

Accountability Deficit: The Intersection of Trust, Power, and Oversight in Policing

J E R I C A H O G A R T H *

ABSTRACT

This paper looks to provide evidence that supports the existence of a deficit in police accountability at all levels by examining the current mechanisms available for police oversight. The internal mechanisms examined include those created by police through statute such as internal discipline measures, independent investigation units, and law review boards. When these internal mechanisms fail to keep police within the bounds of the law, external oversight mechanisms are engaged. As this paper will demonstrate, criminal courts also struggle to balance accountability and significant breaches of the public trust against the strong

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personal mitigating factors that are typically associated with police officers. This balancing is also weighed against the statutory powers and protections afforded to police to allow them to do their jobs effectively. Ultimately, police are properly trained to deal with these types of situations, and they should be held accountable when their actions go beyond what is allowed within the law.

KEYWORDS: *police, accountability, deficit, deterrence, leniency.*

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I. INTRODUCTION

Police officers are taught the law, and how to enforce the law. Criminal prosecutions rely on police officers doing their job. This includes making arrests, investigating crimes, and

collecting evidence to be used at trial. If the police fail to perform any of these responsibilities, guilty individuals may escape prosecution or criminal conviction. Their work is the foundation of the criminal justice system. It follows then that the work and conduct of police officers in the execution of their duties are held to a high standard. If police deviate from these standards, it can have devastating results in a criminal prosecution and can result in guilty or dangerous individuals going free.

Police officers hold the ultimate position of trust in society; public trust in the police is of paramount concern¹. When police officers breach this trust during an investigation by way of violating an individual's *Charter* rights, courts will disassociate themselves from their conduct by either excluding evidence or staying the charges.² Police are held to a high standard in prosecutions because they are understood to know the law.³ The public trust in police is high, and it must be high given the powers afforded to police through section 25(1) of the *Criminal Code*.⁴ This section allows for police officers to use as much force as necessary for the purpose of administration or enforcement of the law.⁵ The public trusts the police to follow the law. So, what happens when they go beyond the powers afforded to them?

II. MECHANISMS FOR POLICE OVERSIGHT

Police oversight in Manitoba is addressed through *The Police Services Act*.⁶ In the Royal Canadian Mounted Police ("RCMP") in Manitoba, the commanding officer is accountable to the minister for policing services.⁷ In municipal police forces, the chief of a

¹ *Wood v Schaeffer*, 2013 SCC 71 at para 52.

² *Canadian Charter of Rights and Freedoms*, s 7, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982 c 11; *R v Grant*, 2009 SCC 32 at paras 69, 72, 200.

³ *R v Schertzer*, 2015 ONCA 259 at paras 132–33.

⁴ RSC 1985, c C-46, s 25(1).

⁵ *Ibid.*

⁶ 2009, c 32, CCSM c P94.5.

⁷ *Ibid.*, s 18(3).

municipal police force is responsible for “the maintenance of discipline in the police service”.⁸ The police chief is accountable to the police board and municipal police forces must operate under the general direction of a police board.⁹ However, it is the responsibility of the director to establish policing standards.¹⁰ Of importance for section 25(1), one of the specific standards established by the director includes the standard for arrests and use of force.¹¹ In terms of general conduct, if it is determined that a police officer (other than an RCMP member) has contravened the code of conduct, then the police chief must provide a director with a report.¹² This report must include the disciplinary measures imposed on the police officer.¹³

If this level of discipline is insufficient, then Manitoba, like other jurisdictions, has an Independent Investigation Unit.¹⁴ The Independent Investigation Unit in Manitoba is headed by a civilian director who cannot be a current or former member of a police service.¹⁵ While the civilian director is not and has not been a police officer, all of the investigators with the Independent Investigation Unit must be either former members of the RCMP or some other police force, or a civilian with investigative experience.¹⁶ The involvement of the Independent Investigation Unit is automatically triggered whenever an officer is at the scene of an incident where it appears that: an officer may be responsible for the death of a person, the actions of an officer may have resulted in the serious injury of a person, or if an officer may have contravened the *Criminal Code*.¹⁷ While the investigations are said to be

⁸ *Ibid*, s 22(1)(c).

⁹ *Ibid*, ss 22(2), 26(2).

¹⁰ *Ibid*, s 48(1).

¹¹ *Ibid*, s 48(2)(d).

¹² *Ibid*, ss 55.1(2)-55.2.

¹³ *Ibid*, s 55.2(b).

¹⁴ *Ibid*, s 56(1).

¹⁵ *Ibid*, s 57(2).

¹⁶ *Ibid*, s 60.

¹⁷ *Ibid*, s 65(1)(a)-(c).

independent, it is difficult for the public to not conceive of some bias given that the investigators are still police adjacent.

A. Investigation Units and Charge/Conviction Rates

Ontario, like Manitoba, has its own version of the Independent Investigation Unit called the Special Investigations Unit (“SIU”) which has been responsible for these types of investigations in Ontario since 1990.¹⁸ Of the 22 excessive use of force charges laid by the unit from 1991–2001, only two resulted in criminal convictions.¹⁹ This results in a charge/conviction rate for the SIU during 1991–2001 of only nine percent.²⁰ This is significantly lower than the charge/conviction rate of Ontario civilians during 2002, which saw a charge/conviction rate of 55 percent.²¹ In terms of crimes of violence during the same period, which would be more analogous to the excessive use of force cases, the civilian charge/conviction rate was 49 percent.²² Thus it follows that at the time in Ontario, a member of the public was five times more likely to be convicted of a crime of violence than a police officer charged with a similar offence.²³ Police officers view this disparity as confirmation that the Special Investigations Unit improperly charges officers with criminal offences.²⁴ In contrast, the public and particularly those interested in police accountability, view the number of acquittals as an indication that the criminal justice system protects its own.²⁵

In 2025, the SIU only laid charges in two cases: Constable (“Cst.”) Matthew Eletheriou was charged with aggravated assault (section 268 of the *Criminal Code*) in relation to the serious injuries

¹⁸ Ian D Scott, “Addressing Police Excessive Use of Force: A Proposal to Amend the Mandate of the Special Investigations Unit” (2004) 49:3 Crim LQ 351 at 351.

¹⁹ *Ibid* at 360.

²⁰ *Ibid*.

²¹ *Ibid* at 361.

²² *Ibid*.

²³ *Ibid*.

²⁴ *Ibid*.

²⁵ *Ibid* at 361–62.

suffered by a 59 year old woman during her February 23, 2025, arrest in Hamilton, and Cst. Michael Berger was charged with assault (section 266 of the *Criminal Code*) in relation to the serious injury suffered by a 50 year old man during his January 31, 2025, arrest.²⁶ In the cases handled by the SIU in 2024–2025, the Director only laid charges in 4.7 percent of the cases.²⁷

B. Confidence in Investigation Units

Recall that officers view the disparity in the charge/conviction rates of the SIU as confirmation that the Unit overcharges officers.²⁸ But the charge/conviction rate poses a greater concern for the public who must participate in these types of investigations. In 2024, the Ontario Superior Court convicted Cst. Jeffrey Smith of assault regarding his actions in the arrest of Mr. Baptiste.²⁹ At Cst. Smith’s sentencing, Mr. Baptiste made a victim impact statement which included his experience with the SIU. Mr. Baptiste shared, “when the SIU laid charges against Constables Fyke and Smith, I felt that I was walking around with a target on my back.”³⁰ Mr. Baptiste felt that the conviction of Cst. Smith only served to

²⁶ Special Investigations Unit, “Status Search: all police services, 2025, cases in which charges laid” (last visited December 2025), online: <siu.on.ca/en/case_status.php> [perma.cc/P4U7-2TL8]; Special Investigations Unit, “News Release: Sioux Lookout OPP Officer Charged with Assault” (24 June 2025), online: <siu.on.ca/sioux-lookout-opp-officer-charged-with-assault-en10465> [perma.cc/7FKR-5NWH]; Special Investigations Unit, “News Release: SIU Charges Hamilton Police Officer After Woman Seriously Injured During Arrest” (16 September 2025), online: <siu.on.ca/siu-charges-hamilton-police-officer-after-woman-seriously-injured-during-arrest-en10674> [perma.cc/KR4X-CL7P].

²⁷ Special Investigations Unit, *Annual Report, 2024/2025* (Ontario: Special Investigations Unit, 2025) (last visited December 2025), under heading “Investigations”, online (pdf): <siu.on.ca/pdfs/siu_annual_report_2024-2025.pdf> [perma.cc/R5FS-255A].

²⁸ Scott, *supra* note 18 at 661–62.

