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Chair

Mr. Dave MacKenzie

Standing Committee on Justice and Human Rights

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• (1530)

[English]

The Chair (Mr. Dave MacKenzie (Oxford, CPC)): I call the meeting to order. This is meeting number 48 of the Standing Committee on Justice and Human Rights. Pursuant to the order of reference of Tuesday, October 16, we are studying Bill C-37, An Act to amend the Criminal Code, and we have witnesses to hear today.

Before we begin, we have a little problem with time today, in that there will be bells at 5:15 p.m., so the meeting will have to end early, and we need 15 minutes at the end of today's meeting to deal with committee business.

We have important witnesses here, but I think we're going to have to shorten up a little bit. Perhaps the first session will be 45 minutes and the second session equal to that, or both of them a little shorter than that.

Ms. Kerry-Lynne D. Findlay (Delta—Richmond East, CPC): Mr. Chair, my colleague and I were talking about that. Because we need enough time to do all those things, we thought, given the way the agenda was set up for today, that perhaps we could have a shorter first half, because there's only one witness, and then the second part could be shorter, too, to accommodate the change.

The Chair: Yes.

Ms. Françoise Boivin (Gatineau, NDP): That was going to be our suggestion; that's why we were almost late.

The Chair: You know that I like to start meetings on time, so I will just remark that you were both a minute late.

We have Susan O'Sullivan, the federal ombudsman for victims of crime, with us for this first session.

I think you've been here a couple of times and know the system. If you have an opening address, please go ahead with it.

[Translation]

Ms. Susan O'Sullivan (Federal Ombudsman for Victims of Crime, Office of the Federal Ombudsman for Victims of Crime): Thank you.

Good afternoon, Mr. Chair and honourable members of the committee.

[English]

Thank you for inviting me here today to discuss Bill C-37, which seeks to amend the federal victim surcharge provisions in the Criminal Code.

I am very encouraged by the introduction of this legislation, as it responds directly to recommendations that our office has made to better meet the needs of victims of crime in Canada.

First, I would like to take the opportunity to discuss my role as the Federal Ombudsman for Victims of Crime. As you may know, the Office of the Federal Ombudsman for Victims of Crime was created to provide a voice for victims at the federal level. We do this through our mandate by receiving and reviewing complaints from victims; by promoting and facilitating access to federal programs and services for victims of crime; by providing information and referrals; by promoting the basic principles of justice for victims of crime and raising awareness among criminal justice personnel and policy-makers about the needs and concerns of victims; and by identifying systemic and emerging issues that negatively impact upon victims of crime.

The office helps victims in two ways—individually and collectively. We help victims individually by speaking with victims every day, answering their questions, and addressing their complaints. We help victims collectively by reviewing important issues and making recommendations to the federal government on how to improve its laws, policies, or programs to better support victims of crime.

I would like to begin by stating that our office is very encouraged by the proposed amendments to the victim surcharge provisions in the Criminal Code that are being examined today. Specifically, there are three changes proposed in Bill C-37 that would act as positive steps forward in addressing the needs of victims of crime.

The first amendment would ensure that the surcharge is imposed in all cases, without exception, by removing a judge's option to waive the surcharge.

Second, the offenders who are unable to pay the surcharge would be able to participate in the provincial-territorial fine option programs to discharge the amount owing.

Third, the amount of the surcharge that an offender must pay would double under this legislation. In terms of implementation, this would translate into a surcharge of 30% when a fine is imposed, or when no fine is imposed, \$100 in the case of an offence punishable by summary conviction, and \$200 in the case of an offence punishable by indictment.

In effect, these changes would ensure consistent application of the surcharge provisions across Canada and hold offenders more accountable to the victims whose lives they have affected.

Because of the benefits of these proposed amendments from the perspective of victims of crime, I would like to express our full support for the passage of Bill C-37. The changes to the victim surcharge provisions have been a priority for our office due to the fact that we hear from victims on a daily basis about their difficulty in accessing the services they need after a crime. Victims also express their frustration when offenders are not held accountable for paying their court-ordered debts, including restitution and the federal victim surcharge.

Victims also face many difficulties as a result of the psychological and socio-economic impacts of victimization. A recent study from the Department of Justice estimates that almost 83% of the costs of crime are borne by victims. These costs include lost productivity and wages, costs of medical and psychological care, and time away from work to attend criminal proceedings. We also hear from victims about their not being able to afford counselling sessions, or about the lack of criminal injuries compensation available in their province or territory.

A contributing factor to these obstacles faced by victims could be the shortfall in funds that the surcharge was expected to generate for victim services and programs. The surcharge is intended to be applied automatically; however, it is routinely waived during sentencing, often without documentation of undue hardship to the offender.

Data from a review of the operations of the federal victim surcharge in New Brunswick from 2006 revealed that the surcharge was being waived in 66.5% of cases reviewed. Further, in 99% of the cases in which the surcharge was waived, there was no documentation on file of the reasons for the waiver.

As a result of the routine waiving of the surcharge, the revenues for provincial and territorial victim services fall short of what was anticipated. This is a signal that the surcharge is not meeting its intended objectives and needs to be improved.

There are concerns that the mandatory payment of the surcharge will result in undue hardship for offenders. This focus does not allow for the consideration of undue hardship faced by victims in the aftermath of a crime. Bill C-37 allows for a more balanced approach that ensures the victim surcharge is consistently applied in all cases while also providing for offender participation in fine option programs or for alternative mechanisms to secure payment.

The changes proposed in Bill C-37 to double the surcharge and ensure that it is automatically applied in all cases will contribute to more effective funding for victim services. These changes will also give offenders the opportunity to provide reparation by paying into services that help victims cope and move forward following a crime.

In conclusion, the changes proposed to the federal victim surcharge provisions are a significant step forward. They will provide a more meaningful mechanism through which offenders can demonstrate reparation for harm done to victims or the larger community, while also demonstrating responsibility and accountability for their actions.

The efficient functioning of the victim surcharge through the passage and implementation of Bill C-37 would send a strong signal to victims that the criminal justice system recognizes the long-lasting

impacts of victimization and the corresponding necessity to hold offenders accountable and to ensure that provincial and territorial victim services are adequately funded. Accordingly, I encourage this committee and Parliament to ensure the passage of this bill, as it will serve to better address the needs of victims of crime in Canada.

As Federal Ombudsman for Victims of Crime, I am grateful to the committee for providing me with the opportunity to highlight the needs of victims of crime in relation to this important piece of legislation.

• (1535)

[Translation]

Thank you. I would be happy to answer any questions you may have.

[English]

The Chair: Thank you.

We begin with Madam Boivin.

[Translation]

Ms. Françoise Boivin: Thank you, Mr. Chair. Thank you, Ms. O'Sullivan, for your testimony and for taking the time to come and meet with us.

I feel that everyone here in this committee agrees that this bill is important because there are currently a lot of loopholes in section 7.37 and the other sections of the Criminal Code. We have heard from witnesses who said that barely 20% of judges order the payment of the surcharge, which makes me wonder about the remaining 80%. Those judges do not even use their discretionary power to determine whether the accused have any evidence to prove that they are unable to pay. So that is definitely a problem.

However, I still have some concerns about Bill C-37 because I am looking at it from the perspective of courts, which will have to subsequently implement it. As we know, in the *R. v. Wu* decision, the Supreme Court clearly said that a person who was genuinely not able to pay could not be sent to jail. My concern is that there is no provision to that effect. This piece of legislation will end up removing the judicial discretion. The discretion was probably misused in the past because the surcharge was not being imposed without any evidence that the accused was unable to pay.

However, my concern is that, by removing the discretionary aspect of this power, we will end up with court challenges. As a matter of fact, not all provinces or territories have programs that allow the accused to pay and to register for a work program or community work. Not all provinces will withhold a driver's licence until the fine is paid.

Have you looked at this matter from that perspective or simply from the perspective that victims are left behind by the justice system, as you so rightly said? Any additional time would be a good thing and any time spent to make the accused accountable would also be a good thing. However, if we ultimately do not get the intended result, perhaps we are missing the boat.

