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# **Standing Committee on Public Safety and National Security**

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**EVIDENCE**

**Tuesday, May 8, 2012**

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**Chair**

**Mr. Kevin Sorenson**



## Standing Committee on Public Safety and National Security

Tuesday, May 8, 2012

• (1530)

[English]

**The Vice-Chair (Mr. Randall Garrison (Esquimalt—Juan de Fuca, NDP)):** I call to order meeting 38 of the Standing Committee on Public Safety and National Security on this Tuesday, May 8.

I welcome our witnesses today from the Office of the Correctional Investigator, Mr. Howard Sapers, and Marie-France Kingsley, director of investigations.

I'd like to invite Mr. Sapers to start with his opening statement. We usually allow about 10 minutes.

**Mr. Howard Sapers (Correctional Investigator, Office of the Correctional Investigator):** Thank you very much, Mr. Chair. It is a pleasure to be back.

I actually have very brief opening comments today, but I do appreciate the opportunity to appear before the committee to discuss Bill C-350. Today I am joined by Marie-France Kingsley, who is the director of investigations for the Office of the Correctional Investigator.

Though I will be brief in my remarks, I will raise some questions and concerns that we have noted regarding the application, scope and potential administration of Bill C-350, but I do want to declare my limitations at the outset. My office has no expertise in the prioritization of creditors or debt recovery mechanisms. I cannot speak to issues raised by this bill concerning jurisdictional matters or jurisdictional competence, and it is beyond my capacity to comment on matters of constitutionality, or even the compellability of forcing payments in the order of precedence contemplated by Bill C-350.

Hopefully, however, I can be of some assistance in bringing some insight into more practical matters that speak to the capacity and ability of a federal inmate to repay outstanding monetary debts, restitution orders, or victim fine surcharges and still meet their obligations to society while serving a sentence in a federal penitentiary.

As members know, Bill C-350 sets out priorities for debt repayment in cases when an offender is legally entitled to a monetary award. There are current mechanisms in place that allow Correctional Services Canada to register known restitutions and fines levied by the courts against federal offenders. Thousands of such registrations are currently on file. However, obligations arising from civil proceedings, creditors, and even spousal or child support payments, are not routinely noted in CSC's records. Bill C-350 would effectively require Correctional Services Canada to establish a tracking system to administer child or spousal support orders, as well

as other debts owed as a result of an award by a court of competent jurisdiction.

It is not clear to me how such a registry would be created, or how much it would cost to implement or maintain. I do question whether we want or expect the federal correctional authority to be mandated to become part of a debt collection scheme. In fact, should it even be CSC's job to verify existing civil debts or other obligations, court orders, or settlements? What if a mistake is made? What if an appeal or variance is granted post warrant expiry? Who would be held accountable or liable? How would creditors register? In the case of debt repayment, is it up to CSC to decide what creditor gets paid first and in what order? One thing is certain, the cost and complexity of administering such a registry can be expected to be significant.

I understand that the need for this bill was based on a couple of high-profile cases. I appreciate that there may be a current impairment in recovering or garnishing monetary awards that may have been received by an offender under federal custody as a result of a legal action or proceeding by a federal court, tribunal, or agency. However, my experience suggests that the publicity surrounding such cases can be significant enough to likely alert any creditors. As we know, creditors usually act very quickly to intercept monetary awards before they can be disposed of by other means.

I am not certain that the creation of a complex and potentially expensive registry is the most efficient or effective way to deal with a few high-profile awards, much less meet court-ordered restitution arrangements, including child or spousal support obligations. In any event, the great majority of offenders in federal custody have very little money and limited capacity to earn while incarcerated. An elaborate recovery scheme is not likely to provide much satisfaction to victims as most debts will likely remain unpaid. Even the courts recognize these realities when imposing fines or making victim restitution orders or surcharges. This is an unfortunate reality, but perhaps also an opportunity to make substantive suggestions for reform.

Let me provide some context. I want to talk for a minute about the capacity of inmates to repay debts or meet ongoing family obligations while serving a federal sentence.

•(1535)

The maximum an offender can earn in a federal penitentiary while gainfully employed was set at \$6.90 per day in 1981. It remains the same rate today, over 30 years later, and it has never been adjusted for the cost of living for inflation. Inmates in federal institutions are provided basic institutional clothing and personal hygiene products. Anything over and above that must be purchased by the inmate with their own money.

An established list of goods for purchase is available to the inmate population at a 10% profit margin. In 1981 when the rate of pay was established, a standard basket of canteen items could be purchased for \$8.49. By 2005 that same basket of goods was estimated to cost \$61.59, representing a 725% increase. Over the past three years, reductions in non-essential health care services previously provided by the Correctional Service has placed an additional burden requiring non-prescription items, such as Tylenol or medicated shampoo, to be purchased through the inmate canteen. For example, a 100 millilitre bottle of Buckley's cough syrup sells for \$7.58 inside, more than one day's wages.

Other potential deductions from offender pay include institutional fines, inmate welfare committee funds, social events, and room and board. The top earners who receive overtime, incentive pay, or supplemental income, such as pension payments, are subject to pay for room and board while incarcerated. This amount is not to exceed \$5 per day or \$50 per every 14-day pay period.

In addition, all inmates must contribute to the inmate welfare fund. These expenses add up to \$6 per 14-day pay period and cover things such as television and cable costs, as well as a variety of inmate welfare committee disbursements for organized activities for offenders, as well as inmate donations to charitable groups and legal fees for group actions.

My point here is simply to say that crime does not, in fact, pay. Prison rarely captures the affluent. Most offenders have no savings, and their earning capacity inside a federal institution is extremely limited. There seems little point in diverting earnings that, at best, will only minimally support release. It is not unusual for a released offender to be facing thousands of dollars of accumulated debt and only limited employment opportunities.

The issue that Bill C-350 addresses is an important one. Part of an offender's reintegration should include the satisfaction of debts to the best of their ability. My concern is that the suggested approach may prove both unworkable and counterproductive.

Thank you once again for the invitation to meet with you today. I look forward to your questions.

**The Vice-Chair (Mr. Randall Garrison):** Thank you very much, Mr. Sapers.

We'll move to the government side. Candice, you have seven minutes.

**Ms. Candice Hoepfner (Portage—Lisgar, CPC):** Thank you.

Thank you very much, Mr. Sapers, and Ms. Kingsley, for being here and for your presentation.

Just so it's clear to me, Mr. Sapers, would you in principle be supportive of a measure that would ask offenders to pay outstanding debt? I want to go on to the challenges that you identified, but in principle, I wonder what your opinion is of this bill and how it would affect offenders. In your opinion, is it a positive bill or is it something that you wouldn't be able to support?

**Mr. Howard Sapers:** Thank you very much for that question.

As I said in my concluding comments, it is an important principle and it is particularly important that offenders be given an opportunity to provide restitution and to satisfy their debts. That's part of becoming responsible; that's part of reintegration. That, in and of itself, is not my concern. The concern is really about a legislative mechanism that may create more problems than it's solving.

**Ms. Candice Hoepfner:** I appreciate your comment. So, if I'm hearing you correctly, you do support it and you don't see it as anything that would be negative. In fact, for accountability purposes and in terms of offender rehabilitation, it would probably be beneficial for offenders to pay restitution, to pay child support, and to pay spousal support.

I wonder if you could comment on offenders' families and your role in that regard. Many times you talked about the fact that offenders don't have a lot of money in prison and, in your opinion, crime certainly doesn't pay—nor should it—but there are families who are also the victims. It might be a father or a husband who's in jail, and the family is not getting support. Is that something that you've recognized in your work?

