

THE STANDING SENATE COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

UNREVISED EVIDENCE

OTTAWA, Wednesday, December 4, 2002

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill C-10 to amend the Criminal Code (cruelty to animals), met this day at 4:10 p.m. to give consideration to the bill.

Senator George J. Furey (*Chairman*) in the Chair.

The Chairman: Honourable senators, this afternoon we are scheduled to begin our consideration of the animal cruelty provisions in what is now Bill C-10B by hearing from three panels of witnesses. We will hear from the Department of Justice officials who work in the area of criminal law policy. They will be followed by a panel of industry members that will include the Canadian Cervid Council, the Canadian Federation of Agriculture and the Alberta Farm Animal Care Association.

Our final witnesses today represent Aboriginal concerns and are from the Inuit Tapiriit Kanatami organization.

We have a budget item to deal with and I therefore ask that, following the hearing, senators remain for a few minutes in order that we can discuss that.

We will now proceed with our first panel of witnesses.

Senator Stratton: What are we dealing with?

Senator Adams: I was going to ask that too.

Senator Cools: What is the reference before us?

Senator Stratton: What is the reference before us?

Senator Cools: What is this committee studying and under what authority is it studying it?

The Chairman: It is my understanding that as of yesterday we were still under instructions from the chamber to consider Bill C-10B.

Senator Stratton: Where is it?

Senator Cools: Where is Bill C-10B?

The Chairman: We know the substance of it. It is it before us.

Senator Beaudoin: It is the last paragraph of the message.

Senator Andreychuk: The message we received says Bill C-10, not Bill C-10B. I am perfectly willing to proceed, but if I understand correctly, as we speak we are requesting the House of Commons to separate Bill C-10. We sent Bill C-10 over to the House of Commons and we are asking that they separate it into Bill C-10A and Bill C-10B in the way that we suggested.

I do not believe that we have Bill C-10, Bill C-10A or Bill C-10B before us, but I am willing to proceed on the basis of a pre-study and apply the evidence to whatever message we get back from the House. However, I do not think that we legally have those bills before us at this moment. I tried to make this point in the Senate chamber in an effort to seek direction. It is not my intention to stop the process. On the contrary, I have been anxiously anticipating this part of Bill C-10. I want to proceed with it but I think it is like a pre-study. We could use a working document like Bill C-10B as a reference and hear from the witnesses. However, I think that we cannot legally study Bill C-10 because we have sent that back to the House of Commons, as well as Bill C-10A and C-10B.

Senator Beaudoin: If we wish to debate this point, I would easily accept the proposition of studying the second part of the document before us, because in law nothing is separate until the other House concurs with us. It is at that very moment that everything comes to life.

We have had so much debate on this and we should do what is proposed. I would go so far as to say that we should do a pre-study on this document. If, at the end, we have a procedural problem, we will solve it at that time. If we start again with the problem of procedure, we will lose another hour.

The Chairman: Your comments make a lot of sense.

My only question to the committee is that, if we proceed in the fashion has been suggested by Senator Beaudoin, which seems fairly sensible, are we following the instructions of the chamber, which told us basically to proceed with study on 10B?

Senator Cools: No. We are in violation of any authority that has been given to us in the chamber. It is simply not good enough to say that we should proceed, lest we waste time. The fact of the matter is that a committee only has as much authority as the Senate gives to it and a committee only has the references as the Senate gives them. This committee originally had two references: one was Bill C-10 itself, and the second one was the instruction to divide Bill C-10 into two bills. Those were the two references. Those are unalterable.

If you will recall, some days ago I believe Senator Andreychuk raised the question, when we were talking about how to proceed, that we would be losing jurisdiction over Bill C-10B. I would submit this is exactly what happened this afternoon on the Senate floor. When we were trying to clarify if it was the entire Bill C-10 that was being carried back to the Senate, the Speaker informed us that it was Bill C-10 that was being carried along. Somewhere along the line, and I do not know how it was done, but Bill C-10 was wrenched from this committee and Bill C-10 is now Bill C-10A and C-10B and it has been sent back to the House of Commons. In point of fact, this committee no longer has Bill C-10B committed to it. It is a serious matter.

Senator Beaudoin: I disagree strongly with that. The last sentence of the message referred to our power to study Bill C-10B. That is the end of it.

Senator Cools: No, it is not the end.

Senator Beaudoin: It is no use to continue a debate on this.

Senator Cools: No, it is not the end.

Senator Beaudoin: It is in the message.

Senator Andreychuk: I am trying to find a middle ground on this. This is why I wanted the Senate to confirm what we were supposed to be studying. Since they chose not to do so, the best we can do in inferring what we have left is that we do not have Bill C-10. It is gone, which was confirmed. What we can do is study the subject matter of that bill in the portion that is 10B and then, when we get it back, we can apply this evidence to it. That seems to be the middle of the road that would get us over the legal impediment of not having Bill C-10 in front of us.

Senator Beaudoin: It already is.

Senator Cools: I have already argued that we need a reference to do that.

Senator Baker: May I remind committee members of the very words that came from the chairman when he was asked, "what are we discussing?". He said, "the subject matter".

Senator Cools: Honourable senators, I would submit to you that we cannot decide that what is before us is simply the subject matter and not 10B itself, because when we began we were not sure whether 10B was a bill or not. It seems to me that we are digging ourselves in deeper and deeper at every stage of the game. The fact of the matter is that when the committee set out to divide the bill, the committee was pretty clearly told at the time that it was retaining, that it would report Bill C-10A and C-10A would go back to the House of Commons, while the committee would retain C-10B. However, on whoever's authority, and it

did not emerge today in the Senate, some persons in the Senate have undertaken to send back Bill C-10. I would submit to you that at that action supersedes this other action. We cannot simply decide that we, on our own, will change our order of reference. It does not work that way.

The Chairman: Nor, I suggest to you, Senator Cools, can we as a committee ignore a direction from the chamber. The chamber directed us, as Senator Beaudoin said, to study C-10B.

Senator Cools: No, it did not. As a matter of fact, that particular point was the subject of great discussion here. The Senate directed us to study Bill C-10 and then it directed us to divide the bill into two, right? After that, it was we who took a decision to keep 10B and to report on 10A. It does not work that way. There is confusion.

All I would say to you, chairman, is that we cannot keep operating like this. We are digging ourselves in deeper and deeper at every stage. This has been very improper. The way we have been proceeding today is improper. As a matter of fact, I am ready to call it constitutionally corrupt. It is. We need a reference from the chamber.

Senator Stratton: If I may, with the objections noted, and we must take note of that, I do not want to sit and discuss this for hours. We have witnesses here that we owe the courtesy of hearing and I would like to proceed, with the recommendations of Senator Andreychuk and the notice provided to us of the objection of Senator Cools. That is how I think we should proceed, if we could.

Senator Cools: Unfortunately or fortunately, you just cannot choose to overturn.

Senator Stratton: We are not overturning.

Senator Cools: I am sorry, you cannot.

Senator Smith: Do you object to proceeding?

Senator Cools: You cannot do it this way. I am saying that the committee does not have a clear order of reference from the Senate at this time and the chairman has a duty to clarify that.

Senator Smith: He already has.

Senator Cools: No, he has not.

The Chairman: Senator Cools, if I may: is it the wish of the committee that we proceed to hear evidence and if the committee agrees with this, are they also agreeing that in doing so

we are following the order of the chamber to proceed with this matter?

Some Hon. Senators: Agreed.

Senator Cools: Let the record show that.

The Chairman: The record will show that Senator Cools objects.

Senator Adams: Can the witnesses sit down now?

The Chairman: Yes.

Senator Stratton: I have one minor point.

I have not yet seen a comprehensive list of witnesses, because there are people who have approached me who would like to appear. I have not seen whether or not they are on the list. May I be provided with that, please?

The Chairman: Yes.

Senator Cools: As past chairman, I would have thought that one of the first decisions the committee would take would be a decision on how it was proceeding, for how long it would proceed and roughly how many witnesses the committee was planning to hear. There is a way in which to move ahead. For example, last week, we had all assumed that the committee was going to continue to hear witnesses for a few days. It did not. I, for one, do not understand how these decisions are being made.

I think we have an obligation to proceed properly.

The Chairman: Those decisions, Senator Cools, as you well now know, are made by a steering committee. If the lists are not getting out to honourable senators on time, we will make every effort to ensure that you are given as much possible notice in future. Our point is well taken, senator.

Senator Cools: Chairman, with all due respect, the committee does not make decisions. It makes recommendations. Any decision that the steering committee takes should be approved here.

Senator Beaudoin: No.

Senator Cools: Oh yes, yes, yes.

The Chairman: Senator Cools, that is a point for another time. We will now proceed with our first panel of witnesses, Mr. Mosley and Ms. Klineberg. Please come to the table.

As there are a fair number of witnesses to be heard on this particular bill and because we have a fair number of senators with a great deal of interest in participating in the debate on this bill, we have asked witnesses to limit their presentations to five minutes. I would ask senators to kindly limit preambles to their questions as well, so that we can get as many senators heard as often as possible in the shortest timeframe.

Mr. Mosley, you have a presentation.

Mr. Richard G. Mosley, Assistant Deputy Minister, Criminal Law Policy and Community Justice Branch, Department of Justice Canada: Thank you, honourable senators.

Since the enactment in 1892, the Criminal Code of Canada has contained provisions that prohibit various acts against animals. Initially, they applied to animals that were owned or kept. In 1953, the law was amended, by adding for the first time offences that protected all animals, whether owned or wild, from the infliction of unnecessary pain, suffering or injury, as well as from criminal neglect.

The current law on animal cruelty in the code is therefore, essentially the same as the law as enacted in 1953. All offences, apart from those in respect of cattle, are summary conviction offences with a maximum penalty of six months in prison, a \$2000 fine or both. Offences in relation to cattle have a maximum penalty of five years in prison or an unlimited fine.

The amendments in the document that you are considering have two primary purposes. The first is to increase penalties and to simplify and rationalize the offences, both of which are common criminal law reform objectives. Summary conviction offences are made dual procedure, and maximum penalties would be increased from six months to five years for offences of intentional cruelty and from six months to two years for offences of criminal neglect. The amendments also simplify and modernize the current law by removing overlapping provisions and archaic language and distinctions by deleting complex deeming provisions by clearly separating the offences of criminal neglect from more serious intentional offences and by no longer classifying offences of animal cruelty with other property offences.

We are well aware that there are concerns that industry practices may become more vulnerable to prosecution. We believe, however, that if you look closely at the current law and at the measures that are being proposed in the document, it becomes clear that the potential liability of industry participants will not increase or be affected in any way.

There is, we believe, a misunderstanding of the current animal cruelty law, in part because of misunderstandings as well about the application of the criminal law in general. I should like to spend a few minutes, if I may, to address some of those points.

First, what is lawful today will be lawful under the proposed measures in the bill, the document that you have under consideration. The definition of what is a crime is maintained in the new amendments with the exception of one new offence for killing an animal with brutal intent, something which does not occur in the industry context. This ensures the greatest applicability of the existing jurisprudence.

Second, the bill does not remove or limit defences, even though section 429(2) of the Code, which provides the defences of legal justification, excuse and colour of right, will no longer apply expressly in the context of the part of the code that would be amended. Section 429(2) is not crucial for an accused person because all of the defences, excuses and justifications of the common law are available under subsection 83.

Bill C-10, as adopted in the House of Commons, makes special reference to subsection 8(3). This includes the colour of right and other defences. Colour of right, in our law, is a form of mistake, a justification or excuse. It is included in the phrase "justification or excuse" in subsection 8(3). If a common law defence is relevant to a given charge, it can be argued by the accused under subsection 8(3). Subsection 8(3) provides a broader protection to the accused than subsection 429(2) of the Code presently does. It is our belief that this subsection 429(2) is now redundant by the changes that were proposed in Bill C-10.

The defences should not be confused with what has been called special or upfront protection for industry groups. There is no legal authority for the proposition that the defences give some kind of special protection for lawful industry practices or that they are relevant in any way in assessing the lawfulness of an act in an industry context, nor is there any legal authority for the proposition that the defences help to define what counts as a crime. That would be contrary to established principles of statutory interpretation. We do not define murder, for example, by reference to the law of self-defence.

Similarly, the defence of colour of right does not provide content to the crime of cruelty against animals. The full weight of authority holds that persons engaged in lawful activities must avoid causing unnecessary pain. The protection for industry derives from their compliance with the law -- in other words, with the fact that the practices themselves that they carry out are human. There is no special protection under the existing law for industry practices with animals.

This is consistent also with the way that the code applies to other professionals and workers such as police officers, doctors, athletes and lawyers. They are all subject to the criminal law as they carry out their duties and may, in exceptional cases, be charged with an offence. The law applies to them in the same way as it applies to anyone else, and animal industry participants are no different.

This does not mean, in our view, that the current animal industry practices are cruel.

Humane industry practices are not cruel. The vast majority of the persons engaged in those industries obey the law and treat their animals responsibly. However, where an industry participant crosses the line and inflicts unnecessary pain on an animal, the law must be able to intervene.

The industry representatives already know this. The promotional material from groups such as the Ontario Farm Animal Council and the Canadian Cattleman's Association and animal research advocates such as Partners in Research expressly recognize that these activities are subject currently to the animal cruelty provisions of the code and that no unnecessary pain may be caused in the course of their activities. There is no suggestion in these materials that people involved in those activities are permitted to be cruel. On the contrary, they recognize their responsibility to be humane.

That is precisely what Canadians told us in the course of the consultations that were conducted prior to the development and introduction of this proposed legislation.

Concern has also been expressed that relocating offences to a new part of the code will confer rights on animals or alter their legal status as property. This contention is contrary to established principles of statutory interpretation and contrary as well to constitutional law. Removing offences from the part of the code that deals with property offences does not alter the legal status of animals as property. The chapter heading is a classification tool only.

Finally, there seem to be fears that private citizens or groups will use the law to stop industry practices through private prosecutions. Numerous safeguards are in place that prevent private citizens from using the criminal law for political purposes. Recent amendments in Bill C-15(A), which was adopted last spring and came into force this past summer, make it harder than ever for individuals to use the criminal justice system for non-judicial purposes. The Attorney General of the jurisdiction must be advised of a private prosecution and can take it over and withdraw the charges at any time. Vexatious prosecutions, as are contemplated, we believe, by these concerns, can be easily shut down before a person is even required to appear in court. There is no reason to doubt the effectiveness of those safeguards and the good faith of the justices of the peace, provincial court judges and Attorneys General.

The government has been responsive to concerns that have been raised in this context. Several changes were made to the amendments since their first introduction in Parliament, and these were specifically requested by industry groups. We suggest that they were not legally necessary, but they were designed to bring even greater clarity.

These amendments are relatively modest in the larger scheme of reform of the criminal law. However, they are important. They improve the existing law by recognizing animal cruelty as a more serious offence and by simplifying the law. They do not place industry participants at any greater risk of prosecution than under the current law.

Thank you for your indulgence and for giving me a little more than five minutes to go through my remarks.

Senator Beaudoin: You did not mention *mens rea*. Do we apply the Criminal Code principal as usual, or is there something in this bill on *mens rea* itself? Is it always the same, or is it different?

Mr. Mosley: There is an effort to clarify the *mens rea* in this area in this bill. For example, the proposed new section 182.2 would clarify that.

It reads:

Every one commits an offence who, wilfully or recklessly,

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

(b) kills an animal...

I will not go through all the subclauses.

Senator, this does relate to the issue of colour of right that has caused so much concern. Colour of right is a form of mistake as to the facts that are required to establish the offence. However, the presence of that state of mind can also vitiate the mental element required in order to commit the offence. In other words, it can also go to the issue of wilfulness or recklessness.

