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Chair

Mr. Bernard Patry

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• (1530)

[Translation]

The Chair (Mr. Bernard Patry (Pierrefonds—Dollard, Lib.)): Good afternoon, everyone. Welcome to this meeting of the Legislative Committee on Bill C-35.

[English]

It's an act to amend the Criminal Code in regard to reverse onus in bail hearings for firearm-related offences. This is meeting number seven.

Our witness today is from the Canadian Council of Criminal Defence Lawyers, Mr. William M. Trudell, the chair.

Welcome, Mr. Trudell. The floor is yours for your presentation, and after that we will have questions and answers in a seven-minute round.

Go ahead, please.

Mr. William Trudell (Chair, Canadian Council of Criminal Defence Lawyers): Mr. Chair, I thank you very much for inviting the Canadian Council to be present. I'm especially grateful because I understand that you may not hear too many witnesses on this bill.

As probably all of you know now, the Canadian Council is a national council with representation throughout the country. We offer a national voice not on behalf of defence counsel so much as the administration of justice in relation to the preservation of due process as it affects accused persons. We're very grateful to be given the opportunity to come here.

Unfortunately, we do not support the bill. I know from what I've read that it may be a minority situation in relation to what's happening here, but let me give you some ideas as to why we're concerned about this bill.

It is a principle issue, and that is based upon the fact that there is a constitutional right to release, and the shifting of the onus has to be done upon a principle basis. What we see here is a lack of statistical information that would support the need for this bill. In other words, are there statistics that would show that there are firearm offences being committed by people out on bail, or people on bail on firearm offences committing other offences? We don't know that this statistical information is available. From my reading of previous meetings, it doesn't seem like it is. So it's not, in my respectful submission, supported by evidence and consultation that the bill is indeed needed.

What we would ask you to consider is, when changes are made to criminal justice, to the legislation, that you look at the impact of the entire system.

Yesterday I was in Quebec City at the national Steering Committee on Justice Efficiencies and Access to the Justice System. As you know, that committee has now met for a number of years, with representatives who are totally apolitical, representatives of first ministers, chief justices, deputy ministers, and we were talking about pilot projects taking place across the country on the issue of bail. We are all cognizant of an incredible remand population in this country, and I thought it was bit ironic that I was coming here today to testify on a new bill that talks about a reverse onus.

I could say to you that it's not going to make any difference, and so why not pass it? Because I want to say to you that it's our experience on the ground that people charged with gun-related offences are not released.

The bill provisions, as elucidated now in Hall with a tertiary ground of public confidence in the administration of justice, are already there. It is extremely difficult for someone charged with this type of offence to be released on bail.

When the tertiary ground was introduced a number of years ago, there was probably a lot of complaining about how this shifted and almost made it impossible and much more difficult for persons to get out, because the tertiary ground has to be interpreted in an enlightened way. But I can tell you, and I believe I speak for the experience right across the country, that if you're charged with a firearm-related offence, it is going to be extremely difficult for you to be released on bail.

The primary ground is whether a person will show up. The secondary ground is strict: in the public interest, is there a substantial likelihood that a person may commit another offence? And then the tertiary ground addresses the public confidence in the administration of justice. Therefore, we do not feel this bill adds anything.

So one might say, well, why are you here? If it's not going to make much difference, then let's go home. The point is that there's a principle here. The principle is that there's a presumption of innocence and you have a constitutional right to bail, and that's an important principle that should be looked at.

•(1535)

I would ask you to consider this. When changes are made to legislation, we have to look at the entire system and how it works. For instance, the national Steering Committee on Justice Efficiencies did a report on early case consideration. We consulted with the chiefs of police, and they had input into this. What we all came up with is that we're not doing a good job at the front end, so when a case gets to the arrest point and a bail hearing...

You know hearsay evidence is admissible. These cases have not been properly screened. Hearsay evidence is allowed at the bail hearing, you're ending up really with a kind of mini-trial, and at the end of the day, when you move this case along, you're going to find that it's not optically what it appeared to be at the front end.

If we're going to make bail much more restrictive, we have to look at putting energy into making sure cases are properly screened when they come into the system. As you know, there are only a couple of provinces in the country that have pre-charge screening involving crown counsel. That's left to the police in many jurisdictions, including Ontario. They lay the charges and the crown attorneys get the charges after they've come into the system.

You've given me some time here, and I might be battered and bruised by the time I leave, but I want to say it anyway.

I read some of the background paper from the parliamentary library concerning comments made in support of this legislation. It was of very great concern to me because Premier McGuinty, from my province, and Mayor David Miller were quoted as supporting this bill. Mayor Miller said the legislative amendments in the bill are very important and he hopes the legislation will encourage witnesses of gun crimes to talk to police, knowing that criminals will remain behind bars and not be out on bail. Surely that's not why we change legislation. There's still a presumption of innocence.

