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## Chair

**Mr. Kevin Sorenson**

# Standing Committee on Public Safety and National Security

**Thursday, May 10, 2012**

● (1530)

[*English*]

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

This is meeting number 39 of the Standing Committee on Public Safety and National Security, on Thursday May 10, 2012. Today we are continuing our consideration of Bill C-350, An Act to amend the Corrections and Conditional Release Act (accountability of offenders).

Our first witnesses today are appearing by video conference from Winnipeg, Manitoba. We have the Manitoba Keewatinowi Okimakanak Inc., with Grand Chief David Harper and Michael Anderson, the director of the natural resources secretariat.

They are not there yet, but we also have here, appearing as an individual, Mr. Steve Sullivan.

We welcome you to our committee, Mr. Sullivan.

He is the former Federal Ombudsman for Victims of Crime.

Let me just say that you have a very tough act to follow, Mr. Sullivan, because we had the current victims commissioner here, and she did a remarkable job. You can pass that on to her.

We do welcome you here and we look forward to your testimony.

I see that we do have some action there in Winnipeg now.

We want to welcome you. Can you hear us in Winnipeg?

**A voice:** Yes, I can hear you.

**The Chair:** All right. They're still working on the audio.

We're just waiting, then, I guess, for David Harper, the grand chief, and Michael Anderson.

**A voice:** Michael is here, but we're just waiting for the other individual.

**The Chair:** Perhaps we will begin. We have one guest with us here in Ottawa.

We will invite Mr. Sullivan to begin, then, if he would, with opening comments.

When Mr. Harper and Mr. Anderson are prepared, we will look forward to their comments after Mr. Sullivan's.

Welcome, Mr. Sullivan.

**Mr. Steve Sullivan (Former Federal Ombudsman for Victims of Crime, As an Individual):** Thank you, Mr. Chair.

Thank you for the invitation. My opening remarks this afternoon will be fairly brief.

I should just say that I've been working with victims in various roles for almost 20 years as an advocate and, as you mentioned, as the former ombudsman. Currently I work with Ottawa Victim Services, which is a smaller community agency here in Ottawa, but I'm here as an individual representing my own personal views.

Let me begin by saying that I support the principles of Bill C-350. I'm not qualified to speak to some of the testimony I've read on the federal-provincial issues that have been discussed, or the constitutionality, but the principle of the bill is one that I support. I think it is only logical that someone who is in a federal prison for creating victimization, for example, and who is being asked for compensation for that victimization committed upon that person, would respect the individual's legal rights and civil rights that have been violated and provide compensation if they have been ordered by the courts to do so. I think that's a fairly practical and logical procedure to undergo.

Having said that—and certainly no criticism is meant of the author of the bill—I don't think this will have a very large impact on the majority of victims of crime. You've heard evidence from other witnesses about the number of federal offenders who have restitution orders—around 575 or so, a relatively small number. There's a small number of those who have victim fine surcharges outstanding. I think it was 700 or so. That's a reflection of some problems in the courts about the way restitution is ordered and the way victim fine surcharges are often waived in so many cases even though they're not supposed to be. Those are other issues beyond the scope of the bill.

I don't know what the mechanism would be for Corrections, for example, to know about civil orders that have been ordered if a victim, for example, or a family, sued an offender civilly. Those as well are not all that common. It's difficult for victims or families to have the financial means to sue individuals in civil court, so it's a relatively small number of offenders who, I would expect, would be in federal prison.

I have not had a lot of experience with working with victims whose offenders have received compensation, either through the federal government or through other provincial governments. I can think of one case of an offender serving a life sentence for murder who received some compensation regarding an institution he had stayed at as a young person. He was abused in that institution. But other than that, I don't have a lot of experience with it. I don't think most victims have those civil judgments as well.

As I say, again, I don't mean to criticize the author of the bill. I think the principle is a sound one. I really don't have much else to say in my opening remarks, although I'm happy to answer any questions the committee members may have.

● (1535)

**The Chair:** Thank you very much, Mr. Sullivan.

Mr. Anderson, is that you I see in Winnipeg?

**Mr. Michael Anderson (Director, Natural Resources Secretariat, Manitoba Keewatinowi Okimakanak Inc.):** Mr. Chair, I apologize if I've been coming in and out. I don't have the video feed from your end, so I thought it was not working.

Thank you very much for the opportunity to appear. Would you like me to make my comments at this time?

**The Chair:** Yes, please. Let me also say that the video feed and the audio feed are very good here. We see you and we welcome you to our committee.

**Mr. Michael Anderson:** Thank you very much. I have some brief comments to make regarding the bill.

*Tansi, boozhoo, edlanet'e,* and good afternoon, Mr. Chair, members of the committee, and Madam Secretary.

On behalf of the northern Manitoba first nations, of which there are 30, and the 65,000 first nations citizens represented by the Manitoba Keewatinowi Okimakanak—MKO—I'd like to thank you for the opportunity to provide these brief comments and recommendations regarding Bill C-350, An Act to amend the Corrections and Conditional Release Act (accountability of offenders).

It's a core vision of the 30 MKO first nations that each of the MKO first nations should be the safest and most secure place to live for each of the citizens of the MKO first nations. The MKO first nations first and foremost are committed to achieving the highest standards of public and community safety and security based on community-driven preventive and restorative approaches supported by community-based policing.

It is the objective of these initiatives to place an emphasis on reconciliation between the victim and the community and the offender, and on the rehabilitation and reintegration of offenders as productive members of the family and the community. This vision also reflects the inherent and customary laws and the community and cultural values of the MKO first nations.

Bill C-350 proposes that reconciliation between the victim and the offender might be advanced by ensuring that any amounts owing and payable by Her Majesty to the offender are instead paid directly by Her Majesty to the victim in accordance with the priority that's established in proposed subsection 78.1(1).

Clause 2 of Bill C-350 proposes to amend the Corrections and Conditional Release Act by including the new subsection 78.1(1), which would provide that "any debt owed to an offender as a result of a monetary award made to the offender by a court, tribunal or agency pursuant to a legal action or proceeding against Her Majesty the Queen in Right of Canada or an agent or employee of Her Majesty in the course of the performance of his or her duties, shall be satisfied by the payment", according to the order of priority established in the proposed bill.

MKO is very concerned that the classes of monetary awards contemplated in Bill C-350, being a monetary award made to the offender by a court, tribunal or agency pursuant to a legal action or proceeding against Her Majesty in Right of Canada, would include a payment or award made to an offender pursuant to the Indian Residential Schools Settlement Agreement, which settlement has been approved by the courts. Subject to check, it's my recollection there are at least nine court orders approving the Indian residential schools settlement as a series of class actions.

First nations persons receiving a payment or award further to the Indian residential schools settlement are recognized essentially as victims as well. The payment or award is essentially a form of restitution for the victimization of these first nation persons through the Indian residential schools system. The apology delivered on June 11, 2008 by the Prime Minister represents a recognition by government of the significant impacts of the Indian residential schools system on many thousands of first nation citizens. Further recognition in Canada's legal system of the potential impacts of colonization, including the effects of the Indian residential schools system on the circumstances of aboriginal offenders, appears in paragraph 718.2(e) of the Criminal Code.

Paragraph 718.2(e) requires a sentencing judge to give particular attention to the circumstances of aboriginal offenders in considering whether an alternative to incarceration may be more appropriate in the circumstances. In R. v. Gladue, the 1999 decision of the Supreme Court of Canada, that responsibility or obligation of the court was reinforced for sentencing considerations in the case of aboriginal offenders.