²⁹ *R v FYKE and SMITH*, 2024 ONSC 3808 at paras 1, 9. Cst. Fyke was ultimately acquitted (see *R v Fyke and Smith*, 2024 ONSC 169 at para 208) and the Crown appealed but it was dismissed (see *R v Fyke*, 2025 ONCA 602 at para 40).

³⁰ *Ibid* at para 17.

make this target bigger.³¹ Police associations have done little to reduce this fear when they have acted as intervenors in criminal cases involving police officers.

By way of example, the Calgary Police Association acted as an intervenor in the Alberta Court of Appeal's case of *R v Dunn*.³² The case involved a Calgary police officer where the Court described the excessive use of force as, "a violent assault of a slight, handcuffed female prisoner in the police station, who presented no risk of violence or escape."³³ The Calgary Police Association, as intervenor, was seeking guidance, "as to the jeopardy a police officer may face for 'a momentary lapse in judgement or mistake.'"³⁴

The Calgary Police Association was concerned that this momentary lapse in judgement or mistake may lead to a jail sentence for an officer.³⁵ This concern is particularly troubling because the Alberta Court of Appeal noted that the victim in this case was assaulted and injured while completely defenceless because the officer lost his temper.³⁶ The Court clarified that this is not a case where a police officer made a mistake in responding to the danger or potential danger to themselves or others as suggested by the Calgary Police Association.³⁷ The Court took it a step further and affirmed that, "it is wrong to think that courts will offer leniency to police officers who abuse their position in the matter that the appellant did."³⁸ The Calgary Police Association further advanced the following troubling position:

A reactionary resort to "more robust sentences" in response to nebulous concepts of "modern social change and heightened public awareness, particularly as it relates to police use of force against vulnerable persons" discourages officers from responding

³¹ *Ibid.*

³² 2024 ABCA 247.

³³ *Ibid* at para 22.

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Ibid* at paras 22-23.

³⁸ *Ibid* at para 23.

effectively or at all to avert the risk of being charged criminally for use of force.³⁹

The Alberta Court of Appeal thankfully rejected this position. They noted that it was a “remarkable suggestion” that members of the Calgary Police Service would “shirk their oath” and duty for fear of being held liable in a criminal court of having committed a gratuitous or unprovoked assault.⁴⁰ The Court advised the Calgary Police Association that the correct answer is simply to refrain from this type of conduct.⁴¹

C. *Review Boards*

Review boards serve as a further oversight mechanism when other internal mechanisms have failed. The Alberta Law Enforcement Review Board (“ABLERB”) was utilized by Godfred Addai-Nyamekye (“Addai-Nyamekye”) after he alleged that the Chief failed to properly investigate a complaint he made regarding the Calgary Police Service.⁴² The complaint related to an interaction he had with Calgary police on December 28, 2013.⁴³ That evening at approximately 3:30 a.m., Addai-Nyamekye and two friends were attempting to push their vehicle, after it became stuck in the snow, when two Calgary Police Service officers, Donockley and Kwasnica, stopped to speak with them.⁴⁴ Donockley alleged that during the interaction, Addai-Nyamekye became physically and verbally aggressive towards one of his friends, and that Donockley had told Addai-Nyamekye to calm down.⁴⁵ Donockley and Kwasnica then proceeded to take Addai-Nyamekye to the ground where they arrested him for public intoxication.⁴⁶ The

³⁹ *Ibid* at para 24.

⁴⁰ *Ibid* at para 25.

⁴¹ *Ibid*.

⁴² *Addai-Nyamekye v Calgary (Police Service)*, 2018 ABLERB 13 at para 9 [*Addai-Nyamekye* 2018].

⁴³ *Ibid* at para 1.

⁴⁴ *Ibid*.

⁴⁵ *Ibid* at para 2.

⁴⁶ *Ibid*.

officers then placed Addai-Nyamekye in the back of a marked Calgary Police Service van and drove him to a random street where they released him into the cold of night.⁴⁷ Addai-Nyamekye was left outside and alone in freezing temperatures wearing only a light shirt and a track suit.⁴⁸ Addai-Nyamekye did what he could in that moment, and what most people abandoned in the cold would do; he called 911.⁴⁹ But help did not arrive. Instead, Addai-Nyamekye was met by Cst. Trevor Lindsay.⁵⁰

Cst. Lindsay arrived approximately 20 minutes after Donockley and Kwasnica left Addai-Nyamekye in the cold.⁵¹ Instead of helping him, Cst. Lindsay himself called for help only two minutes later after he and Addai-Nyamekye became involved in a physical altercation.⁵² The facts of this altercation as presented by the ABLERB differ from the account of Addai-Nyamekye. In the ABLERB's recount of these events, they simply state that the altercation lasted three to four minutes and that during the altercation, Cst. Lindsay used a conducted energy weapon.⁵³ This altercation resulted in a charge of assaulting a peace officer for Addai-Nyamekye.⁵⁴ The laying of this charge is particularly troubling when compared to Addai-Nyamekye's version of events.

In a 2020 interview with CBC News Calgary, Addai-Nyamekye shared his version of the events, which was supported by materials obtained by CBC News.⁵⁵ After an FOIP request obtaining the dispatch records of the Calgary Police Service, it was discovered that after Addai-Nyamekye was dropped off, Donockley actually phoned dispatch to advise them that, "You may be getting a call

⁴⁷ *Ibid.*

⁴⁸ *Ibid* at paras 2–3.

⁴⁹ *Ibid* at para 3.

⁵⁰ *Ibid.*

⁵¹ *Ibid* at paras 2–3.

⁵² *Ibid* at para 3.

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ Joel Dryden, "Six years after his violent arrest, Calgary man says he's still waiting for justice", *CBC News*, (11 June 2020), online: <cbc.ca> [perma.cc/E5T3-WVBK].

from a [drunk individual]” and “We just dealt with him, issued him a ticket” and further, that “He said he was going to call 911. But you’ve got no reason to, he’s just a drunken fool.”⁵⁶ While this does not seem sinister on its own, Donockley took it a step further by advising dispatch to ignore Addai-Nyamekye and that he would walk home.⁵⁷ Addai-Nyamekye was left in a construction zone over three kilometers away from home.⁵⁸ It follows that when Addai-Nyamekye did phone 911, he was advised by the operator to “Call a taxi. 911 is not a taxi.”⁵⁹ However, Cst. Lindsay did arrive on scene. Video from a police helicopter was obtained by CBC News which depicted the interaction between Cst. Lindsay and Addai-Nyamekye. In the video, Cst. Lindsay was seen attempting to pull Addai-Nyamekye by his handcuffs.⁶⁰ Cst. Lindsay is then seen punching Addai-Nyamekye in the back of the head followed by repeated strikes with his knee to Addai-Nyamekye’s back, head, and neck.⁶¹ There is no mention of this violence in the summary of events by the ABLERB.

Addai-Nyamekye had attempted to use the ABLERB as a method of appealing the Chief’s decision in dismissing his 2013 complaint; the only issue for the ABLERB was whether the Board had jurisdiction to proceed with the matter as an appeal.⁶² The Board found that Addai-Nyamekye had laid his complaint against the respondents within the time limitation, but that the Calgary Police Service had falsely treated Addai-Nyamekye’s complaint as

⁵⁶ An FOIP request refers to a request for information made under the Alberta *Freedom of Information and Protection of Privacy Act* which was repealed in June of 2025 (see Office of the Information and Privacy Commissioner of Alberta, “Freedom of Information and Protection of Privacy Act” (last visited 22 May 2026) online: <oipc.ab.ca/legislation/foip/> [perma.cc/HZ3C-S7C5]); Dryden, *supra* note 55 under heading “violent arrest in the East Village”.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² Addai-Nyamekye 2018, *supra* note 42 at para 10.

though it had been withdrawn.⁶³ This resulted in a finding that the Calgary Police Service had failed to follow its own complaint withdrawal policy and procedure.⁶⁴ The ABLERB ultimately decided that in the absence of a disposition of the complaint—given that it was treated as a withdrawn complaint by the Calgary Police Service—there was no disposition to appeal.⁶⁵ Instead, the ABLERB ordered that an inquiry be conducted regarding the handling of Addai-Nyamekye’s complaint.⁶⁶ While this may seem like a satisfactory resolution, the scope of the inquiry was limited only to the Calgary Police Service’s failure to follow their own policies.⁶⁷ The scope of the inquiry would explicitly not deal with the conduct of any of the officers involved or any potential discipline for the involved officers.⁶⁸

Addai-Nyamekye appeared before the ABLERB four years later, again attempting to hold the Chief responsible in his dismissal of his complaint. Addai-Nyamekye filed new complaint letters with the Calgary Police Service in 2016 following the dismissal of his own assault charges resulting from the incident with Cst. Lindsay.⁶⁹ His charges were dismissed by the Crown after one of the involved officers claimed to have no memory of the incident due to sleep apnea and could also not rely on any notes as none had been taken any notes.⁷⁰ This ABLERB decision contains further important information regarding the incident; there was a criminal investigation into the entire incident, including the conduct of the officers, and the Edmonton Prosecutors Office had recommended that no charges be laid against any of the officers.⁷¹ The ABLERB again upheld the Chief’s use of their discretion in only placing an

⁶³ *Ibid* at paras 23, 25.

