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Chair

Mr. Dave MacKenzie

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•(1105)

[English]

The Chair (Mr. Dave MacKenzie (Oxford, CPC)): I call the meeting to order.

This is the Standing Committee on Justice and Human Rights, meeting number 22. Pursuant to the order of reference of Thursday, December 15, 2011, we are studying Bill C-26, An Act to amend the Criminal Code (citizen's arrest and the defences of property and persons).

This morning we have three groups to appear before us.

Just so that everybody understands the rules of the committee—and not the chair's rules—they are that there is an opening address of ten minutes allowed, per group. I'll let you know when there's one minute left in your total. When we begin the rounds that go back and forth, they're five minutes total for question and answer. If I cut you off, it's not because I'm being mean-spirited; it's just to balance it out for all the committee members.

Mr. Battista and Ms. Dufour, if you wish to have an opening address, please go ahead. Thank you.

[Translation]

Ms. Nicole Dufour (Lawyer and Coordinator, Criminal Law Committee, Barreau du Québec): Thank you very much.

I am here with Giuseppe Battista, who is chair of the Barreau du Québec's criminal law committee. That committee consists in equal parts of defence lawyers and crown attorneys, as well as a few university professors.

On reading Bill C-26, we note that, to a large extent, it reiterates the content of Bill C-60, which had the same title, and bills C-547 and C-565, which dealt with the same subjects and on which the Barreau has previously commented.

We note that certain expressions in the French version of Bill C-26 are inconsistent with the English version and should be corrected. The words "unlawfully" and "lawfully" in the English version are translated by expressions using the word "légitime", which, in our view, does not necessarily convey the purpose intended by the English version. For example, section 34(3) as proposed by the bill contains the expression "agir de façon légitime". We submit that the phrase "autorisée par la loi" would be more accurate than the word "légitime".

The Barreau du Québec would like to offer its congratulations on the effort to simplify the legislation relating to self-defence, which has been criticized by the courts and by law enforcement bodies. In

our opinion, these amendments do not alter the current case law, since the proposed provisions address the conduct and actions of a person who uses force, and not the outcome, for deciding whether the use of force in the circumstances is reasonable and lawful.

However, we believe that the choice to legislate in the negative is not advisable in the circumstances. We submit that it would be preferable to use an affirmative formula that refers to the right to repel force, or the threat of force, by force.

Bill C-26 reiterates the elements of Bill C-60, which provided that an arrest may be made within a reasonable time after the commission of an offence if a person believes on reasonable grounds that it is not feasible in the circumstances for a peace officer to make the arrest. The Barreau du Québec believes that the proposed amendments are potentially dangerous in terms of the safety of the individuals involved in exercising a power of this nature and for the persons who would be subject to it.

In addition, the fact that a citizen's arrest must be made "within a reasonable time" after the commission of the alleged offence leaves the way open for a possible abuse of power. Any arrest includes elements of unforeseeability arising from the use of the force that is needed in order to make an arrest, peaceful though it may be. By definition, an arrest implies the use of force: a person who makes an arrest must physically control the person and restrict their movements and, if necessary, may use reasonable force to compel the person to submit to their authority. When police make an arrest, they are identified by their uniform or otherwise, and persons arrested by police know that the police are entitled to make arrests, even if they believe the police are in error in their case, and police are required to inform the person arrested of the grounds for the arrest and of their rights. The police are trained to make arrests, and even with their training and skills, arrests sometimes go wrong, even where the persons involved are not criminals. A member of the public does not have the training and resources available to police forces. The power of arrest is an important power that must be exercised in accordance with the law, and the rights of a person who is arrested must be respected.

The power to arrest granted to individuals must be an exceptional one and must be subject to strict guidance. We believe that the use of the expression "reasonable time", as proposed in section 492(2), is problematic, in view of the risks associated with a citizen's arrest.

[English]

The Chair: Ms. Dufour, could you slow down just a little bit? Thank you.

[Translation]

Ms. Nicole Dufour: There are also grounds to question certain very practical aspects of a citizen's arrest. What would the arrested person do? Where would they be taken? How would we ensure that the constitutional rights of the person under arrest are respected? What would happen in the event of an unlawful arrest? Would the person who made the arrest have civil or criminal immunity?

The Barreau du Québec is of the opinion that the proposed amendment results in more disadvantages than solutions, and that it would be preferable not to enact it. Section 494(1) of the Criminal Code should remain as it currently stands.

We believe that an approach based on protecting the safety of individuals, including both the offender and victim of theft or property damage who enforces the law, is vastly preferable to an approach that could endanger individuals' safety.

Thank you.

[English]

The Chair: Did you have anything, Mr. Battista? Thank you.

Mr. Abergel.

• (1110)

Mr. Oliver Abergel (Member, Criminal Lawyers' Association): Good morning. I'm here on behalf of the Criminal Lawyers' Association. We've been before you before.

We're a non-profit organization, founded on November 1, 1971. The association is comprised of approximately 1,000 criminal defence lawyers, many of whom practise in the province of Ontario, but we have representation from across Canada.

The association has been granted standing to participate in many significant criminal appellate cases as well as other judicial proceedings. We find it both a privilege and a pleasure to be given the opportunity to appear before this committee on this important bill.

I'll start by saying that this bill is very important to all Canadians, as it deals with the basic rights to defend oneself and one's property against unlawful attack. The Criminal Lawyers' Association believes that everyone, regardless of party affiliation or particular role in the justice system, be they crown prosecutors, defence lawyers, judges, or police, can agree that no one should attract criminal liability for legitimately defending oneself from aggression.

The position of the Criminal Lawyer's Association is that the goal of Bill C-26, in particular sections 34 and 35 involving the self-defence provisions, is laudable.

Countless courts, academics, and trial lawyers have commented with dismay at the needless complexity and confusion associated with the present self-defence provisions. Clearly this bill is attempting to respond to those criticisms. However, the bill as drafted is not without some difficulties, from our perspective. I will attempt to outline constructive criticisms while maintaining that the bill does respond to criticisms that have gone on for a number of years.

I have three essential points. Number one is the issue involving what I call "lethal force". Paragraph 34(2)(b), as it currently stands, makes it clear that an innocent party who has not provoked an assault is justified in causing death or grievous bodily harm if he or she reasonably fears death or grievous bodily harm and reasonably believes that he or she cannot otherwise preserve him or herself from death or grievous bodily harm. The proposed amendments simply create a reasonableness standard, and I say there's not a great difficulty with that for many uses of force.

Proposed subsection 34(2) lists the nature of the force or the threat as one factor to be considered among a list of possible factors. Proposed subsection 34(2) also lists "other" means available as being a factor in such scenarios. That is suggestive potentially of bringing in notions of retreat or possible escape, especially when dealing with someone who is in their own home.

The Criminal Lawyers' Association recommends that there be a clear subsection clarifying that lethal force is proportionate where it is used to repel force or a threat of force capable of causing death and/or grievous bodily harm. We say this because we believe that without this clarification innocent parties will have their actions dissected in 20/20 hindsight, without appreciation of the stress of a self-defence scenario. For example, if you're in your own home, with your family asleep in their beds, and someone breaks into your dwelling and comes after you with a weapon, you should be able to defend yourself using lethal force if necessary. You should not have to explain why you didn't avail yourself of other potential avenues of escape.

Issue number two is the list in proposed subsection 34(2). The Criminal Lawyers' Association agrees with the Canadian Bar Association that proposed subsection 34(2) may result, unintentionally, in being used as a checklist, especially when a judge is applying these criteria. We acknowledge that the proposed subsection clearly says that these are some of the factors and the list is not exhaustive. We understand that.

