> Our criminal justice system is based on both a defining statute (the Criminal Code) and the case law which has been built up over years in its interpretation and application. Both aspects are cornerstones of our system.
>
> This bill attempts to codify some, and I emphasize only some, of the basic principles of sentencing which evolved in our courts over the last hundred years or so—This bill's approach of attempting to redefine principles will result in endless litigation which will add millions of wasted dollars of expense to a system that is now struggling to make more efficient use of existing resources.

The Canadian Police Association represents police across the country, not just in Ottawa. It went on to say that it was compelled to articulate just how ill advised the bill was and to say:

> The sentencing is far too important to be saddled with as poor an effort as this and it should be sent back to the drafting table with instructions to start again. At this late date we urge you to do the same thing and do whatever is necessary to not proceed any further on this bill.

Those are pretty strong statements from the police community that was so important to the government's support of Bill C–68 but is being totally ignored on Bill C–41. Why is its support so important on one bill and totally ignored on the other?

When Parliament passes amendments to current legislation it is usually done because it wishes to change the direction of the legislation or to make up for some deficiency in law. As was pointed out by the Canadian Police Association, the bill falls far short of that.

The amendment about which everyone has been talking this evening with respect to section 718.2 does not do it either. The amendment calls for crimes motivated by bias, prejudice or hate to be deemed aggravating circumstances. Therefore a greater sentence would be applied. We have heard impassioned speeches from the government benches about the personal injustices and experiences they have had with respect to discrimination. I do not doubt that. I do not doubt there are many Canadians who have been faced with that.

The justice committee heard extensive evidence about what the courts have been doing for years. Before passing sentence the courts take into consideration all the aggravating and mitigating circumstances. The courts are already giving stronger sentences when they are based on hate or prejudice.

The motivation of the offender has always been an issue. Courts today frequently hand out more severe penalties for crimes committed on the basis of hate, prejudice or bias. If that is already the case, why do we need this section in Bill C–41? Are we in effect telling the courts that we are passing new legislation because we want them to maintain the status quo? There is one difference, which is that section 718.2 lists nine issues to be considered.

The justice committee attempted to determine if the list was exclusionary, that is if the basis for hate crime is not listed in the section can the court consider it to be an aggravating factor?

• (1950)

The hon. member across the way brought forward the fact that an amendment was made to it. Yes, there was an amendment made to it that added the similar factor. As is usual, in cases where lawyers appeared as witnesses some said that the list would not be exclusionary and others said that the list would be considered exclusionary. If it was not meant to be exclusive why would the government include a list?

It is obvious that people charged under this section will be arguing as to whether or not the list is exclusive. It is equally likely that in leaving the section as it is we as parliamentarians are leaving it up to the courts to decide whether something belongs to the similar factor. That is why the section should be deleted in its entirety. I have not heard one individual state that the courts as a whole have not been effective in taking aggravating factors into consideration for crimes based on hate, prejudice or bias.

As I said earlier, section 718.2 received the most attention but other areas deserve further scrutiny. One such issue is alternative measures. The concept of alternative measures is valid. I do not think there is anyone in the Reform Party who does not support the concept of alternative measures.

However the bill has left far too many unanswered questions. What is an alternative measure? We cannot answer that question because there is no definition. There are not even guidelines on what the provinces can decide is an alternative measure. Who qualifies for alternative measures? That is another question that we cannot answer. The bill just states that the person who makes the decision must consider it appropriate. Who is this person who is to decide if the penalty is appropriate or not? Again we do not have an answer. The bill does not stipulate who should be making these decisions. In fact the bill does not even state what type of crimes are appropriate for alternative measures.

One would think that the alternative measures would not be available to people who have previously been dealt with by alternative measures. The bill does not say that. It may be extremely difficult to determine if an offender was previously dealt with by way of alternative measures because there is no need for mandatory reporting of alternative measures. Nor is there a central repository to determine if alternative measures have been previously used. The sections dealing with alternative measures are just too vague to support.