•(1540)

**Mr. Howard Sapers:** Actually, very sadly, we see this happen in both directions. We do from time to time have contact from family members who are seeking mechanisms for support. We also see challenges from offenders who want to continue making whatever kind of support payments they can whether they're court-ordered or not, sending money back to the family from whatever their institutional earnings are. So there are certainly problems in both ways.

We also know that some creditors are willing to negotiate with offenders and their families in terms of income disruption and their ability to pay and satisfy obligations regarding outstanding debts—and others not so much. So that playing field is a little uneven, but I think in principle that expecting offenders to satisfy their debts in a reasonable way to the best of their ability is laudable. But there were a couple of qualifiers there: “in a reasonable way” and “to the best of their ability”.

**Ms. Candice Hoepfner:** The challenge that I heard you articulate was more in terms of the CSC. I think you said that Bill C-350 would effectively require CSC to establish a tracking system to administer debts that are owed. Is that your main concern?

As I read the bill, I see that if an award is made from the federal government to an offender, an inmate, this bill lays out who would be paid first, second, third, and fourth, and when all of these things were paid out, then the remaining moneys would go to the offender.

I'm seeing the Government of Canada, the crown, paying out the money, but what you're saying is that as the bill reads right now, it would be up to CSC to determine who else is owed money in this list of people who would get paid before the offender would. So you're seeing this as a problem because now CSC has to find out whom the offender owes money to. Is that correct?

**Mr. Howard Sapers:** CSC would have to register both the income and the expense or the monetary award and the debt. Then they would have to administer payments. There is a schedule contemplated in the bill, but it's not clear to me, for example, what would happen if an inmate received a structured settlement. It's not clear to me, as I said, what would happen if there were a change or an appeal or a variance at some later date.

It's also not clear to what extent CSC would be responsible for maintaining the accuracy and the currency of that, and perhaps even for posting warrant expiry. It's also not clear what would happen during the period of time when an offender might be on conditional release in the community, let's say on day parole, and working and having another source of income.

It's also not clear what would happen and how funds would be received and disbursed if there were an out-of-court settlement or if there were a settlement resulting from CSC's negligence, for example, if there was a claim against the crown regarding the destruction of personal property. It's not clear to me whether even the drafter of the bill would have contemplated that.

If an inmate is transferred from one institution to another, for example, and has a radio that's worth \$50 and the radio is broken during the transfer and it's clearly CSC negligence that caused that damage, then if that offender is given \$50 or another radio, that's a monetary award from the crown. How would that factor into further disbursements? Those are everyday, practical considerations. The principle of debt recovery, as you say, is not the issue; but the operational challenges, I think, are considerable.

**Ms. Candice Hoepfner:** Maybe I misunderstood what you just said, but I do think it's very clear that this is not money that an inmate would be making as payment for work that they were doing while out on conditional release or if they were out and being paid. This money is actually from awards by the government.

That's an interesting point about the radio being broken. I think initially some of us might say that's a good point. The other part of that is maybe an inmate shouldn't have a radio if he hasn't paid his debts, and he needs to pay his debts first before getting a radio. I know you're giving that as an example, but I think the premise of this bill would be that even if an inmate were awarded something, if they were a victim...

Can I keep going?

I have one more really quick question.

Do you think we can amend this bill to fix some of those issues specifically with regard to CSC collecting information on who the creditors are?

• (1545)

**Mr. Howard Sapers:** I have not turned my attention to specific amendments. This may be less a legislative issue and more an administrative or regulatory issue.

I'll say two very quick things. The example I gave of an inmate working on conditional release wasn't about the new income. For example, family support or child support is usually based on income, so there could be a variance. Things would change if their circumstances changed.

I could have substituted running shoes for a radio. Inmates are allowed to have personal items that have some value. There are some questions about how that would affect an inmate's ability to have those items and personal effects in the cell.

**The Vice-Chair (Mr. Randall Garrison):** Thank you very much. I will now turn to the opposition side.

[*Translation*]

Ms. Doré Lefebvre, you have five minutes.

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

I want to thank Mr. Sapers and Ms. Kingsley for being here. Your remarks were extremely informative, particularly in terms of your viewpoint.

We recently did a bit of research into what happens at the U.S. Department of Justice. One witness told us the Americans had put a measure in place. You are probably familiar with their debt repayment program for offenders. That program may have more of a financial component where the inmate receives debt repayment counselling and such.

Mr. Sapers, what is your take on a program of that nature? Could you also go a bit further and tell us whether the Correctional Service of Canada could ever incorporate inmates in the debt recovery process?

[*English*]

**Mr. Howard Sapers:** Thank you.

The experience in the United States, as you can appreciate, is very uneven. There are several different approaches. Some of the approaches we're familiar with include things such as debt counselling at intake. An offender who is newly admitted to a prison, as part of that admission process, will undergo some discussion about debt and the ability to repay. Some even enter into assisting the inmate in negotiating debts, recognizing that a financial burden is often a huge barrier to successful reintegration.

There are other U.S. schemes that involve housing placements and overcoming challenges such as security deposits on monthly rents and things like that. There are various approaches at various state levels across the United States.

The second part of your question was really about, as I understand it, whether there is a process we would see CSC implementing to do the same—

**Ms. Rosane Doré Lefebvre:** It was about including the participation *du détenu en effet*.

**Mr. Howard Sapers:** You mean the offenders. As a matter of fact, we have talked from time to time with institutional parole officers about the role they might play. You could contemplate a change, as I said, in the intake process. You could contemplate a change while you're doing release planning. It could very well become part of their routine, particularly if there were a registry where it was clear what the debt obligations were and it was also clear whether or not there was a source of funds to satisfy those debts.

• (1550)

[Translation]

**Ms. Rosane Doré Lefebvre:** You mentioned a registry. If I understood correctly, you said it would be quite costly and difficult to set something like that up. Is there no other mechanism, besides a registry, to track all those debts and do things properly? Is that possible?

[English]

**Mr. Howard Sapers:** I'm really uncertain about the most efficient way to do this. I could contemplate a situation whereby debts are registered as they are now. In the offender management system there is the ability to register monetary awards and outstanding debts.

Last year over 2,100 individual entries were made about debts and about \$57 million in outstanding obligations. As I understand it, one of those was a single restitution order of \$25 million. The rest accounted for the other half.

A mechanism is available, and there's a way to register. Once you collect that information and register it, it's in the administration. What do you do in terms of ensuring the collection, the payment, the forwarding of the funds, the accounting of the funds, etc.?

[Translation]

**Ms. Rosane Doré Lefebvre:** As I understand it, then, there is already a mechanism in place in those institutions that have the ability to manage it more or less.

[English]

**Mr. Howard Sapers:** It's partially in place. It doesn't register the obligations or the payments in the way that's contemplated by this bill.

[Translation]

**Ms. Rosane Doré Lefebvre:** Very well. I am not sure whether you can answer this, but what effect do you think this bill will have on inmate behaviour in the institutions? Will it be positive or negative?

[English]

**Mr. Howard Sapers:** That's very highly speculative on my part. I'm not sure I can give you an informed opinion on that.

One of the difficulties I would foresee is that if there were a dispute or a disagreement, it may not be clear that the debt is recognized, or it could be something that has been appealed. So I could see it being a source of conflict or tension if there were a dispute or a disagreement about the amounts involved.

It could also be a factor in whether or not inmates even pursue claims against the crown or whether they prefer out-of-court

settlements with secrecy agreements, or whether they go through full legal proceedings where there could be public disclosure.

It could affect things that way.

**The Vice-Chair (Mr. Randall Garrison):** I will go back to the government side now, and Mr. Leef for seven minutes.

**Mr. Ryan Leef (Yukon, CPC):** Thank you, Mr. Chair, and welcome.

Mr. Sapers, going back to one of the questions Ms. Hoepfner was talking about, you raised an interesting point. I was curious from the bill itself if it would be interpreted the same way, just with respect to the running shoe example or the radio, because I think it's a good point if we're talking about a monetary award being made to an offender. Some of those commonplace things would generate some interesting questions.

