opinion, is already available via the police to provide to the crown at a bail hearing. I have personally acquired the aforementioned information via available programs police agencies use.

In life, we make decisions. When making those decisions, we research, educate ourselves, and learn what is best before we forge ahead with our plans. It is no different with our judicial system. We want to make an educated and well-informed decision during bail hearings. This bill is not about being tough on crime. This bill is about being fair, honest, and open with the public about crime. In the end, we want to ensure that the public has faith in our criminal judicial system and that we can look at every citizen in Canada, including those accused of crimes, and tell them that we made the decision with all the information that was available. Our citizens deserve the truth. Bail hearings are no different.

Thank you.

● (1615)

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

Now we will go to Mr. Trudell.

Mr. William Trudell (Chair, Canadian Council of Criminal Defence Lawyers): Thank you very much, Mr. Chair, and honourable members of the committee. It's an honour to be here.

I am chair of the Canadian Council of Criminal Defence Lawyers, which was formed as a council in 1992. For those of you who don't know, where there is a strong criminal defence organization in a province, we have a representative. Where there is none, like in the north, we have a representative. We voice and assist on legislation from across the country from a defence council's point of view.

Before we started, I said to Ms. MacInnis-Wynn that I, too, thought she was incredibly brave. I acknowledged as best I could the pain she has gone through. I also said and apologized in advance that I would probably be saying things that she, and perhaps Mr. Elliott, would not agree with. But it comes in the spirit of all of us trying to help and make the criminal justice system work better. With the greatest respect, I hope that you accept these comments in the spirit in which they're given.

Something has happened in this country in the last five years that is remarkable. Actually, I'm going to expand it to maybe the last eight or nine years. One of the things that happened was that in Vancouver, about 10 years ago, the Canadian Association of Chiefs of Police, together with a couple of judges, decided there should be a forum on reinventing criminal justice. Fifty people were invited to a closed-door meeting. At that meeting, we found that all the different stakeholders have more in common than not. That has led to the 10th and its collaborative study of criminal justice.

The federal-provincial-territorial ministers of justice formed the Steering Committee on Justice Efficiencies and Access to the Justice System, a committee of 15 defence counsel, chief justices from the high courts and provinces, representatives from the Canadian Association of Chiefs of Police, and deputy ministers to meet collaboratively to look at criminal justice issues. One of the common features in both of those studies, those programs, those committees, is the front-end management of the criminal justice system, including the problems with bail and with mental health.

I want to recommend to the committee the report of the National Criminal Justice Symposium on reinventing criminal justice, and the report of the Steering Committee on Justice Efficiencies, which has studied bail, which has studied early case consideration, as you're probably aware. Probably in every province right now, provincial governments are studying criminal justice because of the impetus here from Parliament in Ottawa in looking at restorative justice, looking at the Criminal Code, and looking at bail. Bail is actively being studied in just about every province.

I understand. I commend, for what it's worth, the person who introduced this bill to try to deal with a tragedy, to see whether or not there needed to be a legislative change. But the legislative change that you—and this is your job, not ours—may introduce and pass is legislation that affects the entire country. It is not legislation that responds to a terrible tragedy.

My respectful submission is—and I'll help as best I can—is that we do not have a legislative failure here in this case, but a systemic failure. All of the factors that my friend, Mr. Elliott, referred to, the primary, secondary and tertiary grounds, are considered every day by the courts. The failure to pass information down the line is a mistake. It's a human mistake. I would like to respectfully submit that, as a result of that mistake, attention has been energized.

My friend has referred to Ms. Irving's report. I've just been told that Deputy Armstrong did a report in Alberta. You are considering this. Indeed, criminal justice is a live topic.

● (1620)

I hope that when you consider these provisions, you look at this in the big picture and try to understand the impact in Nunavut, as well as in Toronto, in Prince Albert, as well as in St. John's.

Thank you.

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

We very much appreciate all of the testimony we've heard today.

I'd like to take this opportunity to welcome to the committee today Mr. Sean Fraser, who is replacing Mr. MacKinnon; Mr. Dubé, who is replacing Mr. MacGregor; and Mr. Diotte, who is sitting in on our meeting today.

Welcome, all of you.

We're going to start with Mr. Nicholson.

Mr. Nicholson, the floor is yours, sir.

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

Thank you, lady and gentlemen, for your testimony here today.

Shelly MacInnis-Wynn, thank you so much for coming here today. You've made a difference in bringing attention to this gap in the Criminal Code's provisions, and I want to thank you very much again for your testimony here today.

Mr. Elliott, you pointed out that it's usually the case that whoever's conducting these bail hearings gets all this information, and that it would be an exception to the rule if they didn't get the information with respect to a person's past, either criminal record or breaches of bail or anything else. Is that correct?

Mr. Michael Elliott: If I understand your question, the systems that we have before us are what I refer to as CPIC and JOIN. JOIN is like a justice online information check. When we do CPIC checks of an accused, we get their previous information. When I say "previous information", that's what their convictions are and what charges against them have been withdrawn or taken away from them. We do a JOIN check, because JOIN can actually provide information to us that shows what criminal charges are before—

Hon. Rob Nicholson: But in most cases, this is before the court. Is that correct?

Mr. Michael Elliott: That's correct, sir.

Hon. Rob Nicholson: One of the issues we had the last time we were here was that one of the witnesses was saying that we were going to increase exponentially the time it's going to take to do these things. I made the point to him—and you're confirming this—that most of this information is before the court in any case, isn't it?

Mr. Michael Elliott: If CPIC and JOIN are up to date, there should be no reason not to acquire that information. We do it on a daily basis. Actually, I call it protocol. Every time we arrest an accused, we do a CPIC and JOIN check to obtain this information to find out if we can release an accused, such as on a promise to appear, or if we have to, depending on the circumstances, present the person before a justice of the peace to see if the person will seek bail.

Hon. Rob Nicholson: That's good. This is what we have to have.

Mr. Trudell, you indicated that this was a systemic failure, but isn't that what this bill is about doing—correcting the possibility that we could have a systemic failure?

Mr. William Trudell: No, with great respect, sir, the bill is a legislative change to the Criminal Code. I've tried to get up to speed, and I'm happy that Mr. Elliott referred to it. I've read a couple of the reports. As a result of this, there was a decision by Chief Justice Wittmann dealing with police officers doing bail hearings, etc., in Alberta. But what I understand is that the information that may have been available—certainly was available someplace—was not conveyed.

