

Bill S-213, introduced April 26, 2006 by Senator Bryden

Second reading debate (day 1) Tuesday May 2, 2006

Bill to Amend—Second Reading—Debate Adjourned

Hon. John G. Bryden moved second reading of Bill S-213, to amend the Criminal Code (cruelty to animals).—(*Honourable Senator Bryden*).

He said: Honourable senators, Bill S-213 increases the maximum penalties which a court may impose for offences under sections 444 to 447, inclusive of the Criminal Code, dealing with animal cruelty. Otherwise, the code is unchanged.

Before I go further, I wish to point out one of the reasons this booklet that contains the bill is constructed in the manner that it is. The explanatory notes on page 1A and 1B at the back set out the Criminal Code as it is now with the penalties as they are now. This makes it easy to compare the changes proposed by this bill. Only the penalties will change in this bill. The sections that create the offences will remain exactly as they exist and have existed for some time.

This is an important point. These sections and the offences under them have evolved over many years, some of them from the common law before there was a code. Undisturbed, these sections have the great advantage of having been used and interpreted many times and have left a trail of legal precedents that are accepted by and instructive to present-day judges, enforcement officers, prosecutors, and all members of the public in regulating our treatment of animals.

I have introduced this bill because of the recent history of this issue. Over the past four years, Bills C-10, C-10B, C-22 and C-50, dealing with cruelty to animals, have been introduced into Parliament, and each one of them has been stalled either because time has run out or they were turned back by this chamber.

I wish to give those who have been more recently appointed to this chamber some context. Some of them are coming into subject cold. As a former member of the Standing Senate Committee on Legal and Constitutional Affairs, I have been dealing with what, in the last Parliament, became Bill C-50, for the past five years or so. In each of its previous incarnations, Bill C-17, C-15B, C-10, C-10B, C-22 and, finally last year, Bill C-50, the position by the Department of Justice has always been that these amendments were primarily to increase the penalties available to the courts upon conviction of a person found to be criminally responsible for cruelty to animals and secondarily to modernize and tidy up some of the language in the existing Criminal Code provisions dealing with cruelty to animals.

The Department of Justice made repeated assurances that there were no substantive changes in the law, that no new offences were being created and that, "what is lawful today under the Criminal Code dealing with animals will be lawful tomorrow," or after the passage of those pieces of legislation.

With all due respect, these assertions were simply false. However, once the first version of the bill passed the House of Commons a number of years ago, it appeared that the members of the House of Commons were persuaded that no further examination was needed when virtually the same bill was reintroduced over and over again.

Since the purpose of this proposed legislation was to increase the penalties for cruelty to animals and no one was against that, organizations, businesses and individuals who depend on animals for their livelihood, science or recreation, reluctantly succumbed to the "what is legal today will be legal tomorrow" mantra and acquiesced.

The matter fell to the Senate and its Legal and Constitutional Affairs Committee to examine the bill in detail by hearing from many witnesses concerned with the impact of certain amendments on their dealing with animals and from many lawyers, academics and other experts who questioned the sweeping implications of certain amendments on individuals, industries and recreational activities.

I will indicate some of the problems that were discovered, in point form.

First, the present Criminal Code includes cruelty to animals offences in the crimes against property part of the Criminal Code. Bill C-50 and its predecessors created a whole new part of the Criminal Code for its offences against animals. No one ever was able to explain to our satisfaction the legal implications of that move.

(1640)

Second, the present code applies basically to domestic animals and animals in the control of persons. Bill C-50 defined "animal" as a vertebrate other than a human being. This expanded the application of its offences to all vertebrates, all wild animals, including fish. It increased the universe to which the Criminal Code sections would apply by hundreds of thousands or millions of animals.

Third, section 182.2(1)(c), just to give an example, stated,

Everyone commits an offence who wilfully kills an animal without lawful excuse.

In the existing Criminal Code, it is not an offence to kill an animal, it is an offence to kill them cruelly, to cause unnecessary pain. What was being brought in was to make it an offence to kill an animal without lawful excuse. We found out during our hearings that a valid provincial hunting, fishing, trapping licence does not constitute a lawful excuse. The Department of Justice would not tell us what does constitute a lawful excuse when recreational hunting or fishing.

Section 182.1(a) provided that everyone commits an offence who wilfully causes unnecessary pain, suffering or injury to an animal. That is the existing code as well. However, the existing code does not apply to all wild animals, including fish. What does that expanded definition of animal do to recreational angling, particularly catch and release fishing, since fish have been included in the definition of animal under the bill that was being proposed but not the existing law? These issues and others have huge implications for our multi-billion dollar sports fishing and out-fitting industries, to say nothing of the impact on individual citizens who hunt and fish recreationally. To the best of my knowledge, none of these issues had been seriously addressed by the Department of Justice. Perhaps they were waiting for the courts to deal with them by default.

