

Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs

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OTTAWA, Thursday, February 13, 2003

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill C-10B, to amend the Criminal Code (cruelty to animals), met this day at 10:56 a.m. to give consideration to the bill.

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

The Chairman: Honourable senators, we have before us one panel that consists of two groups. They are REAL Women of Canada and the Campaign Life Coalition.

Our normal procedure is to ask each panel to take five minutes for their presentation. I understand, Ms. Landolt, that you were not able to get your brief into us until quite late. As a result, senators have not had time to review it. We will be more lenient with your presentation this morning because of that. However, if you can narrow it down, that would be better since we like to have more time on the other end for interaction and questions from senators.

Senator Joyal: On a point of order, Mr. Chair, yesterday, I raised the issue that we were supposed to receive from the Canadian Council on Animal Care their guide as to the care and use of experimental animals. The clerk mentioned that this document was distributed to our offices in January. In fact, it was distributed in January. Therefore, I must apologize to my colleagues. All my colleagues should have received from the clerk of the committee the document dated January 9.

Honourable senators will recall that when Mr. Gauthier, a representative of the Canadian Council on Animal Care, appeared before the committee he referred to that guide. I asked that members of the committee be given a copy of the guide.

Yesterday, they were questioned about it. This morning, I checked my office and found that, in fact, it was sent to members of the Standing Senate Committee on Legal and Constitutional Affairs from Marcy Zlotnick, clerk of the committee, on January 9.

Senator Nolin: Mr. Chairman, in the House of Commons committee mention was made of a study that is available through Justice Canada. This study supports the

fact that an individual who can cause cruelty to an animal can become dangerous to human beings. Perhaps it would be possible to obtain this study from Justice Canada.

The Chairman: We will look into it.

Senator Cools: That is a whole issue that involves assertions having been made. We would need some solid research in this regard. There is a whole body of research that shows the relationship between psychopathic behaviour and cruelty. If they are cruel to people, they are cruel to animals too. It is very interesting research and we should call witnesses on that too.

Senator Nolin: Proper research and conclusions from the research are different things.

Senator Cools: We would need to look at that carefully. Many documents come out that just spring to conclusions without any strong evidence.

The Chairman: Ms. Landolt.

Ms. Gwen Landolt, National Vice-President, REAL Women of Canada: Members of the committee, it is always a pleasure to come before you. I am delighted to be here dealing with Bill C-10B, cruelty to animals. Our concerns about the bill are two-fold.

First, the bill has widened the offence of cruelty. I know that you had before you Richard Mosley, Assistant Deputy Minister, Criminal Law, Department of Justice, who said that the liability of the industry would not be changed under this legislation. However, I looked at the legislation and it has broadened the present provisions of cruelty to animals in Canada. The present act used the word "wilful" and in the proposed legislation, it is "wilful and reckless." This gives quite a different meaning to the prohibition against harming animals. There is another provision in proposed 182.3 of negligently causing "unnecessary pain, suffering or injury to an animal." There was no such offence in the current legislation. In fact, it seems we have broadened the offence, which may create more problems for the industry because we have not only "wilful" but "reckless" added to the definition. This makes the industry more vulnerable than it is under the current legislation.

This is a particular concern because your previous witness, Mr. Mosley, stated that the industry must be humane in its practices. That was in part of his testimony. The standard of care, that is, the standard of being humane, may not conform to the customary and accepted practices of industry, whose procedures a court may subsequently determine cause unnecessary pain. In fact, a judge may determine under Bill C-10B that the customary practices in any industry are not acceptable because cruelty to animals includes not only the "wilful acts" but also "reckless acts" and "causing unnecessary pain."

There is also question about the words "brutal" and "vicious." There is no definition of those two words. Again, this causes concern. What does that mean for Aboriginals with regard to their standards? Hunt farms is another example. The leg traps were acceptable in my lifetime, but now they are not acceptable because the standards of care have changed. Any judge could change it. By widening the definition of cruelty to animals, we are concerned that there will be problems for the industry and for our Aboriginal people in their customary standards of practice.

It has been mentioned that the Criminal Code amendments last year made private prosecution more difficult. Nonetheless, I do know that Crown officers and representatives of some humane societies are exempt from provisions of the amendment under the Criminal Code prohibiting private prosecutions.

I was concerned about the winter 2000 issue of the Animal Alliance newsletter, which said:

I can't overstate the importance of this change. This elevation of animals in our moral and legal views is precedent setting and will have far, far reaching effects. We'll make sure of that.

Therefore, not only would we have the industry and Aboriginals more vulnerable under the wording of this new amendment, but even if the Crown does not proceed, private prosecution obviously will proceed by humane officers. That is a major concern. There are wide-ranging implications to this amendment.

Turning now to our second point, the definition of "animal" in proposed section 182.1 states, "In this Part, 'animal' means a vertebrate, other than a human being, and any other animal that has the capacity to feel pain." Again, I look at this from a legal perspective as a lawyer. This definition seems to create protection for unborn human life as well as for animals. This conclusion is based on the following law, which I will summarize as follows.

Under our Criminal Code, section 223, a child only becomes a human being when "it has breathed, has an independent circulation; or the navel string is severed." In short, the Criminal Code provides that an unborn child becomes a human being only after it has been born and separated from its mother. Yet, under the 1991 case of *Lemay and Sullivan*, section 223 of the Criminal Code, when a child becomes a human being, was applied. In that case, a child was in the course of being born and was attended by two women who had no medical background. The baby's head emerged into the birth canal but the rest of his body was stuck. The woman was in labour for 24 hours before they took her to the Vancouver General hospital. As the trial judge said, a young intern used a basic delivery technique and the baby was born in a matter of two minutes, but the baby was dead. The question arose: Was this a human being, applying section 223 of the Criminal Code? The Supreme Court of Canada said no, it was not a human being because its body had not completely emerged, even though its head had been born.

Senator Nolin: Can you repeat the name of the parties? Is it *Lemay and Sullivan*?

Ms. Landolt: It is on page five of the brief, *Lemay and Sullivan*. We know under the

Criminal Code and criminal law that a child is not a human being until it is completely born.

Then, under the civil code, as well as the English common law, we have *Daigle v. Tremblay*. In that case, an interlocutory injunction was brought by the father of an unborn child in the Province of Quebec. The Supreme Court of Canada set aside the interlocutory injunction brought by the Court of Appeal of Quebec on the grounds that the child was not a human being and therefore the injunction against the woman was invalid.

Under the common law, in the case of *Winnipeg Child and Family Services v. DFG*, an Aboriginal woman who was addicted heavily to glue sniffing. Her first child was born normal, but she had two children who were born with foetal abnormalities because of their mother's addiction. The three children were taken away by child welfare services and placed under a court order for guardianship because due to the mother's addiction the children were at risk. She became pregnant again. The Child and Family Services of Winnipeg, by court order, put the mother into medical treatment. The Supreme Court of Canada again held, in 1997, that the woman could not be incarcerated because it was not a human being and, therefore, the child could not be protected, even though the child would be born, obviously, with foetal abnormalities.

