Ostensibly, the aim of broadening the remit of offences that qualify for hybridization is to encourage plea bargains: faced with the potential of less incarceration time owing to a summary conviction over an indictment, individuals are more likely to plead out. Supposedly, this should free up some of the backlog in the court system, and Crowns will be happy since under Justice in Track some already receive a financial incentive for pleas; more pleas mean more money in their pocket.

However, I am not sure the exercise with worth the candle, and comes with some unintended consequences:

1. While the proposed hybridization may help clear out some of the backlog in Superior Court, it risks doing so at the expense of lower (provincial) courts, thereby overwhelming an already crowded provincial correctional system. The implications should be fully costed out. In fact, there appears to be a general lack of evidence, statistics, and data to support many of the changes proposed in this bill, or gauging their implications – which is rather surprising for a government that likes to tout science and evidence as a guiding mantra. The Bill proposes to raise the maximum penalty for a summary conviction to up to 2 years less a day for many offences. If the provision passes, there will be more offenders in provincial jails, for longer periods of time, with no programming (since there is little of it in provincial jails). Of 328,026 adult criminal court cases, only 1,315 (0.4%) actually went through Superior court; 326,713 (99.6%) went through provincial court. Although provinces already sholder the bulk of adult criminal cases, the provisions on hybridization would result in even fewer cases go through Superior Court.

2. Some offenders drag out the court process to take advantage of “dead time” credit while remanded, awaiting trial. It used to be 2-for-1; now it is at the discretion of the judge, often 1.5-for-1. If you know your plea is a maximum sentence of 2 years, you now have an incentive to drag out “dead time” before solution to maximize the additional credit. In other words, opening the proposed offences to a summary conviction means very few people who now face jail time would actually end up doing jail time as part of their sentence.

3. The bulk of charges never go to trial anyway. The clearance rate for criminal cases in the Ontario Court of Justice was 90.9% between July 2017 and June 2018; the previous year it was 96.9%. Given that reality, to what extent will hybridization actually achieve the aim of unclogging the court system?
4. Many offences are already hybridized; the proposal here is simply to broaden the remit. A look at the myriad Acts affected by this proposal signals that offences that are likely to see the greatest impact may not be Criminal Code but other violations. A particularly interesting example is the provision to amend Criminal Code provisions for exploitation and trafficking in persons: for all other Acts and offences, the nature of the change is clearly spelled out in the Bill – for this one, it refers administratively to Bill-38 that was tabled in February 2017. During committee testimony the Minister indicated that his government would never put into force consecutive sentencing, notwithstanding concerns about this position raised by stakeholders, police (notably Longueil police), and victims. I am unsure the public will tolerate hybridization of all the offences within the proposed remit of this Bill, such as abduction, white collar crime, and human trafficking. Presumably, these select offences have a 10-year maximum for a reason, and opening them to a summary conviction is highly controversial, as previously testimony on this bill suggests. After all, the classification of an offence has long been understood to signal how serious the offence is; implicitly, then, hybridization sends a message that these offences are now less serious than they used to be. Concretely, for instance, it means the victim surcharge for such offences is effectively cut in half, from $200 to $100; that in itself sends the wrong message – to offenders and victims alike.

5. Expanding the latitude for Crowns to elect whether to proceed summarily or by indictment also has important procedural implications: only indictable offences require a warrant signed by a judge, charges for summary offences must be laid within six months (12 months if Bill C-75 passes in its current form) whereas there is no statutory limitation on charging someone with an indictable offence, individuals charged summarily need not provide fingerprints, do not have a right to elected a trial by judge and jury, and may apply for a pardon 3 years (5 years if C-75 passes in its current form) after their sentence expires (as opposed to 5 for indictable offences – 10 years if C-75 passes). In other words, the legislative changes being proposed have a series of second-order effects, some intended, some unintended.

6. Usually Crown or police (depending on the province) lay charges only when they believe there to be a reasonable chance of obtaining a conviction. Presumably, the justice system should then take its course. What is the point of having a justice system when the state’s overarching objective becomes to resolve as many cases as possible before they ever go to trial?

7. Investigators gain experience by defending their evidence in court. Fewer complex cases in court means less experience for investigators at trial. Less experience for investigator in front of defence lawyers means that as complex and serious cases do come up for trial, these cases are more likely to fail as a function of inexperience, with the consequential reputational risk for the justice system overall.
8. Victims are to be consulted under the *Canadian Victims Bill of Rights*. In many cases, that obligation has already been reduced to a rather *pro forma* matter anyway. More summary convictions are likely to be unpopular with victims, and do little to reinforce their faith in the justice system.

9. Abolishing peremptory challenges of jurors seems profoundly uninformed. This proposal stems largely from the outcome of one recent trial. While that trial shall not detain us here, several sources, including the *Globe and Mail*, have documented that the outcome was not a function of the jury, but rather of a haphazard investigation whose evidence that made it difficult for any jury to convict on reasonable grounds. Abolishing peremptory challenges is thus a solution in search of a problem. In fact, doing away with peremptory challenges may make the justice system less fair. If the government wants better justice outcomes, it should fix well-documented flaws in investigations and evidence-gathering by some elements within the RCMP, a matter about which I have written elsewhere and on which I have testified previously.

10. I have similar concerns about the limitations this bill imposes on preliminary inquiries. While I concur that, at present, preliminary inquiries impose too onerous a burden on the system overall, restricting them to offences punishable by imprisonment for life is too high a bar. Should the government insist on hybridization as it currently stands in the bill, then perhaps it my better to retain preliminary inquiries for all offences punishable by indictable offences of 10 years of greater.

In sum, it would appear that the proposed hybridization puts the benefits of the judicial process before the interests of victims, investigators, prosecutors, provinces, the public, and the integrity of the justice system and rule of law. I am afraid that I am apprehensive about any legislative change that puts process before substance.