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Wednesday, December 9, 2009

Chair

Mr. Ed Fast

Standing Committee on Justice and Human Rights

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● (1530)

[*English*]

The Chair (Mr. Ed Fast (Abbotsford, CPC)): I call the meeting to order.

This is meeting number 53 of the Standing Committee on Justice and Human Rights. Today is Wednesday, December 9, 2009.

You have before you the agenda for today. We'll be dealing with a number of issues. We'll begin by completing our review of Bill C-52.

We expect to go to clause-by-clause on this bill at our first meeting in the new year, on Tuesday, January 26. Committee members may want to take note of the fact that our meeting schedule in the new year has at least tentatively been changed to Tuesday and Thursday, not Monday and Wednesday, so our first meeting would be on January 26.

We have with us today a number of additional witnesses on Bill C-52. Then we'll move on, in our second half of the meeting, to hear Mr. Scott Andrews, who is the sponsor of Bill C-464, an act to amend the Criminal Code (justification for detention in custody).

At the end of our meeting, we'll undertake some committee business. It shouldn't take long. There are two items, and hopefully we'll get through those. I've asked the clerk to distribute a copy of the steering committee report, together with the budget for our travel to Winnipeg and Edmonton, so that you can review it ahead of time and so that we can deal with it in an expeditious manner at the end of this meeting.

Now we'll move to our review and consideration of Bill C-52. As listed on the agenda, we have a number of individuals as witnesses. We have Janet Watson, Mike Miles, Melanie Johannink, and Larry Elford. We also have, representing the Earl Jones Victims Organizing Committee, Joey Davis. We have, representing the Investor Recovery Pool Committee, Brenda MacMillan. We don't have someone from the Department of Justice yet. They may be coming.

In any event, we'll move forward with our witnesses. I think each of you has been told how much time you have to speak. Perhaps we'll start as listed on the agenda.

Ms. Watson, if you would, please start.

Ms. Janet Watson (As an Individual): Thank you, Mr. Chairman.

Members of the committee, I am here to represent the 1,600 victims of the Mount Real scandal, which was exposed in 2005. We lost a total of $130 million. Many victims lost their entire life's savings. They had to return to the workforce in their 60s and 70s, their dreams of a comfortable retirement shattered. Many suffered serious health problems, both psychological and physical. It is believed that at least one victim committed suicide.

Our victims, along with those of Earl Jones, Norbourg, and Norshield, have been lobbying vigorously for the federal government to crack down on white collar criminals. We wish to thank Mr. Harper and his government for listening to us and for bringing forth this new bill.

The Mount Real case has not received the media attention of other major fraud cases in Quebec. We are the forgotten victims. Mount Real is alleged by Quebec's l'Autorité des marchés financiers, or the AMF, to be a massive Ponzi scheme involving 120 different associated and subsidiary companies. All the aggravating factors included in this new bill would certainly apply in the case of Mount Real: the duration of the alleged fraud, the complexity of the fraud, and the significant impact of the fraud on its victims.

We are not only confronted with devastating financial loss, but with great injustice as well. Criminal charges have yet to be laid against the principals of Mount Real. We feel betrayed by the RCMP, who told us that the case was too complicated and that they lacked the money and manpower to investigate. They strongly suggested that the trustee for Mount Real prove that a crime had been committed before they would take possession of the file.

Something has to be done to make sure that we have the resources to investigate and prosecute white collar criminals. In a recent *Financial Post* article, James Grout of Thornton Grout Finnigan says that one reason Canada is fourth on the list of countries where fraud is prevalent is the lack of deterrence. “We don't put anyone in jail”, he said.

It is imperative that these criminals be exposed and prosecuted as quickly as possible. Since 2005, the principals of Mount Real have had ample time to transfer and hide their assets. The AMF has only laid penal charges against them. They have been free to live their lives, even leave the country, passports in hand. The trustee for Mount Real has recovered about $4 million, most of which has gone to pay the trustee's and lawyers' fees. There will be no money left for the victims of this scandal.

We feel betrayed by the AMF. We realize that as investors we have a responsibility to do our homework, to know and understand what we are investing in and who we are dealing with. In our case, we did everything by the book. Our financial advisers and iForum, the brokerage company they worked for, were duly registered with their professional associations and the AMF. We trusted that these financial watchdogs would do their job to protect us. Our investments were in promissory notes, which our brokers assured us were guaranteed.

The AMF actually investigated Mount Real a few years before its collapse in 2005 and found nothing wrong. We made claims to the victims compensation fund, but were refused on the basis that the fund did not cover our particular type of investment. Banks offer insurance up to $100,000. The government should consider a similar type of insurance to protect investors from becoming victims of unscrupulous fraudsters.