Ironically, because the woman was put into treatment, her child turned out not to have the abnormalities because at that crucial period of her pregnancy she was getting care and stopped the glue sniffing. However, the point is that the child was regarded both in criminal law and civil code of Quebec and also under the common law of the English provinces as not a human being under decision of the Supreme Court of Canada.

Finally, in the year 2001, there was the case of *Martin v. Mineral Springs Hospital*. It is a case where during the course of delivery, a child died through the admitted negligence of the attending physician. The mother argued that if the child is not a human being under the case law of the Supreme Court of Canada, therefore, she was entitled to damages for the loss of a part of her body to the same extent as she would receive damages for the loss of an eye or a limb.

Madam Justice Rowbotham of the Court of Queen's Bench of Alberta denied this claim on the grounds that one cannot receive compensation for the loss of this part of one's body, which was the unborn child, because one cannot get compensation for the death of a born child or family member because there can be no pecuniary measurement. If compensation cannot be awarded for the loss of a born child, it cannot be awarded for the loss of an unborn child. Consequently, damages for the loss of the unborn child were denied on the same grounds that you have for the loss of a born child. The idea of it being part of a woman's body seems to have been transformed by Madam Justice Rowbotham last year. It would appear that the child cannot be matter of the mother's body because of the development of the DNA. We now know that it has a totally separate DNA from

the mother. We never had that before knowledge before. This is something quite new. Although DNA was discovered in 1953, it is only recently that we have been able to establish that it is totally separate and distinct from the mother. It is a separate individual.

Again, in the Court of Queen's Bench of Saskatchewan, in *Borowski v. Attorney General of Canada*, the judge found that modern embryological and genetic studies have verified that the child before birth is genetically a separate entity from the time of conception or shortly thereafter. The *Borowski* case was overturned on other grounds, but the trial judge's finding of separation of the child was not overturned.

Accordingly, in Canada, the unborn child is not a human being either in criminal law or in civil law. Further, since the unborn child's mother cannot be compensated for the loss of her child because it is regarded as a separate entity, it would appear that it is not a human being within the definition section of this bill.

When this bill is passed, it would be an offence to wilfully cause unnecessary pain, suffering or injury to an unborn child, and the word "brutally" and "viciously" would also be applicable. Under clause 182.3 of this bill, it will then be an offence to negligently cause unnecessary pain, suffering or injury. We have already seen very persuasive decisions in the U.S., which indicate that, for a child *in utero* who is damaged, there is compensation being paid. Also, ironically, women can now receive compensation for the loss of an embryo under the new medical technologies.

The new sweep of the law has become clear that although it is not a human being, under the law, it would appear that it is developing to be regarded as that.

A point should be made that if the status and protection of animals is increased by way of Bill C-10B, then these protections must reasonably be extended to unborn human life. The language of this bill indicates an intent to raise the status of animals to what the animal rights groups call "personhood" in order to eventually give animals some sort of legal standing in court. Given the Canadian court's definition of unborn, it would be implausible not to extend these same rights to the unborn child as well under Bill C-10B.

This is not a surprising conclusion because, for example, in February 1887, when the Toronto Humane Society was first established, it was established with broad humanitarian aims with special concerns for horses and also for neglected and abandoned children. In New York City in 1874, in the famous case of an adopted child, Mary Ellen, when the police and the district attorney's office refused to assist in a case of a seriously malnourished and neglected child, the American Society for the Prevention of Cruelty came to the rescue. They brought successful action for protection of the child who was being treated as an animal and was a member of the animal kingdom. Therefore, this child, Mary Ellen, was given protection.

It is not unreasonable that the time has come to provide this protection under Bill C-10B, or whatever legislation, because approximately 110,000 abortions were performed in Canada last year. As a result, more Canadians were killed by abortion in Canada in one year alone than were killed in all the wars in which Canada participated in the 20th Century. Bill C-10B may provide the means to put a stop to the pain and the suffering and death of unborn human beings who are, in current Canadian law, relegated to a lower status than animals.

The only conclusion one can reach when we look at the common law, the Criminal Code and the civil law of Quebec, is that clause 182 in Bill C-10B provides protection to animals, and quite clearly is extended to the unborn human child, for which we are very grateful.

Ms. Karen Murawsky, National Director of Public Affairs, Campaign Life Coalition: Thank you for inviting us to meet with your committee.

Campaign Life Coalition is the national pro-life political organization. It is within our mandate to take note of any and all matters in Parliament that will affect the status of children before birth and other vulnerable people. In this context, we have reviewed Bill-C10B and have found portions of the bill that require our attention.

I would note that you have in front of you a brief dated February 13. There was an earlier brief that was changed after the bill was split. I would direct your attention to the brief dated February 13. Ignore the previous one.

Mr. Aidan Reid, National Public Affairs Officer, Campaign Life Coalition: In the context of this bill, we are concerned primarily with the definition of an animal and the relation of this definition to the protection of animals and children before birth. In clause 182.1, we see that "animal" means a vertebrate, other than a human being, and any other animal that has the ability to feel pain.

We must ask whether it is possible to determine which animals can feel pain and whether it is sensible to research what their status would be under this bill. In contrast, there is significant and compelling scientific testimony that unborn children at the very early stages of life in the womb do feel pain. Yet, much of the suffering of animal, which would be prohibited by Bill C-10B, is allowed every day to be imposed upon prenatal humans.

Where is the moral balance in this reasoning? The government refuses to protect children before birth and is moving to allow them to be killed simply for their stem cells. Prenatal children are not human beings under the Criminal Code, as that status is reserved for those of us who have been born.

At this time, it is apparently not politically correct to give any recognition to the most basic right of the unborn child, the right to life.

On the other hand, we have this Bill C-10B, which recognizes the seriousness of harming an animal. It states that a crime would result in a possible five-year prison term, or a fine and 18 months in prison.

Will we create a system whereby the lives of animals are accorded a higher value than that of human beings?

When this bill was analyzed by Mr. Gérald Lafrenière of the Law and Government Division, Library of Parliament, he stated that the bill was being introduced due to "mounting scientific evidence of a link between animal abuse and domestic violence and violence against people generally." Likewise, Dr. Philip Ney in *The Psychological Aspects of Abortion*, 1979 stated that,

Permissive abortion diminishes the social taboo against aggressing the defenseless, ... When we are so careful not to tamper with the delicate balances of plant and animal ecology, one wonders why we are so ignorant of the effects that killing the unborn infants of the human species is having on all humanity.

Animals are beings that feel pain and require extensive protection in our society. Human children *in utero* feel pain and are not protected in our society. Where does this place the animal versus the human being on the human scale of value?

