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# Standing Committee on Justice and Human Rights

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Chair: Mr. Randeep Sarai





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• (1600)

[English]

**The Chair (Mr. Randeep Sarai (Surrey Centre, Lib.)):** I call this meeting to order.

Welcome to meeting number 66 of the House of Commons Standing Committee on Justice and Human Rights.

Pursuant to the order adopted by the House on March 8, 2023, the committee is meeting in public to continue its study of Bill C-295, an act to amend the Criminal Code.

Today's meeting is taking place in a hybrid format, pursuant to the House order of June 23, 2022. Members are attending in person in the room and remotely using the Zoom application. I'd like to make a few comments for the benefit of the witnesses and members. Please wait until I recognize you by name before speaking. For those participating by video conference, please click the microphone icon to activate your mike, and please mute yourself when you're not speaking.

Since I believe all members and House guests are here today, I don't have to go through the rules of Zoom and whatnot. You're all experienced with this.

For Ms. Larouche, I want to let you know the sound tests have been done and the interpretation services have been verified.

I would like to welcome our witnesses for the first hour.

From the Department of Employment and Social Development, we have Elisha Ram, senior assistant deputy minister, income security and social development. From the Department of Justice, we have Matthew Taylor, general counsel and director, and Isabelle Desharnais, counsel.

They're not going to be making any remarks, so we're going straight into questions. Hopefully, we'll get a full round in before we get our next round of witnesses.

We'll begin with six minutes for Mr. Caputo.

**Mr. Frank Caputo (Kamloops—Thompson—Cariboo, CPC):** Thank you very much, Mr. Chair.

Thank you to our witnesses. I appreciate the fact that we have such capable legal expertise in this situation, because we need some guidance.

I spoke with a number of you earlier—all three of you, briefly.

I'll get right into this. I'm going to bring it up on my laptop here to look at the text of the bill.

One of the main questions I have is this. Oftentimes, when we use terms in law, we'll define them, even if they're well known to the public or in the English language. For instance, everybody knows what a manager is, but when we're looking at putting criminal liability on somebody, that word might be something we define in the Criminal Code. To be clear, the word "manager" isn't defined, nor is "owner". For instance, an owner of a long-term care facility could be somebody.... It's likely to be a corporation. The owner is going to be a corporation, not the shareholder of the corporation, who may themselves be running it.

Is everybody with me so far?

One of the questions I have.... This is the main one and it will probably take up the six minutes. To commit a crime, a person has to do the act. In this case, the act would be a failure to provide the necessities. That's the criminal act involving wrongdoing, but there also has to be an element of intent there. Sometimes, that element of intent might be negligence. That's how it's placed here.

The question I have is this: Is there an issue with the constitutionality of imputing or putting liability on an owner or manager who doesn't necessarily have the day-to-day care of the patient who suffers harm? Is that question clear?

**Mr. Matthew Taylor (General Counsel and Director, Criminal Law Policy Section, Department of Justice):** I think it is clear, and perhaps I can start.

What I might say to help the committee—I think it's at the heart of your question—is that the failure to provide the necessities of life, as we would generally understand them.... They would be things like.... The frontline worker provides the care and the food, and administers medicine and things of that nature, whereas the owner or manager may be one step removed from that day-to-day care.

Is that the crux of your question?

**Mr. Frank Caputo:** Yes, that's essentially it.

Normally, if you're going to impose criminal liability—or penal sanctions, if you want to put it a different way—there has to be an intent to carry out, or the negligence, which is the intent here. I'm trying not to sound too much like a legal nerd, so everybody can follow. There has to be that connection between the accused person and the act being carried out.

My concern is when an owner or a manager—especially when undefined—doesn't have that necessary connection. I'd like your comments on that.

• (1605)

**Mr. Matthew Taylor:** Maybe I'll make a couple of other comments and then perhaps turn to my colleague to augment.

I think I would avoid using the word “intent”. I know you're not meaning it as deliberate because we are talking about a negligence-based offence. The *mens rea* for this offence is negligence, which requires evidence of a marked departure from the standard of care of a reasonable person in those circumstances. That's the first point I might say.

I think the bill does try to provide some specificity around the concept of manager, although it doesn't say, “manager is defined as”. It does speak to a “person who is responsible for”, and then it enumerates a number of different responsibilities. That doesn't speak to your question about “owner”.

I think you raise an interesting point in respect of wanting the criminal law to be clear and precise, so that those who are governed by it understand what is and what isn't legal, and who the law applies to and who it doesn't.

[Translation]

**Ms. Isabelle Desharnais (Counsel, Department of Justice):** I'm going to answer in French, if you don't mind.

Proposed paragraph 215(1)(b.1) refers to the duty of the owner or manager “to provide necessities of life to residents of the facility”. That can be interpreted in two ways. If the owner or manager directly provides care to residents, that person could be charged with neglect if they fail to perform that duty. In the case of an owner or a manager who does not directly provide care to residents, but who is responsible for the actions of their employees, the concept of vicarious liability comes into play. That concept doesn't apply in criminal law. Under the bill, both interpretations are possible.

[English]

**Mr. Frank Caputo:** Thank you.

Thank you, too, for that, Mr. Taylor. When you talked about *mens rea*, I didn't want to get into the Latin too much, but your point is well taken. We have to establish a *mens rea* component of negligence, in this case.

Ms. Desharnais—

**The Chair:** Mr. Caputo, you're out of time now.

Next we'll go to Mr. Naqvi for six minutes.

**Mr. Yasir Naqvi (Ottawa Centre, Lib.):** Thank you very much, Mr. Chair.

I want to thank the witnesses who are here with their expertise in this matter.

We've been hearing a lot about this particular bill. It obviously addresses a very important issue surrounding what we saw during the pandemic in terms of loss of life, especially those seniors in many of our communities who were living in long-term care facili-

ties. Of course, it's our job as legislators to ensure that we get the various elements of this legislation right.

I think I will pick up on the kind of question Mr. Caputo was asking and ask our experts about the difference between the terms “manager” and “owner”. I want to know their understanding of the difference between a manager and an owner.

What changes can we make to define it better, so that if there's a difference, we can articulate that difference clearly?

[Translation]

**Ms. Isabelle Desharnais:** You'll understand that we aren't in a position to provide any legal advice as to what should be amended or changed.

Yes, only the term “manager” is defined in the bill. The definition is based on various responsibilities, which aren't cumulative. The definition of a manager comes into play as soon as the public department establishes one of those responsibilities. It's important to mention that the manager cannot be someone employed on a casual basis, so the definition has two facets.

As for the term “owner”, the definition relies on common sense because it's not set out in the bill. Someone is an owner when they have property rights over something. That is likely how the term would be defined.

• (1610)

[English]

**Mr. Yasir Naqvi:** Thank you.

Am I hearing from you a suggestion that if we choose to amend this bill, we should add the term “owner” and define it in addition to “manager”?

**Mr. Matthew Taylor:** That's a good question. Certainly, providing a definition would provide clarity, picking up on what I said earlier, to Canadians and to the public as to who these groups of people are.

