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Chair

Mr. Kevin Sorenson

Standing Committee on Public Safety and National Security

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• (1530)

[English]

The Chair (Mr. Kevin Sorenson (Crowfoot, CPC)): Good afternoon, everyone.

This is meeting number 37 of the Standing Committee on Public Safety and National Security, Thursday, May 3, 2012.

Today we're going to continue our consideration of Bill C-350, an act to amend the Corrections and Conditional Release Act on accountability of offenders.

We'll have time at the end of today's meeting for the consideration of some committee business.

On our first panel today we will hear from Mr. Irvine Waller, president of the International Organization for Victim Assistance. Dr. Waller is a professor of criminology at the University of Ottawa. He is an author and his work has been recognized by numerous awards from the National Organization for Victim Assistance and others. He has championed the rights of child victims at the International Bureau for Children's Rights, where in 2005 he mentored the adoption of the UN guidelines on justice in matters involving child victims and witnesses of crime.

Our committee welcomes Dr. Waller back to the committee. I know we've had the privilege of hearing from him in the past and meeting him.

We look forward to your opening comments. Welcome.

Dr. Irvin Waller (President, International Organization for Victim Assistance): Thank you for that introduction and for the opportunity to speak to crime victim issues in front of this committee.

I want to add to the introduction two or three things that I think are relevant to what I'm going to say.

I was involved in a major study in the seventies on the needs of crime victims and how we could meet those needs. One of the things clearly identified in that study was their need for restitution. I was also on the Hugessen committee that in 1973 brought victims and police officers onto the National Parole Board, something that continues to this day.

The award that you mentioned was for my role in getting the UN General Assembly to agree to human rights standards for crime victims. Those standards are very important for this committee to look at.

I'm going to be really reinforcing what the federal ombudsman on victim issues told you earlier, but I'm going to go a bit beyond what she told you and say that I think we need a lot more than is in Bill C-350 and a lot more than she called for to ensure that the needs of victims for reparation are met through restitution in this country, and at a level that meets international standards.

I want to make a more general point that the situation of crime victims in this country is way behind that of comparable jurisdictions, jurisdictions such as the United States, France, or Australia. That's not just my opinion, that's the opinion of several committees. The committee in 1989 that was chaired by David Daubney made a series of recommendations in restitution. The committee report "Victims' Rights - A voice, not a veto" in 1998-1999 made a series of recommendations about victims, most of which were ignored or implemented in a very unsatisfactory way.

If you look at what has happened in Ontario, which is the only place we've really had a serious look recently at what happens for crime victims, the Ontario ombudsman wrote a report that said the compensation system in Ontario, not the restitution system, was adding insult to injury.

In response to that report, Roy McMurtry, recently retired Chief Justice of Ontario, who will be known to all of you, completed a report making recommendations. Those recommendations used the UN standards from 1985. They talked about what the role of police should be to inform victims more about what is available. And they talked about the importance of having an advocate at the provincial level to get action.

Another important critic has been the Prime Minister's Office, which in the material prior to Bill C-10 talked about the damage that is done to victims by crime in this country, talked about the famous 83% of \$100 billion. I prefer talking about \$83 billion. That's actually the figure that comes from Justice Canada. I think it's a reasonable figure. It is, of course, the damage done to adult victims. It doesn't include victims under the age of 15. And \$83 billion is a very important figure for what I'm going to have to say.

The Prime Minister's Office also talked about the abysmal proportion of victims who report to the police in this country, 31%. And if you look at sexual assault, it's actually only 8%. This is way below any comparable country, such as the United States or the United Kingdom. I think we have to ask ourselves very much why so few victims in this country are going to the police. They're very professional police, very highly paid police. But it is a very low proportion.

● (1535)

If we do, in fact, scratch at those figures to understand why, what we see is that victims of property crime are going to police because they expect some sort of reparation. That could include restitution, but it could include also other ways of paying back, which would include, of course, insurance.

If we look at victims of violent crime, then we see what they want is the offender stopped, and I want to emphasize “stopped”. I didn’t say “punished”, I said “stopped”. It’s actually a relatively small proportion who are going for some very heavy penalties.

It’s a serious situation, and I hope your committee will choose to encourage not only the adoption of something along the lines of Bill C-350, but much more serious attention to meeting the needs of victims, in terms of their losses, and the ways in which those losses can be repaired.

My third point basically relates to international standards. We have, since 1985—Canada of course was a leader in getting those adopted—UN standards, and within those there are basically five issues. One of those issues is restitution for the victim from the offender.

In your introduction, sir, you mentioned the much later guidelines, around 2003, that have been adopted by ECOSOC, in relation to child victims. Those also refer to restitution.

Both of those documents have in the resolution or in the actual documents themselves a heavy emphasis on prevention. This country needs to reduce the \$83 billion in harm to victims, and the way to do that is to invest in what is well established and well known and would reduce violence and property crime, everything from examples like Winnipeg, which reduced car theft by 87% within three years, to the Alberta strategy, where comprehensive matching of smart enforcement with smart treatment with smart prevention has been going now for nearly four or five years, with a plan and with evaluation and with the driving energy of the Alberta strategy being reducing harm to victims.

Some of the other international standards that I think your committee needs to look at are those, of course, of western Europe. The European Union has a framework decision from 2001, and is studying a directive at the moment, and those refer to restitution. Victims are represented with legal aid in France in the court process, and roughly 50% of all cases in France are resolved by the payment of restitution from the offender to the victim and there is no other action taken. This is undoubtedly a model for us. It’s the model that influenced the International Criminal Court, of which Canada is a strong supporter, where victims are represented by legally aided lawyers.

The U.S. has a range of different things that relate to restitution. In California, for instance, their corrections system monitors the restitution orders, it takes payments on the minimal amounts that prisoners earn in prison, and it also takes payments out of what prisoners might get if they get a paying job as part of their sentence. There are other U.S. states that have something similar. Florida, for instance, has something similar. Vermont, just south of the border, actually pays restitution up to about \$2,000, I believe, and then

collects from the offender. So there are a number of interesting options within the U.S.

Probably the most important is the Justice For All Act. As you may or may not be aware, the current Vice-President of the United States has been the lead on three major pieces of legislation.

● (1540)

The Victims of Crime Act in 1984 puts about \$1 billion into victim assistance and compensation every year by using a victim fine surcharge, which is way more advanced than ours, because it is applied not just to individuals but companies. Pfizer, for instance, paid a \$1.3 billion fine that went into that.

Vice-President Biden also supported the Violence Against Women Act, a very important act, because not only does this look at what responses there should be to victims, it also looks at prevention and evaluates it.

The Chair: Mr. Waller, if I can just interrupt for one minute, we’re well over ten minutes now, coming up to eleven minutes. How much more do you have?

Dr. Irvin Waller: Two minutes. Sorry, my watch is not working right then.

The most recent act is the Justice for All Act. That includes restitution, includes legal aid, options for getting it, and that is of course behind a proposal that was launched last week to get a constitutional amendment in the United States that would include restitution.

In closing, I want to mention that I’ve written a book recently called *Rights for Victims of Crime: Rebalancing Justice*. It specifies quite precisely how we can get restitution to happen in this country, and I’m quite proud of a chapter in a criminology textbook that has just come out that talks about the Canadian situation and again repeats what can be done for restitution.

I’m available for questions.

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

We’ll move to the government side and to Ms. Hoepfner, please, for seven minutes.