For example, in the jurisprudence in this area there is a case wherein an individual fired a gun to frighten off two dogs that were on his property. He meant to shoot between the two but accidentally injured one. He did not have the intent to wilfully harm either of those dogs. His intent was to frighten them off. He was excused of any criminal responsibility as a result, but that really went to his mental state rather than to the question of a right to shoot the animals in those circumstances.

Senator Beaudoin: The reason that I raise that is that we previously had a debate here on "knowingly" and "wilfully". It was raised by the Honourable Senator Nolin. I believe you have already answered that question as it may depend on the articles involved. The word "knowingly" is of the utmost importance.

Mr. Mosley: Yes, in the appropriate context. The Criminal Code does use the word "knowingly" in certain circumstances. Generally speaking, if there is no reference to a state of mind and it is a crime, then full *mens rea* is required. That is usually intention and knowledge of the circumstances going into the commission of the offence.

Senator Beaudoin: My last question has to do with property. Of course, it is a property crime, but under this bill it is more than that. There is a new concept having to do with the owner and the animal, or is it the same as before in the criminal law?

Mr. Mosley: I believe Parliament made that decision in 1952 or 1953. You will recall that there was a commission that started in 1947 or 1948 under Mr. Martin, who proposed a series of significant changes to the Criminal Code. It was the first major reform of the Criminal Code since 1892.

Senator Beaudoin: However, this has not changed.

Mr. Mosley: We are not changing that principle. Prior to the adoption of those amendments in 1953, the law with regard to cruelty was focused on the ownership of the animals. That dates back prior to the 1982 Criminal Code. It dates back to the Imperial statutes that were incorporated into Canadian law pre-Confederation and carried through between Confederation and 1892. The focus was very much on ownership and property rights in the animals.

Senator Beaudoin: The concept has not changed.

Mr. Mosley: The concept was changed 50 years ago, but not in this bill.

Senator Jaffer: Some people who are engaged in agriculture and other lawful activities have said that they believe this bill will remove their upfront protection from prosecution for their activities. What are your views on that?

Ms. Joanne Klineberg, Counsel, Criminal Law Policy, Department of Justice: As a general principle, what is lawful today under the current law will continue to be lawful once these amendments are passed. We believe that the concept of upfront protection is somewhat misplaced. It seems to suggest that there is a bar to prosecution if the purpose for which an activity is carried out is lawful. The case law clearly supports the view that even if the purpose of an activity is lawful, the means used to achieve the purpose must be humane.

There is really no such thing in law that we could refer to as upfront legal protection for industry. Industry fully acknowledges that they have the obligation to be humane in their dealings with animals, and we believe that they are.

Senator Stratton: I would like to move to the question of perception and the door being opened to the slippery slope.

This concern has been expressed before but I will ask the question anyway. The Winnipeg Humane Society was, I believe, the last humane society in Canada to sell animals for research purposes. Over the years, animal rights activists have gradually shut down each humane

society through pressure. The Humane Society of Winnipeg has now ceased selling animals for research.

Anyone who thinks that is the right thing to do should read the strict code of conduct that universities and colleges have for dealing with animals for research. The process that must be followed when using animals for research is quite clear. Nevertheless, animal activist groups have over time gradually shut down sources of animals for research.

While what you are saying is consistent with what the bill says, those on the other side of this argument believe, nevertheless, that the door is opening for such groups to go after, for example, the Canadian Exhibition Association, fairs, festivals and rodeos, the Calgary Stampede in particular, and they have called expressing concern. The Association of Universities and Colleges is concerned. Ranchers, farmers, trappers and hunters are concerned.

You say that will not happen, but the response from that side is that those groups will persist until they find one policeman who will lay a charge against them. The groups on the other side consistently say that this is opening the door. No matter what you say to assure these groups that that will not happen, we see the example of animal activist groups doing exactly that with regard to the sale of animals for research.

I must apologize to my wife, my kids and my grandkids, because they are currently on your side. My wife will likely divorce me over this. I always apologize to them upfront.

This situation is real. It has happened with animal research. Why would it not happen now?

Mr. Mosley: May I first say that we do not have a side in this debate. Our interest is in the clarity of the criminal law and in making reforms that are consistent with the principles under which we have operated for many years.

Perception is not reality.

Before I got into this line of work, I used to be a prosecutor. There was always pressure your from individuals and groups to bend the criminal law to their own political agenda. That is an inescapable part of the human experience and legal experience.

However, the law does not permit itself to be abused. There is always occasion for an error to be made by an individual involved in the administration of justice. The system recognizes that and corrects those errors by, for example, giving the Attorneys General of the provinces a supervisory role over private prosecutions. That way, we do not have a flood of people trying to harass or intimidate others through the use of the criminal justice system. Those cases simply do not proceed.

Those cases are taken over, and they are stopped by the Attorneys General.

All I can suggest to honourable senators is that every effort has been made to develop a law which is sound in principle and which reflects modern views of how to respond to cruelty. I refer not to research practices, not industry practices, but inhumane cruelty to animals.

All honourable senators are aware that there have been illustrations of egregious cases, where the current structure of the law is inadequate to adequately express society's revulsion to cruelty. Those are not cases that involve farmers, ranchers, stampede operators, research scientists or others engaged in the use of animals.

Those are cases of people being brutal and vicious towards animals.

With the greatest of respect to the concerns that are being expressed, we do understand that they are real concerns and I am not trying to diminish them in any respect. However, we simply do not see how these proposals will facilitate the issue about taking over humane societies. That is happening. That may happen simply through the exercise of political rights by individuals within a particular community. It is not aided in any respect by these proposed changes to the Criminal Code.

Senator Stratton: The concern expressed by, for example, rodeo operators is that they may have chuck wagon races. As we saw a few years ago, they could be having a chuck wagon race, there might be a collision and, all of a sudden, you have animals who are hurt and must be destroyed. Do you not think that animal rights activists will go after that in exactly the same way, using any legal recourse they have available to them, as they have done with the human societies and, as a result, shut down the industry?

Mr. Mosley: They cannot do it today. They will not be able to do it under these changes.

Senator Stratton: Allan Rock assured us of that.

Senator Cools: And firearms. You were there when Mr. Rock assured us.

The Chairman: Senator Bryden?

Senator Bryden: I want to try and be as specific as I can about what has been done, because you introduced an amendment at the House stage where 82(5) was added. For greater certainty, you put subsection 8(3); subsection 3 applies in respect of proceedings for an offence under this part. Is that correct?

That was because to some extent of the concern that section 429(2) no longer applies to part 5. The problem I have is that subsection 8(3), which I will not quote, is a general provision of the Criminal Code that is available as a defence in all sections of the Criminal Code.

Nevertheless, when the comparable dealing with animals was in part 11 of the Criminal Code, section 429(2) was in there.

The question I have is this: If the section you have just added, 8(3), applied to whatever dealings you had with animals then under the Criminal Code, yet 429(2) was a defence under that section, and we are now saying that we that we do not need 429(2) because 8(3) applies, why was 429(2) necessary before?

Mr. Mosley: You would have to go back to the 19th century and the forerunner statutes of the Criminal Code. When they were being drafted, as I mentioned earlier, the provisions relating to cruelty to animals all applied to possession rights, ownership or possession of the animals, even if they had been wild animals initially which were later captured. It was all related to property over the animals and possession rights the individual had over those animals.

The predecessor section to 429(2) is relevant in the context of offences like theft and fraud in relation to property. You could argue that it is relevant to possession rights in relation to animals as well.

The removal of 429(2) does not extinguish the defences in relation to justification or excuse, because they were common law defences that were imported into the Criminal Code as a whole by 8(3).

Since 1892, 429(2) has been redundant in a sense, because it was not necessary. There might be a debate as to whether every aspect of common law defences was initially recognized at that time. However, the Supreme Court has made it clear recently that 8(3) does encompass all of the common law defences. The Supreme Court has also made it clear that the common law can expand in relation to the defences for the individual accused.

Our position, honourable senators, is that you are not losing anything by removing section 429(2) from those sections of the code relating to cruelty to animals. In fact, 8(3) gives a stronger protection to the individual accused, because all you need to do in relation to any of the defences that it contemplates is raise a reasonable doubt. The language in 429(2), as was pointed out by the Manitoba Court of Appeal, is of questionable constitutional validity, because it appeared to impose a burden on the accused to make the case that he had such a justification or excuse.

Under 8(3), as the general principles of exculpation apply, you need only raise a reasonable doubt in relation to any of the common law defences. Under the particular circumstances of a case, it may or may not be relevant.

Colour of right is a good example of a defence that does not apply in many factual

circumstances, because it is simply not relevant to the facts of that particular case.

Senator Bryden: Mr. Chairman, if I may continue.

I have a bit of a concern still, because one of the questions that arises is that, since 8(3) was there and I presume there have been any number of revisions to the Criminal Code, and 429(2) remained in the Code as well and appears to have been, if not a necessary defence, a defence.

Now under the new Part 5, we are saying the general provision of the Criminal Code, 8(3), is there as a protection, and therefore 429(2) is removed. Normally, a judge in making interpretations would say, "Legislators do not act for no reason. Why did they remove section 429(2)? What is different about this treatment of animals in here now from what it was when section 429(2) was necessary?" Section 8(3) was always there -- there when section 429(2) dealt with animals and there now when we are dealing with it in this draft bill.

Mr. Mosley: The simple answer to that point is that Parliament also recognizes the wisdom of having provisions of general application. This is something that we have been striving towards for many years, namely, to have a code which is not replete with one-off provisions here and there throughout the statute applying only to a handful of sections or offences, but to rather have broad statements of principle that apply throughout the code and on which there is general agreement.

I suspect you will hear from criminal lawyers in the course of your deliberations on these proposals, and I doubt that you will hear from any of the criminal lawyers any difference of opinion about this point. Section 8(3) covers the ground. Professor Stewart may be on your witness list. Professor Stewart is one of the strongest advocates in Canada for recodification to try to consolidate, clarify and simplify the basic principles.

If Parliament, each time that it amended a part of the code, wished to insert a particular defence or defences, it would add confusion. It detracts from the general scheme of the statute in an effort to ensure that the principles are well understood. All I can suggest, senators, is that it is redundant. It is simply unnecessary in this context.

Senator Bryden: I do not want to belabour it, but I have one comment to make. You referred to the Criminal Lawyers Association. Ms. Perkins-McVey of the Criminal Law Association said that, in the opinion of the association, what you have just said, namely, that section 8 would cover the defence of justification or lawful excuse. However, she also said, "If persons are concerned that they no longer have the right to reasonable excuse and justification, then we can simply either indicate in section 429 that it applies to the proposed section 182.2, that is quite simple, or a subsection can be added under Part 5 to indicate that this does not in any way take away common law defences as set out in section 8 and section 429 of the Criminal Code."

Do you have any objection to doing that?

Mr. Mosley: With respect, that is in essence what has happened with the insertion of 182.5. For greater certainty, it is a reminder. It refers back to 8(3). This is 182.5 on the reference to common law defences.

Senator Bryden: "For greater certainty, subsection 8(3) applies in respect of proceedings for an offence under this part."

I agree with that. However, she appears to be saying here that people are concerned that we are losing the defences and there is something missing, or else we would not have had section 429 to begin with. We could also say that section 429 is incorporated there.

Mr. Mosley: We have an ever-growing Criminal Code. Certainly the Department of Justice has been involved in putting forward a number of changes over the years, but you started your intervention by confirming that Ms. Perkins-McVey accepted the principle that the defences are covered by subsection 8(3).

With the greatest respect, offering comfort in response to concerns is not the object of a criminal statute. A criminal statute must be clear in principle and in application by the courts. I suggest that if we were to look throughout the code for offences where an amendment here and an amendment there to add express references to defences would offer comfort to those who may be concerned about them, then we would rapidly double the size of the existing code. It is not necessary.

Senator Bryden: It may be necessary to give some comfort to some people to politically get a new provision to become a law. Sometimes practical comforts must be dealt with by the people sitting here. Many people are concerned that something is being lost. Saying that section 429 applies to proposed section 182.2 would not add many pages to the Criminal Code, or, to do it the other way around, we could simply add section 429 to your existing proposed 182.5 and states that for greater certainty, subsection 8(3) and 429(2) apply in respect of proceedings for an offence under this part.

I do not want to take any more time. I just want to raise that. It is not as simple as that. I am a lawyer. I understand that I can win the case just as easily with section 8(3), but the people who are managing the feed lots and the people who are hunting seals with a spear are the people who will need the comfort in order to give some of us the comfort that we are not somehow taking away from their rights and what they are entitled to do or inadvertently giving to people who may not understand that person's way of life a new device with which to harass them.

I am not really asking for a reply, because I know what you are saying legally. You are

absolutely correct. As a draftsman, I would so do the same thing.

Ms. Klineberg: There seems to be a belief every time this conversation arises that section 429, as you suggest, is important somehow for the people who work on the feed lots and the people who do animal research, and that it provides some kind of protection to them, and that would be the justification for putting it in as extra added clarity. However, it is important not to leave out of this dialogue the fact that section 429 does not operate that way.

The case law on animal cruelty in no way supports the view that the defences in section 429 provide a defence of lawful industry practice, if you will. The definition of what counts as an offence requires that even where people are engaged in a lawful practice, they must be humane. That is contained within the definition of the offence itself. All of the offences contain all of those elements. The case law does not bear out the suggestion that section 429, which would come into play afterwards, could somehow provide a defence where a person had knowingly committed cruelty. It is a very exceptional circumstance where the defences in section 429 are relevant. They may apply in cases where a person is acting under duress or under necessity. Those would be some excuses that might excuse the intentional or negligent infliction of pain on an animal. However, to simply suggest that section 429 permits intentional cruelty where it is in the course of a lawful enterprise is not supported by the law whatsoever.

Providing greater certainty is always a laudable goal, but it should not be done on the premise that section 429 is relevant to the people who are asking for it. It does not operate in that way.

Senator Baker: We presently have before another committee of the Senate a bill regarding species at risk. I presume you are aware of that legislation. Clause 100 of that bill says that the defence of due diligence will be a defence under the act.

We amended the Fisheries Act a couple of years ago. Section 78(6) of that act contains not only the offence of due diligence but says something to the effect that anyone who honestly believed in a set of facts that, if true, would provide legal justification or legal excuse, would be rendered innocent.

It appears that these protections that are being codified are the trend rather than the exception. Are you saying that we do not need these protections in legislation that has recently been passed and legislation that is under consideration in the Senate because it is covered under subsection 8(3)?

Mr. Mosley: I am suggesting that the range of common law defences that are currently covered by section 429(2) would be available to the accused by virtue of subsection 8(3).

I am aware of the species at risk bill, but I have no direct involvement in it. I can, however, speak more generally about the issue of due diligence.

Due diligence was a concept that the Supreme Court of Canada developed not long ago in the context of the application of negligence within the criminal law environment. It serves as a defence where an individual or a corporation would be found liable for what would otherwise appear to be a strict liability offence. If they have demonstrated due diligence in carrying out all of the steps necessary to avoid the harm that is the subject of the proceeding, then that would serve as a defence to a finding that they were negligent in those circumstances. That is an off-the-top-of-my head, general statement about that.

In the context of that particular bill, either the drafters or the parliamentarians involved may have believed that it was necessary in that context to clarify that due diligence was available in defence of that particular statutory offence.

In this context, as your colleague has acknowledged, there is really no reason in law for including a reference to section 429(2) either directly or by cross-reference. The only apparent reason for doing so is to respond to the concerns of some that they are losing something. In law, they are not losing anything, and I think that the weight of the authority you will receive on the subject will confirm that.

Is it necessary to do it? I cannot comment on your political judgment; that is not a matter that it would be appropriate for me to speak to. However, in terms of the clarity of the law, it would be regressive to include those terms or that cross-reference in this context.

