

Don't miss this unique program for Crown and defence lawyers, police/police trainers, judges, investigators, criminologists and police regulatory lawyers

Self-Defence and Use of Force: The New and Evolving Substantive Defences to Violent Conduct

Get practical advice and an up-to-date understanding of this complex area of criminal law from a dynamic, cross-discipline faculty.

They will address:

- The new statutory scheme governing self-defence and how it works in practice
- Permissible use of force by on-duty law enforcement officers
- Capacity, consent and volition in sex assault cases
- Citizen's arrest powers; past, present and future
- Applying the new self-defence law to domestic assault cases
- Recent developments in the "air of reality" test
- What is left of traditional defences?
- Advanced consent in the context of sports

Keynote Luncheon Address

Ian D. Scott, Former Director, Ontario Special Investigations Unit
"Reforming Ontario's Special Investigations Unit"

Chairs

Danielle Robitaille, Henein Hutchison LLP
Suhail Akhtar, Crown Counsel, Ministry of the Attorney General (Ontario)



DATE & TIME

Saturday, March 1, 2014
9:00 a.m. - 4:30 p.m. EDT/EST

LOCATION

Osgoode Professional
Development Centre
1 Dundas St. W., 26th Floor
Toronto, ON

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Self-Defence and Use of Force: The New and Evolving Substantive Defences to Violent Conduct

When and how much force is permissible in the course of a violent interaction is a continued area of legal dispute and confusion. Are you informed?

Recent changes to the *Criminal Code* and the common law have sought to clarify the law on self-defence and various other related justification and excuses. The law in this area continues to evolve as it is applied not only to bar-room brawlers but to ordinary citizens, parents, hockey players, abused spouses and, increasingly, police officers.

Join a faculty of experts from diverse sectors of the criminal justice system who will discuss, debate and give you practical tips on the latest “need to know” developments, including:

- What is the current state of the s.25 *Criminal Code* defence of Protection of Persons Acting under Authority?
- Understanding the interaction of the criminal justice process and police act discipline systems
- Consent and capacity issues in sex assault cases
- New Citizen’s Arrest *Criminal Code* provisions and how they work in practice
- Applying the new self-defence provisions and SCC decision in *R. v. Ryan* in domestic abuse cases
- Avoiding potential landmines in applying the “air of reality” test post recent SCC decisions
- What is left of the traditional defences in *R. v. Jobidon* and *Canadian Foundation for Children, Youth and the Law v. Attorney General in Right of Canada*?

Register now by visiting www.osgoodepd.ca, calling 416.597.9724 or 1.888.923.3394, emailing opd-registration@osgoode.yorku.ca or faxing 416.597.9736 (for group registrations).

Keynote Speaker

Ian D. Scott, former Director, Ontario Special Investigations Unit

Chairs

Danielle Robitaille, Henein Hutchison LLP

Suhail Akhtar, Crown Counsel, Ministry of the Attorney General (Ontario)

Faculty

The Hon. Justice Sandra Bacchus
Ontario Court of Justice

James R. Cassells, Retired Sergeant and Use of Force Coordinator, Toronto Police Service

Susan Chapman, Ursel Phillips Fellows
Hopkinson LLP

Kimberley Crosbie, Counsel, Crown Law
Office - Criminal, Ministry of the Attorney
General (Ontario)

The Hon. Justice Philip Downes
Ontario Court of Justice

Michael D. Edelson, Edelson Clifford D’Angelo
Friedman, Barristers LLP

Michal Fairburn, Stockwoods LLP Barristers

Matthew Gourlay, Henein Hutchison LLP

Marie Henein, Henein Hutchison LLP

Howard Krongold, Webber Goldstein Abergel

The Hon. Justice Ian MacDonnell
Superior Court of Justice (Ontario)

Vanessa MacDonnell, Assistant Professor
Faculty of Law (Common Law Section)
University of Ottawa

The Hon. Justice Peter Martin
Alberta Court of Appeal

Brian McGuire, Assistant Crown Attorney
Ministry of the Attorney General (Ontario)

Ann Morgan, Deputy Director, Office of the
Crown Attorney, Ministry of the Attorney
General (Ontario)

The Hon. Justice Ian Nordheimer
Superior Court of Justice (Ontario)

Philip Perlmutter, Counsel, Crown Law
Office - Criminal, Ministry of the Attorney
General (Ontario)

Jocelyn Speyer, Crown Attorney, Ministry
of the Attorney General (Ontario)

The Hon. Justice Gary Trotter
Superior Court of Justice (Ontario)

Paul Zambonini, Assistant Crown Attorney
Ministry of the Attorney General (Ontario)

8:15 Registration and Continental Breakfast

9:00 Permissible Use of Force by Police Officers

Michael D. Edelson, Edelson Clifford D'Angelo Friedman Barristers LLP

Philip Perlmutter, Counsel, Crown Law Office - Criminal Ministry of the Attorney General (Ontario)

James R. Cassells, Retired Sergeant and Use of Force Coordinator, Toronto Police Service

In the context of current events and the seemingly more frequent charging of officers for on-duty conduct

- What is the state of the *Criminal Code* s.25 defence in post-*Dziekanski*, post G-20 climate?
- In the age of YouTube and cell blocks under full surveillance, how has the technological shift impacted the prosecution and the defence?
- What you need to know about the interaction of the criminal process and the *Police Act* discipline system

9:45 New Citizen's Arrest Provisions: Section 494 of the Criminal Code

Vanessa MacDonnell, Assistant Professor, Faculty of Law (Common Law Section), University of Ottawa

The charging and subsequent acquittal of David Chen, a storeowner in Toronto, brought into focus the deficiencies in the Citizen's Arrest provisions of the *Criminal Code*. Parliament's amendments to these sections are seen as a way of protecting innocent citizens from being victims of crime. But do they?

