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Chair

Mr. Dave MacKenzie

Standing Committee on Justice and Human Rights

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• (1530)

[English]

The Chair (Mr. Dave MacKenzie (Oxford, CPC)): Seeing the clock at 3:30, we'll call the meeting to order, this being meeting 43 of the Standing Committee on Justice and Human Rights. Pursuant to the order of reference of Wednesday, June 20, 2012, today we are considering Bill C-36, an act to amend the Criminal Code, known as elder abuse.

We have some witnesses before us today. Just before we get to that, I would say that for a variety of reasons, Thursday's meeting will be cancelled. The clerk has notified witnesses, some of whom are out of town. We'll cancel Thursday's meeting, and as for the witnesses who were scheduled for Thursday, we'll try to have them here for the following Tuesday.

Ms. Kerry-Lynne D. Findlay (Delta—Richmond East, CPC): That's the Tuesday after the break.

The Chair: Yes, we have a break in here. The issue would be whether we do clause by clause, which was planned for then, or we do it on the following Thursday.

Ms. Kerry-Lynne D. Findlay: I believe we agreed that we would move the whole calendar forward.

The Chair: The clerk will make arrangements, then, for clause by clause to be done on the following Thursday.

We have witnesses with us today, one of whom is here on a video conference, Madame Beaulieu. She is chairholder, research chair on mistreatment of older adults. In the room we have Susan Eng, vice-president of advocacy for the Canadian Association of Retired Persons, and Naila Butt, executive director of the Social Services Network.

I think when you received your correspondence from the clerk, he indicated that you would have up to 10 minutes for an opening address. I'll let you know when you're at nine minutes so that we can cut you off at the 10-minute mark without disturbing what you're doing.

Perhaps we can start with Madame Beaulieu on the videoconference. If you have an opening address, please go ahead.

[Translation]

Ms. Marie Beaulieu (Chairholder, Research Chair on Mistreatment of Older Adults, As an Individual): Ladies and gentlemen members of the parliamentary committee, good afternoon.

Thank you for the opportunity to participate in your work from afar, thanks to the technology that connects the Université de Sherbrooke to Ottawa. I appreciate modern means of communication.

As the Research Chair on Mistreatment of Older Adults, I am very happy to speak to Bill C-36. Allow me to introduce the chair and tell you about my professional background before I go ahead with my comments.

The Research Chair on Mistreatment of Older Adults was created in November 2010, for a five-year period ending in October 2015, as part of Quebec government's action plan to prevent senior abuse.

According to the International Network for the Prevention of Elder Abuse, Inc., which I represent in North America, this is the only research chair of its kind worldwide. The chair has five goals, including the dissemination of research results to various communities. My presentation is set against that backdrop and based on over 25 years of research practice in the area of elder abuse.

I want to thank the federal government for its concern about the mistreatment of seniors. That social problem deserves attention for various reasons. I will state two main reasons.

The first is the increasing proportion of seniors in the Canadian population. According to Statistics Canada, elderly people made up 14.9% of Canadians in 2012, but it is projected that, within 25 years, one person out of four will be a senior. That figure alone is reason enough for us to look into this.

The second reason is that the response to the needs of abused seniors and their abusers fluctuates greatly from one region to another of Canada. We need knowledge, regulatory and legislative frameworks, and practical guidelines. Your actions are headed in that direction.

The step we are currently taking has to do with the Criminal Code of Canada. More specifically, I am talking about our legislators's option that is currently being studied—the sentencing. I want to begin by saying that I cannot see anyone being opposed to what is proposed. Nevertheless, you will not be surprised to hear that I have some comments to share with you. I divided my comments into two categories. I will begin with the wording of the amendments, and then I will discuss their application.

The proposed subparagraph is set out as follows:

(iii.1) evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation,

I want to begin by commending the legislator for not introducing the notion of vulnerability in the wording. I have been fighting for many years to disprove the incorrect theory that being elderly necessarily leads to being vulnerable, which in turn leads to being abused. I want to break that connection made all too quickly between age, vulnerability and abuse, as everyone will be afraid of aging if abuse becomes an inevitable consequence. In addition, the individual diversity among people from 65 to 100 years old—or even between two 75-year-old individuals—is so great that designating that group with a single notion, that of vulnerability, is terribly limiting.

However, how will a judge assess the significant impact on a senior's life? Those who have been involved in criminal law courts know that, during a trial, the consequences are not presented as evidence. Therefore, the court can hear about the impact on the victim only once someone pleads guilty or is convicted. The victim is then invited to fill out the victim impact statement form at the court where they will talk about the effect of the crime on various areas of their life. Currently, the judge may take that into account or not.

• (1535)

I am wondering how many senior victims fill out that form. I don't really have the answer to that question, which I am adding to the discussion. Although that form is meant to provide the victim with a voice, some of them have a hard time talking about what happened and putting everything in writing. Is that worse or better for a senior? I don't know. However, I tend to believe that, if a senior has cognitive or functional limitations that affect their health, filling out the form would be a challenge.

So what kind of provisions are there to make sure that the judge will consider that significant impact, to use the working of the bill? In my own words, this is the question we need to ask ourselves: How will the judge take those consequences into consideration and deal with them? That's important to know. If we do not know that, we may feel that the proposed subparagraph will not change anything, as judges have always had the power to take the nature of the crime into account—as well as its seriousness and the consequences on the lives of victims—when deciding on a sentence.

The second question I am asking myself has to do with age. How should we define age? Do we base it on chronological age, whereby every day we will all be older than we were the day before? Do we go by physiological age, or health status? Or should we go by cognitive age or brain function? Should we base it on social age, where life is divided into phases, including school, work, marriage or young family and then retirement? In short, how will the notion of age be operationalized in this bill?

The third question I ask myself is about the word “and” placed between “age” and “other personal circumstances” in the bill. Am I to understand that age will not be the only factor considered? Once again, how will the required elements be gathered and how will they be taken into consideration to determine the personal situation of the senior victim?

The second part of my comment is about implementation.

The sentencing is the step that concludes—or nearly concludes—any legal process. That implies that an offence or a crime has been

committed and the police got involved. At that stage, the case has already been deemed serious enough and could be developed further to constitute a formal complaint. The suspect or suspects have been identified, although I recognize that, in cases of elder abuse, since we are talking about a relationship of trust, the identification of abusers may be less of a challenge. The case has made its way to court, there was no out-of-court settlement, and the criminal or criminals involved have been convicted or have pleaded guilty. Only then would the proposed subparagraph apply.

We all understand that many cases of abuse may not go through all those steps. What happens to cases of abused seniors that have not made it to the end of the process? In other words, what will be the real repercussions of this measure or how many cases will be concerned?

All the literature and practical accounts show that a small portion of abuse cases make their way to court. There are of course some more subtle situations that will never come before courts, such as excessive familiarity or extreme rudeness, but there are all those other situations that are never heard about. Many reasons may help us understand why so few cases are heard. A major reason is the structural ageism of our communities.

What value does the word of a senior have for a police officer? How are seniors considered? How are they treated by a lawyer or a judge? How does a crown prosecutor assess the capacity of a senior to testify in a court? Wouldn't a good out-of-court settlement be better than a trial in some cases because the senior may have a hard time testifying?

How can a senior deal with the length of proceedings, from the moment of victimization to the sentencing? It is well known—naïve optimism aside—that some defence lawyers use postponements to bring down the trials involving elderly victims.

• (1540)

So, as you can see from my many comments and questions, I am wondering about all the other actions required in preparation for the change we are discussing today. My concern is that the legislation will apply only to a limited number of situations. What, then, can we put in place to help as many victims of elder abuse as possible?

If we assume that 10% of seniors could fall victim to elder abuse in Canada, that would mean nearly 52,000 victims. After all, there are almost 5.2 million seniors in Canada. Even if there isn't agreement that 10% is the right figure, and we assume it is actually 5%, that still means 26,000 victims—and that's a lot. Of those 26,000 cases, how many will make it to court?

