

**No More Mr. Nice - guy**

# No More Mr. Nice-guy

---

Copyright © 2018 by Barry Holland

All rights reserved. This book or any portion thereof may not be reproduced or used in any manner whatsoever without the express written permission of the publisher except for the use of brief quotations in a book review.

Printed in Canada

First Printing, 2018

Second Printing, 2018

ISBN-13: 978-1775317104

# **No More Mr. Nice-guy**

**A Guide to Defending Yourself, Home and  
Property In Canada**

**By  
Barry Holland**

**Barry Holland  
Strathcona County, Alberta  
nomoremrniceguy@weprotectforyou.com**

## About the Author

There were two key events in his early life. As a boy, he lost a fist-fight, and his Dad gave him some sage advice about fighting. When he was 17 years old, he was hospitalized by a baseball bat-wielding assailant in what was likely a case of mistaken identity, or road rage, and his father's advice saved his life. After that event, he decided never again to be unprepared for a confrontation.

Barry Holland has lived a life full of occupations, training and experiences that have provided him a wealth of knowledge about security, martial arts, soldiering, policing, counter-terrorism, special operations, and international security contracting and crisis management. Repo-man, Boxer/Kickboxer, Infantry Assault Pioneer, Military Police, VIP Protection, RCMP SERT Course, Joint Task Force 2, Police Arrest and Restraint Instructor, Muay Thai practitioner, Self-defence Trainer, Locksmith, Private Investigator (surveillance specialist), International Security Contractor and Commercial Pilot; just the short list of his experiences and qualifications from which he has stripped the best information. Combined with extensive research into legal precedents and collaboration with criminal-defence lawyers, the reader gets the raw and the refined on the legal, practical and tactical of how to defend himself, family and property without breaking the law.

Barry has long advocated for members of the public, as good citizens, to stand up against criminals and look out for each other. In the course of every-day private life, he has made more than a dozen arrests, from impaired driving to robbery offences, and many more interventions against criminals. He has always found it disturbing when good citizens get into trouble after they stood-up against criminals, but allegedly crossed some obscure legal line, and are charged and prosecuted. Now semi-retired, he has written No More Mr. Nice-guy. This guidebook provides the Nice-guys of Canada the clear and correct guidance they need to courageously stand-up to criminals effectively, and within the law.

## Testimonial

Holland's book is "A very informative, useful, thought-provoking book. It's a must-read for anyone claiming to be informed on this important, topical Canadian issue."

"Barry Holland educates in a very important area of the law: the difference between asserting "citizen's arrest" instead of claiming "self-defence" in respect of any incident wherein use of force and/or a weapon by a good guy comes into question by virtue of how Canadian criminal law is written. Knowledge is power."

Richard A. Fritze  
Barrister, Solicitor & Notary (ret'd)

---

## Contents

<b>Introduction</b> .....	8
<b>Definitions</b> .....	13
<b>Fundamental Human Rights - Protection FROM Government</b> .....	14
<b>The Criminal Code of Canada (CCC)</b> .....	16
<b>When Protected</b> .....	18
<b>Criminal Offence Categories</b> .....	21
<b>Arming Yourself</b> .....	28
<b>Legal Section Summary</b> .....	32
<b>Practical Home and Family Preparation</b> .....	34
<b>Personal Assessment</b> .....	34
<b>Preparation</b> .....	35
<b>Home Security</b> .....	41
<b>Guests and Visitors</b> .....	41
<b>Safe-room</b> .....	41
<b>Residence</b> .....	42
<b>Trespassing</b> .....	45
<b>Trespassing at Night – CCC</b> .....	46
<b>Protection of Property - Criminal Code of Canada – Section 35</b> .....	48
<b>Defending Family and Others</b> .....	49
<b>Refer back to CCC s. 34 Defence of Others</b> .....	49
<b>Practical Preparations</b> .....	53
<b>Medical</b> .....	53
<b>On the Road</b> .....	55
<b>Road Rage</b> .....	56
<b>You, a Good Witness</b> .....	59
<b>Criminal Profile</b> .....	65
<b>Normalcy or Optimism Bias</b> .....	66
<b>Arrest and Detention Procedures</b> .....	67
<b>Arrest by Private Person</b> .....	67
<b>Restraints</b> .....	69
<b>Firearms and Other Weapons</b> .....	71
<b>Various Weapons</b> .....	72
<b>Fight to win, or don't fight</b> .....	83
<b>Tactical Matters</b> .....	85

