



HOUSE OF COMMONS  
CHAMBRE DES COMMUNES  
CANADA

# **Standing Committee on Justice and Human Rights**

---

JUST • NUMBER 023 • 1st SESSION • 41st PARLIAMENT

---

**EVIDENCE**

**Thursday, March 1, 2012**

—  
**Chair**

**Mr. Dave MacKenzie**



## Standing Committee on Justice and Human Rights

Thursday, March 1, 2012

•(1105)

[English]

**The Chair (Mr. Dave MacKenzie (Oxford, CPC)):** We will call to order meeting number 23 of the Standing Committee on Justice and Human Rights. We are meeting pursuant to the order of reference of Thursday, December 15, 2011, in regard to Bill C-26, An Act to amend the Criminal Code (citizen's arrest and the defences of property and persons).

Today we have three witnesses appearing before us.

You've probably heard from the clerk that you get a ten-minute opening address. I will let you know when you're down to nine minutes. It's nothing personal, but we'll cut you off at the ten-minute range.

You're free to start, if you wish, Ms. MacDonnell.

**Prof. Vanessa MacDonnell (Professor, Faculty of Law, University of New Brunswick, As an Individual):** Good morning.

My name is Vanessa MacDonnell. I'm a law professor at the University of New Brunswick Faculty of Law. I teach and research in the areas of criminal and constitutional law. This past summer I authored a paper with Mr. Russomanno on the changes being proposed to the power of citizen's arrest by what was then Bill C-60 and is now Bill C-26.

I'd like to touch on four points in my opening statement this morning. I would welcome questions from members of the committee on any of these points or on other aspects of the bill.

First, I'd like to talk about what I'd call temporal concerns with the changes being proposed to the power of citizen's arrest.

The existing law permits an individual to effect an arrest where that individual finds a person committing an offence. The arrest takes place immediately and in most of these cases there's no serious question as to whether the offence has been committed and whether the individual performing the arrest has the right person.

Once you start to stray from this paradigm, though, certain concerns arise: there's a higher possibility of a false arrest; the individual performing the arrest might have the wrong person, the wrong arrestee; and, the person being arrested may have no idea why he or she is being arrested and might resist arrest, either lawfully or otherwise.

These are all circumstances where, in my submission, we would want the police, rather than a private citizen, involved. There's actual police work to be done here. This isn't the kind of case where a thief

is caught red-handed, for example, and there may be evidence to seize or an investigation to be conducted. In my view, in this category of cases, we've exceeded what the citizen can meaningfully do. In this respect, the expansion of the powers of citizen's arrest being proposed by Bill C-26 is concerning.

Second, it's important, I think, to highlight that the provisions related to defence of property that are being proposed in this bill are also relevant to our discussion of citizen's arrest. These provisions, like the existing defence-of-property provisions in the code, provide an individual with a defence in circumstances where he or she is defending property. So defence of property, and the self-defence provisions more broadly, provide some protection to an individual who uses force in performing a citizen's arrest.

Included in this broader web of protections are also provisions that protect individuals who use force to prevent the commission of an offence, and protection for individuals who take steps to prevent a breach of the peace. You can read about some of these provisions in the legislative summary for the bill that has been provided by the Library of Parliament.

But the point here is that there's a broad web of provisions that already provide protections to persons who perform citizen arrests. Again I would make the point that situations that fall outside the scope of this broad web of protections likely require the professional expertise of the police.

Third, the major beneficiaries of the expansion of powers being proposed by this bill are not actually small shop owners like Mr. Chen, but rather the private security industry. I'm sure that Professor Rigakos is going to speak more about this in his remarks.

Society is increasingly relying on private security forces as the first line of defence to a number of security threats. These forces are often highly sophisticated. They are well resourced. They police a range of environments and places.

The academic literature and the empirical literature suggest that where marginalized groups are being policed by private security forces, especially in low-income housing communities, there's a real potential for harassment, and the powers being proposed by Bill C-26 may exacerbate this situation. I think we should be very concerned about the liberty and equality concerns that arise when we expand the powers of private security forces, especially if we end up doing so sort of unintentionally.

This bill was really aimed at the David Chen situation and not, perhaps, at expanding the powers of private security forces more broadly. I would simply point out that, unlike police officers, there is very little in the way of regulation of the private security industry.

When we're talking about police officers, of course, their powers are constrained. They have only those powers that are given to them by statute or the powers they have at common law. They're also required to observe the limits of the charter in their duties.

This takes me to my fourth point, and that is the question of whether the charter applies to the actions of an individual performing a citizen's arrest. On this point, I'd just say that the case law, to date, is unclear about whether the charter applies when a person is performing a citizen's arrest. The Supreme Court of Canada has yet to rule definitively on this point. So there's no guarantee the charter would serve as a meaningful check on individuals performing a citizen's arrest.

Perhaps I'll stop there.

Thank you.

• (1110)

**The Chair:** Thank you.

Mr. Russomanno.

**Mr. Leonardo S. Russomanno (Criminal Defence Counsel, Webber Schroeder Goldstein Abergel, As an Individual):** Thank you.

Good morning. I'd like to start by thanking the committee for having me here.

I see a few familiar faces from previous testimony I've given as a member of the Criminal Lawyers' Association. Today I'm testifying as an individual, out of my own interest as a criminal lawyer, on the issue of citizen's arrest and the proposed expansion of it.

I work in a criminal law firm in Ottawa, Webber Schroeder Goldstein Abergel. I have been a criminal lawyer for almost four years. I have experience in the courts here in Ottawa, and I've appeared at all levels of court. On a regular basis I deal with private security and the contact between private security and members of the public.

Generally speaking, in the vast majority of cases there is an appropriate use of police discretion and crown discretion. I expect that some questions about Mr. Chen's case, in particular, may touch on that topic.

Basically, my position with respect to the proposed change to citizen's arrest is that it is unnecessary. I would adopt the comments of Professor MacDonnell as well as the comments from a previous day's testimony by Kim Pate of the Elizabeth Fry Society and by the Canadian Bar Association. Quite simply, this is a solution in search of a problem.

There are a number of concerns that arose out of the case of Mr. Chen. In my view, there's dissonance between the solutions that are being proposed in the expansion of citizen's arrest and the causes for concern about what happened in Mr. Chen's case.

What originally interested me in this issue was that on the heels of Mr. Chen's case all of the national political parties seemed to come out in favour of expanding the scope of citizen's arrest. One of the main concerns that I read in the news as well as in a transcript of testimony was the unfairness of it all. Mr. Chen had to go through this ordeal simply for trying to protect his property. I think it's something we can all understand quite easily. It has to do with liberty, with the hard-working individual who was just trying to protect his property and who ends up getting caught in the criminal justice system.

The concern I heard being repeated by all the political parties was that Mr. Chen was caught up in the system. He had to spend money on hiring a defence lawyer. He had to spend a night in jail. He had to endure the stress of a potential criminal conviction. It was not the best use of crown discretion to proceed in charging Mr. Chen.

At the end of the day, though, Mr. Chen was found not guilty. This result heightened my interest in why we were proposing to expand the scope of citizen's arrest, when, at least in the case of Mr. Chen, the system seemed to have come to the right decision.

With respect to people getting caught up in the system and having to spend money on lawyers and a night in jail to be acquitted, I can tell you as somebody inside the criminal justice system that this is a very routine occurrence. This is something that happens all the time. It may not be beneficial, but I think it's a necessary cost to the system.

What surprises me is the reaction of members of Parliament to the fact that somebody who was acquitted had to endure this. Certainly, I sympathize with that concern. However, as a criminal defence lawyer, my reaction was to wonder why there was not a similar level of concern for my own clients, who are often acquitted after spending a night in jail and have to spend money on a legal team or a defence lawyer.

The cause of Mr. Chen was the impetus for the change in legislation. However, as Professor MacDonnell stated—and I think Professor Rigakos is going to say this as well—the major beneficiary here is the private security industry.

My concern is that there are some negative implications here that are far greater than the benefit to be gained from expanding the scope of citizen's arrest. Some of those concerns have already been outlined by Professor MacDonnell. However, my main concern really has to do with the lack of accountability of private security.

• (1115)

I come at this problem as someone with practical experience, someone who is in the courthouse. I can tell you that I probably won't see many cases like Mr. Chen's, but what I do see on a very regular basis is private security effecting arrests, and I think the same concern should apply here.

Members of Parliament ought to be concerned about the liberty interest of people who come into contact with unaccountable members of private security. It's the same type of concern that occurs with Mr. Chen.

I have had a number of cases of members of the public who have been wrongfully arrested by private security, who have been dealt with in a heavy-handed manner, and who have had the prospect of criminal conviction hanging over their heads for well over a year, until their trial date, only to be acquitted at the end of day and for it to be seen as more or less a pyrrhic victory of sorts. They had to spend money. They might have spent a day or a few weeks in jail before they got out on bail. They went through a humiliating experience with private security, who aren't accountable. And at the end of the day, they're acquitted. That's all well and good from the justice system's point of view, but not necessarily from that individual's point of view.

There's a dissonance here where this committee ought to be concerned about what the effects are going to be on private security. We're giving a lot more power to private security by expanding the scope of citizen's arrest. Those are the cases that you're going to be seeing in the courthouse on a regular basis, far more than cases like Mr. Chen's. So really, it comes from the point of private security.

I would also note that we have the issue of the Trespass to Property Act, or at least that's what it's called in Ontario. There are provincial trespass-to-property acts that are used by private security and can be used by people like David Chen to effect an arrest. What I would have hoped to see more of is a discussion about the interplay between provincial legislation, such as the Trespass to Property Act, and citizen's arrest provisions in the Criminal Code.

I'll leave my comments at that. I look forward to your questions.

**The Chair:** Thank you.

Mr. Rigakos.

**Prof. George Rigakos (Professor, Chair, Department of Law and Legal Studies, Carleton University, As an Individual):** Thank you.

Members of the committee, thank you for this opportunity to speak to you today on these proposed amendments to the Criminal Code. I understand I only have a limited amount of time, so I'll make my comments as brief and to the point as possible. That's going to be difficult, given that I'm an academic, but I'll do the best I can.

