

Standing Committee on Justice and Human Rights

Comité permanent de la justice et des droits de la personne

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⊕ (1530)

[*English*]

The Chair (Mr. Art Hanger (Calgary Northeast, CPC)): I'd like to call the Standing Committee on Justice and Human Rights to order.

It being Thursday, January 31, our committee will be reviewing and debating Bill S-203, An Act to amend the Criminal Code (cruelty to animals). I believe the bill was sponsored through the Senate and Senator Bryden.

Senator Bryden, you are first on the list, of course, to testify.

I wanted to advise my colleagues that after Senator Bryden's testimony there is going to be a brief break to discuss some committee business. Normally I would conduct this at the end of the session, but there is a concern with some of the members regarding a time issue, so we'll try to quickly deal with that business half way through.

Senator Bryden, you have the floor.

Hon. John Bryden (Senator, , Senate): Thank you, Mr. Chairman, and committee members, for fitting consideration of Bill S-203 into your busy agenda.

This is a very straightforward bill. It amends the sections of the Criminal Code that deal with cruelty to animals to increase the maximum penalties that a court may impose

for the offences set out there. In doing this, the bill responds to the most serious deficiency in our criminal law for the protection of animals by providing enforcement officers, prosecutors and courts with access to penalties up to levels the offences warrant and Canadians expect and that act as substantial deterrents to those who would commit these terrible acts of animal cruelty.

Under the existing Criminal Code, all animal cruelty offences, with one exception, are punishable only on summary conviction. The maximum penalties that may be ordered by a court are limited to a fine of \$2,000 and/or six months imprisonment. The one exception relates to killing, poisoning or maiming cattle, which is an indictable offence punishable by imprisonment of up to five years.

There is a broad consensus that these penalties are not adequate. They do not reflect the seriousness with which Canadians view these crimes today and they do not present an effective deterrent. This is what Bill S-203 addresses. It seeks to fix the most serious deficiencies in the law as it stands now.

There is significant support for this bill from various and varied stakeholders. There is also opposition from some animal rights lobby groups, some humane societies and some individuals, but I believe that I can safely say that no one is opposed to what is in this bill. Any opposition relates to what is not in this bill, and as you are all aware, this bill does not prevent those who desire to create a more ambitious and comprehensive regime from pursuing their goals.

I will very briefly describe the provisions of the bill and the changes they would effect.

First, each of the offences would become a hybrid offence, allowing for the prosecutor to decide, on the basis of the seriousness and the circumstances of that particular case, whether to proceed by way of indictment or on summary conviction.

Right now, only injuring or endangering cattle can proceed by way of indictment. All the other animal cruelty offences are at the exact opposite end of the spectrum. They may only be prosecuted under summary conviction, which in our system, as you are well aware, is generally reserved for less serious offences. This in itself sends the wrong message. Bill S-203 would correct this and make all of the animal cruelty offences hybrid ones.

The bill does not create any new offences. I repeat, this bill does not create any new offences. That was an important principle during the drafting of the bill. The goal was to keep things as simple and straightforward as possible.

You may then be surprised to see a new section 445.1 in this bill, and to note that the language of section 445.1 and 446 does not precisely recreate the existing in section 446. This reflects the fact that in setting out the new penalties, the bill distinguishes between situations where animals are injured intentionally or recklessly, and situations where they are injured by neglect.

⊕ (1535)

As you know, our criminal law and justice system generally makes a distinction between acts done intentionally, knowingly or recklessly and situations of negligence. This is reflected in the penalty structure proposed in Bill S-203.

In brief, for those offences involving intention or recklessness and also for the offence of causing pain, suffering or injury by failing to provide reasonable care, the maximum penalty would be increased to five years imprisonment on indictment or 18 months imprisonment and/or a fine of \$10,000 on summary conviction.

For other animal cruelty offences, the bill would raise the maximum penalty to two years imprisonment on indictment. Where the prosecution elects to proceed by summary conviction, the maximum fine would be increased to \$5,000 from the current \$2,000 and the maximum imprisonment would remain at six months.

These penalties are drawn from those set out in previous bills prepared by the Department of Justice. They were based on a comprehensive comparative examination of animal cruelty statutes in other jurisdictions, as well as a comparative analysis of similar types of offences under the Criminal Code that was conducted by the Department of Justice.

Under subsection 446.(5) of the Criminal Code a court today is authorized to make an order prohibiting an accused from owning or having custody and control of an animal or a bird for a period of up to a maximum of two years. This two-year limit has been recognized as inadequate. Bill S-203 would take away the cap altogether and, in fact, provides that in the case of a second or subsequent offence any order made by a court must be for a minimum of five years. This is the new paragraph 447.1(1)(a) that I mentioned earlier.

Finally, the bill contains a new provision authorizing the court to order the accused to pay reasonable compensation to a person or organization. This most often arises with animal welfare agencies who cared for the animals that were injured, and that is a new paragraph 447.1(1)(b).

One final point before I conclude. Aboriginal rights, under section 35 of the Constitution, protecting traditional hunting, fishing and trapping methods are unaffected by this bill. Indeed, aboriginal members of the Senate participated in the development of this bill, working to ensure the bill meets aboriginal concerns.

Mr. Chairman, that is my very brief overview of this bill. It is a short bill, but I believe it will go a long way to help address a serious problem with the Criminal Code as it now stands. A series of attempts by different governments over the past 10-plus years have failed to pass Parliament. If that situation continues into the future, at least the modest amendment in Bill S-203, if adopted, will allow the courts to punish offenders as the

offences warrant and work to protect the animals until such time as a new and more sophisticated regime is enacted.

Mr. Chairman, I would like to end by quoting Donald Piragoff, Senior Assistant Deputy Minister, Department of Justice, who testified before the Senate Legal and Constitutional Affairs Committee after describing the provisions of the bill, which was Bill S-213 and is now Bill S-203. After explaining the provisions, he continued, and I quote:

Together they constitute a significant improvement to the current law regarding sentencing and one with which all Canadians would agree.

Thank you for your attention.

⊕ (1540)

The Chair: Thank you very much, Senator.

We'll go right to questions.

The first round is seven minutes, Mr. Murphy.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): Thank you, Mr. Chairman.

Thank you, Senator.

I just have a few questions. I wasn't around for any of the previous legislation and the back and forth, but I've read the code and I've read your act and I've read parts of Bill C-50 and I've read my colleague Mr. Holland's bill and I guess what I'm trying to get at, Senator, is I respect what you've done in trying to move the issue forward and in your attempt to move the ball forward but not lose the game, so to speak, do you think you could have pushed it a little further?

In other words, are you open to friendly amendments that would move your bill more towards Bill C-50 without losing the battle, and if you don't know what I'm talking about--I suspect you do--I would talk about things like amending the bill to include definitions for animals. As you know, the sense of animal protection and cruelty in section 444 and on in the code is medieval. It's animals as possessions only, not as sentient beings, etc.

Do you think that you could move on that point? Do you think that you could move on making, as the code sort of does, the distinction go away between owned animals and wild animals, and I respect what you're saying about the troubles that the bills get into when they encroach upon aboriginal rights or the pastimes of people who hunt and fish, and I understand that, but in calibrating this did you take into consideration just how far you could go to move the forward without losing the day?

Hon. John Bryden: Thank you for your question or questions. I guess the best way for me to answer that is to try to give you the context in which I created this bill.

What scuttled every other attempt to conclude a bill and get it through Parliament was the fact that the number of amendments that were made, the number of changes that were made were considerable. The position that was taken, at least publicly, when the first bills came forward was that the principal concern of the Canadian people, the public, was that the penalties were not adequate to fit the crimes that were occurring and the statement was made, and many of you will remember this, or at least some of you will remember this, the statement was made over and over that the principal reason for amending the bill, for creating an amended bill was 80% of the reason of the purpose was to increase the penalties, and that the rest of the thrust was to improve the wording, modernize the wording, tailor a few things up, but the primary focus was to get the penalties up.

⊕ (1545)

Mr. Brian Murphy: scuttle the bill in short? New Brunswickers are known for brevity and directness, and you're no exception to that. Would amendments like I'm speaking of scuttle the bill?

Hon. John Bryden: The reason that I say that it would scuttle the bill.

What we've learned in dealing with these bills is there is not an amendment. If one amendment is good, 15 is a lot better, and that is what has mired this file for years and years.

I'll make it as brief as I can. We have a criminal code on cruelty to animals that has served us very well for a long period of time, and what's more it has a history. Prosecutors understand it, the people who work with animals understand the law, and the courts understand the law. The reason that it does not work is because the penalties are so anemic that the courts throw up their hands because if somebody runs a puppy mill and he's charged, convicted, and pays his \$200 fine or whatever it is, he's back in business in a week.

What I decided to do, and it's either right or wrong, is I said the law is not what's wrong, what's wrong is we need to adjust the penalties, and that is why I purposely avoided changing any of the existing law. We have the context, we have the precedence, and what will be changed are the penalties that would be used.

Nothing prevents somebody else who carries a different brief for whatever reason, and they can change it tomorrow, as you all know. But one of the reasons that it did not work very well before was there was not enough consultation on that 20%, nobody went and talked to the aboriginal people, nobody actually sat down and explained why it would make a difference in protecting the actual animals, and it was too moot to create a whole new part of the Criminal Code instead of using the part that is already there.

I'll stop.

Mr. Brian Murphy: My time is running out.

To be more specific on the tail end of your answer, and maybe we'll hear this through the testimony. Do you think that the aboriginal community would be content with S-203?