● (1535)

I would like to thank this committee for allowing me time to talk about Mount Real and its victims. Most of us have given up hope of ever recovering any of our money. We feel abandoned by government and law enforcement agencies alike, and we wonder if justice will ever be served. The charges laid against the principals of Mount Real by the AMF will only be heard in the fall of 2010, almost six years after we first realized something was wrong. Our hope is that the governments, both federal and provincial, will continue to listen to us and take action so that the pain and suffering we have endured will not be in vain.

Thank you.

The Chair: Thank you.

As just a note to everyone present, I've been advised that there has been a concurrence motion called for in the House. We may be expecting bells to ring shortly. Unfortunately, witnesses, there may be a break between now and when you get to finish your testimony, but we'll continue until the bells ring and then we'll come back afterwards. So just stick around.

Just so you know, we're in the process of making arrangements to provide you with the rest of this meeting, so a full two hours will be available. We're removing our last item from the agenda and we'll deal with it at another time. So you'll all have enough time to speak and to be asked questions.

We'll go to Mr. Mike Miles.

Mr. Mike Miles (As an Individual): Good afternoon. *Bon après-midi.*

I'd like to start by telling you about the collapse of non-bank asset-backed commercial paper, or ABCP. This bogus short-term savings product was marketed with an R1 high credit rating—that's the same as a treasury bill—and a bank liquidity guarantee. Both attributes proved to be worthless. Thirty-five billion dollars of this misrepresented savings product was sold to Canadian retail owners such as myself, corporations, and all levels of government. The ABCP failure has removed at least $21 billion from the Canadian economy.

Without either our knowledge or consent, my wife and I had much of our retirement savings transferred from treasury bills into ABCP in July 2007. Two weeks later, this toxic product was worthless. We spent the next 18 months working with many of the other 1,800 retail ABCP owners to get our money back. In our case, we were able to use the Companies' Creditors Arrangement Act, or CCAA, court to force a settlement, whereby most of the retail owners were repaid in exchange for agreeing to support a restructuring. However, approximately three dozen retail owners who had savings of over $1 million were not repaid. A father of a disabled child who had no money to pay his bills committed suicide. All retail ABCP owners had their lives severely disrupted. Corporate and government owners have had to exchange their worthless paper for long-term notes, which may allow them to recoup some of their losses in 2017. The best available estimate is that this paper might eventually be worth 60 cents on the dollar. Equally unjust, the restructuring prohibits any of the injured parties, including those who voted against the restructuring, from suing the responsible parties.

There have been widespread allegations of misrepresentation or fraud in the manufacture, credit rating, and distribution of ABCP. My wife and I, along with others, have filed complaints with the Investment Industry Regulatory Organization of Canada, or IIROC. However, as of December 7, the self-regulatory agencies such as the Ontario Securities Commission, or OSC, and IIROC had not prosecuted any of the individuals or institutions that were responsible for this fiasco. Our representative's appeals for assistance from the RCMP's integrated market enforcement team, or IMET, were simply referred to the self-regulatory bodies.

Small folks like ourselves were simply left to duke it out with some of the largest financial institutions in the country. Most retail owners were very fortunate to regain their savings. However, there was no opportunity to obtain compensation for 18 months of work or the personal turmoil and hardship this fraudulent savings product has caused. More importantly, the non-retail ABCP owners have lost their savings and none of the responsible parties has been held accountable.

Our experience with ABCP provides direct evidence of how the present system of dealing with white collar crime does not work to protect Canadian citizens. With this background, I offer the following comments on Bill C-52:

One, the present bill appears to be directed towards rogue fraudsters. However, with the ABCP collapse, we faced what appears to be fraudulent misrepresentation or fraud conducted by the banks and financial institutions who manufactured, rated, wholesaled, and retailed ABCP.

Two, as of December 7, the self-regulatory agencies have not laid any ABCP-related charges, despite having more than two years to do so. As indicated by the December 11, 2008, letter from Mr. Dean Buzza of IMET to Mrs. Diane Urquhart, who was retained to assist the ABCP retail owners, IMET has deferred investigations on this complex case to the self-regulatory agencies. That letter has been previously presented to this committee.

Three, given the complex nature of cases like ABCP and the failure of both the self-regulatory agencies and IMET to take effective action, Canadian citizens need a competent securities investment crime unit that is entirely independent from the self-regulatory agencies. This organization, which might be modelled along the lines of the securities crime unit that Gary Logan and Diane Urquhart spoke to you about, should have the mandate to aggressively investigate and prosecute individuals or corporations that employ those individuals and that commit white collar crime.

● (1540)

Four, the revisions to Bill C-52 propose that a judge should have the authority to order felons to repay fraudulently obtained funds. This authority should be expanded to include costs such as having to pay for a second mortgage due to expected funds not being available. These costs should be borne by both the individuals and the corporations they work for.

