

17 USE OF FORCE

Departmental Order #: 30-96

A. POLICY STATEMENT

1. Section 17 sets out the policy and procedure for the use of force by members of the Halifax Regional Police Service and examines use of force from three perspectives: level of subject resistance, method of control and use of lethal force.

B. REFERENCE

1. *Criminal Code of Canada*
2. Department of Justice, Policing Services, *Use of Force Policy*.

C. DEFINITIONS

1. Resistance: is defined as action directed from the subject toward the officer affecting an arrest. Resistance is manifested by the subject who attempts to evade an officer's attempts to control. The amount and type of resistance will vary, based upon a variety of factors.
2. Control: is the action exercised by the officer to direct a situation. Control is the force an officer uses to influence and neutralize the unlawful, physical actions of a subject under arrest.
3. Soft Empty Hand Control: techniques that have minimal implications of injury.
4. Hard Empty Hand Control: techniques that have a higher potential or probability for subject injury.

5. Vascular Neck Restraint (VNR) Level I, II and III: technique that when properly delivered may render the subject unconscious. The target point for this technique is the upper neck below the jawline.
6. Striking techniques: techniques that may be delivered with an officer's open hand, fist, forearm, leg or foot.
7. Chemical Agent: refer to the HRPS approved chemical agent. A chemical Agent is a tool that can provide a means by which an officer can defend him/herself or another from injury and is a means of controlling a subject when an officer is facing resistance in the form of Resistant Level IV.
8. Impact Weapon: is the HRPS approved baton.
9. Significant physical force or weapons: levels of control ranging from empty hand controls through to and including intermediate weapons as well as pointing of firearms at subject without discharging them.
10. Lethal Force: the type and level of force reasonably likely to cause death or serious physical harm. Lethal Force does not always result in death. Death may result from causes other than Lethal Force.

D. POLICY

1. The law grants police officers the authority to resort to the use of force in the course of their duties under certain circumstances and with strict limitations governing the extent of the use of force.
2. Where a police officer is under a legal duty upon notice of certain facts, to take certain action, the member will be protected from criminal/civil liability if the action is based on the honest belief, formed without negligence and on reasonable grounds that those facts did exist, even if that belief was mistaken. This action must be exercised in a reasonable manner; if excessive force is used the member guilty of that excess is criminally and civilly liable for it according to the nature and quality of the act.
3. Department policy should not be construed as a higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violations of this policy could form the basis of departmental action. Violations of law will form the basis for criminal and civil action in a recognized judicial setting.
4. In a majority of cases, some level of physical force will be necessary to effect an arrest or to protect others. The amount of physical force may be as low as placing a hand on a subject's shoulder or arm and verbally directing that subject to place his/her hands behind his/her back for handcuffing. Depending upon the level of resistance offered, the officer may use techniques that influence behaviour by

eliciting pain in order to apply handcuffs. Section 25(4) CCC indicates that only "necessary" force is justified. Any force above that act would be unjustified, and a criminal act by a police officer would then occur.

E. GENERAL

1. The *Criminal Code of Canada* deals with the legal levels of force that law enforcement officers may use in the normal course of their duties. It should be emphasized that when consent or an emergency is not present, and reasonable grounds to make an arrest do not exist, non-consensual touching by a police officer may constitute a crime, as well as result in civil liability. When reasonable grounds exist, criminal and civil liability may still occur if the limits of the law are exceeded.
2. The *Criminal Code of Canada* provides situations that allow justification for the use of force by members.
3. Section 25 CCC: Everyone who is required or authorized by law to do anything in the administration or enforcement of the law as a peace officer is, if she/he acts on reasonable grounds, justified in doing what she/he is required or authorized to do and in using as much force as is necessary for that purpose.

3.1. Section 25(3) CCC: Subject to subsection (4) and (5), 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 any one under that person's protection from death or grievous bodily harm.

3.2. Section 25(4) CCC: A peace officer, and every person lawfully assisting the peace officer, is justified in using force that is intended or is likely to cause death or grievous bodily harm to a person to be arrested, if

- a. the peace officer is proceeding lawfully to arrest, with or without a warrant, the person to be arrested;
- b. the offence for which the person is to be arrested is one for which that person may be arrested without a warrant;
- c. the person to be arrested takes flight to avoid arrest;
- d. the peace officer or other person using the force believes on reasonable grounds that the force is necessary for the purpose of protecting the peace officer, the person lawfully assisting the peace officer or any other person from imminent or future death or grievous bodily harm; and

- e. the flight cannot be prevented by reasonable means in a less violent manner

3.3. Section 25(5) CCC: A peace officer is justified in using force that is intended or is likely to cause death or grievous bodily harm against an inmate who is escaping from a penitentiary within the meaning of subsection 2(1) of the Corrections and Conditional Release Act, if

- f. the peace officer believes on reasonable grounds that any of the inmates of the penitentiary poses a threat of death or grievous bodily harm to the peace officer or any other person; and
 - g. the escape cannot be prevented by reasonable means in a less violent manner.
4. Section 26 CCC: Everyone who is authorized by law to use force is criminally responsible for any excess thereof.
5. Section 27 CCC: Everyone is justified in using as much force as is reasonably necessary:
- a. to prevent the commission of an offence:
 - i. for which, if it were committed, the person who committed it might be arrested without warrant, and;
 - ii. that would be likely to cause immediate and serious injury to the person or property of anyone; or
 - b. to prevent anything being done that, on reasonable grounds, he believes would, if it were done, be an offence mentioned in paragraph (a).
6. Section 32(1) CCC: Every peace officer is justified in using or in ordering, the use of as much force as the peace officer believes, in good faith and on reasonable grounds that:
- 1. is necessary to suppress a riot; and
 - 2. is not excessive, having regard to the danger from the continuance of the riot.
7. Section 34(1) CCC: Everyone who is unlawfully assaulted is justified in repelling force by force if the force he/she uses is not intended to cause grievous bodily harm and is no more than is necessary to enable him/her to defend him/herself.

8. Section 37(1) CCC: Everyone is justified in using force to defend him/herself or any one under his/her protection from assault, if she/he uses no more force than is necessary to prevent the assault or the repetition of it.
9. Sections 40 & 41 CCC: deal with defense of a dwelling-house or real property.