Consequently, it is possible that human children in the womb would be included under the category of "animal" in this bill. While Bill C-10B would fail badly by not giving recognition to the higher status of human beings as opposed to animals, it would at least give protection to human children before birth.

Senator Beaudoin: You raise a difficult problem. Criminally, the foetus is not protected. In civil law, it is not. In common law, it is not. We have that definition in clause 182.1. You say that the animal has more protection than the foetus. Is that not what you said at first?

Ms. Landolt: Yes.

Senator Beaudoin: Are you suggesting that we redefine the word "animal"? I cannot see how we may change the criminal law on abortion by proposed section 182 in the interpretation of the courts. It is true that the foetus is not protected because the court said that before the child is born the foetus does not exist as such. We all agree on this, I think.

The Parliament of Canada may define abortion. We may amend the Criminal Code and give protection to the foetus. Of course, we may do that. However, the purpose of this bill is to address cruelty to animals. I cannot see how a foetus may be considered an "animal" — that is impossible. Are you saying that the unborn child must be an animal and therefore it falls within the definition of section 182?

Ms. Landolt: It falls precisely, Senator Beaudoin, within the definition. It says "a vertebrate" — which applies to the unborn — "other than a human being." By civil

and criminal law, a foetus is not a human being; "feels pain" — we know a foetus does feel pain. It falls within the four corners of the definition. You say that will be in conflict with section 223 of the Criminal Code because it is not a human being until it is separated from its mother. You have two conflicting provisions.

One must assume that the Minister of Justice knew what he was doing when this legislation was drafted with such a broad definition that would encapsulate the unborn. We all know that human beings are within the animal category. They are not jellyfish. They are not cephalopods. They are not tubers or vegetables. They have to be something, so they are animals.

So there is a conflict. Section 223 of the Criminal Code says a foetus is not a human being. This bill, if passed, says that there is protection because a foetus is not a human being under section 223 of the Criminal Code. This bill states that, even if it is not a human being, whatever it is, it is protected because of the provision of this bill. This section protects it. We do not know what it is but we know it is an animal. We know that human beings are all animals. We know that this bill is then protecting a foetus, even though it may not be a human being. That is one issue. We know that it is not a human being under the Criminal Code and by the civil and the common law.

Senator Beaudoin: This is sure.

Ms. Landolt: This bill refers to something that, by definition, is something other than a human being. If a foetus is not a human being, it must be something. That is why the child in the womb fits directly within the four provisions. There is a conflict. One side says it is not a human being but the other side says this is a not human being but it is protected anyway. That is what happened.

I presume the Minister of Justice knew what he was doing when he drafted this legislation, but he does encapsulate a child in the womb. Even though it is not a human being, it is protected under this bill.

Senator Beaudoin: Criminal law is a law of defence. We must be precise in the Criminal Code. The courts have ruled on the question of abortion. Parliament may legislate, nevertheless. There is no doubt about that. They have not legislated now for a number of years — not since the famous cases of abortion.

We are now dealing with cruelty to animals. It may be that we will have to bring in an amendment to clause 181.2. We have heard a lot about the definition. It is not clear-cut. I do not think that we may infer from the proposed sections in Bill C-10B that the foetus will come under that clause. It is too big. I cannot see how a court of justice would come to such a conclusion.

It may be that the foetus has no protection at all; it may be that, indirectly, a court of justice may come to the conclusion that the foetus should be protected. That may be. However, in a domain such as criminal law, we must be so precise that we

cannot infer that conclusion from that section 181.2 as it is drafted. That is my point.

I have a legal problem there. You have stated that the unborn child must be an animal and, therefore, it falls within the definition. How can that be the case? A human being is a human being. An animal is another being.

The purpose of this bill is to deal with cruelty to animals. It has nothing to do with human beings, as far as I can see, or with the foetus before the person becomes a human being.

Ms. Landolt: That is our point, Senator Beaudoin. The definition is so broad that it encapsulates and includes the unborn child. It is up to a court of law to decide that. Under the Charter, anything is possible with the courts. Under section 15 and section 1 of the Charter, the courts have wide ability to interpret many things that we never determined. In all our criminal law cases, everything not remotely connected with abortion, the court has had to interpret. It may not be that the court would accept this argument but the window is opened by this definition, for which we are very grateful. We care about animals. We care about all human life. We are glad that this has been broadened to encapsulate that.

Senator Beaudoin: I cannot imagine that the Supreme Court of Canada, which rendered decisions on abortion, would come to such a conclusion. They have dealt with abortion. If we want to change the law, Parliament may do that. Whether or not we should is another question. However, the court has already made its decision on this issue. I cannot see how they may infer from statute that we should concur with the argument that a foetus has this protection. That is not the purpose of this bill.

Ms. Landolt: We have to presume that when the broad definition was put in, the minister must have known what he was doing. Why else would he put that definition in? It is up to a court to decide.

Ms. Murawsky: Honourable senator, we seek protection for a child who has been excluded, basically, from the human race, if you will, before birth. We seek that protection where we can find it. We are all familiar with the cases that Ms. Landolt cited, but I have a situation from personal experience. My daughter-in-law, through medical negligence, lost a child as it was born. There is no compensation for that child either, because that child does not exist. There is no victim. The case cited in that case was the Winnipeg Child case. That child is totally excluded from the human race. The Criminal Code calls it an "unborn child." Where does that child fit? This is the first place we have seen in proposed law that that child fits. We grasp these opportunities.

Senator Beaudoin: To summarize, I think the court will say it is up to Parliament to say exactly what Parliament wants. An animal is an animal; a human being is a human being; a foetus is a foetus. It is up to the legislative branch of the state. To

infer otherwise from a bill such as this is pretty far-fetched, in my opinion. I just raised the difficulty.

Senator Joyal: Thank you for having brought this issue to our attention, because it shows the importance of the definitions in this bill. I share your opening comment. We were told that this bill was just increasing the penalty for animal cruelty. However, in practical terms, the more we study it, the more we realize the implications of it.

It might be helpful for you to read the transcript of the two experts we heard last night, Professor Livingston and Professor Adamo, who testified on the issue of pain in relation to animals. I would add that to your references, because it was very helpful.

I am of the opinion that we should remove from the definition "and any other animal that has the capacity to feel pain." The two professors demonstrated clearly that the vertebrate have five classes. I do not want to repeat them; that is on the record. The only other group of beings, according to science, that could be attached to the definition of "animal" are cephalopods, as you mentioned yourself. All other ones cannot suffer pain, according to the scientific community. If we want to protect insects, that is up to us, but that is not included in this definition, and the word "pain," in my mind, is redundant.

That being said, I am having trouble following a point on the logic in your brief. It is the following. You say on page 5 of your brief, which states that, "the Supreme Court of Canada held that the unborn child was a part of the mother's body." That has been sustained in the Criminal Code, the common law and the Civil Code of Quebec. I think the court has been consistent — it might not be right, but it has been consistent — in maintaining that the unborn child is part of the mother's body.

