



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Citizenship and Immigration

CIMM • NUMBER 045 • 2nd SESSION • 41st PARLIAMENT

EVIDENCE

Thursday, April 30, 2015

—
Chair

Mr. David Tilson

Standing Committee on Citizenship and Immigration

Thursday, April 30, 2015

•(0845)

[English]

The Chair (Mr. David Tilson (Dufferin—Caledon, CPC)): Good morning everyone. This is the Standing Committee on Citizenship and Immigration. It's Tuesday, April 30, 2015. We're studying Bill S-7, an act to amend the Immigration and Refugee Protection Act, Civil Marriage Act, and the Criminal Code, and a number of other pieces of legislation.

Appearing before us this morning are two witnesses, Laila Fakhri and Richard Kurland, our favourite witness, who is a lawyer and policy analyst.

Ms. Fakhri, you have up to eight minutes to make a presentation. Thank you for coming.

Ms. Laila Fakhri (As an Individual): Good morning, everyone. I'm very pleased to be here and to have the opportunity to participate in this discussion on Bill S-7, the zero tolerance for barbaric and cultural practices act.

Being an immigrant woman and working with victims of domestic violence, I have learned that certain antiquated cultural practices, such as forced marriages and child marriages, create barriers for women's rights because they are generally associated with increased violence and oppression.

In many ways I support this proposed legislation because I believe in equal rights for all men and women in political, economic, cultural, personal, and social activities. I do want to mention that while I see many a strength in this bill, I also believe there are many flaws in it as well. I am against barbaric and cultural practices that prevent women from achieving equal rights.

We need a policy as clear as Bill S-7 to end these old barbaric traditions in Canada and abroad, because we live in the 21st century and things, such as our social structure, have progressed.

We need to develop a strategy to end all forms of gender-based violence. Fortunately in Canada, under the Canadian Charter of Rights and Freedoms, Canadian immigrants have the right and freedom to practice any religious belief without any repercussions. However, certain immigrants will continue to carry on their own ideologies in the area of matrimony that may not necessarily be in line with Canadian values and may possibly infringe upon women's rights and freedoms. In the name of freedom, these cultural practices are carried out at the expense of the liberty, well-being, and happiness of the women and girls involved. Freedom that allows individuals to practice old traditional cultural beliefs that oppress other people is not freedom at all; it is tyranny.

It is morally incumbent to support Bill S-7, the zero tolerance for barbaric cultural practices act, to protect women who grew up in western society. This category of women may be in constant clash with their families who would rather see them partake in traditional practices. She may face huge pressures to accept her family's or community's wishes. If she is from a very traditional family, the wrong decision may be life threatening. Two extreme Canadian cases of this are the four females from the Shafia family in 2009, from Kingston, Ontario, and Ms. Nasira Fazli in 2013 in Ajax, Ontario. As well, many other women are and continue to become victims of domestic violence.

I wish to highlight the following major factors that predispose immigrant women to domestic violence.

First is conditional permanent residency. There is a period of two years during which the permanent residency of the sponsored person is conditional on the person remaining in a conjugal relationship and cohabitation with their sponsor. This is a flaw that I see in the act. If they don't fulfill these conditions, their permanent residency could be revoked and they could be deported. In most cases, the victims are uninformed about their rights and the cultural norm in Canada. Out of desperation, they will remain in the relationship due to this requirement.

Second, women are financially dependent on their abuser or their spouse. I should emphasize that the first point is deemed to be the most complicated and, perhaps, has the greatest impact on increasing the risk of domestic violence against immigrant women. While I support this bill in many ways, I want to make it clear that this is an area where I see flaws.

I propose the following recommendations to help address some of the challenges I have mentioned. First, an information booklet on fundamental rights and freedoms, in particular women's rights, should be distributed to applicants of the sponsorship program as a mandatory requirement for review, prior to approval of entry into Canada.

•(0850)

Second, immigrant women who lack financial independence might be dangerously dependent on their husbands for financial support. The repercussions of this type of financial dependency for women may include reduced self-confidence, increased isolation, and psychological, mental, and social health problems. Language classes after the women arrive in Canada should be compulsory.

By passing Bill S-7, the zero tolerance for barbaric cultural practices act, the government is obligated to create more programs and services. More work needs to be done. If we Canadians believe that Canada is the world leader in the promotion and protection of women, women's rights, and gender equality, what do we need to do to bring this talk to a walk?

Polygamy, forced marriages, and honour killings are heinous and barbaric practices. It's time to say no to these practices. These practices add to the issue of domestic violence.

The elimination of gender-based violence is value driven, not valueless. In order to do this, the Canadian government needs to take serious steps to increase programs and services and to educate front-line workers—police, doctors, counsellors, and settlement workers—the legal system, and overall, all citizens.

Women who live in Canada and around the world deserve to live free of violence and abuse. I request that our government protect women from facing the harsh consequences of barbaric and cultural practices on Canadian soil. If the Canadian government is open to bringing immigrants to this country, we need to educate them in culturally acceptable practices, values, beliefs, and Canadian law.

Again, I would like to express much gratitude to all of you for your courage and for being here with us. Together, we will see change.

Thank you.

The Chair: Thank you for your presentation, Ms. Fakhri. In a few moments, some of my colleagues will probably have some questions for you.

Mr. Kurland, welcome again.

Mr. Richard Kurland (Lawyer and Policy Analyst, As an Individual): Thank you, Mr. Chairman.

It's again a deep honour and privilege to be here before this committee.

Today I thought I'd share with the committee an intelligence report from the Canada Border Services Agency migration intelligence section in the intelligence operations and analysis division of the enforcement and intelligence operations directorate. The report provides intelligence indicators. The purpose, in a fact-based system, is to provide the committee with an intelligence report that justifies entirely the direction of the proposed legislation.

I have only three sentences to read. They are important. The CBSA intelligence report to Immigration Canada, among other enforcement partnerships, illuminates a disturbing trend. It is as follows:

Another disturbing trend is that of *mut'a* (an Arabic word relating to joy and fulfillment of enjoyment and compliance when used in terms of marriage and observing the requirements of the marriage contract in Islam) where women are purchased and forced to marry wealthy Muslim men from the Middle East and Africa for short periods of time for sexual purposes and then divorced in short order. One article refers to it as "Islamic sexual tourism." The practice happens in southern India because the cost to do so is one-third of the price in the men's homeland

The purpose of this report was to warn our embassy system globally of a factor in marriage fraud. That's the immigration purpose.

When I read this—and it was released through appropriate channels—it signalled to me that this committee that's observing the present legislation needs to know that there are, out there, facts that support the very direction taken in the proposed legislation. Now, I am sure the CBSA may be willing to provide additional information on this topic; however, in my view, there's nothing wrong in proposed law to signal to the world, as a beacon of Canadian values, what will not be tolerated in Canada.

Those are my opening remarks.

●(0855)

The Chair: Thank you.

Mr. Menegakis.

Mr. Costas Menegakis (Richmond Hill, CPC): Thank you, Mr. Chair.

I want to thank our witnesses for appearing before us today.

This is a very important piece of legislation for our government. Following up on the previous study, we spent the better part of almost a full year studying the strengthening of protecting women in Canada's immigration system during which, Ms. Fakhri, I'm happy to tell you, the issue of conditional PR came up considerably. There was also the important recommendation coming out of the report that we should inform immigrants before they come to Canada of their rights when they come here, because they are in fact not forced to stay in an abusive marriage. There are so many channels that they can avail themselves of; however, we found in that study that they were not aware of them. One of the recommendations there dealt with informing people before they come here what their rights are so that, when they come here, they do not feel imprisoned in the relationship that they're in.

In December of this year, Antonio Guterres, who's the United Nations High Commissioner for Refugees, had an initiative put through. He put out a release marking 16 days of activism against sexual and child-based violence. These 16 days of activism led up to international Human Rights Day on December 10. This year the United Nations High Commissioner for Refugees' office's theme is protecting the rights of and preserving childhoods, working together to address child marriage. Mr. Guterres urged governments to take action, saying:

We must advocate with governments for child marriage to be prohibited by law, and for this to be effectively enforced.

I'm very pleased and proud to see that our government is taking the lead on this issue because this is something that we started well before Mr. Guterres' latest initiative.