In Canada, 20% of inmates in federal prisons are aboriginal people. In Manitoba, 70% of the inmates in provincial facilities and 50% of the inmates in the two federal institutions are aboriginal persons. However aboriginal peoples make up only 15% of Manitoba's population and about 4% of the population of Canada. In Manitoba, aboriginal offenders are sent to prison more often than non-aboriginal offenders. Aboriginal offenders in Manitoba make up more than two-thirds of offenders in custody, but less than half of those serving conditional sentences.

● (1540)

In part, the significant and disproportional representation of aboriginal offenders in Canada's justice processes arises from the persisting effects of the Indian residential school system on the survivors and their families and communities. It is important to recognize that many aboriginal offenders are also survivors and are also, therefore, victims of the Indian residential school system.

It would be inappropriate and contrary to the intent of the apology and to the objectives of the Indian residential schools settlement for Her Majesty to effectively seize a payment or award made by Her Majesty as restitution to the offender, who is also a survivor of the residential school system, when this survivor's offence can at least in part be attributed to the adverse effects of the Indian residential school system.

In respect of Bill C-350, MKO recommends that clause 2 of the bill be amended to expressly exclude or provide an exception for any payment or award made further to the Indian residential schools settlement agreement from those classes of monetary awards proposed to be encompassed through proposed section 78.1 of the Corrections and Conditional Release Act.

MKO further recommends that persons expert in matters related to the Indian residential schools settlement agreement appear before the standing committee to provide evidence in respect of the settlement and of the court-supervised nature of the settlement process.

Those are my opening comments.

*Ekosani. Mahsi' cho. Meegwetch.*

Thank you very much.

**The Chair:** Thank you.

We'll move into our first round of questioning.

I invite Ms. Hoeppner, from the government, to question for seven minutes.

**Ms. Candice Hoeppner (Portage—Lisgar, CPC):** Thanks, Mr. Chair.

Thank you to both Mr. Sullivan and Mr. Anderson for being with us today.

Mr. Anderson, I'm going to begin with you. We've heard testimony throughout our study of this bill about how important it is for victims and family members to receive restitution when crimes are committed. We've looked at the order this bill lays out. We've also heard testimony that including residential school awards would not be the right thing to do.

As a reflection of all of Canada's sadness over the treatment of children in Indian residential schools, the Prime Minister offered a full apology in 2008 on behalf of Canadians. Could you articulate and explain a little bit further to us why, in light of that, it's important to not include residential school payments in this bill while at the same time maintaining the overall spirit of victims being paid and receiving compensation?

● (1545)

**Mr. Michael Anderson:** Thank you very much for the question.

As I indicated at the beginning of our comments, the reconciliation between victims, offenders, and communities is a core element of our restorative justice and community-based policing initiatives and our vision for our policing and justice systems—public safety—within our territory. Particularly when you have a fairly small community in which persons are expected to reside together for an extended period of time—if not for most or all of their lives—it's absolutely essential that this form of reconciliation take place, so it's uppermost in our minds.

I know that on a separate bill before the Senate, Bill C-10, there was a representative from the Inuit of Nunavut, a public defender from that territory, who indicated the significant impacts of an offender returning to the community without having this process of reconciliation take place when you're dealing with a small hamlet of fewer than 200 people.

The same kind of thinking applies in our case. The residential schools payments, the claim settlement amounts, are intended to try to set right the life of an individual who has been severely disrupted by his or her experience in the Indian residential school system.

The quantum of the settlements, the two types of payments—the common experience payment and the independent assessment amounts—are intended as a form of restitution and an attempt to reconcile the effects of government policy and the actions of the churches on these individuals. These amounts are intended to assist an individual in recovering his or her path in life and then in moving forward.

For these amounts to be reallocated for victims of an offence they may have committed—as I said, in part as a consequence of the adverse effects of the IRSS process—completely undoes the intent of the award and also sets the individual back in terms of the ability to be reconciled within Canadian society.

That being said, the concept of reconciliation is a very powerful customary law principle. Excepting the payments from the basic provisions of the act does not prevent a process whereby individual offenders may consider whether any amount of that payment might be paid by them to the victim in their personal journey to reconcile that particular act.

**Ms. Candice Hoeppner:** Thank you very much for that.

For the benefit of the committee and for those listening, could you let us know how important even today that apology was—the restitution obviously, but also the apology on behalf of Canadians—from the Prime Minister?

**Mr. Michael Anderson:** The apology was extremely important. During the apology itself, our boardroom in Thompson was absolutely packed. There were first nations citizens from our communities and leaders and technicians from the various groups who joined us in the Grand Chief Francis Flett memorial boardroom. People were completely surrounding our building.

It was an enormously important and significant event in terms of a recognition by Canada of the reality of the residential school system and the effects it had on aboriginal Canadians, on first nations Canadians. That first step toward reconciliation was enormously important, but it's important to underline that it was a step toward reconciliation between Canada, the churches, and the victims of the IRS system, and that the claim settlement mechanisms through the agreements and so on are further steps in that long process.

**Ms. Candice Hoeppner:** Thank you.

I'm going to go to Mr. Sullivan now, just to change direction a little bit.

How much time do I have?

● (1550)

**The Chair:** You have a minute and a half.

**Ms. Candice Hoeppner:** Mr. Sullivan, from the work you've done on behalf of victims and with victims, can you tell us a bit about what it means to victims—even the psyche of being a victim—to have, for example, a government not recognize that an offender should be held accountable by way of being asked to pay restitution? We've heard some testimony that some judges aren't always awarding restitution, and then there's a problem, because obviously you can't collect what hasn't even been awarded.

It's not about the money, because money can never repay or redo the harm that has been done to victims. But I think there's a message that has been sent in the past, and I think it is one of the things this bill is trying to change. The message has been that offenders, because of where they are located, aren't necessarily under the same rules as the rest of Canadians, even in terms of their civil obligations to pay debts.

Can you explain to us, from the work you've done, what it would do for a victim to know that if a restitution order has been placed on the offender and the offender comes into money, it would be paid to them?

**Mr. Steve Sullivan:** I can say that restitution is unfortunately rarely ordered by the courts, and most often it is for property offences. One of the requirements of the code is that you have an actual set amount. If it's a broken TV and I know that my TV cost $500, I can give that to the court.

Courts have discretion around providing orders of restitution in non-property related expenses, but those are often difficult to quantify. So when it comes to a sentence that often takes place quickly because there's a plea bargain and all those things, restitution is rarely part of the sentence.

It often can be very frustrating for victims who expect to receive the restitution. Often, it's coupled with probation orders. A guy would get a provincial sentence and a probation order, and if he doesn't pay the restitution order at the end of his sentence, it's up to the victim to go to civil court to try to get that money back. That's not a practical process for most victims of crime. They just don't have the means or, frankly, sometimes the energy to go through that.

So it's doubly frustrating when someone is ordered to pay restitution and doesn't do it. What we know from the research is that victims often appreciate even the attempt to provide restitution. Let's say someone owes you $1,000, is making efforts to pay it back, and gives you $100. So it might take years, but that attempt is more meaningful for victims than government compensation.

**The Chair:** Thank you very much, Mr. Sullivan and Ms. Hoeppner.

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

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

Thank you to both witnesses for appearing today.

I want to start with some questions or remarks from Mr. Anderson. We very much appreciate your testimony, in particular with regard to the problem of awards through the Indian residential schools settlements.

I'd like to pursue that a little more with you but also let you know that we on the NDP side have prepared an amendment to exempt those settlements because of other concerns we've heard. If I understood correctly what you were saying, there are a couple of problems if they are included.

One is that including them takes reconciliation out of the cultural context. The other seems to be that it takes away agency from the person who needs to make his or her own decision to pursue that reconciliation.

Is that a correct understanding of what you were saying?

