

Luo Guang Yu Seven Star Mantis Kung Fu @ 2004 - 2021 Copyright

Introduction

Praying Mantis Kung Fu was founded 400 years ago in the tradition of Shaolin, integrating late Ming dynasty martial practices with Chan Buddhist meditation and Neo-Confucian philosophy. It evolved against a backdrop of political instability, social unrest, and large-scale violence premised on the notions of self-preservation, individual autonomy, moral agency and the natural right to self-defence. This was the world as it was 400 years ago.

Today, depending on where you live, the world is a much different place than it was 400 years ago. If you have the good fortune of living in a developed region you can be thankful for the generally higher levels of peace and security that typically benefit from a liberal democracy, transparent rule of law, progressive education, and secular values based on individualism, fundamental human rights, equality, reason and science. But despite such progress in even the best parts of the world, developed regions continue to experience socio-economic imbalances, conflict, inequality, injustice, violence, and human suffering of their own. This was the starting point for my article entitled, “The Realities of Violence” (June 2021) in which I provided a detailed case study analysis on violent victimizations in the United States. The world as it is.

In today’s article I will continue with an extension on the topic on violence and explore the theme of personal self-defense. In section one I will introduce some key working definitions; in section two I will demonstrate the conceptual derivation to the natural and moral right of self-defense; and finally in section three I will introduce Canadian federal criminal code pertaining to self-defence and the criteria required to meet the definition of justified self-defense. After reading this article you should have renewed confidence in the natural, moral and legal right to self-defense; as well as a new understanding of core legal principles related to managing potential criminal liability in a self-defense interaction.



Nathan A. Wright
Chief Instructor

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Master Luo Guang Yu
罗光玉 1888-1944

1. Working Definitions

Learning Objective: You will learn about the definitions of self-defence, violence, interpersonal violence, and the distinctions between violence and crime.

1.1 What Is Self-Defense?

Self-defense is a universally accepted principle that a person may protect themselves from harm under appropriate circumstances, even when that behavior would normally constitute a crime. It is the natural, moral and legal right to prevent an attacker from committing violence against you, or another person, or the perceived threat of such, through the use of reasonable counteracting force. This can be related to the defense of a person and also the defense of property. On the surface this definition is intuitive but in fact it is more complicated than appears and can raise many questions when applied to different situations. For example, what was the nature of the force/threat, was the threat immanent, and was your use of force reasonable? What if the intended victim provoked the attack? What happens when victims reasonably perceive a threat even if the threat doesn't actually exist? In order to handle the myriad of situations where self-defense arises, the Canadian federal and provincial governments have developed rules to determine when self-defense is allowed (triggers) and how much force a defender can use to reasonably protect themselves. I will come back to this more specifically in section three.

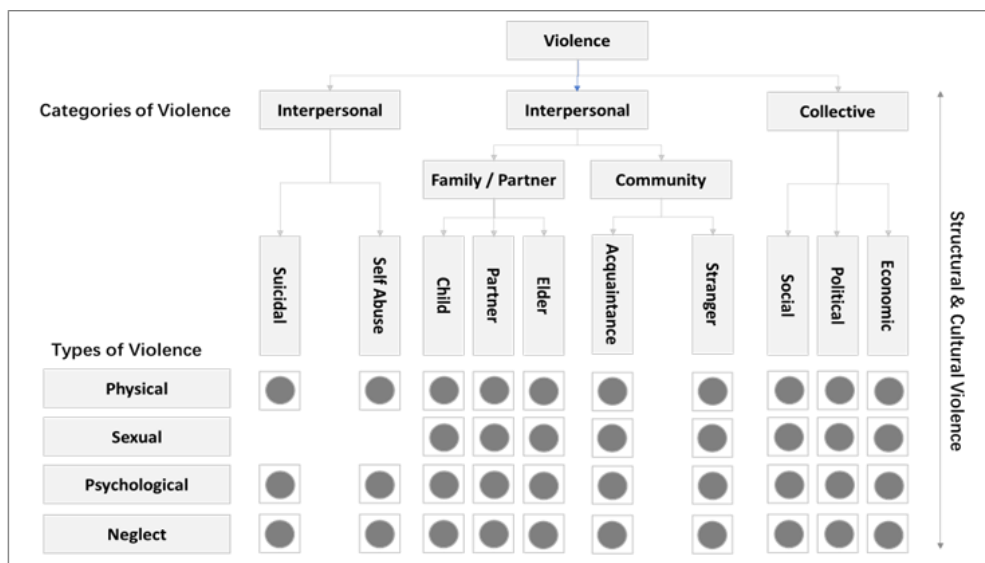
1.2 What is Violence?