---

<b>Rules of Sound Tactics</b> .....	85
<b>Basics of Tactical Search</b> .....	87
<b>Situational Awareness</b> .....	96
<b>Confrontation</b> .....	106
<b>Preparing for Confrontation</b> .....	106
<b>Preparation in General</b> .....	107
<b>Basic Rules of Confrontation</b> .....	108
<b>Criminal Trespass or Intrusion Response</b> .....	109
<b>Confrontation in the Home</b> .....	110
<b>Confrontation Outside the Home</b> .....	115
<b>Shooting a fleeing Criminal</b> .....	119
<b>Arriving at a Crime in Progress or Recently Committed</b> .....	120
<b>Equipment and Weapons</b> .....	122
<b>Your Gear</b> .....	122
<b>Safer-Room</b> .....	128
<b>Password and Duress-word</b> .....	129
<b>Search of a Home</b> .....	130
<b>Outbuilding Approach and Search</b> .....	136
<b>Two Person Tactics</b> .....	139
<b>Cover and Concealment</b> .....	142
<b>Restraints</b> .....	143
<b>Communications</b> .....	148
<b>Tactical Communication</b> .....	149
<b>Speaking to the 911 Operator</b> .....	153
<b>Signaling Police</b> .....	154
<b>Your Dog</b> .....	155
<b>Dealing with Police</b> .....	156
<b>I feared for my Life</b> .....	156
<b>Jail-house Informants</b> .....	157
<b>Your Lawyer</b> .....	159
<b>Summary</b> .....	160
<b>Things You Should Never Do</b> .....	161
<b>Legal Precedents and Criminal Code Offences</b> .....	162
<b>Summary of Charges and Applicable Precedent</b> .....	162
<b>Legal Issues Summary Corresponding Case-law</b> .....	170

---



“For every idealistic peacemaker willing to renounce his self-defence in favour of a weapons-free world, there is at least one warmaker anxious to exploit the other's good intentions.”

— Margaret Thatcher - **Prime Minister of the United Kingdom** from 1979 to 1990

---

## Introduction

### Good People Don't Have To Be Victims

People from all walks of life can be the target of a criminal assault and property crime; from the most street savvy urbanite to the isolated, self-reliant gentleman farmer, the high profile pop-star to; the Prime Minister while at repose in his bedroom. Sometimes they defend themselves effectively, thwart the criminal only to be further victimized by the legal system. A person who is in a high-stress situation and unfamiliar with criminal laws and tactics can easily make a simple mistake. A legal mistake that can result in the victim being prosecuted for their actions against a criminal. Sometimes a tactical mistake results in the victim being unable to handle the situation and getting injured. The best way for regular folks to create a favorable outcome is to prepare for the times in their life when they take action against a criminal. Prepare with knowledge, resources, and skills.

This guidebook explains:

- The laws related to defending yourself, family and property.
- How to prepare to protect your home and all that you hold dear.
- Basic techniques and tactics to help you develop skills and therefore the advantage in a threat situation.
- How to deal with the authorities after you prevail against the criminal.

The legal information presented in this guidebook is based on case-law in Canada and tested to support other decisions. They are strong precedents that show how the law has been interpreted. Since Parliament makes the law, the courts interpret it, and police enforce it, there is sometimes disconnect between what Parliament may have wanted to address with the legislation and what the public gets from the enforcement and judicial bodies.



**ATTENTION CRIMINAL, STOP READING THIS BOOK!**

To some people, it may appear that Criminals may use the information in this guidebook to their advantage. It's doubtful that Criminals would take the time to read the book. If they do read this book, it should strike fear into their heart. They will realize that Private Persons have a lot of power and with the information and instructions in this guide will result in the Criminal; getting caught, going to jail, getting their ass kicked or spending the rest of their worthless life on a feeding tube, or dead!

