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# Standing Committee on Justice and Human Rights

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EVIDENCE

**Monday, April 27, 2015**

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**Chair**

**Mr. Mike Wallace**



## Standing Committee on Justice and Human Rights

Monday, April 27, 2015

•(1530)

[English]

**The Chair (Mr. Mike Wallace (Burlington, CPC)):** Ladies and gentlemen, I'm going to call to order meeting number 71 of the Standing Committee on Justice and Human Rights. We are televised today.

Pursuant to the order of reference of Friday, November 28, 2014, we're going to be dealing with Bill C-35, An Act to amend the Criminal Code (law enforcement animals, military animals and service animals).

We are fortunate to have the Hon. Peter MacKay, the Minister of Justice and Attorney General, to lead us off for the first hour of discussion on this particular bill.

Minister MacKay.

[Translation]

**Hon. Peter MacKay (Minister of Justice and Attorney General of Canada):** Thank you, Mr. Chair.

Dear colleagues, I am happy to be here to discuss the bill on service animals.

[English]

It's always a pleasure to be with you, colleagues. We're here, as you know, to discuss yet another piece of criminal justice legislation that the government believes will contribute to making Canadian communities safer.

I thank you in advance for this committee's hard work and commitment to do a thorough and rigorous review of important bills, both government and private members'. I hope that my remarks today will assist you somewhat in the review of Bill C-35, the justice for animals in service act, referred to colloquially as Quanto's law.

Quanto, as many of you will know, was an Edmonton police dog that was fatally stabbed on October 7, 2013, while assisting police in apprehending a suspect. The tragic killing of this beautiful law enforcement animal struck a chord with a lot of Canadians, and many in the police, legal, and community groups called for greater recognition and protection of service animals.

Bill C-35 fulfills a 2013 commitment in the Speech from the Throne to enact a law such this in recognition of the daily risks undertaken by animals used by police to assist them in enforcing the law and protecting society.

Quanto's killing was also the most recent instance in which a police service animal was killed in the course of a police operation, and there are other examples that I'm sure you will be studying.

[Translation]

In addition to proposing to create a new Criminal Code offence that would specifically prohibit the killing or wounding of a law enforcement animal, Bill C-35 would also extend specific protection to trained service animals that assist persons with disabilities and military animals that assist the Canadian Forces in carrying out their duties.

[English]

The members of this committee, I'm sure, are aware that the person who killed Quanto was subsequently convicted under existing section 445 of the Criminal Code for the wilful killing of a dog, along with other offences arising out of the same set of events on October 7, 2013.

The criminal responsible was sentenced as a result to a total of 26 months in prison on various charges, of which the sentencing judge attached 18 months specifically for the killing of Quanto. The court also banned him from owning a pet for 25 years and banned him from driving for five years. In sentencing the offender, the judge stated, "The attack on this dog wasn't just an attack on a dog. It was an attack on your society and what is meaningful in our society".

The government agrees wholeheartedly with this sentiment and believes that the creation of a specific Criminal Code offence, coupled with a specially tailored sentencing regime, would contribute to the denunciation, both general and specific, as well as deterrence of such crimes. These are well-known sentencing principles, I know, for this committee.

•(1535)

[Translation]

I would like to take a moment to review with you just what Bill C-35 proposes in terms of amendments to the Criminal Code.

[English]

Just to turn quickly to the substance of this bill, the bill would clearly define which animals would fall within its ambit.

Secondly, the legislation sets out the element of the new offence. The prescribed conduct is the killing, maiming, wounding, poisoning, or injuring of a law enforcement animal while it is aiding a law enforcement officer in carrying out the officer's duty and a military animal while it is aiding a member of the Canadian Armed Forces in carrying out that member's duties or a service animal performing its tasks.

The necessary mental element is wilful and without lawful excuse, a common standard used in the Criminal Code, in order that accidental or negligent conduct would not be criminalized by this new offence. Obviously, there is a great deal of discretion within the courts for findings of fact based on evidence.

Finally, thirdly, similar to the existing section 445 of the Criminal Code, "Injuring or endangering other animals", the new offence would be subject to a maximum penalty of five years imprisonment when the accused is prosecuted on indictment and 18 months imprisonment or a \$10,000 fine for a summary conviction. So there's a hybrid element to the offence.

It is the sentencing regime that distinguishes this new offence from section 445, and it does so by introducing a provision, section 718.03, which expressly directs the sentencing court to give primary consideration to denunciation and deterrence as sentencing objectives in respect of this new offence.

This provision will apply whether the animal in question is a law enforcement animal, military, or service animal. However, with regard to an offence committed against a law enforcement animal, Bill C-35 would require the sentence imposed for the offence to be served consecutively to any other sentence imposed on the offender for an offence committed at the same time. And as is the case where a law enforcement animal is killed while assisting a law enforcement officer in carrying out his duties, and the offence is prosecuted by way of indictment—so there is a selection here—the offender would be liable to a mandatory minimum penalty of six months. This joins the some 60 other mandatory minimum penalties already found in the Criminal Code.

During second reading of this bill I was pleased to note there was broad support across party lines for it. I see this as one of the more non-partisan issues and non-partisan legislation that may come before this committee. In fact, there is a great deal of support for the enactment of the provisions in the Criminal Code that deal with the intentional injuring and killing of law enforcement animals, military animals, or service animals.

At the same time, I acknowledge that there will no doubt be questions raised with regard to the proposed mandatory minimum penalties, where a law enforcement animal is killed while assisting a law enforcement officer engaged in enforcing the law and prosecuted by indictment. To pre-empt the questions that I know will come, I believe that a mandatory minimum penalty is warranted in these instances, both for general and specific deterrence and denunciation of this type of offence involving service animals. Like members of the military, members of the police, some of whom are members of this committee, these are service animals that are in harm's way—it's the only way I can describe it. They are doing a duty that is a higher calling expected of an animal, in the same way that police officers, of course, assume a certain degree of danger and liability.

Therefore, with respect to the mandatory minimum penalties imposed by this bill, I would ask the committee to take note that this provision was carefully tailored in several ways.

First, the prospect of the mandatory minimum penalty being imposed only arises in regard to the intentional killing of a law enforcement animal while aiding a law enforcement officer in carrying out those duties.

Second, the potential application of the mandatory minimum is further limited by the fact that it would only apply where the crown prosecutor proceeds by way of indictment. Prosecutorial discretion is always exercised, with a careful eye to proportionality, constitutionality, and totality, the same considerations used by a judge. Where the crown elects to prosecute this offence as a summary conviction, the mandatory minimum penalties, obviously, don't apply.

Finally, in terms of the length of the mandatory term of imprisonment, the six-month term of imprisonment is at the lower end of the range.

I would pause here to underscore, as I mentioned earlier, that the judge who sentenced Quanto's killer specifically imposed an 18-month sentence of the 26 months that were handed down for the killing of that service animal.

Bill C-35 also proposes to amend the Criminal Code to require that a sentence imposed for an assault on a police officer, or certain other peace officers, will be served consecutively with other sentences imposed on the offender arising out of the same set of circumstances.

● (1540)

[*Translation*]

We are strongly of the view that attacks on those officials who work on our behalf to protect society also represent an attack on our society and that such a provision is justified to express society's denunciation of such conduct and as a general deterrent.

[*English*]

To conclude, Mr. Chair, I would be pleased to answer questions by you and members of the committee with regard to this important bill.