Senator Baker: The amendments to the Fisheries Act, of course, cover colour of right because that is the definition of colour of right in section 78(6)(b) and due diligence in section 78(6)(a), and in the new clause 100 in the species at risk legislation presently going through the chamber.

The only dramatic changes that I see being made to the present law is that the offences are being made hybrid offences, the penalties are being increased and a distinction is being made between a normal dog and a police dog.

However, with regard to major changes, you gave an example of the gentleman who injured one of two dogs that came upon his property. The defence that was used in that case, if you recall, was actually section 429(2). The gentlemen thought he had a right because those dogs were on his property. That was the defence he used.

The big change is the omission of three defences as recognized by the Ontario Court of Appeal, the Newfoundland Court of Appeal and I presume other courts of appeal. The removal of those three defences becomes all the more important because we are becoming a

society that has become over-regulated.

With regard to section 19 of the Criminal Code dealing with ignorance of the law, the then Chief Justice of the Supreme Court of Canada said, in *R. v. Jorgensen*, that there are exceptions to section 19 of the Criminal Code. He said that officially induced error is one exception. The second exception was codification of colour of right in certain acts of Parliament.

Ms. Klineberg and I have argued about whether it covers only mistake of fact or also mistake of law. That is another argument, however. Certainly it has been recognized by a majority of opinions of courts of appeal that where it has been codified it in fact does cover errors of law.

The most recent case is one of the Newfoundland and Labrador Court of Appeal in *R. v. Watson*, a 1999 case that reviewed the existing law in Canada. That court said that while it has been the subject of some debate, the weight of the authority and logic suggests that colour of right is not limited to errors of fact but extends to errors of law.

They quote the Supreme Court of Canada in *R. v. DeMarco* and the Ontario Court of Appeal.

If you say that it is redundant, if that is the opinion, namely, that it is redundant, then there is nothing wrong with putting it back in.

Senator Joyal: Or leave it there.

Senator Baker: Yes, leave it there. Do you have any argument, in your opinion, as to a good reason why the Senate should not consider including section 429(2) in this new legislation? Do you have any reason other than the fact that it is redundant?

Mr. Mosley: I was going to refer to the Comber case. Clearly, that was a situation where the person did not have the intention, the necessary mental element required, and had made a reasonable mistake as to the existence of the state of facts which would allow him to do what he did. The court had no difficulty finding, in those circumstances, that he had a lawful justification or excuse. The same would apply today or tomorrow if this legislation were to be passed in the form that is currently before you.

The greater concern, however, is, every time that Parliament adds unnecessary language, surplusage and redundancies, it adds to confusion about the meaning of the law and it complicates matters in the courts in the application of the law. It is much clearer to refer to section 8(3) than to be constantly looking for cross-references that may or may not apply to the particular offence that is before the court.

No dispute would be among those involved in the investigation of the offence or its prosecution that justification or excuse applied to the individual, and the individual would only have to raise a reasonable doubt as to its application to be entitled to its application. If you add words to the code or retain unnecessary words, you invite more speculation as to what they mean.

If they are left in this context, but they do not apply in another, what does that mean? Is it an expression of Parliament's intent that section 8(3) is not to be a general application, that if you do not have it in reference to other offences where the accused may be entitled to raise justification or excuse, that Parliament intended, because there is no express reference, that it should not apply?

I understand the concern that you want to respond to those who are worried about the effect of these changes, but the net effect of doing this is to have an adverse impact on the drafting of the Criminal Code.

It is a code that we have had for over 100 years, and it is constantly being added to. Where Parliament can be clearer about its intent, I would respectfully suggest, it should try to do so. This is a good opportunity not to add additional confusion to the statute.

Senator Baker: You would suggest, then, that we also recommend that with respect to the species at risk bill going through the Senate we remove a clause that the Department of Justice Canada put in there, namely, clause 100 that I referred to earlier, because it is unnecessary. It is redundant.

Mr. Mosley: I am not suggesting that at all.

Senator Baker: Why not?

Mr. Mosley: As I explained earlier, the issue of due diligence is different. It is very specific.

Senator Baker: What about the Fisheries Act?

Mr. Mosley: I must confess that I am not familiar with that one.

Senator Baker: It is a great one. In Newfoundland, we are very familiar with it. In Nova Scotia, the premier will tell you that he is as well.

Senator Bryden: If I understand what you are saying, it is probably not very good that clause 182.5 is included in this, which says that for greater certainty subsection 8(3) applies in respect of proceedings for offence because it may imply that there may be some places where (3) does not apply. If it were yours to do neatly, you would take section 182.5 out?

Mr. Mosley: That is correct.

Senator Baker: That one is in there. Why can we not put in the other one?

Ms. Klineberg: May I suggest another reason it would not be appropriate or most helpful to include a cross-reference to section 429? You may recall we had this conversation.

Senator Baker: We had this argument.

Ms. Klineberg: As I was mentioning earlier in my response to Senator Bryden, there is a perception -- and it is a misperception -- among people that section 429 entitles or excuses the commission of intentional cruelty where a person is engaged in a lawful practice. That seems to be where the concern is. It is amongst people who are engaged in lawful practices, and they are concerned they are losing something. The concern seems to be that Section 429 entitles them to not have regard to the criminal law, that even if they commit intentional cruelty, section 429 is there by way of an excuse.

There is absolutely no legal authority for that proposition. Section 429 does not assist a person engaged in a lawful practice, if they knowingly or recklessly cause intentional pain. Not one case is on record where it has provided a case in that way or where it has even been argued as a defence in that way.

Therefore, to cross reference section 429 for the purpose of reassuring that group of Canadians would have the effect of allowing them to continue to believe they have some sort of shield, which, in legal fact, they do not have. In that way, they are exposed to criminal liability if they cross the line. If we try to reassure them, but the reassurance does not have that effect in law, then we are allowing this misperception to go on, and that is a disadvantage to everyone.

Mr. Mosley: I might clarify my too quick response to the point Senator Bryden made.

The reference to section 8(3) causes no harm because it is simply a reference to a general provision of the Criminal Code, and it is a reminder that that provision is there. It is an alert, if I may call it that, to the existence of that section of the code of general application. It does not invite the problem that you are inserting specific references to defences here and there in the code.

Senator Joyal: I have two groups of questions. First, you said that you consulted with Canadians. Can we have a list of the groups that were consulted with this bill? Did you order a private firm to do consultation on your behalf, or did officers of the Department of Justice meet with groups? If so, who were the groups and the various people that you consulted?

Ms. Klineberg: In 1998 we prepared a public consultation document that was put on the

Department of Justice Web site. It was also sent out to a number of different groups: agricultural associations, to medical research associations, to veterinary associations, to humane societies and animal rights groups, to people involved in teaching, to law societies, to provincial governments. There may be more. I can certainly provide the actual list that we used. I believe there were over 100 copies of the document that we mailed out. The response was quite significant. We got a number of responses back.

Senator Joyal: Did you consult formally with representatives of the Aboriginal people?

Ms. Klineberg: I do recall that the consultation paper was sent out to a number of different native organizations. However, I do not recall we ever received written responses.

Senator Joyal: However, you did informally come in contact with them by sending the document.

Ms. Klineberg: That is correct.

Senator Joyal: Are you under the perception that no Aboriginal groups came back to you on this? Did you assess the impact of the bill on the Aboriginal people's traditional practice of hunting and fishing?

Ms. Klineberg: I can tell you that we certainly did consider that. We considered the issue of Aboriginal rights under the Constitution. However, more specifically, when we considered the impact on Aboriginal communities, it was along the same lines of the analysis of the impact on any other industries. Very little of the substance of the law was actually changing; it is in the nature of clarifications and increasing penalties. As we expressed earlier today, the substance of the law is not changing, so it was our view that the way the law would apply would not be any different than the way it currently applies. That would be the case, whether it was Aboriginal groups or not.

Senator Joyal: In your own opinion, does the Department of Justice, through your division, not consider that it has a fiduciary responsibility under the Crown to protect the Aboriginal peoples' traditional hunting rights as it is under the Constitution, to measure up the impact of that legislation or proposed legislation with the Aboriginal communities? In your own opinion, and I do not want to put words in your mouth, Aboriginal people are like any other communities which could be affected by this legislation.

Mr. Mosley: If I may jump in here, Senator Joyal, we certainly would not agree with the thrust of your question on that point. Certainly in this context, as my colleague has indicated, we were not contemplating substantive changes to the law.

In that context, we did not believe that there was any potential for infringement of

Aboriginal rights, nor anything that would invoke the rights protected under section 35 of the Constitution.

Of course, if there is any treaty or other Aboriginal right that is affected by these provisions of the Criminal Code, as they currently read or as the proposed amendments read, those rights can be addressed through the courts. However, it is not clear to me how you see that either the existing law in the Criminal Code or the proposed changes would have any bearing on Aboriginal rights.

Senator Joyal: My point is the following. It may look political, but it is a legal point. My understanding is that when the federal Crown, in this case through the Department of Justice because we are dealing with Criminal Code issues, contemplates amendments to the Code, it has to ask itself what the impact will be on Aboriginal people, because you are in a fiduciary relationship with the Aboriginal people. At the same time that you are legislating for the whole of Canadians, and the Criminal Code applies to everybody, you have a constitutional duty to ask for yourself what the impact is on Aboriginal people on behalf of the Crown.

This is part of the double exercise that I contend that the Department of Justice in this case had, as it had with the firearms legislation. That is why there was a formal provision in the firearms legislation to recognize the rights of the Aboriginal people. That is why, as you know, there are court cases now.

We are asked in the original Bill C-10 to legislate on both grounds, on the one hand on the animal cruelty provision of the original bill, and on the other hand on firearms. Both grounds impact directly on the traditional, constitutional Aboriginal rights for fishing and hunting.

We cannot ignore the impact that those provisions have in relation to those particular groups of Canadians, because we have the responsibility to ask for ourselves and because we hold their rights under our own responsibility. That is why we are the fiduciary of their rights. We cannot just say, in my humble opinion, we will legislate and if it applies to Aboriginal people, that is fine. To me, that is not giving weight and recognition to the responsibility of the Crown in relation to Aboriginal people when the Parliament of Canada legislates.

In that original Bill C-10, of course, those two sets of provisions happen to deal specifically with the issues of hunting and fishing. There is no question in the minds of some groups of animal rights advocates that traditional ways of hunting and fishing might be seen to be unusually cruel.

We have known it in the past. We know of the seal hunting issues in this country and my colleagues from Newfoundland and from other groups can testify about this. When we are dealing with this matter, and especially taking into account what you said a moment ago, at the same time that we are rejuvenating the Criminal Code, we are expanding it. There is no

dispute about this. The proof is that the definition of animals that we are putting in the code is an unknown definition in other common law systems.

The fact is that we must now establish the pain for an animal to be defined under this section, so there is something very new there. We have not touched on it; however, it is an important element. If you have taken the animals out of the property to put it into a different category, there is a reason for that. It is not just for the benefit of making the Criminal Code modern. If you do something, it has a legal impact.

I am trying to reconcile that with our duty as Parliament of Canada, or at least as one house of the Parliament of Canada, to have a measured impact of that legislation on our own. It is our own responsibility to ask those questions for ourselves in the beginning.

To me, it does not suffice to say well we will throw it on the Internet and if they answer it, that is fine; if they do not answer, we presume they are happy with it. It goes beyond that, in my humble opinion.

We have reviewed the previous witness's testimony on firearm legislation, and what I consider the interpretation of the fiduciary responsibility. In terms of those rights, it is quite clear that, before we adopt that legislation, we must satisfy ourselves that we have exercised our duty to protect the traditional rights. We are the fiduciary of their constitutional rights.

It is not enough to put a section in the bill and say they can go to court if they are not happy or if they feel they are threatened. Any Canadian who is not happy can go to court to challenge legislation. We have an additional responsibility here. It does not suffice to put in a non-derogatory clause and say, "if you think your rights are infringed, you can go to court and try to prove that the animal is a vertebrate" or something.

I believe that we have to ask ourselves that preliminary question in relation to this section of the bill and the other.

Mr. Mosley: There was a great deal in that intervention. I will not attempt to respond to it all. You are absolutely right, of course, that the definition has expanded. That is a substantive change to the law in this context.

However, the substantive elements of the offences have not changed. With respect, I would submit that the animals which are the subject of traditional hunting and fishing practices are the same animals that are governed by the existing law.

There are no cases that I am aware of which have suggested that traditional hunting or fishing practices constitute inhumane treatment of the animals.

Without a substantive change in the elements of the offences, it is difficult to see how one

might argue that these amendments to the code would have an adverse effect on the exercise of those traditional rights or practices.

Your point is well taken about the fiduciary responsibility. We are trying to deal with that. We have limited resources through a unit within the department that is dedicated to native law. We rely on our colleagues within the Department of Indian and Northern Affairs. We do not have the resources to do the kinds of consultations that I believe you are suggesting that we should do on every initiative. Quite frankly, the government and the department cannot go out to every community when there is a new criminal law reform initiative and expressly ask. We have to rely on the existence of the national associations and their capacity to respond to our consultation documents.

In this case, I believe that that document was out there for the better part of a year. We could check on that. However, it was out in the public domain for a long time. It was seeking input. It has been a long time in Parliament in a predecessor form and in the current form. It has been almost four years that we have had this matter before the public.

To date, I have not seen anything that would suggest that an Aboriginal right, treaty right or other right, is affected adversely by these changes as a matter of law. They do not alter the substantive elements of the offences that have been part of our law for generations in which those practices have been exercised under the umbrella of the Criminal Code of Canada.

Senator Joyal: If I understand your approach correctly, you have not consulted the guide that exists within the public administration of the federal government since I believe 1996 or 1997. It suggests to the administration the approach to be taken by the various departments, not only Indian Affairs but all departments dealing with issues that pertain to Aboriginal peoples in Canada. These are the guidelines that should be respected by the various levels of administration when they come forward with legislation or programs in relation to Aboriginal people. There is a formal guide. I could give you the exact title. It was issued and circulated among all of the administration of the federal government, which is essentially the point.

It is not only up to the Department of Indian Affairs to assume that fiduciary responsibility. Each and every department, especially the Department of Justice, is as much a fiduciary trustee of that special relationship as the Department of Indian Affairs.

As I have previously expressed, and I do not want to extend too much on this, but there have been two cases in the Supreme Court, the *Guerin* case in 1986 and the *Sparrow* case in 1990. The criteria have been very well stated in those two cases that when the federal government approaches an issue that has an impact on the Aboriginal people, there are criteria to follow. You cannot just mail the documents to the people, and if they happen to answer, they answer.

We all know the context in which many of the people in the Aboriginal communities operate. Yesterday the Auditor General of Canada in her report outlined how underprivileged many small Aboriginal communities are, and it is hard for them to respond. It was stated in a report from the Auditor General yesterday. I believe it is a very important issue. I raise it here because we have the privilege of having you today as a witness. However, this seems to me that it is something we have to be very satisfied about when we legislate on those grounds.

Mr. Mosley: I certainly accept that basic proposition.

Senator Adams: Thank you, Mr. Chairman. I agree with Senator Joyal. I am a hunter. We have thousands of species, and they cannot all be listed here in Bill C-10. We split this bill in the Senate. It is now much easier to understand, separate from the firearms issue.

Now, to me, with everything in here that we see, it is plain what is an animal. You are beginning to see it in the animals, like farmers, something like that, and the pig owners. You mentioned about wild animals. What does wild mean, according to animals?

You might have a pet in your house. Perhaps you have a dog, and you understand what kind of a dog you have. Perhaps you are a hunter, and you hunt to survive, or you are a trapper. It is very difficult to regulate the killing of that animal under the Criminal Code. If you have a dog or something which you kill, you own it. You are licensed for the dog. You look after it. You pay the dog license or the cat license or something like that. I do not know if there is anything in the Criminal Code which is able to regulate someone hunting to survive and goes out and kills an animal. Is it cruelty?