• (1115)

That being said, the concern is in a practical matter, and the Criminal Lawyers' Association are able to give commentary as practical trial lawyers that, especially in a jury trial, the list of factors is what will be provided to a jury and what the jury will take with them into their deliberations. There is a concern that if another factor comes up that wasn't deemed important enough to list as one of the major factors to be taken into consideration, this may negatively impact the law of self-defence.

It's our submission that the list is simply not necessary, that it leaves out many potential relevant factors, and that all of the enumerated factors are simply examples of either proportionality or of necessity.

My third point is on section 34.(3).

The common law, as it currently stands, is that a person is justified in using force to repel an unlawful arrest. The amendment, as represented in the proposed section 34.(3), injects a subjective belief and creates a potential onus for a person who has resisted an unlawful arrest or an unlawful search to show that they subjectively and reasonably believed that the other person was acting unlawfully.

Again, we agree with the Canadian Bar Association that section 34.(3) is simply not necessary. It's very clear that self-defence is not applied to resisting a lawful arrest, that it's duplicitous and may, by accident, inject the need for an accused to prove his or her subjective belief when defending against unlawful arrest and/or search.

Thank you.

The Chair: Thank you very much.

I'm not sure if it's Mr. Chen or Ms. Shi. Whoever wishes to go first, go ahead.

Ms. Chi-Kun Shi (Lawyer, As an Individual): Good morning, Mr. Chairman and members of the committee. Thank you for inviting me here today.

My name is Chi-Kun Shi. I'm a lawyer.

I spend most of my time practising civil litigation, far away from the criminal courts. However, in 2009, when I learned of David Chen's incident and the serious charges he faced, I felt that his case was one that raised issues not only about public safety, but also about fundamental Canadian values. I became involved in the public discourse.

In that process, I had the opportunity to speak to many store owners. I researched the proper roles of all three levels of government in the matter; debated the issues repeatedly on radio and television talk shows in both the English and Chinese languages; and gave numerous interviews to journalists of all media types, including international, national, and syndicated programs, as well as local college student newspapers.

From these discussions I learned that Canadians see the right to exercise citizen's arrest as intertwined with the fundamental relationship between Canadians and our government.

The proposed amendment to subsection 494(2) of the Criminal Code, before the committee today—that is, clause 3 of Bill C-26—is therefore an exercise in recalibrating that relationship and redefining the role of government in the lives of Canadians. It has fundamental implications.

The proposed amendment eliminates the current unworkable restriction that limits citizens' arrests to the very narrow window when the criminals are in the process of committing the crime.

In David Chen's case, the police relied on the contemporaneous restriction to deny David the availability of the citizen's arrest defence, and thereby flipped the essential elements of an arrest, any arrest, into very serious charges of kidnapping and forcible confinement. These charges were levelled against him as he arrested the shoplifter one hour after the crime was committed.

The proposed amendment before this committee will eliminate this scenario. It allows the store owners to make an arrest within reasonable time. However, it imposes other conditions, including the one that I will respectfully submit may not respond to the reality of life in a grocery store.

The proposed amendment stipulates that the citizen making the arrest must have found the criminal committing the offence in the

first place, although the arrest could be made within reasonable time thereafter.

In practice, store owners rely on surveillance videos to determine, often after the fact, that the theft has taken place. As many of the shoplifters are repeat criminals, the store owners or their agents may receive the information of the theft through each other as they are often able to reliably identify these criminals.

Strictly speaking, information of that nature may not be sufficient to authorize a legal citizen's arrest under the proposed amendment, as it requires that whoever makes the arrest must have found the criminal committing the offence. As the consequence of an illegal citizen's arrest is so serious, the question one must ask is whether the amendment should be fashioned to provide the store owners more space between, on the one hand, doing a picture-perfect legal citizen's arrest, and on the other hand, suddenly becoming an alleged kidnapper.

Under the Criminal Code, even with this proposed amendment the stakes are very high for store owners who exercise their right to citizen's arrest. The benefits, on the other hand, are quite limited.

As David's case demonstrates, the Criminal Code, as implemented, imposes much harsher penalties on illegal citizens' arrests than on shoplifting. If we believe that the law encourages certain behaviour and discourages other, one can make the argument that the government's vision realized by our Criminal Code on the issue of shoplifting is one of acquiescence.

On the other hand, the government's vision on citizens' rights to protect their own properties is one of severe caution.

During many debates about what David's and other store owners' proper response to shoplifting should be, opponents of the right to citizen's arrest argued that store owners should call the police and then just wait.

● (1120)

As we all know by empirical data, anecdotal evidence, and indeed as admitted by police themselves, there are not enough resources for the police to confront the issue of property crimes on their own. So what these opponents are really saying to the store owners is simply to suck it up. Store owners who try to do anything else to protect their properties are taking the law into their own hands or committing vigilante justice.

In my view, until they've made a citizen's arrest, the law that day was in no one's hands but the shoplifter's. What the opponents have captured, though, in their view is the equating of citizen's activism with anarchy. To some extent the Criminal Code's harsh treatment of store owners reflect this view. Even these proposed amendments, motivated by the recognition of these store owners' fundamental rights to defend the fruits of their hard work, contain conditions that I submit reflect the government's unease about trusting Canadians to participate in the safeguarding of their communities.

The debate surrounding citizen's arrest is an opportunity to re-examine the role that every Canadian should play in his or her own surroundings and community. In Chinese, the word “democracy” is made up of two characters that mean “citizen” and “decide”: “democracy” means “citizens decide”.

These proposed amendments take a step towards giving Canadians more chances to decide and shape their lives. Perhaps some day the government will see fit to further amend the Criminal Code and trust Canadians with the right to defend themselves, where there are reasonable grounds to do so, without placing strictures that, as in David's case, turn Canadians defending their properties into serious criminals and turn career criminals into star witnesses for the crown.

I will always remember a store owner who told me that after he caught a shoplifter and waited for the police to arrive, he was more scared than the shoplifter of what the police might do. That is wrong. This proposed amendment is a good start to setting things right.

Thank you for your attention.

The Chair: Thank you.

Mr. Chen.

Mr. David Chen (Owner, Lucky Moose Food Mart, As an Individual): Good morning. Thank you for inviting me today.

My name is David Chen. I'm the owner of the Lucky Moose Food Mart.

Almost every day people steal from my store. Calling the police does not stop them. They are gone before the police get there. Sometimes the police don't have time to come.

Two and a half years ago, when I tried to stop a repeat shoplifter, I was told I was wrong. I was told chasing him was wrong, but he ran away when I asked him to pay for what he took. I was told tying him up was wrong, but he was hitting me and my workers. I was told putting him in my van was wrong, but he was kicking us. I was told I might be a bigger criminal than the shoplifter. I was told I was more dangerous than the shoplifter. I was in jail overnight. My wife was not allowed to see me.

I was very lucky that many Canadians supported me. The community raised funds to pay my lawyers. My lawyers worked hard and gave me good discounts, and the court set me free.

Even with so much luck, my family still has a hard time with the system. We spent time and money. We worried that I might go to jail, all because I don't want anyone to steal from me.

I know many people worry about shoplifters and store owners fighting on the street. I want to tell them we store owners don't want to fight; we just want to make a living for our families. When we have no choice, we want the chance to defend ourselves and what we work hard for. When we do, we need the government on our side.

I am just one of many store owners who are victims of crime. I want you to know that Bill C-26 is important to us. It means this government is listening to us and understands that we are victims.

