



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Justice and Human Rights

JUST • NUMBER 046 • 1st SESSION • 41st PARLIAMENT

EVIDENCE

Tuesday, October 23, 2012

—
Chair

Mr. Dave MacKenzie

Standing Committee on Justice and Human Rights

Tuesday, October 23, 2012

• (1530)

[English]

The Chair (Mr. Dave MacKenzie (Oxford, CPC)): I call the meeting to order. This is meeting number 46 of the Standing Committee on Justice and Human Rights, pursuant to the order of reference of Tuesday, October 16, 2012, Bill C-37, An Act to amend the Criminal Code.

We welcome the Honourable Rob Nicholson, Minister of Justice and Attorney General of Canada, along with a colleague from the Department of Justice, Madam Morency.

Minister, I'm sure you are quite familiar with the rules. You have an opening address. Please feel free to begin.

Hon. Rob Nicholson (Minister of Justice and Attorney General of Canada): By all means. It's about 60 minutes, Mr. Chair, if that's okay with you.

The Chair: That will be fine.

Hon. Rob Nicholson: I'm pleased to appear before the committee today to speak about Bill C-37, Increasing Offenders' Accountability for Victims Act. The government, as you know, has consistently made victims of crime a priority, and this bill represents our most recent legislative proposal to ensure that offenders are held accountable to the victims who they have harmed.

I was very encouraged by the strong support shown for this bill by members at second reading. I think we can all agree that victims of crime deserve our full support, and I hope we can all continue to work together to ensure the swift passage of this bill.

The bill proposes three changes to the victims surcharge provisions of the Criminal Code. The first change would ensure that the victim surcharge is imposed in all cases without exception by removing the option to waive the surcharge. Second, the offenders who are unable to pay the victim surcharge would be able to participate in the provincial and territorial fine option programs to discharge the amount owing. Third, the amount of the victim surcharge that an offender must pay would double under this legislation. All three proposed amendments serve the same purposes: to promote a sense of responsibility in offenders for their actions, and to make offenders accountable to the victims whose lives they have affected.

The changes that we are proposing in the legislation would address a number of issues with the operation of the victim surcharge that have been the subject of study and consultation over the last few years. First, and perhaps most important, it would ensure that the

victim surcharges apply to all offenders without exception. The original 1988 victim surcharge provision required the judge to order the surcharge. In 2000 the provision was amended so that the surcharge would be automatically imposed. The court could then waive the victim surcharge if the offender proved that its imposition would cause undue hardship to the offender or the offender's family. Despite this amendment, a surcharge is not applied in all cases.

Research conducted by the Department of Justice in New Brunswick, published in 2006, shows that the surcharge was waived in two-thirds of the cases over a five-year period of time. Remarkably, the surcharge was waived in 84% of cases involving summary conviction offences and 91% of cases involving indictable offences where the offender received a sentence of imprisonment. In contrast, the surcharge was waived in 25% of cases where the offender was sentenced to pay a fine.

The research suggests that the noticeably higher waiver rate for offenders receiving custodial sentences is due to a blanket waiver policy for offenders who are sentenced to imprisonment as opposed to proof of hardship to the offender or his or her family. Furthermore, in 99% of the cases where the surcharge was waived in New Brunswick, reasons for the waiver were not provided by the court, and no documentation was found showing that the offender had demonstrated that paying the victim surcharge would cause undue hardship to the offender or his family.

The research is particularly troubling as it shows that the current provisions are not operating as they were intended. Waiver of the surcharge is not founded upon proof of hardship, but on presumptions about the offender's ability to pay, and we find this unacceptable. It's not acceptable for offenders, and it's certainly not acceptable for their victims. The victim surcharge is a part of the offender's sentence.

We must be mindful of the underlying purpose of the victim surcharge to hold offenders accountable to victims. This is entirely appropriate and is in keeping with the sentencing principles in the Criminal Code, which make specific reference to promoting responsibility in offenders and making reparations for harm done to victims.

For this reason, Bill C-37 proposes to remove the waiver option in order to ensure that the victim surcharge is applied automatically, as it was intended. Those offenders who are truly not able to pay the victim surcharge without incurring hardship would have the option of participating in provincial and territorial fine option programs to discharge the amount owing. This is the second change proposed by Bill C-37.

Fine option programs will allow offenders to satisfy the victim surcharge by earning credits for work they perform in programs operated by the provinces or territories. This is in line with the philosophy of a victim surcharge, which seeks to make offenders accountable to victims of crime.

• (1535)

Currently, offenders who are unable to pay the surcharge are not required to take any additional steps to demonstrate responsibility for their actions. Allowing offenders to discharge the victim surcharge by participating in fine option programs would ensure that all offenders are held accountable for their actions. Giving back to the community through such work would remind offenders of their responsibility to victims and to the greater community.

Finally, the third change we are proposing in Bill C-37 would double the amount of the victim surcharge. This is an essential element of our package of amendments. The surcharge would be raised to 30% of any fine imposed or where the punishment does not include a fine of \$100 for summary conviction offence and \$200 for an indictable offence.

This would be the first increase to the victim surcharge since the year 2000, when the provision was last amended. To ensure that the offenders are accountable to victims for the harm they have done, the victim surcharge must be meaningful. Let us not forget that the primary purpose of the surcharge is to ensure that offenders receive a sentence that will promote responsibility for their actions.

Because the victim surcharge is used to help fund services for victims, its payment allows offenders to make reparations to victims and the larger community. Questions have been raised about how the victim surcharge is used and how we can be certain that the amounts collected will truly benefit victims. To be clear, subsection 737(7) of the Criminal Code directs that the victim surcharge will be used for assistance to victims of crime as directed by the province or territory where the surcharge is imposed. Each of the provinces and territories has established services for victims of crime and a dedicated fund for victims services in accordance with their provincial and territorial victims legislation.

Revenue from the victim surcharge is collected and remains in the dedicated victims fund of the province or territory where the surcharge was imposed. The provincial or territorial government decides how to use this revenue to fund victims of services in each province or territory, but revenue from the victim surcharge has consistently fallen short of expected amounts.

We have worked with our provincial and territorial colleagues to determine how best to address this issue because we know they rely on the victim surcharge to assist in funding crucial services for victims of crime. Many have said they did not see any increase in revenue after the last amendments to the victim surcharge in the year

2000. This is why under this bill we are taking a two-pronged approach to reform. It would ensure that the victim surcharge is imposed in all cases, without exception, and it would raise the amount the offenders must pay.

This approach, which was developed through research and consultation, is supported by the Federal Ombudsman for Victims of Crime, whom I believe you will hear from at this committee.

This government takes its commitment to hold offenders accountable for their actions seriously. The amendments proposed would ensure all offenders are held accountable to victims, either through the payment of the victim surcharge or through participation in community service. Raising the amount of the surcharge would ensure that offenders are paying a meaningful amount, which would have the added benefit of funding the services for victims of crime.

We must continue our commitment to victims of crime, but we cannot do this alone. Meeting the needs of victims of crime is a responsibility that we share, of course, with the provinces and territories. In 2007 we established the federal victims strategy to give victims a more effective voice in the criminal justice system. In 2011 we renewed this strategy with funding of \$13 million per year. In 2012 we allocated an additional \$7 million over five years. Most of this funding goes directly into the victims fund, which provides grants and contributions to provinces, territories, and non-governmental organizations to develop or enhance victim services.

We will continue to work with our provincial and territorial partners to ensure that they have the funding they need to offer much-needed services to victims of crime.