I again thank you for the work of this committee. I'll take the opportunity to thank all those members of police, military, and those who use service animals for things such as comfort and mental health counselling that we are now seeing through canine and equine companionship, which is an extraordinary use of animals in society.

For the furtherance of the principles of justice, we had a recent example of a dog in the Edmonton Police Service which accompanied a child who was obviously feeling the trauma of a sexual assault. That dog was allowed to be on the stand with that young girl while she gave her testimony. I think this is the type of innovation that actually brings great credit to our justice system, and it shows and highlights some of the great people we have working alongside those animals to further the interests of justice.

Thank you, Chair.

**The Chair:** Thank you, Minister, for those opening remarks.

We will now go to the question and answer period. The first questioner from the New Democratic Party will be by Madam Boivin.

[Translation]

**Ms. Françoise Boivin (Gatineau, NDP):** Thank you, Mr. Chair.

Minister, thank you for being here to discuss Bill C-35. I have a few questions for you.

This bill essentially has support. However, things have changed in our legal landscape since the bill was passed at second reading, before being referred to the committee. I am talking about the Supreme Court of Canada's decision in Nur. You partially reacted to that decision by anticipating issues that would be raised regarding mandatory minimum sentences.

Concerning the Nur ruling, I don't really agree with your comment in the *National Post*. I did not see the ruling as quite the endorsement of your mandatory minimum sentences as you did, but I agree that it also does not indicate that mandatory minimum sentences are illegal. I may be less of a fan of the decision than you.

I will now talk about Bill C-35 itself.

Have you met with Department of Justice officials since the Nur decision to look at the impact it could have, especially its *obiter dictum* on mandatory minimum sentences and the two criteria to be met? Have you asked the Justice Canada officials to consider that? If so, what did they say? How can the criterion set out in the Supreme Court decision be met with regard to a mandatory minimum sentence? It is also hybrid and should not be left to the discretion of the crown. How do you think the criterion can be met at both levels? If the punishment is not cruel and unusual, the second criterion is used. Here is a quote from the chief justice: ...the second question is whether the provision's reasonably foreseeable applications would impose cruel and unusual punishment on other offenders

Have the officials answered those two questions?

**Hon. Peter MacKay:** Thank you, Mr. Chair.

I want to thank my distinguished colleague for asking that question, which is not a theoretical one. It's an important question for everyone and for all the bills we have introduced in Parliament.

[English]

I would say that in examining the Nur case, as my friend has said, we obviously look at the entire decision of the court, including the dissenting opinion, but what came from that decision, as she's alluded to, is that mandatory minimum penalties were in no way ruled out as an option for Criminal Code sanctions. They were, however, limited in the specific case based on the facts before the court that dealt with penalties around firearms.

I would suggest that some of the interesting dicta that came from that case also talked about the importance of not stretching credulity. That is to say, that the reasonable hypotheticals were viewed by some of the judges as not being, quite frankly, reasonable, according to some of those—

• (1545)

**Ms. Françoise Boivin:** They were dissenting—

**Hon. Peter MacKay:** Those were dissenting—

**Ms. Françoise Boivin:** I hope our Minister of Justice still believes that a majority of the court has ruled and that that is then the rule of the land on the issue. We can prefer the dissension all we want, but the rule of law right now stands with the majority. I'm being specific. I want some arguments. I want you to convince me that Bill C-35 would be okay with the Nur decision. That's what I'm asking. And did you ask your officials to review the legislation after the Nur decision?

**Hon. Peter MacKay:** Let me answer you specifically.

Yes, of course, officials at the Department of Justice always review these decisions. I review them. We look specifically at the entire decision and how that impacts existing legislation, on future legislation, including this bill that is before us.

To come back to this issue of the test of cruel and unusual punishment and gross disproportionality, I believe, and our officials believe, on balance, that based on the decision in the case involving Quanto that I referred to in my opening remarks, where the judge in that case actually handed down a sentence that was four times more than what we're discussing here as a mandatory minimum, in some ways we already have jurisprudence to look at as a touchstone as to both of those questions, both proportionality, taken in concert with other sentences that occurred at the same time.... And with the issue of cruel and unusual punishment, I would suggest again that that is very instructive and that we go through that test and analysis. The constitutionality, I believe, is sound and would support upholding this particular sentence.

**Ms. Françoise Boivin:** You also touched on the wording of Bill C-35. In a sense, by saying without a "reasonable excuse", doesn't that add to the argument, at that point in time, that those unforeseen or unforeseeable reasonable cases that could arise from a specific situation then would be corrected by the fact that it wouldn't fall in Bill C-35?

As well, why exclude, from the mandatory minimum sentence, the other type of animals that are included in the infraction? Are you making different classes of dogs and horses?

**Hon. Peter MacKay:** Yes, quite frankly, we are. This may be a question best posed to those who are using police animals and who will be appearing before this committee, but to my understanding, the rationale for this is the degree of harm, the degree of exposure, that animals would have in those instances that would justify or bring about a commensurate higher sentence.

Coming back to the question with regard to why we have proceeded with this hybrid type of offence, again, we believe there are facts and factual circumstances that very often arise that would justify a prosecutor, in conjunction with the police, deciding to proceed by way of indictment. That obviously involves more egregious circumstances, where there was a deliberate attempt to kill or injure the animal, as opposed to a circumstance that one could envision where the animal, while in pursuit of a person, or during a search and rescue, went after the wrong individual, for example, and the person, in fear for their life, used what they felt was proportionate force to protect themselves, and the animal was injured or killed. Those are circumstances that might result in the laying of a summary conviction offence that would not have these mandatory minimum penalties attached.

**The Chair:** Thank you.

Our next questioner, from the Conservative Party, is Monsieur Goguen.

**Mr. Robert Goguen (Moncton—Riverview—Dieppe, CPC):** Thank you, Chair.

Thank you, Minister and officials, for testifying today.

Of course, we recognize the importance of this as another element in the protection of Canadian society. We know how animals, service animals and Canadian Forces' animals, play an important role in protecting Canadians.

Mr. Minister, we're wondering how exactly you feel the legislation will better protect law enforcement animals, service animals, and military animals. How does Quanto's law improve the existing laws? Could you focus on that, please?

• (1550)

**Hon. Peter MacKay:** I suspect that the most direct example I could point to, coming out of the Quanto case, is the profile that is placed, and that this legislation will underscore, on the value that these animals bring to their task, to their service, to our country. We included military animals, to which I can speak somewhat personally, having observed the use of military animals in Afghanistan, where they provided tremendous service at great risk. They are often used in the detection of explosives, IEDs. Many people will have seen them at airports, where they're detecting drugs and sometimes contraband material, including weapons.

These animals have, by design, assumed a certain amount of risk, and we want to protect them. I think you will hear very shortly from witnesses about the value, the financial value and investment, that comes with these service animals based on the training, the time that it takes. Not every animal, obviously, is designed for this type of work. Horses, for example, are also used very often for crowd control. They're used by the Royal Canadian Mounted Police. They're very often used in situations where they too can be in harm's way.

So it places these service animals at a higher threshold. It obviously has penalties attached in a way that is designed to deter individuals who might be inclined to harm them, to injure them, to kill them. For those reasons, we have encapsulated this in a bill that brings about mandatory penalties and in some cases fines; they're not necessarily mandatory penalties, depending on the circumstances.