Hon. John Bryden: Pardon me?

Mr. Brian Murphy: Would the aboriginal community be content with your bill?

Hon. John Bryden: Absolutely.

Mr. Brian Murphy: How do you know that?

Hon. John Bryden: Because I had seven aboriginal people working with me on this during its development, and they were in the lead in opposing the other bills that came down through justice because they didn't know where they were going, whether it was going to affect their hunting, fishing, and treaty rights, and there was no way of finding out. There were things that showed up in those bills that used words like "created a new offence of killing an animal in a brutal manner", and there was no definition of what constitutes "brutal". What constitutes "brutal" to some starlet sitting on the ice little white seals is quite different than what would be brutal to a fisherman or a harvester of wildlife.

I can say without any question, and we could bring people to give evidence, that the aboriginal community is comfortable with this bill, and that's one of the reasons I stuck to my knitting and said we have a bill, they've lived with it all their lives, and so therefore it's not a problem for them. What they need to know is where they're going, and they accept the level of the penalties.

⊕ (1550)

The Chair: Thank you, Senator.

Thank you, Mr. Murphy.

Monsieur Ménard.

[*Français*]

M. Réal Ménard (Hochelaga, BQ): Bienvenue, monsieur le sénateur. Je suis un peu surpris de votre témoignage. Je reconnais la bataille que vous avez faite. Quand on a des convictions et quand on s'implique dans la rédaction d'un projet de loi, on souhaite évidemment qu'il soit adopté.

Vous n'êtes pas sans savoir que plusieurs parlementaires ont reçu des représentations à l'effet que votre projet de loi était très insuffisant dans son contenu même. Le débat n'est pas tellement celui d'augmenter les peines, puisque les gens sont très peu traduits devant les tribunaux. On a même eu de la littérature qui a été portée à notre connaissance indiquant que seulement 1 p. 100 des gens qui se livrent à des actes de cruauté envers les animaux font l'objet d'une condamnation effective.

Quant à réouvrir le débat et être saisi d'une loi, pourquoi faudrait-il se contenter de ne pas avoir de définition d'« animal », de considérer toujours que c'est un bien, de ne pas s'attaquer aux animaux sauvages et ceux qui sont en errance? Plusieurs lacunes de votre projet de loi ont été portées à notre connaissance comme parlementaires. D'autres députés ont tenté de corriger ces lacunes; je ne les nommerai pas, mais je peux le regarder puisqu'il est mon voisin aujourd'hui. Il y a également le fait que, si jamais la Chambre approuvait le projet de loi et qu'on vous le référerait à nouveau au Sénat, le Sénat approuverait-il également un autre projet de loi qui irait plus loin? C'est vrai que les deux projets de loi ne sont pas incompatibles, mais vous ne pouvez pas prétendre que personne ne s'oppose au projet de loi puisque nous avons reçu beaucoup de représentations. En tout cas, moi j'en ai reçues et j'imagine que mes collègues en ont reçues aussi.

Les groupes qui interviennent pour la protection des animaux ont critiqué sérieusement et vigoureusement votre projet de loi comme étant très incomplet. Reconnaissez-vous qu'il y a un mouvement d'opposition? Les deux projets de loi ne sont pas incompatibles, je le répète, mais quant à se saisir du débat, ne devrait-on pas aller plus loin que ce que vous nous proposez? Et reconnaissez-vous que les groupes qui interviennent pour la protection des animaux n'appuient pas votre projet de loi, mais appuient davantage celui qui a été présenté par un collègue de la Chambre?

[English]

Hon. John Bryden: I recognize that there are a lot of people who do that. Whether they do that for good reason, one would say it depends on whether you're buying or selling. The fact is a lot of it was based on the idea that the Criminal Code, as it exists now, for protection of animals applied only to domestic animals. The fact is since 1953 the section in the Criminal Code that makes it an offence to cause unnecessary pain, suffering or injury to an animal applies to strays and to wild animals. It is not restricted.

I was amazed at the last meeting of the legal and constitutional affairs committee in the Senate when certain animal rights people appeared before that committee and indicated, when they were told by the Department of Justice, that in fact the present code covers wild animals and stray animals as well as domestic animals, under the provision I just mentioned, they were shocked and surprised. They didn't know.

[Français]

M. Réal Ménard: Attendez un peu. Sans vouloir entrer dans les détails, est-il juste, sur le plan des faits et de l'histoire et de la généalogie de ce projet de loi, de dire que nous,

parlementaires de la Chambre des communes, devons avoir présent à l'esprit quand nous l'étudierons que les groupes qui interviennent pour la protection des animaux n'appuient pas ce projet de loi? Sur le plan de la véracité des faits, on se comprend.

Je le répète, les deux projets de loi ne sont pas incompatibles. Je comprends ce point de vue. Mais, à votre avis, le gouvernement appuie-t-il votre projet de loi? Le gouvernement conservateur appuie-t-il votre projet de loi, à votre connaissance?

⊕ (1555)

[*English*]

Hon. John Bryden: That is up to the government.

I certainly did support my bill at the time when it was given second reading the person who was the lead on the government side, I think it was Mr. Moore, categorically said that the government supports this bill. I also had that information from the Bloc. Whether that's still true or not I don't know, but that was indicated to me as well.

The point is this. It's not up to me. If you want to amend the bill, then that, of course, is your right. All I can do is bring to you what experience I have had over much more than 10 years, and my experience is--

[*Français*]

M. Réal Ménard: Je vais vous poser...

[*English*]

I'm going to ask

[*Français*]

Une troisième question, si vous permettez. Notre crainte est que, les sénateurs, d'après vous, voteraient-ils un autre projet de loi comme celui qui a été présenté à la chambre par mon collègue voisin qui va beaucoup plus loin? N'y a-t-il pas un risque que si jamais on dispose positivement de ce projet de loi avec amendement, mais qu'il est déféré au sénat, il y ait certains de vos collègues qui disent qu'ils ont déjà statué dans ce dossier et qu'ils ne votent pas un deuxième projet de loi? Que pensez-vous de cette éventualité? Pouvez-vous nous rassurer? Je sais que vous n'avez pas de boule de cristal et que vous ne contrôlez pas les sénateurs.

[*English*]

Hon. John Bryden: Yes.

[*Français*]

M. Réal Ménard: Les sénateurs sont imprévisibles, je comprends cela, mais quelle est votre compréhension?

[*English*]

Hon. John Bryden: It would depend on the bill as it comes. We do our job. We do the analysis and we would do our job. Would there be any block that says no, having passed that, then we won't pass any more? And the answer is no, absolutely. That is not an issue.

I tell you what is as much of an issue as you have that in your mind, what happens if my bill does pass is that all of a sudden to those people who carry certain agendas, the lever they've had for so long to try to get this Cadillac bill, dealing with animal cruelty, passed is gone.

The fact of the matter is that the major concern of the public is they need to have adequate penalties in order to have the court system work properly. And once that's gone, the concern of a lot of people who are saying oh, but the Senate might block it. The Senate doesn't wander around and block stuff simply to block it. The fact of the matter is their concern, some of them are concerned that once that lever is gone, it's goodbye Charlie Brown to our influence in trying to control the animal rights of Canada.

[*Français*]

M. Réal Ménard: Merci.

[*English*]

The Chair: Thank you, Senator Bryden.

Monsieur Ménard, good question.

Mr. Comartin.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Senator, I really don't even know where to start with you, but let me start with the fact you're not elected, is that correct? The Senate of this country is not elected. The Senate of this country has twice refused to adopt legislation that the House of Commons, which is elected, sent to them. Is that correct?

Hon. John Bryden: I'm not here to be cross-examined I don't believe and I think you know the answer to those questions as well as I do.

Mr. Joe Comartin: All right, you're not elected and the Senate is not elected and twice you've blocked this legislation in the Senate. Why would we expect that if we made any amendments, that you wouldn't do it a third time?

Hon. John Bryden: We did not block the legislation in the Senate. The last time I actually made the motion and the motion was made to support the aboriginal people who wanted one more chance to get an abrogation clause to go inside that would do what they wanted it to do. What occurred was, instead of giving the final reading, they requested that the matter be referred back to the committee to see if they could get it to the point where it was in fact acceptable to them.

That was accepted in the Senate and before anything more could be done, the House was prorogued. We've gone from prorogation to elections and so on. So most of the time that the bills have failed, they happened to have been in the Senate some of those times, but it's because Parliament stops and you had to start it over.

🕒 (1600)

Mr. Joe Comartin: It is a fact that on at least one occasion you made significant amendments and that bill got sent back to the House of Commons.

Mr. Derek Lee (Scarborough—Rouge River, Lib.): Just on a point of order, Mr. Chairman.

The Chair: Mr. Lee, on a point of order.

Mr. Derek Lee: Mr. Comartin has for the second time referred to Senator Bryden as “you” when I think Mr. Comartin may have been referring to the Senate rather than to Senator Bryden himself personally.

Senator Bryden here today does not represent the Senate. He does not represent a party in the Senate. He is an individual senator who has piloted a bill through the Senate and brought it to the House here as private member's business.

Thank you.

The Chair: Thank you, Mr. Lee.

Mr. Comartin, put your questions to the Chair and make reference generally.

Mr. Joe Comartin: Okay.

Mr. Chair, through you to the Senator, you had, and I mean you personally, not the Senate, had the opportunity to encompass in your bill, his bill, Mr. Chair, the entire part of what was originally 15, then 10-B and then 50 in the last House when this was before the House of Commons.