● (1540)

[English]

Ms. Susan O'Sullivan: First of all, we certainly acknowledge that there may be issues for some offenders in terms of ability to pay, but what also needs to be part of that conversation is the burden that victims carry in the wake of a crime. Their costs are as a direct result of the crime. This can include some very practical issues for victims of crime, such as those I mentioned in my opening comments: medical attention, lost wages, and those types of things. I hear from victims across this country about their struggle and the impacts of crime on victims and about their struggle to access services.

Victims need to have supports in place, and those supports need to be funded. The moneys raised in the surcharge will contribute to this. I certainly want to acknowledge that I did look at those statements, and I've looked at testimony from other witnesses. I've looked at the fact—it's my understanding—that there are seven provinces and territories that have the fine option program, but the other three provinces have other mechanisms in place.

The federal victim surcharge was implemented in 1988 and was amended in 2000 to make it automatic. I think you're referring to some of the same studies that I've seen. The New Brunswick study from 2006 showed that in 66.5% of the cases the surcharge was waived, and in 99% of them we have no record of why it was waived.

Ms. Françoise Boivin: No records....

Ms. Susan O'Sullivan: So what we do know is that, as it stands right now, it would appear that the surcharge is being routinely waived. I think we owe it to victims to take this new direction and make it consistent across this country. I think it's time.

What is in place right now is the fine option program in seven of those provinces and territories. It recognizes that if there's an inability to pay, there's an opportunity to do community service, for example, to contribute to your community. That too, as you've touched on, is linked to the sentencing principles of reparation of harm to the victim and the community at large, as well as the accountability and responsibility of the offender.

I would hope that the Department of Justice is having these conversations with those provinces about looking at what they can put in place to address this.

Ms. Françoise Boivin: Thank you.

Do I still have time, Mr. Chair?

The Chair: Yes, you do.

Ms. Françoise Boivin: That's excellent.

What about the people who have problems?

[Translation]

What about people with mental health problems?

Witnesses will come later and tell us that there are people with mental health issues or physical disabilities in the prison system. Do these measures have to be applied across the board?

I understand that you will say, as others have often said, that there are provincial and territorial programs.

A study done by our wonderful Library of Parliament has shown that provincial and territorial programs are not the same everywhere. They cannot be used in the same way.

Let me turn again to extreme cases. As a representative of victims across Canada, would you see a problem with establishing some very strict parameters for extreme cases? That would ensure that courts will not come and tell us one day that we had not made provisions for extreme cases and that they will simply remove the section in question, because it would be too discriminatory in such and such a situation.

So we have people living in extreme poverty, who could not be compensated by one of the programs, or those who would not even be able to register for a program like that, because they have a mental health issue or a physical disability. I wonder how open you are to that.

● (1545)

[English]

The Chair: A very short answer, please. She only had a minute, but we went quite a way past that.

Voices: Oh, oh!

Ms. Susan O'Sullivan: Yes, my answer would have been longer.

I think I would want to go back to my original comments to acknowledge that there will be offenders with issues. What I also want to acknowledge is the hardship for victims of crime who also suffer from issues such as PTSD, who have anxiety, and who have need of these services, which is exactly what this is intended to provide.

I also know that the criminal justice system has mechanisms in place should people have severe issues, such as whether they are not criminally responsible. We have mental health courts and other things in place around that. I think what's important here is providing that consistency, because one of the issues you're also touching on is the extreme variability in the services available to victims across this country, depending on where they live.

The Chair: Thank you.

Ms. Findlay.

Ms. Kerry-Lynne D. Findlay: Thank you, Mr. Chair.

Thank you for being with us today, Ms. O'Sullivan.

As you know, our government created the Office of the Federal Ombudsman for Victims of Crime in 2007. I know that you've held that position for about two years now. Your input here is invaluable as we go through this legislation.

I'm aware, of course—and I believe you mentioned this in your opening remarks—that in your report on February 2 of this year, *Shifting the Conversation*, which is a title I like, you recommended a doubling of the victim surcharge and that it become mandatory. I'd think you'd agree with me that this legislation is meeting that strong suggestion you had. It was heard.

Ms. Susan O'Sullivan: Thank you very much for that.

It was absolutely a recommendation in our *Shifting the Conversation* report. It was about rebalancing and making sure that the legs of the stool are equal.

Ms. Kerry-Lynne D. Findlay: Thank you.

In that regard, I'm wondering what your comments would be about the necessity of it being mandatory. Also, you mentioned in your remarks that not only has it not been enforced, but we don't even know the reasons why it hasn't been enforced. Would you agree with me that in making it mandatory, this also means that we'll have a better insight into how that would work in terms of what the circumstances are of both the accused and the victim?

Ms. Susan O'Sullivan: Yes, absolutely. On our recommendations, I'll again go back to my earlier comments. The federal victim surcharge was put in place in 1988. It was amended in 2000. What we have seen is that it has been routinely waived, so it's not fulfilling its intention. It was intended to raise moneys for provinces and territories to provide services to victims of crime.

I can tell you that we hear from victims of crime across this country. I'll use one example. I talked to a mum who had lost her daughter. Her daughter had been murdered. She said that she was one of the lucky ones because she got 30 counselling sessions paid for, but that it had been 18 months and they hadn't even gotten to pre-trial. She was wondering how many sessions she should save. Well, that's not meeting the needs of a victim of crime. As everyone at this table knows, when we're talking about victimization it can be lifelong, and the needs of a victim of crime don't end with the end of the criminal justice system, necessarily—they will go on.

As everyone here is aware, the majority of direct services are provided by the provinces and territories, so when we talk about giving the provinces and territories access to more financial support to be able to deliver those services, to be able to meet the needs of victims of crime, both at the time of crime and in the aftermath following the crime—and in many cases, over many years—this is something that we must do. We must start to take these positive steps forward. We must start to recognize that victims are not bystanders in the criminal justice system and that they have these needs that have to be met.

Ms. Kerry-Lynne D. Findlay: Given your unique circumstances, and because of your position and your ability to dialogue with victims, do you see this as something that victims of crime in Canada will widely support and appreciate?

Ms. Susan O'Sullivan: Yes. As a matter of fact, it's what we hear from victims of crime. I certainly want to say that victims of crime will have many different needs in terms of their victimization. You will hear from some victims of crime who will be very supportive of restorative justice, for example, and who see that as something that's appropriate for them. You will see others who....

But no matter what, they still need supports in place, and that can be practical supports. I'll just use one example: criminal injuries compensation. It's something that's provided, but not in all provinces and territories, as people are well aware. That allows access: for example, criminal injuries compensation can actually fund things like counselling. To help them cope with what has happened to them and to have the needed supports in place, the access to those moneys needs to be paramount.

We need to recognize who has suffered the harm and the loss, and again, acknowledging... It's not an either-or in some cases. We know that. No victim wants what happened to them to happen to anyone else, but what they can't understand—and what I hear constantly—is why they don't have access to services in a timely way, and in some cases, just access to the appropriate services. Because it's one thing to get counselling, but as you can imagine, some need specific trauma counselling. Access to the kind of counselling they need can be expensive, but we need to be assured in society that the needs of victims of crime are also supported and addressed in the criminal justice system.

• (1550)

Ms. Kerry-Lynne D. Findlay: Thank you.

I think it's quite obvious that there is of course a direct victim of a crime, but whole families can also be victimized. I thought that you could perhaps comment on that, on where there's a need for support or, in other words, the definition of “victim”.

Ms. Susan O'Sullivan: Absolutely, and as a matter of fact, I may just even refer to my testimony last week on Bill C-44. I think we heard very powerfully from families who had lost loved ones to homicide. They talked about the impact on the other siblings in the family in terms of the supports they need.

We heard, again, about the definition of “victim”. For example, in the U.K. they use the words “victim witness”. There are many people who are touched by a crime. In families, particularly in a homicide, people often will say that the siblings are the silent ones who we don't hear from but who are obviously tremendously impacted.

