

March 22, 2013

Via email: lcjc@sen.parl.gc.ca

The Honourable Bob Runciman, Senator
Chair, Standing Committee on Legal and Constitutional Affairs
The Senate of Canada
Ottawa, Ontario
Canada K1A 0A4

Dear Senator Runciman:

Re: Bill C-37, *Criminal Code* amendments (*Increasing Offenders' Accountability for Victims Act*)

The Association of Legal Aid Plans of Canada (ALAP) appreciates the opportunity to comment on Bill C-37, *Criminal Code* amendments (*Increasing Offenders' Accountability for Victims Act*). The ALAP represents legal aid programs in all provinces and territories. These plans are charged with providing legal services to those eligible individuals who cannot afford to hire a lawyer.

While the ALAP supports the goals of making offenders more responsible and accountable and providing services to victims of crime, ALAP believes that Bill C-37 constitutes an ineffective and ill-advised solution. Our views on this matter are set out below:

1. A judge currently has discretion to waive a victim surcharge where it would cause undue hardship to offenders or their dependents. Bill C-37 removes this discretion, resulting in two highly problematic consequences: increased marginalization of those who become offenders due to mental illness or cognitive disabilities, poverty or other underlying systemic triggers; and judges who will no longer be able to take the specific circumstances of Aboriginal offenders into account.
2. There is no evidence to show that payment of a surcharge deters crime or makes offenders more responsible or accountable. It does not appear the Victim Surcharge Program has been evaluated to show what impact it has on offender behavior. Other initiatives such as restorative justice programs, housing and social supports have been evaluated. Those types of programs reduce arrests, recidivism and costs to the criminal justice, health and social services systems.

3. There is no evidence to show that increasing the surcharge or removing the waiver will bring in more revenue for Victims Services programs. As of March 31, 2012, the Federal Government was owed close to \$129 million in unpaid fines and surcharges from over 22,000 people. Over one-quarter of the unpaid amounts were for less than \$250.00. Removing the waiver will mean that more people who cannot pay (persons in poverty, on social assistance and unemployed persons who are incarcerated) will have surcharges levied against them. The Public Prosecution Service of Canada appears to be moving toward the use of private for-profit collection firms to collect unpaid fines and surcharges. If so, the cost to collect will likely exceed the surcharge collected, if any, meaning a reduction in revenue.

(It should be noted that the United Kingdom's experience with victim surcharges seems to parallel ours. Currently, victim surcharges raise about £10m annually. In October 2012, surcharges were increased to raise a forecasted £50m annually. However, as of March 2012, the British government was already owed £593m in unpaid fines including victim surcharges.)

4. If a government program is a needed public good, it should be recognized collectively as such and resourced through general revenues from taxation, rather than through indirect taxes levied upon specific segments of society. Given the huge amount of unpaid fines, it is extremely unwise to think ongoing programs could be sustained under such volatile and low funding levels.

Victims Services are currently funded, primarily, through provincial general revenues and/or provincial surcharges. For example: only 10% of Alberta's victims' services funding comes from federal victim surcharges; and Ontario uses general government revenues in addition to federal and provincial fines.

Victim Surcharge funding also funds programs which assist in the administration of justice.

5. If a government can generate "tax" money by convicting people, would this over time exert pressure on government, prosecutors or others to charge and convict, rather than divert persons from the justice system? While it may seem highly unlikely, this question should be asked.
6. Judicial discretion in sentencing is a cornerstone of our judicial system and ensures that punishment fits the crime. It is also tied to values around rehabilitation and an understanding of how crime and offenders are created within a society. Removing discretion will result in punishment that is out of proportion to the offence and the offender. When applied to poor or marginalized persons, it may result in situations where that person receives a more severe punishment than would a middle-class offender. For example, collection costs will be added on and it could take years for poor person to finally pay them.

7. The argument that criminals, rather than taxpayers, must pay for victims' services is predicated on false assumptions as to who is convicted of crimes and how they come to be offenders. We know that in our criminal justice system there is an over-representation of persons with mental health issues, the poor, Aboriginal persons and others who have been and are disadvantaged.

For example, this year's National Criminal Justice Symposium (held January 18 and 19, 2013 in Montreal) focused on persons with mental health issues and their interactions with the criminal justice system. Depending upon the methodology and definitions used, studies have found that 30% to 90% of persons in the criminal justice system have mental illness, mental health issues or cognitive impairment. While new admissions to federal correctional institutions decreased between 1997 and 2001, the proportion of offenders with mental illness increased. De-institutionalization, the lack of community supports and the lack of a national mental health strategy are all reasons that have been cited for this problem.

Imposing surcharges on those who cannot pay without hardship to themselves or their dependents is simply another example of "criminalizing the poor". Unpaid fines and surcharges are debts that never go away, even when a person is on social assistance or in jail with no ability to pay. There is no statute of limitations on them and they don't have to be periodically renewed as do civil judgment debts. Poor and marginalized offenders are more vulnerable to the consequences of unpaid fines and the collection process. They could lose their ability to renew a licence or motor vehicle registration. If they have work, this could limit their ability to get to work. If they are making any income or have any money in the bank, their wages or bank accounts could be garnished, setting them back further and likely putting them into civil debt. And, it could potentially restrict their ability to access housing, due to bad credit records.

8. Aboriginal persons, being 3.8% of the Canadian population in 2006, are over-represented in the criminal justice system. In 2007-2008, Aboriginal persons represented 20% of adults who were remanded, 25% of those admitted to provincial or territorial custody, and 18% of adults admitted to federal custody. They also represented 20% and 21% respectively, of adults sentenced to probation or a conditional sentence. Geographically, incarceration rates are significantly higher in territories and provinces with the largest proportion of First Nations, Metis and/or Inuit populations. Increasing the victim surcharge and removing judicial discretion to waive it will not reduce this over-representation. It may actually make Aboriginal values even less important within the justice system. Given that *R. v. Gladue*¹ specifically requires judges to take into

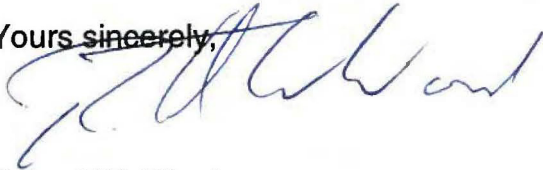
¹ [1999] 1 S.C.R. 688.

account the unique circumstances of aboriginal offenders when imposing sentence, one could argue that Bill C-37 may severely impair Gladue.

There is no evidence that this Bill (nor the existing Victim Surcharge Program) will increase offender responsibility or accountability. The Funds raised are not a major part of Victim Services funding and are unlikely to increase under this Bill. Instead, the Bill targets marginalized persons and will marginalize them further. It removes the Courts ability to ensure the punishment is appropriate for the offence and offender and effectively overturns Gladue. It is respectfully submitted that Bill C-37 should not become law.

Thank you for considering the concerns of the ALAP.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Robert W. Ward", written over the typed name.

Robert W. Ward
Chair, ALAP