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## The Cyberbullying Hearings

# Children as Witnesses at Senate Committees

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Senator Mobina S. B. Jaffer and Senator Salma Ataullahjan

*In December 2012, the Standing Senate Committee on Human Rights tabled its report *Cyberbullying Hurts: Respect for Rights in the Digital Age*. It followed a series of hearings in 2011 and 2012 where it closely examined the roles that stakeholders can play in addressing cyberbullying and the emerging best practices. The committee began this study by using the standard modus operandi for most parliamentary reviews - holding public meetings with experts, government officials, and representatives from stakeholder organizations. However, it was missing an important piece of the puzzle; the committee needed to hear from the children themselves. This article looks at how the committee went about the unusual task of hearing minor children as witnesses.*



How do we elicit the views of young people before a Senate committee? After a review of past proceedings of other committees and the key procedural authorities, we discovered that parliamentary hearings involving youth have been rare and that there were no set rules or predetermined procedures involving meetings

with minors. In the absence of well-established processes, we knew that we should proceed cautiously. While inviting minors would be a challenge, we felt that it was worth the risk.

### Studying Children's Rights

In 2001, the Senate amended its Rules to establish a new standing committee to review legislation and policy relating to the implementation of Canada's domestic and international human rights obligations. Over the course of its history, the committee has spent a considerable amount of time studying children's issues and has published four separate reports dealing extensively with the human rights of children in Canada.

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*Senator Mobina Jaffer represents British Columbia in the Senate of Canada. She was chair of the Standing Senate Committee on Human Rights when it published its report on cyberbullying. Senator Salma Ataullahjan represents Ontario and is a member of the Senate Standing Committee on Human Rights.*

We looked at tough issues such as sexual exploitation, corporal punishment, bullying and poverty.

With this particular interest in children's issues by the committee, Senator Ataullahjan brought forward the idea of a study into the cyberbullying of youth. Members had been noticing a substantial rise in media

reports about extreme forms of bullying over the Internet and through mobile electronic devices. We were shocked by its severity and the personal impact on students. We were also taken aback to learn of cases where young people were taking their own lives to escape ongoing harassment. Based on the seriousness of these cases and the outcry for action, Senator Ataullahjan formally proposed a study to the committee.

On November 30, 2011, the committee received the Senate's permission to undertake a review of cyberbullying of youth pursuant to Canada's obligation under the United Nations' *Convention on the Rights of the Child*. Under Article 19 of the international agreement, "States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse."<sup>1</sup> The UN Committee on the Rights of the Child, which oversees the implementation



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of the convention, has further stated that Article 19 applies to “psychological bullying and hazing by adults or other children, including via information and communication technologies (ICTs) such as mobile phones and the Internet (known as ‘cyberbullying’).”<sup>2</sup>

### Why Hear from Children?

Over the course of our study, we were told time and time again of the strong relationship between young Canadians and technology and that it is a new frontier often misunderstood by adults. Dr. Faye Mishna of the University of Toronto expressed to the committee the “unmistakable generational divide between younger and older individuals.”<sup>3</sup> This youth-adult disconnect was also pointed out by another witness, Bill Belsey, founder of Bullying.org, who spoke about the importance that technology plays in the lives of children, which is “like the air that this generation breathes.”<sup>4</sup>

Several years ago, the committee had stressed the importance of children being heard in their own voices. In 2007, the committee recommended:

... that the federal government dedicate resources towards ensuring that children’s input is given considerable weight when laws, policies and other decisions that have a significant impact on children’s lives are discussed or implemented at the federal level.<sup>5</sup>

The committee felt obliged to abide by its own recommendation, as we were studying an issue directly affecting children.

The next questions became: Who and How? According to the evidence we received during our hearings, it was noted that bullying, including cyberbullying, tends to be most severe and frequent between Grades 7 and 10 (ages 12 to 15).<sup>6</sup> With this in mind, the committee decided that it needed to hear from young people within this particular age group. We also needed to hear from youth who were directly impacted by cyberbullying.

To find children to participate in the study, the committee reached out to the public using social media (such as Twitter), the Internet and the traditional media. We also connected with health professionals and youth organizations. As word spread, the committee was contacted by individuals who were interested in assisting us. We were fortunate to have students in a Grade Eight class from Springbank Middle School in Alberta volunteer to provide their views, which met the age 12 to 15 cohort. Through our outreach efforts, we were also able to recruit a group of teens from the ages of 15 to 18 who were victims of online bullying.