Premier McGuinty also said he supports this bill because it will cut down on gun crime. Those are, with the greatest respect, political statements; they arise out of a terrible shooting that took place on Boxing Day in Toronto. Yet the reaction to this bill has to be on a principled basis.

I know people have talked about Hall. I know you've been told that this bill follows the Hall decision, but I also respectfully submit that in this case this reverse onus may not stand up to constitutional arguments. When you get to deciding whether or not it's an infringement, you have to go to clause 1; the court is going to want to know that there is evidence, that this can be backed up, and there is no evidence. Without the statistical analysis showing there is a problem here, I think it may have problems later on.

Lastly, in Hall there are four grounds, tertiary grounds, that are taken into consideration in deciding whether the public confidence in the administration of justice is weighed properly. This bill adds two grounds. Those two grounds are in clause 5, which says "the apparent strength of the prosecution's case"<http://www.sushi4all.com/sushi4allhome.html> that's not new—"the gravity of the offence"—that's not new—"the circumstances surrounding the commission of the offence"—that's not new. But added is "including whether a firearm was used"—that's new—and then "the fact that the accused is liable, on conviction, for a potentially lengthy term of

imprisonment"—that's not new—"or, in the case of an offence that involves, or whose subject-matter is, a firearm, a minimum punishment of imprisonment for a term of three years or more."

So what this legislation does is add two more factors the court can take into consideration as tertiary grounds. In our respectful submission, that covers it. If that seems to be a problem, well, you're making it more difficult for persons to get out in relation to these firearm offences, so you do not need the reverse onus.

•(1540)

Those are my submissions.

Thank you.

The Chair: *Merci beaucoup.* Thank you very much, Monsieur Trudell.

Now we'll start with Mr. Bagnell, please, for a seven-minute round.

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

I think I can assure you that at least the opposition members—and I think the government members—agree with you 100%. We're pretty upset that there were no statistics in this area, when we had the stats people here. A bill should be based on statistics and the factual background, so we're in agreement on that.

I'm curious. I think virtually all of the people who have come before us, if not all, have basically been in favour of this bill, including lawyers. Some of them mentioned the same points as you did, that it won't make a lot of difference, but if we're making a principled decision, we're making a principled decision, because a lot of them don't get out anyway.

Is there any reason why virtually everyone else is supporting this bill and your organization is not?

Mr. William Trudell: We're here to represent the fundamental principles of justice. Due process—I guess you could use that phrase of the United States. The fact that it may not make much difference practically on the ground, which may be the case, doesn't mean that it's a principled decision to make. In other words, it is reactive, in my respectful submission, to situational events. If you start with the premise that there's a constitutional right to bail, and you move from that premise to the presumption of innocence that overrides everything, then before you change that, before you put the onus on an accused person, there has to be a principled reason for it.

So we're not just here to change legislation, with respect, for practical reasons. There's a fundamental principle that has to be the rock that you build on.

Hon. Larry Bagnell: It's not that the reverse onus is not used on a number of occasions already; it's the principled use of it.

Mr. William Trudell: It actually is, so let me talk about what those are.

We're talking about firearm. It's not knives; it's specifically firearms.

Let's take drug cases. There's a reverse onus in certain serious drug cases. Well, there was consultation, and the problem of drugs is an international problem, and Hall reflects that there are certain cases in which the bail provisions are not enough to deal with what is perceived to be a bigger issue.

Murder—a more serious offence, I can't think of. Terrorism offences are international. So what we're talking about is that where there is a reverse onus, there have sometimes been international—or certainly national—reasons for it. The Supreme Court of Canada doesn't say reverse onus is okay. They look at the specific reasons why, and specific offences.

So what I say to you is that we're not trying to be obstructionist; we're just asking why this is happening. If you want to make it more difficult for somebody to get out—and I'm saying you don't have to—then you can add those two aspects of it. If you've been involved in an offence with a gun, then you have a bigger problem, because the public confidence in the administration of justice is going to be strained. But you shift the onus, and that's fundamentally very difficult.

What happens when you shift the onus? On the practical side, that's going to make bail hearings more difficult. There's no question about it. They're going to be longer. There are going to be people who are without jobs, without families, single parents, who are unable to meet the onus. There's no question about it.

What is the onus? The onus is covered by getting a package that controls the risk. How do you do that? Get somebody from the community to support the person—an employer, a family member—and you're going to have to put up a significant recognizance. So who are the people who are not going to be able to meet this onus?

In our respectful submission, there are certain cases in which the legislature has the reverse onus, but those cases are specific, and they are sanctioned by the courts. We respectfully submit that there's not the same evidence on this bill.

• (1545)

Hon. Larry Bagnell: Just let me get my last question in here.

The examples you gave in which reverse onus is used are serious, and a lot of people consider these offences serious. I'm sure someone in their questioning is going to bring up that there are a number of offences that occur when people are on bail. These offences that are committed while people are on bail are obviously serious offences, the reason for which reverse onus was put on the other ones, so why would we not put this in to further protect the citizenry?