• (1540)

I hope that we can also work together at the federal level to ensure that this bill receives the support it deserves to hold offenders accountable to victims of crime.

The Chair: Thank you, Minister.

Now we begin the rounds.

[*Translation*]

Ms. Boivin, you have the floor.

Ms. Françoise Boivin (Gatineau, NDP): Thank you, Mr. Chair. Thank you for joining us today, Mr. Minister. You are starting to be part of the furniture at our committee. We appreciate that.

We were all very pleased to be able to support Bill C-37. I think that all of us here in this room agree that victims should be compensated properly. There are huge needs in that respect. This bill might be a step in the right direction. At the same time, we have to make sure that we are not creating other problems by passing this bill.

I am sure you have followed the debates on Bill C-37 at second reading. You were able to see that the official opposition is concerned about the loss of judicial discretion in specific cases when the accused had to demonstrate that they were unable to pay. We have some questions about that. You briefly touched on it in your presentation.

Is it because it seems that it is not imposed, almost automatically? Have you been able to study the reason? Is it because many of the accused had legal aid and the court perhaps concluded that they would be unable to pay as a result? Has your department been able to look into this matter? Was it because the estimated surcharges have not materialized?

[English]

Hon. Rob Nicholson: You've raised some very good questions, Madam Boivin.

Interestingly enough, the only province that actually publishes information with respect to this is New Brunswick. As I indicated to you, in the majority of cases of indictable and summary conviction offences, it was waived, and again, very seldom do we ever get any reasons why this is the case.

With respect to judges imposing this, for the most part, I would imagine that much of the funds will come from individuals who have received a fine. In a sense, the judge decides what fine the individual is going to pay. What we're saying is that there has to be a 30% surcharge on that for victims of crime, but ultimately, the appropriateness of the fine is determined by the judge. Indeed, with respect to summary and indictable offences, again, the judges, or the juries for that matter, will decide the guilt or innocence of the individuals. This seems to be consistent with the penalties we are imposing. I believe it sends out the appropriate message that individuals must be accountable to victims. It's not just law-abiding Canadians who should pay for victim services; all those who create victims have a responsibility as well. I think this bill accomplishes that.

Ms. Françoise Boivin: Fair enough, thank you. I understand that point.

That being said, would it be appropriate that a person who has a total incapacity to pay, is your service, and yourself as Minister of Justice....

• (1545)

[Translation]

I have consulted the case law and, more specifically, the Supreme Court's *R. v. Wu* decision. The case involved a person living in extreme poverty.

We are afraid that we are dealing with a two-tier justice system, meaning one for those who live in the provinces and territories that

have a program that allows them to collect money and one for those in the provinces and territories that do not have that type of program.

In addition, those who have absolutely no way of paying are going to have to stay in jail or be sent to jail to make up for the surcharge. In my view, that does not serve as compensation at all, unless the fact of going to jail is indirect compensation for victims. That is not the issue. This has to do with collecting money to be able to make up for the victims' losses.

[English]

Hon. Rob Nicholson: Again, and you did touch on it, for those individuals who find themselves convicted of a crime in this country, there is the fine option program available in seven of the provinces, which allows people to find other ways of contributing and dealing with their inability to pay the fine or the surcharge of the fine or the surcharge on their criminal conviction for a summary or indictable offence. Indeed, in provinces which do not, or do not yet have one of these programs, they deal with it in a certain way.

Ms. Françoise Boivin: Like Ontario.

Hon. Rob Nicholson: That's right.

They either provide time for the individual or they work with the individual. They send out certain notices to do this. Again, we're not talking about huge amounts. We're talking about \$100 or \$200 for the people convicted of crime. Again, it's up to the courts to decide. If there is a fine to be imposed, the courts have all the information before them.

This will work. Again, particularly for those provinces with fine option programs, it's another way for the individual to contribute through some type of community service and assistance to make recompense in a small way to those people they've victimized and to the threats they've inflicted upon society.

The Chair: Ms. Findlay.

Ms. Kerry-Lynne D. Findlay (Delta—Richmond East, CPC): Thank you, Mr. Chair.

Thank you, Minister and Ms. Morency, for being here today.

Minister, I'd like you to address why, in your view, this victim surcharge has increased. I'm particularly wondering about the prevalence of the waiver, also about consistency across the country in its application.

Hon. Rob Nicholson: I suppose you could say the information that we have received has not been consistently applied. Again, much of it is anecdotal, because much of this material is not available, with the one exception that I indicated. But I think there is a responsibility on legislators to revisit all aspects of these items. The fact is that it has not been increased or altered since the year 2000.

It means that it's due, if not overdue, to have a look at these issues. I think this is appropriate. Certainly it's consistent with our efforts to stand up with victims of crime. I think it's a perfect fit on every level. To make sure this is now going to be a part of all sentences in Canada is a step in the right direction.

Again, it hasn't been changed since the year 2000. It's an idea whose time has come.

Just so you know, to make sure these things are administratively well put together, we didn't start indexing it. We didn't start indexing it to the cost of living or anything else, because we don't want a situation where one year they're collecting \$100, and the next year it's \$101.75, for instance. I think we're better off having a set amount so it is familiar to the court and the court staff. It's easier to administer. It's something that hasn't been updated in quite some time. I think it was due.

Ms. Kerry-Lynne D. Findlay: Am I correct that these victims funds which the money will go to are administered by the provinces and territories?

• (1550)

Hon. Rob Nicholson: Yes, they are. I'll mention examples of some of the programs that are administered, and they change, as you can imagine, from province to province. There are programs for court support for vulnerable individuals, victim notifications that are sent out—and these are financed with funds collected through this compensation under the victims of crime—and referrals for counselling. Assistance in preparing victim impact statements is another example of where money collected from surcharges, in a number of jurisdictions goes. These are well administered, in my opinion, by our provincial and territorial partners. It's another way of assisting them, as they have, for the most part, the responsibility for the administration of justice in Canada. This is another way we can help them.

The Chair: You have a minute and a half.

Ms. Kerry-Lynne D. Findlay: Minister, is this something that would have been discussed with your provincial and territorial counterparts?

Hon. Rob Nicholson: Yes, that's a very good point. I do raise these matters on a continual basis with my provincial counterparts. I am pleased with the encouragement and support that I have received over the years. I get together with them on an annual basis, at least, and I'm in touch with them very often between federal, provincial, and territorial meetings. Again, I believe this will be well received. These funds will go straight into provincial coffers, straight into the programs they have to assist victims of crime. My prediction is that this will be very well received.

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

The Chair: You still have half a minute, but if you don't want it, that's fine.

Ms. Kerry-Lynne D. Findlay: That's fine.

The Chair: Mr. Cotler.

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

On that point, during the consultations I had with our provincial and territorial counterparts when I was minister of justice, at the time in 2005 the attorney general of Manitoba recommended that the surcharge be increased, as he put it, from 15% to 20%. The increase here is to 30%. Has the position of the attorney general of Manitoba changed? What was the response as a whole of the provincial and territorial counterparts? Did they make the recommendation that it be

raised, or did it come from a federal initiative with which they concurred?

Hon. Rob Nicholson: I can tell you that the attorney general of Manitoba has changed since 2005—

Hon. Irwin Cotler: Well, I know that.

Hon. Rob Nicholson: —as has everyone across the country. I'll be getting together with them in another week or so, and I'll meet a number of new ones.

