

## Charges Against Police

### No One is Above the Law

There are times when a police officer's duties will require the use of force against another person. Sometimes, this force is lethal. "When a member of the community is killed or seriously injured by a police officer, it is not only appropriate to ask whether the police were acting lawfully, it is essential."<sup>1</sup>

### Use of Force by Police

A number of provisions in the *Criminal Code* address the powers of police to use force in carrying out their duties.<sup>2</sup>

Under section 25(1), a police officer is justified in using force to effect a lawful arrest, as long as the officer acts on reasonable and probable grounds, and uses only as much force as reasonably necessary in the circumstances.

Under section 25(3), a police officer is justified in using potentially lethal force if the officer believes on reasonable grounds that this force is necessary for his or her self-preservation or the preservation of any one under his or her protection from death or grievous bodily harm.

Section 26 of the *Criminal Code* says that an officer is criminally responsible where the force is excessive. In other words, if a police officer uses force that does not comply with the statutory requirements, the officer can be charged and prosecuted for an offence.

The use of force must be proportionate, necessary, and reasonable. However, it is generally understood that police may be required to act quickly in volatile situations. In light of this reality, they are not held to a standard of perfection and they are not required to precisely measure the amount of force that they use. Nor are they legally required to use only the least amount of force that might achieve their objective. The justification for force under section 25(1) of the *Criminal Code*, as interpreted by the courts, allows police considerable latitude in making split-second decisions about how best to respond.

## Charge Assessment

Crown Counsel are responsible for deciding whether a criminal charge should be approved against a police officer. They apply the same Charge Assessment Guidelines ([CHA 1](#)) to allegations against police officers as they do to allegations made against civilians. These guidelines are established in Branch policy and are publicly available. They assist Crown Counsel in reviewing a Report to Crown Counsel (RCC) for the purpose of charge assessment. The guidelines apply irrespective of whether the RCC setting out the circumstances surrounding an alleged offence comes to the Branch from the Independent Investigation Office, the Royal Canadian Mounted Police, or a municipal police department.

Under Branch policy,<sup>3</sup> charge assessment on allegations against a police officer is completed by a Crown Counsel with no prior or current connection with the officer who is the subject of the investigation. In most circumstances, the Crown Counsel assigned to do the charge assessment and take conduct of any prosecution will work in a different region of the province than the suspect police officer. When determining whether a charge will be approved, Crown Counsel must at all times remain aware of the fact that if a prosecution is initiated and goes to trial, the Crown will bear the onus to prove each material element of the alleged offence beyond a reasonable doubt. When the allegation is one of excessive force, this includes proving that the statutory criteria for a justified use of force under the *Criminal Code* have not been met.

## Clear Statements

In all cases where the IIO has investigated and forwarded an RCC, the Criminal Justice Branch (CJB) will release a media statement after the charge assessment to announce whether charges have been approved. Where charges are not approved, CJB also provides the public with a “Clear Statement” which explains the reasons why charges are not approved.

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<sup>1</sup> *Wood v Schaeffer*, 2013 SCC 71 at para 3.

<sup>2</sup> In certain circumstances, police are justified under the *Criminal Code* to engage in behaviour that for others would amount to a criminal offence (see section 25.1). However, this is rare and subject to carefully crafted rules that have been put in place by Parliament.

<sup>3</sup> Police – Allegations Against Peace Officers (POL 1) policy is available here: [www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/prosecution-service/crown-counsel-policy-manual/pol-1-police-allegations-against.pdf](http://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/prosecution-service/crown-counsel-policy-manual/pol-1-police-allegations-against.pdf)