Mr. William Trudell: First of all, I think you want to be satisfied as parliamentarians, with the greatest respect, that there's a need. There's anecdotal evidence all over the place. I can give you great anecdotes that some other people may not agree with. But where's the hard evidence that there's a problem with the existing bill situation with people charged with firearms offences? When you say we're going to keep these people in and we're going to protect the public, you've jumped a long way, because you may keep people in who, at the end of the day, are proven to be innocent or indeed innocent of something. What you have when the case comes into the system is a picture, but by the time the trial comes or by the time the preliminary comes, that picture always changes significantly.

I'm not saying that guns may not be a problem in this country. Quite frankly, I'm from Toronto and I may have a different view of guns than someone from Saskatchewan or New Brunswick on our council. The bottom line is that the Criminal Code is there. The tertiary ground covers exactly what you are talking about, protecting the public and adding public confidence in the administration of justice. It's already in the Criminal Code.

That's why I say to you—forget about reverse onus—you already have to deal with the tertiary ground. Is what happens practically on the ground that justices start with the first ground, then go to the second ground, and then are supposed to go to the third ground? No. What happens is that you go to the third ground, the tertiary ground, the public. When an offence takes place in a milieu, for instance, like Toronto after Boxing Day, nobody's going to get out, because the justices are going to reflect the environment and the public's concern. When there are threats of terrorism, we're going to react to that.

But our job here is to say, wait a minute, we have to hang on to these basic principles, and then ask, are we shocking the basic principles to cover situational events? If you had evidence before you that people were abusing the bail system, especially people charged with firearms offences, you wouldn't want to hear any witnesses. It would be obvious.

With great respect—Sorry.

[*Translation*]

The Chair: Thank you.

Mr. Ménard.

Mr. Réal Ménard (Hochelaga, BQ): Good afternoon, Mr. Trudell. I am glad to see you again. With the Canadian Police Association, you are, no doubt, among our most regular witnesses. However, you rarely share the same opinion about a bill. But that is another matter.

This bill deals with subsections 515(6) and 515(10) of the Criminal Code. It seeks to modify the principle of release on bail before the hearing.

You have already touched on the point that interests me. First, you are right in saying that the government tabled the bill before we could obtain any reliable and conclusive statistics. Our first witness was the Canadian Centre for Justice Statistics. As was the case with Bill C-9 on suspended sentences and Bill C-10, we feel that the government is motivated by ideological factors that are not supported by any reliable statistics.

I think that you have much to contribute to the committee. You represent people who appear before justices of the peace and before courts on a daily basis, people who have committed offences, some of which are firearms-related.

Several witnesses told us that whenever firearms are involved, judges seldom grant bail, and as this was already well established in practice, it did not need to be enshrined in legislation.

Moreover, subsection 515(10) gives the judge an option to deny bail, if he thinks that evidence will be destroyed or that the individual poses a threat to society or that he will not show up at his hearing, despite the individual's constitutional right to bail.

Please tell us about how defence lawyers, whom you represent, approach release before the hearing when a client applies for bail in a firearms-related offence?

• (1550)

[English]

Mr. William Trudell: It's my opinion, based upon research we have from canvassing defence counsel across the country, that people charged with firearms offences, unless they're accidental discharges in northern Saskatchewan, do not get released on bail. If they get released on bail, the bail restrictions are so severe that it amounts to house arrest. Actually, house arrest is the package that defence counsel proposes in almost every case where they are representing someone. On the package that a defence counsel has to present now with a gun charge or an offence that has guns associated with it, you have to propose house arrest or your client will not be released.

In Toronto, and I think in Vancouver, the government has guns and gangs prosecutors, and a lot of resources are put into the prosecution of these cases. I don't know where the problem is. I have not seen evidence, because I can't get it for you. No defence counsel is going to say—I respectfully submit that the crowns would tell you that people just don't get out.

It's an enormous task to represent someone on bail. I think what's happening a lot, Mr. Ménard, is that people don't even contest bail. They see a detention order, and there is pressure to move the case on because they're not going to get out.

I don't know whether that has answered your question. If you have a case where someone has a gun, the only way you're going to succeed is if you have house arrest and you are able to show that the Crown's case is not as strong as it optically is. Therefore you end up with a mini-trial at a bail hearing, which costs money and time. That flies in the face of all kinds of work going on in this country by people of all political stripes to try to figure out a better way to manage bail hearings.

We do such a poor job of managing each criminal justice case. We find out after it comes off the assembly line that what we thought was going to be a Ford is really a Pontiac. It's a job for the police, the crowns, and the defence to make sure they look at things at the front end. Rarely do you get a case at the bail stage that's ready to go to trial.

[Translation]

Mr. Réal Ménard: You are right. You have clearly shown that the government is in error because it does not base its public policies on reasoning supported by statistics. Fortunately, the Bloc Québécois is keeping an eye on this. I think the public will know this.