Over the years I've had representations. You've been in this position as well, Mr. Cotler. You assemble these things. You hear as well from victims' groups, law enforcement agencies, and you come up with a program that you think will work. My prediction is, as I gave to Madam Findlay, that this will be well received. I suppose I'll give Dave Chomiak a call at some point in time and ask him if this is consistent with what he would have liked if he were still attorney general, but as I say, I'm sure it will be well received.

Hon. Irwin Cotler: Let me turn to the fine option program. It is my understanding, and I stand to be corrected, that there is no fine option program at this point in either Ontario or Newfoundland and Labrador, and that in Manitoba and Alberta, for instance, the entry into the fine option program is only available at the point at which an offender is admitted to jail, and in Nova Scotia and New Brunswick an offender may participate in the fine option program only after having paid the court costs and the surcharge portion of his or her fine. By removing the undue hardship defence from section 737 of the code, provincial and territorial fine option programs may be the only avenues available for low-income Canadians to satisfy their surcharge obligations. As I mentioned, we had this variation in the provinces and the prospective impact with respect to low-income offenders based on their province or territory of residence.

Have all these things been factored into your considerations in this regard?

• (1555)

Hon. Rob Nicholson: Yes, that's a good point.

I remember having looked at this. You quite correctly pointed out, and it's to be expected, that as each province develops, or doesn't develop, a program, there are considerable variations. As you pointed out, in one of them the fine option program does not apply to individuals who are given a fine. Again, it goes back to the question Madame Boivin directed to me in terms of judicial discretion. Presumably the judge, in making a fine, is aware of the fact that he or she is imposing a monetary amount on an individual who has been convicted of a crime, and that the surcharge, which is going to be 30%, is a part of that.

That being said, over the years I've been assured by my provincial counterparts that these programs do work well and they do accommodate individuals who would, for whatever reason—and it could be reasons of poverty, as you indicated—say they can make their contribution back to society, to begin that reconciliation process, by helping out and doing some sort of good community work. Again, that works.

It still accomplishes the same thing: making individuals responsible for what it is they have done and at the same time making a contribution. Again, I think most people would agree with me that these programs shouldn't be simply funded by law-abiding Canadians, but by the individuals who have been convicted.

As you say, there's a wide range across the country. Certainly, when I get together with my provincial and territorial counterparts in another week, I will be glad to have another discussion with them. I'll be interested to know how this will work with respect to their fine option programs and, indeed, if they're making any plans for changes.

The Chair: Thank you.

Mr. Goguen.

Mr. Robert Goguen (Moncton—Riverview—Dieppe, CPC): Thank you, Minister and Madam Morency, for appearing.

Minister, the law as it currently stands is that a victim surcharge is required to be imposed in every case without the judge having to specifically order it. To balance that, on the other hand he has the discretion to waive the victim surcharge when it's perceived it would cause undue hardship. You were citing the numbers in New Brunswick where in the vast majority of cases no victim surcharge was imposed. On the other hand, New Brunswick is one of the provinces that has a fine option program, so that in itself is curious.

In my mind am I correct in saying that this is an attempt to balance the playing field in favour of the victims? There are options to help them, to have the perpetrators of the crime pay for the cost of crime. The cost of crime according to the last study was \$99.6 billion, and surprisingly 83% of it was borne by the victim. In your mind is it not an attempt to balance the playing field for the victims of crime?

Hon. Rob Nicholson: We're always trying to do that, Mr. Goguen.

You made a very good point about the administration of this. In the majority of the cases that I cited they were individuals who were convicted of summary or indictable offences, and it was waived. There was no explanation to the extent that we can check. There were no representations with respect to the individual's ability to pay. For the most part I would guess that it's either forgotten about, or it becomes routine either not to impose it or indeed to collect it.

With that being said, to make this automatically a part of every sentence in Canada sends out a very clear message. It's a good message because victims who find themselves caught up in this terrible situation in their lives want to know that their concerns are being heard, that their priorities are a priority of the criminal justice system. This is not the whole show. This is just one component of that, but it's one more component to say to them that there are consequences for the individual who has inflicted pain on them and/or their families.

It's another way for the individual to make recompense and to get back into contributing to society and say he created these victims on whom he has inflicted this pain and in a way he's helping to put something back into society to try to make some amends for that. It's not very much in terms of monetary amounts, but again it sends the message that there are consequences, and again for the individual who is paying these things he'll say this is a start. The judge is imposing a penalty, an imprisonment or a fine on him, and he has to start making his way back into society. A victim surcharge is a reminder that these things are not just hurtful to the individual who is going to prison, in that he or she suffers, and their family suffers, but other people suffer as a result of their actions.

• (1600)

Mr. Robert Goguen: Thank you.

Quickly, Minister, Mr. Cotler pointed out that three of the provinces don't have the fine option program: British Columbia, Ontario, and Newfoundland. We have a shared jurisdiction in the area of criminal law, and certainly the fine option program would fall under the administration of justice. Am I right in saying that the federal government would cooperate in assisting them, not necessarily financially, in setting up such systems, if called upon? I think quite correctly Bill C-37 makes it mandatory to impose a fine, and it would be left to them, if asked, to put the fine option program in this system.

Hon. Rob Nicholson: It's a good point.

One of the things pointed out by Mr. Cotler in a review of what takes place across the provinces, I'm not sure if any of them are identical. It seems to me there are variations in all the provinces that have them, and that's appropriately so. The money is going to provincial projects within the province or territory. Each one has to be tailored a little to meet the needs of the individual jurisdiction.

In terms of any advice or assistance we can give, we're always very pleased to do anything we can to assist, anything to help victims, but ultimately the decision will be made by each individual government in the provinces or territories. Again, even with those who don't have a fine option program, there are procedures they take. For instance, a person's driver's licence could be suspended if the person ignored a fine that he or she received after he or she was convicted of a criminal offence. That's one of the options. If you're asking about my preference, I certainly do like the idea that there's a fine option program, and I think most provinces and territories agree that's a good way to handle it. Again, it's up to each individual jurisdiction.

The Chair: Mr. Scott.

Mr. Craig Scott (Toronto—Danforth, NDP): Thank you, Mr. Chair, and thank you, Minister, for joining us.

I want to continue discussing the fine option programs and whether they are available and whether there are conditions within each province such that a program will not cover the surcharge. It seems that we have at least five, if not six or seven, provinces where there may be a problematic relationship in terms of availability. Let's just say that it's five. For offenders in those provinces, the special form of relief of the fine option program won't be available.

I want to know, Minister, whether you've received advice on whether this falls into the area of being a differential application of the criminal law. I wonder if it is problematic enough that we really need to be looking at the principles of fundamental justice under section 7 of the charter being in play here. The law is holding something out, but it's actually not available to everybody in the country, although we have a nationally applicable body of law. Is there any issue you guys have crunched through to say that section 7 is not a problem?

Hon. Rob Nicholson: We look at all aspects of the federal jurisdiction and all the constitutional elements that go into this. With respect to the Constitution of this country, it's very clear that it's the federal government that imposes the penalty with respect to violations of the Criminal Code. That being said, I wouldn't agree that in five provinces there is no availability. My understanding is that seven provinces have a fine option program. Again, as Mr. Cotler pointed out, there are variations among provinces. Even those that do not have a fine option program have procedures in place in terms of allowing the individual time to pay the fine, for instance, if it's a fine, or the surcharge, if it's a summary or indictable criminal conviction that results in imprisonment. That being said, they have procedures in place. Within a province that doesn't have a fine option program, it goes even to things like having your driver's license suspended if you continue to ignore the consequences of your criminal conviction.