Ms. Candice Hoepfner (Portage—Lisgar, CPC): Thanks very much, Mr. Chair.

Thank you, Dr. Waller, for being here, and thank you for the work you do advocating for victims.

I can say emphatically that on this side of the table—and I believe on both sides of the table—we are concerned with the way victims have been disregarded in many ways over the last many years under certain criminal justice regimes. What we’re trying to do as the Conservative government is bring the focus back to victims. We’ve appointed the ombudsman for victims and created the role. There are a number of other initiatives we’re doing, so it’s really good to hear.... I’m sure you have a broad range of suggestions and things you would like to talk about.

I’m going to focus specifically on Bill C-350. I’m glad to hear that you support it. I want to ask you a couple of questions on your research and the work you’ve done with victims.

Can you explain how, for a victim to see an offender receiving money, especially when it's from the federal government, which is what this bill deals with.... If an offender is awarded funds from the federal government and is not obligated to pay the restitution that has been awarded and ruled on by a judge, can you talk about what that does to a victim, even in terms of re-victimizing?

Can you differentiate—if there is a difference—between victims of property crime, versus victims of violent crime?

Dr. Irvin Waller: I think it's very clear that we don't have a system where the needs of victims are taken into consideration in a just and fair way. It's a surprise for victims when they go through the criminal justice process and find that the judge does not give due consideration to restitution. They suddenly find that the offender who was incarcerated is being released without any consideration given to restitution.

You're probably aware of the triple murder in the McDonald's in 1992. One of the offenders inherited some money and is now a multi-millionaire. So three people are dead, one person is disabled, and the parole process hasn't taken into account in any way whether this person is making restitution. I think that's a fairly extreme case, but nevertheless it's an important case that took place, and is taking place in Canada today.

I think victims are looking for some sort of justice from the criminal justice process. There are examples, like France and the International Criminal Court, where victims actually have standing and are able to talk about personal safety, restitution, and justice, and where restitution is ordered more often.

If you go back to cases like Olson, in those days we used to talk about the Son of Sam legislation. I'm not sure if you're familiar with that. A 2001 variation in New York State shows this is a model of what would happen.

One of the problems with Bill C-350 is that it's quite limited. We really need to set up a process whereby victims can sue an offender and get an order that is in some way enforceable. The Son of Sam legislation in New York State is one way of doing it, and there are other ways of doing it.

● (1545)

Ms. Candice Hoepfner: Thank you.

My time is limited, so I'm going to bring it back to Bill C-350. I appreciate, as you said, there may be more that we can do, certainly on the specific issue of restitution. I'm glad to hear that you support the spirit and what Bill C-350 does, even if it's a small step forward, telling victims that the restitution they've been awarded should come to them, and that we're starting the process.

The other part that the bill addresses quite clearly is the outstanding amounts owed to children and spouses of offenders. Do you do any work with the families of offenders, given the fact that they're also victims of crime?

Dr. Irvin Waller: I don't have a comment on that.

Ms. Candice Hoepfner: You don't have any comment at all?

Dr. Irvin Waller: I comment on what I specialize in. I specialize in the needs and rights of victims, how we can meet those needs,

how we can prevent.... I'm not a specialist on this issue, so I prefer to not comment.

Ms. Candice Hoepfner: That's fine. We'd heard some testimony that spouses and children also are victims, but I respect that.

Dr. Irvin Waller: I am not for or against. I don't have a comment.

Ms. Candice Hoepfner: Thank you.

You also referred to different models, and the ombudsman also referred to other countries that are doing different things with restitution. Can you explain to me—and you did very briefly—in the U.S., for example, how are they compelling inmates to pay the fees and the restitution? Is this in legislation, and are they tracking the money that comes to them? Can you explain that a little further?

Dr. Irvin Waller: In the United States you've got the series of different jurisdictions. You've got the federal and the state jurisdictions. So it varies enormously. The California system is that if a restitution order is made, then the state correction system—you've got two levels of the correctional system—tracks the payments and they take money off the wages or income of the prisoner.

I think the Justice for All Act—that's the federal act from 2004—is a very important model to look at because it actually provides legal aid for victims to sue and try to get restitution.

I also want to draw your attention to the National Crime Victims Center in the United States, which has set up seven preconditions for restitution to actually get paid. The ombudsman referred to some of these in her evidence. But basically if we want to see restitution paid you have to start right from the beginning. So when the person's charged you need to get some idea of what that person's worth is. You need to make sure the victim is aware of restitution. That means the police need to inform them. You have to enable them to request it in a written request—I lost \$500, or \$500,000, whatever it is. We certainly need to make sure that judges are following this. The State of Oregon, for instance, had a sentence—not a restitution sentence, but another sentence—vacated because the victim's right was not respected, and it went to the Supreme Court.

So we need to make sure that when judges are not obeying what's in the Criminal Code or the spirit of what's in the Criminal Code, it's respected. We need to change the Parole Act and so on. You have to do it the whole way through.

● (1550)

The Chair: Thank you, Mr. Waller.

We'll now move to Mr. Garrison, please, for seven minutes.

Mr. Randall Garrison (Esquimalt—Juan de Fuca, NDP): Thank you very much, Mr. Chair.

It's a great pleasure to have Dr. Waller here. We were just exchanging that as a criminal justice instructor, I used much of his research in my teaching and we sent students from our program to study with him.

It's a great pleasure to have you here today.

I want to continue the discussion on the idea of restitution versus the distinction between restitution and compensation. It's a question I asked the victims ombudsman. If the focus is on repayment by the offender, I have a worry or a concern that victims will end up with differential treatment. In other words, if your offender is someone with resources and who takes responsibility, then the person is likely to receive coverage for their losses. But if the person is of few resources or turns out to be someone who resists taking responsibility and accountability, those victims would end up without compensation.

I just wonder if you have some thoughts on that dilemma.

Dr. Irvin Waller: I think what we have to do is work out what restitution is justified in respect of the harm that was done to the victim and what actually gets paid. You should not be trying to get blood out of stone. You have to recognize that somebody who's incarcerated is typically not getting a lot of income and therefore you're not going to get a lot of money. What the UN General Assembly declaration says is that you first look at what restitution you can get from the offender, and then, in cases of violence—and that's not limited to physical violence, it could be serious psychological trauma—you turn to compensation.

But I am realistic: I don't think we're going to get all the \$83 billion paid back by anybody. That's why I think it's so important that our legislators at the federal and provincial levels start seriously investing in what we know will stop this violence. Alberta provides a good example of what we need to be looking at from coast to coast, and, up to a point, what the federal government needs to collaborate in.

There are other ways of getting that payment made. That's effectively what happened in the Jones case, where the Royal Bank came up with \$17 million. So there are the possibilities of third-party suits or contributions, where something can be paid. But it's not going to happen in every case. If you go back to the McDonald's triple murder, I don't think you'd be able to show how McDonald's contributed to negligence in that case. You can't always expect there to be a rich corporation around the corner to pay those amounts.

We have to start looking at this in a broader context, and we have to look at it from the victim perspective. That's what's so important. Criminal justice should respond to the needs of victims in a just and fair way, and that includes getting judges to order restitution.

Mr. Randall Garrison: In this committee we have had a raft of bills coming at us that take various pieces of this. On this side, we're going to be asking that the committee devote some time to those broader issues, to a broader study of victims. I'm hoping we'll find agreement on the other side. I'm optimistic that we will, if we ever get out from under this onslaught of legislation. So I take your point there.