The World Health Organization defines violence as “the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, that either results in or has a high likelihood of resulting in injury, death, psychological harm, and/or maldevelopment” [1]. The act of violence is not normal and it is difficult to comprehend let alone reconcile, but the risks and potential consequences it presents are real and intrinsically understood by all people.

1.2.1 What is Interpersonal Violence?

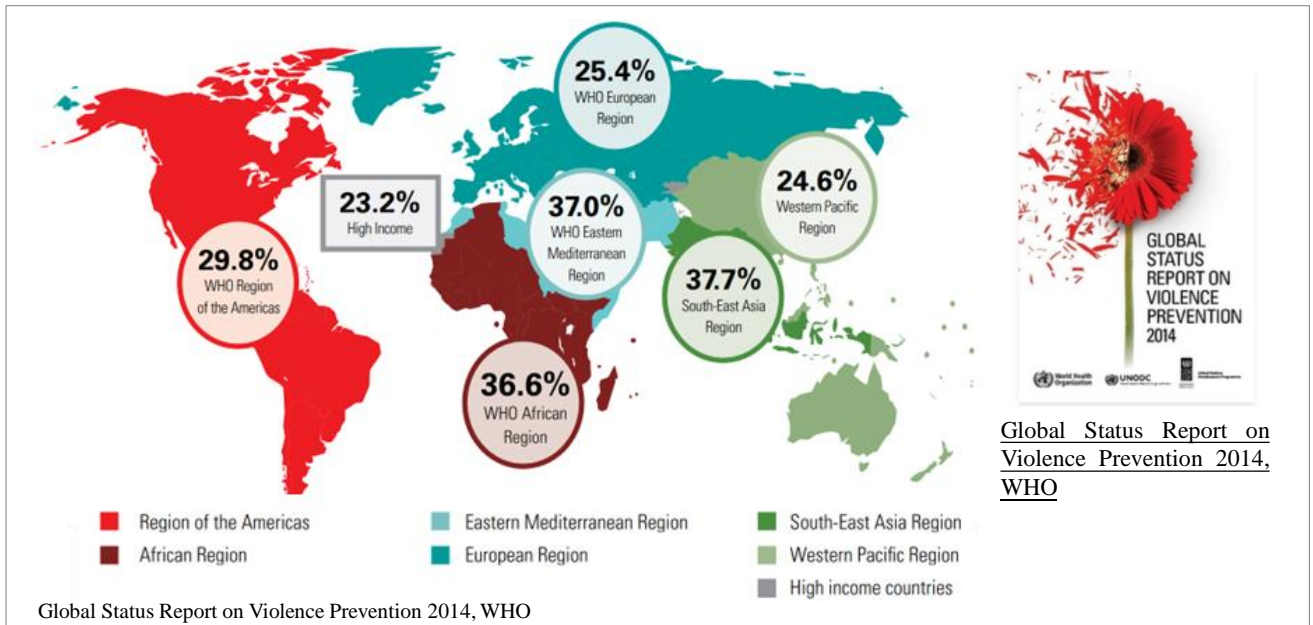
Interpersonal Violence refers to violence inflicted by another individual or by a small group of individuals. It can be further divided into two subcategories: 1) Family / Intimate Partner Violence (IPV), and 2) Community Violence. Family and IPV violence is largely between family members and intimate partners, usually, though not exclusively, taking place in the home. This includes forms of violence such as child abuse, intimate partner violence and abuse of the elderly. Community violence is violence between individuals who are unrelated, and who may or may not know each other, generally taking place outside the home. This includes youth violence, random acts of violence, rape or sexual assault by strangers, and violence in institutional settings such as schools, workplaces, prisons and nursing homes (1).