Just to build a bit on my colleague's statement, the concept of owner, a person who is an owner, could also be captured by some of the duties articulated in the clause pertaining to a manager. It is conceivable, for example, that owners could be responsible for hiring or scheduling staff. Under this definition, they would also be captured by the term “manager”.

There is some overlap, and you've also heard witnesses talk about the opposite concern, which is that personal support workers or the frontline workers, who are not generally responsible for the management of a health care facility, might be captured on a case-by-case basis by the duties that are listed under manager.

It's a bit of a long answer to say that providing that kind of clarity would assist those responsible for administering the justice system to understand precisely how these provisions apply and who they should apply to.

**Mr. Yasir Naqvi:** I'm okay for now, Chair.

Thank you.

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

We will now go to Madam Larouche for six minutes.

[*Translation*]

**Ms. Andréanne Larouche (Shefford, BQ):** I want to say a big thanks to the witnesses for being here today to discuss this important bill, which deals with an issue we all care about.

I'd like a few things clarified, so I have some short questions. A moment ago, the discussion focused on the need to clarify the terms "owner" and "manager", and I'll come back to that.

Bill C-295 is adding the definition of the term "long-term care facility" to section 214 of the Criminal Code. That definition could be problematic, however, because it does not mention the fact that those facilities come under provincial jurisdiction. Furthermore, what constitutes a long-term care facility is defined very prescriptively. The definition excludes situations where a senior makes a clear and voluntary decision to reside in such a facility when they don't necessarily lack the ability to care for themselves.

Ms. Desharnais, you talked about the difference between owners and managers. Do you see anything in how the bill defines a long-term care facility that could be problematic?

**Ms. Isabelle Desharnais:** It's important to understand that the term "long-term care facility" is used neither exclusively nor universally across the country. Some provinces and territories refer to these facilities as long-term care homes or nursing homes. The definition is based on the assumption that the adults living in the facility have some form of frailty. A person who has some form of frailty for whatever reason and, as a result, requires daily care may need to live in a long-term care facility.

Does that answer your question?

**Ms. Andréanne Larouche:** I take that to mean that it may nevertheless be appropriate to revisit certain aspects of that definition.

Now I'd like to turn to proposed paragraph 215(2)(b), which the bill would add to the Criminal Code. The paragraph refers to the failure to perform a duty that causes the health of the person to be injured permanently. It's good to take into account the individual's health, but my question is this. How does that fit into Quebec's framework, which already regulates those situations under the Act to combat maltreatment of seniors and other persons of full age in vulnerable situations? The act provides for the expanded role of the local service quality and complaints commissioner, among other things.

How does the proposed provision align with existing legislation like Quebec's when it comes to maltreatment? I'd like to hear your view on that.

• (1615)

**Ms. Isabelle Desharnais:** Provincial legislation, especially Quebec's, complements the Criminal Code, and the two can work together. Provincial laws serve to establish accountability mechanisms, create complaint or report management committees and empower inspectors, all in an effort to give facilities that provide care to vulnerable individuals more structure. What the Criminal Code

does is basically criminalize conduct committed by individuals with criminal intent.

The two pieces of legislation can coexist while trying to achieve different things, although they can have aspects that overlap at certain times. The greater the role of mens rea in the conduct or the more criminal the conduct, the more it moves away from provincial and territorial regulation, at one end of the spectrum, towards the Criminal Code, at the other.

**Ms. Andréanne Larouche:** Elder abuse can take many forms, from physical and psychological to financial. In fact, the Quebec government's video on collaborative intervention processes to combat maltreatment of seniors does a good job of explaining that. How does the bill address the many facets of abuse? Is it applicable in residences where different types of abuse can arise?

**Ms. Isabelle Desharnais:** The Criminal Code captures a host of offences that fall under the umbrella of abuse, a general term that covers negligence, sexual violence, financial violence, physical violence and psychological violence. That means the code already includes general offences for assault and sexual violence. The bill, however, deals strictly with neglect and does not address the other types of abuse.

**Ms. Andréanne Larouche:** That means the bill addresses only one specific facet of abuse, neglect. What recommendations could be made to give the bill a broader scope, or do you think it's enough for the bill to focus solely on neglect?

**Ms. Isabelle Desharnais:** I can't give you a legal opinion in response to your question. I can say, though, that neglect refers to the duty that is owed by one person to another and the fact that the performance of the duty has potential consequences if it results in permanent injury or is likely to cause injury. The bill's scope is limited to neglect and does not capture all types of abuse.

**Ms. Andréanne Larouche:** Thank you.

[*English*]

**The Chair:** Thank you, Ms. Larouche.

We will next go to our last six-minute rounds and Mr. Garrison.

**Mr. Randall Garrison (Esquimalt—Saanich—Sooke, NDP):** Thank you very much, Mr. Chair.

Thank you to the witnesses for being here today.

I want to back up a step from this bill and ask about the existing section of the Criminal Code, subsection 215(1), and I think it's paragraph (c). It's already an offence to fail to provide necessities for someone under their charge, I think that is what it says in that section.

Is it in fact already a criminal offence, without this private member's bill, for long-term care home managers or owners to fail to provide that care?

**Mr. Matthew Taylor:** Yes, I would say that it certainly is.

**Mr. Randall Garrison:** I guess the question, then, is how this bill is going to make that more clear or whether it's going to expand the coverage.

I would ask again, in looking at this bill, does it actually expand the offence beyond what is already in the Criminal Code?

• (1620)

**Mr. Matthew Taylor:** That's a difficult question to answer, because I think ultimately it will depend on how the courts interpret the duties of the managers or the owners. With the provision you already mentioned, I think it speaks very clearly to the person who has a duty to individuals under their charge.

To the extent that this bill goes beyond that, yes it does, but ultimately it would be for the courts to determine. I think you know as well that oftentimes, with the enactment of more particularized provisions, it can be useful to help remind the system to pay particular attention to an issue of particular concern. Therefore, it has value in that respect as well.

**Mr. Randall Garrison:** Is there other legislation that would be parallel to this? I'm thinking of perhaps the responsibility of owners of corporations for deaths or injuries of workers on the job. Is there anything parallel to this in existing legislation?

[Translation]

**Ms. Isabelle Desharnais:** Section 217.1 of the Criminal Code, which flows from the Westray bill, sets out an employer's duty to its employees. Bill C-295, however, addresses the duty of the employer or manager to residents. The provisions aren't quite the same; they don't apply to the same set of circumstances.

[English]

**Mr. Randall Garrison:** Where that leads me is that, if we have something that is roughly parallel in the case law around Westray, is there a distinction made between those who have managerial responsibilities in terms of policy and those who have what we call maybe line manager or operational responsibilities? Has that happened in the Westray cases?

**Mr. Matthew Taylor:** I'm going a bit by memory, but the Westray provisions did a couple of things. As my colleague spoke about, it created the ability to prosecute corporations for either negligent criminal behaviour or criminal conduct that required subjective *mens rea*. It did impose a duty on employers who have a responsibility for the safety of their workers.

That isn't exactly what this bill does. This bill is about employers vis-à-vis those in their charge, effectively. It's not an exact parallel in that respect.

**Mr. Randall Garrison:** We did hear concern from especially nurses, who often have what we might call line manager responsibilities, that they might be captured under the broad provisions. There isn't a distinction made in the private member's bill as presented between what I would call senior managerial responsibilities and line responsibilities.