Why did you choose to only selectively go at the penalty part as opposed to all the rest of the bill?

Hon. John Bryden: The short answer to that is that the other parts of the bill all had problems with them. There had not been sufficient consultation before it was done. Any consultation that took place was after the fact, people were presented with a bill that was already there and told this is it, now come and see if you can fix it.

The other thing was that there was some misleading occurring because the word that was coming out was what's legal today will be legal tomorrow under any one of these bills. Once it became clear that there were indeed new offences in those bills then people became very concerned and that is why there are so many.

I grant the fact there are a number of people who oppose this bill for reasons of their own doing and for good reasons and maybe not so good reasons, but where we are really coming from is to say we've got to start somewhere. Surely if we can't agree to put a reasonable penalty scheme on the existing one we are never going to be in a position to create this Cadillac version that really crashed, and it crashed a number of times. It was not John Bryden that made it crash.

The Chair: Mr. Comartin.

Mr. Joe Comartin: Mr. Chair, through you to the Senator, do you agree with the statement that the reality is that he is the essential part of the bill that was twice passed by the House and is now in private member's bill 373. The contents of Bill C-373 have in essence been passed twice by the House of Commons, does he agree with that or not?

Hon. John Bryden: I agree.

Mr. Joe Comartin: Mr. Chair, I am not sure why I am being imposed on this particular rule as it has not been the rule of this committee up to this point.

The Chair: Mr. Comartin, in all fairness I think you come on somewhat antagonistic with the Senator.

Mr. Joe Comartin: No question.

The Chair: So just keep that in mind. The Senator will reply.

Hon. John Bryden: I am trying to recall. I know that it was in the House of Commons and over to us and back over to the House of Commons. I know the one time it was passed it was my understanding that it was passed and all three readings were done in one day in the House of Commons.

What you indicated, the essential part of the bill--

Mr. Joe Comartin: Mr. Chair, could you ask the Senator to refer to you rather than to me?

The Chair: Mr. Comartin.

Mr. Joe Comartin: I would ask you to direct the Senator to address you rather than me.

🕒 (1605)

The Chair: Thank you. Senator.

Hon. John Bryden: The reference was made to the essential part of the original bills being passed here, so why did I decide to do the penalty ones.

The fact is when those bills came down the essential part of the bill was the penalties. Time after time ministers of justice said the major purpose of this bill is to increase the penalties, don't pay any attention to any of this other stuff, it is the penalties. Eighty percent of the problem would be solved in the minds of Canadians and they had done a survey that showed 80% of animal cruelty would be solved, Mr. Chair, if we got the penalties right.

Well we got the penalties right. The one thing that everyone agreed on was the level of penalties and so on. Once we had them right I thought it would be helpful as a compromise to take the existing law which we have lived with for all this period of time and put the penalties that everybody agreed to. That is exactly what my bill does. It does no more or less than that.

The Chair: Thank you, Mr. Bryden.

Thank you, Mr. Comartin.

Mr. Dykstra.

Mr. Rick Dykstra (St. Catharines, CPC): Thank you, Mr. Chair. I will try to direct my remarks through you to the Senator.

In terms of the bill itself certainly from the pushback that I have heard from those that feel the bill doesn't go far enough. For example, animal fighting is not firmly addressed in this bill. Through you, Mr. Chair, how would the Senator respond to that?

Hon. John Bryden: My response, Mr. Chair, is that it's true. As I indicated, I did not start out to create new offences because once you start there is an endless road.

Mr. Rick Dykstra: One of the other points that I noted are the past objections that are centred around vague language in the legislation that some anglers and hunters believe

may put them in a very tough position. It's the exact opposite argument in that it actually goes too far.

Hon. John Bryden: The answer to that is that it may be the case because there are situations in other countries where under the rubric of not causing any pain, suffering, or injury to an animal, that includes angling and, in particular, catch-and-release angling. It is not, because of the way the bill read, the other bills, without lawful excuse. When I hook a salmon in a catch-and-release position I don't have the excuse that I need the food. I'm hunting or fishing for sport. I do not have a lawful excuse.

I want to indicate that if that bill had passed in that fashion, having a valid fishing, hunting, or trapping licence from a province of competent jurisdiction does not count as a valid excuse if you're charged under that Criminal Code section. The case from the Supreme Court of Canada that made that so is the Jorgensen case. I can give you the notation, but I don't have it right here. That is a fact and it was specified to us.

I asked the question of the Department of Justice in another hearing. I asked, if we have valid fishing and hunting licenses from provincial jurisdictions or a proper jurisdiction, is that a valid excuse? The answer was no it is not, and I was referred to that case. I read the case and that's the way the law is. It's a constitutional thing and a provincial licence does not trump a Criminal Code charge.

You can imagine how that was reacted to by those folks who fish. You can imagine how it reacts in the relations with the aboriginal people as well.

Mr. Rick Dykstra: One of the other questions that I have is related to the fact that for some reason cattle are placed above all other animals and importance based on penalties. Why is that?

🕒 (1610)

Hon. John Bryden: This is an educated guess because I did do some research. It was put in there very early on in the law at a time when there were cattle rustlers and people spreading poison around. Cattle was very important and so it was singled out and it may very well have been the first offence of any in relation to animal cruelty. That is why, I believe, it had the bigger penalty and was indictable.

Mr. Rick Dykstra: Why would that need to exist today? I'm not familiar if cattle rustling is still happening, but if it is I would certainly like to hear your thoughts on that.

Having said that, why would you have left it in? Why wouldn't you have given it equal weight to all animals?

Hon. John Bryden: It is still there, but it has the same weight. It is a hybrid offence the same as every other offence. You can do it by indictment and therefore get the same

prison sentence as it used to be, but you can also proceed on summary conviction if you want. It is treated exactly as the other penalties.

Mr. Rick Dykstra: I get the sense that part of the rationale that the senator used to move the bill forward is that there is going to be an opportunity to pursue animal cruelty with respect to legislation immediately following this. This bill actually sets up another stage. Am I interpreting that correctly?

It would seem to me that if you want to reach another level that you would do so rather than attempt to pass a piece of legislation that you may not be entirely happy with hoping that there is some potential to move further as we go down the road. It took 12 years to get where we are, who's to say that we'd ever get the chance to do this again for another decade.

Hon. John Bryden:

My answer to that is that it's to attempt to get the best that is available to us now and that is the major issue that was brought in at the beginning of this whole discussion. Nothing prevents the animal rights folks, the other people who have a much grander idea of the scope of what needs to be done here, from bringing in new legislation tomorrow.

But I would like to say—and this is a confession—I have spent more than 10 years of my life trying to work out something on this file and if I could move this one into the House of Commons and have a vote on it, then I probably would die a happy senator. I'm not about to take on another load of this stuff.

Sorry, Mr. Chair.

The Chair: That's quite all right, Senator.

Thank you, Mr. Dykstra.

Mr. LeBlanc.

Hon. Dominic LeBlanc (Beauséjour, Lib.): Thank you, Mr. Chair, and through you, welcome, Senator, to the committee.

The senator has done a lot of work on this issue. He's spoken in our caucus a number of times, both in our regional caucus and in the national caucus. For any private member or senator who gets a bill as far as the senator has, Mr. Chair, it's something to remark.

I have only two very precise questions for the senator. Some of the reading I've done on this issue obviously involves issues around wild and stray animals. In the senator's view, Mr. Chair, I'm wondering if the senator would tell us, does Bill S-203 protect wild and stray animals? If so, how? That is an issue that I've been receiving some representations on.

The senator also referred to penalties as being one area where there is some common consensus, the need to modernize the penalty, the sentencing structure of this particular part of the Criminal Code. I wonder if the senator would tell us some of the stakeholders with whom he's met, who have appeared before the Senate, with whom he's had communication over these years. Are the stakeholders in agreement with the penalty improvements contained in your bill? Have stakeholders expressed to him concerns that the penalties go too far or don't go far enough? I'm wondering if he could quickly take us through some of the stakeholder reaction with respect to the penalty elements.

Thank you, Mr. Chair.

🕒 (1615)

The Chair: Senator.

Hon. John Bryden: Mr. Chair, I'll take the last one first, and that is that there are stakeholders sitting behind me and I am pretty sure that they would agree with this. It's the only thing that we were ever all able to agree to, and that is the level of the penalties.

The level that is set in my bill, which came out of the original bills, they're identical penalties, and those have been accepted by all of the stakeholders whether they are farmers, whether they are scientists who are using animals in research, whether they are the humane societies. I've had no indication from the humane societies or even the— Well, I think there's one animal rights group that would rather up it from five years in jail to ten years in jail, but I haven't heard from them for a long time.

So the answer to that question is: There is general acceptance that the levels of penalties being set forth here are exactly the right ones. I wanted to indicate that there's a reason for that, and I had made a note, first of all these were the penalties provided under each of the proposed government bills—the ones that are in this—and they are a result of an extensive study by justice, including a comprehensive, comparative analysis of animal cruelty statutes in other jurisdictions, and a comparative analysis of similar levels of offences in the Criminal Code. So it's been thoroughly researched and to the best of my knowledge it's been accepted by everyone.

The first part of the question was the question of wild animals and domestic animals. As I indicated, in 1953 there was a section put in the Criminal Code that says “Anyone who wilfully causes or, being the owner, wilfully permits to be caused, unnecessary pain, suffering or injury to an animal or a bird...”.

