HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Justice and Human Rights

JUST • NUMBER 019 • 1st SESSION • 41st PARLIAMENT

EVIDENCE

Thursday, February 9, 2012

Chair

Mr. Dave MacKenzie

Standing Committee on Justice and Human Rights

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● (1105)

[*English*]

The Chair (Mr. Dave MacKenzie (Oxford, CPC)): We'll call the meeting to order. It's meeting number 19 of the Standing Committee on Justice and Human Rights.

Today we have some witnesses appearing before the committee, dealing with Bill C-26, An Act to amend the Criminal Code . We have Ms. Pate here today from the Canadian Association of Elizabeth Fry Societies and Mr. McLeod here from the Association of Professional Security Agencies.

We have by video conference two witnesses, one from the Canadian Bar Association, Mr. Gottardi, and one from the Canadian Police Association. I'm not sure if we have both video conferences. We have a little technical problem at this point with the Canadian Bar Association's connection, so we have Mr. Stamatakis here from the Canadian Police Association.

Welcome to you all. If you have an opening address, we'd like to keep them to five minutes. I'll let you know when you have one minute left, and then we'll begin the rounds of questions from each side.

Ms. Pate, would you like to go first, if you have an opening address?

Ms. Kim Pate (Executive Director, Canadian Association of Elizabeth Fry Societies): Mr. Chair, I do. Thank you very much.

And thank you to the committee for inviting the Canadian Association of Elizabeth Fry Societies to present this morning. As some and perhaps all of you are aware, our organization is composed of 26 members who are across the country and provide services that range from early intervention to prison assistance and community re-entry. Our members work with marginalized, victimized, criminalized, and institutionalized women and girls throughout the country. As some of you know, some of our members are in fact the only groups who work with our victimized women and girls and are the only victim services in some of their areas.

We present on Bill C-26 from this perspective. We and our members thank you for the opportunity to present.

I'll try to keep our comments brief, and I'd be happy to have discussion.

The Chair: Ms. Pate, I made a mistake here. You have 10 minutes. It was at our last one that we had a lot of witnesses, so we had cut it to five minutes. So you have 10 minutes. I'm sorry about that.

Ms. Kim Pate: Okay. Well, I've cut it down, so hopefully we'll have a lot of time for discussion.

Our organization has long been interested in this work. In fact, we responded to the 1993 white paper the Department of Justice put out on this issue, as well as the 1998 Department of Justice review of the defences of self-defence, defence of others, and defence of property. We certainly have a position, which I've provided to the clerk, that is a position from that time and is more comprehensive than this bill, but I thought it might be of use to the committee members as you're studying the bill.

I will refer to a few of the areas in that brief and also, obviously, comment specifically on the provisions of Bill C-26.

I also want to say that I've had the opportunity to read the brief from the Canadian Bar Association. In substance, we are in support of most of the recommendations. In particular, we are in agreement with the notion that the subjective element of proposed subsection 34 (2) needs to be enhanced.

In fact, we would suggest that there needs to be some discussion of some particular areas in terms of the issues that battered women in particular face, because it's an area where they have not always been able to avail themselves of the self-defence provisions. We think of some of the systemic issues that were highlighted in the Malott case by the Supreme Court of Canada and then picked up by Madam Justice Ratushny when she did the self-defence review of the cases of women who had been jailed for using lethal force and who had not had the opportunity to avail themselves of self-defence, despite the decision of the Supreme Court of Canada in Lavallee.

In particular, we are concerned that the subjective pattern of reasonableness needs to take into account issues like course of control, issues like the histories of violence and abuse that have existed, and also that the particular features of the accused's experience need to be part of the explanation and part of the consideration that the court would give, so should be included in the self-defence provisions.

We have some concern that it also be a charter-driven analysis, so that when someone is making a mistake or perceives an ongoing risk, that it be a charter-driven process. So things like hate crimes, like homosexual panic, cannot be invoked in those sorts of situations, and we have to be talking about not only subjective perspectives, but subjective perspectives that are equality based and protected by our charter.

We also would like to see in the provisions that relate to defence of property a clear indication that there's a value that life will take precedence over property. That isn't there. It's certainly one of the recommendations we made in 1998 and 1999 to the Department of Justice. We would reiterate that view: that in fact we need to ensure the value of life over property.

We also think there should be some analysis of the impact on indigenous peoples who are attempting to invoke the protection of their property—historic property rights—and certainly that's not reflected in the current legislation.

We are not in agreement with expanding citizen arrest areas because we are extremely concerned about the potential consequences of largely untrained individuals attempting to arrest and attempting to assess the scale of risk or the risk. We therefore are concerned about that. I'm concerned that in fact it might encourage a proliferation of private security interests, instead of the publicly accountable policing services whose responsibility it is currently to undertake arrests.

We also think that it may in fact be a concern for security companies and for others who are engaged in criminal justice work, in that it may in fact be perceived at times as requiring some sort of obligation. Certainly, there has been raised by police officers—as well as parole officers—a concern that an extension of this might be that there would be an expectation that arrests be undertaken by individuals whose job it isn't usually to do that, who would themselves in fact call the police.

We also think there should be clearly indicated throughout these areas that there's a duty to retreat on the part of individuals who are using force and to whom those who might try to use these defences would be responding, so again, it would be part of the charter-based analysis.

Those are, very quickly and briefly, our comments. We look forward to the perspectives of our co-panellists and to the questions from the committee.

Thank you very much.

● (1110)

The Chair: Thank you very much.

Mr. McLeod, do you have an opening address?

Mr. Ross McLeod (President, Association of Professional Security Agencies): Yes. Our piece was submitted in due time, and I understand it has been translated so that your committee will have it.

I'll make just a few remarks and give a broad overview, and then —I think the devil's always in the details—we'll leave it for the questions.

In our piece we try to put things in context. We feel there are trends at play that are accelerating and that will accelerate into the future, so it's very timely that Bill C-26 is being brought forward.

The history of public agents as opposed to private agents, which our association represents, is a very brief one, less than 200 years old. Policing used to be an entirely private affair, and in the last almost 200 years it's become largely a public affair. The public model of policing probably reached its high-water mark in the sixties. Since then there has been a slow but inexorable move back towards private elements coming into the model.

The security industry as we know it today has risen to be a very robust, very large industry that now outnumbers public agents, police officers, by at least two to one. That's the most conservative estimate you can get. Some analysts go as high as five to one or six to one. This indicates that there are very real problems with the fully public model of policing.

The financial crisis that started in 2008 brought this into high relief. There are large layoffs taking place in public policing departments in the U.S. In Canada, there are various groups looking at policing. The financial model of public policing is non-sustainable as it's presently constructed.

In the future we will see more, not less, private agents being involved in enforcement. The drivers that started this industry in the seventies are still very much there, and the conditions are set to make the private sector even more prominent in the future. So Bill C-26 is timely.

We would like to also bring in the notion of technology that is starting to permeate certainly the private sector, which is ahead of the public sector in the use of technology in enforcement. In our recommendations, we draw attention to the requirement that “find committing” an indictable offence, that private agents or citizens... and they're the same thing here, for these purposes. The “find committing” requirement must take into account the use of electronics.

Picture a large modern regional shopping centre with a Walmart-type store with tens of thousands of square feet. The security is enhanced and abetted by pervasive CCTV surveillance. Crimes are observed in their commission with “virtual eyes”, with agents sitting in control rooms watching people stuff their booster bags or their garments with high-value small items and then heading out of the establishment past the last point of sale.

As a practical matter, these agents have to communicate with their peers on the floor through radio or texting and direct them to effect the arrest of the shop thief as they exit the premises.

● (1115)

Similarly, in malls, in what sociologists call semi-public spaces, which would include large malls, there's all sorts of activity that takes place—a whole range of criminal activity—and, once again, CCTV is pervasive: to protect the public. So when you redraft the “find committing”, please take into account that technology gives us new ways to find committing. Those should be held in mind as you draft this.