**Mr. Michael Anderson:** Yes, those are both components of what we were saying. But also, of course—and importantly—the payments themselves are reconciliatory in their root; that is, intended to reconcile the adverse impacts upon the individual of the Indian residential school system. They're intended as an important part of that individual's healing process. So this undoes the intent and objective of that award.

**Mr. Randall Garrison:** Have you seen—

**Mr. Michael Anderson:** The other aspect—

**Mr. Randall Garrison:** I'm sorry. Go ahead.

**Mr. Michael Anderson:** The other important part, though, is this. I mentioned our emphasis on restorative and community-based justice systems. We place a great deal of significance on those initiatives, because within our communities we want to bring victims and offenders face to face to resolve the issues between them. We believe that reconciliation—as distinct from enforcement and incarceration approaches—is absolutely critical to public safety in our communities and, we would say, also to all Canadians.

**Mr. Randall Garrison:** You've actually just covered my second question, so I have one last question I would ask today.

Have you seen examples of settlements through the Indian residential school agreements that have been part of the reconciliation process and have been shared out to others in the community?

**Mr. Michael Anderson:** Well, as a matter of restitution with a person who they may have offended in some manner in their life...?

**Mr. Randall Garrison:** Yes.

**Mr. Michael Anderson:** I do know that the settlement payments can be distributed within the communities to do good things in terms of the purchase of needed hunting and harvesting equipment to improve the lives of individual families.

In some cases, that may indirectly improve the lives of persons they may have adversely affected. I don't have an example of direct correlation that I can speak to at this point.

Generally, the concept in our first nations is community. When someone begins to take steps within the community to share the benefit of their healing process and also the physical outcome of that in terms of equipment that might be needed by the community to harvest, to make repairs to homes, and things like that, those steps are benefiting a large number of individuals and in general more widely benefiting the community as a whole.

**Mr. Randall Garrison:** So you would say that the pattern you have seen is the sharing out in the community of those awards.

**Mr. Michael Anderson:** Yes, absolutely.

● (1555)

**Mr. Randall Garrison:** Thank you.

I'd like to ask a question now of Mr. Sullivan.

You said in your opening remarks that you thought this bill would have a small impact. Are there ways in which you think this bill could be improved to have a larger impact? Or are there other things that you think should be a priority instead?

**Mr. Steve Sullivan:** We could spend all afternoon talking about the number of different things. I think this bill has a very specific focus. It's very targeted.

With respect to the discussion about the residential school settlements, I think that on a practical level that would be a very small problem. You would need to have a first nations person in federal prison who has a restitution order or victim fine surcharge and who also is getting a residential school settlement.

Victim fine surcharges are really small. For the most part, you're looking at $50 to $100. So if someone were to get an award and then someone would be required to pay that, it's a relatively small amount. Unless it's a white-collar crime, restitution orders are relatively small. They're focused on property.

These are not large amounts of money, so I'm not sure that would be a particularly big problem. I think we're looking at the back end of the system.

One thing I would agree with is around restorative justice. There's a program within the Correctional Service of Canada that does seek to bring victims who want to meet their offenders or have a discussion with their offenders about the offence.... I know families who have done that in homicide cases and sexual assault cases. That's an incredibly well-run program that is respected around the world. That's a very positive thing. The victims you speak to who choose to go through it—it's not for everybody, and I would hesitate to encourage people to do this, because it is very personal—report incredibly high levels of satisfaction with that process.

So I think those kinds of mechanisms, both within Corrections and beyond, and having our sentencing principles be more reflective of restorative principles.... It's actually talked about in the Criminal Code, but we don't actually see very much in practice.

**Mr. Randall Garrison:** Would you say that victims are aware of the possibility of that reconciliation program? Or do most know about that?

**Mr. Steve Sullivan:** It's not well advertised, in part because it's a fairly small program. It's a fairly lengthy program, and in any one case, there's no structure to it.... It's really victim-driven. There are cases that go on for years because victims decide they want to step back, and then maybe they want to meet, or they don't want to meet but have letters exchanged. There are those kinds of things.

I think the benefit of the program is that it is so flexible, but it's a fairly small program, not well advertised, and not well promoted. I think that just because it's so small they're hesitant to promote it too much, because if more victims demanded it, they couldn't meet that demand. So I would say that most victims are probably not aware of it.

**Mr. Randall Garrison:** Would that be a funding or an expertise question in terms of meeting more demand?

**Mr. Steve Sullivan:** It would probably be a funding issue.

I certainly can't speak for those who run the program. I want to be clear about that. I think they would be hesitant about expanding it too largely, because there aren't all that many people who are experts at doing those kinds of meetings. So if it were to grow, it would have to grow fairly slowly, but largely it is a funding issue.

**Mr. Randall Garrison:** How much time do I have?

**The Chair:** You have half a minute.

**Mr. Randall Garrison:** On the remarks you made on the residential school settlements, I guess you were focused on the amounts. I think the concerns we heard from the Manitoba first nations were not focused on amounts but rather on the concept and the principles. Would that be correct? That's the difference...?

**Mr. Steve Sullivan:** I won't speak for the other witness, but my sense would be that if someone.... I respect the apology and I listened to the apology, like many Canadians, and on the settlements that are being given, I understand why and how that's being done. But I think the principle, though, is that someone who is receiving compensation from the government for being victimized would then not compensate the person they victimized—court-ordered restitution or whatever the case may be. For the person they victimized, that would be doubly offensive to them, and I don't think.... Certainly, in regard to victimization, you can go through the federal correctional system, and probably there are very few people there who haven't been victimized in some way as young people. But that can never be an excuse for creating other victims.

Obviously, it's a factor considered in treatment, sentencing, rehabilitation, and programs, but it can never be.... In all the programs that are run in prison, it's never an excuse for creating more victims; I would not support an exclusion, because I think it does promote responsibility.

● (1600)

**The Chair:** Thank you very much, Mr. Sullivan and Mr. Garrison.

Mr. Rathgeber, please, for seven minutes.

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

Thank you to all the witnesses for your testimony and for your thoughts.

Mr. Anderson, let me start with you. No one is more sympathetic to the plight of victims of the residential school system than I am, but I'm troubled and confused by the suggestion that compensation paid pursuant to that settlement ought to be exempt. I guess I agree with Mr. Sullivan, for reasons that I'm going to explore with you in a second. I have not seen the NDP amendment, but I anticipate that it will create an exemption.

Let me suggest to you, by way of background, that I spent years as an insurance lawyer. Again, I don't mean to sound unsympathetic—because I am very sympathetic—but you indicated that compensation paid to the victims of the residential school system was an attempt to right a wrong. I agree with that, but I must say that all victims of all claims—whether it's a tort claim against a government or whether they're a victim of an automobile accident—believe the compensation they receive is an attempt to right a wrong. That is not to diminish the pain that the individuals you represent went through, but all victims legitimately feel that in their own way.

My question is this. In Manitoba.... I don't know anything about debtor-creditor law in Manitoba, but I know a fair bit about it in Alberta. Residential school settlements would not be exempt from normal provincial execution rights that creditors have, so that if an individual received a settlement pursuant to a residential school settlement, and I was representing a creditor of that individual, I would have full access of execution pursuant to writs and garnishee proceedings. Is there something different in Manitoba that I'm not aware of?

**Mr. Michael Anderson:** There's a large number of concepts there. I'll start with the last one.

I take it that your example is pursuant to the laws of the Province of Alberta.

**Mr. Brent Rathgeber:** It is, under normal debtor-creditor law.

**Mr. Michael Anderson:** All right. The distinction here, firstly, is that it's a piece of federal legislation that we're discussing. Her Majesty had a significant and central role in the Indian residential school system, unlike the Government of Alberta, which may have been involved in some way, but it was a policy of the government, of Her Majesty, so there is a major distinction in terms of the origin of what we're describing as the wrong.