**Mr. Matthew Taylor:** I think that's an important question. I think it speaks to the comments of Mr. Naqvi earlier in terms of how, for example, a manager and the responsibilities of a manager are laid out in the bill, and how that overlaps with somebody who isn't the senior manager, to use your term, but who may be acting in

a managerial function. Whether it was the intention of this bill to target the personal support worker or frontline worker who, on a given day, assumes the responsibilities articulated, I think, is an important point for you to consider.

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

On the question of the different use of labels for facilities across the country, that's something that I hadn't really thought about. I think it's an important point. In this private member's bill, it gives a definition of a long-term care facility.

I'm asking something that you may not be able to answer, but would that cover all those variously titled facilities in the provinces, or do we have something that we need to work on there?

[Translation]

**Ms. Isabelle Desharnais:** I can give you a general idea of how it works in other provinces and territories, according to the research done by staff.

A common criterion is a minimum number of residents who are not related to the owner or manager and who live in the establishment for various health reasons. The criterion varies across the country. British Columbia does not refer to these establishments as long-term care facilities and has set the minimum number of residents at three. That number is five in Newfoundland and Labrador. In New Brunswick, it's seven. All that to say, the differences across the country revolve mainly around the minimum number of residents.

• (1625)

[English]

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

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

We'll go now to our next round.

Mr. Brock, you have five minutes.

**Mr. Larry Brock (Brantford—Brant, CPC):** Thank you, Chair. I didn't think I was going to get a round. That's a bonus.

Thank you to the witnesses.

I don't believe anyone has asked you a question yet, Mr. Ram. I don't want you to feel left out, so I'd like to get your perspective as a ministry official with the portfolio that you are in charge of. What are your thoughts in terms of how this particular private member's bill will assist in addressing some of the systemic problems we have in long-term care homes?

**Mr. Elisha Ram (Senior Assistant Deputy Minister, Income Security and Social Development Branch, Department of Employment and Social Development):** Thank you, Mr. Chair.

I'll start by saying that I'm not a legal professional, so I can't really speak to the specific provisions of the act. I do share the advice that's been provided by my colleagues that this is an area where there is some diversity in terms of how some of these facilities are structured, what they're called and how they're organized. You should give some thought to whether or not the terminology that's used in this bill fully captures the diversity. Keep that in mind.

I would say that there's probably value, as my colleague already spoke to, in terms of increasing awareness of this issue—this private member's bill—and whether or not it actually captures additional behaviour that isn't already covered under other pieces of legislation.

**Mr. Larry Brock:** If I could interrupt for a moment, you're the Department of Employment and Social Development. Are you concerned about the impact that this private member's bill will have not only on retention issues, given the broad nature of the definition of “manager”, which essentially captures everyone from a janitor, in my view, right up to the potential typical manager of a long-term care facility, but also on the issue of recruitment?

The industry itself is suffering in terms of substantial vacancies across this country—tens of thousands of them. This industry can ill afford, in my view, to have a piece of draconian legislation that is actually going to hurt the industry as opposed to helping it. Can I have your thoughts on that, please?

**Mr. Elisha Ram:** Thank you, Mr. Chair.

I would agree with the member that recruitment and retention is definitely an issue in the health care sector writ large, but particularly for long-term care facilities. Our department is doing some work looking at this issue with the Department of Health, and there was some funding provided as part of the health deal recently announced that tries to address some of these issues.

As I said, I'm not a lawyer, and I don't really have a particular view on the scope of the application of this particular private member's bill in the sense that you meant it.

**Mr. Larry Brock:** Mr. Taylor, leaving aside the obvious, I'm sure you've probably heard from other witnesses before that the government issued a throne speech in 2020 that specifically addressed elder abuse, specifically telegraphing to the industry, and to Canadians, and vulnerable Canadians, that this government was actually going to care and do something about the prevalence of elder abuse.

You have that issue.

You have mandate letters going to the Minister of Justice and the minister responsible for seniors, again, addressing a requirement to amend provisions in the Criminal Code to address these issues. Nothing was done until such time as my colleague, Hedy Fry, brings a private member's bill.

I know the department does not routinely do charter statements for private member's bills, but I'd like to hear from you, sir, because, in my view, the floodgates are going to open substantially if this bill passes with minimal or no amendments. It's going to open up a number of court challenges, particularly from defence counsel. I'd like to know, from your perspective, sir, how you feel about the

charter application as it currently stands right now with this particular bill.

• (1630)

**Mr. Matthew Taylor:** It's a very good question. Certainly, as you know, when we provide advice to the government as public servants and as lawyers, that advice is protected, but I think you also know that providing charter advice is part and parcel of the work that we do in supporting the minister and the government.

You will also know that with any offence, or any offence creation, most often they raise section 7 considerations—“life, liberty and security of the person”—so certainly that is something that would be looked at and analyzed in providing advice to the government.

I think the only other piece of information that I can offer to you would be to point you to our “Charterpedia” page on the Department of Justice homepage, which contains fairly detailed information on section 7 jurisprudence. Obviously that jurisprudence would inform the development of any advice we would give to a minister of the government.

**The Chair:** Thank you.

Next, we'll go for the last one to Ms. Diab, for five minutes.

**Ms. Lena Metlege Diab (Halifax West, Lib.):** Thank you very much, Mr. Chair.

Mr. Ram, I want to continue that same line of questioning.

You talked about the diversity. We've heard from others about the different terminology that is used across the country when we talk about long-term care. I know that you're not a legal person or an expert in that, and maybe that's a good thing. Given your experience, you would know the staffing structure, I guess, and the number of people who interact with residents. Can you tell the committee who we are holding accountable and who we should be holding accountable?

Does this bill do something that you think is not already existing? We've heard other witnesses say—and it was talked about here as well—that there are Criminal Code offences that already deal with some of this. There is provincial legislation in different parts of the country, and different provinces deal with other parts and so on.

What are we missing here? From your experience, what is the gap? What is it that we need to be trying to fill here if there is one? I'm asking for what you've seen on the ground with this kind of stuff.

**Mr. Elisha Ram:** Thank you for the question.

We have done some joint work with the provinces and territories, particularly in the context of what we saw during the pandemic. There was actually a paper that was recently done under the auspices of the federal-provincial-territorial forum of ministers responsible for seniors. It took a look at some of the evidence that came out of that experience.

What we've learned is that there are a number of gaps. Those gaps are often around a lack of clear accountability. There was the vulnerable position that seniors were put in, particularly during the time of lockdown when it was very difficult for people from the outside to be able to see into those facilities and maybe understand what was going on. There was the transition to a largely virtual sort of communication, but not all individuals who were living in those facilities had access to the right technology or were comfortable with it. There was little ability for people outside the situation to really perceive what was happening and to speak up or to step in to support those members.

I would say from our perspective that the gaps we would be looking to deal with, not necessarily within the scope of this particular private member's bill, are really to increase that accountability and to create more ways for individuals who are living in those facilities to be able to express what it is they're experiencing, so that they are not left on their own to deal with these situations.