I should also praise Costas Menegakis, who brought this bill forward as a private member. It was later incorporated into this bill that you see before us, presented by the government.

**Mr. Robert Goguen:** Thank you.

Minister, Madame Boivin focused a lot on the aspect of the mandatory minimum sentences. We know that in *R. v. Nur* the mandatory minimum sentences were found unconstitutional, because it was felt that the imposition was grossly disproportionate, I guess, to the gravity of the act. Yet they did, in that case, uphold the sentences, which were beyond the mandatory minimums. I note in the case of Quanto's law that the judge actually imposed 18 months. It's my sense that animal lovers, and Canadians by and large, would certainly be well accepting of a mandatory minimum sentence for the killing of an animal in the enforcement or execution of his duties.

Are you concerned about this law in any way being found anti-constitutional because of its disproportionate equality in relation to sentencing?

**Hon. Peter MacKay:** Thank you, Mr. Goguen.

As I just said in an exchange with Madame Boivin, this is, I think, a reflection of society's condemnation of those who would wilfully injure animals generally. The other obvious example that we see, which is encompassed here, is that those animals with specified duties that serve the public more broadly—the individuals who are suffering from a disability, those who use animals day to day—provide a tremendous societal benefit. To deliberately target, injure, harm, or kill an animal with those responsibilities, we think, deserves a commensurate punishment that puts emphasis on the need to protect them. That in fact is what we're doing here. We're attempting to put greater protections in place for those animals who are protecting society at large through their service.

I agree with your assessment. I think that Canadians generally would be very much in favour of this. I haven't really heard any rational reasons that this legislation wouldn't be welcomed, other than some discussion around the mandatory minimum penalties. Just to conclude your answer, the court, having already handed down a penalty that exceeds the mandatory minimum, even in an extreme circumstance where the dog Quanto was killed, I think, provides us a good example that it would in fact be upheld as constitutionally proportionate.

**Mr. Robert Goguen:** When I think of the law enforcement animals or service animals and I reflect upon the amount of training that is involved in getting such an animal up to speed to be able to accomplish those important roles, there has to be a value to imposing that type of a mandatory minimum sentence just to protect the asset and the investment in these animals who do such a great job for society. Don't you agree, Minister?

• (1555)

**Hon. Peter MacKay:** I absolutely agree.

There is, as you mentioned, a tremendous amount of time and effort and investment involved in the training of these animals. I'm suspect that many of you have seen these animals in the rigorous training they go through. To suggest that we wouldn't want to reflect society's value of these animals, I think, would be wrong-headed. This legislation, I believe, will put greater emphasis and underscore the value that they provide us each and every day.

We expect in the future to see more use of animals for what I was describing earlier as animal therapy. They provide great comfort to soldiers who are suffering from post-traumatic stress. I saw a demonstration recently in Halifax by an organization called Paws Fur Thought, and a retired member of the armed forces named Medic Cousineau. You can see the impact these dogs are having on the lives of soldiers, police officers, and by bringing them to a better place, a safer place, it's helping with regard to their therapy and treatment. They have not lost a single person to suicide since they entered into this program, so there's tremendous value. I think we're going to see greater emphasis and use of animals in the future.

**Mr. Robert Goguen:** Thank you.

**The Chair:** Thank you.

Thank you for those questions and answers.

Our next questioner, from the Liberal party, is Mr. Casey.

**Mr. Sean Casey (Charlottetown, Lib.):** Thank you, Mr. Chair.

Welcome, Mr. Minister.

You properly anticipated that we would be a little bit preoccupied with the constitutional aspects, and I appreciate your remarks with respect to the mandatory minimums and the discussion we've had to date on that.

I'd like to add another element as we talk about the constitutionality of the bill, and that is within the new proposed section 445.01, the creation of a defence of lawful excuse. I raise that with you, Minister, for the discussion or the prospect that this has the potential of imposing a reverse onus. Certainly, the courts have had something to say on reverse onus provisions infringing on paragraph 11(d) of the charter.

We've had the discussion around mandatory minimums. I'm asking you about the existence of this lawful excuse defence and the possibility that it infringes on paragraph 11(d).

My question is whether you have sought and obtained legal opinion with respect to the constitutionality of this bill and, in particular, the two areas that I've raised.

**Hon. Peter MacKay:** Thank you, Mr. Casey.

As with all legislation presented to the House of Commons or through the Senate, or in many cases even private members' bills, the Department of Justice routinely examines them for their constitutional compliance.

With regard to the specific question of whether the department believes, based on that constitutional analysis, that the bill is in compliance, the answer is yes. Do we have specific advice that touches on the subject of the reverse onus? I would say no—while it has been contemplated. This is part of the regular examination of

bills that attempts, as a court would, to anticipate certain scenarios, certain factual evidence, that could and would be presented to a court. In regard to the reverse onus provisions here and charter compliance, we believe, again, on balance, that as written in this legislation, it would be found to comply with the charter.

I say that because the reasonable excuse presented here would be based on those factual scenarios of a person's attempting, essentially, to protect themselves, or being of the mistaken belief that the animal was going to use disproportionate force in either tracking them, holding them, or as is the case in some instances, where the police train the animal to do so, biting and holding the individual. If the person, for example—and I'm again doing what the courts often do, hypothesizing—had a panic attack, or the person had prior experience with an animal and as a result responded disproportionately, injuring the animal, we think that a court would properly consider that evidence in coming to the conclusion that they did use a reasonable excuse, that they didn't have the mental requisite, the *mens rea* necessary to convict a person for having harmed or killed the animal. All of those circumstances, as in many of these cases, would be based on the factual scenario presented to the court.

• (1600)

**Mr. Sean Casey:** Thank you.

In terms of the incidence of this problem, I've read that a police dog has been killed 10 times in the last 48 years, but I understand that the scope of this bill is larger than that. My question for you is around prevalence. I understand that the bill has been motivated by a specific incident in Edmonton, but can you give us a feel for the scope of the problem? Do you have statistics that would indicate how prevalent the crimes are that this bill seeks to address?

**Hon. Peter MacKay:** In short, I don't believe we have accurate statistics, because much of what we heard in both the drafting process and the consultation period was anecdotal. Many of the injuries that animals have suffered have often gone unreported. They wouldn't necessarily have resulted in a criminal prosecution, for example. In the case of Quanto, obviously, the facts were laid out very clearly before the court. It was well reported. I'm also aware of instances, one in particular, where a police horse was struck by a vehicle deliberately, resulting in catastrophic injury to the horse, and they had to put the horse down. We're also aware of some cases involving a person with a seeing-eye dog that was attacked. Of course, very often an animal's natural protective instincts will be to protect the person that they're with, and that animal was injured.

In short, Mr. Casey, there are well-documented cases that we're aware of. There are others that have been reported anecdotally. In the final analysis, what we attempt to do is create a higher threshold under the law that will protect these animals that have that added element of responsibility, that bring about that service component. That's what is being pulled out and set apart from the animal cruelty laws that already exist. That is the intent. It has been drafted specifically with that purpose in mind.

**Mr. Sean Casey:** Thank you.

Forgive me as I continue to try to find a body of evidence to support some of the decisions within the department. My next question is in the same vein.

You indicated that longer sentences will serve to have a general and specific deterrent effect, that this was your belief. Is there any evidence that you can point to that indicates that longer sentences do, in fact, have a deterrent effect?