Subsection 78(1) of the bill talks about monetary awards made pursuant to a legal action or proceeding against Her Majesty. Would a broken radio or missing running shoes or damage to personal property via a search normally go the course of a legal proceeding or an action, or is it more, I wouldn't say informal, the case that there'd be a formal review of that damage and a determination would be made by CSC that wouldn't exactly constitute a legal action and proceeding?

• (1555)

**Mr. Howard Sapers:** Under commissioner's directives it is a formal proceeding. It's a claim against the crown where there then could be a grant of compensation or restitution, so it may happen that way under the commissioner's directive, or it could also happen through a court proceeding.

Typically, that's what we're seeing with many claims against the crown. It's around damage or loss of personal property. That's typically what they are and they're typically not very high dollar values.

**Mr. Ryan Leef:** It still begs the question because it would be a monetary award given to them, right?

Sorry, which section was that?

**Ms. Marie-France Kingsley (Director of Investigations, Office of the Correctional Investigator):** It's under section 234 of the commissioner's directives. Those contain the guidelines of the principles for claims.

**Mr. Ryan Leef:** So your assessment would be that it would constitute a legal action or proceeding under this definition of this proposed bill.

**Mr. Howard Sapers:** Yes.

**Mr. Ryan Leef:** I'm assuming that the obligation of the CSC, when we're looking at it, would fall under that same proposed section, where it carries on and talks about "pursuant to a legal action or proceeding against Her Majesty in right of Canada, or an agent or employee", meaning against Her Majesty, an agent, or an employee, which would be the CSC, I guess.

I'm trying to find in here where that burden would shift over to CSC in actually administering the program or the payment structure, because the final subsection 78.1(4) reads: Any amount of the monetary award referred to in subsection (1) that remains after all payments have been made in accordance with subsections (1) to (3) shall be paid to the offender.

What it says to me is that there's an award, a settlement made to the inmate. Then they determine if there's any money owed, either through paragraph 78.1(1)(a), child or spousal support, or (b) as owed pursuant to a restitution order, (c) or a victim surcharge, or (d). Then if there's anything left, it gets paid to the offender.

I'm having a hard time seeing where... It's not CSC that's cutting the cheque. I brought this up with the last witnesses. The CSC wouldn't be cutting the cheque. I'm not sure CSC would actually be getting the money. It would seem to me that if the inmate is granted a settlement in a court or a proceeding, whether that's a publicly disclosed thing or an out-of-court settlement, whoever actually comes up with the agreement or the settlement would then hold those funds and would also be the ones with the obligation to settle out paragraphs 78.1(1)(a), (b), (c), and (d)—and not CSC.

Maybe I'm interpreting that a little differently from you, but I don't see the money going to CSC first, and then CSC handing it out under (a), (b), (c), and (d). Am I missing something there?

**Mr. Howard Sapers:** You know, I'm not sure.

In this case, the cheque would be cut by the crown to the offender. The offender doesn't have access to the bank the way you and I would, or frankly, even the way an offender might if he were on conditional release in the community. An in-custody offender would have a different circumstance from an offender serving a similar sentence for a similar crime, but only he had now been released on day parole or full parole.

In any case, if the offender is in custody, they have very different access to their account, and CSC controls that. If it weren't CSC being administratively involved, it begs the question, who would be? The court can't reach into that offender's account. The creditor obviously can't, or they would already have done so if there were a mechanism for them to do that. The cheque gets deposited on the offender's behalf, but administratively, CSC is looking after that offender's bank account.

It's not like you and me just going to a chartered bank or to an ATM.

• (1600)

**The Vice-Chair (Mr. Randall Garrison):** Be very brief, Mr. Leef.

**Mr. Ryan Leef:** That makes sense. The way you're describing it makes sense, but the section reads that the balance is paid out. The balance, after all debt is paid, is then paid out. I didn't see the full amount going to the inmate and then the inmate paying it back. It seems like the debt's paid and then the balance goes into the inmate's CSC account. That's the way it reads to me.

**Mr. Howard Sapers:** That's why I said I'm not sure who's missing something. I'm not sure it's you. In the drafting of the bill, I'm concerned that there may be a bit of a gap in logic. I'm not aware of

any other mechanism, other than if it's a claim against the crown that's successful, the money is paid to the offender. Otherwise some other authority would have to have access to a registry of all of that information and then be able to parcel out the funds according to this schedule or some other schedule.

**The Vice-Chair (Mr. Randall Garrison):** Thank you very much, Mr. Sapers.

Since we don't have a Liberal member present in the room, that concludes the first round. We'll move to the second round, beginning with Monsieur Rousseau for five minutes.

**Mr. Jean Rousseau (Compton—Stanstead, NDP):** Thank you.

[Translation]

Thank you for being with us, Mr. Sapers.

I would like you to comment on something you said: "I question whether we want or expect the federal correctional authority to be mandated to become part of a debt collection scheme."

Why should the federal correctional authority not take part in this initiative?

[English]

**Mr. Howard Sapers:** Well, the specific reference was to the creation and maintenance and policing of that kind of a registry process, responsible for both documenting the monetary awards and also the payments out. Please read that in the larger context, which was also to assist an offender to satisfy all of their obligations, which is very much the purpose of the Correctional Service of Canada. But it may not be practical for the Correctional Service of Canada to then become directly involved in transferring funds or making payments on behalf of an offender to creditors.

[Translation]

**Mr. Jean Rousseau:** Does it have to do with a lack of financial and human resources, which can jeopardize the rehabilitation of certain inmates?

[English]

**Mr. Howard Sapers:** My primary concern is really the administrative burden that would be placed on the Correctional Service of Canada and whether that is an appropriate undertaking for them to be involved in, given the resource implications.

[Translation]

**Mr. Jean Rousseau:** I want to know whether you believe this could create an additional burden and jeopardize the rehabilitation of some individuals. You said that your focus was really rehabilitation. Could imposing additional obligations on inmates jeopardize their rehabilitation?

[English]

**Mr. Howard Sapers:** An offender facing release is facing many barriers and many challenges in the community and one of those challenges is often accumulated debt. I think any good reintegration plan has to take that into account and any good correctional scheme should also be cautious in adding to that debt or burden.

I don't think I could make an across-the-board statement and say this would be hurtful in all cases or that this would be helpful in all cases, but it's quite common for offenders coming out of prison to be facing both employment barriers and debt issues. We would have to take that reality into account if we were going to change the way that offenders who win a monetary award—in other words those who have been deserving of a claim—have that award disbursed to them.

• (1605)

[Translation]

**Mr. Jean Rousseau:** Do I still have time?

[English]

Oh, all right.

[Translation]

If we could amend this bill to make it acceptable, what would you propose?

[English]

**Mr. Howard Sapers:** I'm sorry, I really didn't contemplate amendments. The bill itself is very short. As I said, it seems to me that we may find more success in looking at administrative and regulatory changes through commissioner's directives in terms of debt counselling, family support, and satisfaction of things such as victim fine surcharges.

[Translation]

**Mr. Jean Rousseau:** If I understand correctly, it's the mechanics that you find problematic as far as implementing this bill goes.

[English]

**Mr. Howard Sapers:** Well, I find the bill addresses an important issue that has merit but presents a solution that could end up being very problematic, because it could become very cumbersome and expensive. It could also present some fairness issues in determining who is the most deserving recipient of funds.

**The Vice-Chair (Mr. Randall Garrison):** *Merci, M. Rousseau.*

We'll turn back to the government's side. Ms. Young, you have five minutes.