For a long time people—how they got it, I don't know—believed they had to be both. You had to cause the pain and suffering and you had to be the owner. The fact is, that it's a two-offence section. One is you can cause the pain and suffering yourself, to an animal—it doesn't matter, wild or domesticated—or, if you're the owner you are also guilty if you stand back and watch somebody do that to your animal, whatever it is,

whether it's a cow or a horse, or indeed, it's even worse if you pay him to do it because you haven't got the guts to do it yourself.

Mr. Mark Holland (Ajax—Pickering, Lib.): Mr. Chair, I think we have limited time. Perhaps if I could just pose one question?

The Chair: Yes. Senator, did you--

Hon. John Bryden: I just wanted to complete this quickly, because people are saying "Well that's just mean"--

The Chair: I'll give you your time, Mr. Holland.

Hon. John Bryden: --and my authority for the statement that I just made about the wild animals comes once again from Donald Piergoff from the Department of Justice. He testified that in fact that section that I just read, generally worded, is the most frequently charged offence of causing unnecessary pain and suffering injury to an animal, and it is not--these are his words--it is not limited to kept or owned animals, but in fact protects stray and wild animals as well.

The Chair: Thank you, Senator.

One very quick question, Mr. Holland.

Mr. Mark Holland: Thank you, Mr. Chair. Thank you, Senator.

This is my concern, Senator. We know that only one-quarter of one per cent of animal abuse complaints result in a conviction. That means that dealing with the penalties only deals with one-quarter of one per cent of the problem.

We have a bill in front of us that is opposed by every animal welfare group that is in Canada. We have over 130,000 signatures opposing this bill and supporting what was Bill C-50, which is now my private member's Bill C-373. We have a Facebook group with over 7,000 Canadians. The previous Bill C-50, now Bill C-373 has been passed by the House of Commons two times. Senator, you said--

Hon. John Bryden: Mr. Chairman, is there a question here?

🕒 (1620)

Mr. Mark Holland: There is. My question is right now.

Senator, you had said we would lose the lever--those of us that care about this--we would lose the lever if your bill got passed to do something about the 99.75% of other issues. Let me ask a very simple question.

Will you support Bill C-373, given that enormous support from the Commons, the Canadian public, everything? Will you support that, yes or no?

Hon. John Bryden: No, not the way it is. It has to be properly consulted, because there are things in there that will make the situation worse, not better--and this is in my opinion. I mean, I'm just here as a farm boy, but that is actually the case, and I wanted to ask this question, Mr. Chair. I'm not going to ask the question. I'll put this to you. I've heard that statistic about one per cent, or whatever.

The Chair: One-quarter of one per cent.

Hon. John Bryden: One-quarter of one per cent. I would like to know who formulated that statistic.

The Chair: Okay. We're not going to get to your question right now, Senator, but I am going to turn to Madame Freeman. You have the floor.

[*Français*]

Mme Carole Freeman (Châteauguay—Saint-Constant, BQ): Bonjour sénateur. Je vais m'adresser à vous, Monsieur le président.

C'est une procédure assez peu commune, très peu orthodoxe. D'abord, Sénateur, je suis tout à fait accord avec vous quand vous dites que le problème avec votre projet de loi, ce n'est pas ce qu'il contient, mais ce qu'il ne contient pas. C'est assez étonnant qu'on doive étudier un projet de loi dont le principal défaut est ce qu'il ne contient pas.

Je vois que M. Holland a posé la question que j'aurais aimé poser, à savoir si vous pouviez appuyer ce projet de loi, le C-373 Loi modifiant le Code criminel (cruauté envers les animaux), qui semble faire plus l'unanimité. Vous avez déjà répondu non.

Alors que vous êtes si loin dans ce projet de loi, pourquoi n'avez-vous même pas penser demander la définition du mot animal? Vous présentez un projet de loi et vous n'avez même pas la définition de ce mot. Pouvez-vous nous expliquer pourquoi vous n'avez même pas introduit cela dans le projet de loi?

[*English*]

Hon. John Bryden: Yes, I don't know whether it will be satisfactory or not, but I made the decision that if I were going to use the law as it exists, then I had to be true to that commitment. That is if I were going to leave the law, which has worked for many years, I couldn't pick and choose which place I should make an amendment or an addition because once you start, there are always more additions and I wanted the opportunity to take this code and put the proper penalties with it, and give it a chance to be able to protect the animals.

I answer Mr. Holland in the manner that I did in that I mentioned being a farm boy. I am not buying a pig in a poke. I can tell you if that is the way it comes out, then there will be problems with it whether I am here or not. There are a lot of issues. Now, what can be done? I believe that we need to be fair and open with all of the stakeholders and we need to do our consultation and we need to be very honest with ourselves and very open with the public. In doing that we can build a very good, more complex system and a more modern system, but not to pick the one that was hammered together the first time, which is what it is still. That's my problem.

Would I participate in trying to come up with a second way here? Then answer to that is yes, but I am not going to say "and that second way will be" whatever that number is because there are problems and there are people who are going to be appearing before you, from the list that I've seen, who will raise some of those, and they can do it a lot better than I can.

[*Français*]

Mme Carole Freeman: Vous comprendrez, monsieur le sénateur, que ce projet de loi est totalement insuffisant et ne s'attaque vraiment pas au problème de la cruauté envers les animaux. Vous ne semblez pas disposé à appuyer le projet de loi de notre collègue M. Allan, alors je n'ai plus de questions parce qu'on va répéter ce qu'on a dit précédemment. Je vous remercie.

🕒 (1625)

[*English*]

Hon. John Bryden: Did you want an answer?

[*Français*]

Mme Carole Freeman: Non, je n'ai plus de questions. Cela ne donne rien, on va répéter.

[*English*]

The Chair: Thank you, Madam Freeman.

Mr. Calkins. I understand that you're going to--

Mr. Blaine Calkins: --split my time with Mr. Petit.

I just have one quick question, and if you'll indulge me, Mr. Chair, from one farm boy to another, I'd just like to talk to the Senator, if that is okay.

I certainly appreciate your bill. With my experience, Senator, as a farm boy and as a cattle farmer I can see that there is one change here. You've actually broadened the scope for which charges can be laid for offences against cattle, which means that where before there was only an indictable offence, it changes it to a hybrid. I know from my time serving in law enforcement, a law enforcement officer only has the ability to either lay the charge or not lay the charge, and the judgment that they have therein was usually based on the nature of the penalty and whether the penalty would suit the charge.

What I'm concerned about here, and I'm just wondering if you had any representation to this, is now that the hybrid offence is now there for the section dealing specifically with cattle, if you had any representation concerning an increased number of charges for relatively minor offences involving cattle that will result on summary conviction penalties being applied to farmers. From my perspective, some of those cases may appear to be just one more onerous problem for cattle ranchers to overcome. I'm just wondering if you could comment on that.

Hon. John Bryden: I have not had any particular approach saying that is going to cause a problem. I have had the other side of that, perhaps from law enforcement officers. It gives them an opportunity to lay charges that are more fitting to the crime, that is to say something along the lines of a snare on an animal that steps into one, a cow or a horse or whatever. That causes unnecessary pain and suffering, but you don't want to put a person in jail for five years for that. On the other hand, it's a maximum of five years. It is up to, and also there is a fine.

The other part of my answer is if I were going to be even-handed in relation to all of the other things in saying how are we going to treat these penalties, then the same thing had to apply to the cattle one that was there.

Mr. Blaine Calkins (Wetaskiwin, CPC): Thank you, senator.

The Chair: Thank you, Mr. Calkins. M. Petit.

[*Français*]

M. Daniel Petit (Charlesbourg—Haute-Saint-Charles, PCC): Merci.

Bonjour, monsieur le sénateur. C'est une question courte mais qui se composera de deux choses. Vous savez aussi bien que moi que lorsqu'on augmente les peines, c'est-à-dire qu'on les fait passer à tant d'années maximales naturellement ou que l'amende est plus chère... Étant avocat, je le sais, les clients viennent nous voir parce que cela coûte cher et ils veulent qu'on les défende ou sinon ils vont tout seuls plaider coupable, ils paient l'amende et s'en vont. Donc, je voudrais savoir, lorsque vous avez présenté ce projet de loi, si vous avez couvert ou êtes sûr d'avoir couvert, dans votre esprit, ce qu'on appelle les abattoirs, c'est-à-dire où on tue les animaux, par exemple, avec une masse, de l'électricité ou un pistolet? Avez-vous couvert les abattoirs où on égorge le poulet avec un couteau? Avez-vous aussi couvert, dans votre idée, le fait que dans certaines religions au

Québec, par exemple la viande halal, on coupe la chèvre avec un couteau? Avez-vous une possibilité d'être sûr que ce projet de loi ne sera pas contesté devant la Cour suprême? Vous savez que celle-ci est jalouse de tous les droits. Je suis en faveur de ce que vous faites, mais je ne voudrais pas non plus qu'on fasse quelque chose et que, le lendemain matin, l'honorable Cour suprême dise que c'est regrettable tout cela.

Vous savez, lorsqu'on présente un film à la télévision où on abat des animaux d'une décharge électrique, avec un fusil ou d'un coup de masse, le public est très surpris. Je voudrais savoir si vous avez examiné cet aspect lorsque vous avez travaillé à l'augmentation des peines.

