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# Standing Committee on Justice and Human Rights

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Chair: Mr. Randeep Sarai





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• (1635)

[English]

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

Welcome to meeting number 65 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 on Bill C-295, an act to amend the Criminal Code.

Today's meeting is taking place in hybrid format, pursuant to the House order of June 23, 2022. Members are attending in person and remotely by using the Zoom application.

I'd like to make a few comments for the benefit of witnesses and members.

Please wait till I recognize you by name before speaking. For those participating via video conference, click on the microphone icon to activate your mike, and please mute yourself when you are not speaking.

For interpretation, those who are on Zoom have the choice at the bottom of your screen of floor, English or French. Please adjust to the desired setting now. Those in the room can use the earpiece and select the desired channel.

I remind you that all comments should be addressed through the chair. For members in the room, if you wish to speak, please raise your hand. For members on Zoom, please use the "raise hand" function. The clerk and I will manage the speaking order as best we can. We appreciate your patience and understanding in this regard.

Now I would like to welcome our witnesses, who are all appearing by video conference today.

First we have, from BC Care Providers Association, Terry Lake, chief executive officer—

[Translation]

**Ms. Andréanne Larouche (Shefford, BQ):** Mr. Chair, have all the required tests been done and are all the witnesses ready to testify?

[English]

**The Chair:** Madame Larouche, yes, all connections have been tested, so we should be good.

**Ms. Lena Metlege Diab (Halifax West, Lib.):** The folks online can't hear us anymore.

**The Chair:** Hold on one second. We'll get the clerk to figure this out.

Can you hear me now? Did you hear my introductory comments?

Okay, for those who are not members, at the bottom of your screen, just select the interpretation you'd like. There's English or French, or the floor, if you're bilingual. If you're going to ask questions, use the "raise hand" function if you're online and the clerk and I will do our best to acknowledge you.

I was just about to introduce our witnesses.

From BC Care Providers, we have Terry Lake, chief executive officer, by video conference.

We have the Canadian Association for Long Term Care. Jodi Hall, thank you and welcome.

From the Canadian Federation of Nurses Unions, we have Linda Silas.

I will begin by recognizing Terry Lake, our good friend and frequent visitor to this committee and others, for five minutes, and then we'll go to the next. Then we'll have a round of questions.

It's over to you, Terry.

**Mr. Terry Lake (Chief Executive Officer, BC Care Providers Association):** Thank you, Mr. Chair, and good day to members of the Standing Committee on Justice and Human Rights.

I'm coming to you today from beautiful Kamloops, British Columbia, in Secwépemcúl'ecw, the traditional territory of the Tk'emlúps te Secwépemc first nation.

My name is Terry Lake. I'm the chief executive officer of the British Columbia Care Providers Association, which is the largest organization representing contracted providers of long-term care and assisted living in B.C. We comprise both not-for-profit and for-profit organizations and, through our operating arm, EngAgeBC, we also represent private home health providers and independent living providers.

I've been in this role for two and a half years, but previously, from 2013 to 2017, I served as B.C.'s minister of health responsible for seniors' care in the province. In our province, long-term care is provided by health authorities, non-profit societies and for-profit corporations, each responsible for approximately one-third of long-term care residents, of which there are approximately 30,000.

Why this bill? Following the first wave of COVID-19, before vaccination was available, there was indeed serious concern about the impact of the virus on vulnerable residents of long-term care homes. Approximately 80% of deaths in Canada after that first wave occurred in these settings, and we witnessed terrible scenes, particularly in the provinces of Ontario and Quebec, where Canadian Armed Forces personnel were dispatched to care for residents.

Chronically underfunded homes had staffing challenges before the pandemic, and with many staff falling ill to the virus or simply too scared to go to work, residents were sometimes left in terrible circumstances. It's easy to understand the motivation for action to prevent these terrible situations from being repeated. The Speech from the Throne in 2020 indicated that the government was going to do just that, and at that time, I provided a submission to this committee indicating that provisions in the existing Criminal Code already provide measures very similar to what this bill is intended to do. These provisions are found in sections 219, 220 and 221.

Criminal negligence occurs when a person, first, has a duty imposed by law, which would include, of course, regulation of care facilities; second, does or omits to do something and thereby shows a wanton or reckless disregard for the lives or safety of others; and third, thereby causes death or bodily harm.

Also, section 217 of the current Criminal Code says that a person who has authority to direct how another person does work is under a legal duty to take reasonable steps to prevent bodily harm to that person and bodily harm to another person arising from that work.

That's the existing Criminal Code, but of course every province and territory has legislation and regulations that hold operators and employees to account for any neglect resulting in harm to residents. In B.C., the Community Care and Assisted Living Act and regulations include a section called "Harmful actions not permitted", and this is under regulation 52:

(1) A licensee must ensure that a person in care is not, while under the care or supervision of the licensee, subjected to any of the following:

(a) any of the following types of abuse or neglect, as described in section 1 of Schedule D

These include emotional abuse, financial abuse, neglect, physical abuse, sexual abuse and deprivation of food or fluids as a form of punishment.

Jodi Hall, my colleague from the Canadian Association for Long Term Care, will speak about the chilling effect that these proposed Criminal Code changes could have, and likely would have, on the recruitment and retention of workers in long-term care, but let me just say that staffing is the number one challenge we face in caring for our elders. That was the case before the pandemic, and it's still the case. Anything that exacerbates that challenge will, in fact, result in less care, not more care.

I know this bill was not put forward to make the situation worse, obviously, so what I'm suggesting is that if the government feels seniors in care do lack protection of any type, it should put forward its own legislation that goes through a robust engagement strategy to understand the potential positive and negative outcomes.