I wonder if you could comment on this. In particular, do you have any knowledge of what other governments are doing to help prevent this issue worldwide? This is not just a phenomenon that affects Canada; it affects other governments as well.

Perhaps I can start with you, Mr. Kurland.

Mr. Richard Kurland: Governments worldwide is too broad a subject for me, unfortunately.

Each country in their own way will reflect values through the legal system. Each country will reflect through the legal system the appropriate pains and penalties for an inappropriate act. Here's where the pedal hits the metal, so to speak. In western societies the fundamental societal organizational rule is that everything is permitted except that which is prohibited. Due to that touchstone of societal organization, some countries have a more difficult a time dealing with the particular issue at hand, theocracies aside.

So where do some western countries draw the line? It has been a political third rail in the last 20 years in western European societies to adequately capture, ensnare, and punish the impugned activity. More can be done, and the value here is not so much the pain, the penalty, to be imposed by the proposed law here in Canada. The value is a signal to other countries, particularly western Europe, who are grappling on the ground with this kind of issue but not identifying the gorilla in the room for what it is, and I'm talking France.

Now that Canada is taking initiative, I would say that at global level, to combat on the plane of values what will be tolerated and not tolerated, in my view Canada is going to be the country looked at by other countries in the world, notably western Europe, as a model, just as Canada now is looked at by western European countries and countries in Asia as a model for immigration structure and law. This is the next step.

● (0900)

Mr. Costas Menegakis: Ms. Fakhri, I want to touch a little bit on the title of this bill, because we have some members of the opposition who take issue with the word “culture” in the title. The title, as you know, is “Zero Tolerance for Barbaric Cultural Practices Act”. We maintain that “culture” does not refer to any one particular culture. In fact, we have seen elements of this bill affecting a number of different communities.

We want to send a clear message that we will not tolerate cultural traditions that are barbaric here in Canada. Children cannot grow up here and be forced to go back to their parents' country because they were promised at some point to be married to somebody. Lo and behold, they arrive there, they are 14 years old, and then they are in a wedding situation. We maintain that these are barbaric acts. They are cultural practices in some communities, not one specific one but several. We want to make sure that this is evidently clear in the title as well.

Do you agree that these practices, rooted in some cultures, are indeed barbaric and should be criminalized?

Ms. Laila Fakhri: For me, being an immigrant coming from a community—I am from Afghanistan—as well as being in contact with many other immigrants, I do see clear examples of these issues still existing. We need to pass a clear message. Even though the title might sound a bit harsh, we need a clear title saying “Zero Tolerance for Barbaric Cultural Practices Act” to pass a clear message to people that this is what today's life is. That is what Canada believes in, and that is what Canada's values are when it comes to women's rights and equality.

● (0905)

The Chair: We have to move on. We have time limits. I'm sorry.

Madame Blanchette-Lamothe, go ahead.

[*Translation*]

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

I want to thank the witnesses for their participation today in our study of Bill S-7.

I want to begin by saying that the controversy around this bill does not concern the existence or non-existence of barbaric practices against women. I can assure you that everyone around this table is in agreement that there are barbaric and unacceptable practices against women here in Canada, and probably in all countries. Of course, there are certain practices that are to be found more frequently in other countries. The debate regarding the title is not about whether or not barbaric practices exist.

There is not a doubt that we must fight these practices. We all agree on that. Violence against women, whatever form it takes, is completely unacceptable. We have to do everything in our power to stop it and to bring about equality between the sexes, as you said.

I think it is important to somewhat reframe the opinion of people attending this committee with regard to violence against women. We do not agree on the most effective way to fight against this type of violence against women. That is what the debate centres on in connection with this bill.

Ms. Fakri, you explained earlier some of the things that make women vulnerable. These elements mean that women may encounter certain types of violence more easily in their environment, such as forced marriage. You emphasized financial dependence several times. That seems to be an important point for you. However, there is nothing in Bill S-7 that addresses that issue.

Recently, the committee did a study on the vulnerability of women in our immigration system. That is one thing that came out of this study, but since the publication of the report, there is still nothing being done on that.

Since you work on the frontline with women, what concrete measures would you propose to improve newcomers' gender equality, which is tied to financial independence?

[*English*]

Ms. Laila Fakhri: As we know, the issue of domestic violence is very complicated, and we all know it's not only a cultural issue. It happens in every culture, every society, and so on.

From my experience in working with victims of domestic violence, I have seen women come here, having been sponsored, who have been in Canada for a year or two years and still don't know how to use the bus or how to call 911. Her husband is not on welfare and they are independent. She is not going to school—she is prevented from going to school—but she has nobody to turn to.

Somehow one out of a hundred might be lucky enough to find somebody—a neighbour or somebody—to call for her, and then she gets to ask for help.

I believe that for any process of sponsorship when a spouse sponsors their wife or their partner from overseas there is a period of waiting for two or three years until the process finalizes and the person enters Canada. If they gave a booklet in the sponsored person's language and told them to review it and said that it would be part of the interview questions, people could enter Canada with knowledge, knowing that that they are choosing the country and that these are their rights in going there. I believe it would make a difference, if you knew that there are services existing.

I hear so many women say that they didn't know that these services existed or they would have left a long time ago. But they are coming, they enter Canada, but they are still under the control and power of their partner.

●(0910)

It is the same thing with finances. Women depending on their abusers, in terms of financially depending on the person who has sponsored them, causes a huge issue. These women have never had access to money, never had a bank account. We have to take them by the hand to show them how to open a bank account. They have never had their own bank account.

These are the steps we need to take to maybe eliminate some of the issues of domestic violence, like working with settlement workers. There should be, at least for two years, mandatory involvement of settlement workers with those newcomers, and regular meetings without the presence of the husband. We need to somehow educate all the women and their children who are trapped in these conditions. This is a new country for them. They have nobody. They have nobody to go to. The only person they know, in some cases, is the person who has sponsored them.

[Translation]

Ms. Lysane Blanchette-Lamothe: That is very interesting. Thank you very much.

[English]

Ms. Laila Fakhri: I hope they look at these things and can consider this stuff when they are passing the bill.

[Translation]

Ms. Lysane Blanchette-Lamothe: That is something we would like to see.

We are a bit disappointed to be debating a bill like Bill S-7 while in our opinion, and as you also mentioned, there are some very concrete measures that could help vulnerable women. Those measures were mentioned in the last report, or in the complementary report submitted by the NDP on the vulnerability of women.

Very briefly, since I have very little time left, would you agree that one of the problems that occur in forced marriages, and regarding violence against women in general, is the issue of silence? We have to find ways of encouraging women to disclose these situations, as if they do not do so, we cannot punish the guilty. The first step is to ensure that they are all given means to disclose that type of violence, such as forced marriages.

[English]

Ms. Laila Fakhri: That is certainly a very important matter, but we need to find a way to give her the courage to speak out. She

might be under fear of deportation. She might be under pressure from family. She might not know how to speak and where to go, how to call certain numbers, and how to reach for help.

It might be easy to say that they should speak, but it's not easy when you are in her place because, for her, coming to a new country, where she doesn't know the language, where she is not aware of her rights, where she has no access to any money to pay for a bus to go one stop from her house, or to call for a taxi, these are all barriers that she is facing.

The Chair: Thank you.

Go ahead, Mr. McCallum.

Hon. John McCallum (Markham—Unionville, Lib.): Thank you, Mr. Chair.

Welcome to the witnesses.

Mr. Kurland, I was certainly struck by your testimony on this *mut'a* point. But since we basically agree with the substance of the bill, I'd like to focus on a couple of more technical issues that might improve it.

The first of these is the possibility of being deported for polygamy. One of the witnesses before us earlier said that there was no clear definition of polygamy in the courts. I think that poses a risk, because if you tell people that they will be deported for a certain offence, but you don't define the offence, then that's a recipe for trouble down the road.

My question is this. Perhaps only for the purposes of this bill, rather than more generally, could there be some definition of polygamy, for which a person could be deported, and then that would bring greater clarity to the bill? There may be problems with doing that, but I wonder if you have a view.

●(0915)

Mr. Richard Kurland: Certainly, sir.

Hon. John McCallum: You have a view on most issues, so I thought you might.