In terms of the administration of it, the Constitution is very clear that where and how individuals are housed and the administration of that is within provincial jurisdiction. Again, I think this is a fair application of that. It's consistent with our constitutional responsibility to impose penalties under the Criminal Code.

• (1605)

Mr. Craig Scott: Thank you for that. You may well be right that ultimately it's okay. The reason I'm asking is that when we go back to a landmark decision, the Morgentaler case, the actual reason those provisions of the Criminal Code were struck down was that the Criminal Code was purporting to hold out a benefit of the criminal law, which was, in fact, a defence, that was differentially available across the country. It was that differential availability, including how it interacted with provincial health care systems, that produced the problem with the fundamental principles of justice. This may not be nearly as consequential as what was being dealt with in that case, but it strikes me that there's some analogy there.

Hon. Rob Nicholson: I think the exact opposite case could be made, which is that now there will be consistency. We won't have a situation where in certain jurisdictions the fine surcharge is routinely waived, for instance, and in other jurisdictions it is applied. We can say with complete confidence that this will apply right across this country. It will be consistent with the provisions of the Criminal Code, and it will apply to everyone.

Again, how the penalty is administered at that point is quite properly within the Constitution of this country, but it is administered at the provincial or territorial level. Again, that's part of the Constitution. They're all dealing with the same penalty scheme, so there's a consistency that's brought about by this which I think will be welcomed.

Mr. Craig Scott: I would grant you that. I think that's absolutely right. That's certainly one effect. It's whether the rest of it would be a problem.

The Wu case, brought up by colleague, basically says that genuine inability to pay is a defence to imprisonment for failure to pay a fine. I'm wondering whether it's your position and the position of the Department of Justice that this decision will cover a surcharge situation as well.

Hon. Rob Nicholson: We've been very consistent that there will be a surcharge applied in all convictions across this country. The where and the how of its administration is delegated, of course, to the provinces, under either a fine option program or whatever program is put in place by the provinces.

It will be administered by the provinces. I suppose, quite apart from the constitutional responsibility for the administration of justice, it makes sense, as they're getting the money as well. The money is going into provincial funds for programs for victims, so it makes sense on both of those levels.

The Chair: Mr. Seeback.

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

Minister, I want to pick up on where we've been going with this discussion. We're talking a bit about certainty on the imposition of a fine.

I found the information you provided in your statement to be quite interesting and worth repeating: 84% of the time in summary convictions, and in 91% of indictable cases, the surcharge was not imposed. As well, when I look at this, you mentioned that even when it was not imposed, there were no reasons suggested for why it was not. Subsection 737(6) of the Criminal Code states that when the court does waive, it has to give reasons.

Would this be part of the reason that you're looking at this legislation? Does there seem to be a strange application of this section going on?

Hon. Rob Nicholson: One of the things that people have told me—those who work with me—is that there is no consistency in this particular area. I don't know if there's anybody who would disagree that there is no consistency in that.

It seems to me that, on the one level, there should be consistency with respect to the application of the penalty provisions of the Criminal Code. I think that stands on its own. Quite apart from that, the concept of reinforcing our support for victims of crime and victim services is something that sells itself and commends itself to me, and I'm sure to most people as well. It's a good idea to assist with programs that assist victims of crime in this country.

It seems to me that it works on both levels: that we can and should have a consistency with respect to the penalties that are dealt with in the Criminal Code and, at the same time, that whatever efforts are made by us as parliamentarians to support victims of crime in this country and victim services is something that can and should be supported. I think it works on both those levels.

Why did we do this? You know of our continuing efforts with respect to the support for victims of crime in this country. This is a perfect fit.

But you're quite correct in that at the same time, I've heard for quite some time that there is a complete inconsistency on this. As I pointed out to Ms. Findlay, it has been since 2000 that even the level of the fines has been revisited. We can't go for another 100 years and leave it at 50 bucks for summary conviction offences. You have to take a look at it every so often and ask if it is keeping pace with the demands for victim services in this country so that they're not stuck at a year 2000 level of services and prices. Again, the amount of money going to help victims has to be consistent with that as well.

• (1610)

Mr. Kyle Seeback: In talking about support for victims, it's something that we think is very important. I assume you've done some consultation. I know that the Federal Ombudsman for Victims of Crime, Sue O'Sullivan, has said that we should double the victim surcharge and make it mandatory in all cases, without exception. I take it that she's someone you've consulted with respect to this legislation. It seems that we've hit that nail on the head.

Hon. Rob Nicholson: Thank you for raising that. As was pointed out by Mr. Cotler, the former attorney general of Manitoba had asked that we increase the victim surcharge. Certainly, with regard to the Federal Ombudsman for Victims of Crime, as you just pointed out, she too has been calling for changes to the Criminal Code that are very similar to what you're looking at today. Again, nothing's perfect, but I imagine she will be quite pleased when she gets the opportunity to comment on this.

Mr. Kyle Seeback: That's great.

The Chair: You have one minute.

Mr. Kyle Seeback: One minute? That's fantastic.

I want to go back to the consistency of the application of this. When you look at the application of this, do you see any circumstances where we are not going to be able to have the new surcharge imposed?

Hon. Rob Nicholson: One of the things that we have made very clear in the legislation is that now it is going to be imposed; there will not be a waiver of it at the time of sentencing. This is a part of the sentence. If you get a fine there will be an automatic 30% increase for victim services. We have doubled the victim surcharge for all summary and indictable offence convictions in this country. It's going to be across the board. This is going to be built in to the Criminal Code when this bill hopefully is passed out of this committee and gets third reading, and proceeds to the Senate and then royal assent. This will be part of the laws of this country. I think the majority of Canadians will welcome this. I think this is a step in the right direction, as you can tell.

The Chair: Thank you.

Mr. Jacob.

[Translation]

Mr. Pierre Jacob (Brome—Missisquoi, NDP): Thank you, Mr. Chair.

Thank you for joining us today, Mr. Minister.

Do you think there is the potential, under Bill C-37, for offenders to be imprisoned because they are unable to pay the victim surcharge and also unable to settle it through a fine option program?

If so, do you see any problems with that? A few minutes ago, you said that it would be applied systematically.

• (1615)

[English]

Hon. Rob Nicholson: It would be applied not just systematically, but consistently across the country. Again, you will find in seven of the ten provinces a fine option program for people who for whatever reason cannot, or are unwilling to, pay the fine or the surcharge. Where there is no fine option program, you would have to look at each individual province or jurisdiction to see how they treat these. What very often happens is that, among them, they will determine a payment plan for the individual. If there are no payments, the individual might, for instance, find that his or her licence has been suspended. Again, the administration of that is up to each province, but what we have, and what we will have after this bill is passed, is consistency.

With respect to the fine, you quite correctly pointed out that if a fine is imposed on an individual, there would now be a victim surcharge if the individual didn't pay the fine. There is that possibility the individual could end up in jail if he or she ignored the penalty. People generally pay the fine so they can avoid the jail time. That is often part of either the plea arrangement or the penalty imposed by the judge. What happens after that is administered by the provinces. You may find very interesting what a number of the provinces are doing in this area.

[Translation]

Mr. Pierre Jacob: Let us talk about the provinces. If offenders convicted under the Criminal Code can only participate in those programs in certain provinces, what measures can be taken to ensure that Bill C-37 does not have a disproportionate impact depending upon where an offender lives?

