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# Standing Committee on Justice and Human Rights

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EVIDENCE

**Thursday, May 3, 2012**

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**Chair**

**Mr. Dave MacKenzie**



## Standing Committee on Justice and Human Rights

Thursday, May 3, 2012

• (1135)

[English]

**The Chair (Mr. Dave MacKenzie (Oxford, CPC)):** We'll call this meeting to order.

This is meeting 34 of the Standing Committee on Justice and Human Rights. Pursuant to an order of reference of Wednesday, February 15, 2012, we are dealing with Bill C-309, An Act to amend the Criminal Code (concealment of identity).

To our two witnesses, I apologize. We got caught up in a vote in the House, and since our meetings are two hours in length, we've lost half an hour. With the agreement of both sides, we've agreed that each panel will be 45 minutes in length instead of an hour. That way it will work out.

We have Mr. Tony Hunt with us, and by video conference we have Inspector Steve Rai.

I think you've probably had some indication of the time limit for your opening address. We'd like to keep it down to five or seven minutes maximum. I'll let you know if you're going to run out of time.

Mr. Hunt, if you would like to start, go ahead, please.

**Mr. Tony Hunt (General Manager, Loss Prevention, London Drugs Limited):** Excellent. Thank you.

My name is Tony Hunt. I am general manager of loss prevention for London Drugs Limited. For those who are not familiar with it, London Drugs is a Canadian retailer based out of Vancouver and founded in 1945. We have stores from Victoria through to Winnipeg.

Thank you for this opportunity to comment on Bill C-309. As a security professional representing one of the many businesses impacted by the Vancouver hockey riot, I hope to share with the committee the role that masks can play and the impact these large-crowd events have on the safety of our staff and the public.

On the evening of June 15, 2011, our hallmark London Drugs store at the corner of Granville and Georgia in Vancouver was broken into and pillaged by over 300 criminals. Thirty staff watched in horror as thugs ravaged through the burglar-resistant glass and steel security gates, pounding their way into the store. The staff fled to safety in our basement room barricade, while thieves stole \$450,000 worth of expensive merchandise and inflicted \$224,000 in physical damage.

The property can be replaced, but the emotional trauma on our staff is just not an acceptable societal standard. In the independent

review of the 2011 Vancouver Stanley Cup playoffs riot, entitled *The Night the City Became a Stadium*, Mr. Furlong and Mr. Keefe discovered that on the night of game seven at the main viewing area downtown, before the first goal was even scored, there had already been reports to police of a small cluster of masked men in the crowd.

The review report also determined that on the night of the riot, some individuals came downtown prepared to make trouble. To quote the report:

...some revellers came with alcohol. Others were equipped with masks, weapons, accelerants...

This report indicates that certain individuals came to this assembly with weapons for use on people and property, and masks to first obscure their identities. I have nine images I brought with me today that I can circulate to the committee, if it so pleases.

We found in reviewing our video images that a significant percentage of the suspects who entered our store during the looting either wore some type of mask or attempted to obscure their face in some way. Our estimate is that 30% of the suspects tried to use their shirts, sweaters, umbrellas, scarves, bandanas, and even a wrestling mask to hide their faces. While the motivation behind such violent and wanton disregard for the safety and the rights of others seems beyond comprehension, in viewing the images it appears obvious that many of those attacking our store covered their faces before entering the store to commit their crime.

One can only wonder if there had been an opportunity and means to deter those individuals from donning masks, if at least some of the damage and risk to life may have been avoided. The key from the victims' perspective is to prevent the crime from occurring in the first place.

London Drugs seeks to provide a safe and secure environment for our customers and our staff under all circumstances. In 2010, the national retail federation in the U.S. published a white paper on the evaluation and preparation that retailers can conduct before large events. This is generally accepted in the retail business as a best practices document. We use these and other best practices to plan for events in our communities that may put our staff or business at risk.

We regularly plan around and coexist peacefully with large gatherings on the city streets, parks, or courtyards near our stores. The overwhelming majority of protest events are peaceful, cause little disruption, and are attended by well-meaning individuals exercising their rights. When preparing for these large events, we view gatherings attended by those in masks to be extremely high-risk events, requiring additional preparation, anxiety, and expense.

It has been my experience in observing protests that often groups wishing to stage a protest indicate that masks are not welcome due to the potential for causing trouble or devolving the situation. I was present when this comment was made during the Occupy protests in Vancouver several months ago, and this week the same comments were attributed by the media to protesters in Quebec City.

• (1140)

It is important to note that the issue of masks encouraging criminal behaviour goes beyond protests. There is a very real threat to retail businesses that security professionals refer to as multiple-offender crimes. These are different from flash mobs, which are generally involved in a fun-loving and spontaneous prank. Multiple-offender crimes are events in which individuals attend a location and under the cover of a prank or spontaneous gathering, and often with the power of social media to organize and amass for anonymity, commit large-scale grab-and-run thefts or vandalism while putting staff and customers in danger. These events are of growing concern in the U. S. The ability to freely obscure one's identity while appearing in a flash-mob atmosphere simply increases the chance of escalation to criminal behaviour.

All of us realize that our technology and our communications have changed. With the proliferation of video and mobile phone cameras, there is a vested interest for those who wish to act in a criminal and unsafe manner to remain anonymous by wearing a mask. Providing our police with a tool to intercede at a more preliminary stage of an event may prevent violence by removing the anonymity currently enjoyed by those who create mayhem.

The lawful excuse provisions of the bill recognize and protect those who have lawful reason to wear head coverings, or have other lawful excuse for obscuring their face. As a company we are respectful of cultural diversity and believe these provisions to be vital for the bill to be successful in protecting our customers and staff while respecting those same individual rights and observances.

For the safety of our staff, the public, and for those who wish to exercise their rights to protest in a lawful and peaceful manner, we encourage the acceptance of the bill, providing the provisions of lawful excuse are retained.

Thank you.

• (1145)

**The Chair:** Thank you, Mr. Hunt.

Inspector Rai, do you have an opening address? If you do, please go ahead.

**Insp Steve Rai (Inspector in Charge, District Three, Operations Division, Vancouver Police Department):** Thank you, and good morning.

I am very pleased to be provided the opportunity to speak with you today about my experiences as a public order commander for the Vancouver Police Department. I have been a law enforcement officer for 22 years. I have been a public order commander for five years as one of my roles with the Vancouver Police Department. I was one of the public order commanders for the duration of the 2010 Olympics, including the opening and closing ceremonies, the gold medal hockey game, the Stanley Cup playoffs last year, including being the north commander for the night of the riot. I have led public order responses for many social and political demonstrations throughout the city of Vancouver.

The Vancouver Police Department unequivocally vows to uphold the Canadian Charter of Rights and Freedoms, and we recognize and respect the fact that the Canadian Charter of Rights and Freedoms guarantees the freedom of thought, belief, opinion, expression, and peaceful assembly, and that peaceful assembly also refers to peaceful protests. It has become evident that a relatively small portion of people who take part in peaceful assemblies and protests employ a tactic of concealing their identity by wearing disguises, masks, or other facial coverings for the purpose of committing unlawful acts. Part of this tactic is to blend in with the larger group of peaceful protestors or assemblers, commit unlawful acts, and then remove their disguises, masks, or facial coverings, thus endangering the peaceful protestors. This occurred in Vancouver during protests that took place on February 13 and 14 at the Heart Attack march regarding the Vancouver 2010 Olympic games, and during the June 15 Stanley Cup riot.