Especially living in the Arctic, it is not like living in the city, you know. Every summer, we have all the animals coming up from the south. They migrate up there. We used to see the hunting of the geese in the springtime. That is the best time to get to get the food. They are fat. They come from the south. They migrate up there in the summer. They are around the local communities, near the local communities and the parks.

Do you have enough from your department to go around to the community and consult people in the community? Perhaps after I finish my question you can ask me how many justice departments we have in Ottawa. We now have two judges now in Nunavut. They have no difficulty with going out into the community. They go there for court cases. Why did you not go around our communities to ask the people about their concerns and how they would like to see you regulate the cruelty to animals provisions of the Criminal Code?

We have a law for ourselves that says that if we are not going to eat, we will not kill it. As I say, anything we kill, we make sure we are not cruel to it. When I go hunting, I am not going to sneak up on a caribou or anything like that. He has to see me first. That is the way we hunt. We give them a chance to get away. If I miss it, it got away, and I go look for

another one.

Bill C-10B mentions dogs. We have bylaws in the community dealing with dogs. We do not have to have dog tags like you do in the South. If a dog is not claimed after two or three days, during which time the bylaw officer feeds and cares for it, it has to be destroyed. Under Bill C-10B, the bylaw officer would be charged with cruelty to animals under the Criminal Code.

I know every type of mammal that lives in the North that we use in the winter time. In the summer time, there are perhaps another 100 mammals there. Bill C-10B does not list all of those mammals. If it did, it would be very thick.

If this bill applied only to farmers, I would have no difficulty with it.

In 1970, Greenpeace came to our communities and pressured people not to hunt seal or to trap. The price of sealskins and fox skins went from \$60 down to \$5. It would be better for the government to simply give those people welfare. At those prices, people cannot afford to buy guns. People no longer use dog teams but have to buy \$10,000 skidoos to go hunting on the land.

In 1970, the Hudson's Bay Company pulled out of the North. The Hudson's Bay Company used to buy all the furs from the community. We use the skins and the meat of the mammals that we hunt.

Our hunts sometimes last for days. Some days it is 40 or 50 degrees below zero. It is not like in the South where you can go to the grocery store and pick out anything you want, as long as you have the money.

The Chairman: Senator Adams, I am sorry to interrupt you. I certainly enjoy listening to what you are saying, but we do have a long list of people who wish to ask questions.

Senator Adams: To conclude, as Senator Joyal says, Aboriginal rights should be recognized. Why were Aboriginal people not consulted when we are the most affected by Bill C-10? We have to pay twice as much for food as do people who live in the South. I have no problem with how this bill applies to pigs, but as it applies to other animals I have a problem.

Mr. Mosley: When there is a possibility of an infringement of a treaty or other Aboriginal right, we do go into the communities to consult. In this particular context, we did not see how this could possibly be an infringement. I accept the illustration the honourable senator has given. In fact, I have been on a seal hunt in the North in which the seals were dispatched very efficiently and humanely, which is all the law requires. It has required that for 50 years. This does not change that in any substantive respect.

The Chairman: I have one question that arises from what Senator Adams said. It relates to the issue that he raised about municipal dog tags.

We have here certain changes to the law with respect to killing animals. Section 182 says that anyone who kills an animal without lawful excuse is committing a federal offence.

Will provincial jurisdiction be considered a lawful excuse? A practical example would be a provincial hunting license. Would that be considered a lawful excuse?

Ms. Klineberg: Lawful excuse for killing an animal can derive from a number of different sources. It can be a purpose that is recognized at common law. It can be a purpose that derives from a statute. It is entirely correct that all of the traditional purposes would be lawful excuses for killing an animal.

I would add, however, that if unnecessary pain is caused in the course of killing an animal, that separate offence may be charged at the same time.

The Chairman: Are you saying that a provincial statute would be considered an excuse for violating the federal offence without any specific reference in the legislation to that particular situation?

Ms. Klineberg: I am not saying that the statute would be the excuse; it is the recognized purpose for killing an animal, of which there are many at common law. Some purposes for harvesting animals are recognized in statute. It is the purpose itself that would afford the excuse, not the statute, per se.

Senator Baker: I do not think that the witnesses attempted to answer Senator Adams' question. Senator Adams asked why, with such a major change as an offence becoming indictable and punishable by three years imprisonment, the Aboriginal people were not consulted.

Mr. Mosley: The substance of the offences has not changed. Certainly the penalty has been substantially increased.

Senator Baker: That is what the honourable senator was referring to.

Mr. Mosley: This is aimed not at the type of practice to which the honourable senator referred but to the cases you have all read about in newspapers in recent years. For example, someone on the St. Lawrence decided to get rid of an unwanted dog by bashing it on the head and throwing it into the river.

Virtually every group that has commented on this legislation is agreed that the existing penalty structure is inadequate for these offences and that there is a need to provide for longer

terms than the present summary conviction maximum of six months.

This goes to the moral culpability of the individual. With the greatest of respect, I cannot see how viciously, brutally and without any justification whatsoever killing an animal in any way accords with traditional hunting or fishing practices.

It is not a reasonable argument with regard to increase of penalty. Certainly, there have been many examples across Canada where people have done precisely that to animals, whether their own animals or animals that they encounter. The public, quite frankly, becomes outraged when they discover that the maximum that would apply in those circumstances is six months or a \$2,000 fine. It simply is inadequate. Recognizing that inadequacy through amendments to the criminal law in no way reduces or adversely impacts upon Aboriginal rights or practices. With the greatest respect, senator, it is just not pertinent in this debate.

Senator Sparrow: The question that arises here is just about increasing penalties. That is what you are telling us, but we have a bill with a number of issues in addition to the increased penalties. Referring to clause 182.2 (1) now in this bill, it says:

Every one commits an offence who, wilfully or recklessly, (c) kills an animal without lawful excuse.

Suppose we are not talking about the hunting or farming but about rodents. We are talking about gophers and rats. We are talking about the person who wilfully goes out to shoot a gopher. According to this section, he has no lawful excuse for doing it. It is just that that is what is there and what is taking place.

What has happened, as an example, in Saskatchewan, is that the rodents have overrun the province. The wildlife federation has paid so much a tail for having gophers killed. Maybe that is a lawful excuse, but for the person who goes out to do that on his own because they are there and farmers encourage him to do that -- it is not a farm animal, it is a rodent -- how can he justify that as a lawful excuse? We are faced with that all the time.

Perhaps, Mr. Chairman, the witness could answer that question as it relates directly to what happens in individual cases.

Mr. Mosley: Certainly, rodents cause considerable harm to the agriculture industry. The gophers to which you referred to cause harm. It is good husbandry of one's land to control the number of such animals. With the greatest respect, senator, I cannot imagine a Canadian court ever concluding that reducing the rodent population on your property was anything other than a reasonable thing to do to protect your property.

May I remind you that all the individual would need to do would be to raise some

reasonable doubt that he or she has a lawful excuse? A farmer who wants to protect his fields has a perfectly legitimate reason for controlling the rodents in those fields.

Senator Sparrow: The farmer does, but what about the individual who goes out who is not the farmer and wilfully kills that animal because it is there. We can talk about protection.

Let me give you the example that has taken place. In the issue of the gophers, which is a serious problem, the animal rights people say, "Well, do not kill them. Catch them. Turn them loose in another area where they will not affect anything." That is what we are talking about.

Senator Andreychuk: We do that with the Canada geese now. Where we used to trap them, catch them and use them for food, we now have to herd them, put them into airplanes and fly them to northern Saskatchewan on a regular basis.

Senator Sparrow: That is what they are talking about with the gophers.

Senator Cools: It is no joke.

The Chairman: Senator Sparrow, I think that Mr. Mosley understands quite clearly your answer. Do you want to add anything to your answer?

Mr. Mosley: I do not think I can.

Ms. Klineberg: The only thing I can add is that pest control is a recognized lawful purpose for killing animals at common law. If the purpose is pest control, whether it is a person's own property or they are assisting someone else at keeping their property free of pests, it would amount to a lawful excuse.

Senator Sparrow: I understand that.

Ms. Klineberg: You are absolutely right. With respect to the person who goes out and, for no reason at all, kills a wild animal, that is a question for the courts to decide.

Senator Sparrow: Do not throw the court out now.

Ms. Klineberg: If someone is prepared to say that they had no lawful excuse --

Senator Sparrow: I gave you the example where there is no lawful excuse. A person goes out because there are rodents there. He goes out and, for recreation purposes, he wilfully does this, and you say, "I will take it to court and the courts will decide." Surely, we are trying to decide now whether it is against the law to do so. I am asking you that question: Is it against the law? You said, yes, it would be against the law and the courts would decide.

Senator Cools: Let the courts decide. I was listening to the debate with some interest. I would caution the witnesses and senators as well that, right now, this country is burdened with laws and regulations, most of which people can no longer understand. I do not think it is responsible to say, "Let the courts decide."

Has anyone looked at the costs of hiring a lawyer recently? That commerce called the practice of law is a huge industry. My concern with this bill is that we are opening up all manner of perhaps unintended and unanticipated opportunities for the bench and the bar to do all manner of innovative things. There was a time I believed it was impossible, but I have watched and I have read a lot of these judgments and I see what has happened.

I am supportive of the thought of protecting animals. I come from a family of horse lovers. An uncle of mine was a horse breeder. I am a respecter of animals. A measure of our own humanity is how we treat our animals.

However, my concern is whether this bill is doing what we are saying that it is doing. Our concerns here have to do with whether or not we are just imposing yet another layer or burden on people and yet another set of tools to bring about endless prosecution, while not correcting or ending real cruelty to animals.

Having said that, I have a couple of questions. The first one goes to the question of the punishment or the penalty for these offences. A few moments ago, you were saying that people generally agree that the punishments are not severe or stiff enough to meet the nature of the offences. That may very well be. Could you tell us a bit about the drafting of this bill and how it was conceptualized?

If you were to look at page 3 of the alleged Bill C-10B -- I refuse to call these bills. I was going to use that word all through my speech yesterday, but I never got to give it. If we look at the alleged Bill C-10B, and I guess it is the alleged page 3, subsection 2, the clause at the top, it says here an "indictable offence." I should put that on the record.

It would be the clause that is amending section 182(2) of the act.

2(2) states:

Everyone who commits an offence under subsection (1) is guilty of

(a) an indictable offence and liable to imprisonment for a term of not more than five years

You have chosen five years as the maximum sentence for such offences. Could you tell us why you chose the number five? Why not four, six or three? I would draw your attention to the fact that if you look at a section of the Criminal Code, for example, section 233, which governs the offence of infanticide. Infanticide, as we know, is a woman's offence. A man

cannot be charged with infanticide. It is commonly believed that infanticide means the killing of a child, but it is not. A man cannot be charged with an infanticide. Section 233, for example, says clearly that:

A female person commits infanticide when by a wilful act or omission she causes the death of her newly-born child.

What you are proposing is a penalty that is equal to the penalty for infanticide or many other crimes. It becomes the same crime as the killing of a gopher, if I were to take Senator Sparrow's example. Let us go a bit farther than a gopher, because it does not read as well, and say the killing of a deer is the same crime as killing a neonate. Could you tell us about that? I have another question as well.

Mr. Mosley: First, when one considers the offence of infanticide, one must recognize that the killing of a neonate by a male would be treated as manslaughter or murder.

Senator Cools: First or second-degree murder or manslaughter, I had no doubt.

Mr. Mosley: There is a range of penalties.

Senator Cools: If a man kills a child, the same crime carries a much larger penalty. I am aware of that. That is why I said it is a woman's crime.

Mr. Mosley: 233 is probably a reflection of a paternalistic view.

Senator Cools: Of womanhood.

Mr. Mosley: It also reflects the notion that shortly after birth, a woman would not possibly be of sound mind or body. This is certainly a 19th century view. On a number of occasions, we have attempted to rationalize the law of homicide.

Senator Cools: I wish you would change it.

Mr. Mosley: We have encountered some resistance. People like things to remain the way they are.

Killing of cattle is currently, and has been for a long time, treated as an offence bearing the maximum penalty of five years. In one respect, this harmonizes the inhumane killing of other animals with the existing provision relating to cattle.

For a long time, the scheme of the Criminal Code has been that penalties increase by graduations, which start with a basic summary conviction offence at six months. In the course of the past 10 years, a new maximum penalty for summary conviction hybrid offences with

punishment for summary conviction of 18 months being brought into the code. It then goes to two years, five years, 10 years, 14 years and life. That is the general approach. Whenever penalties are being examined for changes, we try to remain consistent within the code and increase according to that scheme.

As to the general point as to why it was felt necessary, I must tell you that we continue to get enormous amounts of mail on this subject from ordinary Canadians who are of the view that six months as a maximum penalty for the inhumane killing of an animal is simply insufficient. I have yet to see one letter suggesting that maintaining the level at six months is an appropriate way to reflect the culpability of the individual in the more egregious cases.

This is not a question of trying to equate the killing of a newborn child with the killing of an animal. In each circumstance, the culpability of the individual may justify an offence anywhere within the range that is provided by the law. It is difficult in today's world to justify a higher maximum penalty for the killing of cattle than for the killing of other animals. Canadians simply do not accept that a cow or a bull in a farmer's field is worth more than, for example, a companion dog to someone who is in need of the assistance of an animal of that nature.

Senator Cools: I am very aware of that, as I said before. I grew up with animals, so I am very sensitive to that. What I am trying to figure out, though, is your conceptual framework. That is not always apparent to those of us who sit here on the other side.

I put this into the context, for example, if you were to go to page three of the alleged bill, to the section that is amending section 182(3) of the Code, it says that everyone commits an offence who:

being the owner, or the person having the custody or control of an animal, wilfully or recklessly abandons it or negligently fails to provide suitable and adequate food, water, air, shelter and care for it

Here, again, these words come forth, "custody" and "control". This is the old access and child welfare language. I wonder why, for example, you said, "being the owner or the person having ownership", a word connected to that brand of words, that family of words, rather than "custody" and "control". I am trying to show you that there are distinct patterns throughout this alleged bill that definitely goes to different thinking than what you are actually telling us. I hear what you are telling us, but the actual phrasing and drafting of the alleged bill definitely reveals another set of thinking underlying it. I will return to that at some later point.

My second question, which is the real reason for my intervention, is that I notice in the early stages of the bill, under the definition, the alleged bill defines an animal as a vertebrate other than a human being.

" In this part, animal means a vertebrate, other than a human being, and any other animal that has the capacity to feel pain."

If you look at what a vertebrae is, and we had a discussion about that a while ago where I was trying to run my mind back to donkey's years ago when we all studied vertebrate and invertebrate zoology. We have a definition here of vertebrate which says that the vertebrae subkingdom comprises ourselves, humans, along with all beasts, reptiles, frogs, toads and fishes. Vertebrates are a pretty wide collection of creatures.

When I look to understanding where we are going with this bill and when I looked at the infanticide sections, to my mind I say, "We are trying to protect life. Life is very special."

I would say to myself, all human life is special, too. You then begin to think of that category of beings called the unborn, unborn children, the preborn, whatever language you wish to use.

I am mindful that Canada is now probably the only developed country in the world without some legislation to protect preborn or unborn children. Many hail that as a victory; I do not agree with that view.

If I were to look at an event, for example, the wilful killing of a preborn child, say, in the third trimester, say at eight months of pregnancy or something like that, would I look to the section of cruelty to animals? Would such a being, such a creature, be protected by that section of the act?

I am mindful that section 223 of the Criminal Code tells us when a child becomes a human being. There is a contradiction in that. It is when a child becomes a human being. It tells us when a being becomes a human being, let us say.