If those outcomes don't appeal to the Criminal, they must stop committing crime, turn themselves in, admit to their crimes, accept their punishment and turn their life around.

## Preface

Some believe that violence, even in self-defence, is morally wrong. Many expect the state to be responsible to prevent crime, apprehend and prosecute offenders. I agree that the state's legal system and police play the primary role in the apprehension, prosecution, and incarceration of criminals, by and large, they are ineffective in the prevention of crime or coming to the aid of a victim while the crime is being committed. Still, others sympathize with the Criminal; that they are products of their past and just need a chance to get their life in order. The time for helping them get their life back on track is not while committing some cruel act of violence or crime. When they are attacking decent people, they are nothing more than Criminals.

This guidebook is for people who believe that their life is precious and worth defending, their property is theirs, and are willing to prevent criminals from taking it. For those brave people, this guidebook is a wealth of information and will give them the legal and practical knowledge, tactical know-how, and mental preparedness, so they can effectively stand up to criminals and prevail.

To those who believe a Private Person should relinquish their property to the criminal rather than commit a violent or aggressive act to stop the theft. Or those who say it's better, to succumb to the fear and lose your property rather than to risk being hurt. I say the only person who can decide that is the intended victim. The better informed and prepared the Private Person is, the better decisions they will make, and regardless of the outcome, the better they will feel about the outcome.

Canadian Laws, concerning the use of force and powers of Arrest by a Private Person, sometimes referred to as citizen's arrest, were changed in 2013 to give clearer wording and also give some extra latitude to Private Persons acting in good faith while upholding the law. March 2013, Bill C-26, referred to as the "Lucky Moose Bill" passed, amending the laws regarding Arrest by Private Person. It gave more latitude to the criteria justifying an arrest. The change in the law was required because police and prosecutors had developed a practice, when dealing with Arrests by Private Persons acting to uphold the law, of using any transgression on the part of the Private Person, and the letter of the law, to lay charges and even prosecute the intended victim and excuse the behavior of criminals.

Many case files have been pursued by prosecutors with little justification, or chance of conviction nor was it in the public interest, for the victim to be charged, yet charges were laid. In due course, they were dropped or stayed, yet, because charges were laid the public is left with the impression that the intended victim's actions were illegal. Coincidentally, and not unintentionally, the victim who was traumatized by the crime committed against him; had to endure the humiliation of arrest and interrogation, a smeared reputation, fingerprinted, information entered into police data banks that suggest he is a criminal, had to pay lawyers and lose income or employment. The media is complicit as they will almost certainly report on the event based only on the police press releases and resulting charges, but rarely report when the charges are dropped. This leads the public to the perception that defending yourself and family is not allowed. This book will dispel many myths, give sound advice on how to avoid crossing the legal line, how to avoid providing information to police and prosecutors that will be used to lay charges or convict good citizens who exercise their right to stand up to Criminals.

While examining the broad topic of defending yourself, family and property you reflect to yourself, that it would just be better to let the criminal take what they want. This attitude is often promoted by police in cases where a Private Person has stood up to a criminal with a positive outcome for the intended victim. On the rare occasions when the Private Person is injured when confronting or resisting a Criminal, the media never asks the Private Person if they regret standing up to the Criminal. I suspect it's because people who will stand up to criminals, despite the risks, are principled and believe they were morally right. Despite the police saying it is unwise to do so, whether they are truly concerned for the welfare of the Private Person or crassly reinforcing the public perception, Private Persons not only have

the right to stand up against criminality, there is a duty to do so within a civilized society.

The dollar value versus the personal value of the property is subjective. A person with only a few dollars to their name may be very motivated to prevent the theft of a small amount of cash, the loss of which will impact his life. The theft of an electric generator worth a few hundred dollars under normal circumstances might not seem worth the risk of standing up to the Criminals if however; Criminals attempted to steal a generator during a lengthy power outage in a winter ice storm, the owner might feel very different about its value.