**Hon. Peter MacKay:** Well, look, this has long been debated in legal circles. I've spent time in a courtroom, as have you. I've taken part in prosecution and defence. My general belief, and the belief of many, I would suggest, is that general and specific deterrence is not only used regularly and routinely every day in a courtroom, but also that it does have effect, as does the reporting of it for general deterrence. Upon hearing that a stiffer penalty, a period of incarceration, could result, individuals who might be similarly inclined may be impacted

How do we measure that to a nicety? In many cases, it is very much based on how people themselves react and what they say about the impact that had on them: whether they were going to bring a gun to a robbery, for example; whether, after having already been convicted of a similar offence, they were going to go out and commit that offence again upon fear of facing a stiffer penalty.

I suspect that for you and I, while we may disagree on a subject matter, this isn't going to be resolved any time soon. We are going to continue to have this debate.

**The Chair:** I'm going to resolve it right now. We're moving on.

Thank you very much. Thank you for those questions and answers.

Our next questioner is Mr. Dechert, from the Conservative party.

**Mr. Bob Dechert (Mississauga—Erindale, CPC):** Thank you, Mr. Chair.

Thank you, Minister, for appearing today.

You mentioned in your opening remarks that the animal that was the impetus for this bill, Quanto, was a law enforcement animal. I note in the bill that there are also two other definitions: "military animal" and "service animal". In some cases there are slightly different penalties with respect to the killing or injury to those animals.

I wonder if you could tell us the rationale for extending Quanto's law to encompass service animals and military animals, as well as law enforcement animals?

• (1605)

**Hon. Peter MacKay:** Well, the rationale for that, Mr. Dechert, and thank you for that question, was to capture that broader category of service animals. Above and beyond those working in law enforcement, this would also involve the type of animals we see working in border services, with the military, but also those animals that each and every day are interacting with the general public and providing a real benefit and a service, not only to individuals but to society generally.

There was a time not that many years ago when it was almost frowned upon for a person to have an animal with them in a mall, in public areas. Now we are seeing the utility that these animals bring. We're ratcheting up, if you will, the threshold of protecting those animals while they're working.

When the animals are in training—and this was something, quite frankly, that I needed to remind myself of—you're not supposed to approach them. Those who have animals with them while they're working will remind you: "Look, I'm sorry, but don't pat this animal. It's working. It's in the process of providing a service."

I mention that only to underscore that these are animals of great social utility; they deserve greater protection, greater recognition. In fact, I'm also hopeful that they will benefit from greater inclusion and understanding of the role that they provide. Part of the criminal sanctions are for the purpose of protection. Part of this exercise, we hope, is to have a greater understanding of how we work with our four-legged friends and that what they do is of real benefit for our country.

Mr. Chair, not far from where we're gathered here, we have a statue that was built to recognize a dog that gave its life in service of Canada during the war. It picked up a grenade in its mouth and ran away from the soldiers who were gathered in that area, and thus when the explosion went off, the animal died. It's the same thing in Newfoundland and Labrador. There was a very famous dog that was a mascot for the Royal Newfoundland Regiment that gave its life in the service of the country.

These are acts of heroism by our furry little friends that really deserve recognition. Similarly, and not to in any way diminish the importance of it, they deserve protection under the law.

**Mr. Bob Dechert:** I know a woman who has a seeing-eye guide dog, and not only is this dog absolutely essential to her ability to live a normal life and get around in a very congested city like Toronto, but also, a real bond has developed between the owner and that animal. If that animal were destroyed for any reason, it would not be easy to replace.

I was wondering if you could tell us whether consultations were held on the development of Quanto's law and, if so, who was consulted and when they were consulted.

**Hon. Peter MacKay:** Mr. Dechert, to answer that question directly, there weren't the types of consultations, for example, that might normally occur, but we saw consultations and empirical data and information being gathered by one of our colleagues to present a private member's bill.

The commitment in the Speech from the Throne came about, and in large part this bill was drawn, from that private member's bill. As well, there were visits to police training quarters and there were opportunities to hear directly from those who had worked with service animals, both in the military and police and otherwise. Again, our colleague, Costas Menegakis, gathered a body of evidence and information, and we gathered some information in the course of making that commitment in the Speech from the Throne.

• (1610)

**Mr. Bob Dechert:** What kind of reaction have you received from the public in Canada? My late mother was a great believer in the value of animals. She was a dog trainer and showed dogs and she used to say to me all the time, "there are no bad dogs, only bad people". What kind of reaction are you getting from the general public?



**Hon. Peter MacKay:** I must say, having grown up on a farm, we always had dogs. Some of my closest friends...and in fact one of the police officers in my hometown is the dog man, as they say, and he has trained several animals and used them in the course of his career. He has given evidence before this committee. His name is Sergeant Duane Rutledge.

Time and time again when the subject comes up, which it does on occasion, the public is overwhelmingly in favour and supportive of anything that would protect a service animal. There is, I think, a tremendous and even growing respect for the service animals, police dogs in particular. You're seeing all sorts of different animals. When you go to the United States, for example, you see giant poodles being used at airports, which are not dogs you would normally associate with that type of work, but their olfactory senses are very accurate. So different types of animals provide different services.

There are the comfort animals. Some will sleep in the same room as a soldier suffering from post-traumatic stress and wake them up when they're having night terrors, and they will provide the type of comfort and companionship that is so very important to somebody who is feeling anxiety. The dog can actually sense that anxiety, whereas another person might not. That is a gift, and, I would suggest, what those animals do is of great value and is in need of protection.

You referenced the bond that's formed between persons and animals. It's a very real thing.

**The Chair:** Our next questioner from the New Democratic Party is Madam Péclet.

[Translation]

**Ms. Ève Péclet (La Pointe-de-l'Île, NDP):** Thank you, Mr. Chair.

Minister, I am very happy to have some time to ask you questions. Thank you for appearing before us.

My first question is about the situations you considered when drafting the bill. In the case law, which legislation have crown prosecutors been using to convict people of animal cruelty, such as in the Quanto case? Of course, Bill C-35 did not yet exist.

**Hon. Peter MacKay:** Thank you for your question.

Quanto's case is not unique. Other similar cases have come before the criminal court.

[English]

Obviously, in the case of Quanto, there was a conviction obtained by the crown under a different section of the Criminal Code. What the sentencing judge did there, I suspect, is look at the fact that this was a police animal, as an aggravating circumstance as opposed to a specific offence, which is what we're talking about here.

While there isn't a great deal of accumulated case law on this particular subject matter, there is some. Mr. Casey said that it's somewhere in the range of 10 cases. I think we looked at 12 to 15. There were a few others, perhaps, that didn't show up because they were provincial court cases and perhaps not as prominent.

Again, the Quanto's case and the resulting Bill C-35 is an attempt to encapsulate the specific role and the specific purpose these animals play, above and beyond an animal that is a pet or an animal

that is kept for domestic purposes. Again, one of the more horrific examples of animal abuse is these puppy mills, where they raise animals for the sole purpose of mass-producing them, and they're abused. Dogfighting is another specific example in the Criminal Code.

In answer to your question, we didn't have a great deal of case law to depend on. We looked at Quanto's and the circumstances there. We consulted with police and those officials who work directly with animals and determined that this was a value proposition to put a specific law in place to protect those animals.