Also, in regard to the requirement that a private agent or a citizen —it's the same thing for these purposes—turn over an arrested person within "a reasonable time", or make the arrest within reasonable time with a "find committing" of the offence, we should also take into account, once again, electronic aids that allow us to track, whether it be, through RFID, articles that are being stolen from retail environments, or whether it be large containers or tractor-trailers that are being stolen from terminals, which we detect through GPS tracking. Often before an apprehension can be made by public or private agents, significant time has elapsed and jurisdictions have been crossed as the stolen equipment is followed. This should be taken into account as well.

As we point out, the drivers that are growing the private industry are not going to abate any time soon. To go back to the example of loss prevention people, who make on average many more arrests than public police officers do, they spend an awful lot of time holding arrestees and holding prisoners while waiting for fully sworn public officers to arrive—for what are for the most part very, very minor offences—and to charge and release these folks at the scene. If we were to allow private agent citizens, who were trained and certified to do so, to charge and release at the scene, like bylaw officers can write various provincial offences tickets, this would represent a massive saving in police time. I think the police establishment would be very grateful if this could be envisioned in any redrafting.

By and large, we support these changes. We think they're in the spirit of what's actually happening out there and what's going to be happening over the next 20 or 30 years.

Thank you.

The Chair: Thank you, Mr. McLeod.

Now joining us by audio and video, we have Mr. Tom Stamatakis, from the Canadian Police Association.

Sir, if you have an opening statement you wish to make, please go ahead and do it now.

Mr. Tom Stamatakis (President, Canadian Police Association): I do. Thank you, Mr. Chair.

I apologize for not being there in person today.

For those of you today who might not be familiar with the Canadian Police Association, we are the national voice for 41,000 of Canada's front-line law enforcement personnel. We represent police personnel serving in 160 police services across Canada, from Canada's smallest towns and villages to those working in our largest municipal and provincial police services, as well as members of the RCMP, railway police, and first nations police.

It's my pleasure to be able to speak to you today regarding Bill C-26. I would like to offer a few brief opening remarks in order to keep as much time as possible to answer any questions you might have regarding this legislation and the impact it will have on Canadian law enforcement personnel.

Obviously the December 2009 case of Toronto store owner David Chen showed that Canada's current laws regarding the right of citizens to effect an arrest in order to protect themselves or their property required some consideration. That being said, we should always take care to underline, particularly for the sake of public safety, the fact that the preservation of the public peace should always be the responsibility of professional, trained, and recognized law enforcement personnel.

I should note that before Bill C-26 was originally introduced in the last Parliament as the former Bill C-60, the Minister of Justice and his department consulted extensively with our association and other law enforcement stakeholders to ensure that our concerns were reflected in this legislation. We appreciate their efforts to reach out in this regard, and as always we look forward to further cooperation whenever it's possible.

With respect to this specific legislation, our association is generally supportive of the goals and methods contained within Bill C-26. I would like to take this opportunity, however, to outline a few brief concerns.

Obviously, law enforcement personnel are the beneficiaries of a significant amount of training in areas such as the proper use of force, methods of detention, and arrest powers, which average citizens are not privy to. Therefore, it's vitally important that we continue to educate the public that despite any changes to the powers of citizen's arrest in Canada, the first reaction people should have if they witness a crime being committed is to call the police and allow our law enforcement professionals to do the jobs they're trained to do.

We should also take care that any changes made within this legislation do not have the unintended consequence of broadening the current mandate of private security, particularly with respect to loss prevention in commercial settings. While I am sympathetic towards store owners and businesses that wish to minimize losses with respect to the very real concern of shoplifting, which costs us all in the long run, we must take care not to go too far in the pursuit of protecting property.

For instance, it can be tempting to believe that all shoplifters are teenagers committing a crime of opportunity. But factors such as the presence of accomplices or even, in the worst case, gang affiliation can lead to increased personal danger for private security personnel who try to effect an arrest. We definitely don't want to see a situation in which a citizen's arrest is made only to find the suspects' friends or accomplices returning for a measure of retribution.

In the end, property owners, shopkeepers, and businesses that are looking to prevent losses should take the basic steps necessary to assist law enforcement, including installing functioning and clear cameras where necessary, as well as quickly reporting any suspected activity to local police agencies, rather than looking to take the law into their own hands.

In summary, Bill C-26 does help clarify some of the situations in which it might be appropriate for a private citizen to act in defence of themselves or their property, but we must avoid any indication or implication that these actions should be a replacement for professional law enforcement personnel.

I do appreciate the opportunity to address you today and certainly welcome any and all questions you might have on how this legislation impacts our members.

Thank you.

● (1120)

The Chair: Thank you very much, sir.

We have a little problem with the video conferencing for Mr. Gottardi....

Mr. Stephen Woodworth (Kitchener Centre, CPC): Mr. Chair, while we're waiting, may I inquire as to whether or not we had a written submission from Ms. Pate? I don't seem to have one, if we do.

The Chair: No.

Mr. Stephen Woodworth: Okay, thank you.

Ms. Kim Pate: Mr. Chair, while we're waiting, I would like to point out for Mr. Woodworth that if he is looking for some of our submissions, I did provide a copy of the position paper that we submitted to the Department of Justice. It's old now, but many of the comments that I raised are included in that.

The Chair: I think our problem is that it's only in English. It will have to be translated.

Mr. Stephen Woodworth: If I may, I really wasn't intending it to be a negative inquiry. In fact, I was very interested in what Ms. Pate had to say, so I thought a little more time to digest it would be helpful. Thank you.

● (1125)

The Chair: Okay.

Mr. Eric Gottardi (Vice-Chair, National Criminal Justice Section, Canadian Bar Association): Hello?

The Chair: Mr. Gottardi?

Mr. Eric Gottardi: Yes, Mr. Chair.

The Chair: We do apologize. We've obviously had some problems here. We have you now on audio. We don't have a video connection. If you have an opening address and would like to provide it now, that would be fine.

Mr. Eric Gottardi: Yes, thank you.

I think it might have been a lot easier just to come to Ottawa to appear before the committee today. I apologize for not being there in person. I know that we're a bit late because of the delay, so I'll curtail my remarks a little so we can get straight to the questions.

I want to thank the committee for the invitation to present today the CBA's views on Bill C-26. As some of you may know, the CBA is a national association of over 37,000 lawyers, law students, notaries, academics, and judges. An important aspect of our mandate is seeking improvements in the law and the administration of justice. That's the perspective from which I appear before you today.

Personally, my capacity is as the vice-chair of the CBA's national criminal justice section. This section consists of a balance of crown and defence lawyers from every part of the country. I am a lawyer in Vancouver who does both crown and defence work.

The Criminal Code provisions concerning self-defence, defence of others, and defence of property have been the subject of decades of criticism and frustration for lawyers and judges, due to the multiplicity of code sections and subsections and many variations among their elements. Many high-profile cases in Canada have faltered on jury instructions regarding self-defence.

The CBA national criminal justice section has called for reform of these provisions of the code for many years—for over 25 years, in fact—so it's with great happiness that we see this bill coming forward with the proposed amendments to the law of self-defence. In particular, we support the bill's creation of two comprehensive sections concerning the defence of self and the defence of others, and indeed including the defence of property as well.

This bill represents an historic and significant step in the evolution of the law and, hopefully, the simplification of the law of self-defence. It's in light of that historical context and the likelihood that if this bill is passed, this iteration of the law of self-defence will remain on the books for many decades, that there are some small amendments the CBA proposes to help fine-tune the provisions contained in Bill C-26 that are related to self-defence.

Hopefully, we'll get into some of those details later as questions come, but in particular, those suggested amendments are set out in detail at pages 2, 3, and 5 of our submission before you today.

The second aspect of the bill is the expansion of the powers of citizen's arrest. It's that aspect of the bill that the CBA does not support.