The committee set three objectives for the hearings. The first was to provide the children an opportunity to speak to the committee about their views and experiences with cyberbullying in their own voices. Secondly, we had to ensure that any participation by a youth should not inflict any mental injury or further aggravate any existing harm. Finally, out of respect for the children involved and to show that their input was valuable, all proceedings would have to follow acceptable parliamentary processes and decorum. With these objectives in mind, committee staff was instructed to develop a plan on how to proceed.

Our staff listed issues and challenges to be examined and resolved before the proceedings. We had to determine whether a child had the necessary competence to appear before a parliamentary committee, if parental consent was required, ensure the process followed the necessary norms and ensure not to harm our intervenors.

### Competence

In the past, some parliamentary committees (including our committee) have heard from young people but they were primarily in their late adolescence. It was our belief that inviting the children in our target age group would be a first for the Senate and likely for many Canadian legislatures. We questioned whether a twelve year old, for example, could fully comprehend what is being asked of him or her, and fully understand the process and its consequences. After consultations with the Office of the Senate Law Clerk, the committee looked to the courts for criteria for competence in a legal setting. According to the *Canada Evidence Act*, elements for competence for children under the age of 14 include:

- the capacity to observe;
- the capacity to recollect; and
- the capacity to communicate.<sup>7</sup>

These three elements served as a starting point to assess the competence of potential participants. For the purpose of an appearance before a parliamentary committee, we added two further elements to the evaluation:

- the capacity to understand the process including parliamentary privilege and decorum; and
- the capacity to appreciate the consequences of appearing before a committee of Parliament, either in public or in camera.

With these five points, committee staff met with school officials to determine if the Grade Eight students from Springbank Middle School met the necessary threshold. The process was explained to school officials and an evaluation was conducted through in-depth

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discussions with the teacher involved and the school principal to determine if the children had the necessary intellectual capacity to participate and the necessary reasoning to undertake the responsibility according to our criteria. A positive assessment was required for us to proceed. The committee clerk also held a telephone conference with the participants to explain the process, answer questions and gauge their ability. The clerk then made a recommendation to the committee to move forward, which was accepted.

These same points were applied to the hearing with the older youth, who were victims of cyberbullying. Since all these attendees were in their mid to late teens, competence was easier to determine. Here, competence was assessed in two steps. First, an initial assessment was initiated through a conversation held by the clerk with each youth. If the clerk recommended inviting them based on their discussion, the youths were then interviewed by a child psychiatrist in Ottawa who had been enlisted by the committee. A green light from the psychiatrist was needed to proceed with their testimony.

### **Parental Consent**

Under rule 12-9. (2) of the Rules of the Senate, committees have the power “to send for persons, papers and records.” There are no stated caveats to this power. Therefore, it was deemed that parental consent was not a procedural requirement. Nonetheless, the committee strongly believed that the permission of a parent or legal guardian should be obtained in all cases.

For our meeting with the Grade Eight class, the school obtained the necessary permissions before the meeting, which were communicated to the clerk. For the older youth, the clerk was instructed to obtain the permission of a parent or legal guardian for their participation. If the permission was granted, the child was added to the list to be considered by the committee along with some preliminary background information. The committee then sent formal invitations to both the young person and a parent or guardian to travel to Ottawa to attend an in camera meeting.

### **Understanding the Process**

As mentioned, the committee went to great lengths to ensure that all participants clearly understood the parliamentary process and what was expected of them. While most adult Canadians have general knowledge of political institutions, we could not expect the same of the teenagers and tweens. We were, however, pleasantly surprised by their level of awareness about Parliament. To fill any gaps, the committee staff worked with the Grade Eight class and the teacher involved

to fully explain how Parliament works and why their input was so valuable to us. During the information session, the clerk explained each step of the process, their responsibilities and what our desired outcome would be. Based on questions during the session and the feedback received, it was concluded that being proactive contributed immensely to the success of this endeavour.

The preparation of the older participants took on two forms. When each youth was invited along with their guardian, the clerk made sure to explain the process by telephone, provide documentation and answer any questions. Furthermore, when they arrived on Parliament Hill, they were assisted by an experienced committee clerk on site prior to their testimony. This gesture served well to alleviate any last minute anxieties.

### **Mental Health Safeguards**

In the lead-up to our meetings with the youth, witness after witness spoke to the committee about the devastating impact cyberbullying had on the lives of victimized children. We heard about teens who were continuously harassed via social media or by text. The committee deliberated at length about the need to hear directly from young victims and the potential negative impact on them. The Senators agreed wholeheartedly to put in place some unconventional but necessary safeguards to protect the mental health of the youth, so as not further victimize them.