Democratic governments in the United Kingdom, France, and New York State have developed legislation that would either limit or prohibit the wearing of disguises, masks, or facial coverings during peaceful assemblies. The VPD supports amending the Criminal Code of Canada or developing alternative legislation to limit or prohibit the wearing of disguises, masks, or facial coverings whose purpose is to conceal the identity of a person intent on committing unlawful acts prior to, during, or immediately after a lawful assembly or protest.

Reasonable limits to any such amendment or new legislation need to be considered. It is not our intent to infringe upon protesters' charter rights regarding wearing facial coverings at a protest where it is reasonable that wearing the facial covering is an important symbol during the lawful protest. For example, we are not suggesting that medical professionals could not wear surgical coverings if they were to protest, or if during a political protest people wore masks that were caricatures of the leaders or governments they were protesting. Rather, we are focusing on those elements of protesters that fundamentally infiltrate the larger, peaceful protest, wear facial coverings, proceed to commit their unlawful acts, and then quickly remove them and use the larger, peaceful protesters as a form of human shield. This is the behaviour that we recommend be legislated against.

To summarize, a legislative amendment prohibiting the wearing of disguises, masks, or other facial coverings for the purpose of concealing identity would assist police in identifying members of protests who engage in unlawful behaviour. Other jurisdictions have similar legislation in place for precisely this purpose. An amendment to the Criminal Code will limit or prohibit the wearing of disguises, masks, or other facial coverings during lawful assemblies while enhancing the safety of police officers and the peaceful protesters.

Thank you.

**The Chair:** Thank you, Inspector.

We now begin our five-minute rounds.

Madame Boivin.

[Translation]

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

Thank you to the witnesses for being here today.

I think everyone sympathizes with you, given the events you had to deal with. Whether it is police forces or business people who experience these riots, it is never pleasant. A number of years ago, when I was participating in a lawyers' convention in Quebec City, we were caught up in a Saint-Jean-Baptiste demonstration. It was supposed to be a celebration, but it turned into a riot. Nothing is more stressful than being caught in the middle of something like that. It isn't funny either for those who participate in the gathering totally peacefully.

The issue we have now is determining whether the bill from our Conservative colleague, Mr. Richards, and the amendment he is proposing to the Criminal Code, will really allow us to achieve the goal being sought. We are all in favour of virtue. We would all like to be able to arrest those who are ill-intentioned in a crowd and take them out before the trouble starts.

The problem is that very often, until the trouble starts, these people are difficult to identify. You both recognize the right people have to participate in a peaceful assembly, no matter the way they express themselves, whether they have a scarf on their face or not. In fact, the scarf is not the problem; it's what the person wants to do with the scarf that is problematic. I think we agree on that.

My question is for Mr. Rai. Do you not already have enough power? We haven't talked about it yet, but section 31 of the Criminal

Code can be used. If police have reasonable suspicion that someone is ill-intentioned, they can arrest that person beforehand. If that is not done, it might be because they have to wait until something illegal happens, they have to wait until the person commits the offence. It practically becomes a catch-22 situation. I don't see how the amendment proposed by the bill can give you the tools you need.

• (1150)

[English]

**Insp Steve Rai:** Thank you.

I'll speak from the perspective of being an on-the-ground public order commander.

I understand that there are avenues in the Criminal Code that touch on wearing a disguise while committing an indictable offence. I'm not a legal expert, but I know that the threshold is higher when you're wearing a disguise when committing an indictable offence under the Criminal Code. The threshold is much higher.

What we're looking at is the safety of people who want to come down and protest, bring their children to show them how to express themselves on a position they feel strongly about, and not be hijacked by a small cluster of people who are bent on wearing facial coverings to either intimidate a point of view or hijack the event for their own ends. As a police officer, as an on-the-ground commander, I don't have the tools to expediently, concisely, and surgically go in and have the strength of a tool to mitigate and diffuse that path towards taking that protest in a different direction. We see that now more and more.

**Ms. Françoise Boivin:** That's my question. How will the amendment give you better tools? Unless you find the person actually rioting, using concealment, what would you do differently with the amendment that you can't do right now? How will it permit you to do something different?

**Insp Steve Rai:** Suppose people show up with backpacks—and we see this all the time—with gas masks, handkerchiefs, and different items. They are people who are known to us. They infiltrate a crowd and hide in it. As soon as they are masking up, or if we search their backpacks, we can have a much stronger response if we have a law that's specific to that, rather than our going to a riot or going to an unlawful assembly.... We're looking for tools that help us prevent and mitigate before that line is cut.

**Ms. Françoise Boivin:** Article 31 of the Criminal Code permits you to do that if you see a *manifestant* in a crowd. He's got a mask. He's got a backpack. You suspect...you have reasonable grounds. I cannot believe anybody would think you do not have reasonable grounds. You go to Disney and they open your bags to make sure you're not bringing anything in. I believe you have the tools.

What complicates things is the size of crowds. Suddenly these guys are well hidden. We turn in circles, because I don't see how the new legislation will permit you to do more than what you already can do under the Criminal Code. It's almost an impossibility, unless you just say you don't accept anybody with a mask or a disguise in any crowd. That would be the best way to do it, wouldn't it?

• (1155)

**The Chair:** Go ahead.

**Insp Steve Rai:** Let's look at the most recent example of the Vancouver riot. We have a huge crowd there, 100,000 or 150,000. Some people we impeded before the riot began, but many people we didn't, because the crowds were so large. What has this cost our department and the local citizenry, including London Drugs and the business community? Investigations have run into the millions because we have had to electronically unmask people who were masked up during that assembly.

The power to tell people they can't mask up because there is a law, with fines and penalties, operates as a deterrent. Instead, we're looking at millions of dollars of investigations, millions of dollars in damages, and the subversion of police resources that we should be spending on other criminal activity. This law, which sets forth responsibilities at the onset of a public assembly, will help the police in a number of tasks.

**The Chair:** Thank you, Inspector.

Mr. Goguen.

**Mr. Robert Goguen (Moncton—Riverview—Dieppe, CPC):** Thank you, Mr. Chair, and my thanks to the witnesses for appearing today.

Inspector Rai, I think you've struck upon one of the stronger points of the legislation—deterrence. You'll never stop everyone from wearing a mask if people set their mind to it. But deterrence is an arm that the police have to be able to use. You were on the ground the day of the riots, so I'd like to canvass some of the mayhem that fell out of this.

Were private citizens, innocent bystanders, assaulted in these Vancouver riots? Are you aware of that?

**Insp Steve Rai:** Yes, we had 40 to 45 reported assaults, and half of them were on police officers. There are many stories about the riots. Some people called the police after they were assaulted; some didn't. I'm just telling you the ones that were reported. A mob of 15 rioters attacked one person. People were pepper-sprayed, kicked, punched. We had sexual assaults against women. This was two riots in one. The entire downtown core was covered with hooligans, alcohol-fueled. There were many more assaults than the number I just mentioned, but those are the ones that were reported to us.