**Ms. Ève Péclet:** Do you feel that the courts haven't prosecuted enough? What about this article couldn't be applied to specific circumstances that would be applied by the courts by Bill C-35? What is the difference? What is the difference between the new articles we're going to put in, the new infraction, and the sections such as, for instance, section 445? Is it only the minimum sentence that would be considered or are there other circumstances that weren't included in the section about cruelty to animals?

•(1615)

**Hon. Peter MacKay:** Yes, it is the mandatory minimum for a higher-end type of offence, where, based on the facts of the case, it results in a determination that the animal was deliberately killed. There's also the consecutive sentence element. Very often what will happen is that an individual involved in assaulting or killing a police officer similarly has done harm to the animal, because they work in that team environment. That sets it apart from the existing Criminal Code sections that pertain to animals. They simply don't have that law enforcement component. I hope I'm not going out on a limb here, but it's akin to the recognition under the Criminal Code of an assault on an individual versus an assault on a police officer, in the context of an animal.

Again, I say for emphasis that we looked not only at this particular offence. We also looked at the range of sentences that were applied in cases involving animals that were not service animals and determined that a higher penalty, including the mandatory minimum and the elevated fine, was reflective of the need to protect those animals and the special role they play in society because of their work.

[Translation]

**Ms. Ève Péclet:** One of the differences between the new provision in Bill C-35 and the provisions in the section on animal cruelty is the notion of lawful excuse.

Paragraph 445(1)(a) of the Criminal Code only uses the word "wilfully", with no mention of lawful excuse.

Can you give us some examples of what would constitute a lawful excuse? How would that apply in certain situations, such as a demonstration or an airport or customs search? It's not just a matter of law enforcement animals, but also of law enforcement officers. What would be a lawful excuse in some of those cases?

[English]

**Hon. Peter MacKay:** I spoke to Mr. Casey's question similarly. What's envisioned here is that in every case you're going to look at the individual circumstances that result in the charge or the offence, whether it was an assault on the animal causing harm or whether it was the death of the animal. What's envisioned here is that you have to take into circumstances the condition of the accused and what was in their mind. That *mens rea* could be affected by a mental illness. It could be affected by—

**Ms. Ève Pécelet:** Or the fear of the....

**Hon. Peter MacKay:** The fear certainly, and the previous experience they might have had as a child, for example if they were bitten and now have an elevated fear.

Those circumstances would be taken into consideration in both the attempt by the prosecution to achieve a conviction, but also I suspect by a sentencing judge. So we felt that the lawful excuse, which is available in the Criminal Code, should apply to this offence. It's not a strict liability offence and the circumstances there, the example that I give, very much go to the *mens rea*. What was in the mind of the accused when he interacted with this animal in a violent way? Did he use what he thought was proportionate force in attempting to protect himself? If, when the dog grabbed him on the arm he grabbed him on the throat, that might justify the individual having to use lethal force to prevent...and to save his own life, or to save the life of somebody else. So it would be very much predicated on all those circumstances at the time of the offence, which would be examined by a court of competent jurisdiction.

**The Chair:** Thank you very much.

Thank you for those questions and answers.

Our next questioner from the Conservative Party is Mr. Wilks.

**Mr. David Wilks (Kootenay—Columbia, CPC):** Thanks, Chair.

Thanks, Minister, for being here today.

Every few months I go out to plaque 16 and name 20, which is that of Michael Buday, who was killed on March 19, 1985, as he took his dog, Trooper, to detain Michael Eugene Oros, and was shot in the back of the neck. He is unfortunately not with us any more, but he is probably the epitome of a dog handler. They are the first in and the last out.

You mentioned earlier, Minister, law enforcement animals and what they are used for, but I wonder if you could maybe take us down the road a little about the training they undergo and where that takes place, from the perspective of the RCMP anyway, and anything else you might want to add.

• (1620)

**Hon. Peter MacKay:** Thank you very much, Mr. Wilks.

As I've done on other occasions, and as I know other witnesses have, I thank you for your service in uniform. Your experience, I think, is very important and instructive on a number of these cases.

You referenced the training regime that these animals go through. What I have seen in both the police training of animals and the military training—and they're often contract employees—is that it's extremely demanding or rigorous. These animals are selected the

same way that Olympic athletes might be selected. Again, I don't think that's a stretch because many of these animals just don't make the cut, they don't have the physical prowess. We have an Olympian here, Kyle Seeback, who can speak to that as well.

But I truly believe that it goes back to the question of the value that we place on these animals, the investment. Some of these animals, when you calculate that training regime, the investment of time and effort put in by individuals with expertise in the area, you're talking about a value of tens of thousands of dollars. These are not show animals; these are work animals. These are specimens known for their strength, their endurance, and their ability to respond to commands.

Every dog, as you know and as you alluded to, forms a very special bond with their handler. There is, again, that very special esprit de corps that exists in dog handling units. They are ready to die for one another and they are very often in circumstances where that possibility exists.

I come back to the very important point that I think these are animals deserving the type of protection afforded to them by placing greater emphasis on deterring individuals or anyone who would deliberately harm an animal in the provision of that service.

**Mr. David Wilks:** I can say, Minister, I've been on the practice end of a service dog several times and you want to ensure that you lead with the arm because if you don't, things don't turn out well.

I don't know if you or the staff that you have with you are the ones to ask, but in the definition section “law enforcement animal” means a “dog or a horse”, but then when we go to “military animal and service animal” it says only “means an animal”. I wonder if there is a reason why it was termed that way under this bill.

**Hon. Peter MacKay:** The simple answer is that for the purposes of law enforcement—at least in this country, although there are some examples I could give from other jurisdictions we looked at—it is limited to a dog and horse. Those are really the only animals that have been used in Canada for law enforcement in our history.

Military animal and service animal could conceivably involve a broader definition. One that comes to mind that has not been used for decades is carrier pigeons, but that again is not a very good modern example.

We have seen the use of primates in other jurisdictions for military purposes. Some individuals, persons with disabilities, may find innovative ways in which animals are able to help them in the daily conduct of their lives, but the classic examples that we have seen, for border services, for police, for military, are dogs that are used for protection, for searches, whether that be for narcotics or other illicit substances, and VIP protection.

Crowd control is another one. There are also avalanche and search and rescue dogs. In the context of the tragic circumstances we are seeing unfolding in Nepal, we know that animals provide invaluable service in their ability to respond to avalanches as we are seeing in the Himalayas.

That was the reason we tried to constrain the example in the law enforcement context to animals being dogs and horses.

• (1625)

**The Chair:** Thank you, Minister, for your time today kicking us off on Bill C-35.

Members should know that I'm unfortunately due somewhere at 4:30. You may have noticed the Japanese delegation that was here for a bit.

I thank the minister for meeting with them briefly after question period. Actually, the head of their delegation used to be their minister of justice. It was an interesting opportunity to meet with them.

I'm going to talk to them about budgeting and estimates, Madame Pécelet, which I love. I'm off to that.

We're going to suspend. We'll turn the second half of the meeting over to the vice-chair, Madame Boivin, with four officials.

[Translation]

**Hon. Peter MacKay:** Thank you very much.

[English]

**The Chair:** On Wednesday, we have four witnesses and we have set aside two hours. If we use the two hours, great. If not, that's what has been provided.

With that, I'll suspend.

• \_\_\_\_\_ (Pause) \_\_\_\_\_  
•

[Translation]

**The Vice-Chair (Ms. Françoise Boivin):** We are resuming.

• (1630)

[English]

Thanks to the officials for being here with us to pass a great hour answering all of the brilliant questions that you will receive. Thank you, Mr. Zigayer and Ms. Morency.