With that in mind, I urge you, as members of society and parliamentarians, to continue working together towards other tangible measures that will support victims of abuse. That means doing a better job of raising awareness around the issue and providing proper training to all those who will be working with victims of elder abuse.

[English]

The Chair: We're down to nine minutes.

[Translation]

Ms. Marie Beaulieu: Thank you.

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

• (1545)

[English]

The Chair: Thank you very much.

Ms. Marie Beaulieu: Questions are welcome in both languages.

The Chair: Thank you.

Ms. Eng, would you like to make an opening address of 10 minutes?

Ms. Susan Eng (Vice-President, Advocacy, Canadian Association of Retired Persons): Thank you, Mr. Chairman.

I'm very pleased to appear before the committee today to support Bill C-36.

CARP is a national non-profit, non-partisan organization with 55 chapters and over 300,000 members across the country. We focus on improving the quality of life for all Canadians as we age. A critical component of our mandate, therefore, is the right of all Canadians to be free of discrimination based on age and of its worst manifestation, which is elder abuse.

I followed the committee's deliberations at your meeting last week in preparation for today's appearance, and I would say that CARP members would be very encouraged by the all-party support shown for the proposal to increase sentencing for elder abuse convictions. On behalf of people they know who have been abused, and sometimes on their own behalf, they will take heart that Parliament is taking action to eradicate the scourge of elder abuse.

They will also be impressed by the common thread in your deliberations that the proposal, on its own, is but one element in a comprehensive strategy needed to prevent, detect, report, investigate, and ultimately prosecute elder abuse.

CARP has been on the record as calling for a single point of first contact, an elder abuse hotline, if there is evidence of abuse. To reflect our social responsibility, there should be a duty to report. Elder abuse is a public crime, not just a personal matter.

We believe that here is a need for greater caregiver support for the estimated 2.7 million Canadians who are now caring for loved ones at home, and we're calling for specialized investigative support and victim services and shelters for the elder victims of abuse. That is in addition to ensuring swift passage of Bill C-36.

There is no doubt that other levels of government must play a role. The investigation and prosecution of elder abuse crimes falls under provincial jurisdiction. The provinces and municipal levels can provide victim services and shelters for victims of abuse. Spending priorities at all levels of government can increase access to affordable housing, relieve caregiver pressures, and provide income support, all of which can help to prevent elder abuse. That is not to excuse elder abuse in any manner; it is to reflect on some of the pressures that can give rise to abuse.

To be perfectly clear, CARP's view of elder abuse is that it is a crime of predation, so we target the predators, whose crime is made worse because they're exploiting the power imbalance between them and their victims. More often than not, that power imbalance is given to the predators out of trust, familial love, or dependence. That's

what makes them vulnerable. That's why, unlike other crimes, the vast majority are committed by those who are closest to the victims. That is why CARP supports Bill C-36, which targets precisely this exploitation and the differential impact due to age and other personal circumstances.

In fact, CARP recommended this provision to the then minister for seniors, Julian Fantino, at our first meeting, in February 2011. As he was a former chief of police, I knew he would immediately understand the operation of section 718 of the Criminal Code, which can increase sentencing for aggravating circumstances. Providentially, and sadly, we had occasion to put this discussion into sharp focus just one month later, with the case of a grandmother who was forced to live in an unheated garage through a Toronto winter.

Bill C-36 adds a clause to section 718.2, but it is instructive to note that the section was originally added to the Criminal Code to direct more severe punishment if the offence was motivated by bias, prejudice, or hate based on race, gender, religion, age, etc. In our opinion, that more directly targets the predator and his or her motivation. Bill C-36 adds the further circumstance of a differential impact due to age.

Taken together, we believe that the provisions can achieve the purpose of deterrence and prevention.

CARP takes the position that even one case of elder abuse is one case too many, but the numbers still bear mentioning. CARP member polling shows that approximately 10% of older Canadians experience some form of abuse, which is consistent with academic and Statistics Canada research. Based on the recently released census figures, there are 4.9 million seniors as of 2011. At 10%, potentially half a million Canadian seniors may be facing some form of elder abuse.

• (1550)

In just 10 years it's estimated that the 65-plus population will grow to 7.9 million. If nothing is done to reduce the incidence of abuse, three-quarters of a million seniors could face elder abuse.

This 10% figure is made worse by several factors.

First, U.K. research suggests that vulnerable seniors, defined as those who are dependent on others for care or who suffer from some type of disability, suffer much higher rates of abuse, at 25%.

Second, there's under-reporting. According to Statistics Canada, about 7 in 10 crimes against older Canadians are never reported to police. Studies of elder abuse in the U.S. show that as many as 90% of all cases of elder abuse go unreported.

Third, the thing that makes this worse is that it's largely a crime that takes place where a person is supposed to be the safest, among their family and friends. Family violence against seniors has increased by 14% since 2004. As the Minister of Justice testified, of the 7,900 reported acts of violence against seniors, roughly a third were committed by family and a third by their acquaintances.

I have a final comment on public awareness. Of course there is a great need for people to recognize what constitutes elder abuse, and, more importantly, what they can do about it. The public service announcements in the New Horizons program have gone a long way to promoting public awareness. Police and prosecutors need further training and resources to better investigate and prosecute abusers, but they are not going to get those resources allocated unless all levels of government make it clear that eradicating elder abuse remains a priority. That's why we cannot lose sight of the importance of a Minister of Justice standing up in Parliament and before this committee to proclaim our collective abhorrence of elder abuse, and for this committee to back that up with passage of Bill C-36.

While we're at it, let's rename the annual Elder Abuse Awareness Day and call it the Day to End Elder Abuse.

Thank you very much.

The Chair: Thank you.

Ms. Butt, if you have an opening address, please go ahead.

Dr. Naila Butt (Executive Director, Social Services Network): I would like to thank the Standing Committee on Justice and Human Rights for inviting the Social Services Network to appear before you as you are examining Bill C-36, an act to amend the Criminal Code in reference to the issue of elder abuse.

My name is Dr. Naila Butt. I'm the executive director of the Social Services Network, a not-for-profit charitable organization located in Markham.

The Social Services Network was established in 2004 to deliver culturally and linguistically appropriate direct services to the diverse multicultural South Asian population. Our goal is to inform, support, and empower the community to live an independent and enriched life and to integrate it into the broader Canadian context. With a growing portfolio of services and projects, our multilingual staff represent many South Asian cultures, countries, and faiths, and we have delivered over 27 projects with 32 community partners involving volunteers, coordinated more than 800 awareness and wellness activities, served 4,000 South Asian clients, and engaged over 50,000 community members.

Over the last two years we have established ourselves as a major provincial and national player, particularly as we are at the forefront of addressing the issue of violence in South Asian families, including a strong focus on elder abuse.

One of our main avenues for addressing the issue is through our Impact of Family Violence: A South Asian Perspective, which is an annual province-wide conference project.

Our expertise has also been acknowledged through the awarding of a pan-Canadian initiative funded by Human Resources and Skills Development Canada's new horizons for seniors program. It sets out to work with South Asian seniors from diverse cultural and linguistic

communities and the relevant sectors involved in violence prevention and abuse to identify the areas where seniors are at risk of abuse. The goal is to establish a coordinated community response and increase knowledge on elder abuse awareness and the relevant supports that are needed.

Using a local-level community development approach, this project is currently being implemented in four regions of Ontario—York, Toronto, Peel, and London—with the goal of addressing and reducing elder abuse in our communities.

Why is elder abuse a concern for South Asian families?

Elder abuse in South Asian communities is becoming a growing concern, as SSN front-line staff have identified from their work in the community and as detailed in our Impact of Family Violence conference report.

The report of the May 5, 2011, conference presents a compilation of the collective and cumulative ideas of over 200 conference participants and experts who agreed upon recommended next steps to take this work forward.

There is little concrete quantitative data that outlines the extent of elder abuse in South Asian communities, but the results of the conference and other focus groups that have been conducted by SSN indicate that elder abuse is a prevalent issue that has been silenced in South Asian homes.