These considerations preoccupy large numbers of Canadians who have concerns for the fact that abortion in this country has become a form of birth control and not what it was intended to be. I am wondering if unborn children are protected under this section.

They are children. "Other than a human being", your Criminal Code says clearly. I would suspect that whoever drafted this "other than a human being" must have had something in mind. Could you tell us what they had in mind when they said "other than a human being" bearing in mind the other sections of the Criminal Code that talk about when a human being is a human being?

Then, since we have such a broad definition of "vertebrae", we know somehow or the other that human unborn children are not reptiles and they are not toads. What happens to them in respect of this particular section?

There are large numbers of witnesses who want to appear before this committee on that very subject. I am looking forward to the testimony of some of them, because some of them are very proficient lawyers and would be very skilled at looking at the law. I am hoping that we will be hearing testimony from Mrs. Gwen Landolt, who has appeared before this committee before and is an able lawyer.

The Chairman: I hate to cut you off.

Senator Cools: I am asking a question. It is a legal question.

The Chairman: You have asked the question. I think Mr. Mosley has heard it. Perhaps he could reply.

Mr. Mosley: I did not refresh my memory on the law on this point before coming to the committee this afternoon. However, I would refer the honourable senator to section 238 of the Criminal Code, which is found in roughly the same part of the code as the infanticide offence.

The Criminal Code and criminal law in general still wrestles with the issue, but this is the question of when a child or a foetus or an antinate or a preborn dies in the course of being born. Section 238 deals with it but distinguishes between that being and a human being. The courts, to my recollection -- it has been a while since I have looked at those cases -- have concluded that they do not apply to the situation that you have described. So that in law that being, the foetus, the antinate, is not a human being.

Senator Cools: That is what I was just saying, but they would be another animal that has the capacity to feel pain.

Mr. Mosley: With respect, I doubt very much --

Senator Cools: To clarify one point that the witness raised, he referred to section 238 of the Criminal Code, but section 238 speaks to the unborn child who is killed in the act of being born, which is a slightly different question from what I raised. I was not necessarily referring to being killed in the act of being born. I was referring to the act which --

Senator Stratton: Abortion.

Senator Cools: Which kills it to make sure that it is not born.

Mr. Mosley: The context of this part of the alleged bill --

Senator Cools: The alleged bill, oh!

Senator Sparrow: He is finally on side!

Mr. Mosley: I would respectfully suggest that the court, in interpreting the meaning of "animal" in this context, would look at the whole part and would conclude that this is intended not to apply to any being of a human nature but of other animals that do not share the quality of being human. Frankly, it is inconceivable to me that a court would conclude that this does apply in the circumstance that you have described.

Senator Cools: I think the witness has given a good answer, but we need some clarification in this area and we should definitely have some testimony on this very important point.

(French follows, Senator Nolin)

(après anglais)

Le sénateur Nolin: J'aurais quelques questions concernant les principes directeurs qui ont amené le ministre et le ministère à entreprendre cette révision sur les infractions contenues, de temps immémoriaux, dans le Code criminel, et avant cela dans les lois britanniques.

Qu'est-ce qui sous-tend cette action du ministre et du ministère aujourd'hui? On pourrait aller dans le détail des infractions, mais ce qui anime les modifications est vraiment l'augmentation des peines, des sanctions rattachées à ces infractions.

(Sen. Nolin : What are the guiding principle behind that)

(anglais suit)

(Following French, Senator Nolin continuing)

What are the guiding principles behind that?

Ms. Klineberg: Principally, there are two guiding principles to these amendments. One is, as you mentioned, increasing the penalties. The other, which Mr. Mosley made reference to in his presentation, was simplifying and clarifying certain aspects of the existing regime on animal cruelty, which is somewhat complex.

For instance, there are certain deeming provisions in the existing law. There is a provision that deems neglect to be wilfulness. In criminal law terms, these are two concepts that do not really have anything to do with each other, but the way the law accomplished the goal of prohibiting not just intentional cruelty but also neglect was to put in this deeming provision, which is somewhat complicated in law. The main thrust was increasing penalties, but as well there are certain elements of the existing regime that are complicated and not as clear as they could be. The other guiding principle was to clarify these things so that everyone could have a better understanding of what the law actually required.

Senator Nolin: I understand your answer that it will clarify.

Ms. Klineberg: Right.

Senator Nolin: Let us use the penalties. Why is it important? The important word is "principle." Why is it important to increase the penalties?

Ms. Klineberg: Humane societies are the frontline workers in animal cruelty cases. Every province has by statute created societies for the prevention of cruelty to animals. These organizations have the statutory authority and power to prohibit acts of cruelty and to investigate. Under many of these statutes, humane societies designate their officers as peace officers with powers under the Criminal Code.

In large part, the frontline workers in cases of animal cruelty are humane society workers. Later in the process they may involve the police. However, complaints about animal cruelty and abuse are initially brought to humane societies. Quite often these are the people who will see the prosecution through from start to finish.

Humane societies reported to us several years ago that they were having trouble getting the current laws enforced adequately by the criminal justice system. They were not being taken seriously by prosecutors and judges on occasion. Their perception as law enforcers in this area was that the penalties had to be increased to make the laws stronger so that they would be used

more effectively.

Senator Nolin: What kind of research did the department undertake to go beyond the anecdotal evidence that you received from those learned frontline experts on cruelty to animals to build your argument to convince cabinet that it was important to increase those penalties?

Ms. Klineberg: Subsequent to that we initiated a consultation process through which we sought the views of a variety of different groups. The response that we got back was overwhelmingly that the penalties should be increased. This was the view that came from industry groups as well.

There was a sense among the Canadian public, groups that protect animals and also industry associations that the penalties should be increased, that these offences had to be taken more seriously.

We also did some research into the link between cruelty to animals and violence against human beings. There is more and more scientific evidence coming forward, including some Canadian studies, that show that when a person has engaged in cruelty toward animals they may be more likely to commit violence toward people at a later stage in life.

Senator Nolin: Could you table that research?

Ms. Klineberg: We certainly could provide that.

Senator Nolin: That would be interesting to read.

Science is informing you that there is a link between cruelty to animals and improper attitudes toward human beings. Why do you limit your definition of cruelty to animals to invertebrates? Why not include all animals other than human beings?

(French follows -- Sen. Nolin: Pourquoi s'en tenir...)

(après anglais)(Sén. Nolin)

Pourquoi s'en tenir qu'aux invertébrés? Oublions les êtres humains et le problème du fœtus. Pourquoi ne pas s'en tenir qu'aux vertébrés?

M. Mosley: Si vous regardez la version française, on dit, « et de tout autre animal pouvant ressentir la douleur ». C'est plus que les vertébrés.

Le sénateur Nolin: Quel est le rapport entre la protection de l'individu et le fait qu'un animal qui n'est pas un vertébré puisse ressentir de la douleur? Est-ce simplement la notion de douleur? Quel est le lien entre la douleur de l'animal et le fait qu'un individu est –

(Sen. Nolin : -- likely to be not respectful to human...)

(anglais suit)

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(Following French -- Sen. Nolin continues)

-- likely to be not respectful of human beings because he is cruel to animals.

(French follows -- Sen. Nolin: Quel est le lien?)

(après anglais)(Sén. Nolin)

Quel est le lien? Pourquoi la notion de douleur est-elle si importante?

(Mr. Mosley : We start with the principle...)

(anglais suit)

(Following French)

Mr. Mosley: We start with the principle that vertebrates are sensate, that they can feel pain. In addition to the research to which my colleague referred, we looked at the changes that were made to the law in the countries with which we normally compare ourselves -- the U.S. states and the countries of the Commonwealth that have modernized their cruelty statutes. We can provide that information if you wish.

In some of those countries they have tried to redefine the meaning of "animal". If you simply went to dictionaries, as was suggested, you may have some difficulty encompassing all of those animals that science will say can feel pain. The object of the definition was to encompass those animals that can feel pain. Of course, in any particular instance where it was alleged that someone was inhumane toward one of those animals, it would be a matter of proof to demonstrate that it had the capacity to feel pain.

This is not open-ended and it would require evidence to establish that as a matter of fact in a court of law.

(French follows -- Sen. Nolin: J'entends votre réponse...)

(après anglais)

Le sénateur Nolin: J'entends votre réponse et c'est ce sur quoi je bloque. Prenons l'exemple d'un animal qui n'entre pas dans la définition de vertébré. Pourquoi créer un problème pour le procureur qui devra prouver que cet animal souffre? Ce sera là un degré de preuve plutôt compliqué à obtenir. Pourquoi cette préoccupation, alors que ce qui nous intéresse est l'attitude de l'être humain envers un animal? C'est l'attitude qui nous préoccupe et non le fait que l'animal souffre.

(Mr. Mosley : The fact that the animal suffers...)

(anglais suit)

(Following French)

Mr. Mosley: The fact that the animal suffers is relevant to the question of what the criminal law should cover. I have heard the suggestion that putting a worm on a hook for the purpose of fishing would constitute a form of cruelty to the animal. With the greatest of respect, that is not an argument that I believe bears any weight. However, if anyone were foolish enough to advance it, I have no idea how you would establish that that form of conduct would cause suffering by the animal.

There must be limits to the scope of the application of the criminal law. Drawing the line at causing suffering is something that most reasonable people will, I believe, accept, that that is where the culpability of the individual comes into play.

(French follows -- Sen. Nolin: Je lirai vos études.)

(après anglais)

Le sénateur Nolin: Je lirai vos études. Je présume que vous reviendrez à la fin du processus, après que nous aurons entendu d'autres témoins, afin d'approfondir ces questions, car celles-ci m'apparaissent être le fondement du maintien de ces infractions au Code criminel. On nous demande d'augmenter l'élément de sanction pour ces crimes. Nous allons devoir comprendre leur raison d'être à l'origine et si on doit approfondir les peines. Cette question m'apparaît fondamentale.

(Chair : Certainly, Senator Nolin...)

(anglais suit)

(Following French)

The Chairman: Certainly, Senator Nolin.

Senator Andreychuk: Mr. Mosley, you say that when you removing section 429(2) and going to 8(3) may afford even more defences because it goes back to common law.

However, from my perspective, part of the problem is that a body of law has been built up under section 429(2), if you will permit me. I was a judge for a few years interpreting these sections.

It seems to me that once you move out of section 429(2) and into section 8(3), it does not necessarily follow that the same attitude and perspectives will be looked at by the judiciary.

Therefore, do not the people who have been relying on this evolving body of law have some great concern as to whether it will be as applicable or will have to be retested in the courts?

The second part of my question is this: Is there not a change of onus when you do this? Are you not moving the onus? That in itself would give me cause for concern if I were trapped under these sections.

Mr. Mosley: I believe it works the other way, if I may, in the way that 429(2) is currently worded.

Senator Andreychuk: The onus is on the accused.

Mr. Mosley: That is correct, whereas raising a reasonable doubt under 8(3) puts the onus on the Crown to disprove the application of that defence. It works to the benefit of the accused, not to the detriment.

The defences covered by section 8(3) are all the common law defences. It is very broad, unless the Criminal Code expressly states that a defence does not apply. There are some circumstances in which Parliament in its wisdom has chosen to do that. That removes a defence.

However, section 8(3) gives a defence of broader application and easier application to the accused than section 429(2).

Senator Andreychuk: Mr. Mosley, you and I are old enough to remember that common law defences are not explicitly stated, so you have to go back to precedents.

My concern is that we have built a body of law around 429(2) that I believe people are comfortable with and understand. They may have thought there were some shortcomings, and we need the amendments. I agree with that.

However, to say now that we will throw you into common law defences and, not only that, we will put the onus on the prosecution, while that may at first blush look as though it is for the benefit of the defence, I am not sure that will be the way it works out in practice.

Will you not agree that what your best intentions have been in your department in the drafting and in your presentation, finally, are not interpreted the same way in the courts, and, particularly, when we will be, in these cases, going through a whole host of courts across Canada at every level?

Mr. Mosley: Let me say first that any of the criminal lawyers who have appeared before your committee, if asked about how it works in raising the common law defence under section 8(3), will tell you the same thing as I have told you. All it requires is for the accused to raise the doubt about the application of the defence, and then the burden. That is an evidentiary burden.

Senator Andreychuk: Exactly.

Mr. Mosley: It is not a persuasive burden. The persuasive burden rests with the Crown to prove that defence does not apply with the accused.

With respect to your point about the jurisprudence under 429(2) -- we have gone through it all -- it relates to the principles enshrined in those common law defences, and the jurisprudence goes back to the 19th century. Section 429(2) is merely a statutory expression of those common law defences in the code. It does not add or give anything in addition to what the common law would have recognized in the application of those defences to the individual.

Senator Andreychuk: We have a bit of a disagreement there.

Mr. Mosley: The jurisprudence will continue to be applicable to the issue or question of whether there is a defence of justification or excuse to any particular accused in the circumstances.

Ms. Klineberg: In respect of colour of right in section 429, the jurisprudence under section 429 is intimately bound up with the jurisprudence under the theft provisions of the Criminal Code. There, the theft offence includes the phrase "fraudulently and without colour of right." I am not sure it is fair to say there is jurisprudence under section 429 that is a

distinct body of law.

It is the concept of colour of right, wherever it appears in the code, that the courts have regard to, and they borrow from each of those cases. The jurisprudence is in respect of the colour of right, I would suggest, as opposed to under section 429.

Senator Andreychuk: I believe we disagree on that point, but I do not have time to pursue it today.

Mr. Mosley, you keep saying that any one who does something humanely should not be worried. Anyone who is within the bounds of normal animal husbandry should not worry. However, I know that attitudes toward what is humane and not humane have changed, just as our attitudes towards women, children, abuse and everything in the Criminal Code have changed. It is value-laden. Therefore, your interpretations at the moment will be the ones that we will agree with.

You have just given me the counter argument that we put in a law, and we thought it was good. However, you are getting now this overwhelming response from people saying it is out of date. It does not reflect society's values.

The problem is that there is this tension that there is not one value system. It has been this tension between people who do not want any harm, or anything done to animals vis-à-vis those who believe there can be some intrusion for some very valid reasons.

That test has changed over time. Is this not the one area where you would want to say to citizens, if you have a comfort level with 429, we will leave it because it is such a judgment laden area?

Mr. Mosley: That is the point that my colleague spoke of earlier, that the perception that there is some safe haven or harbour for those who may kill animals inhumanely is just wrong.

Senator Andreychuk: As we well know, it is not what is. It is what people believe it to be that is important, and comfort for people and reassurance should not be from our test. It should be from their test. If they feel, rightly or wrongly, that they get some comfort and some ability to manoeuvre in their business and their livelihoods, which is the Aboriginals, anyone working in animal husbandry, research, that they continue to do what they do. If that is what makes them feel at ease, surely, is that not what good public policy would be about?

Mr. Mosley: However, it is doing them a disservice. I absolutely agree with your point that the concept of what is humane or inhumane is evolving and has evolved over the course of

the past 50 years since those amendments were made in 1953. That will continue whether or not Parliament adopts this legislation. It will not be altered by the adoption of this legislation.

If it continues, however, to evolve, the existing law will be inadequate to deal with the more egregious examples of that inhumanity, however society may regard it to be in one year, two years, five years or longer.

Senator Andreychuk: I am not suggesting that you change this alleged bill.

I am suggesting that if there is something that we can do to have people feel more comfortable with the law, while it may make the bill more bulky, would it not be something we would do as a good public policy practice?

We should bear in mind that the minister has quite rightly -- and I applaud him for this -- announced that he wants to go through the Criminal Code, rationalize it and, perhaps, take hold of it, at which time all inequities and perhaps needless sections can be removed.

However, it will be done with that in mind as a public policy and not targeted, as it appears to be here, to some people who seem to feel very vulnerable. What would another three sentences, that you say will not change the law but will give people some assurance that there is not an unintended result, matter in there?

