

Contemporary Issues in Policing, Corrections, and Security

6

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After completing this chapter, you should be able to:

- State the issues associated with the exercise of authority, analyze a case, and take and defend a position on the exercise of authority.
- State the issues associated with the corruption of authority, analyze a case, and take and defend a position on the corruption of authority.
- State the issues associated with the use of discretion, analyze a case, and take and defend a position on the use of discretion.
- State the issues associated with the use of force, analyze a case, and take and defend a position on the use of force.

Introduction

The purpose of this chapter and of Chapter 7 is to consider a number of issues in policing, corrections, and security that are the recurrent subjects of ethical decision-making. Up to this point in the book you have considered the basis on which ethical decisions can be made and you have reviewed some of the key ethical issues in contemporary society that require our consideration. It is now time to focus on some of the critical aspects of policing, corrections, and security that will require the application of each officer's ethical principles and decision-making skills throughout his or her career.

In a survey of ethics training in policing, a number of ethical issues in law enforcement were identified (International Association of Chiefs of Police, 1997). Some of the issues highlighted in the survey will be addressed in this chapter: the exercise of authority, the use of discretion, the use of force, and integrity and corruption. Pollock and Williams' (2012) list of ethical issues includes discretion, duty, honesty, loyalty, and gratuities. Miller, Blackler, and Alexandra (2006) discuss from an Australian perspective police authority, discretion, coercive and deadly force, and corruption. The topic of discretion is discussed from a range of perspectives, by a number of authors, in a book edited by Kleinig (1996), and the topic of police authority is considered by Cohen (1991). Barker (2011) focuses on many of these topics, and McCarthy (2012) provides a thorough examination of corruption in correctional facilities. In many ways these topics, although they are discussed separately in this text, are interrelated. For example, Barker (1996) discusses corruption of authority in his section on police corruption, and Cohen (1991) focuses on integrity in relation to police authority. In more practical terms, an ethical lapse or failure in any of the areas examined here and in Chapter 7 can result in an officer being the subject of a number of formal processes, including internal discipline, criminal charges, public complaint reviews, public inquiries or inquests, and civil claims¹ (MacMillan, 2006; Thatcher, Wright, & MacMillan, 2009).

In order to assist with understanding the treatment of the contemporary ethical issues dealt with in this chapter, it will be important to refer to Table 3.1 in Chapter 3 to identify the specific legislative source that deals with the types of conduct being examined. Relevant excerpts will also be provided from Box 3.1 relating to the ethical issues identified, along with a restatement of the summary from Chapter 3, followed by a more detailed examination of the provisions from one or two jurisdictions.

Exercising Authority

The Scope of Authority

Exercising authority is one of the central functions of an officer in the public safety realm. When it comes up as an ethical or conduct issue, it is generally in connection with an alleged "abuse of authority." As Cohen (1991) notes, an officer's authority can be either well defined or poorly defined. In the context of law enforcement, the officer's authority is generally defined by statute and common law and by the policies and procedures of the officer's service. In the realms of public safety, peacekeeping, crisis intervention, or public welfare, the officer's authority is less likely to be prescribed by legislation and more likely

1 A pivotal report that brings into sharp focus some of these issues is the Royal Commission on the Donald Marshall, Jr., Prosecution (1989). The report can be read at http://www.gov.ns.ca/just/marshall_inquiry/_docs/Royal%20Commission%20on%20the%20Donald%20Marshall%20Jr%20Prosecution_findings.pdf.

