

JUSTICE MINISTER PETER MACKAY ON SELF-DEFENCE IN CANADA

From: Ministerial Correspondence Unit - Mailout

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Sent: February 16, 2015 8:04 AM

To: Dave Hardy

Subject: Correspondence from the Minister of Justice and Attorney General of Canada

Dear Mr. Hardy:

The Office of the Prime Minister has forwarded to me a copy of your correspondence concerning self-defence.

I would like to assure you that the Government of Canada believes law-abiding Canadians who have been the victim of a crime should not be re-victimized by the criminal justice system.

The criminal laws of Canada permit the use of force in defence of a person's home and property. A person is justified in using reasonable force to prevent someone from unlawfully entering the home and/or removing or damaging that property or to remove someone who is doing so. The *Criminal Code* also provides the basic defence of self-defence. Self-defence allows for the use of reasonable force to defend against an assault, which includes both actual force and an attempt or threat to apply force against a person's will.

Both self-defence and defence of property clearly allow a person to respond to force, actual or threatened, with force of his or her own. Where these defences apply, they excuse behaviour that would otherwise be criminal, such as assault or, in the case of self-defence, homicide. However, the force used in response to the threat must be reasonable, meaning that excessive force or more force than necessary to prevent the threat is never allowed. The final determination of what is reasonable will of necessity vary according to the specific circumstance of a given incident. Each case would thus have to be considered individually.

The police have discretion as to whether or not to recommend or lay charges, based on the evidence they obtain from the individuals who were involved and from any witnesses. Even when a criminal charge has been laid, the individual may still raise the defence of self-defence or defence of property during the trial, at which stage it is the judge or the jury (if there is one) who hear all the evidence and come to determinations of fact, including whether the evidence is sufficient to justify an acquittal on the basis of such a defence.

Nonetheless, in 2011, the Government introduced the *Citizen's Arrest and Self-defence Act*, which came into force on March 11, 2013. This act streamlined and simplified the defence of property and self-defence provisions in the *Criminal Code*, as well as expanded the circumstances in which citizens' arrests can be made.

Previously, the courts had found the laws on self-defence and defence of property to be confusing and unnecessarily complicated due to the way these provisions were written in the *Criminal Code*. The clarification of the laws in this area allows Canadians—including police, prosecutors, and the courts—to more easily understand and better apply the law, and assists prosecutors and police in exercising their discretion not to lay a charge or proceed with a prosecution.

The Act also expanded the citizen's arrest authority. Before these reforms were enacted, a private citizen could only arrest an individual who was actively engaged in committing a criminal offence. This act now allows a property owner to make an arrest within a reasonable period of time after finding someone committing a criminal offence that occurs on or in relation to property. However, the property owner is only permitted to make a citizen's arrest when there are reasonable grounds to believe that it would not be feasible in the circumstances for a peace officer to make the arrest.

The arrestor is still required to contact the police as promptly as possible after the arrest and the police will advise the arrestor whether to continue to detain the person until police arrive. In addition, the Act made it clearer that only as much force as is reasonably necessary could be used during a citizen's arrest.

I note your reference to the castle doctrine. This is an American common-law principle that gives a person certain protections against home intruders. Typically, the doctrine ensures that a person whose home is invaded may use force against the invader without any duty to withdraw or retreat from the home before using that force.

The new Canadian legislation permits a person in peaceable possession of property, or a person assisting someone they believe to be in peaceable possession of property, to commit a reasonable act (including the use of force) for the purpose of protecting that property from being taken, damaged, or trespassed upon.

The use of deadly force is only reasonable in very exceptional circumstances—for example, where it is necessary to protect a person from death or grievous bodily harm. The courts have clearly stated that deadly force is not considered reasonable in defence of property alone. However, in most cases of home invasion, a person will likely also have a reasonable fear for his or her own safety and that of others inside the home. Where this is so, self-defence may also be an available defence. Neither self-defence nor defence of property requires a person to retreat before being able to use force.

While I can provide you with general information about the state of Canadian law, as Minister of Justice and Attorney General of Canada, I cannot provide legal advice to members of the public or comment on specific situations. Should you require further clarification about the law, you may wish to consult a lawyer in private practice who can provide you with a legal interpretation.

I believe that these reforms provide clear direction on the appropriate use of these defences, thereby providing Canadians with safer and healthier communities in which to live.

I appreciate having had your comments brought to my attention.

Yours truly,

The Honourable Peter MacKay