[English]

Hon. Rob Nicholson: I have actually been quite impressed, Monsieur Jacob, over the years with respect to what provinces do in this area. We talk quite a bit, as you know, at the federal level about what we are doing for victims, but we're not the only ones. I've been impressed by what non-governmental organizations and groups, individuals, provinces, and municipalities are doing. That's one of the things I have found over the years when I've travelled across this country. I have been quite impressed by the different services that are provided to victims.

I've been of the opinion, and we state that very clearly, that we have to do more. I think the Federal Ombudsman for Victims of Crime will say that. It is an ongoing project and commitment priority of the government to continue to do this. Again, what happens at the provincial level is not all the same— appreciate that—nor is the fine option program the same, as we've already indicated. That being said, there are programs in place to assist victims. Quite frankly, I don't know of any jurisdiction that doesn't have some type of program which in one way or another assists victims. We can all say that they should be doing more, but I know of no jurisdiction in this country that doesn't in some way extend a hand to victims, and on that we are all agreed. I'm always agreed with my provincial and territorial counterparts that we make that a priority and continue to do more for victims who are on the right track.

[Translation]

Mr. Pierre Jacob: If there is a large increase in the number of people applying for fine option programs, could you tell me whether the infrastructure is or will be in place to handle applications, to supervise work and to account for the work credits?

[English]

Hon. Rob Nicholson: Again, in terms of what will take place with the fine option program if an individual gets a summary conviction offence and receives a \$100 surcharge, and whether this will hugely tax the fine option programs of the provinces, my guess is it probably won't. I think most people will come up with the \$100 or \$200 if they have committed an indictable offence.

As well—and you may have appeared in court yourself, Mr. Jacob, to know this—when individuals are given a fine, they usually scramble. They want to pay that fine because the fine is an alternative to incarceration. For the most part people would prefer to pay a fine. This fine will include the victim surcharge, but that's what they would prefer. I don't see this overwhelming the fine option programs at the provincial level. Again, my belief is that my provincial and territorial counterparts will be pleased that there is now some consistency across the country. And every cent from this surcharge will go into provincial and territorial funding programs, so they'll be quite pleased.

• (1620)

The Chair: Thank you.

Mr. Albas.

Mr. Dan Albas (Okanagan—Coquihalla, CPC): Thank you, Mr. Chair. I'm very happy to be here today.

Minister, thank you to you and your staff for visiting us today.

I'd like to follow up on some of the things that Monsieur Jacob brought up.

Under the current version of section 736 of the code, offenders who are required to pay a fine may discharge the fine in whole or in part by earning credits for work performed under a program set up for that purpose. According to the current wording of subsection 737 (10) of the code, this fine option program may not be used for a victim surcharge. Bill C-37 would make it possible for offenders to also discharge the victim surcharge through the fine option program, where the program is available and the offender qualifies for it.

How will the time required for the offender to work through the fine option program be determined? How will it be determined in order to equal the surcharge monetary penalty imposed?

Hon. Rob Nicholson: I'll ask Ms. Morency to answer that one for you, Mr. Albas.

Ms. Carole Morency (Acting Director General and Senior General Counsel, Criminal Law Policy Section, Department of Justice): If I understand the question correctly, I think the question is how the amount would work out into the amount of time taken to pay off the surcharge.

Mr. Dan Albas: Yes.

Ms. Carole Morency: In each of the provinces, my understanding of the fine option program is basically they equate, often around the minimum wage, to the number of hours required to pay off that surcharge.

Mr. Dan Albas: Okay, so the different provinces will have different approaches. Some might use a credit system. Some might use minimum wage. Is that correct?

Ms. Carole Morency: That's my understanding, yes.

Mr. Dan Albas: What kind of activities might be entailed under this program?

Ms. Carole Morency: If you look at the different programs that exist in the provinces and territories, there are, as the minister has said, variations between them. I think some of the common features are they tend to be, for example, work in a volunteer sector so that it doesn't detract from employment opportunities for others. It's often, as I say, in the volunteer types of services in the community. Different provinces will have different types of services that can be identified. Once they get into the program, they'll be directed to that.

Mr. Dan Albas: If my understanding is correct, some would either pay the fine—of course, that would support victims through this proposal—or they would work the time off through volunteer activities, which would have benefit to the community in addition to that.

Hon. Rob Nicholson: Exactly. That's a very good point. While there would be no money going directly into victim services, it would still send the message to the individual that there are some consequences for the activity that he or she got involved in, and the individual is contributing in some way to the society that ultimately has to pick up the tab for all this. I think it works on that level as well.

It's not directly going into the victims fund, but nonetheless it sends the message home to the individual that the individual has committed a serious act for which the individual has to do something to make some sort of recompense, whether that be through community work, as Ms. Morency pointed out, or the payment of a fine. Either way I think this is something that's constructive.

Mr. Dan Albas: My understanding would be that if they are doing something for the community, there's pride that goes along with that. There's also the direction, and the value to society, as you said.

Based on a more consistent approach to it, I'm sure the provinces would be happy to see that victim services would be funded with more consistency, would they not?

Hon. Rob Nicholson: That is something they will certainly welcome. As I pointed out, all the money from this goes to the provinces and the priorities they set within the realm of helping victims. It will be applauded on that level. Again, for those who like to see more money go into programs administered by the provinces, it's consistent on that level as well. They will have more money to put toward assisting victims.

While everything we do doesn't get 100% support at every level, I'm quite confident this will be well received by my provincial and territorial counterparts. Again, we've had quite a few changes over the years in provincial attorneys general, but there has been a consistency there as well that they will like. I think it will work.

● (1625)

Mr. Dan Albas: Thank you, Minister. That pretty much answers all my questions.

Thank you, Mr. Chair.

The Chair: Mr. Côté.

[Translation]

Mr. Raymond Côté (Beauport—Limoulu, NDP): Thank you very much, Mr. Chair. Thank you for joining us today, Mr. Minister.

I listened to you carefully when you talked about the situation in New Brunswick. I found that very interesting, but there is something I would like to understand.

You mentioned that, in 99% of cases, no reason was provided for the waiver of the surcharge. Have those data enabled you to determine whether a fine was imposed? What was the proportion?

[English]

Hon. Rob Nicholson: Yes, alone of the different provinces, New Brunswick seems to have all the information on this that's available to us. We've even given you a breakdown of when and where the surcharge exists under the Criminal Code, and overwhelmingly it is not applied to individuals convicted of an indictable offence. For the most part, when a fine is imposed in the province of New Brunswick, I believe that 75% of the time a surcharge is added, but in 25% of the cases one is not, even when a fine is being imposed. It varies between whether the individual is sentenced with a fine or imprisoned for an indictable offence.

It was very helpful to us, quite frankly, to have a look at what happens statistically in the province of New Brunswick. From what I've been told across the country, what happens there about the inconsistency of the victim surcharge is backed up anecdotally as well, so when we had a look at what took place in New Brunswick, very carefully obviously, we said it was consistent with everything that we heard across the country, and that's going to change with this law.

[Translation]

Mr. Raymond Côté: Mr. Minister, does the Department of Justice—or provincial sources, for example—have information about the financial situation of people who are brought to justice and who are convicted?

[English]

Hon. Rob Nicholson: Again, you'd have to ask each provincial attorney general with regard to how much money. Sometimes they have individuals who have stolen money and end up in court. There are various levels of financial ability of individuals to pay. This is why I believe most provinces now are into the fine option programs. Individuals who for whatever reason cannot or do not want to pay a fine will have that option.