• (1555)

Dr. Irvin Waller: I do crime victims week on both sides of the border, and I was invited by the bipartisan caucus of the U.S. Congress to address their public policy forum. In Canada, I would like to see at the federal level—actually at any level—more cooperation on the victim issue. I didn't say on punishment. You'll never agree on punishment, but you could agree on prevention,

victim assistance, and victim rights. I think this is a no-brainer for all parties to work on.

Progress in this area is overdue. I think one in four adults in Canada is a victim of some crime. If you look at the Prime Minister's statistics, which are police statistics, there are 400,000 victims, and that excludes many of the people, women, who are victims of serious assault. If you need an argument, that's an argument. We need to start bringing those figures down. Yes, we need to use evidence to do it, and to the extent that we're not successful, we need to make sure there are services there, that police are doing it the way the international—

Mr. Randall Garrison: I'm going to run out of time, so I'll ask a quick question.

In the current budget we had large cuts at Statistics Canada. I'm just wondering whether you have concerns about the ability to collect the statistics on victims of crime.

The Chair: We need to keep the focus on this bill, but we'll allow that question this time. I'm going to be watching, going over a review of budget, whether there's enough or not.

Go ahead, Mr. Waller.

Mr. Randall Garrison: This is about the collection of statistics on victims of crime.

Dr. Irvin Waller: It is extremely difficult in this country to get accurate statistics on the use of restitution. It is also difficult, but not impossible, to get statistics on the harm.

The \$83 billion comes from a combination of the crime victims survey multiplied by the estimates of costs. This country does victimization surveys only every five years. Alberta does them regularly, but we don't nationally. Other countries, such as the U.S. and England, do these regularly.

So I don't know whether it should come out of Statistics Canada, but we need surveys. The International Association of Chiefs of Police has said that the only way we'll know whether victims' needs are being met by police is through surveys. And if they say it, then those are strong grounds for doing it.

Mr. Randall Garrison: Thank you.

The Chair: Thank you very much, Mr. Garrison and Dr. Waller.

We'll now go to Mr. Leef, please, for seven minutes.

Mr. Ryan Leef (Yukon, CPC): Thank you.

Thank you, Dr. Waller. That's quite a dossier and CV you have. We appreciate your experience on this bill.

I don't know how many more questions now we can ask. We've asked a number of other witnesses about this, and I'm gathering your position, really, is that while this might be a positive signal in the Corrections and Conditional Release Act, we probably need to look at other ideas, other solutions, and other bodies of legislation or policy development to really hit the nail on the head with this. I'll ask you a couple of points, maybe, just out of curiosity, to help shape this and future discussions that our committee is bound to have.

The \$83 billion that's borne by crime victims—is that measured by direct victimization, or do they take into account indirect? What I'm getting to is how we create a determination of claimants so that it doesn't go from the reasonable to the ridiculous when you have claimants coming forward looking for restitution, and also how we can get full perspective on whether or not in this country we're measuring that number properly and giving it its true weight.

Just to give an illustration of it, if somebody breaks into a pharmacy and disrupts the operation of that pharmacy and the business has to be closed, you create a number of victims after that point—the people who can't access those services, who might be in desperate need of those services. Arguably we would include them in a victim picture. That might not be where that \$83 billion starts to be calculated.

Maybe I can just get your thoughts on whether that would be a reasonable calculation to include in that number a certain level of indirect clients. Do we do that, and to what degree do we do that?

• (1600)

Dr. Irvin Waller: The \$83 billion comes from work done by Justice Canada. It's used a lot by Minister Nicholson, and I think it's good use of data.

It is limited in some ways. It's based on really two core bits of information. One is what's called, by me, the “victimization” survey, which is the general social survey that basically talks to a sample of some 25,000 adult Canadians about whether they've been the victims of eight or nine specific crimes. Those include the common violent crimes and the most important property crimes, but they don't include fraud, for instance.

They then multiply the estimates of those crime levels by estimates of what a civil court would pay an average victim. It doesn't include companies and it doesn't include the sort of secondary victims that you're talking about.

I think it's about at the limit of our current methodological sophistication. In my book I use American data because it's a bit better than ours, but it comes basically to the same conclusions. My stuff also includes drunk driving, which is where more people are killed than in homicide in Canada and where people get injured.

But, you know, it's a ballpark figure, and if you started including these others, you would increase that figure. I'm not against somebody doing it.

I want us to use the \$83 billion because it has recognition by our current federal government and I think it's good.

Mr. Ryan Leef: Thank you.

If this steps outside of your area of expertise or specialty, there's no problem.

We haven't had a lot of criticism, necessarily, in the direction we're going with this one specific thing, other than, as I said, the fact that there's encouragement to try to do a bit more generally. But to focus right back on the bill, the only criticism I think we've heard is the concern that forcing—for lack of a better word—an inmate to pay or make restitution takes away their choice or their rehabilitative improvements to make the right choice and to seek reward and growth from that experience. I have my own opinion on that, which is that if anybody in the free world in society has to make those payments regardless of choice, then we should all be treated equally.

But from a purely rehabilitative perspective—and from your studies, if you have those—does that seem to make sense? If we're forcing a judgment upon an inmate to make restitution and payment because of a court judgment, would you see that as impacting on or interfering with their ability to achieve rehabilitation or to achieve a higher level of their own decision-making, which would affect them when they're released into the greater society?

Dr. Irvin Waller: You didn't hear this, but I wrote a major book on the effectiveness of the prison parole system. It's somewhat dated, but the data is used on the website of the Correctional Service of Canada, and I've certainly stayed in touch with the material on what is effective in terms of reducing recidivism.

My major point is that we have to start with the reasonable needs of victims. I think it's reasonable to go the way that the U.S. is going or the way the European Union is going in saying that victims basically have a right to restitution, and we have to work out the best way to do that restitution from the offender.

In addition, you may.... I don't think your other witnesses have referred to the evaluations of restorative justice. Now, restorative justice sounds like a soft option, but you have many parents of murdered children in Canada who see that as the right way to deal with the issues.

I'm a researcher. I look at the evidence. Yes, I have a particular interest in the victim issue, and the evaluations of restorative justice show that when you do it right, not only is the victim happier, because they're more empowered and have all sorts of options to ask for things—to get information, to get truth, and to get a feeling of what's going on—but it also reduces recidivism.

• (1605)

The Chair: Thank you, Dr. Waller.

We'll now move to Mr. Scarpaleggia, please, for seven minutes.

Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.): So the \$83 billion figure, this is the cost to victims of crime...?

Dr. Irvin Waller: Adult victims.

Mr. Francis Scarpaleggia: Adult victims—

Dr. Irvin Waller: In Canada.

Mr. Francis Scarpaleggia: In Canada—over what time period?

Dr. Irvin Waller: A year.

Mr. Francis Scarpaleggia: Every year? So it's \$83 billion every year.

Dr. Irvin Waller: Well, maybe I can just clarify. What they do is look at the number of victims in a year and then look at the harm for those victims, the loss of quality of life over their lives.

Mr. Francis Scarpaleggia: Over their lives? Okay. I understand that.

Dr. Irvin Waller: But unless you bring the crime rate down, which we're actually not doing in Canada—despite the police statistics—it's basically \$83 billion every year.

Mr. Francis Scarpaleggia: Right, so it's almost like the present value, really....