Please continue to keep us in mind when you make laws.

Thank you for letting me speak today.

● (1125)

The Chair: Thank you.

Now we begin the rounds. As I said, the rounds are five minutes for questions and answers, so if we end up cutting you off, it's because we've run out of time.

Ms. Chow will begin.

Ms. Olivia Chow (Trinity—Spadina, NDP): Thank you to the panellists, especially to David Chen for taking a day off work to come to Ottawa and the House of Commons, because I know how hard you work.

It's hard to believe it's two and a half years ago that you had to endure a night in jail and spend an enormous amount of money and time and anguish trying to clear yourself when you were just trying to protect your own property.

The current law basically says that you can do a citizen's arrest if the shoplifters are unsuccessful, if you catch them in the act, but when they are successful—they stole something and took off—you cannot do anything. Is that fair? Is that why you want the law changed?

Mr. David Chen: We just want to protect ourselves and our property. We're working hard. They still come back and come back. I have to stop that. I just want to try to stop them, to call the police. We are just trying to protect ourselves.

Ms. Olivia Chow: I know you had called the police several times, and often they don't come on time. By the time they come, the shoplifters are long gone. Is that why you felt that after the shoplifter left, having taken things the second time, you had to do something because that had occurred many times before?

Mr. David Chen: There were so many times before. One day I called police, and I waited for five hours. They didn't come. A few days ago I got lady and she sat on the cash almost three hours, and we couldn't do any business. That's why when I call the police and they don't come, I try to stop them and wait for them.

● (1130)

Ms. Olivia Chow: Can I ask this of Chi-Kun Shi, your lawyer friend?

People say there's a concern that the store owner can go overboard and become too violent under the proposed amendment to the right of citizen's arrest, knowing full well that in the Criminal Code there is already the right to do a citizen's arrest. It's just that you can't do it after the person has stolen the goods. You have to catch the person stealing. Is there any credence to that concern that the store owners will become Rambos?

Ms. Chi-Kun Shi: I always find it interesting that there is such fear about the store owners aspiring to be, as call you them, Rambos. I have met many of them, and they are nothing like Rambo. They are extremely hard-working people who work crazy hours to provide daily necessities to us. If one wants to be afraid, one should be more afraid of people lining up to get the latest Apple iPod. They are more prone to get violent than these store owners.

The other way to look at it is that this idea of store owners getting violent really comes out of the government's paternalistic approach to governing. The outcome, as we can see in David Chen's case, is a topsy-turvy result where the justice system simply does not bolster people's sense of confidence in our rule of law.

This idea of store owners being Rambo is really a bogeyman born out of an unease about a more activist citizenry that is a partner in public safety rather than dependent on the government for it. I would submit that it is actually healthy if we are going to have a culture shift in Canada where Canadians see themselves to be more active participants and in fact owners of their own community and responsible for its safety. Police can't do it alone. We've all seen that. How can the police show up in time to catch a shoplifter? It's not possible to do unless you put police in every store, and that's not possible either.

At the risk of stereotyping, I really want to point out that if you look at these store owners, most of them are new immigrants. They work so hard. They allow us to go and get milk at midnight, our kids to pick up candy after school, and our parents to pick up a newspaper on the weekends. If anything, they need our unwavering full support.

The Chair: Time's up.

Mr. Woodworth.

[Translation]

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

Thanks as well to the witnesses for being here.

[English]

To Ms. Shi and Mr. Chen, I say *xie xie*, thank you very much for coming here. We always appreciate it when Canadians who are not affiliated with any group but are here simply to make our laws better come to speak to us.

And I don't mean to overlook you either, Mr. Abergel. Thank you as well.

[Translation]

I have some questions for Ms. Dufour that I will have to ask in English because my French is not very good.

[English]

I have questions regarding the section of your brief on citizen's arrest, and in particular the extracts from your previous letter, which are found on page four, some of which could be quite misleading if there are those who read them and are not informed about the facts.

In particular, the second-last paragraph on page four refers to Bill C-547, extending the power of arrest so that it can be exercised by citizens who believe on reasonable grounds that an offence has been committed. I would like you to acknowledge publicly here that you are aware that our bill does not extend section 494 in the same manner that Bill C-547 did. You're aware of that, I take it?

• (1135)

Mr. Giuseppe Battista (Lawyer and President, Committee on Criminal Law, Barreau du Québec): If I may, I think you're correct. We were referring to the previous amendment and the

comments we have made, but you are correct. This legislation has dealt with that concern.

Mr. Stephen Woodworth: Correct, and to your satisfaction, I take it?

Mr. Giuseppe Battista: Yes, that aspect does.

Mr. Stephen Woodworth: The new assessment does not permit citizen's arrest based on reasonable grounds, even, but only finds committed—

Mr. Giuseppe Battista: Yes.

Mr. Stephen Woodworth: The same comment is made in the final paragraph on page four in relation to Bill C-565. So again, the government legislation does not carry forward that issue from either C-547 or C-565, correct?

Mr. Giuseppe Battista: Yes, you're correct.

Mr. Stephen Woodworth: You can understand why.... Since you began that section of your submissions by saying that there were some comments that were still relevant, I'm concerned that by referring to those items, it's a little misleading for those who aren't aware, and I appreciate your making that clear.

Mr. Giuseppe Battista: The intent was certainly not to mislead, but simply to reiterate the fact that we had commented in the past. And our comment at this stage of the legislation obviously is not on that point, but you're right to point that out.

Mr. Stephen Woodworth: I'm simply saying that even without intending to mislead, the inclusion of those paragraphs I found misleading for those who were not informed. Thank you for clarifying it.

Then, on page five, at the top, again from this extract, there's a question about Bill C-565—making arrests without warrant less broad than C-547. None of that has to do with the government bill, does it?

Mr. Giuseppe Battista: No.

Mr. Stephen Woodworth: All right, thank you very much.

On the same page five of your submissions, there are some questions, and I'd like to suggest answers to you and see what you think of them.

What would the arrested person do? Where would they be taken? How would we ensure that the constitutional rights of the person under arrest are respected? I suggest to you that all of those questions would be well satisfied by the fact that we are keeping subsection (3), which requires anyone who is not a peace officer and arrests without warrant to forthwith deliver the person arrested to a peace officer. That answers the question of where they would be taken, right?

Mr. Giuseppe Battista: Yes and no. I'll explain.

The difficulty we have with this is the following. I just want to take this opportunity to say that I find that what happened to Mr. Chen is a very unfortunate and terrible thing. I don't think he should have ever been charged. But that's another issue.

Mr. Stephen Woodworth: I have to ask you to stick to my question just because I have such limited time. I appreciate your sentiment, however.

Mr. Giuseppe Battista: The concern we have here is that there is a distinction to be made when an arrest occurs as the act is being committed and when an arrest occurs a reasonable time later on, when citizens are involved.

Mr. Stephen Woodworth: Let me hear about that distinction then.

Mr. Giuseppe Battista: Yes, that's our distinction.

The Chair: Your time is up. Sorry.

Mr. Cotler.

Hon. Irwin Cotler (Mount Royal, Lib.): Although most of our approaches with regard to citizens' arrests seem to contemplate that this will be done by a private individual, or as in the case of Mr. Chen, a shop owner—and I want to commend you, Mr. Chen, for your actions in this regard, and I regret what you had to endure—I want to raise the issue of where private security guards may be involved in making the arrests and will be doing so in an ongoing way as part of their job.