We know from research and studies that many families—I'll just use homicide as an example—will go through not just loss of income, but also the need for supports and other concurrent issues that may recur as a result of their victimization. We need to have those supports in place to ensure that families and victims are able to cope with the aftermath of a crime, through the criminal justice system and beyond.

Ms. Kerry-Lynne D. Findlay: Thank you for your insight.

The Chair: Mr. Cotler.

Hon. Irwin Cotler (Mount Royal, Lib.): Thank you, Mr. Chairman.

Thank you for being with us, Ms. O'Sullivan. I know that we've talked about these issues in the past.

I'd like to refer to your report on this issue, *Shifting the Conversation*. Your special report makes several recommendations, one of which is that the amount of the federal victim surcharge should be doubled. I'm wondering how you arrived at this recommendation.

I know that your report refers to a 2005-06 study by the New Brunswick Department of Justice, but in that study by the New Brunswick Department of Justice, the responses were of a different variation. There were those who said there should not even be a victim surcharge when there was an inability to pay, and there were differences as to what the amount should be.

My question is this: was there any consultation on your part with provincial and territorial Attorneys General? Did they make any recommendation with regard to that? I say that because I recall that at the time, in 2005, the recommendation that I remember is from the then Manitoban Minister of Justice, Mr. Chomiak. His recommendation was that it be increased to 20%, not 30%, so I'm just wondering how we arrived at the figure of 30%.

Ms. Susan O'Sullivan: Many of the recommendations in *Shifting the Conversation*.... If you go back, you'll remember that the report *Victims' Rights—A Voice, not a Veto* came out with some main themes. This office was created in 2007. That recommendation occurred when the former ombudsman was there.

I had an opportunity to speak to the federal-provincial-territorial committee, which was led by Pam Arnott, of the Policy Centre for Victim Issues. I had an opportunity to present the special report to the heads of victim services. When I spoke to them, I clearly outlined what we would be asking for in our recommendations. I didn't receive any feedback that any changes should be made; I was sharing with them what those recommendations were.

I can also tell you that over the last two years I've had opportunities to speak to victims across this country and to speak to, for example, judges. I've had the opportunity to speak to a large group of judges, crown attorneys, different people in the criminal justice system, victims, victim-serving agencies, and academics. Of course, part of my job mandate is to inform people of the priorities for victims of crime.

I've taken every opportunity to be out there publicly in Canada to speak about *Shifting the Conversation* and its recommendations. In fact, one of the main reasons we did this was to engage Canadians in a conversation on that. Obviously, we did consult on this report with victims and victim-serving agencies. Specific to the question of what the amount should be, I did not. I discussed the recommendation, as you quite rightly stated, that it would be doubled and made mandatory.

• (1555)

Hon. Irwin Cotler: This leads me, then, to a question that I know my colleague, Françoise Boivin, has been addressing. It is the decision of the Supreme Court in *R. v. Wu*, which held that "it is irrational to imprison an offender who does not have the capacity to pay on the basis that imprisonment will force him or her to pay".

What would your response be to the idea that enforcement of non-payment by incarceration should be an available option only when a fine option program is in fact available?

Ms. Susan O'Sullivan: I'm sorry: what is the question?

Hon. Irwin Cotler: I'm saying that the Supreme Court, in the *Wu* case, basically said that people should not be incarcerated because of their inability to pay. In other words, as they put it:

...imprisonment in default of payment of a fine is not an alternative punishment—he or she does not have any real choice in the matter. At least, this is the situation until fine option programs or related programs are in place.

If you look at the situation in the provinces, you'll find a serious variation as to whether, in fact, a fine option program is in place. For example, there is no fine option program in either Ontario or Newfoundland and Labrador. In Manitoba and Alberta, for instance, entry into the fine option program is only available at the point that an offender is admitted to jail.

How would you respond to the fact that the enforcement of nonpayment through incarceration should only take place when a fine option program in the provinces is in fact available, to be consistent with the judgment of the Supreme Court in *R. v. Wu*?

Ms. Susan O'Sullivan: My understanding is exactly as you said. Seven provinces and territories have fine option programs, and three—British Columbia, Ontario, and Newfoundland—do not. Basically, my understanding is that if you're unable to pay a fine under a fine option program, there are still other mechanisms in place for that.

I would hope, as I said in my other comments, that the Department of Justice would have the conversation with British Columbia, Ontario, and Newfoundland and Labrador about how they might go about doing that. At the end of the day, what we're trying to say here is that the end result is that victims should have better access to services to help them cope with the crime that has been committed against them. In order to do that, this is one area where we can start to bring about some consistency in terms of how we're dealing with this.

In British Columbia, they can make application to a judge, as you say, to serve time to satisfy a fine and also to have the fine converted to community service. That's from some of the research we did. In Ontario, licence suspension, civil enforcement, automatic demand letters, federal payment set-offs....

Again, if we take a longer-term lens, if a person can't pay at the time of sentencing, the person can go to the fine option program or to those other mechanisms. If somebody is incarcerated in a federal institution, for example—we deal with federal offenders—they make some wages, and they can also have an income account. We're talking about \$100 and \$200, if it's not a fine that has been imposed. Is there any reason they can't be paying reasonable amounts throughout their incarceration to again meet those sentencing principles? It is not just reparation for harm to the victim; it's about accountability and a responsibility to pay that debt.

The Chair: Thank you.

Mr. Albas.

Mr. Dan Albas (Okanagan—Coquihalla, CPC): Thank you very much, Mr. Chair.

Thank you to our witness for being here today.

As you're well aware, victim services are extremely important and need to ensure the well-being of law-abiding Canadians who have unfortunately been victimized as a result of the unlawful behaviour of another individual. As everyone around this table knows, these services are provided at the federal level, but even more so at the provincial level. By increasing the victim surcharges and making them mandatory in all cases, Bill C-37 will ensure that more money will be sent to the provinces to increase support in services to victims across this country.

I should also mention that I've spoken to one particular family that was a victim of a drunk-driving incident. They weren't even aware that some of these services existed and were very supportive upon hearing that we were looking at doubling the surcharge.

In another tragic incident in my riding, the mother of a family was murdered. The family is currently going through all the things you mentioned in the report, including access to counselling, etc. They're very supportive, and they actually didn't even know that there were these resources.

Do you think this increase of funding for victim services will be well received by the provinces and by organizations on the ground?

• (1600)

Ms. Susan O'Sullivan: Absolutely, and as a matter of fact, I've had the opportunity to deal with a lot of front-line people delivering those services. I have to tell you that there are some tremendous people in our country who are making a huge difference, with very little funding, to try to deliver on some of the programs. They're trying to meet the needs of victims of crime. The more financial support we can give to victims and victim-serving agencies to be able to support victims of crime...obviously it's going to make a difference.

If we talk about healthy and safe communities, that means taking care of victims of crime as well. They need to be able to deal with the aftermath of that crime and those very practical real-life realities they face. It can be something as simple as this: if you have to go to court, how are you going to get there? If you have to go to court, do you have child care issues when you get there?

I'll give you another example. I talked to another mom whose son had been murdered in another province. She was scraping together the money to pay for her hotel room for six weeks. I realize that's a provincial responsibility, but it also speaks to the variability amongst the provinces and territories in terms of services available. It's our hope that more money coming from the victim surcharge will help the provinces and territories in addressing better ways for victims of crime to access services.

Mr. Dan Albas: Some examples of programs and services funded by the surcharge are about information on the criminal justice system, such as court processes, court preparation, and court support for vulnerable persons—like you said, even as far as how you deal with child care—and victim notification of the offender's release from a provincial institution.

I would imagine that with making this mandatory, there would be increased funds that would go to these victim services. There's also the consistency, so that maybe they can plan out their operations

over a broader period of time. What kinds of programs or tweaks to the existing programs do you think this bill would help along?