- What changes have been made?
- Are the amendments sufficient or do they go too far?
- A look at the past, present and future of the powers of citizen's arrest in Canada

10:15 Refreshment Break

10:30 Traditional Defences: What is Left?

The Hon. Justice Philip Downes, Ontario Court of Justice
Marie Henein, Henein Hutchison LLP

Jocelyn Speyer, Crown Attorney, Ministry of the Attorney General (Ontario)

It has been ten years since the SCC decision in *Canadian Foundation for Children, Youth and the Law v. Attorney General in Right of Canada*, [2004] 1 S.C.R. 76 interpreting and restricting the statutory defence of "correction of a child". It has been over 20 years since the Court's decision in *R. v. Jobidon*, [1991] 2 S.C.R. 714 invalidated the defence of consent for assaults causing bodily harm.

- What is left of these traditional defences?
- How have the courts grappled with and resolved the cultural and regional differences in attitudes towards consensual fistfights and corporal punishment?
- In the context of these two policy-driven S.C.C. pronouncements, do we see any trends pointing to further evolution or changes in the current state of the law?
- Can an advanced consent in the sporting context, still offer a full defence?

11:15 The New Law of Self-Defence Part 1

The Hon. Justice Ian MacDonnell
Superior Court of Justice (Ontario)

Justice MacDonnell will examine the new Section 34 of the *Criminal Code* provisions of the law of self-defence: what's different, what still applies and whether it is retrospective in effect.

11:45 Luncheon

12:15 Special Keynote Speaker

"Reforming Ontario's Special Investigations Unit"

Ian D. Scott, former Director, Ontario Special Investigations Unit

1:00 Roundtable Discussion:

The New Law of Self-Defence: Part 2

The Hon. Justice Peter Martin, Alberta Court of Appeal

Brian McGuire, Assistant Crown Attorney
Ministry of the Attorney General (Ontario)

Michal Fairburn, Stockwoods LLP Barristers

- How does the new statutory scheme governing self-defence work in practice?
- Is it easier or harder to assert?
- What has happened to the previous criminal law which helped interpret key concepts in defining self-defence?
- What are the trends across the country?

2:00 Recent Developments in the "Air of Reality" Test

The Hon. Justice Gary Trotter
Superior Court of Justice (Ontario)

Matthew Gourlay, Henein Hutchison LLP

Paul Zambonini, Assistant Crown Attorney, Ministry of the Attorney General (Ontario)

The "air of reality" test has long been a difficult concept for all parties. *R. v. Cinous*, [2002] 2 S.C.R. 3 now more than a decade old, remains the familiar guidepost. Difficulties persist, however, especially where the accused's primary defence is incompatible with another possible defence that may or may not have an "air of reality". The Supreme Court has, in just the past year, divided sharply in two such cases: *R. v. Gauthier*, 2013 SCC 32 and *R. v. Buzizi*, 2013 SCC 27.

- How high a threshold is the air of reality test?
- What impact have the recent decisions in *R. v. Buzizi*, *R. v. Cairney*, 2013 SCC 55 and *R. v. Pappas*, 2013 SCC 56 had on the test?
- What can the parties do to bolster or undermine the defence?

2:45 Refreshment Break

3:00 Self-Defence and Duress in Domestic Cases

The Hon. Justice Sandra Bacchus, Ontario Court of Justice
Susan Chapman, Ursel Phillips Fellows Hopkinson LLP

Ann Morgan, Deputy Director, Office of the Crown Attorney
Ministry of the Attorney General (Ontario)

Agenda [Cont'd]

R. v. Lavallee, [1990]1 S.C.R. 852 was a watershed case in the area of self-defence in domestic abuse cases.

- What guidelines did the Supreme Court of Canada lay down?
- What has happened since this decision?
- What effect, if any, does the new self-defence law have on the common law in domestic cases?
- Has the SCC decision in *R. v. Ryan*, 2013 SCC 3 ruled out the possibility that duress will ever be successfully asserted in the domestic context?
- What lessons can be learned from *Ryan* in terms of creating or refuting a record of abuse?

3:45 Capacity, Consent and Volition in Today's Sex Assault Cases

The Hon. Justice Ian Nordheimer
Superior Court of Justice (Ontario)

Howard Krongold, Webber Goldstein Abergel

Kimberley Crosbie, Counsel, Crown Law Office - Criminal
Ministry of the Attorney General (Ontario)

- Consent and capacity issues with drunken sex in a "hook-up" culture
- Sexsomnia/parasomnia
- Consenting to rough, injurious sex
- Advance consent and consciousness

4:30 Closing Remarks and Program Concludes

Registration

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Self-Defence and Use of Force

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Program Changes

We will make every effort to present the program as advertised, but it may be necessary to change the date, location, speakers or content with little or no notice. In the event of program cancellation, York University's and Osgoode Hall Law School's liability is limited to reimbursement of paid fees.

Date & Time

Saturday, March 1, 2014

9:00 a.m. - 4:30 p.m. EDT/EST

Please arrive a half hour early for sign-in and material pick-up. Dress is business casual.

Location

Osgoode Professional Development Centre
1 Dundas St. W., 26th Floor
Toronto, ON



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