The question is whether private security guards, who are more likely to be involved in this pattern of arrest, should be treated differently from other private citizens or shop owners in terms of the powers of arrest, and be subject to specific training requirements, certain regulatory requirements, with respect to their powers of arrest. In other words, are we addressing the role of the private security guards as sufficiently as we should, or are we looking at the citizen's arrest in a conventional fashion, largely through the prism of private individuals, shop owners, and the like, and leaving the private security guard unaddressed?

The question is open to anyone who wishes to reply.

[Translation]

That may be a member of the Barreau du Québec or Mr. Abergel.

•(1140)

[English]

Ms. Chi-Kun Shi: Thank you, Mr. Cotler. I have some thoughts about that.

I think the problem demonstrated in David Chen's case wasn't whether people had training, but whether in Canada we believe that Canadians have not only the right but also a role to play in public safety. This legislation, in my respectful submission, ought to focus on entrusting and promoting a sense of ownership in one's right to defend oneself and also on promoting the respect the government should give to ordinary Canadians. They are on the front line. It is their property, and it is a fundamental right that they should have to protect themselves and to be supported by the government in that endeavour.

So I would think that it is not particularly an issue of training, but an issue of attitude. As a society, what do we think everyone's role is in public safety? Are we going to continue to tell Canadians not to do anything? Are we going to take the paternalistic approach and tell them to leave it to the government, when clearly the government—in this case front-line police officers—cannot deal with the issue of rampant shoplifting in Chinatown, or in many stores?

Hon. Irwin Cotler: I understand, but I'm particularly concerned with the arrest by private security guards. Should they, for example, be subjected to the principles of the charter in terms of the requirement to inform a citizen of their rights with respect to arrest? Do we have a sufficient regulatory regime, or should we have a different regime with regard to private security guards? I'm not talking about private individuals like Mr. Chen. I'm talking about the increasing use of private security guards. Are the same rules and regulations going to apply to them?

I suspect the legislation has been crafted with the idea of the involvement of the Mr. Chens. What about the private security guards? Are we thinking about whether there should be a different approach with regard to them?

Ms. Chi-Kun Shi: To the extent that private security guards are given any more power to arrest, then they should be subject to more restrictions—for example, the application of the charter. But if the security guards are not being provided with any more training that will elevate them to any special status, then I think they should be looked at more like citizens.

Again, Mr. Cotler, I think the issue is not so much whether it is a private security guard. The problem, as I see it, that Bill C-26 is starting to address is a fundamental issue of whether Canadians are going to be allowed more chances for self-determination and the fundamental right to participate and be an equal partner in the safety of their communities.

The Chair: Thank you, Mr. Cotler. Your time is up.

Ms. Findlay.

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

Thanks to all of you for appearing here today.

In particular, Mr. Chen, I know it's not easy to take a day off work to come here to give us the benefit of what was an unhappy experience for you.

I'm very interested, Ms. Shi, in what you've been saying about an active citizenry partnering in public safety. Also, you've said that this legislation is a good start to setting things right. I appreciate that as well.

But I'm also mindful of Mr. Chen's remarks in saying that “we want the chance to defend ourselves”. In my riding in British Columbia, we have many small stores. Shopkeepers and shop owners there come to me with a lot of worry about constantly being targeted by those who would steal their goods, or who even want to do them harm, because sometimes they have weapons. Other times they don't, but certainly the intent is there to take something away.

I'm interested in having you tell us, Ms. Shi, about how you feel that shopkeepers like Mr. Chen can benefit from this. Will this provide more clarity for them on how they can act and what they can do to defend themselves?

•(1145)

Ms. Chi-Kun Shi: Thank you.

First of all, to take away that really unreasonable demand the current legislation requires—that they can only catch a shoplifter committing the crime—is a huge break. Because if one thinks about it carefully, that timeframe is infinitesimal. When the thief is in the store taking the goods, the act has not yet been completed, because he has the chance to pay for it at the cash. As soon as he leaves the cash, the act has been completed. I guess that's the infinitesimal moment: when the person is passing the cash. At some point, you can say, “Aha—he wasn't going to pay for it”.

It is totally unrealistic, and it's unevenly enforced as well. If you think about Mr. Cotler talking earlier about security guards, security guards always apprehend outside the store. By that time, the act has been committed. There are actually no rights to that arrest. Yet in that case, the police would never nail a security guard for an illegal arrest.

That's why we need Bill C-26 as a good start: to clarify. It is a break; however, I would submit that it is just a good start. I see in the language, as I say in my submission, such caution; there is such concern that these store owners would go overboard. The problem is that in that equation there is not sufficient attention, in my submission, paid to the concerns of what has been going on in these stores in the meantime, and that is rampant shoplifting.

Mr. Chen's case is such a dramatic demonstration of what happens when the law fails people: the store owners, until this proposed amendment, basically had both hands tied behind their backs and a huge stick over their heads. Dare you do anything.... Just let them take it and go: I've heard that on so many talk shows, with hosts and other people asking why he can't just let them take the plant, asking how it can be worth him having to struggle on the street, and saying that we can't have violence on the street.

My answer to that is that we send soldiers to Afghanistan: what do you think they do there? There are values that we believe are worth fighting for. It's okay to do it overseas, but we can't have a struggle on the street...? We'd rather let people steal from people the things that they work so hard for...? The potted plant, for a middle-class person, may be just something nice to look at on our patio in the summer while we sip our Pinot Grigio, but for Mr. Chen, it's food on the table and education for his children and clothes on their backs.

It is that sense of respect for and recognition of citizens' rights and their participation in the community that I think Bill C-26 has done a good job of starting to address.

The Chair: You have a little more time: ten seconds.

Ms. Kerry-Lynne D. Findlay: In that ten seconds, I'll say that I like the Chinese definition of democracy, that being that citizens decide.

Ms. Chi-Kun Shi: Thank you.

Ms. Kerry-Lynne D. Findlay: I have a lot of Chinese Canadians in my community as well.

The Chair: Thank you, Ms. Findlay.

Mr. Harris.

Mr. Jack Harris (St. John's East, NDP): That was a great use of ten seconds, Ms. Findlay.

Thank you all for coming today. I have lots of questions, but unfortunately I only have five minutes. But I do want to touch on two aspects of the citizen's arrest point.

The Barreau du Québec and the Canadian Bar Association have talked about concerns about the lack of training of individual store owners and others who might exercise a citizen's arrest. Of course they have that power now, and it may be that this legislation would encourage a proliferation of that. Do you think there is a need for some effort by the Government of Canada Department of Justice to provide some education about the role of this new law if it passes and to assist in perhaps exercising restraint or knowing when to do this? That's question number one.

Partly following up on Mr. Cotler's question about the Charter of Rights and Freedoms and the role of security guards—and this may be a question for the criminal lawyer people here, not to take away from your legal training—is there a sense that a person, whether it's a security guard or an owner, in exercising a citizen's arrest would be considered a person in authority with respect to confessions, and would that provide some protection?

• (1150)

Mr. Oliver Abergel: I will answer the honourable member.

You raise an interesting concern, the question being at what point do charter interests become involved, and the courts have wrestled with this. I believe this committee is in possession of an academic paper written by Mr. Russomanno as well as Professor MacDonnell, who I understand will be testifying later on to deal specifically with this issue.

