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GOVERNMENT ORDERS

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[English]

Citizen's Arrest and Self-defence Act

Ms. Kerry-Lynne D. Findlay (Parliamentary Secretary to the Minister of Justice, CPC):

Madam Speaker, I am pleased to speak today to Bill C-26, An Act to amend the Criminal Code to address the issues of citizen's arrest and the defences of property and persons.

Bill C-26 represents a responsible expansion of the citizen's power of arrest as well as a simplification of the self-defence and defence of property provisions in the Criminal Code. These reforms are balanced and necessary.

Today, I would like to address some of the details of the law of citizen's arrest.

Many members will know the background to the citizen's arrest reforms proposed in the bill. For members who perhaps are not as familiar with this issue, let me begin with a description of what arrest actually is. An arrest consists of the actual seizure or touching of a person's body with a view to detention. Uttering the words, "you are under arrest" can constitute an arrest if the person being arrested submits to the request.

Arrest powers are found in a range of federal and provincial laws. The Criminal Code provides for several distinct arrest powers. Currently, under section 495, the police officers are empowered to arrest, without a warrant, any person who they find committing a criminal offence. Police officers may also arrest without a warrant any person who they reasonably believe has committed or is about to commit an indictable offence.

For an arrest to be lawful, the arresting officer must personally believe that he or she possess the required grounds to arrest and those grounds must be objectively reasonable. This means that a reasonable person standing in the shoes of the officer would believe that there are reasonable and probable grounds to make an arrest, which depends upon reasonable and probable grounds to believe that an offence has been committed.

In comparison to the power of arrest that every police officer has, section 494 of the Criminal Code also authorizes private citizens to arrest, again without a warrant, those found committing indictable offences, those being pursued by others who have authority to arrest and those found committing criminal offences in relation to their property. In all cases of a citizen's arrest, there is a legal duty on the citizen making the arrest, under section 494, to deliver an arrested person to the police forthwith. This term "forthwith" basically means as soon as reasonably practicable in all the circumstances.

As members can see, there is a clear distinction between the power of arrest for police officers and the power given to citizens. There are good reasons for these differences, many of which are obvious. Police officers are professionally responsible for enforcing the criminal law. They are trained in the use of force, including how not to get hurt themselves and how to minimize any injuries that may be inflicted on others, as well as being trained in the legal requirements for lawful arrest. As well, police officers are subject to oversight so that in cases where things go wrong, a citizen who may have been unlawfully assaulted can seek redress.

Private citizens are not subject to any of these conditions but, nonetheless, the law does recognize that sometimes only the private citizen is in a position to act in the face of criminality. The law would not be doing its job of promoting public peace if it left the citizen with no choice but to stand and watch as criminals committed their crime. No, the law must and does empower the citizen, in limited circumstances, to take part in the administration of justice where necessary.

In this regard, the particular power of citizen's arrest we are concerned with is the power to arrest people found committing an offence on or in relation to property. As I have already mentioned, the power of arrest for the private citizen arises where the citizen finds someone committing an offence on or in relation to property. In other words, the person must be found actually in the process of committing the offence for a private arrest to be lawful. This is a limited power and the law does not permit an arrest even a short while after the offence was detected.

I think we can all appreciate that the limitation of "found committing" can produce unjust results in certain situations. Canadians do not agree with criminal charges against a citizen who tries to arrest someone a short while after he or she was found committing a crime, for instance where the person returns to the scene and is readily identified as the person who stole property a few hours before.

Bill C-26 therefore proposes a straightforward reform to extend the period of time allowed for making a citizen's arrest. Specifically, the bill would expand subsection 494(2) of the Criminal Code of Canada to permit property owners, or persons authorized by them, to arrest a person, not just when found committing a criminal offence on or in relation to property but also within a reasonable time after the offence is committed.

(1135)

Many questions have been asked about what constitutes a reasonable period of time for making an arrest. It is not feasible to impose a rigid time limit on an arrest, such as an authority to arrest within four hours of an offence. A rigid time limit would likely produce unfairness in some cases, just as the existing rule that limits arrest at the time of the commission of the crime does.

It is also not possible to define or describe what constitutes a reasonable period of time. Whether an arrest was or was not made in a reasonable period of time must be determined on a case-by-case basis based on all the relevant facts and circumstances. Facts and circumstances that are likely to

be relevant to such a determination include the length of delay, the reasons for the delay and the conduct of the suspect and the arrester, among others.

The proposed reforms also add an additional requirement where the arrest is made after the crime has been committed. This requirement is that the arrest will only be lawful if the person making the arrest reasonably believes it is not feasible for police officers to make the arrest themselves. This is a new safeguard that Bill C-26 would bring into law to ensure the law would not encourage or promote vigilantism. This requirement would ensure that citizens would only use this expanded power of arrest in cases of urgency and only after they turned their minds to the question of whether police officers would be able to make the arrest.

