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Chair

Mr. Anthony Housefather

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● (1605)

[*English*]

The Chair (Mr. Anthony Housefather (Mount Royal, Lib.)): Good afternoon, everyone. Welcome to this meeting of the Standing Committee on Justice and Human Rights. We resume our study into Bill S-217, an Act to Amend the Criminal Code (detention in custody).

I want to extend to all of our witnesses a very big apology, since due to the vote we're starting late. We really appreciate your forbearance in terms of sitting as one panel. We'll hear from each one of you and then we will move to questions.

We welcome this afternoon, as an individual, Mr. Jonathan Denis, who is here from Alberta. He is a former solicitor general and attorney general of Alberta. We have, from the Canadian Centre for Abuse Awareness, Mr. John Muise, who is the director of public safety. From the Canadian Association of Crown Counsel, we have Mr. Rick Woodburn, who is the president.

Finally, from the Canadian Association of Chiefs of Police, we have Mr. David Truax, who is detective superintendent, Ontario Provincial Police, and member of the law amendments committee. We have Rachel Huntsman, Q.C., who is the legal counsel for the Royal Newfoundland Constabulary and member of the law amendments committee. We have Ms. Lara Malashenko who is the legal counsel for the Ottawa Police Service.

It's a pleasure to have you all.

As agreed, we're going to start with Mr. Dennis. The floor is yours, sir.

Mr. Jonathan Denis (As an Individual): Thank you very much, Mr. Chair and members of the committee, for inviting me here today. Of course, we're here to discuss Bill S-217, an act to amend the Criminal Code (detention in custody). This of course would:

> (a) expand the grounds for the justification of detention in custody; and (b) require that, in any proceedings under section 515, the prosecutor lead evidence to prove the fact that the accused has failed to appear in court when required to do so and the fact that the accused has previously been convicted of a criminal offence or has been charged with and is awaiting trial for another criminal offence.

By way of background, Mr. Chair, as you mentioned, I had the privilege of serving as an Alberta MLA from 2008 to 2015, as well as minister of justice, solicitor general, and attorney general from 2012 to 2015.

During my time as attorney general, I developed an appreciation for the work that the crown, defence, and all police do to ensure there are proper checks and balances in our justice system. All actors are necessary in order to keep our justice system operational and our streets safe, and to protect both the innocent and the guilty. None of my comments should be interpreted as a slight towards any of these groups, all of whom I hold in high regard.

I want to take you to the day of January 17, 2015. Even though the day began rather nondescript for me, like any other, this is a day that I will unfortunately never forget. I got a call from my chief of staff at the time, indicating that there had been a shooting in St. Albert, just northwest of Edmonton, involving one of the RCMP officers there. You're all aware of the chain of events and what happened.

Constable Wynn and his partner attended the Apex Casino in St. Albert, responding to a call on a stolen vehicle. As Constable Wynn and his partner entered the casino to search for the suspect, they found him and he shot Constable Wynn in the head, ultimately resulting in Constable Wynn's death and serious injuries to his partner, Auxiliary Constable Bond, who, fortunately, ultimately survived.

The next day, I attended the RCMP's K Division office in Edmonton, and Deputy Commissioner Marianne Ryan showed me the video of Constable Wynn's demise, which I watched twice. The sight of this video still haunts me to this day.

Equally disturbing to me was when I discovered the shocking circumstances of how the assailant, Shawn Rehn, happened to be at large, and how the death of Constable Wynn and injuries to Auxiliary Constable Bond were both 100% preventable. That's right, they need not have happened, and we need not be here today.

Shawn Rehn unfortunately had a lengthy criminal history. He had more than 100 offences dating back to 1994. Many of these charges involved confrontations with police officers, as well as firearms offences. Since 2010, he had been sentenced to a total of 10 years in jail offences, including possessions of a prohibited firearm, breaking and entering, and theft, and yet he walked as a free person.

I want to take you back to 2014. In September 2014, after being arrested on several charges, including possession of a prohibited weapon and an outstanding arrest warrant for failing to appear in court, Rehn was released on $4,500 bail.

During the bail hearing, there was no mention of Rehn's lengthy criminal past. There was no mention that in 2009, he attacked an ex-girlfriend, choked her, ripped her hair, and broke her collarbone. There was no mention that he had a lifetime firearms ban, posed a flight risk, or had past disregard for court orders.

Now, speaking for myself, as a lawyer of 15 years, this does not seem right to me, but I can find no fault whatsoever in the actors in the judicial system that day. Why? Because the prosecutor was following the law as it stands right now. The current law only states that a prosecutor “may” lead evidence of the criminal history of the applicant, and is a law, I would submit to you, that must change. In the law, by changing literally one word, you may literally save lives, because I believe it is reasonably foreseeable that an event like this will happen again if this law is not amended.

Our justice system needs to be continually improved; indeed, this work is never fully complete, but it can be improved from time to time.

One such improvement I support is this law. It is important to note that this law does not presume anyone to be guilty. Rather, it simply provides that the court oversee full information—the whole picture—of an accused's past, and let the judge or justice of the peace make a decision based on the full quotient of information before him or her in his or her courtroom.

The more information available, I submit to you, the more likely the court is to be able to make the appropriate decision.

Our justice system should never be viewed through a partisan lens, and I want to commend each one of you who voted for this bill regardless of your party affiliation. Indeed, this bill will not pass without support from more than one party. We have an opportunity here to make an improvement now, before this tragedy strikes again. I suggest, as I mentioned, that it is reasonably foreseeable that a situation like this will in fact happen again if the law stands as is.

You have an opportunity here to pass Wynn's law through committee and through third reading. To quote Shelly MacInnis-Wynn, “This is not about choosing sides. It's about saving lives and making our country a safer place to live.”

● (1610)

I look forward to the other comments from the panellists here, but also to your questions.

Thank you.

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

We're going to go to Mr. Muise.

Mr. John Muise (Director of Public Safety, Canadian Centre for Abuse Awareness): Thank you, sir.

Hello. My name is John Muise. I'll give you a quick background because my professional experience is relevant to the issue at hand.

I am currently the volunteer director of public safety for Abuse Hurts, a charitable NGO dedicated to the eradication of child sexual abuse. I served 30 years as a Toronto police officer, both plainclothes and uniform, and six of those years were on secondment to the Ontario government's Office for Victims of Crime.

In 2009 I was appointed a full-time member to the Parole Board of Canada and spent five years adjudicating parole and release decisions for offenders serving penitentiary sentences. All of these decisions involved a detailed risk assessment. Never once did I make a release decision in the absence of a criminal record.

I previously appeared before the Senate committee in support of passage of this bill on the same day as Constable Wynn's widow. I was deeply inspired by the courage she displayed and later was heartened to hear of the widespread support and passage through committee and the Senate at large.

I watched the video feed of MP Michael Cooper's March 21 testimony at this committee and the questions that many of you posed to him. His presentation was spot-on. Additionally, it is clear from the questions asked that committee members have a very good understanding of the proposed legislation and of the tragedy that led to the introduction of this bill. As a result I'm not going to rehash the case.

Instead, I will focus on some of the issues raised in recent testimony. As part of that I will address the proposed paragraph 518 (1)(c)(iv) near the end of my presentation.