[*English*]

Hon. John Bryden: To answer that first of all, the primary management of animals and slaughterhouses, whether they be chickens, pigs, hogs, calves or cows, those are all managed at the provincial level. There is a reason for that and it is what has caused part of the problem with this other bill, that property and civil rights is a matter of provincial jurisdiction and the only way that the Criminal Code, the one that I'm dealing with, has any business in there is when it acts as an overriding sanction to preserve the peace and good government of the citizenry as a whole. The job of handling the regular management of animal husbandry, to use that word, is a provincial jurisdiction and we have no right to be in there as a federal government in doing that although as you know there are contracts between them and so on.

I asked the question specifically of the justice officials, and they're here I think, and someone else can ask them but the justice officials who were before us before, whether there are any constitutional issues on this bill and their answer was, no.

🕒 (1630)

The Chair: Thank you, Mr. Bryden. Mr. Lee, you'll be the last on the list.

Mr. Derek Lee: I've just had the pleasure of reading and re-reading the two principle existing sections of the code. Section 445 deals with injuring or endangering animals that are kept for a lawful purpose. Those animals are just the ones that are kept. Those are the domesticated ones.

The next section of the code, section 446, deals with all animals. There is no restriction they have to be lawfully kept and so I think there's a misunderstanding out there saying that the existing sections in the code don't apply to animals that are not domestic. I can see where that confusion might come from because they're two separate sections, one dealing with causing unnecessary suffering which applies to all animals and one dealing with injuring or endangering which only applies to domesticated and kept. Would you agree with that, senator?

Hon. John Bryden: Absolutely.

Mr. Derek Lee: Thank you.

Now, concerning this business of reform, almost everybody around the table here would agree, I think, that there is room or need for reform of the Code with respect to the animal kingdom, not including humans, and maybe adding on some other parts of the food chain. I'm not sure, but almost everyone here agrees.

Earlier, you said you would not support the other private member's bill in its current form, Mr. Holland's bill from the House.

Hon. John Bryden: Yes.

Mr. Derek Lee: This is a very hypothetical question because that bill is unlikely to get to the House or the Senate, but do you think you might be able to support a bill of that nature, were it in slightly different form, as a reformed package? And would you agree that this legislative area is really, really in need of reform, as is indicated by the previous government bills that haven't made it all the way through?

Hon. John Bryden: Mr. Lee, the answer to that is yes. I'm pleased to see you taking the position that indicates there is a need for reform, but it's not necessarily an immediate reform which is a quick fix.

I believe it will take some very careful thinking, some research that will get it done. I believe that in that regard my bill can act as step one. That is, while we're getting it right, this will at least protect the animals today until we're in a position to put the bigger scope around a new bill.

What we need is a new bill.

Mr. Derek Lee: Who will lead that reform if you've covered off, as you say, 80% of the problem? How many people around here are going to lead a charge on the 20% remaining?

Mr. Dykstra looks like he's ready to go for it.

Hon. John Bryden: My answer to that, Mr. Lee, is that if, having taken care of getting the penalties for cruelty to animals right and once that has been done, there is no outcry, there is no significant reason to do what you're suggesting, then one would have to wonder, is there a real problem?

🕒 (1635)

Mr. Derek Lee: Oh, I think most people think there is, but that's the public.

Anyway, thank you, Mr. Chairman.

The Chair: Thank you, Mr. Lee.

Thank you very much, Senator, for your testimony today. We appreciate your appearance here.

I'm going to ask the other witnesses just to sit back for one moment. I have some quick committee business to deal with here.

First of all, we have a steering committee report.

A voice: Do you want us to vacate the room, sir?

The Chair: Well, one moment. I'm going to ask, shall we handle that at the end of the committee meeting? I know Monsieur Ménard has a time constraint.

Mr. Rob Moore (Fundy Royal, CPC): I do, too. I've got to leave at 5:30.

The Chair: Okay. Then I'm going to ask that the room be vacated for five minutes, approximately. I'm sorry, gentlemen and ladies.

[Proceedings continue in camera]

🕒 (1655)

The Chair:

[Public proceedings resume]

I call the meeting to order.

Continuing our review of Bill S-203, An Act to amend the Criminal Code (cruelty to animals).

The witnesses before us, Association of Universities and Colleges of Canada, Mr. Andrew Tasker, Professor of Pharmacology and Director of Atlantic Centre for Comparative Biomedical Atlantic Veterinary...is that one title?

Dr. Andrew Tasker (Professor of Pharmacology and Director, Atlantic Centre for Comparative Biomedical, Atlantic Veterinary College of the University of Prince Edward Island, Association of Universities and Colleges of Canada): No.

The Chair: No, okay.

You're a director of the Atlantic Centre for Comparative—

Dr. Andrew Tasker: Comparative Biomedical Research.

The Chair: Biomedical Research. I am missing that word. Thank you.

Steve Wils, manager of legal affairs; Canadian Cattlemen's Association, Leslie Ballentine; and the—

Ms. Leslie Ballentine (Executive Director, Ontario Farm Animal Council, Canadian Cattlemen's Association): For the record, could we have that corrected? I'm actually here for the National Coalition of Animal Dependent Sectors, of which the CCA is a member. I'm representing a wider constituency than just CCA.

The Chair: Okay, that's good. Thank you.

And the Canadian Veterinary Medical Association, John Drake, president, Alice Crook, chair, of the Animal Welfare Committee.

Welcome, and thank you for attending.

I will begin, as noted on our agenda, with Association of Universities and Colleges of Canada.

Mr. Tasker, will you be making the presentation?

Mr. Steve Wills (Manager, Legal Affairs, Association of Universities and Colleges of Canada): No, I will, Mr. Chairman.

The Chair: Mr. Wils.

Okay, Mr. Wils, the floor is yours.

Mr. Steve Wills: Thank you, Mr. Chairman, for giving the Association of Universities of Colleges of Canada the opportunity to appear before you today to comment on Bill S-203, An Act to amend the Criminal Code (cruelty to animals).

My name is Steve Wils. I'm manager of legal affairs at the association, and I'm pleased to present our association's view, along with my colleague, Dr. Andrew Tasker, who is Professor of Pharmacology and Director, Atlantic Centre for Comparative Biomedical Research, Atlantic Veterinary College, University of Prince Edward Island, and also the former chair of the Canadian Council on Animal Care.

As you know, Mr. Chairman, a rigorous assessment program is in place to oversee the ethical care and use of animals for teaching and research at Canadian universities. This program is composed of the guidelines, policies and assessment standards of the Canadian Council on Animal Care.

🕒 (1700)

[*Français*]

M. Daniel Petit: Pourriez-vous aller un peu plus lentement, s'il vous plaît?

[*English*]

Mr. Steve Wills: Okay, a little slower? Sorry.

I'm speaking a little quickly, is that—

The Chair: Yes, if you could slow down for the interpreters.

Thank you.

Mr. Steve Wills: Okay.

I guess we're not that far behind schedule, okay.

The Chair: Well, we are a little.

Mr. Steve Wills: A little, okay.

As I was saying, the program I was referring to is composed of the guidelines, policies and assessment standards of the Canadian Council on Animal Care.

The CCAC policy statement, entitled *Ethics of Animal Investigation*, provides for the use of animals in research, teaching and testing only if it promises to contribute to the understanding of fundamental biological principles or to the development of knowledge that can reasonably be expected to benefit humans or animals.

Researchers much use the most humane methods on the smallest number of appropriate animals required to obtain valid information.

[*Français*]

Toutes les universités canadiennes où s'effectue de la recherche mettant en cause des animaux respectent les normes du Conseil canadien de protection des animaux. En fait, la conformité aux normes est exigée par le Conseil de recherches en sciences naturelles et en génie du Canada et par les Instituts de recherche en santé du Canada, les deux bailleurs de fonds de la majeure partie de la recherche universitaire mettant en cause des animaux financée par le fédéral. Les établissements membres de notre association ont choisi de se conformer à ces normes dans le cadre de toutes leurs recherches mettant en cause des animaux, qu'elles soient ou non financées par le fédéral. Les normes du Conseil canadien de protection des animaux sont tenues en si haute estime au Canada et à l'étranger que les agences fédérales de recherche ainsi que les laboratoires et les entreprises du secteur privé qui effectuent de la recherche et des expériences mettant en

cause des animaux ont compris qu'il était dans leur intérêt de se prêter volontairement au programme d'évaluation qui, sur la scène internationale, sert de modèle à d'autres pays.

[English]

My colleague, Dr. Tasker, is very well placed to respond to questions about both the use of animals in medical research and the Canadian system of oversight that governs university researchers. As a former chair and member of the executive of CCAC, he is very familiar with the policies and guidelines. In addition, he has been a federally-funded medical researcher for over 20 years.

As one example of his work, he and colleagues at the University of Prince Edward Island conducted research involving the use of laboratory rats that led to the creation of a unique animal model that helps scientists understand the progressive changes in brain development and function that lead to epileptic seizures and other forms of human brain dysfunction.

[Français]

L'Association des universités et collèges du Canada soutient les principes qui sous-tendent les modifications du Code criminel proposées dans le but de veiller à ce que les animaux soient adéquatement protégés de tout acte de négligence et de cruauté délibérée. Nous constatons cependant que les efforts déployés par le passé pour modifier cette section du code ont provoqué une controverse considérable.

[English]

In particular, AUCC has been concerned about the inclusion in some previous bills of vague and undefined terminology that was open to subjective interpretation. We were also concerned about the uncertain impact of previous proposals to move the cruelty to animal offences from part 11 of the code, wilful and forbidden acts in respect of certain property, to a newly created part 5.1 of the code, cruelty to animals.