Mr. Richard Kurland: With this particular issue, the points raised were points I've been addressing in the last few days. On the one hand, enforceability—in Canada or outside Canada. My sense is that the primary target may well be protecting Canada's borders from individuals entering. In anticipation of your question—it does happen—I'm looking at the *Canada Gazette* Part II, volume 149, number 8, from April 1, 2015. It's a regulation amending the Immigration and Refugee Protection Regulations. This amendment formalizes electronic travel authorizations. The gain here is to have the prospective traveller to Canada complete tombstone data online. If it turns out that the prospective traveller has more than one spouse, automatically the file would be queued for review and potentially the ETA would not be announced.

Here's where we get to the rub. Our foreign policy so far is to allow forward individuals to Canada on a temporary basis who are known polygamists on the condition they promise not to practise polygamy in Canada during their stay. Well, I'm hoping that your question will raise literally hundreds of millions of dollars for our treasury because as a proposed remedial measure to this, I would add on to the ETA system a template that would allow the prospective traveller to be treated as we treat individuals with drunk driving offences. For \$400 you can access a temporary resident permit to overcome your inadmissibility to Canada for a temporary purpose. This would allow individuals—the millions, if not tens of millions of individuals who are in polygamist relationships—to enter Canada in compliance with our immigration law for a temporary purpose, and we collect \$400 per traveller.

Once in Canada, my concern is that it's shared. How do we remove people from Canada who run afoul of the proposed law that will, let's face it, have retroactive impact? I have great difficulty with that. There is a weakness potentially in that there's no clarification as to a best before date. When does this apply, retroactively or not?

Hon. John McCallum: Okay, I think implicitly you have put forward a definition: if you're married to more than one person. But sometimes the definition is broader. I'm not sure if we're on a point of high principle opposed to this practice. We'd say it's okay if you pay us \$400. That's another issue.

But I don't want to run out of time. I have one other issue, which is the defensive provocation, and I think perhaps that sends a bad message. I have two suggestions I'd like you to comment on. First is to remove the defensive provocation. I think that might be beyond the scope of the bill. Second, if you can't do that, then right now certain minor crimes like theft or mischief are included, but instead of that, have a list of more serious violent crimes that would fit the bill, rather than make it broad the way it is now.

● (0920)

Mr. Richard Kurland: I'm in favour of clarity over generality when it comes to the bite of our legal system. I'd add a prescribed list of known activities.

Hon. John McCallum: Right.

The Chair: Thank you.

Mr. Kurland, you're a criminal lawyer. I don't know whether you have the bill in front of you. I'm looking at clause 8 and I don't know whether I thoroughly understand it or not, but maybe you can help me with it. This bill will make it an offence to take someone outside of Canada with the intention of having them marry against their will if the person is under the age of 18. However, the new offence of participating in a marriage within Canada, where one of the persons being married is doing so against their will, seems to have no age limit.

Why is there an age limit for the offence of forcing someone into a marriage abroad? That's one question.

The second question is this. Does this mean that where a person aged 18 or older is taken into another country for a forced marriage, the individuals involved would not have committed an offence?

Mr. Richard Kurland: The designers, I suspect, looked at the other components of Canada's domestic law provincially, so

marrying within Canada would be subject to those provincial laws. Those provincial laws have floor limits on the age of marriage; hence, it would not necessarily be a good idea to have, federally, a minimum marriage age. Having that would appear to be an intrusion into provincial jurisdiction.

It wouldn't be necessary to enforce the intent of Parliament as proposed in the bill by having a minimum marriage age when the minimum marriage age is evident in provincial statutes.

The Chair: That's a good answer.

Mr. Leung, you have the floor.

Mr. Chungsen Leung (Willowdale, CPC): Thank you to the witness.

Mr. Kurland, I just wish to point out to you that Bill S-7, in part 1, clause 2, proposed subsection 41.1(1), actually indicates what polygamy is, and then proposed subsection 41.1(2) provides the interpretation, but we'll leave that to future consideration.

My question has to do with the proper training and the enforcement of the provisions by our front-line workers. We have immigration officers stationed abroad; we have Canada Border Services people at points of entry; and domestically we have our own immigration officers as well as municipal police, provincial police, and the RCMP. Given all of this training of enforcement officers, does this bill provide the tools for them to enforce legislation regarding any of these issues, such as forced marriages or child marriages? How does this bill do that, and if we ask in the negative, how can we do it better? I'd like to hear your comments on that.

Mr. Richard Kurland: The lifeblood of Canada's immigration program is precisely that question: can we do it better? Indeed, with dedicated individuals from coast to coast to coast, from a policy perspective, and with external stakeholders, experience feeds into the great system and we do things better. We've progressed over the last 20 years to the state where Canada has never had as good an immigration program. I think we're on the right path. This bill does give us more avenues for information collection. We're going to be going to external stakeholders, the groups that are concerned with violence against women across this country. In the case of external stakeholders on our Pacific coast whose communities are directly impacted by this practice, that system will collect information and feed it to the enforcement people, such as the Canada Border Services Agency, among others, and where evidence permits, the hammer will come down.

The good thing about this, though, is that I don't see the need for additional resources for implementation. This is just another carefully identified fact scenario that allows enforcement officers, when they see a match, to bite down. In terms of enforcement, we've identified a practice. We don't need additional resources. It's going to affect primarily women across the country in a very positive manner.

● (0925)

Mr. Chungsen Leung: So it's correct to say that it actually ties in all of our front-line workers who address this issue and helps to—

Mr. Richard Kurland: It does, with one addition, an important one, that was raised earlier. More needs to be done on the information-collection side. More resources need to be brought to bear to allow women who, it sounds like, are in burqa homes and just can't get out. They're sheltered, covered. That's not right. We may need to move pieces on the settlement board to address this scenario that's been brought to light today.

Mr. Chungsen Leung: Let me turn to you, Ms. Fakhri. You mentioned that one of the best tools is to provide information, provide counselling, and provide I would say a motherhood type of oversight for women brought in after being subject to forced marriages, and so on.

How do we do this in a very close-knit type of cultural family practice? You mentioned that when a wife is brought in, there's no way to access them. There's no way to provide that information to them, especially if they're from a foreign culture, they're illiterate, and they're not even allowed outside the home. What are some of the suggestions you have for this?

Ms. Laila Fakhri: It is really a very complicated thing, as you mentioned. We need to find a way to make that connection or to make it mandatory the same way we make language classes mandatory and compulsory. Language classes would be a great way for settlement workers to access these populations.

As well, if they enter Canada with some knowledge about where they are coming and how their life will change in different ways from their country of origin, I believe that will make a difference. As I mentioned, a booklet in their own language should be distributed to them. While they're waiting during the process of entering Canada, it would be a great time for them to study and review that. When they come in for their interviews, those should be part of the interview questions. For instance, "If you are facing an issue such as this in Canada, what do you do?" That way, later she might remember it, "Oh, before I came to Canada, I learned that these services are available. I can call these places." Knowledge is power. Once you know....

As you mentioned, the issue might be how to make that connection with them. I believe it will be through settlement workers. If the settlement worker is a female, it will make a difference, as will regular meetings. It should be part of the agreement with the sponsorship that if you're bringing a person to this country, these are the requirements and they have to be done.

The Chair: Thank you.

Ms. Mathysen.

Ms. Irene Mathysen (London—Fanshawe, NDP): Thank you very much, Mr. Chair.

Thank you to our witnesses for being here. We appreciate your taking this time. Obviously we want our report to be accurate and useful and to guide us in terms of this legislation.

I have a couple of questions. These stem from your testimony and from things we heard from previous witnesses.

For example, last week we heard from a young lawyer who was talking about polygamous marriages. To the question of how many there are in Canada, the response was anecdotal. We don't seem to have any real numbers. But if there is such a relationship in Canada, if there is a threat of deportation, then the sponsor or the male partner could simply divorce the second wife. That puts her in, I think, a very precarious position. There was concern about what happens to these women and their children.

In terms of these kinds of consequences, are you hearing fears from women who could very well be deported in regard to what happens to them and their children? Second, is part of the fear financial, as in "Where do I go?", and the possibility of being marginalized from family, or simply being shunned by family?

● (0930)

Ms. Laila Fakhri: Yes. I have heard from many women that they would have a fear of deportation. I would say that culturally they don't want their family member to go to jail. They would be isolated from the community, not only from their families but the entire community and stuff like that.