⁶⁴ *Ibid* at para 25.

⁶⁵ *Ibid* at para 29.

⁶⁶ *Ibid* at para 28.

⁶⁷ *Ibid* at para 30.

⁶⁸ *Ibid*.

⁶⁹ *Addai-Nyamekye v Calgary (Police Service)*, 2022 ABLERB 8 at paras 3, 5.

⁷⁰ *Ibid* at para 3.

⁷¹ *Ibid* at para 4.

inclusive Official Warning into the officer's file and not pursuing any further action for not complying with the note-taking policy.⁷² To date, Addai-Nyamekye has yet to receive any justice for the events that occurred on December 13, 2013.

III. BODY CAMERAS

When internal mechanisms fail to hold police accountable, it is understandable that the public would prefer a truly independent measure to assist in police accountability. As such, there is a burgeoning area of literature on the use of body cameras by police.⁷³ Generally, body cameras have been considered a “highly effective tool” in assisting the public and criminal justice system in their pursuit of fairness and justice, particularly in cases involving complaints of excessive force by police.⁷⁴ Currently, fewer Canadian police use body cameras than those that do.⁷⁵ Of particular importance in Manitoba, the RCMP is (mostly) equipped with body cameras.⁷⁶ The Winnipeg Police Service has requested on multiple occasions to obtain body cameras, but the City of Winnipeg has consistently found it to be outside the budget.⁷⁷ This

⁷² *Ibid* at para 35.

⁷³ The goal of this paper is not to delve deeply into any particular solution, but only to make them known. For more information on body cameras, see generally Alana Saulnier & Julia Abbatangelo, “Body-Worn Camera Policy in Canadian Policing” (2024) 50:1 Can Pub Pol’y 20; Stanislava Zgurova, “Body Worn Cameras (BWCS): Privacy vs Solid Evidence” (2024) 46:6 Man LJ 169; and Ella Czaplá, “Reforming Canadian Policing: Body-Worn Cameras and the Assumed Efficacy” (2026) 10:1 MacEwan U Student J.

⁷⁴ Zgurova, *supra* note 73 at 170.

⁷⁵ *Ibid*.

⁷⁶ *Ibid*.

⁷⁷ See generally City of Winnipeg, *Item No. 13: Winnipeg Police Board Budget Referral – Capital and Operating Body Worn Cameras and Digital Evidence Management* (June 24, 2021 City Council Regular Meeting Agenda), (Winnipeg: Decision Making Information System, 24 June 2021), online: <dmis.winnipeg.ca> [perma.cc/28LS-MUJP]; Winnipeg Police Board, *The Environment for Policing in Winnipeg in 2024* (Winnipeg: Winnipeg Police Board, 2024) at 22, online: <legacy.winnipeg.ca> [perma.cc/N9C6-4MSG]

is discouraging when there is a growing body of studies indicating that body cameras correlate with lower rates of the use of force by police and fewer complaints regarding police conduct.⁷⁸

Body cameras have also served additional uses beyond reducing use of force. In *R v Henderson* (“Henderson”), body camera footage was used to prove a section 10(b) violation.⁷⁹ The body camera worn by Officer DeJong provided video evidence from Officer DeJong’s interaction with Henderson after he attempted to contact duty counsel.⁸⁰ In the video, Officer DeJong asked Henderson if he was finished with his call with duty counsel and Henderson clearly stated that duty counsel hung up on him.⁸¹ Instead of asking Henderson if he wanted to call duty counsel back or if he was satisfied with the advice he was able to receive, Officer DeJong simply confirmed that Henderson spoke with them and then proceeded to take Henderson to complete breath tests.⁸² Body cameras have also been a useful tool in trial fairness by providing an impartial view of interactions between police officers and accused persons.

In *R v Daytec* (“Daytec”), body camera footage captured two officers providing a breath demand to Daytec who was suspected of driving impaired.⁸³ Daytec was charged and convicted of impaired operation of a conveyance but was acquitted of the charge of failing or refusing without reasonable excuse to comply with a breath demand.⁸⁴ The acquittal was based on body camera footage of the

(this paper was written prior to the announcement of body cameras to be worn by Winnipeg Police. See Jeff Keele, “Winnipeg police officers to wear body cameras”, *CTV News* (6 March 2021), online: <ctvnews.ca> [perma.cc/X2VN-6PPY]).

⁷⁸ Robert Diab & Marshall Putnam, “Pathways to Police Adoption of Body and Dash Cameras in Canada: How and Why Parliament Should Intervene”, (2022) 70:4 *Crim LQ* 429 at 432.

⁷⁹ 2025 *ONCJ* 615 at paras 39-40.

⁸⁰ *Ibid* at para 39.

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ 2021 *ABPC* 48 at paras 1, 3.

⁸⁴ *Ibid* at paras 1, 7.

officers providing their breath demand.⁸⁵ There were two officers involved, Cst. McKerrell and Cst. Friesen, the latter of whom was not a qualified technician.⁸⁶ The video depicted both Cst. McKerrell and Cst. Friesen giving conflicting instructions to Daytec, and the Court ultimately held that Daytec was reasonable in his confusion based on the incorrect, contradictory, and confusing instructions provided by the officers.⁸⁷ Accordingly, the Court held that Daytec had a reasonable excuse in failing to comply with the demand to provide suitable breath samples and found him not guilty on this charge.⁸⁸

While the above cases demonstrate the potential benefit of body cameras to an accused person's ability to make full answer and defence by providing the accused with valuable evidence to support their position, the absence of this evidence may not support a finding of a violation of an accused's right to make full answer and defence.⁸⁹ Notwithstanding the previous statement, some judges have criticized the police when they have failed to use body cameras or dash cameras as a means of "pre-empting recurring conflicts over police evidence" which could avoid some trials altogether.⁹⁰ Objective police evidence is crucial in cases involving accused police officers as they are inherently privileged in credibility assessments made by the court.⁹¹ This is particularly relevant when we consider that acquittals are the most common outcome in cases of assault arising from police use of excessive force, which often hinge on the credibility assessment of the complainant.⁹²

⁸⁵ *Ibid* at paras 81–83.

⁸⁶ *Ibid* at paras 81–82.

⁸⁷ *Ibid* at para 97.

⁸⁸ *Ibid* at para 98.

⁸⁹ *R v Saunders*, 2021 ABPC 77 at para 74.

⁹⁰ Diab & Putnam, *supra* note 78 at 431.

⁹¹ Kate Puddister & Danielle McNabb, "When Police Break the Law: The Investigation, Prosecution and Sentencing of Ontario Police Officers" (2021) 36:3 CJS at 398–99.

⁹² *Ibid* at 393–94.

A. *Cameras and Credibility*

Body cameras were crucial in the positive outcomes of the *Daytec* and *Henderson* cases, but video is not always sufficient to overcome the credibility deficiencies of a complainant with a criminal record or poor reputation. The section 25(1) test hinges on the objective reasonableness of the officer's use of force, but this assessment begins with the subjective assessment of the officer's decision to use force.⁹³ An area frequently addressed in the case law is the officer's perception and knowledge of the suspect. The subject themselves can be a reason to justify use of force as was the case in *R v Derrick*, whose facts are also described in *R v Arkinstall*.⁹⁴

Jason Arkinstall ("Arkinstall") was charged with uttering a threat to kill a police officer during the course of a routine traffic stop.⁹⁵ Arkinstall testified in his own defence and the decision of the Alberta Provincial Court rested on a W(D) analysis between Arkinstall and his friends and four members of the Calgary Police Service, including the complainant, Cst. Derrick.⁹⁶ This credibility analysis was done with a comparison to video evidence submitted at trial of Arkinstall's arrest and was crucial in assessing the *viva voce* evidence.⁹⁷ The Court found that Cst. Derrick's evidence varied with what was observed on video.⁹⁸ This was the same conclusion for Sgt. Kaminski and Acting Detective O'Neill.⁹⁹ Further, all three members lacked notes on the material particulars and all three members were shaken on cross-examination by Defence Counsel.¹⁰⁰ Cst. Vane was the outlier, and while her evidence was considered credible and reliable, her evidence was not considered helpful.¹⁰¹ In

⁹³ *R v Nasogaluak*, 2010 SCC 6 at para 34 [*Nasogaluak*].