We're concerned that the bill may encourage citizens who are untrained in arrests to risk their own personal harm and risk liability for wrongful arrests. We know that arrestees are more likely to resist citizen's arrests than arrests by the police, and ordinary citizens are less likely to have a knowledge of physical controls or tactical communication to deal with individuals who actually resist those efforts of arrest.

We're also concerned that the changes will encourage unjustified arrests by private security personnel, who are not subject to public oversight in the same way that police agencies are. Such personnel often lack the necessary range of equipment or adequate training to safely and lawfully make arrests in a manner proportionate to the circumstances.

So it's a dual approach that we have to the bill today. We're excited and happy to support the long-awaited amendments to the law of self-defence. It's a welcome reform. On the other hand, or in our view, the changes to the law of citizen's arrest are just unnecessary, and in fact may put Canadians at further risk.

Thank you.

● (1130)

The Chair: Thank you very much.

Now we'll begin our rounds. They are five-minute rounds.

We'll begin with Madam Boivin.

[*Translation*]

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

I'd like to thank all the witnesses who have joined us this morning.

Mr. Gottardi, I share the concerns of the Canadian Bar Association. I read your brief carefully. Anyone who has practised in the field would agree that these are not the easiest criminal provisions to read and understand, in terms of intent. But this is part of the everyday reality of crown attorneys, police officers, members of the controlling forces and defence lawyers. Everyone agrees that if everything were simplified and clarified, it would be better. But we need to be careful. If there's one thing I've learned as a lawyer, it's that simple legislative documents and lawyers aren't many. I haven't seen many in the course of my career.

We also heard from Mr. McLeod, of the Association of Professional Security Agencies. One of my concerns deals with citizen's arrests.

Mr. McLeod, according to the provision as drafted, I don't see how you could be involved closely or remotely in the arrest of someone without a warrant if you did not witness the incident. You aren't an extension of the person whose property was stolen. Is that how you interpret this provision? I felt like there had been a bit of lobbying, that you would be allowed to do a little more to lighten the load of the public authorities. But people from the police association told us that it should be left in their hands since they were properly trained to do this work.

I'd like to know what your position is with respect to Bill C-26.

[*English*]

Mr. Ross McLeod: We have two bases for arrests as security guards. One is the citizen's arrest, just as any other citizen in the age of majority can do. The other is as the owner of private property dealing with, say, a trespass issue in an apartment building, or even in a mall, where we have the delegated rights of the owners or occupiers or managers to tell people to leave the premises if, for instance, within the retail environment, they set up a stall and they're selling products in the mall without renting from the mall.

If we tell someone to leave and they don't leave when directed to do so—this is a direct quotation from the legislation—then we can arrest without warrant, and we can arrest for indictable offences, as citizens.

That's where it comes from.

Ms. Françoise Boivin: Bill C-26 doesn't change anything from what you're already authorized to do.

Mr. Ross McLeod: No, the changes are extremely subtle. I've tried to deal with them from our perspective, because we see that technology is becoming a big thing—now and in the future.

[*Translation*]

Ms. Françoise Boivin: We're talking about a reasonable period of time. So you might have to appear before the court if necessary. You would have to investigate, verify and do certain things.

How would you interpret the reasonable period of time mentioned in the provision that replaces subsection 494(2)?

[*English*]

Mr. Ross McLeod: I don't think it will experience a really broad interpretation. Right now everything has to be fairly immediate. There has to be fresh pursuit.

Ms. Françoise Boivin: So it wouldn't be a question of days or...?

Mr. Ross McLeod: No, I don't see that happening.

There is a second aspect to your question about the relationship with the police. You suggested that perhaps I was lobbying for enhanced powers. I certainly was. The police, in turn, are lobbying to leave it to the professionals. The police can't even attend in a timely manner to deal with arrests that are currently made by loss prevention people in retail environments. They certainly can't—and don't want to—get more involved in those environments. They simply cannot do it. They don't have the time, they don't have the personnel, and they're not there to see all these things happening.

● (1135)

The Chair: Madame Boivin, we're at our limit. Thank you.

Mr. Goguen.

Mr. Robert Goguen (Moncton—Riverview—Dieppe, CPC): First of all, thank you to the witnesses for appearing—those we see and those we don't.

My question is directed to Mr. McLeod. Of course, the reforms proposed in Bill C-26 allow property owners, and persons authorized by them such as security guards, to arrest persons they find committing a criminal offence, whether the offence is seen via technology or as an eyewitness. It authorizes them to make the arrest at that time, or within a reasonable period of time—you've spoken about that—after they have found the person committing the offence. Of course, the property owner or the security guard in question has to have reasonable grounds, under the circumstances, for not calling a police officer to come to the site. You've talked about how the overwhelming amount of incidents would dictate that perhaps a police officer can't be there.

With that in mind, how important is it to allow people authorized by property owners, such as security guards, to conduct citizens' arrests? You've talked about saving money with this and about the fact that the police cannot attend because of the overwhelming number of incidents. Can you give us some examples to illustrate that?

Mr. Ross McLeod: It's very, very important. It's one of these things that has been growing and going on under the public radar. If you suddenly brought an end to it, it would lead to real chaos in shopping centres, in retail environments, in semi-public/semi-private spaces, and in housing projects.

If you talk to the director of security for a regional shopping centre, he can show you literally thousands—or in the case of something the size of the Eaton Centre, tens of thousands—of banning orders that have been issued against a whole range of folks for a whole range of anti-social and criminal behaviour. Most of the orders are time-stamped now, so someone gets to come back after a period of months or, depending on the offence, maybe a year, and to have a fresh start once the banning order is cancelled.

This unglamorous work of low-level law enforcement that's done by security is the sort that police don't want to do. They're required to say, “Leave it to the professionals”, but at that level of professionalism and that level of compensation, there's no way that they can do it, or that they even want to do it. There has to be a lower echelon that takes care of that, and that's what private security does.

We simply ask that what we're doing now, which will accelerate into the future, not be abridged or mitigated in any way, because it's very important to civil society.

Mr. Robert Goguen: I agree that banning orders would certainly be on the lower end of the spectrum, but there are other instances where I thought perhaps reasonable force or detention would have to be used.

Some concern has been expressed about what kind of training your association provides to the individuals you employ.

Mr. Ross McLeod: Our association doesn't provide any direct training as an association, but there are new and enhanced provincial regulations on training. It's an ongoing thing. Our association meets with the registrar, and the registrars all across Canada have formed their own association. We're now working as a group on harmonizing the training and testing regulations across Canada, with a view to the portability of security licences across the country. This is a process that's started and will carry on for the foreseeable future.

We have basic training regulations, and the next step will be adding more regulations and testing for people who are actually using force. This is all very doable, and we're in the process of doing it.

Mr. Robert Goguen: Am I to understand that you have a form of continuing education for security guards in regard to topics that would bring their services into play?

Mr. Ross McLeod: It's available from many sources in the community, but what's continuing is the work among the provincial registrars of the private security industry, working with agencies like ours who represent the industry, to promulgate training and testing standards and to bring in higher levels for people who are doing higher levels of enforcement work.

● (1140)

Mr. Robert Goguen: I wanted to ask about one further thing. You talked about cost savings. Have any studies been done with regard to savings from the use of security guards versus police enforcement?

Mr. Ross McLeod: No. Those also are under way now, but I think most rank and file officers will tell you that they spend a huge amount of downtime just dealing with this.

In fact, just the pressure of this has led to various ad hoc arrangements. For instance, Peel Regional Police have an arrangement in their jurisdiction where, if an arrest is effected at a shopping centre, for shop theft or something else, you call in and speak to the desk sergeant and you tell him about all of the ID you have on the person, the offence, etc. They make a judgment over the phone; they give you a release number and they allow you to release at the scene, and then they mail out an offence ticket.

There are certain criteria to be met. Obviously this isn't a serious criminal who has a long criminal record; they're checking that back at the station. If those criteria are met, you're allowed to release. This is happening in Peel, and I've been told that it's happening in other jurisdictions as well. It's just an ad hoc measure that the police have worked out to try to cope with the pressure.