Topography of Violence



World Health Organization

Prevalence of intimate partner violence, by WHO region



1.3 What are the Distinctions Between Violence and Crime?

The terms “violence” and “crime” are closely linked and used colloquially are interchangeable. There are however some important distinctions and should not be confused. Some crimes are violent (including homicide, rape, sexual assault, aggravated assault, and robbery) while other crimes involve no direct violence at all (such as tax evasion or illicit drug use). Likewise, not all types of violence are criminal, such as structural violence [17], or the many forms of psychological violence. In other words, not every case of violence is a crime, and not every crime is violent. Therefore, it is important to distinguish between violence and crime as two different terms that can often overlap each other, but need not necessarily do so.

Whether an act is classified as a crime or not depends on the laws of a country. Crime can therefore be defined as a violation of the law and an act of deviance from established rules, or a non-commission of an action that is required by law. Violence, on the other hand, is an act of physical aggression that in most cases results in harm. Whether a violent act is considered a crime, changes from country to country, and it might change over time, as countries adapt their laws due to changing political

systems and social values. Understanding the difference between these two concepts is important in responding appropriately and adopting effective prevention strategies.

2. CONCEPTUAL FOUNDATIONS IN SELF DEFENSE

Learning Objective: You will learn about the foundational axioms forming the conceptual derivation of the natural and moral right to self-defense.

2.1 What is Self-Preservation?

Self-preservation is a fundamental organizing principal for all life on planet earth and forms the biological basis for the natural right to self-defense. Self-preservation is commonly understood to be the survival instinct to preserve one’s life and to protect oneself from coming to harm. This captures the human essence, but still misses out on some of the underlying biological and behavioral functions implicit in the meta-description. More accurately, self-preservation encompasses all of the complex internal physiological functions, and external behavioral patterns that your body

exhibits and/or engages in, both voluntarily and involuntarily, to maintain system integrity, survive and thrive.

Internally, self-preservation includes three primary biological functions, considered defining characteristics of life (5): Metabolism, Homeostasis, and Reproduction. Metabolism refers to a set of sustainable chemical reactions carried out for maintaining the living state of the cells in an organism and can be divided into catabolism and anabolism. Catabolism is the process of breaking down food (molecules) to obtain energy, and anabolism is the process of synthesizing (building up) compounds from simpler substances required for cell growth and development. Homeostasis is the process of self-regulation and maintenance of a steady internal dynamic equilibrium despite changes in the external environment. Reproduction is the biological process by which an organism reproduces an offspring who is biologically similar to the organism.

Self-preservation also manifests in a number of internal cellular defense systems that include the immune system, the inflammatory response, redox regulation, metabolism, and DNA repair (4). All five cellular defense systems are required to combat a diverse range of stressors (bacteria, fungi, viruses, aging, etc.) and maintain a healthy and functional physiology in order to reduce disease risk in humans. These defense systems operate at the molecular level within cells and tissues to maintain appropriate functioning of cellular processes and prevent stress-related changes that lead to deteriorating health and increased risk of chronic diseases (4).

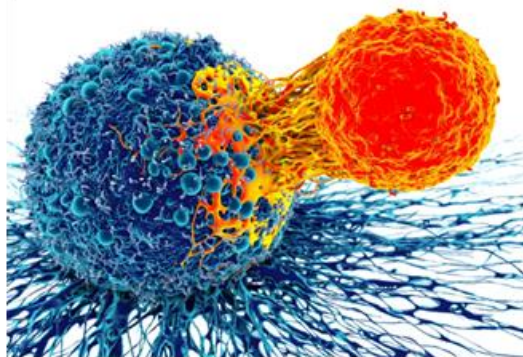
Behaviorally, self-preservation manifests in a broad and complex range of instinctive and learned behavioral patterns that serve the purpose of increasing reproductive

fitness (both for you, your offspring, and extended kin). The foundation of these include feeding, fleeing, fighting, reproducing, parenting, and cooperating. Fighting is more accurately described by evolutionary psychologists as aggression, which includes the subcategories of proactive and reactive aggression, of which the latter includes defensive aggression (6). Defensive aggression in mammals is based in 200 million years of Darwinian evolution and functions to remove a source of a dangerous stimulus or perceived threat of such through the use of physical force / aggression. Self-preservation serves as a central tenant of defensive aggression in animals and for the natural right to self-defense in humans.