⁹⁴ 2018 ABPC 4 [*Derrick*]; 2011 ABPC 23 [*Arkinstall*].

⁹⁵ *Arkinstall*, *supra* note 94 at para 1.

⁹⁶ *Ibid* at paras 9–10.

⁹⁷ *Ibid* at paras 7–8.

⁹⁸ *Ibid* at para 10.

⁹⁹ *Ibid*.

¹⁰⁰ *Ibid*.

¹⁰¹ *Ibid*.

terms of Arkinstall and his friends however, the Court found that all three were credible and reliable.¹⁰²

The Court made the following relevant findings of fact regarding the interaction between Arkinstall and the members of the Calgary Police Service. At the time of the incident, Arkinstall was wearing a Hells Angels T-shirt and pendant and Cst. Derrick, with his subjective perception of Arkinstall as a Hells Angels member, called for back-up.¹⁰³ Once back up arrived, and after a brief stand-off, Arkinstall agreed to exit the vehicle and raised his arms in submission.¹⁰⁴ Sgt. Kaminsky then “grabbed the Accused by the arms and threw him like a rag-doll, face first, on to the hood of the Tahoe.”¹⁰⁵ Sgt. Kaminsky also delivered two baton strikes to the back of Arkinstall’s neck.¹⁰⁶ After being handcuffed, Cst. Derrick assumed control of Arkinstall and guided him to the back of the police van as Sgt. Kaminski opened the doors.¹⁰⁷ Arkinstall shouted profanities throughout the interaction and even told Cst. Derrick that he would “kick his ass.”¹⁰⁸ To force Arkinstall into the back of the van, Cst. Derrick struck him in the back of his head before grabbing Arkinstall by his neck and throwing him into the van.¹⁰⁹ Cst. Derrick then slammed the inside cage door and outside van doors on Arkinstall’s legs and feet.¹¹⁰ As a result of his interactions with Cst. Derrick and Sgt. Kaminski, Arkinstall suffered several injuries including: a large bump on his right temple, a cut to one of his ears, a swollen neck, and numbing in his

¹⁰² *Ibid.*

¹⁰³ *Ibid* at para 18.

¹⁰⁴ *Ibid* at paras 18, 21–22.

¹⁰⁵ *Ibid* at para 22.

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid* at paras 23–24.

¹⁰⁸ *Ibid* at para 24.

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

feet and ankles from the impact of the police van door.¹¹¹ It was later confirmed that Arkinstall had also suffered a concussion.¹¹²

Cst. Derrick and Sgt. Kaminski both testified that Arkinstall had uttered threats to kill them.¹¹³ Arkinstall, while admitting he used a lot of profanity, did not recall specifically making any threats to kill either officer and did not admit to making any such threats.¹¹⁴ Having found the officers to not be credible or reliable in their testimony, the Court ultimately acquitted Arkinstall on the charge of uttering threats.¹¹⁵ Cst. Derrick's trial for his excessive use of force was decided seven years later and the credibility of the complainant, Arkinstall, played a significant role in Cst. Derrick's trial and subsequent acquittal.

The opening paragraph in the trial decision for Cst. Derrick sets the stage for the credibility battle between Cst. Derrick and Arkinstall. It reads: "This charge arises out of an allegation of excessive use of force by the accused, *a member of the Calgary Police Service*, from his arrest of Jason Arkinstall, *a full patch member of the Hells Angels motorcycle gang*" [emphasis added].¹¹⁶ While the video evidence in Arkinstall's trial was significant in securing his acquittal, the judge in Cst. Derrick's trial viewed the evidence quite differently. Hawkes J. focused on all the missing pieces in the video, such as the initial traffic stop and the struggle to put the handcuffs on Arkinstall, and found that the gaps in the video created limitations in its use.¹¹⁷ Despite the many contradictions in Cst. Derrick's evidence, Hawkes J. found that his evidence still left him with a reasonable doubt.¹¹⁸ Hawkes J. held that he was satisfied

¹¹¹ *Ibid* at para 27.

¹¹² *Ibid* at para 28.

¹¹³ *Ibid* at para 30.

¹¹⁴ *Ibid* at paras 31–32.

¹¹⁵ *Ibid* at paras 33, 35.

¹¹⁶ *Derrick, supra* note 94 at para 1.

¹¹⁷ *Ibid* at paras 32–33.

¹¹⁸ *Ibid* at para 47.

beyond a reasonable doubt that the force used by Cst. Derrick was used to complete the arrest of Arkinstall.¹¹⁹

Hawkes J.'s assessment of the interaction between Arkinstall and Cst. Derrick focused heavily on Arkinstall's membership in the Hells Angels and the reputation of the organization. Hawkes J. held that the Hells Angels have "a reputation for violence, intimidation, criminal activity, and animosity towards the police, and that Mr. Arkinstall was a member of the Hells Angels."¹²⁰ Hawkes J. held that Cst. Derrick was in the lawful execution of his duty as a police officer when he arrested Arkinstall, and that Cst. Derrick believed that Arkinstall was a "full patch" Hells Angels member and reasonably believed the reputation of the Hells Angels organization.¹²¹ Hawkes J. held that Arkinstall was resisting arrest, and that there were no injuries observed on Arkinstall.¹²² Hawkes J. in his decision to acquit held that Cst. Derrick's use of force was consistent with the use of force policy and that Cst. Derrick's response was a "reasonable, proportionate and necessary use of force to attempt to secure the compliance of a volatile and violent Mr. Arkinstall."¹²³

IV. POLICE ACCOUNTABILITY IN THE CRIMINAL COURT

Despite a large portion of cases against police officers resulting in acquittals in the criminal court, not all police officers are acquitted. The final mechanism in holding police accountable is through sentencing following a finding of guilt. The Ontario Court of Appeal confirmed, and the Manitoba Court of Appeal later reaffirmed, that the appropriate sentence for a police officer should be more severe than the sentence for a civilian who committed the

¹¹⁹ *Ibid* at para 53.

¹²⁰ *Ibid* at para 61.

¹²¹ *Ibid* at para 72(a)–(b).

¹²² *Ibid* at para 72(c)–(e).

¹²³ *Ibid* at para 83.

same crime.¹²⁴ However, the case law demonstrates that officers tend to be sentenced less punitively than the general public in cases of assault and driving-related offences and are generally more likely than civilians to receive a non-custodial sentence.¹²⁵ Further, most of the sentences imposed on police officers by judges are absolute and conditional discharges which allow the police officer to avoid the stigma of a criminal record.¹²⁶ In a review of the cases involving assault, police officers received discharges in almost half of the decisions.¹²⁷

This statistic is surprising when considering that denunciation and general deterrence are the primary sentencing objectives to be advanced when sentencing police offenders.¹²⁸ While jail sentences for police officers are considered to have little benefit to police in rehabilitation or specific deterrence, they do hold an important purpose in deterring other officers from committing similar conduct.¹²⁹ In the Manitoba Court of Appeal's decision in *R v. Letkeman* ("*Letkeman*"), a case involving an officer who had shot and killed the suspected impaired driver of a motor vehicle and had also seriously injured a passenger of the same vehicle when he rammed it twice with his police cruiser, the Court held that, "a sentence must convey to the police that overzealous conduct of this kind will be seriously sanctioned, and thereby act as a deterrent for other officers."¹³⁰ While Cst. Letkeman's killing of the driver was considered to be reasonable, his ramming of the vehicle was not and Cst. Letkeman was found guilty of criminal negligence causing bodily harm.¹³¹

The case was before the Manitoba Court of Appeal as the Crown was appealing Cst. Letkeman's sentence of a three-year

¹²⁴ *R v Letkeman*, 2021 MBCA 68 at paras 31, 39 [*Letkeman CA*].

¹²⁵ Puddister & McNabb, *supra* note 91 at 398.

¹²⁶ *Ibid* at 395.

¹²⁷ *Ibid*.

¹²⁸ *Letkeman CA*, *supra* note 124 at para 27.

¹²⁹ *Ibid* at para 56.

¹³⁰ *Ibid* at paras 10-11, 61.

¹³¹ *Ibid* at paras 1, 11.

probation order, which included conditions that he complete 240 hours of community service and pay a fine of \$10,000.¹³² While the Manitoba Court of Appeal did focus heavily in their reasons on the importance of denunciation and deterrence in sentencing police officers, the sentence ultimately imposed left obvious questions as to their commitment to advancing this position.