Mr. Mosley: With respect, it may mislead them into thinking that there is some protection in the law that is not there. That is the great disservice it would do to those who are seeking that comfort, because they do not have it now.

Senator Andreychuk: You say if we put it in, then we mislead them.

Mr. Mosley: Yes.

Senator Andreychuk: How?

Mr. Mosley: It suggests that they are somehow protected from the application of the criminal law relating to cruelty to animals. It reinforces a notion that, today under the existing regime with 429(2), that there is some special place or exemption for them with regard to how they deal with animals. It is a misunderstanding of the law as it has been for the past 50 years.

Senator Andreychuk: It would seem to me that none of the groups who have contacted me have made that point. They feel they are going to lose a defence, not that, in fact, they somehow have an exemption now. They are well aware of the fact that they do not have an exemption; however, they feel they have a tool with which they can fight. If you are saying it

is a paper tool, and it is not going to help them, then perhaps it is more important for them to have a signal that life will go on as it is now.

I assure you that if any group came to me and said that they are exempt, they would be wrong.

I spent many years prosecuting and defending people under these sections. I do not think anyone has thought that they were exempt, whether they worked as a researcher, a farmer or an Aboriginal.

What they are afraid of is the way that they practiced is somehow now no longer going to be current and that somehow, they are going to be vulnerable for what they have been doing, which was acceptable previously. For some reason, they feel they need the defence. I believe this has some merit, because you are changing onus and dropping it back into common law. Will some judge say that, under 8(3), some of our common law defences no longer exist? Will we have somebody in one jurisdiction interpret it differently than in another? I believe so.

Rhetorically, why can we not give them something that will not hurt the law, will not hurt animals and may help people work properly and appropriately in research, in farming and on Aboriginal livelihood?

The Chairman: Thank you, Senator Andreychuk.

Senator Andreychuk: Thank you for your indulgence.

Senator Watt: Let me start off by trying to encapsulate where I believe we are as an Aboriginal people at this point.

Leading up to and into the early 1960s, Aboriginal peoples were still very much using the traditional ways to transport ourselves back and forth into the land to harvest what we needed.

For some odd reason, those tools that the Aboriginal had were the dogs; they were slaughtered by the order of the Government of Canada. The people that executed that decision of Government of Canada were the RCMP.

The way you described it, the law already existed, and humane matters should be taken into account. Not only the humane should be taken into account, but the livelihood of the people should also have been taken into account.

However, the fact is the Aboriginal people were crippled as a people in Canada leading up to and into the 1960s, and a little bit after the 1960s.

The dogs were humanely well cared for by the owners and tied up. Nevertheless, they were not even loosed. They were shot, while they were still attached by their chain.

I thought this was an important point to put on the record.

I believe the steps that have been taken in terms of how we confront government orders and the law. Not too long ago, perhaps about seven years ago, in 1995, I am not saying this is exactly what happened, however I believe that an attempt by the Government of Canada in disarming Canadians as a whole was taken by introducing Bill C-68.

A lot of our people, due to the lack of understanding or being able to communicate in a way where they can transmit the information back and forth, fell into a crack. I would say that a lot of Aboriginal people over the age of, let us say, 45 are unilingual even today; in other words, those people have no way of understanding what the Government of Canada is passing.

For this precise reason, in 1975, I was one of the people who foresaw how hard it was going to be for Aboriginal people. We decided to make a move to examine the system to see whether we could actually secure ourselves as a people in this country, because we know for a fact that we were being run over by the simple fact that Aboriginal people are very small in numbers. At times, politically small numbers do not hold or carry any weight.

For that reason, we have decided as a people in Canada that now is the time to try to arrive at an acceptable arrangement between the Government of Canada, the provincial governments we deal with and the Aboriginal people. It happened to Nunavik for northern Quebec Inuit, after the James Bay and Northern Quebec Agreement. That agreement is very well detailed.

On top of that, Nunavut, which is under federal jurisdiction because, even though a split that took place and they are called the Nunavut government, it is still in a sense dictated by one minister. We all know that. We have premiers and elected people, but as to power, we have none.

And then by saying all of that, one of the other steps that we have taken is to ensure that when we worked out a deal, a so-called "modern treaty", we made sure and we had lawyers everywhere. Unless I was misled at that time, we acted knowing the fact that the Constitution was not the issue at that time. This was before 1982. The Aboriginal people did as best as we could to tie the hands of the federal and provincial government, by way of coming up with the umbrella legislation, which was called C-9, so that one cannot play one off the other and they have to stick to their words of what was agreed to. We made an agreement and treaty with the Crown, not with the government. The government has to listen to and follow that trend.

Shortly after that, we felt this could still be taken apart, attacked or dealt with in some way that was not quite secure enough. An opportunity came around again; Pierre Elliott Trudeau began to start talking about repatriating the constitution of Canada.

When that was about to take place, we decided as Inuit to form an institution called ICNI, the Inuit Committee on National Issues. We were at the forefront negotiating and assisting the Prime Minister at the time, because he was having a hard time convincing the provinces as to whether or not he was to take unilateral decisions on his own. We were there standing right beside him, and we thought it was an opportunity to rectify and clarify once and for all where we stand in this country.

After so many years later, however, I am finding out that the same government that has slaughtered my dogs, and slaughtered my ancestors' dogs, totally crippled our way of looking after our families and things of that nature, then turns around and passes Bill C-68. That is pretty hard to follow.

People my age do not have any difficulties obeying that law because we can understand and communicate to the best of our ability. We may not be perfect, but we do get our licence. We register our rifles and things of this nature. However, the fact is that the people up there still have no way to understand this.

In 2002, there was Bill C-10, which has been divided into two, namely, Bill C-10A and Bill C-10B. Realizing the window of opportunity, I have tried to make a move to indicate, "Wait a minute here." There must be recognition of certain special circumstances. That is what our agreement is all about. This is what the Constitution that we have is all about. The James Bay Northern Quebec Agreement and Nunavut Agreement are entrenched within the Constitution. As you probably remember, at the time it was open ended, and Senator Joyal can verify if I am not perfectly correct in this area. When we went for open-ended, it was considered that it would cripple the system, so Lougheed, during a hockey game in Montreal, decided, "We better restrict those Aboriginal people. Otherwise, they will destroy this country." He added one word into what we negotiated, and it was dropped originally. I remember I went to Pierre Elliot Trudeau and said, "What happened? You kept assuring me that this would not happen." However, it was dropped from the resolution before patriation took place.

Knowing this exercise that we went through, I think you are about to move in that direction again. This is something that we will have to argue in court. I do not know who will pay for it. Perhaps because of the fact that the Government of Canada has fiduciary responsibility, as Senator Joyal indicated, then they will have to foot the bill. Individual people may be convicted wrongly for knowingly dealing with an animal in an inhumane way. I can indicate

to you many of those inhumane ways would be considered as inhumane by a person from this house, but I do not consider them as inhumane.

Let me give you an example. You answered one of the senators about the fact that you were involved in a seal hunt, and they practiced the humane way. I do not know where you were. I do not know what Arctic you were at, but if I am one of the so-called animal rights activists or the humane society, and I may be connected to those organizations, for example, the law enforcement or RCMP or provincial police and saw an Inuk person practising his traditional pursuit using his own traditional hunting equipment on the ice and being discovered, I would say, "This guy is harpooning that seal. He is pulling that seal out of the hole without killing it." What do you call that? Those are the examples I want to give you. I am really worried about that.

The other concern is spearing the fish. Once again, we do not kill the fish when we spear it through the ice hole. We use a fork with a point in the middle, and there is no way the fish can escape. If you are talking about a humane way, coming back to the seal issue, if you ask me to kill that seal before you harpoon it, I will lose that seal because it will sink. What is the most important thing to you? Wasting what we harvest, or trying to do it professionally, even if you have to use the traditional hunting equipment and things of that nature? Those are the areas of uneasiness that are confronting us now. Then the food is taken and we are all gone. What is left for the Aboriginal person? You have done such a good job as a government, or the pressure that came from outside forcing the government to do those things.

As to the lack of definition in what you consider being cruel to animals, we have no difficulty, as Senator Adams said, if you restrict it down to pets such as dogs, cats and things of that nature. We have no difficulty with that situation at all because we like to have our belongings protected. More importantly, this law, if it is constructed properly, will also help the Aboriginal people. It would be good for that type of thing, but it would have to be constructed differently from what it is now.

The Chairman: Senator Watt, if I could interrupt you now.

Senator Watt: I am a long way from being finished, but I could, perhaps, go on a second round.

The Chairman: Perhaps you could let the witnesses reply to some of the things you said.

Senator Watt: I will stop there and then wait for the second round later.

Senator Buchanan: Good for you.

Senator Watt: I am sorry to say but I have been here in the Senate for 18 years. Should I continue to be laid back because I am shy about bringing up these matters over and over again? Well, Mr. Chairman, I am not shy.

The Chairman: My only reason for interrupting you, Senator Watt, was that you raised many issues, and at this juncture I thought it would be fair to give the witnesses a chance.

Let me explain where we will go from here. We had two other panels scheduled tonight. We will hear from one other panel. There is food outside. The third panel has graciously and patiently agreed to be rescheduled, and I thank them very much for their patience and consideration. However, given the hour and given the fact that I have heard from other senators -- our numbers are dwindling -- that they cannot stay much longer, we will reschedule the third panel. However, we will hear from the second panel.

I will now let Mr. Mosley respond to some of the issues Senator Watt has raised already, and there may be other issues that he wants to raise as well.

Senator Watt: I do not expect you to cover them all because I said a whole mouthful.

Mr. Mosley: Thank you for your indulgence. I cannot imagine that I could.

I very much respect the description of the traditional lifestyle that you have put before the committee. I cannot see how this bill would have any negative effect on that lifestyle. We made the point earlier this evening that inhumane treatment is captured under the existing law and could be the subject of an investigation and prosecution. However, that has not happened.

Senator Watt: Not yet.

Mr. Mosley: No, it has not, and it is difficult to conceive of circumstances in which it could happen because you are talking about a way of life that has been in place for thousands of years in which the practice of hunting that you described is the accepted way to capture a seals. Your point makes eminent good sense. You simply cannot kill the seal and watch it disappear into the hole; you have to harpoon it in order to complete the hunt.

That is a perfectly reasonable explanation of that practice. In the past 50 years, in theory someone could have taken a person to court on that. It has not happened. It will not happen because the law is strengthened and clarified.

I fully accept your concern about the changes that are being effected by Parliament and modern society, but that will not be altered by this legislation. That could happen today. It

does not happen because the people who administer the law are reasonable and they understand that the courts will not --

Senator Watt: That is the problem.

Mr. Mosley: I cannot give you assurances that every enforcement officer in the country behaves reasonably. We know that is not true. However, this law does not make it easier for an enforcement officer to behave unreasonably.

Senator Watt: It is very nice to say that this law will not apply to us. If it will not apply to us, we definitely need some assurance to that effect. We currently have no assurance at all. It costs money to defend yourself in court. I can imagine what will happen to an elderly individual who is raising his grandchildren, which is a common practice within the Aboriginal community. Many grandparents raise the young ones.

As an example, one such a person came to me over the weekend when I was in the North and told me that, due to a past criminal record, his request for a permit was deferred. He asked what he should do now and I had no answer for him. He is still raising his grandchildren.

Would you be prepared to recommend that we be assisted with regard to this bill? There is a lack of definition in the bill that worries us a great deal. Could Aboriginal people be totally exempted from this bill?

Mr. Mosley: There is no exemption for Aboriginal people in this law.

Senator Watt: Why is that? You told me that we need not worry because this law will not apply to us. Now you are saying that it is applied to everyone and there is no exemption.

Mr. Mosley: With the greatest of respect, senator, I did not say that. The exchange I had with Senator Andreychuk illustrates precisely the concern that we have about retaining section 429(2) in the Criminal Code; namely, people may believe that they are exempted from the law when they are not. They are not exempted today from the application of the cruelty provisions of the Criminal Code.

Senator Watt: If a clause were put into this bill exempting Aboriginal people, that would be definite assurance. If a law enforcement officer had a reasonable suspicion that we were killing an animal inhumanely, we would be able to hang our hats on the fact that we are exempt. Under this law, the Aboriginal people must prove that they killed the animal in a reasonable way.

I own 11 husky dogs. One of my dogs had a litter of nine puppies two days ago. One pup was deformed. I had to decide whether to let that little deformed puppy suffer. I think I crossed the line right there.

Mr. Mosley: How?

Senator Watt: By killing it. I had no choice.

Mr. Mosley: With the greatest of respect, how would this bill affect that situation?

Senator Watt: If the law enforcement officer saw the way I put the little pup out of its misery, he might say that I killed it in a very inhumane way. I will not tell you how I did it, but those types of things happen in our lives.

Senator Beaudoin: This is about reverse onus. I asked Senator Andreychuk why she did you not ask whether the reversal of onus violates the Charter. In my opinion it does. The Gamez case was brought to my attention. It states, "It would seem that placing the onus on the accused to prove the legal justification excuse is unconstitutional."

I believe they are mistaken. I believe that the Supreme Court of Canada has accepted that reverse onus does not go against the Charter of Rights and Freedoms. Under our system, we are presumed innocent until we are proven guilty. We are not obliged to speak, but if we speak, it may be held against us.

In some parts of this bill we see that one may have the onus of proving something. This is very important. Is this against the Charter? I think it is, because we are presumed innocent until proven guilty. Having to prove that you are not innocent goes against the Charter, does it not?

I do not remember the case at this moment, but I believe that the court has accepted reverse onus. This is a very difficult question, but I like to ask difficult questions.

There is such a thing as the reverse onus of evidence. Usually the Crown in our system must prove in such a way that you are guilty. The onus of evidence is beyond any reasonable doubt because we are all presumed innocent in our system.

The legislators in some statutes and in some areas reversed the onus of evidence because it is difficult to prove to the contrary. However, I found a case that says that is against the Charter. Therefore, it is unconstitutional. To a certain extent, that is related to what you said.

Senator Watt: That is the point that I was leading to.

Mr. Mosley: If my memory serves me correctly, two of the three judges in the Manitoba Court of Appeal were of the view that the section was likely unconstitutional, but they were not required to decide it in that particular case, so the case is open.

Senator Beaudoin: Is it still open?

Mr. Mosley: Yes, but as a matter of general principle, it is likely unconstitutional because it puts the burden of proving the lawful justification or the excuse on the accused.

Senator Beaudoin: It is under section 429(2), Colour of right:

No person shall be convicted of an offence under section 430 ... where he proves that he acted with legal justification ...

Evidently, the court stripped the last part of that sentence because it becomes unconstitutional. However, it may be in one case they accepted that as being within the Charter of Rights and Freedoms. The reverse onus of evidence is something that, *prima facie*, is against the Charter.

Mr. Mosley: There is a basic principle. If the law allows for a defence, then it suffices that the accused raise a reasonable doubt about that defence. That is an evidentiary onus, in a sense. Basic constitutional principles in this area are not required to prove the defence. The Crown then has the burden of disproving it as part of its case.

Senator Beaudoin: In my opinion, it goes directly against a fundamental principle of law that we are presumed innocent.

Senator Baker: That is Section 7 of the Charter.

Senator Beaudoin: Yes, and section 11(d). Do you agree with that?

Mr. Mosley: Yes.

Senator Beaudoin: That is enough for today, then.

Senator Baker: For Senator Watt's benefit, the witness, I am sure, did not mean to suggest that there have not been recent cases where animal rights groups have been prosecuting seal hunters with the assistance of the Department of Justice.