to be left to his or her discretion. The situation becomes even more complex when an incident can be construed either in terms of law enforcement or in terms of public safety, peacekeeping, crisis intervention, or welfare. The perspective officers adopt with respect to their role or purpose can greatly influence their decisions and the ethical theories that underpin these decisions. In this regard, Cohen (1991) discusses a case in which one officer views a situation from a law enforcement perspective and another officer views it from a public safety perspective. Even when an officer has the legal authority to act a certain way, an alternative course of action may bring about a more satisfactory result in the long run, especially if the alternative course is based on ethical values. Miller, Blackler, and Alexandra (2006) describe a case in which a group that illegally occupied a government building had considerable media and citizen support. Although the senior officer could have had his officers move in at the outset to arrest the occupiers for trespassing, he chose at first only to have a small group of officers monitor the situation. Arrests were made only when the occupiers had become bored and the media and other supporters had moved on. Correctional and security officers are faced with similar situations, situations in which actions depend on perspective and scope of authority. In this context, understanding the various ethical traditions or theories becomes important because how an officer uses his or her authority is commonly the subject of examination.

Police Codes and the Scope of Authority

Concerns about the proper exercise of authority are not a recent development. Both the New South Wales Police Force code of 1870 and the Canadian Constables' Manual of the early 20th century include sections concerning the authority of officers. In more recent times, the United Nations Code of Conduct for Law Enforcement Officials² addressed the use of authority as follows:

Article 1

Law enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.

Article 2

In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.³

In terms of the legislative codification abuse of authority has been dealt with in various ways:

TABLE 6.1 Definition of Abuse of Authority in Provincial Codes of Conduct

AB	BC	NB	NL	NS	ON	PE	SK
ss. 5(1)(i), 5(2)(i)	s. 77(3)(a)	ss. 35(f), 41		s. 24(7)	Sch., s. 2(1)(g)	ss. 3(f), 9	ss. 36(f), 37(c)

2 Search for the United Nations Code of Conduct for Law Enforcement Officials online at <http://www.ohchr.org>.

3 See also the British Columbia Police Code of Ethics, which explicitly states that officers “accept personal responsibility for acting legally and ethically,” at <http://www.jibc.ca>.

Abuse of Authority

- Exercising authority as a police officer when it is unlawful (or unnecessary (AB)) to do so (AB, NS).
- Using unnecessary or inappropriate force on any person (intentionally or recklessly (BC)) (AB, BC, NB, PE).
- Making an (unlawful or unnecessary (ON)) arrest (intentionally or recklessly (BC)) without good and sufficient cause (BC, NS, SK).
- In the performance, or purported performance, of duties, intentionally or recklessly detaining or searching any person without good and sufficient cause (BC).
- Without lawful authority, detaining, arresting, or searching a person (NB, PE).
- Using any unnecessary violence or force against (or cruelly treating (NB)) a prisoner or other person contacted in the exercise of duty (NS, ON, SK).
- Undertaking without the permission or instruction of a senior officer any service or execution of documents involved in a civil process (SK).
- While on duty (or off duty but in uniform (BC)), using profane language or acting in a manner that is discourteous, uncivil, abusive, or insulting to a person or that tends to demean or show disrespect to a person on the basis of that person's race, colour, religion, national origin, ancestry, place of origin, age, physical or mental disability, marital status, sexual orientation, sex, economic or social status, political belief or activity, creed, ethnic origin, or family status (BC, NB, ON, PE).
- Being discourteous or uncivil to any member of the public (SK).
- Failing to behave with courtesy due in the circumstances toward a member of the public in the performance of his or her duties as a member (BC).
- Harassing, intimidating, or retaliating against a complaint (NB, PE).

More specifically, s. 77(3)(a) of the BC *Police Act* (1996) deals with improper exercise of authority as follows:⁴

- (a) “abuse of authority,” which is oppressive conduct towards a member of the public, including, without limitation,
 - (i) intentionally or recklessly making an arrest without good and sufficient cause,
 - (ii) in the performance, or purported performance, of duties, intentionally or recklessly
 - (A) using unnecessary force on any person, or
 - (B) detaining or searching any person without good and sufficient cause, or
 - (iii) when on duty, or off duty but in uniform, using profane, abusive or insulting language to any person including, without limitation, language that tends to demean or show disrespect to the person on the basis of that person's race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age or economic and social status.