Ms. Susan O'Sullivan: I think that's a question you would want to pose. I always say, "Let the patient tell you what the problem is." As we know, we have very unique communities in our country. I had the privilege of being up north, for example, and saw the challenges that fly-in communities face with regard to access to services. That's just one example. I think it is absolutely within the mandate of the provinces and territories to have that discussion about where their greatest needs are or where capacity-building would be in terms of the use of that money.

Mr. Dan Albas: Is it your sense that by increasing the surcharge and by making it consistent, we're going to be able to give that certainty to the provinces so they can go to their communities, have those conversations, and say that here's what the federal government has done, so what will we do from this point on to help victims?

Ms. Susan O'Sullivan: It's my understanding they do have agreements in place already in terms of how that money can be used, so I would really defer to the provinces and territories on that.

Mr. Dan Albas: All right, but your feeling is, though, they would be well-received and—

Ms. Susan O'Sullivan: Oh, yes.

Mr. Dan Albas: Good. I certainly appreciate that.

Mr. Chair, how much time do I have left?

The Chair: You have about 40 seconds.

Mr. Dan Albas: I just want to thank you, Ms. O'Sullivan. I've read the reports your office has put out. I think they're excellent reports. I certainly appreciate your opinions and your testimony here today.

Thank you, Mr. Chair.

Ms. Susan O'Sullivan: Thank you.

The Chair: Thank you.

Mr. Scott.

Mr. Craig Scott (Toronto—Danforth, NDP): Thank you, Mr. Chair. I'll try to be quick and then pass my time to Monsieur Jacob.

Thank you for coming, Ms. O'Sullivan.

I just want to follow up a little on what Mr. Cotler was talking about. We had an excellent survey done by our committee analysts from the Library of Parliament.

One of the facts that was revealed was that in three provinces and two territories—and there may be other elements—their fine option programs, by their own law, cannot apply to federal surcharges. The question from Mr. Cotler was, should we condition the application of these changes by getting rid of the undue hardship but putting the fine option element in the federal Criminal Code? Should we condition it on it only applying in a province if their fine option program clearly applies...?

Do you have any information on this or have you been interacting at all with the Department of Justice or any of the provinces to know whether or not provinces are well aware of this piece of legislation coming through and whether they are prepared to change their own laws in order to create a hookup with Bill C-37?

• (1605)

Ms. Susan O'Sullivan: In my mandate, I have no authority to make recommendations to the provinces and territories. However, I would hope that the Department of Justice, which has committees in place to discuss these matters with the provinces and territories, would have those discussions.

Mr. Craig Scott: You have no role to give recommendations, but you're not aware that the provinces are prepared to change their laws...?

Ms. Susan O'Sullivan: No.

Mr. Craig Scott: Of the three provinces without fine options, one of them has no mechanism for an alternative, and that's Newfoundland and Labrador. B.C. doesn't make the licence suspension mandatory. Ontario does.

In respect of provinces without fine options having alternatives, do you think we should be addressing this in Bill C-37? Do you think that in these provinces there must at least be something other than the fine option? There would be a problem in Newfoundland and Labrador and there might be a problem in B.C., because it's a completely discretionary thing; it's not mandatory to suspend the licence when you can't pay the fine.

Ms. Susan O'Sullivan: I'm going to refer to my earlier comment, which is that having Bill C-37 will bring about consistency at the federal level. It is then up to the provinces and territories to determine if they're going to have one and what their fine option program would look like.

From my look at the provinces, I'll say that there are different things in place. In Newfoundland and Labrador, that includes letters, notices, telephone calls, asset searches, suspensions of driver's licences, federal payments set-offs, and financial counselling. They do have some things in place. I certainly bow to the Library of Parliament on their research.

This is going to bring about some consistency in creating support for the provinces and territories to increase services for victims of crime. I'm hearing from a lot of different people that the provinces and territories vary in including fine options. We hear the same thing about services for victims of crime. Criminal injury compensation, for example, is not available in the north or in Newfoundland. We want to ensure that victims of crime, wherever they live in this country, can have access to these services. It is a good direction to move in.

Mr. Craig Scott: Thank you.

The Chair: You have one minute.

[Translation]

Mr. Pierre Jacob (Brome—Missisquoi, NDP): I will try to be quick.

Let me say from the outset that the NDP supports victims of crime, their families and their communities, as we were able to clearly see in previous testimony. They are often collateral victims.

The NDP also supports better funding for programs for victims. In our view, that is where money should be invested.

We also recognize the importance of supporting judicial discretion. Judges are in the best position to decide whether a person is able to pay the surcharge or not. Cases of extreme poverty, as it has been pointed out, mental health problems, intellectual disabilities, and so on, are real obstacles to payment.

In addition, I used to be a criminologist. I know that criminals like to wash their hands of it all, pay a fine of \$100 or \$200 if they can afford it and get off easy. That is what they love. I, for one, am in favour of prevention. That is the best way to reduce the number of potential victims.

[English]

The Chair: I'm sorry. You've used up all of your time and a little bit more, and we're on a schedule.

Mr. Seeback.

Mr. Kyle Seeback (Brampton West, CPC): Thank you, Mr. Chair.

Thank you, Ms. O'Sullivan. I read your report. I think it was excellent and a great service to victims.

You talked about 80% of the costs of crime being borne by victims, which is something that far too often gets lost in discussions on criminal justice policy. It's great that you've raised this again.

Strangely enough, while this legislation has broad-based support, there are people who are opposed to this legislation. I don't understand why. There's a group coming to testify later this afternoon, the John Howard Society, and I suspect they are going to suggest that they are not in favour of this legislation. They've opposed every piece of crime legislation that we've put forward in this session of Parliament.

What do you say to organizations that wouldn't support this and don't think that individuals who commit crimes and victimize people should actually play a role in funding the services to help the victims?

• (1610)

Ms. Susan O'Sullivan: We can never lose sight of who has suffered the harm and the loss here. If we look at the issues and principles of sentencing, we can see that this is about reparation of harm to victims and to the community at large, but it's also about the accountability and responsibility of the offender.

I am going to use my line about a longer-term lens. I'll use one example from the United States, where people can understand that people might not have the ability to make an immediate payment.

With this legislation, the amendment would allow people to do community service and to give back to their communities. I recognize that some provinces may have to look at how they are doing that.

My one example from the United States is the federal inmate financial responsibility program. It's voluntary. Over the last 10 years, there has been a dramatic increase in the amount of inmates participating in that and the moneys raised.

So I think that sometimes.... I hesitate to use one meeting with a group of offenders, but when I actually met with offenders on one occasion, they told me that they don't have a mechanism, that they want to contribute back, so part of that rehabilitation for some is to do that in their corrections plan. So our recommendation is in the report, *Shifting the Conversation*, and it's looking at multiple ways that we can look for involvement and in society supporting... because, really, if you want to talk about a balanced criminal justice system, it's one that also recognizes the rights and the needs of and the supports for victims of crime.

I'll just say I agree with your comment about prevention. There is an entire continuum out here. It starts with prevention. When that doesn't work, it's early intervention, and when that doesn't work it's enforcement, and then we're into the criminal justice system. They're all important. It's not an either-or here.

But we can never forget that for the victims it's not a balance right now. We need to rebalance that. We need to ensure that victims have those supports in place and can deal with the aftermath of that crime. That's what victims struggle with. They understand that people are coming back into the community and they don't want them to reoffend.

But what they can't understand is why they don't have a lot of these supports and a lot of the rights in place. That's what I think this is a positive step towards.

Mr. Kyle Seeback: Certainly, part of that—part of any rehabilitation, I think—is accepting the consequences of your actions. Would another part of that not also be contributing to lessening the harm that's been caused? Would you agree that this is also a significant part of it? If we continue on the same road, we're actually holding people less accountable for the acts, especially these serious violent acts.

Ms. Susan O'Sullivan: I would even build on that and encourage the provinces and territories to ensure that they have those conversations and discussions. I can't make recommendations.