2.2 What is Individual Autonomy?

Individual autonomy is a principle that derives from the central organizing principle of self-preservation (response to stimulus) and serves as a fundamental presupposition to moral agency, human rights and legal self-defense. Individual autonomy starts with the assumption that we are complex biological individuals (embodied brains), with large degrees of control, imbedded in dynamic ecosystems. As the most complex biological organisms on planet earth, humans have powerful cognitive and affective capabilities that grant a seemingly infinite number of degrees of control over both ourselves (individually) and the environment we interact in. We have the ability to govern ourselves directed by historicity of experience, considerations (reason), desires (emotions and values), conditions, and characteristics that are not simply imposed upon us externally, but that are innately part of what can be considered one's authentic self (consciousness).

Imbedded in dynamic physical (natural), social, economic and institutional hierarchies, we have the ability to further



Internal Defense - Natural Killer Cells

Natural killer cells are lymphocytes belonging to the same family as B cells and T cells. They are cytotoxic cells of the innate immune system and circulate in the body seeking out infected and cancerous cells. When they encounter an abnormal cell, natural killer cells secrete cytotoxic granules to destroy the cell and limit the spread of infection or disease in the body (16).

observe and understand the world, make representations, interpret the representations of others, and make decisions to carry out actions based on the will and intent of our own accord. This interaction is not merely a passive one but more importantly a distinctively proactive one. We have the ability to affect change on the world, including affecting other individual agents, as well as being affected by the external environment and others. The consequences of such can be positively value enhancing and sustainable, or value destroying and unsustainable. Simply put, we have the ability to hurt and the ability to be hurt, which in turn has important implications for the role of moral agency (ethics) as a going concern. Individual autonomy when taken to its natural conclusion imparts a profound and practical need for ethical responsibility (ethics-based obligations and duties) and its reciprocal component in human rights. This is the unity of duty and rights.

2.3 What Are Human Rights?

The conceptualization of human rights derives from the biological organizing principles of self-preservation and individual autonomy which manifest in social standards and ethical norms that recognize and protect the dignity of all human beings. Human rights govern how individual human beings live in society and interact with each other, as well as their relationship with the state and the obligations that the state has towards them. Individuals also have responsibilities in using their human rights and must respect the rights of others. No government, group or individual person has the right to do anything that violates another's fundamental rights.

At the heart of fundamental human right includes the right to life, liberty and security of person that are represented by a number of characteristics including being: inalienable, universal, egalitarian, and accountable. Inalienable in that all people are inherently entitled to by default of being human and by virtue of the inherent dignity of each human person. Universal in that they are applicable to everyone, everywhere, at every time. Egalitarian (non-discriminatory) in that all human beings are entitled to human rights without discrimination of any kind. And lastly, human rights must follow rule of law and have accountability to ensure integrity and adherence to.

United National Declaration of Human Rights

On December 10, 1948 the United Nations General Assembly established the first international common

standard in fundamental human rights (Resolution 217A) to be universally protected for all peoples and all nations. The first ten articles are reprinted directly United Nations website (7) below.

1. Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.
2. Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. Article 3: Everyone has the right to life, liberty and security of person.
4. Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.
5. Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
6. Article 6: Everyone has the right to recognition everywhere as a person before the law.
7. Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.
8. Article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.
9. Article 9: No one shall be subjected to arbitrary arrest, detention or exile.
10. Article 10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

3. General Legal Principles

Learning Objective: You will learn about the criminal legal code in Canada related to defense of person and some of its core legal principles.

3.1 Self Defense Law

Self-defence law is a universally accepted principle that a person may protect themselves from harm under appropriate circumstances, even when that behavior would normally constitute a crime. Under Canada's federal criminal code (Canada Criminal Code, R.S.C., 1985, c. C-46) there are two main categories of Personal Defense: Defense of a Person (Section 34) and Defense of Property (Section 35). Here I will primarily focus on and discuss the defense of a person statute as relates to the use or threat of force under the federal criminal code (9).

