The charge that the bill itself is unconstitutional has certainly been laid in many quarters. I believe Senator Ghitter mentioned it quite categorically several times in his speech. Yet, Professor Hutchinson, the Associate Dean of Osgoode Hall, whom he did not quote, believes that it is not quite as simple as that since there is little Supreme Court guidance on the matter, and there are different views about the effect of the Constitution on aboriginal rights. However, he believes that, given the provisions in clause 117(*u*) of the bill, which gives the power to introduce special regulations in dealing with aboriginal people in Canada, and given the existing regulations in place, such as the requirement of firearms acquisition certificates which has been in place for 20 years without court challenge, the court would not find this legislation unconstitutional.

Professor Hogg, the eminent constitutional scholar, testified that the solution lies in the direction of relieving aboriginal people from paying fees and providing for the appointment of an aboriginal officer. In other words, it should be done in the regulations. Professor Hutchinson reiterated this point when he said:

> On the face of the legislation, it would seem to be on the limits of acceptability — the manner of administration will decide which way it goes.

Professor Quigley of the University of Saskatchewan states unequivocally:

> Regulations have the force of law in just the same way as statute.

He went on to state:

> In my legal opinion, aboriginal rights are not infringed by the gun registration scheme.

He states that, if we consider the *Sparrow* case:

> Before you breach an aboriginal right you must find that the provision in question is unreasonable, imposes undue hardship or denies the aboriginal people the preferred means of exercising their right. If you test the gun registration scheme against that in my opinion there is not violation.

Professor Quigley goes on to make another telling point on the issue of constitutionality. He reminds us that when statutes or regulations are attacked under the legislation, the court typically endeavours to save as much of the legislation as it can, and to strike down only the offending parts. Therefore, to strike down the fee, for example, would not necessarily jeopardize the entire registration scheme.

As I understand it, the testimony given before the committee seemed to focus the constitutional argument along these lines: Aboriginal peoples have a constitutional right to own and use guns, which non-aboriginal peoples do not. The government can regulate in this area, but it must do so according to the high standards set in *Sparrow*. Aboriginal rights are taken to be protected unless the government can show that they have acted with considerable trust, that they have consulted, and that the reason for regulation is a substantial and compelling good.

To summarize this very important issue, this amendment on the aboriginal rights question has no substantive impact on their protection. It will not satisfy the legitimate concerns of the aboriginal peoples, nor can the Senate be justified, based on expert testimony, in amending Bill C-68 on constitutional grounds.

A second key amendment concerns delayed implementation of the registration scheme by provinces and territories who oppose it. To begin with, the Legal and Constitutional Affairs Committee was given an opinion that an opting-out scheme would be unconstitutional. This variation on implementation in some provinces and territories which are opposed would make a national program unworkable. Those intent on criminal activity will certainly seek out guns in regions where guns are not registered. Further, it would not be possible to assess the true costs and effectiveness of the legislation, as the attorneys general of the provinces would like, if registration is not in place, say, between British Columbia and Quebec.

If registration is not universal, then law-abiding gun owners will be penalized in other ways. A gun owner in Manitoba, for example, could not take his unregistered gun across the border to hunt in the U.S. or to take part in a target shooting event. A gun collector in Alberta could not sell his long gun to a collector in British Columbia. Gun manufacturers in Scarborough and Peterborough could not continue to export their products.

It has also been suggested that businesses in provinces where registration is not in effect could not continue to import guns from the U.S. or elsewhere. These are not measures for law-abiding gun owners. All this, as has been pointed out, is to postpone the legislation from 2003 to 2005.

That brings me to a matter that has been called "decriminalization." In this regard, one amendment would remove from the Criminal Code the offence of possessing an unregistered firearm. The other would eliminate minimum sentences imposed for a second or third conviction.

Without amendment, the bill allows police and Crown prosecutors to use their judgment and distinguish law-abiding gun owners from others clearly engaged in crime. Police will charge some legitimate gun owners who fail to register their guns, perhaps after giving them a warning and time to comply with the law. They will charge them with the summary offence under the proposed Firearms Act that this bill allows. Despite what gun owners in the west have been told, on conviction, he or she will not have a criminal record.