At the same time, you can see a different category of women. A woman who has some knowledge will act differently. A woman who knows about her rights, who is a bit westernized, will say, "I don't care. This is my right. I need to access my right." The woman who has no knowledge is the one who definitely would be shaking like a bird, saying, "What am I going to do? He already threatened to deport me. He will send me back to the other country." You can see how fear comes from a place of not knowing. She doesn't know she has rights.

Ms. Irene Mathysen: You have spoken about this threat of a sponsor suggesting that non-compliance or any kind of behaviour from the sponsored spouse would lead to a possible deportation. You referenced conditional permanent residency. Would you like to see that removed from the practices in Canada?

Ms. Laila Fakhri: If we can come up with a better suggestion at the same time to make the woman's life easier, it would be better.

Ms. Irene Mathysen: In terms of services, you mentioned we don't have enough services and there need to be more in place for women. Would you include safe, affordable housing in those?

Ms. Laila Fakhri: Those are some examples, which, in order to save time, I didn't mention. When a woman is leaving her abuser, she goes through huge challenges of staying for a long time in the shelter. Shelters can only accommodate the person between six to eight weeks, and in the majority of shelters it's even shorter. There is a huge waiting list for housing. Even though we advocate for priority housing, that's not happening.

In some cases a woman goes through so many challenges she will say I'd rather stay in the abusive relationship. The money she receives from social services does not cover her for even a one-bedroom. In most cases the options are shared accommodation or renting a basement, and in many cases she doesn't have credit. Nobody's renting to her because she's a single mom, because she doesn't have an income.

Housing is a huge issue for women who are fleeing abusive relationships.

• (0935)

The Chair: Thank you.

Mr. Shory.

Mr. Devinder Shory (Calgary Northeast, CPC): Thank you, Mr. Chair, and thank you, witnesses.

Mr. Kurland, by mentioning the term *mut'a* marriage you took me back to my law school in India. I still remember one of the courses we had to take in the law courses was the Hindu Marriage Act, and the second was Muhammadan law.

In those days we were young so when we studied this *mut'a* marriage, we laughed a little bit. We thought this was not true, to be honest with you. How can it happen that you marry someone for four hours, three hours, three days, or two days? Our understanding was that after that period you're automatically divorced. There is no liability and nothing like that.

I'm very impressed the CBSA went to that depth of all the laws and found out that small term in that act.

I have a couple of questions. One is from an immigration perspective, that is, the potential abuse of immigration, is there a possibility of this *mut'a* law being used? The second, quickly, because the chair will not let me go over time, from your perspective as a lawyer, I'd like you to comment on the law enforcement and the use of peace bonds against anyone who may assist in a forced or underage marriage.

Mr. Richard Kurland: The peace bond is an additional tool in the arsenal that will protect Canadians and permanent residents from bad things. I just don't know why it has never been done before.

On the effect of the *mut'a*, it would be disturbing if we found that Canadians and permanent residents engaged in this practice overseas. This report is redacted in large chunks, and I'll be leaving a copy today. It may be interesting to discover whether or not the redacted portions actually pinpoint the practice connected to Canadians or permanent residents, which is why it's on a watch-list for marriages of convenience, an immigration category to Canada.

Connected to immigration enforcement and the deportation of spouses—women—connected to bad situations at home, the first question one must ask is how they got here in the first place. If the female is in danger of removal from Canada, probably due to a misrepresentation, equally removable is the male.

On the point of information and technology, yes, the problem is the power relationship. One person has information and the other does not. It's simply, easily overcome. All that's required as part of the sponsorship obligation is guaranteed access to something called a laptop, and the model today, I'm proud to say, is the City of Vancouver, which has embarked on free Wi-Fi for residents of Vancouver. With free Wi-Fi and a laptop, a settlement worker or sponsorship group can train a person in how to access the Internet—problem solved on the information front.

Mr. Devinder Shory: Do I have some time?

The Chair: No, I'm sorry.

Go ahead, Mr. Eglinski.

Mr. Jim Eglinski (Yellowhead, CPC): Thanks, Chair. I'd like to thank both witnesses for coming out.

Mr. Kurland, I liked your entry there. It was very short but to the point.

I was in law enforcement for a number of years, and some of the cases I came across with immigrants, and even some cases with Canadians, used the defence of provocation. Many people who have committed murder have tried to seek a conviction of manslaughter because unless they used a firearm there is really no limit on the penalty.

They argue the victim's conduct provoked them to lose self-control and kill. Currently, any conduct by the victim, including insults or other forms of offensive behaviour, can be used as a defence, but the proposed amendment would limit the defence of provocation so that lawful conduct by the victim, which might be perceived by the accused as insulting or whatever, cannot be used. Only conduct by the victim that amounts to a relatively serious criminal offence could be argued.

I wonder if you could comment to us on this important provision. Do you think it's fair that honour-based issues be perceived and tried using the defence of provocation? Thank you, sir.

• (0940)

Mr. Richard Kurland: My goodness, there's no sense in regilding the lily. It's the right thing at the right time. It addresses directly a practical problem, so I come back to a more global view. Why aren't other countries adopting this? Canada's the model. I think you've nailed it, quite frankly, squarely on the head, or to put it differently, yes, it's the right legislative effort, which will take away a possible defence from individuals who ought to be incarcerated for a substantial period of time for their act.

Mr. Jim Eglinski: Just to put a spin on that, I can remember a case, back about 20 years ago, in which the individual, who was from a foreign country—the couple was from a foreign country—actually totally and completely, in my mind, believed he was right, and I'm pretty good at evaluating people.

Now, can you answer to me how we deal with that individual? He didn't have an excuse. There is no excuse. There is no good provocation, but he didn't know any better, or it could be that she didn't know any better, reversing the scenario.

That's just a point.

Mr. Richard Kurland: Well, that's what juries are for.

It would be insulting to put that mindset into the category of persons who do not understand the nature and quality of their act.

While we're talking about law school, going back to law school days in the criminal law courses, how do you treat ideas that are present in the individual's mind that lead to a horrific act? This question goes to the fundamental goals of our criminal justice system in terms of outcomes. This bill addresses a particular outcome in the appropriate way. It's too bad it wasn't there 20 years ago, when you had your case.

Mr. Jim Eglinski: Absolutely. It would have been a lot easier.

Ms. Fakhri, last week we had a witness like you here, Mr. Tahir Gora of the Canadian Thinkers' Forum. He said there are a number of people who criticize the name of the bill, calling it pretty loaded, but that his group believes in "calling a spade a spade" and believes that violence against women is absolutely barbaric and must be addressed strongly, as forced marriages, polygamy, and honour killings happen every day around the world under the guise of cultural practices.

Could you give me your comments on whether you agree that the wording we have in this legislation is adequate?

Ms. Laila Fakhri: Do you mean just the title?

Mr. Jim Eglinski: I mean concerning "barbaric practices".

Ms. Laila Fakhri: I believe it is an issue that needs to be addressed and that this will pass a clear message.

Mr. Jim Eglinski: It's a good message, then?

Ms. Laila Fakhri: I agree with it, yes.

Mr. Jim Eglinski: That it's a good clear message....

Thank you.

The Chair: I think our time has concluded.

I want to thank Ms. Fakhri and Mr. Kurland.

Ms. Fakhri, thank you for taking the time to come give us your presentation. It's been very helpful.

Mr. Kurland, you never fail to disappoint me in your presentation. I always enjoy it.

Thank you very much to both of you.

We will suspend.

• (0940) _____ (Pause) _____

• (0945)

The Chair: All right, we will reconvene with the second part of our meeting. I'd like to introduce our three witnesses, our three guests who are going to help us with this bill this morning.

We have Kamal Dhillon. She is the author of *Black and Blue Sari*. We have Madeline Lambole, who is a Ph.D. candidate in criminology. We also have J. Michael Spratt, who is a criminal lawyer from Abergel Goldstein and Partners.

Good morning to you all.

We're going to start with you, Mr. Spratt.

• (0950)

Mr. J. Michael Spratt (Criminal Lawyer, Abergel Goldstein and Partners, As an Individual): Thank you.

The Chair: You each have up to eight minutes to make a presentation.

Mr. J. Michael Spratt: I'll try to use it all.

