2024
ANNUAL REPORT
ON
THE LAW ENFORCEMENT
JUSTIFICATION PROVISIONS

PURSUANT TO SECTION 25.3
OF
THE CRIMINAL CODE

January 1, 2024 to December 31, 2024

Prepared by

The Ministry of Public Safety and Solicitor General
Policing and Security Branch

Table of Contents

1. Introduction 1

2. Overview of the Law Enforcement Justification Regime 1

3. Statistics 3

   A. Emergency Designations 3

   B. Authorizations for Specific Acts and Omissions 3

   C. Instances of Public Officers Proceeding Without Senior Official Authorization. ... 4

4. CONCLUSIONS 4

1. Introduction

Sections 25.1 – 25.4 of the *Criminal Code* provide a limited justification for otherwise illegal acts and omissions committed by law enforcement officers (and those acting under their direction) while investigating an offence under federal law, enforcing a federal law, or investigating criminal activity.

The law enforcement justification provisions also establish a system of accountability under which the competent authority, the Minister of Public Safety and Solicitor General (the Minister), is required to make public an annual report on the use of specific portions of the law enforcement justification provisions by municipal police departments and agencies that operate in the Province of British Columbia.

In particular, the Minister must report:

- how many times a senior official made temporary designations under the law enforcement provisions (Section 25.1(6) of the *Criminal Code*)*;*
- how many times a senior official authorized a public officer to commit an act or omission that would otherwise constitute an offence, and that is likely to result in loss or serious damage to property, or directed an agent to commit and act or omission that would otherwise constitute an offence. (Section 25.1(9)(a) of the *Criminal Code*)*;*
- how many times a public officer proceeded without an authorization from a senior official, due to exigent circumstances (Section 25.1(9)(b) of the *Criminal Code*)*;*
- the nature of the conduct being investigated in the above mentioned instances (Section 25.2(d) of the *Criminal Code*) and;
- the types of justified acts or omissions which would otherwise constitute offences, that were committed in these instances (Section 25.3(1)(e) of the *Criminal Cod*e)

2. Overview of the Law Enforcement Justification Regime

In April 1999, the Supreme Court of Canada's judgement in *R. v. Campbell and Shirose* declared that under the common law, police were not immune from criminal liability for criminal acts they committed during an investigation. The Court also stated that, "*if some form of public interest immunity is to be extended to the police… it should be left to*

Parliament to delineate the nature and scope of the immunity and the circumstances in which it is available."

On December 18, 2001, Bill C-24, *An Act to Amend the Criminal Code (Organized Crime and Law Enforcement)*, received Royal Assent. While most portions of Bill C-24 came into force on January 7, 2002, the law enforcement justification provisions, set out in sections 25.1 – 25.4 of the *Criminal Code,* were proclaimed on February 1, 2002, to allow time for the training and preparation of law enforcement personnel.

The law enforcement justification initiative provides a circumscribed justification for otherwise illegal acts and omissions committed by law enforcement officers (and others acting under their direction) in the course of investigating an offence under federal law, enforcing a federal law, or investigating criminal activity. The initiative also establishes a system of accountability.

The law enforcement justification provisions provide a designated public officer with a defence in law to the extent that his or her conduct is reasonable and proportional under the circumstances. Certain types of conduct, such as intentional causing of bodily harm, violation of the sexual integrity of a person and wilful attempt to obstruct, pervert or defeat the course of justice, are excluded from the justification provisions.

An essential element of the law enforcement justification provisions is that they apply to designated public officers only. In the case of police services in British Columbia (not including the Royal Canadian Mounted Police), the Minister is the competent authority for making designations.

The Minister is responsible for designating a senior official who, in turn, advises the Minister on public designations. Under ordinary circumstances, only the Minister may issue public officer designations to a member of British Columbia police services; however, in exigent circumstances the senior official may make temporary public officer designations. Emergency designations are valid for up to 48 hours and are made only if the senior official believes that due to exigent circumstances, it is not feasible for the Minister to designate a public officer and under the circumstances, the public officer would be justified in committing an act or omission that would otherwise constitute an offence.