**Mr. Robert Goguen:** I guess it would go without saying that a number of businesses were shut down. There were damages. Were any of the employees affected by this riot?

**Insp Steve Rai:** Some employees had to lock themselves in back rooms or security rooms, and some of them remain traumatized to this day. We had a famous store that blends coffee near the heart of the riot, and this poor victim had to lock herself in while she heard a mob outside attacking and destroying her business. These kinds of things happened throughout the downtown core during that riot. It

affected people's lives. You pour a lot into your business—blood, sweat, and tears. Yes, a lot of businesses were affected.

**Mr. Robert Goguen:** I wonder, had this existed at the time, how it would have helped you to deter or to stop...and you did comment on this topic for de-escalating the riots. What kind of additional arm would this have been? Ms. Boivin sort of alluded to that.

**Insp Steve Rai:** I'm speaking from my experience as a public order commander. When you have a crowd on the ground and you're trying to ensure the safety of the crowd, and the point you're trying to make is respected and you amend your tactics according to the crowd, which is a peaceful crowd, you give them more street room. You give them an extension on time. You work with the crowd, because we're here to facilitate that in our country.

Where this amendment or tool would have come in handy is when, as a public order commander, you're making decisions on tactics and you see a large number of people with backpacks, and maybe some of the people have had their backpacks searched and masks have come out and disguises have come out. Now you're thinking, okay, the crowd is being infiltrated by another element. Then as the riot or assembly moves forward and the troublemakers, if I can call them that, start to take more ownership of the larger crowd, that's where I, as a public order commander or a police leader, can come in and make a decision and have the tool behind me that I can surgically remove people. I can also have the education, the pre-awareness to the event. People know what they're doing. The people know they're covering their faces for an intent. The Black Bloc is not a group; it's a tactic.

When you have the full weight of the Criminal Code, and it's clearly articulated and the police officer knows that clearly and he can articulate that on the ground, those are all subtle nuances and strengths that help you mitigate an event like a riot.

• (1200)

**The Chair:** Thank you, Mr. Goguen.

Mr. Cotler.

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

I'd like to put a question at this point to Mr. Rai following from his testimony. Your testimony, Mr. Rai, began with an important affirmation of freedom of expression, association, and assembly, anchoring it in the Charter of Rights and Freedoms, and then spoke about the situation of small groups who endanger peaceful protest and the like.

This initiative is not unlike what other countries are doing, but my sense is if you look at our legislative framework, you will see it is what other countries are doing without this specific initiative. We have a whole set of provisions that can deal with these issues now, whether we're talking about provisions about unlawful assembly in section 63 of the Criminal Code, or with respect to section 67 and the proclamation of a riot, or with respect to section 30, an arrest for breach of an offence, or section 30 where it also speaks to the suppression of a riot. The most important thing—and this brings me to the whole issue here—is subsection 351(2) of the code, which sets out the offence of disguise with intent and where it reads:

(2) Every one who, with intent to commit an indictable offence, has his face masked or coloured or is otherwise disguised is guilty of an indictable offence

We have the legislation and enabling authority right now. Is it not more a question of the efficacy of law enforcement rather than the absence of law? I'm concerned about this trend of the over-criminalization in the Criminal Code and responding to specific incidents, such as what occurred with the Stanley Cup, with yet another law, rather than asking whether the legal system in place was already sufficient for that purpose and whether it is like that which exists in other countries.

**Insp Steve Rai:** I'm not a legal expert, by any means, but I can tell you the law with the last one you mentioned, subsection 351(2). That is applied by police officers on...if somebody is robbing a bank—they go in and rob a bank with a balaclava on, they run out of the bank, and you catch them—it's a single case; it's manageable.

We're talking about the ability to have large groups of people not hijacked by a small group of people who are wearing intimidating facial masks and are employing a known tactic. A Black Bloc is a tactic that's used worldwide by groups to hijack public assemblies. I don't mean to lecture or anything, but in the Charter of Rights, the larger group also has a right to bring their children down, bring their grandmothers down, bring people down to make a statement, I don't know, at the footsteps of an art gallery or city hall, without being intimidated by a small cluster employing Black Bloc tactics.

I don't think that other section is easily applicable from a policing-on-the-ground perspective when you have thousands of people.

●(1205)

**Hon. Irwin Cotler:** I just want to say that the courts have already used the existing legislation, including section 718.2 of the Criminal Code, to determine that the wearing of a mask can imply violence, intimidate victims, demonstrate planning, etc. In other words, the courts seem to have found in the existing legislation that which is necessary for the purposes of sanctioning the very conduct that we are all concerned about. That's why I go back to the question. Is it not more a question of the efficacy of law enforcement and the application of the law rather than the absence of an enabling authority to begin with?

**Insp Steve Rai:** Again, I can say that the courts.... I don't have the wherewithal to have all the knowledge on how the courts have applied it and how they've sanctioned people who have been in violation of that.

What I can tell you is that that particular law is fine when the person gets to court. It's the ability to utilize that in a preventative purpose from law enforcement's perspective. Do I use that tool? Can I use that tool when I have 150,000 people? Is that going to help me mitigate damage in the millions to the downtown core of a Canadian city? Not at that moment. Certainly, afterwards it can be applied and the courts can provide remedy and sanction people. But I'm saying, from my perspective as a law enforcement officer, that it currently is not working for me on the ground.

**The Chair:** Thank you.

Ms. Findlay.

**Ms. Kerry-Lynne D. Findlay (Delta—Richmond East, CPC):** Thank you, Mr. Chair.

Inspector Rai, I'm from British Columbia. My riding is Delta—Richmond East. It's my understanding that the Vancouver police were only able to lay two charges under section 351 so far, relating to the Vancouver riot. Is that correct? Do you know the number of charges that were able to be laid so far?

**Insp Steve Rai:** The number of charges that we've recommended is 592 against 200 rioters. The number that have been approved by the crown, and they're working their way through these—they've approved 226 charges against 85 persons. So it's sort of a processing line.

We're continuing to recommend charges or to process people, we're continuing to use technology to unmask rioters involved in criminal activity, and the crown is working through what we've been providing.

**Ms. Kerry-Lynne D. Findlay:** Were those charges laid under section 351 or some other sections, or is it a variety of sections?

**Insp Steve Rai:** I'm not on the investigative part of the riot investigation team, but the charges include everything from mischief, break and enter, commercial break and enter, level two, level three assaults, theft from auto, theft of auto, and the participating in a riot charge.

**Ms. Kerry-Lynne D. Findlay:** Thank you.

One of the questions that has arisen so far in this deliberation is when you have a peaceful protest that then escalates into what we regard as a riot, a tumultuous event that is then happening. There may be people who have been in that peaceful protest for peaceful reasons and may not hear the riot act being read or may not be in the thick of it, so to speak, and realize that it is now a riot scene.

My question to you is this. Would it not be correct that, particularly from your position as a commander in a difficult situation like this, the police attention is going to go toward those who are in the commission of an offence, as opposed to someone who is not doing anything unlawful other than simply being present and who seems to be trying to leave or get away from the scene? Is your attention not directed at those who are actively engaged in the riotous behaviour?