I remind the committee that provincial health authorities and municipalities would be impacted by this bill, and there is currently

next to no awareness about the bill. Health authority officials in British Columbia expressed surprise when I raised concerns at a recent regular meeting between health authorities and the ministry, and only now are they performing due diligence on this bill.

All Canadians and certainly providers of long-term care services care deeply about vulnerable adults who require complex care in nursing homes. Operators have contributed to the formation of national standards, have supported efforts to train more health care professionals and are determined to continuously improve our system of care. All operators and organizations, like the BC Care Providers Association, will continue to work diligently with all levels of government to make sure that this happens.

• (1640)

With that, I am happy to take your questions.

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

Before we go on, I want to wish all the nurses out there a happy National Nursing Week. Kudos, and we all celebrate all their great work. Especially during the pandemic, everyone realized the hard and important work that nurses do.

Next we have Jodi Hall from the Canadian Association for Long Term Care.

**Ms. Jodi Hall (Chief Executive Officer, Canadian Association for Long Term Care):** Members of the committee, I want to start by thanking you for inviting me to appear before you today to discuss Canada's long-term care sector.

My name is Jodi Hall, and I am the CEO of the Canadian Association for Long Term Care. CALTC is committed to ensuring quality long-term care for all, and we advocate on behalf of seniors in long-term care homes and our members. Our members include many of the provincial long-term care associations and a range of long-term care operators from non-profit, faith-based, and private corporations.

CALTC appreciates that the spirit of the proposed bill is to protect vulnerable adults, and we support the introduction of legislation that would address elder abuse in Canada. However, the bill before the committee does not accomplish that. If it were to pass in its current form, I believe it is likely to have a devastating impact on the long-term care sector throughout the country.

Long-term care homes are currently facing a number of issues that impact their ability to be sustainable. First, the health human resources crisis is a critical challenge. The latest data from Statistics Canada from the final quarter of 2022 notes that there are over 38,000 vacant positions in Canada in long-term care homes. This is more than double the number of vacancies in 2019.

Provinces are making investments in long-term care, and the leadership and frontline teams in long-term care homes remain dedicated to providing high-quality resident care every day. However, they are doing so with limited resources, and many are in homes that have aging infrastructure.

Our sector needs support. We face significant, systemic issues, including widespread staffing shortages, aging infrastructure and chronic underfunding. These are not new issues. Decades of underinvestment laid the foundation for the perfect storm, which painfully played out through the pandemic and has left homes to continue to struggle today.

In the last election, the government committed to investing \$9 billion in long-term care over five years. Unfortunately, we are still waiting for that commitment to be realized. These investments could be used to help support the recruitment of staff, to increase our standards of care and to invest in the much-needed infrastructure that's required.

While long-term care has received more attention as of late, we have not, as a country, come together to talk about creating a sustainable long-term care sector. In the next 15 years, there will be another 10 million seniors in Canada. We need to address the questions around long-term care sustainability, but today we are here to address Bill C-295.

CALTC members are unequivocal in our denunciation of elder abuse in all forms. This bill that has the potential to have a devastating impact on long-term care homes while not addressing the multi-faceted considerations that are needed for elder abuse legislation in Canada.

As well, “manager” is so broadly defined within this bill that it includes almost all long-term care staff. As it stands, this bill focuses on employees in long-term care and only in long-term care, as other settings—for example, a hospital—that provide similar care with similar employees, often to those who are waiting to be admitted to a long-term care home, are not noted.

We believe that this will further increase the challenges around recruitment and retention. Creating further obstacles to recruitment and retention for long-term care is not the way to improve quality or safety in the homes.

All levels of government have the opportunity to work with the long-term care sector to build a resilient path forward. Unfortunately, I believe the bill as presented does not take advantage of that op-

portunity. Moving forward, the government should launch inclusive consultations with long-term care residents, families, providers and others in the health care system to identify existing gaps in elder abuse protections and how best to effectively address them without causing unintentional impacts, as this private member's bill will do.

If the committee should choose to proceed with the bill, we ask that at the very least the scope of the bill be not limited to long-term care facilities and long-term care managers but be refocused on all health care settings and all health care professionals so as to not result in inequities in recruitment and retention being directed at long-term care homes alone.

I thank you for the opportunity to speak, and I'm happy to take questions.

• (1645)

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

Next we'll go to Linda Silas, president of the Canadian Federation of Nurses Unions.

**Ms. Linda Silas (President, Canadian Federation of Nurses Unions):** Thank you, Chair, and thank you for acknowledging nurses week.

I'm Linda Silas, national president for the Canadian Federation of Nurses Unions. CFNU is the largest nursing organization in Canada—honestly, in North America—with 250,000 nurses and nursing students.

It's an honour to speak to you today, and thank you for the invitation.

I'll start off by acknowledging the important advocacy this bill is bringing through its sponsor, the honourable Dr. Hedy Fry, who put her conviction into action by advancing this bill through Parliament.

Like Dr. Fry, I too was mortified by what I saw unfolding in long-term care sectors in the months following the start of the COVID-19 pandemic. I also expressed deep concern about the quality of care provided in the sector long before COVID-19. In 2015, CFNU commissioned a report entitled “Before It’s Too Late: a National Plan for Safe Seniors’ Care”, because we knew that with our aging population and critically understaffed long-term care facilities, we needed to ensure seniors received the care they deserved. In 2015, we sounded the alarm bell.