Have you any opening comments to make? I thought not.

We will start the round of questioning with Madame Pécelet.

[Translation]

Ms. Pécelet, go ahead.

**Ms. Ève Pécelet:** Good afternoon.

The minister answered questions about mandatory minimum sentences during the first hour. You probably expected to be asked about the same issue.

Did the department review the bill and the inclusion of mandatory minimum sentences in Bill C-35 with respect to the Supreme Court's new ruling in *R. v. Nur*? Do you think the bill complies with the Supreme Court's decision?

**Mr. Michael Zigayer (Senior Counsel, Criminal Law Policy Section, Department of Justice):** I think the minister answered your question well.

Of course we looked at the Supreme Court's recent decision regarding this legal issue. In summary, we think that the penalty set out in the bill will not be seen as cruel and unusual punishment. The minister brought up the ruling in the Quanto murder case a few times. The court imposed a 26-month sentence for several offences. The judge stated that 18 months of the sentence were imposed specifically for killing the animal. We could speculate that, in the absence of other offences, the judge might have imposed a sentence of more than 18 months for the animal's killing. The assumption can be made.

When you look at the notion of cruel and unusual punishment, a six-month minimum is not excessive, considering the sentences the courts have handed down in the past for similar offences.

In this case, we considered other situations and concluded that the bill's provision

[English]

would resist or survive a constitutional challenge.

[Translation]

**Ms. Ève Pécelet:** You held consultations and considered the case law. My honourable colleague Mr. Casey said there were some dozen cases over the past few years. What did the prosecutions consist of? If we focus only on animal cruelty and not on any other offences people were accused of, which parts or sections of the Criminal Code were used the most in the cases you considered? What sentences were imposed? We are talking about Quanto, but there are also other similar cases.

**Mr. Michael Zigayer:** Thank you for the question.

The only section of the Criminal Code that could be used to prosecute someone for killing a law enforcement animal, a police dog, was section 445.1, which covers cruelty to animals

That was the section used to prosecute Quanto's killer. That's pretty much all I can say on the matter.

The case law does not allow us to analyze previous cases because the nature or role of the killed or injured animal is not specified in section 445.1.

• (1635)

**Ms. Ève Pécelet:** Since we are on the topic, let's discuss section 445.1. The major difference has to do with the use of the term "lawful excuse". Section 445.1 uses "wilfully causes" or "wilfully permits to be caused unnecessary pain, suffering or injury to an animal or a bird". Only "wilfully" is used and not "lawful excuse". The wording is a bit different.

When you used the terms reasonable or lawful excuse during your consultations, which cases were brought up? Why did you use those specific terms?

**Mr. Michael Zigayer:** The best I can do is refer you to the Library of Parliament's analysis of the bill. Subsection 429(2) of the Criminal Code reads as follows:

No person shall be convicted of an offence under sections 430 to 446 where he proves that he acted with legal justification or excuse and with colour of right.

In the bill, that new offence is covered in the provisions I just mentioned. Consequently, the provision can be used by the defence in relation to the new offence mentioned in the bill.

**The Vice-Chair (Ms. Françoise Boivin):** You are out of time, Ms. Péclet.

I will now go to the Conservative members of the committee. Mr. Calkins, go ahead.

[*English*]

**Mr. Blaine Calkins (Wetaskiwin, CPC):** Thank you, Madam Chair. I want to thank the officials for remaining behind here. If you'll indulge me for a minute, I'd like to get on the record some of the things that the minister brought up when he was here. When he brought up the animals that were used to treat the soldiers with PTSD, I thought it was very appropriate given the timing. In my riding I'm very lucky to have Can Praxis, an organization that uses horses to treat soldiers with PTSD. It's just like it is with dogs: you can't fool a horse when you're having relational issues or other kinds of stressors in your life. If you ride a horse—and I spend a lot of time on horseback—it can tell when things are right and when things aren't going well.

So I certainly appreciate the value of service animals, whether it's in service to our veterans or in service to our law enforcement personnel.

For a little while in my career I was the ranger in charge of Red Lodge Provincial Park in Alberta, directly west of the RCMP dog training facility, south of Innisfail, between Innisfail and Bowden. I spent many a day there, especially on the weekdays in-between, particularly in May and June when there weren't a lot of campers at the provincial park. The RCMP staff would come out there with their training dogs and use that park and facility as part of their training grounds for those canine units, and like Mr. Wilks I made darn sure when I was out there that I had the right equipment on my arm, and made sure I led with that when the dog was coming.

I also had similar experiences when I worked as a national park warden in Jasper National Park, where we used dogs to detect potential poaching and various other kinds of potential offences that wouldn't otherwise be easily detected by human beings.

Here is my question for the officials. When you look at the bill, it is very straightforward but doesn't give us a whole lot of insight insofar as the people who might be watching or going over this debate, especially when it comes to Canada Border Services Agency, are concerned. I think everybody who uses an airport or has gone to a border crossing understands and sometimes sees dogs there.

Can you tell us something about what these service animals, what these dogs, have been able to do to help prevent contraband from coming into Canada?

**Mr. Michael Zigayer:** I suppose I'll start with Canada Border Services animals. We've seen them at the airports. We see them sometimes on television. They're walking past passengers and past baggage. I can tell you that Canada Border Services Agency has a detector dog service, and as I understand it there are about 53 detector dog service teams. That would be the operator and the animal together. They serve to facilitate and expedite the inspection of goods coming into the country, because you can imagine that it

might be a lot more labour intensive if you didn't have them screening and using their God-given gift of being able to sniff, although they are trained. It does take specific training for them to be able to detect explosives or certain types of drugs.

With regard to police dogs—and now I'll mostly make reference to the RCMP—they have what we understand are 157 dog teams across the country. As the Minister was saying, they are involved in all types of activities, including VIP protection, crowd control—and, as you mentioned, horses are used in that connection as well. If I can just step away and talk about horses for a moment, when mounted officers are in a crowd or there's a crowd situation.... Suppose it's Canada Day, it's not even a demonstration against something, but a happy occasion, and someone has a heart attack. If there's a mounted officer, the people on the ground can see the officer. He's higher up. He's more visible. Also, in the reverse situation, a mounted officer can perhaps see something happening.

So they really are teams and are really useful in law enforcement. What distinguishes these animals from all the other animals is the important role they play in the administration of justice and in assisting the police not only to enforce the law but also in helping people to obtain medical treatment or whatever.

• (1640)

**Mr. Blaine Calkins:** I appreciate that, as somebody who has spent a lot of time on horseback. That was my job. I was a national park warden; actually, I was a back country warden. I spent hours on that horse and I still do in my own spare time when I go hunting or camping in the Rocky Mountains. I'm lucky to be from Alberta and have those opportunities.

I understand the bond that's created between a master—if you want to call it that—and the service animal, whether it's a horse for the very reasons that you highlighted, or with a dog.

There have been a lot of questions and concerns brought up about some of the issues around mandatory minimum sentences and some of the other provisions that we have here. One of the questions that I have a bit of a technical concern with—even though I agree totally in principle with the legislation—is that we've seen animals being used in space exploration and in a lot of different capacities. Some of those reasons might include the rehabilitation of the animal, but the other reason might simply be that the animal is being used in place of a human being as the initial point of contact, or there is a safety consideration or concern.