The federal government itself has acknowledged its role through an apology delivered in the House of Commons by the Prime Minister of Canada. I would say respectfully that that significantly distinguishes the type of wrong we're describing that might be otherwise addressed through the ordinary court recourse under the laws of Alberta.

**Mr. Brent Rathgeber:** I understand all of that, but my question is.... Today, in May 2012, if an individual in my province of Alberta came into a settlement—today—without this piece of legislation, and if I represented a judgment creditor of that person, somebody who had successfully sued that individual in court, I would be able to attach the proceeds of that settlement.

So my specific question is this. I don't know if you're a lawyer; I suspect you're not. Do you know of anything in Manitoba law that differentiates what would be the normal rights of a creditor today to attach the proceeds of a residential school settlement?

**Mr. Michael Anderson:** I am not a lawyer, and the comments that I'm making are not a legal opinion, although I work closely with our lawyers.

No, I am not—subject to check—aware of something that may make moneys an individual has not subject to some form of allocation through an order of the court.

**Mr. Brent Rathgeber:** Sure.

**Mr. Michael Anderson:** Again, my comment, though, is that we're not discussing a process to transfer the awards of moneys under the laws of Manitoba. We're talking about a federal statute dealing with individuals who have an award being provided to them by the federal government, in part through actions of the government that it has acknowledged.

Again, I would say they are distinguished from those two cases on —

● (1605)

**Mr. Brent Rathgeber:** Okay, and I understand that, and I respect your view. The problem—and it's a big one—is that if there's an amendment to this legislation to create an exemption for a person in a federal institution who comes into a settlement, that person will be able to shield his or her settlement from his judgment creditors and a person on the outside won't.

I have not seen the NDP amendment, but if it says what I suspect it says, it's creating an exemption for federal prisoners that members outside the federal institutions do not currently enjoy. That's not really a question; it's a statement. I'll leave it at that, Mr. Chair.

That's fine—

**The Chair:** There's a minute and a half left.

**Mr. Brent Rathgeber:** —unless you want to comment.

**Mr. Michael Anderson:** I want to comment that the object of the bill is not to create a uniformity in terms of the processing of claims and the ability to attach moneys that persons who are offenders might come into. We're dealing with a specific piece of federal legislation that is designed to amend another specific piece of federal legislation dealing with Corrections and conditional releases, as distinct from the ability to seize and attach moneys. I think we need to keep very closely—

**Mr. Brent Rathgeber:** The bill is an attempt to create a priority for victims outside the normal provincial laws of creditor priorities. So you're right—it's an attempt not to attach. It's an attempt to create an exemption and then create priorities.

Thank you, Mr. Chair.

**The Chair:** Thank you, Mr. Rathgeber.

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

**Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.):** Thank you.

This is a fascinating debate. It's very edifying, and I'm following it with great interest.

As I understand it, just so that I'm clear, Mr. Sullivan and Mr. Anderson are on opposite sides of this particular issue. Is that correct?

**A voice:** Yes.

**Mr. Francis Scarpaleggia:** If I understand it, Mr. Anderson, your argument, which is obviously a very strong one, is essentially that these payments to victims of residential schools were ordered by the federal government, pursuant to an acknowledgment that the federal government had done some wrong and was responsible for victimizing many in residential schools.

Is that the fundamental logic? It seems to be what I'm picking up, but I just want to make sure I understand.

**Mr. Michael Anderson:** Yes. It's important, too, that the residential school settlement process is court-supervised and subject to court orders approving the settlement agreement; hence its linkage to the way the statute is worded at present. There is a linkage between the flow of those moneys and the actions of Her Majesty as acknowledged by the Prime Minister on June 11, 2008.

**Mr. Francis Scarpaleggia:** I need your help here. I was in the House when the Prime Minister apologized, but would settlements not have been paid regardless of the apology? I mean, there has been a process in place to indemnify victims of residential schools going back to before 2008, I think.

Am I not correct on that? Does the apology have legal weight in terms of requiring the government to make these payments? I thought this was all part of an earlier settlement.

**Mr. Michael Anderson:** Again, I'm not a lawyer and am not providing a legal opinion, but I would say that the settlement agreement and the subsidiary agreements speak for themselves as to the responsibility accepted by the various parties, and the processes that are outlined for addressing those responsibilities.

The apology has weight in terms of providing a moral recognition by the government of its actions. To a first nations person, in accordance with customary law of first nations, your word is your bond. That's a very important thing for the current representative of the Queen's side of the treaty negotiations to acknowledge: that the commitment to build a nation together in peace and harmony was unravelled shortly after the entering into treaties. The consequences of that are as they are laid out in the apology that was provided on June 11, 2008.

The manner of dealing with those acknowledgments, however, speaks for itself through the settlement agreements themselves; hence our recommendation that a person expert in the administration of the settlement and the claims, and the funding and payment of those claims, might wish to appear before the committee at your invitation.

● (1610)

**Mr. Francis Scarpaleggia:** The idea that your word is a contract is a good credo to live by, and certainly one that everyone should live by.

If I gave you a theoretical example—very theoretical—of a situation in which the federal government was responsible—maybe not directly, but could be seen to be indirectly responsible—for victimizing someone and had then to pay out restitution, perhaps you could comment on it. I'm curious to see how you would approach it—and you, Mr. Sullivan, maybe.

Let's say we're talking about a case of sexual harassment within the government. It could be within the RCMP, but let's leave the RCMP out of it, because it's not about the RCMP; it's just a theoretical example.

Let's say that a female employee of the government suffers extensive sexual harassment, sexual abuse, to the extent that the person suffers from post-traumatic stress syndrome, which is not unheard of in those cases. Then, because people who suffer from post-traumatic stress syndrome can do harm to themselves and presumably to others, let's assume that this person, this woman, commits a crime—it could be a property crime—goes to prison, and receives restitution or a payment from the federal government for the sexual harassment she suffered.

Do you think that should be exempted as well?

**Mr. Michael Anderson:** Mr. Scarpaleggia, our evidence is dealing expressly with the awards under the Indian residential schools settlement agreement and those awards provided to first nations or aboriginal persons. The example you've given is wholly different in its nature and its source. Victims have their own comments and view; victims will describe their own experiences. But the victims of the Indian residential school system were victimized for extended periods of time and in multiple ways that are set out in the apology.

**Mr. Francis Scarpaleggia:** I understand that, yes.

**Mr. Michael Anderson:** We're dealing with a specific set of events that led to specific victimization of specific persons and a settlement agreement that's been approved by at least nine courts. We're dealing with a very large set of effects that has, regrettably, the effect of dominating much of our intercourse between first nations persons and government. It is a long road to set all of that healing in place and to come out the other side. These settlement amounts are part of that healing process.

With respect, I just see the examples as wholly different.

**Mr. Francis Scarpaleggia:** Okay. One, as you say, is a broader set of circumstances over a longer period of time, something that undermined relations between peoples—

**Mr. Michael Anderson:** Let me say that, as I mentioned, our Criminal Code of course reflects that element of that legacy in paragraph 718.2(e), the requirement for what's become known as Gladue reports. The word “aboriginal” appears once in the Criminal Code, and it's in that provision that it does. Sentencing judges are compelled to consider the specific circumstances of an aboriginal offender as an alternative to incarceration. So this legacy is reflected even in the Criminal Code of Canada with instructions for sentencing judges.

**Mr. Francis Scarpaleggia:** It's hard to believe you're not a lawyer, sir.

**The Chair:** Thank you, Mr. Anderson.

We'll now move to Madam Doré Lefebvre.

You have five minutes.

[*Translation*]

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

[*English*]

Five minutes is perfect.