●(1210)

**Insp Steve Rai:** Absolutely. We had many people who were trying to get out of the downtown core. That was part of what made it difficult for policing the riot or bringing it in control quicker, although it was fairly quickly controlled. You have people trying to get out, who don't want to be involved, and you have people who just want to stand around and film and video, and they are entertained by what's going on. You also have a third element, and it is the group that is now egged on by others, who decide to tear off their shirts, cover their faces, and go in and loot a store.

At some point you're trying to police all three. You're trying to help those getting out. You're trying to help move those who are filming to safer locations so they don't get mobbed, attacked like the one gentleman I mentioned earlier—15 attacked him—while you're trying to arrest these masked-up people going into stores, robbing and pillaging the entire inventory. You're trying as police officers to do all three.

**Ms. Kerry-Lynne D. Findlay:** Thank you.

Mr. Hunt, I'm familiar with your store, of course, having practised law in downtown Vancouver for way too long. I know, having family there, there were people on the Canada Line, for instance, the next day, bragging about having stolen merchandise from your store. There are many stories of that from people who live there.

At the time this happened at that particular store in downtown Vancouver, do you have testimony about employees or perhaps customers being at risk or having been in a dangerous situation?

**Mr. Tony Hunt:** The situation unfolded over a couple of hours. It's been described as surreal by both our security people who were on the ground at the store as well as the staff who were in the store through the event. Before the riot happened, there was a situation in which one of my security people was standing on the inside of our locked glass doors, and on the outside a masked individual walked up in this large gathering and spray-painted the front of our store, in plain view of everyone.

While we certainly could have arrested that person, none of the passersby could, because that actually is not an indictable offence, as I understand. I'm not a criminal prosecutor, but that would be a summary conviction offence.

To me, as soon as that and some of the other events happened, like fires being set, it became a very destabilizing environment. People didn't know what to do with themselves. They were receiving text messages from loved ones, who were watching in live action in media these scenes of great violence and these fires that were taking place.

Our staff initially huddled into a room about the size of the committee chamber here, and then ultimately into a smaller room, which was the security office, behind multiple locked doors. They were fully safe, but it was hard for them to believe that, given what they were able to see on the video screens in the security office. It was described as out of control zombies attacking the store. That was the description our people used. They used words like "terrified" and "traumatized".

Obviously, we have an excellent employee assistance program and we've been able to provide support for those folks. This is an event they'll never forget. It was dangerous. It was terrifying.

When you call emergency services, because of the priority level, they won't come to a large bonfire built 20 feet in front of your store. They can't send a fire truck. It's a very unnerving situation, and our people never thought they would find themselves in that situation for simply working in a retail store downtown in a major city.

**The Chair:** Thank you.

Mr. Scott.

**Mr. Craig Scott (Toronto—Danforth, NDP):** Mr. Chair, do we have enough time?

**The Chair:** You have five minutes.

**Mr. Craig Scott:** Thank you so much.

Mr. Rai, if I could discuss a few things with you, that would be great.

In the testimony we heard on Tuesday and now today, we heard three sets of justifications for this proposed amendment, and they all

make sense in a certain way. I'm not sure that the provision does the job or whether they're all legitimate. There is one that hasn't been emphasized by you, although it possibly could have been because you talked about digitally unmasking and all the work needed to do that.

One goal of this seems to be to make it an investigative tool, to make it easier to find offenders after the fact, because if for some reason this results in more people being in crowds without masks, they're going to be easier to identify. From your perspective, is that part of why you support this as an investigative tool?

•(1215)

**Insp Steve Rai:** No. Policing is made up of a lot of parts, and the investigative part is another group of people. I was just relaying how difficult it has been to go from zero to a hundred in the use of technology in this kind of investigation. We sent an army of police officers down to Indianapolis to a research lab there and set new standards for technology. The London Met, the U.K., are interested in this.

So that's just one area of it. For me, I'm an operational police officer. I'm a commander on the ground on these kinds of events. For me, it's being able to have a strong, clear, robust ability to mitigate, to dampen the troublemakers in a crowd, and that's essentially it in a nutshell. I'm looking for something that I can use, when there are 2,000 people protesting within footsteps of the art gallery, with spouses and children and grandmas, so that you don't have 10 people show up with backpacks, gas masks, and black handkerchiefs and all of a sudden take over. I can go in there and arrest them.

**Mr. Craig Scott:** Thank you.

The reason I brought that up is I may have misinterpreted some of Mr. Storseth's own testimony, but he did talk a lot about the investigative side. So it's helpful to have your operational perspective.

This backpack example was also brought up by the chief constable of the Victoria police yesterday. I'm having a little bit of trouble understanding how this new provision relates to the ability to stop and search people who turn out to have masks in their backpacks if they're not already masked.

Can you draw the link for me?

**Insp Steve Rai:** I'm not trying to bring a nexus into unlawful search and seizure or anything like that. It's just that the MO, the method of operation, for tactics by disrupters is usually they show up and store a backpack with all their gear in the bushes somewhere, or they have a very thin backpack under a jacket. They then move into the middle of a crowd and pull out their masks or balaclavas or what have you.

So I think the backpack analogy is more that police are familiar with that method that it seeps into the discussion. But this legislation is not going to help me stop somebody carrying a backpack a block away from a demonstration who happens to be waiting at the bus stop. It's just that they're using backpacks to carry that, yes.

**Mr. Craig Scott:** That helps a lot. Thank you.



One last question. I was very pleased to hear how you talked about the need for demonstrations to be peaceful exercises in civic citizenship for families and their kids and things. So that perspective is really important. I'm a bit worried that if this turns out to be an effective deterrent on people wearing masks—because they're afraid that when an assembly gets called an unlawful assembly or becomes a riot and they're going to be somehow criminal without knowing it—people will start not wearing masks for that reason.

Do you have any concerns that it would have a deterrent effect on the kinds of protests that do use masks in the ways that you suggested, for caricature, that kind of thing?

**Insp Steve Rai:** The one thing that's involved in policing is discretion, and when you screen police officers, when you train police officers in the fundamentals of law enforcement in our society, you can't get away from discretion.

We're a professionally policed country. With other crimes, such as driving over the speed limit, the police officer has the discretion to give you a warning and let you go. When you have demonstrators, police are professional enough to know when there is a group, say, of doctors advocating for health care or whatever and they're wearing surgical masks, or.... We're not robotic in the sense that we're going to apply this without any background knowledge or ability to independently assess, think, and use discretion.

So no, I don't have too much fear on that account.

• (1220)

**The Chair:** Thank you, Inspector, and thank you, Mr. Hunt. We've run out of time.

I would just point out that I think it was Mr. Richards, not Mr. Storseth.

**Mr. Craig Scott:** Oh.

**The Chair:** They're two different bills.

**Mr. Craig Scott:** My head is spinning more than I thought.

**The Chair:** We'll suspend for about three minutes so that we can switch panels.

Thank you very much for being part of today's testimony.

• \_\_\_\_\_ (Pause) \_\_\_\_\_  
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**The Chair:** I call the meeting back to order.

For the information of the witnesses, I do apologize that we're running a little bit late. We had votes in the House. With the consent of both sides of the committee, we made the decision that each section will now be 45 minutes in length.