**Ms. Wai Young (Vancouver South, CPC):** Mr. Sapers, thank you so much for being here today.

I find it kind of shocking, actually, given how short this bill is, that you didn't come prepared with some amendments. Because you're not exactly... I'd like to clarify your position, because it is not clear to me, anyway, whether you support this bill or not.

**Mr. Howard Sapers:** Well, thanks for the question. I'm sorry to shock you. My role typically is not to give a thumbs-up or a thumbs-down on legislation. The committee has asked me to provide my opinion, from the perspective of my office, on how this may impact the federally sentenced offender population. I've tried to do that to the best of my ability.

**Ms. Wai Young:** Thank you. I do appreciate that.

I just find it interesting because we earlier had another bill in front of us about vexatious complaints. We were trying to streamline and reduce that process and thereby reduce the administrative burden on CSC. What I'm hearing from you, based on this bill, which I think is

very straightforward, is that this is going to add to their administrative burden and, therefore, you are very concerned about that.

**Mr. Howard Sapers:** That's true. With the previous bill dealing with the grievance process, I think some of my comments were that I was concerned that it would not in fact reduce the administrative burden. In my comments I did in fact suggest that a possible amendment might be the elimination of the second-level grievance. I was concerned that the private member's bill, as presented, would create new administrative challenges for the service, just as I think this bill will create new administrative challenges for the service.

**Ms. Wai Young:** You've identified in your testimony that there would be very few people in this category, is that correct? How many people receive big payments in this area? You said there were going to be very few, is that correct?

**Mr. Howard Sapers:** I don't think I gave any indication of the numbers. There have been 2,100 plus registered awards so far this year. I can certainly provide the committee with the number of claims against the crown relating to personal property, for example. My suggestion was that there may be very few who have significant awards, but there are certainly many claims against the crown that are brought every year and several hundreds that are successful every year.

Do we have the numbers?

For 2006-2007, the fiscal year ending March 31, 2007, there were 722 cases claiming almost \$2.6 million against the crown. Of that total, about \$280,000 was paid out. That excludes all monetary awards under \$1,000, and several of the monetary awards are under \$1,000 because of the nature of the claim. By 2010-2011, that number had grown to over 1,200 cases or claims against the crown. They were claiming a total of \$4.2 million. In that case, there were seven cases over \$1,000, amounting to just over \$10,000. The remainder of the cases were monetary awards of an amount less than \$1,000.

I'm sorry if I misspoke in suggesting that there were few.

• (1610)

**Ms. Wai Young:** No, I'm not sure you misspoke. I just wanted some clarification on that. Thank you for providing that; I really appreciate it. Those figures are very interesting, so thank you for supplying them.

I also wanted to ask you, given how straightforward and simple this bill is—and you said it had merit, and it does kind of lay out a victim priority order of repayment—whether you think that CSC is incapable of developing administrative processes to do this.

**Mr. Howard Sapers:** No, I don't think they're incapable. I think they've had some challenges in some areas of administration that I've commented on in my reports, things such as the grievance process and other administrative areas of their jurisdiction. They're not incapable of doing it. The questions are; what is the burden; what would the cost be; and ultimately, would it divert attention and resources away from other areas of their operation?

**The Vice-Chair (Mr. Randall Garrison):** Thank you very much, Ms. Young. You're out of time.

We'll go to Mr. Rafferty for five minutes.



**Mr. John Rafferty (Thunder Bay—Rainy River, NDP):** Thank you very much, Mr. Chair. Thank you to both of you for being here.

Ms. Kingsley, feel free to jump in at any time if you have any comments.

I have a question that's only indirectly related to this bill, I suppose. It goes back to the \$6.90 a day. Nothing's changed in 31 years in terms of that, and two of the things you indicated are most problematical for people being released are death and jobs. Would a change in that \$6.90 a day have an impact on the debt of an inmate who may have finished serving a five- or six-year sentence and would have accumulated, if it were more than \$6.90 a day, a fair amount of money?

**Mr. Howard Sapers:** The issue with inmate compensation is a fairly significant one. Without even paying attention to or turning our minds to what would happen upon their release, just in terms of their experience while incarcerated, the costs of their keeping in contact with their family, paying for postage stamps and greeting cards to family members, or even looking after their own personal hygiene needs, are considerable inside an institution. So even day to day there is an impact from the fact the top income earners earn \$6.90 a day. Many income earners earn half that inside an institution.

**Mr. John Rafferty:** You're an investigator and as you think about this and lie awake at nights, what would be reasonable 30 years later, after \$6.90 a day for 30 years?

**Mr. Howard Sapers:** I say this with some caution because there's a very long story and I won't go into the details about it now, but the suggestion we've made is that inmate allowances be reviewed from time to time, perhaps every three years, and that they be adjusted to reflect inflation or cost-of-living rates. Without even turning our minds to the baseline amounts, even just ensuring that there's a mechanism in place for these to be reviewed in a timely way and that a review results in a change if warranted has been our suggestion.

**Mr. John Rafferty:** We talked about running shoes and broken radios, and the bill is very narrow in scope in terms of what it deals with, but there are some other things that could be problematic here in terms of a government settlement. I'm thinking that probably one of the largest populations we have in our federal penitentiaries is first nations, Métis, and Inuit people. The residential school settlements would, I suppose, fall under the scope of this bill if a person were incarcerated when that settlement was made.

Do you see a way in this bill to distinguish between awards like that, which I personally don't think should be part of this deal, or somehow separate them from what we dealt with before in considering vexatious complaints? I think that's what the bill is intended to deal with partly. Do you see in this bill a way to adjust that to ensure that we don't include things that really shouldn't be included for moral or ethical reasons?

• (1615)

**Mr. Howard Sapers:** In fact, it may be possible to contemplate a list of awards that should be excluded from any scheme contemplated under Bill C-350, and you could attach that list as a schedule to the act. You could create a schedule relating to the new subsection 78(1) and then review that schedule from time to time. Certainly, residential school claims or, perhaps, claims arising out of human rights complaints are things you may want to exclude.

**Mr. John Rafferty:** Thank you very much.

You also talked about—

**The Vice-Chair (Mr. Randall Garrison):** Be brief.

**Mr. John Rafferty:** You also talked about disputes or disagreements and I found it very interesting that there's no mechanism in there for those, but I think we could probably come up with an amendment that would deal with those, to ensure that a mediator would be made available to make sure that the dispute resolution process took place, or something like that. Would you see that as a valuable addition to this bill?

**The Vice-Chair (Mr. Randall Garrison):** Be very brief, if you can.

**Mr. Howard Sapers:** This is where my concern really begins to manifest itself. With the layers of administration you would put on, do you want to create a legislative necessity for that with either a mediation process or another kind of process to arbitrate, negotiate, or settle disputes?

So could I contemplate a series of amendments? Certainly. Do I think that it would be the most appropriate way? That's exactly the question I raise in my opening comments. I question whether that's the most appropriate way to do it.

**The Vice-Chair (Mr. Randall Garrison):** Thank you very much.

I think with the unanimous consent of the committee, since we're in the second round, I will offer Mr. Scarpaleggia five minutes at this point if he chooses to use it. Is that agreed?

**Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.):** Chair, to be honest, all the questions have been asked—at least based on what I've heard. But I appreciate the offer. I'll maybe bank it for some other time.

**Some hon. members:** Oh, oh!

**The Vice-Chair (Mr. Randall Garrison):** No, I don't think there's any banking of time allowed at this committee.

So I think that's going to conclude our questions for you today, Mr. Sapers, and Ms. Kingsley. Thank you very much for appearing before the committee once again, and I'm sure we will see you from time to time.

As our other witnesses are here, we will suspend for just about two minutes while the other witnesses come to the table.