I appear before you today as an independent scholar and as a member of the Canadian academy who has been studying public and private policing for almost two decades. In the limited time I have, I'm going to focus my attention on the proposed changes to the Criminal Code dealing with a private citizen's power of arrest and, more specifically, paragraph 494(2)(b), which will allow private citizens to make an arrest within a reasonable amount of time after the offence is committed if they believe on reasonable grounds it is not feasible in the circumstances for a peace officer to make the arrest.

I think the changes proposed in Bill C-26 amalgamating a series of awkwardly worded sections relating to defence of property and self-defence make sense and clarify what was already present in the Criminal Code, so I have nothing to add here.

I want to speak to you today about what I consider to be two problematic assumptions that seem to underpin the proposed changes to section 494, and then employ three scenarios to illustrate

my reservations about these proposed amendments. I will then sum up with a recommendation.

There are two problematic working assumptions about the proposed changes I'd like to speak to directly. The first is that Bill C-26 is designed to help small store owners like David Chen. The second is that the private security industry is in need of clearer and more expansive arrest provisions in order to do an effective job, and that these proposed changes are in any case simply enshrining legislatively what is already common practice in an increasing challenging security environment. Let me deal with these each in turn.

Bill C-26, in my opinion, will rarely help small store owners like David Chen. Instead, it will almost exclusively benefit the private security industry. With respect to the beneficiaries of these proposed changes, I want to make it clear to the committee that the private security sector will not only be the primary beneficiary of these changes but in practical terms will likely be the only beneficiary. Quite simply, non-security employees rarely, if ever, make arrests. They don't have the know-how. They don't have the confidence.

Unfortunately, there is an absence of available statistics on who makes citizens' arrests, but I would be very surprised, from all of my experience, if even 1% of all such arrests across Canada on an annual basis were attempted by non-security personnel. In fact, to satisfy my own personal curiosity over the years—because I always do a lecture on the division between public and private powers of arrest—I asked my students how many of them had ever conducted a citizen's arrest. These are all policing students in policing classes, so you'd think they'd be a biased sample and more likely than most to do it. Over the last ten years or so, of 500-plus students, only one had made a bona fide citizen's arrest that was not related to their employment in some form. Many of them had made private citizens' arrests, but as agents of the landowner.

Associated with the belief that this bill would aid small store owners, proprietors of businesses, and landowners is the idea that police often charge private citizens if they have not effected an arrest "just right", and that, moreover, these private citizens are subject to considerable judicial scrutiny and will be held to account for a poorly executed arrest. The overwhelming predominance of case law, including that of the David Chen case, as it turns out, points to the opposite reality. The judiciary has bent over backwards to accommodate private citizens' arrests and has, except in the most extreme cases, done everything it can to allow arrests to stand even though they were likely unconstitutional.

Moreover, judges are quite likely to admit evidence collected thereafter, lest not doing so would bring the administration of justice into disrepute. Therefore it's important to keep in mind that these proposed changes should be more accurately understood, for all practical purposes, not as private citizens' powers of arrest but rather as private security officers' powers of arrest. That's my first point.

My second point is the private security industry does not need more expansive arrest powers. As the committee has surely heard by now, private security personnel outnumber the police by at least two to one in Canada, and, depending on how one calculates the numbers, that ratio could be as high as three to one. Criminological research since about the mid-eighties has pointed to the dramatic rise of private security employment across the globe. The trend line for Canada points to a crossover point somewhere between 1968 to 1971 when the private sector was at par with police employment and then began to overtake it.

Since then, not only has the relationship between the public and private sectors transformed quantitatively by virtue of ever-growing demand for private security personnel, but I think it has also transformed qualitatively with respect to what the private security now takes on and how closely interlinked it is with public policing compared to the 1960s. This growth and increasing overlap in function has happened without any significant change to the Criminal Code. Thus, I think the strongest case against any perceived need to expand the arrest provisions in the Criminal Code is precisely the success of the private security sector without them.

• (1120)

The second-strongest case against the perceived need to expand private citizen arrest provisions in the Criminal Code is the increasing and unchecked functional interrelationship between the public and private sectors. When I first started doing research on public and private policing in the early 1990s, you would be hard-pressed to find a single police executive who would publicly endorse closer ties with the private security sector. It seemed that it would bias the police or would undermine their appearance as neutral arbiters of the law. Today these connections are not only endorsed but have also become institutionalized in areas as disparate as public foot patrol, forensic accounting and fraud investigation, and even major event coordination and planning such as the recent G-20 in Toronto.

The Canadian public needs to take stock of these important alterations in private security provision before the Criminal Code is amended to legally enshrine what amounts to a significant expansion of private security guards' powers of arrest.

Let me now turn to a couple of scenarios that will illustrate my concern about what these amendments might mean.

Within the language of the current bill, it's quite likely that there will be many instances when various types of private security personnel, including nightclub bouncers, by the way, will delay arresting someone they find committing a criminal offence in relation to the property they are hired to guard. The reasons for the delay may vary, but they will most likely revolve around some resourcing concerns and the availability and responsiveness of the police. The bill, as it stands, does not stipulate what would be acceptable as a rationale for not arresting immediately, only that the private security guard may arrest at a reasonably later time.

Let's look at the first scenario. A person is wanted by the police because a warrant has been issued for their arrest. The wanted man then proceeds to steal an item from a mall vendor. A mall security guard, having witnessed the incident and having reported the suspect's image on CCTV, decides to make an arrest at a later, more

convenient date. In this scenario, by virtue of bestowing discretionary authority to the private security guard, we may have stunted a police manhunt.

Scenario two: A nightclub bouncer witnesses a criminal act but is unable to make an arrest because the drunken patron has fled the scene. By the way, this is not uncommon, especially in Halifax. Bouncers see the people they have just wrestled with the previous night at the mall the next day. In any case, the nightclub owner prefers his door staff to refrain from making arrests lest they be taken out of service in dealing with the police. The following morning, possibly only half a day after the original incident, the same nightclub bouncer sees the now sober man getting into his car in an underground garage where there is no cellphone reception. Based on the language of the bill, the off-duty bouncer, fearing the man will get away, and that it's not feasible for a peace officer to make an arrest, is within his right to make a citizen's arrest far removed from the original site of the incident and for what may have been a minor summary conviction offence.

Scenario three: A security company, alerted to a spate of recent thefts from a client's warehouse, sets up a sting operation using secret cameras, tagged merchandise, recording devices, and even the screened presence of security agents observing ongoing thefts. None of the company employees recorded stealing materials are arrested immediately. A few weeks later, having gathered all of the video evidence and drafted signed statements from observing guards, the client invites all of the workers to a meeting and conducts a mass arrest. They then alert the police, turn over all of the evidence and a van-load of handcuffed suspects.

My argument to the committee is that all of these scenarios would be legal and not unlikely, given the state of private security innovation and entrepreneurship, and given the language of the proposed amendments for section 494 of the Criminal Code. But note what's happened here. Not only are private security companies acting precisely like public police services, using discretion, conducting investigations, and then turning over evidence to a peace officer on a silver platter, but, by virtue of their ability to delay arrest for a more convenient time, private security guards are always on duty. They are, for all intents and purposes, acting like private police officers. Their authority is tantamount to that of a peace officer once they believe they have witnessed a criminal offence while guarding private property.

BillC-26 therefore will create de facto private police officers, not in name, but in function, as they will use discretion, investigate, and build a case based on their new-found authority to delay arrest. I'm quite confident that this is not the intent of the committee.

It is therefore my recommendation to the committee that the proposed sections of the bill dealing with defence of property be adopted as written, but that proposed amendments to section 494 be dropped, and that for the time being, the original language of this section be retained.

• (1125)

**The Chair:** Thank you.

Now we begin with members of the committee. Mr. Harris, for five minutes.

**Mr. Jack Harris (St. John's East, NDP):** Thank you, Chair.

Thank you for most interesting presentations.

If I may start with you, Professor MacDonnell, you mentioned that there was already sufficient or additional assistance to store owners from the protection-of-property section. I don't quite see that in the new section as proposed in the code. I don't see where it would assist in the David Chen situation. I'll let you deal with that, if you might.

I was very interested in the concern expressed by all three of you about the possible effects on private security guards. In my view, this would be an unintended consequence from our party's perspective when we originally put forth private members' proposals designed primarily to avoid the technicality that if somebody.... In the David Chen case, it was basically an hour later.

I didn't hear the police, by the way, apologize for arresting David Chen and charging him. They said they were quite satisfied they had acted within the law and would probably do it again.

I'm sympathetic to what Mr. Russomanno says about people being acquitted of crimes. I practised criminal law in my time, and lots of people do get acquitted and don't get any redress.

How can we protect the David Chen situation, this technicality of there being a delay? A guy shoplifts and comes back half an hour later. I couldn't grab him the first time, but I can get him now. You try to catch him and he evades capture, but comes back the next day because he's that kind of guy. Why can't I grab him then? That seems to me to be what we're trying to deal with here. We don't want to empower private security guards.

I find it quite startling that this would empower private security guards to act in that manner, with delay, to gather evidence instead of arresting someone they actually find committing an offence, to delay and do an investigation. So let me ask you, are those scenarios we just heard about realistic in this wording we have here? If they are, how do we do what we want to do and avoid empowering private security forces in the way that's been suggested? I'm asking you because you're the ranking academic here, with a position as a law professor.

• (1130)

**Prof. Vanessa MacDonnell:** Thank you very much.

I'll start with your first question, which concerned the extent to which the citizen's arrest provisions interact with other provisions in the code that might provide protection to an individual performing a citizen's arrest. What I'll say is that the bill as currently drafted expands the power of citizen's arrest and makes certain changes to the defence of property. My point is simply that when we look at the existing provisions dealing specifically with citizen's arrest and the proposed changes, it's important not to just look at the citizen's arrest provision in a vacuum. It's important to understand how the existing law provides a more robust degree of protection to an individual performing an arrest than what would be suggested if we just looked at the existing citizen's arrest provision in a vacuum.