Dr. Irvin Waller: Yes, if you're a victim of an aggravated sexual assault, or what the Americans would call a forcible rape, your loss of quality of life.... So there are some small payments that you make for the sexual assault nursing examiner and some payments you make in short-term trauma counselling, but your loss of quality of life is over a much longer period.

Mr. Francis Scarpaleggia: Right.

On the surveys of victimization, those are used to ensure that the figure is accurate or...? They're also to keep track of what kinds of crimes are being committed and who's being harmed, I guess.

Dr. Irvin Waller: Well, in countries like England, the United States, or Canada, there are two ways we measure crime. One is from some sort of survey: the national crime victims survey in the United States, the British crime survey in England, and a general social survey in Canada. The other is what the police record. What you have to remember in Canada is that we have an extraordinarily low rate of reporting of crime to the police, and that rate has been going down over the last 20 years.

So whereas between 40% and 45% of victims in the United States or England report their crime to the police, in Canada we're at 31%. Just to put this in perspective, if you compare that to the province of Ontario, which has very limited victim services and rights and so on, you're looking at 30% reporting. Quebec is generally much more advanced, with much higher payments from compensation and other things, and there you're at 40%.

Mr. Francis Scarpaleggia: The surveys of victimization being done are meant to find out the true rate of victimization versus what's reported. Is that it?

Dr. Irvin Waller: It is what's reported and recorded. That's correct.

Mr. Francis Scarpaleggia: You seem to be saying that the main obstacle to making things right is that we don't tell judges to order restitution in all crime cases. Is that correct?

Dr. Irvin Waller: I think it's a bit more complicated. That's what the federal ombudsman told you. What you have to do to get restitution ordered is make sure that the victims have clarified what they want and what's justifiable and have requested it. You see that in those states in the U.S. where it's most advanced.

Mr. Francis Scarpaleggia: In Canada, judges are not required to order restitution. Is that what you're saying?

Dr. Irvin Waller: I forget exactly how the Criminal Code and the Youth Criminal Justice Act are worded. Is it required? It's easy for them not to order it.

Mr. Francis Scarpaleggia: I see.

Dr. Irvin Waller: I don't have in front of me the actual wording. But we also don't know how often it is not ordered. We don't collect those sorts of statistics.

Mr. Francis Scarpaleggia: That's interesting.

If you were in a position to order that two things be done to resolve the problem of insufficient restitution—say you were the Minister of Justice for a day, or whatever—what two things would you say we have to do right away?

• (1610)

Dr. Irvin Waller: I would say that you need to modify the Criminal Code along the lines of the best jurisdiction in the United States, which is probably the Justice for All Act.

The second thing, which I'll limit to the federal role, is to change the RCMP Act to make sure that every victim who reports to the RCMP in Canada is given the basic information according to the standard set not by me but by the International Association of Chiefs of Police, of which most of police leaders in Canada are members.

Mr. Francis Scarpaleggia: I see.

Dr. Irvin Waller: I'm going to give you a third thing.

I would bring the provinces together. I would tell them that these are joint areas and that you, federally, are going to do your job in the Criminal Code and the Youth Criminal Justice Act and are going to change the RCMP Act but that the most important way for victims to get restitution is for the provinces to start doing things differently. One of those would be to bring the criminal and civil jurisdictions together, as they did for family issues about ten years ago.

Mr. Francis Scarpaleggia: How much time do I have left?

The Chair: You have a minute and a half.

Mr. Francis Scarpaleggia: You say that Alberta does a victimization survey every year.

Dr. Irvin Waller: It may be every two years, but it is done regularly

Mr. Francis Scarpaleggia: It's often. And the federal government does it every....

Dr. Irvin Waller: It is every five years.

Mr. Francis Scarpaleggia: It is done every five years. What about other countries?

Dr. Irvin Waller: It is done every year.

Mr. Francis Scarpaleggia: It is every year.

Dr. Irvin Waller: And they're much more sophisticated than ours.

Mr. Francis Scarpaleggia: Okay. Thanks.

Dr. Irvin Waller: The national crime victimization survey in the U.S. started in 1972, so you have a very long period. The British crime survey started being done every year in the late 1980s. The British release their crime survey and their police data together. This avoids a huge amount of confusion among the media. Our media are not doing their homework well on this issue.

Mr. Francis Scarpaleggia: Thanks. I'm done.

The Chair: We have another minute. It actually goes back to the NDP.

Maybe we'll just leave it at that.

We want to thank you, Dr. Waller, for appearing today. Certainly, as I mentioned before, your expertise is very much appreciated. Your testimony has been listened to, and we look forward to going back over some of the things you've done. I've written down a couple of points to look up, or have my researcher look up. One is the Justice for All Act in the States. A second would be potential changes to the RCMP Act, which you believe might work towards the enhancement of victims' rights.

Thank you for your work. You might want to put in a little plug here for your book. I don't know if it's available at all good bookstores around Canada. I know that in my little drugstore, in my small town, I haven't seen it, but maybe there is a way we can find it.

Thank you for coming.

We'll suspend for a moment and prepare for our next witness.

• (1610) _____ (Pause) _____

• (1615)

The Chair: On our second panel this afternoon, we are hearing testimony, hopefully, from Stephen Fineberg, the vice-president of the Canadian Prison Law Association. Mr. Fineberg has been held up momentarily. We're hoping that he will arrive soon.

I'll give you a little bit of information on Mr. Fineberg. He's from the Canadian Prison Law Association, an organization of lawyers who work on behalf of prisoners and who seek to protect and promote the constitutional rights, interests, and privileges of prisoners by advocating on their behalf.

As well we have, no stranger to our committee, Ms. Pate. Kim Pate is the executive director of the Elizabeth Fry Society of Canada. She has taken time out to come before our committee on a number of issues dealing with prisoners and prisons and prisoners' rights and many different issues.

We welcome you back. If it is all right, we will begin with your testimony, and hopefully Mr. Fineberg will make his way through security and will get here.

Welcome.

Ms. Kim Pate (Executive Director, Elizabeth Fry Society of Canada): Great.

Thank you very much, and thank you for inviting us to appear.

I guess I don't need to introduce our organization, because we have been here before. In case there are any new people, our organization works with those who are marginalized, victimized,

criminalized, and institutionalized, particular imprisoned women and girls.

I want to take the opportunity very quickly to say that next week is National Elizabeth Fry Week, which is a week in which we try to draw attention to the number of women who are in prison. We end it on Mother's Day to draw attention to the number of those who are in prison and the impact that imprisonment has not just upon them but upon their children. As many of you are aware, in the case of 90% of the women who go to prison who have children, their children end up in the care of the state, compared with 10% in the case of men. So it's a very different situation for women, and it ends in our having to deal with the victimization of their children as well.

With no further ado, I'll get to Bill C-350.

I want to start by saying that in principle of course our organization supports compensation, restitution, child support, and ensuring that all individuals are held accountable and take responsibility for their financial and fiscal obligations.

I find it challenging, though, when looking at Bill C-350, to take into account that we're talking about situations in which people may receive compensation because of their victimization—essentially, situations in which victims are being compensated and then being required to use their compensation moneys to assist others.

I know that this situation already exists. For instance, we know that in the majority of cases of those who receive compensation, it is because there has been an acknowledgment by the corrections service, in the context of receiving it from corrections or the state, that they have been victimized, that their rights have been violated, and often that they've been abused. To have that resource treated as an income rather than the compensation it is and to have them recharacterized other than as the victims they are in those contexts, somehow still carrying on with a perpetration or adding to the punitive treatment they receive, is a concern for us.