I think the issue is twofold, especially when it comes to service dogs. One, they can provide the services more quickly, efficiently, and more accurately, like you rightly said. Two, they're also sometimes sent into situations where it might not be safe for an officer to go in initially, or it might be too cumbersome. I mean a foot race between two human beings takes a lot longer to resolve than a foot race between a German Shepherd and a human being, for example.

When we put these provisions in place, which I'm sure will be passed, they will confer these animals with a certain level of protection above and beyond other animals, and rightly so for the risks they are taking under going these particular activities.

I'm wondering if there are other countries that we're aware of or other jurisdictions within Canada at the provincial level that may already offer certain protections to service animals?

**The Vice-Chair (Ms. Françoise Boivin):** Mr. Calkins, you took your time and his time, but I'll give you 30 seconds to answer. I'm so glad to say this to somebody.

• (1645)

**Mr. Michael Zigayer:** Yes, other jurisdictions have specific laws similar to what is proposed in Bill C-35, to create a specific offence for the killing or the injuring of a law enforcement animal, and even in some cases with regard to service animals.

[Translation]

**The Vice-Chair (Ms. Françoise Boivin):** Mr. Casey, the floor is yours.

[English]

**Mr. Sean Casey:** Thank you, Madame Chair.

Mr. Zigayer? Is that close?

**Mr. Michael Zigayer:** It's perfect.

**Mr. Sean Casey:** Thank you.

I want to continue the conversation you started with Ms. Pécelet with regard to subsection 429(2) of the code.

You pointed out that subsection 429(2) provides a defence and that the new section also provides a defence. My question is how the two fit together.

If we look at what's in the code now, 429.2 provides a defence where the accused proves that he acted with legal justification, or excuse, and with colour of right. This act amends the code to insert the words "willfully and without lawful excuse".

My question is, do the new words that we are adding into the code broaden, limit, or simply repeat the legal defence in law that exists?

**Mr. Michael Zigayer:** I think the best way to answer that is to say that if ever this provision comes up under a prosecution, the court will consider or the accused will advance whatever defence against the charge they believe they can.

The key element, as the minister was saying, is the willfulness or the intent to commit the offence. The defence without lawful excuse, essentially the reference to subsection 429(2), is to indicate that it's not a new law. That requirement or that ability of the accused to demonstrate that he had some lawful excuse for doing the act has been with us for some time.

I was trying to think of an example in which this might be applicable in conjunction with an assault on a law enforcement animal. I came up with one that may or may not be a reasonable hypothetical, but I'll leave it with you.

If one had a situation in which a law enforcement animal was used more as a weapon by the police officer in an inappropriate fashion to attack an individual, and let's add to that the fact that it was not a lawful arrest that was being attempted, then I would think that person would have the ability to defend himself—it would be self defence—against this animal, against this assault that was being perpetrated with the animal. At trial, he would have a reasonable excuse for

doing that if he was actually charged with having wounded or injured the law enforcement animal.

**Mr. Sean Casey:** I guess my question is whether the words that are being added to the code add anything given that subsection 429(2) already exists.

In the example you just gave, presumably subsection 429(2) would provide a complete defence for the accused in those circumstances.

**Mr. Michael Zigayer:** There might be other provisions in the code that one could rely on, for example, section 34 perhaps. In any event, they are consistent. I wouldn't say they were inconsistent.

**Mr. Sean Casey:** I guess my question is why we need them. Let me frame it another way.

I presume that the two witnesses I'm speaking to here were either the principal drafters of the bill or the experts within the department on the bill. What was the legislative intent? What was the intent in adding those words given the existence of section 429. I'm sorry if I'm repeating myself, but was the intention to make the defence of lawful excuse tighter or broader, or did you have any intent in terms of the defence that already exists?

• (1650)

**Mr. Michael Zigayer:** I guess I would say there wasn't any specific intent to derogate from section 429. Perhaps one could say one would look at the new provision and the focus of the legal discussion, the legal argument, and determine whether or not there was a defence there rather than having reference to section 429.

**Mr. Sean Casey:** Ms. Morency, did you want to add to that?

**Ms. Carole Morency (Director General and Senior General Counsel, Criminal Law Policy Section, Department of Justice):** I'm just going to add that Bill C-35 is proposing a very specific, narrow set of amendments to address a very specific type of issue. I think the comment you're raising has maybe more to do with the whole area of the provisions, because Bill C-35 is just maintaining a similar approach to what's there right now. The reference to subsection 429(2) applies to all of those other provisions, whereas Bill C-35 is only going in to do something very narrow.

Perhaps the issue you're raising is why you have it in both places. It's in both places right now with the existing sections 445 and 429, and Bill C-35 is just maintaining the same approach. There's no inconsistency or enlarging of the approach taken here.

**Mr. Sean Casey:** Well, if it doesn't enlarge it and doesn't limit it, why is it there? Why can't we just rely back to the words that are already in it? I assume by putting those words in there they meant something.

**Ms. Carole Morency:** What you're raising is an issue that's there right now in the Criminal Code. The approach that Bill C-35 takes is really to model the existing offence, but to carve it out specifically for these particular animals. The issue, I think, is more fundamental with all of the provisions there, but it's there now in the Criminal Code between section 429 and the other animal cruelty provisions.

**The Vice-Chair (Ms. Françoise Boivin):** That's the time, sorry about that.

**Mr. Sean Casey:** Thank you.

**The Vice-Chair (Ms. Françoise Boivin):** Since I have no more names on your side, I'll take the liberty of asking you a few questions.

[Translation]

I would like a clarification. The new subsection 445.1(1) stipulates the following:

Every one commits an offence who, wilfully and without lawful excuse, kills, maims, wounds, poisons or injures a law enforcement animal while it is aiding a law enforcement officer in carrying out that officer's duties...

Does it have to be known that it's a law enforcement animal or a dog accompanying a police officer? For example, I am thinking of demonstrations where police officers are not necessarily uniformed. Is knowing that a person is accompanied by a law enforcement dog essential for an offence to be committed?

[English]

**Mr. Michael Zigayer:** If I understand the question properly, the question is, if I happen to see a dog accompanying a law enforcement officer and I assault that animal, do I fall within the scope of this legislation? The legislation is very specific. It speaks of a law enforcement animal and defines what a "law enforcement animal" is. It is an animal that is specifically trained to assist a law enforcement officer and is actually engaged in assisting that law enforcement officer at the time that it is assaulted or killed.

**The Vice-Chair (Ms. Françoise Boivin):** My question was more about, I don't know it's a policeman.

•(1655)

**Mr. Michael Zigayer:** You do not know it's a policeman?

**The Vice-Chair (Ms. Françoise Boivin):** No, I do not know. The policeman doesn't identify himself. Do we need to know it's a policeman, and if there's a dog, should we assume that it is an assisting police animal?

**Mr. Michael Zigayer:** I think you're getting into the area of legitimate defence or legitimate excuse because one would expect even an undercover officer to identify himself as a peace officer, as a law enforcement officer, at the time that he's interacting with a private citizen. If I happen to say, "Stop, police," and I happen to be accompanied by this dog, there's a certain knowledge that's communicated by the fact that the police officer has said, "Stop, police."