My suggestion is actually quite similar to that of Professor Rigakos. I don't have any objection to the changes being proposed to the defence of property. So taking that defence along with the amendments being made to self-defence more generally, and taking also those provisions of the code that protect individuals who are acting to prevent the commission of a crime, for example—

**Mr. Jack Harris:** Can I interrupt for one second? I hear you in the generalities, but when I look at the provisions here, self-defence says you can eject them from your property or you can try to take back the property. It doesn't say anything about arresting or re-taking the property. That's not what we're talking about here. We're talking about actually holding a person so that the police can come to get them.

**Prof. Vanessa MacDonnell:** Right. These concerns really only materialize if an individual has exceeded his or her authority in performing the arrest, and that individual is subsequently charged with assault, for example. In that case, the defence-of-property and the self-defence provisions, more broadly, are engaged and provide a certain degree of protection. They may not provide the extent of protection being suggested by the proposed changes to the citizen's arrest provision, and my point here is simply that there is more protection than we see in the citizen's arrest provision alone. When we start to stray from the paradigm of the thief being caught red-handed, and we're talking about arrest taking place some time after the alleged events have taken place, then we're straying into territory where we should really be relying on the police and not on the David Chens of the world and the private security guards of the world.

My point was simply that we should examine as a whole the protection that the code already provides to individuals who make these types of arrests, and I think what we'd find is that the protection is actually quite robust. What's interesting about—

**The Chair:** I'll have to interrupt you there. We're quite a bit over.

Mr. Goguen.

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

Thanks to all the witnesses for attending. It's very helpful to get your testimony and to hear your thoughts on what could be a somewhat complicated act.

Just to take up Professor MacDonnell, in a perfect world the police would obviously be the people assisting and conducting all the arrests, and there's always the prospect of false arrest. First and foremost, based on the act, it's understood that the arrest can only be made in circumstances where it cannot reasonably be done by the police, so they remain the first line of defence against crime.

What we've gotten in testimony from storekeepers, some of the police authorities, and even people who provide private security is that it's not practical for the police to respond to shoplifting or intoxication offences. It's not so much that it's the people in the far north who the police can't respond to, because even in urban situations the police cannot respond quickly to situations of shoplifting. A lot of the act is drafted, in essence, based on practicalities.

What we've also heard is that a lot of the ground rules, particularly with regard to the defence of property, were very, very convoluted. You have scenarios where the police aren't sure what the ground rules are, the citizens aren't sure what the ground rules are, so we throw it to the court to decide, and there is a lovely docket crowded.

I'm wondering—and I'll throw it out to all of you—although you may have some reservations, would you agree that the way this act is framed is an attempt to set the ground rules more clearly so that the parties involved in making the decision to either make the arrest or to prosecute have some sense of where we're going as to what's reasonable and what isn't? Is there some clarity there? We know about the jury charges being so convoluted and difficult that there's the appeal again.

Any thoughts on that from any one of the three of you?

• (1135)

**Prof. Vanessa MacDonnell:** I'd just say very briefly, dealing just with the powers of citizen's arrest, that I think the difficulty with the proposed changes is that a citizen might be unaware of the extent of his or her authority to perform these kinds of arrests because there's a presumption that citizens know the law, but we know realistically that they don't always understand the nuances of the contours of this authority. I suspect the same issue may well arise with the proposed amendments. Again, you're always dealing with some form of line-drawing exercise, and I think the concern exists, and the thing I would just add is that I think you're quite right in suggesting that what's being proposed here is an attempt to come up with a practical solution.

On this practicality point, it's important to realize what the practical implications are as well in terms of empowering very sophisticated law enforcement personnel who are these private security guards. I guess my view is that we know that in the Chen case the system worked. He was acquitted, even in the face of what was really a fairly aggressive arrest and holding of a suspect. So we know the system worked there. We look at the implications of these changes and I think that, on balance, maybe things are better left as is.

**Mr. Leonardo S. Russomanno:** Perhaps I could just jump in here.

Speaking to the self-defence provisions in the defence of property, I think it's certainly a laudable goal in mind to simplify the sections.

This is something that courts and experts have been calling for, for a long time, and I think it will go a long way to simplifying the jury charge and the law of self-defence in general.

I do have some concerns about what was previously subsection 34 (2) of the Criminal Code with respect to the use of deadly force. In the previous iteration of the defence, deadly force can be used if one perceives grievous bodily harm or death and feels there's no other reasonable way to get out of it. The subsection that was added in the new legislation suggests the possibility of a proportionality requirement in such cases. It doesn't seem quite clear, but there is a concern there, because I think as a general proposition, the way the law stood before, if you're faced with a threat of grievous bodily harm or death and you don't have any other way, you can use deadly force. I don't know that it was the intention of the drafters to actually make that defence less robust. That's the only comment I would have with respect to that.

I would echo the comments of Professor MacDonnell with respect to the case of David Chen and the system working. I think it's consistent with what Professor Rigakos said as well, about courts more or less being quite flexible with the application of citizen's arrest in justifying the use of that arrest power.

With respect to the reasonable time requirement, I think it's going to take some time for courts to figure out what that means, exactly. What does "within a reasonable time after" mean? If you had this scenario play out where the arrest took place a day later, I don't know that a police officer would happen upon that situation and say, "All right, that's a reasonable time afterwards, so I'm not going to charge this person with forcible confinement and assault."

I think you're still going to end up, in my opinion, with the scenario of people being brought through the court system, and at the end of the day, they might be acquitted; the court might end up saying, "Okay, this was a reasonable time afterwards, in the circumstances." I think it's worth mentioning.

• (1140)

**The Chair:** Sorry, our time is up.

Mr. Cotler.

**Hon. Irwin Cotler (Mount Royal, Lib.):** Thank you.

I want to put a question right to you, Mr. Russomanno, in terms of your initial remarks, but I think there was a reflection in all the presentations in this regard.

I also want to say that I thought we had a thoughtful set of presentations, and I appreciate it very much.

You mentioned, with regard to the legislation, that this was, in a sense, a solution in search of a problem, that it arose really out of the David Chen case. You raised the question of why we're seeking to expand citizen's arrest, because Chen's case was not atypical.



I have a question that's larger than this issue, but it arose out of your remarks, and maybe some of the others. That is, do you think we as parliamentarians, regardless of party, regardless of government, have developed an approach whereby we are legislating in response to a particular situation? We have Sébastien's Law, for instance; I can go on and name a whole series of laws that have emerged as a result of a particular situation—i.e., David Chen.

Do you think we may in fact be overloading the Criminal Code and the like through this legislation, which is a response to a particular situation that has arisen but may in fact be a solution, as you've put it, in search of a problem?

**Mr. Leonardo S. Russomanno:** Yes. I wholeheartedly agree. And I think you've put it much better than I could.

In fact, in responding to the David Chen case, when you look at the language of the proposed amendment, it quite laudably does try to narrow the issue so as to prevent concerns of vigilantism and notions of people forming a posse to go on and enforce the law on their own.

I do agree with that comment wholeheartedly. I think it is going to overload the court. It has unforeseen consequences, namely with private security. But in the case of David Chen, it clearly was a response by Parliament to that particular issue, the way I see it.

**Hon. Irwin Cotler:** Okay.

Secondly, a common theme, not unrelated to the first, is that the legislation, as you and others have mentioned, really has an impact with respect to the private security sector, that in fact it may expand the powers inadvertently re the private security sector, although it was related to David Chen. So the model we are using for the legislation relates to Chen, but the fallout will be expanded powers for the private security sector.

Is there something we need to do with regard to this legislation regarding accountability for the private security sector, since we're legislating regarding David Chen but may be missing the consequential fallout to what we need to be legislating about?

The question is to any of you and all of you.

**Mr. Leonardo S. Russomanno:** I'll answer very quickly, because I think the other two witnesses have much more expertise than I do on this topic. Yes, I do think that there needs to be accountability. I think this was a problem that pre-existed this amendment. Even as it stood, the powers that the private security members had were already unaccountable, and that was a concern, at least in my experience in the courts.

**Prof. George Rigakos:** The private security sector is regulated and made accountable through provincial statute. The security industry will tell you that they are far more accountable than the public police. They'll say that because they have to adhere to market logics. If in fact they get sued, they have to pay for more insurance. Typically, their guards are not unionized. My own studies have shown that in terms of the likelihood that any reprimand will take place because of conduct on the job, when you compare private security guards to public police there's really no comparison. Private security is far more likely to receive consequences.

The point I was trying to get across, though, is that it's so vague, and while the intent may be that it should be within a couple of hours and it's really intended for store owners, I put the question to my colleagues in the security industry directly online. I asked them what it meant to them, what it looked like to them, and the answers varied. I got a response from a security executive in a large loss prevention company and he said 30 days seemed reasonable to him. Then a response back was "No, I don't think that's what was intended. It's probably going to have to be within a few hours."

In the end they felt there would have to be a couple of guinea pig cases here, and when you start talking about that, I wonder whether or not we're building more of a problem in terms of judicial decision-making and clarity on this issue than we're actually solving. The can of worms we're opening is quite significant.

• (1145)

**The Chair:** Thank you. Our time is up.

Mr. Woodworth.

**Mr. Stephen Woodworth (Kitchener Centre, CPC):** Thank you very much, Mr. Chair, and my thanks to the witnesses.

I agree with the other members who have said this has been a thoughtful conversation, and I appreciate it. I also always appreciate it when people come in their own behalf rather than on behalf of any group, because I really do appreciate citizen engagement.

I found myself quite conflicted, though. I'll start by saying, Professor MacDonnell, I thought you came as close as anyone to articulating well the concerns about the temporal issue in the amended citizen's arrest power, those being the higher possibility of false arrest, the possibility of resistance from the arrestee because he or she is not aware of the reasons for the arrest, and the possibility of impairment or erosion of an investigation or seizure of evidence. I want you to know I get that.

I would say to all of the witnesses, and I'll start with Professor MacDonnell, is that I look at those possibilities as the imperfect implementation of a law. Any law can be imperfectly implemented. Every law, in fact, is subject to abuse or misuse or underuse or imperfect implementation. So I would like to begin with this question. As a matter of principle, forgetting trying to look into the crystal ball and seeing how the law will be implemented, but as a matter of principle, do you see anything wrong in principle with the notion that if you were to knock me over the head, steal my watch and ring, and run off, and I see you the next day with no possibility to get a police officer's help, I should legally be able to catch you?