Thank you for inviting me to speak on this important piece of criminal legislation. As was mentioned, I practice criminal law in Ottawa, and I'm a partner at the firm Abergel Goldstein and Partners. I'm a past board member of the Criminal Lawyers' Association. I'm

currently on the CLA's legislative committee, and I'm vice-president of the Defence Counsel Association of Ottawa.

I've represented individuals charged with murder, have been involved in the peace bond process, and have litigated cases involving the use of provocation. I'm used to appearing before the justice committee, and I'm happy to appear before you here today, although it is a bit strange, given that this is essentially a criminal law bill.

It's a bill that, I submit, is consistent with this government's legislative history, which I submit to you, is designed to obscure major legislative changes and ultimately limit debate. In that context, I think it's important to detail the impacts that this bill will have on criminal law. I want to specifically speak about provocation and peace bonds.

Provocation is currently governed by section 232 of the Criminal Code and provides for a defence of provocation and in some cases can reduce the charge of murder to manslaughter. Actually understanding what provocation means is fundamental.

When the minister testified before you, there were some comments likening provocation to premeditated murder. Legally, of course, that's completely inaccurate. Provocation requires that there be a wrongful act or insult that is sufficient to deprive an ordinary person of the power of self-control and would cause that person to act on the sudden, before there was time for any cooling of the passions.

Provocation reflects mitigating circumstances. In other words, provocation is an allowance made for human frailty. It recognizes that a killing, even an intentional killing, may be extenuated by the complete loss of self-control and is less heinous than an intentional killing by a person acting with rational intent.

Now, there are limits on provocation. The minister told you that measures in Bill S-7 would amend the Criminal Code such that legal conduct by a victim cannot legally be considered provocation. That's already the case. The Criminal Code makes it clear that one cannot be legally provoked by someone who is doing something they have a legal right to do or by doing something that the accused incited them to do.

As I said, provocation requires that there be a wrongful act or insult that would be sufficient to deprive an ordinary person of the power of self-control. Honour killings, the purported justification for the amendments to provocation in this bill, don't meet that criteria. Our courts have time and time again rejected religion and honour as a basis for provocation.

Provocation, after all, deals with the "ordinary person" test. The Supreme Court made it clear in the case of Tran that the reasonable person, the ordinary person, is informed by the contemporary norms of behaviour, including fundamental values such as the commitment to equality. The Tran case, 2010 SCC 58, actually upheld a conviction, which was entered on appeal, for a murder in which the accused claimed to be provoked by the sight of his wife having sexual relations with another man. What is crystal clear is that whether or not the defence of provocation ultimately is put before a jury depends on there being an air of reality to that defence. That's something that the courts carefully scrutinize.

Minister Alexander told you that anyone charged with murder could raise the defence of provocation in seeking to reduce to the lesser charge of manslaughter. That's misleading and simply untrue. There must be an air of reality to the argument before it can be placed in front of a jury.

The government has maintained that changes in Bill S-7 are necessary. Quite simply, they're wrong. The minister used the Shafia case as a justification for changes in provocation. Of course, as you know, the facts of that case are well known, and it's also known that provocation wasn't raised by the defence in Shafia. Shafia was convicted of four counts of first-degree murder.

So what do our courts say about honour-based provocation? Well, let's take a look at the case the minister didn't discuss with you, the 2006 case from the Ontario Court of Appeal of Humaid. The Ontario Court of Appeal upheld a conviction for first-degree murder, denouncing honour killing in language that even an immigration specialist should be able to understand.

The court said that assuming the accused's religion and cultural beliefs, in that case, were antithetical to the fundamental Canadian values, such as equality of men and women, they could never play a role in the ordinary-person provocation inquiry. The Court of Appeal went one step further and categorized these types of rationales not as provocation, but as motive.

The evidence that you heard is that there have been three unsuccessful cultural provocation defences. The minister told you that this provocation defence has been raised in several so-called honour killings across Canada. I hope he was not trying to insinuate that the application of provocation is common. That would be a reckless mischaracterization. We are talking about three cases.

• (0955)

This bill does more than just limit provocation to honour killings. If that was the intent of the legislation, perhaps it should have been drafted more specifically.

We just had the Supreme Court release the case of Nur, striking down some mandatory minimums. The rationale given by the minister was that they were targeted at a specific fact situation, and the court found their application was overly broad. That could be the case here, because Bill S-7 applies to much more than just honour-based provocation. It also prevents provocation from applying to a range of other cases that have historically been put before the jury. Racial slurs, hate speech, mistake of fact—all these situations will be limited in the ability to raise provocation.

One can imagine a variety of situations where it may be appropriate to leave provocation with a jury—not to tell the jury to accept it, but to leave provocation with the jury.

Imagine the father of a young girl who has committed suicide due to cyberbullying, who was sexually assaulted and harassed online. Imagine that father standing by his daughter's grave when he is confronted by the friend of the offender, who says some of the most despicable things that would never be repeated in a forum such as this, inhumane things, and spits on the daughter's grave. Under this law, if the father reacted violently, he would be unable to raise provocation, even if he acted in the heat of the moment when his passions were inflamed.

Even if we combine behaviour like that with offences such as corrupting morals, making sexually explicit content available, corrupting children, indecent acts, exposing genitalia to a person under 16, violence to the clergy, disrupting religious worship or a funeral, recording and distributing information, failure to provide the necessities of life, administering a noxious substance, threats to kill animals, inciting or promoting hatred, theft, fraud, and mischief, this bill would be an absolute bar to provocation in those cases.

Perhaps it speaks to the government's unwillingness to read the case law or inability to understand that life can be complex. This bill simply goes too far and is too broad with respect to provocation.

Now, in my brief few moments, I would like to talk about peace bonds. Peace bonds already exist. Section 810 covers arguably what is included in this bill.

Even if it is not undesirable to add a new section to the Criminal Code to target specifically what this bill targets—and that is a consideration that should be taken carefully because the bigger the Criminal Code gets, the harder it is to understand, and we are presumed to know what's in here—one has to look carefully at what it is actually going to do.

This government is suggesting that a 14-year-old girl takes it upon herself to lay a peace bond against her family. That's ridiculous. I suppose an outside agency like the CAS, the Children's Aid Society, could intervene to lay the peace bond on the child's behalf, but they can already do that. They can already apprehend the child. They can already go to the police.

Regardless of the mechanism of laying a peace bond, the matter doesn't end when a peace bond is laid. When a person goes to court to swear a peace bond, that starts the process. The person they are complaining against is served and summoned to court. The peace bond is not automatically imposed. We still have something called due process in this country.

Then, the peace bond would be set for a hearing in our underfunded courts—

The Chair: We have to move on, Mr. Spratt. I'm sorry. We have time limits.

Mr. J. Michael Spratt: I welcome questions on it, because it is an important issue.

The Chair: I am sure our colleagues will have some questions for you.

Ms. Dhillon, you have up to eight minutes.

Ms. Kamal Dhillon (Author, Black and Blue Sari, As an Individual): Thank you for inviting me again.

I believe that Bill S-7 on zero tolerance for barbaric practices is a good start.

I'm humbled and honoured to be here. As you know, my name is Kamal Dhillon, and I speak as a person whose already witnessed violence. I've become an advocate for those who, like me, have been the target of domestic violence.

The last time I was here I shared a part of my story with the committee. As a result of that, I have authored a book called *Black and Blue Sari*, which chronicles my entire story of twelve and a half years of marriage to this man who routinely and viciously abused me, tortured me, and threatened me.

In my book, I describe the harrowing details that unfolded from the day I was married to this supposedly respectful, warm, and charming man and went on until the day my marriage ended. Without getting into too much detail, I'll share a little bit of it.

I was violently raped on the night of our honeymoon. From that night onward, I was subjected to emotional, physical, sexual, and financial abuse that occurred at least several times a week. He even attempted to murder me several times. As a result of his beatings and his rage, I live in constant pain. I have an artificial jaw as a result of that. I've had 10 multiple jaw surgeries and have more to come.

I am literally scarred for life, and despite my husband's violent death some years ago, I'm still haunted by flashbacks to those horrific beatings. I'm a single mom of four grown children and a proud grandmother of two.

One of reasons I share my story publicly is to help stop this epidemic, which is so well hidden behind closed doors. They say that the journey of a thousand miles begins with one step. It's interesting to note that this is true for one long journey, but also for one short one. I'm pretty sure that this is probably referring to goals, tasks, initiatives, and other actions. I think this is probably referring to everything that requires someone to take the first step.