Before us today we have Mr. Paul Champ from the BC Civil Liberties Association and Mr. Lincoln Merraro from Cadillac Fairview Corporation Limited. Michael Byers is speaking as an individual by video conference.

I think you have all been advised that you do have an opportunity for an opening address. We're trying to keep them closer to five or six minutes, if we can, just because of time.

I would welcome you to go ahead in the order I have here.

Mr. Champ, if you have an opening address, please begin.

**Mr. Paul Champ (Legal Counsel, BC Civil Liberties Association):** Thank you very much, Mr. Chair.

I'd like to thank the chair and the clerk and the committee members for inviting the BC Civil Liberties Association to appear and provide our comments and views on Bill C-309 and the proposed amendments to sections 65 and 66 of the Criminal Code.

The BCCLA would like to express its concern and opposition with Bill C-309 and its attempt to increase criminal sanctions for those who wear masks or face coverings at riots or unlawful assemblies. To be clear, the effort here is not to create a new offence; it's to create more significant penalties or sanctions for those who wear masks at unlawful assemblies or riots. So it's someone who's already committed some kind of crime.

I'd like to set out our concerns in four areas of civil liberties: one, freedom of expression; two, privacy; three, the presumption of innocence; and four, protection.

With respect to freedom of expression, whenever people organize and gather to express their views or opinions on a law or other public issues, whether it's a rally or a demonstration or protest, I think we all have to recognize that's a very good thing. When citizens and people organize, it's always a good thing. The exchange and expression and communication of ideas in a peaceful assembly reinforce the vitality and vibrancy of a democracy. The right to freedom of expression is described as a fundamental value in Canada, because, to quote the Supreme Court of Canada:

...in a free, pluralistic and democratic society we prize a diversity of ideas and opinions for their inherent value both to the community and to the individual.

The question is, how does Bill C-309 inhibit free expression? Simply put, it creates a chilling effect for those who may wish to wear masks at popular protests and rallies. Contrary to some opinions this committee may have heard, there are legitimate reasons for wearing masks that are tied to expressive activity.

First, masks can be a powerful aid to unpopular speech. For those who wish to convey messages that are likely to offend governments or others, the anonymity that masks provide may encourage the uninhibited expression of views by offering security against reprisal from government, employers, family, or others.

Here are just a few examples. How will people—who wish to—protest against the treatment of refugees by the Canadian Border Services or Canadian Security Intelligence? People who attend those kinds of rallies or protests may well be concerned that they are then going to come under the surveillance of CSIS. Or what if a person who was a refugee wanted to protest the atrocities against Tamils in Sri Lanka a couple of years ago? Some of you may recall those protests. There were many flags of the Tamil Tigers, which is recognized as a terrorist group in Canada. But if someone was a refugee attending that, would they be concerned or fearful that in some way they're going to be wrongfully targeted because they're attending such a rally?

What about the young, first-year Bay Street lawyer, perhaps not so enamoured with his or her job, who wants to attend the G-20 demonstrations in Toronto, or people who work for investment banks, like Goldman Sachs? There was a famous op-ed a couple of weeks ago of a person who quit Goldman Sachs because of their disagreement with that industry.

What about those who may choose to rally for or against same-sex marriage? Perhaps the son or daughter of a cabinet minister wished to attend the legalized marijuana rally at Parliament Hill a few weeks ago. Or perhaps an NDP MP wishes to attend the tuition rallies in Quebec. These might all be reasons why someone might not want their identity conveyed at a rally.

Secondly, in some circumstances the masks themselves may convey a message to observers. People wear politician masks, surgical masks, like doctors protesting for medicare, or Guantanamo Bay orange jump suits with sleep deprivation goggles. Guy Fawkes masks are now popular at Occupy protests, and so on. In short, the mask or the disguise is part of the message.

Assembly and freedom of expression are not simply something that democratic society should tolerate. It is something that should be encouraged and celebrated. This committee and Parliament should think about to what extent these new provisions inhibit that.

• (1225)

Secondly, it's privacy. The BCCLA has concerns about the use of facial recognition software and how it might be used for police or intelligence watch lists. There's been an expansion of no-fly lists. What does it take to become a target today? We don't know.

What about university students attending a protest today about something very unpopular, or maybe even the Occupy movement? That person may end up with an intelligence file for the rest of their lives because they attended a certain kind of protest in their youth.

The presumption of innocence is the third area of civil liberties that we're concerned about. Intention or state of mind is a critical element in the criminal law, and the BC Civil Liberties Association and other civil liberty organizations have long been concerned about the unlawful assembly and riot provisions in the Criminal Code because it is often very unclear when a lawful assembly becomes an unlawful assembly.

If you're someone who is at the front of a protest, wearing a mask, how do you know that there's not a small group in the back that do start engaging in criminal activity, thus rendering that entire assembly unlawful? You have, then, apparently, under the Criminal Code, immediately committed a crime. Now, with these new provisions, it's a crime where you could be subject to five years in prison. That's a concern.

Fourth, and finally, protection is the last point I want to make. I was here earlier and heard the comments by Inspector Rai from the Vancouver Police Department. I have to say that some of the things he said are a little bit disconcerting. We are worried that these provisions will in some way encourage police officers to engage in what he called preventative activity.

There's no question that the crimes that were committed at the Stanley Cup riots are completely unacceptable, and those who

committed those crimes should be prosecuted. But the concern is when police, at demonstrations and rallies, get their own ideas about who may or may not be someone who is acceptable or about what kind of rally or protest is or is not acceptable. This idea of pre-awareness, or an agenda, or surgically removing people—these ideas are problems.

The other point Inspector Rai was making is that it can be used for de-escalation. That's not the experience of the BC Civil Liberties Association.

I will make this one last point. We obviously know about the terrible consequences of the Stanley Cup riots in Vancouver in 2010, but we often forget the numerous, very well-attended rallies and protests during the 2010 Olympics. These protests were largely peaceful. There were thousands and tens of thousands at some of those rallies.

One factor, we believe, as to why they were peaceful is that the BC Civil Liberties Association had organized an illegal observer program. Four hundred people with notepads were trained to attend these rallies in special, bright T-shirts, identifying who they were. That ended up creating very much a deterrent effect. There was not violence, there was not escalation, because we will say, from our experience, from activists who attend these kinds of rallies, that it's often the police who can cause the escalation of violence at rallies.

Those are the concerns we have.

I'd just conclude and emphasize to the committee that Bill C-309 does infringe or inhibit some of our most fundamental freedoms. It is disproportionate and unnecessary to address the concerns raised. Someone committing a crime can and should be prosecuted, and this bill will not change that in any way. What it will do is cause a chilling effect on free speech, and several other problems that I've raised with you today.

I thank you very much.

• (1230)

**The Chair:** Thank you.

Mr. Merraro.

**Mr. Lincoln Merraro (Senior Security Manager, Cadillac Fairview Corporation Limited):** Thank you.

In the interest of trying to keep it under five minutes, I'll go quickly, but thank you for allowing me to speak today.

I work for Cadillac Fairview. Our property is the Pacific Centre, which is located kitty-corner to the Vancouver Art Gallery, which has been mentioned several times, as well as four blocks away from the Stanley Cup riots that occurred in 2011.