Since that report was published, little has changed. The residents in these long-term facilities have suffered greatly. Nurses were pleased when the long-term care services standard was released earlier this year, but we know that much more needs to be done. The standards aren’t mandatory, so without legislation requiring facilities to carry out the quality of care across the board, including a minimum of 4.1 hours of direct care per resident per day, seniors remain vulnerable.

Dr. Fry’s bill allows us to continue shining a light on long-term care. I strongly support the intention of the bill to bring safety and well-being to residents.

I’m not going to quote the Criminal Code. However, nurses are very concerned with the definition of “manager” in the bill. It would create a situation in which workers within these facilities, who do not have senior decision-making responsibilities for the operation or make financial decisions, could be held criminally responsible for the quality of care residents receive.

Tasks associated with the definition of “manager” in the bill are reflective of tasks carried out by unionized nurses in these facilities. For instance, regulated nurses serve in leadership roles within long-term care facilities. They engage in activities such as training and supervising staff. They may be involved in hiring and scheduling of staff and lead the planning and coordination of provision of care to residents. These nurses are not responsible for determining the budget of the facility they work in, leading to how many staff are hired, the extent of the training they receive and other conditions within these facilities that have led to dire outcomes for residents. The actual owners of those facilities, the people who make key decisions around resourcing and quality of care, are often many levels above the nurses on the floor.

We know that in the for-profit long-term care home, the profit motive competed directly with the duty to provide optimal care. In Ontario, data shows that these homes, with significantly higher rates of COVID-19 deaths, employed an average of 17% fewer workers than not-for-profit municipality homes, but they could afford to pay dividends to their shareholders. At a time of an unprecedented shortage of nurses in all areas of nursing across the country, the current wording of this bill could push more nurses out of long-term care and act as an obstacle for recruiting in these especially challenging times.

On behalf of Canada’s nurses, I call upon this committee to recommend changes to the definition of “manager” to mean any person who has senior decision-making responsibility for financial and other decisions regarding the fullness of responsibility under the definition of this bill.

Thank you, and I’ll answer any question as needed.

● (1650)

**The Chair:** Thank you.

Now we’ll begin our first round of questions. For those who don’t know me, I use cue cards, so when you’re down to 30 seconds, watch for the yellow cue card, and when you’re out of time, the red one. Try to wrap it up around that time. I don’t like interrupting.

I’ll begin with Mr. Moore for six minutes.

**Hon. Rob Moore (Fundy Royal, CPC):** Thank you, Mr. Chair.

Thank you to all of our witnesses for appearing today on this private member’s bill. Your expertise is certainly valued.

I will say at the outset that we are all, obviously, against elder abuse, but we want to make sure.... I think one of our witnesses used the expression “unintended consequences”. We want to make sure that whatever we deal with as parliamentarians achieves the goals it sets out to achieve and does not have negative consequences.

I’m going to ask my question to Jodi Hall.

You mentioned challenges that you see within the legislation itself. This is a private member’s bill, but at this committee we have the opportunity to consider ideas for amendments from witnesses. Do you have some suggestions that would make this bill more palatable or, in your view, more useful?

The last thing we would want is a piece of legislation that discourages people from taking employment in an area that so desperately needs it. Do you have some suggestions in that regard?

**Ms. Jodi Hall:** We remain deeply concerned about the overall scope and impact of Bill C-295 as presented. We feel that many of these challenges are already addressed within provincial legislation and within the Criminal Code as it exists today.

Certainly moving away from this legislation would be our first choice. Second to that, if the committee is putting this bill through, we would ask that they reconsider the definition of “manager”, in that it’s specific only to the long-term care manager, as well as the definition of “long-term care facility”. We would recommend that they apply more broadly across the health care system.

For us, when we consider that the intent of this bill is to address elder abuse and that very similar staff would be providing very similar care in a hospital setting, for example, why would this legislation only target elder abuse that would be present in a long-term care environment and not in a hospital setting?

As for recommendations for amendments, it would be to focus on those areas and broaden out the setting and the professionals that the bill would apply to.

• (1655)

**Hon. Rob Moore:** I want to reconcile two things. On the one hand, I'm hearing from some of our witnesses about a broadening, but we're also hearing about a narrowing. Is it correct to say "narrowing" in the sense of how and to whom this legislation would apply within an institution, but "broadening" in the sense that it doesn't create two standards for institutions that are doing similar work—with the example of a hospital versus a long-term care facility—so that one is not disadvantaged compared with the other when it comes to recruitment and the standard that we hold them to? Is it correct that you would also like to see a narrowing within the institution on whom this would apply to, and how?

**Ms. Jodi Hall:** To be clear, we do not support this legislation as presented. I want to be very clear on that point.

There are so many serious challenges within long-term care. We feel that the risk it poses to recruitment and retention within the long-term care sector is significant. There are accountability mechanisms already in place within the Criminal Code and within provincial jurisdiction of long-term care legislation, standards, regulations and inspections, just to name a few.

However, if the committee is compelled to put this legislation forward, then in order to address the inequalities that it would create in identifying just the long-term care sector, we would ask that it be broadened to the entire health care sector, especially given that it's meant to address elder abuse.

**Hon. Rob Moore:** Understood. That makes sense.

This committee undertook a study on elder abuse a couple of years ago. There were mixed opinions when it came to amending the Criminal Code. Where there was consensus was on prevention of elder abuse. I think you mentioned that.

When something is before us, we sometimes imagine that there's a complete vacuum of law, but you mentioned provincial regulation that is already in place. Can you speak a bit to that?

**Ms. Jodi Hall:** Yes, there are extensive accountability measures in place at the provincial level. It is the responsibility of the jurisdiction of provincial governments to ensure this level of oversight of long-term care homes.

