

*Government Orders*

modernize the law by updating an archaic provision of the code that is inadequate and no longer fits the reality of present day Canada.

The bill provides that force that is intended or is likely to cause death or grievous bodily harm to arrest a fleeing suspect may only be used when reasonably necessary for the protection of any person from imminent or future death or grievous bodily harm, and only if the flight cannot be prevented by reasonable means in a less violent manner.

This bill calls for a proportionate response and respects the principle of restraint.

*[Translation]*

I want to make sure that police officers can continue to protect themselves and the public from serious injury or even death.

Bill C-8 specifically authorizes the use of whatever force is necessary to protect the public or police officers.

*[English]*

The proposal for a new subsection 25(4) focuses the decision on whether to use deadly force against a fleeing suspect against the risk of physical harm posed by the fleeing suspect if not immediately apprehended. The subsection provides that the physical threat posed by the fleeing suspect may be imminent or future. As a result, the subsection would allow for the use of deadly force against a fleeing suspect in situations where the danger to the public would be increased and not reduced by allowing the fleeing suspect to avoid arrest.

By adopting that standard, Parliament would be saying that only in those circumstances is the use of deadly force justified. At the present time there is in the current provision no requirement that the fleeing suspect be dangerous before deadly force can be used.

Admittedly, the assessment of future danger is a difficult one to make. But retaining the word as it appears in the amendment would make it clear that the provision would apply, for example, with respect to a dangerous mass murderer, or a person with a record of violent offences fleeing from arrest who constitutes a danger to society, even though the anticipated harm may not be immediate.

The assessment that the fleeing suspect poses a threat of death or grievous bodily harm is to be based, according to the amendment, on the circumstances as the user of the force on reasonable grounds believes them to be. In this way the test merges the police officer's subjective belief about the seriousness of the danger posed by the fleeing suspect with the objective test of reasonableness of such belief. This approach is consistent with the test currently used in subsection 25(3) of the Criminal Code.

• (1305)

The bill also proposes, in new subsection 25(5) of the Criminal Code, that deadly force be allowed in order to prevent the escape of an inmate from an institution in which it is known that there are inmates who would be dangerous if they escaped. This proposed amendment once again reflects the current policy and practice relating to the use of force in penitentiaries. Whereas the use of force against escaping inmates is justified by the present subsection 25(4), peace officers in penitentiaries would not be able to perform their job properly and public safety could be jeopardized by the proposed use of subsection 25(4), because paragraph 25(4)(d), if applied to the prison officers would be found inappropriate to the special situation that they face in penitentiaries.

In penitentiaries it is practically impossible for peace officers observing an escape to assess whether the particular inmate attempting to escape is likely to be dangerous if the escape is successful. What is more, the peace officer in such circumstances would be unlikely to know the factors that determine the risk the inmate presents at that particular moment. Deadly force would only be permitted as a last resort after other reasonable, less violent means, if possible in the circumstances, have been tried.

In comparing escape from a penitentiary to the flight of a suspect, the inmate is already in the custody of the law, has been convicted and sentenced for having committed an offence. The social and psychological significance of an escape is very different from a fleeing suspect trying to escape arrest, in that the person who flees on the spur of the moment while escaping from a penitentiary is very rare. Ordinarily such escapes involve planning and premeditation. It is necessary also to bear in mind that it is necessary to maintain discipline and respect for lawful authority in penitentiaries. This amendment would assist in achieving that objective.

Last, the bill includes an amendment to the Coastal Fisheries Protection Act to provide the authority in accordance with regulations to be made under the act for a protection officer to use disabling force against a fleeing foreign fishing vessel in order to arrest the master or other person in command of the vessel.

The amendment to the Coastal Fisheries Protection Act is being proposed to ensure that the Department of Fisheries and Oceans retains the same powers it has at present to use disabling force when necessary. No new powers are being added.

Fishery officers employed by the Department of Fisheries and Oceans to enforce regulations concerning the fisheries are peace officers under the Criminal Code. They have duties and training that are similar to those of other peace officers. These people may, on occasion, have to use force to disable a foreign fishing vessel that has violated our laws and tries to escape.