We know that despite some of the testimony I was able to review, very few prisoners get lawyers to do this. There is not legal aid, and there are very few individuals who can afford to get counsel to assist them with this. Usually the cases in which there is a resolution of this sort and there is a compensation scheme are those in which there is a particularly egregious breach of human rights and charter provisions. It's usually a settlement negotiation, because the individuals don't tend to have counsel. When it is a settlement, one of the conditions is a non-disclosure clause. A challenge would be to go behind those non-disclosure clauses, whether with the corrections service—and obviously corrections would know, because they are imposing that non-disclosure clause....

I read with interest the testimony of Mr. Tallor and his colleague from the Department of Justice. It would in fact breach a prisoner's privacy if they first required a non-disclosure provision and then breached it by notifying others or imposing....

Those are questions the committee would have to look at.

I already know, given that in some instances women will ask—and as you know, for the last 21 years now my focus has been on women, although prior to that I worked with men and young people.... In the last 20 years, and in my experience with men as well, often when those non-disclosure clauses are signed there is an expectation that they will have some assistance in what they can do with their money or how they can invest it. Sometimes I have been asked to consult on those. In my experience, any income that women have used has either gone to assist their children, for counselling, or some of them have used it to take courses to essentially allow them to participate in their own rehabilitation, because education is not covered. Education has not been covered in this country beyond grade 10, sometimes grade 12 and GED-equivalency, since 1992.

The other concern I have and that I haven't seen addressed—and it may be that I missed it, so I would encourage anybody, if there is information about this, to bring it to my attention—is that there are some prisoners who have had extensive experiences in residential schools and have recently received some residential school compensation because of the apology that was provided by the government and the scheme that has been set up by the government to compensate those individuals who experienced physical, psychological, and/or sexual abuse in the residential schools.

• (1620)

I know it's already an issue we've had to raise with legal aid. In some areas, legal aid has tried to force individuals who have residential school claims to pay for their own legal counsel when they're trying to get assistance with matters. Clearly that is not what the residential school settlements were supposed to be for.

Again, there were individuals who have been using them to assist their children, and to assist themselves in their own rehabilitation to take counselling to deal with the trauma. We would have concerns about those resources being then tapped into, to fund other resources with the state.

We do support the development of better victim services, overall. Our concern, however, is that it should not be funded in this way by victims themselves. That's a position I would suspect most everybody here has taken as well.

So really the question becomes at what point are you ceasing to recognize individuals who are being compensated because of their victimization as victims, and what is the label imposed upon them because they are serving a sentence, forever tainting every other facet of their lives? We would have concerns about that.

I'm happy to answer any questions.

• (1625)

The Chair: Thank you, Ms. Pate.

We'll move to the first round. Ms. Hoepfner and Mr. Leef are going to split.

Ms. Candice Hoepfner: Thanks, Mr. Chair.

I'm going to take a moment to ask Ms. Pate a couple of questions, and then my colleague will take over.

Just so I'm clear, and I appreciate that you stated at the outset that you support this bill in principle, and you support restitution.

Whether they're offenders or non-offenders, I would assume you believe it's important for all Canadian citizens to pay debts or pay monetary obligations they have.

Ms. Kim Pate: Just to back up, I do believe it's important for people to pay debts. I wouldn't necessarily say I'd support, in principle, the bill. I support, in principle, the notion.

Again, it's a challenge when we have a bill that essentially duplicates what is already available in the law, to be able to have compensation schemes, restitution schemes. Obviously we support child support being paid. As a single mom, I'm certainly someone who would support child support being paid.

Ms. Candice Hoepfner: But you have the opportunity.... Your former spouse, or whoever is paying the child support, as a non-offender, is obligated to pay it. From the testimony we've heard, there is no obligation for offenders, even if they come into money, to pay child or spousal support, or even the restitution.

Ms. Kim Pate: Actually, I think there is still a responsibility to pay it.

Ms. Candice Hoepfner: The legal—

Ms. Kim Pate: Whether those mechanisms are enforced by the courts is a family court matter that could be enforced. Certainly by registration of that debt it can be enforced.

Ms. Candice Hoepfner: One more quick question, then. Would you consider it a punitive measure to require offenders to pay, no matter why they received the award from the federal government? You defined it as they were victims themselves. Do you consider it a punitive measure to ask offenders to pay their debts or to pay their obligations?

Ms. Kim Pate: Those are two separate questions. I think that one, yes, it's important that people pay their debts. And no, I don't think it's unfair to require people to pay their debts.

I think, though, when they've received a payment, as a victim, then—

Ms. Candice Hoepfner: The way you view it, you don't think someone should have to pay someone that they've victimized financially—

Ms. Kim Pate: No, I think there should not be—

Ms. Candice Hoepfner: —if they received the funds because they themselves are victims.

Ms. Kim Pate: I'm sorry for interrupting.

I would be clear that there are mechanisms to enforce those debts and obligations, and that's the appropriate mechanism to take, not to then allow all of their income to be opened up, which essentially already is, anyway. Corrections has access, as Mr. Toller said. They can see what goes into prisoners' accounts, as they sometimes do and are sometimes challenged for doing. They should not then be able to just reach into those accounts for whatever purpose they choose.

Ms. Candice Hoepfner: I don't think this bill actually words it that way, but thank you.

I'll turn it over to Mr. Leef.

The Chair: Thank you.

We're going to go back to Mr. Fineberg.

We want to welcome you. In your absence, we did already introduce you. It was a glowing introduction of all you've ever done, and you just have to—

Mr. Stephen Fineberg (Vice-President, Canadian Prison Law Association): Then I agree with it.

The Chair: Yes, let's agree with that.

We would invite you now to give your opening statement and then we'll come back to the remaining four and a half minutes for the government.

Go ahead, Mr. Fineberg.

Mr. Stephen Fineberg: The Canadian Prison Law Association thanks you for the opportunity to appear on this bill.

We're a national organization of prison law practitioners from across the country whose purpose is to advocate on behalf of incarcerated persons and promote the rule of law as it affects the prison community. Since our founding in 1985, it has been our privilege to appear before this and other committees of Parliament on matters affecting the prison law environment.

I should mention that while our members are legal professionals, all activities undertaken on behalf of the CPLA are performed on a voluntary basis.

Our organization has objections to Bill C-350 based on principle and law. We are aware of and somewhat resigned to those many restrictions and irritants which consignment to a federal institution lawfully imposes on our clients and their incarcerated peers, yet the penalty unexpectedly proposed by Bill C-350 is of a kind unrelated to the rest. It is difficult to imagine that the sentencing judge, with one eye on the facts and the other on proper sentencing principles, would have anticipated, much less intended, the imposition of special rules for the garnishment of monetary awards, especially as the sanctioned criminal behaviour likely hasn't the slightest connection to the civil ill this legislation wants to cure.

Do not think that we stand against the payment of spousal and child support orders, or the payment of restitution, or the satisfaction of monetary judgments won in the civil courts. What we deplore is the conferral on deserving creditors of a new statutory advantage which is proffered only where and because their adversary is a federal prisoner. If there exists compelling reasons for offenders to respect court-ordered payments, it is not because an individual has committed a robbery, or an assault, or a drug offence; it is for exactly the same good reasons that apply to every other Canadian who is the subject of a court order. The statutory pressure on offenders to comply with orders should be neither less nor greater than that on the rest of the public. To operate otherwise would be to head down the road to second-class citizenship with second-class civil rights.