Hon. Rob Nicholson: That's right.

Mr. William Trudell: You can't legislate the failure to communicate, and that's what happened here.

Let me say this: most defence counsel will tell you that the bail hearing is the most important aspect of the criminal justice system, because it's the front end. A determination is made as to whether or not your client's right under the charter is going to be met. A client in custody starts, in effect, serving their sentence, and the pressure is incredible. I can tell you, with the greatest of respect, that after 40 some odd years of experience, bail hearings are taken very seriously by crown counsel—

Hon. Rob Nicholson: That's right, and this is why they have to have all the information before them, don't they?

Mr. William Trudell: With the greatest respect, you don't need legislation to tell someone that they need the information. The bill creates problems in that sense.

● (1625)

Mr. Michael Cooper (St. Albert—Edmonton, CPC): In what sense?

Mr. William Trudell: Let's look at paragraph 518(1)(c) of the Criminal Code and its proposed replacement subparagraphs, starting with:

> (iv) to show the circumstances of the alleged offence, particularly as they relate to the probability of conviction of the accused,

That's nothing new in some respects, but if you're putting it in there, what does it do? Does that mean that crown counsel has to make sure that they have more evidence to put to a justice of the peace? Then it becomes almost a trial as opposed to.... We, the system, just cannot afford that. We are concerned right now about time and pressure in the system.

Right now, one of the factors that is taken into consideration on the tertiary ground is the strength of the crown's case. If you're going to mandate that the crown has to produce that evidence, what does that mean? It's not available yet. The police have not done it. What you get at a bail hearing is a synopsis because the file isn't ready. What you're doing here is introducing a potential step that is absolutely impossible with the resources we have and will add to the problem of the Jordan decision. That's one thing. Another is:

> (i) to prove the fact that the accused has previously been convicted of a criminal offence,

Obviously, that's a secondary ground. Moreover, there's the following:

> (ii) to prove the fact that the accused has been charged with and is awaiting trial for another criminal offence,

In an indictable offence, it's a reverse onus. Finally, there is:

> (iii) to prove the fact that the accused has previously committed an offence under section 145,

Those are the administration of justice offences. With respect, I would suggest that every police officer, every judge, every defence counsel, every crown counsel in this country would say that we have a real problem with the administration of justice offences in the criminal system being prosecuted and loading up the remand. This, as I read it—

Hon. Rob Nicholson: Does that make the argument that the court shouldn't hear about this information? If somebody has breached the terms of their release or something—let's say they breached it 15 or 20 times—don't you think that's relevant for the court to decide?

Mr. William Trudell: Of course it's relevant, but why have they breached it 15 or 20 times?

Hon. Rob Nicholson: Well, they may be criminals. That happens.

Mr. William Trudell: With the greatest respect, they may be persons.... You will find in the National Criminal Justice Symposium's studies on justice efficiencies that the vulnerable in this country face administration of justice offences more than anyone else. I didn't come up with that. Those are the studies that have been brought forward. I don't know whether that assists you.

The Chair: Thank you.

Mr. Fraser.

Mr. Colin Fraser (West Nova, Lib.): Thank you very much, Mr. Chair, and my thanks to all of you for being here today.

Ms. MacInnis-Wynn, I echo the comments of the chair in thanking you for everything you have done to bring this forward today and for being here and sharing your story with us. I'm so sorry for your loss, but thank you so much for being here and the courage it took to do that.

Mr. Trudell, I'd like to ask you a question. I'm first going to ask you a question on subsection 515(10), the justification for detention in custody. This bill seeks to add a couple of factors on the third ground of reasons justifying bail detention. The rationale put forward for this bill is to ensure that the relevant evidence is always presented to the court or to a magistrate in a bail hearing.

These additions to subsection 515(10) on the third ground seem to expand the ability of a court to detain a person, or it's giving them another kick at the can, if you will, on things that have already been considered in paragraphs (a) and (b) of the justifications.

I'm wondering if you have any thoughts on that and if you believe that the grounds added to subsection 515(10) would be useful.

● (1630)

Mr. William Trudell: Sir, are you referring to Roman numerals (v) and (vi) in the bill?

Mr. Colin Fraser: Correct.

Mr. William Trudell: With the greatest respect, I don't think they add anything to the existing system that we have. If an accused person has failed to appear, then immediately there's going to be a problem on the primary ground. In other words, if I've been charged with a criminal offence, the court wants to know that I'm going to show up. So that's the first thing. Is he going to show up? Does he have roots in the community? That may lead to some restrictions.

The fact that an accused has failed to appear in court on one or more occasions when required to do so doesn't say the accused has been convicted of a criminal offence; it says the accused has failed to appear. It's too broad. There are lots of reasons that people may fail to appear. That's not what we're concerned about here. If the person has a record of failing to appear, and that record is not excusable because of vulnerabilities, then that person fails on the primary ground. But that's vague; it doesn't add anything.

It is of concern if the accused has failed, but it doesn't say they've been convicted. The fact that the accused has previously been convicted of a criminal offence he has been charged with, or is awaiting trial for a criminal offence, is already there. That's the secondary ground. The secondary ground is, if we let this person out, is he going to interfere with the administration of justice, such as interfering with witnesses? Does he have a history of the revolving door? It's already covered in the Criminal Code.

It doesn't add to what we have, and it—

Mr. Colin Fraser: Mr. Trudell, you say it doesn't add to what we have. Does it expand at all the ability or likelihood of a person's being detained who otherwise would not be?

Mr. William Trudell: The fact that an accused has failed to appear doesn't say he has been convicted of a criminal offence of failing to appear. That expands it, no question in my submission. How is this interpreted? Whether or not there is a new thrust on crown counsel not to follow the law as it is, as guided by the courts, in the Morales and Pearson decisions of the Supreme Court of Canada, is something I'm concerned about.

Mr. Colin Fraser: Thank you for that.

Could I now turn to proposed subparagraph 518(1)(c)(v)?