Five, the CCAA restructuring of ABCP was hampered by the international banks, who were a party to this alleged fraud, being given a court stay that allowed them to be exempt from a standstill agreement. That's a complicated way of saying this gave them undue power to influence the form of the restructuring, and it allowed them to dictate a blanket exemption from lawsuits for all parties. This is a gross miscarriage of justice, as ABCP owners were deprived of their ability to sue the perpetrators of this fraudulent product.

Yesterday, the *Globe and Mail* reported that IIROC is moving closer to a settlement with the major banks and brokerages that sold ABCP. Penalties are expected to be approximately $200 million.

My initial comments include that $200 million in fines is less than the reported legal fees incurred during the ABCP restructuring. It still leaves a net profit of $34.8 billion.

It has taken IIROC and OSC 28 months to announce, and I quote, “ongoing negotiations”. In contrast, the U.S. authorities invested and charged the perpetrators of a similar toxic scheme related to auction-rated securities in six months.

Finally, no criminal charges have been laid by IMET. It is my opinion that the responsible parties should be accountable to the criminal justice system and, where warranted, sent to jail.

I hope the lessons learned from the ABCP collapse will assist you in improving Bill C-52 and the procedures by which white collar crime is prosecuted in Canada.

Thank you very kindly for the opportunity to be here.

● (1545)

The Chair: Thank you very much.

I will move to Melanie Johannink.

Ms. Melanie Johannink (As an Individual): Hi, I am Melanie Johannink, a recently severed Nortel employee and chair of the Nortel Bankruptcy Justice Committee, and as such, I have thoroughly read through the bill and would like to raise a concern.

Alleged fraud at the top of a public corporation also poisons the well. Observing the impact of alleged accounting fraud at Nortel between 2002 and 2004 has given me knowledge to understand how Nortel, in bankruptcy protection today, could have turned out with a different ending.

If Canada did a better job deterring financial fraud, Nortel could still be an ongoing concern in its tradition since 1895. If Canada had effective securities crime policing such as Gary Logan proposes to achieve with a new securities crime unit, then the alleged Nortel fraud would have been prosecuted by now. Instead, Nortel has had four different CEOs in eight years, with over 17 rounds of layoffs.

In 2000, the first OSC allegation of insider trading against senior officials occurred. In April 2004, with accounting and insider trading allegations, Frank Dunn was terminated with just cause. The RCMP launched a probe into Nortel's finances, and in June 2008, four years later, Dunn was arrested by the RCMP, as were two other former Nortel executives, charged with fraud affecting the public, falsification of books and documents, and producing a false prospectus.

The two subsequent CEOs after his departure were preoccupied with working through restatements, supplying documents for the various investigations, negotiating the class action settlement, and dealing with the reputation of the corporation at the same time.

In the technology industry, evolution of new technology and services is a constantly changing landscape. The competition is fierce. In my opinion, Nortel has had reputational damage affecting not only the shareholders and creditors, but also its customers. When the financial crisis hit, Nortel, to me, was ill prepared to weather the storm through the years of turmoil.

The Nortel situation demonstrates that alleged corporate fraud in public companies not only damages their shareholders and creditors but has wide-reaching effect on employees.

In 2009, seven years after the accounting restatement issues arose, we now have over 20,000 Canadian Nortel pensioners, long-term disabled, and severed employees facing significant income cuts, and through bankruptcy, the wallet is opened on the taxpayers' purse to pay for increased use of social security programs. Meanwhile, Nortel's executives continue to receive executive salary bonuses for reducing costs by putting retirees and former employees onto the public purse.

Bill C-52's effort to encourage more restitution settlements for the victims of fraud is an excellent idea, but when the prosecution of executives takes place up to 10 years after a corporation has gone bankrupt, what good is it to terminated employees who lost their jobs without severance when the company went bankrupt 10 years earlier?

In November 2008, the Deloitte Forensic Center and the Deloitte reorganization services group analyzed bankruptcy filings in the U.S. between 2000 and 2005 and SEC enforcement releases issued during the period. Their study concluded that companies issued accounting and auditing enforcement releases were three times more likely to file for bankruptcy than those not issued one, and 35% of the companies issued SEC accounting enforcement actions during the period filed for bankruptcy.

Terminated employees, pensioners, and long-term disabled persons need to be protected at the time of bankruptcy. An amendment to the Bankruptcy and Insolvency Act would be a way to ensure compensation to the pensioners, but upon bankruptcy filing, there is no opportunity for employee groups to file for civil lawsuits to remedy the damages caused to them by alleged fraudulent conduct due to the bankruptcy court stay. How can justice be served 10 years after the fact?