I believe Bill C-50 had huge implications for many law-abiding Canadians, particularly rural Canadians. I was concerned that, armed with this legislation, certain militant groups would have the ammunition to harass industries and individuals whose activities are not criminal under our present law. For that reason, I introduced S-24, in the last Parliament, and for that reason, we now have the new bill introduced at second reading today.

I will not be very long, but I do want to make a comparison, just so everyone really understands what is happening here. In the existing Criminal Code, subsection 446 (1) says:

Everyone commits an offence who

(a) wilfully causes or, being the owner, wilfully permits to be caused unnecessary pain, suffering or injury to an animal or a bird;

Then I go down to the penalty clause:

(2) Every one who commits an offence under subsection 1 is guilty of an offence punishable by summary conviction.

On summary conviction, the normal fines have been in the \$200 to \$600 range, with a maximum of six months of incarceration.

In the bill before you, proposed section 445.1 reads:

Everyone commits an offence who

(a) wilfully causes or, being the owner, wilfully permits to be caused unnecessary pain, suffering or injury to an animal or a bird.

The change is that everyone who commits an offence under subsection 1 is guilty of an indictable offence and liable to imprisonment for a term of not more than five years or an offence punishable on summary conviction and liable to a fine not exceeding \$10,000 or to imprisonment for a term of not more than 18 months, or both.

I have made this comparison to indicate that the issue that has always been driving the legislation relating to amending the Cruelty to Animals Act is the fact that the penalties do not fit the crimes. However, in all of the investigations that I and others have done, we did not find any situations where the existing Criminal Code offences would not permit a charge to be laid in a proper case. The problem ended up that it was not taken very seriously. If someone had a puppy mill, they were charged, paid the \$200 fine and were right back in business. Therefore, the prosecutors give up, the enforcement officers give up, and even the judges give up. That is the reason it is not working.

I take the position that we have a working law that has evolved over the years and everyone understands how to that law. It is effective and it does the job it is intended to do for everyone. To release the pressure of people screaming about how cruel we are to puppies and whatever, all we need do is increase the penalties.

Honourable senators, I sat through many hours of hearings on this issue. I did not hear any examples of acts of cruelty to animals that would not be caught by the current provisions of the Criminal Code. We simply do not need to amend the substantive provisions in order to prosecute the terrible acts that horrify all of us.

In my amended bill, we go from almost all the penalties being by summary conviction under the system in place now, with a maximum of six months, to an indictable situation with up to five years in prison and summary convictions with up to a \$10,000 fine and/or six months. We absolutely need stronger penalties. That is what Canadians want and expect.

The bill I am putting forward today will leave the substantive provisions of the code intact, ensuring that what is lawful today will continue to be lawful, but we would increase the available penalties to the level proposed in every bill that has been introduced by government over the last five or six years. It is short and to the point. I hope to facilitate an end to the situation in which we find ourselves by proposing a solution that cuts to the heart of our real objective in a way that I hope we can all support in order that Canadians' real objective, that of making the punishment better fit these crimes, can be achieved as quickly as possible.

I hope all honourable senators will join me in supporting this bill.

(1650)

The Hon. the Speaker *pro tempore*: Senator Bryden, will you accept a question?

Senator Bryden: Yes.

Hon. George Baker: Senator Bryden, this is certainly a change from the legislation that the Senate was asked to deal with some time ago. As Senator Bryden and other senators would know, the Senate was faced with a situation where the Canadian Jewish Congress, the Canadian Arab League and various organizations from across Canada came to us with representations. Having spent 29 years in the House of Commons, I must admit that members the other place are not lobbied in as active a manner as are senators. Perhaps that is because it is recognized that members of Parliament really do not have the time to deal with legislation. They are too busy getting re-elected. They do not really deal with the law and changes in the law, and thereby, I enjoyed it for 29 years.

Let me ask the honourable senator a question. He is correct in the case law. All of us read the cases from QuickLaw, Westlaw and Carswell on a daily basis. Instead of reading novels, we read case law. It appears as if, under sections 444 to 447 of the Criminal Code, that the judgments have been consistent in each province in that they have referenced, in a similar manner, assault charges brought under the common assault provisions of the Criminal Code. In other words, one arrives at a point at which one should stop — *R. v. Jorgensen*.