Courts have come to conflicting decisions on this point as to whether security guards or private citizens enforcing the law involving a citizen's arrest create obligations that conform with charter norms. We can say at this point that it's split. If we had to see where the courts were going, it's likely that the Supreme Court of Canada on its previous jurisprudence would rule today that a private citizen did not incur charter obligations when arrested. It's a normative question as to whether they should or not, and it becomes even more complex when dealing with private security firms. There's a real distinction between what we expect from the Mr. Chens of the world or any single citizen who may come across this issue, find a crime in progress and arrest someone, versus what are our expectations of large-scale quasi-police in terms of large security firms. That is certainly a concern the Criminal Lawyers' Association views as something that is an issue.

Mr. Jack Harris: This is not new, though. For example, if we're extending to make legal arresting somebody an hour later, as opposed to at the same time, that's not a new concern. It would be a concern under the existing law, I should think.

Mr. Oliver Abergel: Right, but the concept of the more you remove it from a very narrow fact scenario, where you have a shopkeeper who's arresting somebody immediately found committing a crime and holding them for police, and let's say the courts are probably going to find that does not create charter obligations, the concern from our perspective is that the changes in the law allowing a broader period of arrest.... And I should point out that this law does not restrict itself to honest shopkeepers who are arresting shoplifters; it applies broadly to any offence—a security guard, for example, arresting somebody a few hours later off the property. The concern is that this does not automatically create charter obligations, where from our perspective we believe it should.

The more you get away from the private single citizen, like Mr. Chen, to a more corporatized private security environment, the more the Criminal Lawyers' Association feels that charter obligations ought to be engaged.

The Chair: Mr. Battista, just a short one.

Mr. Giuseppe Battista: I would say it's not a good idea to legislate on the basis of one horrible example that with a little more discretion would have avoided the situation.

I don't know where the one-hour thing comes from. The legislation that's proposed suggests a reasonable delay. Reasonable delay doesn't say one hour. It could be the next day. It could be a week later. The concern is that this will not be used by the little shopkeepers, but will be used generally by agencies. It extends very much the power of agencies acting for the benefit of individuals, and that is a concern to us.

The last point I want to make on this Rambo issue is that the concern we have is not that shopkeepers will turn into Rambos. I don't think anybody seriously believes that. The concern is that if we encourage individuals to engage in this activity, unfortunate events will occur. Already when police are involved in arrests, the events are very delicate and very difficult. We've had in Montreal recently the arrests of people who have mental health issues, and people died—from little meaningless events, which degenerated in the course of an arrest, and that's with police who are trained. That is our concern.

Our concern is that the little shopkeeper will not only be the victim of a theft, but worse, because of that type of event. We're concerned that if we encourage individuals to do this we'll have those risks. That is what our concern is. It's not that individuals who want to protect their little business be charged. It's a terrible thing to do that. The concern here is that with this type of legislation, innocent, good, honest people, who are simply trying to do what they believe is right, will perhaps suffer terrible consequences because the person who's committing the shoplifting may be on drugs, may be out of his or her mind. They may react in a horrible way, where police should be acting. That is the concern.

• (1155)

The Chair: Thank you, Mr. Battista.

Mr. Goguen.

[*Translation*]

Mr. Robert Goguen (Moncton—Riverview—Dieppe, CPC): I want to thank the witnesses for attending our meeting and for giving us their views on this important bill.

[*English*]

We have some questions for all of you, but my question is directed to Mrs. Shi.

You spoke about subsection 494.(2), and of course that expands the reasonable time within which it's possible for, in your case, the shopkeeper to make the arrest. It's also premised on the basis of a reasonable and probable ground that the police officer can't make the arrest. I know there are a lot of delays, so there are, generally speaking, some reasonable probable grounds.

I'm wondering if you think the inclusion that the person doing the arresting believe there be reasonable probable grounds that the police cannot make the arrest will ensure that citizens actually in general behave responsibly and in a law-abiding fashion. Does that act as a safeguard, in your mind?

Ms. Chi-Kun Shi: I think it probably does. The reality is that unless the police station is next door, they could never get there on time. That is simply the reality on the ground. In my view, it would have been sufficient to say that if you make the arrest, you must have reasonable grounds.

I always favour the reasonable grounds language. I know it's not in the proposed amendment. I favour it because it has more flexibility and shows a lot more trust and respect for the citizens whose properties and safety are actually on the line to make that judgment call. It's very easy for all of us sitting in this committee room to say, "Well, what if you get hurt? We really don't want you to get hurt. Why don't you just let him take the plants?" I will submit that this is a slightly paternalistic approach, and at the root of it, it doesn't seem to place enough respect on the people who have the most stakes in this scenario.

Mr. Robert Goguen: You've fallen on a topic that I think is very key to this: the time to be able to react. Obviously people are in scenarios where they have to make rather quick decisions. They have to assess the danger. They don't know the suspect per se; it's a person who's in their store. I'm wondering if you thought of allowing more time, perhaps, to provide greater safety, not only for those being arrested, but also for shopkeepers. We know that it has to be reasonable grounds to believe the police are not going to attend, but we're not in a police state. It's pretty obvious that in most instances the police cannot attend to a shoplifting incident.

What would your thoughts be on that? Could you share those with us?

Ms. Chi-Kun Shi: Yes, I think absolutely that if there is more leeway as to the time maybe they'll say "This guy looks like somebody who stole from us, but we want to check our surveillance video." Usually these shoplifters are repeat offenders, and they will be back, so they'll have this opportunity to do that.

I wanted to comment earlier on the concern about violence. It seems that the undertone is that if there's a potential for violence, let's not do it. I find it very interesting, because we actually, every day, do many things that guarantee violence: hockey, WWE shows. We pay money to watch violence. Crossing the road can get us killed. Driving is very violent and potentially very dangerous, yet we do it every day. It's a balancing act.

On balance, I think Bill C-26 starts to put a bit more value on the store owners' rights, not just to their property, but to their dignity. To be a victim of crime is an indignity.

Mr. Robert Goguen: This strikes the right balance, in your mind?

Ms. Chi-Kun Shi: Yes.

Mr. Robert Goguen: Is there more time?

The Chair: Yes, you still have a minute.

Mr. Robert Goguen: Okay. I will address this to Ms. Shi, but also to the others.

One of the areas discussed in previous testimony was the issue of "finds committing". This doesn't apply so much to the small shop owner, but more to the mall owners when you have someone who is monitoring from up top, who has an overview of everything that's going on, and sees someone shoplifting and then communicates to another security agent who then makes the arrest. That person obviously hasn't found the person committing the crime; it's information being relayed.

Do you see that as being somewhat troublesome? Do you have any suggestions? I leave this open to all the panel as to how something may be amended to make that more legally binding.

• (1200)

Ms. Chi-Kun Shi: From my own experience of speaking to people who own businesses, I think what they need from the government is a framework that has flexibility and a bit more trust. In my view, it's better to have flexible legislation and leave it to individual judges. Also, it is better to have legislation that sends a message not only to people making the arrest, but also to provincial governments, provincial attorneys general, and police officers that we support store owners and their fundamental rights. When you deal with them, if there is any incident, you should bear in mind that their right to defend their property is to be respected. I hope that is what Bill C-26 will start to do. It has to be flexible. You can't restrict it to any particular situation. It won't work and it's not fair.

The Chair: I'm sorry, you're out of time.

Mr. Jacob.

[*Translation*]

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

My first question is for the representatives of the Barreau du Québec. I would like to know what the consequences of the problems of the English-to-French translation of paragraph 34(2) of the Criminal Code are. It seems to me the French wording introducing the list of factors is different from that in English. Is it not true that the French term "notamment" could mean "more importantly", "particularly" or "especially", whereas the English expression "among other factors" does not appear to mean the same thing?