Let's start with what appears to be the biggest concern, delay. I don't see the problem. The criminal record, the FPS sheet and CPIC printout, showing outstanding charges and other pertinent information, such as high-risk offender notations, are both keystrokes away. Many courthouses have police satellite offices equipped with CPIC access. Failing that, a small town crown is a phone call away to the local cops.

These materials can be accessed by fax, for boomer fossils like me, or a scan, for the millennial generation, as well as email. You will recall that Officer Elliott in the previous testimony noted these materials are readily available.

MP Boissonnault raised concerns about the burden that would be caused by even another five minutes being added to every file. This, however, is simply not the case. As MP Cooper rightly noted, these materials are already almost always part of the bail package. This bill just ensures the information is provided to the court.

MP MacGregor noted the testimony of the CACP. I was present when members of the CACP testified at the Senate. Like others listening that day, I was somewhat surprised by their position. I do not believe that the bill requires the police to prove the record or do any more work than is already done.

The record does that all by itself. It is fingerprint based. The FPS sheet and the CPIC printout listing outstanding warrants and charges for that matter are used every day by Canadian courts. If there is any concern, perhaps it's just a matter of fixing the wording and for that you could rely on the drafters, I suspect.

MP Bittle also raised delay in the context of matters decided on consent. This bill doesn't interfere with consent agreements. It just ensures after one is done that the court has essential information required to make a good public safety decision.

Additionally, in my opinion, there is no slippery slope here regarding prosecutorial or judicial discretion. The bill simply requires disclosure of the most crucial risk assessment information, so that the court is able to consider it.

There are many examples of case law and legislation that impose clear expectations on both judges and prosecutors. Here are just a couple. Anyone involved in the criminal justice system will know what the word “Stinchcombe” means. It's a unanimous 1991 Supreme Court of Canada decision requiring full, I repeat full, disclosure to the defence of all materials related to the case, regardless of whether the prosecution or police think it is helpful or relevant. Those who ignore this decision do so at their own peril and at the peril of their case.

Section 718.2 of the Criminal Code says the court “shall” consider a list of sentencing principles—not “may”—and a variety of circumstances “shall” be deemed—not “may”—to be aggravating circumstances.

● (1615)

The witness William Trudell, from the law association, raised the issue of proportionality. Section 718.1 of the Criminal Code says:

> A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

In other words, you can't be too soft or too harsh. My point in mentioning all of these is that there is much precedence for legislation that provides clarity for both the crown and the courts.

As I mentioned at the beginning, I want to address proposed subparagraph 518(1)(c)(iv), which reads:

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

I know it was raised by more than one of you. This is not something new. In reality, every bail hearing already includes a synopsis of the charge. You couldn't proceed with a bail hearing without a synopsis of the charge. Often, it includes information about the relative strength of the case, and this is obviously about the tertiary grounds. I'm not sure what Mr. Trudell envisioned. He did indicate—and I'm using my own words to paraphrase—that this could potentially grind the system to a halt. He does have a different viewpoint, but I would leave it to the committee to decide how they are going to handle that particular subparagraph. The bottom line is, you can't have a bail hearing without a synopsis.

I know we are working to the clock, so I will wrap up.

Much has been made here and at the Senate committee of the fact that a national committee is studying courtroom delays and pretrial incarceration. You know, it would be great if the federal government —and I'm going to take a shot at everybody—appointed judges in a timely fashion and provided sufficient resources to the RCMP to end the CPIC backlog. It would be great if the provinces and territories invested in more courtroom space and the hiring of crown attorneys and support staff. Wouldn't it be great if all provinces created a ROPE squad, like Ontario's, to round up dangerous people like Shawn Rehn running loose in our communities? It would be great if there were more widespread use of electronic monitoring so more people who could safely be on bail would be on bail, rather than in custody. Also, Supreme Court Justice Michael Moldaver has already suggested that judges and lawyers must share some of the blame for delays, although I know his position did not go over well in the legal community.

There are many things that could and should be done to address delays and pre-trail incarceration numbers. Those are great ideas, every single one of them, but none of this should get in the way of doing the right thing regarding this bill.

I know that some people view this bill as simply symbolic. For me, there is nothing symbolic about a bill that provides clarity to the crown and the courts. That ensures public safety is not trumped by expedience. Mr. Trudell noted that you shouldn't change legislation based on tragic circumstances, unless it is absolutely necessary. I agree, but I believe this bill is necessary, would be easily implemented, and won't cost a dime. I would ask the committee to come together in a non-partisan way. If you have to do something with 518(1)(c)(iv)—if you think that is necessary—do it, and send it back to the House with unanimous support.

Then, I would encourage any of you who can to speak to the justice minister. I see Bill Blair, parliamentary secretary, whom I used to call “Chief”—so it's hard to say, “Hey, Bill, how are you doing?”—and Marco Mendicino, whom I don't know, but I do know he is parliamentary secretary and a former crown. I would encourage you to go back and convince the justice minister to join with the backbench Liberal MPs—who, I think, have acted independently and, in the political realm, courageously—and recognize the value of this bill, fix it if it needs to be fixed—that's what the committee is for —and pass it into law.

Finally, I am here today because I've spent more than 40 years—I'm sorry to say, my entire adult life—trying to keep people safe, like so many of you, and prevent victimization. I truly believe this is a bill that would do just that and would not in any way be an added burden to the justice system.

● (1620)

Thank you to Senator Bob Runciman, the author of the bill, to MP Michael Cooper for diligently acting as House sponsor, and to all of you, Mr. Housefather, for allowing me to speak on behalf of Abuse Hurts.

I look forward to answering any questions you have.

Thank you so much.

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

Now we will move to Mr. Woodburn.

Mr. Woodburn, the floor is yours, sir.

Mr. Rick Woodburn (President, Canadian Association of Crown Counsel): Thank you for having me here. I'm Rick Woodburn. I'm the president of the Canadian Association of Crown Counsel.

The interesting part about this is that we're meeting here in Ottawa right now—I left my meeting to come here. I hijacked the agenda this morning to specifically put this issue on. We represent more than 7,500 crown counsels across the country. At the table this morning were the presidents of each of the associations and of the federal crown, for which Marco Mendicino used to be the president.

We had an open discussion with respect to this subject. Our views, which I collated this morning, along with what I've read online.... I haven't been following the political side of this, but what I have looked at is the background of Bill S-217.

It's a heartfelt situation. Somebody losing their life in the line of duty is of course a terrible and tragic loss to all of us. That being said, however, we can't always follow our hearts when it comes to the law. That's the motivation behind this. It's laudable; however, the recourse or what's going to happen in the end may not be what the bill envisions right now.

I can tell you, I've run hundreds of bail hearings; I do everything from shoplifting to homicides, and the case is similar for those around my table this morning. I was in bail court two weeks ago. I've run several bail hearings. Everybody was kept.

We have a vision and we have an understanding of the law when running bail hearings. When a crown attorney fully understands that the release of an individual can mean that the person in question can go back and kill their spouse, start another crime spree, or whatever could be worse.... When we're running a bail hearing, we understand the ramifications.