Expecting police to stop crime in progress is foolish. Police are rarely at the scene when the crime is occurring or even close enough to catch the perpetrator while still at the scene. Even when police are aware that a violent criminal is at large and a threat to the public or specific person they may not act to protect anyone. Numerous instances have been brought before the courts and official inquiries where police have failed to respond or were so delayed in their response that tragedy resulted. The courts consistently support previous decisions that police DO NOT HAVE THE DUTY TO PROTECT A PERSON. In several test cases, the actions or inaction of police were found to be negligent; it was not shown that the negligence was a direct cause of the crime that subsequently occurred and therefore police are not held responsible either criminally or civilly.

A woman in B.C was refused assistance from the RCMP when she was being stalked by her estranged husband who attempted to kill her. In the process, he shot her 12-year-old daughter and killed her friend. B.M. v. British Columbia

The decision to dismiss her civil suit was succinctly put by B.C. Justice Ross Colver: "Police are guardians of society, not guarantors of individual safety." It is worth reading the entire decision by the B.C. Court of Appeal. Noting that the decision stated that police are NOT 'Duty Bound' to protect Private Persons from criminal violence. The following paragraphs from the decision are poignant;

[46] The facts in the instant case are quite different from Hill, supra. B.M. sought police assistance and had direct engagement with an officer when she presented her complaint. She had a pressing need for protection as a potential victim of R.K.'s violence, and the police should have recognized that. She cannot be said to fall into a large indeterminate class; to the contrary, she was a person, in Lord Keith's words at 243 of Hill, supra, with a "special distinctive risk." [193] In their factum, the appellants noted Superintendent Hall's description of police policy in Prince George with respect to relationship violence - "We charge, and we charge, and we charge" - as evidence that a proper investigation would have resulted in criminal charges and, possibly, incarceration for a period of time.

[194] That Constable Andrichuk's investigation fell short of the relevant investigatory standard does not, however, provide an evidentiary basis for concluding that a properly conducted investigation would have prevented the events of 29 April 1996. As Mr. Justice Hall notes at para. 142 of his reasons, Mr. R.K.'s previous exposure to the criminal process had not deterred him. Short of deportation or substantial time in custody, which were remote outcomes, it is difficult to imagine a sanction with realistic potential to forestall further violence by Mr. R.K.

[195] On the question of causal connection, the appellants relied largely on the Attorney General's policies. These conclusory statements were offered as probative of the general propositions underlying them. However, the mere assertion of a proposition as the basis of a policy is not the same as proof of that proposition.

Another precedent-setting case was appealed to the Supreme Court of Ontario. (Jane Doe v. Board of Commissioners of Police for the Municipality of Metropolitan Toronto). In this case, a serial rapist had been attacking women in an apartment building. Police opted not to release information so as

to increase the chances of apprehending the Criminal. Failing to warn the women in the building. The rapist struck again, and the victim unsuccessfully sued the police and the police commission.

The most important point to be made in these cases is that the police are not required to protect Private Persons, rather, to protect society in general. Victims are violated in every manner, killed, lose their property, and traumatized because police are not present to stop the Criminal, even in cases when the threat is imminent. Important also are the words of Mr. Justice Hall,

“Mr. R.K.'s previous exposure to the criminal process had not deterred him. Short of deportation or substantial time in custody, which were remote outcomes, it is difficult to imagine a sanction with realistic potential to forestall further violence by Mr. R.K.” So the police did nothing.

The justice system could not stop Mr. R.K., and the victims felt they had to wait for the outcome to PROVE the need for measures and means to defend themselves. It is almost too bizarre to believe, yet in Canada, that is the way it is. Did the police ever suggest that the Complainant take reasonable steps to defend herself and explain the legal authorities and practicalities of doing so, of course not?

Those unaffected directly by crime often discount the concerns raised by those who have experienced it. Political leaders with around the clock police protection have forgotten or choose to ignore how the rest of the citizenry lives and sometimes dies.

The Right to Life is inalienable, and derived from it, under Common-Law, is the Right to Self-defence. The Right to Protect Life, yours and those under your protection, is fundamental, as is the means to do it.

Neither the government, politicians, nor judiciary formally repealed the right to Self-Defence. They simply make it seem unlawful, and difficult to access the most effective means of self-defence, and punish those who do manage to obtain the means, if the means is a firearm, pepper-spray or Taser. Even if the police were obligated to protect us (which they aren't), or, if they tried to protect us (which they often don't), most often there wouldn't be time enough for them to do it. It's about time that we came to grips with the way things are and resolve to never abdicate responsibility for our personal safety, and that of our loved-ones.