Mr. Giuseppe Battista: I know you have discussed this matter. With all due respect, I believe the word "notamment" is not at all a restrictive term. When the term "notamment" is used in a legal document, it may simply be to cite an example. In case law and under the rules of interpretation, it is not viewed as restrictive, but as introducing an example that may lead to other situations. I believe it

should not be interpreted as limiting what is indicated. In that respect, I believe the translation is accurate and correct.

Mr. Pierre Jacob: Thank you.

Ms. Nicole Dufour: With your permission, I would like to mention that, in Quebec legislation, increasing use is being made of the expression "entre autres", which we prefer to the word "notamment". When citing a list of elements, one says that something concerns "entre autres" such and such an element. There is nothing inclusive to it.

Mr. Pierre Jacob: Thank you.

My second question once again is for the representatives of the Barreau du Québec.

Your brief states the following:

The Barreau du Québec is of the opinion that the proposed amendment results in more disadvantages than solutions, and that it would be preferable not to enact it. Section 494(1) Criminal Code should remain as it currently stands. We believe that an approach based on protecting the safety of individuals, including both the offender and victim of theft or property damage who enforces the law, is vastly preferable to an approach that could endanger individuals' safety

You addressed the subject, but I would like you to develop your idea on this point a little further.

Mr. Giuseppe Battista: When someone arrests a person, the matter sometimes proceeds normally and calmly. In fact, that is what happens in the majority of cases. Hundreds and thousands of people appear for shoplifting, for example, in courts that deal with those kinds of cases, and it all takes place in normal fashion. Sometimes, however, that is not the case.

Our committee is made up of lawyers who practise criminal law on the defence side and crown attorneys. We are somewhat fearful of encouraging citizens to act in this manner, and here I am not talking about the moment when they find themselves in the situation. For example, a person I catch in the act knows that I saw him commit his offence. If I arrest him a day or two later, the fact that that individual committed an offence may be challenged. I am a citizen, not a police officer. I don't wear a uniform and I have not received the required training for that type of intervention. Our fear is that matters will deteriorate in that kind of situation. The problem is not that the merchant may act in bad faith. On the contrary, our concern is that, having been robbed, a merchant should not also be a victim of an assault or some other kind of violence.

We are therefore in favour of an approach whereby police authorities, who are competent in this area, intervene in these cases. When we consider the pros and cons, we weigh that in the balance. We are in favour of the safety of the merchant and the individual. Human life is the priority. However, when there are problems of substance abuse, criminal behaviour or street crimes, if we may put it that way, we very often see that the problem is related to both substance abuse and mental illness. Police officers who have to deal with these types of offences know this and perhaps have told you this in other circumstances. That must be borne in mind. The combination of these two factors is explosive, and sometimes the cause must be addressed, not the effect.

What I am saying does not help Mr. Chen. What happened to him is regrettable; I want to emphasize that. One might have hoped that some well-advised discretion might have been exercised. He should never have been charged, but he was. Fortunately, the judicial system worked and he was also acquitted. In our view, the act in its present form is good. It ensured that Mr. Chen was not convicted, which is positive.

However, we are concerned. The question that Mr. Cotler asked earlier raises the problem. It is not small merchants who should be our main concern, but rather the possibility that we are creating parallel agencies that have police powers without being trained as police officers. Police officers are subject to the control of parliamentarians, elected representatives, in their field of intervention and in their domain, but security agencies—

• (1205)

[English]

The Chair: Thank you, Mr. Battista. We're out of time.

Mr. Rathgeber.

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

Thank you to all of the witnesses here today. I'd especially like to thank Mr. Chen. We hear from lawyers frequently and they're always insightful, but it's very nice to hear from someone like you. I have a couple of questions for you.

You indicated earlier that people steal from your store every day, and I was curious as to whether or not you could place a monetary value, on a monthly or an annual basis, on thefts from your business.

Ms. Chi-Kun Shi: He's unable to estimate.

Mr. Brent Rathgeber: Your store is a small convenience store?

Mr. David Chen: Yes. My store is almost 500 square feet. Sometimes the customer takes only \$5 or \$10. I had one customer, more than one customer, who at Christmastime took more than \$100 out of my store.

Mr. Brent Rathgeber: Sure.

Your store's not large enough either in physical size or in the size of the business to hire private security—would that be correct?

Mr. David Chen: I can't hire private security.

Mr. Brent Rathgeber: Sure. I understand you might have video surveillance, but you can't hire private security?

Mr. David Chen: No.

Mr. Brent Rathgeber: Thank you.

I have a couple of questions for the lawyers on the panel, first to Ms. Dufour or your partner.

With respect to subclause 34(1), I'm perplexed as to why you believe that legislating in the negative is inferior to legislating in the positive. You raise issue with the negative wording "a person is not guilty of an offence" and would prefer the positive wording "everyone is justified in repelling force".

I don't know that I understand the distinction, but my initial reaction is that if you want to discourage potential vigilantism, you

might be better off legislating in the negative, as opposed to creating a positive impression, as one might be justified in doing. I want you to explain to me why you think that legislating in the positive is a more positive result.

• (1210)

Mr. Giuseppe Battista: Our view is that historically the right to self-defence is something recognized in legislation, and it is legitimate for people to repel force by force when they're attacked. All we are suggesting is that the wording of the legislation should suggest that, should indicate that.

I don't think legislating in the negative will in any way diminish a person's rights. But when we ask what the law states and what the law stands for, the law states that we don't want people to be using violence, but it also stands for the fact that if individuals are attacked, they may legitimately repel force. So it's a recognition of that legitimacy, not an invitation to use violence, obviously.

Mr. Brent Rathgeber: Mr. Abergel, this is the second time I've heard concerns over the non-exhaustive permissive list in subclause 34(2), where advocates and barristers have been concerned about how that might be interpreted. I wasn't convinced last time that it's improperly drafted, but maybe you'll have a better chance at me.

In your opening you talked about jury instructions and that all the factors in subclause 34(2) really come down to gravity and immediacy. But do you not agree that if you removed paragraphs (a) to (h) and only had the words "gravity" and "immediacy", it would provide a jury with absolutely no benchmarks to measure a defendant's conduct against?

Mr. Oliver Abergel: I see your point, honourable member. I think that in each individual case, a trial judge, as is their wont, will focus the jury on the specific factors of that particular case. So if you're dealing with a case of two men fighting, you wouldn't need to get into gender or potential issues relating to a previous domestic relationship. A trial judge would most certainly focus the jury on the issues of that particular case. I think a jurist can better do it than a well-meaning.... The list is well-meaning; there's nothing wrong with the factors. Our only point is that they're all simply examples of necessity or proportionality.

Mr. Brent Rathgeber: So your concern is that the list isn't—

The Chair: Your time is up, Mr. Rathgeber.

Go ahead, Ms. Borg.

[Translation]

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

I missed your presentations, which is unfortunate, so I apologize in advance if I repeat myself or ask you to repeat something. We are fighting on a number of fronts, and we unfortunately cannot be everywhere at the same time.

My question is for the representatives of the Barreau du Québec.

The people from the Canadian Bar Association said they were afraid there would be an imbalance between the subjective and objective elements of this bill. Do you have any suggestions to make to us to improve that balance, or do you think the bill is balanced enough?

Mr. Giuseppe Battista: In our opinion, the bill is well drafted. I understand the fears raised by others, but we believe the issue here is judicial discretion, evaluation. The bill indicates that the factors cited should be considered, but there are others. That is what I meant earlier when I answered the question about the use of the word "notamntam". When judges instruct juries or assess the issues on a case-by-case basis, they will have to use their good judgment.