Mr. William Trudell: Right:

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

Mr. Colin Fraser: Yes, and in proposed subparagraph 518(1)(c)(iii), it reads:

> to prove the fact that the accused has previously committed an offence under section 145,

That deals with failures to appear. What, if any, difference do you see between proposed subparagraphs (iii) and (v) here?

Mr. William Trudell: I don't see any difference, really, on first reading, but this is the issue that's being examined by committees right across the country and by the Department of Justice. This is one of the administration of justice offences that contribute to the enormous number of persons in remand in the jails.

Mr. Colin Fraser: I'd like to turn to Mr. Elliott.

In that same section 518, the crown would now have to lead evidence regarding the circumstances of the alleged offence to be considered. Do you see that causing any delay? I know we can talk about criminal records and how producing failures to appear may be easy, but can you respond to what Mr. Trudell said?

If we now put an onus on the crown to have to show or demonstrate what the circumstances of the offence were, even in cases where normally that wouldn't be a ground that the crown would rely on, the onus is now on them to show this evidence before the court. Do you see that causing any delay with regard to producing that information? If it does cause delay, what happens to the accused in the meantime if he has to come back for a bail hearing the next day? Is he released in the meantime?

● (1635)

Mr. Michael Elliott: Well, if I understand your question correctly, if a crown has to provide, say, an extra five or ten minutes to prove the onus on an accused, I look at it from this perspective: if I'm taking five or ten extra minutes to provide all the information that is available to a justice of the peace or to a judge, I'd rather take five or ten extra minutes to provide all the information that I have available than take an opportunity that something may, I'll say "slide" for lack of a better term, and then somebody, unfortunately, gets out and creates havoc, or an issue like we presently see before us. That's my understanding and take from that. To me, it may be 15 or 20 minutes, but the bottom line is that all the information is being provided, and what's important is making sure all the information is out there.

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

Can I ask Mr. Trudell to briefly comment?

Mr. William Trudell: It's not five or 10 minutes. It's not ready. It hasn't been prepared. If that's going to be introduced, then the defence has to challenge it, and you're going to have a trial at the bail hearing. If in five or 10 minutes the crown counsel could be better equipped to put a bail hearing together, then I'm all for that, but we're talking about the case. The police are under such stress in terms of getting disclosure that it's not going to happen in five or 10 minutes. Police officers aren't going to be able to put it together. Their cases are still developing. They have reasonable and probable grounds to charge, but a lot is going to happen between then—preliminary hearing, pretrial, and all the rest of it.

Crown counsel, defence counsel, and the justice of the peace are under great pressure to move the clock and move the yardsticks. I see this as absolutely weighing down a bail hearing. Right now in this country, it is very strained at the bail courts, absolutely strained. Sometimes you wait hours for briefs to show up before a bail hearing takes place. It's putting unnecessary pressure on the police and the crown and it doesn't solve the problem, because at the end of this, and foremost, is the accused's right to bail. That has to be kept in mind here.

I see this, and my counsel colleagues from across the country see this, and we think, "My God, how is that ever going to happen now, with the pressures on the system?"

The Chair: Thank you very much.

Monsieur Dubé.

Mr. Matthew Dubé (Beloeil—Chambly, NDP): Thank you, Mr. Chair.

Ms. MacInnis-Wynn, you might be tired of hearing this, but I also want to offer my condolences. It must be challenging to be involved in this process. The fact that you're taking the time to do it is certainly remarkable. We thank you for that, for what it's worth.

Mr. Elliott, I want to ask a question about some of the issues that were raised when this bill was before the Senate, in particular with regard to the Canadian Police Information Centre. The Irving report mentioned that some of the information can be outdated, and it's sometimes difficult between jurisdictions for a whole slew of reasons.

We're dealing with the bill, but there are other moving parts around it, information for bail packages and things like that. I'm just wondering what your thoughts are on that. If this bill were adopted, would anything need to be done to fix that structure and to make sure that law enforcement is able to provide the right information so that the process can go forward in as unhampered a way as possible?

Mr. Michael Elliott: From my perspective, I know that CPIC has been behind on the information that's provided in their records. That's why I use what we call JOIN. Through JOIN I can get updates on any information not added to CPIC at that time. Many times when I pull a record on an accused it will be up to 2015, let's say, with maybe nothing added after that date. I can do a JOIN check and acquire additional information on the accused that potentially hasn't yet been added to CPIC. That way I can use two systems to provide up-to-date information on the accused.

Does that help answer your question, sir?

Mr. Matthew Dubé: Sure, in part, but I'm also wondering about the jurisdictions—when crimes are committed in other provinces and things like that. My understanding is that some kinks need to be worked out at that level. What's your perspective on that?

Mr. Michael Elliott: I can only speculate on other jurisdictions. My background information is in dealing with Edmonton, and specifically Alberta, so it's very hard for me to provide.... I can't provide information on what occurs in Ontario or what occurs in B. C.; I don't know what programs are available. For Edmonton, for example, from the Alberta perspective, we have additional systems. We use EPROS. Any time an accused is dealt with in Edmonton, we have a record of that person.

Unfortunately, I can't answer on what's provided in Ontario or what's provided in B.C. I don't know if my colleague here can help provide any more information on that.

● (1640)

Mr. William Trudell: There are problems in communication between forces, but I think best efforts are made to make sure that CPIC is up to date. CPIC is a national program. Sometimes it falls through the cracks, but in my experience, when I'm going for a bail hearing, usually the police pretty well have the information that's available on CPIC in the crown's file.

Mr. Matthew Dubé: If this bill became law, would it be important, from the government's point of view, to look at improving those systems and perhaps look at what's happening in different provinces to make sure that the information is as readily available as possible to avoid some of these delays and other things that are being raised as possible consequences of this law?

Mr. Michael Elliott: There's no doubt in my mind that we need to continue to study and look at our judicial system. It's very fluid and ongoing. We're here today looking at Bill S-217. CPIC is just one system that we have across the country that, in my opinion, continues to be updated and be as accurate as possible. There's no doubt in my mind that there are other systems across this country that we need to continue to expand, adapt, and learn from so that we can help all jurisdictions work together, whether RCMP or municipal police forces. To me, this bill in the judicial system is one small step in trying to increase the amount of information available to all of our colleagues and to be more proficient.

[*Translation*]

Mr. Matthew Dubé: Mr. Trudell, my next question also concerns jurisdictions.