## Definitions

Definitions are not as per a dictionary; rather, they are layman's terms as used throughout this guidebook.

**Back-up (Responder)** - A Private Person enlisted by a Responder who as such has the same authority as the Responder.

**CCC** - Criminal Code of Canada. The federal law that applies to all provinces and territories.

**Criminal** - Someone who is about to commit, or has committed a criminal act, e.g., assault, theft, arson; with intent (mens rneas).

**Crown (Prosecutor)** - Publicly funded lawyers who prosecute criminal cases brought to them by police. They are officers of the court.

**Intermediate weapon** - Based on the force continuum, a weapon not designed or intended to cause death or grievous bodily harm, e.g., pepper-spray, baton, Taser. If however, a baton and other impact weapon is used to deliver strikes to the head, then that is considered lethal force.

**Less Than Lethal (LTL)** - Special ammunition that is designed not to cause an injury so severe as to be fatal. Sometimes call "bean-bag" or baton rounds.

**Neutralize (a threat)** - Affect the Criminal in such a way that they are no longer pursuing criminal aims. Causing a Criminal to cease criminality in such a way that further violence is unlikely.

**Private Person** - Can be any person not involved in criminal activity, i.e., a member of the general public. Not including members of law-enforcement or judicial branch while on duty. More specifically, a person acting under the authorities of the CCC, Trespass Acts, and Case-law, where the words Private Person, Every one, Persons acting, Persons assisting, Person lawfully in possession of, are used in the wording.

**Rager (road)** - An angry motorist who threateningly targets another motorist whether the hostile driver remains in their vehicle or, exits the vehicle and assaults the other driver. A Rager may try to cause a collision, impede or block an escape, follow, harass or pursue the targeted motorist.

**Responder** - A Private Person who intends to deal with a situation that could lead to a confrontation with a Criminal.

**Safer-room** - A predetermined room designed or modified to resist forcible entry by criminals.

**Shotgun** - A class of firearm that is non-restricted, capable of firing ammunition containing multiple projectiles.

**Support Person** - Someone who is not the directly involved with, the intended victim of a criminal act but will support the Private Person in their effort to apprehend or defend against the criminal.

**Weapon** - Any object that, regardless of the purpose for which it was designed, is capable of causing or used to cause bodily harm.

## Fundamental Human Rights - Protection FROM Government

### Canadian Charter of Rights and Freedoms

The CCRF enshrines political rights of citizens and civil rights of everyone in Canada. These rights protect the people from all levels of government laws, policies and actions. The CCRF was signed into law on, 17 April 1982.

The CCRF greatly expanded the scope of judicial review, allowing the courts to make a determination on the constitutionality of a specific law or portion of the law, whether Federal or provincial, and, when found to contravene the CCRF, strike the law down; as happened with the abortion laws in the Morgentaler SCC decision. The CCRF applies to government laws (including federal, provincial, and municipal governments and public school boards), not to private activity.

Since the focus of this book is the defence of your person, other persons, and property from criminals it is essential to know why you can carry out specific actions and not others. The things that you are allowed to do are either because you are protecting a right or because of a statute that gives you the authority such as the Criminal Code of Canada.

There are sections of the CCRF that cover areas that don't concern the topics and laws addressed in this book so we will only look at the articles that do have an impact and they are:

### **Legal Rights**

Rights of people in dealing with the justice system and law enforcement are protected, namely:

Section 7 - right to life, liberty, and security of the person.

Section 8 - freedom from unreasonable search and seizure.

Section 9 - freedom from arbitrary detention or imprisonment.

Section 10 - right to legal counsel and the guarantee of habeas corpus.

Section 11 - rights in criminal and penal matters such as the right to be presumed innocent until proven guilty.

Section 12 - right not to be subject to cruel and unusual punishment.

Section 13 - rights against self-incrimination.

Section 14 - rights to an interpreter in a court proceeding.