Ask any person who has done bail what their biggest fear is when they go home after doing bail court. It's that somebody they released or somebody who was released by a justice goes out and commits another crime. It's something we think about every day.

The interesting part was that Jonathan mentioned the prosecutor. I spoke to the Alberta crowns' president with respect to this case. It was unfortunate that there wasn't a prosecutor available. That's important to note. It was a police officer who did the bail hearing. It was human error: he failed to put the record before the court.

That's what it was. It was human error. It is not something we normally do. We put the record before the court. It's important. That's meat and potatoes; it's the first thing we're trained to do.

Now, Alberta has been remedied, according to my understanding, in terms of the way they report. Now police officers no longer do bail hearings. There is release by police officers in charge, and that's fine, but that's not what we're dealing with here. Now the situation has been remedied by making sure that crowns in every jurisdiction do bail hearings.

What's the effect of this particular bill?

This is important. The legislation itself really remains unchanged, in the sense that paragraph 518(1)(c) of the Criminal Code says that along with any other relevant evidence, the prosecutor “may” prove the record, “may” prove that there are outstanding breaches, “may” prove the offence before the court, “may” prove that they're outstanding on another matter—“may”.

The big problem we're having is that “may” has changed to “shall”. That is very important legally for us and for lawyers and for crown attorneys when we're running these matters. To change a word from “may” to “shall” and, putting those two words together, “shall prove”, means that it's up to crown attorneys to prove that record.

John is quite right. Is it a press of a button that normally gets your record? It is. But when you say “shall prove” a criminal record, it's not the press of a button anymore. It's going to the courthouses and getting certified copies in each jurisdiction in which the subject was arrested and charged and convicted. That's what it means to “prove” under the Criminal Code. If, then, a defence lawyer puts us to the test and says that this is what it means to prove a criminal record and you “shall” do it, that's what we have to do.

That is extremely onerous. I'm telling you, when we're in trial and an offender says, “I don't believe my record; you have to prove it”, it takes us days to properly prove somebody's record.

● (1625)

That's part of the problem we're having when we talk about proving—we “shall” prove—whether or not they're on another offence or the breach itself that they're on.

This committee, in the past, has studied victims' rights. When you “shall” prove something, does that mean that you can just hand up the synopsis? Is that what proof is? In criminal law, that's not what proof is. Proof is that we're going to have to call a witness. If it's unclear what the police officer saw or heard, does that mean we're going to have to put the victim on the stand? That's what “shall prove” means. If we have to prove the outstanding offence, do we have to call those individuals in? You have to think about that. When it says “shall prove”, that's a big problem for us.

You might say, “Gee, it says 'may prove'. What's the difference?” Under section 516, we are allowed to use reliable hearsay, and that's because we “shall” not have to prove anything, as it stands right now. We use reliable hearsay—that's the press of the button, the synopsis—and our bail hearings are done.

Bail hearings don't take five minutes. They take somewhere between half an hour and two hours, on average. That's for a bail hearing where you just pass information up, hear from a surety, and hear some evidence—about two hours. That expands if there are more sureties—half a day. When you're calling evidence at a bail hearing for more serious matters—sexual assaults, aggravated sexual assaults, homicides—those take up to two days. That's when we do call evidence. This is not something that is just out there and might happen. This is what will happen if it passes. I can tell you, in no uncertain terms, that when we are put to the test by defence, bail hearings will double and triple in time. And it's not necessary.

Across the country—and I've felt the temperature across the country—we have trained crown attorneys. Bail is 101. That is the first thing we teach them. We teach them how to read the CPIC, how to read all the bail reports, how to do the synopsis, and what they have to do for a proof for bail. That's the first thing we learn. There is no difference now between ordering us to do it and our naturally doing it, because we are trained to do so. This will add nothing to bail hearings, but it will take away a lot.

We talk about delay, and that's a big issue that we have here. Will we have more fulsome bail hearings if we have to prove everything? Yes, I guess we will. If we have to call evidence, yes, we'll have more fulsome bail hearings. But what is the cost? We're living in a world where half a day of bail hearing will take away half a day from a trial. Where does that trial move to? Where is the time? Where does it go? It's simple. In the end, we'll see more cases stayed because of Jordan, because they're running past 18 months. This is something that will happen. It's not just kind of out there. If bail hearings expand and take longer, other matters will fall like dominoes, and it will end up having the opposite effect.

Lastly, on “shall prove”, what happens if we don't prove? What happens if I can't get that record? What happens if I can't get that person in? What's the remedy for that? Think about that when you're passing this bill. What's going to happen if we don't get that information in? We lose the bail hearing or, worse, they're let go without anything; they're just let go. If we don't prove it, what's the remedy? They're probably going to be let go. So, by making us prove these certain things, what changes? We're already doing it. But if you make us prove it, our onus goes up; it doesn't go down. Keeping the individuals you want to keep off the street is harder, not easier.

The last part, of course, is about crown discretion. I'm not sure if I am going over my time—

● (1630)

The Chair: You have a bit of time. Go ahead.

Mr. Rick Woodburn: Of course it removes crown discretion. You're not going to see other parts of the Criminal Code where it tells us to call certain evidence. Cases like Boucher, Krieger, Miazga all entrench as sacrosanct the idea of crown discretion, and we need to have that to operate freely and independently in the justice system.

When we talk about tertiary ground, you want to add two things. One, you want to show whether or not they have never failed to be in court before, and whether or not they are out on another matter, or have committed other offences. Tertiary ground has historically been for our most horrible crimes where the public is looking at us and saying this person doesn't have a criminal record, this person hasn't committed any crimes, but they committed this murder that's so horrible that the administration of justice would be in disrepute if we release them. That's what the third ground is saying. Of course we're taking into account the other parts of bail.

What's it saying when we say this is a horrible crime but we add on that they didn't fail to attend court, and they don't have any outstanding record? When you have six different factors under the third ground it waters it down. It doesn't enhance the third ground. When you see somebody arguing on the other side and they say of course it's terrible, of course he had a gun, of course he's going to get a lengthy period of time, but on top of everything else he doesn't have a criminal record, he hasn't committed any other crimes in the past so we should let him go, we don't want to water down the third ground by adding those two. It's already innately in that bail section; it doesn't need to be added.

I apologize if I went over time, and I apologize if I was a little more blunt than I should have been.

The Chair: We want blunt, and we want clarity.

Thank you very much, Mr. Woodburn. Now we are going to the Canadian Association of Chiefs of Police, and we're going to start with Ms. Huntsman.

Ms. Rachel Huntsman (Q.C., Legal Counsel, Royal Newfoundland Constabulary and Member of the Law Amendments Committee, Canadian Association of Chiefs of Police): Distinguished members of this committee, my name is Rachel Huntsman, and I am legal counsel with the Royal Newfoundland Constabulary. I am here today with Detective Superintendent Dave Truax, who is with the Ontario Provincial Police, and Lara Malashenko, legal counsel to the Ottawa Police Service.

We appear as representatives of the law amendments committee of the Canadian Association of Chiefs of Police. We are speaking to you today on behalf of President Mario Harel and fellow CACP members. We will address the important issues relating to Bill S-217. We express our sincere appreciation for your inviting us here today.