I applaud the government for taking the first steps to abolish violence against women and girls, but we need to recognize that there are still many more steps to be taken in what is likely to be a never-ending journey towards respect and self-esteem. But taking steps, no matter how small, is still better than taking no steps at all.

Thank you for doing your part in this. As much as I want to, I would not criticize the government for not doing. I actually applaud you for taking some initiative. It's certainly worth the time. I join you in expressing righteous indignation about some of the barbaric cultural practices that we as a society have allowed to permeate our culture. Condoning the behaviour equates to approving the behaviour. It's one thing to abhor the practices that have been allowed to exist in some cultures, but it's another to actually do something about the injustice we see. There is no honour in honour-based violence, and honour-based killings are really murders.

I want to try my best to make a difference for those who have been subjected to domestic violence, even if it is one at a time. If we work together, we can make a difference. As you can appreciate, it is very difficult to measure the true extent of violence against women, as most incidents of domestic violence and sexual assault go unreported.

For someone like me, growing up in this country, I was not allowed to talk about my abuse. It was about family pride. For a lot

of women who come to this country, language is a big barrier. They are scared that they may be deported if they speak out. They actually don't even know that there are resources for them. Most of our ethnic communities are very closely knit, and a lot of pressure is exerted on the woman to remain with her husband.

●(1000)

Unfortunately, many of these immigrant women may also be abused by other family members when an extended family lives together. In the South Asian culture, immigrant women are also socialized to believe they have no rights. They're threatened with losing custody of their children. In our culture, marriage is considered permanent, and we're to submit to our husbands no matter what.

Another factor in recognizing domestic violence is isolation. It prevents the woman from getting the proper help that she desperately needs. Domestic violence can also create a feeling of shame and embarrassment so that the woman drive abusive behaviours underground. Nobody wants to admit that they're being abused. Violence against women directly affects victims, children, families, friends, employers, and co-workers. There are far-reaching financial, social, health, and psychological consequences as well. There is also the cost of bringing perpetrators to justice.

Abuse is a human rights problem. As a woman and a survivor of extreme abuse and torture at the hands of my husband and his extended family, I have chosen to break the silence and the secrecy and to speak out so that you will know the reality and the severity of domestic violence. I also hope that through my story you will be disturbed enough, affected enough, and enraged enough to join me in making positive changes towards ending domestic violence.

My hope is to see more men and women come together to confront such violations. If we don't take steps to confront this, my fear is that it will actually increase. It is my sense that many abused women have lost hope and they feel there is no hope or future for them. Speaking as a victim of domestic violence, I believe that we need to take some initial steps to ensure that there are plans for women. We need to give them some hope.

I do have a question. How do we protect girls and victims over the age of 16 and what do we mean when we say zero tolerance? Are we saying probation or are we saying a jail term? What about repeat offenders?

I want to end by saying thank you for inviting me. Together we can make a positive difference. I applaud you for taking this initiative.

●(1005)

The Chair: Thank you for your presentation, Ms. Dhillon.

Ms. Lamboley, it's your turn. You have up to eight minutes. Thank you for coming.

[Translation]

Ms. Madeline Lamboley (Ph.D. candidate in criminology, As an Individual): Mr. Chair, ladies and gentlemen members of Parliament, good morning.

My name is Madeline Lamboley and I am a Ph.D. candidate in criminology at the University of Montreal. I recently submitted my doctoral thesis on the forced marriage of immigrant women in Quebec.

Today, I am here to share my point of view on the criminalization of forced marriage. I thank you for this initiative.

My doctoral thesis is based on a qualitative approach built around “life story” interviews with 11 women between 18 and 50 who were living in, had been in or had been threatened with a forced marriage in Quebec. I completed that with 17 “experience narrative” interviews with key information providers from the police, the justice system, and the social and community environments.

During the preparation of my thesis, I wondered if the specific criminalization of forced marriage would be a solution.

Analysis of my data shows that despite the great vulnerability of the victims of forced marriages who live in Canada, for the moment, the express criminalization of this type of conjugal union does not appear to be a solution.

Why? There are four reasons.

We have to understand before we act. Several key information providers agree that before criminalizing forced marriage, it is essential to understand all aspects of it and to agree on a common definition, first of all, so that we all have the same reading of the issue. However, we have not yet reached that point.

Moreover, there are virtually no quantitative data on the topic; we are not aware of its true scope. Forced marriages exist in Quebec and in Canada, but in what numbers? We need an answer to that question before undertaking any kind of action to legislate or take other measures. There are other avenues that make it possible to criminalize nefarious behaviours that arise in forced marriages, however.

Even if this gave the authorities greater power to act, Canada does not seem ready to take such a measure. In fact, is it even necessary? Does the state not already have all of the necessary legal resources to intervene? Canada is not without means to face this issue already, to the extent that it is possible to intervene legally under the criminal system to sanction reprehensible actions that arise in a large number of situations in forced marriages (threats, aggression, sexual assault, kidnapping, confinement, false marriages, extortion, intimidation, battery, murder, attempted murder, and so on); these however are not specific only to forced marriages.

There remains a host of more insidious situations that have already been well-documented, and that can be the hallmark of forced marriages: exploitation, domestic servitude, and even in some extreme cases, slavery. These situations are much more difficult to bring to justice, or even to social awareness. We have to strengthen the legal measures that are already in place.

I asked myself whether, in the context of immigration and in the absence of a specific international instrument to protect victims of forced marriage, it would be relevant to consider the application of the Protocol to prevent, suppress and punish trafficking in persons. The protocol was ratified by many countries, including Canada. Its purpose is to implement measures to ensure the physical safety of

persons and examine the possibility of legislative means to allow the victims to stay in the country temporarily or on a permanent basis. Since we have no specific sanctions, the protocol would be one possible solution to explore.

If the express criminalization of forced marriage is not advisable and cannot be considered, could forced marriage be added to the conjugal context to form an aggravating factor when violence rears its head; this could be considered in tandem with exploitation.

We have doubts as to the deterrent effect of a criminal law. Several authors, including Ms. Rude-Antoine and Mr. Neyrand, whose opinion I share, have wondered about the feasibility of prohibiting forced marriage. The legal texts are numerous. We are not convinced that this legislative action will be effective and will correspond to the social reality of these forced marriages it wishes to combat.

The difficulty with this penalization objective is twofold. On the one hand, we have to be able to identify the passage from a suggestion, the proposal of an arranged marriage, to the imposition that is the execution of a forced marriage; moreover, that penalization should not stigmatize the parents, the families and their culture of origin, as that may encourage even more young women to grant their consent in spite of themselves.

Who will be affected by criminalization? The parents, the husband, the in-laws, the extended family and the community.

•(1010)

Since some European countries criminalized the practice, how many cases have been prosecuted or have resulted in a sentence? That is the challenge of applying legislation that prohibits a harmful practice.

The legislation is not useless, but eradicating forced marriage requires more than just legal tools. Moreover, it might place an additional burden on the victim. A number of individuals interviewed—both key informants I met, and women—doubt the deterrent effect of a specific criminal provision for forced marriages. Canadian society would express its disagreement with such a practice through the legislation, but could it then protect the women who are its victims? Many people agree that the legislation would further stigmatize the victims who are already vulnerable enough.

Bill S-7 shows that the government is paying attention, and I commend it on that. However, the legislation lacks nuance and could have the opposite effect from that intended by isolating victims of forced marriage a bit more, even exacerbating the violence they are experiencing. In my opinion, the bill is not based on a proper understanding of the complex issues involved in violence against women and children in the context of honour.

If the criminalization approach is not possible at that point in our knowledge, what potential solutions could be implemented or simply used by Canada and Quebec to help victims?

The bill provides that the legal age of marriage be raised to 16, but why not instead bring it up to 18, the age of majority? Moreover, the marriage must be a civil one. In France, for instance, the marriage must be celebrated in a civil ceremony by the appropriate authority before being celebrated in a religious ceremony. That could be an approach to consider. There is a problem related to officiants. A father or mother can become officiants just by signing a form. That causes a lot of problems.