I'll start with Professor MacDonnell.

**Prof. Vanessa MacDonnell:** It's difficult for me to separate this question from the realities of what we know about, even in the context of police work, some of the frailties associated with this process.

**Mr. Stephen Woodworth:** Understood. That's why I made the distinction. I know your concerns about the application and implementation of the law, but I want to start with whether or not you are telling me that there is any flaw in the principle that I should be able to stop and arrest someone a day after that person has robbed me, when I can't get the help of a police officer? Is there anything wrong with that principle? I understand all about looking into the crystal ball and seeing there are cases where that might be abused, but is there a problem in principle with that law?

**Prof. Vanessa MacDonnell:** Again, I see where you're taking me. My difficulty is.... Let me use one example. There's a real concern that exists in the criminal justice system about the veracity of eyewitness identification. There's this phenomenon of the honest witness who mistakenly identifies someone, who believes it honestly and is a concerned citizen. The courts have been very plain in saying that eyewitness identification is in many cases entitled to no weight because it's very problematic.

It's difficult to separate out this paradigmatic situation from what we know about the way these things go. If you're in a position where your concern is that 85% of the time things might go wrong either for the arrestee or the arrestor, and you know that the existing provisions will cover many situations where those concerns are attenuated, I think the logical conclusion for someone like me is to say let's keep things the way they are.

**Mr. Stephen Woodworth:** Understood.

Unfortunately, because of time limitations I'm going to have to pass over Mr. Russomanno and Mr. Rigakos. I'd like to continue this conversation with you for just a moment longer.

In principle I am quite confident that the court system can in fact redress imperfect implementation of good laws. I'm quite willing to allow the courts to do that. For me, the question of whether it's a good law depends on onus too. Who am I trying to serve? Who am I trying to protect?

If someone knocked me over the head and stole my watch and I saw them the next day and I had to wave at them and watch them walk away when there was no police officer around, to me, the protection of such a person is sound in principle. I will give the onus to protecting victims, rather than the onus of preserving against the possibility of an abusive exercise of a good law. So—

• (1150)

**The Chair:** Unfortunately, Mr. Woodworth, your clock is done. The watch says that five minutes is up.

Madame Boivin.

[*Translation*]

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

I would like to thank the witnesses. This is a very interesting topic.

I would like to thank Mr. Woodworth for the example he gave us. That really gets you thinking. But it is also an example that perhaps shows that we are opening a can of worms, as the saying goes.

But I want to make sure I have understood you correctly. Am I to understand from your remarks that it would be better to leave the Criminal Code as it is right now and that the case law is sufficient?

Cases like that of Mr. Chen certainly occur. But we are likely to sort of complicate our lives if we try to handle a particular case. Have I understood correctly? Is that basically what you are saying?

**Prof. Vanessa MacDonnell:** Yes, you have understood correctly.

**Ms. Françoise Boivin:** What do you think about that, Mr. Russomanno?

[*English*]

**Mr. Leonardo S. Russomanno:** I'll answer in English. I can understand French, but my spoken French isn't very good.

Yes, I would agree that it should remain as it is with respect to the citizen's arrest.

I don't have very many issues with respect to the defence of property and self-defence, subject to the comments I made earlier. I think that those, as suggested by Professor MacDonnell, would go some way in addressing the concerns that underlie the desire to expand citizen's arrest.

**Ms. Françoise Boivin:** Professor Rigakos, did I understand correctly that basically your testimony to the committee on the citizen's arrest is to leave the Criminal Code as is?

**Prof. George Rigakos:** Yes.

**Ms. Françoise Boivin:** Okay, that's clear.

[*Translation*]

You said something important. Since the beginning, I have been worrying about the citizen's arrest. That has to do with the security of the person. I would not recommend a citizen's arrest. People don't have the training or the skills required for it. It can be dangerous. But if a person still feels it is their duty to do so, it has to be done properly to avoid any problems. You have to be sure that you are arresting the right person. That is something to consider.

I understand your position. You would like to keep the Criminal Code as is. However, since we are a minority in Parliament, I don't have much hope that we will be able to achieve that. I think the government wants to make amendments to the Criminal Code.

I am a bit concerned when I hear you talk about a reasonable period of time. That only adds to my concerns. I am told that, in some cases, that could mean a number of days. The Criminal Code has to specify what a reasonable time is if someone is arrested after an offence was committed. In my view, it clearly means a few hours after the fact. But people infer that it could be the next day. I almost made peace with the idea that it could happen over the next several hours, if the same person was stupid enough to go back to the same store. Mr. Woodworth's example heightened my fears and I thank him for that, because I was almost ready to support the clause as written. It sometimes helps to hear from witnesses. I understand that it could be the next day or the day after when memory may no longer serve properly.

How can we reconcile all that and make the clause more consistent so that the situation is less worrisome than the one Mr. Chen has experienced?

•(1155)

[English]

**Mr. Leonardo S. Russomanno:** In short, if you have that sort of reasonableness requirement you are leaving it to the common law to figure it out, and the courts are going to have to figure it out. It's not the first time that such language has been used and the common law has been left to figure it out. There is uncertainty to start with. Most of us have faith in the common law to come up with the right answer in certain circumstances, and the beauty of the common law is that, on a case-by-case basis, it goes through this.

I find it hard to resist the urge to answer the previous hypothetical question. I think it's tied into this. Certainly in principle it is reasonable. However, I think that the hypothetical problems with mistaken identification and lack of accountability are inseparable from that question, which in principle I fully agree with. There should be a corresponding right. The problem is the lack of accountability that flows from that, the uncertainty in the language, and the possibility that a citizen's arrest is going to be met with violent resistance, where the arrester is not properly trained to carry out such an arrest.

**The Chair:** Mr. Jean.

**Mr. Brian Jean (Fort McMurray—Athabasca, CPC):** I always enjoy academic discussions, but I'd like to take this back to a more practical reality. I would like to talk about practicality. I grew up in Fort McMurray, which, when I moved there, had about 1,400 people. Today there are about 100,000 people. I practised criminal law. My parents had a store on the main street and I undertook about ten arrests of citizens. In one case I got assaulted by a couple of guys I chased after, so I understand what it's like to be involved in that kind of thing. I have had thousands of court appearances as a lawyer in hundreds of criminal trials. It's a very busy place.

I'm going to start with you, Ms. MacDonnell. Are you from eastern Canada?

**Prof. Vanessa MacDonnell:** I am indeed.

**Mr. Brian Jean:** There are a lot of people in Fort McMurray with that last name.

In how many criminal trials have you been the senior counsel on?

**Prof. Vanessa MacDonnell:** None.

**Mr. Brian Jean:** How many of you have been a senior counsel in trials where you used the defence of self-defence?

**Mr. Leonardo S. Russomanno:** Self-defence...?

**Mr. Brian Jean:** Senior counsel, I'm talking about.

**Mr. Leonardo S. Russomanno:** I'd say about a dozen. I should mention that I am not an academic.

**Mr. Brian Jean:** I understand you're not, but you've four years at the bar.

**Mr. Leonardo S. Russomanno:** Yes, that's right.

**Mr. Brian Jean:** Mr. Rigakos?

**Prof. George Rigakos:** I'm a medical lawyer.

**Mr. Brian Jean:** I have seen what might be called an imperfect system of academics when I was doing my bachelor's of law and my MBA. I had just about finished my master's of law when I went to

practise criminal law. In this capacity, I saw one thing that helped the situation of academics—the judges. They were able to interpret in just about every case the issue of reasonableness or the reasonable demand test.

The one thing that's been left out of this discussion, if I may say—and I see you nodding with me, Ms. MacDonnell—is the civil law remedy for security forces and the civil law remedy for wrongful arrest. I had the opportunity of practising in both areas of law, and I can assure you that anybody who made a wrongful arrest felt the consequences in his pocketbook. This is why the security officials train their people so well.

Can you comment on that, Ms. MacDonnell?

**Prof. Vanessa MacDonnell:** Yes, I'm happy to respond to your questions. I also have a great deal of faith in judges. I guess one of my concerns would involve all the cases that don't get to court, and all of the circumstances where either there's no criminal charge, or there's no civil action brought because you're maybe dealing with a marginalized individual who doesn't have the money to bring an action against a private security company.

**Mr. Brian Jean:** I agree 100%. That's why we have contingency agreements, and that's what I practised as well. I was able to sue people on the basis of the percentage that I would receive, based upon the success, and I did a lot of that.

But the case I would like to bring up—and you're exactly right—is that there are not a lot of people who get the opportunity to have what Mr. Chen had. A lot of people are arrested in circumstances like that, or have been in the past. I've seen a lot of Mr. Chens across the country, and they don't have the ability to get redress or to get the publicity that Mr. Chen had, so they're arrested or thrown in overnight.

As Mr. Russomanno said, his clients who have been thrown in jail have had no redress, have had no publicity. There's been no sympathy towards them as a result of being wrongfully arrested in circumstances where they were defending their property or themselves. That's my issue.

**Prof. Vanessa MacDonnell:** Right.

**Mr. Brian Jean:** That's exactly my issue. They don't have the time to do that.

**Prof. Vanessa MacDonnell:** Again, what's so interesting about the Chen case providing the impetus for this law reform is the fact that Mr. Chen was acquitted. Actually, this goes to the member's point—

•(1200)

**Mr. Brian Jean:** But he spent a night in jail, which is not very comfortable at all. He was arrested and manhandled. Just to be honest, I know lots of clients who have been in circumstances like that and, as Mr. Russomanno said, they are not pleasant scenarios. It's not like the Holiday Inn.

I do want to ask a couple more questions, if I may.

**Prof. Vanessa MacDonnell:** Sure.

**Mr. Brian Jean:** I think the law is to reflect society's needs. Would you agree with that? The law changes. That's why we have common law and why it's so effective. It's to reflect what society needs. Would you agree with that?