Thank you very much.

• \_\_\_\_\_ (Pause) \_\_\_\_\_  
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**The Vice-Chair (Mr. Randall Garrison):** Welcome to our witnesses today. We have with us on Bill C-350, from the Department of Justice, Catherine Kane, the director general and senior general counsel of the criminal law policy section, and Ms. Elissa Lief, the senior general counsel of the family, children, and youth section. Thank you very much for appearing on short notice. We do appreciate that.

I understand that you may wish to make only brief or no opening statements, so I leave that in your hands.

•(1620)

**Ms. Catherine Kane (Director General and Senior General Counsel, Criminal Law Policy Section, Department of Justice):** Thank you.

I have not prepared opening statements. Our understanding was that the committee might have some questions for us. I can briefly indicate that I would be prepared to answer questions with respect to the restitution provisions and the victims surcharge provisions, having had extensive experience dealing with those amendments over many years in my responsibility for criminal law policy in the Department of Justice.

My colleague would be well placed to answer questions with respect to family law enforcement, regarding at least the federal government's role in that area.

**The Vice-Chair (Mr. Randall Garrison):** Okay. Thank you very much.

Then we'll begin with questions from the government side.

Ms. Hoepfner, for seven minutes.

**Ms. Candice Hoepfner:** Thank you very much. I might not need seven minutes.

I'm wondering if you would give us your views on, or if you have been able to evaluate, the constitutionality of this bill in its present form.

**Ms. Catherine Kane:** I'm not prepared to speak to the constitutionality of the bill. It would be other colleagues within the Department of Justice who may have been consulted with respect to its constitutionality. My understanding was that you had questions with respect to surcharges and restitution, and I was specifically asked to speak to those issues.

**Ms. Candice Hoepfner:** Okay.

Constitutionality had been our initial reason for wanting to get some input. I guess there would probably be a variety of opinions from a variety of legal experts possibly on the constitutionality of any given bill or piece of legislation. Anyway, I'll leave it at that.

Are you able to speak to the following, because we do hear some concerns about it and it wasn't quite clear to me. If an inmate is serving his or her sentence in a certain province and if regulations for collection, whether maintenance collection or any types of collection, differ by province, would the inmate have to be resident of the specific province where they're serving their sentence or would they be resident wherever their permanent address was before they were incarcerated?

**Ms. Catherine Kane:** If a restitution order or a surcharge order were outstanding, that's a debt that's owed to the province because a surcharge is collected by the province. So the province that would be seeking the surcharge revenue from the offender would likely be waiting for that offender to be released and returned to the jurisdiction where the surcharge was imposed, to then proceed with collection efforts in the event it wasn't paid while the offender was in the institution or before the offender entered the institution. It's more a practical matter than a matter of where the offender is deemed to be a resident. But there would be civil enforcement remedies that could be transferred from one jurisdiction to the other if the province

wanted to take those steps to try to enforce the civil order—a debt—from one province in another province.

**Ms. Candice Hoepfner:** Would that be the same for child support or spousal support? It might be Ms. Lieff who could answer this.

**Mrs. Elissa Lieff (Director General and Senior General Counsel, Family, Children and Youth Section, Department of Justice):** With respect to support, there is interjurisdictional support legislation that allows one province to deal with another province in terms of collection. I can't speak specifically to how the provinces deal with offenders, but there's legislation that exists. Where one parent resides in one jurisdiction and another parent resides in another jurisdiction, and there's support owing, the provinces work together to collect that.

**Ms. Candice Hoepfner:** Yes, and I think that's where we've seen the challenge when we're talking about offenders.

When we're talking about people who aren't offenders and who are living in general society, there are ways for spousal support and child support to be collected. We've heard some conflicting testimony, but I think, by and large, what we've heard, unfortunately, is that there is no mechanism for offenders to be forced specifically to pay child support, spousal support, and then it goes on. We heard testimony in terms of restitution or other outstanding moneys that are owed.

Here's another question on something that we've heard come up as well. One of the witnesses we had, Mr. Toller from CSC, mentioned that if legal counsel determined there was a legal basis to consider that CSC might be liable, and if they've incurred damages, then an out-of-court settlement might be reached. Do you know whether out-of-court settlements would be included in the monetary awards that are affected by Bill C-350?

•(1625)

**Ms. Catherine Kane:** As I read the bill, as drafted, I had assumed that it was only awards made by a court. The bill does raise a few questions, so I can't speak with authority because I'm not as familiar with the bill as perhaps my colleagues from Public Safety, who have already appeared, would have indicated.

I had thought we were speaking of court orders rather than settlements. I had thought that was the intention. It's not for me to say what the sponsor's intention in the bill was, but that was what I gleaned from reading the bill.

**Ms. Candice Hoepfner:** That's what you brought out of it.

**Ms. Catherine Kane:** Yes.

**Ms. Candice Hoepfner:** Okay. Thank you very much.

That's all I have, Mr. Chair.

**The Vice-Chair (Mr. Randall Garrison):** Is there anyone else? We have two minutes remaining on the government side.

Mr. Rathgeber.

**Mr. Brent Rathgeber (Edmonton—St. Albert, CPC):** Thank you.

Thank you to the witnesses.

Constitutionality aside, Ms. Kane, or Ms. Lief, do you have any thoughts regarding priorities with respect to federal bankruptcy legislation or provincial enforcement with respect, not so much to maintenance enforcement—because this regime attempts to give priority to maintenance orders and child support orders—but to provincial enforcement under a writ of execution or a garnishee summons? Who would take priority when there's conflict in claims? Or do you know, because I don't?

**Mrs. Elissa Lief:** I can't comment on what the interaction would be between federal and provincial legislation with respect to that, and I'm not an expert in the federal bankruptcy legislation as well.

My understanding of the federal bankruptcy legislation is that there is a certain amount of support debt that's recognized off the top. So you sit above the unsecured creditors and then the obligations do not die with being released from bankruptcy. The support obligations continue, but how the interplay between the legislation would work otherwise and beyond that, I can't comment.

**Mr. Brent Rathgeber:** Do you think the exemptions under provincial execution creditors legislation would apply, that a debtor is allowed so much in terms of real property and so much in terms of personal property? Do you think those exemptions would apply?

**Mrs. Elissa Lief:** That's not my area of expertise.

**Ms. Catherine Kane:** It's not mine either.

**Mr. Brent Rathgeber:** Thank you. Nor is it mine.

**The Vice-Chair (Mr. Randall Garrison):** Thank you, Mr. Rathgeber.

We'll turn to the opposition side.

Madame Doré Lefebvre, for seven minutes.

[*Translation*]

**Ms. Rosane Doré Lefebvre:** Thank you, Mr. Chair.

I would also like to thank Ms. Kane and Ms. Lief for being with us today to discuss Bill C-350.

I have many questions about the constitutional side of all this, but I have to restrain myself.

I am going to ask you the following questions right off the bat. Do you find this bill too vague? Does it have flaws?

[*English*]

**Ms. Catherine Kane:** As I noted, there are some questions that the bill raises for me, but I think I'd have to agree with Mr. Sapers that the Correctional Service of Canada is capable of giving meaning to the bill and of implementing the spirit of the bill. So it's certainly possible for them to interpret it and make it work.

There may always be improvements that the committee may be considering in terms of clarity, but that's for your committee to determine.

[*Translation*]

**Ms. Rosane Doré Lefebvre:** Ms. Lief, would you like to comment on the clarity of the bill?

[*English*]

**Mrs. Elissa Lief:** I would agree with my colleague.

[*Translation*]

**Ms. Rosane Doré Lefebvre:** Very well.

You said the bill raises some questions. Could you tell us which ones?