In reversing the lower court's decision and providing their reasons for the sentence, the Court focused heavily on the sympathetic circumstances of Cst. Letkeman. The Court found that Cst. Letkeman was a man with a wife and four children, he had no criminal record, he was a Christian man, and he was a five-year veteran of the RCMP.¹³³ Over 120 letters were filed in support of Cst. Letkeman, and the trial judge held that, "it is an understatement to say he is held in high esteem and has led an exemplary life that many describe as selfless."¹³⁴ The Court ultimately determined that in the circumstances of this case, an appropriate sentence would be ten months' custody.¹³⁵ However, the Court ultimately reduced this to a term of only three months' imprisonment to account for his completion of the community service hours and payment of the fine.¹³⁶ Despite being sentenced to three months' imprisonment, the Court ultimately stayed this portion of the sentence due to delay and held that the objectives of denunciation and deterrence could be achieved without incarcerating the offender.¹³⁷ The Court then set aside the probation order and left the fine in place.¹³⁸

Unsurprisingly, the decision of the Manitoba Court of Appeal in *Letkeman*, contained a dissent. The dissenting judge, Justice Burnett, wrote a powerful dissent condemning the reasons and decision of his colleagues, holding that, it was "inconceivable that

¹³² *Ibid* at para 1.

¹³³ *Ibid* at para 13.

¹³⁴ *R v Letkeman*, 2020 MBQB 12 at para 28.

¹³⁵ *Letkeman CA*, *supra* note 124 at para 72.

¹³⁶ *Ibid* at paras 73–74, 79.

¹³⁷ *Ibid* at paras 95–97

¹³⁸ *Ibid* at para 97.

a civilian offender in similar circumstances would receive such a lenient sentence.”¹³⁹ He further held that, “if a civilian offender had committed this offence, a significant jail term would have been imposed.”¹⁴⁰ Justice Burnett held that the appropriate sentence for Cst. Letkeman was one of 36 months’ imprisonment, reduced to 30 months to account for the community service, repayment of the fine to Cst. Letkeman, and the setting aside of the probation order.¹⁴¹ Justice Burnett concluded his reasons with the paragraph below:

The sentence imposed by the trial judge, and the sentence proposed by my colleague, do not respect well-established legal principles. Most importantly, they do nothing to maintain public confidence in the administration of justice or to demonstrate that police officers who commit serious criminal offences will be severely punished.¹⁴²

The well-established legal principles on which Justice Burnett relied, included that police officers should be held to a higher standard than civilians and that they should be sentenced more harshly than civilians when there is such an egregious breach in the public trust.¹⁴³

The suggested ignorance of these principles is not unique to the Manitoba Court of Appeal. Lenient sentences for police officers convicted of very serious crimes are not unusual. In *R v Doering*, a decision of the Ontario Superior Court, Cst. Doering was convicted of failing to provide the necessities of life and criminal negligence causing death.¹⁴⁴ The convictions arose from the death of an Indigenous woman who died in police custody where it was determined that Cst. Doering had ignored her medical condition and further, that he had lied to other officers regarding her condition which affected her ability to potentially receive lifesaving

¹³⁹ *Ibid* at para 105.

¹⁴⁰ *Ibid* at para 158.

¹⁴¹ *Ibid* at para 159.

¹⁴² *Ibid* at para 163.

¹⁴³ *Ibid* at para 146.

¹⁴⁴ 2020 ONSC 5618 at para 1.

care.¹⁴⁵ The Court determined that Cst. Doering's conduct "represented a marked and substantial departure from the standard of care of a reasonable and prudent police officer."¹⁴⁶ After staying the charge for failing to provide the necessities of life in accordance with the *Kienapple* principle, the Court sentenced Cst. Doering on the count of criminal negligence causing death.¹⁴⁷

The Court affirmed the well-established principle that when police officers are convicted of crimes, their sentences must reflect their special role and authority in society, and that these powers require that officers be held to a high standard of accountability.¹⁴⁸ The Court further found that Cst. Doering was only in a position to commit such an offence because of his ability as a police officer to detain the victim.¹⁴⁹ The Court appropriately held that this case warranted a term of imprisonment, holding that, "Nothing short of that can reflect the gravity of the offences in this case."¹⁵⁰ In imposing the sentence, the Court stated that this sentence must reinforce, "the societal values that were breached: the sanctity of human life, the right of all persons to a minimum standard of care, and the duty of police to treat all persons in their custody with respect and humanity."¹⁵¹ In "reinforcing" this strong sentiment the Court ultimately imposed the sentence of only 12 months in custody.¹⁵² This short term of incarceration for the loss of life of an Indigenous woman is especially troubling given that the *Code* was amended in 2019 to reflect the heightened vulnerability of Indigenous women and further reinforces the importance of denunciation and deterrence in cases such as this.¹⁵³

¹⁴⁵ *Ibid.*

¹⁴⁶ *Ibid.*

¹⁴⁷ *Ibid* at para 8.

¹⁴⁸ *Ibid* at para 24.

¹⁴⁹ *Ibid* at para 28.

¹⁵⁰ *Ibid* at para 76.

¹⁵¹ *Ibid.*

¹⁵² *Ibid* at para 89.

¹⁵³ *Criminal Code*, *supra* note 4, s 718.04.

In *R v. Theriault*, the Ontario Superior Court held that, “serious offences warrant serious punishment even when they are committed by otherwise law-abiding people.”¹⁵⁴ Cst. Theriault’s serious offence involved the assault of Mr. Miller, a young black man, whom he assaulted with a metal pipe while off-duty.¹⁵⁵ In his victim impact statement, Mr. Miller explained that he feared for his life during the interaction with Cst. Theriault and that, “to this day, he is troubled by the fact that these were the actions of a police officer, sworn to serve and protect.”¹⁵⁶ Again, the Court held that nothing short of a jail sentence would suffice.¹⁵⁷ The Court ultimately imposed a custodial term of nine months, and indicated that this was sufficient to “adequately denounce the offence committed and deter other like-minded individuals from engaging in the same sort of conduct.”¹⁵⁸

In *R v. Lindsay*, Cst. Lindsay again found himself to be under the oversight of an Alberta court.¹⁵⁹ This time Cst. Lindsay was convicted of aggravated assault against a Mr. Haworth.¹⁶⁰ Despite the Court’s knowledge of Cst. Lindsay’s previous use of force issues with Addai-Nyamekye, the Court of Queen’s Bench held that Cst. Lindsay did not pose a material risk to the public and that there was no need for specific deterrence.¹⁶¹ The Court stated that while Cst. Lindsay was not required to be held to a standard of perfection; he must be held to the standard of what police officers are trained to do and what the public expects them to do.¹⁶² Cst. Lindsay had overreacted with excessive force after he perceived Mr. Haworth to have spit on him.¹⁶³ Cst. Lindsay had punched Mr. Haworth in the

¹⁵⁴ 2020 ONSC 6768 at para 10.

¹⁵⁵ *Ibid* at para 3.

¹⁵⁶ *Ibid* at para 18.

¹⁵⁷ *Ibid* at para 93.

¹⁵⁸ *Ibid* at para 104.

¹⁵⁹ 2021 ABQB 839.

¹⁶⁰ *Ibid* at para 1.

¹⁶¹ *Ibid* at paras 54–55.

¹⁶² *Ibid* at paras 114–115.

¹⁶³ *Ibid* at paras 61, 71.

face causing him to bleed and he then threw further punches at his head before throwing him to the pavement.¹⁶⁴ Mr. Haworth suffered a skull fracture and a subdural hematoma as a result of being thrown to the pavement.¹⁶⁵ More troubling is that nine months following the assault, Mr. Haworth committed suicide.¹⁶⁶ For this “serious offence”, Cst. Lindsay was ultimately sentenced to a term of incarceration of 90 days to be served intermittently, followed by a term of probation of 12 months.¹⁶⁷

While these trial level decisions are troubling, the appeal decisions raise further concern; but they also raise some hope. Cst. Doering appealed both his convictions and his sentence to the Ontario Court of Appeal.¹⁶⁸ The Court reaffirmed that the victim’s deteriorating physical condition “would suggest to any prudent, reasonable police officer that Ms. Chrisjohn’s medical situation may well be changing for the worse.”¹⁶⁹ Cst. Doering in his factum on appeal relied on his past experience as a police officer dealing with individuals who were high on methamphetamine to justify his lack of medical intervention.¹⁷⁰ He argued that his prior experience provided “a basis for Cst. Doering and any reasonable police officer to reasonably believe there was no need for hospitalization.” [emphasis in original]¹⁷¹

The interveners in the case, the Toronto Police Association, the Police Association of Ontario, and the Canadian Police Association all supported this argument.¹⁷² Despite this, the Court set aside the conditional stay and imposed a conviction on the charge for failing to provide the necessities of life.¹⁷³

¹⁶⁴ *Ibid* at para 71.

