

Citizen arrests carry risks: experts

New law may encourage vigilantism, security and legal specialists warn

BY DOUGLAS QUAN, POSTMEDIA NEWS JANUARY 30, 2011

The Harper government is expected to introduce legislation that would give ordinary citizens more powers to slap invisible handcuffs on lawbreakers.

While merchants say they welcome greater freedom to carry out citizen arrests, some legal and security experts worry that the government could confer too much power upon citizens and encourage vigilantism.

"The traditional policy of the law has been to try and leave arrests up to the professionals -- the police -- wherever possible," said Jonathan Dawe, a criminal lawyer and adjunct professor at the University of Toronto.

"There is a concern that untrained citizens might arrest in situations where it isn't really justified, and a further concern about citizens putting themselves in dangerous situations where someone -- themselves, the person they are arresting or innocent bystanders -- might get hurt."

The recent debate was sparked when a shopkeeper in Toronto's Chinatown, David Chen, was charged with assault and forcible confinement after he and two of his employees confronted a man who had stolen plants from the store an hour earlier, tied him up and threw him into the back of a van. Current law allows a citizen to make an arrest only while a crime is in progress.

Chen was ultimately acquitted of the charges, but the fact that he was charged at all upset fellow store owners and politicians.

Liberal MP Joe Volpe and NDP MP Olivia Chow introduced private member's bills aimed at loosening the restrictions on when a citizen can detain someone.

Prime Minister Stephen Harper also jumped into the fray, ordering government lawyers to look into changing the Criminal Code late last year and then making a personal visit to Chen this month.

Sara MacIntyre, a spokeswoman for Harper, said the issue is a "priority" for the prime minister and legislation will likely be tabled in February. Those are encouraging words to Ralph Moyal, president of the Retail Merchants' Association of Canada, who says changes to Canada's citizen-arrest laws are long overdue.

"Honestly I'm disgusted by some of these laws. It's about time these archaic laws were changed," he said.

But Brian Robertson, a senior training associate at Toronto security consulting firm David Hyde & Associates, said he wonders if the pending Criminal Code changes are more about political

opportunism than sound public policy.

It's a "slam dunk" for the Conservatives because they've already got opposition support and it will be seen as showing that they care for the "little guy" and visible minorities, he said.

Robertson said there is "no solid argument" to expand citizen-arrest laws.

Any changes to the law are fraught with risk and, in some cases, could invite citizens to engage in "tracking people down."

The current law is narrowly designed to give the public an option in emergency situations when no police are around, said Vancouver criminal lawyer Rishi Gill.

"In making the proposed change, we do need to ask, what is the outer limit of a private individual pursuing their own investigation?" Gill said. "I doubt the police would want this."

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