Mr. Kyle Seeback: The other thing we hear is that somehow the quantum is unreasonable, that it's going to be very difficult for people to pay. Putting aside the unique circumstances that some people might find themselves in—and I think it's the rare circumstance—do you believe it's unreasonable to charge \$200 to an individual who has committed an indictable offence and who likely committed serious harm against an innocent person in society?

Ms. Susan O'Sullivan: I will use federal offenders as an example. As we know, they can earn wages, and they can also have an income account in the federal penitentiary. I think most victims of crime would find it reasonable that reasonable amounts be deducted from that so they can meet their debt—

Mr. Kyle Seeback: Right.

Ms. Susan O'Sullivan: —in terms of their \$100, or in the case of indictable, \$200.

Mr. Kyle Seeback: Do I have any time?

The Chair: Yes, you have a little.

Mr. Kyle Seeback: Would you have any knowledge of how long it would take for somebody who's participating in one of those offender programs in jail to repay a \$200 fine, whether it's through their cash or their account?

Ms. Susan O'Sullivan: I'm not sure how much per day they can make in wages. I realize it's not a lot, but we're talking about \$200, a small amount. Some inmates can have income accounts that have quite a bit of money in them.

The Chair: Thank you. That brings us to the end of this session.

I want to thank you, Ms. O'Sullivan, for being here and providing the committee with a wealth of information. We'll just take a short break while we change and bring in the panel for the second half of today's meeting.

Thanks again.

• (1615)

(Pause)

• (1615)

The Chair: I will call the meeting back to order.

Our witnesses perhaps weren't present, but I indicated that we have a little problem with time today, which seems to be a usual situation. We cut the first one a little bit short and we'll cut you a little short. We have to be finished by 5 o'clock to deal with some committee business and with votes that are going to happen today.

Welcome, Mr. Waller and Ms. Latimer. It's an important subject.

If you have an opening address, please go ahead. Ms. Latimer, if you wish to start, that would be fine.

Ms. Catherine Latimer (Executive Director, John Howard Society of Canada): Thank you very much.

As you know, the John Howard Society of Canada is a community-based charity committed to supporting effective, just, and humane responses to the causes and consequences of crime.

The society has more than 60 front-line offices across the country, with many programs and services to support victims of crime through direct services, restorative justice, and victim-offender mediation.

Almost all of our societies contribute to victim prevention by working with those at risk of offending or reoffending. Our work helps to make communities safer.

I want to thank you for your kind invitation to be here to speak to Bill C-37, which proposes to double the victim surcharge and remove the discretion of judges to waive the surcharge if it would result in financial hardship.

These simple amendments, in their current form, will have serious and unfair consequences for the most marginalized Canadians facing criminal law, and will place further stress on a justice and corrections system already in crisis.

I would like to make essentially four points about Bill C-37. The first deals with undue financial hardship.

Removing the discretion of the judiciary to waive the surcharge where it would result in financial hardship will lead to harsh consequences for the poor, mentally ill, and marginalized. While it might be possible to participate in fine option programs, they are not universally available, and many people, owing to senility, FASD, mental health issues, and other problems, cannot complete such programs.

To impose a fine through a sentence, subsection 734(2) of the Criminal Code requires that the judge must first be assured that the accused is capable of paying the fine or discharging it through a fine option program. No consideration of means or ability to pay is required with a mandatory victim surcharge. It is likely that more of those unable to pay the victim surcharge will find themselves in default of the order and subject to imprisonment.

It raises some very challenging questions. In May 2011, for example, newspapers reported that an Alberta man refused to pay the victim surcharge for a transit infraction, and was killed while detained in the Edmonton remand centre. Many provincial correctional facilities are crowded and violent, particularly for those made vulnerable by mental health issues.

The second point I would like to make relates to disproportionate penalties. A sentence is intended to reflect a proportionate penalty relative to the seriousness of the crime and the degree of responsibility of the offender. Victim surcharges are described as additional penalties imposed on convicted offenders at the time of sentencing. They are over and above what a judge determines is an appropriate sentence.

These add-on penalties inflate an otherwise fair sentence. If it results in a total penal consequence that is disproportionate, it could violate the charter's section 12 protections. Fixed surcharges that cannot be calibrated to the seriousness of the offence or the offender's ability to pay will have a particularly harsh effect on the poor.

Three, there are some questions about whether victim fine surcharges, per se, make offenders more accountable to their victims. Many programs—I'm sure you'll hear about more of them from Professor Waller—including restorative justice, succeed in making offenders more aware of the impact of their crimes on victims, help victims, and lead to reductions in recidivism. It is unlikely the surcharge per se will make the offender more accountable to his or her victim.

The surcharges are not linked to the degree of harm experienced by the victim. In fact, they are applied in victimless crimes or where the offender self-harms by the offence, such as through drug use. The failure to link the surcharge to the circumstances of the victim will not serve to make the offender more accountable to his or her victim. It will likely build cynicism, which is the opposite of the stated policy intent. Victim surcharges will appear to offenders as an additional penalty, or at best a source of revenue for services to some victims.

There are also some questions about the need for increase in the provincial victims services funds. The federal victims strategy

evaluation, posted on the Department of Justice website, shows a significant lapsing from the federal-provincial-territorial component of the fund. Table 7 shows that of the \$16 million made available, the provinces used \$3 million, leading to a lapse of \$13 million.

While this might have been a designated-purpose fund, before invoking changes that will hurt the poor, it would be good to know how provinces are currently using their victim surcharge revenues, and whether there have been any further resources lapsed. Provinces are also generating revenues from victim fine surcharges connected with provincial infractions.

● (1620)

In another study posted on the Department of Justice website, "Federal Victim Surcharge in New Brunswick: An Operational Review", the Attorney General of Manitoba proposed a victim surcharge increase from 15% to 20% on fines. Linking the increase to fines and the related statutory ability-to-pay considerations would provide welcome protection for the impecunious. It would be a much more modest increase in the significant generation of revenues that would likely flow from these amendments.

In conclusion, the John Howard Society strongly supports effective programs for victims and victim prevention. Increasing surcharges and making them mandatory will not achieve the policy objective of increasing accountability of offenders to victims.

The amendments proposed in Bill C-37, however, will have very serious implications for the poorest and most marginalized facing criminal charges. Without an amendment allowing judicial discretion to waive victim surcharges when they would result in hardship, we can expect to see injustice and inhumanity flowing from this bill. More brain-injured, developmentally delayed, senile, and mentally ill will default on the surcharges and perhaps find themselves in increasingly crowded, dangerous provincial jails.

We urge the committee not to proceed with this bill. If it does, we ask the committee to amend Bill C-37 to allow judicial discretion to exempt the offender from having to pay the surcharge where it would result in undue hardship.

Thank you very much.

The Chair: Thank you.

Mr. Waller, if you have an opening address, please deliver it.

Dr. Irvin Waller (President, International Organization for Victim Assistance): I'm the president of the International Organization for Victim Assistance. I have been working to get services and rights for victims for some 40 years and I have recognition in the United States and a number of other countries for my work. I've recently done a book, which actually was written for the people around this table, called *Rights for Victims of Crime: Rebalancing Justice*.

In relation to Bill C-37, this book says we should be paying for services for victims out of general revenue; that's where we pay for most other services. However, I'm a pragmatist, and any progress to help victims is worth it. I've been an advocate—a reticent advocate—for fine surcharges since they were first introduced in the U.S. in the seventies and early eighties and when they came to this country in 1989.

I think Bill C-37, with the doubling of fine surcharges, is a reasonable step to take. However, I think it's extremely important to see that Canada is way behind other countries in terms of what it does for victims, and we should not confuse a doubling of the fine surcharge with a genuine strategy to meet the needs of victims.

The \$83 billion in harm for victims is totally inexcusable in a country like Canada; that's the data used by the Prime Minister's Office earlier this year, or maybe late last year. The fact of 440,000 violent crimes known to the police is totally inexcusable in a country of this wealth. Also, totally inexcusable are the 1.3 million property offences known to police.