⁴ Visit the Office of the Police Complaint Commissioner website at <https://www.opcc.bc.ca> and research case 2010-5401 on abuse of authority.

Ontario considers excesses of authority or improper exercise of it to be instances of discreditable conduct under s. 2 of the Code of Conduct found in the Schedule of Part VII of General Regulation 268/10 of the *Police Services Act*:

- 2(1) Any chief of police or other police officer commits misconduct if he or she engages in,
- (a) Discreditable Conduct, in that he or she,
 - (i) fails to treat or protect persons equally without discrimination with respect to police services because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability,
 - (ii) uses profane, abusive or insulting language that relates to a person's race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability,
 - (iii) is guilty of oppressive or tyrannical conduct towards an inferior in rank,
 - (iv) uses profane, abusive or insulting language to any other member of a police force,
 - (v) uses profane, abusive or insulting language or is otherwise uncivil to a member of the public, ... or
 - (xi) acts in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force of which the officer is a member; ...
 - (g) Unlawful or Unnecessary Exercise of Authority, in that he or she,
 - (i) without good and sufficient cause makes an unlawful or unnecessary arrest, or
 - (ii) uses any unnecessary force against a prisoner or other person contacted in the execution of duty.

Correctional Codes and the Scope of Authority

Like the authority of police officers, the authority of correctional officers is defined in legislation and in the policies and procedures established for the service. In the Correctional Service of Canada Code of Discipline there are sections dealing with the discharge of duties:

General Responsibilities

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4. Each employee of the Service is also expected to be conversant with, and adhere to the various Acts, Regulations and policies affecting employees of CSC as well as the instructions and directives of the Service.

Professional Standards

Responsible Discharge of Duties

5. Staff shall conduct themselves in a manner which reflects positively on the Public Service of Canada, by working co-operatively to achieve the objectives of the Correctional Service of Canada. Staff shall fulfil their duties in a diligent and competent manner with due regard for the values and principles contained in the Mission Document, as well as in accordance with policies and procedures laid out in legislation, directives, manuals and other official documents. Employees have an obligation to follow the instructions of supervisors or any member in charge of the workplace and are required to serve the public in a professional manner, with courtesy and promptness.

Security Codes and the Scope of Authority

The International Code of Conduct for Private Security Service Providers (ICCPSSP) provides general guidance on the use of authority as follows:

General Conduct

28. Signatory Companies will, and will require their Personnel to, treat all persons humanely and with respect for their dignity and privacy and will report any breach of this Code.

• • •

Detention

33. Signatory Companies will only, and will require their Personnel will only, guard, transport, or question detainees if: (a) the Company has been specifically contracted to do so by a state; and (b) its Personnel are trained in the applicable national and international law. Signatory Companies will, and will require that their Personnel, treat all detained persons humanely and consistent with their status and protections under applicable human rights law or international humanitarian law, including in particular prohibitions on torture or other cruel, inhuman or degrading treatment or punishment.

• • •

Discrimination

42. Signatory Companies will not, and will require that their Personnel do not, discriminate on grounds of race, colour, sex, religion, social origin, social status, indigenous status, disability, or sexual orientation when hiring Personnel and will select Personnel on the basis of the inherent requirements of the contract.

Pursuant to the *Private Security and Investigative Services Act* (2005), security personnel in Ontario are subject to the Code of Conduct created in Regulation 363/07, which deals with use of authority as follows:

- 2(1) Every individual licensee, while working as a private investigator or security guard, shall,
- (a) act with honesty and integrity; ...
 - (c) comply with all federal, provincial and municipal laws;
 - (d) treat all persons equally, without discrimination based on a person's race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability;
 - (e) refrain from using profane, abusive or insulting language or actions or actions that are otherwise uncivil to any member of the public; ...
 - (g) refrain from behaviour that is either prohibited or not authorized by law.