In both conferences, in 2011 and 2012, we dedicated a workshop to the issue of abuse against South Asian seniors. Workshop participants included front-line service providers representing diverse linguistic, faith, and cultural South Asian communities who work directly with seniors; South Asian seniors themselves; academic subject-matter experts; and mainstream organizations involved with the issue of elder abuse, including the Ontario Network for the Prevention of Elder Abuse, the Advocacy Centre for the Elderly, and the Toronto, York, and Peel police services, which have expertise in elder abuse.

A quote from one of our six community workers who work directly with the families and seniors helps to summarize and contextualize this issue:

Seniors are not aware of what constitutes elder abuse. They do not know of their rights. They are afraid of speaking out. Many feel ashamed of the treatment they are receiving from their children and grandchildren. Due to language and cultural barriers, they are unable to access many supports that are available.

South Asian seniors are clearly isolated and neglected. Most live with their adult children and their grandchildren, who are busy with their school and paid work. There's a communication gap with youth, and with the adult children at work, there is no time to provide support to seniors.

Many seniors are experiencing exploitation in terms of having their pension cheques taken away from them, leaving them with no access to money, and the expectation that they are to provide child care, housework, and cooking for the family, which are difficult activities for older seniors who are sometimes frail and unhealthy.

●(1555)

Family dynamics are complex, with multiple factors influencing stressors in the home. For example, there are financial challenges for their adult children who, as immigrants, find it difficult to find a job but need to support their own children and their parents.

There is a notion in the South Asian culture that when you have children, they will look after you as you age, just as you took care of them when they were young. In their home countries, this expectation is supported. However, immigrant families experience multiple barriers to inclusion, such as systemic discrimination in employment and education and other settlement stresses that put pressure on this custom.

Seniors and front-line workers described the psychological, verbal, and emotional abuse seniors were experiencing in the home, leading to depression and mental health issues. Some South Asian seniors, such as Tamil seniors, suffer from post-traumatic stress disorder related to their experiences of war, and they worry about their families back home. Financial abuse is also evident, leaving seniors dependent on their adult children even for transportation money.

Active and passive neglect of seniors also seems to be evident in this community. Violation of rights is definitely a form of abuse that is experienced by South Asian seniors. False information about their entitlements as sponsored immigrants and fear of deportation and the police are tactics that are sometimes used by abusers to control the seniors in their homes.

In addition, there is a lack of knowledge about the Canadian system and laws, and they do not know where to go to get help. In a few cases we heard about physical violence against seniors in the home.

One of the biggest issues that arose in many of our discussions on the issue of elder abuse was the cultural and specific systemic barriers to disclosure and reporting. Because of this, we inferred that the incidence of elder abuse is higher than has been identified.

What are the barriers for these seniors in accessing services? There is a strong fear of bringing shame to the family, or they may be too proud to confess their problems to others. It also brings shame to the whole family if others in their cultural and religious community think their children aren't taking care of their parents.

From the adult children's perspective, it can be considered a shame to bring in outside caregiving help for their senior parents, thus placing the burden of caregiving on already busy families. Language barriers, cultural conflict, loss of their social support system, and their changing role in Canada also contribute to the seniors' vulnerability. They don't know where to go, nor do they have an understanding of their rights and entitlements. Lastly, South Asian seniors are hesitant to use the mainstream services because there is fear that agency intervention will result in family breakup and disintegration of the family.

However, we do recognize that the factors influencing the occurrence of elder abuse in these homes are complicated and go beyond the individual family or cultural experience. For the diverse South Asian populations living in Canada, the most significant

stressors they experience relate to the migration and settlement processes. They're trying to find jobs, secure affordable housing, pay the rent, buy groceries, and understand the Canadian justice system.

Stress and poverty are attacking their physical and mental health, with isolation, frustration, and depression taking over. Homes are overcrowded, and families are experiencing stresses within the family home related to the new need for more than one breadwinner here in Canada and the changing role of women and elders.

When examining the issues related to family violence in South Asian families, explanations that emphasize culture often provide an overly simplistic analysis to the complex and confusing web of problems that South Asian families in Canada are engulfed in.

●(1600)

The Chair: You have one minute.

Dr. Naila Butt: What needs to be done?

We fully support this legislation. Our elder abuse project and other cross-sectoral work that we are doing in Ontario has focused on the strategies that follow.

First, provide education for immigrants on what life in Canada is like for immigrants, including Canadian rights, freedoms, and laws, and also on what to expect with grandchildren growing up at home, financial restraints, and the justice system.

Also, there needs to be family counselling for all members of the family, delivered by South Asian counsellors, not mainstream counsellors.

As well, there needs to be more support for adult children caregivers, more support for South Asian programs for seniors, delivered by organizations like SSN, and more peer-to-peer support groups.

Elder abuse information needs to be provided to seniors in their own languages to educate them on what constitutes abuse, the consequences of abuse, and where they can go for help. There is a need for support programs that help health and social service providers and seniors themselves identify the signs of elder abuse, and for more sector-specific, cross-sectoral, culturally sensitive training.

There is a need for South Asian-specific emergency residential shelters and also a need to work on problems with the whole family, as well as a need for more funding for mental health services.

In summary, there is a need for education and support for seniors and families before and after the immigration process, for awareness training for front-line health and social service providers in identifying signs and symptoms, for culturally and linguistically sensitive family counselling programs, for cross-sectoral collaboration, and for more support for adult children and families.

In conclusion, the South Asian population is growing rapidly, and South Asians continue to remain one of the largest visible minority groups in Ontario as a whole. The population of Canada is also rapidly aging. In the York Region alone, by 2026 a 400% increase in seniors is projected.

These statistics, coupled with elder abuse stats, validate our inference that elder abuse is occurring in our communities at a comparable rate proportional to the mainstream population in Ontario—

The Chair: Thank you. We're out of time.

Dr. Naila Butt: Okay.

The Chair: Madam Boivin, at our last meeting I think I said that it was seven minutes to start. It's five minutes for each round. I apologize for that confusion last week.

You have five minutes.

Ms. Françoise Boivin (Gatineau, NDP): I didn't complain.
[Translation]

I want to thank all three of you for being here today to discuss such an important issue. I think we all share the same vision when it comes to the matter of elder abuse. Ms. Beaulieu, I believe it was you who said that no one could oppose such a bill. I challenge anyone here to stand up and voice their opposition to Bill C-36.

Nevertheless, no discussion is ever that simple. In listening to all three presentations, I don't think I heard anyone say that Bill C-36 was a magic bullet. The problem is far more complex and much more nuanced than we might think. What's more, it impacts a group of individuals who are among the least likely to speak up—and that is not meant in a negative way—but who may have the most reason to speak up and complain.

When I began practising law—I'm going to betray my age—almost 30 years ago, when I was called to the bar, the issue of domestic violence was coming to the fore. Everything I have read about Bill C-36 so far very much reminds me of that issue. In other words, it's going to take a lot of education, a lot of publicity, something that is well under way in Quebec. In fact, I was extremely glad to see the ads featuring Yvon Deschamps, for example, speaking out against the taboo surrounding elder abuse.

I have a concern about Bill C-36 and the way it is written. I am not so sure that it will truly do what we think it will. Ms. Beaulieu, you did a good job of making that point when you said that it comes at the very end of the process. So the process must have been initiated for the bill to even be applicable, someone must have been charged. Many sections in the Criminal Code could apply to elder abuse cases, whether we're talking about criminal negligence, fraud or some other act.

•(1605)

[English]

My question is directed to the three of you.

When you did your studies—and we have those statistics of the percentage of people it touches, or whom we assume it touches—when a sentencing process is reached, were you aware that judges were not using this as a deterrent, as aggravating circumstances? People from the ministry told us last week that, yes, it was already used. Do you agree with them or not?