Therefore, if it is part of the mother's body, it is included in the first part of the definition, which says that an animal means "a vertebrate, other than a human being." A foetus assimilated to the body of the women, so it is excluded from the first part of the definition.

When it is excluded from the first part of the definition, then you go to the second part of the definition. The second part of the definition refers to the capacity to feel pain. In your own brief, you say — and I agree with you — that by the seventeenth to eighteenth week, "nerve connections become completely established between the cortex and the thalamus in the brain." Last night, it was clearly demonstrated that you need the cerebral cortex to feel pain. According to that scientific definition, the embryo does not feel pain before 17 or 18 weeks.

Therefore, even according to your approach, there would be period in which the embryo would not be an "animal" according to 182.1 because it cannot suffer pain. As you said yourself, in the first 17 or 18 weeks the embryo cannot suffer pain because there is no connection between the cerebral cortex and the brain. It was

clearly demonstrated to us by the experts that you need the cerebral cortex.

There appears to be a contradiction in your position, which I have been wrestling with. The first one is that the embryo is part of the human body, according to the Supreme Court, in all our tradition, common law and civil, and they are excluded from the first part because they are in the human being of the woman. They are part of the body of the woman, in the first part of the definition.

Ms. Landolt: There are several responses. One is this idea of the thalamus and the cortex being connected to feel pain. That was established in 1997 by the Royal College of Obstetrics and Gynaecology in Britain. That has subsequently been changed.

The more recent research now shows that you do not have to have them connected to feel pain. In fact, the research shows that the pre-term infants experience more pain than mature adults and that the neonates feel pain even before the cortex and thalamus begin to form at eight weeks. That is sufficient. That is the most recent study from 1998. What you heard last night was the 1997 study, and it has changed.

Senator Joyal: The length of time can always be discussed, whether it is the eighth week or the fourth week. The principle is that when the egg has just been fertilized, at that very moment, the stem cells cannot feel pain. On moral grounds, you say you cannot kill a human being. I agree with you, but that is another issue. However, in the strict sense of feeling pain, there is no scientific proof that a stem cell feels pain. I am not contesting your position; I am trying to understand. There is a period, whatever the length of that period, whereby the embryo does not feel pain. If that is so, there is a contradiction in the definition that we have in the second part of the definition, because there is a part whereby you do not feel and a part where you do feel. We have to be consistent with the definition. The definition must remain constant on the approach that we develop.

Ms. Landolt: I understand that the problem of feeling pain is that nobody can determine when you feel pain, whether it is an animal or whatever it is.

If someone hurts me, I can scream or speak out. However, with a child or a duck or dog or horse, there is no way you can tell when they begin to feel pain. However, the research is now beginning to indicate that the child in the womb can feel pain as early as eight weeks, according to the 1998 study I have footnoted. However, even if that is not true, the point is, then, if the child can feel pain at 16 to 17 weeks, that is only when the woman is four months pregnant. She is just barely four months. It would fall within the definition if you use pain as a definition.

I agree with you that using pain in the definition is pretty risky, because you just do not know. If you remove it entirely, it solves the problem. It is difficult. I think researchers show you must use psychology and physiology and biology, and they still do not know pain. It is better, I think, to remove that because no one really

knows.

Even if I am wrong about eight weeks, at least by 16 or 17 weeks when the thalamus and the cerebellum have united, then we know from that time on it would fall within the category. That is, if you leave the pain in the definition. However, I agree with you; pain is so vague and difficult to prove, it is not necessary in this definition to protect animals.

With respect to the child being a part of its mother, the *Martin v. Mineral Springs* case has really changed the common law. That case shows that the mother was refused damages simply because it was an unborn human child and she could not get compensation for the born child. It changed the whole gamut because medical technology with DNA has changed everything now. The DNA shows that it is a separate human being. The court was not aware of that in 1989 and 1991. The court must move with the times. It cannot go back to the old system when they were ignorant of the medical DNA. DNA is marvellous. It has been so advantageous in the courts of law in many areas.

If you leave the definition as is — and I agree, move the pain out because it is conjecture rather than actual proof — you will still find a child in the womb. There is a valid, pervasive argument to show it falls within the definition. We are animals. Biologists and scientists define us all as animals.

Senator Joyal: We are mammals.

Senator Smith: I follow along with the thinking of Senator Beaudoin. The will of Parliament at the moment is to preserve a woman's right to choose. That has been dealt with legislatively before.

Senator Cools: It has not been dealt with by Parliament.

Senator Smith: Excuse me, Senator Cools.

Senator Cools: It has not been dealt with by Parliament

Senator Smith: I have the floor.

The Chairman: You will have your turn, Senator Cools, I assure you.

Senator Smith: I think it is pretty clear as to what the intent of Parliament has been with regard to this issue. I agree with Senator Beaudoin. Although you are inviting the courts to make an interpretation that it is applicable here I do not think they will do that because the intent is not unequivocally clear.

I do not understand this. I do not quarrel with you pursuing the cause at all, whatsoever. However, I do not understand if there is some chance that the courts would buy that argument, why would you not let it go through? Why would you not

let it go through because what you are doing by appearing here is almost inviting us to snuff out any chance that the courts might do that because we are aware of what the will of Parliament on this issue is?

I am baffled that you are trying to achieve a result through the back door that you know is not really possible through the front door. I do not blame you for trying that. However, to the extent that you might have had a shot at it, you would have had a far better shot to let this legislation go through with its current wording rather than argue the case. If the yin and yang and the sun, moon and stars all line up and you get the interpretation you want, then you would achieve it. It seems to me what you are doing is inviting us to make it absolutely clear to any court that might be interpreting this that it is not applicable in the instance you are talking about.

Maybe you could respond to my comments.

Ms. Landolt: Senator Smith, you speak like a true politician. You understand the pros and the cons of the issue.

Senator Smith: I am trying to speak like a lawyer.

Ms. Landolt: What you raised is very true. Do you not think that I have not thought and contemplated and deliberated whether or not I should appear on this very issue? What you say has absolutely been a concern of mine until the very end, until yesterday, as a matter of fact.

The reason I brought it forward at this point in time is it has been raised previously. In the previous testimony, the matter has been raised. This concept is not a novelty to this committee.

Second, the debate has to begin somewhere. If you recall, the abortion law was struck down in 1988 by the Supreme Court of Canada. The Mulroney government brought forward new legislation. The legislation passed the House of Commons. It was defeated by one vote in the Senate. It was one vote only that defeated that legislation Mr. Mulroney brought forward. It may have been decided by the Supreme Court on January 31, 1988, but it has not been definitively decided when it passed the House of Commons and it was only defeated by one vote in the Senate. The debate has to begin.