Obviously, the fears concern how the act is interpreted. We believe that judges will interpret these provisions as they have done in the past. Even in cases where the provisions were not as clear as they might have been, the judges have managed to ensure that the act was clear enough.

We believe that, generally speaking, with these amendments, this is positive. We do not have the same concerns, although we understand them. We believe that judges will know how to navigate these waters.

• (1215)

Ms. Charmaine Borg: Thank you.

You are afraid we are encouraging citizens to conduct arrests or to put themselves in dangerous situations. We want to include a provision in the act addressing situations in which an arrest by a peace officer is impossible. In those instances, people must have reasonable grounds to believe that a peace officer is not available. Do you think this measure might encourage a citizen to think twice before arresting someone, or do you believe that it is still not strict enough?

Mr. Giuseppe Battista: Honestly, I think that, when citizens act this way, they are not thinking about the exception in the act; they are acting because they are the victims of a situation. Our fear with regard to this provision concerns the reference to a reasonable time. What is a reasonable time? Here I have heard people suggest one hour, half an hour and so on. The truth is that a reasonable time is not defined and that it will be a case-by-case matter. In our opinion, that expression and that reality could cause some problems.

It is not the interpretation of the act that is causing a problem. There was an unfortunate case, which was resolved in a positive manner. Our fear is that, by introducing the idea of reasonable time, we are straying from the moment at which the offence is committed, introducing subjective elements and elements that may unfortunately give rise to situations that were not anticipated or desired by anyone.

Ms. Charmaine Borg: Representatives of the security guards association told us they wanted us to ensure that the use of evidence from electronic surveillance, particularly cameras, was expressly included. From what I understand, it is already case law that such material may serve as evidence. Do you think it would be necessary to include it expressly or do you believe that the case law is sufficient?

[English]

The Chair: Please give a short response.

[Translation]

Mr. Giuseppe Battista: I do not believe the act needs to be extended to enable individuals other than police officers to resort to those means.

Ms. Charmaine Borg: Thank you.

[English]

The Chair: Thank you.

We'll go to Mr. Jean.

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

Thank you to the witnesses who are attending today.

What happened to Mr. Chen happens all too frequently in Canada, and it has in the past. As a criminal lawyer who practised in northern Alberta for a long period of time, I saw that happen more frequently than most Canadians would expect. Of course the police are there to enforce the law, politicians like us are there to make the laws, and judges are there to interpret the laws. So you have to excuse me for believing that politicians should react to society.

Mr. Chen, how long have you been in business?

Mr. David Chen: I have been in business for more than 15 years.

Mr. Brian Jean: During that 15-year period, as you indicated earlier, thefts were happening at the Lucky Moose frequently. I think you mentioned earlier that it was every day, in fact. Is that correct?

Mr. David Chen: No, the Lucky Moose only opened three years ago.

Mr. Brian Jean: Okay. And during that three-year period, were a lot of things stolen from you?

Mr. David Chen: Yes.

Mr. Brian Jean: Would you say this happened on a daily basis?

Mr. David Chen: I saw many things go missing. Sometimes I could get a bit back because I saw someone stealing; sometimes I couldn't get anything. I witness it every day.

Mr. Brian Jean: You've become quite famous in your neighbourhood, in Chinatown. Is that fair to say?

Mr. David Chen: Yes, many people know me.

Mr. Brian Jean: Would you say that the theft has dropped considerably since people came to understand that you're not going to allow them to steal?

Mr. David Chen: Yes. One thing I'm doing is we installed more cameras in the store, and we can print pictures from the computer. I can look at pictures of those persons who came and stole the last time. If that guy comes again, I can keep my eyes on him.

• (1220)

Mr. Brian Jean: Wouldn't you say that the recognition this case has brought you has made people stop stealing from you as much, because they know you're going to arrest them?

Mr. David Chen: Yes.

Mr. Brian Jean: That's great. Thank you, Mr. Chen, and congratulations.

Mr. Battista, you mentioned some criticisms of this scenario. I recognize some of those. What would you suggest would be a reasonable time?

Mr. Giuseppe Battista: The difficulty with that is—

Mr. Brian Jean: I understand the interpretation issue, but I'm asking you specifically in relation to Mr. Chen's case, what would you suggest would be a reasonable time?

Mr. Giuseppe Battista: I think that when an individual apprehends someone he has seen and knows has committed the offence, then they can apprehend that person.

Mr. Brian Jean: So on sight, on time, at the very time of the incident.

Mr. Giuseppe Battista: Yes, and that doesn't mean on the second. There is sometimes a bit of a delay. Our concern is that when we introduce the notion of reasonable delay, we're necessarily extending the time. The courts had recognized a standard of time.

Mr. Brian Jean: You also recognize, as Ms. Shi said, that the offence isn't actually committed until the person goes outside the store. At that time, it's already too late, based on the law as some people would interpret it.

Mr. Giuseppe Battista: Honestly, I don't think there's any judicial interpretation that says that when a person walks out of the store and is apprehended, that person is not committing the offence. The offence is being committed. And I don't think you think that either.

Mr. Brian Jean: I would agree.

I had a business for a time from my parents, and my job was to catch shoplifters. I had many people outrun me—I'm not a very fast runner. I can assure you that we were told by law enforcement that we couldn't arrest those people or apprehend them or stop them until they left the premises. Catching them at that time is a foot race.

Ms. Dufour, I tried to find you on the Internet and it was very difficult. Were you the same Ms. Dufour who was on the working group on adoption in Quebec, for the Quebec government?

[*Translation*]

Ms. Nicole Dufour: Yes.

[*English*]

Mr. Brian Jean: You testified for the Senate committee on cannabis facts for Canadians. Was that you? You testified in front of the Senate?

[*Translation*]

Ms. Nicole Dufour: No.

[*English*]

Mr. Brian Jean: Were you a panellist for the Liberal biennial convention, the 2012 policy session?

[*Translation*]

Ms. Nicole Dufour: A speaker, yes.

[*English*]

Mr. Brian Jean: Thank you.

I think those are all my questions.

The Chair: Are there no questions? Okay.

Seeing no further questions, we've made our rounds of the committee. We need some time and there is another committee coming in behind us. We have to vacate the room.

Mr. Jack Harris: We have the room till one o'clock, do we not? We were going to meet at 12:45. I'm just wondering, given that we have five witnesses here, if there would be time for another round. I'm interested. We talk a lot about the citizen's arrest, but there are some other points on the self-defence provisions I would like to ask the guests about.

The Chair: It's up to the committee. You've completed round one.

Mr. Jack Harris: You may not see any sense in another round, but we have a two-hour meeting, and according to the schedule, at 12:45 we're going to consider committee business. But it being 12:25, and the meeting being set for two hours and we have five witnesses in front of us with considerable experience in the criminal law, I certainly feel it's my entitlement to continue to ask questions.

The Chair: I would say to you, Mr. Harris, that I did give your side quite a bit more time than the other side to start with. But it's up to the committee.

Mr. Jack Harris: I wasn't measuring the time, but if the committee wants to shut down the committee and not allow further questions of the witnesses, that's the committee's decision.

An hon. member: Is that a motion to adjourn?

● (1225)

The Chair: If we adjourn, then the meeting is over. I think what you want to do is suspend and go to the next scheduled agenda.

Ms. Olivia Chow: Do you need a motion for that?

The Chair: That's right. It's motionable, not debatable.

Ms. Olivia Chow: Recorded vote.

Can I hear the motion, please?

Mr. Robert Goguen: The motion is that we suspend and go to the next part of the session.