The Chair: Thank you.

Mr. Cotler.

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

I'll ask this question, to be answered by any of the witnesses today.

When a private citizen chooses to effect an arrest without a warrant, then he or she can run the risk that the person who is thereby arrested may in fact be innocent; that the arrest may be determined to be a wrongful arrest; and in this case, that the person can be sued for damages for false imprisonment. If the person is sued for damages by reason of false imprisonment, he or she can raise the defence of having believed, on reasonable grounds, that the accused committed a criminal offence. In such a proceeding, it is the citizen who has the burden of proof to demonstrate that his or her belief was reasonable.

My question is, what effect would this bill have on the whole question of false imprisonment, if any?

Mr. Ross McLeod: I don't see really any new effect. There's a whole area of law here. There are lawyers who specialize in this.

I'm the head of our association, but I also own an agency that historically, over the last 30 years, has been a vanguard agency in doing proactive security work. We've arrested over 65,000 people over the last 30 years. I know what's involved in the logistics of doing that. I know what the insurance premiums associated with doing that are, because sometimes you get sued. It's just a reality of life—it happens. Shopping centres get “slip and falls”; we get interpleaded with those things. They sue everybody—the cleaners, the security.

In my opinion, and in the opinion of our lawyers who do these cases, Bill C-26 won't have any major effect.

There are a lot of lawyers who are eager to take these cases against the security agencies. I don't think it's going to make it easier for them to do it, and I don't think it's going to make it more difficult; it's pretty much the same.

The Chair: Ms. Pate, do you have any comments? No?

Mr. Gottardi, do you have any comments?

Mr. Eric Gottardi: Yes.

Mr. Cotler, your question has different applications.

When you're talking about individuals involved in the private policing or the private security field and those individuals who make arrests routinely, it may not represent much of a change in terms of potential civil liability or even potentially criminal liability.

But then there's also the aspect of grocers like David Chen, and the average Canadian. The CBA's concern here is that there's a perception that this amendment to the law is going to provide much broader and more robust protections to people like Mr. Chen and to average Canadians who choose to intervene in what they believe to be a crime that they are witnessing. But the reality is that if they're effecting an arrest, they are, in effect, assaulting someone. In an after-the-fact scenario, they're going to have to rely on this defence or this justification for the arrest itself.

From our perspective, it's really problematic to even create the impression for anyone out there that they now have a broader right to arrest people who they think may be committing a criminal offence or taking part in criminal behaviour, because that will encourage people to intervene, and that may in fact result in them putting their own safety at risk or opening themselves up to civil liability.

● (1145)

The Chair: Thank you.

Mr. Stamatakis, did you have any comments?

Mr. Tom Stamatakis: Yes. I'm going to concur with the comments that my colleague from the bar association made. I touched on this in my comments. I think it's all in how the bill is introduced and how people perceive it, because I think it's fair to say that if the message is.... If somehow this encourages citizens or even private security personnel to more frequently arrest individuals who they come into contact with or believe have committed some kind of criminal offence in their proximity, then I think it's only reasonable to assume that there would be more litigation.

The Chair: We've passed your time, Mr. Cotler, sorry.

Ms. Findlay.

Ms. Kerry-Lynne D. Findlay (Delta—Richmond East, CPC): Thank you, Chair. Thank you to the witnesses who are here today to assist us. My question is for Mr. McLeod.

As I understand it, a security guard is usually privately and formally employed and is paid to protect property assets and/or people. I realize there are many variations of that job description. Security guards maintain a highly visible presence, and I assume that is done to deter illegal and/or inappropriate actions, by observing either directly or through patrols, for instance. You were talking about electronic surveillance and the modern technologies we have today to assist us when looking for signs of crime, fire, disorder, and that sort of thing.

Bill C-26 would allow security guards, as designated persons, to take appropriate action to prevent crimes from happening as long as they act reasonably.

I have a couple of questions. Should private security guards, in your view, be able to act, or should they just be reporting incidents back to their clients, employers, or emergency services, as appropriate? In other words, when security personnel are doing their jobs in the real world, what do you see as an appropriate limit between just reporting and actually acting?

Mr. Ross McLeod: I would put it to you that the genie came out of the bottle back in the 1970s. Up until that time, the industry was an “observe and report” industry, and large segments of it still are. However, observing and reporting just didn't cut it anymore. The police response was too slow. In many cases, when the police arrived, the situation was gone, the damage was done, and the aggrieved parties were frustrated. There was a great demand from the public for remediation, for some level of intervention and remediation in low-level crimes.

That's what the public is concerned about. It's interesting watching television about serial killers, because what we are all concerned about in our communities is being accosted by toughs on the street, drunk and disorderlies, and this sort of thing. Parking problems and parties are the big things.

So around about 1970 was when the massive hiring of private security and the large enclosure of public spaces into semi-private spaces—the closed shopping mall—started to take place. It was a moment of truth for public policing. They could have gone in and taken their writ inside these places—these transit organizations and the huge malls. They chose not to, so private security just grew up to take care of that. You cannot go back. You could never go back.

For most Canadians, their first experience of enforcement and authority is from a private, uniform-wearing guard. The great focus for private security is deterrence. The uniform being there cuts it 90% of the time. Hands-on intervention is required in very few cases, but when it is required, when there's a crime in progress, there is no time to just observe and report. There has to be an intervention, and that's why the industry is where it is now.

● (1150)

Ms. Kerry-Lynne D. Findlay: Am I correct in presuming that security personnel are trained to call law enforcement, at the first opportunity, to come and support whatever they're doing?

Mr. Ross McLeod: Absolutely. However, law enforcement prioritizes the calls. I can tell you that minor disturbances—shop thefts, belligerence, drunk and disorderly—are not top-priority calls.

Ms. Kerry-Lynne D. Findlay: You mentioned the mall, and this is something that we have many of in my riding. In my pre-budget consultations I was given the scenario of theft within the malls where someone is observed and followed, and law enforcement either took a very long time to get there, understandably, or never arrived at all.

I want a quick comment from you on the necessity for security personnel to have these powers of arrest.

Mr. Ross McLeod: The uniformed security guards you find at gates and things like that hardly ever—ever—make arrests. A lot of them aren't trained in the use of force and are forbidden to make arrests anyway. However, with regard to loss prevention personnel who work in these malls and work in these transit organizations, their purpose is to do just that. They're trained for it and they're looking for it. They're the ones we have to support.

That's where our civil society.... That's the new city centre. That's where people hang out. That's where people do their shopping. That's where they want to feel safe.

The Chair: Thank you.

Mr. Jacob.

[*Translation*]

Mr. Pierre Jacob (Brome—Missisquoi, NDP): Good morning.

My first question is for Mr. Tom Stamatakis, of the Canadian Police Association.

I'd like to know what training your members get. Are there consistent rules? Do your members have mandatory training? Is there ongoing training for your members in terms of the number of hours and topics? Do the terms of arrest favour the security of the individual or the security of property? Is this taught? Are human rights, the Canadian Charter of Rights and Freedoms and respect for privacy taught to your members?

I'll let you answer. My question was long.

An hon. member: Are you talking to Mr. McLeod?

Mr. Pierre Jacob: No, my question is for Mr. Stamatakis, of the Canadian Police Association.

[*English*]

Mr. Tom Stamatakis: Thank you. Obviously a question like that would involve a very long and complex answer.

What I can tell you is that all public police officers in this country are trained. The responsibility for training and policing falls to the provinces. All of the provinces have provincial training standards that require an extensive amount of training initially, when police officers are first hired. Then there's a requirement for ongoing training throughout their careers on a regular basis.

To use the Vancouver Police Department as an example, members have six mandatory training days per year where they review issues related to use of force, application of the use of force, powers of arrest, powers of search, and updates with respect to the latest developments in terms of cases that have been decided or the latest developments in law. There are ongoing updates with respect to privacy issues.