**Ms. Lena Metlege Diab:** From your reading of the bill, what's in it that could help in that?

**Mr. Elisha Ram:** I'm not sure that's what this bill is trying to address.

**Ms. Lena Metlege Diab:** Okay.

For the Department of Justice, we've talked a lot about other laws that exist out there. In fact, I took some notes. We were talking about the Criminal Code, but there could be others. Where's the gap? What are we missing?

We know what happened during COVID. We know that some of the institutions were where our elderly were largely affected. We also know that in some of these institutions that's where we needed to care for a lot of them, because a lot of them were not healthy to begin with. We take that into account, but there were also more deaths in those facilities than there should have been. I guess that's the summary, if I can put it that way.

What are we missing? What do we need to do? Who do we hold accountable? Can we hold someone accountable? Is there a gap that we need to try to fix? Is this bill doing that?

• (1635)

[*Translation*]

**Ms. Isabelle Desharnais:** The Criminal Code currently contains a set of general offences. As mentioned earlier, it is possible to hold an organization liable under paragraph 215(1)(c) of the code. Section 22.1 of the code ties the organization's conduct to the alleged offence, setting out the circumstances in which an organization is considered to have committed an offence.

The code already contains three offences of negligence. We're talking about negligence under section 215, but it's important to keep in mind criminal negligence causing bodily harm and criminal negligence causing death. The question then comes down to the purpose the bill's sponsor is trying to achieve. That is up to you.

[*English*]

**The Chair:** Thank you.

Thank you, Ms. Diab, and thank you to the witnesses. We really appreciate your time. You probably now understand why it was very important to have you here to get some of the nitty-gritty of the bill and how it reflects other parts of the Criminal Code.

You guys are now excused, and we'll just suspend for a minute or two to get the next round of witnesses.

We'll begin in a minute or two.

• (1635)

(Pause)

• (1640)

**The Chair:** We're back for the second hour. Welcome back.

We have with us, via video conference, as an individual, Dr. Marie Beaulieu, professor at the Université de Sherbrooke and research chair on mistreatment of older adults. We also have, from the Canadian Network for the Prevention of Elder Abuse, Dr. Sandra Hirst, chair of the board. From CanAge, we have Laura Tamblyn Watts, president and chief executive officer. Lastly, from Elder Abuse Prevention Ontario, we have Marta Hajek, chief executive officer.

You will all have five minutes to make your opening statements, and then we'll begin a round of questions.

We'll begin with Dr. Marie Beaulieu.

[*Translation*]

**Dr. Marie Beaulieu (Professor, Université de Sherbrooke and Research Chair on Mistreatment of Older Adults, As an Individual):** Thank you, Mr. Chair.

Good afternoon.

I'd like to thank the committee for inviting me to participate in its study on Bill C-295, which would amend the Canadian Criminal Code by adding provisions related to the neglect of vulnerable adults.

I am here as a researcher who has been working on elder abuse and ways to combat it since 1987, so 36 years. Although I am retired from Université de Sherbrooke, I am still an adjunct professor there, as well as an adjunct researcher with the Research Chair on Mistreatment of Older Adults and the Research Centre on Aging. I am also the co-director of a centre that works with the World Health Organization to promote senior-friendly environments and combat elder abuse. Not only have I worn many hats in this area, but I am also deeply interested in the issue.



It's not hard to guess the context underlying this bill. The COVID-19 pandemic, specifically the way it was handled and the impact it had in two types of senior residential or care settings laid bare the organizational dysfunction, which was partly known. These places are congregate living settings for seniors that may or may not provide care and services, as well as residential care settings where both adults and seniors in vulnerable situations live. I want to stress the fact that these two settings are different, something that isn't clear in the bill. I'll come back to that. Both types of facilities employ a lot of administrators, referred to as "managers" in the proposed amendment to section 214 of the Criminal Code.

I want to make six brief points for the purposes of today's discussion.

First, the bill focuses on the organizational dimension of elder abuse or mistreatment. In doing so, it sets aside the common definition of elder abuse, which, implicitly at least, focuses on the interactions between individuals within what is presumed to be a relationship of trust. I applaud the fact that the bill addresses the role that organizations play in elder abuse, because it puts the issue in a broader context, shining a light on community, organizational and institutional dynamics.

Second, the definition of long-term care facility proposed in the bill seemingly does not include congregate living settings known as private seniors' residences in Quebec. They are places that lease accommodations solely to seniors, on a for-profit or not-for-profit basis. Seniors who live there have to be independent or semi-independent. I'd like to understand why the definition excludes those settings. It's even more surprising given that Quebec's act to combat maltreatment of seniors, CQLR c L-6.3, was amended in the spring of 2022 to include those living settings, among other things. I think that's a discussion worth having.

Third, the bill introduces the idea of vulnerable adults, not vulnerable seniors, and I agree with that decision. Long-term care settings are indeed home to people of various ages who live there because they require the support. Nevertheless, I recommend that the bill use the term "adult in a vulnerable situation", instead of "vulnerable adult". When you refer to someone as being in a vulnerable situation, it means that their vulnerability is not inherent and that it may be temporary or the result of specific circumstances. In my view, the term "adult in a vulnerable situation" is both more inclusive and less stigmatizing.

Fourth, the bill focuses on a specific facet of elder abuse—neglect. While I can appreciate why that choice was made, it's important to understand that the line between neglect and violence can be very unclear at times. Keep in mind that neglect can take various forms: psychological, physical, material and financial. There is a lot of crossover with the various types of abuse.

Fifth, discussions with police officers have opened my eyes to the fact that criminal negligence is difficult to prove. Prosecutions and convictions based on those offences are few and far between, and require very specific evidence. Therefore, I would like the committee to consider the applicability of this proposed Criminal Code provision. I look forward to discussing that. What evidence is necessary in order to secure a conviction under the proposed provision?

Sixth and finally, paragraph 215(2)(b) of the Criminal Code refers to conduct that "causes or is likely to cause the health of that person to be injured permanently." That raises questions in my mind. I wonder about the significance of the word "permanently", because it should be enough to cause significant injury to the person, regardless of whether it's temporary or permanent.

• (1645)

In closing, I want to say that making these changes through the Criminal Code was a smart decision given the fact that the code applies countrywide. We all know that measures affecting health care run the risk of creating jurisdictional overlap between the provincial, territorial and federal governments.

As my colleagues in the legal field say, I respectfully submit these comments for your consideration. I look forward to our discussion.

• (1650)

[English]

**The Chair:** Thank you.

Next we'll go to Dr. Hirst for five minutes.

**Dr. Sandra P. Hirst (Chair of the Board, Canadian Network for the Prevention of Elder Abuse):** Thank you for inviting the network to speak to you today on this important issue.

We commend the committee for its dedication and decision to amend the Criminal Code to acknowledge the abuse and neglect experiences of older adults.

The chronic neglect and abuse of older adults living in long-term care facilities in Canada is a long-standing problem. Two recent reports document the appalling conditions that residents in long-term care facilities experienced during COVID. Legislative support for the recently released Health Standards Organization new national long-term care standards could help address the problem.

However, encounters with elder abuse survivors can occur in hospital settings and in the community. For example, in hospital settings, older adults could be admitted due to existing physical or mental health problems, but also as a result of the abuse, for example, for injuries and malnutrition.