It should not be forgotten that this new safeguard complements other safeguards already in the law of citizen's arrest. For instance, as I mentioned earlier, there is a duty upon any citizen who arrests someone to deliver that person as soon as possible to the police. This is another safeguard that ensures citizens are not in a position to apprehend a possible criminal and keep him or her confined for an extended period of time. Once apprehended, the suspect must be turned over to police. Failure to do so puts the lawfulness of the arrest in jeopardy and leaves the arresting person subject to prosecution.

These requirements are reasonable and appropriately balance the right of the citizen to take steps to prevent crime and apprehend criminals against the overarching objective of ensuring that it is the police who deal with suspects. The police have a duty to preserve and maintain the public peace and must remain our first and foremost criminal law enforcement body. This new safeguard, especially when coupled with existing ones, would ensure that they will so remain.

Finally, for even greater certainty, the reforms also specify that the existing provisions in relation to the use of force and effecting an arrest apply to citizen's arrest. These rules are set out in section 25 of the Criminal Code and apply to all actions taken by police officers and private citizens where they are acting for the purpose of administering or enforcing the law. According to section 25 of the Criminal Code, an individual who makes a citizen's arrest is "if he acts on reasonable grounds, justified in...using as much force as is necessary for that purpose".

However, I would note that a person making an arrest will never be justified in using force that is intended or is likely to cause death or grievous bodily harm unless he or she believes on reasonable grounds that it is necessary for self-preservation or to protect anyone under his or her

protection from death or grievous bodily harm. This is the same rule that applies to the police. Its benefits and objectives are clear and obvious.

These are important reforms that will give Canadians confidence that when they act to arrest someone they have found committing an offence, the law will view them as law enforcers in an emergency situation and not as criminals.

However, Bill C-26 would do more than this. It would also simplify the law relating to defence of property and defence of persons, which are in dire need of clarification. Law societies, bar associations and judges have been calling for such reforms for decades. It is not that the law does not give Canadians the power they need to defend themselves. Rather the problem is that the way the law is written is so confusing that it makes it very difficult to understand what is and is not permitted.

However, there are additional consequences. Once they are raised in court, confusing laws require prosecutors and defence counsel to devote energy and arguments about the proper interpretation and they cause judges difficulty in explaining to juries how they should govern their decision making. The end result is lengthier trials, unnecessary appeals and additional cost to the system.

In a nutshell, the legislation seeks to simplify both defences so Canadians can understand the rules and govern their ability to defend themselves, their families and their property. Simpler laws would also provide better guidance to police officers who are called to the scene of a crime. They will be better able to make appropriate decisions about whether charges are or are not warranted.

(1140)

The proposed new defences would boil down to a few simple considerations. In the case of defence of the person, did the defenders reasonably perceive that they were or that another person was being threatened with force or were they actually being assaulted?

In the case of defence of property, did the defenders reasonably perceive that property they peaceably possessed was or was about to be interfered with, such as by someone taking, damaging, destroying or entering property without legal entitlement?

In both types of cases, did the defenders respond for the purpose of protecting themselves or another person from force or for the purpose of protecting the property in question from interference?

Finally, in both types of cases, did the defender act reasonably in the circumstances?

These are the key components for defences which allow a person in emergency situations to engage in conduct that would otherwise be criminal. Just as it is not possible to provide a definition or an answer in the abstract to the question of what is a reasonable period of time for making an arrest, it is also not possible to set out what actions are reasonable in self-defence or in defence of property.

What is reasonable depends entirely on the circumstances and the reasonable perceptions of the person faced with the threat. There are many relevant considerations; in fact, a list of factors that may be considered is provided in relation to self-defence and defence of another. This list includes a range of factors which frequently arise in self-defence cases, such as the nature of the threat, the presence of weapons, and any pre-existing relationship between the parties, and the proportionality between the threat and the defence of response.

In the case of defence of property, the nature of the threat to the property is likely to be the most important consideration. If someone is threatening to burn down their neighbour's house, such a threat would likely permit a greater defensive response than if the threat were merely to place an unwanted sticker on a neighbour's car.

I trust that it is now apparent why the reasonableness of the defensive conduct can only be assessed in relation to all the facts.

I would just like to address a few small points that relate to the defence of property. It is crucial to understand the limits of the legal ability to use force to defend property. This is not a defence that allows people to use force to protect or assert ownership rights.

Ownership rights, and many other legal interests in property, are matters of property law, which is a matter of provincial responsibility. Disputes over these types of issues must be decided by the civil courts if the parties cannot agree among themselves.