The most inexcusable statistic used by the Prime Minister's Office is that only 69% of victims in this country go to the police. These are third world statistics. Once you begin to provide services for victims, once you begin to get police providing information to victims, and once you get some sort of reasonably coherent system of criminal injuries compensation, you can expect more victims to go to the police. I think that's what you see from looking at other countries.

Just to back up what you see in other countries, let's go to the United States for a moment and see what they did with victim fine surcharges. They didn't just go after the small-time offenders. They went after big corporations. They actually raised more than a billion dollars a year out of the Victims of Crime Act that dates from 1984. These are fines on major corporations that have cheated in some way.

I'm concerned that while we double these sorts of fine surcharges, we make sure that our courts and the regulations are such that we can see, maybe not billion-dollar fines, but a hundred-million-dollar fines here, and I think this will enable us to have, from coast to coast, the sorts of services we need.

Let me take you for a moment to the European Union. They recently adopted a directive that applies to 27 countries—not 10 provinces, but 27 countries—where the inhabitants don't even speak the same language, and 75 million victims in an area of 500 million people will now have guaranteed access to victim services.

This will not guarantee access to victim services for victims in this country. We should be making sure this happens. If the European Union can do it, then we can do it.

The Prime Minister of the United Kingdom recently said that prevention is the most effective and most cost-effective way of dealing with crime and everything else is picking up the pieces. Well, guess what? The United Kingdom just recently introduced a restorative justice procedure across the whole of England and Wales. They've done this because the evidence shows that victims are much more satisfied with restorative justice, and it's an effective way of reducing recidivism.

My plea here is, yes, go ahead with this legislation, but let's get a bipartisan, tripartisan piece of legislation. Every year I give a speech to the bipartisan caucus of the U.S. Congress. This does not have to be a political game. This is something that all sides of the House can agree on.

• (1625)

Let's get a real action plan that is actually going to reduce the number of victims significantly and that is actually going to provide services to all those victims who need it. It's not that costly in a country like this. It's going to ensure that police forces give information—including the RCMP, who are controlled by a federal act—that we get a much greater participation of victims in the process, and that we get a real, genuine policy to reduce that \$83 billion.

We, in the next five years, with leadership from the federal level, could reduce those statistics on violence and property crime, including those who don't go to the police, by 40% to 50%, for a percentage of what we are currently spending on reacting. We need to do that. That's what a genuine policy that is going after the needs of victims would be about that.

Thank you.

• (1630)

The Chair: Thank you, Mr. Waller.

Mr. Jacob.

[Translation]

Mr. Pierre Jacob: For those who were not here, let me repeat what I had started to say.

We support victims of crime, their families and communities, as well as the recommendations of the ombudsman for victims. At the same time, we recognize the importance of supporting judicial discretion.

I also have a number of questions in mind.

Ms. Latimer, we have been able to see that provincial fine programs are not standardized. Three provinces do not have compensatory programs. How is it possible to ensure that the surcharge money will actually go to the victim groups that need it?

The other question that bothers me has to do with individuals who are unable to pay, whether because of extreme poverty, mental health issues, intellectual disabilities or other reasons. You have briefly talked about that in your speech. Can we add an exception, so that we do not completely strike down this piece of legislation?

Furthermore, I was pleasantly surprised to hear Mr. Waller talk about prevention. If memory serves, he said that prevention has worked out well for Great Britain. It is true. That really is the way to reduce the number of potential victims. Of course, we can increase the number of police officers, but the quality of our social fabric needs to be improved, which includes education, social services, and so on.

In addition, I don't think that making offenders or criminals pay an extra \$100 or \$200 will really make them more accountable. Prisons need to have more rehabilitation programs, as well as programs that make people face the consequences of the actions they have committed so that they really have an opportunity to become accountable and reintegrate into society. They will then be able to participate in restorative justice programs.

I know that was a long question.

Ms. Catherine Latimer: May I answer in English?

Mr. Pierre Jacob: Of course.

[English]

Ms. Catherine Latimer: It is a long question, but I think you've hit on something very significant, which is that I think we would all like to see more programs available for victims.

The question is—I think Professor Waller pointed to this as well—how are you proposing to fund that? You point to something, which is the alternative that is set out in the legislation for those who can't afford it, our fine options programs, and they are not universally available. Some of the John Howard societies offer fine option programs; many of them don't.

You're not going to have an even uptake of options, other than the surcharge. You are leaving very vulnerable a great slew of people who will be automatically hit with a surcharge and will have no ability to be able to pay that off. There are mechanisms in the Criminal Code of Canada, such as subsection 787(2), which allow for incarceration of those who are unable to pay orders of a financial nature.

The likelihood that you are going to see people who are impoverished heading towards provincial jails is increased with this legislation, unless you make an amendment that allows judicial discretion to not impose the surcharge where it is pretty clear that the person cannot discharge the surcharge without financial hardship.

[Translation]

Mr. Pierre Jacob: Thank you.

I will give you a chance to talk about prevention and restorative justice programs.

[English]

Dr. Irvin Waller: I'd just like to comment that, when you look at the reporting rate by victims to the police, 40% of victims in Quebec report to police, compared to 30% in Ontario. This is, in my view,

the direct result of the Quebec government's deciding to use public servants to deliver victim services in the mid-1980s. They basically covered the whole province with professional services for victims. It's not quite as perfect as I would like, but it's going in the right direction.

Quebec also pays considerably more in compensation than, for instance, Ontario, where a recent report called the compensation program “adding insult to injury”.

It is important that we do actually get better services, that these are funded appropriately, and that the people working in those services are paid appropriately. In terms of prevention, this committee has heard me before, but I will repeat some of the highlights.

•(1635)

The Chair: We're quite a bit over time, so just be very brief.

Dr. Irvin Waller: Okay.

The most spectacular example anywhere in the world in terms of crime reduction is a Winnipeg example with an 85% reduction in car theft. The past president of the Canadian Association of Chiefs of Police is going to be in charge, probably, of victim issues, since he's now a deputy minister in Saskatchewan and has been adopting the Glasgow model.

There are a lot of things that we can do in this country to reduce the \$83 billion in harm. We need to do that. That's on an annual basis. It doesn't matter if police-recorded crime is going up or down: that harm is there. We need to face it and we need to do something about it.

The Chair: Go ahead, Mr. Goguen.

Mr. Robert Goguen (Moncton—Riverview—Dieppe, CPC): I thank the witnesses for testifying and sharing their insight.

Mrs. Latimer, everyone around the table knows that your organization is unwavering in its opposition to the government's justice agenda, and of course this agenda is one that seeks to hold criminals accountable and ensure the safety and security of victims and law-abiding Canadians. Of course, we understand that your organization's role is to stand up for criminals, but I find your position distressing in that it takes in no element of protection whatsoever for the victims.

Professor Waller brought up the fact that the cost to victims was \$83 billion. I guess the cost of crime in 2008 was \$99.6 billion; let's call it \$100 billion, for the sake of argument. The cost of crime borne by the victims is \$83 billion. That's rather staggering. Let's put that in perspective: that's four times the \$21-billion carbon tax proposed by the NDP. It's staggering, so my question is, does your organization—

Ms. Françoise Boivin: Friendly as usual....

Voices: Oh, oh!

Mr. Robert Goguen: —ever consider the rights of victims when taking a position on legislation?

Ms. Catherine Latimer: Well, I'm so pleased to have received the question.

First of all, let me explain that the John Howard Society supports just, fair, and humane responses both for the offender and for the victims of crime and its consequences. We do believe that offenders need to be held fairly and proportionately accountable when they commit crimes. There is no question that we are an organization that supports a just and fair approach.

In terms of taking into account the interests of victims, we provide many services for victims across the country. We are interested in addressing the harms immediately that fall to victims. We're very, very interested in preventing re-victimization, or victimization in the first place, by working with those who may be at risk of offending or may have already offended.

Yes, we are cognizant of the concerns of victims, and we take those into account when we are forming positions on justice policy that reflect the John Howard Society values and mandate.