Authorities have to educate, train the communities and raise public awareness. They definitely have to provide support services and implement a national action plan encouraging a concerted effort among community institutions and organizations. There needs to be a protocol for fighting against forced marriage. The authorities could also implement a repository for gathering disturbing information as France did; have a policy—

• (1015)

[English]

The Chair: I'm afraid I'm going to have to cut you off, ma'am.

We're well over time.

Mr. Shory has a question.

Mr. Devinder Shory: Thank you, Mr. Chair.

Thank you, witnesses.

Mr. Chair, I'd like to make a quick comment on Mr. Spratt's commentary, because he mentioned provocation.

Of course we all know, as you know, Mr. Chair, that provocation is a legal defence in Canada. But at the same time, the defence we are talking about in the context of honour killing was raised at least three times in Canada and the alleged provoking conduct in these cases was real or perceived marital infidelity and the other conduct with the victim the offender perceived as disrespectful or defiant toward them or their families or their family culture.

These particular claims failed—Mr. Spratt will know this as well—due to the inadequacy of the supporting evidence. Of course the proposed amendment in this bill we are talking about would modernize the defence so that it only applies where the alleged provoking conduct was objectively serious, namely where it would amount to a criminal offence with a maximum sentence of five years. Of course the reform would limit the defence so it no longer excuses murder where the provoking conduct of the victim was lawful.

Much has been made of the fact that the defence has failed where it has been raised in the context of honour killing here in Canada. While this is true to date, there is nothing preventing a court from accepting it in the future. It may be true in common law, but in this society now a man's wife is not his personal property. These are the times we are dealing with. Of course I also heard the comment that a peace bond already exists. I also heard that maybe we don't need this bill because this is not required. But when we talk about potential immigration—forced marriages, or underage marriages for the purposes of bringing someone for immigration—I believe it comes under the Immigration Act.

Ms. Dhillon, I'm coming back to you because I have very limited time.

I believe this bill sends a very clear message to individuals coming to this country that harmful and violent cultural practices are unacceptable in Canada. These particular practices are incompatible with Canadian values and will not be tolerated here. As you heard from other witnesses also, some critics say that the bill is not required, and it seems as if they are saying that the government is creating a problem that does not exist. I don't agree with them.

What are your thoughts on this, and do you believe this bill is not needed?

Ms. Kamal Dhillon: I believe it's needed. It's a good start.

I'd like to see stiffer sentences. I'd like to see a very strong message sent out to the perpetrators that when we say "zero tolerance" we mean zero tolerance. I'd actually like to see more done for victims over the age of 18. Once they finish high school, then what?

Mr. Devinder Shory: Last week we heard from a witness, Mr. Tahir Gora. He's from the Canadian Thinkers' Forum and I'll quote what he said:

Critics criticized the name of the bill, calling it a pretty loaded one.

However, our group believes in calling a spade a spade. Violence against women is an absolutely barbaric act. It must be addressed strongly. Forced marriages, polygamy, and honour killings happen every day around the globe under the guise of cultural practices. Should those cultural practices not be condemned? Calling a spade a spade should not be a political issue in a country like Canada where human rights guarantee equal rights to men and women.

Do you agree, and do you want to make a comment on it?

Ms. Kamal Dhillon: No, I agree. I think it's absolutely right.

• (1020)

Mr. Devinder Shory: Polygamy is an affront to Canadian values and I was glad to hear it has been illegal since 1890, but we all know it is still a shameful reality in a country like Canada. How will this bill protect Canadian values and convey to these communities that such practices are not welcome here in Canada?

Ms. Kamal Dhillon: I think first we need to educate people. I think a lot of people are not aware of this new bill, so more awareness, more education, and going to the schools and letting students know these are their rights, because they are still minors. They're 16 years old and they need to be taught.

Mr. Devinder Shory: I guess I agree with you on the knowledge of this bill. I know that even last week with a police officer, in my capacity as a member of Parliament, I started discussing this particular issue of forced marriages and underage marriages. Then I mentioned that we are studying Bill S-7 and he was not aware. You're absolutely right on that.

What should we do to make sure that the public, and specifically those with potential to be abused, are aware of this bill and what they can do?

Ms. Kamal Dhillon: I think there should be more awareness. I'm not sure how you're going to promote and let people know, but there needs to be agencies and advocates out there speaking out on this and letting people know.

I, for one, go to the schools and speak against schoolyard bullying and violence. I make people aware. I remember at one school a student said to me, "Ms. Dhillon, had you spoken to us about this a year ago, I would have saved two of my friends from being shot."

Mr. Devinder Shory: When you go to schools to talk about underage marriages or forced marriages, do you think that when and if this bill becomes the law of the land, it will help you to convey to those students that this is the law now and they can take these actions, that they are not under any obligation to be forced to go to a foreign country to bring somebody here as an immigrant and then maybe move away?

Ms. Kamal Dhillon: I can do that, but here's my question. If they are forced, they probably will not be told that they're being taken to get married. Once they're in that country, say in India, is there any law that's going to protect them there?

The Chair: We've concluded our time, Mr. Shory. I'm sorry.

Madam Blanchette-Lamothe.

[*Translation*]

Ms. Lysane Blanchette-Lamothe: Thank you very much, Mr. Chair.

I also want to thank the witnesses for participating in today's meeting. Ms. Dhillon, I hope you can hear the simultaneous interpretation.

You talked earlier about the importance of sending a strong message. Everyone around this table agrees that any kind of violence against women, including forced marriage, is unacceptable. The debate is rather about the best way to counter that type of violence. You talked about how important it is to send a strong message. In the latest budget, which was tabled last week, the only funding set aside for promoting any kind of a message was intended for promoting the Conservatives' budget and not for combatting violence against women.

You said that you spent 14 years in an abusive situation. During that time, you had rights as a woman. What finally helped you break the silence? Was it a new bill? What helped break that silence?

[*English*]

Ms. Kamal Dhillon: I think what helped me break the silence was being a mother of four kids, two girls and two boys. I did not want the cycle repeated. I actually was not aware of any bills or any rights because I was so confined and scared. However, when I did go to the shelter, I knew that I had some rights, for instance getting a restraining order against my husband. I had to take that step to know that I had some rights, but I wasn't aware of them ahead of time.

[*Translation*]

Ms. Lysane Blanchette-Lamothe: Thank you.

Can you give us one specific provision of Bill S-7 that might have helped you?

• (1025)

[*English*]

Ms. Kamal Dhillon: I'm not fully aware of the bill, but knowing that there are some rights for victims.... I think in the barbaric situation I was in, any hope would have been a big hope for me.

[*Translation*]

Ms. Lysane Blanchette-Lamothe: Thank you very much.

You say that it's not really about Bill S-7 itself, but about sending a clear and strong message that women have rights. I completely agree. I still want to repeat that I feel the bill is not necessarily the best solution and that women already have rights.

Ms. Lamboley, you were listing potential solutions before being interrupted. I would like you to finish what you were saying.

Ms. Madeline Lamboley: So I will continue my list: implement a national action plan that will truly encourage a concerted effort among community institutions and organizations—a crucial step in this kind of a situation; adopt a protocol for combatting forced marriage—many initiatives are being undertaken left and right, but they would really need to be concerted, and a holistic approach would have to be adopted focusing on prevention, victim protection and the penalization of aggressors, at the same time; adopt a clear policy on the sharing of confidential information related to youth protection—in many cases, this is problematic, but sharing that information could be crucial; use a civilian approach through protection measures against forced marriage. The United Kingdom did that. It would probably be a wise first step. I have met women and key informants, and regardless of what intervention approach is used, we are convinced that we need a better solution to end the violence, without potentially giving rise to secondary victimization, which is just as harmful to victims.

Above all, the legislative amendments must be accompanied by victim protection measures, and more funding must be provided to organizations working on resolving those issues and helping the victims of such abuse. The community aspect is also very important. Those are the people working on the front lines with victims.

Ms. Lysane Blanchette-Lamothe: You brought up the victimization and stigmatization of victims several times.

Could you tell us a bit more about that?

How could the bill currently before us make the victimization or stigmatization of victims worse?

Ms. Madeline Lamboley: The expression "barbaric cultural practices" is used in the very title of the bill. But it should be pointed out that this kind of practice is not encountered only in cultural communities. Other women across Canada are its victims, too. Further stigmatization of the issue must be avoided. As Ms. Dhillon said, the women sometimes don't speak French or English. They are also not aware of their rights.