The defence of property only applies where there are real time threats to physical possession of property or threats to the state of property in someone's possession, such as a threat to destroy or render property useless and ineffective. That is because in emergency situations there is no recourse to the courts. If someone steals or destroys another's belongings, they are gone before the civil courts can assist.

The overarching function of the criminal law is to promote public order and public peace. The law therefore cannot sanction the use of force to protect property in any circumstances other than where a present lawful situation is threatened in a manner such that seeking civil recourse at some later date creates the risk of a permanent deprivation or loss of the property in question.

The law allows people to preserve the status quo, not to solve ongoing disputes with violence.

There is one last matter that I must address in relation to the defence of property. The new law of defence of property, like the current law, does not put any express limits on what can be done to defend property; however, I would like to note for members that our criminal courts have unequivocally rejected the use of intentional deadly force in defence of property alone as unreasonable.

In the case of self-defence or defence of another, these defences allow for the use of intentional deadly force, depending on the circumstances. This is because it is a life that is being threatened. It is only reasonable for individuals who face a serious threat from another person to protect themselves. If the nature of the threat is such that it is reasonable to counter that threat with deadly force, that may be acceptable, depending on the circumstances.

Threats to property are not the same. Human life always outweighs our interest in property. So when the situation is one where damage or destruction of property must be balanced against the determination of human life, the property interest must give way to the greater interest in human life.

Some conflicts which appear on the surface to involve threats to property only do in fact also pose a risk to human life. For instance, individuals whose homes are invaded are likely to feel that their property is being interfered with and on that basis does have the right to use force to evict the trespasser; however, this does not mean that a homeowner is without recourse and must submit to anything the trespasser intends. Rather the homeowner is also likely to feel personally threatened by the presence of the trespasser in such circumstances.

(1145)

In any case, where a person has succeeded in entering a home without permission, especially if it is at night, that presents a situation in which any reasonable individuals would perceive danger to themselves and other occupants. Where such a threat is reasonably perceived, self-defence and defence of others becomes available and indeed may be the operative defence if deadly force is ultimately used.

I think all members can agree that clear and simple defences and a citizen's arrest law that provides flexibility for variations in the circumstances will allow all Canadians to take necessary and reasonable steps when the circumstances leave them no other reasonable options.

I urge all members to support this important legislation.

(1150)

[Translation]

Ms. Lysane Blanchette-Lamothe (Pierrefonds—Dollard, NDP):

Madam Speaker, this week, the hon. member for Delta—Richmond East said that it was not necessary to consult experts or do research to draft a bill and that it was enough to simply consult Canadian families.

I find this somewhat worrisome since, today, the opposition is trying to pass this bill at second reading so that a serious discussion can occur in committee. The hon. member for St. John's East mentioned that he expected to hear from legal specialists about self-defence and defence of property in committee.

Today, what does the hon. member think about these specific expectations?

[English]

Ms. Kerry-Lynne D. Findlay:

Madam Speaker, this matter will be referred to the Standing Committee on Justice and Human Rights where it will be considered, as any legislation is considered.

The member may have misunderstood me last week. I did not say that research was unnecessary. I said that, in fact, there are so many comments about the justice system and the lack of confidence in it generally that this is something we can also take into account. However, this matter will definitely go to committee to be studied there. We will await those outcomes.

Mr. Jack Harris (St. John's East, NDP):

Madam Speaker, I wonder if the parliamentary secretary would like to comment on the circumstances which gave rise to the citizen's arrest changes because they

were concerning. The owner of the store was charged by the police who arrived on the scene, after being called by the individual. He was then charged with kidnapping, possession of a dangerous weapon, unlawful confinement and assault.

This gave rise to a lot of the publicity and concern about the case. Does that indicate some lack of clarity in the citizen's arrest provision?

Does the member think that what we are doing here is the minimal amount that needs to be done because we do not want to encourage people to effect citizen's arrests when other alternatives are available?

One would not know the state of mind of the person, and quite often those effecting citizen's arrests do not have any training as to how to handle people.

Would the member comment on that and whether she thinks there are sufficient safeguards in the citizen's arrest provision?

Ms. Kerry-Lynne D. Findlay:

Madam Speaker, I thank the hon. member for his question and his hard work on the justice committee.

This is not in response to any particular situation and I really cannot comment on the specifics that the hon. member has alluded to.

There are many areas in the Criminal Code where the law has been so long standing. In the modern world and the unfolding of many different circumstances, it is very hard to comprehend for all involved, the judicial system, judges, law enforcement and citizens, as to what is appropriate and what they can and cannot do in a given situation. Of course, for law enforcement it is much clearer. We are trying to modernize the law and simplify it to the extent that it makes it clearer what the citizen's arrest powers are.

This would allow for the understanding that it may not be just at the exact time of the committing of an offence but a certain time after, if the police cannot be brought into the situation, where a citizen's arrest would still be appropriate within reasonable circumstances.