Mr. Chairman, the witnesses also told us, especially the Canadian Centre for Justice Statistics, that contrary to common opinion, and what one might think, we are in a period in which firearms-related offences are on the decrease. Moreover, I have no doubt that during the second round, my colleague Serge Ménard will speak about the

inconsistency of tabling a bill like this one while abolishing the public firearms registry. I will let him put that question.

Have you any information about the decrease in firearms-related offences?

[English]

Mr. William Trudell: If that's statistically what the case is, let me say that if we come here and the Bloc happens to agree with our position, we're happy. But we are apolitical, and we're talking about fundamental things.

Quite frankly, I don't have the evidence that firearm offences are going down, because what we are reacting to is situational—major explosions in Toronto and Vancouver that seem to appeal to certain aspects of trying to get tougher on crime. But I think the overall crime rate is going down.

• (1555)

The Chair: Thank you, Mr. Trudell.

Mr. Comartin, please.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Statistically over the last four years and even longer than that, the use of the long guns in crime has actually dropped precipitously. The use of handguns and illegal guns has gone up marginally, and it may have peaked at around 2005. We haven't seen the 2006 figures yet, but the suggestion seems to be that it probably peaked at 2005.

Let me ask you this. There is a general consensus. Even Professor Doob, who is so far probably the strongest witness other than you to oppose this legislation, was clear that it's probably not going to make any difference at this period in time. Those people who are faced with the charge of using a gun in a crime are not likely to get out and simply won't get out.

What I want to ask you is this. If we incorporate this and make the assumption that it's not going to make any difference or hardly any difference at all, down the road, if crime rates continue to drop, gun crimes continue to drop, and gun crimes with handguns and illegal guns start to drop, what do you see happening at that point with the judiciary? Will they continue to keep them in, even if we only have one murder a year with a gun? Will the practice stay? Will they become more willing to entertain arguments that will allow the person out on bail pending the trial?

Mr. William Trudell: As we move forward, after the situational events that we're all reacting to recede a little, I think the constitutional challenge to this section takes on more of a possibility of success. As we move forward, I'm not sure what judges will do, but we will have eroded a basic principle of the right to bail and, in some respects, the presumption of innocence. We may never be able to go back.

But in two years, three years, four years, or five years, Mr. Comartin, there's one thing that's probably going to still be in the Criminal Code, and that's the tertiary ground. It is the public confidence in the administration of justice. You can't ignore it anymore. It's there.

I don't see significant changes in what judges will do with this legislation. I don't think it's going to survive that long.

Did I answer that or not?

Mr. Joe Comartin: You only answered on the charter side, in terms of how the initial trial judge and the appeal courts will handle it. In terms of the practicality on a daily basis of those charges coming up for bail, will the judges eventually become more lenient in allowing for bail?

Mr. William Trudell: No, I don't think so. Do you know why? Despite the work of the national steering committee and everybody being in agreement, including chiefs, we have to do a better job of making sure there's not a lot of junk coming into the system and there's screening.

You will have bail hearings with hearsay evidence. You will have to deal with public confidence in the administration of justice. People who will be charged with these types of offences, and who probably don't have jobs and families, will not have the ability to put together a package to establish that they're candidates for bail.

Mr. Joe Comartin: That's all. Thank you.

The Chair: We'll go to Mr. Thompson, who will share his time with Mr. Hanger, or it's the opposite. It's up to you.

Mr. Hanger.

Mr. Art Hanger (Calgary Northeast, CPC): Mr. Trudell, thank you for appearing again. It's always fine to have you in front of our committee.

Mr. William Trudell: I write these things down when you say them.

Mr. Art Hanger: Please don't read between the lines. I'm serious.

In any event, given the fact that there has been evidence not only before this committee but before other committees as well that deals with firearms, would you not agree that we're really talking about a small group of people who are involved in firearms activity?

•(1600)

Mr. William Trudell: It probably is, and that small group of people aren't being released.

Mr. Art Hanger: Right.

On another point that you mentioned, I think you left the impression with the committee that if these characters who are involved in gun crimes were kept in jail, they would be unable to feed their families or do their fatherly and husbandly duties. You've been in the criminal justice system a long time—I'm not sure how long as a defence lawyer—but I've been in it a long time too as a police officer, and I'm just scratching my head, trying to think back to how many people I've actually dealt with who were so intent on looking after their kids and who were involved in serious criminal activity, whether robberies or drugs, that involves firearms. I can only think of one, and that one happened to be a police officer who

went off the rails. He actually did end up abandoning his family for some serious criminal activity—and he did have a family.

But going back into this argument of bad guys as the model fathers and husbands in our society, I'm really searching to think about anybody who fits that category, because most of them, 99.9% of them I would have to suggest, really couldn't care less about family, and if they did, they would abandon their criminal ways and go after doing that.