Regardless of the type of home, all long-term care homes would be subject to the provincial regulations and standards. That's not to mention other pieces of legislation that come into play as well, like an occupational health and safety piece of legislation.

**Hon. Rob Moore:** I'm out of time, but thank you to all of our witnesses.

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

Next we'll go to Ms. Diab for six minutes.

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

Welcome to all our witnesses.

I think we can all agree—the committee and the witnesses—that the impetus of the bill is clear. The member sponsoring the bill addressed the issue of neglect of vulnerable adults, particularly in long-term care facilities, given what we saw during the pandemic and the state of our long-term care facilities at that time.

One thing we're preoccupied with as a committee is preventing the tragedies that were reported by the military when they were deployed from happening again.

Let me ask Mr. Lake and get his views. Do you see this bill preventing those tragedies that took place during the pandemic from happening again?

Second, does it hold the right people to account for those issues? In your opinion, whom do you hold responsible?

• (1700)

**Mr. Terry Lake:** It's a complex question, and I think that is why there is a need for a thorough consultation to understand it. We all understand the motivation behind the bill, but to understand the best mechanism to accomplish the goals would, I think, require extensive stakeholder consultation.

If you think back to March 2020—we've all lost track of time, but put your mind back there—we didn't know what we didn't know. All we knew was that there was this virus out there that was deadly, particularly to older people.

Put yourself in the shoes of a long-term care personal service worker, for instance, particularly in the provinces of Quebec and Ontario, at the time when there was a high incidence of virus prevalent in those care homes. First of all, if you were sick, you didn't go to work. However, if you weren't sick and you were afraid for your family, you didn't really know what to do.

If people were that scared to go to work, I don't think this legislation would have compelled them to go. Thankfully, the vast majority of long-term care workers in fact went to work, and those who went to work performed heroically to keep our seniors well and safe.

I think there are better mechanisms. I think Jodi has touched on a few of those.

Properly funding long-term care is one. As you know, long-term care is not covered under the Canada Health Act, and it varies by province. However, generally speaking, the province will pay for a portion of the cost of long-term care, and then the resident and their family will pay the balance. Often that's income-tested.

However, it has suffered from chronic understaffing for many years. There's a bit of a stigma that is applied to health professionals working in long-term care, so they may choose acute care, thinking it's a better form of health care for them to be in. Ageism is part of that. There's no question about it.

The difficulty in recruiting into long-term care has always been a challenge. Anything that makes people think twice about going into long-term care—or home care, for that matter, because this would apply to people providing home care as well—would make them think about other health care settings before long-term care.

I think we could do a lot to protect seniors in care by increasing investment, by increasing hours of care and by increasing the incentives and recruitment and retention strategies—all of which, by the way, the provinces are all working on at the moment.

As Dr. Samir Sinha often points out when he's doing media, Canada underfunds seniors' care by about 15% compared to other OECD countries.

**Ms. Lena Metlege Diab:** I have another question. I'm not really sure who to direct it to.

Given the complicated staffing structures and the number of people who intersect with a resident, who do you hold accountable if something like that goes wrong, in your opinion?

Second, I think you've all said that there are Criminal Code provisions and provincial legislation. We all know we have 10 provinces and territories. They all probably have different things in their statutes, I suppose. What is missing here? What is the missing link to try to achieve what we're trying to achieve?

Maybe I'll ask you, Ms. Silas. I know it's the nurses union, but I haven't heard from you yet. What would you say to that?

• (1705)

**Ms. Linda Silas:** Thank you.

To add to Mr. Lake's presentation, let's be clear: We know what to do. We have occupational health and safety standards that are approved across this country. We have infection control standards that are approved and recognized across this country. We have staffing mechanisms that are approved across this country. What is missing is proper funding for long-term care, home care, and all the regulation and the mandated standards.

This federal government just passed national standards for long-term care, but it's not mandated. That's what has to happen.

It has to be recognized that in long-term care—and Jodi explained that there's a difference between home care, residence care and long-term care—they are sick residents. They're not what we used to see as level one, two, three and four, where the level one folks walk around and go shopping. Most of those in our long-term care facilities are level four, and they need the appropriate 4.1 hours of care.

Ontario is the only province now that has put on paper that they will look at four hours of care by 2025, but again, how it is going to be implemented? It's only with serious funding to our long-term care, matched with the standards and the regulations, to avoid the disasters that happened at the beginning of the pandemic—and let's be honest: Things weren't rosy before either.

**The Chair:** Thank you, Ms. Silas. Thank you, Ms. Diab.

We'll next go to Ms. Larouche for six minutes.

[*Translation*]

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

I thank the three witnesses for being here today.

I will also take a moment to recognize National Nursing Week. This concerns today's witnesses. Nurses are doing an outstanding job.

To follow up on what Mr. Lake said in response to a question, I remain convinced that it is not just health care for seniors that is underfunded, but all health care in general in Canada. That is why I am making a heartfelt plea and, in solidarity with nurses, I continue to call for an increase in health transfers. This is one of the Bloc Québécois' positions, and today's topic is directly related to this increase. We have talked about the importance of the increase we are calling for to bring the federal share of funding up to 35%. We can't think about better funding and better support for staff if we don't also think about better support and more financial resources for the health care system.

That was my little introduction.

I would now like to turn to Ms. Hall.

In response to some questions, you said that Bill C-295 targeted only specific types of facilities and, therefore, did not meet all the needs in terms of abuse. Abuse does not occur only in long-term care facilities or in one type of residence. We are also seeing a diversification of the types of places where seniors live, and we must take that into account when we talk about abuse. I know that in Quebec, in particular, there is a lot of scrutiny of home care.