We just went through this massive case with Clayton Ruby representing Greenpeace. The Department of Justice took all of the film here in Ottawa that was presented. The sealers, represented by a pro bono lawyer, just got a decision recently from the Court of Appeal, and

that was on cruelty to seals and the way they were killed. They filmed them, and I am sure the witness remembers that. R. v. Ward came out on the selling of bluebacks. These people are being prosecuted Friday, two days from now. There are 108 of them. I am sure the witness did not mean to suggest that recently there has not been an increase in the number of prosecutions by the Department of Fisheries and Oceans, assisted by the Department of Justice on complaints by animal right group. This is becoming in vogue, and that is why Senator Watt is concerned about the seal hunters.

The Chairman: Mr. Mosley, did you want to make one final comment?

Mr. Mosley: No, thank you. Is this coming to a close?

Senator Buchanan: I want to make one comment. Like Senator Baker and a few others, I come from a part of this country where fishing is very important. I had a fisherman call me a few days ago. He is actually a fisherman and a processor of lobster. He wanted to know something, and I told him, "Do not be silly." Now I am beginning to wonder if I said to him, "Do not be silly. That will never happen." He told me that a few years ago an animal rights group out of Halifax came down to his little fishing area where he has lobsters and he processes lobsters. Of course, we all know, you take boiling water and you dump them in. He had an overzealous humane officer from the Nova Scotia Society for the Prevention of the Cruelty to Animals, who said, "I will charge you because Mrs. So-and-so in Halifax says you are being cruel to those lobsters."

Thank God, nothing happened, because he said, "This is nonsense." The prosecutor in Halifax said there is no way we will prosecute this man and it was dropped.

He said, "Listen, they are now saying that any animal that has pain will now be an animal under this new act." I said, "No, do not be so silly, George. That will not happen." I am kind of wondering now if it will happen because the definition of the animal is now that it is a vertebrate, and any other animal that has the capacity to feel pain.

I boil lobsters all the time. Does a lobster feel pain? As far as I am concerned, it does not. However, the lady in Halifax says they do. Mark my words, she will be one of the first ones after this bill is passed to start to harass poor old George that he is processing lobsters by causing them great pain by dumping them in this boiling water. I with cannot see that happening, but it could.

Senator Stratton said a minute ago his wife would divorce him. My wife would not divorce me. If she heard me saying what I am saying here, she would shoot me.

Senator Baker might recall that we introduced a resolution in our legislature a few years ago about the seal hunt. When I got home, it was on the news that I had done it.

Senator Baker: He was the premier.

Senator Buchanan: Yes, and that I had done it. I did not do anything. In fact, I absented myself from the house when it was done because I knew I would be in trouble when I got home -- this is a secret meeting, I hope. When I put a lobster in the pot at home, my wife leaves the house. She will not stay.

With respect to this new definition, "the capacity to feel pain", is there a chance that our little processors in Nova Scotia and Newfoundland will now be harassed by some of these dogooders, who say, "The poor lobster! Look, dumping these lobsters in boiling water." When you dump a lobster in the water, they do jump a round abit.

Senator Watt: Do they feel any pain?

Senator Buchanan: I do not think they do, but she thinks they do.

Mr. Mosley: I have heard tell that people say they can hear a lobster scream when it goes into water, but I think if that were the case, I would be in a lot of trouble as well. No one will get prosecuted.

The Chairman: Mr. Mosley and Ms. Klineberg, we thank you very much for coming. We may or may not, depending on how the rest of the evidence unfolds, be looking to hear from you again. Thank you very much for your patience.

Senator Beaudoin: May I have one moment, please? It is the Keegstra case where they accepted the reversal of evidence, the Supreme Court of Canada, as being a limit that is acceptable.

Mr. Mosley: In particular circumstances, not as a general principle.

Senator Beaudoin: Each case is a case, is it not?

Senator Joyal: We will have to look into the reading that they did on the first section of the charter in relation to that.

The Chairman: Honourable senators, we will resume our hearing.

I welcome our next panel of guests: Serge Buy, Executive Director of the Canadian Cervid

Council; Mr. Guy Fontaine, representing the Alberta Farm Animal Care Association; Mr. Ron Bonnett, Board Member and President of the Ontario Federation of Agriculture; and Mr. David Wilson, legal counsel to the Canadian Federation of Agriculture.

I understand that each organization will have some brief comments, followed by questions from senators.

Mr. Serge Buy, Executive Director, Canadian Cervid Council: Thank you, Mr. Chairman. The Canadian Cervid Council speaks on behalf of all Canadian deer and elk farmers throughout Canada. We have members in nine provinces and territories. The only province in which we do not have members is your province, Mr. Chairman. We will have some at one point.

We represent about 2,500 elk and deer farmers. We also represent in this issue game bird associations, as well as some wild bore associations, who have asked us to represent them, as they are concerned about some of the statements under the law and the implications of the law.

Let me first say that the members of the Canadian Cervid Council are law-abiding citizens of Canada who have made substantial investment in the creation of their businesses and the industry as a whole.

They have built hunt farms, which is a part of our industry, and which is legal in most provinces in Canada at this time.

The Canadian Cervid Council respects and supports the true intent of the proposed legislation. However, our members are very concerned that the language of the proposed legislation could interfere with existing legal business operations.

The legislation should not be used to threaten long-established practices of the agricultural sector. The Council is concerned that the apparent ambiguity of the proposed language could permit a party with a different philosophy with respect to hunt farms to use the proposed legislation to advance its own agenda as opposed to respecting the true intent of the law.

Hunting on hunt farms should not be at risk. The operations have existed for years in a number of Canadian provinces, the United States, Europe, Asia and New Zealand. If the proposed language of the law of the bill could be interpreted to interfere with existing and lawful operations, then that language must be amended, clarified and/or augmented to reflect the true intention of the proposed legislation.

The proposed legislation is not intended to close down properly operated hunt camps or

hunt farms. It should clearly express its intent. Terms such as "wilfully unnecessary" or "brutally" are by themselves ambiguous. Clearly, in the operation of a hunt farm, the wilful intent is to shoot an animal that is present. Advocates could argue that the shooting of the animal causes unnecessary pain or is a brutal act. However, the intent of the proposed legislation is not to outlaw hunting. Let the language of the bill be clear in that intent.

The Canadian Cervid Council supports the proposed exceptions as drafted by the Law Reform Commission of Canada. We also would consider adding as an exception hunt farms operated in accordance with the lawful rules regarding their operation. Our industry does not want to be drawn into protracted legal battles with persons and groups that oppose hunting in general. The Council is concerned that the ambiguity in the proposed legislation, without further amendment or clarification, will lead to that result.

The majority of our members who operate hunt farms are located in Saskatchewan and Quebec. We have some as well in Ontario. We have game bird farms and hunt farms that exist in a number of provinces.

I have listened with great interest to the presentations previous to ours by Mr. Mosley and his colleague. I have heard with great interest the questions and answers. Mr. Mosley said that people should not be concerned. However, we are concerned. His colleague, Ms. Klineberg, said that if there is a complaint, the courts would decide.

Senators, we cannot afford to go in front of the courts every time someone has a complaint. Our operation must be protected. General agricultural practices must be protected.

I have received today a report from the Prime Minister's Caucus Task Force on Future Operations in Farming, entitled *Securing Agriculture's Future: Invest Today -- Prosper Tomorrow*.

Senators, I would ask that you make sure that the next report from the Prime Minister's caucus task force on agriculture is not entitled "invest today so you can pay lawyers tomorrow."

The Chairman: Thank you very much. I believe we will hear from each group before we open up for questions.

Mr. Guy Fontaine, Chairman, Alberta Farm Animal Care Association: Thank you, Mr. Chairman and honourable senators. I am indeed honoured to be here. I can assure you that I consider this to be a privilege.

I am chairman of AFAC, Alberta Farm Animal Care, being an association that brings together at the table 18 significant component groups of livestock commodity groups of Alberta. I represent the Alberta Cattle Commission, now known under a different name as of this year, Alberta Beef Producers.

There are 35,000 in the province of Alberta. I was appointed by the Alberta Beef Producers to represent their association on AFAK, and in the past few years I have escalated to the chairmanship of that organization.

I have listened well to my members on the board. The commodity groups there are significantly concerned about the humane treatment of animals. I am proud to say that, in my assessment, the majority of the producers in Alberta are responsible caregivers in the husbandry and the management of their livestock. However stated, we consider that the legislation, as it stands now, must be passed. We view the need to step forward to consider that the cruelty to animal legislation, as it exists under the Criminal Code of Canada, must be modernized.

I say this, and yet I must immediately come back to express concerns that they have that their practices of husbandry should be protected. They have affixed an asterisk to the approval, if you will, of Bill C-10B, as it stands, subject to the possible amendment that would bring in the accepted practices as they prevail within the husbandry of livestock. If I refer to the province of Alberta, please allow me to do so; it certainly applies to all of the provinces.

I am quick to point out that I take solace and comfort from the fact that I am a practitioner, a lawyer. Certainly from the standpoint of occupation, I have maintained my position as a criminal lawyer for the past 40 years. How time flies. This year is the 40th year of my practice, having graduated from the University of Ottawa, at the steps, if you will, of Parliament Hill. It has been a pleasure to revisit Ottawa. I say, promptly, that I have not learned it all; I am still in the process of doing that.

Having said that, I take solace from the assurances that I have had with the administration of justice within the sphere of prosecutions. I have seen the process. I have seen the need of Alberta justice stepping in in every instance. We have never had a private complaint go to full prosecution on its own. It has never happened in the province of Alberta. I have never seen it. I am assured that it has never existed.

I know we are limited in time, honourable senators; however, I wish to say that Alberta may offer an opportunity here of considering an amendment to the Criminal Code that would assist. Let me explain that under the Animal Protection Act of Alberta -- and I dare say this is

probably true of all provinces, that the majority of prosecutions dealing with animal welfare and cruelty concerns are probably, in the majority, taken at the provincial level, and only in the rarer instances are they prosecuted under the Criminal Code of Canada. Particularly now that there does not exist a hybrid section, prosecutors do not have the opportunity of prosecuting by indictment in instances that would warrant that. It will certainly fill a gap there.

However, in Alberta, we say by definition the following:

No person shall cause or permit an animal of which he is the owner or otherwise or a person who is ordinarily in charge of the animal to be in distress.

Then it goes on in subsection (2) to say the following:

Subsection (1) does not apply if the distress results from an activity carried on in accordance with reasonable and generally-accepted practices of animal management, husbandry or slaughter.

We have, in the instance of this definition, prosecuted, under the Animal Protection Act in Alberta, people who have deviated from those normal and acceptable practices of livestock husbandry in instances such as evidenced by a case that went to court only two days ago, November 28, 2002, which resulted in penalties of significant amounts, the case of Barry Graham, a producer in Alberta who has been under investigation for the past two years and who has neglected his animals to a point where they have been under scrutiny and, only recently, where they were charged as a result of 19 horses and 34 cows dying. As a result, 300 animals were seized. They were charged.

This particular farmer was charged under two different statutory authorities. They were charged provincially under the Animal Protection Act and also charged under the Criminal Code of Canada. They were not charged for the same offence under both statutes, because clearly *Kienapple*, a decision of the Supreme Court of Canada, prohibits the duplicity of prosecutions. However stated, it was for different offences. Under the provincial statute, it triggered a penalty of \$7,500, whereas the maximum under the Summary Conviction Act the federal statute was \$2,000. We have increased our penalties in Alberta three years ago by amendment from \$5,000 to \$20,000, so we have a statute that certainly affords us an opportunity of setting out a penalty of a significant amount, which serves as a deterrence.

If Bill C-10B contained a proviso wherein the livestock producers in our province of all sectors, be it beef, pork or whatever, were given assurances that they, indeed, can continue practicing their field of gainful employment and not be subject to the risk of criminal litigation, then there would be a comfort zone there. They are seeking that.

I have an assurance as a lawyer that the administration of justice will not allow it. I am

satisfied with the bill as it stands, that 429(2) not be there. However, as I heard Senator Andreychuk say while I was waiting in the lobby to address the assembly, why not leave it there? Why not leave it there if it is simply a few more lines? It is not going to make the bill that much more voluminous. Certainly there is merit to that.

In response, the Ministry of Justice has simply said that that is unnecessary because of section 8(3). I take that view too. I am satisfied with section 8(3). It gives the common law defences that I feel content with as a criminal lawyer. I sense that the producers do not see it that way. Certainly Senator Andreychuk does not see it that way. And if the committee were to, by now being familiar with our stature, our provincial statute, the animal Protection Act, it does set out that these practices in fact are justifiable in the instance where they are shown to be the normal practices of animal husbandry in that particular field. That would certainly take care of Senator Watt's concerns as well in the Aboriginal sector of killing seals.

The Chairman: Mr. Fontaine, I will ask you to wind it up now.

Mr. Fontaine: Yes. I will just finish on this particular note.

(French follows - Mr. Fontaine continuing: Le sénateur Nolin a posé...)

(après anglais)

M. Fontaine: Le sénateur Nolin a posé la question à savoir pourquoi l'augmentation des peines. En réponse, je suggère que la peine monétaire est de nature à décourager. Deuxièmement, la procédure sommaire et l'acte d'inculpation conviennent aux cas plus sérieux. Ce sont mes remarques.

(M. Fontaine : In conclusion, I wish to thank you...)

(anglais suit)

(Following French - Mr. Fontaine continuing)

Mr. Fontaine: In conclusion, I wish to thank you. I will certainly respond to any questions that you may wish to ask.

The Chairman: Mr. Bonnett, I understand that you and Mr. Wilson will be dividing the time.

Mr. Ron Bonnett, Member of the Board of Directors, Canadian Federation of Agriculture: Yes, we will divide the time. I wish to thank the chair and honourable senators for giving us a chance to speak on the cruelty to animals section of proposed Bill C-10. For those of you who are not aware, the Canadian Federation of Agriculture represents 200,000 farm families across Canada. We have provincial organizations in the provinces. We have a number of different commodity organizations representing dairy farmers, chicken farmers, egg producers and turkey producers. We represent a broad cross-section of people.

Each of the provincial organizations and commodity organizations have a democratic structure allowing issues to flow back and forth so that there is very intense scrutiny and comment on issues that come forward. The position that is presented to you today is basically pulling together all of the views of those different organizations and provincial organizations.

As mentioned, I am a member of the CFA's board of directors. I am also president of the Ontario Federation of Agriculture representing 40,000 farmers in this province. I am also a beef farmer from near Sault Ste. Marie, Ontario for people who know where that is.

We are very supportive of legislation that deals with cruelty to animals. We are supportive of many aspects of it, including tougher penalties for those who are proved to be wilfully doing cruel acts to animals. As an industry, we have been very proactive in developing codes of practice and ensuring that our farmers do the best job possible to manage the livestock that they have.

However, the reason we are here today is not to ask you to water down the bill, but it is to take a look at some of the things that we feel have to be fixed. One of those things is a legal oversight, which we feel will impair the existing defences that we have.

It could pose a threat to animal husbandry. This basically goes back to the section 429(2) of the Criminal Code.

We are proposing a fairly simple alternative. Farmers have a tendency to like to keep things simple, and we are just proposing an amendment to 182.5 that would change the

wording. It would read, "subsections 8(3) and 429(2) apply in respect of proceedings for an offence under this part." It actually extends 429(2) as well.

We have obtained legal counsel, David Wilson and Lynn Starchuk have prepared two opinions, and I believe that those are attached to your presentation. Mr. Wilson will summarize some aspects of that following my comments.

There are several other issues that we would like to address with respect to the bill. One of those things that continues to cause alarm is the moving of the cruelty to animals section from Part XI of the Criminal Code, Wilful and Forbidden Acts in Respect to Certain Property, to the Part V section, Sexual Offences, Public Morals and Disorderly Conduct..

I believe it is fair to say that for 50 years animals have been successfully protected under the property section of the Criminal Code. In moving it from the property section of the Criminal Code to the sexual offences section, the government is raising the status of animals in society.