Ms. Susan Eng: I would disagree, simply because the types of sentences that were being handed out really shocked the conscience. People would look at that, and despite all the various excuses you

could use—for example, that the person was the caregiver for the older person and therefore you couldn't then send them to jail, etc., or that they didn't know any better, as in one case where one person was really low-functioning—you still look at it and say that can't be enough. It's almost a licence to commit this crime.

From that observation, without adequate statistics on whether judges might have given a heavier sentence had this provision been in place, at least at this point we have to bring it forward as one possible reason that the sentences are inadequate.

Ms. Françoise Boivin: Are you all reasonably satisfied that when it says,

[Translation]

the bill says, “had a significant impact on the victim, considering their age”,

[English]

it doesn't specify that it has to be an older person? It refers to “age”—meaning what?

Ms. Susan Eng: Well, it wouldn't mean anything else.

The Chair: I think Madam Beaulieu wants to say something. Go ahead.

[Translation]

Ms. Marie Beaulieu: Thank you, Ms. Boivin, for your comments, which I sincerely appreciate.

You are raising some points that I touched on during my 10-minute presentation. I wonder whether judges aren't already using their discretion to take into account the fact that the victim is a senior.

I am troubled by the fact that so few cases ever make it to court. When you examine the case law, something I did two or three years ago, you find very little there.

One probable solution lies in educating all of the stakeholders in the justice network about what it means to work with seniors. That was what I recommended earlier when I said that police officers needed to learn how to work with seniors with respect to gathering evidence. That recommendation also applies to crown prosecutors, defence counsel and judges.

Will this amendment do a lot more? It may in the few cases that actually lead to a conviction. My overriding concern is that this bill targets only a minority of the situations out there, when the focus should really be on prevention.

So, while I would never oppose Bill C-36, I would urge Canada's parliamentarians to continue considering all the other steps in the process, particularly those focusing on prevention and better support and assistance.

On my end, I am working on a research project aimed at identifying better police practices with respect to seniors, because everything goes back to that. If the police don't go about gathering evidence in the right way from the outset, the case will never result in a conviction.

•(1610)

[English]

The Chair: Thank you. We're over time. Maybe we'll explore that a little bit later.

Mr. Seeback, go ahead.

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

I'm still not sure. Ms. Boivin surprised me by saying it might not be enough. It's almost as though she was saying that it's not going far enough. Maybe we should look at a mandatory minimum penalty or something, but I'm just....

Ms. Françoise Boivin: I should have known.

Mr. Kyle Seeback: Ms. Butt, you talked about issues predominantly in the South Asian community. I come from a riding, Brampton West, that has an exceptionally large and vibrant South Asian community. Some of your comments struck me as something I want to explore a little bit with you.

You talked about some of the issues facing seniors in the South Asian community with respect to elder abuse. I think it's not talked about very much. I can say that no one has ever spoken to me about it. From what you seem to be indicating, it is a real issue and something we should find some solutions for.

I want to talk to you about how we can try to do some work like that. I know your organization does some work. I think you've received some New Horizons funding to help with that work. When you talk about trying to break down the barriers, I understand what you're saying. There's a language barrier, there's a shame barrier, and all these kinds of things. How would we get this message through to the seniors in our South Asian community, particularly, of course, in a riding such as my own?

Dr. Naila Butt: It's basically a community development approach that we have to work with. We have to work with the seniors, with the family. We have to raise awareness. We also have to work with all the stakeholders. It's not a vertical approach that you have to take. Look at the individual. You have to look at the society as a whole. What are the barriers? What are the challenges that we need to take on?

People don't talk about this issue because the expectation is that seniors are taken care of by their children. There are challenges that these communities face.

Mr. Kyle Seeback: Then how do we raise awareness within the community for the seniors who might be facing this abuse? What would be...?

Dr. Naila Butt: You need to have more community support groups, counsellors, and community-based agencies sharing the information about the services that are available. The information should be available in the local languages. You should have counsellors who understand the perspective of their community. We need people who can really engage with them, people in a position of trust. Faith leaders play a very important role. Places of worship are another thing. You have to engage all the sectors in the society.

Yes, it's an issue. This legislation is very important, but if you do not provide adequate community support and resources, it will not

make a difference. Even for those people who don't have a language barrier, it's an issue: how will they access the justice system?

There's a long way to go, and there's a whole step in behaviour change before people feel confident enough to go and access their rights. This is what we've been doing through our Impact of Family Violence conference. The next conference is in 2013. We bring all the sectors together, which includes the police, the school systems, the community-based organizations, mainstream organizations, and the justice system. We bring them all together and have a dialogue to see what the steps are moving forward.

Of course policy-makers are a huge piece. We have to have that and raise awareness, and then have community programs that address the needs of those seniors. We need public awareness campaigns.

•(1615)

Mr. Kyle Seeback: Great. I'd be very interested in working with you to try to raise awareness, certainly within my riding of Brampton West. I'm pleased to hear that you're supportive of the legislation. I agree; I think it's a great step that works in conjunction with a number of other programs that we've put in place.

This is a growing issue. Our population is aging, and there are going to be more people who could be victimized. In addition to programs, a significant portion of what this bill is doing is adding a denunciation value. That's going to be very helpful within the community, to know that communities all across the country denounce this type of behaviour.

The Chair: Thank you, Mr. Seeback.

Mr. Cotler is next.

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

Ms. Eng, you mentioned in your opening remarks that you urged swift passage of Bill C-36, yet your brief calls for a comprehensive approach to punish the most egregious manifestations of elder abuse as well as preventing the abuse from occurring in the first place. This has been a common theme from all three witnesses: the importance of prevention.

Bill C-36 has but one clause: a proposed change in sentencing whereby a judge could consider the victim's age and other personal circumstances, including their health and financial situation, as aggravating factors. As such, the bill effectively operates to punish those who've already engaged in elder abuse rather than protecting seniors from such abuse to begin with. Indeed, the Criminal Code already empowers judges to consider any relevant aggravating or mitigating circumstances.

Some have argued that Bill C-36 is unnecessary. Moreover, the specific inclusion of personal factors such as health and financial situation may be problematic in that it could cause these elements to be misused at trial. Having urged swift passage of Bill C-36, are you suggesting that it be enacted in its present form, which is effectively after the fact, as an intervention, or, given the importance of prevention, are you also recommending that Bill C-36 be amended so as to address the issue of prevention as well?

Ms. Susan Eng: Thank you for the question.

I was never a criminal lawyer, but I suppose my past clients might be considered criminals by some. I don't know exactly how that act should operate. From our perspective, prevention is the key, and from what we also understand, the purpose of this exacerbated sentencing is to increase the deterrent effect of sentencing. We recognize fully that people get to this point in the judicial process after much else has occurred—detection, investigation, and prosecution—for all of which we encourage more allocation of resources and greater sensitization to the issue.

Detection and prevention, of course, ought to be our very first initiative. That doesn't fall to the Criminal Code, but we believe very strongly that this initiative and the kind of prominence that will be given to it will be enough to start spurring on both setting up priorities at the provincial level, which have to allocate the resources for prosecution and investigation, as well as the average Canadian who recognizes now that this no longer has to be a silent and hidden offence, that there is something the system will do something about and something they can do something about. Obviously our recommendations go beyond this provision to extend to the other kinds of resources and a comprehensiveness to the resources that are available so that the average neighbour who sees something going on knows exactly what to do next.

• (1620)

Hon. Irwin Cotler: I appreciate that your brief contains seven specific recommendations and that those specific recommendations really are part of a comprehensive approach, as you mentioned, and will indeed address the whole question of elder abuse in that comprehensive fashion.

We all agree on supporting this bill in principle. My question is only whether there are any specific refinements or improvements that could be made to this bill in its present form that may make it more protective of the issues of elder abuse rather than addressing just the punishment, which is after the fact.

Ms. Susan Eng: I understand you.