In 2021, the World Health Organization released its "Global report on ageism". It brought ageism and elder abuse and neglect to the forefront.

Elder abuse and neglect were rampant in our communities and facilities long before COVID. Elder abuse has been a silent pandemic for years. From a 2015 national study, we learned the prevalence rate of mistreatment was 8.2% among Canadians aged 55 and over. That's over 750,000 Canadians. Mistreatment includes physical, emotional, sexual and financial abuse, systemic abuse and neglect, and the violation of rights and freedoms.

We know it exists, but we have no idea of the actual size and nature of the problems of abuse and neglect in the community or in facilities. Our knowledge is incomplete because we lack the type of investigations we urgently need. We need prevalent studies in the community and facilities, substantive theory development and clinical trials to test out interventions, both socially and legally.

CNPEA is one of the many voices calling for elder abuse and neglect to be recognized and addressed at the federal, provincial, territorial and local levels, with an emphasis on prevention and early detection through a collective, sustained effort. Mounting research demonstrates that older adults who experience abuse and neglect are at an elevated risk for a wide range of negative health and well-being outcomes, yet even as the older adult population grows and rates of elder abuse rise across the globe, it continues to be overlooked and perpetrated by individuals within the facilities.

Although awareness of elder abuse is likely to have increased, it remains an ill-defined concept within society and for older adults, specifically. Elder abuse is a complex issue that requires nuanced responses. There is no one-size-fits-all solution, because older Canadians are not a homogenous group. Layers of identity, such as gender, race, sexual orientation, economic standing and disability have a direct impact on a person's risk of victimization and their ability to report and to access social services.

If we are serious about tackling elder abuse and neglect, we need to start by confronting ageism. By the World Health Organization's definition:

Ageism arises when age is used to categorize and divide people in ways that lead to harm, disadvantage, and injustice. It can take many forms including prejudicial attitudes, discriminatory acts, and institutional policies and practices that perpetuate stereotypical beliefs.

It's rarely recognized as the violation of human rights that it is.

Both the WHO and the UN emphasize the importance of age-friendly communities. That includes long-term care facilities. A supportive, age-inclusive community that promotes health and safety and well-being across the lifespan leaves less room for abuse and neglect to breed.

CNPEA has recently completed phase one of a project with a group of partners, entitled "Future Us". It is a clear and articulated pan-Canadian road map to increase the prevention of elder abuse and neglect. Thanks to funding from the Department of Justice victims fund, we've developed a guide with multiple entry points that will allow us at an individual, organizational, facility or government level to play a role in preventing elder abuse and neglect.

The sector of elder abuse and neglect prevention is a very fragmented one. Not all provinces and territories have a dedicated organization or network, and funding varies across jurisdictions.

• (1655)

I have to edit my comments because of your time limit, so I will jump to our recommendations.

We thank Graham Webb, who made his presentation to the House in May of 2021.

We recommend that, included in the act, the federal government fund organizations that are national in scope and resource a solid

infrastructure; table amendments to the Criminal Code that would explicitly penalize elder abuse and, in doing so, consider the offence of criminal endangerment, especially with elements covering the failure to provide care where the contract for care exists; identify and implement mechanisms to protect whistle-blowers in long-term care in consultation with relevant stakeholders; and provide funding to improve training and enhance resources to facilitate investigations.

I would once again thank the chair and the committee for the time to give this presentation.

I would add a personal note that I have worked in long-term care as a registered nurse for over 40 years, so I do have some biases here.

Again, thank you to the committee.

**The Chair:** Thank you, Ms. Hirst.

We'll now go to Ms. Watts for five minutes.

For those who haven't seen it, I will raise the 30-second card, just before you run out of time, so please keep that in mind.

Thank you.

**Ms. Laura Tamblyn Watts (President and Chief Executive Officer, CanAge):** Hello. My name is Laura Tamblyn Watts, chief executive officer of CanAge, Canada's national seniors' advocacy organization. We are a non-partisan, not-for-profit organization that works to advance the rights and well-being of all older Canadians. We thank you for the opportunity to make submissions to you today on this bill.

We know that the context of COVID-19, the long-standing pre-COVID-19 challenges in long-term care and the seniors' health staffing crisis weigh heavy in everyone's mind for this discussion.

By background, I am a lawyer. I spent more than 20 years working in the field of elder law and elder abuse. I'm past chair of the national elder law section of the Canadian Bar Association. I was a member of the national standards for long-term care advisory and technical committees. I'm also a faculty member at the University of Toronto's faculty of social work, where I teach law and aging. As head of CanAge, I supported the previous JUST committee inquiry in 2021, being in favour of creating a very carefully worded criminal elder abuse charge.

Given that background, it may be quite surprising to hear that I am here to respectfully submit that this bill should not go further. In common parlance, this bill has been heralded by some as very good-hearted but wrong-headed. We thank the sponsor for her passion and commitment to seniors, and we appreciate the emphasis on the issue of institutional abuse. The idea is important, but in our respectful view, the issue does not achieve its stated goal through this legislation.

It also seems, based on the background explanation of this bill, to try to use the Criminal Code as punishment for what we at CanAge believe is a failure of the Canadian funding system or attention on seniors care generally. Seniors need a system that works, not a system that is underfunded and ignored. We need a robust long-term care system, not to punish individuals for working in a system that is actually set up to fail.

Very specifically with regard to this bill, our concerns are three-fold.

First, like so many other witnesses have said, we believe that this bill is overbroad in its wording and will have significant unintended negative consequences. The language of long-term care itself does not adequately capture the provincial terminologies, which range from “residential care” in B.C. to “personal care homes” in Manitoba, for instance. The language is imprecise.

Second, there are already existing tools and methods combined with ones we hope and expect to come down from our federal and provincial governments, such as a seniors safe act and perhaps the new promised Criminal Code provisions that we discussed so deeply in 2021.

Third, we also have the adoption of national standards, which have only been introduced in the last few months. While there is a \$14-billion price tag, about 67% of long-term care homes have already committed to or are in the process of actually adopting those national standards.

Very specifically with regard to the overbroad wording, we believe that the proposed amendments are drafted in a loose way. We have heard from others that the language around “manager” and the lack of definition for “owner” expose existing and future professionals to increased liability. They would certainly discourage participation in the long-term care sector.

Nobody enters the long-term care profession with the goal of hurting seniors, and the staff are already so traumatized from what they had to go through with COVID-19 that the idea they're going to have additional criminal liabilities targeted specifically at them would, in our respectful view, be catastrophic to recruitment and retention in this area.

Specifically, we also take note of the nurses and their recommendations for a deeper consideration of the impact this would have on them. We note, with some great concern, that this could have even captured our federal Minister of Seniors, who went back into long-term care at a very challenged home in her jurisdiction to help out during a pandemic. Under some of the wordings of “manager”, she might have been captured inadvertently.

We also would like to think about the word “vulnerable”. I note with great pleasure my colleague Marie Beaulieu and her discussion that vulnerability is not an intrinsic issue. Indeed, to call an older person vulnerable as an intrinsic issue, we believe, is ageist. We do underscore the importance of understanding social vulnerability.