**The Vice-Chair (Ms. Françoise Boivin):** So it goes into the general defence possibility.

**Mr. Michael Zigayer:** Yes.

**The Vice-Chair (Ms. Françoise Boivin):** You see it as a possible act that could be raised by the defence on that factor. That's all I wanted to know, if it was an automatic...and the excuse had to be outside the actual attribution of the policeman or the dog itself.

**Mr. Michael Zigayer:** Well, there's a close connection. In some instances the dogs are wearing a kind of vest. Think of customs. Sometimes they wear what I'll call a vest that says "Customs" on the side, and there's maybe a flag, and that identifies them when they're

walking through the airport. There's a handler with them, and that handler is always in a uniform. If you attack that dog, as it is working with the handler at the airport, then there's an inference that would be drawn that you knew the type of animal that you were attacking.

[Translation]

**The Vice-Chair (Ms. Françoise Boivin):** Does that include provincial corrections officers?

**Mr. Michael Zigayer:** Yes.

**The Vice-Chair (Ms. Françoise Boivin):** That is clear to you.

[English]

**Mr. Michael Zigayer:** The definition of "law enforcement officer"—that term is specifically defined for the purposes of this legislation—"means a police officer, a police constable or any person referred to in paragraph...", and there are a series of paragraphs from section 2 of the Criminal Code. I'll just go through them: Correctional Service officer, integrated cross-border maritime law enforcement officer, or shiprider, a CBSA customs officer, a CBSA immigration officer, a fisheries officer, and the military police.

Before I hang up on this particular question—I don't want to mislead—I'll just take a quick look at the Criminal Code.

[Translation]

Paragraph (b) stipulates the following:

a member of the Correctional Service of Canada who is designated as a peace officer pursuant to Part I of the Corrections and Conditional Release Act, and a warden, deputy warden, instructor, keeper, jailer, guard and any other officer or permanent employee of a prison other than a penitentiary as defined in Part I of the Corrections and Conditional Release Act,

**The Vice-Chair (Ms. Françoise Boivin):** I see. It would probably be included in that.

I have one last question for you. It's basically the same one I put to the minister.

I understand that there aren't very many cases in the case law that deal with the same issue. The impact of Bill C-35 is fairly limited. It is a bit difficult for me to understand the logic behind the exclusion of certain kinds of animals. They are covered to some extent, but then, under mandatory minimum sentences, it says that a police dog is more important than, for instance, horses that go to war with people or something like that. It's a bit difficult for me to understand the logic behind that. Why was the distinction made?

I repeat that rising up against animal cruelty doesn't mean we dislike hunters. I heard all sorts of things in the speeches at second reading of Bill C-35. The legislation focuses on three categories. I am trying to understand the logic behind all this. To some, a seeing-eye dog is just as important as a police dog. Any kind of murder is experienced just as dramatically as a police dog's killing. I understand the argument about danger and a higher likelihood of danger. I am trying to understand the department's logic behind the way the bill was drafted.

• (1700)

[English]

**Mr. Michael Zigayer:** What distinguishes a law enforcement animal from all other animals is that an attack on that animal is an attack

[Translation]

on the administration of justice.

[English]

That's a very important factor that distinguishes the law enforcement animal from all other animals, just as there's a reason we distinguish an assault on a peace officer, a police officer in particular, from assaults on ordinary individuals.

Perhaps this is an opportunity to refer to clause 2 of this bill, which creates a new sentencing provision specifically with regard to assaults that are committed on peace officers—assaults, common assault, an assault causing bodily harm, or the aggravated assault on a peace officer. Henceforward from when this legislation comes into force, that sentence will be served consecutively to whatever other sentence the individual is convicted of.

So if the police officer is arresting someone for a break and enter, and that individual resists and assaults the police officer, the offender will get whatever sentence he was going to get for the break and enter, and the term of imprisonment that's imposed for the assault on the police officer will not be served concurrently, but will be served consecutively. This again recognizes that assaults on peace officers, police officers, and these law enforcement animals are actually assaults on the administration of justice, or are crimes committed in the larger sense against the administration of justice.

**The Vice-Chair (Ms. Françoise Boivin):** Thank you so much.

Does anybody else have questions?

Mr. Wilks.

**Mr. David Wilks:** Thank you, Chair.

I just want to go back to something the chair just alluded to, and that was with regard to police officers in plain clothes. Maybe I'll just clarify a little bit, having dealt with a fair number of dog handlers, that they are in plain clothes. But with the RCMP they're normally in a blue uniform, not with a yellow stripe, and nine times out of ten they are accompanied by a uniformed police officer. The one exception would be when they get separated from the police officer in the pursuit of an assailant. But even at that, before releasing the dog they must identify themselves as a police officer, and they must also say, "If you do not stop, if you do not surrender, I will release the dog".

That's just a clarification.

If I may, I'll turn the rest of my time over to my colleague, Mr. Calkins.

**Mr. Blaine Calkins:** Thank you, Mr. Wilks, I appreciate that. I appreciate that clarification as well.

My question, Mr. Zigayer, is for clarification.

You went through the clause in the legislation that is inclusive of the definitions of peace officer. For greater certainty, and I'll have to go back into the annals of my mind, but years and years ago when I was employed as a national park warden and as a conservation officer for the Province of Alberta, I believe I was captured in the definition of a peace officer. While the particular subsections in the bill mention a fisheries officer and talk about correctional services and cross-border services agents, and so on, but could you please reassure this committee that anybody appointed with a peace officer status—that would be a dog-handler at the provincial jurisdiction level who is charged with being a peace officer, and a national park warden—would be captured by this legislation? I ask because there are dog handlers in the national park warden service as well.

**Mr. Michael Zigayer:** I appreciate your question, because it is true that when this particular provision was drafted not every person who falls within the definition of peace officer was included in this new definition of law enforcement officer. My understanding is that the park wardens obtain their peace officer status not through the Criminal Code but through the National Parks Act. Again, I'll take a moment to verify that.

• (1705)

**Mr. Blaine Calkins:** This isn't the reason for my question.

Every statute that enforces or creates a law enforcement agency has, of course, its own legislative framework to do that. There is often a clause in that piece of legislation saying that this person is an ex-officio member of this particular force, or whatever the case might be. That is why I'm asking for clarification.

If you don't have the answer right now, I think the committee would be happy to get a specific answer if there's somebody you need to refer to or confer with on this particular issue. It is a question that I think the committee should have an answer to, because if there does need to be a technical amendment to the bill to make sure that something like a park warden service dog should be and is intended to be protected under these provisions, then we need to make an amendment to the legislation to do so, and we need to know that as soon as possible.

**Mr. Michael Zigayer:** Madam Chair, I'd be pleased to make that undertaking. I will examine that, and through the minister's office will get the answer to you or through the chair.

**The Vice-Chair (Ms. Françoise Boivin):** Excellent. Hopefully, it will be before we start the clause-by-clause study. Otherwise we will present some type of amendments, I'm sure.

**Mr. Blaine Calkins:** If necessary.

**The Vice-Chair (Ms. Françoise Boivin):** If necessary.

**Mr. Blaine Calkins:** My instinct tells me that it's probably already captured. I simply want to be reassured that that particular law enforcement service would qualify under this legislation.

Thank you.

**The Vice-Chair (Ms. Françoise Boivin):** You still have time, but are you okay?

Excellent.

My thanks to everyone.

[*Translation*]

Thank you very much for joining us this afternoon. That is our agenda for the day.

The meeting is adjourned.

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