As farmers, we are concerned about this. We are able to use animals in food production because animals are a commodity. The wording of property must reflect that. Humane treatment of animals is not compromised by the fact that they are under the property section now.

We would like to offer a compromise. If you still wish to move it to the new section, put a new title for Part V. It could read "cruelty to animals, private and public property." That reference to public property would also extend coverage for those people who were concerned that wild animals were being abused, which is not covered.

That change would put a connotation in that section that we are referring to property. We are not referring to something akin to sexual offences.

I wanted as well to talk about the definition of animal. It was interesting that it was discussed by the Senators earlier. We do have concern with putting in a definition of animal that gets into the issue of identifying an animal that feels pain. Not having a definition has never been an obstacle to prosecutions in the past.

If it has not been a problem in the past, why fix it? We believe it may create more confusion and more problems than those that it will solve.

I ask David Wilson to speak to us about the legal justification excuse and colour of right. You see I leave this stuff to the lawyers.

Mr. David K. Wilson, Legal Counsel, Canadian Federation of Agriculture: Thank you Mr. Bonnet, and thank you chairman and honourable senators.

In the interests of brevity, I am not planning to read the remarks that have been prepared. I plan instead to focus on five key legal reasons why CFA supports retaining the colour of right defence through a limited amendment to Bill C-10.

First, colour of right is an important offence. It applies when there is an honest belief in a state of facts or law. It is particularly important in my submission in protecting accepted animal husbandry practices. Without colour of right the very reasonableness of accepted animal husbandry practices could be scrutinized in criminal proceedings. That is a real concern to CFA.

The second point that I wish to make, and I say this with great respect to the government witnesses who appeared previously, Bill C-10 in its current form will not preserve colour of right. The Supreme Court of Canada has been very clear that colour of right is only relevant where it forms part of the definition of a crime as it currently does in the animal cruelty cases based on section 429(2).

Bill C-10 would eliminate any reference to colour of right in animal cruelty cases. I say, therefore, that section 429(2) is not redundant. The suggestions that were made earlier, in my view, are simply incorrect as a matter of law.

Third, the issues, concerns and the problems that have been raised have been made worse by the adoption under Bill C-10 of a lower threshold of guilt, whereas the existing provisions require wilful conduct to establish an offence. Bill C-10, and I am specifically referring to section 182.3, will criminalize negligent behaviour. This shift makes it all the more important that the colour of right defence be protected.

Fourth, the cases suggest colour of right applies to honest but mistaken beliefs, not only as to the facts, but also as to the law. In this respect, and I believe there were some comments earlier this evening on this point, it operates as a limited exception to the doctrine that ignorance of the law is no excuse.

Given the way in which section 19 of the Criminal Code operates, this line of defence would be lost under the current wording of Bill C-10.

The final point I wish to make is that the amendment the CFA is proposing, which as indicated by Mr. Bonnett would preserve the application of section 429(2) in animal cruelty cases, simply ensures that existing defences are not lost inadvertently. It will not prevent

animal cruelty laws from being modernized; it will simply protect against prejudicing the legitimate existing rights of animal users.

With those few brief comments and indicating that I am happy to answer any questions that you may have, I will pass the microphone to Mr. Bonnett for a few closing remarks. Thank you.

Mr. Bonnett: Honourable senators, in summary, we are not asking for special treatment. We want to be able to follow normal accepted husbandry practices with our animals and be free from malicious and unjust prosecution. Earlier, the concern was raised about the expense this could cause by getting ourselves into the court system and having to defend ourselves. Rather, we can fix the problem now.

In closing, we support the intent of the bill but not at the expense of our legal rights.

Senator Beaudoin: The two of you used the words "modernize the system". As well, you have proposed amendments to Bill C-10B. We have your documents, of course, and we will refer in our report to those two points.

Are you generally in agreement with the bill as it has been drafted, except for the amendment you proposed, Mr. Fontaine?

Mr. Fontaine: Yes.

Senator Beaudoin: Could you repeat your amendment, please?

Mr. Fontaine: Rather than stating the specifics of the amendment, I am simply suggesting that you would consider an analogy with the animal protection act of the province of Alberta to allow that those practices common to animal husbandry in the livestock industry be permitted and be exempt from prosecution.

Senator Buchanan: That would cover lobsters then, would it not?

Mr. Fontaine: Yes, it would.

Senator Beaudoin: That is a good start.

Mr. Fontaine: Our definition is less complex than the one in the animal protection act of Alberta which simply says an animal is not a human being. That is it.

Senator Beaudoin: What is your amendment, Mr. Bonnett?

Mr. Bonnett: We had several amendments. One was to amend the wording of clause 429(2) which would allow the protection that is already there within the law to continue.

We mentioned two others. One was the addition of a subheading above clause 51 which would refer to public and private property. Thus, it keeps the intent that it covers property and it is not like it is attached to humans.

The other is the removal of the definition of animals, which goes back to the lobster issue. One of the problems we have with the definition as it stands is that it could come down to the fact that people taking a plough through a field and ploughing worms could be prosecuted. There is the possibility that someone could see that as an issue. Why create such a problem?

The Chairman: I would like to ask Mr. Wilson his views on headings as an interpretive tool.

Mr. Wilson: The basic principle is that the heading of a section is useful as an interpretive aid. It does not alter in a substantive way the body of what is in the sections. However, there are certainly a number of instances where the Supreme Court of Canada, and other courts, have found the heading useful and significant. It tends to colour the interpretation of the other provisions.

I would just like to add one other comment on the issue of the proposed amendment by CFA as it relates to section 429(2). I am aware of a number of different proposals that have been suggested by different groups that are concerned about the elimination of section 429(2). There are different variations on a theme. It is fair to say a couple of things about the CFA approach. One is that there is a recognition by CFA that this bill is at a fairly advanced stage. The suggestion is not to look at radical surgery. As Mr. Bonnett indicated, CFA supports the intent and thrust of the bill. We have to recognize that there are several problems.

The comments I made focused particularly on the loss of the defences under section 429(2). It is an attempt to deal with that in a very surgical as opposed to a more open-ended way that the CFA has framed the amendment in the manner that it did.

Senator Beaudoin: If with your two amendments we improve Bill C-10B, this may be one way for us to do it in the report of this committee. Generally speaking, you agree with the bill the way it is, except that you want some amendments. They may be reconciled with the rest of your memorandum.

Is it that your amendments may request more precision, or what? Are there new ideas or more precision? What is it?

Mr. Wilson: If I could just speak to the amendment as it bears on section 429(2), I believe that there is, frankly, a difference of legal opinions about the significance of section 429(2). I heard remarks earlier this evening by the witnesses for the government suggesting that it is really redundant, that it really does not mean anything and that the common law fully encompasses those provisions.

Section 429 encompasses the element of lawful justification and excuse, which certainly does have an overlap with the common law. You can interpret the cases in different ways as to whether it supplements the common law. However, as it relates to colour of right, that is a whole different ball game. Colour of right is a concept which, in the *Jones* case, the Supreme Court of Canada has suggested can only be relevant where it is included in the definition of a crime. In that case, they threw out an Aboriginal group who attempted to argue colour of right in defence of some bingo practices on the basis that they did not have a counterpart to section 429 in respect of the offence that they were dealing with there.

To me, if you extend that logic, and it is not a big leap, to the animal cruelty section, if Parliament says, "We are getting rid of section 429. However, you can still rely on the common law," that leaves open a huge question. Does colour of right have any place in there any longer?

In my respectful view, it would not because of the way the Supreme Court of Canada has interpreted the law and also because of the way that the courts would interpret a change of that kind. The courts would say that it was obviously Parliament's intent to eliminate section 429 and what was in that, which expressly refers to the colour of right. Absent some clear case law giving life to colour of right in the Common Law context under section 8(3) -- and I am not aware of any case law that has done that -- there would be a big problem.

That leads to the second point: Who cares? Is colour of right of any significance? There is limited case law on the subject, so we have that disadvantage. The Supreme Court of Canada has not dealt with animal cruelty, to my knowledge, and has only touched on colour of right in a limited way. Frankly, we are working with fairly limited tools. However, in respect of the existing limited case law, the *Comber* case, which was mentioned earlier this evening, provides an example. Colour of right was certainly front and centre in providing a defence to an accused farmer who shot a dog accidentally when trying to scare it off and, having accidentally shot the dog, shot it again to put it out of its misery. That colour of right was used to provide the farmer with a defence. The individual was found not guilty as a consequence.

The suggestion was made: "What the person did was perfectly reasonable so he would not face any problems under the existing law." However, the court, in that case, did not look at

reasonableness. The court said: "Look, this fellow had an honest but, perhaps, mistaken belief that the animal would not survive and so shot it to put it out of its misery. That forms the basis for a colour of right defence."

I mentioned these things to underscore that we are dealing with an area of the law that is complex, difficult, evolving and somewhat untested. This is not a situation where important defences should be thrown aside on the basis that, somehow, they are redundant.

Mr. Fontaine: Since Senator Beaudoin raised the question to both of us, I want to briefly respond to the amendment that I had suggested by transposing the section from the Animal Protection Act into the framework of Bill C-10B. As a *mise au point*, I am not suggesting that we maintain section 429 (2) and then deal with the additional insertion of the wording of the Animal Protection Act. If section 429 (2) were to fall as it currently stands, as I view section 182, then our proposal is that we would transpose wording to the effect of the Animal Protection Act.

The Chairman: Mr. Fontaine, if I hear you correctly, you disagree with Mr. Wilson's assertion that without section 429, the colour of right could be lost as a defence.

Mr. Fontaine: I do not follow Mr. Wilson entirely. I have always perceived the colour of right to deal mostly with property. I think that he would agree with me. Part 11 dealt with property and, as such, it was probably intended by the legislators who passed 429 (2) to provide a defence that would relate to property. Certainly, it is separate and apart, and colour of right is not even mentioned in clause 8(3) but we do have Common Law principles that relate to lawful excuse. My suggestion is that it would relate to colour of right. I am not concerned if section 429 (2) falls; I have no problem with that. I believe that defences will come under clause 8(3). I take solace from the fact that the eminent counsel, Mr. Roger Tassé had made the same proposal. I am supported therein by the Supreme Court of Canada in the decision of *Regina vs. Holmes* set out in 1988.

(French follows -- Senator Beaudoin: Est-ce que vous avez...)

(après anglais)

Le sénateur Beaudoin: Est-ce que vous avez son amendement?

M. Fontaine: J'ai simplement vu sa présentation. M. Tessier a suggéré qu'il n'y avait aucun risque d'atteinte à la défense de l'article 429(2). Il a simplement indiqué que grâce à l'article 8(3) nous avons préservé la défense des principes du droit commun.

Le sénateur Beaudoin: Je ne saisis pas très bien. Qu'est-ce qu'il propose? Il a sans doute rédigé un texte?

M. Fontaine: Si je ne m'abuse, M. Tessier a indiqué simplement qu'à son avis le fait que l'article 429(2) soit éliminé du projet de loi C-10 – à l'époque C-17 – ne représentait pas un problème.

Le sénateur Beaudoin: Que disait le paragraphe qu'il a écarté?

M. Fontaine: Sans mentionner un article pouvant être inclus dans le projet de loi C-17, M. Tessier, alors qu'il s'adressait au comité, avait simplement indiqué que si l'article 429(2) était éliminé, les défenses prévues sous l'article 8(3) existeraient tout de même. C'est la position que je maintiens. Cette position est d'ailleurs supportée par la décision de la Cour Suprême du Canada dans l'arrêt *Regina c. Holmes*. Ai-je bien répondu à votre question ?

Le sénateur Beaudoin: Oui. J'aimerais examiner les trois amendements afin de voir ce qu'il est possible de faire. Dans notre rapport, nous suggérerons, s'il y a lieu, des amendements à la loi. Il arrive que nous acceptions le rapport tel que présenté. Ce fût le cas concernant les armes à feu où il n'y eut aucun amendement. Le projet de loi C-10B pourra faire l'objet d'amendements. Notre rôle est d'entendre des témoins et des experts. Dans le cas où ceux-ci nous produisent des documents, nous pouvons suggérer des amendements à notre législation. Nous sommes ici pour améliorer les choses.

M. Fontaine: J'aimerais suggérer que la Loi sur la protection des animaux, telle qu'elle existe en Alberta, soit soumise au comité afin que vous puissiez en examiner la formulation.

(Mr. Fontaine : So that you would see the wording...)

(anglais suit)

(Following French -- Mr. Fontaine continuing)

So that you would see the wording of the Animal Protection Act, I would suggest that I could make that act available to you. I do not have it with me, but I will do so.

The Chairman: We will leave it to the clerk to contact you, Mr. Fontaine.

Mr. Wilson: I have a narrow point to make for clarity. Recognizing that the law in this area is not entirely clear, it is, however, clear and true that the colour of right has its roots in property law. That is where it began. The simple examples of someone who is accused of stealing and says, "But I thought it was mine." That is a classic example of colour of right.

There are examples of this referred to in the opinions that we cite. One is the *DeMarco* case and the other is the *Watson* case. It is clear that colour of right is not limited in its scope to property rights. The *Watson* case involved a Greenpeace person accused of mischief on the high seas. It had nothing to do with property rights at all. The concept of the doctrine, however, was recognized as something that could be considered by the court. In respect of animal cruelty, whether the individual owns the animals in question is not the issue. If you take the Comber case, the one animal cruelty case where colour of right was actually decided, the fellow had shot a stray dog, not his own dog, to protect wildlife on his property that was not his.

I want to point out that colour of right is an important doctrine, but it is not limited in its scope to property rights. That is important.

Senator Jaffer: Perhaps Mr. Wilson can answer this. When I look at this segment of the act, it is part 5(1), not five. Mr. Bonnett, I think you are mistaken to state that this falls under sexual offences. It is part 5(1). I think it is a separate part. I wanted to clarify that.

Mr. Bonnett: It is a separate heading.

Senator Jaffer: Yes, it is a separate one.

I have not read the *Watson* case, but from law school, I always thought colour of right was property. From what I understand, this act is taking animals out of the property section. Therefore, I will read the *Watson* case.

Mr. Wilson: I think the law is quite clear that colour of right is not limited to property rights, although it is true that property rights lie at the historical roots of the concept.

It is also probably true that the proprietary aspect may be particularly relevant in some

cases. To take an animal cruelty case and a situation with farm practices, the fact that the animals are, from even the point of view of a farmer seeking to act in a humane way, a commodity is something that can have a bearing on how the colour of right doctrine is applied. To clarify, the law here gets a little complex, but colour of right is not limited to property rights and the proprietary aspect may still be relevant, which is all the more reason why the defence should be retained.

Senator Jaffer: Is it not true that, in the code, "colour of right" is part of the property defences?

Mr. Wilson: Right now, in section 429, colour of right is part of a set of sections that deal with property issues. However, that does not mean that colour of right needs to be limited in its scope to property rights. In fact, the courts have held otherwise.

To put it another way, if the government decides to move the animal cruelty sections out of certain forms of property covered in one section of the code to another part of the code, that does not remove the need and the importance of colour of right. It is still a very important defence.

Senator Jaffer: I want to thank the four of you for being here so late this evening. We appreciate your coming all this way.

The Chairman: Thank you very much. I wish to echo Senator Jaffer's comments. We thank you for your patience and for very worthwhile and erudite presentations. Thank you very much.

Senator Adams: Before we adjourn, will the draft amendment come to us?

The Chairman: Yes, I believe Mr. Fontaine will present something to the clerk. We already have Mr. Bonnett and Mr. Wilson's presentations.

Mr. Buy: We also have a brief that will be presented. Another group next week will present a brief similar to ours, except for an amendment specific to concerns we will be presenting at the same time. We felt you had a lot of lawyers presenting a lot of things and it would be good to have other opinions.

The Chairman: Thank you very much.

The committee adjourned.