So I don't think that's going to make the impact that you really have tried to establish here with the committee.

Mr. William Trudell: I think I misspoke myself, which is not surprising. I wasn't talking about the bad guys. I was talking about the very difficult situation for people charged with offences to mount a package to support their release. My suggestion is that these people are not going to have jobs to go to, are not going to have families who support them and who will come forward as sureties, and will not probably have the roots in the community to get over the onus. I'm not holding any flag for people who are found to be bad guys after a trial, but what I'm saying is that the reverse onus makes it extremely difficult for persons to fashion a package of support in the community, so that a judge would think the risk is manageable.

That's what I was talking about. It's not the persons themselves, but it's the community support, the employer, etc., that they're obviously going to need to satisfy the onus.

Mr. Art Hanger: That goes to my point then, really, that because of the lifestyle that these bandits live, they're not going to be able to do that whether they're in or out, and generally don't.

Apart from the fact that there may be some effort on the part of a defence lawyer wanting to create something like that as an argument to keep them out of jail, and apart from those particular situations, I don't see that as an argument not to put them away.

Mr. William Trudell: You know that I'm not going to agree with you when you call these people "bandits" and things like that. I often say, come on with me after this meeting and we'll go over to a hospital and we'll go into the delivery room, and you point out which ones will be victims and which ones will be my clients.

Quite frankly, you're forgetting something, with the greatest respect, and I say it with the greatest respect because I know you. A lot happens from release to trial, and what appears to be a bad guy and a "bandit" in the front end—and we can't make those statements because of the environment they come from, which is a lot tougher. It's a lot more in keeping with the dignity of this country to say that even those people who look like they're bandits and bad guys have a right to be presumed innocent and have a constitutional right to release. The measure of a great country, I guess, is how we treat the people who may not deserve it.

•(1605)

The Chair: Thank you.

Mr. Thompson.

Mr. Myron Thompson (Wild Rose, CPC): I think our guest knows where I stand on a lot of these things. I too am disappointed that there aren't some statistics about bail. But when you look at risk and the safety of victims, we have lots of possible things that could happen that we look after pretty well.

When I was a farm lad, we had a vicious German shepherd. You made certain he was confined in a situation where he couldn't go after any guests who came to the farm. We had a bull you didn't want to jump in the corral with. That was well known to people who happened to come to the place. You look after risk.

I come from a small town, and we had one incident in our area where a person who was out on bail murdered two people and then killed himself. To me, that was the very thing that said that's enough of that. You don't take those kinds of risks. That's just common sense. If the person has demonstrated that he's capable of possibly doing it, then you don't take the chance. Nobody likes to play Russian roulette.

What does it take? What kind of a stat would make you and your organization say, well, now it makes more sense, maybe we should support this kind of bill? To me and, I would venture to say, millions of Canadians, it takes one. You just don't do it. It just doesn't make sense.

As a principal at a school, I had a kid who was arrested as part of... well, they called them the "apple dumpling gang". He was 17, and he was part of this gang that robbed the Bank of Montreal at gunpoint in our hometown. Two days later, he was back in school. I thought that was rather strange: "You participated in a bank robbery, you weren't successful, you got arrested, and now you're back in school." "Well, I'm out on bail." So I talked to him about all these things.

But when you demonstrate that you could very possibly be a threat, why do you want to play with people's lives and take the chance?

Mr. William Trudell: Well, that's what justices of the peace do now; they balance the risk and decide. Every time I come here, I run a risk of what you're going to do to me when you question me, but the risk is worth it.

The Chair: Now we'll go to Mr. Murphy.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): *Merci, monsieur le président.*

I was just going to make a couple of statements and then ask a question that arises from your comments about section 1 of the charter. So you can get mentally prepared for that. I have just a couple of preamble comments about statistics.

My friend Larry mentioned that we didn't have the statistics. We're all a little disappointed by that. What we have, however, is the undertaking from the Canadian Centre for Justice Statistics, CCJS, that they would be looking at the way they ask the questions to track bail, and that's encouraging. So there will be statistics, I guess, specifically on bail. They were talking about recognizance, remands—just different language. They were unable to satisfy us on whether these reverse onus provisions that already exist work, for instance, and secondly, whether there is an increase in gun offences for which this reverse onus on bail might have an impact.

It's not the lack of stats. I'm leading toward section 1 here. The Supreme Court of Canada is going to understand that there was a lack of stats because of how the question was asked, not a lack of stats based on the lack of evidence of efficacy of such proposed measures. That's my first point.

The second is that we heard very strongly that this was merely codifying the practice, and you said, in your own words, "I don't see significant changes" in the application of the law by the justices and the prosecutors and, well, defence attorneys. There's not a lot that's going to change. That was reassuring, I suppose, and it made sense to me that this legislation should pass, because it's codifying something.