The mandate of the CACP is safety and security for all Canadians through innovative police leadership. Ensuring the safety of our citizens and our communities is central to the mission of police services. Police officers discharge their obligations with professionalism and dedication in often dangerous situations, as demonstrated by the senseless and tragic death of Constable David Wynn in St. Albert on January 17, 2015. On this date, Constable David Wynn's family suffered an unimaginable loss that has forever changed their lives.

We know that people who commit crimes repeatedly or who do not comply with conditions of their release pose a significant risk to the safety of the public and to the police. The decision to hold or to release has been described as an exercise in risk assessment. Those of us who are duty-bound to protect the public must predict whether an offender will attend court, reoffend, and abide by release conditions.

In order to make the right decision on an offender's detention or release, the various stakeholders of the criminal justice system must have relevant information when making these critical decisions. Bill S-217 proposes to strengthen the bail provisions of the Criminal Code to ensure that offenders who should be detained are detained.

Although we support the spirit of Bill S-217, our presentation will address concerns we have with respect to the particulars of these two amendments and the impact they will have on police operations and resources. Following careful consideration and analysis of this bill, we believe that the amendments, in particular the amendment to paragraph 518(1)(c), may cause confusion, create added delay, and impose challenges upon a bail system that is already operating at full capacity. Instead of strengthening the bail provisions, we fear that these amendments may create a result counterproductive to what the bill is hoping to achieve.

Bill S-217 proposes two amendments to the bail provisions of the Criminal Code. The amendment to paragraph 515(10)(c) sets out the grounds that will determine whether an offender will be released or detained prior to trial. There are three clearly articulated grounds for detention under subsection 515(10) of the Criminal Code, commonly referred to as the primary, secondary, and tertiary grounds. The application of any one of these grounds may result in the detention of the accused person.

Clause 1 of Bill S-217 seeks to amend the tertiary ground by adding the accused's criminal record and outstanding charges to the circumstances that a justice may consider when deciding whether the detention of the accused is necessary to maintain confidence in the administration of justice.

It is our position that this amendment is not necessary, because the criminal record and outstanding charges of the accused are already relied upon under all three grounds for detention. Under the primary and secondary ground, the accused's criminal record and compliance with previous court orders are considered when assessing whether detention is necessary to ensure the accused's attendance in court and assessing the risk of further offences being committed by the accused if he or she is released.

The Supreme Court of Canada in the case of R. v. St-Cloud (2015) held that the accused's criminal record may also be considered by the justice under the tertiary ground.

Clause 2 of the bill proposes to remove crown discretion from paragraph section 518(1)(c) by requiring that the crown shall lead evidence to prove the fact of a prior record, outstanding charges, previous convictions against the administration of justice, that the accused has failed to appear in court, and to show the circumstances of the offence.

The CACP sees a number of concerns arising from this amendment. First, what does “to prove the fact” mean, and why is the current evidentiary burden “to prove” being changed to “prove the fact”? Does proving the fact place a higher evidentiary burden or onus on the crown? To prove a fact is not a legal term, and it is not defined. We suggest that this is problematic.

The current threshold for admission of evidence at a bail hearing is evidence that is “credible and trustworthy”. The crown is not placed to the burden of proof that exists for the admission of evidence at trial. Will the crown now be required to call evidence through the investigating officer? Will hearsay evidence be permitted? Will affidavit evidence now be required?

● (1635)

The crown should continue to exercise its discretion as to how to lead evidence.

If this amendment contemplates the crown leading evidence and proving facts, it will place added pressures upon police and create “mini trials” through the calling of multiple police witnesses, thereby causing further adjournments and delays in a system that is already strained and operating at full capacity. While this is not the intended purpose behind this bill, it may be an inevitable consequence. Presumably these requirements will apply in consent situations as well, but this remains unclear and needs to be considered by the committee.

We ask this committee also to consider that delays at the bail stage of the prosecution work to the accused's advantage, allowing for a Jordan application for a stay of proceedings. We do not want to see charges against high-risk offenders stayed because of delays during the bail process.

Supt David Truax (Detective Superintendent, Ontario Provincial Police and Member of the Law Amendments Committee, Canadian Association of Chiefs of Police): Let me continue.

The administration of criminal records is a shared responsibility involving all police services in Canada. However, they're not legally required to provide criminal record information for adults to the RCMP for inclusion in the National Repository of Criminal Records, accessible by the entire police community via the Canadian Police Information Centre, known as the CPIC system.

Accurate criminal record information has a direct impact on the proper administration of justice. This information is critical to the decisions made daily by police, prosecutors, judges, and correctional officers on matters such as release and bail, charge screening, plea negotiations, sentencing, and offender management. Public safety can be put at risk in the absence of complete and accurate criminal records. The need for quick access to accurate records is perhaps the most important in the arrest, release, and bail stages.

It is important to note that delays exist between the time a conviction is rendered in court and the time details are submitted by the local police service to the National Repository of Criminal Records, accessible via CPIC. Additional information relating to outstanding charges in cases in which the individual is awaiting trial may be available through other law enforcement data banks in provinces and territories, the Police Information Portal, local police records management systems, or local court records.

Notwithstanding these issues and the noted gaps concerning adult criminal record information, the RCMP has been working with police services across Canada since 2014 to automate criminal record updates by March of 2018. This initiative, referred to as the criminal justice information modernization project, has enabled many police services to date to enter criminal charge and conviction information into the national repository, which would then be accessible through CPIC in near-real time, in turn making the information immediately available to police officers and criminal justice officials. The criminal justice information modernization platform is the solution that will eliminate any backlog, moving forward, for criminal records supported by fingerprints.

In the interim, we understand that the RCMP is working with its policing and criminal justice partners to mitigate risks with respect to criminal records by including priority updates concerning high-risk offenders, and in support of court purposes such as sentencing decisions. For additional details on these matters, it would obviously be more appropriate to have the RCMP speak directly.

It is important to note that criminal record information obtained through CPIC is directly based on an offender's fingerprints. Timely fingerprinting is essential to updating criminal convictions. Failure of an accused to attend for fingerprinting often results in police inability to enter conviction details. Fingerprinting upon arrest is a procedure that would ensure that timely and accurate information is added to the national repository and become accessible through the CPIC system.

The Identification of Criminals Act would need to be amended to permit fingerprinting upon arrest. As a result of the constraints we have previously discussed and the objectives of Bill S-217, we agree that the most complete and accurate information concerning the accused's criminal record and pending criminal charges is required.

Secondly, concerns have been raised regarding amending paragraph (c) of subsection 515(10) to include the criminal record of the accused and the bill's proposed language regarding the term “prove the fact” and remove prosecutorial discretion. Further consideration of these issues is warranted.

Thirdly, criminal record information is based on the submission of the offender's fingerprints. If any gap exists in obtaining the individual's fingerprints, important information may not be available through CPIC. As such, consideration should be given to amending the Identification of Criminals Act to permit fingerprinting upon arrest. With this amendment, police would be able to access the accused's full criminal record and outstanding charges through CPIC.