● (1700)

Our second point is that the qualifications for criminal misconduct are overbroad and vague as well. These amendments, in our respectful view, do not provide greater clarity. They perhaps trod on the existing Criminal Code and its deep provincial legislative provisions. The problem is not that the authority does not exist. The problem is that nobody uses the existing authority.

Additionally, there's the very well-thought-out and promised charge of criminal elder abuse that we discussed in 2021. We urge the committee to consider that robust set of conclusions instead.

Last, we believe that Canada is unique in the OECD in not having a national seniors strategy. We don't have a national long-term care strategy. We do not have a national elder abuse strategy. Funding to combat elder abuse has not been substantially done—

**The Chair:** Excuse me.

Yes, Ms. Larouche.

[*Translation*]

**Ms. Andréanne Larouche:** The interpretation has stopped, Mr. Chair.

[*English*]

**The Chair:** Can we check interpretation really quickly? We'll just give you a few more seconds to wrap up after. Can you just do a couple of lines?

Can you repeat the last part? You are out of time, so just wrap up the last part.

Thank you.

**Ms. Laura Tamblyn Watts:** Thank you.

In conclusion, we believe that Canada is unique among comparable countries in not having a national seniors strategy. We do not have a national long-term care strategy or a national elder abuse strategy. Criminalizing the staff of long-term—

[*Translation*]

**Ms. Andréanne Larouche:** There's still a problem, Mr. Chair.

[*English*]

**The Chair:** I'm sorry. I'm going to stop you for a second.

Can we double-check on interpretation again? I think the channel is still an issue.

Go ahead

**Ms. Laura Tamblyn Watts:** I only have one second left. I'm just wrapping up.

In conclusion, we believe that criminalizing the staff of long-term care, who are overwhelmingly women and many of whom are newcomers to Canada and racialized people, is not the answer. The answer is to fix long-term care itself.

Thank you.

**The Chair:** Thank you. I apologize for the technical difficulties.

Last, we go to Ms. Hajek for five minutes.

• (1705)

**Ms. Marta C. Hajek (Chief Executive Officer, Elder Abuse Prevention Ontario):** Thank you very much, Mr. Chair, committee members and fellow panellists.

Thank you for today's opportunity to address the proposed amendments to the Criminal Code through Bill C-295.

My name is Marta Hajek, and I serve as the CEO of Elder Abuse Prevention Ontario. Our provincial organization is dedicated to the prevention of elder abuse. We raise public awareness through educational forums in communities, and we deliver training across all sectors that want to recognize and prevent instances of abuse and neglect.

While we are not legal experts, three decades of experience has made us experts on systemic challenges, those that hinder appropriate and coordinated responses to the silent pandemic. We work to fill the gaps in which too many older adults fall undetected and without support.

Taking action to allow for the prosecution of those with governance and executive authority over practices that lead to predatory or abusive behaviour towards vulnerable persons is good. Being held accountable would encourage owners and executives to better consider the consequences of their investment and operational choices for their clients and society. It would be welcomed.

However, the proposed amendments in Bill C-295 alone will not address those factors that lead to abuse: profit over care, which fosters chronic understaffing; and age discrimination.

Our primary concern remains. We urgently need a national elder abuse prevention strategy, a whole-of-government approach with emphasis on prevention when crafting policy and legislation as well as early detection through collective and sustained efforts.

Elder abuse prevention in Canada is fragmented. Those affected do not have equitable access to the necessary supports. Elder abuse is not a homogeneous issue. Instead it is a complex one. We should all be deeply concerned about its exponential growth.

While the intent to amend the Criminal Code is laudable and may succeed in punishing some who wilfully commit neglectful acts in long-term care settings, it will not significantly reduce instances of abuse. Wider structural reforms to the administration of justice across all jurisdictions are necessary to ensure consistent reporting and convictions. Focusing exclusively on long-term care and using age-neutral language such as "vulnerable" without addi-

tional qualifiers is akin to putting even more blinders on our system of prevention and intervention.

While 7% of older people reside in long-term care settings, 93% live at home or in the community. While the devastating Canadian Armed Forces report identified the pervasive nature of neglect and abuse in long-term care settings, instances of reported cases of elder abuse in the community rose 250%. Many more cannot or did not report abuse for fear of humiliation, reprisal, consequences to the abuser or confusion on where to even turn for help.

Elder abuse is a violation of human rights. It carries with it significant negative impacts on our public health and safety systems. Applying an ageism lens to policy considerations for the protection of vulnerable older persons prevents myopic approaches that leave many in our collective blind spots.

Most recently, Elder Abuse Prevention Ontario, as a member of the Canadian Coalition Against Ageism, joined a delegation of Canadians from civil society and government to participate in the 13th open-ended working group on aging at the United Nations. Together, our diverse voices called for the declaration of the UN convention on the rights of older persons. This binding instrument would promote and preserve the dignity, safety and security of all older persons. Canada and the world must do better, because if not now, then when?

At the same time, some Canadian jurisdictions are waiving liability for service providers who fail to provide the necessities of life or provided substandard care during the pandemic. The government, under the Charter of Rights and Freedoms, has an obligation to uphold the rights of older Canadians. This waiving is a step away from that accountability.

Inconsistencies and the lack of a comprehensive national strategy create confusion and do little to prevent neglectful practices from continuing behind closed doors. We cannot any longer allow this to remain unchecked.

• (1710)

Let's be clear. Let's name the issue and define it to inform better data-collection practices and support real, targeted and systemic actions. Let's work together to make sure provincial and federal laws are aligned and federal law enforcement, Crown counsels and the judiciary are better able to recognize and have those instruments to respond to elder abuse and neglect. Let's work across all jurisdictions to enforce standards to ensure that all Canadians have access to places where they can age safely and with dignity.

Finally, let's continue to work together to educate our communities and those who enforce our laws and administer justice, and to provide the supports that people need to advocate for themselves or on behalf of someone else who is unable to do so for themselves.

This is our submission. Thank you for the opportunity to speak today.

**The Chair:** Thank you to all of the witnesses.

We'll now begin our first round of questions.

We're just going to shrink the time to five-minute first rounds and four-minute second rounds.

We'll begin with Mr. Brock for five minutes.

**Mr. Larry Brock:** Thank you, Chair.

Good afternoon, ladies. It was a pleasure to hear your summaries. I want to thank you so much not only for your attendance but also for your leadership and advocacy in this area. We are all going to be part of this aging demographic at some point in time and we need to get this right.

It's unfortunate, however, for many of you who are here that this almost feels like déjà vu. Two years ago we were talking about this issue, and this government has done nothing to advance this by way of passing its own legislation, notwithstanding a throne speech three years ago, notwithstanding mandate letters to the Minister of Justice and the minister responsible for seniors in which they were instructed to bring legislation specifically to address elder abuse across this country. They have done nothing, and it's taken a member of the Liberal caucus to bring a private member's bill.

I asked the particular member last week about why the government has not taken steps and why she did. Her response was, "Someone had to do it." I don't think that is the appropriate approach to take given the seriousness of this issue, the seriousness of it not only to our elders but also to the industry at large.

