Third, I believe that the police also suffer under our present law from a lack of statutory direction regarding the issuance of a summons. In my view, the law should authorize a peace officer, where a minor offence has occurred, to issue on the spot to the alleged offender a form of summons which might be called, and which is so-called in the present bill, an "appearance notice." This would be very much like an ordinary traffic ticket, and would require the accused to appear at a later date specified in the notice, and he would be subject to penalties if he were not to appear.

Let me now turn to the present situation, as I see it, regarding bail. The processes of arrest and of bail are interrelated. If an arrest is not made, of course bail is not required. If an arrest is made, then the process of bail comes into play. At present, a large number of those arrested are taken into custody. Professor Friedland, in the study to which I referred, demonstrated that of those arrested, 85 per cent were held in custody until their first appearance before a magistrate. But it is this custody period which is really the source of the indignity and embarrassment of the administration of criminal justice, because there is a serious social and legal price attaching to a decision to arrest and hold in custody.

There are the possible effects of custody on the outcome of the trial and on the sentence of the accused if he is not released pending trial. I do not want to attach too much importance to the statistics that I have seen from certain areas in Canada, and in the United States, about the effect of pre-trial detention on the outcome of the trial itself. It may be that there is not an exact cause and effect relationship, as alleged, or as may apparently be borne out by some statistics. But there is an indication that those who are held under pre-trial detention will have, on the basis of statistics, a lesser opportunity for an acquittal and, certainly, they will have less of an opportunity to present a reasonable defence and assemble the evidence necessary for that defence. I think that we cannot ignore, either, Mr. Speaker, the high incidence of guilty pleas by persons who are detained and kept in custody under pre-trial detention. I think there is the possibility, and we cannot ignore it, of improper treatment while in custody and prior to trial. There is the possibility of delay and inconvenience in attempting to raise bail, particularly in view of present financial considerations attaching to the order for bail. There is the opportunity for the accused to become enmeshed with a legal bondsman. Also, generally, there are all the personal considerations to take into account, such as loss of employment, loss of income, loss of protection for the accused's family, the anxiety of relatives, friends and so on.

• (12:30 p.m.)

Every member in this House has had some reason to be painfully aware of this, either because there are many of us here who have practised law or because some of us have had to intervene on behalf of someone not able to obtain bail. Under the present law, a judge or magistrate has no real guidance as to how or indeed whether to allow bail to an accused, nor is there any express provision in the Criminal Code stating whether it is the Crown or the accused who bears the burden of proof on a bail application, whether it is up to the Crown to show cause why bail should not be granted or whether, on the other hand, it is incumbent on the accused to show why he is entitled to bail. In doubtful cases, the place where the burden lies may be influential in determining whether bail is granted or withheld.

The corollary to these vague formulations that are now found in case law is that bail of some kind has in practise been required in virtually all cases. The process of bail has been conducted in a rather mechanical fashion, where there has been no meaningful attempt by the judge to determine the likelihood of flight from trial and the predictability of whether the accused will show up for the hearing which, after all, is the main consideration which ought to be before the magistrate or judge at the time of a bail hearing.

The defects of present bail procedures are serious and have been widely documented. First of all, it is obvious that to demand of a poor person any significant amount of bail, either in cash or by way of other security, is tantamount to a requirement that he remain in custody until his trial. Money bail or cash bail in these instances amounts to preventive detention. Second, a wealthy or influential or professional accused is usually able to produce bail with little or no difficulty. Yet, there is no evidence so far as I can find that wealthy people are more prone to show up for their trial than those without influence and without wealth.

Mr. Woolliams: It worked the other way with Banks.

Mr. Turner (Ottawa-Carleton): Accordingly, the almost universal requirement of bail results in bail for the rich and preventive detention for the poor, without any determination of the real question which I believe should always be before the mind of the court, namely, will the accused appear for his trial. It is not unknown for bail to be put up by a bail bondsman in return for a fee, rather than by the accused himself. Thus, often the real responsibility for seeing that the accused shows up for the trial does not rest with the accused but with the bondsman. Again, bail is regularly set in many if not most, jurisdictions solely by reference to the gravity of the offence with which the accused is charged, rather than being based on an evaluation of the personality of the accused himself, of his identity with the community, and the chances of his appearing for trial.

Finally, although a subsidiary objective in pre-trial detention but a very important one if you weigh the rights of the individual against the right of society to protect itself—the first consideration should be whether or not he will show up for his trial—the second consideration should be whether or not, if he is allowed to go free on bail he will detrimentally affect the public interest, perhaps engage in serious anti-social conduct prior to trial. But I believe that at the moment the decision to set bail on grounds of the public interest is often not accompanied by any evidence or finding of potential danger to