Other countries are not as lax as Canada. These types of offences should be taken very seriously and efficiently. If Bill C-52 includes public corporations, executives would work in an effective and transparent way to save themselves a fall from grace.

I have taken a day out of my employment insurance, what little moneys I am currently making, for you to hear my plea. I have full faith that Bill C-52 will be amended to include stiffer sentences for white collar crime committed at public companies.

● (1550)

The Chair: Thank you very much.

Folks, you've heard the bells start ringing. We're going to suspend until after the vote, unless there is consent to go another 15 minutes.

Some hon. members: Agreed.

The Chair: All right, we'll continue for another 15 minutes.

Next on our list is Larry Elford.

Mr. Larry Elford (As an Individual): Thank you.

Ladies and gentlemen, I'm here to tell you how to commit the perfect crime, perhaps with the help of Bill C-52. Let's call it “How to Steal Billions in Six Minutes and Never Be Caught”.

If I were to rob a financial institution in Canada, I am subject to the penalties of the Criminal Code; I think everybody knows that. If a financial institution, however, robs Canadians using any one of a thousand methods that I witnessed while working for financial institutions, they are not even subject to the penalties in this proposed bill, as I read it. They fall under the Securities Act. Investment crime is more likely to fall under the protection—yes, I said “protection”—of securities commissions in 13 provinces and territories than to be prosecuted. Most of the time, independent police agencies are not even involved.

I worked in the financial industry for 20 years and I found it nearly impossible to hold a discussion about ethics and honest treatment of customers, so strong was the culture and addiction to sales, commissions, and bonuses. Most Canadians, however, are of a mistaken impression that our financial institutions are so trustworthy as to be above examination.

I would like to challenge this dangerous conventional wisdom, and I'll go so far as to call it a form of collective insanity.

The Chair: Mr. Elford.

Mr. Larry Elford: Yes?

The Chair: I've just been advised that it's possible the vote may happen much sooner than in 30 minutes.

We are going to suspend, and we'll be back as soon as we're done voting.

Mr. Larry Elford: That's no problem.

The Chair: And you can start over.

The meeting is suspended.

● (1550)

(Pause)

● (1645)

The Chair: I reconvene the meeting.

I believe that when we left off, Mr. Elford, you had started to speak. I invite you to start from the beginning so that we have a complete picture of what you're telling us.

Mr. Larry Elford: Thank you, Mr. Chairman.

I was saying that I'm here to tell you how to commit the perfect crime, possibly with the help of Bill C-52. I mentioned the Criminal Code of Canada and the fact that if I were to rob a financial institution, the Criminal Code would probably apply to me, but in a financial institution in Canada governed by the Securities Act in 13 provinces and territories, there's any one of a thousand methods that I've witnessed of robbing the savings of Canadians and Canadian taxpayers, and they're often not subject to criminal sanctions of any kind. Maybe on the fingers of my hand, I could come up with the number of criminal penalties against actual subjects in the last 10 or 20 years.

Investment crime is more likely to fall under the protection of securities commissions. That word is terrible to say: that securities commissions are protecting investment crime. But that's what I saw over 20 years of working in finance. Most of the time, the independent police agencies are not involved and not even notified.

I worked for 20 years in the financial industry. I found it nearly impossible to discuss ethics and honest treatment of customers. The culture of sales commissions and bonuses was far too strong. Most Canadians, however, are of a mistaken impression that our financial institutions are so trustworthy as to be above examination. I mentioned that I'd like to challenge that dangerous piece of conventional wisdom and that I'd like to go so far as to call it collective insanity.

Most Canadians have also been sold a story that our Canadian financial institutions are the world's strongest. While that may in fact be true, it ignores the possibility that they may be strong because they are legally allowed to be predatory and are protected from real competition and real examination in Canada. It ignores millions of dollars that I watched being skimmed from your investment returns and your pension accounts by predatory sales practices dressed up in a disguise of "investment advice", damage that cuts the retirement of the average Canadian investor by half.

Also ignored are billions of dollars in damages every year from a system designed to place the interests of financial institutions ahead of their customers'—a system we do not speak of, but which exists in actual practice. It ignores investment frauds that are penalized by authorities in the United States, while here in Canada the same abuses are considered standard industry practice, and they continue to harm Canadians each and every day. Regulators in Canada are allowed to turn a blind eye to all of these. It ignores hundreds of billions of dollars in damages by companies like Northern Telecom, Global Crossing, Enron, Eaton's, and a thousand others that are used in some way to fatten investment bankers, lawyers, or CEOs at the expense of your financial security.

Financial abuse by the institutions we trust is costing Canadians more money each year than the cost of every other crime in the country combined. I used Justice Canada's website for my figures. Yet we act like good Canadians and we praise our financial institutions for being among the strongest in the world. It's a little bit like praising the schoolyard bully for being so well fed, after he has stolen everyone's lunch.

