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Thursday, October 18, 2012

—
Chair

Mr. Dave MacKenzie

Standing Committee on Justice and Human Rights

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• (1530)

[English]

The Chair (Mr. Dave MacKenzie (Oxford, CPC)): I call the meeting to order, this being meeting number 45 of the Standing Committee on Justice and Human Rights. Pursuant to the order of reference of Wednesday, June 20, 2012, we have Bill C-36, An Act to amend the Criminal Code (elder abuse). Today we're going to deal with clause-by-clause consideration.

Pursuant to Standing Order 75(1), consideration of clause 1 is postponed.

(On clause 2)

The Chair: The chair calls clause 2, which I am calling now, and I understand the NDP have an amendment, NDP-2.

[Translation]

Ms. Françoise Boivin (Gatineau, NDP): Thank you, Mr. Chair.

It will come as no surprise. I think everyone has had the opportunity, before today, to review the amendment we were going to move. This amendment follows on the various testimonies we have heard and expresses the purpose of the bill, which is to amend the Criminal Code with respect to elder abuse. The purpose of the amendment is to remove the word "significant"—or "*important*" in French—from the proposed subparagraph. The amended clause of the bill would read as follows:

2. Paragraph 718.2(a) of the Criminal Code is amended by adding the following after subparagraph (iii):

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

Although, practically, I know what the outcome of my proposed amendment will be, given my talents as a mathematician, I simply want to explain again why I have put forward this amendment.

This is one of the rare bills we all support, as to its content. It is a necessity, even though, after reading the documentation provided by our brilliant Library of Parliament analysts, we can see that judges have already been considering the commission of an offence against an elderly person as an aggravating factor. Having said that, all the witnesses mentioned, even if they were not necessarily speaking about the criminal offence and sentencing, that there was still a lot to be done with seniors, and we certainly cannot think that this bill will fix everything.

In looking at it, we thought that we would put ourselves in the shoes of our Conservative colleagues and, like them, try to be tough on crime. We decided to try to be a little tougher with a view to

avoiding any debate. We know that this is pure legalese. When a person is before the courts and when submissions on sentencing are rendered, if the expression "significant impact" is given...

• (1535)

[English]

"...a significant impact on the victim",

[Translation]

...given that it is new, there will probably be endless discussions on it. The purpose of the amendment, pure and simple, is to avoid all possibility of parallel debate that has nothing to do with what we are trying to do within Bill C-36. And by "we", I mean the committee, the government and the opposition parties. The bill aims to give a little more protection to our seniors, who are sometimes vulnerable. Sometimes they aren't, but some people commit offences against them as though they are, and are then surprised to learn that they can be charged. We want to send the message that our seniors must not be attacked financially, physically, morally or in any other way.

I told you a story about something that happened recently in Gatineau, involving a 99-year-old woman. I still cannot believe that there are people who would stoop so low and commit this kind of offence. That person will have the opportunity to plead his case before the courts. People are still presumed innocent until proven guilty. If that person is found guilty, I would not want there to be a debate as to whether the offence had a significant impact on the victim. Instead, I would want to know whether there was an impact on the victim because of her age or any other personal circumstances.

We all have the opportunity here to be serious about this issue, and I have no reason to believe that the government is not. We hear its tough-on-crime rhetoric, and we are regularly accused of being soft on crime. For once, I feel comfortable saying that it seems we have found a way to say exactly in writing what we intend to accomplish. It isn't perfect yet, but almost.

Since we are lucky to have someone from the department here, I would like to ask him, in case I am mistaken, whether removing the word "significant" or "*important*" changes something with respect to the burden of proof in sentencing.

Mr. Villettorte, I'm not asking whether you agree or not, but I would like to know if, by removing the word "significant" or "*important*", it changes anything with respect to the burden of proof in sentencing and the way in which the judge would be called upon to judge the aggravating factor as such.

Mr. Matthias Villetorte (Counsel, Criminal Law Policy Section, Department of Justice): Good afternoon, everyone.

Based on the wording, the proposed subparagraph in Bill C-36 is intended for cases where the impact on the victim may be exacerbated by the combination of the person's age and other personal factors. Furthermore, we must also ensure some consistency with respect to the Criminal Code. The idea of "significant impact" or "*effet important*" is already used in section 380.1. This doesn't just ensure consistency; it also addresses cases where there is not just an impact on the victim, but a significant impact, given the victim's age and other personal circumstances.