As part of my thesis work, I met a woman who did not even know about the 911 number. First and foremost, the women have to be told about their rights in their mother tongue, so as to ensure that they understand what they are entitled to. They must also be provided with basic information such as the 911 number and be informed of their immigration rights. Some of them think they can be deported simply because their husband so wishes, and that is not the case.

In short, it's really a matter of providing them with basic information on their rights, in their mother tongue.

Ms. Lysane Blanchette-Lamothe: Thank you.

You suggested looking into the possibility of making forced marriage an aggravating factor rather than criminalizing it as Bill S-7 does.

Can you tell me a bit more about that suggestion?

Ms. Madeline Lamboley: We feel that many things are already covered in the Criminal Code, such as female genital mutilation. When has that provision been used? It has been used once, and the case was dropped.

Criminalizing forced marriage would indeed send a clear message. However, would it prevent forced marriages? Would it eradicate them? I'm not so sure of that. There is also a provision on human trafficking. How many times has it been used? If the goal is to send a message to Canadians, there may be ways other than criminalization to do so.

In addition, when it comes to forced marriages, the matter of evidence is a significant problem. To an extent, it's her word against his. What's particular about this form of violence is that the aggressor is not only the husband or the family, but rather the husband, the family, the in-laws, the community and the extended family. In the case of Banaz Mahmud, who was killed in the United Kingdom, some 50 people were involved in her murder.

•(1030)

[English]

The Chair: We're going to have to move on. I'm sorry, Ms. Lamboley; we have time limits.

Go ahead, Mr. McCallum.

Hon. John McCallum: Thank you, Mr. Chair, and thank you to the witnesses.

Mr. Spratt, if I interpret you correctly, you are saying that while the Conservatives may be trying to make honour killing even more illegal than it is, they're failing because it's already as illegal as it's possible to be. With respect to the provocation defence, I think you're saying that they are taking away the provocation defence for things that maybe ought to be there, like if a Jewish person is submitted to extreme anti-Semitic language, or putting it there where it maybe needn't be there, like theft or mischief.

But I guess my question to you—other than to correct me if I'm interpreting you wrongly—is whether you see any role for any desirable change on the provocation issue, because I think it's true for that defence, that where it's been used successfully has generally been in the case of the killing of a spouse. Honour killing is all about

that, so is there some change or improvement that could be made, or should it just be left the way it is?

Mr. J. Michael Spratt: Well, I think we have to distinguish between how provocation was historically applied by our courts and how it's being applied now and under the direction of the Supreme Court and Court of Appeal. No longer would these things fly in the courts: killing of a wife for infidelity, killing an individual because of a perceived homosexual advance, or the use in the honour context. There's no air of reality in those circumstances and it's been rejected the three times that it has been put forward.

What we should, perhaps, be doing if we want to look at the provocation section is, as some critics have said, calling a spade a spade and writing in the legislation exactly how we want this legislation to apply. I was looking at some comments from March 23 in the House where there were some comments by the government that other common-law jurisdictions have eliminated and repealed provocation altogether. That's simply not true. If you go and look at the U.K. legislation, you'll see it's true that provocation was abolished but it was replaced with another section called “loss of control”. In that section, it says it can apply to words and to comments. They have to be serious. That's set out in the legislation. But what they actually do in the legislation is what maybe we should do here if we want this bill to apply to honour killings.

That legislation says the fact that a thing done or said constituted sexual infidelity is to be disregarded. They've actually applied it through legislation to the specific targeted facts, narrowed, that they want to address and not necessarily limited the application of provocation to exclude some rare, unusual but perhaps justifiable applications in the future.

Hon. John McCallum: Do you think that the bill could be amended along those lines to make the section on provocation more helpful, or do you think it should just be dropped? What is your view on that?

Mr. J. Michael Spratt: I think it need not be amended. This is quite clear in the courts, and the law is clear in that respect. If the government wishes to be clear in their legislation and be focused in the legislation, as the Supreme Court says legislation should be, then it should be written into the legislation. I don't think I would object to a provision saying, “despite the foregoing, provocation shall not be raised or considered where a judge rules that the killing was motivated by honour, culture, or infidelity.” Something specific like that would not be offensive to me as a lawyer because that's already

—

•(1035)

Hon. John McCallum: That's already there.

Mr. J. Michael Spratt: —already a no go in the courts.

Hon. John McCallum: What's the point of doing this if it's already there?

Mr. J. Michael Spratt: I suppose you could do it to send a message, but there's no funding in this bill. The message could be better sent if things were funded properly, if more resources were being made available, and if something simple like ensuring that someone who wants to bring a peace bond against a family member is provided with state-funded representation, or if the number of judges or courts we have were increased so those peace bonds could be heard more expeditiously. Things like that would be a much better use than needlessly adding sections to the already overburdened Criminal Code.

Hon. John McCallum: Thank you.

The Chair: Thank you.

Mr. Eglinski.

Mr. Jim Eglinski: I would like to thank all the witnesses—

The Chair: The bells are ringing and will go for 30 minutes. I'm thinking two more questions.

Can I have unanimous consent that we continue for the next few minutes?

Some hon. members: No.

The Chair: There is no agreement.

To our witnesses, the bells are ringing—it sounds like an old song—but we have to go and vote because of that. On behalf of the committee, I want to thank you for coming, helping us out, and giving us your interpretation of what this bill is, or what it should be. Thank you very much on behalf of the committee.

This meeting is adjourned.

Published under the authority of the Speaker of
the House of Commons

SPEAKER'S PERMISSION

Reproduction of the proceedings of the House of Commons and its Committees, in whole or in part and in any medium, is hereby permitted provided that the reproduction is accurate and is not presented as official. This permission does not extend to reproduction, distribution or use for commercial purpose of financial gain. Reproduction or use outside this permission or without authorization may be treated as copyright infringement in accordance with the *Copyright Act*. Authorization may be obtained on written application to the Office of the Speaker of the House of Commons.

Reproduction in accordance with this permission does not constitute publication under the authority of the House of Commons. The absolute privilege that applies to the proceedings of the House of Commons does not extend to these permitted reproductions. Where a reproduction includes briefs to a Committee of the House of Commons, authorization for reproduction may be required from the authors in accordance with the *Copyright Act*.

Nothing in this permission abrogates or derogates from the privileges, powers, immunities and rights of the House of Commons and its Committees. For greater certainty, this permission does not affect the prohibition against impeaching or questioning the proceedings of the House of Commons in courts or otherwise. The House of Commons retains the right and privilege to find users in contempt of Parliament if a reproduction or use is not in accordance with this permission.

Also available on the Parliament of Canada Web Site at the following address: <http://www.parl.gc.ca>

Publié en conformité de l'autorité
du Président de la Chambre des communes

PERMISSION DU PRÉSIDENT

Il est permis de reproduire les délibérations de la Chambre et de ses comités, en tout ou en partie, sur n'importe quel support, pourvu que la reproduction soit exacte et qu'elle ne soit pas présentée comme version officielle. Il n'est toutefois pas permis de reproduire, de distribuer ou d'utiliser les délibérations à des fins commerciales visant la réalisation d'un profit financier. Toute reproduction ou utilisation non permise ou non formellement autorisée peut être considérée comme une violation du droit d'auteur aux termes de la *Loi sur le droit d'auteur*. Une autorisation formelle peut être obtenue sur présentation d'une demande écrite au Bureau du Président de la Chambre.

La reproduction conforme à la présente permission ne constitue pas une publication sous l'autorité de la Chambre. Le privilège absolu qui s'applique aux délibérations de la Chambre ne s'étend pas aux reproductions permises. Lorsqu'une reproduction comprend des mémoires présentés à un comité de la Chambre, il peut être nécessaire d'obtenir de leurs auteurs l'autorisation de les reproduire, conformément à la *Loi sur le droit d'auteur*.

La présente permission ne porte pas atteinte aux privilèges, pouvoirs, immunités et droits de la Chambre et de ses comités. Il est entendu que cette permission ne touche pas l'interdiction de contester ou de mettre en cause les délibérations de la Chambre devant les tribunaux ou autrement. La Chambre conserve le droit et le privilège de déclarer l'utilisateur coupable d'outrage au Parlement lorsque la reproduction ou l'utilisation n'est pas conforme à la présente permission.

Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante : <http://www.parl.gc.ca>