If implemented, such changes could have led to unfounded allegations of misconduct against universities and university researchers, and frivolous and unwarranted private prosecutions under the Criminal Code by individuals and organizations for whom no use of animals in research is acceptable.

These prosecutions could result in significant financial costs and serious damage to the reputations of universities and to individual faculty members who are conducting important animal-based teaching and research in a highly ethical and responsible manner.

🕒 (1705)

[Français]

Le projet de loi S-203 prend en compte les préoccupations que nous venons d'exprimer. Il met de l'avant une solution raisonnée et bien adaptée qui respecte l'objectif qui consiste à mieux protéger les animaux contre la négligence et les mauvais traitements en alourdissant significativement les peines associées aux gestes de cruauté envers les animaux sans pour autant entraver la recherche universitaire.

[English]

AUCC endorses the considered approach of this bill and we respectfully urge the committee members to support its passage.

Thank you again, Mr. Chairman, for providing us the opportunity to convey the views of AUCC and its members on this important matter. Dr. Tasker and I would be pleased to respond to your questions and to those of the members of the committee.

The Chair: Thank you, Mr. Wills.

Now to the national coalition of animal-based sectors. Is this the coalition you represent, Ms. Ballentine? You have the floor.

Ms. Leslie Ballentine: Thank you very much, Mr. Chairman.

I'd also like to thank the committee for the opportunity to address Bill S-203 which, of course, was first introduced as Bill S-24 by Senator Bryden in February of 2005.

I'm here today to represent a national coalition of animal-based communities who provide Canadians with food, clothing, and advances in medical research. Our 16 member coalition recognizes that our use of animals for human benefit is a privilege and our constituents are committed to ensuring that animals are humanely treated and responsibly used.

We also believe all animals deserve protection under the law. We have consistently endorsed in principle the effort to modernize the animal cruelty provisions in the Criminal Code ever since amendments to the law were first proposed in 1998. Our active involvement in this debate has been limited to ensuring that any changes to the law do not threaten the rights or the interests of those who legally use animals in a responsible manner.

As you know, numerous attempts to pass legislative amendments to the animal cruelty provisions have failed. The criticisms raised in the past primarily focused on amendments that were shown to pose serious legal and practical concerns for those Canadians engaged in lawful activities involving animals. Many of those concerns were resolved with each consecutive bill.

Some concerns remain, however, and disagreement persists over further changes that would help clarify the intent and the application of a very different law than exists today. As a result, more than eight years have passed and the legislation remains unchanged.

The purpose of our presentation today is to provide you with our perspective on Bill S-203 and to outline our reasoning for endorsing this bill. The bill proposes three amendments to the current animal cruelty provisions, all are penalty enhancements to the current sentencing provisions and respond to an identified concern with the present law. These enhancements are also identical to those proposed in every bill that has been introduced over the past eight years.

While there remain strong disagreements with other aspects of previous legislative amendments, there is overwhelming agreement among all parties that the low maximum penalties for cruelty are inadequate, both to denounce the animal cruelty as unacceptable and to punish deliberate acts of cruelty when they do occur. In this regard, our coalition shares the same view as others who are presenting before you.

We have consistently supported the proposed increase in penalties for those who abuse animals and this is in keeping with the view of all concerned Canadians, whether they're pet owners, professional associations, legitimate animal protection agencies, judges or government. We endorse Bill S-203 for the following reasons.

First, it broadens the offences for animal cruelty by creating two levels of charges that would apply to all animals and that may be used selectively by prosecutors to better reflect the seriousness of the crime. Second, it increases the sentencing penalties that may be imposed by substantially increasing maximum fines and jail time. It also removes the current limitation on animal possession that can be applied against offenders, and that includes lifetime bans for repeat offenders. And, the bill includes a new provision that would allow the court to order offenders to pay compensation to agencies or individuals who provide care for the animals involved.

Our coalition is in full agreement with Justice of Canada officials who believe this bill is straight forward and a significant improvement to the current law. According to testimony given November 9, 2006, by the senior assistant deputy minister for the Department of Justice to the Senate Committee on Legal and Constitutional Affairs, the purpose of this bill seems straight forward. It is designed to amend the sections of the Criminal Code of Canada dealing with cruelty to animals to increase the penalties for the offences found there.

He went on to say that the three amendments together constitute a significant improvement to the current law regarding sentencing and one with which all Canadians would agree. Our coalition also agrees with the Senate and Department of Justice officials that this bill does not preclude the future introduction of further amendments to the Criminal Code by the federal government.

We also concur with their assessment that passage of the bill would immediately address the issue of penalty enhancement, a situation that has been allowed to continue for more than eight years of debate. Given the long history and controversy behind attempted amendments to the law, it is the view of our coalition that incremental improvements are preferred to no improvements at all. Moreover, we believe that poorly written laws are no substitute for inadequacies in the current law.

We recognize that there is opposition to this bill because of what it does not do. It is fair to say that all parties would agree that Bill S-203 is less ambitious than its predecessors. However, based on the evidence at our disposal, some of this opposition is built on a false understanding of the existing provisions. This view is one that is shared by a former Ontario cruelty investigator as outlined in an additional piece of evidence that the clerk has given to you today.

A common and repeated argument is that the current law does not apply to unowned animals such as stray and wild animals. This is untrue as our attached evidence shows. Furthermore, this view is not shared by Justice of Canada officials as evidenced in their testimony to the Senate Committee. During questioning it was clearly explained that “the most frequently charged offence, section 446(1)(a), of causing unnecessary pain, suffering or injury to an animal is not limited to kept or owned animals.”

Based on this interpretation it would appear that the fault lies more in the application of the law than in the law itself. And by this, we mean that there is every reason for successful prosecutions against cruelty to wild and stray animals when the proper charge is laid.

A lack of successful prosecutions is another reason that is cited for more expansive amendments than covered under this bill. However, it should also be acknowledged that many of those cases may not have succeeded, not because the courts would not address them, but because of a weakness in the evidence.

Statistics seem to indicate that charges and successful prosecutions are increasing even under the current law. For example, the province of Ontario relies more heavily on the Criminal Code than most other provinces that have their own provincial statutes. In 2004, 695 charges were laid by the Ontario SPCA--a record number according to their annual report and a six-fold increase over 2000. The OSPCA cites annual conviction rates ranging between 80 and 90%.

In our view, Bill S-203 would assist animal protection agencies by reducing their need to lay charges since it offers much stronger deterrents plus stronger restrictions against repeat offenders.

In the meantime, sentencing judges across the country are frequently reported in the media as wanting to be able to deliver more severe punishments for the cases that come before them. As recently as March 2007, officials with the Ontario SPCA told the media that penalties for animal cruelty are too lenient and deserve a sober second look. The

OSPCA's livestock inspector was quoted as saying: "We would like judges to have the flexibility to impose whatever sentence they feel is appropriate." This is something that Bill S-203 would do.

The sentencing amendments proposed in the bill would help protect animals by acting as a stronger deterrent to those who would engage in intentional animal cruelty or wilful neglect. They would also provide enforcement agencies, prosecutors and the courts with significantly enhanced tools to treat such crimes with the seriousness they deserve and they would remove the current disparity between indictable offences for livestock and lesser summary offences for other types of animals such as pets.

The Canadian public, when calling for changes to the Criminal Code provisions, has clearly indicated that their highest priority is to increase penalties. The constituents represented through our coalition have also consistently supported the need for legislation that would help to reduce animal cruelty and increase penalties for anyone who abuses animals.

It is our view that Bill S-203 provides the opportunity to deliver a long awaited and widely demanded improvement to the current law. It is for this reason above all that our coalition endorses this bill.

🕒 (1715)

The coalition appreciates the opportunity to once again appear before this committee and explain our support for a reasonable solution to a longstanding expectation.

Thank you, Mr. Chairman.

The Chair: Thank you, Mrs. Ballantine. You kept it right on the nose as far as the time was concerned, and we're limited I know.

For the Canadian Veterinary Medical Association, Mr. Drake, will you be making the presentation?

Mr. John Drake (President, , Canadian Veterinary Medical Association): We'll both be making the presentation.

The Chair: Just keep in mind your time constraints.

Mr. John Drake: Thank you, Mr. Chair.

Good afternoon, members of the standing committee. My name is John Drake. I'm this year's president of the Canadian Veterinary Medicine Association. That's the organization that represents Canada's 10,000 veterinarians. I'm also in a mixed-animal practice in Charlottetown, Prince Edward Island.

Preventing animal cruelty and animal abuse is a top priority for the CVMA. To properly deal with these reprehensible crimes, and also to prevent and reduce related domestic and family violence, Canada needs effective and up-to-date animal cruelty legislation in the Criminal Code.

As you know, Canada's current animal cruelty legislation dates back to 1892. Bill S-203, which we've discussed already today, changes very little of what is deficient in this antiquated legislation. The key weaknesses in the Criminal Code dealing with animal cruelty are:

Number one, inadequate penalties;

Number two, different provisions for different species and no definition of an animal;

Number three, treating animals as property;

Number four, the use of the term "wilful neglect" as burden of proof for animal cruelty conviction;

Number five, absence of provisions for dealing with brutal or vicious killings;

And, number six, insufficient measures regarding animal fighting and training animals for fighting.