Ms. Françoise Boivin: You know, as do I, that we are not just talking about cases set out in section 380.1. This affects everything that forms the basis of our principles in sentencing, principles that guide our courts to impose the best sentence and enable them to consider the various aggravating or non-aggravating factors, and so on.

In such a context, if the purpose of the bill is to amend the Criminal Code with respect to elder abuse and if we are talking about protecting seniors, we also want this to have an impact on other provisions of the Criminal Code. This would not be a provision that would just come out of the blue, that we wouldn't see anywhere else in the Criminal Code.

My question was about the burden of proof, the proof that must be established before the court. Am I mistaken in saying that if we ask for proof of a significant impact, the burden of proof will be a little heavier than if we only asked for proof that there was an impact on the victim?

• (1540)

Mr. Matthias Villetorte: Whether the word "significant" is there or not, the burden of proof will be the same in sentencing. The goal, the foundation is to arrive at a proportionate sentence. That is the cornerstone of sentencing. The sentence must be proportionate to the degree of the offender's responsibility and the severity of the crime.

The aggravating factors are a recognition of a greater impact than what we would find "commonly", for lack of a better word. Everyone recognizes that an offence will have an effect on a victim, right? If that were it, that would be the general application. This also refers back to what has already been heard from witnesses during these hearings. Vulnerability must not be linked only to age.

I do not necessarily want to use the word "vulnerability", but this wording means that, when a victim is particularly vulnerable because of his or her age and other specific circumstances, the offence has a more significant impact on that victim.

Ms. Françoise Boivin: I understand your argument, but we are not removing the other criteria. You are right about the burden of proof. I was not talking so much about that as the evidence that needs to be established. If I have evidence that needs to be established, the burden remains the same, regardless of the words we use, but the evidence will be different if I simply had to show there was an impact rather than a significant impact.

I would agree with you if I had decided to try to remove the words "and other personal circumstances, including their health and financial situation". But, Mr. Villetorte, aside from that, we didn't

address the issue of youth or offences committed against a spouse, and so on. Spousal violence in itself is an aggravating factor.

Is it wrong to say that we want to consider it an aggravating factor, the fact that, in a certain context, this affects a senior, because of the person's age or other personal circumstances?

Mr. Matthias Villetorte: I can't say whether it's good or bad; I can't comment on that. I can say that the courts recognize the existence of these criteria. For example, we recognize the cases in subsection 380.1(1). We have seen the jurisprudence in cases of large-scale fraud.

It is important to state as an aggravating factor the fact that the offence had a significant impact on the victim, through a combination of the victim's age and other personal factors. The jurisprudence recognizes this.

Ms. Françoise Boivin: I am pleased that you referred to subsection 380.1(1). I don't want to start a debate with you, but this applies in a financial context. It is very clear that we wanted it to be a significant impact in a financial context. We aren't talking about \$5 here. Everything is relative.

I repeat that section 718 of the Criminal Code is included in the part that deals with sentencing. It affects all kinds of offences that could have been committed. The idea is to make it an aggravating factor for seniors.

But I understand your logic. And I think that my colleagues have understood what we were trying to do, which was to reduce the type of evidence that would have to be established at sentencing. Once it has been shown that an offence was committed, that it had an impact on the victim because of the victim's age and other personal circumstances, including the victim's health and financial situation, that's it, it becomes an aggravating factor. That is the essence of this amendment.

[English]

The Chair: Thank you.

Go ahead, Ms. Findlay.

Ms. Kerry-Lynne D. Findlay (Delta—Richmond East, CPC): Thank you, Mr. Chair. Thank you for what you've brought out to my colleague, Madame Boivin.

This motion proposes to eliminate the reference to "significant" in clause 2 of the English version and the reference to "*important*" in clause 2 of the French version.

The Criminal Code provides a broad range of offences that apply equally to protect all Canadians, regardless of age, health, or gender. All offences have an impact on their victims; however, this impact may be exacerbated by reasons of the victim's age and other personal circumstances, such as their health.

As Mr. Villetorte has very ably outlined for us, the Standing Up for Victims of White Collar Crime Act, which we recently dealt with, amended subsection 380.1 of the Criminal Code to add an aggravating factor to the fraud offence, again aimed at helping seniors and the elderly.

The fact that the offence had a significant impact on the victims “given their personal circumstances, including their age, health and financial situation”, shows that we are trying to achieve consistency here.

The wording of Bill C-36, as introduced, recognizes that offences may have a significant impact on elderly persons who are particularly vulnerable because of personal circumstances and, in our view, ensures consistency throughout the Criminal Code in denouncing crimes committed against elderly persons.