[Translation]

Mr. Raymond Côté: Mr. Minister, at a 2011 meeting of the Standing Committee on Finance, the Canadian Association of Elizabeth Fry Societies estimated that four in five women in prison were sentenced for crimes related to poverty. That means that their financial situation does not allow them to cope with the challenges that life throws at them. Could you comment on that estimate?

[English]

Hon. Rob Nicholson: It may be that a judge, in deciding what penalty is to be imposed, probably takes into consideration an appropriate sentence in each individual case, among other things. It varies with respect to the criminals. I'll tell you what is consistent and that is what I hear from victims in this country. They want to be better informed on what happens. They want to know what's taking place in the court system to make sure that they are either able to get in their statement or to attend hearings. There has been a great consistency among victims in this country as to what they believe criminal justice should be doing to accommodate them, and certainly, that's the bottom line here.

The bottom line is to make sure there is consistency of application of the Criminal Code, and to make sure we send out that message to victims. We will do everything possible to look after their interests and to make sure their concerns are heard in our criminal justice system.

● (1630)

[Translation]

Mr. Raymond Côté: Do I still have time? No?

Thank you, Mr. Chair.

[English]

The Chair: Thank you, Minister, for being here.

We'll take a short break now until the minister leaves and then we'll reconvene.

● (1630)

(Pause)

● (1635)

The Chair: We'll call the meeting back to order.

Welcome, Ms. Morency and Ms. Arnott.

I understand that Madam Boivin may have a question or two.

[Translation]

Ms. Françoise Boivin: I have a few quick questions about Bill C-37. They are rather technical or legal in nature.

In the Crowell decision, the court rejected the arguments that the victim surcharge should be considered a provincial tax. That was the big debate. Yes, sometimes, when we look at automatic surcharges, we are likely to think that it is a good way to pad the government's coffers, although the objective to help the victims is commendable. Those arguments had not been accepted by the court, because they were instead perceived as the result of the federal government exercising its criminal jurisdiction under section 91(27) of the Constitution Act. They were rejected in part because the court relied on the concept that the victim surcharge imposed in the sentencing process was an expression of public disapproval and the fact that it was not mandatory.

The fact that it will be wall-to-wall, meaning mandatory, worries me. Are we not in danger of having to deal with the same problem that led to the Crowell decision? Are we not in danger of taking this measure only for it to be perceived as a hidden tax to collect funds and send them to the provinces as a way to divest ourselves of our obligations towards the victims?

Furthermore, I am not sure I heard a clear answer from the minister about this. Should the Wu decision not continue to be applied? Otherwise, could it not be a case of unusual punishment under section 9 of the Charter, for instance? Have your services examined all those aspects?

Ms. Pamela Arnott (Director and Senior Counsel, Policy Centre for Victim Issues, Department of Justice): If I may, I will start with the first part of your question.

In our view, it is not a tax. This bill actually specifies that judges must follow the overall sentencing principles, meaning the totality principle and the principles of general deterrence and specific deterrence.

So we don't see it as a tax, especially since a number of provinces have option programs. As a result, that provides for a solution other than prison. In the provinces and territories where there are no such programs, there are other measures, such as community services or other services, that allow offenders to fulfill their surcharge obligations.

Ms. Françoise Boivin: I would like to go back to the Wu decision, if you don't mind. Do you think that the amendment to Bill C-37 applies to the Wu decision?

Ms. Pamela Arnott: In our view, it does not apply. Let us turn to the practical side. In most provinces, there is the option of community service programs. They have the so-called fine option programs. The provinces that don't have those programs have other measures. In practical terms, we feel that there is no such violation.

Ms. Françoise Boivin: What would happen if someone is unable to fulfill their financial obligations or if the person has a mental or physical disability preventing them from working? Have you looked at the issue from that angle?

Ms. Pamela Arnott: I can give you some concrete examples. For instance, in Newfoundland, there is the option of paying in instalments. If the offender does not pay the surcharge on the spot, they can do so over a certain period of time. Other provinces have similar programs.

Once again, in our view, offenders can fulfill their surcharge obligations without there being a violation of section 7.

• (1640)

Ms. Françoise Boivin: In a dire financial predicament, such as a person on welfare, will those people have to pay over a period of 25 years? In addition, a person may have a physical or mental disability. There are cases like that. We are certainly going to hear witnesses talk about extremely tough situations that first nations are experiencing, for example. Unfortunately, many aboriginals are sent to jail.

Have those cases really been studied? We keep talking about the judicial discretion that used to exist. Granted, perhaps it was misapplied, because we no longer know why they refused to apply the surcharge. But we could limit judicial discretion instead of removing it completely. Have you considered that?

Ms. Pamela Arnott: We have consulted with the provinces and territories about the challenge with people who have no resources. They feel that they are able to face that challenge. In addition, a number of provinces subscribe to a Canada Revenue Agency program through which fines can be paid by a withholding tax.

Ms. Françoise Boivin: You mean tax deductions at source.

Ms. Pamela Arnott: Exactly.

Ms. Françoise Boivin: Okay, thank you.

[English]

The Chair: Mr. Goguen.

Mr. Robert Goguen: Thank you, Mr. Chair.

There's been quite a lot of discussion focused on the fine option program. We've learned that there are three provinces that don't have the fine option program. The fine option program is administration of justice. It's clearly a provincial competency, so it's not something we can delve into.

The opposition seems to be equating the absence of a fine option program to a form of undue hardship. Yet you have explained to us that provinces that don't have a fine option program proper have other means. We've talked about payment through Revenue Canada and suspension of driver's licences.

In the case of the victim surcharge, the fund goes to the province. Could a province that didn't have a fine option program use the funds from the fine option program to set up a fine option program?

Ms. Pamela Arnott: Each province and territory has legislation that specifies what the funds can be used for, and for a number of provinces and territories, that is absolutely what the funds could be used for. That's the short answer. All provinces and territories have legislation that specifies what revenue from the federal and provincial surcharge will be used for.

Mr. Robert Goguen: Within the scope of their constitutional authority, they would be able to set up the fine option program and use the funds coming from the surcharge. Is that the short answer? We could do a constitutional law course, but we're not here to do that. That's the short answer. Is that correct?

Ms. Pamela Arnott: Yes, sir.

Mr. Robert Goguen: Thank you.

Thank you, Mr. Chair.

The Chair: Mr. Cotler.

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

I'd like to pursue two issues that were brought up by my colleagues, both with respect to two Supreme Court judgments. One was the Wu case; the other was the Crowell case. The Supreme Court, in *R. v. Wu*, held:

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.... For the impecunious offenders, however, 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.

The court also said, “At least this is the situation until fine option programs or related programs are in place.”

You answered, with regard to a question whether it was applicable to victim surcharges, that in fact the judgment was not applicable to victim surcharges. Would you agree that enforcement of non-payment by incarceration should be an available option only where a fine option program is available?

• (1645)

Ms. Pamela Arnott: Mr. Cotler, I can speak to the victim surcharge. In that case, as I've mentioned, there are a number of programs that would alleviate the problem of an absolute and utter inability to pay. I'm not able to speak to the broader question of imposition of fines broadly.

Hon. Irwin Cotler: Would the government support an amendment to the bill that would codify the Supreme Court's decision in *Wu* as applied to the enforcement of the victim surcharge?

Ms. Pamela Arnott: I'm sorry, Mr. Cotler, I can't speak to that.

What I can say is that we believe the current existence of fine option programs and the other programs in provinces and territories that don't have a program would alleviate that problem of an offender's having a complete and utter inability to pay.