We are bringing forward this: This is a window of opportunity. As I say, you are absolutely right from a political point of view. However, we thought we might begin the debate now. It has to begin somewhere. There are many concerned Canadians. I do not think we are alone in our concern. Our organization is concerned about human life, from the unborn to the disadvantaged to the aged. It has to be protected. That is only the only reason why we are bringing it forward.

Senator Smith: That is fair enough. I appreciate your candid and frank answer.

However, Parliament more often than not tends to reflect how the public feels about things. Any polling that I have seen, seems to indicate to the extent that public opinion on this issue can be gauged, the point of view, namely, the right of a mother, of a pregnant woman to make a choice, is if anything going up. There is a strong majority opinion to the extent that public opinion can be measured. Is that not correct?

Ms. Landolt: No, it is not. In the United States, the trend has gone the opposite way. We always seem to follow them. There have been amendments and curtailing of abortion in the United States. The courts have curtailed it, and it has changed.

There was a poll done by, Compass Poll, but they did not ask the question. They asked, "Do you think a woman should have a choice?" However, he did not ask when it should be or for what reason. That was not a question dealing with abortion. If you ask women to have a choice, if a decision to have an abortion were performed, who else will make the decision? It will not be you or you. That was not the question.

However, any poll we have had in Canada that asked, do you think there should be some protection for human life, do think abortion should be performed at a certain time, it is not shown that a majority of people have been opposed to what we have, abortion on demand.

Perhaps, Ms. Murawsky can better speak to that.

Senator Smith: I have not seen those polls. I would be interested in seeing them.

Ms. Murawsky: We have a collection. We will give them to you.

Senator Smith: I am sure there will be other women's groups who will have a collection of other polls. We are happy to look at them all.

Ms. Murawsky: I should like to make note of one item. We keep looking at this in the context of abortion. Most abortions in Canada are done at around 12 weeks. Some information indicates that the unborn child could even be sensitive and could feel pain at 11 or 12 weeks.

There is also the other end of the spectrum. We are talking of the protection of children before birth. The cases that we have cited involve children about to be born or being born. We are neglecting that whole group of children from 12 weeks to the end of term. There is no protection for them. They die just before birth because of some infection. They are born because of negligent doctors and they die during birth. These children, unless they have exited fully from the womb, are not human beings under law and therefore have no protection.

A child born at seven months has protection. The same child within the womb who was injured by an attacker has no protection. They would also fall under this.

Senator Smith: You would not feel any different if the law said eight weeks, would you?

Ms. Landolt: There would be an improvement. I would not like it but I am certainly much for it. I would like anything that would protect human life at any time.

Senator Smith: I understand that.

Senator St. Germain: Ms. Landolt and Ms. Murawsky, thank you for coming. Some of us do believe that life begins at conception. I still have a problem with this. You maybe have tried to explain it but I would like clarification.

If we define a foetus as an "animal," would that not undermine the pursuit of change — by those of us who believe life starts at conception — in the status of the foetus? We would be undermining hope to one day achieve that change to reflect our belief that life begins at conception?

Ms. Landolt: Not at all. The law already says a foetus is not a human being. I cannot change what the Supreme Court has said. The Supreme Court ruling superimposed this on the common law. If the legislation is written to say one thing, that thing takes priority over the common law, over the judge-made law.

There is now simply a judge-made law that the child is not a human being. Yet we have the Criminal Code, section of 223, which states a foetus is not a human being until it is born. You will have a conflict with this proposed section as well.

That does not weaken our position; it strengthens our position, senator. It really does. We are saying that the unborn child falls within the four corners of this definition. We know the Supreme Court said a foetus is not a human being but that was a common law. This law superimposes over the common law.

Senator St. Germain: I do not want to minimize the fact that we are losing potentially 110,000 human beings per year. If we do this in the short term, do you still think this would be beneficial? Would it jeopardize anything in the future?

You can extrapolate that every life is important. However, if we look at the big picture and if conceivably we could ask Parliament to reconsider its position, might not the pursuit of this venue or this approach undermine the future consideration?

Ms. Landolt: Speaking as a lawyer, I would say no. It would not undermine our position for the protection of human life. It would not undermine the position from a legal perspective. It would strengthen our position. The court has already said under common law that a foetus is not a human being. We are not changing that. This bill could in fact strengthen our hand and open a window for us.

Senator St. Germain: Not being a lawyer, could the court not change their view on that?

Ms. Landolt: Certainly we are hoping that the court will.

Senator St. Germain: You are getting pretty legalistic. If the court did change its view, do you feel this proposition would undermine the ability for future courts to make that decision?

Ms. Landolt: No, I do not, Senator St. Germain.

Senator Jaffer: My line of reasoning follows along Senator Joyal's comments. I think you answered part of the question but not completely. "Animal" here means a "vertebrate other than a human being." From what I understand in the law at the moment, until the child is born and is separate from the mother, it is part of the mother and so it is a human being. I did not get your answer clear as to how you say that it is an animal.

I have to tell you, I have great distaste for the way you are considering an unborn child as an animal. I will have to look at general definitions, as I am sure you have. That is another day's question.

I still cannot see how you can call it an animal. It is a part of the mother. I would like clarification.

Ms. Landolt: I am an animal, too, under the classification of biology. All of us are.

Senator Jaffer: Let us not look at that. Parliament in this legislation is very specifically saying "other than a human being." It is not saying "other than an animal." I take it that we all here are human beings. We may be animals but we are also human beings. As my colleague Senator Joyal was saying, the law at the moment is that the child is part of the mother and the mother is a human being. Until the child is born and is separate, it is part of the mother. It is a human being. I just do not understand your argument.

Ms. Landolt: Senator Jaffer, that finding was based on previous decisions that the foetus was part of a woman's body. That view has been changed by the *Mineral Springs Hospital* case and by modern DNA. We now know, both at common-law and under DNA, that a foetus is not a part of the mother's body.

The situation has changed. The courts have to move with the times. That is all there is to it. They cannot continue on with the ideology of the 1980s. We are now in 2003.

Madam Justice Sandra O'Connor said it best in the United States when she said the law on abortion, on the protection of human life, is on a collision course with modern medicine, biology. That is what has happened. A court somewhere, sometime, hopefully in my lifetime, will face this. The collision course is there between biology and medicine. The law must recognize the science. It cannot continue on with this old-fashioned idea that developed in the 1970s and the 1980s.

Certainly in the United States, the changes are already coming in. A mother can be compensated for the loss of an embryo in new medical technologies. A woman whose unborn child is harmed or killed can get compensation; that case is from the appeal court of Minnesota. Another woman in North Carolina was carrying twins. When her husband attacked her, she picked up a knife and killed him. The court said her action was justified because she was protecting the life in her womb. She was found not guilty of murder.

The trend is there. The law will have to deal with reality. A foetus is simply not a part of the body anymore — not scientifically and not medically. Because of *Mineral Springs*, things have changed.