Let me reveal four simple ingredients I found in our financial system that allow billions of dollars of financial abuse to take place each and every year.

The first ingredient in making financial crime pay is having the ability to self-regulate, to have our own in-house policing system, and to use this system to often bypass real criminal investigation and prosecution. Part of this includes securities commissions, and 13 of them across the country act more and more like the corrupt sheriff in every *Smokey and the Bandit* movie I've every seen. They seem to feel that they too are above examination.

The second ingredient is that the financial industry, rather than the taxpayer, pays the salaries of these regulatory agencies. That means that clever financiers get to choose who to hire to regulate financiers. Imagine if you were a criminal mind and you had the ability to choose who you wanted to police yourself.

The third ingredient in making financial crime pay is to pay them about triple what they would earn in the same job elsewhere. The salary of the head of the Securities and Exchange Commission in the United States is capped at $162,900 per year. The 13 securities commission heads in Canada are paid as much as four times this amount, each one of them. I'm told there were once 90 staff members at the Ontario commission alone who were each paid more than the top man in the United States.

● (1650)

Overpaying our regulators makes them highly compliant, conflicted, and more willing to say yes to the financial industry. The Canadian public, on the other hand, does not pay their salaries, and members of the public are not usually even allowed in the front door of any securities commission in Canada. Instead, they are sent to non-government industry groups where they are spun around by an industry-run kangaroo court process. The public will not be helped but simply abused a second time. Please don't take my word on this; ask any abused investor.

If you were shopping for a list of ingredients required to make financial crime pay, last but not least is the ability to buy permission to violate the laws of Canada. In fact, 13 securities commissions, acting in concert, will allow any financial institution in the country to violate our laws simply by filing an application to do so. I have in my hand a list of several thousand such legal permissions that have been granted without informing the public of a single, solitary one. This is the greatest gift you could possibly ask for as a criminally minded financier: to be able to break any law you wished in this country in pursuit of profits.

Finally, we come to the helpful effects of Bill C-52. I see nowhere in this bill where it applies to public market fraudsters. In fact, my reading of it shows that subsection 380(2) of the Criminal Code, relating to public market fraudsters, has been removed or is not present in this bill. That would be a fantastic gift from the writers of this bill to yet again the financial markets of Canada; we can continue to hide our crimes inside our own private regulatory system with no outside oversight or interference.

Thank you for your time.

The Chair: Thank you.

Next we have Joey Davis, representing the Earl Jones Victims Organizing Committee.

Mr. Joey Davis (Earl Jones Victims Organizing Committee): Good afternoon, Mr. Chairman and honourable members of the committee.

I wish to thank the committee for allowing me to come before you today to make a statement in regard to Bill C-52 on behalf of the alleged victims of the Earl Jones case of white collar crime.

● (1655)

[*Translation*]

I also want to thank the Conservative government and the members of the three other federal political parties for their meeting during the summer months, when the events of this tragedy occurred.

As victims of crimes committed by white collar criminals, we want to thank you for listening to our voices and our recommendations in tabling Bill C-52 against white collar crimes in Canada.

[*English*]

Before I begin my comments on Bill C-52, I would like to briefly remind you of the circumstances surrounding the Earl Jones case.

In July of this year, an invisible bomb exploded in the lives of over 200 people. In the first week of July, Earl Jones, this seemingly charming and erudite man, had locked the front door of his West Island business office, did not return phone calls or e-mails from worried clients, and went missing for nearly three weeks. This left a feeling of panic and confusion amongst all his former clients, until we mobilized ourselves and learned of the truth on the 12th day of July.

[*Translation*]

Some Quebec provincial authorities, meaning the Sûreté du Québec and the AMF, attended the first meeting with victims, as did the designated bankruptcy trustee RSM Richter and the bankruptcy attorneys, when it was announced that all the remaining assets of the Earl Jones Consultant & Administration Corporation assets had been seized and that the company had officially declared bankruptcy. No one knew why nor how Earl Jones went about being the author of their financial destruction.

[*English*]

The beginnings of any fraud start with trust. Earl Jones gained the trust of his clients, close personal friends, members of his own family, and his "enablers"—which I will explain a little further on—all a long time ago.

This particular case of fraud, or Ponzi scheme, is not that of a fly-by-night operation. This Ponzi scheme resulted from the deliberate planning of a determined financial predator laying the seeds of trust from the outset. As can be attested to by the various banking records and other documents uncovered within the bankruptcy, this Ponzi scheme was perpetrated over an extended period of 30 years of uninterrupted swindling. This level of betrayal has shattered the lives of his own family, his once close circle of lifelong friendships, and of course devastated the lives of all of his former clients.