Sincere thanks are extended to this committee for allowing the Canadian Association of Chiefs of Police the opportunity to offer our comments and suggestions on this bill. *Merci.*

● (1640)

The Chair: Thank you very much, Mr. Truax and Ms. Huntsman. We very much appreciate the testimony. All of your testimony was very helpful and very interesting.

Now we will move to questions of the panel. We're going to start with Mr. Cooper.

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

Maybe I will begin by allowing Mr. Denis or Mr. Muise to respond to some of the points raised by the other witnesses. I'll leave it open-ended.

Mr. Jonathan Denis: The one comment I wanted to make was with respect to Rick Woodburn's comment about this being a matter of human error. I again submit to this committee that it's reasonably foreseeable that this error in fact will happen again and submit that this is all the more reason that we need to amend this legislation to prevent the human error from happening again. The system is based on individuals, and these individuals do err from time to time, but by codifying this we're going to be preventing this error from happening again.

● (1645)

Mr. John Muise: Both the CACP and Mr. Woodburn on behalf of his association mentioned the “shall prove” or “prove the fact”. Clearly, they see that issue as a potential stumbling block. All of a sudden we're going to have these trials within trials to prove every fact of the case, and defence lawyers are going to insist on it.

I don't know; maybe that could happen. Obviously I'm neither a lawyer or a drafter, but if indeed that part of the wording in the sections that are proposed to be changed—the “shall prove” or “prove the fact”—is the major sticking point, then maybe the committee needs to look at changed wording; rather than that formulation, say “provide information” about the accused, or “provide information regarding the accused's criminal offence”, “provide information regarding whether the accused has been charged with another”, or that is “outstanding on”—softer language that has the same result, which is that it's going to be clear that you “shall provide” it, but it's just using different language.

It seems to me, and certainly this is my translation of what Mr. Woodburn and the CACP said, that this is definitely a major sticking point for both of them. I raise that as a potential solution from somebody who quite frankly doesn't have the background these folks have, but this might help. I don't know.

Mr. Michael Cooper: Okay. Thank you for that.

Certainly the intent of the bill was not to increase the evidentiary burden, but rather to ensure that the information that is always presented or should alway be presented is in fact presented.

Now, there had been some focus at the last committee meeting on item (iv) of paragraph 518(1)(c) regarding showing the circumstances of the alleged offence, particularly as they relate to the probability of conviction of the accused.

Mr. Muise, it was noted in Mr. Elliott's testimony that at least in the province of Alberta a bail kit as a matter of course includes information such as the nature of the offence, the strength of the evidence, the accused's criminal record, and so on. All of this information, then, is already going in.

Is that your experience, as someone with 40 years of law enforcement?

Mr. John Muise: With no doubt, concerning the synopsis and what happened with the case, it is.

For instance, let's say it was an 18-month investigation that involved Privacy Act interceptions, including interceptions of encrypted information. Those kinds of things are often part of the synopsis, particularly if it's a more serious case such as Mr. Woodburn talked about, to point out just how strong the case is.

In each and every case you're going to get the circumstances; that is without exception. Then certainly I agree with Mr. Woodburn that in more serious cases you're going to get that. Particularly as the possibility of somebody's being held in pretrial custody goes up, the evidentiary burden to some degree is heightened.

Yes, then, I would agree with that.

Mr. Michael Cooper: Right. As you pointed out, Mr. Muise, how do you have a bail hearing if you don't have the circumstances of the offence? Why is the person there? There has to be a context, a narrative.

Mr. John Muise: The bail hearing is not going to proceed if the justice doesn't know why the person is there.

Mr. Michael Cooper: Very good.

Now, Mr. Truax or Ms. Huntsman, you made reference to a couple of points. In a bail application hearing, who has the responsibility to decide whether someone is granted bail or not?

Ms. Rachel Huntsman: If the application actually goes to a hearing, it goes before a judge, at least in Newfoundland, and so the judge will make the decision as to whether the offender is detained or released.

Mr. Michael Cooper: That's right. It is the judge or justice of the peace who makes that decision.

Under the current law, is there anything that restricts a prosecutor from recommending the release of someone seeking bail? Is there anything in the Criminal Code that restricts them from doing that?

● (1650)

Ms. Rachel Huntsman: Is there anything that restricts the prosecutor from recommending release?

Mr. Michael Cooper: Right.

Ms. Rachel Huntsman: Well, the prosecutor has to consider whether or not the accused is a candidate for bail and whether or not a bail hearing should proceed.

Mr. Michael Cooper: That's exactly right, and if a prosecutor determines that this person should be released, the prosecutor could recommend that to a judge, isn't that right?

Ms. Rachel Huntsman: Yes, that's correct, and if that recommendation is being considered, I would expect that the prosecutor will, after consultation with the police and perhaps with defence counsel, look to see whether or not conditions can be put into place to ensure—

Mr. Michael Cooper: Right, thank you.

Ms. Rachel Huntsman: —the public safety.

Mr. Michael Cooper: And there is nothing under Bill S-217 that would prevent a prosecutor from making that recommendation, is there?

Ms. Rachel Huntsman: There is not directly, but the problem I see with this bill is that when there is a hearing—and I believe that consent applications would still fall within the section of the code—

Mr. Michael Cooper: I have to interrupt you. I don't know when the last time was that a prosecutor made a decision on a consent application. Do you?

Ms. Rachel Huntsman: I think they make the decision all the time on consent applications.

Mr. Michael Cooper: I can tell you that I've never gone to court on a consent order. It was the judge who had to sign off on the consent order. I've never heard of a consent order—

Ms. Rachel Huntsman: Yes, with respect, that's correct, but from my experience as a crown counsel, what happens is that you review the file, and if you believe that an accused is a candidate for release, you will consider whether there can be conditions put into place that will address the public safety. You may consult with the police, you may consult with the defence; you will then agree with conditions, and from my experience, you then advise the sitting judge that the crown and the defence have agreed to the accused's release, and you essentially put those conditions before the judge.

Yes, you're correct, then, that the judge has to sign off on it, but the conditions are usually crafted by the defence and the crown.

Mr. Michael Cooper: Well, that's right, but it's still the decision of the judge or justice of the peace, and I—

The Chair: I don't want to limit your thought. You're at eight minutes now, so could I suggest, so that you don't lose your train of thought, one question to wrap up, and then we'll come back after the round of questions?

Mr. Michael Cooper: Mr. Muise, is there anything in this bill that is new, other than making sure that what should be done is done?

Mr. John Muise: Other than the conversation about those words we talked about, these are all things that are done on a regular basis. The conversation about the words is just about the drafting. Otherwise, these are all things that are done on a daily basis.

Mr. Michael Cooper: I think it should be pointed out for the record, Mr. Chair, in response to Mr. Woodburn, who made reference to the tertiary section, that at paragraph 34 of the St-Cloud decision, citing—it was in reference to Madam Justice McLachlin—that the residual or tertiary ground is not a ground of last resort, but one that is separate and distinct, that was clarified by the Supreme Court.

The Chair: Thank you, Mr. Cooper.

We'll go to Ms. Khalid.

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

Thank you, ladies and gentlemen, for your testimony today.

I'd like to start with Mr. Denis, he being the AG for the area.

I'm sure you must have seen experience that makes you such a strong proponent of this bill.