As you know, the provinces are in charge of the administration of justice, even though the Criminal Code is under federal jurisdiction. What burden does this bill place on the provinces? How could we address the possible repercussions? For example, back home in Quebec, the delay in appointing judges leads to certain administrative delays. This is a major issue that's regularly raised back home.

How should we deal with this reality and ensure the legislation won't further burden the provinces?

[*English*]

Mr. William Trudell: I think when we're looking at criminal justice issues, we have historically looked at it with siloed approach. Health is not at the table with justice and corrections, and it's the same thing with the provinces, in my respectful submission.

The committee would benefit from knowing what happens in the provinces. I know that right now in Ontario a very vibrant bail study is going on through the ministry, and in deciding whether or not this bill is necessary you may benefit from finding out what's going on in the provinces and how this bill may impact them.

But there's no question about the following. Let's just say for the purpose of this discussion that if my interpretation of the increased onus to show the strength of the case is correct, then that seriously impacts the crown's ability to run a file. That means that instead of having three files a day, there might be one. It means you need more crown counsel and judicial officers, and you probably need more police officers in charge of getting that material together.

When we make a legislative decision in the system, the repercussions to make it work on the ground would go out to the provinces. I could only begin to touch the tip of the iceberg on the work that's being done by the provinces, which, as you point out, are in charge of the administration of justice. That's what happened as a result of the Jordan decision. All the provinces are trying to react.

With great respect, the committee would benefit from hearing from some of the provinces on what they're doing and on the impact of the bill.

● (1645)

The Chair: Mr. Bittle.

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

Mr. Trudell, I'll start with the proposed amendments to paragraph 518(1)(c), namely subparagraphs (i), (ii), and (iii). With every crown counsel and police officer I've spoken to, this evidence is led automatically. If we were to change those proposed subparagraphs—and I'll leave out proposed subparagraph (iv) at the moment—is that a symbolic change, given your experience in the criminal justice system?

Mr. William Trudell: I think it is symbolic because I think that it creates.... I think it is symbolic in many ways. That's sort of the concern I had—albeit with the apologies I stated at the beginning.

Mr. Chris Bittle: In building on what you said, symbolism is important. We're in politics, and that's a true statement. However, in terms of overstating the public safety benefits of the proposed changes to these particular subsections of the Criminal Code, do you see any change to public safety resulting from changing the word "may" to "shall" as it affects those three proposed subparagraphs?

Mr. William Trudell: I think that we are maybe creating problems in a criminal justice system that is under stress and being looked at by the federal government and provincial governments.

Let me just say this, if I could. We are sitting here and you are working very hard, and I'm a defence counsel, and there's a police officer and a victim here talking about the bill. The public out there, more generally, really doesn't understand what we're doing. The public sees a person out on the street creating a terrible situation who should have been detained. The public says, "The system must be wrong; there's something the matter here."

When we look at it and try to explain to the public, I think they would understand that you shouldn't make legislative changes if they're not necessary because of the impact across the country.

Mr. Chris Bittle: We heard in reference to proposed new subparagraph (iv) and the potentially significant burden it would place on the criminal justice system.

Let's take it back to basics, though. In terms of walking into the courthouse in Toronto, or any jurisdiction, can you give an idea to the committee how many matters might be heard by a justice or a justice of the peace in terms of a bail list they're expected to hear?

Mr. William Trudell: If every bail were contested, we'd get nothing done. There is real hope that there's front-end management —and this has been a problem—so that crowns can make decisions about release and not be concerned about risk aversion. You need that front-end management, because you cannot ask for a detention order in every case.

Sometimes detention orders are requested because there's not enough information or because it's easier to let a justice decide, and that's not the way the system should work. To start with, defence counsel hopefully will know something about the case. If it's duty counsel, go to crown counsel who already has some information from the police as to the background. Sometimes the police recommend conditions. Hopefully that's done in the front end, but if that's not done, then you are going to have probably two or three contested bail hearings, at most, on a day.

Mr. Chris Bittle: In the current system—without the amendments—how many approximately would a justice hear, given your experience? I know it will vary from day to day.

● (1650)

Mr. William Trudell: On a daily basis?

Mr. Chris Bittle: Yes.

Mr. William Trudell: I'd say at least five to 10 each day. Sometimes you see courts, when trying to deal with this, having to deal with administrative things that are foreign to some other courts.

I don't want to pick any jurisdiction in particular, but Brampton, Ontario is a hugely growing municipality with a modern court building that is no longer adequate, and bail hearings are incredibly stacked up. It's not just what happens in the courtroom; it's getting the information.

Mr. Chris Bittle: Thank you.

I'd like to turn to Mr. Elliott.

You said that, based on your opinion, this wouldn't be a burden on the judicial system, but we've heard from Mr. Trudell that this could be a significant burden on the criminal justice system. In speaking with police officers and the chief of police in my riding, they're fully aware of the Jordan decision and the pressures it has introduced.

Given what Mr. Trudell has testified to, would you care to re-examine your opinion that this would not burden the justice system, because seemingly it would place a potentially substantial burden on the justice system?

Mr. Michael Elliott: What I am referring to when I say there is no burden is that, when I provide a CPIC printout for an accused and I do a JOIN check on the accused, I have all the information to show his or her convictions and a list of potential charges that are still before the courts. In this case, Mr. Rehn had 29 outstanding criminal charges that were still before the courts.

Mr. Chris Bittle: But going ahead to proposed subparagraph 518 (1)(c)(iv), Mr. Trudell testified that with the type of evidence that would be mandatory to put forward.... Granted, the CPIC printout and other items like that are very quick and are done as a matter of fact. If the prosecution had to provide that information, couldn't that potentially cripple the criminal justice system, based on what you are hearing from Mr. Trudell?

Mr. Michael Elliott: I'd have to speculate about whether it would cripple the system. Would it slow down the system? I would say yes, but from my perspective that delay, for lack of a better term, is necessary to provide that information to a justice of the peace. Whatever the charges against them are, I think the justice of the peace deserves to know all the information on the accused.