Mr. Robert Goguen: I'm wondering, Mrs. Latimer, if this is a paradigm shift in your organization's position, because back in March of 2011, your predecessor, Kim Pate, testified before the legal and constitutional affairs committee. She was testifying on Bill C-59, An Act to amend the Corrections and Conditional Release Act and Bill C-475, An Act to amend the Controlled Drugs and Substances Act.

Her quote at that time, back in March 2011, was: "I want to be clear that, as we stated before the house committee, we do not support this bill. We do [not] support issues to protect the rights of victims and to protect victims generally. We feel that if that was the objective, many more initiatives could be undertaken rather than, after the fact, undertaking a bill of this sort".

So wow: 180 degrees....

Ms. Catherine Latimer: Well, Kim Pate is the executive director of the Canadian Association of Elizabeth Fry Societies; she's not with John Howard and she doesn't speak to the John Howard position. I don't think that's really reflecting a 180-degree shift in John Howard thinking.

• (1640)

Mr. Robert Goguen: Well, I'm wondering which justice initiatives your organization has actually supported. Are there any that come to mind? I don't seem to recollect that there's been much support coming from your organization.

Ms. Catherine Latimer: That would be a very narrow perspective. There are elements of Bill C-10 that we supported. For example, there was a provision in the elements looking at youth justice where they were going to ensure that young people would not be housed with adults in the same facility. We supported that.

We've supported a number of specific provisions, but the difficulty is that when they are amalgamated into giant omnibus bills where we find we have objections to some of those provisions that fail to meet the John Howard standard of being just, humane, and effective, we have difficulty supporting the entire bill, that's for sure. Yes, that's true.

Mr. Robert Goguen: Well, this is by no means an omnibus bill. I don't think there are very many clauses. I'm wondering if it's reasonable to say that for a reasonable bill initiative like Bill C-37,

regardless of how reasonable it is, wouldn't the John Howard Society be pitted against it?

Ms. Catherine Latimer: We're not pitted against Bill C-37. We're pitted against the removal of the judicial discretion to not impose the victim surcharge if the person is unable to pay. That's a fairly fundamental principle of justice that has been reflected in fine provisions, that's embedded in the Criminal Code, and that have been reinforced by the Supreme Court in the decision of R. v. Topp.

You can't get blood from a stone. If you try to get resources from people who do not have the resources or are unable to participate in the alternative, which is the fine option program, you're going to end up putting in jail the people who are unable to pay. You're going to end up with a new form of debtors' prison and the John Howard Society certainly does not support that.

The Chair: Thank you.

Mr. Cotler.

Hon. Irwin Cotler: Thank you, Mr. Chair.

I'd like to just advise Mr. Goguen—I believe he'll appreciate it—that Ms. Latimer was a distinguished public servant in the department working on issues of victims' rights, among others. I don't think we should go into issues of whether a person cares or does not care for victims' rights simply because they're an executive director of a particular organization. Let's all agree that everyone here cares about victims' rights as part of our concern with regard to criminal justice.

Let me go to the issues themselves. I might add parenthetically that one can oppose this bill precisely because one cares about victims' rights, in the sense that it would remove judicial discretion with regard to the impoverished accused and the like, who would end up being incarcerated. Mental illness considerations may be involved as well. A commitment to the rights of victims could invite one to critique this bill on the basis of victims' rights.

One of the things I wanted to speak to and ask both of you, because in your presentation, Mr. Waller, you gave some very compelling concerns that deal with the whole question of how we ought to have a more comprehensive policy and strategy in these matters, which would deal with issues of.... All the things that you said very compellingly, I won't go into.

In a throwaway line, but not an unimportant one, you mentioned that we can pass this bill, but that these are the other things we should be doing. My concern is if one passes this bill, one may not get to do all the other things you've been speaking to because people would say we've done what we need to do with regard to victims' rights. I think your agenda is one that we need to take seriously, and I would hope on a bipartisan, tripartisan approach, as you put it.

First, do you think that passing this bill would be without any adverse fallout on the merits? Because I think Ms. Latimer has raised some concerns.

Second, on the pragmatics of it, is it not possible that if we do pass it, we may not get to the point of doing that which you so persuasively put before us as an agenda?

Dr. Irvin Waller: Well, I'm not the politician, but I certainly watch what goes on in other countries. What I've heard from the current government is that they want to champion victim rights. My assumption is that this is one step and that they will in fact look at what they can do to bring prevention, services, and rights for victims up to international standards.

The neat thing about 2012 is that the European Union has just shown that you can have standards across countries—27 countries—and I think this is a very useful document to look at. We also have more than 20 years of legislation in the United States, including the Justice for All Act, a very important initiative in 2004. I think we're in the rather wonderful position that we can look at and learn from other countries.

My main concern would be not that they will not follow through on services and rights and in providing leadership and help to the provinces, but that they will not balance these with the sorts of prevention we need. I think we're going to see the provinces moving on prevention, but the federal government, in my view, has to put its money where its mouth is.

If you look at the Victims of Crime Act of 1984, you see \$1 billion put into not just services but also into compensation in the United States. I think this shows what can be done.

The McMurtry report's evaluation in Ontario talked about the importance of the victim being informed. It also talked—and this is a really important point, to me—about evaluating whether we're meeting the needs. In this country, if we're going catch up with other countries, we have to begin to look at whether what we're doing for victims actually meets the needs.

I don't want to slow down Bill C-37, because you don't need legislation to evaluate the needs. In the budget, the \$16 million or whatever it is that the federal government spends on victims is seriously peanuts. They should be putting money into looking at the gaps between services and needs, in collaboration with the provinces. These are all things that have been recommended. It's a question of action.

• (1645)

The Chair: Thank you.

Ms. Findlay.

Ms. Kerry-Lynne D. Findlay: Thanks to both of you for being here today.

I would just state that there are many preventive programs being funded by Justice Canada, and in fact by other branches of the government right now, programs on preventing crime with respect to youth crime as well as adult crime. This is something that our government takes very seriously, and we certainly fund many programs, which is not to say there could not be more programs, but these are certainly welcomed by the community and the provinces.

I think we need to put this particular bill in some perspective, because the initiative before our committee would see the victim surcharge increased by 30% for an imposed fine, \$100 for a summary conviction, and \$200 for an indictable offence. I would suggest that in the view of most Canadians these are very nominal sums.

I listened to your testimony, Ms. Latimer, about effective, just, and humane principles. You say that in your opinion this is unfair. Would you not agree with me that it is reasonable to have a convicted individual, particularly one who is convicted of an indictable offence, contribute to the rehabilitation of the victim that person has created?

Ms. Catherine Latimer: First of all, I congratulate the government and would like to express the John Howard Society's support for the measures you have taken with respect to crime prevention. I think we're all on the same page on that.

With respect to offenders contributing to the victims in overcoming their trauma and whatnot, yes, I think they should contribute. I think a fair way to do that may be that when a judge awards a fine—and it's a component that you will find now in the Youth Criminal Justice Act—the province can designate an amount of that fine to go to a particular purpose, including victim services. The entire amount of the fine, which would be a proportionate and fair penalty that holds a person accountable, could all go to victim services. I think many of us would find that laudable and useful.

• (1650)

Ms. Kerry-Lynne D. Findlay: Are you talking about the surcharge on fines?

Ms. Catherine Latimer: No, I'm talking about the fine itself, not the surcharge.

Ms. Kerry-Lynne D. Findlay: So the entire fine would go toward victim services.

Of course, that's for each province to decide. I'm from B.C.. It happens to be that my province is one that doesn't have the fine option program; however, as a lawyer who practised there for many years, I know that they have other alternatives in place for dealing with collection of fines.

I see that my colleague Mr. Jean has joined us. I'll share the rest of my time with him.

The Chair: Mr. Jean, you have two minutes.

Mr. Brian Jean (Fort McMurray—Athabasca, CPC): Thank you very much.

I want to continue in that vein of questioning. You mentioned a proportionate and fair fine. Of course, as you know, I was in the criminal justice system for some period of time, and I had the opportunity to see surcharges waived on a consistent basis, even in northern Alberta.