We decided to hear from the vulnerable victims in private. When the committee began the study, it anticipated hearing sensitive testimony. It sought permission from the Senate to occasionally hear witnesses in camera which required the suspension of a Senate rule.<sup>8</sup> This exemption is not often granted by the Senate and the committee took its responsibility to be open and transparent very seriously. Nonetheless, we judged that the protection of victims justified closing the meeting to the public. The committee also went a step further and limited the attendance of staff only to individuals essential to the proper functioning of a hearing. We also considered our physical setting during our preparations. A small meeting room was chosen instead of a large one in order to make the experience cozy and friendly, as opposed to a big “spectacle.”

Our closed door meeting with each victim took place for almost two hours, over the course of which we heard the youths accompanied by their parental guardian. The guardian was present at all times and was informed of what was going on every step of the way. During each presentation and subsequent questioning, we asked the other youth to wait in a separate room where they



were accompanied by Senate staff for ongoing support. It was important for us to hear from them individually to ensure confidentiality and avoid any feelings of discomfort.

The most important and useful resource made available to us through the entire process was the assistance of a pediatric psychiatrist. She was instrumental in not only ensuring that all the teens were mentally prepared for the difficult experience, but also in assisting the members of the committee on what to expect, how to proceed and not cause further harm. Since she assisted during the in camera hearing, we cannot identify her publicly, but would like to acknowledge her invaluable contributions. We thank her sincerely for her help.

Before beginning our hearing, the psychiatrist met privately with each youth and their parental guardian to determine their capacity to participate and gauge their mental state. She asked them about their experiences and any anxiety they may have in sharing personal and heart-wrenching stories before a group of Parliamentarians. After these one-on-one conversations, the psychiatrist met separately with committee members to provide an oral report and her opinion on the readiness of each participant. She also made recommendations to members on questions to be asked of each witness and established areas that should be out of bounds, so as not to cause further emotional damage. Finally, the committee was privileged to receive a “crash course” on how to question and interact with the children in a non-threatening manner.

We asked the psychiatrist to remain at the meeting to counsel the chair on the management of the proceedings. She was permitted to intervene if she felt that a child was in distress and should discontinue their testimony. Fortunately, her intervention was not required and all Senators showed empathy and compassion towards our brave witnesses.

During our public meeting with elementary students, some children did speak to the committee about their personal experiences, but not to the same extent as those we heard from in camera. Since this meeting was public and also televised, we asked the children to refrain from using any names, either of the victims or bullies. While the testimony was protected by parliamentary privilege, it was not protected from public opinion. We were fully aware of the potential disastrous impact it could have on the person testifying or any individuals named. During questioning, Senators did not ask for specifics that would identify any persons involved. The chair also closely monitored the meeting to ensure that none of the children endangered themselves or others.

## Final Thoughts

Handling controversial social issues, such as cyberbullying, is never an easy task, especially when they involve children. We had to balance the gathering of relevant and vital information to assist us in our conclusions against the risk of exposing children to a public spotlight or of re-living traumatic events. After much soul-searching, we felt that we needed to hear their voices. We quickly learned that they were the real experts on bullying in schools and online, and that their views were needed for us to truly understand what was happening in their lives and those of their peers. It was not easy. The committee stressed unequivocally that if we were to take this important step, we would need the time and effort to do it right. In the end, our conclusions were heavily influenced by what the children had to say. To acknowledge their contribution, the committee published a companion report aimed directly at youth.

The involvement of our outside collaborators, school officials and our child psychiatrist was essential to our reporting. We were most fortunate to have them play a vital role in the process and bring their counsel to our deliberations. All in all, the committee proceeded very cautiously and took some time-consuming steps, but in the end, we feel that our preparations were worth the effort. Our eyes were opened to a different world.

## Notes

- 1 United Nations, Convention on the Rights of the Child, A/RES/44/25 <http://www.un.org/documents/ga/res/44/a44r025.htm>.
- 2 Committee on the Rights of the Child, General Comment No. 13 (2011), *The right of the child to freedom from all forms of violence*, p. 9, April 18, 2011.
- 3 Mishna, Faye, “Cyber Bullying,” written submission to the Standing Senate Committee on Human Rights, April 30, 2012, p.5.
- 4 Belsey, Bill, *Proceedings of the Standing Senate Committee on Human Rights*, Issue 6, December 12, 2011.
- 5 Standing Senate Committee on Human Rights, *The Silenced Citizens*, The Senate of Canada, 2007, p. 60.
- 6 Based on the testimony of Tina Daniels and Shelley Hymel, *Proceedings of the Standing Senate Committee on Human Rights*, Issue 12, May 7, 2012.
- 7 *Canada Evidence Act* (R.S.C., 1985, c. C-5), Section 16 and 16.1.
- 8 *Journals of the Senate*, The Senate of Canada, November 30, 2011, p. 689.