The third point, the last point, is that with respect to your section 1 challenge argument, this code changes with time. We've been saying that here. If you look at the current reverse onus sections, it's "inciting to mutiny", "seditious offences", "piracy". It's in part 1 of the code, and it does make you think of a different time in our Canadian history, not the time of armed gangs in downtown Toronto.

So the code grows with time. Do you not think—and this is the question—that the Supreme Court, in reviewing this, as they did in the *Vancouver Sun* case on the ATA provisions, would say that the intent of Parliament was to address a concern about gang gun violence that's out there, absent statistics?

● (1610)

Mr. William Trudell: I don't know how you can do it absent statistics. What you're doing then is changing the law based upon anecdotal evidence.

Let me refer you to something in Hall. Just for the purpose that it might answer the question, I'm reading from the head note on page 4 of 36, at the last line: "The problem with s. 515(10)(c) is that it allows the subjective fears of the public and ill-informed emotional impulses extraneous to the bail system to form a sole basis for denying bail." Then: "Section 515(10)(c) cannot be saved under s. 1 of the Charter. First, the respondent did not identify a pressing and substantial objective furthered by the provision."

That's the same thing the court is going to visit upon this bill later on.

I say to you, Mr. Murphy, that if you got statistics that said the provisions of the tertiary ground as now constituted are not working, then you can have a comfort level in changing a basic principle here. But without them—and you're saying we don't have them, but we're going to change the bill because it doesn't make any difference anyway—That's not right, with great respect, because you're changing a fundamental principle, and that's the erosion of it.

That's the problem, with great respect, that we've been talking about every time we come here. There's a lack of consultation on some of the bills you're dealing with, and you're being asked—all members, all parties—to try to find out what the statistical information is. That's why you call people here to get input.

But if you're not satisfied that the evidence is there, then you can't reach a verdict, and you don't have any evidence. There's no evidence that this bill is needed.

I'm sorry. I don't know whether that answers.

The Chair: Thank you.

We'll have a very short question from Madame Jennings.

[Translation]

Ms. Jennings.

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): No. It is all right.

The Chair: All right.

[English]

We'll go to Monsieur Ménard, *s'il vous plaît*. No? We'll go first to Mr. Dykstra or Monsieur Petit, either one.

Monsieur Petit, you have five minutes, for both together. We're finishing at 4:30.

[Translation]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): Thank you, Mr. Trudell. Your testimony raises a question. You told Mr. Bagnell that laws were being created due to an overreaction to certain events.

I find that your opinion is reasonable. Does it apply to the Canadian Firearms Registry? Do they want this registry because they are overreacting?

[English]

Mr. William Trudell: I don't know that I want to get there, but I can tell you this. Many years ago, when Allan Rock was the Minister of Justice, I wanted to support his gun movement and I found that there were different regions of the country that had very different reactions to it. But I can tell you this: there's no paucity of information and statistics and people who are prepared to help in relation to the success of the gun registry, including the police.

So it's not comparable, because you have so much information as to the necessity: international experience with the gun registry—You're not making the decision on that now. It's a debate that's been going on for a long time, but I would imagine there are rooms on Parliament Hill that are full of information on behalf of or contrary to the view of a gun registry. You have lots of information to make that decision; you don't have, in this one.

Mr. Rick Dykstra (St. Catharines, CPC): Mr. Trudell, it's interesting. You've appeared over the last number of years a number of times in front of various Senate and justice committees. In doing a bit of research to get to know you a bit better, so that having met you—You've made lots of comments; there are lots of quotes, lots of things I may or may not disagree with.

But having said that, the one that stands out is a comment, and I want to get clarification from you as to whether this is actually a quote from you or not. You're quoted in the *North Bay Nugget* as saying in London in 2002 that Bill C-24, which at that time was and still is Canada's organized crime bill, “legalizes wrongdoing by the only organized gang in this country, which is the police”.

I'd like you to clarify that comment for me and, hopefully, say that you actually never said it.

• (1615)

Mr. William Trudell: No. If the *North Bay Nugget* said I said it—I think there's a context to my submissions and many submissions in terms of the organized crime legislation. We were very concerned, I think, at the time about how many people made up an organization. I think I was testifying, and said on a number of occasions, with others, that what we seem to say is organized is not really organized. A group of people coming into a room is not really an organization.

I probably said something such as that one of the most organized organizations is the police. So there was a lot of context to it. I don't think you want to judge me on the basis of something out of context from the *North Bay Nugget*, because I'm sure there are lots of police officers who—

Mr. Rick Dykstra: Sir, I'm certainly not here to judge you on one comment. I was just asking you to give some clarification to that.

Mr. William Trudell: I have no difficulty—Let me finish.

Mr. Rick Dykstra: One of the other questions I have is in regard to the point around statistics. I just want to get some clarification as to whether you thought on this reverse onus bill statistics were or were not important. I understand, based on comments that you've made earlier, that judges don't base their decisions on statistics, they base their decisions on the evidence and the presentations that are made before them.