Mr. Chris Bittle: I just have one quick final question. I mentioned it to Mr. Trudell. Changing "may" to "shall" with respect to proposed subparagraphs (i), (ii), and (iii) really is a symbolic change. You yourself testified that this is something that happens as a matter of fact. Since there is no criminal consequence or consequence of any kind for a mistake occurring, these mistakes can happen again and there is no consequence. If these actions already happen as a matter of fact, there is no consequence to doing it. Isn't this a symbolic change, and aren't we overstating the potential public safety benefits of this bill?

Mr. William Trudell: With respect, that is my submission.

Mr. Chris Bittle: Oh, sorry, that was for Mr. Elliott.

Mr. William Trudell: I'm sorry. I apologize.

Mr. Chris Bittle: If I wasn't clear. My apologies.

Mr. Michael Elliott: Sorry, you may have to repeat that because I thought the question was being directed to my colleague here.

Mr. Chris Bittle: Mr. Trudell testified that it's a symbolic act, a symbolic change. You testified that, as a matter of fact, you provide most of this information without question. Without these changes, this information is going to be provided. If you are doing that as a matter of fact anyway and there is no consequence for a mistake, changing subparagraphs (i), (ii), and (iii) of section 518 is a symbolic change. Symbolism is important, but would you admit that this is a symbolic change—just those three particular subparagraphs—that isn't going to change how the criminal justice system is run?

Mr. Michael Elliott: My opinion on whether it's symbolic or not is this. Even though I provide that information, I would like to ensure that the information is provided to the justice of the peace. Even though I pass my file on for a bail hearing, I do not know if that information will be presented. If we can ensure that it is presented, then we know that the information is provided to the JP.

The Chair: Thank you very much.

Given that we started a bit late, may I suggest that we now go to different members of the committee who have shorter questions and that we allow everybody to participate at this point, instead of doing another full round? Is that good with everyone?

I'll start with Mr. Cooper, since I know he has several things to say.

● (1655)

Mr. Michael Cooper: If I can beg your indulgence, Chair, I'd like to thank the witnesses, especially Ms. MacInnis-Wynn for her very important and powerful testimony.

I have questions for all three witnesses.

Mr. Elliott, you have over a decade of law enforcement experience. We talked about delay, and you talked about CPIC. It is my understanding that access to CPIC is really keystrokes away. Is that correct?

Mr. Michael Elliott: Yes, that's true.

Mr. Michael Cooper: How long does it take you to access CPIC for information on prior criminal convictions, outstanding charges, and failures to appear? Give us an idea.

Mr. Michael Elliott: If I had to run an accused on CPIC, I could probably obtain the information in a minute.

Mr. Michael Cooper: And how long would it take you to get it to crown counsel?

Mr. Michael Elliott: It would be printed off. I can either fax it, scan it, or email it to my colleagues.

Mr. Michael Cooper: Okay, so it's a matter of minutes.

Mr. Michael Elliott: That's correct.

Mr. Michael Cooper: Mr. Trudell, you said that outstanding charges, failures to appear, prior criminal convictions, that type of evidence is almost always presented at a bail application hearing. Why is it?

Mr. William Trudell: Because a judge or a justice of the peace, as it may be, has to make a decision about whether an accused is going to be denied liberty, and he does it in graded steps, based on the primary, secondary, and tertiary grounds.

Mr. Michael Cooper: Exactly, and without that information it would be pretty tough for a judge or a justice of the peace to make a determination, wouldn't it?

Mr. William Trudell: Yes, obviously.

Mr. Michael Cooper: Obviously, and that's why the heart of this bill is to change the word “may” to “shall”. To that point, Ms. MacInnis-Wynn, there was some suggestion about symbolism and there was some suggestion at our last committee meeting that this might delay a bail application by five minutes.

We have in front of us the rap sheet of Shawn Rehn, which was not presented at the bail application hearing, and as a result her husband isn't alive. Maybe you could talk about the symbolism and what your comment would be on that.

Ms. Shelly MacInnis-Wynn: That information was available in minutes, and again, as Mr. Elliott said, who would not want to have that information available to them when making that decision on whether or not that person should be back out on the streets?

Imagine what that person is feeling right now, how they're living with themselves knowing that they let that person out and that person went out and killed someone. People like that are walking the streets every day. Fortunately, it's not happened that we know of, again, but it takes minutes to have that information—just minutes.

You should stop to think about how those minutes could affect you as a person, because it could have been anybody. It could easily have one of you that evening that he decided to take his anger out on. Yes, my husband was an officer and officers are on the front line of things, but it could have been anyone. It only takes a few minutes, and why would you not want to know the information before making that decision and letting that person back onto the streets? It's just as simple as that.

The Chair: Mr. Fraser.

Mr. Sean Fraser (Central Nova, Lib.): Thank you very much.

I greatly appreciate the testimony of all three of our witnesses and the perspective each of you has offered.

I have only one question and it'll be aimed at Mr. Trudell. My gut reaction when this issue came before the House of Commons was that I want to do my part to make sure, to the extent possible, that all bail decisions are made with full information. I think everyone agrees on that much.

My concern is arose when I started to think about the potential implications of this policy from my own background in commercial litigation. I've had colleagues before show up in court where the rules required, as a mandatory feature of the application, that they introduce affidavit evidence in support of that application. When you try to make an application without that evidence, the judge is required to dismiss the application and the person who bears the burden of proof has their application rejected.

I have no background in criminal law, so I'm looking for your opinion to inform my own open mind. My concern is if the crown were to show up and simply make a mistake. I think whether it's mandatory or not, a mistake will happen at some point again; we can't legislate against negligence. In the event this inevitable mistake happens again, will the judge be required to let the person go, who should otherwise be kept, for failure on the crown's part to discharge the burden of proof?

● (1700)

Mr. William Trudell: Let's start with the police station. If the police officer at a station, the officer in charge, has the power to release and there's no information in CPIC or wherever about this person's background, that person will probably be released from the station if the officer can do it, because there's no reason to hold them. If it's subsequently found out that there was a mistake—and it probably would be pretty quickly—the person could probably be rearrested.

If you get into a bail hearing in front of a justice as an accused person who has now been in custody for at least a day or two and there's no information before the court, it is the obligation of the court, then, to ask the crown whether he's showing cause here. If the crown has no evidence, that person will be released. There is no question about it.