[*Translation*]

Thank you Mr. Sullivan and Mr. Anderson. It's good to see you again.

Mr. Anderson, I know you've been asked a lot of questions about residential schools. If there is no exemption for residential school awards or monetary awards granted to your communities, how would this be viewed by the people you represent?

● (1615)

[*English*]

**Mr. Michael Anderson:** As we've indicated, the lack of any exemption would be viewed as inappropriate and contrary to the intent of the apology and the objectives of the Indian residential school settlement. The persons who we've spoken to about the bill were uniform and swift in their reaction to the lack of any exemption being entirely inappropriate with the intent of the apology and with the settlement itself.

[*Translation*]

**Ms. Rosane Doré Lefebvre:** Thank you very much, Mr. Anderson.

I will now ask a question to Mr. Sullivan.

The present federal ombudsman appeared before our committee on Bill C-350. She said that we had to focus on what victims have to go through, presently, and also on rehabilitation, to make sure offenders do not commit more crimes.

How do you think Bill C-350 could encourage offenders to participate in this kind of initiatives, to support their rehabilitation?

[*English*]

**Mr. Steve Sullivan:** If we lived in a perfect world, we wouldn't need prisons; we wouldn't have offenders. In an ideal world, which we do have, if an offender were to receive compensation from the government or another place, then he would freely turn around and provide that restitution to the victim that he created. We all know this. But you don't just give the money over to the victim. These are court-ordered restitutions, right, which, as we talked about, are very rare to see.

But you would hope, then, that as the process, whether it's this process or a process whereby they were encouraged.... I think in Bill C-10 there's a reference now in the correctional plan to encouraging offenders to repay. You would hope that this could perhaps be part of the programming for offenders: you created this victim and this is part of your responsibility now to that person to help make up for what you've done and to apologize.

I think probably we'd be surprised by how many offenders might want to do that. They might, after taking some program, be very much in favour of that. But having said that, if they choose not to do it, then I think it's a fair process to say, “Well, you're going to do it anyway, because you do have a court-ordered sentence”.

These are sentences that they have. Fulfilling a restitution order is not just a responsibility; it's a legal obligation to fulfill your sentence, just like going to prison, or just not like drinking if you're on probation. I think it can be part of a rehabilitation effort for a lot of offenders.

[*Translation*]

**Ms. Rosane Doré Lefebvre:** All right.

I want to come back to the new ombudsman's appearance before our committee. She also talked about a program in the United States, whereby the offender, when he starts his sentence, is involved in the working out of a plan to repay his debts.

Do you think that kind of plan could be part of a rehabilitation program?

[*English*]

**Mr. Steve Sullivan:** I think it could be. In Bill C-10 there is, I think, more of an emphasis on encouraging offenders, as part of their correctional plan, to repay restitution orders and victim fine surcharges and those kinds of things.

I know that the Province of Saskatchewan has a program whereby the province provides assistance to victims, not in federal prisons, but just overall, in getting offenders to repay restitution orders. There is a lot of innovative work being done in North America and abroad that I think promotes restitution going to the victims, which can increase their satisfaction with the process but also can encourage offenders to take responsibility.

One of the benefits of restorative justice programs, and what we know from programs in which victims and offenders have a dialogue, is that restitution is much more likely to be paid. Offenders understand the harm they have done. They often have to face the person they've hurt, and they appreciate what it actually is that they are paying for, and that it's not going just to the government, but to the actual person. That has a profound effect on offenders.

● (1620)

[*Translation*]

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

[*English*]

**The Chair:** Thank you, Mr. Sullivan.

We will move back to Mr. Leef, please, for five minutes.

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

Thank you to both witnesses.

Mr. Anderson, thanks very much for your testimony so far. I think you have done a commendable job of dealing with some questions that would be challenging and of providing some examples that certainly test what I think a lot of people would initially see as unnecessarily differentiating victim groups.

I must say that when you addressed Mr. Scarpaleggia's question, you articulated quite well the differences. Prior to hearing that, I myself would have been asking the exact same question and waiting to hear a reasonable response to it. I think you did a great job on that.

The question I have is this. We know that the spirit and the intention of the bill are really to provide restitution and support for victims. One of the categories in the bill is for families—family and child support. You could speak better on this topic than any one of us in the room, I'm certain, but undoubtedly, the criminality that goes on within first nations and aboriginal communities, largely contained within your own communities.... When you have an offender enter a federal institution—and now we enter the question about residential school settlements—and they are awarded that settlement, and then their family is left behind within the community, I guess the intention of the bill is to make sure that they don't become any more victimized than they already are.

Arguably, families with a mother who is left with the children are victims as well. Even if they're not victims of the actual crime, they are victims in the sense that they have lost, let's say, a father figure. While the person is in jail, they've lost a traditional leader, or somebody who can teach them the cultural traditional ways of life. We know that often, along with this, come financial burdens that just create more and more victimization.

This is an open-ended question to you, really. How would you address it within your community if we had a federal inmate who received that settlement but then maintained protection of it while families needed it and wanted it? They're your community members as well. They're as much victims of the crime and of the residential school system as well.

I guess what I'm really asking for is just some feedback, if you have a way to articulate it as eloquently as you did on the other questions, on how we reconcile that issue. Because I think that's the true spirit of the bill. Without creating offence to anyone in general, it's just to provide necessary protection and support for all of the parties involved in this.

**Mr. Michael Anderson:** There's a number of ideas there. I appreciate and thank you for your comments and for describing it as an open-ended question.

The safety and security of our families are uppermost in the minds of our communities, particularly as it is a reflection of the customary law that has flowed down through and before the time of signing and entering into treaties. Some of the things that weigh heavily on our minds in looking at this pattern of impacts, from the Indian residential school system to colonization post-treaty and so forth, are reflected in harsh statistics.

For example, 88% of aboriginal persons in Stoney Mountain Penitentiary were children in care at some time, in the child and family system. That's an enormous burden that it places on families, communities, and care providers to recognize that once persons find themselves diverted in that direction in life, in many respects their life becomes, to some extent, derailed.

It takes an enormous amount of effort to bring persons back into the standards and to reconcile them with their own community. We're faced with that. We see these linkages between persons who were abused as children in the residential school system and have become abusers of members of their own family, and we're grappling with that.

So when we say that it's a community-driven preventative and restorative justice approach, an enormous amount of weight is placed on integrating the effects of all of those elements and on creating a community that provides for safety and security. When we say that it's a core vision that our communities should be the safest place for our citizens to live, then we must overcome all of these challenges and resolve all of these disconnects between the ordinary and customary flow of life and the circumstances that are happening. We must resolve this enormous disproportionality of aboriginal offenders and the enormous disproportionality of persons in the penal system who were themselves in care as children and so forth.

So we would agree with protection of the family being a priority, but the distribution of any proceeds received by an offender in prison should be arranged for between them and their family. That's an important resource for the family.

● (1625)

**The Chair:** Thank you, Mr. Anderson and Mr. Leef.

I'm going to go to Mr. Rousseau.

Mr. Rousseau, you're going to have only two or three minutes.

**Mr. Jean Rousseau (Compton—Stanstead, NDP):** It's okay, Kevin—I mean “Mr. Chair”. Sorry.

**The Chair:** Kevin is fine.

[*Translation*]

**Mr. Jean Rousseau:** Mr. Sullivan, the core principle of the bill is to make offenders more accountable. Do you think this bill will really have an impact? Most of the time, offenders could not care less about the money they owe. Do you think victims view this bill as a solution to their problems in this respect? Did many victims tell you that such a bill was necessary?

[*English*]

**Mr. Steve Sullivan:** I think the impact will be small simply because there are very few offenders in the federal system who have restitution orders or victim fine surcharge orders from the courts.