The change being made here will make the offence hybrid. A hybrid offence, summary or indictable, automatically comes under the Identification of Criminals Act. As a result, when a person is charged with a hybrid offence, it is assumed by the court that the offence is indictable until the Crown elects which way it chooses to proceed. Someone is then fingerprinted, photographed and so on.

In those circumstances, is the honourable senator making this a hybrid offence to highlight the fact that people regard cruelty to animals at a much higher level than they do assaulting human beings as defined under the Criminal Code?

Senator Bryden: Thank you for that question — I think.

There is no question that we must have hybrid offences, to use your term, because in order for the penalties to fit the seriousness of the crimes, we must have the opportunity to treat most of the severe penalties as indictable offences and still leave open the opportunity to treat them as summary conviction offences.

We have done very well in our criminal law system by giving as much discretion as we possibly can to judges and, indeed, prosecutors in properly laying charges.

My honourable friend mentioned the number of people who appeared and who were very concerned. One of the groups of people who were most concerned about the bill that came out of the justice mill was the Aboriginals. Under our Constitution, the Aboriginals should have been consulted. There should have been a lengthy consultation because their livelihoods and way of life depend so much on animals and fish. Nonetheless, no consultation occurred, which was very troublesome.

Ask Senator Adams or Senator Watt. It was a major issue with the industries in this country, particularly the fields of health care, pharmaceuticals and in the laboratories. Those industries are closely regulated and monitored, but they are often the subject of harassment by militants who support the animal rights movements.

The fact is that it is very difficult to put something as tough as was going into Bill C-50 into the Criminal Code to say that someone commits an offence if they kill an animal without lawful excuse. No one will define what constitutes a lawful excuse. If you were being attacked by a grizzly bear and you defended

yourself, that would probably count, but just to have a licence, or, for example, to adhere to all of the slaughter regulations within a province would not constitute a lawful excuse.

In other countries, the really militant animal rights people are treating the fact that something, on the face of it, is criminal as a justification for them — whether there is any foundation for it or not — to harass.

Let us take, for example, an Aboriginal hunter who does something that he has been doing all of his life, to say nothing about the seal hunt, for example. I do not want to get into that issue. However, if he does something that he has been doing all his life and all of a sudden, somewhere in Ottawa, this change is adopted, just killing an animal without lawful excuse becomes a crime. The Criminal Code trumps everyone else. The animal rights people, and indeed some enforcement officers, will say, "You are committing a criminal act. Where is your lawful excuse?" The person's lawful excuse may be to say, "This is my traditional way of life." The enforcement officers would say, "No, it is not, so I have to charge you." The answer that was always given was, "Well, that is fine; let the courts decide."

I can tell honourable senators that there are very few Aboriginal hunters or just ordinary folk out on the farm who are able to go with a group like PETA — the People for the Ethical Treatment of Animals, which is funded out of the U.S. — all the way through litigation. What happens is the person just gives up, and he has lost that right.

Honourable senators, we have to be able to take care of those people who read in the press that some ignorant bully is running a puppy mill where animals are improperly fed, where they are dying of thirst, and so on, and nothing can be done about that except to give the guy a \$500 or \$600 fine. Then the whole world blows up in the newspapers saying that we have to change the law. Yes, we have to change the law, but we have to change the law to increase the penalties to the people who are breaking the law. We do not have to create more laws to give people an opportunity to take advantage of them.

The Hon. the Speaker *pro tempore*: Honourable Senator Adams, do you have a question?

(1700)

Hon. Willie Adams: I know Senator Bryden, with whom we worked for close to five years on different issues. I wish to ensure that the honourable senator's bill is better than the other three that were put forward and which were on the Order Paper in the last five years.

The honourable senator talks about hunting. Mostly the honourable senator talked about fishing and deer hunting and other forms of hunting. We are concerned that our original way of life will not be disturbed. We do hunting of seals and whales and we fish. There was a bill concerning the feeling of mammals. If this bill passes through the Senate it will have to go to the House of Commons. I hope that it gets there and I hope that clause, which is in other bills, will not be in the bill the honourable senator has now. If it is, I am still worried about the bill going from here to the House of Commons. Some people over there may have liked Bill C-50. I want to make sure that that will not happen.

The honourable senator mentioned the penalties and the jail sentences. There was a five-year sentence, with a maximum up to a \$5,000 fine. Do I understand that Bill S-213 now says the penalty is 18 months and a fine of up to \$10,000.

Senator Bryden: The penalties depend on the seriousness of the offence, honourable senators. Once again, we are dealing with the offence with which the Honourable Senator Adams is very familiar. It is the one that he has lived and worked with all his life. Nothing has changed in this bill.

Some of the offences in the Criminal Code now do not carry as heavy a penalty as some others.