There's another side: that person could be detained wrongfully. That person could be detained by a lack of “credible evidence”, I'll call it. There are a lot of people in jail for whom a different result might occur if we had that extra five or 10 minutes to find out something about their background—not this man's background, but their background—such as a history of mental illness, addiction, or whatever. What that different result might be is a bail program, a bail supervision.

We can't legislate to prevent human error, but what's happened here is.... In the last few days, I've been overwhelmed by all of the steps and studies that have been done in response to this case, especially in Alberta. You learn from the mistakes. It's even to the point where there's a reference taken and Chief Justice Wittmann says no, police officers can't do bail hearings other than for summary convictions. The system has responded to this human mistake. I think you can benefit from how the system has reacted and is trying to address this terrible tragedy.

I would say again that it's not a legislative issue here, and that's a problem.

Mr. Sean Fraser: In the limited circumstance where, through other potential evidence—perhaps it's the testimony of the officer or the nature of the offence, whatever it might be—it's apparent that the person should be detained, if this provision made mandatory the adducing of a criminal record into evidence, would the judge not then be hamstrung to have to let the person go?

Mr. William Trudell: I'm sorry. My mind faded for a couple of seconds. Could you ask me that again?

Mr. Sean Fraser: Yes, certainly. I'm concerned about what I think would be an exceptional circumstance whereby the crown, through evidence such as the testimony of the officer who made the arrest or whatever it might be, determines that the person should be detained. If a judge is required to have the criminal record and someone makes the mistake despite this other evidence suggesting they should be detained, and there's no criminal record, would the judge not then be required to let this person go?

Mr. William Trudell: No.

Mr. Sean Fraser: Okay.

Mr. William Trudell: The judge is going to apply the primary, secondary, and tertiary grounds. On the fact that a person doesn't have any criminal record, the fact that it's not available, if the facts as presented to the bail hearing at that particular point in time determine that this person should not be released.... Let's say they are from Alberta and the offence takes place in Ontario. They're not going to be released unless there's a cash bail, because they may not show up—they have no roots. There's no question about it: the justice of the peace can make a decision, not based on even a criminal record.

Mr. Sean Fraser: Thank you.

● (1705)

The Chair: Mr. Dubé.

Mr. Matthew Dubé: I have one quick question. I won't be long.

I want to ask Mr. Elliott one last question about how the police and law enforcement will operate under this. Without being an expert, I want to make sure I understand properly. I know that in the Senate committee the Canadian Association of Chiefs of Police raised a concern, but it was more of a question, as to how we change the burden of proof.

The burden of proof is very different in a bail hearing than it is in an actual trial. The concern raised was that maybe the burden being heavier would prevent hearsay and things like that, which could be perhaps lighter forms of proof—if I can phrase it that way—from being submitted. Is that a concern you share? If so, what can we do to rectify that?

Mr. Michael Elliott: From an Alberta perspective, my colleague mentioned something: right now, police officers cannot provide bail hearings unless it's a summary conviction. It's going to have be a crown. In this case, a crown is providing that information. Police officers, from my perspective, should not be doing bail hearings. We're police officers, we're upholding the law, and we're doing our job. Our job is not to do bail hearings.

To help from your perspective, that's the crown's obligation to make that occur, to make sure all the information is provided.

Mr. Matthew Dubé: If I may, perhaps in the context of preparing the bail package, what is incumbent on you?

Mr. Michael Elliott: From my perspective, nothing will change—

Mr. Matthew Dubé: Okay.

Mr. Michael Elliott: —from that because I'm still going to provide your CPIC printout, your JOIN printout, and all relevant information that I have on that accused. In this case, I will provide that bail package to the crown when the crown presents to the justice of the peace.

Mr. Matthew Dubé: As law enforcement, your approach to preparing that package with or without this legislation would not change.

Mr. Michael Elliott: That's correct.

The Chair: Mr. Bittle and Mr. Cooper.

Mr. Chris Bittle: Thank you. I'm a civil litigator. I do apologize.

There we go.

We're all on the same page. It's a very Canadian parliamentary moment with everyone apologizing to everyone.

Mr. William Trudell: I was just told that was an appropriate apology from me.

Mr. Chris Bittle: As I have never seen a consent bail hearing or a bail hearing at all, could you please briefly describe what goes on at a consent hearing, how often it happens, and would these amendments limit the ability to have these?

Mr. William Trudell: What goes on in a consent bail is this. Crown packages are available. A prosecutor, whether for the province or the PPSC in drug matters, looks at it, looks at the criminal record, looks at the accused, and in a drug case finds out whether there's an addiction issue. The prosecutor looks at whether the accused has roots in the community, and maybe whether they have a surety. If those boxes are ticked off and they have a discussion with the officer in charge, then they will consent to a release on terms that the officer may help with, such as whether or not to have a curfew on this person or whether or not they should report—whatever conditions reflect the case.

That's how it works in, I would say, 60% and maybe more of all cases. In other words, you and I are preparing to appear in front of the committee. We're working on what we're going to submit to the committee. You're going to ask me the questions. I'm going to ask you the questions. Then we're going to go to the judge and say we have agreed on this.

What that means is that crown counsel is going to ask the proper questions. Then what happens is that a defence counsel may show up or maybe get in early and say, do you know what, I've got a surety. I've got the bail program. I've got a drug addiction program. So you build that in. Then you add the third important party into that consent release. It's done like that. Sometimes what happens is that defence counsel and the accused person, particularly if the latter is not represented, often agree to all kinds of terms just to get out. Then you find that the accused doesn't have a house, doesn't have an alarm clock, and can't follow those terms.

Sometimes crown counsel will say, we want these terms, and they're not necessary. But that's what happens in a consent bail. The work is done in advance.

● (1710)

Mr. Chris Bittle: Would these amendments to the code limit the ability to engage in that activity?

Mr. William Trudell: Absolutely, you have proposed subparagraph (iv). It says:

> to show the circumstances of the alleged offence, particularly as they relate to the probability of conviction of the accused

That's a trial. That bail hearing is going to take a while for sure, so yes.

Mr. Chris Bittle: This is likely my final question.

Mr. William Trudell: Sir, can I say that the crown counsel will be forced not to consent. Then the courts are going to implode.

Mr. Chris Bittle: Do you see charter issues with this bill?