Parliament and other levels of government often pass laws that are unconstitutional. The courts often make the determination that the specific law or parts of it violate the Constitution. It seems the lawyers that draft these laws must be aware of the likely unconstitutionality of the laws. Their political masters are more driven by political pragmatism. They know if ever challenged to the Supreme Court, the law would be found to be unconstitutional. The real barrier to the protection offered in the Constitution and CCRF is that the government always has the prerogative to appeal up to, and including, the Supreme Court of Canada any court decision against the law based on unconstitutionality, and they do it with tax dollars. The appeal process is expensive, so an individual is unlikely to exercise their right to appeal. The courts of appeal have to agree that an appeal is justified.

There are several laws related to the Firearms Act that some jurists and legal scholars believe violate sections of the CCRF, the Firearms Act in its entirety may be unconstitutional as it has classed regulatory and administrative law within the scope of Criminal Law. None the less, until there is an individual motivated and well-funded enough to take parts of an unconstitutional law through the judicial review process, it remains the law and so enforced.

### **Right to Life**

Defending yourself, family and others, as well as your property, stems from rights that all humans possess. Every person born into this world has Natural Rights, which at various times and places in history have been further defined into Human Rights and Civil Rights consistent and primary among them is the right to life and not to be deprived of it without just cause. This is the most fundamental of rights, and all the other rights pale by comparison, since if there is no right to life, and by extension, the right to defend life, then the others are irrelevant.

This primary right to life can, therefore, be extended to the right to the security of person, the right to resist all forms of unprovoked or unlawful assault. Despite the apparent complexities involved the tenet of the security of person is well established in Canadian Law. There is also the laws supporting a person aiding or defending of another person who is being assaulted.

### **Right to Property**

The right to prosper, or Property Rights, are also deeply rooted in the legal lineage that is the basis for Canadian Criminal Law. Great tomes exist to clarify the complexities that have arisen from living in societies where the very definition of property and ownership get blurred.

The right to own property is fundamental to a society of law and order. The Charter of Rights and Freedoms does NOT include a right to own property and not be deprived of it; by government. Efforts to amend it has failed. Alberta has some protection within the provincial Bill of Rights. Protections against government seizure of property is not at issue in this guide. CCC clearly states that a Private Person or agent has the authority to use whatever force necessary to prevent the theft or damage to property and recover that property.



## The Criminal Code of Canada (CCC)

The CCC contains a list of behaviors and acts that persons within the borders of Canada can't do, are regulated, or in a few cases, are compelled to do. Primarily though, criminal law is a list of prohibited activities. It also lists; definitions of certain words, and activities and sets out punishment for certain offences. For some prohibited activities, a licence may be issued permitting the Holder to do what is otherwise illegal.

Reading and understanding the CCC requires the reader to appreciate that the words used in the CCC have specific meanings as do the order of sections, paragraphs, etc. as does punctuation. The meaning of words and terms are meant to be consistent throughout, this isn't always the case, so when the meaning of a word changes specific to the given section, there may be a clarification as part of that section. When attempting to understand criminal law, it's a good practice to keep a dictionary handy to check on the meaning of certain words.

The CCC was not written all at once, so there are many inconsistencies, related sections are scattered throughout, and language can seem to be contradictory.

Where the meaning of a word is not defined in the CCC, a law dictionary may be helpful. Often, when the courts are deciding on a case and the definition of a word, is important to the case the judge will look at several definition sources including the common use or definition of the word and use whichever one is most favorable to the defendant.

It is also important to know that the Canadian Criminal system is based on British Common Law (except Quebec). As such, where precedent exists from an equal or higher court within a given province, the judge is compelled to accept the precedent within his ruling. Rarely are the details and circumstances of cases so similar to its precedents that there isn't any latitude for the judge to make a ruling tailored to the case at hand. It is also important to know that if a precedent relevant to the case is not raised by the Crown or Defence, it may be raised and considered by the judge. All parties may have failed to find and consider a relevant precedent that would have altered the decision. For some offences a conviction requires the Judge to apply a minimum sentence. Further along in this guidebook, you will find references to specific sections of the CCC as well as precedents that have a bearing on the law as written and relevant to the various subjects and issues addressed in this book.