I do want to read a couple of passages from a submission this committee received prior to today from the Canadian Association for Long Term Care. I'm going to read out various passages, and I would love to hear from all of you, or some of you, your thoughts with respect to this submission, whether you agree or you do not, and ultimately what you can recommend to those of us on this committee about how we can strengthen this particular bill. You've identified so many flaws in this bill. We really need to collectively work to improve this if we're going to make a difference in the lives of seniors.

I'll start by saying this:

The Canadian Association for Long Term Care (CALTC) is unequivocal in its support for ensuring anyone responsible for elder abuse is accountable, regardless of where and how it occurs. However, this Bill not only focuses on a singular setting, it only considers physical abuse, of which protections already exist...This legislation does not consider the emotional, psychological and financial elements of elder abuse....

...It is our position that the best way to address these gaps is for the government to develop and consult on well-considered legislation that addresses elder abuse in all its forms and in all settings.

...We urge the [government] to recommend against passing Bill C-295 and instead call on the government to introduce comprehensive elder abuse legislation in its place....

CALTC is deeply concerned that this approach is flawed and not well-considered—

That's in relation to the problems with the retention of employees.

—As outlined, the health human resources challenges in long-term care homes are already at emergency levels. By targeting the people who work on the front-lines, providing critical care to vulnerable residents, we expect this legislation to exacerbate these challenges.

Last of all, they put together a recommendation to replace the words "long-term care facilities" with "licensed health care facilities", thereby ensuring that no matter where care is provided, it is held to the same standard. They also recommend replacing the definition of "owners and managers" with "health care professionals" to ensure that all staff, regardless of their role in providing care, are held to the same standard under the law.

That is for anyone to answer. Please go ahead.

• (1715)

**Ms. Laura Tamblyn Watts:** Thank you for the opportunity.

I would offer that CanAge is in strong support of the first two. Actually, my understanding of the CALTC position is that it's not really in favour of amending the legislation, rather it believes this legislation is, by its nature, not constructed to achieve the aims.

We would offer the same thing. We agree with the first two pieces. I don't think this legislation, as drafted, achieves its goals, but certainly we are long awaiting promised legislation from this federal government. We are long awaiting the promises out of 2021, when we all presented, each of us here, at the same justice committee.

It is an opportunity to reinvigorate that conversation. I worry that tightening up the words will not necessarily achieve our goals, and I think that perhaps moving different forms of legislation is the better approach.

**Dr. Sandra P. Hirst:** Can I raise another point?

**The Chair:** Go ahead very quickly, please.

**Dr. Sandra P. Hirst:** To address your last statement, it's not just registered nurses and nursing staff. There's a diversity of staff who work in facilities. We have to acknowledge that housekeepers, dieticians and visitors all have to be addressed to prevent abuse.

**The Chair:** Thank you.

Dr. Beaulieu, I know you have your hand up, but you'll have to answer in a subsequent question, unless you're having sound issues or otherwise.

I will next go to Madam Brière for five minutes.

[*Translation*]

**Mrs. Élisabeth Brière (Sherbrooke, Lib.):** Thank you, Mr. Chair.

Professor Beaulieu, thank you for being here this afternoon. I had the privilege of hearing you speak when you appeared before the committee as part of its study on elder abuse, which culminated in the June 2021 report entitled "Elder Abuse: Identifying the Issue and Combatting All Types of Abuse".

You covered a number of elements in your opening remarks. You talked about the importance of considering the two types of living settings and the fact that the bill introduced the organizational dimension of elder abuse, helping to put the issue in a broader context. I'd like to give you an opportunity to say more about that.

**Dr. Marie Beaulieu:** Thank you, Mrs. Brière.

It's clear from the bill that it captures only organizations. That brings me to reiterate a very important point that was made earlier: most seniors do not live in those settings. When the bill was drafted, the decision was made to capture only places where seniors live in a congregate setting. What sticks out to me is the fact that, despite the many alternatives seniors have to living at home, the bill appears to target only one of those environments: long-term care facilities. They provide the most care-intensive services to those who are the most frail. I wonder whether that's really a good idea.

My recent research on congregate living settings for seniors has shown not only that elder abuse is directed against residents, but also that elder abuse occurs between residents. Something I found interesting, and you brought it up, is the fact that, all too often, elder abuse is associated solely with interpersonal dynamics. Increasingly, though, we are coming to understand that the phenomenon is broader than that and can include the mistreatment of seniors by communities and organizations. That necessarily leads to a more systemic look at the issue.

I listened carefully to my colleague Laura Tamblin Watts. She highlighted how important it was to reconsider how these settings are managed, funded and structured. I completely agree with her. When I read the bill, however, I was looking for what was expected of these facilities. What I saw was greater accountability from owners and managers. What I didn't really see was greater accountability from the various people who work with seniors day to day, workers, and that point was made by others as well.

To my mind, that's very different. Instead, the bill seeks to crack down on organizations and their administrators. One of the things

the COVID-19 pandemic taught us was that we didn't always know who was in charge of these places.

**Mrs. Élisabeth Brière:** Thank you.

Something else you raised was the fact that the bill refers to vulnerable adults. You think it should instead refer to adults in a vulnerable situation, because that would make it clear that their condition was not inherent. I was quite glad you made that point. Again, I'd like to give you a chance to provide more information. Could you talk about that for us?

• (1720)

**Dr. Marie Beaulieu:** Yes, certainly.

More and more work is being done right now on vulnerability. We realize that vulnerability is not limited to a health problem or the presence or absence of disabilities. Vulnerability is a much broader and more circumstantial concept. We realize that people may find themselves in a vulnerable situation at some point in their lives, which makes them vulnerable. However, that does not mean they will remain in that state forever. So designating some people as vulnerable becomes a way to label them, and that can be very ageist and very reductive.

However, taking into account the whole situation and looking at the characteristics of the person and the environment in which they find themselves is important. One of the things we've learned over the years through studies on elder abuse is that the context and, more importantly, the characteristics of the abuser or the abusing organization often tell us a lot more than the characteristics of the senior. So I think it's important to reintroduce the nuances stemming from all these analyses.

**Mrs. Élisabeth Brière:** Since I have only 30 seconds left, I will take this opportunity to thank you for your insight and congratulate you on your career and all the research you have conducted to help improve the cause of seniors and reduce elder abuse.

[*English*]

**The Chair:** Thank you, Ms. Brière.

Next we go to Ms. Larouche for five minutes.

[*Translation*]

**Ms. Andréanne Larouche:** Thank you very much, Mr. Chair.

I would like to thank the witnesses for being here to talk to us about Bill C-295, which deals with the very sensitive issue of elder abuse.

Ms. Beaulieu, I had the opportunity to meet you and exchange with you in my former life, at the Université de Sherbrooke, when I was working as project manager on raising awareness of elder abuse and bullying. I thank you for what you brought to my work, and I acknowledge your expertise and your commitment.

If I understood you correctly, you said, in the second point of your presentation, that you were surprised by the fact that Bill C-295 does not apply to private seniors' residences and does not refer to them. That could even be one of its shortcomings. Given the reality in Quebec, where seniors' living environments are becoming increasingly diverse, could you tell us more about that?

**Dr. Marie Beaulieu:** Yes, certainly.

Apart from their traditional home, which they can own or rent, seniors can now find themselves in a host of congregate living settings. I think the notion of community is just as important as the notion of a care environment. In congregate settings, services are normally provided.