I'm here to talk about the effects of that event and those types of events on our tenants. The amount of damage, the amount of glass, the number of fires has been spoken about already. What hasn't been spoken about too much is the human condition: the number of people who were terrified that night, not just by the people who were there to celebrate winning or losing, but by the people who would be at their storefront wearing a mask. I believe it's a terrifying experience, if you are a shop clerk and you are standing inside your store and there is a protest or an assembly happening outside your store, to have somebody come up in a mask and make you feel unsafe.

That night we completed 17 different incident reports, ranging from theft from auto to break and enter to graffiti to mischief. I can tell you that in each of those situations, when we had to do the video review for it we found that there was a mix of people who would be silently or aggressively egging on other people to do the act. The people who were usually doing the egging on of the people would be the ones who were wearing masks. Prior to the start of the game, and certainly by close to the end of the game, when the mood started to shift, you were able to see that there were plenty of people who were clearly prepared for what they wanted to do that night.

This essentially put that property into a safe lockdown mode, meaning that our 100 retailers who were there and their staff were forced to try to find a way home. We have six office towers connected to the Pacific Centre, and when I say that we did 17 incident reports on various things, these don't include the dozens of different times that we had to send security guards to escort either a lawyer, a banker, or a retailer from their office through the crowds to transportation to get them away from there.

Since then, with every incident we've done a review. We compiled more than 114 hours of CCTV footage. The estimated cost of damage to us and to some of our tenants, such as TD Bank, Sears, Aritzia, H&M, Blenz Coffee, AI culinary school, Holt Renfrew, Tip Top, SportChek, as examples, is over \$1 million. We had one employee's car flipped over and torched while they could only stand by and watch.

To put it into perspective, the Pacific Centre covers almost four city blocks on two sides. Every single business along those two streets was affected in one way or another. Since we are across from the Vancouver Art Gallery, this also touches home for us, because we see a lot of the protests, the lawful gatherings. We're happy to see those happen.

We also unfortunately see when some of those things start to devolve. I can tell you, being an observer literally across the street, that it begins to develop by having a few people involved who wish to get into the middle of it and, as was mentioned earlier, for lack of a better word, hijack that event for their own purposes. It creates a very unsafe environment for the people who are there to lawfully protest, it creates a very unsafe environment for the people who work and live in that area, and it makes it very difficult for the message that would have started at 12 noon on a nice day with banners and chanting. By 3 o'clock that message is entirely lost, because the event has been taken over.

Thank you.

• (1235)

**The Chair:** Thank you, sir.

Now, Mr. Byers, appearing by video conference, if you have an opening address, please go ahead.

**Prof. Michael Byers (Professor and Canada Research Chair, Department of Political Science, University of British Columbia, As an Individual):** Thank you very much. It's good to be with you today, particularly in the presence of my former professor of constitutional law, Irwin Cotler, who taught me 25 years ago.

Just for the record, I am a board member of the BC Civil Liberties Association, but that's not why I'm here today. I'm here because I was a member of the 2010 Olympics civil liberties advisory committee, which was an ad hoc group of retired judges, police officers, lawyers, and academics who worked directly with the City of Vancouver, with the RCMP-led integrated security unit, and with a number of protest groups in the lead-up to the Vancouver Winter Olympics.

The proposed legislation that you're considering today, Bill C-309, would obviously make two simple changes to the Criminal Code: amending section 35 to make it a criminal offence to wear a mask during a riot, and secondly, amending section 66 to also make it a criminal offence to wear a mask or other disguise when participating in an unlawful assembly.

During the Vancouver Olympics, I was proud to live in a country in which the expression of all political views is respected and protected, and during the riots that followed the Vancouver Canucks game seven Stanley Cup loss, I felt nothing but contempt for the criminals who were rampaging through our streets.

Those two sentiments are entirely consistent. In a democracy, there's a crucially important distinction between a protest and a riot. Almost all of the people involved in the Vancouver Olympics protests were there to express political concerns.

On riots, let me simply say—and others have said this before me—that the proposed amendment to section 35 seems redundant, since the Criminal Code already makes it an offence to wear a mask with the intent to commit an indictable offence. And obviously, participating in a riot is already an indictable offence. For this reason, my comments are directed solely at the second of the two proposed amendments, namely the creation of a new offence, punishable by up to five years in prison, for wearing a mask or disguise during an unlawful assembly.

Unfortunately, it is relatively easy for a peaceful protester to unintentionally find himself or herself involved in an unlawful assembly. The definition of an unlawful assembly in paragraph 63(1)(b) of the Criminal Code says that it is an assembly that causes

persons in the neighbourhood...to fear, on reasonable grounds that they

will by that assembly...provoke other persons to disturb the peace tumultuously.

This is hardly clear and definitive and is therefore open to subjective and controversial determinations by the police.

The matter is obviously complicated by the fact that some political protests include a small number of individuals who are intent on disturbing the peace tumultuously, and their ability to do so is sometimes facilitated by the presence of that much larger group of peaceful protesters. Clearly, some of that small number of individuals intent on disturbing the peace may wear masks or other disguises. But as Mr. Champ has pointed out, at the same time, some protesters who have absolutely no intent to disturb the peace tumultuously may also be wearing masks and be doing so for entirely legitimate reasons. This, I feel, is where the second part of Bill C-309 overreaches.

During the opening ceremonies for the Vancouver Olympics, I was observing a protest from a position roughly 10 metres away from the police line. I found myself standing beside a man who was wearing a balaclava. I seized the opportunity to engage him in conversation and gently suggested that he remove the mask. "You have nothing to fear", I said. "You're not doing anything illegal." He replied: "It's not the police who worry me. I work in an office where everyone is extremely supportive of the Olympics. If they see me here"—and at this point he pointed to the wall of TV cameras that were covering the protest—"I might lose my job."

•(1240)

By that point the protest we were observing had probably become an unlawful assembly, meaning that the man I was speaking with, who had done nothing wrong, would fall within the scope of Bill C-309.

I should also say that the Vancouver Police Department handled that particular protest in a manner that casts valuable light on the proposed legislation before you. Entirely by design there was just a single row of VPD officers wearing baseball caps facing a crowd of 2,000 people. The police were friendly and smiling as they informed the protesters that their march could not continue into the stadium where the opening ceremonies were about to begin.

Almost all of the protesters accepted the limitation with grace, because the police had stopped traffic for them as they marched through downtown Vancouver and allowed them to come within 50 metres of the stadium and to chant and wave placards in clear sight and earshot of the ticket holders who were walking in.

A dozen masked people did try to pick a fight by spitting at the police and throwing traffic cones. The officers continued talking and smiling, the larger crowd remained calm, and the attempted riot fizzled out like a wet firework. The masked youths left in a sulk.

They came out the next morning without the presence of the larger surrounding crowd, broke a window at the HBC store, and were promptly arrested, to the satisfaction of not just the police but the thousands and thousands of peaceful protesters.

If the Vancouver Olympics can teach us anything, it's that the vast majority of protesters, if treated well, are the most valuable assets that security planners have. Well-intentioned protesters can exercise peer pressure on potential perpetrators of violence because they know that law-breaking can impede or distract from their message, if their message is in fact being allowed to get through.