Of the noted 185 creditors of the Earl Jones bankruptcy, those aged 50-plus and seniors comprise approximately 90% of the Earl Jones client registry, a list originally compiled by the Earl Jones Victims Committee of all former clients and alleged victims.

The financial as well as the emotional trauma suffered by these victims affects three generations within the family structure. These are the investors themselves, typically the grandparents who have lost all of their life savings; the adult children of the investors, who are now left to financially support their parents; and the children and grandchildren of the investors, whose inheritance and financial security have been stolen from them.

To quote some recent statistics on white collar crime in Canada, and based on published news reports in the Canadian press and on information available from RSM Richter, the trustee in bankruptcy for the Earl Jones case, of seven high-profile white collar crimes in Canada over the past five years, the Earl Jones Ponzi stands out as the single largest per capita loss, at an average loss of $477,000 per victim.

In our opinion, Bill C-52 can be summarized as a bill that attempts to, one, be a better deterrent of white collar crime through a new promise of mandatory prison sentences, and two, provides a greater sense of justice to victims, thanks to the knowledge that the criminal is going to jail and the fact that restitution from the perpetrator can now be addressed by the criminal courts.

To add strength to this bill that would raise the level of change threshold within the minds of the Canadian public, however, we strongly believe our specific recommendations would have an impact on providing that sense of deterrence and justice to victims of white collar crime.

Our first recommendation to ensure Bill C-52 reaches the level of change threshold required to make a meaningful difference in determining white collar crime relates to mandatory sentencing. While we see the introduction of the two-year mandatory jail time as positive, the deterrent power of this provision in the mind of the fraudster is less significant than its consideration of the total jail time he is likely to serve. What we are referring to here is the far greater deterrent impact that could be expected by commonly imposing 14-year sentences, coupled with the elimination of the one-sixth early release rule. I realize that the latter is a subject of Bill C-53, but it helps put in perspective our thoughts on the minimum mandatory sentence proposed in Bill C-52.

Our second recommendation is to introduce the limited temporary relief for victims of financial crime to mitigate the psychological and financial impact of fraud. A copy of this plan has already been forwarded to each of you, as well as to other government ministers at both the federal and provincial levels, for your review and consideration.

Without the means to financially survive for the first 12 months after being victimized by an act of financial crime, the restitution called for in Bill C-52 would likely come too late to prevent the terrible downward spiral of selling family homes, taking handouts from already financially stretched children, and making other personally devastating life adjustments. Bill C-52's call for restitution is admirable. Let's make it more meaningful by providing the victims with the proposed limited temporary relief survival bridge to restitution.

Our third recommendation is to identify and target not just the lead criminal who perpetrated the crime, but those financial institutions, associations, and professionals who, through egregious neglect, wilful blindness, or gross incompetence, "enabled" these crimes. These enablers should be the first line of defence in the protection of the financial investor from the financial predator. Yet it is incumbent on investors to do their homework and to be careful, but even an informed investor—particularly a senior citizen—will too often be outmanoeuvred by an experienced financial predator.

● (1700)

We recommend that Bill C-52 be amended to mandate a systematic identification and investigation of the potential enabling roles of those financial institutions, those associations, and those professionals in every future white collar crime case in Canada.

We further recommend that, if it is determined that these enablers could have reasonably been expected to have noticed and/or prevented the fraud that was committed, then they should have a legal responsibility to provide restitution to the victim just as much as the perpetrator of those crimes.

[*Translation*]

As a citizens group, the Earl Jones' victims organizing committee has been relentless in its desire for justice and restitution for all victims of financial crimes.

[*English*]

In conclusion, I wish to thank the committee for allowing me to present our views in shaping new legislation that will help protect Canadians against further white collar crimes.

Thank you.

The Chair: Thank you very much.

We'll move now to Brenda MacMillan

Ms. Brenda MacMillan (Member, Investor Recovery Pool Committee): Good afternoon, honourable members of the justice committee and fellow participants.

It is unfortunate that I need to be here. I wish to thank all of you for your labours with this bill and to encourage that we push harder yet.

The 3,000 people that I and we represent seek benefit from this bill's development, and we felt it highly important to stand in front of you and say that we support your efforts and also to ask what more we can do to help.

We hold the most unfortunate status, to the best of our knowledge, of being the victims of our nation's largest financial fraud—a most precarious and prestigious honour. Few people can comprehend a billion-plus dollars. The financial hardship with our people is simply overwhelming in thousands of cases. We are living in an epidemic of fraud today, with little or no deterrent to slow down those who are inclined to it. We need to empower and give resources to our authorities to do the job, and we simply do not do that right now.

I suggest criminals land on a gentle pink pillow in Canada, to the grand detriment of those they have victimized. If fraud under half a million dollars is presented to the police, they do not act. We suggest it is because they cannot act within the restraints of budgetary and other resource concerns. And trust me, the bad guys know this.