Criminal law can be quite intimidating to the uninitiated. Several sections that form the basis for the positions and recommendations presented in this guidebook will be referenced and clarified. Even Supreme Court Judges sometimes disagree on the interpretation certain aspects of the law so don't expect that the interpretations or reference cases in this book will automatically compel a prosecutor. Judges are sometimes found on appeal to have erred in some interpretation of the law and the decision overturned. In a later section, we will discuss legal guidance and counsel. The information provided here will attempt to avoid areas of ambiguity. The focus will be on what the law plainly allows according to decisions by the courts. It is the grey areas where the pitfalls are that can result in a naive Nice-guy getting charged or convicted.

The Criminal Code also changes as bills get passed through parliament or get struck down by the Supreme Court.

The Criminal Code and other federal laws take prominence over provincial and municipal laws. An act that is not proscribed by the criminal code may be illegal under provincial legislation. Each province can pass its own laws providing they are in accordance with the Canadian Constitution and don't conflict with existing federal law. Federal Law deals with Peace, Order, and Good Governance while



Provincial laws address matters of civil and, property rights, hospitals, education, and municipalities. This can be a bit confusing but generally, all laws relevant to Self-defense, Powers of Arrest and Use of Force are Federal, and within the Criminal Code. There may be some instances where a provincial law conflicts with a federal statute.

Within criminal law, requirements for an act to be deemed a crime are determined by the elements of the offence. If all the elements are not present and PROVABLE a conviction can't be rendered.

Prosecutors tend to advance cases only when there is a reasonable probability of conviction or it's deemed in the public interest.

“All that is necessary for evil to succeed is that good men do nothing.”

— Edmund Burke

“long habit of not thinking a thing WRONG, gives it a superficial appearance of being RIGHT,”

— Thomas Paine, Common Sense

## Arrest Without Warrant - (Arrest by Private Person)

As we proceed through this guidebook, I will use two terms as consistently as possible as there are many different common references to the two categories of people.

**Criminal** – A person who has made the decision to commit a criminal act, i.e., violate/harm a person or property of another person.

**Private Person** – Someone who is not part of law enforcement, judiciary or acting in an official capacity with special powers, such as a Peace Officer (Armoured Car Guard, Sheriff etc.) and not a Criminal.

In Canada the term ‘Citizens Arrest’ is not a term found in the CCC, rather, can be used to refer to the actions taken under CCC section 494. “Arrest without warrant by any one.” For simplicity, we will use the term Arrest by Private Person to encompass the authorities of CCC 494. (1)

**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.

For anyone inclined to defend themselves, another person or their property it is imperative to understand the authority provided by Section 494. And the protection provided under section 25(1)

## When Protected

**Section 25.(1)** ("Protection of Persons Administering and Enforcing the Law")

Everyone who is required or authorized by law to do anything in the administration or enforcement of the law

- (a) as a Private Person,
- (b) as a peace officer or public officer,
- (c) in aid of a peace officer or public officer, or
- (d) by virtue of his office, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

## When Not Protected

(3) Subject to subsections (4) (to do with assisting a Peace Officer) and (5), (to do with escape from a penitentiary) a person is not justified for the purposes of subsection (1) in using force that is intended or is likely to cause death or grievous bodily harm unless the person believes on reasonable grounds that it is necessary for the self-preservation of the person or the preservation of any one under that person's protection from death or grievous bodily harm.

**CCC Section 26, Every one who is authorized by law to use force is criminally responsible for any excess thereof according to the nature and quality of the act that constitutes the excess.**

What this means is that the use of force that is likely to cause death, or grievous bodily harm IS permitted. Subjective to the perceived threat, reasonable and proportional to the threat. In any case where a Criminal refuses to comply with the demands of a Private Person intending to arrest them and makes a threat toward the Private Person there is no way of knowing the mind of a Criminal, so it must be presumed that the Criminal intends to carry out their threat. In the absence of an appreciable threat, excessive and lethal force is NOT permitted.

