

# David Chen: Vigilante or Neighbourhood Hero?

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On May 23, when Anthony Bennett was captured on video camera stealing \$60 worth of plants from David Chen's, Mr. Chen's Lucky Moose Market located in Toronto, it set off a chain of events that may lead to a reform of what is known as "citizen's arrest" rights here in Canada. Ironically, it was Chen who was also arrested by the Toronto Police Service, and charges are being sought by the Ministry of the Attorney General and the Toronto Crown's office. However, they are seeking a quick resolution and have offered Chen a guilty plea. Refusing Crown offer of a guilty plea, Chen is hedging his bets on a legal challenge. The Globe & Mail article spells out much of the previous facts.

## Facts:

Bennett stole the plants from the market then rode off on his bicycle. About an hour later he returned to the market, for whatever reason. Mr. Chen and two employees recognized the culprit and gave chase. After subduing him and effecting a citizen's arrest (which is lawful under s. 494(1) of the Criminal Code of Canada), they tied him up placing Bennett in a truck to await the arrival of the police.

As a result, Bennett AND Chen were arrested. Bennett for two counts of theft under \$5000, and Chen for forcible confinement, weapons offences, and assault. Bennett has subsequently pleaded guilty to the theft charges, and received a sentence of 30 days. When I first read this, it immediately became apparent to me that Bennett either has a long criminal history or there are aggravating circumstances surrounding his sentence. This is an EXTREMELY long sentence for a simple theft under charge. (After doing some digging... turns out he does have a long criminal record) Just to put it in perspective. But I digress...

The Crown seems to be adamant to set an example of Chen for whatever reason, and they have even secured Bennett as a witness against Chen. However, Chen and his lawyer Peter Lindsay are playing hardball, and not going the easy way out by accepting a deal. Good for you!

That offer is "insulting," Mr. Lindsay said, and he flat-out refused it

despite warnings that the Crown will ask for a jail sentence for Mr. Chen if the offer is turned down.

Analysis:

This, for me anyway, is where it becomes interesting. Lindsay has said that they plan on not only fighting the charges, but they are going to challenge s. 494 of the Code:

Mr. Lindsay plans to challenge Canada's citizen's arrest laws. Right now, a property owner or someone acting on a property owner's behalf can arrest someone without a warrant if they see that person committing a crime on their property.

That definition is too narrow to allow people to protect their property, Mr. Lindsay says: He argues it should be changed to allow private citizens to arrest people they suspect committed or will commit a crime.

Section 494 of the Criminal Code of Canada reads as this:

- 494.** (1) Any one may arrest without warrant
- (a) a person whom he finds committing an indictable offence; or
  - (b) a person who, on reasonable grounds, he believes
    - (i) has committed a criminal offence, and
    - (ii) is escaping from and **freshly pursued** by persons who have lawful authority to arrest that person.
- (2) Any one who is
- (a) the owner or a person in lawful possession of property, or
  - (b) a person authorized by the owner or by a person in lawful possession of property,
- may arrest without warrant a person whom he finds committing a criminal offence on or in relation to that property.
- (3) Any one other than a peace officer who arrests a person without warrant shall **forthwith** deliver the person to a peace officer.
- (I added the bold)

Clearly, since he would have witnessed Bennett's theft of his own property from his store, the arrest is justified under s. 494(1)(b)(i). I think it is here where the debate begins and continues to Chen's actions after that raise the questions.

What is the legal definition of freshly pursued? It is not listed in s. 2. I did find a number of US definitions, however, they were all related to peace officers and not citizens. I think the bulk of Lindsay's argument is going to hinge on the lack of definition of "freshly pursued." Will the courts interpret his actions as freshly pursuing upon seeing somebody whom he believed on reasonable grounds had committed an indictable

offence?

Had Bennett not come back to the store, this would all have been avoided, but perhaps Chen gave chase because he thought Bennett was about to commit another offence. If it turns out in court that was the case, then the arrest would be deemed illegal because only peace officers have the ability to arrest on reasonable grounds that somebody is about to commit an indictable offence:

495. (1) A peace officer may arrest without warrant

(a) a person who has committed an indictable offence or who, on reasonable grounds, he believes has committed or is about to commit an indictable offence;

From the interpretation I can gain from the quote in the Globe, it appears that Lindsay may also have issue with 494(3). Now the definition of “forthwith” is not explicitly stated in the Criminal Code, however, in my experiences it means as soon as practicable. The closest thing that I could find in the Code is this example:

254(2) If a peace officer has reasonable grounds to suspect that a person has alcohol or a drug in their body and that the person has, within the preceding three hours, operated a motor vehicle or vessel, operated or assisted in the operation of an aircraft or railway equipment or had the care or control of a motor vehicle, a vessel, an aircraft or railway equipment, whether it was in motion or not, the peace officer may, by demand, require the person to comply with paragraph (a), in the case of a drug, or with either or both of paragraphs (a) and (b), in the case of alcohol:

(a) to perform forthwith physical coordination tests prescribed by regulation to enable the peace officer to determine whether a demand may be made under subsection (3) or (3.1) and, if necessary, to accompany the peace officer for that purpose; and

(b) to provide **forthwith** a sample of breath that, in the peace officer’s opinion, will enable a proper analysis to be made by means of an approved screening device and, if necessary, to accompany the peace officer for that purpose.

(Once again I added the bold)

This section is in relation to a testing for the presence of alcohol in a person, more commonly known as taking a suspect in so they can blow into the breathalyzer.

Now the article does not say much about the length of time between Mr. Chen’s arrest of Bennett and his contact of the police and their arrival, i.e. his “forthwith-ness”. The only thing it mentions is that Bennett was bound and placed in the back of a truck. One could only assume that Chen did this to ensure his detention while ensuring his own physical safety, since Bennett had escaped before and is known locally as a thief. Bennett has been known to be violent in the past.

The actions of Chen and his employees immediately after the arrest will undoubtedly be the crux on which this case falls. Should it be argued that “forthwith” has a broad scope and that Chen was justified in his detention of Bennett, he will in all likelihood be found not guilty. However, if the court finds that a more narrow definition of “forthwith” is

required, he may be found guilty.

Stay tuned, I know I'll be following this one as it plays out. Either way, this case has the potential to break some new legal ground here in Canada