¹⁶⁵ *Ibid*.

¹⁶⁶ *Ibid* at para 63.

¹⁶⁷ *Ibid* at paras 118–19.

¹⁶⁸ *R v Doering*, 2022 ONCA 559 at para 10.

¹⁶⁹ *Ibid* at para 59.

¹⁷⁰ *Ibid* at para 68.

¹⁷¹ *Ibid*.

¹⁷² *Ibid*.

¹⁷³ *Ibid* at para 147.

In relation to the charge of criminal negligence causing death, Cst. Doering argued that the trial judge's finding that he had deliberately misled the OPP officers could not stand.¹⁷⁴ The trial judge had held that Cst. Doering could rely on his supervisor's "medical" assessment of the victim through a car window and his direction that the victim did not need to go to the hospital.¹⁷⁵ The Court held that Cst. Doering simply passed along that "assessment" to the other officers.¹⁷⁶ He was ultimately acquitted of that charge by the Court of Appeal based on a lack of legal causation.¹⁷⁷ When Cst. Doering appeared again before the Ontario Superior Court, this time for sentencing on the charge of failure to provide the necessities of life, he was ultimately sentenced to an 18 month Conditional Sentence Order.¹⁷⁸ This sentence was upheld despite further attempts to appeal by Cst. Doering.¹⁷⁹

Despite receiving arguably very favourable outcomes in sentencing, Cst. Lindsay and Cst. Theriault also attempted to appeal their decisions. The Alberta Court of Appeal dismissed Cst. Lindsay's appeal in very short reasons, but a long dissent allowed Cst. Lindsay to appeal to the Supreme Court of Canada.¹⁸⁰ The Supreme Court ultimately dismissed Cst. Lindsay's appeal in a short but unanimous decision.¹⁸¹

Cst. Theriault's conviction and sentence were also upheld by the Ontario Court of Appeal, and he was denied leave to appeal to the Supreme Court of Canada.¹⁸² While these outcomes provide

¹⁷⁴ *Ibid* at para 111.

¹⁷⁵ *Ibid* at para 114.

¹⁷⁶ *Ibid* at para 117.

¹⁷⁷ *Ibid* at para 146.

¹⁷⁸ *R v Doering*, 2023 ONSC 5603 at para 57.

¹⁷⁹ See *R v Doering*, 2024 ONCA 389. Appeal to the SCC was refused on September 26, 2024 (see *R v Doering*, 2024 ONCA 389, leave to appeal to SCC refused, 41302 (26 September 2024)).

¹⁸⁰ *R v Lindsay*, 2022 ABCA 424.

¹⁸¹ *R v Lindsay*, 2023 SCC 33.

¹⁸² *R v Theriault*, 2021 ONCA 517 at para 226. Appeal to the SCC was denied on December 16, 2021 (see *R v Theriault*, 2021 ONCA 517, leave to appeal to SCC refused, 39768 (16 December 2021)).

some hope, they ultimately upheld very favourable sentencing outcomes given the offences committed by the officers. This creates future favourable precedents to be relied upon by officers who use excessive force and go beyond the actions of a reasonable police officer.

V. TRUST AND POWER IN POLICING

Police officers represent the interests of the community.¹⁸³ They have a duty to protect the interests of the community by preserving the peace and apprehending offenders, thus protecting the lives and property of the community.¹⁸⁴ In Manitoba, police are governed by *The Police Services Act*, which broadly defines that police officers have “all the powers, duties, privileges and protections of a peace officer and constable at common law or under any enactment.”¹⁸⁵ The duties of police officers as defined in *The Police Services Act* can be summarized as the duty to preserve the public peace, to prevent crime and offences, to assist victims of crime, to apprehend criminals and others who may be lawfully taken into custody, to execute warrants, to lay charges and participate in prosecutions, to enforce municipal by-laws, and to perform other duties as they are assigned by the police chief.¹⁸⁶ Police have the ultimate power; they have the special authority in law to deal with individual members of our society and impact their right to liberty.¹⁸⁷

Police officers have enormous responsibilities in maintaining order and protecting the public from harm.¹⁸⁸ As such, they are granted special privileges and protections in the law to enable them

¹⁸³ John Burchill, “A Horse Gallops Down a Street... Policing and the Resilience of the Common Law”, (2018) 41:1 Man LJ 161 at 164.

¹⁸⁴ *Ibid* at 180.

¹⁸⁵ *Supra* note 7, s 24(1).

¹⁸⁶ *Ibid*, s 25.

¹⁸⁷ *R v Feeney*, 1997 CanLII 342 (SCC) at para 148.

¹⁸⁸ *R v Forcillo*, 2018 ONCA 402 at para 198 [*Forcillo*].

to discharge this important duty.¹⁸⁹ Police officers are provided with statutory and ancillary powers, as well as training and weapons, and the public trusts police officers to act within the boundaries of the law.¹⁹⁰ Police powers are protected, so long as they act within the boundaries of the law, this includes the appropriate use of force by police in executing their duties.

A. *Section 25 of the Criminal Code*

Section 25(1) of the *Criminal Code* provides protection for use of force by persons acting under legal authority, stating that, “Every one who is required or authorized by law to do anything in the administration or enforcement of the law... is, 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.”¹⁹¹ But the *Criminal Code* takes it further and clarifies not only that police officers are authorized to use force, but that they are authorized to use force that is intended to cause death or grievous bodily harm in effecting a lawful arrest.¹⁹² However, this power is not absolute. Section 25(3) provides that police are not protected by section 25(1) in using force that is intended or is likely to cause death or grievous bodily harm unless the officer believes on reasonable grounds that this use of force is necessary to protect themselves or others from death or grievous bodily harm.¹⁹³ Police are also not protected by the law if the force used is deemed to be excessive. If excessive force is used, police officers can be held

¹⁸⁹ *Ibid.*

¹⁹⁰ *R v Ens and Moyse*, 2011 MBQB 301 at para 10. This decision was sent for retrial by the MBCA on fresh evidence (*R v Moyse*, 2013 MBCA 71 at para 39). The charge against Ens was stayed by the Crown on December 18, 2014, while Moyse pled guilty and received an absolute discharge on June 16, 2015, with a restitution order of \$1240 (Manitoba, Court Registry System, File Number Search, CR11-01-30950, online: <web43.gov.mb.ca/Registry/FileNumberSearch/> [perma.cc/V52M-YGC6]).

¹⁹¹ *Supra* note 4, s 25(1).

¹⁹² *Ibid.*, s 25(4).

¹⁹³ *Ibid.*, s 25(3).

criminally responsible for the act that constitutes the excessive force, judging it by the nature and quality of the act.¹⁹⁴

Courts have interpreted the powers in section 25(1) since its codification. The Supreme Court of Canada in *R v Nasogaluak* (“*Nasogaluak*”), developed the current test used by the courts in determining whether an officer’s actions fall under the protection of section 25(1).¹⁹⁵ The Supreme Court clarified that section 25(1) provides that, “a police officer is justified in using force to effect a lawful arrest, provided that he or she acted on reasonable and probable grounds and used only as much force as was necessary in the circumstances.”¹⁹⁶ The Supreme Court further reiterated that section 25(3) prohibits police officers, “from using a greater degree of force” unless they believe that it is necessary to protect themselves or others from death or grievous bodily harm.¹⁹⁷ The Supreme Court clarified that in applying the law to the facts of a case, the officer’s belief must be objectively reasonable, meaning that the use of force under section 25(3) is to be assessed on a subjective-objective basis.¹⁹⁸

Most importantly, what has been taken from the test as outlined in *Nasogaluak* is that in applying the test, “Police actions should not be judged against a standard of perfection.”¹⁹⁹ The Supreme Court explained that this is because police officers engage in dangerous work involving quick reactions.²⁰⁰ Police actions are to be judged in light of the exigent circumstances in which they find themselves.²⁰¹ This requires the trier of fact, in determining whether the force was necessary, to have regard to the circumstances surrounding the use of said force.²⁰² However, while

¹⁹⁴ *Ibid*, s 26.

¹⁹⁵ *Supra* note 93.

¹⁹⁶ *Ibid* at para 34.

¹⁹⁷ *Ibid*.

¹⁹⁸ *Ibid*.

¹⁹⁹ *Ibid* at para 35.

²⁰⁰ *Ibid*.

²⁰¹ *Ibid*.