Have studies been conducted that show that this is an ongoing problem, whereby people are released on bail and then go out and commit serious crimes? Do we have data to back that up, at all?

Mr. Jonathan Denis: I'm not aware of any such studies, no.

Ms. Iqra Khalid: Okay.

Can you remind me once again of the purpose—the spirit, the intent—of this bill? What is it trying to achieve?

Mr. Jonathan Denis: The spirit of the bill to me, what it is trying to achieve, is that we will not see a situation such as happened to Constable Wynn happen again. I submit to you respectfully that it is reasonably foreseeable that this can happen again.

I also am very concerned with the public's view of the administration of justice, if we do not act in this respect while we have the opportunity.

Ms. Iqra Khalid: Do you think that this legislation, if it moves forward and becomes law, is enough to prevent situations such as that, or is more needed?

● (1655)

Mr. Jonathan Denis: I think the justice system needs to be continually evaluated and continually improved from time to time, and I think this is definitely a step in the right direction.

Ms. Iqra Khalid: Mr. Woodburn, do you have a comment on that?

Mr. Rick Woodburn: On which part?

Ms. Iqra Khalid: On—

Mr. Rick Woodburn: I've read studies. I've been in court when individuals who, under domestic violence, have threatened and beaten their partner repeatedly and have said they were going to be killed. We ran a full bail hearing, putting all the information that's mandated here before the court. They were released, and they broke into the house that night and killed their partner and the baby. That happens. It's something we think about all the time. It's the same information. We put it before the court.

With regard to this—

Ms. Iqra Khalid: Would other measures be needed?

Mr. Rick Woodburn: —I don't want to say catastrophic change, but fairly big change, and a change whose ramifications I'm not sure everybody understands, the ramifications of putting these words....

They're not just words; in law they mean something. We have cases that go to the Supreme Court of Canada on placement of a comma. Changing from our "may" to "shall"—what we have to do —is a big leap. It's rather like when you introduce a mongoose to a strange area: you never know what it's going to do, but it usually takes over. We have the same problem here. I don't think anybody around this table or anybody who testifies can really tell us what's going to happen, but I can tell you it's not going to be good.

Ms. Iqra Khalid: Mr. Truax, how would the implementation of this legislation affect police process going forward with respect to providing evidence or to the way they conduct themselves in preparation for bail?

Supt David Truax: Bail hearing procedures allow for hearsay evidence. That allows, most commonly, a place for one police officer to provide hearsay evidence while giving testimony at that bail hearing. Some of the language in the bill obviously proves the fact that all of those pieces could obviously require the prosecutor to call each and every individual officer to prove each and every individual fact. That obviously would cause strain on policing resources, requiring more police witnesses, more documentation, certified documentation, affidavits, and the like. Obviously the police would be supporting the prosecutor for that bail hearing.

Ms. Iqra Khalid: Okay.

Ms. Huntsman touched on the point about release on consent, and we weren't really sure how this bill would affect consent hearings.

Mr. Woodburn, could you provide clarification on that point?

Mr. Rick Woodburn: I'm sorry, I'm having trouble hearing you. I don't know whether it's the room or some background, but could you repeat?

Ms. Iqra Khalid: Put your earphones on. That will help.

Mr. Rick Woodburn: I thought that was for listening to my iPad or something.

Could you repeat the question while I'm trying to untangle this?

Ms. Iqra Khalid: The bells are ringing.

Mr. Ted Falk (Provencher, CPC): Do we see a vote? Oh, I'm sorry.

In regard to the bells and the lights requesting our presence for a vote, I think we have thirty minutes. We're here in Centre Block, and I think we're in the middle of a very important study. Can I ask for unanimous consent to continue until five minutes before the vote?

The Chair: Yes.

Is everybody good with that suggestion?

Some hon. members: Agreed.

The Chair: It is agreed.

Thank you, Mr. Falk. I didn't even notice. I was fascinated by the witness's testimony.

Go ahead, please.

Ms. Iqra Khalid: Thank you. I will repeat my question.

How would this bill affect release on consent?

Mr. Rick Woodburn: It wouldn't, because we don't present any facts on release on consent. On average, we get somewhere between 10 and 20 people in bail court every day, and then some are carried over, so we have a large number of people. We and the defence lawyers go through the files. We'll consent to the portions that seem appropriate, given all the facts; we write it out, and then one after another they're brought up before the justice, and we will release the individuals. It's almost as a matter of course to senior lawyers to make a decision and put it up there.

That's how it operates. This is not to say that the justice or judge does not have a say, but they don't even hear the circumstances. They don't hear anything—nothing about the individual at all. We've made that decision beforehand.

The Chair: Thank you very much.

Mr. MacGregor.

Mr. Alistair MacGregor (Cowichan—Malahat—Langford, NDP): I want to thank every one of you for your testimony. I think your testimony today has illustrated why the committee process is so important. I think many of us at second reading of this bill really were inspired by the intent, but today's testimony has, I think, given some of us pause.

Mr. Denis, the testimony from Mr. Woodburn, who is an individual who represents 7,500 crown counsel across Canada who deal with this on a day-to day basis, has been pretty damning of the content of the bill. I want to hear your opinion. If this committee, and I don't want to prejudge the process, somehow arrives at a point at which this bill is not going to make it through, what could we do in the federal government to ensure, either through resources or policies...? Is there an alternative route that you could see to prevent something like this happening?

● (1700)

Mr. Jonathan Denis: I believe this is largely an all-or-nothing approach. When you talk about what else could be done, I can tell you that in my home province of Alberta I've seen a significant backlog of criminal and civil matters. Why? It's because the province's explosive growth rate over the last 10 to 15 years has resulted in straining our judicial system.

That could be remedied by appointing more justices. Fortunately, I have to commend this government, because this government has seen fit to fill some of these vacancies. I'm firmly of the opinion, however, that it is just a matter of time, if this bill is not passed, before you have another situation similar to the one we saw in the tragic events of January 17, 2015.

If I may, I want to correct something earlier. One of the panellists indicated that it was a police officer who had handled this particular bail hearing. Recently, Chief Justice Neil Wittmann, the chief justice of the Alberta Court of Queen's Bench, issued a lengthy and very descript decision about that having been actually not appropriate. This was a result of the bail reform that we began shortly after this unfortunate incident.

Mr. Alistair MacGregor: Mr. Woodburn, from the position you have held and all of the experience you bring to the testimony today, do you think, when we look at Bill S-217—and it's not a very long read—there are any ways we could amend it to make it better, or are you suggesting that we just not proceed with it altogether?

Mr. Rick Woodburn: Not being a legislative drafter, I can't see my way through fixing it per se. I like the idea that the language can change, but once again, if you change a comma you start running into problems.

The bail provisions as they stand work the best way they can. Changing them is not going to prevent another tragedy. Another tragedy is going to happen.

Mr. Alistair MacGregor: As you said, it was human error.

I'll follow up with the same question. From your position and with the experience you have, what other things do you think we in the federal government and Parliament can do, in terms of resources and policy decisions, to make sure something like this doesn't happen?

Mr. Rick Woodburn: Are you giving me a blank cheque, or do I have to be—?