Hon. Irwin Cotler: The court in the *Wu* case clearly indicated that it was a prohibition of incarceration because of inability to pay, and that such a situation would obtain until fine option programs or related programs are in place.

I'm saying, in the event that they are not in place, would not the *Wu* decision in fact hold even with victim surcharges? That is a situation we're confronted with.

Ms. Pamela Arnott: I would also point you, Mr. Cotler, to the coming into force provision of this bill, which provides that the coming into force can be set on a future day or days. We have an excellent relationship with the provinces and territories in terms of victims of crime and can have conversations with them about their ability to administer and adapt to this amendment.

Hon. Irwin Cotler: I want to move to the court in *R. v. Crowell*, which rejected the argument that the victim surcharge—it being mandatory in all cases—could be deemed by the courts to be a tax under provincial jurisdiction.

They rejected such an argument in part on the grounds that the victim surcharge imposed as part of the sentencing process was an expression, as they put it, of public reprobation and that it was not compulsory. The court also added that the surcharge's “role as a deterrent is incidental to its fundraising purpose”.

I have two questions. One is, in your opinion, is the surcharge's primary purpose to punish the offender or to raise funds? The second is, does the proposed compulsory nature of the victim surcharge under the bill affect the *Crowell* analysis with respect to whether this is in fact a matter within provincial jurisdiction or within a matter criminal law?

Ms. Pamela Arnott: The first thing I would say is that in regard to victims of crime, we are very conscious that this is an area of shared jurisdiction with the provinces and territories and that, when the federal government is going to legislate in regard to victims of crime, we have to limit our legislation to that which is properly within federal competency.

These amendments, we believe, are within the federal prerogative for criminal law as part of a sentence. We believe they fit within the principles of sentencing and specific general deterrence and also respect the principle of the totality of the sentence.

The Chair: Thank you.

Mr. Scott.

Mr. Craig Scott: Thank you.

I only have one question, but depending on how you can help me, we might need to follow it up.

You said *Wu* doesn't apply, but as far as I understand it, the principles in *Wu* are pretty clear. There are two dimensions to saying it wouldn't apply. It wouldn't apply because it actually didn't deal with surcharges, and therefore in some technical term it doesn't apply, but if you look at the principles, it would have to apply.

What I heard from your answer was that we don't expect it to be needed. You gave examples of how even provinces without the fine option programs can alleviate to the point that you wouldn't end up in the situation of needing the *Wu* principle.

Can I have some clarity on whether you firmly believe it does not apply in that strong sense, or whether it does not apply in the sense that we don't envisage its being needed, though the principles are still applicable to surcharges?

•(1650)

Ms. Pamela Arnott: In our view, it's the second aspect of what you've identified that is the predominant factor. When you look practically at a case, the ability of all provinces and territories to find alternative means to obtain satisfaction of a sentence is what would stop that imposition of fundamental justice.

Mr. Craig Scott: That's great. Thank you. For me, that's really an important clarification.

I would just say in response to Mr. Goguen's drawing this out and your points that we would certainly benefit from knowing a bit more about the programs, or the approaches in those provinces that don't have fine option programs, so that we can be more comfortable understanding what is available. Maybe we're worrying about something that needn't be worried about. Whether the Department of Justice can help us or whether we should be asking the Library of Parliament to do a little research, I'm not sure, but to the extent that you can help us, it would be great.

Ms. Pamela Arnott: Okay, I'd be happy to do that. I also would suggest that it really is a matter of the provinces and territories. I can relate to you what they have related to me, but they are obviously your best source.

I will give some examples. I can speak to Ontario; someone mentioned Ontario earlier. Ontario doesn't have a fine option program, using that name. Some of the options they use, though, are that they do use licence suspension, and not only driver's licences, but hunting licences and fishing licences. They will use civil enforcement for very large amounts. Where there was a large fine and the surcharge was included in that amount, civil enforcement is an option. They'll use demand letters, which crown attorney offices will produce. They'll use writs. They'll use set-off of provincial or territorial payments. They also are part of the federal set-off program, which as I mentioned before, is a Canada Revenue Agency program.

Mr. Craig Scott: Thank you. That helps me a little bit. I'd have to be thinking more quickly on my feet than I'm capable of to know how much those examples apply to the kinds of folks who might be in the situation of being unable to pay. For example, a driver's licence might not apply.

The Chair: Go ahead, Ms. Findlay.

Ms. Kerry-Lynne D. Findlay: This is probably more of a comment than a question. I am a member of Parliament from British Columbia, and B.C. is one of the jurisdictions that does not have this program. I can only say that I've seen from my experience that in any situation really where someone needs to pay a fine or a court-imposed or hearing-imposed amount of money, if they do not have the ability to pay—say, they are on social assistance or just out of work or whatever—there are mechanisms to go before what we call in B.C. a registrar and ask for time to pay, ask for some other way to deal with it. Even in what I would consider very reasonable or small fines such as \$100 for a summary conviction, I have seen people being given many months to come up with that, at so much per month. It is recognized in our concurrent judicial systems that some people simply have a hard time even meeting those obligations, but I know they are given time to pay, with very modest amounts.

The Chair: Go ahead, Ms. Morency.

Ms. Carole Morency: To go back to some of the minister's remarks, he noted, for example, that judges will have discretion in the cases in terms of assessing the appropriate sentence to impose in that case on the offender before the court in all of the circumstances. Whether it's a period of imprisonment and/or a fine, if the judge decides not to impose a fine, maybe there's another sentence. That's one way to address it directly. In the instance where there isn't a fine, the bill would require a flat amount to be paid, which is nominal but, as you say, could nonetheless have an impact for certain accused before the court. With those processes to deal with that, whether it is in a province that has a fine option program, which is the majority, or in the few that do not, obviously again there is a recognition that it could have an impact and there are measures available within those provinces to deal with it.

We've undertaken to see if we can provide some information that might be readily available to the department. It may be that the committee may wish to consider hearing from a witness from one of those provinces more directly to speak to that, but we'll see what we can provide.

•(1655)

The Chair: I would just say to the committee that you have excellent analysts here, and the analysts will endeavour to bring back some information for you on those things, at the next meeting or two meetings down the road.

Ms. Françoise Boivin: If we could get information on the provinces' programs, that would be very helpful because, from what we read already in the research, not all provinces have the same programs. How does it work? It is important for us to be sure it covers pretty much everything and, as you said, you don't have any serious worries that the extreme cases don't fall through the cracks and that a court would be forced to impose jail because the person had absolutely no other way of fitting into any program. That would be helpful.

The Chair: They'll endeavour to bring you back as much as they can, recognizing that time is a little short. I'm sure that they'll have excellent information.

We still have a minute left from Ms. Findlay, if you want to use that.

Mr. Robert Goguen: I'll take a minute.

I'm more than curious to find out what all the programs do provincially as well. We must bear in mind that we have no jurisdiction to impose upon them whatsoever as to what they do. If it's only for intellectual curiosity, fine. They probably have the capability. But we must bear in mind that we have no sway with them. That's all.

The Chair: Our excellent analysts will bring it back for you.

Go ahead, Mr. Côté.

[Translation]

Mr. Raymond Côté: Thank you very much, Mr. Chair.

We have some specific data about New Brunswick. My thanks to Ms. Arnott and Ms. Morency for being here to answer our questions.