Certainly, we've heard frustration from victims about offenders not being ordered to pay restitution. Restitution goes to the victim, and victim fine surcharges go to the provinces, so there's frustration that offenders aren't paying. But that's probably more of an issue for guys who get provincial sentences, because often those are for property crimes, and relatively small numbers of them go to federal prisons.

So this wouldn't be an issue that I would think.... Certainly, most victims I've heard from say that their guy is in the federal system and has a restitution order and is not paying, so they want something done about it. Because it also requires him to somehow be getting an award from someone else. So I think all those dots to be crossed are pretty small.

[*Translation*]

**Mr. Jean Rousseau:** Mr. Anderson, you spoke a lot about reconciliation, versus rehabilitation. We know that the main objective of the bill is to make inmates more accountable. Could you elaborate about this concept of reconciliation, as it is implemented in your communities?

[*English*]

**Mr. Michael Anderson:** Yes, using a Cree term, it's *Kwayasko-nikiwin*. It means achieving balance. It means setting things right.

When there's a disturbance in a person's life or in the community, the restorative justice programs and the community justice persons in our communities feel that it's extremely important to set things right by reconciling the act of an individual, the acts that have affected an individual, and certainly the relationship between the victim and offender.

So rehabilitation in an ordinary sense may be part of that, but the standard or the vision—the objective—is to truly reconcile the actions of an individual and set balance—

**Mr. Jean Rousseau:** *Excusez-moi, monsieur—*

**The Chair:** Mr. Rousseau, please be very quick.

[*Translation*]

**Mr. Jean Rousseau:** Do you think the core principle of this bill will help you in your situation?

[*English*]

**Mr. Michael Anderson:** The things we are looking for in terms of restorative and reconciliatory justice systems are not set out in this bill. If there were amendments to the bill that created restorative justice processes and community-driven preventive measures as a primary mechanism of addressing the relationship between offenders and victims, then it might, but the current bill doesn't address those items.

● (1630)

**Mr. Jean Rousseau:** Thank you very much, sir.

**The Chair:** Thank you very much, Mr. Rousseau.

I want to thank Mr. Anderson and Mr. Sullivan for appearing today before our committee. We very much appreciate your testimony. Thank you for being here.

Committee members, I'm going to suspend for a few moments and allow our guests to exit. We do have a request that we deal with some committee business, and the analysts have also asked that we deal with a very small issue on a report.

We're going to suspend and go in camera after we allow our guests to exit.

Thank you.

[*Proceedings continue in camera*]

● _____ (Pause) _____ ●

[*Public proceedings resume*]

● (1650)

**The Chair:** Folks, we'll call this meeting back to order. This meeting is public. We are proceeding in the second hour this afternoon to look at the clause-by-clause of the bill that we have been studying for the last little while, Bill C-350.

We have a number of amendments before us.

(On clause 1)

**The Chair:** The first amendment is NDP-1, on clause 1, and I will call on Mr. Garrison to speak to that amendment.

**Mr. Randall Garrison:** In essence, this bill is about trying to ensure that offenders are more responsible and accountable. We have supported that in principle. Our purpose in suggesting this amendment is to actually address that directly in the bill, in the purpose of the bill.

The wording of clause 1 on page 1 looks a bit odd because the "re" appears on a different line in the bill, but it is there. So this still says "responsibility". It says: "responsibility of offenders by ensuring that they play an active role in addressing their obligations...". This would mean that, in practice, Corrections would simply have to give people an opportunity to take the obligation themselves, before the obligatory parts came forward.

**The Chair:** All right. There may be some questions in regard to this that would come out of the amendment.

Ms. Hoeppner.

**Ms. Candice Hoeppner:** I'll speak very briefly to the amendment.

Again, I do appreciate the spirit of that amendment. I would say that it might be a little bit problematic if we're saying that CSC ensures that they play an "active role". I think there could be problems in regard to what exactly is the definition of an "active role". In terms of legislation, I think it could create more problems than it solves, but I do appreciate what the opposition is trying to bring forward.

**The Chair:** All right. Is there any further debate? Are there any other questions on that amendment?

Mr. Garrison.

**Mr. Randall Garrison:** May I just ask this? If the word "active" were removed, would you accept the amendment?

**Ms. Candice Hoeppner:** So it would be "by ensuring they play a role"?

**An hon. member:** [*Inaudible—Editor*]

**Ms. Candice Hoeppner:** Yes—what's a "role"? It's still ensuring that their obligations.... The initial one says "ensuring that their obligations...are addressed", whereas yours is saying that—

**Mr. Randall Garrison:** They have a role.

**Ms. Candice Hoeppner:** It's ensuring that they play a role.

**The Chair:** In your first explanation, you said that before the obligatory portion of the legislation would take effect, they would have an opportunity. For how long a period of time, then, do we have this opportunity out there before it becomes obligatory? So unless some of these things are more clearly spelled out....

Are there any other questions on that? Are we ready for the question? All in favour of amendment NDP-1?

(Amendment negatived)

**The Chair:** Shall clause 1 carry?

(Clause 1 agreed to)

(On clause 2)

**The Chair:** For clause 2, you have received the government amendment.

I am instructed by our legislative clerk here that we will deal with that one first, because if that one took effect, yours would not. The NDP clause would be redundant or it would be blocked out.

If you want to explain that....

● (1655)

**Mr. Randall Garrison:** Well, with respect, I have no problem with dealing with it first, but then we would continue to suggest amendments based on the content of our amendment. It does not block us making amendments.

**The Chair:** No.

**Mr. Randall Garrison:** It simply requires some changes in the section numbers. The content doesn't change. We can do that at the table.

**The Chair:** I want you to be aware of how this would work.

If this amendment carries, it would prevent your amendments from coming forward because it blocks out certain lines. It would be contradictory, and so you would then have to propose a subamendment to the amendment.

I'm going to have Ms. Hoeppner speak to the government amendment.

**Ms. Candice Hoeppner:** Thank you very much, Mr. Chair.

Again, it is quite a lengthy amendment. What I'll do is I'll just go through it and explain the purpose of this particular amendment.

Basically, to begin with, in proposed section 78.1, some of the changes we're making are actually just cleaning up the wording of the bill. For example, instead of "In view of the purpose", we'd like it to read "In furtherance of the purpose", to be more consistent with current legislation as it's written. So that would be proposed subsection 78.1(1).

Our proposed subsection 78.1(2) says that if "an offender owes more than one amount described in any of" the paragraphs "the amounts owed under that paragraph must be paid on a proportional basis if there are insufficient monies to fully satisfy them". This would just clarify, for example, that if an inmate has two child support orders for two different children, it would be paid out proportionally between those two children. It would not be proportional between the five different categories—is it five or four?

**Mr. Randall Garrison:** It's four.

**Ms. Candice Hoeppner:** Four categories—it would be proportional within the category.

Proposed subsection 78.1(3) states, "Subsection (1) does not apply to any amount awarded in the decision for costs". Again, that's just clarifying it. If, in part of the decision, costs were awarded as part of the decision, that cost would be awarded first, and then the remainder would be applied under proposed subsection 78.1(1).

Proposed subsection 78.1(4) is something we've heard about. We've heard testimony on it. We think it's important that we include this, so "Subsection (1)" would "not apply to any amount to be paid...as a result of the Indian Residential Schools Settlement" act, "which came into force on September 19, 2007. Again, obviously this wouldn't apply carte blanche to any creditors. This would be specifically for proposed subsection (1).

As for what we've done with the second part, or proposed subsection 78.1(5), we did hear testimony that there would be quite a burden placed on CSC to administer this. So this is a way, we felt, that we could take away that burden from CSC. It won't be up to CSC to find out who the creditors are. The onus would be on the creditor to notify CSC that money is owed to them by an offender. It would clean that up.