Senator Jaffer: The way you set it out makes me exceptionally sick. I do not think I carried animals. I carried an unborn child when I had my children.

I also think you are wrong about the terms "wilful" and "reckless." It is in separate parts in the present legislation. I know you have been busy, but that statement is not correct. It is in the present legislation. Plus, as for humane officers, at the present time they can carry out prosecutions. I suggest those two things that you said were not quite correct. However, I cannot agree with you that an unborn child is an animal.

Senator Cools: She is not purporting that. On a point of order, she is not making that point.

The Chairman: Senator Cools, Ms. Landolt is very learned in this area. She can certainly speak for herself.

Senator Cools: It is just a point of order. We should not impute what she said.

The Chairman: Ms. Landolt is quite capable of answering. I am impressed with her expertise in this area. If you care to comment on that, Ms. Landolt, please feel free to do so.

Ms. Landolt: The fact is that all of us who are mothers have carried children. I have carried girls and boys. The boys are totally different. Their DNA is different; their blood system is different. They do not have the same blood that I have. That is a medical reality. They are a different sex. Their DNA and blood system is different. Everything is different. We used to think that we carried it as part of our body, but astronauts are sustained in the shuttles by artificial means and we are used as a means to sustain a child for nine months. That is just sensible, I guess, that we are sustaining a child in the womb.

Senator St. Germain: The word "animal" is not defined in the Criminal Code. Does that have any bearing?

Senator Jaffer: It is. It is called "cattle" and "bird." It is defined in many

different sections.

Senator Joyal: They are not defined by saying that this is defined as this, however.

Senator Nolin: It will surprise some of our listeners, but I want to thank you. Those who have followed our recent encounters might be surprised by that statement.

First, you are forcing us to focus on the intent of the legislation. However, I disagree with what you have put in your brief. You are absolutely right when you say in your conclusion that "The language of this bill indicates an intent to raise the status of animals to what the animal rights group call "personhood" in order to eventually give animals some legal standing in court." I think you are building your argument on that, but it is fundamental. You are forcing us to think about what we want to achieve by that legislation.

Personally — and this is probably the intent of my colleagues — I believe that we want to protect humans. The committee in the House of Commons has been told that those who are misbehaving and using cruel attitudes towards animals are probably inclined to do the same for human beings. We want to protect those attitudes because, in the end result, we wish to protect humans.

In your briefs, and in answering the questions of my colleagues, you raise the question of the unborn child. It is not our intent to re-open the debate on abortion. That was decided by the Supreme Court of Canada. In 1991, it was upheld by the Senate, not the House of Commons. It is not the intent of our colleagues to go against that.

Thank you for offering us your arguments. We will have to do something with those arguments. That is why I want to thank you. Basically, you are saying that if you are taking the definition — and I am taking both arguments here — to build or to imply new substantive rights, we are wrong. We must do something. For us, a definition is a tool to interpret a law, to help Canadians to reach the purpose of the bill. Obviously, you are forcing us to do something.

Having said that, are the rights of animals, as you indicate in your brief, the main reason you are proposing your argument? Personally, I do not think animals have basic rights. What is your opinion on that?

Ms. Landolt: When I referred to "personhood" and to "different status," I read that in the testimony of the witnesses before you; I just cannot recall which one. It was a woman, but I do not remember her name. In her testimony, she said that they wanted to move it out of the property section of the Criminal Code and put it in a separate section so that it would acquire more status and personhood. I can go back and find it, but that witness said that was the impetus behind this legislation and she was one of the people who were pushing it. That is why I picked

that up out of the testimony before the committee.

I do not think so. I think animals are to serve people and not to become masters of people. I do not think there should be a personhood for animals at all. At the same time, I find abhorrent anyone who would treat them cruelly or unreasonably or inhumanely. When I first picked up the bill, I thought, "Thank goodness. People will deal with life and protect animals." I do not think that they are on the same level as human beings, as you have said. I do not think that at all. I think human beings are higher animals in priority, however you want to put it. I only put that in because that was the impetus and thrust behind the legislation. They insisted it be moved out of property section because they wanted it to have a separate status and to have more personhood. That witness testified before the committee that it would then have status before the courts. That is the long-range plan.

That is why I picked that up. I thought, if that is possible — namely, that they wanted to do that for animals — then it would be implausible that they would not want to do that for the child in the womb. That does not make sense. I am to presume that the Minister of Justice, by that definition, must have known what he was doing. He must have known that he broadened it. What the Supreme Court of Canada does with it, no one knows, but they have opened the door because of that broad definition.

Senator Nolin: In the construction of your argument, the location in the code is of importance for you? In other words, it sends a signal?

Ms. Landolt: Yes, it sends a signal. It does so to the animal rights people. If you like, I could go back to my notes to see who said it.

Senator Nolin: No. We know that.

Ms. Landolt: They are trying to send the signal that the journey has begun to give recognition to animals. It seemed implausible that it would not be for human beings as well.

Senator Cools: I should like to say again, for the sake of the record, that I do not believe that any of the witnesses are proposing that unborn children are animals or should be treated poorly as animals, or whatever. My understanding is that the witnesses were attempting to give their perceptions of what the words of the bill before us meant in respect of interpretation.

There are a couple of things that I would like to say in respect of these matters before us. Senator Beaudoin said that he does not understand how a court of law might reach certain conclusions. I belong to that group of people. I still have not seen the law or the reasoning that the 1989 decision, *Morgentaler*, was based upon. Anyone who has read that case carefully and followed it knows very well that it was an enormous jump in reasoning and logic. If one were to look, for example, at the opinions of Justice Estey and Justice MacIntyre, who essentially said that, far from the arguments being put forward, the weight of the criminal law for centuries

had been to protect the unborn. That was the weight of the jurisprudence.

It is a long time since I looked at this, but I think it was Mr. Justice Estey who put the question to the court as to whether or not, as judges, they should not be making the decision on more than just which justice is pro-life and which justice is pro-choice. This is a bit of the problem that is facing us.

I wish to thank Ms. Landolt for astounding intellectual integrity in presenting this information to us. It was a fair amount of unstinting work on a voluntary business. We have witnesses who appear before us and we know that, quite often, they are paid mega-dollars to produce their briefs. This is voluntary; and, consequently, is one of the reasons you were a little late in getting it in.

Honourable senators, when the Senate voted on Bill C-114 back in 1991, it was in no way voting to uphold any decision of the Supreme Court of Canada. I voted in the debate on that bill, and the senators at the time thought that the bill was insufficient and deeply flawed. It is not, as is being put here before us, that it was because the Senate wanted to uphold the Supreme Court of Canada decision. In fact, many people who voted to defeat the bill had a lot of problems with the Supreme Court of Canada's decision at the time, if we were to go back to the debate. There are some advantages to having been around then.