**Prof. Vanessa MacDonnell:** I don't see any reason why I wouldn't.

**Mr. Brian Jean:** Okay. Indeed, for 50 years at least we've heard people say that the section on self-defence needs changes. You're nodding your head, Ms. MacDonnell. It's not picked up by the microphone, but you're agreeing with me.

**Prof. Vanessa MacDonnell:** I think it's laudable that Parliament has decided to address what is at present a fairly technical series of provisions dealing specifically with self-defence.

**Mr. Brian Jean:** Exactly. I would hope it would go further, and I'm sure Mr. Russomanno agrees. Grievous bodily harm, whether you can consent to that or not, has been a big issue in relation to criminal lawyers across the country for many years as well.

I just want to say, I think the law has—

**The Chair:** Your time is up, Mr. Jean.

**Mr. Brian Jean:** —changed in relation to legislating on particular items all through our history.

**The Chair:** Mr. Jacob.

[*Translation*]

**Mr. Pierre Jacob (Brome—Missisquoi, NDP):** Thank you.

My question is for the first witness, Ms. MacDonnell.

Like the other witnesses, you mentioned that the private security industry is increasingly replacing police officers in terms of making arrests for shoplifting or other offences. Do you think that private security guards should be subject to the obligations under the Charter that require them to inform people of their rights, including the right to counsel, upon arrest.

**Prof. Vanessa MacDonnell:** It would be easier for me to answer in English, if you don't mind.

**Mr. Pierre Jacob:** No problem, go ahead.

**Prof. Vanessa MacDonnell:** Thank you.

[*English*]

As to whether the charter should apply to private security guards or whether there's reason to place on private security guards the responsibility, for example, of providing the right to counsel and observing something similar to the dictates of the charter, what I'd say is this. In my view, maybe the best way to approach this—and as I said, it's not clear whether the charter applies to these circumstances—or one of the ways of getting at the potential concerns that exist with the private security industry is to increase or to build on the existing regulation. Now, this would likely involve collaboration with your provincial counterparts.

For example, there is legislation in Ontario that regulates the private security industry. At present, that legislation contains a code of conduct that, for example, requires private security guards not to use excessive force. I think there's no reason we could not impose charter-like requirements on the private security industry—so require them to provide a right to counsel, to not arbitrarily detain

individuals. That again would likely happen provincially, but I think there's no reason we can't do that.

When you look at the private security industry, in particular, as I've said, they're very sophisticated and they're well resourced. There's really no reason that, as these security personnel are increasingly acting like police, we can't also require the same in terms of obligations or of duties of these officers. I think there is infrastructure for these companies to do that kind of training.

So I think whether we're talking about this bill or not and these changes to the power of citizen's arrest, this is an industry that's largely unregulated but probably ought to be regulated as they come to do more and more work that, as Professor Rigakos has said, looks a lot like standard policing.

[*Translation*]

Thank you very much.

**Mr. Pierre Jacob:** Thank you.

In other words, it is not clear whether the Charter applies to those situations. But that would be nice. A regulatory framework would be needed and 40 hours of training would be a must.

My second question is for Mr. Russomanno.

You said that private security companies were likely to be responsible for more victims and that there was a lack of transparency and accountability. Could you expand on that?

• (1205)

[*English*]

**Mr. Leonardo S. Russomanno:** Yes. Perhaps I could answer in English. Thank you.

In my experience and in the experience of members of my law firm and other lawyers with whom I speak, private security guards have less training, have less experience with the use of force than do police officers. To become a police officer, it's a much more rigorous process than it is to become a security officer. In many of my dealings with cases involving security officers, there is a tendency to resort to the use of force when such force may not be necessary.

I'll provide you with a very poignant example of a person I defended a year ago who was a university student, a 23-year-old female. She was at the Rideau Centre and a fight broke out among other females. She tried to separate the parties. Security had not arrived right at the beginning of the fight. When they did arrive she was in between the belligerents, trying to separate them. Four security guards approached her, grabbed her, put her arms behind her back, and tried to handcuff her. When she tried to explain that she wasn't a belligerent party and she was trying to resist, in effect, they grounded her, which is security guard speak for they took her down. They sat on her and they ended up pressing her against the wall. She ended up in the security office in cuffs for several hours before she was released.

For about a year while she was out on bail, her schooling was completely under threat. She was in a professional program. If she had been convicted of an offence of assault—and assaulting a peace officer, no less, is what she was charged with—her entire career would have been down the drain. This is what I saw as something that was not uncommon, from the experience of my colleagues and other members of my firm. It really causes me concern. When I cross-examined these security officers, they didn't seem to know the boundaries of their duties.

**The Chair:** Time is up.

Mr. Rathgeber.

**Mr. Brent Rathgeber (Edmonton—St. Albert, CPC):** Thank you, Mr. Chair.

Thank you to all the witnesses for your input and attendance here this morning.

I'm going to start with a comment more than a question, but perhaps I might ask for your comment on my comment.

There appears to be, in my view, Mr. Chair, a misconception that Bill C-26 is inspired by Mr. David Chen's predicament a couple of years ago in Toronto. I think that's wrong.

In rural Alberta there have been a couple of very high-profile cases, when RCMP were not always readily accessible. There was a case in New Brunswick that was highly publicized. I'm not entirely familiar with the facts, but I know a firearm was involved. Similarly, in one of the cases in Alberta where a conviction was made, a quad—a four-wheeled recreational vehicle—was stolen, a chase took place, and firearms were involved. Ultimately there was a conviction and the individual went to jail—under those circumstances, I would have to concede, rightfully so.

My point is that I'm not sure that Bill C-26 is inspired exclusively by Mr. Chen. My question for all the panellists is that in light of some of these other more fantastic situations where individuals have tried to defend property—and in rural Alberta, off-property, and sometimes quite some distance from the property—is it not incumbent upon Parliament to provide some clarity to the citizens as to what their rights are to make arrests and what their rights are to defend their property?

I'll start with you, Professor MacDonnell. You probably know about that case in New Brunswick.

•(1210)

**Prof. Vanessa MacDonnell:** I'll only speak for a moment and then pass it on, maybe to Professor Rigakos here.

Assuming that it's useful for Parliament to provide clarity on the extent of the scope of the powers of a citizen's arrest—which I would quite agree with you is important—if you're going to provide this power to a private citizen, it's important to be as clear as possible.

My difficulty with the proposed amendments is this reasonableness requirement probably doesn't accomplish that. So I think there's a concern that we haven't clarified the nature of these powers. If anything, we've created a situation where the individual may be less certain about whether it's appropriate in the circumstances to exercise the power of citizen's arrest.

**Mr. Brent Rathgeber:** Okay, thank you.

Could I hear from a practitioner's standpoint?

**Mr. Leonardo S. Russomanno:** I could certainly agree in principle with providing clarity to citizens in effecting these arrests.

I would agree with Professor MacDonnell about the uncertainty caused by the reasonableness requirement and what is feasible in the circumstances. You raised the example of rural communities versus urban communities, and that may differ.

**Mr. Brent Rathgeber:** Before I get to Professor Rigakos, you appreciate that it's impossible for Parliament to pigeonhole a scenario or a situation. These scenarios are so different. We a case where Mr. Chen was in a convenience store in downtown Toronto, versus farmers in rural Alberta where a police officer is two hours away. These are very different situations. What's reasonable in one situation might be very different from what's reasonable in a second situation. That's why I think the bill uses the words it does.

I'll let Professor Rigakos comment.

**Prof. George Rigakos:** Haven't the courts already started loosening what “finds committing” means, even by virtue of the David Chen case and previous cases, and won't they continue to do so? Haven't they already done so with respect to “finds committing” for peace officers when common law has said—and then it eventually becomes enshrined—that it's “apparently finds committing”, and you don't have to have a clear line of sight?

Judges have been doing this all along, and I wonder what this adds to that. This is my major fear here, that in the interim, by the time it's figured out....

And I understand how the private security sector works, in the sense that I've been doing research on it for 20 years. There is a wide gamut of actors in there, people I am quite suspicious of, and then others who have been working in the public policing sector and have moved on and done quite elaborate things. There are so many different actors that for a period of time until some of these go through courts, you're going to have a bit of a cowboy culture out there. That's fairly guaranteed.

So I'm wondering about the harm that will happen in the interim.

**Mr. Brent Rathgeber:** I suspect we're out of time, but the cases I cited, two from Alberta and one from New Brunswick, do not involve private security. They involved property owners.

Is that the end of my time?

**The Chair:** You are out of time.

**Mr. Brent Rathgeber:** Thank you.

**The Chair:** Ms. Borg.

[Translation]

**Ms. Charmaine Borg (Terrebonne—Blainville, NDP):** Thank you.

My first question is for Ms. MacDonnell or Mr. Russomanno.

The issue with the Charter is a bit fuzzy; at least it seems so based on your answer to my colleague Mr. Jacob. But I know that some cases in Alberta have shown that security guards and citizens who make arrests are subject to the Charter. Could you tell us why you are hesitating? Could you perhaps tell us about one or several specific cases?

[*English*]

**Mr. Leonardo S. Russomanno:** Sure.

The Alberta Court of Appeal, in a case called *Lerke*, a 1986 judgment, determined that the charter in fact did apply to citizen's arrest. The basis for that conclusion was really an historical analysis that was done on the power of citizen's arrest, that in fact the power of citizen's arrest pre-dates the police arrest power. There was a time when we didn't have a police force and we relied on citizens to effect arrest and this arrest power was derived directly from the sovereign. So this power that was granted by the sovereign was subject to the charter on that basis, that it came directly from the sovereign.

There's a tendency to think that the citizen's arrest power actually came after the police arrest power, and that's not the case. The Alberta Court of Appeal ruled early on that citizen's arrest was subject to the charter. Other courts, including Ontario, I think Nova Scotia, and British Columbia have held otherwise.

The Supreme Court has not ruled on this issue.

• (1215)

**Prof. Vanessa MacDonnell:** I would just add that the Supreme Court hasn't ruled on this issue, but what complicates the question here is that in a case called *Buhay*, the court seemed to insist that for charter purposes it was going to treat private security guards as private, except in a very limited number of circumstances. Then, in a subsequent case that came a short time after, called *Asante-Mensah*, the Supreme Court adopted this historical analysis that we see in *Lerke* about the origins of the power of citizen's arrest and suggested that the issue of the applicability of the charter hadn't been resolved.