Mr. William Trudell: It's hard for the public to understand when someone is charged with an offence, but we start off with a presumption that this person deserves to be in the community according to the charter. Anything that seems to interfere with this—anything that is not reasonable and not proportionate—will face a charter challenge, no question.

Mr. Chris Bittle: I just have a follow-up question. You don't see this, especially roman numeral (iv) as reasonable or proportional?

Mr. William Trudell: I think it's a nightmare.

Mr. Chris Bittle: Fair enough.

Mr. Ted Falk (Provencher, CPC): Thank you, Mr. Chairman.

I too want to echo the sentiments of my committee colleagues to Mrs. Wynn, and thank you for your presence here today.

I don't know if you have a copy of this in front of you. Mr. Elliott has one. My understanding of your testimony thus far is that you believe strongly that had this information in this document been presented at the bail hearing released Mr. Rehn, he would not have been released and we wouldn't be here today and wouldn't be having this discussion because you wouldn't even know who I am.

Ms. Shelly MacInnis-Wynn: Exactly. This took how long?

Mr. Michael Elliott: I can print that off in 30 seconds to a minute.

Mr. Ted Falk: That was my next question to Mr. Elliott. How long would it take to produce this information—not necessarily in this format, but information that would be legible and presentable to a justice? You say 30 seconds to...

Mr. Michael Elliott: The CPIC information can be obtained within 30 seconds to a minute. A JOIN check is another computer program we can consult, and that can be done within a minute and a half to two minutes.

Mr. Ted Falk: Right. I don't see how that would create a huge backlog because of that three minutes of time at the outset to provide the information that would have been so terribly relevant to the case with Mrs. Wynn's husband.

Mr. Michael Elliott: That's correct.

Mr. Ted Falk: As a result of Mr. Rehn's release, Mrs. Wynn's husband's life was forfeited because of a lack of information.

Mr. Trudell, I want to direct a question at you. First, I want to make an observation. You said that at the end of the process, at the end of the conversation, the accused's right to bail is what's preeminent. Is that really what you believe?

Mr. William Trudell: Absolutely. That's in the interest of the public.

Mr. Ted Falk: Okay. I don't necessarily share that that's the most preeminent thing, but I understand that you're here representing defence counsel.

Mr. William Trudell: No, I'm not. I'm here as a member of the public and we don't just look at it in isolation. The charter is the umbrella that we work under everyday. I've been a victim of crime. I've defended people that have committed terrible offences and I've defended people who were totally innocent, but the public safety and the interests of the public include the proper and proportionate application of the law. It's not one side of the street or the other, with great respect.

Mr. Ted Falk: If you were in a situation where you were defending the individual and the justice said to you that you may provide information or that you shall provide information, what difference would those comments carry? What difference in weighting would there be in your own mind?

Mr. William Trudell: If a justice said to me—

Mr. Ted Falk: If a justice said, “Mr. Trudell, you may provide this information” or “you shall provide this information”.

Mr. William Trudell: I think a justice is always going to say to the defence, “you may”. I can't think of too many circumstances where the justice will compel, but let's go on the other side of the coin. If I were a crown and the justice said, “Mr. Trudell you shall”, then I might say, “Your worship, I need an adjournment because it's not available. I have done the best I can to put all the information before you, so if you're saying 'shall', then I'm not prepared to go today. We're going to have to put this over until I can speak to the officer in charge and get some information that wasn't available, or the police officer, who usually is here and presses the button in five seconds to get this material, is not available, so I don't have anyone to do this. We're going to have to ask this bail hearing to stand down”. That's how it works everyday.

● (1715)

Mr. Ted Falk: We've just heard testimony that this information is available in three minutes.

Mr. William Trudell: You're not going to make a decision on the legislation on the basis that the CPIC information is available in three minutes. You don't need legislation for that. With great respect, your concerns are much larger than that.

It's easy to say, if the CPIC system is operating properly, and if the information has been downloaded from British Columbia, or Nunavut, or wherever this person was before, and I have somebody to give me that information, then yes, it's going to be available in a couple of minutes. I reiterate: "if".

Mr. Ted Falk: Mr. Trudell, right now the legislation is written that they "may" consider that information, so it's obviously already in the Criminal Code for a reason. It's because somebody considered it important enough to put it in there. This bill changes the word "may" to "shall", which carries a completely different weighting and context to the importance of providing that information.

Mr. William Trudell: With respect, and I'm not arguing with you, it's just that you are looking at bail in a microcosm. There are many concerns and many issues in relation to the bail, on primary, secondary, and tertiary grounds. It's a judicial hearing and a judicial decision is going to be made. You can't just take one piece and say that will change it. In my respectful submission, the fact that a person has a criminal record is relevant and it is almost always before the courts right now.

The Chair: Go ahead, Mr. Fraser.

Mr. Colin Fraser: Just following up on that questioning to you, Mr. Elliott, I asked earlier, but I want to make sure that everyone's clear on this. The document that was presented, basically a bail report, CPIC, doesn't contain any information with regard to the circumstances of the alleged offence or probability of conviction on the charge before the court? I want you to comment on that. You say that the CPIC information can be gathered in three minutes, but I guess that's different from what the circumstances of the alleged offence are, right? That information is produced in a different manner, correct?

Mr. Michael Elliott: Well, sort of, because when we provide information.... If I arrest an accused and have him on a charge for break and enter, for example, I will provide a summary of the information that led me to arrest this person. That will be the primary grounds. I can show that I am bringing the accused before the justice of the peace because of a charge of a break and enter, and I provide the justice of the peace with a summary of what led up to that break and enter.

Now, to provide background on that information, let me reword it this way. If I arrest you, sir, on a charge of break and enter, and I bring you before a justice of the peace to see if you can get bail, I also have the ability to acquire information that shows that while you may not even be convicted of anything, you have 25 or 30 outstanding charges against you before the courts. I think that's pertinent. Even though the accused has not been found guilty of any of these crimes, knowing that an accused has 25 outstanding charges or 20 or 15, I think, is very relevant information.

Mr. Colin Fraser: I agree, but I'm talking about circumstances of the offences. That's different from your criminal record, right?

Mr. Michael Elliott: That's correct.

The Chair: He's talking about proposed subparagraph 518(1)(c)(iv). That's what he's talking about specifically.