The fact of the matter, honourable senators, is that the Supreme Court of Canada decision in 1989 has been overtaken by all the subsequent judgments. What we now have — the notion that the unborn child is a simple part of the woman's body — has been overtaken and overturned as well. The case law is now going back in the direction of saying that it is not a simple part of a woman's body, it is a separate entity.

Many of these positions have been advocated in the name of women. I am of the opinion that a lot of the results of these positions and actions on the part of some of these courts have been damaging most of all to women. I am a woman, and I like to think that I speak for women. What is happening in this country on the ground, for those of us who are close to social services or who have worked in social services, is that the law is turning around. With more time, I am sure Ms. Landolt could give us an even greater expose of what is happening.

The common law is turning around because there are millions of pregnant women who are not getting the help or protection they need because of where the abortion law has gone. For example, there is gross negligence in the instance of women who are delivering babies. These women are not being helped. Some women have felt that they speak for all women; and the other women are boxed out in the middle of nowhere. I feel strongly that, during those months, women need as much help and support as can be had, and quite often as much protection as possible.

These are huge and enormously complex questions. I think the exchange is important. However, at the end of the day, this Parliament has to accept the fact that this is something that we must deal with; and it is simply no longer palatable

or acceptable for a small minority of women to say that they represent women's rights and the rest of us do not.

I am grateful for the opportunity to have taken part in the debate, but the day is over when unborn children have no rights. One of the witnesses testified that most of the abortions are not within that 12-week time frame as this committee had been lead to believe many years ago. Instead, many of these abortions are getting later and later and later. In the instance where there are enormous problems, complications and difficulties, there is no law to fall back on.

We have to re-orient our minds and revise our thinking. The point of view that women have an absolute right to an abortion under every circumstance is a view I would now describe as backward and dated. The Americans are way ahead of us on this.

For those who may want to use their power around this table to affect their own ideological positions, the beauty of today's community is that the world is changing on the ground and the judgments are coming in. Regardless of what anyone thinks here about the unborn being a part of the woman's body, the fact of the matter is that the case law is overturning all of this. The reality is that the common law will always reflect the needs of the ordinary human being. That is what the common law is, that law which rises up from the ground.

I thank the witnesses again for their testimony. The will of Parliament has not been determined on all of these matters. The will of an individual minister may be; but we are subject to lots of wills of many ministers and some of those are not too good. In point of fact, the will of Parliament has been avoided on this issue. There is not a minister who will face up to this issue willingly and have a real debate in Parliament on it.

As Senator Smith has said, never mind the will of Parliament. The will of Parliament has been avoided on this matter and has been circumvented by the Supreme Court of Canada. If we were to read *Morgentaler* again, we would see what the judgment said about the role that Parliament should play in it.

In point of fact, we have not upheld the judgment in *Morgentaler* at all; we have even flown in the face of it. There was a lot wrong with that judgment, but it never intended that this country would find itself without a law to protect unborn children. That was not the intent of *Morgentaler*.

Senator Joyal: The intent of *Morgentaler* was to recognize the rights of women, period.

Senator Cools: *Morgentaler* states explicitly that the rights of Parliament are above that to make those other determinations. It is very explicit. I can bring you the package. I have it in my office.

The Chairman: We are not here to debate *Morgentaler*.

Senator Cools: No, but I want to reply to that.

The Chairman: I appreciate your comments. I do not know if any of the witnesses would like to react to them or if we will move on to Senator Joyal.

Senator Joyal: I have two questions. The first one is in relation to removing animals from the property sections of the code to put them in a different section. They are not, of course, in the person section. Most of us who have a legal background will ask for ourselves, what does that mean legally in terms of the code? We have raised that issue around this table on various occasions. We have asked that question of various witnesses. We have not received a clear answer from the learned lawyers at the Department of Justice.

Having a legal background yourself, could you risk an opinion on this?

Ms. Landolt: Risking the opinion is correct. When I first noticed that they moved it out, my view is that it does give it a different status. It is more than property, because it moves it out of the property section. There are some implications to that. I do not presume to think that it is personhood, as some of the animal rights people say, but it is clear that it has become a much more important and valuable thing. It is not owned, it is no longer property. It becomes a separate entity by moving it out. It clarifies that it is an entity in its own right. That would be the significance of moving it out of that section.

Senator Joyal: When you say an "entity in its own right," you might have pronounced the two words as legally as you know. All my colleagues are listening carefully. You are pronouncing very loaded words, legally speaking. If they have rights, then they have a status in court.

Ms. Landolt: That is the implication that I think they want to achieve. I think it is chipping away. I think it is no longer owned, as a piece of property or a house. They are quite clearly trying to make it into a separate entity, with rights in its own right. They said it would have status in the court; therefore, it would have to be a legal entity. That is their objective. That will not come with this amendment, but it may be down the road.

Senator Joyal: I want to return to one of your statements, that the definition of the unborn child as part of the mother's body has been set aside by *Martin v. Mineral Springs Hospital*. If I understand, the *Daigle v. Tremblay* decision is a Supreme Court of Canada decision. The *Winnipeg Child and Family Services* decision is also a Supreme Court of Canada decision, from 1997. *Daigle* was 1989. The *Martin v. Mineral Springs Hospital* decision is an Alberta decision. As a lawyer, I was told that as long as the Supreme Court of Canada has not reversed itself, this is the norm. An inferior court — with the greatest respect for the Alberta court — can hold a different view, but as long as the Supreme Court of Canada has not changed its determination, it remains the legal norm.

Ms. Landolt: It is, based on the facts of those cases. However, it is moving up

through the channels. You are quite right that it is an inferior court. The Supreme Court of Canada spoke back in 1989, but it is now moving up through the courts. The Supreme Court of Canada never dealt with the issue of punitive damages and personal injury claim. That is a different story than what the court dealt with in *Tremblay* or the Winnipeg case. It is moving up.

Looking at the United States, the trend is clear. There have been punitive damages for personal injuries for loss of a child in the womb. We do not know what the Supreme Court of Canada will do, but it is certainly on the way up there.

Senator Joyal: I receive your answer with deference, because what you say now is what anyone can sustain, that the court might change its mind in the future. However, as long as we must interpret this bill now, we must interpret it according to what the Supreme Court of Canada has already decided.

Ms. Landolt: The decision that it is not a human being.

Senator Joyal: It is part of the mother's body, to be more precise.

Ms. Landolt: They said it is not a human being and is part of a human's body — whatever you want to call it.

Senator Joyal: When they say it is not a human being, they mean that it is not a separate legal entity with rights. When the courts sustains that an unborn child is part of the mother's body, it is not different than the mother's body's status.

Any lawyer can sustain different views on this. However, I think that the Supreme Court of Canada decision is the law of the land, as long as the Supreme Court of Canada does not reverse itself on this. I am not saying that it cannot reverse itself. However, we must read this bill as the law of the land. As it stands, the law of the land states that the unborn is part of the mother's body.