You also say in your brief that Bill C-295 targets only one specific type of abuse—physical abuse—while there are many other types of abuse, including financial abuse and emotional abuse.

Could you comment on the shortcomings of Bill C-295 in this regard and on the measures that could be taken?

[*English*]

**Ms. Jodi Hall:** Thank you for the question.

As per the brief that we submitted, we believe that there is absolutely a need of enhancements to address elder abuse in Canada. We need to have it formally defined so that it's consistently considered across the country.

As well, elder abuse is much more than the physical aspect. We do need to consider social abuse, emotional abuse, financial abuse. These are challenging issues that are experienced not only in a particular setting but for all seniors across the country.



We certainly would support the introduction of elder abuse legislation in Canada that would thoroughly conduct consultations and engagement with critical stakeholders across the country, including police and many other organizations, to be able to address this growing challenge.

• (1710)

[*Translation*]

**Ms. Andréanne Larouche:** In the report titled “Elder Abuse: Identifying the Issue and Combatting All Types of Abuse”, published in 2021, the committee’s recommendation 4 asks “that the federal government identify and implement mechanisms to protect whistleblowers in long-term care”.

Do you believe that Bill C-295 will help whistleblowers such as employees file complaints about elder abuse?

[*English*]

**Ms. Jodi Hall:** No, I don’t believe that this bill will provide any type of enhancement for the accountability structures that are in place today at the provincial level.

We can also look to the Criminal Code as it exists right now. There are examples through legal precedent. I’m not a lawyer, but I can speak to what has been shared with me. We can point to the precedents that have been established through the Westray mine disaster and the ability to determine who the directing mind is when criminal charges are warranted. I would point to those as ways that accountability can be driven today.

[*Translation*]

**Ms. Andréanne Larouche:** That’s fine, thank you.

Earlier, my first question was mainly about types of abuse. I would now like to come back to the definition of a long-term care facility. Bill C-295 proposes the following definition: “a residential facility, or part of a residential facility, the primary purpose of which is to provide long-term accommodation, meals, assistance and care to three or more adults who reside in the facility...”.

It does contain some key words. In your opinion, is it complete or should anything be added to it?

[*English*]

**Ms. Jodi Hall:** I think that it is an incredibly broad definition of a long-term care facility. It would encapsulate almost all types of long-term care organizations across the continuum of long-term care. It does not necessarily focus just on those organizations that care for older adults but on an entire range of community care organizations that provide extended care.

The definition is incredibly broad, and the committee would need to consider whether that is the intent.

**The Chair:** Thank you.

Next we’ll go to Mr. Garrison for six minutes.

**Mr. Randall Garrison (Esquimalt—Saanich—Sooke, NDP):** Thank you very much, Mr. Chair. I want to thank the witnesses for being with us today. I know that for many of them it was short notice to appear, so I appreciate their being here.

I want to start by saying that with all due respect to my colleagues on the committee and our witnesses, it seems to me that this bill did not arise out of the larger questions about care of seniors in this country or elder abuse; it arose out of a crisis during COVID, when we saw Canada having to send its military in to provide assistance in long-term care homes. Not to disparage or diminish any of those other concerns, I think it was pretty clear in our discussion with Dr. Fry at the last meeting that this is what she was really aiming at in this bill.

I think two things are clear about that. One is that workers in long-term care struggled heroically through the crisis to try to provide the necessary care, but despite that struggle, we ended up with one of the worst records among wealthy countries for deaths from COVID in our long-term care.

That leads us to the question of why that happened. It’s been phrased or framed a couple of ways. Quite often, it’s asked, “Why didn’t workers do their jobs?” However, I think an alternative frame is, “Why were they not able to provide that care?”

I’d like to ask Ms. Silas to address that question. Why did we end up with such a poor record during COVID? Can you speak to the framing of that question?

• (1715)

**Ms. Linda Silas:** It’s staffing, staffing, staffing. You know, if we want to put seniors at the middle of the equation and prevent neglect in elders’ care, it will not be through the Criminal Code. Let’s be honest.

We have to put respecting seniors’ care on the top of our list, and that is respecting the workforce, who just love their seniors. It’s probably one of the areas of nursing—and I say nursing broadly, because it includes personal care workers, volunteers and families—where there’s a visceral love for what they do. They don’t have the resources; they don’t have the respect. Changing the Criminal Code is not going to change anything. It’s really about putting seniors’ care as a priority.

**Mr. Randall Garrison:** In the specific situation that arose during COVID, what would you, as a representative of nurses, say was the cause for death rates in the long-term care homes here being higher than in other countries?

**Ms. Linda Silas:** They worked behind the curtains all the time. Nobody was taking care of it.

As we said, in 2015 we came out with a report talking about the understaffing, the lack of training, the lack of personnel, etc., and no one was listening because it was a question of dollars and cents. It wasn't a question of how we took care of seniors. What we saw over the years was the profit margins going up, and we saw that during COVID. It was just an insult to all the health care workers that some for-profit homes were making a profit and giving money back to shareholders when.... We have to remember that most of the health care workers who passed away due to COVID came from the long-term care sector too, so it is about respect, about proper staffing and about giving our seniors, our elders, what they deserve in their last few years.

**Mr. Randall Garrison:** In comparing the record between the public and not-for-profit long-term care homes and the for-profit care homes, you've talked about the higher death rate and fewer staff per patient to start with. Can you expand a bit more on how that relates to the problems we're talking about?