At the time that the provision 718.2 first got first put into the Criminal Code, my work was in anti-racism, and we wanted hate crime provisions put into the Criminal Code, obviously. They weren't put in, but the sentencing provisions were put in on the recognition that many of the manifestations of a crime were assaults and other kinds of recognizable offences that were exacerbated by the hate motivation. When we looked at the provision in paragraph (a) of section 718.2, we noticed that age was one of the protected measures, but it was not clear exactly how that was going to be protected, whether it was the imbalance in terms of age or only because an older person was going to be affected.

The combination of adding the impact requirement does, I think, improve the status quo as to what else could be put in there. We have recommended that consideration be given to a specific crime of elder abuse. We are not specifically recommending it. I think that needs more review and research, but if necessary, there should be a specific crime of elder abuse that should be inserted into the Criminal Code.

The Chair: Thank you, Mr. Cotler.

Go ahead, Ms. Findlay.

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

Thank you to all for being here today. It's an important topic, obviously, for all Canadians and for us.

Certainly in my law practice I ran into many of these situations, unfortunately, doing family and estate litigation particularly. Sometimes they're very sad and difficult. I think many such cases go unreported or under-reported, as has been mentioned here.

However, what we're here to deal with today is to try to create a provision within the Criminal Code that will allow judges in sentencing to achieve a certain consistency. I note in that respect that I would suggest we are seeing some increased judicial awareness.

I'll refer to just a few cases. There was the 2009 Ontario Superior Court case *R. v. Foubert*. In that case, there was a personal support worker who pleaded guilty to assaulting four elderly war veterans suffering from Alzheimer's disease and dementia. They were in his care. In sentencing, the offender was given a period of incarceration to be followed by a probation order with quite onerous conditions. The sentencing judge noted the growing phenomenon of elder abuse in our society and the need for it to be addressed in a serious way.

Another example is from 2010, in the Supreme Court of Newfoundland and Labrador in *R. v. Manuel*. In that case, the offender had twice broken into the home of an elderly veteran and had assaulted and robbed him. In sentencing that offender to six and a half years of imprisonment, the judge was clear in stating that the sentence being imposed was designed to address the public interest in deterring criminals from breaking into private homes, and especially the public duty to protect the elderly in our society.

There's also the 2010 decision of *R. v. Kos Rabcewicz Zubkowski*. In that sentencing of Ms. Kos, she was found guilty of assaulting her elderly mother and of failing to provide the necessities of life.

Of course detection and prevention are always fundamental. I've heard those comments today, and I know that's what was in mind when our government brought in, for instance, the elder abuse initiative. It was a three-year, \$13 million project to increase awareness. We believe that has been successful. That doesn't necessarily mean that's all you do in that three years, but we see this as part of a package of initiatives and support in this area.

Under this proposed amendment, the evidence that an offence had a significant impact on the victims—I think, Ms. Eng, you keyed in on that—due to their age and other personal circumstances, such as their health or financial situation, then becomes an aggravating factor. We believe that once this bill is passed into law, our proposed amendment would ensure a more consistent application of sentencing practice throughout Canada.

I'm going to direct this to Ms. Eng, at least initially, just because we share degrees in law.

Do you think a consistent application of the established sentencing practice will help ensure that violence against individuals who are victimized due to their age would mean that this offence then would be treated seriously in all circumstances? Do you feel we're getting to that effect?

•(1625)

Ms. Susan Eng: I absolutely think so; otherwise I would leave it to the discretion of the judges.

I think the importance of this approach is that it's very similar to the hate motivation circumstances where, if you look at the strict parameters of the event.... Let's say it's an assault that causes no permanent injury, for example. If it's in an environment where there's been a breach of trust and it's their own son hurting them, and there's a loss of their sense of composure and their dignity and so on, under normal circumstances of a judicial decision they might say, well, it was an assault, but there was no permanent physical injury, and in such a circumstance, there may be no sentence whatsoever.

When you recognize that there was a betrayal of trust, with a complete downward spiral for the victim of that circumstance due to that imbalance in age and due to the trust and dependence on the family relationship, then there is a justification for increasing the sentencing. That's why having the added requirement to consider those circumstances—that imbalance and that vulnerability—is an appropriate additional provision to what we already have in the Criminal Code.

I do believe it will make a difference. We tend to watch public opinion a lot. While we might hear that, agreed, nobody is in support of elder abuse, the average person only notices it when something like a really stiff penalty filters down to their awareness. Then they see. Then they look back and see, well, maybe in this circumstance this is a real representation of society's collective disapproval of this kind of behaviour, and if they don't stop themselves, at least they might realize that they might get caught and be punished.

The Chair: Thank you.

Ms. Blanchette-Lamothe, please go ahead.

[*Translation*]

Ms. Lysane Blanchette-Lamothe (Pierrefonds—Dollard, NDP): Thank you.

I want to make something perfectly clear: we all agree that we support Bill C-36 on the whole. But the purpose of today's meeting is really to see if we can improve the bill and, if so, how. Clearly, it is equally important to point out, which you did quite well by the way, that we can't just sit back and say we've done everything that needs doing on the issue of elder abuse just because a bill like this has been brought forward.

My first question is for Ms. Beaulieu.

The minister told this committee that Bill C-36 would likely be a deterrent against elder abuse. I'd like to hear your thoughts on that. Could a bill like this one serve as a deterrent? Could it lead to lower rates of elder abuse, for example?

Ms. Marie Beaulieu: I am inclined to look at it through the same lens as domestic violence in terms of what we learned from that issue. I have to say I graduated around the same time as Ms. Boivin, so we can recall where the domestic violence file was some 30 years ago. A key question was contemplated: did progress really depend on the creation of specific provisions or, instead, on the proper enforcement of existing provisions in all circumstances? "Domestic violence" was not established as a new criminal act in the Code.

Instead, the focus was on every step in the criminal process to ensure that domestic abuse would be taken seriously and that things would be done right when it came time for the case to be heard in court.

That is usually my position. What really matters now is recognizing that we already have multiple mechanisms that are not being used when seniors are victimized. That's why I talked about structural ageism in our systems. If, at every step of the way, we endeavoured to raise awareness and work together to make people realize that elder abuse does exist, it would be far more effective.

I'd like to pick up on something that we haven't discussed a lot so far. The very definition we are usually inclined to give the term "elder abuse" is the one established by the World Health Organization: "a single, or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person".

The element of a relationship of trust is fundamental. That means spouses, children, grandchildren, neighbours, service providers and so forth—people who are not strangers to the senior, and with whom the senior usually wishes to carry on a relationship. So when we talk about elder abuse, we are not talking about crimes committed by strangers. Earlier, someone cited some excellent examples of cases where an elderly person's home had been broken into. I would call that a general crime in which an elderly person was victimized. That is quite different from the abusive dynamic between family or friends.

Will this bill serve as a deterrent? I don't know. But what I do know is that we will see a deterrent effect if everyone in the chain, at every step of the way, knows the importance of taking elder abuse into account.

•(1630)

Ms. Lysane Blanchette-Lamothe: Thank you.

You also had some doubts about the bill's wording. I was struck by what you said.

Do you have suggestions to improve the wording of the bill? You highlighted the words that might cause you to doubt its effectiveness. How could the bill be amended, or further still, how could the Criminal Code be amended in general to provide the necessary tools to detect elder abuse crimes and adequately punish perpetrators?

Ms. Marie Beaulieu: In fact, a review was done, and it looked at all the sections of the Criminal Code that could apply to situations involving elder abuse. I don't have it here, but it is available on the Canadian Network for the Prevention of Elder Abuse's Web site. I think it would go a long way just to re-examine how each of those specific sections could be better applied to cases involving seniors.

The questions I wondered about earlier may have had less to do with the actual wording of the bill than the application of the bill. As regards the idea of a significant impact, I agree. For instance, the WHO definition of elder abuse I read to you mentions harm or distress caused to an older person. That is similar to the concept of a significant impact. I just want to make sure that, when it comes time to hand down the sentence, the judge has everything he or she needs to assess that significant impact.

I mentioned the victim impact statement in court. It's not an easy form to fill out. Bear in mind that a number of Canada's elderly are functionally illiterate. I am not so sure they would be able to put down in writing everything they have gone through.