Mr. William Trudell: Two things. With respect, I wasn't finished.

Mr. Rick Dykstra: I'm sorry, I don't have that much time.

Mr. William Trudell: What I'm saying to you is we, and I, took a very strong stand in relation to the early legislation on organized crime. I stand by all of the submissions that I made, in context.

In terms of statistics, it's the statistics that will help you decide whether or not the change in this legislation is necessary. If this section is challenged, then you're going to end up getting to section 1. When you get to section 1, it has to be demonstratively supported, and that's when you have evidence of statistics that the court would decide whether or not it withstands charter scrutiny.

So when you get to that section 1 analysis of legislation, that's when the court wants to hear about the statistical problem that this legislation was brought in to address. If you can't support it, then the court may decide that it doesn't withstand charter scrutiny. They may decide, on the other hand, that it was reflective of a need at the particular time, and statistics may not be available.

The Chair: Thank you. That's it, I'm sorry.

We'll go to Monsieur Serge Ménard.

[Translation]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): Thank you, Mr. Chairman.

Let me venture to sum up your statements within their context. The doctrine of reasonable doubt is not natural. People naturally tend to think that there is no smoke without fire. Besides, the rule of law is firmly established and constantly defended because errors are made when it is not enforced. Basically, every civilized country has adopted it.

As a matter of fact, when faced with spectacular crimes and ominous threats, some people cannot accept the doctrine of reasonable doubt. This is the case with firearms, despite the fact that firearms-related offences are on the decrease. You can see this if you take the time to consult all the data compiled by Statistics Canada. You can find this in the publication that Statistics Canada made freely available a few months ago. We are referring to the most recent publication, number 82-002-XPF in the Statistics Canada catalogue. The document gives criminal statistics for 2005. On page 7, we can see that less crimes were committed.

For instance, robbery involving firearms was down by 5%, whereas robbery involving other kinds of arms had figures similar to the previous year's figures. We hear that the overall number of robberies is on the increase, but firearms-related robberies continue to go down. We know all this. Nevertheless, we do not feel that the government's attempt to table this bill is based on any real danger. Basically, the public revolution against some specific crimes has made the government unable to apply the doctrine of reasonable doubt.

• (1620)

[English]

Mr. William Trudell: I think the two additions to the confidence in the public administration of justice cover the concerns without shifting the onus. In other words, if you say that the firearm was a part of the offence, and that gets added to the section that the public would lose confidence in the administration of justice, and of course that there's a minimum sentence for a firearm offence, you've covered off, in my respectful submission, what all parties want to do here, to address the level of confidence and fear, real or imagined. You can do that, if you feel it's appropriate, by the simple change in the subsection as opposed to shifting the onus.

[Translation]

Mr. Serge Ménard: As a matter of fact, nothing really calls for amending the legislation, because the provisions that you described allow judges to fully take into account the danger posed by individuals in every case.

You are here to defend fundamental principles that are difficult to defend whenever spectacular crimes occur. You want us to continue following these principles that have been established over the centuries in the legislation of every civilized country.

The Chair: Mr. Trudell, do you wish to respond? It was a comment. Thank you.

[English]

We'll go to Mr. Lee and Ms. Jennings, for five minutes together, and we'll finish with Mr. Moore.

Mr. Derek Lee (Scarborough—Rouge River, Lib.): Mr. Trudell, thank you for visiting with us again.

We're planning to adjust our laws here to actually adjust what is explicitly a charter right, the right to bail. In doing that adjustment, there are two things I want to ask you about. You have warned us that we many not have sufficient justification upfront, statistically or otherwise, to justify doing that adjustment to the charter right.

I want to ask about two things. First, for whatever reason, the government has chosen not to insert a preamble that might have attempted to articulate the nexus between people charged with these offences and further potential danger to the community. Second, regarding the presence in the words of some pro forma criminal offences like ammunition or a crossbow, which don't have anything directly to do really with danger from firearms, not directly, do you think these pro forma references to the crossbow and a couple of bullets in the guy's pocket will detract from our hope that the court will see there is a nexus between the danger of these people and these offences for which they're charged?

Mr. William Trudell: I think it's a problem, and I hope I can answer it.

What's going to come into the system? Who's going to lay the charges? It may very well be that by those examples certain people are going to be caught up into this web who it is not the intention of any of you to address, because obviously the police are the ones who make the decision on the charges. I think we have to be extremely careful about what charges come into the system to make sure that, whatever change is made to the criminal justice system, there is a nexus.

I was wondering why there's reference to crossbows and other things. That's sort of an erosion of the bail. If there's a specific problem and you're satisfied, then it should be narrowly constructed. Otherwise people are going to be caught up, brought into custody, and then remanded and not be able to get out on bail, when you really don't mean to be concerned about those people because the public is apparently not concerned about knives or crossbows.

If that helps, that's how I would—

• (1625)

The Chair: Ms. Jennings.