**Ms. Linda Silas:** What we heard throughout the pandemic was that the for-profit homes were even more restrictive with regard to PPE, for example. That's when you saw the stories of PPE behind locked doors, because it was all addressed to an N95 respirator being a lot more expensive than a paper mask. Those are the areas where we saw.... Unions like SEIU did extended studies, and I encourage the committee to have them do a presentation comparing the for-profit to the not-for-profit.

The not-for-profit and the municipality-run or the religious-run are really based on community and are looking out for the care of seniors, compared to the for-profit, which of course says what they are. As I said in my statement, these studies showed a higher level of deaths there.

You're right, MP Garrison, that we had the worst experience of any developed country in the world, and that was due to our long-term care, which is why everyone is studying it now.

**Mr. Randall Garrison:** In your presentation, you talked about the fact that many people who are captured by this definition of "manager" in this bill don't have any decision-making power or any control over critical decisions on hiring or training. Can you talk a bit more about what that means in practical terms?

**Ms. Linda Silas:** Yes. I'm sure Ms. Hall could explain to you every province's laws, but in most provincial laws for long-term care, there has to be an RN, a registered nurse, assigned on a 24-hour basis. However, sometimes that registered nurse is the director of nursing, and he or she is at home in the middle of the night. Then it's the registered nurse who's on the unit, a licensed practical nurse, or sometimes just personal care workers with somebody on call.

Again, when we're talking about the Criminal Code—and Ms. Hall mentioned the Westray act—it's really to see who makes the final decision, and we guarantee you, the committee, that it is not the nurse or the personal care worker on the ward or in the long-term care facility. Often, it's not even the director of nursing in that facility or the director. It is either the shareholders or the board of directors, depending. The bill as proposed now is really flawed because it's talking about managers who direct the day-to-day activities, but they don't really direct the day-to-day activities, so we have to find out who directs them.

• (1720)

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

**The Chair:** Thank you.

Thank you, Mr. Garrison.

We'll now go to our next round for five minutes. That begins with Mr. Van Popta.

**Mr. Tako Van Popta (Langley—Aldergrove, CPC):** Thank you, Mr. Chair.

Thank you to the witnesses for being here and for giving us your very important expert evidence on an important issue.

Before I go on, I am going to address this to the chair. I was looking forward to the next panel of department officials, because I had some important technical questions about numbers of convictions, what's wrong with the existing legislation and what this bill could improve. I understand they're not coming.

I am particularly troubled, because we're getting competing evidence from our witnesses today. It's very valuable evidence—thank you for that—but one witness is saying that we need to broaden the definition of "manager" and another is saying we need to narrow it down, so we really do need expert help, and I am disturbed we're not going to be seeing that today.

We have these important witnesses in front of us, so I am going to ask them some questions.

Ms. Silas said in her evidence that she is advocating a narrower definition of "manager". She said it shouldn't include lower-level workers, like the scheduler and the purchasing agent, and maybe not even the director of nursing, but it should be focused only on the person making financial decisions. She also said in her testimony that the history of the neglect of seniors is worse in for-profit homes than in not-for-profit homes.

My question is to both Jodi Hall and Terry Lake. Is that your experience in your fields and with your associations?

**Mr. Terry Lake:** I am happy to go first if you like, Jodi.

Certainly in British Columbia, where we have one-third government-owned and operated, one-third for-profit and one-third not-for-profit, there was no discernible difference in the incidence of mortality in care homes based on the ownership type.

I would take some issue there. I think it's a distraction, because we spend a lot of time talking about this issue rather than about how we can make seniors' care better. If you look at Quebec, for instance, where the Canadian Armed Forces personnel went in and saw some terrible situations, you see that 80% of long-term care is government-owned, operated and funded in the province of Quebec.

We point to Ontario's situation, where there just happens to be a large proportion of for-profit providers, and those for-profit providers have homes that have not had investment through the government investing in new facilities for a long time.

Studies in the U.S. show that ownership is not a significant factor. It is the age of the home and the size of the home that determine the difference in mortality.

I would even caution the committee about comments about Canada doing poorly versus similar countries. The Institute for Research on Public Policy published a paper in the last few months that showed the mortality rate in Canadian long-term care was about 26 per 1,000, which was actually better than about two-thirds of similar countries around the world.

We had 80% of our deaths in long-term care because our death rate in the community was so much lower than other countries, so you have to be careful about the data you're using to draw conclusions. As I said, I think it's a distraction because, as Ms. Silos has said, the key to improving care for Canadians in long-term home care is to invest, and we simply need to do that to make sure we have appropriate staffing.

**Mr. Tako Van Popta:** Good. Thank you.

I am hoping Jodi Hall can respond to that as well.

**Ms. Jodi Hall:** Yes, and I completely agree with the comments that Terry has laid out. Every type of long-term care home in Canada was impacted by COVID-19. There were no exceptions to that.

We know that those experiences were largely shaped by the age of the infrastructure and the home's ability to implement infection prevention and control protocols, as well as the square footage that was available where residents lived together, as well as the number of staff available, especially during those early days.

Access to PPE and education for staff were limited, but it was largely due to PPE not being available globally. If you recall that time, which can feel very far away, it was an incredible challenge to be able to access the PPE that was required and to have the funding to be able to purchase it.

The other thing—

• (1725)

**Mr. Tako Van Popta:** I'm going to stop you there because I'm almost out of time and I would like to give Ms. Silas an opportunity to respond.

Is that okay, Chair? Can I have 30 seconds, maybe?