So the training is extensive. It's ongoing. It's established by the provinces. There's consistency across the country. The training is delivered with a view to protecting the public who are being victimized by people engaging in criminal activity. It's also delivered with a view to protecting the offenders we come into contact with, and making sure that when we detain them, we detain them in a way that is respectful of their civil liberties and that protects them from injury. We obviously owe them a duty of care.

To address some of the comments that have been made already, the fact is that public police agencies across the country are always looking for ways to be more efficient in terms of the tax dollars we consume and the services we provide. Of course, we do have to prioritize in terms of how we respond. The fact is, though, we do respond to shoplifters. Do I want to see public police officers in the stores surveilling people who might be engaged in those activities? No. That's a legitimate role, I think, for private security personnel to play. But I do think it's appropriate and necessary that when a person is detained in those circumstances, a public police officer comes in to take custody of that person so that we can ensure that the person is not involved in more criminal activity. Perhaps he's wanted on a warrant, or perhaps he's committed more serious crimes somewhere else. It's an opportunity to gather some intelligence and look to see if there's any further investigation that needs to happen. As well, if we're going to keep that person in custody, we need to do that in an appropriate fashion and in an appropriate facility.

I think Mr. McLeod is kind of overstating the views of the public police community, and I think that's something that could be discussed further.

● (1155)

[*Translation*]

Mr. Pierre Jacob: Thank you, Mr. Stamatakis.

My question is for Mr. McLeod.

I'd like to know what the training rules are for your members. Is there mandatory training? Is there ongoing training? How many hours are set aside for it? Does training for your members touch on human rights, the rights of citizens, the Canadian Charter of Rights and Freedoms, respect for privacy, terms of arrest—and so on?

[*English*]

The Chair: We're at five minutes, so give us a fairly brief answer.

Mr. Ross McLeod: There is mandatory training in most provinces —I believe it's in all provinces now. It's a minimum of 40 hours. It contains a range of topics, from report writing to the basis of authority, and it was put together by the registrars in the provinces, in consultation with the police community and with the private sector.

I just want to underline that the role of private security here is strictly as a first responder. At no time do we want to supplant or replace the police. We're simply first responders, like paramedics. And like paramedics over the past 20 years, we're going from being truck drivers to being trained personnel who can aid and abet the medical enterprise by being a first responder and stabilizing the situation.

We're there in the community, and we stay there. We don't move around. The skills that we're trained in are those skills to stabilize situations and then turn them over to the public police at the first available opportunity.

The Chair: Thank you.

Mr. Woodworth.

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

Welcome to the witnesses, and thank you for your submissions.

I have a few questions for Officer Stamatakis. I assume you're an officer; I didn't catch your rank. Are you a police officer, Mr. Stamatakis?

Mr. Tom Stamatakis: Yes, that's correct. I'm a police officer in the city of Vancouver. I'm a constable.

Mr. Stephen Woodworth: You would be aware of the fact that our existing law already permits a person in lawful possession of property to arrest someone that he or she finds committing an offence in relation to that property. Are you aware of that law?

● (1200)

Mr. Tom Stamatakis: Yes.

Mr. Stephen Woodworth: You are aware, no doubt, the law requires the person who conducts the arrest to turn over the person arrested forthwith to an officer. Are you familiar with that?

Mr. Tom Stamatakis: Yes.

Mr. Stephen Woodworth: I don't know whether you heard Hon. Rob Nicholson's testimony on Tuesday, but Minister Nicholson indicated that he and the government have no intention of removing that requirement for anyone arrested by a private citizen—that the person arrested be turned over to an officer forthwith.

Did you hear his testimony to that effect?

Mr. Tom Stamatakis: I didn't hear his entire testimony, but I did hear some of the reports of it.

Mr. Stephen Woodworth: In fact, if anyone were to examine the amendment to section 494—the existing provision allowing citizen's arrest—they would see that it does not remove any provision that requires the person arrested to be turned over to the police immediately.

I assume that is something you would like. You want citizens who make arrests to turn over the persons they arrest to police forthwith?

Mr. Tom Stamatakis: That's correct.

Mr. Stephen Woodworth: Now, there hasn't been any indication from the government of any other course of action on that to your knowledge, has there?

Mr. Tom Stamatakis: No, not to my knowledge.

Mr. Stephen Woodworth: The new bill, if you have read it, has only four provisions, and only one of them deals with citizen's arrest. Clause 3 of the new bill amends the existing right for someone in lawful possession of property to arrest anyone found committing an offence in relation to that property; it amends it by allowing one to arrest a person who they have previously found committing an offence in relation to their property, but only where it's not feasible for an officer to make that arrest.

Are you familiar with that part of our new bill here?

Mr. Tom Stamatakis: I did review it, but I'd have to look at it again. I'll assume that you have.

Mr. Stephen Woodworth: Well, that's what it says: only if the individual making the arrest reasonably believes that it's not feasible for an officer to make the arrest. I assume you understand that this means that if it is feasible for an officer to make the arrest, the citizen should not, but instead should make sure that an officer gets there to do it. Does that sound...?

Mr. Tom Stamatakis: Yes, that's how I understand it.

Mr. Stephen Woodworth: Good, and is that acceptable to you?

Mr. Tom Stamatakis: Yes.

Mr. Stephen Woodworth: In fact, you would want—

Mr. Tom Stamatakis: Yes, that's how—

Mr. Stephen Woodworth: Continue.

Mr. Tom Stamatakis: I'm sorry. I keep interrupting you.

That's how I understand it. It would be my expectation, and the expectation of the front-line officers who I represent, that the first course of action should be to let the police effect an arrest where it's appropriate to do that.

Mr. Stephen Woodworth: Right, and that's what the section contemplates, but there was evidence earlier that law enforcement, by necessity, has to prioritize calls, and therefore an officer is not always immediately available to come and make an arrest in a property offence case. Would that be at least within the realm of reasonable?

Mr. Tom Stamatakis: Well, I think it just depends on the circumstances, so it's not completely accurate to suggest that police won't respond to a property offence no matter what. It depends on the circumstances.

If a person phones 911 and describes a set of circumstances where there's a heightened sense of risk to the individual or to the property owner, then the priority in terms of a response is much higher. On the other hand, if there is less risk, then the call is prioritized in a different manner.

It depends on the circumstances, but if you're talking about a 100-acre piece of property and an observation that someone was seen on a piece of property miles away from the caller or the potential victim, then it may be, depending on what else is going on, that it takes longer to respond.

Mr. Stephen Woodworth: So—

The Chair: Mr. Woodworth, we're out of time.

Mr. Stephen Woodworth: Thank you.

The Chair: Ms. Borg.

[*Translation*]

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

My first question is for Mr. Gottardi of the Canadian Bar Association.

In your second recommendation, you recommend amending the start of subsection 34(2) as follows: "The court shall consider the relevant circumstances of the accused, other parties, and the act, including but not limited to the following factors…".

So you are recommending that the possibility of consulting the list of factors be made mandatory. What was the motivation for that recommendation?

● (1205)

[*English*]

Mr. Eric Gottardi: Well, I can say that we've had discussions around the inclusion of a list in a section like this that is setting out self-defence. Proposed subsection 34(2) sets out a list of various factors that a judge is supposed to use in determining whether the defensive act was reasonable in the circumstances.

One of our concerns with including a list as it is in its current form is that this might signal to judges that they must consider each and every factor and apply it in every case. That would result in a subtle but important change in what the law is currently.

For example, proposed paragraph 34(2)(b) says: “the extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force”. One might read that as requiring a judge to consider whether or not the person could have retreated, rather than acting out in self-defence, as they could. That would represent a change in what the law is now, because there is not a requirement on an individual to retreat from a threat in every case.

So the very limited amendment that we had suggested here was to just include a qualifier of “including but not limited to the following factors”. Our hope there was that this would signal to judges that they would only consider the factors in that list that had relevant application to the case at bar and that they weren't required to apply every single factor to the list. It's a small suggested amendment, but that's the rationale and that is the concern behind it.