Again, then, proposed subsection 78.1(6) is just cleaning things up by saying that "Her Majesty must only take into account judgments or orders in respect of which a notice has been received under subsection (5)". This is just making it consistent.

Proposed subsections 78.2(1) and 78.2(2) basically give CSC and Finance the ability to speak to each other and share information so they're not contravening any privacy laws.

**An hon. member:** Is this number six?

**Ms. Candice Hoeppner:** No. Sorry. It's 78.2(1) and 78.2(2). Proposed subsection 78.2(1) says, "In order to establish whether a person to whom Her Majesty owes an amount as a result...". That is giving them the ability to speak to each other. Proposed subsection 78.2(2) is that CSC can speak back....

Then, in our proposed section 78.3, those three different lines are about making regulations to ensure this is consistent with other acts.

There were just a few things that needed to be cleaned up, even in terms of CRA and different acts. It's more of a cleaning-up process. It doesn't change at all the content or the intent of the bill. The main changes these amendments we're presenting would make are exempting residential school awards and saying that creditors have to let CSC know if money is owed to them by an inmate—those are the two main changes—and then making sure that CSC and Finance can communicate with each other.

● (1700)

**The Chair:** All right. Thank you, Ms. Hoeppner.

Mr. Garrison, please, and then Ms. Murray.

**Mr. Randall Garrison:** I will start by staying that we appreciate the attention that was paid to testimony from witnesses and to the suggestions we made.

I think it is very important to provide this exemption for the Indian Residential Schools Settlement Agreement, so we thank the government for including that in their amendments.

We had also raised questions about the administrative cost, which I believe you've tried to address.

We still have two subamendments to this that we'd like to suggest, but in general I would say that even if we're not successful, we are still happy with the direction this is going in.

**The Chair:** Mr. Garrison, I would first of all explain that before we vote on this amendment, we would have to move a subamendment.

**Mr. Randall Garrison:** We're prepared to do that.

**The Chair:** We can't move both subamendments. If you could move the one that would appear first chronologically, we could debate that. We would vote on that subamendment, and then we'd move the second subamendment and vote on it.

**Mr. Randall Garrison:** All right. The first one in the bill is Madam Doré Lefebvre's subamendment. We have just asked to have copies made.

**The Chair:** As they are being made, can you give us the substance of what that would be?

[*Translation*]

**Ms. Rosane Doré Lefebvre:** It is a very simple subamendment to the one Ms. Hoeppner just moved to amend paragraph 78.1(1)(a). I want to add the following:

> That Bill C-350, 78.1(1)(a) be amended to read: "any amount owing by the offender pursuant to a common-law partner, spousal or child support order made by a court of competent jurisdiction."

This is a Canadian reality. Two people who are not married are nevertheless considered as common-law partners by the law. It would be interesting to add that.

[*English*]

**The Chair:** Okay.

[*Translation*]

**Ms. Rosane Doré Lefebvre:** Yes?

[*English*]

**The Chair:** Can you just read it again without the extra explanation? Interpretation is putting all of it through as the amendment.

**Ms. Rosane Doré Lefebvre:** I'm sorry.

**The Chair:** Read very clearly just what the amendment is—it will become 1(a).

[*Translation*]

**Ms. Rosane Doré Lefebvre:** Here it is:

> [...] "any amount owing by the offender pursuant to a common-law partner, spousal or child support order made by a court of competent jurisdiction."

[*English*]

**The Chair:** We're supposed to be getting interpretation. I'm not getting any interpretation here.

**Ms. Rosane Doré Lefebvre:** Okay. I'll just say it like this. Instead of just having children or spouse I will put.... I don't know the term in English, but in French it is

[*Translation*]

common-law partner.

[*English*]

when you're not married to somebody.

**Mr. Ryan Leef:** It's common law....

**Ms. Rosane Doré Lefebvre:** It will be an addition at the end. I think it's a reality everywhere, and it's fair to add that to the bill.

**The Chair:** I see some questions.

Mr. Norlock.

**Mr. Rick Norlock (Northumberland—Quinte West, CPC):** I will acquiesce to the legal judgment of my friend at the end of the table, but I have dealt with some family law issues in Ontario. Each living arrangement is viewed differently by the courts; however, I think the usual interpretation is that after about six weeks of two people living together, they are considered spouses, and there is no differentiation in the family court as to whether you're—

**Ms. Rosane Doré Lefebvre:** Except in Quebec....

**Mr. Rick Norlock:** Okay. There you go.

**The Chair:** Mr. Rathgeber.

**Mr. Brent Rathgeber:** I'm not a civil lawyer in Quebec, so I'm a little out of my league here, but I'm curious as to why Ms. Doré Lefebvre is proposing to add extra words.

It appears to me that if a court of competent jurisdiction makes an award for spousal support or child support, it is captured by proposed paragraph 78.1(1)(a), full stop, end of story. She's attempting to specify, and she should think very carefully about this. When she's talking about married couples or common-law couples, and

[*Translation*]

in French, *conjoint*...

● (1705)

**Ms. Rosane Doré Lefebvre:** Common-law partner.

[*English*]

**Mr. Brent Rathgeber:** She might actually be excluding same-sex couples. So if I were her, I would let the wording remain as is. If there's a court order for spousal or child support, it's covered, end of story. It doesn't attempt to define the relationship.

**The Chair:** Next we have Ms. Hoeppner, and then Mr. Norlock.

**Ms. Candice Hoeppner:** Thank you, Mr. Chair.

I agree with Mr. Rathgeber. As soon as you start specifying, even in terms of "child".... A child may not even be the biological child of an individual. He might an adopted child. There are so many variations with "child" that I don't think we should start defining it.

If a competent jurisdiction has awarded spousal or child support, it's not up to us to define what that entails. If a court has awarded "spousal or child support", I think we have it here. I agree with Mr. Rathgeber that rather than starting to define and differentiate it, which might cause more problems, we should go with the court order. That is how the bill is written.

**The Chair:** Mr. Norlock.

**Mr. Rick Norlock:** Sometimes I've seen court orders, having some experience with family law, and usually, as they say in French, a

[*Translation*]

quarrel

[*English*]

between the two—you know, “it's my weekend”. Having viewed many court orders, in my experience they try to steer away from the words “child”, “ward of”, etc.

I'm just wondering, Mr. Garrison or Madam Lefebvre, if you received this from a lawyer who practises family law in Quebec, how negatively would this impact...? My worry is exactly the same. Sometimes you make it worse by trying to be too specific.

**The Chair:** We'll go to Ms. Doré Lefebvre.

[*Translation*]

**Ms. Rosane Doré Lefebvre:** Thank you for your comments.

As you know, there are a few things which are different in Quebec, compared to the rest of Canada. A good example is the status of common-law partners and married people. According to Quebec's Code civil, common-law partners and married spouses do not have the same rights in several respects. Right now, there is a huge legal case about the rights of common-law partners and married spouses. It's an ongoing debate. I cannot reveal the name of the person, even though he is quite famous in Canada. It's happening right now in Quebec.

When I read this, I am concerned about the children of common-law partners. I am not qualified to speak about the rest of Canada, but it might be interpreted negatively in Quebec. That's why it should be added.

[*English*]

**The Chair:** Mr. Rathgeber, please.

**Mr. Brent Rathgeber:** I'm sympathetic to Ms. Doré Lefebvre's predicament. I know the case she is talking about; that's a matrimonial property case, as opposed to a child support case, but that's neither here nor there.

I appreciate that Quebec courts have from time to time been less likely to make awards of child support when the parents of those children are not married. I understand that. That said, she can't get around that by proposing a change of definition in proposed paragraph 78.1(1)(a). This legislation will only apply to court orders.