We must not forget that there was a time when conviction brought with it civil death, the extinction of all civil and property rights. The damaging disparity of the offender's status and that of the ordinary citizen could not have been more complete, but Canadian society has steadily moved away from that antiquated and counterproductive notion.

In 1906 the most drastic features of civil death were swept away in Quebec through the action of legislators like yourselves. In the rest

of Canada the legislatures took action 14 years earlier. Still, the courts were slow to admit that offenders had rights that could be violated by unfair decisions by penitentiary authorities.

The Supreme Court decision in *Solosky v. the Queen*, in 1979, was a turning point, crystallizing the new understanding that "a person confined to prison retains all of his civil rights, other than those expressly or impliedly taken away from him by law".

Today this concept is built into the Corrections and Conditional Release Act itself, which reads at paragraph 4(d), as amended by Bill C-10:

(d) offenders retain the rights of all members of society except those that are, as a consequence of the sentence, lawfully and necessarily removed or restricted;

Clearly, that concept does not endorse a prejudicial garnishment scheme necessitated by neither sentencing principles nor the constraining barriers of bricks and bars.

Should the proposed rules be adopted, would this return Canadian offenders to the cruel and discredited condition of civil death? Obviously not, but it would be a step backward in that direction, and if it should serve to encourage additional measures that further degrade the civil status of offenders, it would be part of a societal tragedy.

We wish to refer the committee to the possibility that this adverse treatment reserved for federal offenders would violate section 15 of the charter, which prohibits discriminatory measures based on membership in a disadvantaged group. Of course, for a section 15 challenge to succeed the courts would have to recognize offenders, or at least federal offenders, as a group contemplated by that section.

Admittedly, this position was rejected in the *Sauvé* case by the Federal Court of Appeal, and subsequently by four justices of the Supreme Court, but we hasten to remind you that that opinion is found in a minority decision. That was in 2002. We note that the majority in the *Sauvé* case declined to rule on the application of section 15 to prisoners, leaving the door open for a differently constituted court to rally to our position, which we respectfully submit will one day prove to be the right one.

● (1630)

If the attack on Bill C-350 on equality grounds should have the look of a viable but uphill battle, the balance is different where the sections 91 and 92 debate is concerned. Here, we think it is for the bill's defenders to demonstrate why this apparent federal invasion of provincial jurisdiction would not be struck down. The question warrants a close examination by experts more focused than we are on the issues raised by section 91 and 92 conflicts, or, to be more specific, conflicts between Parliament's legislative authority over penitentiaries and the provincial legislatures' jurisdiction over matters related to the administration of justice and property and civil rights.

Given this bill's overt duplication of at least some provincial activity, before proceeding to enactment of Bill C-350 it surely would be prudent to hear from the provincial attorneys general, as they are among the interested parties who might be provoked to challenge your jurisdiction in the courts.

Without waiting for expert opinion, however, we feel comfortable stating that Bill C-350 wants to create rules governing matters in the provincial domain, and furthermore risks impairing the provincial scheme already controlling execution of court orders against all assets. The new specialized regime would create confusion for creditors faced with two sets of rules and create two classes of creditors, conferring an unfair advantage on those fortunate enough to have federal offenders as their debtors. One is forced to wonder if the new selective enforcement possibilities against federal offenders will work an even greater mischief by inspiring an interest on the part of some creditors in seeing their debtors receive a federal sentence.

We have said that we have no disagreement with legal rules that facilitate creditors' exercise of their civil and property rights. We imagine the author of this bill shares that position. Why, then, does he not seek to assist all the deserving creditors, instead of a small minority of them? The answer, of course, is that he understands this is beyond your competence as federal legislators. It is a provincial matter for your provincial counterparts, and that is how the execution of court orders and judgments should be handled.

We wonder as well if anyone has examined the financial burden of setting up a comprehensive registry of awards and judgments and orders issued against offenders and of federal awards of all kinds in offenders' favour. Or is Mr. Lauzon's proposal to hand Correctional Service Canada, or some other branch of the federal bureaucracy, the assignment and discover later what the set-up and annual costs will be?

Bill C-350 pits itself not only against provincial legislative and administrative efforts, it seeks to undermine Correctional Service Canada's own operations. One remembers that Bill C-10 has recently added section 15.1 to the Corrections and Conditional Release Act, instructing wardens to ensure that a correctional plan is established for all offenders, the goal of which is to bring about their rehabilitation and reintegration on release as law-abiding citizens. To that end, each correctional plan must contain "objectives for the offender's behaviour, including ... (iii) the meeting of their court-ordered obligations, including restitution to victims or child support". Offenders' progress toward meeting these objectives is to have an impact on transfer and parole decisions.

The correctional plan is at the heart of Correctional Services Canada's program to move the prison population toward responsible attitudes that it is hoped will persist after release. I assume the inclusion of court-ordered obligations in the plan was not done without some thought. CSC does not want court orders satisfied despite the offender's opposition. That would defeat the goal of bringing offenders to understand and accept the rightness of responsible behaviour toward their dependants and creditors. Bill C-350 will pre-empt and frustrate CSC's mandate in this regard, one that was just conferred by Bill C-10.

•(1635)

The Chair: You have one minute, Mr. Fineberg.

Mr. Stephen Fineberg: What we have said thus far is in reaction to the bill's intention. Our criticisms have presumed that the provisions as drafted will operate to create the proposed recovery system. But will they?

We note that the whole of the proposed section 78.1 is made conditional on satisfaction of its subsection (3):

In making payments under this section, Her Majesty is not required to take into account any judgment or order of which Her Majesty has no actual knowledge at the time the payment is made.

The very deliberate effect of that measure is to make this payment scheme operational only when the orders and judgments contemplated have been duly filed or registered in some manner that formally notifies Her Majesty in right of Canada of their existence. It could hardly be otherwise. No one should expect the administrator of the Canadian Human Rights Tribunal to cut a cheque and forward it to a faceless individual whose claim to be a creditor is communicated through a mere letter accompanied by a copy of a punitive court order that may or may not be genuine.

Keeping the knowledge requirement in mind, we turn to the proposed paragraph (a), which refers to amounts owed by an offender pursuant to a spousal or child support order. We expect this provision will be without effect. Recovery for orders such as these is already managed by administrative systems established and controlled by provincial legislatures acting within their jurisdiction. In every province and territory there exists a maintenance enforcement branch whose support orders are filed. Such orders are routinely issued with a clause requiring that support payments be directed not to the individual creditor but to the maintenance enforcement branch.

The maintenance enforcement branch, in turn, without any assistance from Bill C-350, files the support order with all appropriate bodies, including federal tribunals, thereby garnishing not only wages but also monetary awards, both provincial and federal. The action contemplated at paragraph (a) is already taking place through a well-defined and comprehensive structure equally accessible to all creditors, a structure, we remind you, that is already funded. One sees that the proposed offender recovery scheme for support orders is entirely redundant, if not pernicious.

The Chair: Can you wrap it up? I don't know how much you have left there. Are you on your last page?

Mr. Stephen Fineberg: I'll summarize.

Dealing with the other heads for recovery, paragraphs 78.1(1)(b) and 78.1(1)(c), the picture is less clear, because a crown attorney is party to the proceedings in which restitution and victim surcharge orders are made. Is this sufficient knowledge to consider that Her Majesty in right of Canada has been put on notice and to allow moneys to be diverted from awards? It's not clear to us at all.