On jurisdiction, Canada's constitution (Constitution Act, 1867) grants Parliament legislative jurisdiction with respect to "the criminal law," including procedure in criminal matters and the power to pass laws. Each provincial jurisdiction can pass legislation (under s92 of the Constitution A of the Constitution Act, 1867) dealing with subjects including enforcing laws by imposing "punishment by fine, penalty, or imprisonment," and can have "provincial offences" enacted. But if any of these offences conflict with a statute passed under the federal government's criminal-law power, the federal law is generally paramount. In this regard, analyzing federal criminal law is the most relevant to understanding self-defence code in Canada. You should consult with a qualified legal attorney to better understand legal code within your jurisdiction.

3.2 Defense of a Person

Defense of a Person under Section 34 (1) is not guilty of an offense if [15]:

- (a) they believe on reasonable grounds that force is being used against them or another person or that a threat of force is being made against them or another person;
- (b) the act that constitutes the offence is committed for the purpose of defending or protecting themselves or the other person from that use or threat of force; and [state of mind and intent]

- c. the act committed is reasonable in the circumstances.

Furthermore, in determining whether an act committed is reasonable in the circumstances, the court will consider under Section 34 (2) a number of relevant circumstances of the person and the other parties involved in the interaction, including, but not limited to, the following factors:

- (a) the nature of the force or threat;
- (b) the extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force;
- (c) the person's role in the incident
- (d) whether any party to the incident used or threatened to use a weapon;
- (e) the size, age, gender and physical capabilities of the parties to the incident;
- (f) the nature, duration and history of any relationship between the parties to the incident, including any prior use or threat of force and the nature of that force or threat;
- (g) any history of interaction or communication between the parties to the incident;
- (h) the nature and proportionality of the person's response to the use or threat of force; and
- (i) whether the act committed was in response to a use or threat of force that the person knew was lawful.

And finally, under Section 34 (3), subsection (1) above, does not apply if the force is used or threatened by another person for the purpose of doing something that they are required or authorized by law to do in the administration or enforcement of the law, unless the person who commits the act that constitutes the offence believes on reasonable grounds that the other person is acting unlawfully. The above three sections of criminal code, Section 34 (1) (2) (3), are taken directly from the Justice of Canada website [15].

3.3 Defense of Property

Defense of Property under Section 35 (1) is not guilty of an offense if [15]:

- (a) they either believe on reasonable grounds that they are in peaceable possession of property or are acting under the authority of, or lawfully assisting, a person whom they believe on reasonable grounds in peaceable possession of property;

- (b) they believe on reasonable grounds that another person
 - i) is about to enter, is entering or has entered the property without being entitled by law to do so,
 - ii) is about to take the property, is doing so or has just done so, o
 - iii) is about to damage or destroy the property, or make it inoperative, or is doing so;
- (c) the act that constitutes the offence is committed for the purpose of
 - i) preventing the other person from entering the property, or removing that person from the property, or
 - ii) preventing the other person from taking, damaging or destroying the property or from making it inoperative, or retaking the property from that person; and
- (d) the act committed is reasonable in the circumstances.

Under Section 35 (2), subsection (1) does not apply if the person who believes on reasonable grounds that they are, or who is believed on reasonable grounds to be, in peaceable possession of the property does not have a claim of right to it and the other person is entitled to its possession by law.

Under Section 35 (3) subsection (1) does not apply if the other person is doing something that they are required or authorized by law to do in the administration or enforcement of the law, unless the person who commits the act that constitutes the offence believes on reasonable grounds that the other person is acting unlawfully.

3.4 Discussion on Core Elements and Legal Principles

Reasonable Perception of force is the first core element in the defense of person. The concept of “reasonable perception” is the legal system’s best tool to determine whether a person’s perception of imminent danger justified the use of protective force. What matters is whether a “reasonable person” in the same situation would have perceived an immediate threat

of physical harm. The test for the triggering threat is assessed on a combined subjective basis (i.e. what the accused honestly believed) and an objective one (i.e. would the “reasonable person” also share the accused’s beliefs). The expressions “force is being used” and “threat of force is being made” are intended to be interpreted in accordance with the use of similar expressions and concepts in the assault provisions of section (Section 265 – 273) (15).