From the standpoint of the existing law, it's just not clear how the Supreme Court would rule on this question. Certainly when you're dealing with your sort of archetypal private citizen you can see how there could be some fairly significant implementational difficulties in terms of imposing an obligation on the private citizen to provide a right to counsel and to observe all the dictates of the charter.

That's not a legal argument for finding that the charter doesn't apply, but it might mean that in the absence or until the Supreme Court decides this question definitively it might be more productive to look at how we can regulate the more sophisticated actors in the system, and those are the private security companies. We know we can actually target them specifically because they're already regulated, so we can make that regulation more robust in a way that sort of hives off this group from the private citizen.

The court might ultimately conclude that the charter applies to all of these actors and we'll just have to wait to see.

[*Translation*]

**Ms. Charmaine Borg:** Thank you.

Ms. MacDonnell, you said that security guards are more likely to discriminate. If we allow a citizen to arrest someone a week after the

crime and the citizen sees someone who looks like a criminal, who looks like the person or who looks like a street gang member, do you think we are opening the door to generalizations and potential profiling?

**Prof. Vanessa MacDonnell:** Thank you very much.

[*English*]

Yes, I think the literature suggests that when we're dealing with police officers, marginalized groups such as visible minorities and individuals who find themselves in a low socio-economic category tend to be over-policed. That's the way we refer to it.

I think the same concerns might well exist when we're talking about private security forces. We know that these private security guards are, for example, being used now in low-income-housing communities. I think there is a real risk that individuals who are already likely to have a disproportionate interaction with police officers are now going to find themselves becoming disproportionately also...I won't say targeted, necessarily, but they will find themselves in a disproportionate number of interactions with private security guards. So I think there are all sorts of reasons why we should be concerned about the implications of these changes for marginalized communities.

I'll just pick up on a point that was made earlier about the protection of victims. I'm very much in support of the protection of victims. The difficulty here is that sometimes it's hard to know who the victim is, right? If a person is subjected to increased attention because he or she is a member of a marginalized group, that person is also a victim, right?

The trouble with these cases is that unless you get a case that comes to court, in all of these circumstances where people are being stereotyped or subjected to a disproportionate amount of attention, these people just have to live with it, right? There is no redress because these cases often don't get to court.

I think there are real concerns that exist from the standpoint of marginalized groups.

**The Chair:** Thank you.

Mr. Wilks.

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

It always gives me great pleasure to sit among so many lawyers, being a retired member of the RCMP.

Part of what I look at from a police perspective, as my colleague Mr. Rathgeber has said, is that there's a complete difference between rural policing and urban policing, and I think everyone in this room will recognize that. Most of the time—and I would strongly suggest this in the case of Mr. Chen—in urban policing, police prioritize what they will attend and what they will not attend because the time consumption of going after every shoplifter is not feasible.

On the other hand, as my colleague said, in rural policing—which is where most of my background was—quite often it can take two or three hours just to drive to a location. For argument's sake, when I was stationed in New Aiyansh, British Columbia, getting to Greenville took six hours. There comes a point in time, too, that if an offence occurs in a rural area, you're going to put a citizen in a position they may not want to be in, but they need to go there because it's to prevent the commission of a crime reoccurring, as opposed to having occurred.

So I think this bill coming forward is actually a good thing from the perspective of getting clarity—if nothing else, giving clarity—and that's where I look at it from. The police know how far they can go. The police sometimes will abuse their power; I'll be the first to admit that. For private security companies, what they don't know, shall I say, as opposed to what they do know, puts them in a lot more harm from time to time.

My question is for all you, on reasonable time for a private citizen to make an arrest, starting with Mr. Rigakos and moving onward. We can all agree that at some point in time a person would go to the police and make that complaint. But if they were forced to make a decision on an arrest, what is a reasonable period of time? The courts have already determined that for Chan—because he was acquitted—it would be about one or two hours. I believe that was the answer with Chan. So we've already gone to two hours. From all three of you, what is a reasonable period of time?

• (1220)

**Prof. George Rigakos:** I would add that it's not only the time, but also where.

My concern would be that if you want to eliminate the scenarios that I think are quite possible and probable, given the entrepreneurial nature of the private security industry and how they want to differentiate themselves from other competitors as to who is more aggressive, more cutting edge, and so forth, you might be put in the uncomfortable position of at least thinking about the fact that the subsequent arrest has to take place on or in relation to the property on which the person was actually first caught doing it.

Second, in my experience, if it starts to go beyond a day, I think you'd agree that you're talking about the private security people delaying for the purpose of conducting investigations.

So I would say one day, and again it has to be somewhere around the property.

I don't think that satisfies your colleague, but it makes me as a citizen feel a little more secure in knowing that there are constraints around this.

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

Carry on.

**Mr. Leonardo S. Russomanno:** It's hard to say. I have a hard time disagreeing with Professor Rigakos about the one-day limit. I obviously would grow more cautious as the time became expanded.

I would note that in David Chen's case, he was acquitted on the basis of the original legislation, so the one- to two-hour period really was of no consequence in terms of a reasonable time afterwards. The court concluded that it was a continuing offence, and therefore Mr.

Chen fit within the existing contours of citizen's arrest: that this thief was coming back to commit another theft, and so it was one continuous act of theft.

**Mr. David Wilks:** He could have been coming back to pay for it.

**Mr. Leonardo S. Russomanno:** I doubt that.

**Prof. Vanessa MacDonnell:** I'm not sure I have much to add to what my two colleagues have said, but I would like to say something about some of the realities of rural policing. I think this is a huge issue for citizens who live in rural areas and who have a reasonable desire to be safe.

My concern is that in expanding the powers of citizen's arrest and relying on those powers so that individuals can protect themselves, in some ways we're getting away, maybe, from the real issue, which is whether we should have more police officers. Is it reasonable, if you're—?

• (1225)

**Mr. David Wilks:** If I may interject, the fact is that this is a discussion for another day, because it is the burden of a city, town, or nation to determine how many police officers they can afford, let alone anything else.

My question is what is a time limit?

**The Chair:** Your time is up.

Mr. Goguen.

**Mr. Robert Goguen:** What I'm gathering from the testimony is that people seem quite happy with the disposition of the Chen case. Are you satisfied with how that was decided? Is that what I'm getting?

**Prof. Vanessa MacDonnell:** I should say that as far as I'm concerned, the Chen case is maybe a more extreme circumstance than one would expect to deal with in the context of a typical, true citizen's arrest, in that we were dealing with a situation where the arrestee was hog-tied and put in a van. We're dealing with a fairly robust exercise of this power.

I think this goes to Professor Rigakos' point that courts have in fact bent over backwards to acquit individuals in these circumstances. It's probably an indication that the existing provisions provide sufficient protection to individuals in these cases.

**Mr. Leonardo S. Russomanno:** I would have to say that I was very torn when I read Justice Khawly's decision in *R. v. Chen*.

On the one hand, I think the reason that all of the political parties seem to have taken hold of this case and sympathized with Mr. Chen...that resonates with me, because I think the story of a shop owner who is trying to protect his store is something that resonates. There is an unfairness issue, when you're trying to protect your property and the police arrive and end up charging you with much more serious offences than the thief was charged with.

On the other hand, I share the concerns of Professor MacDonnell. We have somebody who really exercised some fairly robust powers of citizen's arrest. While I think it's important that people be able to protect their property, what we have to keep in mind is that we're talking about the offence of shoplifting.

The president of the Canadian Police Association testified, I think back on February 9, at this committee and suggested something similar: that really we have to keep this in perspective, that we're talking about these property offences. When you're increasing the powers of citizens to effect such arrests, you have to keep that in mind. The president of the Canadian Police Association went on to say that we have to be careful that they may not be mere shoplifters; they may have gang affiliations and may be far more dangerous than you think. But I think the underlying sentiment there is a correct one.

**Prof. George Rigakos:** I wish Chen and his colleague hadn't thrown someone in the van and hog-tied him. At the same time, if you read the decision—I guess I can say this, because I'm not a member of the bar—you see that it's written with an outcome in mind. Saying that the offence was ongoing.... Honestly, the whole goal here was to exonerate Mr. Chen. Most of us around this table would understand why that is.

What we're saying, though, is that it's not altogether clear to us that this proposed legislation can offer Mr. Chen any more than the courts are already trying to offer. The potential consequences of this with respect to what the private security industry does outweigh for me any benefit of trying to take into account the very rare instances of Mr. Chen's situation.

**The Chair:** You have a minute.

**Mr. Robert Goguen:** With those words, you have fallen on something interesting that is not all that clear. Typically, there's a jurisprudential cycle. We're happy to leave the self-defence as it is, yet there are principles that are drawn from Mr. Chen's case. As Mr. Rathgeber said, it's not only the Chen case that these principles are drawn from. In the cycle we draw the principles from the common law and we codify. The codification is an attempt to give more guidance to the court. What we've reformed here are laws that date back to the 1890s.

As a matter of practicality, since you've told us that you trust the judges to interpret properly, isn't this a step in the right direction towards knowing where people stand in this area of the law?

• (1230)

**Prof. Vanessa MacDonnell:** The concern really is what Professor Rigakos has just pointed out, which is how we deal not with the David Chen situations but with the empowerment of an industry that is driven by a profit motive and is likely to be inclined to be aggressive, at least until the contours of these powers are well established. You may well see these companies erring on the side of being aggressive.

**Mr. Robert Goguen:** Are not the courts the guardian of that?

**Prof. Vanessa MacDonnell:** The courts are the guardians of it if the case actually gets to court. This again is where we come back to the difficulties, certainly in the civil litigation context. Civil litigation is really out of the question for the vast majority of Canadians. It's not affordable; it's not an option. If you're a person who lives in social housing, you're not going to bring a civil action even if there is the possibility of a contingency agreement against the private security guard who roughed you up maybe once, twice, or multiple times.