Applying this change correctly means putting the right mechanisms in place so that seniors' perspectives can truly be heard. Otherwise, I fear we are missing the mark.

[English]

The Chair: Thank you.

Mr. Albas is next.

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

Further to my comments at last week's committee when we first started studying Bill C-36, as a new member of the Standing Committee on Justice and Human Rights I found it reassuring that there seemed to be at the time a growing consensus as to the necessity of this legislation.

To learn more, I decided to review some of the debate that was in the House. Some of the comments I found memorable were from Ms. Blanchette-Lamothe, one of the NDP critics for seniors, who spoke previously. She said during the second reading of Bill C-36, and I quote: "The NDP will support Bill C-36, but we must be clear about the fact that it is not enough."

Well, it seems that the speech of the member opposite offered support rather reluctantly, maybe begrudgingly. I must bear in mind that it is still support and should be welcome.

I should also note that the government has long held and kept in mind a larger perspective when it comes to elder abuse and has taken some action. When Minister Nicholson testified before this committee last week, he stated that the government does not view this legislation as being the only solution to the problem of elder abuse, but rather as a complement to our government's other initiatives.

Minister Nicholson answered many of my questions and other committee members' questions regarding some of these initiatives that complement Bill C-36. He reminded us that the Conservative government continues to address elder abuse through programs like the new horizons for seniors program. Furthermore, additional funds were announced in Budget 2010 and Budget 2011, bringing the annual funding to \$45 million, and that includes projects to raise awareness of financial abuse against seniors.

I understand that the Social Services Network received new horizons for seniors program funding to raise the issue of elder abuse

awareness in the South Asian community, so I will address my question today to Ms. Butt.

Do you think that the Conservative government's twofold approach, such as working on some of the financial contributions through programs like the new horizons for seniors program while also bringing forward legal measures like Bill C-36, is the right way for us to proceed?

• (1635)

Dr. Naila Butt: Yes, I think they need to go hand in hand.

Mr. Dan Albas: You talked about not just focusing on a top-down but a wider purpose. Could you explain some of the benefits that your community is receiving in regard to the program funding that would complement Bill C-36 and address some of Mr. Cotler's concerns?

Dr. Naila Butt: Basically, under this project we will be designing the program based on input from seniors. We'll be having focus group discussions across the four regions that I mentioned. Based on that, we will be developing a tool kit at the end of the project that will consist of a manual for the various sectors, for the community, as well as a video to increase awareness.

Engaging the community and raising that awareness are the things that are really important. After the whole project is completed, there is the potential for this to be relevant not only to the South Asian community but also to other communities that have those kinds of language barriers as well. It will have national implications.

I think this is a very important step that we need. The legislation is a deterrent, but if we do not have the necessary resources and the community supports available, it will not be there.

The other point I would like to make is that there are certain opportunities that we have within the system. In this community culture, the parents are not supposed to live in homes. We know the burden on the health system if these seniors live in long-term care, so if we provide, with minimal cost, support to the families and the caregivers, who are struggling, it would be a better opportunity for giving better care to those kinds of seniors, and in addition to that, not burdening the health care system.

Mr. Dan Albas: Mr. Seebach brought up a lot of concerns relating to his riding. Do you think this twofold approach would work well in other jurisdictions outside of your area?

Dr. Naila Butt: Yes, but.... At the end of the three years we will find out, but it has the potential, and we look forward to that.

Mr. Dan Albas: Thank you very much. I appreciate everyone's testimony today.

The Chair: Thank you.

Mr. Jacob, please go ahead.

[Translation]

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

Good afternoon. My first question is for Ms. Beaulieu.

I agree with your statement that only a small number of the 52,000 potential cases of elder abuse ever make it to court. You talked about being proactive and that means prevention: better support and a stronger social fabric. Bill C-36 doesn't solve all the problems, but it's a step in the right direction. So I agree with everyone who spoke to that on this side.

I certainly appreciate what you said about a senior's dependence on their abuser. It is usually someone close to the older person. You talked about spouses, children, friends, neighbours and even caregivers carrying out the abuse. I'd like you to clarify something for me. In your opening statement, you drew a distinction between being vulnerable and being elderly. Do you distinguish between the idea of being vulnerable and the idea of being in a position of power or authority?

• (1640)

Ms. Marie Beaulieu: Thank you for your question, Mr. Jacob. You hit on a critical point in my view.

I am going to share the findings of an American research team led by Terry Fulmer. She did a wonderful job of showing the importance of considering vulnerability, which is often linked to factors that are much more personal to the older person. She differentiated between those factors and risk factors. In her study, she categorized the older person's entire group of family and friends, including the abuser, as a risk factor.

What she ended up showing is key as I see it. In certain cases, an older person can, on an objective level, be very vulnerable owing to cognitive losses, health problems or some other issue, but never suffer from elder abuse because they have an appropriate group of family and friends.

Unfortunately, the reverse is also possible, where an older person can, on an objective level, exhibit little or no vulnerability and yet still suffer from elder abuse. Why? Because someone in the older person's group of friends and family is looking to exercise their power over the older person or commit a wrongdoing against them.

Therefore, you cannot assess the incidence of abuse by looking solely at the characteristics of the older person. You must always take into account the person's interaction or dynamic with the friend or family member inflicting the abuse. When you focus only on a senior's vulnerability, the view you get is only partial, and a biased one at that, I would venture to say.

Mr. Pierre Jacob: Thank you for the clarifications, Ms. Beaulieu.

I am going to yield the floor to my colleague Raymond Côté.

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

Thank you, ladies, for sharing your expertise with us and for answering our questions.

I must admit that I am caught a bit off guard by my colleague rendering me a service right away, but I must say that being on the committee has taught me a lot of things. One of the things we talked about is the bill being a deterrent. Based on the testimony of many experts during our committee work, I was able to understand that the legislation in itself did not have a huge deterrent effect. At any rate, that is the conclusion I have reached.

Let's not kid ourselves; people who commit crimes do so assuming that they will not be caught in the act and that they will not be reported. I think that that is a very important aspect to consider, but that does not mean that I do not clearly support the bill. I simply hope that it will be sufficient to finally punish some of those criminal behaviours.

I would like to check something with you, Ms. Eng. In your brief, you presented a number of interesting points. Is it possible that more systematic aspects might reduce vulnerability or, say, the exposure of seniors to abuse? Among other things, I am thinking of financial issues, the automatic enrolment of seniors for old age security and the possibility of offering them more substantial pensions to protect them from circumstances that make them dependent on loved ones, for example. Let's face it; most abuse issues are related to that.

I will give you a chance to answer.

[English]

The Chair: Maybe you could just hold your thought, because we're out of time on that round, and I have Mr. Côté down for the next round—

• (1645)

[Translation]

Mr. Raymond Côté: Fine. I have talked too much.

[English]

The Chair: —so you can follow it up there.

Mr. Goguen, please go ahead.

M. Robert Goguen (Moncton—Riverview—Dieppe, PCC): Thank you, Mr. Chair.

[Translation]

My first question is for all the guests. Everyone obviously has recommendations on how to improve this bill, which actually contains only one proposed amendment.

Could you tell us if there are some positive features in this bill and what are the strongest ones? In your view, what will help to reduce elder abuse?

You can answer in any order.

[English]

Go ahead, whoever wants to.

Ms. Susan Eng: I was ready to answer the previous question, and actually, it does answer your question as well, and that is, for example, a duty to report. Now, there are many drawbacks to a duty to report. People don't like the idea. It infantilizes the senior, so there are some objections.

However, I will say that in the cause of preventing financial abuse, tellers, for example, have been instructed, trained, and sensitized to what to watch for. Western Union and all of these money transfer enterprises have been used as a source of scamming older Canadians. All of these people have made it their business to educate themselves as to how they can at least detect, warn, and possibly—if we had such a mechanism—report on elements of abuse. At the very least, because many of these situations are anonymous, they can only prevent the senior from being taken advantage of.