As we see in **R. v. Knight, the Alberta Court of Appeal** decided that a Private Person shooting and wounding a fleeing thief is sometimes justified. It is reasonable to take the position that if the Criminal has abandoned their criminal endeavor and is fleeing pursuit, using physical means to apprehend, control and restrain the Criminal is well within the authority of the Private Person. The presentation of overwhelming force is appropriate if the Criminal violently resists. If the level of violent resistance is such that the Private Person fears for their life then the use of lethal force is justified. Shooting someone that is fleeing because the Private Person is seeking vengeance or is tired of chasing is NOT justified.

Examine the critical elements of CCC sections 494 and 25(1)

**Any one** – Without qualification or restriction, may arrest..., which IS an act and action of law enforcement. Other CCC sections, including sect 25, which gives protection to persons, i.e., **Every one** / Any one, administering the law.

The protection of CCC 25(1) provides protection first and foremost to '**Private Person**' while administering the law.

**Finds committing** – A caveat on Arrest by Private Person is that the person must witness the suspect in the act of committing an indictable offence. (This differs from police who can arrest on Reasonable and Probable grounds). Bill C-24 (Lucky Moose Bill) expanded this aspect of the law beyond the requirement to find the Criminal committing the crime at that moment. It provides some ability for the Private Person to affect an arrest of a Criminal whom the Private Person has a high degree of certainty has committed a criminal act.

**Reasonable Grounds** – Somewhat subjective, but if a Private Person in the situation, is fairly certain that the person seen fleeing and pursued by persons believed have the authority to arrest him the Private Person may intervene under the authority of CCC sect 494, and protection of 25(1) e.g. You hear sirens and moments later you see a man jump your front yard fence, toss a knife into a trash then try to scale your backyard fence. Based on the circumstances you could attempt to arrest him and would be protected under CCC 25(1) (a) and possibly (c).

**Criminal Offence** – This includes all offences under the criminal code, not just indictable, hybrid or summary offences.

**and, is escaping and freshly pursued** – the word 'and' denotes that both elements must be present. There is some wiggle room here for freshly pursued.

If you believe that a specific person is fleeing from someone who has the authority to arrest that person you may make the arrest.

### **Example 1**

You are on a bus, and an elderly lady exclaims that her purse has just been stolen. She attempts to stop the fleet-footed Criminal from exiting the bus. Though you didn't actually witness the theft, you're seated closer to the door, so you bound after the male who just exited carrying what appears to be a woman's purse. You catch and arrest the person you suspect is the Perpetrator. If it turns out you were wrong, you are still protected because under the circumstances you believed the person was the Perpetrator and had committed a criminal offence.

### **Example 2**

While walking your dog late at night you encounter a man restraining a young adult near the sidewalk. As you approach the man doing the restraining, he quickly informs you that he lives just down the street and his garage was broken into. He caught one Perpetrator, but the accomplice got away. He gives you a general description of the accomplice. You continue on your walk and further down the block your dog becomes interested in, and agitated near, a large cardboard box in the alley. You check out the box and observe a person hiding inside fitting the general description given by the Homeowner. You would have the authority to arrest this person and protection under CCC section 25(1).

Continuing to use the scenario above, you attempt to arrest the adult male hiding in the cardboard box. You have advised him that he is under arrest for 'break-and-enter.' As you are about to restrain the suspect's hands with the dog leash, he lashes out with his fists and takes an aggressive stance. You remove the canister of pepper-spray dog repellent from your pocket and spray the Suspect in the face. Section 25, states that you can use as much force as is necessary to make the arrest.

In other situations such as at home or on your property you may have the option of being in possession of a firearm. When Police attempt an arrest of a suspect who has brandished any weapon or indicated violent behavior, they have intermediate weapons such as baton, pepper-spray, and Taser that they can use before they escalate to their firearms; the lethal force option.

It is unlikely that the Private Person conducting an arrest will have intermediate force options. Present the highest level of force available at the time. Always remember that you are not obligated to make the arrest once you've confronted the suspect. Continually assess the situation and your ability to see it through to a successful and satisfactory conclusion. These situations can escalate rapidly so if you feel the situation is getting just too risky, and beyond your ability to manage you need to consider disengaging.

Police will often present overwhelming force, including pointing their guns at a suspect, when they have a reasonable apprehension that they may be dealing with a violent suspect. It is legally no different for the Private Person. The difference is that the Private Person doesn't have the array of weapon options.