[*Translation*]

Ms. Charmaine Borg: Thank you very much.

My second question is also for Mr. Gottardi.

In Bill C-26, we are continuing to make the distinction between a criminal act and a criminal offence. It says that a person can arrest an individual caught in the act only if it is a criminal act and not a criminal offence.

Is it reasonable to think that the average citizen can make that distinction on the fly?

[*English*]

Mr. Eric Gottardi: Well, this is part of the problem, I suppose, and part of our general concern. The power of citizen's arrest requires a regular Canadian citizen to hopefully have some knowledge of the law, but if they don't, then they're on their own in determining certain things in this provision. Has in fact a criminal offence been committed? Is it a serious enough offence that they're allowed to intervene? Is it indictable? What is reasonable time? If they saw someone stealing from their store the day before, is it reasonable to arrest them the next day?

These are all very difficult judgment calls that lawyers and judges are unable to answer today as we discuss this legislation. In my submission, it's completely unrealistic to think that an average member of the public will be very confident in trying to interpret some of these concepts.

What this means is that we will have some examples of people intervening and arresting people where they're not justified in acting, where the end result will be, at best, that they're criminally charged, and at worst, that they're very seriously injured themselves.

The Chair: Thank you.

You have five minutes, Mr. Rathgeber.

● (1210)

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

Thank you to all the witnesses, those who are here and those who are in British Columbia. Thank you for your presentations.

I'm going to follow up with Mr. Gottardi on the same line of questioning that Ms. Borg pursued.

First of all, let me say that I appreciate that the Canadian Bar Association generally supports this legislation. It may be the first time ever with respect to a justice bill introduced by this government, so I appreciate your general support. But you do have some concerns, and it's those concerns I wish to broach.

In response to Ms. Borg, you indicated some concern about proposed subsection 34(2). You opined that a court must consider in all circumstances the enumerated list of factors. But I take issue with that. The wording in proposed subsection 34(2) is quite specific in that it says, “the court may consider, among other factors”. So not only is the court's obligation permissive rather than mandatory, it deliberately indicates that it's not an exhaustive list, because there may be other factors.

I'm curious, Mr. Gottardi, why you believe it's a deficiency of the bill that a court must consider in all circumstances the enumerated list in proposed subsection 34(2).

Mr. Eric Gottardi: I thank the member for his support of our organization's support of the bill.

I can say I agree with you in that it seems clear from the drafter's intent that the list is really not meant to be a closed, exhaustive list of factors that judges can consider. But the quite intense consultation that we undertook—we talked with our prosecutors and our practitioners, our defence lawyers, and had anecdotal experience and the experience of our members—told us that when judges are given or faced with a list, there's a natural tendency to go through it and effectively treat it almost as a checklist: Does this apply? Does this apply? Does this apply? It's that natural tendency, when one sees a list, to go through each one and apply it to the case before them.

So our thought was that it needed to be emphasized and perhaps even re-emphasized that it is not an exhaustive list, and in fact it's only the relevant factors in that list that need be and should be applied to a particular case.

Mr. Brent Rathgeber: But you'll agree with me that the verb “may” makes it permissive rather than mandatory?

Mr. Eric Gottardi: Yes, I think that's clear.

Mr. Brent Rathgeber: Okay, well, maybe we'll put it in capital letters and maybe judges will pay more heed to it.

Your brief is very well done. I just honed in on one part, where you “believe that it is essential to maintain the subjective element in self-defence, an element that has been affirmed in decades of case law”. I agree with that statement. But when I read through Bill C-26, I can't find any fear or any legitimacy for any fear that the subjective element in self-defence would be removed. In fact, it's quite the opposite. It appears to me that the subjective element is reinforced where the legislation uses deliberate language, like “they believe on reasonable grounds” in proposed paragraph 34(1)(a) and in proposed paragraph 34(1)(c) that “the act committed is reasonable in the circumstances”.

It appears to me that the word “reasonable” reinforces the common-law importance of subjective response with respect to the actions of the person. I was wondering if you have comment or if you agree or disagree with my assessment.

Mr. Eric Gottardi: With respect, I disagree.

I think what you actually see in the draft of the proposed new section 34 is a real emphasis on the objective standard. In fact, I point to the use of the reasonable person. The reasonable person is, by definition, the objective standard.

We have pointed out that in proposed paragraphs 34(1)(a) and 34 (1)(c), and, indeed, moving on to proposed subsection 34(2), with its reliance on the concept of proportionality, in proposed paragraph 34 (2)(g), there's real emphasis on the reasonable person and on the objective standard. It's a subtle view, but the use of that objective language is pervasive throughout the draft. Our concern is that there really needs to be a balancing between the subjective and the objective. It's well accepted in our case law that a reasonable person, acting reasonably in the circumstances of the accused, can have honest but mistaken beliefs about a set of facts. So someone might think that they're about to be attacked or they're about to be threatened, and they may act in self-defence. That, in fact, might not be the case. But as long as they honestly believed, and that belief was reasonable, then they are justified in using force to defend themselves, even in advance of an attack or in advance of a threat.

You particularly see this type of example in cases where you're dealing with violence against women and battered spouse syndrome, where there's a perception of a threat that the woman knows is coming and will often act in advance of that threat to defend herself.

We're strongly against violence against women, and we support a law and an amendment to the law of self-defence that protects those women in their subjective belief that they are under imminent threat. It's our concern that subjective belief isn't adequately protected as the law is currently drafted, so in our submission we have two or three specific suggestions for ways to strike a better balance.

● (1215)

Mr. Brent Rathgeber: I'll take that under advisement, because of course we're all strongly opposed to violence against women and all Canadians.

Thank you.

The Chair: We're way over the time, but Madam Pate, I think, wanted to say something there.

Ms. Kim Pate: If you don't mind, I'd like to add to those comments.

Similarly, we are happy to see some changes to the law of self-defence. We are concerned in particular because we're dealing with the self-defence review of which we were a part and which the Department of Justice co-sponsored in 1996-97. That review made some recommendations with regard to the notion of reasonableness. It's not necessarily what's objectively reasonable and proportionate that needs to be taken into account; it's the subjective interpretation of the person involved.

Because my co-panellist from the Canadian Bar Association just raised this, I'd like to add that oftentimes the risk that is perceived or understood is very real to the woman. Objectively it may not look real or it may look avoidable when someone says to them, “If you ever try to leave or if you try to do something tonight, I will hunt you down, and I will hunt down all your family”. As we've seen in far too many instances, those are threats that have in fact been carried out, so the systemic issue is very real.

The objective test, if you understand violence against women and the subjective interpretation, is in fact that the risk is real. Yet it may not be seen as imminent or proportionate if the woman then grabs the man's gun and uses it when he's sleeping, even though it's clear that he's indicated...as in the case of Jane Stafford. There is a whole group of cases we have our students study in the course we teach on defending battered women on trial. In fact the real risk is very subjectively and objectively present when you look at it. We have Kim Kondejewski's case. There are a number of cases for which juries have heard that information, but unless it's contextualized, unless there is some direction or somebody who understands that and puts it forth, it may not be put forth at all.

So I think it's important to have reflected in this that much clearer language around the fact that it's reasonable in the circumstances as understood by the individual. We've suggested charter analysis so that it can't be used in a way that would be seen as subjectively discriminatory, as in the cases of homosexual panic or those sorts of things.

The Chair: Thank you.

Madam Boivin.

[*Translation*]

Ms. Françoise Boivin: These are very interesting discussions, and they give an idea of what is going to happen before the courts. I'll continue sort of along the same lines.

As for establishing criteria, the question was asked of Minister Nicholson last Tuesday. We wanted to know whether this wouldn't cause some confusion in the minds of lawyers and whether legal arguments would be raised. Although we know that it's specific and that it isn't a comprehensive list, we can wonder whether by enacting these rules, the legislator—us—wouldn't create what I would call "an impact of factor prioritization".