We had an example in our own office when one of our chapter members rushed off to a Western Union office to start drawing out money to send to a granddaughter who was stuck somewhere—you know that usual scam—only to have the clerk say to her that it was probably not a good idea, and that she should double-check. The clerk stopped that particular fraud, but how many more times does this happen? Therefore, absolutely, there's an opportunity here to have this accelerated interest in the issue to spur on activities by other enterprises to collectively find a way to prevent a lot of this abuse.

Does it require another provision in the Criminal Code? It's hard to say, but that obligation to help detect and report is one that we would encourage.

The Chair: Madam Beaulieu, go ahead.

[*Translation*]

Ms. Marie Beaulieu: Mr. Goguen, you are asking what the strength of this bill is and how we can improve it. That reminds me of a principle in law called the Beccaria principle, which says that it is not important how severe the punishment is as long as it is prompt. So it is not about making sure that the sentence is severe, but rather that it is imposed consistently. Perhaps one of the strengths of Bill C-36 is that it reminds us to consider the fact that we are talking about a senior in all cases. In my view, that is a strength.

How can we improve the bill? I am not too worried about improving the wording. I would rather go back to a point that I have raised just now and that I consider important; everything has to do with enforcing the legislation. If we want judges to use it, they have to be able to have access to the information provided by seniors or their loved ones, information about the impact on the senior's health, be it physical or financial. My concern is that we do not always have the right mechanisms in place to allow judges to get all that information. What can be improved is to work on restoring seniors' proper place and finding out what seniors and their loved ones think.

[*English*]

The Chair: Thank you.

Dr. Naila Butt: From the immigrants' perspective, if people are aware of this bill before they come to the country—not only the seniors who will be coming, but also their families—in terms of what may happen if they are not given enough time or if they're abused in a certain manner, that knowledge can be a deterrent in itself. An awareness of that would help before and after immigration, so again, we need to increase information that this is against the law.

Mr. Robert Goguen: In essence, though, I think everyone agrees that amending one section of the Criminal Code in isolation will not resolve all problems.

One program we embarked upon is the new horizons for seniors program, the publicity. On the television you see advertisements that show that this is clearly not right and that you should report it to the authorities.

Do you feel this program, in tandem with this section, has had a benefit? Is there a way to increase it or further the advantage?

• (1650)

The Chair: I'll have to have you hold that thought too, because we're out of time for that round.

Mr. Côté, now you can return the favour to Mr. Jacob, if you like.

[*Translation*]

Mr. Raymond Côté: Yes, thank you very much.

Ms. Eng, I will let you answer my very long question.

[*English*]

Ms. Susan Eng: I do have an answer to that. The public service announcements found a great deal of favour. As you may know, we do poll our members—every two weeks, in fact. When the public service announcements were first put out, we put a link to the public service announcements and asked our members what they thought of them.

First of all, almost universally our members were aware of the public service announcements, so awareness was very high. Second, they also thought that they would do a good job. They really thought they would be effective.

For the third question, we asked if we should spend more money on this. The answer was no, spend it on intervention instead. They wanted us to spend it on specialists and investigative teams and put resources into training for prosecutors and investigators. Look at the concept of an elder protection agency. It's something that's in the United States. It may not be appropriate here, but it is one of those things that found favour.

They found that actual intervention was even more important than research, I have to say. They were looking for hard action almost immediately.

[*Translation*]

Mr. Raymond Côté: Thank you very much.

So the main problem with this bill is right up front, meaning having the tools to implement it. There is also the issue with the type of relationship the victim has with the person committing the crime. It has to do with loved ones, dependent relationships and emotional attachments. We can imagine all that, but it is still very difficult. I feel that this bill will have a positive effect, but too many cases run the risk of not being covered if we do not provide sufficient tools.

Quebec City has a wonderful organization. L'Autre Avenue, to which I referred in the previous meeting, offers the possibility of alternative justice, including restorative justice options that have been put in place especially for teen delinquency. As a result, victims do not feel forgotten by the justice system, for example. One of the interesting findings made by L'Autre Avenue is that a number of victims of crime, such as vandalism or theft, do not feel the need to punish people or to even seek compensation. They simply want their abusers to realize what they did and to make sure that they do not do it again.

What do you think about that solution, given that we are talking about children, spouses or persons whom their victims would never dream of taking to court or reporting?

[*English*]

Ms. Susan Eng: Thank you.

I think there are lessons to be learned from our work in spousal abuse cases and child abuse cases, all of which have some application here. Similarly, in these circumstances, more often than not it is a relationship of trust. Of course, there's the problem that the very person you might want to punish is also the caregiver for the person who's been victimized. You do have a very complicated situation. Frankly, if there were more people around, perhaps that abuse would not have happened, but there's that dependency, and a restorative justice approach might actually be more appropriate.

Singularly, just having this kind of sentencing provision is still important. I think we do have to explore those other options and recognize that this kind of crime is pervasive and growing, and so far there hasn't been a comprehensive approach to really get at it. I think that does deal with some of the elements of the nature of this offence, and I think it would be an exceedingly important one.

• (1655)

The Chair: Madam Beaulieu wanted to say something. Please go ahead.

[Translation]

Ms. Marie Beaulieu: Good afternoon, Mr. Côté. I would like to answer your question too.

I would first like to clarify something that came up a number of times. When we talk about a relationship of trust in a senior abuse situation, we are not always talking about dependency. We must be careful not to reduce senior abuse to the dynamics between a natural caregivers and seniors losing their autonomy. It is much broader than that. I was referring to children, spouses, grandchildren, neighbours and all kinds of service providers. But there isn't always a loss of autonomy that results in a dependent relationship.

The solution you are suggesting when you refer to restorative justice is very significant. A related pilot project is underway at the municipal court of Montreal. It is led by crown prosecutors, among others. I must say that the municipal court of Montreal is in a league of its own; it is a very large municipal court, so they practice criminal law, which is not necessarily done elsewhere.

A crown prosecutor was telling me that one of the most common cases that end up before them involves an elderly woman whose son lives with her because he has an addiction, mental health or gambling problem. Sometimes, he can get along very well with his mother, but, when he is in crisis or in a bad situation, he can also become violent, or even take money if he is a pathological gambler. The mother often ends up agreeing to go to court, not because she wants to see her son in jail, but because he can have access to the services he needs. She sometimes feels that the health system does not give him what he needs.

That is where things get interesting. We have to understand what motivates victims to go to court and we have to see what range of services we can provide. In those cases, the severity of the punishment is perhaps not as important as providing a service that will make it possible to solve the specific problem that the abuser is dealing with.

[English]

The Chair: Thank you.

Go ahead, Mr. Seeback.

Mr. Kyle Seeback: Ms. Eng, I listened to your testimony with interest. I know your background, being involved on the Toronto Police Services Board. You have a good amount of experience with policing and the criminal justice system.

I think it's important that we reiterate this. You talked about elder abuse being a crime of predation. I think that's true. You said it should be denounced. That is something that we on this side of the table think is a very important aspect of our judicial system. I appreciate your comments on that.

I was also interested, especially considering your background with the police, in your view that this legislation will serve the purpose of deterrence. I think you agree that it will serve as a deterrent. That's a bit of a controversial issue in this committee. Some people on the committee don't believe deterrence can be achieved by having sentences that will actually have an effect. We certainly believe it.

Do you have anything more that you want to add to that?

Ms. Susan Eng: Part of deterrence is the likelihood of being caught. It's extremely important that people who are not really aware of their own behaviour have a recognition that this is an example of condemned behaviour. The likelihood of getting caught is important. This is why I obsess so much on the duty to report and the responsibility of front-line workers. The likelihood of getting caught has to be increased. That way the prospect of being investigated and prosecuted and finally convicted and sentenced has real meaning.

Mr. Kyle Seeback: I want to pick up quickly on the duty to report. We have heard from a number of witnesses that a lot of people may not necessarily feel comfortable coming forth with any of this information, but there may well be signs that somebody who was trained would recognize, so I think education on that is a great idea.