Ms. Landolt: Except that, if you do get a court challenge under this when it becomes law, the court will be dealing with that issue again. The court will be dealing with that very fact and it will have to make a determination. What it determined in 1989 on the basis of science and medicine is not what it will get in the year 2010 or 2005, when it happens. It is open to change and I am suggesting the trend is there.

Senator Joyal: I agree with you that the potential is always there. We always know that the court can, after a while, qualify what it has said. However, as long as we have to decide on this bill sometime in the near future, we will have to take the law of the land as it is now. We cannot guess what the decision of the court could be taking the improvements in science into account. There are many arguments that good lawyers like you can bring into the court; however, as legislators, we have to base our decision on what is the law of the land. Of course, the Supreme Court of Canada sometimes says no, it is not this; it is something else. As the Parliament of Canada, we will have to decide how to readjust the legislation and do

what is proper under the Charter.

Ms. Landolt: It is closer than you think. A Manitoba court has already spoken. I did mention it; it happened last week. A Manitoba court has already said that damages for the child in the womb must be compensated, because it is a separate entity. That happened three or four days ago. It was not included in the brief, but it is closer than you think. That is what is happening. As you say, in February of 2002, the Supreme Court of Canada's decision stands, but the lower courts are coming up and changing it right now both in the United States and Canada.

Senator Joyal: I am not denying that courts can have other conclusions than the Supreme Court of Canada. However, you must understand that, as legislators, we have to take the law for what it is and as it has been interpreted. I totally respect your stand. You argue for your own approach, which is totally legitimate in our democratic system. Laws are changed because a concerned citizen takes a view in court. That is part of the public domain and public debate.

However, as legislators, we have text in front of us and we must understand the implications of it. I think you realize that we try to understand it as much as we can. We must take a decision based on the status of the law as it is, unless we want to change it front and centre. That is my position. Again, I am sympathetic to the idea of removing that second part of the definition, because I think there are more problems there than we can solve. Scientific researchers and zoologists told us last night that we would open more challenges to those people who think that animals have rights. We might diminish the impact of the bill. There are problems in determining pain in certain categories of beings and, as my colleague Senator Bryden has said, the second part of the definition contains the word "animal." We define the word by the word, which is, at a point, a difficult element in law.

With regard to the issue of the new category — the emerging category — as a legislator, when I vote for something I want to know what the implications are. That is why we have this committee. We might be sympathetic to what you proposed to us this morning, but for reasons other than those you gave.

Ms. Landolt: Senator Joyal, I would be very happy if you did not amend it. I am happy you are taking that position, because it will, hopefully, be used by another generation of lawyers. I hope you do not amend it.

Senator St. Germain: Senator Nolin inferred that it is not the will of the Senate chamber to reopen the abortion debate. I want the record to show that that is not necessarily the view of all senators. The will may not be there by the majority, but there are many of us who believe that this has not dealt with or dealt with properly, and that people such as the witnesses today face a huge challenge, but it is a very credible cause.

Senator Cools: We have not had a debate, even on how the whole status of the striking down of the law is operating. There is something about this issue that

those who support one side want no debate whatsoever; but the will of the chambers has never been tested or taken on this particular question.

Senator Pearson: I would like to reiterate what Senator Nolin said, that your presence here has helped to refocus us on the intent of the bill. I want to go back to the bill itself and say that my understanding is that this particular bill will increase the respect that human beings have for the animal world. It is a question of respect. It is a question of regulating our behaviour. It has nothing to do with animal rights. It has to do with regulating our behaviour with respect to those members of the animal world that feel pain.

Moving it into a separate category has value in the sense that not all animals are property. There are many, many wild animals. They do not belong to anyone. It was not correct to consider them as property. We are looking in this bill to make people aware of the infliction of cruel, unnecessary pain. It is not just the infliction of pain, because there will always be pain in our interaction with animals, particularly in animal slaughter, and in hunting and fishing. The intention of this bill is to regulate behaviour; we do not think is permissible to do we want with an animal. I applaud the intention of this bill.

I do not think there has been a new crime created by this bill. The offences are being augmented, but there is no new offence. You have the change of the category, taking the offence away from property. This makes sense to me because not all animals can be considered property. It enhances our respect for the natural world. That is my understanding of what it does. I am hoping that with your interjections we may go back and look at whether or not we remove something from the definition of "animal" to make clear what we mean.

That is what this bill is about.

Ms. Landolt: It has changed because the word "recklessly" has been added to "wilfully." That broadens the offence. Before you had to have the *mens rea* or the criminal intent to commit a wrongful act, but now, with "recklessly," it means something else. It means I just did not care.

Senator Pearson: I thought "recklessly" was already in the previous regulation.

Ms. Landolt: The word "recklessly" is not in the previous Code.

Senator Pearson: Is it in a different section?

Ms. Landolt: It is a new word.

The Chairman: Just for clarification, it is in section 429(1) of the Criminal Code already, as Senator Jaffer had pointed out earlier.

Ms. Landolt: Was "reckless" put in? I thought "reckless" was a new word put into this bill. The word "wilful" is in the current Code, but the word "reckless" is

something that was put in. I did not see "reckless" anywhere in the previous current law.

Senator Jaffer was referring to another change. I think you were referring to the word "negligently."

Senator Cools: This Bill C-10B is a whole new provision that did not exist before in the Criminal Code. It comes after the treatment of dead bodies, as a section. The provision that is amended is not even relevant to animals. Look at the existing section 182. This whole Bill C-10B is an addition to section 182. It is not amending anything itself in section 182. If you look it up, you will see.

Ms. Landolt: They have added the word "recklessly" that was not in the current law. That is my point.

Senator Jaffer: "Recklessly" is in the current law.

Senator Cools: It may be in section 446 somewhere. It is not in the offences section.

Senator Beaudoin: If you add something to the Criminal Code, it is an amendment. There is no debate on that.

Senator Cools: No one is denying that. I am saying that these sections are totally new.

Senator Nolin: Just to make it clear, the interpretation clause 429 means that the *mens rea* is needed and the understanding of the degree of *mens rea* is explained in section 429. It is in the Code, but it is not in the crime itself. It is not in the offence. It is in the interpretation clause.

Ms. Landolt: It is not in this provision. Putting it in changes the content because it changes the meaning of it.

The second thing is, Bill C-10B also defines negligence, which is not in the current legislation. That makes it a broader offence, because it is now defined under 182.3. What happened is a much stronger bill. Our concern is how it will implicate industry, as I said from the very beginning. It is not just the penalties that are changed, but also the substance. There have been substantial changes in the legislation, which strengthens it for animals but not for industry, which will be more vulnerable.

The Chairman: On behalf of the committee, I would like to thank the panellists for their very insightful and helpful presentations. You certainly have given us much to think about. You have added considerably to our deliberations on this bill and I thank you very much for taking the time to be with us and to share your thoughts. The committee adjourned.