If a court in Quebec is not inclined, for whatever reason, to grant child support when the parents are unmarried, I'm sympathetic to that. I would disagree with that Quebec court assessment. But that's neither here nor there for the purposes of this legislation, which will only apply, rightfully, to court-ordered maintenance and child support orders.

Thank you, Mr. Chair.

● (1710)

**The Chair:** Ms. Hoeppner.

**Ms. Candice Hoeppner:** I'm not sure if Ms. Doré Lefebvre can answer this question. I don't think she is suggesting that in Quebec people who live common law are not ever awarded spousal support. I don't think that's what she's suggesting. This legislation encompasses awards made—again—in each province. The decision made in each province would be honoured under this legislation.

**The Chair:** Ms. Doré Lefebvre.

[*Translation*]

**Ms. Rosane Doré Lefebvre:** From what I hear, some people around the table are more competent in civil law than I am. With your permission, Mr. Chair, I will just withdraw my subamendment.

[*English*]

**The Chair:** All right. Thank you.

**Ms. Rosane Doré Lefebvre:** I withdraw it.

**The Chair:** I appreciate that. The subamendment has been withdrawn.

I believe there was a second subamendment.

Go ahead, Mr. Garrison.

**Mr. Randall Garrison:** I firmly believe this is simple.

**Voices:** Oh, oh!

**The Chair:** Okay—

**Mr. Randall Garrison:** So we would—

**An hon. member:** [*Inaudible—Editor*]

**Mr. Randall Garrison:** And sometimes not. We're suggesting—

**The Chair:** But I think we all do want to thank you for the perspective on that. It's something we need to look at.

**Ms. Rosane Doré Lefebvre:** Thank you for the opportunity.

**The Chair:** Go ahead, Mr. Garrison.

**Mr. Randall Garrison:** My subamendment would be to amend proposed subsection 78.1(1) by omitting proposed paragraph 78.1(1)(d). This is as we had circulated it.

That's the content that was in the one we had circulated about lines 15 to 17, so now it would just be to eliminate any other amount owing as a result of any other judgment. We still have concerns about constitutionality. Most of those opinions that we've received privately concern proposed paragraph (d), because that's the one that seems most likely to invade provincial jurisdiction, and—

**Ms. Candice Hoeppner:** You're going to eliminate all of paragraph (d)...?

**Mr. Randall Garrison:** Yes, we'd just take out (d). That's our proposed subamendment.

**The Chair:** Mr. Garrison has moved the subamendment to delete proposed paragraph 78.1(1)(d).

Mr. Rathgeber.

**Mr. Brent Rathgeber:** I have a question for Mr. Garrison. I'm curious as to why he is more concerned about the constitutionality of proposed paragraph 78.1(1)(d) than he is about proposed paragraph 78.1(1)(a).

I appreciate that proposed paragraphs 78.1(1)(b) and (c) are under federal jurisdiction—restitution under the Criminal Code of Canada and the victim surcharge under the Criminal Code of Canada—and that paragraph (d) would capture everything else. But paragraph 78.1(1)(a) would also capture child support orders as granted by the provincial courts in the various provinces. I understand his concern; I don't understand the distinction.

**The Chair:** We'll go to Mr. Garrison and then Ms. Hoeppner.

**Mr. Randall Garrison:** Just briefly, I think the distinction would be that in spousal and child support we have well-developed jurisprudence in that very narrow area of jurisdiction, which would I think guide the applications very easily. On the other hand, proposed paragraph (d) opens a broad door for a challenge to the constitutionality of this by including a whole grab bag of other things.

So proposed paragraph (a) is different. The federal and provincial law has been worked out in great detail on child support and spousal support because of the split of jurisdiction, but paragraph (d) just opens the door to all the other things that are in provincial jurisdiction.

**The Chair:** Ms. Hoeppner.

**Ms. Candice Hoeppner:** I wouldn't be able to support this amendment. I would argue that I think it would change the scope of the bill. The drafter of the bill included this as an important part of the priorities that would be paid out, and I think removing it changes the scope of the bill. It takes away from it.

**The Chair:** Just so I'm correct on this, would this take away any other victims out there? You're including the family and spousal and child support, but could it take away...?

Go ahead, Mr. Rathgeber.

**Mr. Brent Rathgeber:** An example, Mr. Chair and Mr. Garrison, is that if an individual who is incarcerated had—unrelated to the reasons why he was incarcerated—been in a motor vehicle accident and injured me or my client, and has insurance, and I successfully sue that individual, I have a judgment against that individual pursuant to my damages for the motor vehicle accident. Let's say this individual suddenly comes into a settlement pursuant to—I don't know—maybe his suit against the director of CSC for mistreatment while he's inside prison.

So if paragraph (d) is in place, I, on behalf of the motor vehicle injury victim, can attach the proceeds he gets from his successful lawsuit against the director of CSC. If Mr. Garrison deletes paragraph (d), the only things that are covered are child support, spousal support, restitution, and victim surcharges.

So you're quite right. Ms. Hoeppner's quite right: it narrows it significantly for other classes of legitimate victims that the sponsor of this bill clearly intended.

● (1715)

**The Chair:** Thank you.

When we start saying “outside the scope of the bill”, that's when I start to get a little concerned.

I don't see any other speakers on the subamendment, so I'll call the question. All in favour of the subamendment to delete paragraph (d)?

(Subamendment negatived)

**The Chair:** Now we'll go back to amendment G-1. All those in favour of amendment G-1, brought forward by the government, please signify.

Oh, I'm sorry, Ms. Murray. We didn't have you on the list here. I'm sorry.

**Ms. Joyce Murray (Vancouver Quadra, Lib.):** I was asking to speak generally to this amendment, as opposed to the subamendment.

**The Chair:** I got you—then for certain we'll hear you.

**Ms. Joyce Murray:** Thank you very much, Mr. Chair.

I have to say that the spirit of cooperation and working together in this committee is very impressive. I much appreciate that.

I haven't been with you in the weeks you've spent on this private member's bill, but it was startling to see this comprehensive a set of changes put in front of us essentially minutes before the final vote on this piece of legislation. That makes it difficult for me, on behalf of the Liberals, to wholeheartedly support these amendments or this bill.

Even though we're in support of the principles of this bill—and I think we have been constructive members of the debate going forward—I would say that I'm not able to support this amendment, not because it isn't per se a positive change, as the NDP appeared to be indicating, but because the process makes it impossible to do due diligence.

So my request would be this. Can the kind of consultation that has led to this amendment be done in future in an earlier stage of the bill so that we're not seeing this 45 minutes before the deadline for the vote on the bill?

**The Chair:** I appreciate that, but I also would remind each one of you that clause-by-clause amendments can come right from the floor. Amendments, subamendments, all these can come....

The fact that it was printed out.... As you know, sometimes we come here and there are amendments on the fly. We rely heavily on our clerks to run out, make copies, and bring them back. So yes, it would have.... I'll take that as a good point, Ms. Murray.

Any other comments on the amendment? Seeing none, all in favour of government amendment G-1?

(Amendment agreed to)

**The Chair:** All right. Shall clause 2 carry as amended?

(Clause 2 as amended agreed to)

**The Chair:** Shall the title carry?

**Some hon. members:** Agreed.

**The Chair:** Shall the bill as amended carry?

**Some hon. members:** Agreed.

**The Chair:** Shall I report the bill as amended to the House?

**Some hon. members:** Agreed.

**The Chair:** Shall the committee order a reprint of the bill?

**Some hon. members:** Agreed.

**The Chair:** Folks, I think we're done.

I want to thank you for that spirit of cooperation. It's good to have this completed.

We are adjourned.

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