Mr. Alistair MacGregor: Well, just give a concise....

Mr. Rick Woodburn: I will say—and this is something that was unanimous, really, around our table and among other people we have talked to—that CPIC is an issue for us. Having a national database for records is really what we should be working on here. We need to get a good, solid database.

Our criminals are very transient now. It used to be that they liked to stick to their hometown. They are travelling across the country, they know they're mobile, and they're committing various crimes in various areas. The problem is that CPIC is not picking that up.

In Nova Scotia, if I call up my provincial bail and look at CPIC, they have three things on it—one from Alberta, one from B.C., and....but I know there are more out there. As a crown with experience, I end up having to call each one of those jurisdictions. Even in Ontario itself, Toronto has different records from even the outside area.

If they were going to do something and wanted to make an impact upon our ability to ensure that people are remanded properly—we're not wanting to deny bail to everybody—CPIC needs to be fixed, or there has to be a national database of criminal records so that I can put my finger on one and print the whole thing up and know exactly what someone has done across the country, not just a couple of things here and there.

Mr. Alistair MacGregor: Detective Superintendent Truax, in part of your testimony you were talking about how the criminal information system is being updated with a goal of March 2018. Do you feel that when we reach that stage we're just going to—?

I would like to hear more commentary on what the goals of it are, what it will allow us to do, and so on.

● (1705)

Supt David Truax: The RCMP advised us, as part of our preparation for our testimony today, that the automation of the submission of fingerprints in order to update criminal record information will be completed, they anticipate, by March 2018. That will certainly expedite the updating of criminal records far more quickly than was the case under the manual and much more labour-intensive process.

There are challenges, as indicated by Mr. Woodburn, in relation to the mobility of criminals across the country—all of those pieces. That's important; it needs to be current and up to date for the police and the involved prosecutors at the bail process to have the most up-to-date, real-time information.

The challenge, however, is that all of that criminal record information is based on fingerprints. If someone misses their appearance for submitting fingerprints, that information may never be entered into the criminal record for consideration by the police, the prosecutor, or the court.

The Chair: Thank you very much.

Mr. Bittle.

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

Before I start asking questions, I have to say that I'm significantly disappointed, because I've learned that the motion we're voting on is a Conservative delay motion that is going to limit our ability and limit our time here today. While there are many accusations about not wanting to work, it's the Conservatives today who, even on a Conservative matter, are asking the House to adjourn early and stop the deliberations today.

I do apologize, and I will—

An hon. member: [*Inaudible—Editor*]

The Chair: Mr. Falk.

Mr. Ted Falk: Now I'd like to make a point of order. The delay will cost this committee eight minutes.

You Liberals cost the committee 30 minutes at the beginning of the committee.

Mr. Chris Bittle: The motion is “that the House do now adjourn”. That's disappointing, but I'll start my questions.

Mr. Woodburn, thank you for bringing this to our attention on the words “to prove”, because it hadn't been brought forward. We've talked about adding “the fact” into this section, which seemed to be problematic. Could it be salvaged if you changed the language from “shall prove” to “shall show”? In your mind, would that have any effect, or are we going down the road on that?

Mr. Rick Woodburn: Down the rabbit hole, as they would say?

Mr. Chris Bittle: Yes.

Mr. Rick Woodburn: Every time you do something like that, I have to put it back in the mix, churn it around a while, and see what happens. It's probably not a question that I could answer right away. It would be different, but then again, you're changing established wording in the code, so once again I'll go back to my “changing a comma could change a lot” statement.

We're having more problems with “shall” and the combination with “prove” or “shall show.” When we're mandated to do something and we don't do it, that's when people are set free, and that's more likely to happen than it is that we're going to forget to put up the bail report to the justice.

Mr. Chris Bittle: Your opinion is that this bill makes Canadians less safe than more safe.

Mr. Rick Woodburn: I probably would have to say that in my view that would be the case: that it actually does not help. Now, I'm exponentially glad that the conversation has been had, and that the bill was brought forward, because we're having a conversation. It's dramatically changed things in Alberta in how things are done and has made us all view the bail provisions in a different way.

However, this bill, as it's written right now, is going to cause delay, in our view. Also, it's a higher standard for us at the bail hearing, and we may have issues with regard to proof. “Dangerous” is more your word than my word.

Mr. Chris Bittle: Detective Superintendent Truax, in your opinion, does this bill have the effect of making Canadians more safe?

Supt David Truax: Well, obviously the bill is here for review in order to come to some conclusion and consider all of those pieces. Also obviously, the law needs to be reviewed in a timely manner. It has to evolve with Canadian society. There are all of those pieces.

There are challenges in the bill. Some of the wording in the bill we believe may be problematic and may have an impact on police resources in relation to the bail hearing process. That causes a challenge, obviously, for Canadian law enforcement agencies.

Mr. Chris Bittle: Thank you.

Back to you, Mr. Woodburn, on what we heard from the Canadian criminal defence lawyers association in terms of clause 2 and paragraph 518(1)(c)(iv). It states:

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

The concern of the Canadian criminal defence lawyers was that this clause essentially creates a trial and could dramatically increase the amount of time spent on a bail hearing. Would you concur with that assessment?

● (1710)

Mr. Rick Woodburn: They'd be right for sure. That's part of the issue we're having, which is that we're going to have mini-trials and that it's just going to make the process longer or more arduous by once again setting the bar a little higher. What happens if we don't have all the evidence we need? We normally don't have it at a bail hearing. Remember: this is shortly after it happens.

As for Stinchcombe, that's fine, but it takes months to get all our evidence in. If we don't have everything we need, if we run the bail hearing, and if we have to prove it to a higher standard and we don't, that person is released.

Mr. Chris Bittle: Thank you so much.

Mr. Denis, you've buttressed your arguments with the statement that you've been practising law for 15 years, but on your firm's website, I see that you practice in terms of "corporate and commercial law and public affairs consulting". Is that the nature of your practice?

Mr. Jonathan Denis: Currently, yes. I was called to the bar on November 23, 2001.

Mr. Chris Bittle: Yes.

I'm a civil litigator, but, like me, you are far removed from the daily goings-on of the criminal justice system.

Mr. Jonathan Denis: I would respectfully submit that's not the case. One of my partners is a criminal lawyer—

Mr. Chris Bittle: I meant you. Your partner isn't here to testify.

Mr. Jonathan Denis: I respectfully differ with your comment.

Mr. Chris Bittle: Well no, I'm asking you a direct question. You are not involved in the day-to-day workings of the criminal justice system, and you have no experience in that on a day-to-day basis.

Mr. Jonathan Denis: I'm sorry, but that is incorrect. I was the attorney general of Alberta from 2012 to 2015.

Mr. Chris Bittle: Again, the day-to-day workings.... You were a politician. You were a political minister. That's fine, and I appreciate that from a policy standpoint, but on the ground, you are not doing bail hearings, sir.

Mr. Jonathan Denis: I have done bail hearings in the past. It's not something that is currently part of my practice, but I demur upon your past comments, with respect.

