

2024 Annual Report on the RCMP's Use of the Law Enforcement Justification Provisions

I. Introduction

Sections 25.1 to 25.4 of the *Criminal Code* provide justification for designated public officers, or persons acting under their direction, for acts or omissions that would otherwise constitute an offence. These acts are justified to be committed if the designated public officer is engaged in the investigation of an offence under, or the enforcement of, an Act of Parliament or in the investigation of criminal activity.¹ The act of omission, as compared to the nature of the offence, must be reasonable and proportional in the circumstances compared to the offence being investigated.

The law enforcement justification provisions also establish a system of accountability that includes a requirement under which the competent authority - the Minister of Public Safety and Emergency Preparedness (Minister), in the case of members of the Royal Canadian Mounted Police (RCMP) - must make public an annual report on the use of specific portions of the law enforcement justification provisions by members of the RCMP.²

In particular, the Minister must report:

- the number of times, due to exigent circumstances, a senior official made temporary designations under subsection 25.1(6);³
- the number of times a senior official authorized a public officer under paragraph 25.1(9)(a) to commit an act or omission that would otherwise constitute an offence, and that would be likely to result in loss of or serious damage to property, or to direct a person to commit an act or omission that would otherwise constitute an offence;⁴
- the number of times a public officer proceeded without an authorization from a senior official, due to exigent circumstances under paragraph 25.1(9)(b);⁵
- the nature of the conduct being investigated in these instances;⁶ and
- the nature of the acts or omissions, which would otherwise constitute offences, that were committed in these instances.⁷

¹ R.S.C. 1986, c. C-46 [Code].

² *Ibid.* section 25.3.

³ *Ibid.* paragraph 25.3(1)(a).

⁴ *Ibid.* paragraph 25.3(1)(b).

⁵ *Ibid.* paragraph 25.3(1)(c).

⁶ *Ibid.* paragraph 25.3(1)(d).

⁷ *Ibid.* paragraph 25.3(1)(e).

The first annual report on the RCMP's use of specific portions of the law enforcement justification provisions was prepared in 2002 and was tabled in Parliament on June 13, 2003. This report addresses the RCMP's use of specific portions of the law enforcement justification provisions from January 1, 2024 to December 31, 2024, and only includes information the disclosure of which would not compromise or hinder an ongoing investigation of an offence under an Act of Parliament.⁸

II. Overview of the Law Enforcement Justification Regime

In April 1999, the Supreme Court of Canada's judgment in *R. v. Campbell and Shirose* declared that under the common law, police are not immune from criminal liability for criminal acts they commit during an investigation.⁹ 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".¹⁰

In response, Parliament enacted the law enforcement justification provisions, set out in sections 25.1-25.4 of the *Criminal Code*, which were proclaimed on February 1, 2002. The provisions provide a limited justification at law for acts or omissions that would otherwise constitute offences when committed by specially designated 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 provisions also establish a system of accountability.

The otherwise unlawful acts or omissions under the law enforcement justification provisions are subject to a legal requirement of reasonableness and proportionality.¹¹ This legal requirement is assessed in the circumstances through consideration of such matters as the nature of the act or omission, the nature of the investigation, and the reasonable availability of other means for carrying out the officer's duties. Certain types of conduct, such as intentionally causing bodily harm, violating the sexual integrity of a person and willfully attempting to obstruct, pervert or defeat the course of justice, are expressly excluded from the justification provisions.¹²

The law enforcement justification provisions also establish a system of accountability. An essential element of the law enforcement justification provisions is that they apply to only specially designated public officers.¹³

In the case of RCMP members, the Minister is the competent authority responsible for designating these public officers.¹⁴

⁸ *Ibid.* paragraph 25.3(2)(a).

⁹ [1999] 1 S.C.R. 565.

¹⁰ *Ibid.* at paragraph 39.

¹¹ *Ibid.* paragraph 25.1(8)(c).

¹² *Ibid.* subsection 25.1(11).

¹³ *Ibid.* paragraph 25.1(8)(b).

¹⁴ *Ibid.* paragraph 25.1(1)(a).

The Minister is also responsible for designating senior officials, who then advise the Minister on public officer designations.¹⁵ Under ordinary circumstances, only the Minister may issue public officer designations to RCMP members; however, in exigent circumstances, a senior official may make temporary public officer designations. A senior official may designate a public officer for a period of 48 hours or less 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.¹⁶

A public officer must receive a written authorization from a 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.¹⁷ In these cases, the senior official believes that committing the act or omission, as compared to the nature of the offence or criminal activity being investigated, the nature of the investigation, and the reasonable availability of other means for carrying out the officer's duties is reasonable and proportional in the circumstances.

A public officer may only 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 loss of or serious damage to property, or for directing another person to commit an act or omission that would otherwise constitute an offence, under very limited circumstances. He or she 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;¹⁸
- avoid compromising the identity of a public officer acting in an undercover capacity, a confidential informant, or a person acting covertly under the direction and control of a public officer;¹⁹ or
- prevent the imminent loss or destruction of evidence of an indictable offence.²⁰

¹⁵ *Ibid.* subsection 25.1(5).

¹⁶ *Ibid.* subsection 25.1(6).

¹⁷ *Ibid.* paragraph 25.1(9)(a).

¹⁸ *Ibid.* subparagraph 25.1(9)(b)(i).

¹⁹ *Ibid.* subparagraph 25.1(9)(b)(ii).

²⁰ *Ibid.* subparagraph 25.1(9)(b)(iii).

III. Statistics

III.I Emergency Designations, section 25.1(6)

Paragraphs 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 officials due to exigent circumstances;
- The nature of the conduct being investigated in these cases; and
- The nature of the justified acts or omissions, which would otherwise constitute offences that were committed by the temporarily designated public officer.

From January 1, 2024 to December 31, 2024, the RCMP reports that the senior officials made no emergency designations for investigations that have been concluded.

III.II Authorizations for Specific Acts and Omissions, section 25.1(9)(a)

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

- The number of instances in which the senior officials:
 - authorized a public officer to commit a justified act or omission that would otherwise constitute an offence and that would likely 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; and
- The nature of the justified acts or omissions, which would otherwise constitute offences, that were committed under such an authorization.

From January 1, 2024 to December 31, 2024, the RCMP reports that no authorizations were granted to public officers by senior officials to commit justified acts or omissions that would otherwise constitute offences and that would likely result in loss of or serious damage to property.

From January 1, 2024 to December 31, 2024, the RCMP reports that no authorizations were granted by senior officials authorizing public officers to direct another person to commit acts or omissions that would otherwise constitute offences.

III.III Instances of Public Officers Proceeding Without Senior Official Authorization, section 25.1(9)(b)

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

From January 1, 2024 to December 31, 2024, the RCMP reports that no public officer proceeded without a senior official’s written authorization due to exigent circumstances.

IV. Conclusion

Between January 1, 2024 to December 31, 2024, in the “twenty-third” year of the operation of sections 25.1 to 25.4 of the *Criminal Code*, the RCMP made no emergency designations for investigations that have been concluded.

No authorizations were granted to public officers by senior officials to commit acts or omissions that would otherwise constitute offences and that would likely result in loss of or serious damage to property.

There were no authorizations granted under which a senior official authorized a designated public officer to direct another person to commit a number of acts or omissions that would otherwise constitute offences.

There were no cases in which a designated public officer proceeded without a senior official’s authorization due to exigent circumstances.