

# Self-defence: What's acceptable under Canadian law?

Lawyers explain how to protect yourself under the Canadian Criminal code

Andrew Pinsent, [CBC News](#)

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*The Supreme Court of Canada is seen in Ottawa, Monday October 17, 2011. After a few high profile cases regarding self-defence laws, questions remain around what is allowed under the Criminal Code. (THE CANADIAN PRESS/Adrian Wyld)*

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The assault charges laid recently against a Toronto restaurant owner who fought a man who he accused of being a thief, along with a number of high-profile self-defence cases in the U.S., have led to questions around property rights and self-defence laws in Canada.

Criminal lawyer Howard Cohen adds that there is a "huge misconception" in Canada regarding the use of self-defence, and many people think they don't have any rights.

The laws around self-defence are a grey area — the criminal code states a property owner can only make a citizen's arrest if the alleged wrongdoer is caught in the act. But many people don't take in to account, "the flexibility and reasonableness of our juries," a factor that has affected many cases where people have acted to defend themselves or their property, Cohen says.

Stephen Harper introduced legislation last year to try and clarify the self-defence rights of Canadians. It was dubbed the 'Lucky Moose' bill, after a case in Toronto where Lucky Moose grocery store owner David Chen and two employees apprehended a thief after he returned to the store.

The three men were charged with kidnapping, carrying a dangerous weapon — a boxcutter— assault, and forcible confinement in the case. The accused thief, meanwhile, pleaded guilty to robbing the store and was sentenced to 30 days in jail.

Prosecutors later dropped the kidnapping and weapons charges against Chen and his two employees, but went ahead with the other charges in which the three men were eventually found not guilty.

The Conservative bill died when Parliament was dissolved for last May's federal election and now, renamed as bill C-26, is currently in second reading in the House of Commons.

CBC News spoke to Cohen and criminal lawyer Stacy Nichols about different legal scenarios that outline what an individual's rights are under current Canadian law. Here are some excerpts from the interview:

**CBC News: You hear a noise and go downstairs in the middle of the night and find a burglar, and you can't tell if he's armed. Legally, what are your options?**

"Your dwelling house seems to be the property you're allowed to protect the most," Nichols says.

Under Section 40 of the Criminal Code, which deals with the defence of dwellings, Nichols says, "everyone who is in possession of a dwelling house is justified in using as much force as necessary, to prevent any person from forcibly breaking into or entering the dwelling house without lawful authority."

Cohen echoes Nichols' sentiments, adding that when it comes to defending themselves, Canadians have the most rights inside their own homes.

“This area is less grey than others. The rule of reasonable force still applies, but most judges will give you the benefit of the doubt,” Cohen says. “... You can use any force you deem necessary to remove the burglar from the house and eliminate the threat to yourself.”

“You could use a significant amount of force. If you knocked them out and rendered them unconscious, you will probably not be charged with assault,” Cohen adds. “But if he was retreating and you hit him in the head with a bat and he was [critically injured], you might have a problem.”

Nichols says the words “as much force as is necessary” are one of the things taken into account by judges.

“It might depend on where the person was, and what they were doing. A judge would look at what degree of force was used and where you struck the person,” Cohen says.

“There's a ton of case law out there where people have been charged in these types of situations,” Nichols adds, referring to situations where an intruder has entered and a dwelling occupant has used lethal force.

“Generally they're treated very, very leniently, or the charges are dropped altogether,” she says.

Cohen says the judge's decision revolves around the specifics of the individual situation.

“Every scenario in criminal law tends to be very unique, so that's a judge's job is to sift through the facts and make a determination based on them, and all kinds of factors play into it,” Cohen says.

### **CBC News: You own a store and someone has come in late at night to rob it. Is it legal to use force to stop them?**

“What is allowed is what's called a citizens arrest,” Nichols says.

“Generally the term ‘as much force as reasonably necessary,’ is again applied to this situation.”

Cohen adds that as in the self-defence scenario, the judge's decision about the amount of force that was necessary in a given situation goes on a case-by-case basis.

“If you had a reasonable belief this person will hurt you, then you can justify killing them,” he says, but adds you would have to be in a situation where “if you don't do something you're going to be hurt or killed.”

Cohen says the courts look closely at a situation to see whether the person claiming self-defence has gone overboard.

“The crown attorney still has to show the force was unreasonable,” he says.

“The criminal code gives Canadians a little more self-defence posture than most people believe is the case, because some people look at some of these situations [like David Chen] that have factors outside of self-defence,” Cohen says.

**CBC News: Someone has just stolen something that belongs to you and is running down the street. Can you chase and tackle them to get your stuff back?**

“You're allowed to try and get your belongings back,” Nichols says, but under Section 38 of the criminal code, “you can't strike or cause bodily harm to the person that's stealing your stuff.”

Cohen concurs with Nichols, saying, “if you see someone committing an indictable offence you can make a citizens arrest using reasonable force.”

“You can pursue that person, but you're liable much like a police officer doing an arrest,” he said.

**CBC News: Someone is simply trespassing. Do we have rights to physically remove someone from our property?**

Cohen says like security guards, if you're going to arrest someone you have to hold the alleged perpetrator for police.

“You would have to use reasonable force to detain, but I would think [in terms of trespassing] you would be judged much more closely on what that force was,” he said.

**CBC News: If we ever fear our family is in danger in public, do we have the right to defend them, even if the threat is a perceived one?**

Nichols says this is the greyest area of the law, but, “unless the person was actually taking some sort of action, or was using some kind of assaultive force, you wouldn't be justified in doing too much.”

Cohen says if a person reasonably believes a potential threat is imminent, and a judge agrees with the reasoning, then they would likely not be penalized for their actions.

“It's more difficult for Canadians to understand because it seems more people are involved in this type of situation in the United States,” he said.

The so-called perceived threat and the level of response is part of the practical reality that surrounds the law in these situations, Cohen says.

“There's no necessity to retreat, as depending on the circumstances, it [defending yourself] could have been the right thing to do.”

It comes down to whether the amount of force used could be considered reasonable, given the situation. Cohen says, for example, “if you were getting out of your car and some young kid

came up to you and started bugging you for money, and you didn't give it to him and he became aggressive, the law wouldn't support you if you beat them senseless."

**CBC News: Under what circumstances in Canada is the use of lethal force allowed?**

Again, Nichols says the decision is in the judge's hands, and is made on a case-by-case basis.

"It all comes back to what is reasonable in the circumstance," she says. "A judge would have to find you had no other choice."