In this context, I'd like to ask another question. I'm concerned about the battered woman syndrome defence. The bill states:

> b) the extent to which the use of force was imminent and whether there were no other means available to respond to the potential use of force;

This is a new provision, and it's a little bit of a concern to me. I'm wondering if we are going to attach primary importance to this. If a woman tells us about all the violence she has experienced in her surroundings, are we going to tell her that, since she lives in a city, she has access to shelters for battered women and that, therefore, she could have taken other measures to deal with the situation?

I'm also wondering whether the Canadian Bar Association would recommend that we replace the words "the size, age and gender of the parties to the incident" with "the physical capabilities of the parties". I'm curious to know why you think it is restrictive to say "the size, age and gender of the parties to the incident" and to replace that with "the physical capabilities of the parties". I don't find it clearer necessarily.

Lastly, I'd like to ask Ms. Pate and the representative of the Canadian Bar Association what they think about the battered woman syndrome defence as part of the government's proposed amendments.

● (1220)

[*English*]

The Chair: Mr. Gottardi, did you want to respond?

Mr. Eric Gottardi: We had some of the same concerns you have expressed with some of the language used in some of the factors, and we set those out on page 4 of our submission. You've touched upon one of them, proposed paragraph 34(2)(e), regarding the size, age, and gender of the parties. We were just concerned that language was problematic and kind of leaned in a particular direction. That's why we went with the physical capabilities of the parties. I'm sure others could come up with a better or more elegant suggestion. There needs to be something broader and more descriptive to say those are factors.

In some ways, that's a factor that's going to be apparent to everyone in the courtroom. If someone is six foot nine and hulking over the person who was defending themselves at five foot two, it's going to be evident to everyone in the jury box and to the judge that it was an issue in terms of the threat that was perceived and that kind of thing. So it's really just a codification of some of the observations that the trier of fact is going to make in a trial anyway.

I think in the list of factors under proposed paragraph 34(2)(f), there has been some effort to preserve the defence in particular in the context of women who are in abusive relationships. But again, rather than focusing on the relationship as the key factor, we had suggested focusing on their familiarity or their interactions or communication.

Ultimately I think the most important suggestion that the Canadian Bar Association is making, which has also been touched on by Ms. Pate, is the one at the top of page 3 of our submission. The subjective belief of the person who's defending themselves really does have to be taken into account, and the language in this act really needs to be clear about that. The concept we suggested by adding to proposed paragraph 34(1)(c) the "circumstances as perceived by the accused", or as understood by the individual—however you choose to frame it—needs to be put across, and allowances need to be made for mistaken perceptions.

Some of the other language and factors need to be balanced out. Factors include such things as imminence or whether or not the person could have retreated and those kinds of things, which on the face of them might be used to defeat defences such as the battered woman syndrome example that we heard about and that we all know, from our familiarity with the courts and cases, is a real problem and is a real defence.

● (1225)

The Chair: Ms. Pate, please go ahead fairly briefly, because we're way over.

Ms. Kim Pate: First, we would underscore that battered woman syndrome is not a defence. It's self-defence, and it's supposed to be taking into account the battering impact. Actually the syndrome has, I would suggest, contributed to some of the confusion, because it requires a pathologizing of the woman's behaviour as unreasonable. We're suggesting that a subjective understanding of reasonableness would see the woman's response as a reasonable response to an unreasonable situation of violence. So we need to have in here some indication of the nature of the course of control and violence against women. I don't see any reason why you couldn't even add in duration and history of relationship and include such matters as histories of course of control and violence against women. I wouldn't say "domestic violence". It is a gendered notion. Occasionally, you'll have another situation, but very occasionally. This is something we certainly see predominantly with women, along with perhaps some of the systemic discriminatory notions for racialized women in particular.

The Chair: Thank you very much.

Mr. Jean.

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

Thank you to the witnesses for appearing today.

I think a lot of questions have been exhausted by my colleagues, but I do have a couple.

First of all, I wanted to say congratulations to Ms. Pate for receiving the Governor General's award last year. I think that's a good recognition. It was in regard to international advocacy for marginalized victims and criminalized women. I bet that was a bit of a surprise in that it was during the reign of a Conservative government, especially after your negative comments about Bill C-10 and our law-and-order agenda. I do congratulate you for that.

I was a lawyer in Fort McMurray for a period of time, and I did have the opportunity to defend somebody regarding the battered wife syndrome, although I was not successful with the defence of self-defence. I noticed—and I just want to make a point of this—that the justice in that case did give a conditional sentence of two years less a day, to be served in the community. So he did recognize that in the sentencing, notwithstanding that he didn't recognize it in the defence itself. I think that seems to be more and more utilized by the courts today in regard to battered wife syndrome.

I was just curious, Ms. Pate. Do you believe that women have to or should ever be incarcerated?

Ms. Kim Pate: In terms of this issue?

Mr. Brian Jean: In terms of any issue.

Ms. Kim Pate: Certainly in the years I've been doing this work, I haven't seen much benefit in keeping women in prison. There are certainly women who need to be separated from the community for periods of time. Certainly, we support people being held accountable.

Mr. Brian Jean: I was just curious because I looked at your profile, and I saw that one of your YouTube videos was entitled, *Crime is a Theory*. I know you have been executive director of the Elizabeth Fry since 1992, and you have done some excellent work. I have written letters to you, myself, in relation to some of the prison conditions in Fort McMurray back in the 1990s. You also published some things about how women don't belong in cages.

[*Translation*]

Ms. Charmaine Borg: A point of order.

We're here to study Bill C-26 and determine how we can improve it. I don't see how discussing the witness's personal background is relevant.

[*English*]

The Chair: Mr. Jean.

Mr. Brian Jean: Thank you.

One of the particular sentences that you wrote was, "We think that current international realities demand that we form an international coalition to end the imprisonment of women and girls." I'm just curious if that's what you believe.

Ms. Kim Pate: Certainly, our vision is of women and girls in the community, contributing and being supported within the community. It's obviously not something we're likely to see happen, but it's something that we work towards. One of our basic principles is, if at all possible, particularly where it's safe for the community and safe for the individuals involved, that women be kept in the community, whether it's on conditional sentences, punitive probation, or those sorts of things. We think the cost—the overall social and human costs, as well as the fiscal costs of jailing predominantly non-violent individuals who are going to rejoin the community at some point—is better served by having resources in the community.

That coalition was actually developed at a time when we started to see the global development of more marginalized women ending up being criminalized rather than getting the support of social services. It's really about focusing in that direction.

Mr. Brian Jean: That's especially the case in Canada, where I think about 1.5% or 2% of women are aboriginal, and yet 25% are in our prison system.

● (1230)

Ms. Kim Pate: It's even higher in our federal system. It's more than a third.

Mr. Brian Jean: Yes, I understand that.

I do admire your work. I just wanted to let you know that. I understand where you come from with regard to where you are going.

I really don't have any other questions for any of the witnesses. I think my colleagues might. Mr. Woodworth is always ready to go.

Mr. Stephen Woodworth: I'll pass, thank you.

The Chair: Mr. Albas is next on our list.

Mr. Dan Albas (Okanagan—Coquihalla, CPC): Thank you, Mr. Chair.

I just want to thank the committee for the opportunity to be part of this discussion about C-26, the citizen's arrest and self-defence act. I actually spent 15 years teaching martial arts and self-defence, in particular, to a variety of youth and adults. Some of my students had to use some of the skills I taught them. Hopefully, most of them didn't have to use it because of their communication skills and whatnot.

Over my career, I found that every time I spoke with either a lawyer, the RCMP, or various law enforcement officers, there was never a clear case where they could tell, in any case, what exactly constitutes self-defence for the reasonable person. I do have some questions with regard to this, and I'm going to be directing them to the constable.

The reforms proposed in this bill would include a list of factors the court could consider in determining whether the person's actions were reasonable. Again, examples, Mr. Chair, would be pre-existing relationships between the parties, including the history of any violence, and the proportionality between the harm threatened and the response in turn.