²⁰² *R v Bottrell*, 1981 CanLII 339 (BCCA) at para 16(4).

courts have noted that police work is high-risk, officers are trained to respond to danger and provocation and this training plays an important part in the legal analysis for use of force.²⁰³

VI. POLICE TRAINING

To become a member of the RCMP, potential future officers begin with an intensive 26-week basic training course, known as “the Cadet Training Program”.²⁰⁴ Upon successful completion of the course, cadets may be offered employment as RCMP members and thereby given the status of peace officer.²⁰⁵ The 26-week basic training course consists of 820 hours of training dispersed over a wide variety of topics.²⁰⁶ 432 hours, or more than half of the cadet’s training, is focused on “Applied Police Sciences.”²⁰⁷ The description provided to the public is that this area provides cadets with the “knowledge and problem solving skills to address the needs of the community through the creation of partnerships.”²⁰⁸ Cadets are required to pass a mid-term and final exam based on the content of the fifteen modules/scenarios they learn throughout this portion of the course.²⁰⁹ The descriptions provided by the RCMP to the public regarding “Applied Police Sciences” are minimal and vague, but from what can be discerned, this includes role-playing scenarios where the cadets participate as police officers and as observers or actors within the scenarios. Additionally, they are

²⁰³ Puddister & McNabb, *supra* note 91 at 399.

²⁰⁴ Royal Canadian Mounted Police, “Cadet Training Program”, (last visited December 2025) under heading “Program Training Standard”, online: <rcmp.ca/en/depot/services-and-information/cadet-training-program> [perma.cc/RSH8-DVRK].

²⁰⁵ *Ibid.*

²⁰⁶ *Ibid.*

²⁰⁷ *Ibid.*

²⁰⁸ *Ibid* under heading “Applied Police Sciences”.

²⁰⁹ *Ibid.*

required to prepare “mock investigative files” which are reviewed by their facilitators.²¹⁰

The next most intensive area of training for potential officers is 104 hours in “Firearms”.²¹¹ This area of the curriculum covers, “handling firearms with safety and precision for public and police safety within the provisions of law and policy.”²¹² This training includes providing cadets “with training specific to decision making in situations where firearms use may be warranted.”²¹³ This training is of particular relevance to section 25(1) as cadets are taught about the use of firearms in relation to the RCMP Incident Management Intervention Model.²¹⁴

Perhaps the most relevant area of training for cadets in relation to section 25(1) is the 94 hours that cadets will spend learning about “Police Defensive Tactics”.²¹⁵ This training provides cadets with “safe and effective techniques to manage policing-related incidents within the context of the RCMP Incident Management Intervention Model.”²¹⁶ The Model will be covered in detail in a later section. For the purposes of their training in relation to the Model, cadets learn and practice their techniques in simulated circumstances.²¹⁷ Cadets are taught a wide variety of techniques including: joint locks, use of OC spray, how to effectively move resistant suspects, stances, strikes, blocks, how to use batons, the carotid control hold, grappling and ground defence, body hold releases, how to handcuff and search suspects, and use of weapon defences.²¹⁸

²¹⁰ *Ibid* under heading “Applied Police Sciences”, subheading “Detachment visits”.

²¹¹ *Ibid* under heading “Program Training Standard”.

²¹² *Ibid* under heading “Firearms”.

²¹³ *Ibid*.

²¹⁴ *Ibid*.

²¹⁵ *Ibid* under heading “Program Training Standard”.

²¹⁶ *Ibid* under heading “Police Defensive Tactics”.

²¹⁷ *Ibid*.

²¹⁸ *Ibid*.

The remaining areas covered in The Cadet Training Program include, “Police Driving”, “Operational Conditioning”, “Drill and Department” and “Other”.²¹⁹ Cadets spend 67 hours in “Police Driving” where they are taught the driving skills and knowledge necessary to ensure public and police safety.²²⁰ This training also includes learning the laws and policies surrounding both police and civilian use of motor vehicles.²²¹ In their 45 hours of “Operational Conditioning”, cadets are expected to develop a “commitment to a life-long healthy lifestyle to ensure their physical and mental readiness for police duties.”²²² As part of this training, cadets are placed through “a series of challenge exercises to understand their limits and use this knowledge in risk assessments when involved in policing situations.”²²³ A total of 37 hours is spent in “Drill and Department”, where cadets “develop a sense of pride in self through professional deportment” by learning to care and maintain their kit and proper turn out in uniform.²²⁴ These skills are deemed to be “essential to professional client service.”²²⁵ There is no indication as to what is covered in the 41 hours of “Other” training that cadets receive.²²⁶

Paul Prokos (“Prokos”) in his work, *Policing the Police: Assessing the Shortcomings of the Regulatory Regime in Addressing Implicit Bias and Racism*, interviewed a police officer who wished to remain anonymous regarding their assessment of the education and training required for police officers.²²⁷ When the officer was asked

²¹⁹ *Ibid* under heading “Program Training Standard”.

²²⁰ *Ibid* under headings “Program Training Standard”, “Police Driving”.

²²¹ *Ibid* under heading “Police Driving”.

²²² *Ibid* under headings “Program Training Standard”, “Operational Conditioning”.

²²³ *Ibid* under heading “Operational Conditioning”.

²²⁴ *Ibid* under headings “Program Training Standard”, “Drill and Department Unit”.

²²⁵ *Ibid* under heading “Drill and Department Unit”.

²²⁶ *Ibid* under heading “Program Training Standard”.

²²⁷ Paul Prokos, “Policing the Police: Assessing the Shortcomings of the Regulatory Regime in Addressing Implicit Bias and Racism” (November 2024) online: (WL Can) Thompson Reuters Canada.

about the pre-requisites required to become a police officer, the officer replied that the only requirement was a high school diploma.²²⁸ This is also all that is required for education on the RCMP's website.²²⁹ When pressed by Prokos about whether the officer felt that this level of education was sufficient given the difficult scenarios faced by police, the officer replied with "a most definite no."²³⁰ In terms of the officer's assessment regarding the adequacy of the training, the officer's reiteration of the topics covered was very similar to what is covered by the RCMP in the Cadet Training Program.²³¹ The officer did raise an interesting issue, noting that there are often questions posed by the officers in training, for which the facilitators, who are often police officers, do not have the answer.²³²

A. RCMP Incident Management Intervention Model

The Incident Management Intervention Model ("IMIM") is used by the RCMP to "assess and manage risk in all encounters with the public."²³³ The IMIM helps to determine what level of intervention is needed and is commonly adopted by police agencies

²²⁸ *Ibid* under heading "The Interview: False Promises and the Affirmation of the Surreptitious Nature of the Inadequacies Embedded in the Regulatory Scheme".

²²⁹ Royal Canadian Mounted Police, "Become an RCMP officer: Before you apply", (last visited December 2025) under heading "Meet the qualifications and requirements", online: <rcmp.ca/en/careers-rcmp/police-officer-careers/become-rcmp-officer-before-you-apply#s1-1> [perma.cc/KG6T-6BK2].

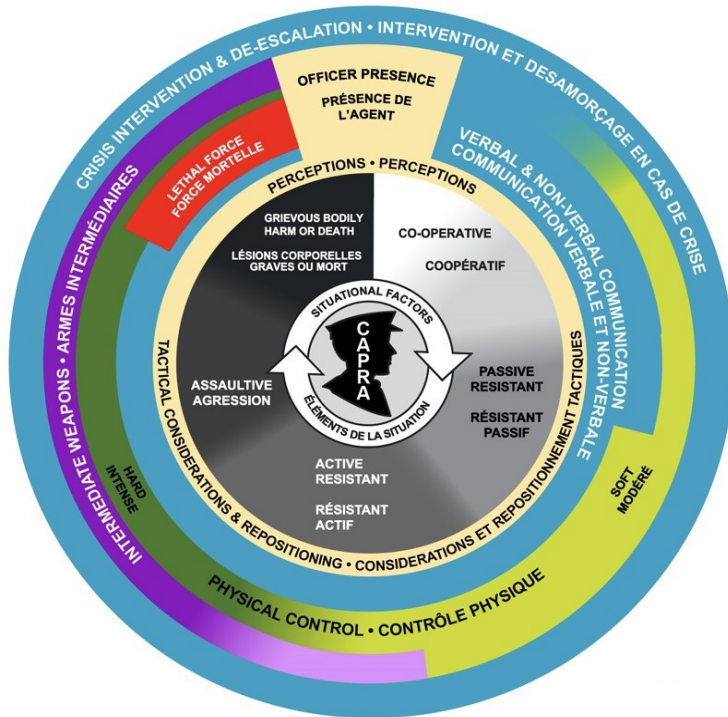
²³⁰ Prokos, *supra* note 227, under heading "The Interview: False Promises and the Affirmation of the Surreptitious Nature of the Inadequacies Embedded in the Regulatory Scheme" (for more on this subject, see the text accompanying note 227).