Now, we shouldn't be surprised if—

•(1245)

**The Chair:** Mr. Byers, we have to cut it off here because we are running out of time.

Could you crank it up a bit?

**Prof. Michael Byers:** Okay. I just need 30 seconds.

**The Chair:** That will be fine.

**Prof. Michael Byers:** We shouldn't be surprised that a few idiots impede traffic, break a window, or overturn a car. One does not encourage or excuse such acts by anticipating them and planning restraint; a few louts in a crowd do not justify sweeping or preemptive arrests.

Let me also say that there will be peaceful protesters who will worry about this legislation being used to facilitate the use of facial identification technology, not just to catalogue criminal acts—things that are already criminal under the Criminal Code—but also to track participation in political protests and the expression of dissent.

I worry that if it becomes law, this legislation will seek to deter important acts of political expression. That is something that I think all the members of this committee should consider carefully.

**The Chair:** Madame Boivin.

[*Translation*]

**Ms. Françoise Boivin:** Thank you, Mr. Chair. I will share my time with Mr. Jacob.

Mr. Byers, you talked about section 35. Was that the section you were referring to? I want to make sure because there are two sections that would be amended: section 65, on riots, and section 66 on unlawful assemblies.

That said, my question is for Mr. Champ. You said that the main impact of this bill is to create tougher penalties for a person who commits an offence while wearing a mask than for a person who is just participating in a riot. Wasn't that already the case? Didn't the courts of Canada already consider being disguised an aggravating factor?

There is another question I would like Mr. Byers or Mr. Champ to answer. Wouldn't it be good to use the same terms in section 351 if we want to create a specific offence in sections 65 and 66 concerning the notion of wearing a disguise, to avoid having all sorts of interpretations of the offence of wearing a disguise in section 351 and the one newly created in sections 65 and 66?

[*English*]

**Mr. Paul Champ:** I think the point you're making is that the law may already sufficiently deal with the issue, and I think it's an excellent point.

For example, if the criminals who looted London Drugs and some of the stores that Mr. Merraro was speaking of did so while wearing a mask, they're going to get a more severe sanction. That's already in the Criminal Code. I used to be a prosecutor. In my experience, I know that would have been a factor. Irrespective of what's in the code, I would have argued for that, and I'm certain that any judge would have put weight on that as an aggravating factor in the crime.

So the real issue is, what is the point or purpose of these provisions? I think the consequences are going to be unintended. As I think Professor Byers has set out, there's going to be a chilling effect for those who may otherwise want to attend a rally, a demonstration, or a protest and wear a mask for legitimate reasons. They are going to be deterred. Or in a case where they want to attend anonymously, they may be deterred from attending at all.

**Ms. Françoise Boivin:** Thanks.

Monsieur Jacob.

[*Translation*]

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

Thank you, Mr. Chair.

Thank you to the witnesses for being with us this morning. My first question is for Mr. Lincoln Merraro.

If I'm not mistaken, you manage a private security company. First, what was your initial training? Then, could you tell me what type of ongoing training you and your employees have as private security agents.

[*English*]

**Mr. Lincoln Merraro:** I'll answer that in two ways. One is that I'm the manager for security at Pacific Centre. I'm not a licensed security guard. We employ contract security guards. The training they get is mandated by the province. They are licensed. They go through 40 hours of training, covering everything from human rights to customer service to powers of arrest. I was also—

• (1250)

[*Translation*]

**Mr. Pierre Jacob:** So there are 40 hours of ongoing training a year?

[*English*]

**Mr. Lincoln Merraro:** That's the initial training.

**Mr. Pierre Jacob:** Initial training? Okay. Thank you.

**Mr. Lincoln Merraro:** Yes. They can do a whole host of other training segments to augment their initial training as well.

[*Translation*]

**Mr. Pierre Jacob:** So, am I to understand that they don't necessarily have, any more than you do for that matter, any training in law, on the Charter of Rights and Freedoms, on rights and freedoms of expression and association, in psychology, or other matters?

[*English*]

**Mr. Lincoln Merraro:** I have a diploma in law enforcement security. For the guards, part of their training is the Criminal Code

and all aspects of law—not to the fullest extent, but yes, they are trained in those areas.

[*Translation*]

**Mr. Pierre Jacob:** Okay. So they are trained. They have an obligation to have how many hours of training per year?

[*English*]

**Mr. Lincoln Merraro:** There's not a set amount of hours per year. They are licensed by the province.

[*Translation*]

**Mr. Pierre Jacob:** Okay, very well. Thank you very much, Mr. Merraro.

My second question is for Mr. Champ.

You said that Bill C-309 would limit the right to freedom of expression, the right to privacy, the right to the presumption of innocence, and, I also think, the right to freedom of association.

I have a letter from the executive director of the Quebec Bar, Mr. Claude Provencher, that he sent to the sponsor of Bill C-309. The letter said the following:

We are concerned about the widely-reported case of a demonstration at Montebello in Quebec, on August 20, 2007, during which police officers, disguised agents provocateurs, tried to encourage protesters to act in a violent way that could have justified an intervention or arrests.

I would like to know what your position is regarding the Quebec Bar's fears.

[*English*]

**The Chair:** We're way over time. A short answer, please.

**Mr. Paul Champ:** I'll give a very quick answer.

In that situation, as in 2007, it was a protest involving the presidents of the United States and Mexico and Prime Minister Harper. The provocateurs in that circumstance were actually police officers. There were Quebec police officers wearing masks, pretending to be protesters, mixing themselves into the crowd, and trying to incite other members of the crowd to start a riot and cause an escalation.

That is a concern that I didn't expand on at the end of my remarks. I was getting to it just a bit.... There are concerns out of the G-20 protests in Toronto, for example, where there was a concern that police were engaged in an excessive use of force. There have been independent reviews by the Special Investigations Unit and the Independent Police Review Director that there were many circumstances of excessive use of force.

With this new provision, I'm worried that people wearing a mask—perhaps for legitimate purposes—are going to have a big target on their backs when some unfortunate bad apples in police forces decide that it's now an unlawful assembly and it's time to start swinging billy clubs.

**The Chair:** Thank you.

Mr. Woodworth.

**Mr. Stephen Woodworth (Kitchener Centre, CPC):** Thank you very much, Mr. Chair.

My thanks to the witnesses for your evidence. It's always thought-provoking at this committee, and yours was no exception.

I would like to begin with Mr. Champ.

You are, I assume, aware that a great many of the protesters during the Vancouver riots were masked. Are you aware of that?

**Mr. Paul Champ:** Yes.

**Mr. Stephen Woodworth:** Are you aware that in fact all charges that the police wish to lay in British Columbia must be approved by prosecutors?

**Mr. Paul Champ:** I'm not aware of that specifically, but I know that's the practice in some provinces, that the prosecutors must approve the charges.

**Mr. Stephen Woodworth:** Let me just say that it's my understanding that this is what happens in British Columbia.

Are you aware that of the 226 approved charges arising out of the Vancouver riot, there were only two charges under subsection 351(2) of wearing a mask with intent to commit an indictable offence? Are you aware of that?