Mr. Chris Bittle: Well, that being said, we've heard now from the Canadian criminal defence lawyers, the prosecutors, and the chiefs of police, who disagree with your assessment of this bill. Do you wish to change your opinion of this? Or is your opinion stronger and you have better experience than those groups that have testified?

Mr. Jonathan Denis: I believe I've sufficiently articulated my opinion to this committee and to you.

Mr. Chris Bittle: Well, you've articulated it. I've asked you a follow-up question. I don't know why you're refusing to answer that question.

Mr. Jonathan Denis: I believe I have answered your question.

Mr. Chris Bittle: No. The question was, do you wish to change your opinion?

Mr. Jonathan Denis: Absolutely not.

Mr. Chris Bittle: Is the answer no?

Mr. Jonathan Denis: No.

Mr. Chris Bittle: So your opinion is stronger than that of chiefs of police, the prosecutors, and the defence bar...?

Mr. Jonathan Denis: That is my opinion.

Mr. Chris Bittle: Wow. That's very impressive, Mr. Denis. You should put that onto your website. Back to—

Mr. Ted Falk: Mr. Chair, that's badgering the witness here.

The Chair: Fortunately, Mr. Denis has a lot of forbearance and is able as a former attorney general to deal with Mr. Bittle's questions, I'm sure, but....

Mr. Bittle, you have about one minute left.

Mr. Chris Bittle: I'll move on. Thank you so much.

Mr. Muise, you testified in your original statement that delay wasn't going to occur. You mentioned me and Mr. Boissonnault and our concerns about delay. After hearing the evidence from others, you've now said, well, maybe that can happen. That seems to be a significant shift in your testimony at the start, in hearing the experts on that file. Do you now agree it's a distinct possibility that these amendments could cause significant delay in the justice system?

Mr. John Muise: No, that's not what I would say.

What I would say is about some of the language, which is really what Mr. Woodburn and the CACP spoke about: "to prove the fact". If that is problematic language, what I would suggest is, as Mr. Denis suggested, don't take an all-or-nothing approach.

Mr. Woodburn is right: there are a lot mongooses out there. Clarity will ensure that it doesn't happen again. Don't take an all-or-nothing approach. Fix the language. That's what the committee is for. That's what you're here for—

Mr. Chris Bittle: I don't have much time.

Mr. Woodburn testified that making changes and messing around in the bail system could have significant consequences. Is that something you're willing to risk?

Mr. John Muise: I've testified on a lot of legislation. Every time legislation is introduced, language is changed. Drafters change language. It's done every day. I think that if there is a will to get this right, there are smart people around this table and there are people who you can go to, people you can go to in the Department of Justice —drafters.

You're a civil litigator. You just told us that a minute ago. Rather than finding a million ways why we can't do something, why don't we work on trying to do something right?

No, I don't accept that if you sit down and try to work around a few words, "Oh my God, you might not get it right...". I don't accept that. I think that is just saying, "You know what, forget it, and throw out the baby with the bathwater, because this is no good." No, I don't accept that at all, actually. I think what you need to do is put your heads down, get to work, and do what you're supposed to do, which is to pass good legislation. I think we can make good legislation out of that if.... I accept that there might be some issue with the wording. I heard it loud and clear on both sides, so I'm saying, "Work on it."

Thank you.

● (1715)

The Chair: We're about 12 minutes away from the vote. What I would suggest is on that either side, for all three parties, if anybody has a one-minute short question...? I know that Mr. Fraser has one and Mr. Falk has one.

Mr. Falk, you go first.

Mr. Fraser, you can go second.

Mr. Ted Falk: Thank you, Mr. Chairman.

I want to thank all the witnesses. I appreciate hearing all of your different perspectives.

Mr. Woodburn, I'm going to ask you questions. You said that with the Wynn case in particular it was human error. What was the human error? Let's go rapidly.

Mr. Rick Woodburn: This is rapid: failing to put the record before the court.

Mr. Ted Falk: But it wasn't required. The legislation said "may".

Mr. Rick Woodburn: It wouldn't matter if it was required or not. Somebody forgot to put the record before the court.

Mr. Ted Falk: You said there was an error made, even though it wasn't a requirement of the law to produce that. It was a "may". You stated in part of your testimony that typically all this is done anyway. If it's done anyway, what's the problem with saying "Let's do it"?

Mr. Rick Woodburn: As I already pointed out, with regard to each one of these new sections, which is what they are, really, when you put "shall" in there, we're being mandated to do something that we've never before had to do. While we "may"—

Mr. Ted Falk: But you said you're doing it anyway.

Mr. Rick Woodburn: —put the information before the court, and we "may" put in the criminal record...in the past, we didn't have to prove it. Now we have to prove it. That takes us into a different ball game altogether, and that's important.

Mr. Ted Falk: You've put quite a bit of emphasis on the word "prove", that it's a problematic word for you. Can you suggest an alternative?

Mr. Rick Woodburn: No, I can't. I couldn't sit here and suggest another alternative word for that.

Mr. Ted Falk: It appears to be the most problematic thing for you.

Mr. Rick Woodburn: No, the most problematic part is "shall". The word "prove" is already in the code.

The most problematic part is when you take "shall" and put it with "prove".

Mr. Ted Falk: But you're saying you're doing it anyway.

The Chair: I have to go to Mr. Fraser. I don't want anyone to miss the vote.

Mr. Fraser.

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

I'll follow up with Mr. Woodburn as well.

If I accept Mr. Denis' comment, and I do, that mistakes happen, and that mistakes will happen at some point in the future again, one of my remaining concerns is that if the court requires you to prove—or show, or whatever language we use—some evidence that there's a likelihood of reoffending, the mistake is made, and the judge does not feel you satisfied that higher standard of proof, is it the option of the judge to let the potentially guilty person go?

Mr. Rick Woodburn: Absolutely. When you raise the standard of proof on all of these sections, which is really what you're asking to do with "shall" prove this, it sets bail hearings on a higher standard, not a lower standard. It makes it harder, not easier, for us to get bail. When you remove the crown's discretion to decide how to conduct ourselves in court, that's also a problem.

Mr. Sean Fraser: So essentially this removes the discretion of the crown or, depending on your province, the officer running the bail hearing, in actually making submissions based on hearsay evidence to the court: "You know, you should hang on to this person. You should not release him." By making it mandatory, if the same mistake is made, the person is more likely to go free?

Mr. Rick Woodburn: That's kind of a quagmire of questions.

Mr. Sean Fraser: Sure.

Mr. Rick Woodburn: There's a lot there. What I can say is that as it stands right now, we "may" prove all this. But when you put "shall" prove, it raises the standard. And if we don't prove, which we'll now be mandated to do, they're more likely to be released than not. If we don't properly prove the record, if we only get some of the record instead of all of it, if they don't properly prove the rest of it, then we're going to have problems.

I see that the chair is cutting me off, which is fine.

The Chair: It's only because of the vote.

You guys were fascinating. I want to thank you so much. Would you be willing to answer written questions from the panel? Some members have indicated that they still have questions. I could ask that the questions be sent to the clerk. The clerk would send them to you and then circulate your answers to all of the members.

Would that be okay with all of you? Okay.

Thank you so much for your testimony.

The meeting is adjourned.

Please go and vote, everyone. Don't miss the vote.