**The Chair:** I'll give you 15 seconds.

**Mr. Tako Van Popta:** Thank you.

**Ms. Linda Silas:** Ms. Hall is probably very right on the access to PPE, because, again, we've never put seniors' care as a priority in this country. Compared to an ICU, they were at the back of the bus to get any PPE, so I do agree there.

I don't have the references. This was a last-minute thing, but in our brief, we will send the references on comparing the for-profit versus the community and not-for-profit long-term care, both on the deaths and on injuries to health care workers. I commit to that.

**The Chair:** Thank you.

Now we'll go to Mr. Zuberi for five minutes.

**Mr. Sameer Zuberi (Pierrefonds—Dollard, Lib.):** I'd like to thank the witnesses for being here today, and for your years of work to promote the good health of everyone in our society, including seniors. I think your testimony is extremely valuable in highlighting that we need to look at some of the definitions, potentially expand the scope in some ways and ensure that we're not capturing those who are not managers in other ways.

[*Translation*]

I would also like to say that, during the pandemic, the reality of long-term care facilities in Quebec and Ontario was different from that in the rest of Canada.

In Quebec, there was an investigation into how seniors were treated in those facilities, and it was discovered that 4,000 people lost their lives there.

[*English*]

This was an important finding, and it was mentioned by Mr. Garrison as part of the reason that this legislation has come forth. I think that's the context we're dealing with, but you point out something important in terms of expanding beyond these homes to other spaces where seniors are cared for.

To all of the witnesses, I would assume that you would want us to expand it to other facilities and domains where seniors are cared for. Is that correct?

Give a quick answer, please.

**Mr. Terry Lake:** If the bill were to go forward, yes, that would be correct.

**Mr. Sameer Zuberi:** I would assume that you feel that this is a gap or an area that we should legislate on, given what happened during the COVID pandemic and what that showed in terms of the care of seniors.

Would you agree that we need to close the gap and to see that seniors are properly cared for through legislation that encompasses not only the people we're talking about—the managers we're talking about in this space, in senior care homes—but in other spaces too? Would you agree to that?

**Mr. Terry Lake:** I'm not sure I would agree.

We are reacting to a terrible situation with emotion, which is understandable, but we have to think why this situation occurred. All of the witnesses here today have outlined what those reasons were: the understaffing, the lack of PPE—which is supplied by government, by the way, and it just was not available—the terrifying nature of the virus, the fact that so many people were ill and the fact that they were really working with skeleton crews beforehand because it's been so hard to attract people into the sector, so anything we do that—

**Mr. Sameer Zuberi:** Just around that, though, this legislation doesn't target the rank-and-file employee. It targets managers and owners who have a responsibility.

Do you think that this responsibility should fall on their shoulders and that they should be held responsible when there are deaths? Don't you think this gap must be closed?

● (1730)

**Mr. Terry Lake:** First of all, I think the definition is so broad that unintended people are captured, so certainly narrowing the definition within the long-term care space—

**Mr. Sameer Zuberi:** Let's assume we narrow the definition, as you're suggesting, in one sense, so as not to capture those who aren't managers, and expand it in another sense so as to capture managers and owners in other sectors who do care for seniors.

If we make those adjustments, don't you think this would be a salutary law?

**Mr. Terry Lake:** I think it would be much improved over what we have today, yes.

**Mr. Sameer Zuberi:** That's really helpful, I think, in helping us to think about amendments, because in this committee we can amend what's on paper, so what we're seeing and what you're talking about is very helpful.

We have about 30 seconds. Would somebody like to speak about seniors who aren't in care homes or in hospitals but are in isolated situations, such as in their own homes or in the community?

**Ms. Jodi Hall:** I can jump in quickly just to say that we do support the development of elder abuse legislation in Canada that is multi-faceted and that is attached to the older adult and not to a particular setting.

I do want to very quickly speak to the concept of owner, because this legislation as presented does not provide a definition of what a long-term care owner is, and there are a multitude of definitions for how that looks across the country. We have provincial governments, regional health authorities, municipal governments, indigenous communities, non-profit community boards, faith-based organizations and a range of private corporations that own these homes, so defining "owner" is not simple, and it is not defined within this legislation as presented.

**Mr. Sameer Zuberi:** Thank you. That's really helpful.

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

We'll go now to our last two-and-a-half-minute rounds, beginning with Ms. Larouche.

[*Translation*]

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

I thank the witnesses for joining us today for this study on an extremely important topic, one that is of particular concern to me, as I mentioned, since I worked on the issue of abuse before I was elected.

I have heard some interesting things.

Ms. Silas, you talked about standards. There are already some standard. That was noted in the armed forces report. One of the witnesses also said that, in Quebec, 80% of long-term care facilities are public and fall under the health care system. Standards have been put in place by the Quebec government, which has the jurisdiction to take action on the issue of long-term care facilities. What is missing is financial means.

What falls under federal jurisdiction, however, is the whole issue of supply and personal protective equipment. However, it was recognized that there was a deficiency in that regard during the pandemic, when those elements could have helped prevent much of the transmission of the virus.

Ms. Silas, you'll be able to comment on that, if you want, but I also have some other questions for you.

Do you think that seniors living in long-term care facilities are necessarily unable to provide for the things they need for their own existence?

Do you think that some seniors who are independent, but in precarious situations and without a family network, may choose to go to a long-term care facility?

What is the demographic reality of people living in these types of facilities?

**Ms. Linda Silas:** Your question is a heavy one, Ms. Larouche.

I must start by saying that I do not represent Quebec nurses. The Quebec system is completely different from that in the rest of Canada, that's for sure. I am not qualified to answer those questions.