I could not help but think about the financial impact and the absorptive capacity in the fine payment option program. Have the department or the provinces been able to give you an idea of how expensive it might be to absorb or whether the capacity on the ground is sufficient to handle the work to make up for credit systems like those? I might have written it down incorrectly. In New Brunswick, in two-thirds or three-quarters of cases, there is no surcharge imposed. This will make a huge difference.

Ms. Pamela Arnott: I am sorry, but I want to make sure that I understood your question correctly. Are you asking to what extent the provinces will be able to absorb the impact of fine option programs?

Mr. Raymond Côté: Yes, financially but also in terms of the capacity of organizations on the ground to absorb a new influx of people unable to pay the fine and wanting to use the fine option program.

Ms. Pamela Arnott: Since 2000, provinces and territories have been saying that the anticipated surcharge revenue is not in line with the projections. So, for those provinces and territories, it meant that it was a step backward. They were expecting a certain revenue and it has not been reached. In our view, it is because of the rather low rate of imposing the surcharge. It was not a result of the lack of collection on the part of the provinces and territories.

• (1700)

Mr. Raymond Côté: But overall, considering that it will be applied systematically, if fine option programs are used on a large scale, it will simply be a credit, obviously. There would not be any financial compensation in that case either. There will even be costs that will be absorbed, either by the province or by organizations. In a nutshell, structures will have to be put in place to absorb that. Do you have an idea of what that means?

Ms. Pamela Arnott: Unfortunately, I don't have any specific data to give you, but, as I mentioned, we have set up a working group with our provincial and territorial counterparts. Those are the types of things we discuss on a regular basis.

Mr. Raymond Côté: Thank you. That's fine.

[English]

The Chair: Go ahead. Mr. Jacob.

[Translation]

Mr. Pierre Jacob: I had a few short specific questions, since I don't have a lot of time left. My thanks to our guests for joining us.

Where does a victim surcharge rank on the order of priorities in a case of the bankruptcy of an offender? That is my first question.

Second, if offenders have outstanding victim surcharges, are they considered not to have completed their sentences? Does that mean that they remain within the jurisdiction of the corrections system? Can this situation last for a long time or indefinitely?

Ms. Pamela Arnott: Unfortunately, I do not know the answer to your first question. But we can get back to you with the answer for a case of bankruptcy.

In terms of your second question, my counterpart here was one of the main lawyers for Bill C-10. Bill C-10 specified that those types of measures, such as paying the surcharge or other financial obligations, were or should be part of the offender's correctional plan.

Mr. Pierre Jacob: I have one final quick question. I believe I still have a few seconds.

If an offender is sentenced for multiple offences, is a victim surcharge imposed for each offence?

Ms. Pamela Arnott: No. The surcharge is imposed at the time of sentencing. Let's take your example. If there are five counts and the sentence is passed in one hearing, the surcharge will be imposed only once.

Mr. Pierre Jacob: Okay.

Thank you, Mr. Chair. Thank you to the witnesses.

[English]

The Chair: Thank you.

I'd like to thank the officials for being here today. It has been very informative. I know the analysts will have some time to delve into those other questions.

To the committee members, before you leave, you need to think how we're going forward here. We're going to lose a day on November 8, I believe. One day next week we're going to have to take some time to make plans about where we're going and get some witnesses for the next sessions to the clerk so that he can have time to get witnesses here after the break.

The meeting is adjourned.

MAIL  POSTE

Canada Post Corporation / Société canadienne des postes

Postage paid

Port payé

Lettermail

Poste-lettre

**1782711
Ottawa**

If undelivered, return COVER ONLY to:
Publishing and Depository Services
Public Works and Government Services Canada
Ottawa, Ontario K1A 0S5

*En cas de non-livraison,
retourner cette COUVERTURE SEULEMENT à :*
Les Éditions et Services de dépôt
Travaux publics et Services gouvernementaux Canada
Ottawa (Ontario) K1A 0S5

Published under the authority of the Speaker of
the House of Commons

SPEAKER'S PERMISSION

Reproduction of the proceedings of the House of Commons and its Committees, in whole or in part and in any medium, is hereby permitted provided that the reproduction is accurate and is not presented as official. This permission does not extend to reproduction, distribution or use for commercial purpose of financial gain. Reproduction or use outside this permission or without authorization may be treated as copyright infringement in accordance with the *Copyright Act*. Authorization may be obtained on written application to the Office of the Speaker of the House of Commons.

Reproduction in accordance with this permission does not constitute publication under the authority of the House of Commons. The absolute privilege that applies to the proceedings of the House of Commons does not extend to these permitted reproductions. Where a reproduction includes briefs to a Committee of the House of Commons, authorization for reproduction may be required from the authors in accordance with the *Copyright Act*.

Nothing in this permission abrogates or derogates from the privileges, powers, immunities and rights of the House of Commons and its Committees. For greater certainty, this permission does not affect the prohibition against impeaching or questioning the proceedings of the House of Commons in courts or otherwise. The House of Commons retains the right and privilege to find users in contempt of Parliament if a reproduction or use is not in accordance with this permission.

Additional copies may be obtained from: Publishing and
Depository Services
Public Works and Government Services Canada
Ottawa, Ontario K1A 0S5
Telephone: 613-941-5995 or 1-800-635-7943
Fax: 613-954-5779 or 1-800-565-7757
publications@tpsgc-pwgsc.gc.ca
http://publications.gc.ca

Also available on the Parliament of Canada Web Site at the
following address: <http://www.parl.gc.ca>

Publié en conformité de l'autorité
du Président de la Chambre des communes

PERMISSION DU PRÉSIDENT

Il est permis de reproduire les délibérations de la Chambre et de ses comités, en tout ou en partie, sur n'importe quel support, pourvu que la reproduction soit exacte et qu'elle ne soit pas présentée comme version officielle. Il n'est toutefois pas permis de reproduire, de distribuer ou d'utiliser les délibérations à des fins commerciales visant la réalisation d'un profit financier. Toute reproduction ou utilisation non permise ou non formellement autorisée peut être considérée comme une violation du droit d'auteur aux termes de la *Loi sur le droit d'auteur*. Une autorisation formelle peut être obtenue sur présentation d'une demande écrite au Bureau du Président de la Chambre.

La reproduction conforme à la présente permission ne constitue pas une publication sous l'autorité de la Chambre. Le privilège absolu qui s'applique aux délibérations de la Chambre ne s'étend pas aux reproductions permises. Lorsqu'une reproduction comprend des mémoires présentés à un comité de la Chambre, il peut être nécessaire d'obtenir de leurs auteurs l'autorisation de les reproduire, conformément à la *Loi sur le droit d'auteur*.

La présente permission ne porte pas atteinte aux privilèges, pouvoirs, immunités et droits de la Chambre et de ses comités. Il est entendu que cette permission ne touche pas l'interdiction de contester ou de mettre en cause les délibérations de la Chambre devant les tribunaux ou autrement. La Chambre conserve le droit et le privilège de déclarer l'utilisateur coupable d'outrage au Parlement lorsque la reproduction ou l'utilisation n'est pas conforme à la présente permission.

On peut obtenir des copies supplémentaires en écrivant à : Les
Éditions et Services de dépôt
Travaux publics et Services gouvernementaux Canada
Ottawa (Ontario) K1A 0S5
Téléphone : 613-941-5995 ou 1-800-635-7943
Télécopieur : 613-954-5779 ou 1-800-565-7757
publications@tpsgc-pwgsc.gc.ca
http://publications.gc.ca

Aussi disponible sur le site Web du Parlement du Canada à
l'adresse suivante : <http://www.parl.gc.ca>