²³¹ *Ibid.*

²³² *Ibid.*

²³³ Royal Canadian Mounted Police, "Incident Management Intervention Model" (last visited December 2025) under heading "On this page", online: <rcmp.ca/en/police-intervention/incident-management-intervention-model> [perma.cc/XE55-B9LL].

across Canada.²³⁴ As stated previously, cadets learn about the IMIM in their basic training, but more importantly, RCMP officers need to re-certify on the IMIM every year.²³⁵ It is important to note that the RCMP includes a disclaimer that the IMIM “is not policy or law” and that it should not be “considered a model to justify use of a police intervention.”²³⁶ The IMIM is reproduced below:²³⁷



The RCMP states that the IMIM “is a visual aid that helps officers picture an event and explain why they used the intervention methods they did”, adding that it is also helpful when an officer

²³⁴ *Ibid.*

²³⁵ *Ibid.*

²³⁶ *Ibid.*

²³⁷ *Ibid* under heading “Incident Management Intervention Model In practice”.

needs to explain their actions in court.²³⁸ Officers are expected to look at the model and then select the appropriate option to control a situation based on the totality of the situation.²³⁹ There are six basic principles that underlie the IMIM.²⁴⁰ They can be summarized as follows: a peace officer's primary duty is to preserve and protect life, the primary objective for all intervention is public safety, peace officer safety is essential to public safety, the IMIM is consistent with federal statutory and common law and does not replace or augment the law, the IMIM must always be applied in the context of careful risk assessment, and risk assessment is a continuous process that must evolve as situations change.²⁴¹

The incident risk assessment process involves assessing situational factors, subject behaviours, officer's perception, and tactical considerations.²⁴² Situational factors include the weather, time of day, the location, and the number of people in relation to the number of police officers present.²⁴³ In terms of a subject's behaviour, officers are taught to assess their cooperativeness, if they are active or passive resistant, if they are assaultive, and if there is any risk for grievous bodily harm or death.²⁴⁴ This last inclusion of consideration for grievous bodily harm or death directly correlates to the wording in section 25(4).²⁴⁵ The officer's perception includes their assessment of the size of the subject, the presence of any weapons nearby, the subject's emotional state, and any knowledge they may have of the subject from previous encounters.²⁴⁶ The officer's perception affects the section 25(1) test and acts as the

²³⁸ *Ibid.*

²³⁹ *Ibid.*

²⁴⁰ *Ibid* under heading "Basic principles of the intervention model".

²⁴¹ *Ibid.*

²⁴² *Ibid* under heading "The assessment process".

²⁴³ *Ibid.*

²⁴⁴ *Ibid.*

²⁴⁵ *Criminal Code*, *supra* note 4, s 25(4) (for more on this subject, see the text accompanying note 192).

²⁴⁶ "Incident Management", *supra* note 233 under heading "The assessment process" (for more on this subject, see the text accompanying note 233).

subjective portion of the test.²⁴⁷ Finally, officers are required to make tactical considerations regarding the presence of low light, availability of cover and back up, as well as their distance from the subject.²⁴⁸ When conducting their risk assessment and choosing an action, officers are required to consider how that action will affect the subject, their surroundings, their fellow officers, and the public.²⁴⁹ Officer responses fall under the categories of officer presence, verbal and non-verbal communication, physical control, intermediate weapons, and lethal force.²⁵⁰ Most importantly for the purposes of this paper, the use of force escalates with each choice of officer response. Physical control can include soft techniques such as handcuffs or harder techniques such as “take-downs” and “strikes”.²⁵¹ There is a special mention that “Vascular Neck Restraint” is included in this area, but that it can only be used in cases where an officer “fears grievous bodily harm or death”, again employing the language of section 25(4).²⁵²

If physical force is ineffective, then officers may escalate to the use of “intermediate weapons” such as OC spray, conducted energy weapons, extended range impact weapons, and batons.²⁵³ The final available option is to use “lethal force” which is the use of firearms.²⁵⁴ The RCMP includes a final disclaimer that officers must be able to explain what occurred prior to, during, and after the incident with “legal articulation”.²⁵⁵ The RCMP describes this articulation as including “the officer’s risk assessment, helping people who [were] not there understand what the officer saw, what

²⁴⁷ Nasogaluak, *supra* note 93 at para 34 (for more on this subject, see the text accompanying notes 197–198).

²⁴⁸ “Incident Management”, *supra* note 233 under heading “The assessment process”.

²⁴⁹ *Ibid.*

²⁵⁰ *Ibid.*

²⁵¹ *Ibid.*

²⁵² *Ibid.*

²⁵³ *Ibid.*

²⁵⁴ *Ibid.*

²⁵⁵ *Ibid* under heading “Explaining the intervention”.

it meant to them, as well as how it made them feel.”²⁵⁶ The RCMP then uses language familiar in the courts by stating that the intervention employed by an officer is “measured against what a reasonable, trained, prudent police officer would do faced with a similar set of circumstances.”²⁵⁷ This is essentially a “reasonable person” test, but modified to the reasonable officer to account for the additional training possessed by officers to assess these types of situations.

VII. FINDINGS AND RECOMMENDATIONS

Police have an enormous amount of public trust and as such are granted special privileges and protections to enable them to discharge their duties.²⁵⁸ Section 25 of the *Criminal Code* provides police officers with special powers and protections that are not available to the public.²⁵⁹ Police officers receive a wide variety of training, but all of their training is guided by the principle of protecting themselves and protecting the public.²⁶⁰ When conducting their risk assessment and choosing an action, police officers are required to consider how that action will affect the subject, their surroundings, their fellow officers, and the public.²⁶¹ If officers fail to adhere to their training or members of the public are killed or injured, independent investigations are triggered.²⁶² But confidence in these internal mechanisms is lacking and

²⁵⁶ *Ibid.*

²⁵⁷ *Ibid.*

²⁵⁸ *Forcillo*, *supra* note 188 at para 198 (for more on this subject, see the text accompanying notes 188–189).

²⁵⁹ *Ibid.*

²⁶⁰ “Incident Management”, *supra* note 233 under heading “Basic principles of the intervention model” (for more on this subject, see the text accompanying note 233).

²⁶¹ *Ibid* under heading “The assessment process” (for more on this subject, see the text accompanying notes 233–241).

²⁶² *Police Services Act*, *supra* note 7, s 65(1).

external oversight is often necessary to maintain the public's confidence in policing and the administration of justice.²⁶³

As demonstrated, however, external oversight is also lacking. Despite consistent reiteration of well-established legal principles regarding the paramountcy of denunciation and deterrence in sentencing police officers, courts consistently impose lenient sentences in comparison to sentences imposed on civilians.²⁶⁴ The public is ultimately left with a feeling that when it comes to sentencing civilians and sentencing police officers that there is a two-tiered system, and courts are aware of this.²⁶⁵ Judges are sensitive to the fact that sentences imposed on police officers for a criminal offence have an impact on not only the public's perception of the justice system, but on their confidence in that system.²⁶⁶ This is because criminal offences committed by police officers diminish the public's trust by undermining the inherent respect for the law associated with police officers.²⁶⁷ This respect for the law is inextricable from effective policing and members of the public will be acutely aware of the differential treatment of officers in the court, whether this is awareness is perceived or real.²⁶⁸

To maintain the public's confidence, police officers must police themselves with the same authority and due diligence that they police the public. This must be assisted by the use of objective oversight mechanisms such as the use of body cameras. When internal mechanisms fail, the court must hold officers accountable for actions that go beyond their training and beyond what is acceptable to the public. This must be done by going beyond the reiteration and acknowledgment of well-established legal principles through the imposition of sentences that accurately reflect and uphold those well-established principles.

²⁶³ Puddister & McNabb, *supra* note 91 at 389.

²⁶⁴ *Ibid* at 398.

²⁶⁵ *Ibid* at 400.

²⁶⁶ *Ibid.*

²⁶⁷ *Ibid.*

²⁶⁸ *Ibid.*

VIII. CONCLUSION

This article has demonstrated that there are significant gaps in the accountability of police both as enforcers of the law and as those accused and convicted of breaking the law. While collateral consequences must be considered for all offenders, it is well-established in law that where the offence is serious, the personal circumstances of the accused must come secondary to the principles of denunciation and deterrence. It must follow then that, at the bare minimum, in cases involving serious offences, police officers must be sentenced to similar sentences imposed on members of the public. The mitigating factors accompanied with being a police officer must be weighed against the aggravating factors that come with committing a criminal offence as someone trusted to respect the law. Anything less would only serve to continue to maintain the current deficit in accountability for police officers who break the law.