Defensive Purpose is the second core element in the defense of person. It is judged on a purely subjective basis where the courts would typically look to some evidence or indication on which a jury could conclude that the accused had a defensive purpose when he or she did the actions that form the subject-matter of the charge. This purpose is not subject to objective confirmation, but rather is roughly equivalent in that the accused believed that they needed to take the action they did and speaks directly to their intent and state of mind. Note that under the old law prior to 2012, this belief had to be verified objectively.

Reasonableness of Actions is the third core element in the defense of person and assesses objectively the reasonableness in the circumstances (or reasonableness of actions). A non-exhaustive list of factors is included in Section 34.2 of the code (page 8) and is a means of codifying relevant considerations that derive from jurisprudence. Some principle factors worth further exploring below include: Nature of Force or Threat (a), Imminence (b), Proportionality (h), Capabilities (e), History of Relationship (f), and Role (c). Practically speaking, this means that an act that constitutes self-defence in one person’s circumstance will not necessarily qualify as self-defence in another.

Nature of Force or Threat. In order to better understand the expression of “force” and “threat of force” it is useful to explore language under the assault provisions of Section 265 (1) in more detail [15]. Specifically it reads: a person commits an assault when: (a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly;

(b) he attempts or threatens, by an act or a gesture, to apply force to another person, if he has, or causes that other person to believe on reasonable grounds that he has,

present ability to effect his purpose; or (c) while openly wearing or carrying a weapon or an imitation thereof, he accosts or impedes another person or begs [15]. Key language to pay attention to here is, “without consent”, “directly or indirectly”, “attempts or threatens”, “act or gesture”, “believe on reasonable grounds”, and “present ability.”

Imminence. Imminence of the attack is not a rigid requirement that must be present for the defence to succeed, but it is an important factor to consider in assessing the reasonableness of the accused's actions. The threat can be verbal, as long as it puts the intended victim in an immediate fear of physical harm. Offensive words without an accompanying threat of immediate physical harm, may not justify the use of force in self-defence. Moreover, the use of force in self-defence generally loses justification once the threat has ended. For example, if an aggressor assaults a victim but then ends the assault and indicates that there is no longer any threat of violence, then the threat of danger has ended. Any use of force by the victim against the assailant at that point would be considered retaliatory and not self-defence.

Proportionality between the threat and the response is a highly relevant consideration in assessing defence of person claims and whether the defensive response was reasonable in the circumstances. Sometimes proportionality can be substituted for the concept of “no more force than is necessary,” and is generally given some degree of flexibility to the accused in the assessment and reasonableness. The law does not require the defendant to consciously and exactly calculate the degree of force necessary in any given situation before defending themselves. Acting in self-defence is usually a decision that needs to be made in a split second, and generally the more urgent or sudden the threatening situation is, the more latitude the law will grant in assessing the reasonableness of the defensive act. In the context of the use of deadly force against an incoming threat of deadly force, proportionality is no longer a threshold requirement that will be determinative of the success of a defence claim.

Capabilities. Physical capabilities of the parties including size, age, and gender, etc., are relevant characteristics. For example, if a petite pregnant woman commences shoving her much larger boyfriend, but due to her small size and current condition of carrying a baby, she presents no real threat to his bodily integrity and there is no risk of

harm or injury, and the boyfriend responds to her force by punching her repeatedly, he would need to introduce some evidence that he was acting for the purpose of defending himself (rather than simply using the shoves as a pretext to respond violently). This is an example of consideration of capabilities (size, gender, health, etc.) and how it relates to both consideration of defensive purpose and reasonableness of action.

History of Relationship. Generally speaking, the courts recognize that evidence about the relationship and history between the parties is crucial for putting the conflict into its proper context. For example, understanding the dynamics of domestic abuse on the victim helps to contextualize the accused's experience so as to allow their circumstances and actions to be viewed and assessed on the basis of being reasonable, or not.