Hon. Marlene Jennings: Very briefly, on the question that Mr. Dykstra asked you about a statement that was attributed to you, obviously you did not have sufficient time to completely address your answer to that, and probably in particular your attitude toward the police. I'm sure you're not anti-police. I would like to offer you an opportunity, if you wish, to expand on your response to Mr. Dykstra.

Mr. William Trudell: I don't think Mr. Dykstra meant anything negative. He wanted some clarification. I don't remember the context, but I can tell you that I defend police officers and we consult with police officers. I just was representing a person charged with the first degree murder of a police officer and had all kinds of nice things said about the way it was handled.

I don't take anything personal from it. We come up here to try to help you; sometimes anecdotal things are said by all kinds of different witnesses here.

Look, I get up in the morning. I go to work. I have little kids and old kids. The first person I call when there's a problem is a police officer, and sometimes the first person police officers call when they have problems is me. I have a great deal of respect for the tough job they are doing.

I am concerned about the politicization of the police; I have said that publicly and will say it again. On the other hand, we work very hard with police at the national steering committee of the Canadian council, and you can't change the system without hearing from the stakeholders. You may be skeptical about some of the things I say. You can say that I'm just a defence lawyer; well, the police association may come here, and you may say, "Wait a minute; they're a police association." The chiefs may come here and have a different view of it.

One of the sweetnesses of Canada is the respect we have for the police, but that doesn't mean that we can't be careful about the abuse of power, because they have extraordinary power.

The Chair: *Merci, monsieur Trudell.*

Next is Mr. Moore, to finish.

Mr. Rob Moore (Fundy Royal, CPC): Thank you, Mr. Chair.

Thank you, Mr. Trudell, for being here.

There's been a lot of discussion today about statistics and the bill. It's a two-edged argument. We hear people say it won't make any difference, and yet somehow say it's so profound in impact that we shouldn't adopt it.

Certainly the government is responding to the calls from municipalities, from mayors, from provinces. I have personally asked large-city mayors what we could do on the justice side, and this has been raised to me personally as the number one issue—reverse onus on bail hearings. These are people who are educated. They know their individual communities better than any of us do, and what they're calling for is this reverse onus.

Further on the statistics, I want you to comment on something.

We had Michael Lomer here from the Criminal Lawyers' Association of Ontario. He said, actually, that he's supportive of the legislation and that in fact it's actually fairly specific. He also said reverse onus does nothing more to courts than to point them in the direction that Parliament wants them to look, and I think that is the message we are sending. It's a subtle message; we're saying that when it comes to these serious firearms offences of attempted murder, robbery, discharging a firearm with criminal content, and the rest, we want to be very sure the public is protected.

On the issue of statistics, Mr. Lomer said we don't use statistics in our arguments in court because the judge will say, "What do I care if 1,000 people are released? I'm looking at this individual, and this is his background, and these are my concerns, and statistics won't help

you." The long way around is that statistics are not necessarily helpful.

I would like your comment on that. The fact of the matter is that we've heard overwhelming evidence, some of it anecdotal, some of it by mayors and by the police, that this is a concern in their area. It is a relatively small number of individuals, but when they are out on the street for whatever reason—and it could be because they have bail—they pose a tremendous threat to the communities. We're talking about a small number of some of the more serious offenders.

Could you comment a bit on the statistics, and also on Mr. Lomer's opinion that this legislation is in fact quite constitutional and in keeping with what has been done with reverse onus in the code to date?

• (1630)

Mr. William Trudell: Statistics—the word I would rather use is evidence—that it is a problem. One of the ways you find out is that there are statistics showing that bail provisions as currently structured are being abused.

I'm not sure what Mr. Lomer's position was. I represent the national council, and we have viewpoints from right across the country, as opposed to Toronto, a big city. It might be different in Saskatchewan. It might be different in Nunavut. So we feel, on behalf of the council, that there's a substantive, principled approach and that we cannot support this bill.

I understand, Mr. Moore, that there are people who are saying that we need to change this because it's a number one problem in Toronto. I see what the mayor said in Toronto. But is the mayor saying it because he knows that the tertiary ground, as applied right now, doesn't work, as opposed to saying that we have to get tougher on these big-city problems and send a message to those few who abuse the criminal justice system and commit these offences?

I am saying, on behalf of the Canadian Council, that the equipment is already there in the tertiary ground. But if you are specifically looking at those people, then the two additions you have introduced in the legislation in terms of looking at public confidence in the administration of justice—if it's a gun crime and it's a minimum three-year or four-year sentence—if you add those to the tertiary ground, that tightens it up a lot more and sends the message out, without fundamental change to the onus.

The Chair: Thank you very much, Monsieur Trudell.

I think it was very interesting. From my point of view, I think it's important to have both sides: people who are supporting the bill and people who are not supporting the bill. That's the idea of having a committee.

Merci beaucoup.

The meeting is over.

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