Bill S-203, unfortunately, focuses mainly on increasing penalties. While that's commendable, it is not enough to critically address the flaws in the current legislation that make enforcement very difficult. Less than 1% of animal cruelty complaints result in a guilty verdict. Increased penalties do little to act as a deterrent when the chances of conviction are so utterly remote. Bill S-203 falls far short in changing these outdated sections of the Criminal Code.

Let me give you an example: Many Canadians would be outraged if they realized the ex-NFL star Michael Vick, who was recently sentenced to a 23-month jail term on a federal dogfights-conspiracy charge in the United States, would not likely face similar charges in Canada for this kind of horrific activity. That is because the wording in the Criminal Code makes it an offence to encourage, aid or assist at the fighting of animals or birds with the evidence being that the accused was present at the fighting. Vick was successfully prosecuted in the U.S. even though he was not present at the fighting. If this case had occurred in Canada, under the current legislation or under Bill S-203, it's very likely he would not have been convicted.

In 2008, the way our society values and regards all animals has shifted dramatically from 116 years ago. Canadians no longer view animals simply as property and they expect that those who abuse animals should be convicted first, punished appropriately and have the privilege of animal ownership severely restricted. The human-animal bond

is incredibly strong and many companion animals are regarded as true family members. It just makes sense that our animal cruelty laws should reflect these fundamental changes.

The CVMA has always been a strong advocate for remedying the weaknesses in the Criminal Code regarding animal cruelty. We strongly believe that Bill C-373, the private member's bill sponsored by Mark Holland, the most recent version of several earlier proposed bills, is a carefully crafted piece of legislation based on almost a decade of broad public and parliamentary consultation. Bill C-373 corrects the current deficiencies in the Criminal Code and it strikes an excellent balance between protection of animals and protection of lawful practices such as fishing, farming, hunting, trapping and scientific research.

With me this afternoon is Dr. Alice Crook, coordinator of the Sir James Dunn Animal Welfare Centre at the Atlantic Veterinary College, and a member of CVMA's animal welfare committee. I will now ask Dr. Crook to present CVMA's position and fully explain our reasons for opposing Bill S-203.

🕒 (1720)

The Chair: Thank you, Mr. Drake.

Ms. Crook, I see your presentation is fairly lengthy and I am going to ask if you could possibly summarize. What we will do is consider it as noted here read into the record in full but if you could summarize it very quickly we would appreciate it.

Dr. Alice Crook (Chair, Animal Welfare Committee, Canadian Veterinary Medical Association): Yes I was intending to go through and hit highlights because I realize there isn't time to cover it.

A little bit about my background. In addition to being at the Atlantic Veterinary College now with the Sir James Dunn Animal Welfare Centre my background is in veterinary anesthesia at the Ontario Veterinary College and the Atlantic Veterinary College, and as a practitioner in Ontario and in PEI.

So, as Dr. Drake said, the CVMA has been actively supporting efforts to amend the Criminal Code regarding cruelty to animals for a long time and along with many other groups we have provided input to the justice department's consultation paper on crimes against animals which was circulated in 1999. I mention this because Mr. Bryden mentioned that the bill was kind of thrown together but I think there was extensive Canadian-wide consultation and support for the different versions. As I think most of you know in 2003 the bill was very widely supported including by veterinarians, animal use groups, the Canadian Council on Animal Care. I think it was Mr. Comartin who said the contents of C-373 have been passed twice by the House. So I think the former versions do have broad support.

Going to page 5 of my brief I was going to talk a little bit about animal abuse as part of the larger picture of violence in our society, which as veterinarians we take very seriously. I am not going to go into that in detail but I encourage you to visit the CVMA website which has information on animal abuse and the links with human violence.

The CVMA believes that amendments to the Criminal Code are essential to improve the ability to successfully prosecute offenders, thereby assisting humane societies and law enforcement agencies to deal more effectively with cases of animal abuse and hopefully help interrupt cycles of violence of which cruelty to animals is one component.

We also went into the particular problem areas that we think are not addressed. Dr. Drake mentioned those already so I think I am going to skip right over those and go to page 7, the area on traditional uses of animals because that is something that is coming up. People are mentioning that there is concerns that Bill C-373 would raise too many questions and that the former versions raise too many questions.

I do want to mention wilful neglect as one of our main concerns, that this is not addressed in S-203.

We recognize there is a dire need to increase penalties, we fully support that. We don't have any problem with the levels of penalties that Bill C-203 proposes but what we do recognize is that the vast majority of cases do not achieve successful prosecutions. A previous speaker mentioned the OSPCA having 89% success rates but that is totally out of line with other reports I have seen. Our concern is that most cases of animal abuse are not successfully prosecuted. Wilful neglect is very much a problem area.

The requirement to show proof that a person intended to neglect their animals makes it extremely difficult to prosecute cases of neglect, even in cases where dozens of animals have been starved to death. I wanted to mention an example which is Queen vs Russel from Weyburn, Saskatchewan, a case in which a number of calves died of starvation and malnutrition. In his decision of June 2000 the judge said there was no doubt the accused were responsible for cattle over a period of months which were 'clearly inadequately cared for with the result that some died of starvation without doubt by lack of adequate feed and care'. It is also mentioned in the transcript there was evidence by experienced stock raisers that the practises being followed by the Russels were not accepted animal husbandry. So he said there was no doubt that these animals were not receiving adequate feeding and care. But he ultimately dismissed the charges on the basis that the accused didn't actually wilfully intend the cattle to die.

So that is the problem with wilful neglect.

The traditional uses of animals.

The main opposition to Bill C-373 and earlier versions comes from concerns that the proposed amendments will have a negative impact on legitimate activities that involve animals such as hunting, farming, medical or scientific research.

The following excerpts are from the justice department's aid to interpretation of the bill from April 2007:

The amendments in the legislation will not alter or criminalize any activity which is otherwise regulated or authorized by federal or provincial legislation or applicable codes or practise such as normal agricultural practises, hunting, fishing, trapping, ritual slaughter, animal research or food production.

So people carrying out these activities would not be subject to prosecution unless they are wilfully doing cruel things to animals well outside of standard practises.

The only way that animal rights activists could attempt to bring charges against law-abiding anglers, hunters, trappers, farmers and animal researchers would be through private prosecution, but the legislation makes animal crimes hybrid offences as we've already established and these are subject to a screening process that requires a much greater involvement of the crown prosecutors at the very early stages in private prosecution. These screening processes, which take place before an accused person is even notified, would prevent frivolous prosecutions from proceeding.

The protection of standard practises is actually made more explicit in Bill C-373 than in current legislation or in Bill S-203 because Bill C-373 includes the phrases "wilfully or recklessly" and "without lawful excuse" in the section regarding the killing, injuring or poisoning of an animal and as well section 182.5 and section 182.6 have been included in Bill C-373 to explicitly confirm common law defence and aboriginal rights.

In conclusion, we all agree that it's essential to increase the penalties for animal cruelty. The CBMA firmly believes, however, that increased penalties will make little difference if the new legislation does not also address the fundamental flaws in the current legislation that make enforcement difficult or impossible.

We respectfully submit that it does not make good jurisprudential sense to re-enact legislation largely unchanged that is over 100 years old. Therefore, we urge the standing committee to reject the amendments in Bill S-203 as inadequate.

Alternative legislation that has been carefully crafted and reviewed is proposed in Bill C-373 that addresses the flaws with current legislation and also increases penalties. The CBMA recommends that the standing committee support reintroduction of the amendments embodied in the widely supported former Bill C-50, current version Bill C-373.

We believe such legislation would provide significant new protection for animals, much more effectively than Bill S-203 and would not jeopardize accepted and recognized practises in the use of animals.

The Chair: Thank you very much, Ms. Crook.

I should remind the committee members that the clock has run out. It is 5.30 p.m. There is no opportunity for questioning unless the members desire to stay longer, but the presentations have been made and they're on the record.

What is the desire of the committee?

🕒 (1730)

Mr. Brian Murphy: Mr. Chairman, I wouldn't see any harm in staying to give time to each member who wanted to ask questions. These witnesses have come a long way in some cases.

The Chair: Yes, they have.

Mr. Brian Murphy: In the case of P.E.I. people they may not have lit homes to go to, so I think we should have three-minute question rounds.

The Chair: I'm going to restrict the time on the questions. Perhaps less than three minutes, but Mr. Murphy, you're first on the list.

[Français]

Mme Carole Freeman: Monsieur le président, je dois quitter, j'ai un discours à la chambre. Avez-vous l'intention de faire un tour de table?

[English]

The Chair: Understood.

Mr. Comartin, you have to leave as well?

Mr. Joe Comartin: I was offering to take Ms. Freeman's time as well as my own.

The Chair: You're certainly on the list, Mr. Comartin, but we'll make the adjustments accordingly.

Mr. Brian Murphy: I want to thank everyone for their testimony. I'll keep my questions very brief.

I respect the submissions from the Cattlemen's Association, and, actually, all of the presentations. If I don't have questions for you, it's probably because I agree with what you said. If Bill S-203 is a half measure or not, it's a step, and I respect what you had to say.

I do have a couple of questions for the Veterinary Medical Association. I'm going to have my assistant look up paragraph 446(1)(a) because it seems to me, Mr. Drake, that it would cover situations of killing animals that aren't owned and it would cover the Michael Vick situation.

If you read paragraph 446(1)(d), it says "in any manner encourages, aids or assists at the fighting", and I understand that would not involved birds, of course. He might be caught, however, and I'd like to know. I don't think you can answer this, but I'd like to know if he would be caught by proposed paragraph 446(1)(a), wilfully causes, or being the owner, wilfully permits to be caused unnecessary pain or suffering or injury to an animal. I think that would cover the Vick situation. I don't know that because I don't have all the annotated cases here. That's my first question.