When we arrive at paragraph (d), which concerns judgments in civil courts, it becomes much less obvious that this can be done. These orders are not registered with anybody, and no mechanism has been proposed—

• (1640)

The Chair: Point of order, Ms. Hoepfner.

Ms. Candice Hoepfner: Mr. Chair, we are so limited on time, and I think the—

The Chair: And that's the problem

Ms. Candice Hoepfner:—witness could answer through some of our questions.

The Chair: It looks as though he is probably ready. We go only until five o'clock today, or maybe a little after five, and then we move into committee business.

Mr. Leef, I'm going to come back to you. You have four and a half minutes, roughly.

Mr. Ryan Leef: Thank you, Mr. Chair.

The one thing we heard about the provisions for maintenance enforcement recovery was that for a garnishee scheme to work, the order had to be filed the moment payment was made to an individual. That became a real challenge, of course, because if payment hadn't been made on the day an order was put forward in court there'd be no money to pay out for child support. This was looked at as a different mechanism to deal with that issue, because obviously inmates aren't paid on a biweekly pay schedule, as the common citizen in Canadian society is.

I found your comments about fairness with regard to other Canadians interesting. I think that's a fair commentary. But to give an example, if I'm provided an award for damages as a victim and I'm wronged in whatever form or fashion you want in Canadian society, and the only source of income I get is the judgment for being a victim, Canadian law doesn't protect that for me. It doesn't say you have this income stream because you're a victim and therefore we will set that aside and make it untouchable by all your other creditors. They can get it regardless.

So what you're proposing is that inmates would actually have enhanced rights over those of the average Canadian, in that they would get awards because they had been victimized.

I think, Ms. Pate, you said it would be an egregious breach. I would agree. I think your commentary on that and your assessment of when these payouts occur are right. But nobody sets that aside for me or any other Canadian citizen and protects that award because someone has been victimized. If I owe Revenue Canada money, they garnishee that. If I owe spousal support, they garnishee that. If I owe any other creditor or debtor, they take that money. That money is not set aside and protected for me. Why would we do that for the inmate population, and how do we convince the average Canadian citizen that it is a suitable and reasonable thing to protect inmates from?

Ms. Kim Pate: Just to be clear, I don't think we do that for prisoners at all. In fact, if they have debts they do have to pay.

What I was trying to say just before we went to Mr. Fineberg was that we don't need this legislation to do that. I think this legislation

goes further than that. So currently, if there are orders, there would be mechanisms to enforce them.

Mr. Ryan Leef: Can you highlight that a little further for me? Because the testimony we're hearing is saying that if inmates are awarded money and they have outstanding debt or credit due, there is no way to access those funds. They go into the CSC savings account, and they are not able to make sure that's paid out. In fact the most CSC can do is encourage them through a case management plan to make a responsible choice to make the payments that are due. But there is no actual mechanism to do that.

Ms. Kim Pate: For sure. I would just say that if CSC is saying that, I'm not sure why they're saying that, because certainly if there's a court order, they enforce it. I know of situations where they have.

I'm not sure why they're saying that. Whether they could go behind for a victim surcharge or add something new that would be for a new payment scheme.... That might be what they're saying they wouldn't have the ability to do.

Mr. Stephen Fineberg: If you'll permit me—

Mr. Ryan Leef: Yes.

Mr. Stephen Fineberg:—I had an opportunity to look at the transcript of Mr. Toller's testimony from yesterday. I think Mr. Toller was trying to make a distinction between the way the Correctional Service operates now and the way the Correctional Service would have to operate if Bill C-350 were enacted. What he was telling you was that currently the Correctional Service is not able to seize the money or divert the money. They can't do anything with the money. They can't act on a civil debt the prisoner has, even if they are aware of the civil debt.

What they do through the correctional plan is to encourage as much as possible. They encourage people to assume responsibility for their behaviour and their debts. That's what he was trying to say. I do not believe he was telling you that these moneys cannot be seized. He was saying that the Correctional Service has no authority to seize the money. He was not telling you that the civil mechanism for acting on orders does not apply to federal prisoners. That's my understanding of his testimony.

• (1645)

The Chair: Thank you.

We'll now run to Mr. Garrison for seven minutes.

Mr. Randall Garrison: Thank you very much to both of you for appearing before the committee.

I'm going to split my time with Madam Doré-Lefebvre.

I just want to ask Mr. Fineberg a quick question based specifically on this bill. I guess it has two parts. Do you see that it has any merit? And do you see any way of correcting its legal flaws?

Mr. Stephen Fineberg: The merit would be in the intention, but I do not think it works. I don't think it can work. I don't think it makes sense to try to bend it out of shape and find a way to do at the federal level what the province already does and perhaps could do better.

If there is any problem with the execution of orders that is specific to prisoners receiving awards, then I think the provincial government should be encouraged to fine-tune its scheme, which already exists, which purports to be comprehensive and is already funded.

I don't see the point of this.

Mr. Randall Garrison: I have just a brief follow-up before I hand it over then.

If this were adopted and implemented, how would an inmate or offender effectively challenge this? It would take some considerable legal resources to do that.

Mr. Stephen Fineberg: That is a problem. Eventually, I imagine, somebody will come forward who has the resources, either private or through legal aid support. If money is seized from someone and that person thinks that the money was seized without jurisdiction, surely there will be a challenge through the courts. As well, I'm suggesting here the provincial attorneys general may interest themselves in this, as their provincial jurisdictions are being invaded.

While we're talking about the difficulty prisoners have in mounting legal challenges, an interesting point is that this occurs also to spousal and child support orders. Typically, a federal prisoner is not able to find the resources to combat the petitions for orders, and the orders are often made out for spousal and child support without much participation from the other side, sometimes without any participation from the other side.

There are provinces, New Brunswick for instance, where there is no legal aid support available to prisoners who want to challenge that kind of thing. Usually they have to sit back and watch it happen.

Mr. Randall Garrison: Thank you.

The Chair: Thank you, Mr. Garrison.

Ms. Doré-Lefebvre.

[*Translation*]

Ms. Rosane Doré Lefebvre (Alfred-Pellan, NDP): Thank you very much, Mr. Chair.

I want to thank our guest for appearing before the committee on Bill C-350.

My questions are for Ms. Pate because I think it is important to hear about women offenders who are in jail.

In your opinion, does Bill C-350 address a situation that is common among women?

[*English*]

Ms. Kim Pate: It's unlikely. There are some women getting payments because of the residential school settlement, so that could certainly impact women.

It's already impacted a woman for whom we've been trying to get a conviction review. In order to get a conviction review, we had a lawyer involved who was going to do it through legal aid. Now legal aid won't cover it, so we're having that argument right now. This is a matter where everybody agrees, including the corrections service, that she should not have been convicted of the offence. It was an assisted suicide, still on corrections' books, and she was convicted of murder. We're trying to get a conviction review. She can't at this

point get legal aid unless she taps into moneys that have been put in trust for if and when she gets out at some point in the future.

It seems pretty egregious, after ten years of a massive history of sexual abuse and physical abuse in residential schools, to then have that money taken away in order to get her out, and then to have no resources to re-enter the community if we succeed. That's the most current situation.