Ms. Olivia Chow: Record the vote, please.

(Motion agreed to: yeas 6; nays 4)

The Chair: The committee will stand down for two minutes.

Mr. Giuseppe Battista: Before we stand, on the last question, we should maybe be able to answer. She was asked a question about whether she was an analyst or gave a conference or something at the Liberal Party, and she did not understand what the question was.

Can she at least explain that?

The Chair: I'll give you a minute to correct that record.

[*Translation*]

Ms. Nicole Dufour: Thank you very much.

The Barreau du Québec was invited as part of the convention that the Liberal Party held to discuss Bill C-10. It was the organization that was invited, and it was completely non-partisan, as we had advised.

That was not exactly the gist of the question that Mr. Jean asked me. I simply wanted to provide details on my organization's presence at that convention. I would also be pleased to take part in a Conservative Party convention to address the same topics. It was completely non-partisan.

Thank you.

[*English*]

The Chair: Thank you very much.

I'd like to thank the panel for being here today. It's been most informative.

Thank you very much.

We'll reconvene in five minutes.

• (1225) _____ (Pause) _____

• (1235)

The Chair: I call the meeting back to order to deal with future business. I hope the committee realizes that this is in public. We'll carry on in public unless there's a motion to do otherwise.

Everyone has been provided with a list of bills that have been referred to the committee, and I believe there's one more that we anticipate. It hasn't been referred yet, but there's a potential for one more to be referred to committee.

We still have on our plate a couple of things we need to finish off, along with the report on organized crime, so to assist the clerk of the committee in setting a schedule, we need to have some direction.

Please go ahead, Mr. Goguen.

Mr. Robert Goguen: I've discussed this with Mr. Harris.

We're proposing that on Thursday, March 1, we have more witnesses on Bill C-26. That brings us to the following Tuesday, March 6, and Mr. Harris would like to have the officials questioned. Depending on the length of the questions, and depending on any amendments and consideration of the amendments, it would be possible, potentially, to go to clause-by-clause after that. There are five clauses. We don't know at this point where that will lead, but that's sort of the option we're heading to there.

If for some reason we couldn't go to clause-by-clause because of the length of the questions, we would then put the clause-by-clause to March 8—again, there are only five clauses—and possibly look at the report on organized crime, which I don't think, potentially, would take that much time.

That brings us to March 13, and we would propose to have Minister Nicholson come to testify on the supplementaries. That leaves us March 15, before the break. Then we would propose to do Bill C-310, which is on trafficking in persons.

Obviously it's proposed; it's a plan. Does it come out that way? It remains to be seen, but that's what we're proposing as a schedule.

• (1240)

The Chair: May I have your comments on witnesses on Bill C-310?

Mr. Harris.

Mr. Jack Harris: Let's talk about the schedule first, if I might comment on that.

The Chair: Yes.

Mr. Jack Harris: Okay.

Mr. Goguen and I have had some discussions. Generally speaking, I don't have an objection, although I want to put on the record our interest in having the officials back here. We haven't heard all the witnesses yet, but so far we've heard some significant suggestions from the witnesses, particularly the Canadian Bar Association and the Barreau du Québec, about the provisions that are here. We would like to, as we said at the beginning, bring the officials back to have further discussion with them, based on the evidence we have heard and will hear. We would like an opportunity, and we suspect it will be required—but I'll concede that it may not. I'd suggest it's more likely that we would want to have an opportunity to reflect on what the officials have to say in response to the evidence we've heard, and then the time that's required, if necessary, to propose amendments for consideration at clause-by-clause.

So I wouldn't be optimistic at all about us moving immediately to clause-by-clause on March 6. Mr. Goguen said that we might move to clause-by-clause on March 6. I'm suggesting that's unlikely.

The Chair: The clerk has also put in March 8, in case.

Mr. Jack Harris: Okay, the idea is that March 8 is there.

I'm saying that because our committee is a deliberative committee. We're asked to consider the legislation and we want to have an opportunity to take seriously the representations that have been made and to discuss them with the officials. As we said in the House and have said here, this is highly technical legislation that is making significant changes, and we want to make sure that if we're doing this, we're going to get it as right as we can. So we don't think rushing through clause-by-clause, if there is an opportunity to consider and potentially come forward with amendments, is what we want to be seen to be doing.

I agree with the schedule as proposed, with the caveat that I don't want to be here on March 6 and after an hour have a motion, as we've just had now, to go immediately to clause-by-clause. Let me tell you, we may spend the next hour debating whether we should be going to clause-by-clause. I don't want to do that. I want to have an understanding that we may want to reflect on the response we get from the officials, and we may want to have an opportunity to go through the process and have amendments and have them translated, etc., for the Thursday meeting.

On that understanding, I'm prepared to accept that.

The Chair: That's exactly what the clerk has. You would have the Thursday, March 8, available to you.

Mr. Jack Harris: I don't know what the clerk has. I'm just saying that I want on the record that this is my understanding of what we're agreeing to.

Mr. Robert Goguen: Well, we're saying the same thing. That's what I said when we met before. That's what I'm saying now, and that's what the clerk has transcribed. It may go to March 6. It may go to March 8 to afford you the occasion to look at it. We're taking our time, as you requested.

Mr. Jack Harris: Okay.

The Chair: So that everybody understands when you vote on this, this Thursday we have witnesses coming. Next Tuesday we have the officials. We may have time for clause-by-clause, but if we don't, you have Thursday, March 8, for clause-by-clause.

Mr. Robert Goguen: And perhaps we can do organized crime, depending on whether we have the time. We may not, but it's been pending since 2006.

The Chair: The analysts tell me that they would be prepared for that by March 8.

Mr. Jack Harris: May I ask a question about that? Will they be prepared by March 8, or will we have it in advance so that we can read it before March 8? If we can't—

Mr. Dominique Valiquet (Committee Researcher): At the latest, we would send it to you by next Tuesday, March 6, in the afternoon.

Mr. Jack Harris: We may have it two days before March 8.

I'm not anticipating any huge changes. Perhaps in preparing the report the differences between it and the previous report could be outlined so that we know what's new. If we have that on March 6, we may be able to deal with it on March 8, whether we do clause-by-clause or not. I'm suggesting that it may be straightforward if the proposed amendments are consistent with what we have. If it can't be done, it can't be done. Regardless, it's a tentative schedule.

• (1245)

Mr. Robert Goguen: It will depend on the clause-by-clause being completed on March 8. If not, we'll have to schedule it some other time, but it would be important—

Mr. Jack Harris: Fair enough.

The Chair: The minister will be here on March 13 for supplementary estimates.

Mr. Robert Goguen: It would be important, as Mr. Harris has indicated, to highlight the changes, because that makes the reading far easier.

Thank you.

Mr. Jack Harris: Yes.

The Chair: Then Bill C-310 is on March 15. We need to know witnesses so that the clerk can bring the witnesses.

Mr. Robert Goguen: Yes.

The Chair: Presumably that will include the sponsor and any other witnesses. The list will be provided to the clerk.

Mr. Robert Goguen: Do you have a scheduled time you'd like the witness names, to give you enough time? Would it be March 12?

A voice: We'd like them as soon as possible.

The Chair: He has to contact them. I would suspect that the sponsor of the bill knows the witnesses.

Mr. Jack Harris: We may even have one or two. We'll get them to you as soon as possible. It will be March 12 at the latest.

The Chair: Having heard the schedule, do we have an agreement that this is the schedule we'll have?

Okay. The clerk has it.

Seeing no further business, the meeting is adjourned.

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