What we do know, as I mentioned, is that long-term care, care for our seniors, is not a priority in any province or territory. Ms. Hall has made it clear that the responsibility lies with a number of players, whether it is the government, the municipality, indigenous communities or the private sector.

It is important for the federal government to look at standards. In fact, it just announced standards, which are great, but they are not mandatory. The province of Quebec and my province, New Brunswick, are just looking at these fine documents, since the standards are not mandatory and are not linked to funding. But that's what needs to be done: The standards need to be attached to funding. Then, if necessary, amendments to the Criminal Code could be considered.

[English]

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

I hope I'm okay with time, Ms. Larouche. My clock was a little off, but I guesstimated that it was about two and a half minutes.

Mr. Garrison, you have two and a half minutes.

• (1735)

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

I want to go back to Ms. Silas on the question that Mr. Lake ruffled about the difference between public and private facilities, because the studies that I am aware of all showed higher death rates from COVID for workers in long-term care and for residents.

I know you don't have the full statistics at hand, but can you just tell us a bit about what you have heard on those specific studies regarding the differences between private, for-profit and non-profit long-term care homes?

**Ms. Linda Silas:** Thank you for the question.

What we're working with is a death rate in for-profit homes that is twice as high as the other nursing homes that we see. I mentioned 17% higher in my presentation. Those are the numbers we're working with.

We're hearing from those working at the base that there's a complete difference between a private, for-profit long-term care compared to a community-based or religious-based nursing home.

We are recommending, when we're talking to provincial governments, that you can have a private nursing home, but the for-profits should never come into effect for the care of either children or elders, similar to our public health care system. That is always where the debate is. When we enter negotiations with a for-profit, it's a different language than it is with our community-based homes.

**Mr. Randall Garrison:** I have a question, though the time is really short.

Are you aware of any other wealthy country in the world that had to send its armed forces in to provide assistance in private long-term care homes?

**Ms. Linda Silas:** No. It was very difficult for health care workers who had to call on their owners and on their managers for dire help. When the report came out with the military—and I'm sure for Ms. Hall and Mr. Lake it was the same thing—we were all distraught. It was very difficult to read. We all committed as providers, as owners and as policy-makers that we would do better.

What we question today for nurses is if going through the Criminal Code is the best way. That's your decision to make as a committee, but for sure we need clarification on the decision for who is responsible and who is covered with this private member's bill. Right now it can attack any nurse working today in a long-term care facility.

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

I want to thank all of the witnesses and share a little story. I grew up in an old folks' home. My mother used to work there. I was babysat for about an hour between shifts. I vividly remember from

my toddler and elementary years all of the hard work, and the bond that lots of staffers had with their patients in these long-term care facilities. Thank you for all of the great work you do in all of your various sectors.

You're now dismissed. You're more than welcome to watch, as the remaining few minutes or so is also public.

We'll go into committee business for the rest of the meeting.

We have the subcommittee's report. Has everyone seen it?

Are you okay with it? Do we need to repeat it, or are you okay?

**Some hon. members:** Agreed.

**The Chair:** Okay. That's approved.

There's the travel to Europe. I think the travel budget was sent around. I think it's slightly higher than last time. It's about \$15,000. That's actually to Mr. Garrison's suggestion to make sure there are business arrangements on it. Hopefully that will be okay. We'll give it one last try to see if it goes.

Are we all good with that?

**Some hon. members:** Agreed.

**The Chair:** I think that's it.

We have Mr. Garrison.

**Mr. Randall Garrison:** I think Mr. Van Popta raised an important issue today about the cancellation of the second panel. We're not having officials appear. I think it's very clear that members of the committee would like to have the officials appear. When a committee is asking for advice from the justice department, I've never seen it treated as an option for officials not to appear.

I'm looking for assurance that even though they didn't appear today, they will appear to give us their advice on this bill.

• (1740)

**The Chair:** Just to let you know, I made the request. Their reply was that because it's a private member's bill, they didn't feel that they could get really partisan, or whatever. I will make a request again.

I will ask Mr. Anandasangaree.

**Mr. Gary Anandasangaree (Scarborough—Rouge Park, Lib.):** Obviously, we have incredible civil servants, and they make decisions for themselves, but I think that if it's the will of the committee, we too would support their appearance here. We would maybe ask for it as a joint request from all parties.

**The Chair:** I'll go to Mr. Caputo. He has his hand up.

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

I would echo that. This is something that I think we do need some expertise on.

I know my colleague Mr. Zuberi asked about this being a law and that we should be catching owners. We have to remember that this is an amendment to the Criminal Code. All criminal law requires intent, or some sort of substitution for intent. Forgive me; that's not the best word. It's a negligence or a recklessness.

People don't generally come to the committee with an open-book knowledge of this kind of issue. I think we need a fair amount of expertise on it. Essentially, what I'm trying to say is that I think we need justice officials' guidance in this, because this is not an easy issue to navigate.

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

Go ahead, Mr. Garrison.

**Mr. Randall Garrison:** I would also say that if there was some suggestion that the department never appears on private members' bills, I don't believe that's true, from my experience on this committee and other committees. I don't think it should be true.

Private members' bills are not partisan, even though they may have political issues. They will move through the House like other legislation and become part of legislation. If we're establishing some sort of precedent that we don't get technical advice from the department on private members' bills, I think that's quite dangerous.

**The Chair:** I'm going to ask them again. Before we summon them or do anything harsher, I will make a strong assertion to have them back. I hope they will be back. If there's a problem, I'll let you all know.

Thank you. We are adjourned.

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