[*English*]

**Ms. Catherine Kane:** As with a lot of legislation, it's always in the details as to how it's going to be administered. When I would look at it, not being an expert in correctional law as Mr. Sapers or others would be, I wondered how these payments would actually be made. How would the Correctional Service of Canada make the payment? How would they know to whom they were to make the payment, because a recipient of a restitution order would be a victim of crime? The victim would have to be made aware that they could advise the Correctional Service of Canada that they had an amount owing and Correctional Service of Canada would have to find some mechanism to track that payment.

I'm familiar with Mr. Toller's testimony of last week, when he was indicating that they have an offender management system that does some of that, but maybe there's a need for more details about how that would be accomplished.

With respect to surcharge orders, those would be owed to a province. A province would also have a mechanism, or vice versa, the Correctional Service of Canada would have to be aware that a particular province hadn't received a surcharge amount owing and ensure that it would be able to pay them that amount out of an amount that the crown would be paying to the offender.

These are small details, but as I said, without any of those changes the bill should be administrable in the spirit that the sponsor intended.

• (1630)

[*Translation*]

**Ms. Rosane Doré Lefebvre:** You said that in order to administer a bill of this nature, mechanisms would need to be put in place at both the provincial and the federal levels.

[*English*]

**Ms. Catherine Kane:** No. I wouldn't suggest that we would have to put in place mechanisms. There would need to be some information sharing so that once this bill were proclaimed into force, provinces would be aware that they might be able to advise the Correctional Service of Canada about standing surcharge orders so that the Correctional Service of Canada could then remit the money to the province to which it is owed in appropriate cases.

Similarly, information would have to be provided to victims of crime who had received restitution orders so they could have that reciprocal sharing of information.

[*Translation*]

**Ms. Rosane Doré Lefebvre:** Mr. Sapers was here earlier and he said that, in his opinion, the mechanism that could be put in place would be a registry making it possible to keep track of all the information. He also felt that managing that information would be quite complex and perhaps costly.

Would you care to comment on the idea?

[English]

**Ms. Catherine Kane:** I think that my colleagues from the Correctional Service of Canada would be best placed to indicate how onerous that would be. I do recall that Mr. Toller made some comments about adjustments to the offender management system that might be required to make this work to the fullest extent possible.

[Translation]

**Ms. Rosane Doré Lefebvre:** Do you think a registry would be the best solution in terms of managing this information? It could list who an inmate's creditors were, for instance. Should something like that be put in place?

[English]

**Ms. Catherine Kane:** Again, I think the Correctional Service of Canada, which already manages some of the debts owed by offenders, would be in a better place to indicate what else it needs to do. My understanding is that it already has something in the way of a register or an offender management system that keeps track of some of those obligations of offenders. They might simply have to adjust that to take into account these other requirements to pay out, as well as the appropriate priorities.

[Translation]

**Ms. Rosane Doré Lefebvre:** Ms. Lieff, I see you have more expertise in family, children and youth issues. At the federal level, is the payment of support obligations by inmates a serious problem?

[English]

**Ms. Elissa Lieff:** I can't provide you any information with respect to inmates because I don't work with correctional services, but I can tell you in terms of some of the examples that Ms. Kane has given that there are existing programs in each province and territory. They're called maintenance enforcement programs and are set up to collect outstanding support orders. Again, that kind of information would have to be shared or made available in some way with respect to the offenders in institutions, for this to be set up and then work.

[Translation]

**Ms. Rosane Doré Lefebvre:** Thank you very much.

Would you say that we currently have the resources needed to implement a bill like this?

[English]

**Ms. Catherine Kane:** I'm not in a position to say. It would be for the Correctional Service of Canada to indicate how well equipped they are to administer this bill. Mr. Sapers was saying that in his opinion they're capable, and his opinion carries more weight than mine when it comes to Correctional Services matters.

**The Vice-Chair (Mr. Randall Garrison):** Thank you very much.

Mr. Leef.

• (1635)

**Mr. Ryan Leef:** I guess for everybody listening today and tweeting the results of our discussions here, we'll say for the record that Ms. Lieff and Mr. Leef are in no way related.

**Voices:** Oh, oh!

**Mr. Ryan Leef:** That's letting her off the hook, not me.

I'll follow up with a couple of the questions I asked Mr. Sapers and see if there's a consensus. I had asked about a monetary award being made pursuant to a legal action or a proceeding. Mr. Sapers said that if an inmate's property were damaged—something as minor as a shoe or a Walkman—it could constitute a legal action or proceeding against Her Majesty. It raised the hypothetical question of whether that would be subject to garnisheeing to meet the obligations of this act.

Under section 234 of the commissioner's directive, as it was quoted, would those sorts of things within the correctional environment constitute a legal action or proceeding against Her Majesty? Would an inmate receiving a monetary award be subject to this act?

**Ms. Catherine Kane:** Before that example was raised, I hadn't turned my mind to that issue, the replacement value of property damaged while a person is serving his sentence. If we were looking at the definition of a legal proceeding against the crown, and if that was the manner in which the offender sought to recover the damages, I think it would fall within the category of a legal proceeding.

**Mr. Ryan Leef:** So through the commissioner's directive that would...

**Ms. Catherine Kane:** I don't have the commissioner's directive in front of me. It may be a matter of how this has been interpreted in other matters dealing with correctional law.

**Mr. Ryan Leef:** I'm still trying to figure out where the onus falls in administering this. Maybe it makes logistical sense for the onus to fall on Corrections Canada. I'm still having a difficult time seeing that spelled out in the legislation—that it falls to the responsibility of Corrections Canada. This bill refers to a monetary award being paid. But the balance is paid after all other conditions have been met. So it doesn't seem to me that the money goes to the inmate, and then the inmate pays the money to the three or four categories related to the debt. That is actually paid out by some other entity.

Do you have any indication of who that entity is? I know we've all been leaning towards CSC, but I haven't seen that spelled out in here, other than in words to the effect that it falls under the Corrections and Conditional Release Act. I'm assuming this body of legislation can apply to Canadian courts as well.

**Ms. Catherine Kane:** My understanding was that the Correctional Service of Canada would be responsible only because it's responsible for the administration of the act. But you're correct that there's nothing in this bill that indicates who is responsible for making the payment.

The court that's making the order against the crown wouldn't necessarily be aware that these obligations were outstanding. It might not be feasible to expect the court to indicate that various portions of the award be paid out first to outstanding family lawyers and then to restitution and surcharge, and so on.

For the easier administration of the regime in an order against the crown, it's likely that whoever's responsible for making the payment—CSC in an offender's claim—would then be responsible for designating the portion or amount to be paid to the various debtors.

**Mr. Ryan Leef:** That's the best broad interpretation we can get right now.

**Ms. Catherine Kane:** To give it meaning that would be feasible and practical....

• (1640)

**Mr. Ryan Leef:** Okay, that makes sense.

This might be out of the scope of your duties, but you don't know offhand what typical, average settlements are for in our country?

No?

Well I think I've maxed out my questions for you. Do you want to ask me any?

**Voices:** Oh, oh!

**The Vice-Chair (Mr. Randall Garrison):** Thank you very much, Mr. Leef.

Mr. Scarpaleggia for seven minutes....

**Mr. Francis Scarpaleggia:** The premise of your appearance here today was to answer questions about the constitutionality of the bill and so on. My understanding is that the Department of Justice doesn't comment on the constitutionality of private members' bills. Is that why you can't comment on these things or why the department...?

We're very happy to have you, by the way, but is that why the department would not have sent, say, somebody who could answer constitutional questions, because it doesn't give those types of opinions when it comes to private members' bills?

**Ms. Catherine Kane:** We were asked to appear before the committee, to my understanding, based on an appearance by the federal ombudsman for victims of crime, who had questions put to her and she suggested that with respect to certain issues it might be advisable to ask her Department of Justice colleagues to comment on restitution surcharge and the family law order system.