Therefore, because of that consistency factor, we cannot support this proposed amendment.

• (1545)

The Chair: Thank you.

Go ahead, Mr. Leef.

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

I think it was explained quite well in both comments. I know that Madame Boivin has a legal mind, so my trying to give my version of interpretation probably won't help. We could sit around and talk about it all day long, and I certainly appreciate where she's coming from.

I was just reading over the clause, and the great news about this is that this act, Bill C-36, finally enshrines this category of individual into legislation where it wasn't enshrined before, and we can all celebrate that it's automatic, that it doesn't need to be considered as an aggravating factor any more.

The challenge, or maybe the danger—and this is rather funny, and Madame Boivin pointed it out—is that we might be swapping sides here. They're being tough on crime, and we're relaxing a little on our position here.

You can simply say that the evidence of an offence had an impact on a victim, but I think it's pretty simple to say that every act of crime has an impact on the victim, plain and simple, regardless of age, gender, or location.

The challenge is measuring what that impact is. Let me give a quick example, because I know I don't want to get into a legal interpretation debate with Madame Boivin. I know she's well versed in this, and we've had some back-and-forth on different committees, playing our perspectives.

If, let's say, an elder's vehicle is broken into when that person is not around, and it's a youth who does it, then there's going to be some impact of that crime on the elder. If that instantly becomes an aggravating circumstance and the sections kick in, then there's no room for interpretation. There's no room to back off that; it becomes a little bit of a challenge on the offender's position. It may very well put the victim in an awkward position in trying to deal with a crime that is now being treated as though there's a direct aggravating circumstance that invokes this section.

I think our position is that the word “significant” already acknowledges that there's an impact, and we don't want to have that as the baseline variable here. “Significant” adds a little bit more. I appreciate the point that we have to be careful about how big a burden that puts on the person who's testifying, but I think the courts

and the crown will be able to work out that term—work out those standards, work out the guidelines around what “significant” means—and maintain that consistency. As Ms. Findlay and Mr. Villette indicated, it's just maintaining that consistency.

There you have it. I think Ms. Findlay's argument expresses our position.

The Chair: Go ahead, Madame Boivin.

[*Translation*]

Ms. Françoise Boivin: I appreciate my colleague's comments. You should never feel badly about not being a lawyer. Lawyers are not the possessors of the absolute truth. If you have three lawyers in a room, you may end up with three different interpretations. And I'm not trying to insult anyone by saying this.

[*English*]

I say that with the greatest love for my profession, but that's part of our DNA, I suppose, and at the same time the difficulty we face all the time is to use the words that really represent what we're trying to say. It's not always easy.

[*Translation*]

I never claim to know the absolute truth.

I read and re-read the document by Cynthia Kirkby and Havi Echenberg, published by the Library of Parliament, and it was worth it. It was a legislative summary of elder abuse. The authors quoted some jurisprudence.

In *R. v. Kralik*, the judge said:

I must also bear in mind, as I am directed by s. 718.2 of the *Criminal Code*, that a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender. Certain factors are deemed to be aggravating factors, but the factors listed in s. 718.2 are only examples of aggravating factors. In my view, abuse of a frail, isolated elderly person, particularly an elderly person who was “not as sharp as she once was,” can be considered an aggravating factor.

In this case, the judge is not asking that the impact be significant. My concern, when we are talking about a senior, is that we are creating a new way of seeing things that goes against what all the witnesses have said, both the witnesses for the government and for both the opposition parties.

The offences in the case my colleague, Mr. Leef, mentioned, involved property. So we can't talk about aggravating offences. If I get into a senior's car with the intention of scaring that person, it isn't the fact of getting into the car that is an offence, but wanting to terrorize that person. That is something different. If someone just hits a person who happens to be a senior, the ruling will not even be based on that. We are talking here about offences against the person, be they assault, financial offences or others still. I understand the fact that we want to use section 380.1 in a specific case of fraud where you want to see a significant impact. But if we are talking about an assault, say someone pushes a senior, that may not have a significant impact.

These are comments I heard when I started talking to people in my riding about Bill C-36. I told myself that they would be proud of us because we were going to vote with the government on this. I think it is a good bill. But when I explained to people what it involved, they invariably told me that it was still flawed, that the criminals would get away with it and that we, the politicians, were only finding loopholes for them.

