

ments would affect that general purport, they would receive my wholehearted support. I believe there is some merit in some aspects of the bill, but unfortunately it seems to me that merit is combined with a principle which is essentially unacceptable.

I can see some merit in permitting a judge to order that a person be prohibited from owning or having in his custody an animal or a bird if that person is convicted of cruelty to the animal or the bird. At present, the law allows the judge to prohibit a person from owning or possessing an animal or a bird only on a second, third, fourth or subsequent conviction for cruelty. There may be some merit in giving a judge the power to prohibit ownership or possession by a person upon his first conviction, but combined with that I see in the bill a principle which always has been fraught with danger and one in respect of which we should always in this House proceed only with the greatest care and caution, and that is the principle of minimum penalties.

Under the present law, if a man is convicted for a second time of cruelty to an animal the judge may prohibit that person from owning or possessing an animal for a period of up to two years. And if the person who is the subject of a prohibition order of that kind breaches that order by taking possession or ownership of an animal while under prohibition, then he is guilty of an additional offence and may be fined up to \$500 and imprisoned for a period of up to six months. You will note that the present penalty for disregarding an order of prohibition made by a judge is a fine of up to \$500 and/or imprisonment of up to six months. In both cases the penalty is defined in terms of maximum; that is, a maximum fine of \$500 and a maximum term of imprisonment of six months.

• (1620)

This is the case with all summary conviction offences. Every summary conviction offence under the Criminal Code, including this summary conviction offence—that is, cruelty to animals—carries with it the penalty of a fine up to a maximum of \$500 and/or imprisonment up to a maximum of six months. The bill before the House would alter the penalty on breach of a prohibition order against ownership after conviction. It would impose a minimum fine of \$250 and would empower the judge to impose a term of imprisonment for a minimum period of three months. In other words, it would remove the discretion which is currently vested in the judge. If he found the man guilty, he would have to fine him at least \$250, and if he imposed a term of imprisonment it would have to be for at least three months. That would be the case, totally irrespective of the circumstances surrounding the commission of the crime.

One can readily see that this amendment removes the flexibility which traditionally is vested in the judge, to fit the sentence to the crime. The seriousness of the crime can range all the way from a rather slight and technical breach of the law to a blatant and horrendous disregard for it. By and large, our law has adopted the principle of permitting the maximum flexibility for judges to impose a sentence which fits the seriousness of the crime. Under the present law we say to the court, in effect, that if a person is convicted of breaching an order of prohibition against owning an animal, it may impose a fine on that

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person of whatever amount it considers to be appropriate, given the seriousness of the offence, and may impose a term of imprisonment from one day, in the case of less serious circumstances, up to as much as six months in the most serious circumstances.

Throughout, it is left to the court to determine what the sentence should be in accordance with the seriousness and the circumstances of the offence. And throughout, of course, the decision by the court is subject to appeal either by the Crown or by the aggrieved person. It is this principle which would be altered if Bill C-46 in its present form were to be approved. It would remove the flexibility in the court to fit the sentence to the seriousness of the crime. It would force the court to impose a minimum sentence of \$250 and, in the case of imprisonment, to a minimum term of three months. That sentence may in a particular case be far too severe. In yet another case and in other circumstances it may be far too lenient. By and large and in a general kind of way we have always resisted building into our criminal law precisely defined penalties, as opposed to defining certain parameters within which our courts are left with discretion to be exercised according to the seriousness of the particular offence.

As to the proposed penalty for breach of a prohibition order with respect to this particular crime, I seriously question whether a minimum penalty is really justified. Without in any way condoning cruelty to animals, which is a reprehensible act and ought always to be subject to punishment, I think it is necessary to keep the offence in proper perspective. If a minimum penalty is called for here, then the penalty for many other seriously anti-social acts would have to be reconsidered.

It may display less a faith than is justified in the good sense of the judiciary of our country to prescribe minimum penalties for a situation where there has been flagrant disregard of an order of prohibition made by the court. Indeed, I believe that if we were to accept the principle of minimum penalties with respect to this particular crime, that is, with respect to the crime of cruelty to animals, we would have to reassess the penalties that apply to all summary conviction offences under the Criminal Code. I do not think one could justify the imposition of minimum fines and minimum terms of imprisonment with respect to this particular crime and not have similar minimums in respect of other summary conviction offences which may indeed be more serious than this one. It is for this reason that I say before we accept this principle in the bill we ought to have a full and complete understanding of how it affects other sections of the Criminal Code and other offences.

Let me illustrate my point, Mr. Speaker, with but one example. Under section 245 it is an offence punishable by summary conviction to assault someone else. The penalty for common assault is a fine of up to \$500 and a term of imprisonment of up to six months. There is no minimum fine and no minimum period of imprisonment prescribed by the Criminal Code for an assault. I question whether it would be defensible to have a minimum fine and a minimum term of imprisonment for breach of a prohibition order against owning an animal and not have a similar minimum or, indeed, a lesser penalty for assaulting another human being. This is the kind of conflict which I