How does it come to be that after one provincial regulatory body, the Alberta Securities Commission in this case, fines a man, he continues to garner funds—millions—from unsuspecting investors after that? We Canadians need an effective and efficient national regulatory body that does not drop the ball and that offers systems that effectively give restitution to victims of such fraud.

Our story and abuse began in the mid 1990s, and here we are 14 years later.

We further encumber our RCMP special forces in white collar crime in not having access—this is unbelievable—to the data gathered by the regulators once a criminal case has been launched. I appreciate deeply our privacy laws in this nation—I really do—however, there is something off and out of step with this picture. We also cut the officers' travel budgets when we need them to travel outside, let alone within, our national borders to do the work.

Being from Alberta, I ask how it is that we have been name-tagged "Nigeria of the north". We have yet to find accountability in the Bre-X story. Also, we let other nations prosecute our criminals, as in the case of Conrad Black in the United States.

The highest per capita income in western civilization rests with Alberta right now. I suggest that we are being targeted by these predators. Who wouldn't come to Calgary or Edmonton when they know that their residents have the disposable income? The bad guys know this.

In this bill's summary, there is mention of the creation of a prohibition order to prevent convicted persons from having access to or authority over property and wealth of others. May we humbly suggest and say out loud that it is long before they are convicted that most burn through the resources of others, literally defending what has been stolen. Fines are paid by investor funds to regulatory bodies all the time.

The summary also mentions and uses the word "consideration"—so "we'll think about it"?—of restitution for victims of fraud. We ask the honourable members of this committee to find and establish in law something beyond this word "consideration" of restitution. Are we able, once conviction is at hand, to take the wealth and property of the convicted? May we at least freeze liquid assets in the process? Can we find those assets hidden out there in the world beyond our nation's borders, and can we do it economically? Can we service those who have been harmed in a manner that is just and focused on the truth?

Please answer my questions with the word "yes".

I thank you for the opportunity, your time, and surely your attention.

● (1705)

Thank you.

The Chair: You're very welcome, and thank you.

We're now going to also ask Joanne Klineberg to speak. You may recall that Ms. Jennings raised an issue regarding subsection 380(2) of the Criminal Code. The same point was raised by Mr. Elford. Ms. Klineberg has been given a heads-up on that.

Are you able to clarify as to the actual status of the bill before us, as it relates to stock market manipulation, insider trading, etc.?

Ms. Joanne Klineberg (Counsel, Criminal Law Policy Section, Department of Justice): As the bill is drafted, the mandatory minimum penalty applies only to convictions under subsection 380 (1), which is just the general fraud offence.

The Chair: The issue that was raised and that you've been asked to appear on.... Does it mean that under no circumstances would someone who is convicted under subsection 380(2), for example, attract a mandatory minimum sentence?

I believe that was Ms. Jennings' point, correct?

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): The question was that the false prospectus, fraudulent manipulation of stock markets, and a series of other very defined fraudulent acts are considered today, in the present Criminal Code, aggravating circumstances that the judge can take into account in determining the sentence of someone who is convicted.

Under the bill that the government has tabled, they remain aggravating circumstances, so the question is, if someone were convicted under subsection 380(2) or section 400, would they be liable to a mandatory minimum?

● (1710)

Ms. Joanne Klineberg: I can only repeat again that, as drafted, the mandatory minimum penalty, which would be proposed subsection 380(1.1), clearly states, "When a person is prosecuted on indictment and convicted of one or more offences referred to in subsection (1)", which is the general fraud offence. That is how the bill is drafted, that the mandatory minimum applies. I can explain the rationale as to why it was that way—

Hon. Marlene Jennings: Let me go back to my question, then.

I was informed by the chair that the RCMP witnesses were asked if they were aware that the mandatory minimum of two years being proposed under government legislation—the bill that is before us—did not appear to apply to a number of criminal acts that we find as separate fraudulent offences in the Criminal Code. One of them is a representative of the integrated market enforcement team, the IMET. They were surprised and told me and the committee that they would like to see the mandatory minimum apply to those other offences.

The chair then informed me that during a short period where I was absent from the room, he asked for clarification and was told by the officers that as a general rule, if someone is charged, for instance, with false prospectus, which is found under a separate section of the Criminal Code, they also would have been charged with general fraud, which is found in section 380, and therefore would be convicted of both, and therefore the minimum mandatory would apply.

Is that in fact the way in which criminal prosecutions take place, where if someone is charged with a fraudulent offence, which is not described in subsection 380(1), they would automatically also be charged under section 380, the general fraud offence—

The Chair: Ms. Jennings, I think she understands the question.

We do have bells at a quarter after the hour. I want to get an answer from her.