For example, the first offence is an archaic one with the heaviest fine of \$5,000 if an offender kills cattle. I believe that goes back to the old rustling days. If one looks at the wording of the existing bill — and by existing I mean the wording that is in the Criminal Code now — one reads it and some of the terminology is somewhat archaic. I am a lawyer and I can remember being told that law does not have to be poetry; it has to be clear. People must understand what you mean. While some of the terms in the Criminal Code may have been current terms 50 or 100 years ago, they have come forward and they have been interpreted in a manner that every judge or prosecutor who deals with these matters knows exactly what is meant, and so do the people who work with the animals that are there.

The honourable senator has a legitimate concern, as do I, and that is we may be able to manage this bill while it is in our jurisdiction, while it is within this chamber, our committee and comes back and receives third reading. This bill can hopefully be sent to the other place and, perhaps, it will be treated in a manner that will reflect at least as much if not more concern for the people who interact with the animals than it seemed to be the last time, when the drafters and so on got into this. To be charitable, the animal rights people had a very strong lobby that produced the series of bills. We sent them back to be fixed and they kept returning in basically the same form.

I am hopeful with starting out with a bill that says, "We know that the cruelty to animals provisions that are in the existing code work." What does not work is once you have made the arrest, once you have had the trial and it comes time to mete out a sentence. We cannot leave our justice system in a situation where the maximum penalty they can impose is \$600 or a maximum detainment would be six months. That would not discourage the professionals who are causing some of the problems.

The fines are tailored to fit the particular offences and they vary. The maximum on an indictable offence goes up to \$5,000 or 18 months. On summary conviction, the penalty is \$5,000 and up to six months in jail. I do not want to get into the situation of saying that we want minimums. We do not want that. We need to give the opportunity and range to the prosecutors and the courts to be able to make the punishment that is available fit the particular incidents with which they are dealing. They do not have those tools now. That is the only thing in my opinion that needs to be changed to give us a very good protection act for animals in our care.

Hon. Anne C. Cools: Honourable senators, it is a long time since we looked at Bill C-10B in committee. I believe that bill was originally divided from Bill C-10. If honourable senators have the interest, wish or desire, they should some day look at the proceedings of that committee and even the proceedings on the bill here in this house to examine the lucid and clear interventions that Senator Bryden made on that matter.

My question to the honourable senator is this: At that time there was concern within the committee about the sustenance and maintenance of the old common law defences. I have yet to look at the bill in this session. Will this bill address the concerns we raised then? At the time, committee members, the honourable senator included, as well as the Honourable Senator Baker, were not satisfied with the responses that the department had been making to our concerns about the common law defences. Would the honourable senator comment, please?

Senator Bryden: Honourable senators, there has never been a question whether or not the old common law defences apply to the offences under 444 to 447 of the Criminal Code; they do. They will not change. Those protections are there and will continue. The same is true with respect to the types of protection available and that have been worked with for years in relation to the religious rites and if you have a regulated animal industry or business, such as the stampede. We heard from lawyers when the bill was before us the last time, who would not give us an opinion whether the stampede in Calgary would go ahead if that bill passed. That is not part of what I am talking about. We will continue to do what we have been doing. We will give the courts, the prosecutors and the enforcement people a little more muscle to be able to say: This is the second time before the court for this offence; this time it is indictable; and this time the person will go to jail.

(1710)

Hon. Tommy Banks: The proponents of the bill presented on three previous occasions argued that the provisions of the common law still obtain notwithstanding the removal of the colour of right reference and that if that bill had become an act of Parliament, nothing that is illegal today would be illegal tomorrow. Many of us disagreed with that because we recognized at least one new offence in the proposed legislation, so those two things do not work. Is there anything in the current bill before the Senate that is legal today that would be illegal should the bill pass and become law?

Senator Bryden: Absolutely not. Bill S-213 does not change the law except to change the penalties. Thus if it is legal today under the Criminal Code, it would be legal still when the bill passes and becomes law because the fundamental offences have not been changed. They are identical. I had the law clerks review the bill with a fine-toothed comb to ensure that the offence sections mirror precisely what we have now in law and have been living with all our lives. The only thing that has changed are the penalties for violation of the sections.

Hon. Terry Stratton: If I may, I would like to congratulate Senator Bryden. During the last Parliament, we saw that this was a good bill. For him to reintroduce it now, I wish him well.

Senator Bryden: Honourable senators, I know I should not comment, but the pride of authorship that I would take in this bill would be to see Bill S-213, with or without my name on it, become law. If the senators opposite were to take it over as a government bill, they would face no objection from me.

On motion of Senator Stratton, debate adjourned.