So this is what I'm bringing forward. I think this is what should be applied. It doesn't revolutionize the Criminal Code. I didn't hear the department representative speak about it. This summarized precisely what we want to do, which is to put an end to elder abuse.

I won't say any more. That is my opinion, and I am sharing it.

• (1550)

[English]

The Chair: Go ahead, Madam Findlay.

Ms. Kerry-Lynne D. Findlay: We are debating over one word, and I don't want to unduly prolong this. We all understand and agree that all crime has an impact on the victims. I believe our government has been very consistent in standing up for victims and in speaking to how we know crime affects their lives, sometimes for a lifetime.

I think we're getting a little off topic here. The purpose of aggravating factors is that they are applied to cases when the impact is significant and therefore should result in a stiffer or higher penalty. This is where our judges are called upon all the time to weigh the factors; we are simply saying in this legislation that if there's a significant impact that a judge is going to see as the factors roll out, we want them to take these issues, such as the age of the victim or their vulnerability, into account. We're giving them the legislative authority to give a stiffer penalty when it is somebody who is particularly vulnerable, in this case our seniors.

• (1555)

The Chair: Thank you.

[Translation]

Ms. Françoise Boivin: She almost inspired me to come back, but I will stop there.

[English]

The Chair: Shall amendment NDP-2 pass?

(Amendment negatived)

Ms. Françoise Boivin: Oh, well, you win some, you lose some.

The Chair: It was a good try.

(Clauses 2 and 3 agreed to [See *Minutes of Proceedings*])

(On clause 1)

The Chair: On the short title, we have amendment NDP-1.

[Translation]

Ms. Françoise Boivin: The amendment proposes amending the bill, in the French version, on line 4 on page 1. We want to replace the term "*personnes âgées*", as it appears here, to read "*Loi sur la protection des personnes aînées*". In French, in Quebec at least, we tend to avoid talking about "*personnes âgées*" and instead use the term "*personnes aînées*", which I think seemed a little more

appropriate as a term. The English version says the same as the French version.

That's all. It's not a point of debate.

[English]

The Chair: Go ahead, Ms. Findlay.

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

We are in agreement with this amendment, since this motion seeks to amend the French short title of the bill to substitute the use of "*personnes âgées*" for "*personnes aînées*", and therefore the short title would read "*Loi sur la protection des personnes aînées au Canada*".

In testimony before this committee there were certain witnesses, such as Madame Marie Beaulieu, who expressed concern with equating vulnerability solely with age. Doing so would be derogatory, because we all understand that a senior is not vulnerable simply because of age. I'm getting to understand that more and more as I age myself.

This is not what Bill C-36 proposes, and the short title of the bill as introduced reflects what is clearly stated in the bill, which is that the impact of a crime on a victim can be exacerbated because of the combination of a victim's age and other personal circumstances. This said, we do not object to this amendment, given that the use of "*aînées*" in the French short title would be consistent with the French titles of other federal initiatives, such as

[Translation]

...the *Initiative fédérale de lutte contre les mauvais traitements envers les aînés* and the *programme Nouveaux Horizons pour les aînés*.

[English]

I think again, in trying to be consistent on our consistencies, we are in agreement with this amendment.

The Chair: Shall amendment NDP-1 carry?

(Amendment agreed to)

Ms. Françoise Boivin: I feel a press release coming on.

The Chair: Shall the short title, as amended, carry?

Some hon. members: Agreed.

The Chair: Shall the title carry?

Some hon. members: Agreed.

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

Some hon. members: Agreed.

The Chair: Shall the chair report the bill, as amended, to the House?

Some hon. members: Agreed.

The Chair: Shall the committee order a reprint of the bill, as amended, for the use of the House at report stage?

Some hon. members: Agreed.

The Chair: Thank you. Thank you to the official.

Before everybody runs away, we have a little bit of other business. There is a budget required for this study. The total amount is \$7,600, and I believe you've been circulated a copy. Perhaps someone would move a motion to adopt it.

Mr. Robert Goguen (Moncton—Riverview—Dieppe, CPC):
So moved.

(Motion agreed to)

The Chair: Thank you.

I understood you wished to move that the committee....

Ms. Kerry-Lynne D. Findlay: Well, we're now going into the subcommittee meeting, right?

The Chair: It's the whole committee.

Ms. Kerry-Lynne D. Findlay: Oh, it's the whole committee.

Yes, I would move to go in camera.

The Chair: We'll stand down for a couple of minutes while the room is cleared and we turn off the public stuff.

[Proceedings continue in camera]

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