Hon. Marlene Jennings: I know, and I apologize, but I do want clarification.

The Chair: Ms. Klineberg.

Ms. Joanne Klineberg: Unfortunately, I'm not in a position to speak to charging practices necessarily across the country. My understanding would be that it would depend on the evidence. The evidence would dictate what charges would be laid.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): Wasn't she going to tell us the rationale?

The Chair: Yes, you were going to give the rationale as to why sections such as subsection 380(2) weren't attracting the mandatory minimum sentence under the bill.

Ms. Joanne Klineberg: I can; unfortunately, it's somewhat complex. It basically boils down to the fact that if we leave aside the insider trading offence for a moment and focus on subsection 380(2), section 382, and section 400—section 400 concerns the false prospectus—each of those offences is essentially what you could call a preparatory offence. It's conduct that is preparatory to a fraud. If you look at the wording of all of those offences, it contains language such as: any person who includes a false statement in a prospectus "with intent to" defraud someone; "with intent to" induce someone.

That is conduct before the fraud actually happens. By analogy, we have an offence in the Criminal Code, section 351, which is possessing instruments for the purpose of housebreaking, which is a preparatory offence that takes place in advance of the housebreaking.

The reason this is relevant is that for those offences, other than subsection 380(1), there isn't actually going to be money to count up, because the fraud hasn't happened yet. It's conduct that is designed to get people to hand over their money, but they haven't actually handed the money over. The moment the money is handed over, that's when you see—in addition, possibly, to these charges—the fraud charge, which does attract the mandatory minimum penalty.

Another consideration that is relevant is that most of those other offences, the one exception being subsection 380(2), contain maximum penalties of 10 years instead of 14. If you were to impose a two-year mandatory term of imprisonment for offences with a 10-year maximum penalty, relative to the two-year mandatory sentence for fraud, there might be some disproportionality.

The insider trading offence—I'm sorry to go on here—is slightly different. That is an offence wherein you could conceive of there being a monetary amount that you could calculate. But the reason the insider trading offence was created by Parliament about five years ago is that it isn't actually fraud. There isn't a deception; what there is, is exploitation of inside information.

Many academics consider that insider trading is actually a victimless crime. The shareholders in general may suffer and investors in general may suffer a loss of confidence, but it's a bit difficult to point to a person, because all those innocent people who traded were going to trade regardless of whether the person on the other end of the transaction was using insider information.

In the case of insider trading, the only thing I would bring to your attention is that you might want to consider whether there may be some disproportionality or unfairness in a maximum penalty in that case, in which you can't really point to victims whose lives have been destroyed in the same way you can for fraud.

● (1715)

[*Translation*]

The Chair: Mr. Ménard, you have the floor.

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): I would like to take this opportunity with you here to get some clarification.

Will section 21, which identifies the parties to the offence, apply and to what extent? We heard from the victims of Vincent Lacroix from Quebec, Vincent Lacroix who had created a number of companies. He was found guilty and was sentenced to a number of years in prison. I wonder about the employees working for those companies, who initially didn't know that they were working for a company committing fraud, and who discovered it at some point.

Do you believe that they become accomplices and that, therefore, they run the risk of a two-year minimum sentence?

[*English*]

The Chair: Make it a very quick answer.

Ms. Joanne Klineberg: Again, it would depend on the evidence, but the general rule is that a person who does something with knowledge that they're aiding or abetting in a crime is guilty of the crime that they're aiding and abetting. If the evidence was there that these employees had become aware that they were facilitating the commission of the crime and they continued to do so, they could be found guilty of the fraud.

[*Translation*]

Mr. Serge Ménard: That is exactly what I want to ask you questions about.

[*English*]

The Chair: All right.

Monsieur Ménard, the bells are ringing.

[*Translation*]

Mr. Serge Ménard: There is a difference between an accountant and a secretary.

[*English*]

The Chair: Monsieur Ménard, please, we need to have some order.

Unfortunately, we have another vote. I really apologize that we can't ask you questions today. We have heard all of your testimony. It's pretty compelling. It's forming part of the public record, and if there is further information that we need from you, our members will get in touch with the clerk and we'll communicate that to you.

I want to thank you all for appearing. This is a very serious matter to all of you; all of your lives have been touched. Hopefully, as we move forward with this bill, as well as perhaps with other initiatives in the future, we'll be able to cut down the amount of fraud that people have to suffer through. Thank you to all of you.

Before members leave—we're not going to go in camera—Mr. Murphy, Mr. Ménard, we circulated the steering committee report to all of you. You've had a chance to look at it. It doesn't appear to be controversial. Could we have a motion to approve it?

(Motion agreed to [See *Minutes of Proceedings*])

The Chair: The meeting is adjourned.

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