A public officer must receive a written authorization from the senior official for acts or omissions that would otherwise constitute an offence and that would likely result in loss of, or serious damage to, property, or for directing another person to commit an act or omission that would otherwise constitute an offence.

A public officer may proceed without a written authorization from a senior official for acts or omissions that would otherwise constitute an offence and that would likely result in serious damage to property, or for directing another person to commit an act or omission that would otherwise constitute an offence, only under limited circumstances. The public officer must believe, on reasonable grounds, that the grounds for obtaining an authorization exist, but it is not feasible under the circumstances to obtain the authorization, and that the act or omission is necessary to:

- preserve the life or safety of a person;

- avoid compromising the identity of a public officer acting in an undercover capacity, a confidential informant, or a person under the direction and control of a public officer; or

- prevent the imminent loss or destruction of evidence of an indictable offence.

3. Statistics

A. *Emergency Designations*

Sections 25.3(1) (a), (d) and (e) of the *Criminal Code* require the following information to be made public:

- The number of emergency public officer designations made by the senior official.
- The nature of the conduct being investigated in these cases.
- The nature of the justified acts or omissions which would otherwise constitute an offence, that were committed by the designated public officer.

For the period January 1, 2024 to December 31, 2024, the police services in British Columbia reported that no emergency designations of a public officer were requested or authorized.

B. *Authorizations for Specific Acts and Omissions*

Sections 25.3(1) (b), (d) and (e) of the *Criminal Code* require the following information to be made public:

- The number of cases in which the senior official:
    - Authorized a public officer to commit an act or omission that would otherwise constitute an offence and that would result in loss of or serious damage to property, or
    - Authorized a public officer to direct another person to commit a justified act or omission that would otherwise constitute an offence.

- The nature of the conduct being investigated in these cases.

- The nature of the justified acts or omissions, which would otherwise constitute offences that were committed.

- ***For the period January 1, 2024 to December 31, 2024 police services in British Columbia made no authorizations for a public officer to commit a justified act or omission that would result in damage to property.***

- ***For the period January 1, 2024 to December 31, 2024 police services in British Columbia made no authorization where a public officer directed another person to commit an act that would otherwise constitute an offence.***

C. *Instances of Public Officers Proceeding Without Senior Official Authorization.*

Sections 25.3(1) (c), (d) and (e) of the *Criminal Code* require the following information to be made public.

- The number of times that public officers proceeded without the senior official's authorization, based on reasonable grounds to believe that the grounds for obtaining an authorization existed and that the justified act or omission that would otherwise constitute an offence was necessary due to exigent circumstances.

- The nature of the conduct being investigated when public officers proceeded in this manner.

- The nature of the justified acts or omissions, which would otherwise constitute offences that were committed when the public officers proceeded in this manner.

For the period January 1, 2024 to December 31, 2024, police services in British Columbia reported that no public officer proceeded without a Senior Official's authorization.

4. CONCLUSIONS

The Minister reports that for the period January 1, 2024 to December 31, 2024:

- No emergency public officer designations were requested or made by a British Columbia Police Service[1].

- Senior officials made no authorizations for a public officer to commit a justified act or omission that would otherwise constitute an offence that would likely result in loss of or serious damage to property.

- Senior officials made no authorization for police officers to direct another person to commit an act that would otherwise constitute an offence.

- No public officer proceeded without the authorization of a senior official.

[1] All administration matters with respect to The Royal Canadian Mounted Police (RCMP) remain with Canada. The Competent Authority for the RCMP is the federal minister of Public Safety Canada; therefore this report does not include Law Enforcement Justification (LEJ) reporting for the RCMP in British Columbia. The Federal Government is responsible for posting LEJ information in regard to the RCMP.