**Mr. Francis Scarpaleggia:** I must have misunderstood the conversation we had, but I guess that was in camera so we can't discuss it?

**The Vice-Chair (Mr. Randall Garrison):** That would be correct, Mr. Scarpaleggia.

**Voices:** Oh, oh!

**Mr. Francis Scarpaleggia:** Okay.

My question is more of a general one, and I suppose you don't need to answer it.

I'm told that when it comes to a government bill, a government bill will go through the Department of Justice and will be analyzed in terms of its consistency with the charter. Is that correct?

Every bill has to be vetted that way?

**Ms. Catherine Kane:** That's correct.

An assessment is done of the charter implications of a variety of legislation. That advice is provided to the minister and not to others.

**Mr. Francis Scarpaleggia:** I'm told that the modus operandi is a little different, in that it used to require the analysis of.... It would put up a very high bar of conformity with the charter, and that may have been reduced in the last while. Can you answer that?

**Ms. Catherine Kane:** It has not been reduced.

**Mr. Francis Scarpaleggia:** Okay, well then, I'll check my information source.

There was a big discussion here at the last meeting about the civil rights of offenders, because we had a lawyer here who specialized in those cases, which sort of relates to the whole issue of how you get the money from a settlement to the creditors.

When an offender wins a settlement, does that money end up in the offender's personal bank account at the moment? Is that how it would work at the moment: it would end up in the offender's personal bank account as opposed to some account he or she may have within the penitentiary or Correctional Services Canada? Or are all the offender's assets under the purview of Correctional Services Canada?

At what point are some of the offender's assets outside the realm of the Correctional Service Canada or of the government? I'm not a lawyer, so that's why I'm asking this question which you might find a little simplistic.

Are all of the offender's assets suddenly taken away from him or her and are under the control of Correctional Service Canada?

**Ms. Catherine Kane:** I'm sorry that I can't be more helpful. I am a lawyer, and it's not whether you are or you aren't: It's the aspect of correctional law and the administration of the Correctional Conditional Release Act, and so on, which is best answered by our colleagues from Correctional Service Canada. I'm not aware exactly of how the offender's assets are managed while they are in custody.

I think it's a bit of a mix of what you suggested. Some things may remain personal, and others are dealt with by the offender management system.

**Mr. Francis Scarpaleggia:** It seems to me that what you're saying in regard to this bill being a bit vague is that we have to clear up the path, the money, from a court order that benefits the offender. We have to clarify the trail of that money: where it goes, who's going to manage it, and who's going to distribute it to the people listed in the ranking of creditors. It that what you're saying?

• (1645)

**Ms. Catherine Kane:** My understanding of the purpose of this bill is that for claims against the crown brought by an offender related to their status as an offender, rather than the offender benefiting without paying their debts, the offender should first satisfy their obligations to others, which are likely related to that offence. So an outstanding restitution—

**Mr. Francis Scarpaleggia:** I understand that, but regarding the administration of the payment, how does that money actually get from point A to point B? How does it actually get to the victim and to the spouse and the dependants? That seems to be the core issue here.

**Ms. Catherine Kane:** That is one of the details that seem a bit vague in the bill. But again, I think it's capable of being administered by the correctional service. How does it get from their hands to the victim to the province—

**Mr. Francis Scarpaleggia:** The point underlying one of my first questions was whether the offender can then say, look, this is my money legally—I don't want to use the word constitutionally—so if you want to get your hands on it to distribute to these creditors, you have to go through the court rather than just automatically disbursing it to the creditors. Is it possible that somebody would raise this issue?

**Ms. Catherine Kane:** Well, these are amounts that, in a way, have been through the court in the first place. These are amounts owing to other people. So take for example a restitution order that a victim is awarded. The victim could enter that order in a civil court and that would be a judgment they could execute against. So if the offender or anybody else.... They would have that court order, they could execute against it, and they could ask the sheriff to seize assets, seize bank accounts, garnish wages, use a variety of civil remedies to enforce that order.

This is just a bit of a shortcut, perhaps you could call it, so that they wouldn't have to do that. The crown would pay that to them and it would satisfy that order and they wouldn't then have to find the bank account belonging to the offender, wherever it's going, and seize the money that way.

**The Vice-Chair (Mr. Randall Garrison):** Thank you very much, Mr. Scarpaleggia.

We'll turn to the official opposition for the second round of five minutes. I understand it will be split between Mr. Rousseau and Mr. Rafferty.

Mr. Rousseau.

[*Translation*]

**Mr. Jean Rousseau:** Ms. Kane and Ms. Lieff, would you say that the bill, as it stands now, could place an extra burden on the federal justice system or that the bill will be fairly easy to implement? You did say that the correctional system could administer the effects of the bill.

[*English*]

**Ms. Catherine Kane:** I'm sorry if I appear to be very unhelpful in answering all these questions, but I really cannot speak for the burdens that this would place on the Correctional Service of Canada.

[*Translation*]

**Mr. Jean Rousseau:** Are you aware of any legal mechanism designed to help women and children with support claims that involve inmates? Is there a system similar to what the current bill sets out?

[*English*]

**Mrs. Elissa Lieff:** I'm not aware of anything that relates specifically to inmates, but as I mentioned, there are maintenance enforcement programs dealing with the collection of outstanding support orders that exist in each province and territory. I don't know how it relates specifically with respect to offenders.

[*Translation*]

**Mr. Jean Rousseau:** You do a lot of work with victims. Will this bill help them put their lives back on track, put their minds at ease?

[*English*]

**Ms. Catherine Kane:** That's a very good question. I think victims would welcome this bill because of the intention behind it, even if it didn't result in their receiving any money at the end of the day.

Victims of crime generally want to see accountability from offenders, and this certainly advances goals of accountability. Victims of crime are very frustrated when they're awarded restitution and it's not paid. They're quite accepting of the fact that many people haven't got the ability to pay, but they're less accepting—as are other people—when they know a person has the ability to pay and doesn't pay.

So if an offender were in the situation of receiving money and the victim had still not had their restitution satisfied, they would be quite dissatisfied. So victims would likely welcome anything that would be a step in that direction.

• (1650)

[*Translation*]

**Mr. Jean Rousseau:** Thank you.

[*English*]

**Mr. John Rafferty:** Thank you, Chair.

Thank you both for being here today.

I have a question that is related to comments by previous witnesses. You were here earlier for the witness before you. He said Bill C-350 causes more trouble than it solves. Would that be your learned opinion of this particular bill?

**Ms. Catherine Kane:** I couldn't comment. I don't feel familiar enough with the whole Correctional Service of Canada modus operandi or the impact of this bill. Just to reiterate my previous comments, it certainly does appear to be a step in the direction that victims of crime have been noting for many years.

**Mr. John Rafferty:** You look like you want to say something.

**Mrs. Elissa Lieff:** I'm just listening.

I would expect that in a situation where there are outstanding arrears in child support, if there is an occasion to have that support paid, it would be welcomed as well.

**Mr. John Rafferty:** Thank you.

Ms. Hoepfner said an interesting thing about amendments; she had an interesting question earlier today.

I just scribbled down an amendment here and wanted to get your thoughts on whether this might solve some of the problems here. I am not an amendment writer, but let me give you this amendment quickly: In case of dispute or disagreement between an inmate and CSC regarding a payment, a mediator will be made available to aid in dispute resolution.

Would something to the effect be helpful in sorting out some of the ambiguity in this bill?

**Ms. Catherine Kane:** I'm not sure that would sort out the ambiguity because there isn't any ambiguity in terms of the amount that is owed with respect to a surcharge, restitution of family law order, and so on. Those amounts have already been determined. If a court is then awarding an amount to an offender because there has been some loss or damage to that offender, that amount has already been determined by a court. Those various amounts are not in dispute.