**Mr. Paul Champ:** Well, that's what I'd heard, but that doesn't surprise me entirely.

**Mr. Stephen Woodworth:** All right. That's good, because I want to ask you, as a former prosecutor, why you think it is that the police were only able to lay two charges under subsection 351(2) in the case of the Vancouver riots, where there were so many people walking around with masks on committing offences. What's the barrier there that prevented them?

• (1255)

**Mr. Paul Champ:** It's obviously identifying the criminal, there is no question. But this bill is not going to change that. If someone is wearing a mask—

**Mr. Stephen Woodworth:** Just a moment. I'm not asking you about this bill; I'm asking you about section 351.

So your answer is that the reason is identifying criminals.

**Mr. Paul Champ:** That's correct.

**Mr. Stephen Woodworth:** Suppose I suggested to you that one of the reasons why there are so few approved charges under section 351 is the high bar set by the requirement to prove a specific intent to commit an indictable offence.

**Mr. Paul Champ:** Again, I didn't review the files. I don't have the criminal files. I would have thought it would have been the difficulty in identifying people. As I understand it, most or many of the people identified as committing offences during the Stanley Cup riots were due to cameras and whatnot. Obviously it would be difficult to identify those people if they were wearing masks.

I don't think it's an intent issue, but again, I'd have to see the specific fact pattern on what the person had done.

**Mr. Stephen Woodworth:** As a former prosecutor, then, you think it's an easy thing to prove that someone has the specific intent of committing an indictable offence.

**Mr. Paul Champ:** Well, I think that's the problem with this particular bill rather than what's happened with the section you spoke about, because—

**Mr. Stephen Woodworth:** I want to keep us on section 351 for a moment.

**Mr. Paul Champ:** As I understand section 351, once you've proved the intent to commit the other indictable offence—for example, theft of \$5,000 or over—

**Mr. Stephen Woodworth:** Right. That's what I'm talking about. Is it easy to prove that intent?

**Mr. Paul Champ:** If you catch someone in a store where the glass is broken and they're holding a big computer or stereo—

**Mr. Stephen Woodworth:** Exactly.

**Mr. Paul Champ:** —I think you can probably prove intent on that.

**Mr. Stephen Woodworth:** But if they're just standing in the middle of an unlawful assembly, it's a little difficult.

**Mr. Paul Champ:** Precisely. That's the point I'm trying to make.

**Mr. Stephen Woodworth:** Exactly. And that's the point I'm trying to make too.

**Mr. Paul Champ:** I think we're on the same page on that.

**Mr. Stephen Woodworth:** We're on the same page here. Section 351 isn't really an easy section to apply to someone who's just standing in the middle of an unlawful assembly with a mask on. That's the point we've agreed upon.

I want to ask you about something else, and that is *mens rea*. What I know about criminal law is that it is generally the case that to be convicted of a criminal offence, one requires some criminal intent.

Can you give me any citation for the proposition, which I think I've heard you and others provide, that it is possible to be convicted of being in an unlawful assembly with the court finding that you didn't know you were in an unlawful assembly and you weren't wilfully blind about it? Is there a citation that says you can be convicted for simply the act of being present in an unlawful assembly without any criminal intention associated with knowing you were in an unlawful assembly?

**Mr. Paul Champ:** I can't name the cases off the top of my head, but I do know there are a couple of cases where—

**Mr. Stephen Woodworth:** Can you send them to me, please?

**Mr. Paul Champ:** I can.

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

**Mr. Paul Champ:** It was in the first ten years after the charter. There were charter challenges to the unlawful assembly and riot provisions, saying you would not necessarily have *mens rea*, and how would *mens rea* be determined.

**Mr. Stephen Woodworth:** Exactly. I'm interested in seeing the citations. Until I look at the cases, I'm afraid we can't really discuss them in—

**Mr. Paul Champ:** That's fine. I'm happy to provide them to you.

**Mr. Stephen Woodworth:** Thank you for that.

I was glad you mentioned the example of NDP MPs attending the tuition rallies, because it explained for me why our colleagues from the NDP are so opposed to this bill. That's helpful.

It seems to me that even if I were an NDP member of Parliament, if I found myself in the middle of a riot or an unlawful assembly wearing a mask, I would probably find it prudent and helpful to the police to take the mask off. So I'm a little unsure about why it is you say that anyone would have a good reason to keep a mask on when they're in the middle of an unlawful assembly or riot. I just don't perceive that this would be a prudent or intelligent thing to do, even for a member of the NDP, unless there were some ulterior motive.

**Mr. Paul Champ:** Just to be clear, if there's an unlawful assembly or riot, anyone in it is committing an offence, whether they're wearing a mask or not.

**Mr. Stephen Woodworth:** Right.

**Mr. Paul Champ:** That's the bill. The problem I was identifying is that it's difficult to determine intent to be participating in an unlawful assembly. That problem is not going to change. The issue is that it's going to create a chilling effect for those who wish to attend. They might be at the front of the march and they don't know that a bunch of vandals in the back are smashing windows.

**Mr. Stephen Woodworth:** Well—

**The Chair:** Thank you, Mr. Woodworth.

**Mr. Stephen Woodworth:** I've enjoyed our conversation. Thank you.

**Mr. Paul Champ:** Thank you.

**The Chair:** Mr. Champ, I would ask you to forward that information to the clerk, and the clerk will distribute it to everyone.

**Mr. Paul Champ:** Will do. Thank you.

**The Chair:** Mr. Jean.

**Mr. Brian Jean (Fort McMurray—Athabasca, CPC):** Thank you, Mr. Chair.

• (1300)

[*Translation*]

**Mr. Raymond Côté (Beauport—Limoulu, NDP):** Mr. Chair, a point of order. It is now 1:00 p.m., contrary to what the clock indicates.

[*English*]

**A voice:** He's right. This clock is slow.

**The Chair:** Oh. Okay—

**Mr. Brian Jean:** Do I have time for one question, Mr. Chair?

**The Chair:** One short question.

**Mr. Brian Jean:** Thank you.

I was just reviewing a website of an NDP member, Paul Dewar.

Is it true that you are an NDP member who supported him in his bid for prime minister, as the letter said?

**Mr. Paul Champ:** It's not true that I'm an NDP member.

**Mr. Brian Jean:** Well, it said on the letter itself, which you signed, that you are a proud NDP member and you believe that Paul Dewar would make a great prime minister.

**Mr. Paul Champ:** I donated money to his leadership campaign.

**Mr. Brian Jean:** So the letter is incorrect?

You should probably change that. It's on the web.

**Mr. Paul Champ:** I donate to people from many different political parties.

**Mr. Brian Jean:** I'm just curious about that one, because it did say in words—

**The Chair:** I appreciate the intervention, but it really doesn't have....

Mr. Côté, I thank you for pointing out the clock.

**Mr. Raymond Côté:** My pleasure.

**The Chair:** We'll see if we can get the clock corrected for our next meeting.

We have a meeting scheduled for Tuesday of next week. We're not certain that we'll have a witness—we may or may not—so the plan is to do clause-by-clause on Tuesday.

I've got nothing from anyone, so we'll go to Bill C-299 on Thursday.

The meeting is adjourned.







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