Now, specific to the constable, that defence would be available for a person who commits any type of act for a defensive purpose. Again, as a former martial arts instructor, you would always try to encourage another way than outright confrontation, such as if they could retreat or get away. This may put them in a situation where they may have to commit what would typically be a crime—like stealing a car to flee an attacker or trespassing on property—as long as it's reasonable under the circumstances.

My question for the constable is that the current law is limited to justifying the act of force only. What do you think, sir, of these reforms and their ability to provide that protection when they are reasonably used?

Mr. Tom Stamatakis: As I said in my opening comments, we generally support the changes in C-26. Like you said, as long as those defensive actions are reasonable under the circumstances, and are used or relied upon specifically to stop a threat, then we support that. I think the concern, though, if there is one, is to make sure people don't decide to go beyond that in terms of defending themselves or taking any other action.

Mr. Dan Albas: I'm glad to hear you say that, sir, because I agree with your earlier points. Obviously, policing is a public benefit, but I do understand, from Mr. McLeod's viewpoint, that it's also, though, a benefit that is not 100% available to all people at all times. So to have these kinds of provisions whereby someone, if they're in a rural area, rather than confronting an attacker straight out, can steal a car so they can get to safety or can trespass across property in order to protect themselves.... I'm glad to hear you say that.

Is there anything else in particular that you would like to bring up in regard to some of these reforms?

Mr. Tom Stamatakis: Yes. Technology was mentioned. I referred to it briefly in my opening comments. I think it's important to consider some of the changes that have occurred and to what extent we can now rely on technology, whereas maybe we couldn't in the seventies or eighties.

The fact is that there are very inexpensive technologies available today. Whether it's premises or properties, they can be easily monitored by video equipment that provides clear images. The proliferation of cellphones that have photo and video capabilities now...those are tools that law enforcement relies on extensively today.

I will just point to the example here in Vancouver of the riot in June of last year, where we successfully identified and have now prosecuted or have recommended charges for the crown to prosecute in hundreds of cases. These were people who were engaged in criminal activity or rioting behaviour and we had no information other than a clip of a video or a photo.

So taking that back to this whole discussion around private security and these quasi-public/private places—shopping malls—I think there's a real opportunity here to really mitigate any risk, whether it's to the public, private security personnel, or even offenders, if we think about relying on technology a little bit more extensively. With the right kind of information, we have the capability now in law enforcement to identify people and successfully investigate people who are involved in even the most minor property crime offences, right up to the most serious offences involving personal harm against other people.

● (1235)

The Chair: I'm sorry, but we're actually over time.

Mr. Dan Albas: Thank you, Mr. Chair. I appreciate the time.

The Chair: We've completed the rounds. We need to keep a little bit of time because we do have a small amount of committee business.

Given the circumstances, I'd to thank the witnesses, Mr. McLeod and Ms. Pate, and also Mr. Gottardi, who we couldn't see but did hear, and we do appreciate that.

Mr. Stamatakis, we could both see you and hear you. We appreciate that.

Thank you very much.

We'll suspend for just a few minutes to give the witnesses time to get away.

● (1235)

(Pause)

● (1240)

The Chair: I call the meeting back to order.

One of the things we need to do is pass a budget for this study. This does not have to go to the Liaison Committee because the amount is under $40,000. The clerk has distributed all of the numbers, which are the kind of standard numbers that get plugged in. We will not necessarily spend the $28,100. In all likelihood, it will be considerably less, but we do need to pass it.

Mr. Robert Goguen: I'd like to move the adoption.

The Chair: Madam Borg, did you say you were seconding it?

Ms. Charmaine Borg: I guess so.

Voices: Oh, oh!

The Chair: Thank you.

Is everybody in favour?

(Motion agreed to)

The Chair: Okay.

Ms. Françoise Boivin: Are you presenting it at 1:30 or next week?

The Chair: It doesn't have to go through the Liaison Committee.

[*Translation*]

Ms. Françoise Boivin: Okay.

[*English*]

The Chair: The other thing is that we're sort of running into a bit of a problem with witnesses on this bill—witnesses supplied by both sides—who are not available or who do not wish to attend. I think the clerk has been trying to fill up our schedule.

Next Tuesday we're okay, and I understand there may have been some discussions about Thursday.

Mr. Robert Goguen: In previous discussion with Mr. Harris, there was a suggestion that we might be able to put Mr. Comartin's bill in there. That only takes about an hour, and he said he only needed 24 hours' notice. There's also the completion of two witnesses on organized crime, which also will not take a lot of time.

Probably both could be done in one shot on Thursday, so my suggestion is that we do that. Obviously we want to get through Bill C-26, and that's why I was reluctant to do those right off the bat, but there's a gap there, and there's no harm to anyone, so....

Ms. Françoise Boivin: That was Jack Harris's point at the last meeting.

The Chair: Exactly.

Ms. Françoise Boivin: So that's excellent.

The Chair: If it's agreed, then, the clerk will take care of that for Tuesday and Thursday of next week.

Some hon. members: Agreed.

The Chair: Then we'll have two more meetings on Bill C-26?

Mr. Robert Goguen: Yes. I mean, what I'm worrying about is do we have all our witnesses? We're not going to add twenty more; this is not going to go on indefinitely. I assume we've pretty much determined who we need.

The Chair: Well, just give us the limit on days. If that limit is two days, then nobody can do that.

Ms. Françoise Boivin: I'm told by Mr. Harris's assistant that he might have a couple, but we'll contact you, and—

Mr. Robert Goguen: He had said that before, that there would be two, maybe. So it's not twenty.

Ms. Françoise Boivin: No, no, exactly; we agree on that.

Mr. Robert Goguen: We're on the same page.

Ms. Françoise Boivin: Plus, we reserve the right to have people from the ministry there just to answer...since we're seeing some recommendations and so on.

Mr. Robert Goguen: Yes; nothing's changed.

Ms. Françoise Boivin: Excellent.

The Chair: Okay, but just tell us, is it two meetings? If it's two meetings, then the clerk is all set and he can schedule that.

Mr. Robert Goguen: Well, Tuesday it's the witnesses we'd agreed upon, or that you've called forth, and then on Thursday it's, as we said, Mr. Comartin's bill and possibly the two remaining witnesses for organized crime.

The Chair: Right, and then it's two more meetings on Bill C-26?

Mr. Robert Goguen: Yes.

The Chair: Then that defines it, if that's what you want.

Mr. Robert Goguen: That's fine with me.

Ms. Françoise Boivin: I can't answer this right now. Maybe another one.... I would go for three, just in case Mr. Harris comes with those two more—

The Chair: Okay, so you have a clause-by-clause—

Ms. Françoise Boivin: Exactly. If you're including the clause-by-clause in the two meetings—

The Chair: No, I'm not. They're just for witnesses.

Ms. Françoise Boivin: Okay. Excellent.

It should be okay, but I don't want anybody to hold this against me if we have two witnesses we want to add, and we can add to the days —

The Chair: We won't tell Mr. Harris that you said it was okay.

Some hon. members: Oh, oh!

Ms. Françoise Boivin: Excellent.

Mr. Robert Goguen: Honestly, with two more witnesses—

Ms. Françoise Boivin: Do you want me to start filibustering? I'd love....

Some hon. members: Oh, oh!

Ms. Françoise Boivin:*Non, non*; just kidding.

Mr. Robert Goguen: With two more witnesses, we may even be able to get it done in clause-by-clause.

Ms. Françoise Boivin: Yes.

Mr. Robert Goguen: I mean, there are five clauses.

Ms. Françoise Boivin: Exactly. I just wouldn't want Mr. Harris to take some approach and then be told, “Oh, sorry, we're done.”

The Chair: Two is good, twenty is bad.

Ms. Françoise Boivin: No problem. I've got the margin.

It sounds good.

The Chair: The meeting is adjourned.

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