As a result, seniors who find themselves in private seniors' residences, either for-profit or not-for-profit, can experience situations of abuse, as I was saying earlier. They may also live in intermediate resources or in family-based resources.

Consequently, if, as seems to be the case, Bill C-295 is limited to residential and long-term care facilities—CHSLDs in the Quebec nomenclature—I think a number of situations created by this notion of a community of care and services could be excluded.

**Ms. Andr anne Larouche:** Thank you, Ms. Beaulieu.

I would now like to come back to the fifth point in your presentation, where you talk about the great difficulty in applying the concept of criminal negligence. Having worked closely with the Quebec police community in the context of collaborative response processes, I agree with you that this concept is very difficult to apply right now. I would like you to tell me more about this difficulty, in relation to the work and testimony of police officers.

**Dr. Marie Beaulieu:** I have worked closely with a number of police services as part of these collaborative response processes, as well as other programs. What was really striking was that the Criminal Code could be used to deal with a certain number of cases, but it was very rarely a case of criminal negligence. That led me to ask my colleagues some questions, and they told me that the evidence was very difficult to obtain in order to prepare these kinds of cases. As a result, very few formal complaints were filed, and they rarely made it to the courts. When that happened, criminal negligence was very difficult to prove and there were few convictions. Without going so far as to say that the police seemed to give up, it was clear that the evidence was very difficult to find in order to build a criminal negligence case.

If a new provision was added to the Criminal Code introducing the nuance of criminal negligence, I think objective criteria will also have to be established that will be used to prove it in order to ensure a certain degree of success. Otherwise, this new provision may end up being used very infrequently.

• (1725)

**Ms. Andr anne Larouche:** Many witnesses who have appeared before the committee have expressed some reservations about the fact that Bill C-295 does not address the problem of ageism. What would you have to say about that?

**Dr. Marie Beaulieu:** I did not see anything about ageism in the bill. What we are seeing is a concern for people who may be among those who have the most needs and who require more protection.

Again, we have to be careful. This does not concern all seniors. They are not all in a vulnerable situation, they are not all in a position of disability, they do not all need to be protected. It is always the famous issue of the balance between protecting people and respecting and strengthening their self-determination.

**Ms. Andr anne Larouche:** Ms. Tamblyn Watts, I have only 10 seconds left. How critical is health transfer funding to give you some breathing room, so you can take action on seniors' living environment?

[English]

**Ms. Laura Tamblyn Watts:** We would like to see a designated seniors care bucket of funds that is then negotiated with the provinces and territories, not just for health but for all issues related to our aging demographic, including elder abuse.

**The Chair:** Thank you.

Last we have Mr. Garrison for five minutes.

**Mr. Randall Garrison:** Thank you very much, Mr. Chair.

I want to thank all the witnesses today who have done a good job of reminding us of the larger context within which this private member's bill sits.

What I can say, of course, as a New Democrat, is that we are concerned and have made part of our confidence and supply agreement with the government a commitment for a safe long-term care act to be introduced to take care of the fact that long-term care is not covered in the Canada Health Act. That would allow us to address some of the broader issues in the way the system operates, the funding and the standards. We are aware of the Liberal promises, and we are aware of the agreement we have with them, so we look forward to that coming forward.

What we have is this private member's bill that I think clearly responds to the large number of COVID-19 infections and COVID-19 deaths during the pandemic. What I'm wondering here is whether there is something useful that this bill can still do, even if it doesn't address those broader issues that this committee addressed in its study on elder abuse or the larger needs of the long-term care system.

We heard testimony on—and I'm going to ask Ms. Hajek, as I think she made reference to this—the conclusions of the studies of the crisis during COVID-19 that caused the Canadian military to have to enter long-term care homes. They found a significant difference in the performance of public and not-for-profit long-term care homes and the performance of for-profit homes when it came to the number of COVID-19 infections and the number of COVID-19 deaths, both among residents and the staff.

I wonder, Ms. Hajek, if you could comment on those conclusions.

**Ms. Marta C. Hajek:** Thank you, Mr. Garrison.

I think it brings us back to the point of accountability. Whether it's for-profit or not-for-profit, the same rules have to apply. The persons residing in these homes are suffering from neglect and abuse. The staff are definitely overworked or understaffed. The challenges were tremendous, and I think, as a global community, we were responding to the novelty of what this pandemic meant. People living in congregate settings certainly paid a higher price.

**Mr. Randall Garrison:** I think I saw you react. Would you like to respond on the same topic?

**Ms. Laura Tamblyn Watts:** Yes, thank you very much.

I think it's important to remember that we didn't include it with the Canada Health Act mostly because, in 1987, we didn't live as long as we do now, and our frailty wasn't as frail. I think it would have been a very good thing to include it, and I think now it's going to be very difficult.

We have been very interested in pushing forward with the Liberal promise for a senior safe act to create legislation that will be thinking about these issues in a substantive and funded way. While we are very concerned about the equitable care of people, I think it's very important as well to fund our new national standards. Many of us participated; I think everyone on this call participated in it. We gave hundreds and hundreds of hours to create new national standards, and we need to have those funded. Those people need to be held to account, whether they be municipal homes, not-for-profit homes or for-profit homes.

• (1730)

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

Given that time is about to run out, maybe I'll go around the table and invite Dr. Beaulieu and Dr. Hirst to make some concluding comments at this point.

**Dr. Sandra P. Hirst:** Perhaps I'll go first.

I think amendments need to be addressed recognizing that older adults need to have quality of life and recognizing the value of their human rights. You're looking, in the act, at the consequences. You're not dealing with the causes of the problems, in my view.

Thank you for the opportunity to comment.

Go ahead, Marie.

[*Translation*]

**Dr. Marie Beaulieu:** Thank you, Ms. Hirst.

The purpose of the bill is really to respond to very specific situations. It does, however, have the merit of looking at the problem a little bit, but we are far from getting a complete picture of the situation. So we must not think that, if these amendments were adopted, the problem of abuse in Canada would be solved and the Criminal Code would no longer have to be reviewed. Many other things could be done.

[*English*]

**Mr. Randall Garrison:** Thanks once again to all the witnesses.

Thank you, Mr. Chair.

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

That now concludes our meeting. I want to thank all the witnesses for attending. We appreciate their time and in-depth knowledge from academic or real-life experiences. We appreciate that.

I believe Mr. Brock has something he wants to ask.

**Mr. Larry Brock:** Thank you for the opportunity, Mr. Chair.

The vice-chair of this committee brought to my attention that the main estimates are due at the end of this month. If we want to speak to them, which we do, we have an opportunity on the 29th and we'd like that to be scheduled.

**The Chair:** Does anyone else have any comments on that?

We'll check the calendar.

Go ahead, Mr. Anandasangaree.

**Mr. Gary Anandasangaree (Scarborough—Rouge Park, Lib.):** Thank you, Mr. Chair and Mr. Brock.

I can check the availability of the minister on the 29th and get back to you. If not, we can look at another date.

**The Chair:** That sounds good.

Thank you, Mr. Brock and Mr. Anandasangaree.

The meeting is now adjourned.









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