It's a real concern. For all of us who are concerned about liberty and equality, these are basic things that Parliament in good faith is

trying to get at with respect to Mr. Chen: the right not to have your property invaded. But there are competing liberty interests at stake here, and we have to be cognizant of how these changes will be operationalized. That's where this private security dimension comes in, and we really can't get around that.

**The Chair:** Thank you.

The chair would ask you a question a little differently.

There's one thing that gets missed in this issue. We always talk about Mr. Chen and the courts and so on, but do you not think the legislation gives some clarity to the police? They're the people who ended up charging Mr. Chen, with the crown. There hasn't been a lot of clarity in the legislation, and police are frequently left with letting the court decide. Do you not think that this provides some clarity for the crown attorneys and the police, going forward?

**Mr. Leonardo S. Russomanno:** No, I don't think it does.

As I said before with respect to the "reasonable time", the police quite rightly err on the side of laying charges when they're unsure, for the protection of the public at large. In this case—and I'm certainly not criticizing the use of the word "reasonable"—there shouldn't necessarily be a strict time limit in the legislation. I'm not sure that this legislation provides clarity to the police, because a police officer coming upon this kind of scenario, in which an arrest is effected, only five or twelve hours or a day later is going to say: "The legislation says 'within a reasonable time afterwards'. I'm not sure what that means. Let's charge the person and let the court figure it out."

**The Chair:** Okay.

Mr. Harris.

**Mr. Jack Harris:** Thank you, Chair.

Obviously, having former police officers and lawyers on this committee makes it interesting. I think Mr. Wilks' comments about rural areas are really important. We're all concerned about empowering a posse, for example, to hunt down somebody who you happen to know committed a crime but we don't know where he is. This concern about temporal restrictions ought to be looked at seriously.

In the Chen case the facts are difficult and so was the result, because the whole issue here was delay. The delay was papered over by a factual finding of a continuing offence. But the delay issue is still there. I'm personally sympathetic to that issue. I like the idea of a temporal limit of reasonableness. I also like the idea of a geographical limit.

I'm worried about the posse issue. I'm worried about the scenarios you've outlined, where some entrepreneurial private investigators decide they'll just take the pictures, do their investigation, wait three or four weeks, and then arrest them. That might not be a reasonable period of time. But that kind of investigative activity might actually take place and they'll make an opportunistic arrest, as opposed to an immediate one. I think the sense is that the delay was really only because the person wasn't there. You still have to act quickly, in my view.



You don't like the bill, so maybe you're not going to help us, but is there a way of amending the proposed legislation to help with these questions—geographical, temporal—and the requirement of immediacy? If there's going to be a citizen's arrest it has to be the next day when the guy who stole your watch shows up. You can't say, "Okay, I got him. I'll take his picture today. Next week when I have my hefty buddies with me I'll arrest him." You can't have that.

Is there a way of amending this to fix it, or is it impossible?

• (1235)

**Prof. George Rigakos:** My preference is that it be left as is and you let the judiciary continue to perform the elasticity and legal gymnastics necessary to exonerate people like David Chen when the cases arise. Allow them to remain "find committing" rather than prescribed.

If this is an inevitability of some sort, I suggest that the two criteria of space and time need to be considered. I can't give you some example in text, or anything like that, but I can tell you that this is a really important issue. It will also be a very important issue for the private security industry. Private security companies already share information on persons wanted through their information network. Many security companies have multiple sites. In downtown Toronto one security company secures more square footage than the public police, especially in social housing. In fact, you had the president of that company speak to you.

They routinely share information from client to client and from security guard to security guard. There is no reason why you might imagine that someone would commit an offence on one property and they could easily arrest them. You may or may not want that. My purpose here today is to convey to you that it will definitely happen. The security industry will do this. You have to decide whether or not you want to build constraints around that. As a private citizen, I hope you do. If the law doesn't stay as is, I would very much appreciate a time and space constraint on these powers.

**Mr. Leonardo S. Russomanno:** I couldn't agree more. I have nothing to add to that.

**Prof. Vanessa MacDonnell:** The only thing I would add is that it's also important in this context to think about the provincial regulatory regimes. Most of the provincial acts on trespass to property are conditioned and have geographical limitations. One of the reasons why David Chen's arrest wasn't authorized under the Trespass to Property Act was that he was off the property. He was left to justify his arrest under the citizen's arrest provisions of the code, rather than the Trespass to Property Act.

You might want to look at some of the provincial analogues to see how these geographic restrictions are structured. There are certain geographic restrictions in the existing code provisions as well.

**The Chair:** Thank you.

Go ahead, Mr. Woodworth.

**Mr. Stephen Woodworth:** Thank you very much, Mr. Chair.

I'd like to turn to Mr. Russomanno for a moment, if I may. We've had a lot of discussion about Mr. Chen's case. I recall your saying earlier, Mr. Russomanno, that in David Chen's case the system did

work. I'd like to ask you if I might suggest what you really meant to say was that in David Chen's case the system reached the right result.

**Mr. Leonardo S. Russomanno:** Well, I do think so. As I said before in response to another member's question, I was very torn by the decision. However, at the end of the day, I do think the court arrived at the right decision.

**Mr. Stephen Woodworth:** The distinction I'm making is that I don't think you, as a defence counsel, would like to hear yourself saying that when an innocent man is arrested and held in jail, put to thousands of dollars of legal expense and the potential vagaries of judges doing legal gymnastics or papering-over, and finally gets acquitted.... I don't think you, as a good defence counsel, would want to say that's the way we would really want the system to work, would you?

**Mr. Leonardo S. Russomanno:** No. I would prefer that an innocent person not be charged at all.

**Mr. Stephen Woodworth:** Exactly.

**Mr. Leonardo S. Russomanno:** Yes.

**Prof. Vanessa MacDonnell:** Or I'll just add—

**Mr. Stephen Woodworth:** I'm sorry, but I'm talking to Mr. Russomanno. I wish I could continue our conversation, but my time is limited.

My point is that's exactly right. The system did not work in Mr. Chen's case, even if it reached the right result. If the system had worked, he never would have been charged, arrested, put in jail, or put through that trauma, correct?

• (1240)

**Mr. Leonardo S. Russomanno:** Yes, and I should note that none of the changes being proposed would possibly affect that.

**Mr. Stephen Woodworth:** In that case, I want to ask you what amendment to the current law you would propose to make the system actually work for someone in Mr. Chen's position.

**Mr. Leonardo S. Russomanno:** That's a very difficult question. I don't think I can answer it, the reason being that this has to do.... The problem with the David Chen case is the use of police discretion and the use of crown discretion. There are very good reasons that police are given a wide latitude to lay charges or not lay charges and why crown attorneys are given wide latitude.

**Mr. Stephen Woodworth:** That may help you to understand why in this particular case, with the legislation before us, I believe we are providing legislative direction to the police not to lay charges just because there has been a reasonable delay between the time someone is found committing an offence and the time the arrest is made. Do you at least understand how I might see that this legislative direction to police could be useful?

**Mr. Leonardo S. Russomanno:** I do, actually. And I do see the language of the legislation as being.... Contrary to the previous remarks, I understand there are other cases as well, but it seems to be directly tailored to Mr. Chen's case.

**Mr. Stephen Woodworth:** No. As my colleagues have pointed out, there are others across the country who find themselves in similar situations. What we are trying to do is make the system work better for those victims.

I have to say that if it were I who had property stolen, if I were the subject of theft, I wouldn't have any trouble figuring out who the victim was, notwithstanding comments made earlier.

I just wanted to make sure, though, on the record, that nobody in this room would want to say that in Mr. Chen's case the system worked, because at least from where I sit, the system didn't work.

Apart from that, regarding the issue of charter application to citizen's arrest, I want to make sure I get this right. It's not something, Professor MacDonnell, that applies simply to the amendment we're proposing; it applies to all of the existing law regarding citizen's arrest. Is that right?

**Prof. Vanessa MacDonnell:** Yes.

**Mr. Stephen Woodworth:** We're just saying there is an issue out there already, and whatever that issue is, it's going to apply to the amendment also, correct?

**Prof. Vanessa MacDonnell:** The added piece here is that as you expand the powers of private security forces, you expand the potential for the abuse of power. So the concern about the potential lack of regulation of this industry is a concern that is present to a greater degree with the amendments being proposed than it is with the existing legislation. But that's not to say there aren't also concerns about the current level of regulation of private security.

**Mr. Stephen Woodworth:** I really do get the fact that we are trying to gaze into a crystal ball and predict how this amendment will be implemented. But I'm happy no one has said the law is wrong in principle.

I was a little surprised at one of the members opposite who said that she wouldn't mind waving goodbye to somebody if she saw them a day later, having been robbed. But for myself at least, I'm happy that this is going to give victims that little additional—

**The Chair:** Thank you, Mr. Woodworth. Time's up.

Mr. Cotler.

**Hon. Irwin Cotler:** I'm going to take up right where Mr. Woodworth left off, and that is on the issue of the Canadian Charter of Rights and Freedoms. Since the jurisprudence itself seems to be divided on whether the charter does or does not apply to citizen's arrest, what would be your view be with respect to the application of the charter to citizen's arrest?

**Mr. Leonardo S. Russomanno:** In other words, should it apply?

**Hon. Irwin Cotler:** Yes.

**Mr. Leonardo S. Russomanno:** That is such a difficult question. I think in principle I would say that there ought to be obligations, whether they come through the charter or through some sort of parallel provincial legislation or otherwise. I think there certainly has

to be some sort of accountability akin to that, which we see with the charter.

The problem, though, as Professor MacDonnell noted, is that especially for your David Chen type of scenario and not your sophisticated security personnel, in practice it may be difficult to implement these obligations, such as the right to counsel or the right to silence. I think there's a fairly solid common law to suggest that citizen arrestors are obligated to provide the reasons for arrest, and that's very similar to what paragraph 10(a) of the Charter of Rights and Freedoms says, but whether or not the panoply of charter rights apply is difficult when you come across the unsophisticated arrestor. I think in principle I agree that there should be accountability akin to that in the charter.

• (1245)

**Hon. Irwin Cotler:** This leads me specifically to the question of whether private security guards should be subject to a requirement under either the charter or any other similar legislation that obliges them to inform citizens of their rights prior to arrest.