Role. This factor in part serves to bring into play considerations surrounding the accused's own role, if any, in instigating or escalating the incident and whether his or her ultimate response was reasonable in the circumstances.

Stand Your Ground. Under Canadian law, you are not explicitly required to attempt to retreat from the threat of force, deadly or otherwise, before responding with force to defend yourself. Reasonableness of actions principle will always be taken into account on all relevant circumstances. Your options however for retreat will be taken into account by the court in determining the reasonableness of actions. This is especially true in circumstances when there is a claim of self-defence where deadly force is used. One major exception to this about retreat when using self-defence in your own home.

Defence of Property. This article will not explore the intricacies of the law of defence of property, but note that, in order to be justified, the use of force in defending property must be for the purpose of removing the trespasser, preventing entry of the trespasser, preventing damage to property, or to retake property. The reasonableness of your actions will be assessed in light of these lawful purposes. In many circumstances, your decision to use force in the defence of property will not be made under the same conditions of urgency as a threat to your person.

3.5 Select Limitations in Self-Defence

Pre-emptive strikes. Canadian self-defence law does not allow the use of pre-emptive strikes and/or pre-emptive attacks in self-defence. Only the use of force when you reasonably believe you will be attacked is permitted. As an example, the use of force because you think someone is going to try to attack you later in the day is contradictory to the principle of reasonableness.

Weapons. Weapons can be used for self-defence, but the act of carrying weapons for the purpose of self-defence can be a various serious criminal offence. Carrying prohibited weapons (automatically opening knives, mace, pepper spray, finger rings, clothing spikes, brass knuckles, etc.), carrying and/or possessing firearms without proper authorization or in contravention of the Firearms Act [14], and carrying a concealed weapon can all lead to potentially serious charges. Even if you lawfully use a weapon in a self-defence interaction, the incident may leave you with various charges relating to carrying around and/or possessing that weapon. Furthermore even carrying around a legal weapon, non-concealed, for the purpose of self-defence can also lead to you being charged with possessing a weapon for a purpose dangerous to the public peace [11].

Firearms. Canada has very strict gun laws for the protection of public safety, and the use or possession of unregistered firearms or weapons is a criminal offence in Canada. Canada has experienced an increasing trend in mass shootings in rural and urban areas in recent years such as in Nova Scotia, city of Québec, Montréal and Toronto. Whether at home or abroad, the deadliest mass shootings are commonly perpetrated with assault-style firearms. Given these events and growing trends, there is increasing concern for public safety, an increasing public demand for measures to address gun violence and mass shootings and, in particular, the concern resulting from the inherent deadliness of assault-style firearms [14].

Concluding Remarks

In today's article I took you through a comprehensive overview on the theme of self-defence. I provided with you with some key working definitions on terms self-defence, violence, interpersonal violence, and the distinctions between crime and violence. Next, I introduced you to some foundational axioms demonstrating the conceptual derivation of self-defence as a natural and moral right. This included principles of

self-preservation, individual autonomy and human rights. In doing so I also introduced you to the international common standard framework on human rights under the United National Declaration of Human Rights framework. Lastly, I provided you with a detailed overview on Canadian federal criminal code pertaining to self-defence (defense of person and defense of property), along with commentary and analysis on some of its core legal principles. Overall, I hope that after reading this article you will have renewed confidence in the natural and moral right to self-defence, as well as a new found appreciation and understanding of the criminal legal code, at least as it pertains to self-defence in the Canadian federal jurisdiction. I would further encourage you to conduct your own research on criminal code as relates to self-defence in your own country and/or jurisdiction of residence.

Be kind, be safe, and train smart!

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September 19th, 2021



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Who We Are

We are a diverse group of people dedicated to the transmission and promotion of traditional Seven Star Praying Mantis Kung Fu (Qi Xing Tang Lang Quan). We represent the proud family lineage of Master Luo Guang Yu, who made the style famous in the Shanghai Jingwu Association in 1919. In 2019 we celebrated the 100-year centennial anniversary of Seven Star Mantis in Shanghai.

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