I see you nodding your head in agreement, so you understand that this is the situation: 80% to 90% of the time, they are waived. What is proportionate and fair, in your mind?

Ms. Catherine Latimer: Proportionate and fair is based on a variety of things. It looks at the sentencing principles and it looks at the seriousness of the offence and the degree of responsibility of the offender. It's a measure that reflects those two components.

Mr. Brian Jean: But of course that is a very subjective element for judges to decide upon. The court usually has the discretion of awarding a fine in a certain range. Do you consider that all of the fines in the Criminal Code are currently proportionate and fair or not?

Ms. Catherine Latimer: I agree with you. It depends on what amount of fine the judge decides to impose in a particular circumstance.

Mr. Brian Jean: Absolutely, but right now, would you suggest that the range the judges have is proportionate and fair? Or should those amounts be increased or decreased? Or do you think—

Ms. Catherine Latimer: I think you point to an interesting issue. I would say they're probably fair, but I think your issue is the consistent waiving of the surcharges and how to address that. I'm not sure that making them mandatory is the way to address the judicial determination to waive them.

Mr. Brian Jean: The difficulty from a practical perspective is that the discretion of the judges is such that they never or very seldom impose them. For the most part, I noticed it as an afterthought of the judge not to impose it. My point is on the proportion, the fair amount. There is no way in the world that you're going to convince me that criminals pay, through fines or surcharges, anything close to what they cost society as a whole.

My question is, do you think criminals should pay financially for their crimes, which are caused as a result of intention and obviously damage people psychologically and property-wise, or do you think the state should come along and carry the burden of criminals?

Ms. Catherine Latimer: To me, you're bringing in some civil law concepts in the question of criminal law.

Mr. Brian Jean: Not necessarily—in criminal law now, they can impose a civil remedy.

Ms. Catherine Latimer: Yes, but the point is that your measure of accountability is not necessarily linked to the cost of your crime; it's linked to the seriousness of your offence and the degree of your responsibility. You're being held accountable for what you did, not necessarily for the broader financial—

Mr. Brian Jean: The question is, am I to pay or does the victim pay? That's what I wanted to know.

Ms. Catherine Latimer: I'd be happy to talk to that—

The Chair: We're out of time.

Mr. Côté.

Ms. Catherine Latimer: Well, I'd be happy to—

Mr. Brian Jean: Please: you can answer it for Mr. Côté.

[Translation]

Mr. Raymond Côté (Beauport—Limoilou, NDP): Thank you very much, Mr. Chair.

Before asking the witnesses questions, I would like to comment on Mr. Goguen's remarks. I would like to ask all members to be

careful out of respect for our witnesses, especially since our time is valuable.

Ms. Latimer, Mr. Waller, thank you very much for joining us. Ms. Latimer, I must admit that one of the figures that you have presented disturbed me. I would like your confirmation. You said that a large portion of the compensation funding for victims in the amount of \$13 million was unfortunately not used. Is that correct?

[English]

Ms. Catherine Latimer: This was an evaluation of the *Federal Victims Strategy Evaluation, Final Report*, 2012. In table 7, there is an indication for the “Provincial/Territorial Component of Victims Fund” showing that \$16,475,000 was made available and that only \$2,956,000 was actually spent, leaving a variance of \$13,518,000.

[Translation]

Mr. Raymond Côté: That is very disturbing.

My office was able to get hold of a study conducted in Ontario in 1994 by Lee Axon and Bob Hann. Those authors noted that 45% of people who received a fine were not able to pay it. So, if the fine is imposed without judges being able to exercise their discretionary power, how can you be sure that the accused will be able to fulfill their obligations?

• (1655)

[English]

Ms. Catherine Latimer: I'm not at all confident that they will be able to meet that obligation. The fact of the matter is that a lot of people who are marginalized and impoverished are charged with offences, and they may have committed those offences—I'm not denying that. But to scrape together the additional resources to be able to pay the surcharge, on top of whatever other penalty is appropriately imposed, is going to create a significant hardship for some of those who don't have enough money from their disability benefits to last them the entire month. They don't have enough groceries; they're going to the food banks. They can't make it without help. It will create some real problems.

[Translation]

Mr. Raymond Côté: There is something else we have learned from this study, which is very disturbing.

In fact, Ontario judges and crown prosecutors refused to impose the surcharge simply because those funds were not put towards the funds for victims, but rather paid to the treasury of the Province of Ontario. The money wasn't given to the victims directly, which did not make those people have confidence in the system.

Do you think that the federal government should work with the provinces to make judges confident in this respect?

Dr. Irvin Waller: Let me answer that question.

[English]

You have to remember that the UN declaration on victim rights was adopted in 1985 and that, starting with Manitoba in 1986, most of the provinces adopted victim services legislation that used a fine surcharge system. Ontario didn't move until 1996, and I think what you see is judges deciding not to order it because there was no legislation in place. The Ontario Victims' Bill of Rights came in 1996.

I think it's a very serious challenge that judges have not been ordering this. It's not unique to Canada. It has happened in other countries. The federal ombudsman talks about "shifting the conversation"; we have to shift the action. Judges have been brought up in a world that was retributive. It goes 200 years back to Beccaria, and it's about the state versus offenders. We live in a period of \$83-billion worth of harm and, really, no adequate services, no information, no use of restitution, and varying compensation.

We have to shift the way that the justice system operates, and we have to start with the police, who have an enormous amount to gain from providing information. I think this legislation is quite drastic as a way to get judges to do what they need to do.

On the other hand, the amounts generally are not that large, and there are many good things here, as the ombudsman said. You have people working in federal penitentiaries; they could be paying.

I want to see not just a focus on what we do about the poor, but what we do about those who could be making very large payments. That's how the U.S. system is funded. It's not funded by taxes on young, black gang members from Chicago; it's funded by big fines that are imposed on companies that pay. Then we will be able to get a country that meets—or begins to meet—international standards for victims.

The Chair: Thank you.

Mr. Jean, very briefly. We will end at five o'clock.

Mr. Brian Jean: Thank you, Mr. Chair.

I just want to pursue that situation a little more. On page 4 of your document called *Sentencing in Canada*, published in 1990, the John Howard Society specifically says that restitution and fines are to cover expenses and to make restitution to victims. That's their purpose.

From my perspective, I've never seen that happen. I've never seen a fine imposed that actually came anywhere close to the damage

caused. I'd like to pursue this further, because I think there are two possible payers of victims in this particular case. One is society, which in my mind victimizes more people; the other is the criminals themselves, who do have the possibility of paying through alternative measures, or through a working scenario, or indeed through money that they have already in their possession.

So who do you think should pay for this? Do you think society should pay—and victimize more people in society, in my mind—or do you think the criminal should pay?

• (1700)

Ms. Catherine Latimer: I think the criminals, or the offender, should be held accountable for their wrongdoing to the extent to which the measure of accountability can be applied to make the lives of victims easier or better through restitution, provision of services for victims, or participating in restorative justice practices. Then I'd say yes.

Mr. Brian Jean: For instance, what they damage they should pay for, and what they steal they should pay for.

Ms. Catherine Latimer: Well, I mean, you can get into—

Mr. Brian Jean: Because that's restitution.

Ms. Catherine Latimer: Pardon me?

Mr. Brian Jean: That's restitution.

Ms. Catherine Latimer: Restitution is also if I steal your diamond ring and I have it in my hand, I should give it back to you, right?

Mr. Brian Jean: Well, actually, that's not restitution, but...

Ms. Catherine Latimer: Well, we can look at the definitions—

Mr. Brian Jean: That's a replevin action—

The Chair: Thank you.

Ms. Catherine Latimer: We can get into a legal—

The Chair: Thank you.

We need to thank both the witnesses for being here today.

This is an important bill we're dealing with and I appreciate the information you've provided to us.

We'll take a short break. Then we'll go in camera and deal with future business.

[*Proceedings continue in camera*]

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