**Mr. Leonardo S. Russomanno:** Yes. I think that should definitely be the case.

**Prof. George Rigakos:** Yes, absolutely.

**Hon. Irwin Cotler:** In the time remaining, given that there's been a common theme here with respect to the private security sector, which is something that has concerned me right from the outset with respect to this legislation, and regardless now of your views on Bill C-26, would you have some specific recommendations regarding Bill C-26 and its application to the private security sector, in that there may now be lacunae in the law such that it doesn't address that issue? Do you have any specific recommendations on the assumption that Bill C-26 is going to pass? The question is will it pass with specific reference to private security guards or not? I'm asking if you have any specific recommendations that we might include in Bill C-26 regarding private security guards.

**Prof. George Rigakos:** If Bill C-26 passes, I'm not sure what kinds of constraints you can put on private security, because they are being imagined as private citizens. Then the question becomes what type of private security and in what capacity are you talking about? Are you talking about forensic accounts? Are you talking about investigators? Are you talking about...and under what circumstances? It becomes a very difficult thing.

The problem we have here, I think, is that we've inherited something that is based upon the idea of sort of the frankpledge system and everyone being responsible for their own policing, and the idea of police as a public good, and the notion of the private citizen as being the first defence against criminality and disorder. That's a 19th century notion and in fact actually it's a 14th century notion, if you go far enough back, that has made its way through the common law.

But what's not in the law is any recognition of the distinction between the private citizen and this massive industry called the private security sector. Until that is somehow resolved, until there is some legislative recognition of the important distinction between David Chen and Intelligarde International or some other aggressive parapolicing organization, these issues are going to have to repeatedly come forward.

Either the distinction can be made legislatively or it can be made by the courts down the road. So far the courts haven't made much of a distinction, to my mind.

**Hon. Irwin Cotler:** I don't think the courts will make that distinction prior to the legislator giving them some guidance with regard to that distinction. That's my sense. I'm not sure they think in those terms. My sense is that this legislation has the Chen case as its kind of underpinning scenario. What I'm still trying to see is whether, given that the Chen case is kind of the narrative framing of the legislation, there's anything we could do with the legislation, however it was framed by the Chen case, to somehow begin to legislatively address the issue of the security sector and its application or if we need to legislate separately with regard to it.

**Prof. George Rigakos:** Just very quickly, if you just want David Chen to be able to arrest, as the owner, as the proprietor, and you're willing to say that will not include an agent of that individual, you've therefore just excluded the entire private security industry.

**Hon. Irwin Cotler:** That's what concerns me.

**Prof. George Rigakos:** So if you want the small shop guy to do that but you don't want the private security industry to do it, then you just make it explicit in the proposed legislation.

• (1250)

**The Chair:** Thank you.

Mr. Jean, very briefly.

**Mr. Brian Jean:** Yes, I would say that society and our judicial system did work in this particular case. I want to say that because the first thing that happened is that clearly the judge sent a message to police in the Chen case. Parliament, as a result, changed the law. In fact, we heard from Mr. Chen, and I'm not sure if you had an opportunity to hear his testimony, but Mr. Chen said that a daily occurrence of theft before is not happening any more, the result being that criminals are aware that he's going to grab them and arrest them. I think you may not like that, but I, as a person who practised criminal law for a long period of time, do like it, and as a store owner I do like it.

One of the things we can do is prevent people from stealing and send a clear message to them that it's not acceptable. I think that's one of the things it has done.

I would like you to comment in relation to that, since you had the biggest cough on the planet there, Ms. MacDonnell. What do you think about what Mr. Chen said, that now people are not stealing from him?

**Prof. Vanessa MacDonnell:** I don't think I actually have any response to that. Sorry I can't be more helpful.

**Mr. Leonardo S. Russomanno:** I don't have an interest in the proliferation of theft. I also share the interest in enforcing law and preventing theft.

I'm not sure that you can necessarily tie the comment that there have been fewer thefts to the message that was sent by the court, and whether or not we can take from it that the police have received a message.

**Mr. Brian Jean:** I would say most criminals laugh at the criminal system as far as shoplifting. I bluntly say that as a person who's been in that area, and not just in criminal law but my parents had a retail store for 40 years. Criminals laugh at the justice system. I'm going to say that they're taking it much more seriously now.

In relation to private security firms, I think civil liability, just like evolution eliminates the stupid, is going to eliminate the stupid people who don't do proper training. It's going to eliminate those companies that don't train their employees properly. Sooner or later they won't be able to get insurance, and sooner or later will not be able to have a security firm. Bluntly, lawyers like you and me are the people who take them to court and sue them for whatever they're worth, and we get insurance payouts. As a result, insurance companies won't cover them any more.

I think yes, it will take some case law. It will take some time, but sooner or later those companies will have to train them properly. I learned that when I was doing litigation in relation to a bar that I sued. I could not believe how much training their employees went through.

**Mr. Leonardo S. Russomanno:** Let me just use an example to establish my disagreement. The charter was enacted in 1982. There have been messages being sent by the court, including the Supreme Court, about what the boundaries of police obligations and powers are. I would say that the police in many cases have yet to receive that message.

**Mr. Brian Jean:** I don't disagree with you. Maybe criminals are smarter, but I don't disagree with you.

**The Chair:** Our time is up.

I want to thank the panel for being here. I think you've provided us with a great deal of information. Thank you very much.

I would say to the committee that on Tuesday we have officials coming. We will be prepared to go to clause-by-clause if the committee is prepared for that.

Perhaps a more important thing is that this is Julia's last meeting with us for a while. Julia's going to take her leave of the committee. We're going to miss her.

Certainly we've appreciated your being here, Julia, and we wish you and your family all the best as you go forward.

**Voices:** Hear, hear!

**The Chair:** The meeting is adjourned.





**MAIL  POSTE**

Canada Post Corporation / Société canadienne des postes

Postage paid

Port payé

**Lettermail**

**Poste-lettre**

**1782711  
Ottawa**

*If undelivered, return COVER ONLY to:*  
Publishing and Depository Services  
Public Works and Government Services Canada  
Ottawa, Ontario K1A 0S5

*En cas de non-livraison,  
retourner cette COUVERTURE SEULEMENT à :*  
Les Éditions et Services de dépôt  
Travaux publics et Services gouvernementaux Canada  
Ottawa (Ontario) K1A 0S5

Published under the authority of the Speaker of  
the House of Commons

### **SPEAKER'S PERMISSION**

Reproduction of the proceedings of the House of Commons and its Committees, in whole or in part and in any medium, is hereby permitted provided that the reproduction is accurate and is not presented as official. This permission does not extend to reproduction, distribution or use for commercial purpose of financial gain. Reproduction or use outside this permission or without authorization may be treated as copyright infringement in accordance with the *Copyright Act*. Authorization may be obtained on written application to the Office of the Speaker of the House of Commons.

Reproduction in accordance with this permission does not constitute publication under the authority of the House of Commons. The absolute privilege that applies to the proceedings of the House of Commons does not extend to these permitted reproductions. Where a reproduction includes briefs to a Committee of the House of Commons, authorization for reproduction may be required from the authors in accordance with the *Copyright Act*.

Nothing in this permission abrogates or derogates from the privileges, powers, immunities and rights of the House of Commons and its Committees. For greater certainty, this permission does not affect the prohibition against impeaching or questioning the proceedings of the House of Commons in courts or otherwise. The House of Commons retains the right and privilege to find users in contempt of Parliament if a reproduction or use is not in accordance with this permission.

Additional copies may be obtained from: Publishing and  
Depository Services  
Public Works and Government Services Canada  
Ottawa, Ontario K1A 0S5  
Telephone: 613-941-5995 or 1-800-635-7943  
Fax: 613-954-5779 or 1-800-565-7757  
publications@tpsgc-pwgsc.gc.ca  
http://publications.gc.ca

Also available on the Parliament of Canada Web Site at the  
following address: <http://www.parl.gc.ca>

Publié en conformité de l'autorité  
du Président de la Chambre des communes

### **PERMISSION DU PRÉSIDENT**

Il est permis de reproduire les délibérations de la Chambre et de ses comités, en tout ou en partie, sur n'importe quel support, pourvu que la reproduction soit exacte et qu'elle ne soit pas présentée comme version officielle. Il n'est toutefois pas permis de reproduire, de distribuer ou d'utiliser les délibérations à des fins commerciales visant la réalisation d'un profit financier. Toute reproduction ou utilisation non permise ou non formellement autorisée peut être considérée comme une violation du droit d'auteur aux termes de la *Loi sur le droit d'auteur*. Une autorisation formelle peut être obtenue sur présentation d'une demande écrite au Bureau du Président de la Chambre.

La reproduction conforme à la présente permission ne constitue pas une publication sous l'autorité de la Chambre. Le privilège absolu qui s'applique aux délibérations de la Chambre ne s'étend pas aux reproductions permises. Lorsqu'une reproduction comprend des mémoires présentés à un comité de la Chambre, il peut être nécessaire d'obtenir de leurs auteurs l'autorisation de les reproduire, conformément à la *Loi sur le droit d'auteur*.

La présente permission ne porte pas atteinte aux privilèges, pouvoirs, immunités et droits de la Chambre et de ses comités. Il est entendu que cette permission ne touche pas l'interdiction de contester ou de mettre en cause les délibérations de la Chambre devant les tribunaux ou autrement. La Chambre conserve le droit et le privilège de déclarer l'utilisateur coupable d'outrage au Parlement lorsque la reproduction ou l'utilisation n'est pas conforme à la présente permission.

On peut obtenir des copies supplémentaires en écrivant à : Les  
Éditions et Services de dépôt  
Travaux publics et Services gouvernementaux Canada  
Ottawa (Ontario) K1A 0S5  
Téléphone : 613-941-5995 ou 1-800-635-7943  
Télécopieur : 613-954-5779 ou 1-800-565-7757  
publications@tpsgc-pwgsc.gc.ca  
http://publications.gc.ca

Aussi disponible sur le site Web du Parlement du Canada à  
l'adresse suivante : <http://www.parl.gc.ca>