How would you envision a duty to report? Who should have that duty, and how would it be enforced?

• (1700)

Ms. Susan Eng: As I said earlier, we have to be very cautious, because it is unlike child abuse, where teachers, doctors, and social workers have an absolute obligation to report. In the case of dealing with older Canadians, people who work in nursing homes and institutions have a duty under their legislation to report as well, but in between that, we must be very careful not to infantilize the senior. It may be something that they've chosen to do; if you see a son always operating the bank account, that's not necessarily abuse.

There should be protocols such that you ask in a polite way so as not to offend anybody involved, and also protocols for the public to be educated on that asking, in that it is not meant to offend. There are protocols that are necessary, but I think that as a society we have to start accepting that we may have to interfere a bit in other people's family lives to prevent abuse. We have to walk around that a bit gingerly, just to be very careful of those kinds of complexities.

Nonetheless, the bottom line is that if we're all invested in preventing elder abuse, then we have to negotiate those pathways to detecting, including the duty to report.

Mr. Kyle Seeback: That's great.

Do I have some time?

The Chair: You have one minute.

Mr. Kyle Seeback: Thank you.

Ms. Butt, did you have something to add?

Dr. Naila Butt: It is the responsibility of each and every individual to report abuse. That's why the education is so important. It's so that everybody is aware that if anybody—it could be any senior—is being abused, we have to report.

Again, on the other point that was mentioned, in these relationships you don't want to be separated. If it's a son and father, or a daughter, you don't want to be separated.

This acts as a deterrent. What the seniors want or what the parents want is basically just that respect is given to them. I think that is how this law can be used: we actually just inform them that this is what it is, and that if you do this, these are the implications. The objective should be to bring those in the family together versus separating them. That should be the last resort.

The Chair: Thank you.

Go ahead, Madam Boivin, very briefly.

[*Translation*]

Ms. Françoise Boivin: I will be very quick.

This is definitely related to the debate we sometimes have with ourselves and with others as well. If there is one thing in particular that I don't like, it is doing politics on the back of seniors.

When all the parties are campaigning, we go to meet with seniors in long-term care facilities or independent senior residences and we sometimes hear horror stories. Just now we were talking about severe punishment. That is all very well, but, once again, we have to get to the charge; the offence has to be recognized. And we have a problem because seniors are afraid and do not dare to talk about it and report it. They are not going to say that their son—pardon the expression—is shafting them. I have heard many stories like that in Gatineau. That is heartbreaking. The responsibility to report it should not fall on the shoulders of one person in particular. I think that we, as members of society, are all responsible for reporting it if we see situations like that.

Ms. Beaulieu, you said something in the beginning that struck me. I was flipping through some papers just now. If I am not mistaken, you thanked legislators and the government for not introducing the concept of vulnerability. Yet the summary of the bill, which is still the explanation of the bill, says that “this enactment amends the Criminal Code to add vulnerability due to age as an aggravating circumstance for sentencing purposes”. Are you still proud of us? Could you maybe briefly explain what you were trying to tell us?

My understanding is that the proposed amendment to section 718 actually seeks to make a person's age an aggravating factor for abuse. Does that not sound a bit like vulnerability? Or perhaps I have misunderstood the wording.

Ms. Marie Beaulieu: You are right. I saw it in the summary, but I didn't see it in the wording of section 718 that we are trying to amend. I believe I was telling myself that the summary would not be

in Canada's Criminal Code. At least, the tricky word “vulnerability” that we hear so much about will not be there, and I say...

Ms. Françoise Boivin: People are going to argue this, the way they argue the title and a host of other things in court.

• (1705)

Ms. Marie Beaulieu: As I was just saying, the concept of vulnerability is a dangerous concept. If “seniors” is associated with “vulnerability” every time, something is wrong. If “vulnerability” is associated with “abuse”, something is even more wrong. I know seniors who are not vulnerable and I know vulnerable people who are not abused.

I want to emphasize that. Vulnerable seniors might never be abused whereas others who objectively are not vulnerable will be abused.

Ms. Françoise Boivin: It is clear.

Ms. Marie Beaulieu: The idea of associating vulnerability with age from the outset irritates me.

Ms. Françoise Boivin: That's great, I get it.

[*English*]

The Chair: Thank you.

Go ahead, Ms. Findlay.

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

I was very careful to use “victimize”, not “vulnerable”, in my earlier question.

In my riding of Delta—Richmond East in British Columbia we have a large South Asian and Chinese Canadian population. I've certainly heard from constituents that being out of the mainstream in terms of language and culture is a big factor in this issue. It's easy to feel isolated, and even more so if you feel you can't express yourself or you're not sure who it is you're to go to.

I'd like to explore this idea about deterrence and a public sanction by having an amendment to the Criminal Code. I'm aware of a case at home where a son was financially abusing his mother. It came to light because she ended up being hospitalized, and when she was asked questions by hospital staff, it wasn't adding up. Bills weren't being paid and her necessities of life weren't being handled.

In the end I came to find out that there is a special unit within the police force called the elder abuse unit, which I didn't know existed before then. Of course their main concern was her having a more secure situation.

What I found out in being peripherally part of that is that even though the mother did not want to testify against her son—and I think she would have been of an age that it would have been very stressful and she probably would not have been very effective under questioning anyway—the fact that the police became involved and were investigating it deterred that person from doing more damage to his mother. It allowed other members of the family, who had her best interests in mind, to come forward and take over.

This is often how things are resolved. It may not actually be in a courtroom. That public sanction, as you said, I think, Ms. Eng, against this behaviour can evolve into a senior being protected who might not otherwise be.

The other thing that came up was the issue of trust. We heard, certainly in the minister's testimony, that a third of those who perpetrate abuse may be family, a third may be known, and a third may be strangers—something like that.

Having been involved in elder care for my mom, who has now passed away, I know that sometimes even when you are very involved in a senior's life, people can establish a trust with a senior very, very quickly in certain circumstances. I know one time I phoned my mother, and though she didn't have an answering machine, an answering machine came on and a strange man's voice was on the message. When I ran down to her apartment to ask who that was and what was going on, it seemed she had befriended a couple of fellows while going to the grocery store who had helped her with her groceries. She had invited them in, and then they said, "Oh, you should have an answering machine." They got invited for tea the next day and they put in an answering machine.

I don't know where it was all going, but she was quite angry with me for saying I didn't think that was a good idea.

The fact is that people are sometimes lonely, even when family is around. They're living alone, and that element of trust and the ability to take advantage of it can be established very quickly.

Would you agree with me that these are some of the unique issues with seniors?

• (1710)

Ms. Susan Eng: I think the importance of this initiative is to start that conversation.

When this bill was first announced, there was cross-country media coverage in newspapers and media of all languages. What it does is start the conversation in people's homes throughout the country. To have them look at it and ask themselves, "Do we know somebody? Did we notice something? Should we be more careful?" This thing can happen. I think that's the message that comes with something with such a high profile as this, in an area that until now has been hidden away and people have ignored.

Obviously we have to fill the gaps. We can't leave this on its own. We have to make sure that people understand this issue.

I want to comment briefly about how to reach through cultural and language isolation, because of course it's an issue for the Chinese community as well. That situation in Toronto with the woman being left in the garage through the winter involved a Chinese family, which, if you accept the stereotype of Asian filial obligations, was certainly a "man bites dog" story, but there was wide media coverage of that story, and our reaction to it got wide coverage. To the extent that something like this gets wide coverage, it doesn't matter about the language barriers. We have very effective other-language media across the country, and they will tell the community that this law is in place. That starts the conversation.

A voice: I agree with that.

The Chair: That ends our rounds.

I'd like to thank our witnesses for being here. From the chair's perspective, I agree that it's very important that the message get out. I hope the press covers today's meeting and the comments from the witnesses, because I think they are appropriate and I think Canadians need to hear them.

This meeting stands adjourned.

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