The flip side of what my colleague Mr. Fineberg has talked about is the number of women who can't get legal aid for family matters when they're required to get social assistance, usually when they get out of prison. They're required to try to get spousal or child support first, or sometimes spousal and child support, before they can go ahead. So that would be an area where it could impact as well.

• (1650)

[*Translation*]

Ms. Rosane Doré Lefebvre: Okay.

[*English*]

Ms. Kim Pate: I'm sorry to interrupt. There aren't a lot who get settlements from the corrections service. Where they do, it has been after the Prison for Women situation, and Ashley Smith. There are some where people have—

[*Translation*]

Ms. Rosane Doré Lefebvre: Yes, the Ashley Smith case was rather important.

Last Tuesday, Ms. O'Sullivan, Federal Ombudsman for Victims of Crime, told us that some balance is needed among victims and that we have to make sure rehabilitation tools are provided. Ms. O'Sullivan stressed that point. It was a very interesting discussion.

In your opinion, does this bill promote women's rehabilitation?

[*English*]

Ms. Kim Pate: I can't see it being something that will necessarily assist their rehabilitation. As I say, if they're getting settlements from corrections—from the state because of actions of corrections—then they're often, as I've mentioned, using those resources to get support to assist them to get out, or to assist their children.

I do think that, unfortunately, it's the bill. As others have said, including Mr. Fineberg, there are other mechanisms. It's one of those issues where, as we've seen with some other pieces of recent legislation, the cost to taxpayers of implementing this, the cost to corrections of trying to implement this—instead of looking to the provinces to buttress the mechanisms that already exist—is not a useful way to be expending resources.

As I said at the beginning, that is not to say we don't support in principle compensation, restitution, and victim support; absolutely, we do. But I think implementing this sort of bill and putting in place legislation that's not required will probably have a huge cost to administer, versus what the benefit will be to victims.

[Translation]

Mr. Stephen Fineberg: If you will allow me, I have something to add.

[English]

The Chair: You have about ten seconds.

Mr. Stephen Fineberg: It's going to create friction between offenders and the correctional service, and there is no need. If they're upset because money is being seized behind their back without their agreement, it can be the provincial mechanism that does it.

There's no need to cause this further friction between the offenders and their parole officers and correctional staff.

The Chair: Thank you, Mr. Fineberg.

We'll go back to the government, to Mr. Leef. But I do want Mr. Scarpaleggia to have an opportunity to ask a question, so really quickly.

Mr. Ryan Leef: We'll share some time.

Thank you, Mr. Chair.

What this starts to boil down to—and your comments were interesting—is the friction between inmates and the correctional environment. We can appreciate the delicate balance you're facing, but I think what we're doing right now is putting too much of that in the hands of the inmates, and the fact is they have a debt to pay to society.

You made an interesting statement of the corrections service's responsible attitudes, and I think one of the ways we achieve responsible attitudes towards corrections is if there is buy-in from Canadian society, which includes buy-in from the victims of crime. When we talk about the cost of imposing these kinds of things—we've heard testimony about the \$83 billion cost to victims and at what point that actually gets repaid and who's responsible for the repayment of that—I think your average Canadian citizen would lean wholeheartedly to the side that the people who have committed the crimes are the ones responsible for repaying that debt, the financial debt and the social debt that they have to pay.

Suggesting that putting measures in place that require them to pay that debt creates unnecessary friction allows us to bend to unnecessary concessions to them, and puts victims even further down the totem pole. It elevates criminal status to a point that is out of touch with the average Canadian citizen.

You characterize them as undeserving creditors. When I see 576 restitution orders, 1,136 fine orders, and 725 victim fine surcharges on the books with Corrections Canada on an annual basis, that represents a significant number in terms of both monetary and individual victims who are never being repaid for the crimes that occur in this country.

I think if you want fairness for the inmates, the first step that needs to occur is fairness to the victims, so they take our criminal justice system and the correctional system seriously. If we appear to be beholden to the criminals who have an obligation and a debt, I don't think that serves them well either, because I think it leaves a scary sense of self-entitlement there. I think it affords them no greater protection within the correctional environment. I don't think it allows

them to move on toward a path of help, hope, and healing when they get into the citizenship thing and when they're trying to feel proud about the things they've done. If they don't find the ownership and responsibility and take that, I don't think we're doing them any favours. If we allow them to hide from it, I'm not sure how we're helping them.

I don't see this as taking money from behind their backs. The money undoubtedly is earned because of some wrong that has been done to them. The debt has also been earned and the debt must be paid.

So I'm not sure how we reconcile that, because I look back on Mr. Toller's evidence, and he flat out said these debts aren't being paid at a high percentage. I'm not sure about the burden of Corrections Canada, because the bill talks about the monetary awards being awarded by the courts, so it's clearly not Corrections Canada cutting the cheque. So somebody else is cutting the cheque to the inmates, which would mean an award would be made by a judge. The judge would find the registered creditors who need to be paid, would pay those people, either the families for child support, restitution orders, a victim surcharge that they owe, or any amount awarded by a court of common jurisdiction, and then any balance would go to the inmate, into their savings account, to be brought into their operating account, twice a year as allowed by Corrections Canada.

So it's not being taken behind their backs. It's being taken front and centre by a court order. I think it's the way we message that that's very important, that if they feel entitled to that money, are due that money and nobody else is entitled to get it, they're forgetting they've earned the debt as much as they have the compensation.

• (1655)

Don't you think that's an important message, that the inmates understand they've earned a debt and that debt needs to be paid?

Mr. Stephen Fineberg: The principle that you raise refers perhaps best to restitution orders ordered by the criminal court to compensate victims. The principle that you raise would apply to that one out of the four different situations the bill contemplates, and there are still the practical objections, in that it's not clear at all that this can work.

Apart from that, there is still the problem of the conflict with provincial jurisdiction. If the conflicts with provincial jurisdiction could be waived, if section 15 of the charter were not invoked, I just want to remind you that the argument you make can be made only on behalf of proposed paragraph 78.1(d) of this bill.

The Chair: Very quickly, Ms. Pate.

Ms. Kim Pate: Two things. If in fact the payment is due because the person has been victimized, then maybe one of the mechanisms you could look at is requiring that the state, whoever the state actor is who has violated the rights, has a surcharge. I think the concern about victims' surcharge is there. So when we're actually talking about someone who has been victimized by the state, maybe there's a way to have a surcharge that's applied to the actor who owes that money as well. That's one thing.

When you're talking about totem poles, the reference to totem poles, a common misunderstanding is that the person lowest on the totem pole is actually the least important. In fact it's the opposite. So the most significant on the totem pole is that person at the base.

The Chair: Thank you very much for that.

Mr. Scarpaleggia, I have some good news and I have some bad news.

Mr. Francis Scarpaleggia: Oh, well.

The Chair: The good news is we do have committee business today, in which you will have ample opportunity to share any thoughts you may have on some of our future business.

Mr. Francis Scarpaleggia: Okay.

The Chair: The bad news is we aren't going to have time to get a question to these folks from you today.

I do want to thank you for appearing. Thank you for coming and giving us your opinion on this bill. If you have other information that you feel you could have answered, or maybe there was a question and because of time limitations you weren't able to adequately expand on it, please feel free to send it in to our committee and we'll see that it's circulated.

Thank you.

Committee, I would ask that you not leave your seats if possible. You can greet these guys or say goodbye very quickly. In about a minute and a half we will reconvene and we will go in camera to deal with future business.

[Proceedings continue in camera]

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