I take it the dispute you are referring to is when the offender simply doesn't want those payments to be made to his creditors.

**Mr. John Rafferty:** I was thinking in particular about residential school settlements, if someone were receiving such a settlement while incarcerated. I think there would be some dispute as to whether that is the kind of award that now should not be passed on to the folks who are outlined in the bill. Disputes will arise.

**Ms. Catherine Kane:** Certainly, that's an issue your committee may want to consider.

**The Vice-Chair (Mr. Randall Garrison):** Thank you very much, Mr. Rafferty.

Ms. Young.

**Ms. Wai Young:** Thank you so much for being here today.

Not being a lawyer myself but having experienced the victim side of this, I was particularly fascinated by some of your comments about how things move through the legal system. It's very complicated, very expensive, and a very long-term process as you said earlier.

This bill is a bit of a shortcut. Is that correct? Can you expand on that a little bit for us?

**Ms. Catherine Kane:** My reference to a shortcut was that it might result in the victim collecting an award that they otherwise would be waiting a long time to collect. The sentence imposed on the offender can include restitution. It's not awarded in the majority of cases, but it's awarded in some cases for what's referred to as reasonably ascertainable losses. Often when it's awarded, the victim has some trouble collecting it. Many victims have said that it's onerous because then it's their responsibility to collect the restitution. However, for some, it alleviates the need to sue the offender in civil court for the same damages. It can take a while to collect the restitution order. It requires that they file the order in the civil court. Then they take steps to execute it. Often they would give a direction to a sheriff, for example, to seize an asset or bank account. They would do that, and there would be nothing there. Then they would still have the outstanding order and they would have to issue what used to be called writs of FiFa—I don't know if that's still the current term. They have to give that direction again at a future time to see if the offender has any assets, and aim to collect again.

If the offender isn't voluntarily paying, it can be a long process. As noted by other witnesses, they are often not people of means, so it's not easy for them to make these payments. Sometimes payments are made over years or months where a payment scheme is worked out. Therefore, if you had an award made to an offender and that money could be provided to the victim in a lump sum to satisfy that amount, it would save them waiting for those payments to trickle in or other

efforts to be made on the part of the victim to collect. They wouldn't have to do so.

● (1655)

**Ms. Wai Young:** Who has the primary responsibility for ensuring, overseeing, or making sure that those payments are made? How exactly does that work for some of us who have not been through that process?

**Ms. Catherine Kane:** When we're talking about restitution, there are two different routes that can be followed. Some offenders are ordered to pay restitution, or they volunteer to pay restitution as part of a probation order. When that's the case, the probation is monitored. If restitution is still not paid at the end of their probation order, the victim can transfer that order into what we call a stand-alone restitution order, and they can file and enforce it as a civil judgment. But often, when it's a condition of probation, it is paid.

Alternatively, a court can order—

**Ms. Wai Young:** Can you just pause there? We've been hearing all along about how the inmate generally has no money and all of that sort of thing, which I'm sure is true. But are you saying now that, generally, when there is probation, these sums are paid?

**Ms. Catherine Kane:** I should backtrack to the sentencing process. In many cases, in order to mitigate the sentence, an offender who can pay in situations where damages or losses have been suffered and restitution is a logical sentence, will voluntarily indicate that they would like to make restitution. That will, hopefully, mitigate their sentence. In those cases, sometimes probation may be an appropriate sentence. It always depends on a number of factors, such as the seriousness of the offence, the offender's record, and so on.

Some of the research done by the Department of Justice over several years has indicated that, where restitution is volunteered by the offender, it is paid more often than when it's ordered by the court. In situations where a court is sentencing an offender, and there's no offer to make restitution, perhaps because of an inability to pay or other reasons, the court may order restitution. The crown may ask for restitution, or the court can do it on their own motion, but they're going to take into account a whole variety of factors, again, in terms of what the appropriate sentence is. So it could be that restitution isn't going to be appropriate for the nature of the offence, and a consideration—not a determinative consideration, but it is certainly a valid consideration—is ability to pay. The courts know that if they order restitution to be paid by an offender who has no means of paying it, it's not assisting either the offender's rehabilitation nor assisting the victim in getting the reparation they seek.

So then moving on to the situation—

**The Vice-Chair (Mr. Randall Garrison):** Could you conclude very quickly.

**Ms. Catherine Kane:** Sorry.

So where restitution is ordered by a court, as I say, if it's not paid—and sometimes there are terms and conditions, a payment schedule for restitution—then it's up to the victim to take steps to enforce it. They file it with the civil courts and they can use civil remedies to seek to get the money, but it is their responsibility.

**Ms. Wai Young:** So the victim is further victimized in having to seek restitution, and the onus is on them.

**Ms. Catherine Kane:** That's correct.

**Ms. Wai Young:** Thank you.

**The Vice-Chair (Mr. Randall Garrison):** Thank you, Ms. Young.

I believe that will be our last round of questions, but before the witnesses go, I just want to clarify the issue that was raised by Mr. Scarpaleggia.

Coming out of our in camera meeting, there was a motion—which is public—that this committee hear expert testimony on the constitutional aspects of Bill C-350 before proceeding to clause-by-clause consideration of the bill.

I consulted the clerk. The clerk conveyed that request to the Department of Justice, which declined to add a witness who could comment on constitutionality.

**Ms. Candice Hoepfner:** I'm sorry, Mr. Chair, but we were still in camera when we moved the motion.

**The Vice-Chair (Mr. Randall Garrison):** I'm told by the clerk, from the minutes of the proceedings, that it is public.

**Ms. Candice Hoepfner:** It was in camera. We were still in camera when we were discussing future business.

• (1700)

**The Vice-Chair (Mr. Randall Garrison):** I'm advised by the clerk that the actual motion does then become public. That's the advice I'm receiving from the clerk at this point, and it's certainly now public.

**Voices:** Oh, oh!

**The Vice-Chair (Mr. Randall Garrison):** On the advice of the clerk, this request was communicated to the Department of Justice, which declined to provide additional witnesses because of their possible future involvement in any constitutional litigation resulting from the bill.

I'm not intending to open debate on this point, but as an explanation—and also as a courtesy, I think, to our witnesses, who may have felt somewhat besieged by the questions—this was a

decision made by officials other than the witnesses who have appeared.

We thank you for appearing today. If you have any further thoughts or comments that occur to you after you leave, you could certainly submit them to us in writing.

[*Translation*]

Ms. Doré Lefebvre.

**Ms. Rosane Doré Lefebvre:** I would like to discuss the motion. That does not concern our witnesses, so I want to thank them for being with us today. It was a pleasure to have them.

I want to talk about the fact that our request to hear from certain witnesses was denied.

[*English*]

**Ms. Candice Hoepfner:** Mr. Chair, unless we're going to...this is not a point of order—

**The Vice-Chair (Mr. Randall Garrison):** Can I get far enough to hear it?

[*Translation*]

**Ms. Rosane Doré Lefebvre:** I just want to know whether the entire committee can ask to have a constitutional expert brought in. I am really not comfortable with the constitutionality of this legislation.

[*English*]

**The Vice-Chair (Mr. Randall Garrison):** Madame Doré, I'm going to rule that we have a session coming up on committee business, which would be the appropriate place to raise this point.

[*Translation*]

**Ms. Rosane Doré Lefebvre:** Thank you.

[*English*]

**The Vice-Chair (Mr. Randall Garrison):** All right.

I understand that our chair, who injured himself hauling grain, will be with us again on Thursday. I know we all wish him well.

Thanks very much.

I will declare this session adjourned.









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