Mr. Colin Fraser: That's different from the information that you're going to garner from the CPIC report, which you're talking about printing off.

Mr. Michael Elliott: Yes, CPIC reports are what the accused has been convicted of. We can go further into the CPIC report, and we can also see whether the accused has previous charges that have been withdrawn or removed.

Mr. Colin Fraser: Do police officers sometimes testify at bail hearings to talk about circumstances of alleged offences?

Mr. Michael Elliott: It depends on the jurisdiction. In Edmonton, for example, I can tell you that bail hearings were always done by police officers. There was a judge, I believe, out of Calgary, and I think my colleague already alluded to his or her name, who stated that now police officers cannot do bail hearings unless a summary—

● (1720)

Mr. Colin Fraser: I'm not talking about conducting them; I'm talking about testifying at one as a witness in order to demonstrate the circumstances of the offences. Do police officers sometimes testify in court on a bail hearing?

Mr. Michael Elliott: It depends on the offence. For example, if it's murder, then it has to be before a judge, so a police officer would be present.

Mr. Colin Fraser: Okay, thank you.

Mr. William Trudell: I can respond to that. A police officer is often available, and crown counsel will ask for an officer to be available if they want to put the officer on the stand to talk about the case.

The Chair: Thank you.

Mr. Cooper.

Mr. Michael Cooper: Mr. Trudell, you acknowledged, of course, that criminal history is relevant and material to a bail application hearing. There are three grounds provided at subsection 515(10) with respect to the basis on which bail may be denied, and obviously that is at the discretion of the judge or justice of the peace. Is that right?

Mr. William Trudell: A justice of the peace will make a judicial decision.

Mr. Michael Cooper: Yes. How could a judge or justice of the peace exercise their discretion without that information? For example, under paragraph 515(10)(b) on public safety, how could a judge or justice of the peace exercise their discretion without having information about the criminal history?

Mr. William Trudell: Every morning when a justice of the peace or a judge takes the stand, goes onto the dais, he is thinking about public safety. He is thinking about the interests of the public and how the administration of justice is working. So when an accused person comes before him, even though there are primary and secondary grounds, the reality is that the judge is thinking about the public in terms of safety in relation to the release of this accused. That goes through a judge's mind in every case. It's not something that is a vacuum. If, however, there is evidence available to help the judge move in one direction or another, then the decision that the judge makes is much more reliable and judicial.

Mr. Michael Cooper: I would hope you're not suggesting that a judge or justice of the peace should be making a determination on bail without evidence.

Mr. William Trudell: No, that would be a release.

Mr. Michael Cooper: Obviously, you would need the evidence of the criminal history readily available.

Thank you, Mr. Chair.

The Chair: I have a couple of short questions. I'd like to start with Ms. MacInnis-Wynn. Again, thank you very much for your testimony.

In your testimony, you spoke from a very personal standpoint about what happened to your husband, but you also talked about what for you was the core of this bill, changing the word “may” to “shall”. As you've heard throughout all of the questioning, there are a number of other elements that have been introduced in this bill that may be of concern to a number of people, relating to how these elements are drafted and where they're incorporated.

What's important for you, and I'm talking about you personally, and what do you care passionately about? Is it for the purposes of proving that the accused have been convicted of a criminal offence, proving that they've been charged with or are awaiting trial for another criminal offence, or proving that they have failed to appear under section 145, and that the evidence “shall” be adduced as opposed to “may”?

Is that what's important for you?

Ms. Shelly MacInnis-Wynn: It is. This information wasn't provided. It's just as easy or as simple simple as that, providing that information for someone to make the right decision, based on the information they were given. If they are not provided with that information, how are they supposed to make a decision?

The Chair: I understand. I simply wanted to understand because there are many different elements. Is that for you the core element?

Ms. Shelly MacInnis-Wynn: Yes, it is.

The Chair: Mr. Trudell, I'd like to turn to you, and return to proposed subparagraphs 518(1)(c)(i), (ii), and (iii). I am disregarding, for the purpose of this question, proposed subparagraph (iv), which I see enormous problems with, in terms of the “shall”, and proposed subparagraph (v).

I only wish to talk about subparagraphs (i), (ii), and (iii), and as you say, they happen in almost all of the cases. It's with regard to the evidence and the record of the accused, what the accused has been charged with and what they're on trial for, and when they fail to appear, and also understanding that the most vulnerable are more likely to not appear for various reasons.

Can you offer me any reason, sir, why a prosecutor should have that discretion, if that information is available, not to present it?

● (1725)

Mr. William Trudell: It's hard for me to argue those three points, and I'm looking at the wording. I'm saying to myself, does the word “prove” add something? So, I leave that to you.

The Chair: We'll have to look at that, absolutely.

Mr. William Trudell: That to me is an issue that someone much smarter, in terms of statutory interpretation, would say you missed, but this is symbolic.

The Chair: You say it's symbolic, but if it's symbolic, then you don't really care if it's there, because for you this is—

Mr. William Trudell: Well no, I care.

The Chair: For you to oppose or say that you disagree with the change in the wording, you should have a concrete reason, in my view, why you oppose the change, not simply say that it is symbolic, that it doesn't mean anything.

I get that there are a number of changes to the law that you are disagreeing with, and maybe that I disagree with too, but I'm asking you now specifically, on that one point, on subparagraphs (i), (ii), and (iii), can you give me any good reason why you would oppose changing “may” to “shall” for the purposes of the prosecutor lacking the discretion, but being required to adduce that evidence?

Mr. William Trudell: Here's my answer, with respect, and it may not be as good an answer as you might get from others.

The Chair: Fair enough.

Mr. William Trudell: The Criminal Code and the judicial system work, and these factors are taken into consideration. With the greatest respect, we cannot change legislation unless it is absolutely necessary, as a result of tragic, horrible circumstances. You're talking about changing the Criminal Code which will effect the entire country, and is it a precedent here that you might be concerned with? If that were all that was in there, those three, and you felt in your wisdom that it was necessary to change the Criminal Code, because there was a vacuum, that's your job. I've tried to help you with mine.

The Chair: Okay, I appreciate that.

Is there anyone else?

If not, first of all, thank you again to all of the witnesses. I think you brought a lot of information to the committee that we not only appreciate but that we will also use going forward as we think about this law.

The meeting is adjourned.