Mr. John Drake: I certainly can't respond to that with any degree of legal expertise. Certainly, one of the problems with the wording of the legislation that is in there that does refer to dog fighting is it does leave that specific area where one of the examples, at least, whether it's the only acceptable one, or if it's just an example, that the accused be present at the fighting.

In the Vick case, what happened was, subsequent to the investigation on the property and drug charges, they found evidence there was dog-fighting and that he owned the premises at which it was occurring.

Mr. Brian Murphy: I'm not defending 1892 legislation, but there's a fair bit of misinterpretation one way or the other, and I don't know what the answer is, about what this law does.

I had some questions about the legislation, but the final one is, I don't know if you've been told, but it seems to me that we're either getting this, Bill S-203, or nothing, and that's because of how our private members' bills work and what the government feels about this legislation.

Wouldn't you agree if it were this or nothing, this term, wouldn't you take it?

Mr. John Drake: Certainly, that's the fundamental issue. If we look at Bill S-203 as a stepping stone to something bigger, then that's one issue. If we look at it as taking the animal cruelty issue and getting it done, and then the discussion is not revisited for long after none of us will be around this table, then that's a different thing. Frankly, that is our fear.

If we accept this, as you called it, the half measure or the watered down version, once it's off the to-do list, then that'll be it. Trying to get it back on the to-do list is going to be even more difficult than it has been, that's our fundamental fear.

Mr. Brian Murphy: That's certainly not our attention on this side. Thank you, Mr. Chair.

The Chair: Thank you.

Mr. Comartin.

Mr. Joe Comartin: Ms. Ballentine, as this was working its way through the various incarnations, starting back after the report in 1998, there was a coalition that formed at the time. I think at least some of your group were on that, and in fact had agreed to the earlier incarnations of the bill.

Ms. Leslie Ballentine: No, we agreed to Bill C-50.

Mr. Joe Comartin: I'm sorry. Yes, that's what I was referring to.

Ms. Leslie Ballentine: Yes, only the one bill, and that was subsequent to numerous changes over the previous bills. There was splitting of bills, there were amendments made with each bill.

Now, the reason we--

Mr. Joe Comartin: The wording that you're looking for would include exempting certain sectors of the--

Ms. Leslie Ballentine: No.

Mr. Joe Comartin: That's not one of the ones you want.

Ms. Leslie Ballentine: No, we want clarification that legal responsible use of animals is not the intention of this bill, whether it is keeping pets, whether it is agriculture, whether it is biomedical research. We are not asking for an exemption for farmers. We are not asking for an exemption for medical researchers.

Mr. Joe Comartin: What about the exact--

Ms. Leslie Ballentine: We want one word added--

Mr. Joe Comartin: --which is--

Ms. Leslie Ballentine: --“intent”.

Mr. Joe Comartin: Okay. I'm just about out of time, but are there any other specifics that you can think of that change--

Ms. Leslie Ballentine: Those are two major ones. We would have liked nothing better than to come before a committee collectively with those who support Mr. Holland's bill, or Bill C-50, or whatever you would like to call it. We tried to accommodate that because it makes it much easier for you, as legislators.

Mr. Joe Comartin: No question.

The Chair: Thank you, Mr. Comartin.

Mr. Calkins.

Mr. Blaine Calkins: Thank you, Mr. Chair.

I appreciate the testimony that I've heard today.

I have a couple of questions specifically for the folks from the Canadian Veterinary Medical Association.

With regard to your membership, is this a unanimous thing from your membership? I can't imagine that it is, given the fact that there are 10,000 veterinarians from coast to coast to coast in this country and that there is unanimous support for the position of the association in your membership.

Mr. John Drake: No, we have not, of course, polled every single member, but the structure of the CVMA is such that it's a representative, democratic body and so those on our governing council have unanimously supported this. The animal welfare committee of the association has supported it, but there will always be some people, of course, in any group that will not support it. One of the biggest challenges that we all face is what is the truth? What is the right legal interpretation. Everybody here wants the same thing. We want good legislation that can be enforced, that can result in convictions where convictions are warranted. Nobody wants frivolous or vexatious prosecutions pursued. Nobody wants to jeopardize legitimate animal research. We all want the same thing.

The challenge for everybody is to try to find what really is the truth, and there are several interpretations.

Mr. Blaine Calkins: Agreed. Those are noble goals to be sure.

What I don't understand, and what I can't, for the life of me, figure out is why, given the history, the track record of previous incarnations of other bills such as Bill C-50, such as Bill C-10A, such as the bill that's currently on the order paper to come up at a future date which might encompass the things that you've talked about, has never historically been successfully passed through our Parliament. They might have made it to the House. They might have been introduced at various stages, but they've never made it all the way to the top.

The one thing that you called for in the six items that you listed out was to increase the penalty provisions. For the life of me, I can't figure out why you wouldn't take the bird in hand now rather than risk it for the two in the bush that historically have always gotten away. It's just a comment I am making. I don't expect you to comment any further. You've already made your testimony to that effect.

I do have a question that I asked the sponsor of the bill with regard to cattle. I remember a drought in Alberta in the early part of the 2000s where we actually had a hay west campaign because we couldn't feed our animals. I would be terrified, as somebody who grew up on a beef farm and don't know anybody who doesn't responsibly manage their herd, but if you run out of feed or if you run out of money to pay for the feed—take a look at some of the crises that are going on in the hog industry—I can't imagine that we would bring prosecutorial advances toward somebody who literally can't afford to feed his cattle, yet some of the suggested changes that I'm hearing from the veterinary association would probably lead down that path.

I am just wondering if those are concerns that your organization, Ms. Ballentine, is bound to have with regard to some of the changes that are being proposed by other organizations?

🕒 (1740)

Ms. Leslie Ballentine: They were very serious concerns with the earlier versions. Remember that we've been through multiple versions. Each time there have been changes made to the bills, every time, to address legitimate concerns. The one you bring up is a prime example. Currently, if we take Bill CC-50 or Bill C-3C-373 that particular issue we think we've addressed, but we still have further concerns, brutally and viciously killing an animal being one of them.

Mr. Blaine Calkins: I've got one other question, and I'm going to go to Mr. Tasker or Mr. Wils here because this is dealing with scientific research.

I have a scientist that I know of who is going through clinical trials right now in England because he cannot, through the ethical rules and standards that we have in this country, perform those clinical trials. Those clinical trials are being performed to basically help us in eradicating BSE, the spongiform, whatever it is, prion that we're dealing with in this country, yet, in an ironic twist of fate, he can't actually do the clinical trials in this country that may come up with a solution that will prevent BSE from occurring here.

From your concerns, when it comes to animal research, this bill is, obviously, through your testimony, satisfactory, but I'm just wondering if you have other concerns, if we go too far about not being able to do the things that we need to do, some of which research would actually help prevent cruel and unusual treatment or cruel and unusual fates for animals.

The Chair: A quick response, Mr. Tasker.

Dr. Andrew Tasker: I agree with you. There are always going to be issues where you can do certain forms of research in certain jurisdictions.

One of the great strengths of the Canadian system is that it is a national set of guidelines, administered through the CCAC, but then interpreted at a local level as to what's appropriate in a particular jurisdiction.

The committees are formed up of people who represent both researchers, but also members of the public, veterinarians and others. Whenever you put something before committee, you're going to be subject to the discussion, the interpretation of that committee. In the case you've describe, I'm willing to bet that the local institutional animal care committee decided that maybe that work couldn't be done, for whatever reason.

I can't comment on it further than that. I can simply say that, from the perspective of medical research, there were concerns with previous legislation which came forward. It was largely not a question of the intent of those legislations, as Dr. Drake said, we are all on the same page, in terms of wanting to do something good here, but there were concerns, and those held up passage of the legislation, and other groups had other concerns, similar ones, different ones, things like that.

We have no concerns with Bill S-203. I completely agree with the point that you've just made in that, from my perspective, as an individual. As a medial researcher, I have no problem with the proposed legislation. I may in the future like to see things which are more all-encompassing, which deal with some of the issues, either restrictive issues or permissive issues, that you mentioned, but at this point in time I see no harm in approving legislation which gets us one step closer to where we want to be as opposed to remaining mired in the situation that we've been in for a extremely long time.

🕒 (1745)

The Chair: Thank you, Mr. Tasker.

The time has basically run out, unless Mr. Comartin, you have one more question you would like to ask. Mr. Murphy? No.

Mr. Drake, did you want to make further comment or Ms. Crook, quickly?

Mr. John Drake: My summary would be what we've said before. Although no one can argue against the laudable goal of increasing penalties, and we fully acknowledge that Bill S-203 has everything in it that the previous incarnations of the legislation have had as far as penalties, our position is that the penalties are not enough on their own. We need firmer legislation that will give a greater chance of conviction. Depending on whose

statistics we hear today and whose ones we accept, we have very different versions of what the situation is. That's' I guess, for the committee to sort out.

The Chair: The statistics vary dramatically, I dare say, as presented.

Thank you all for attending. I really appreciate it.

I also beg your forgiveness on the time constraint that was placed on us. We had some committee business to look after and it was difficult to manage it all.

Thank you again.

Our next committee meeting will be Tuesday, February 5.

A motion for adjournment, please.

Mr. Joe Comartin: So moved.

The Chair: Meeting adjourned.