The extracts quoted above have similar perspectives on the basis of an officer's authority and the bounds of that authority, as well as on the responsibilities involved in exercising that authority. Impartiality and the control of personal biases in the exercise of authority are seen as important, as are the officer's deportment and demeanour. This common view reflects a connection to foundational or ethical principles, and in particular to the ethical value of respect.

Cases Involving the Scope of Authority

Case 1

You are working in a uniform traffic services position in a small police agency and attend an accident involving a close friend who has obviously gone through a stop sign and hit another car. Your friend is impaired. You whisper to him to pretend to be injured, and then call for an ambulance to take him to the hospital. Next, you lay a charge of failing to stop at a stop sign, and no mention is made of the impairment.

This incident raises a number of questions about the use or abuse of your authority.

1. What do the ethics statements cited above suggest about this incident?
2. What will be the potential effect of your friend's behaviour on you, your friend, and the other driver?
3. What should you have done?

Case 2

You are working the midnight shift with a new partner, and he is driving the patrol vehicle. You are following a car that is being driven normally, and when it turns left in front of your patrol car at an intersection, it is apparent that the driver is a person of colour. Your partner immediately activates the emergency equipment and stops the car, stating he is going to conduct a routine check to see if the driver has a valid licence and insurance. Your partner speaks with the driver while you observe from a short distance. Your partner is professional and courteous to the driver. Once he obtains the driver's licence, you both return to the patrol vehicle. Your partner conducts a computer check of the driver and states that there is no way a person of colour should be driving such an expensive vehicle or be in this part of town, and that he must be up to no good.

1. What do the ethics statements cited above suggest about your partner's attitude?
2. What is the potential effect of your partner's behaviour on you, on the driver, and on the public trust?
3. What would you do?

Case 3

You are working uniform patrol in a large city and have just been transferred to a very rough neighbourhood where drug trafficking is a major concern, particularly in and around local schools. Both the business community and community groups have been pressuring the local politicians and the chief of police to do something about the drug problem. One evening, your supervisor advises you that he wants anyone who looks suspicious to be stopped and searched, whether or not there are legal grounds to do so. It is time, he says, to send a message to the drug dealers and other criminals that the community and police are not going to stand for their actions anymore.

1. What do the ethics statements cited above suggest about this situation?
2. What is the potential effect of your supervisor's advice on you, on your supervisor, on the community, and on the drug dealers?
3. What would you do?

Corruption

Authority, Power, and the Corruption of Authority

Any discussion about the exercise of authority must naturally consider corruption. For the most part, abuse of authority as dealt with above involves situations where an officer is not seeking personal gain, but pursuing broader social, organizational, or other goals that may have some ethical foundation (for example, the greatest good for the greatest number). This latter form of abuse of authority is sometimes referred to as “noble cause” corruption and is sometimes seen as more acceptable in that the officer is, it is argued, acting for the greater good (Kleinig, 2002⁵). Obviously it is sometimes convenient to be able to claim some such ethical justification for one’s misconduct.

Corruption of authority is likewise a form of abuse of authority, but normally refers to situations where the officer is exercising his or her position, power, or authority for personal gain. Barker (1996), introducing the concept of corruption of authority, argues that whenever an officer accepts free meals, services, tickets to entertainment events, or other rewards, his or her authority is corrupted. The position held in society by officers, and the authority vested in them, automatically sets up a power relationship between officers and members of the public that works in the officers’ favour. It is in an officer’s best interest to maintain this power. When gifts or discounts are given to an officer because of his or her position, that officer’s power is diminished; in fact, such transactions reverse the balance of power. This is why Barker (1996) believes that this behaviour corrupts the officer’s authority. As for security and correctional personnel, the corruption of their authority occurs in their dealings with clients or with the offenders they supervise.

Concerns About Corruption

McGrath (1997) points out that corruption affects the image and reputation of all officers, particularly where it extends beyond ethical or policy breaches to involve actual illegal activities. When officers are caught engaging in corrupt practices, it immediately gains the attention of the media and the public. Such occurrences diminish the public’s respect for the police, correctional, and security organizations involved. When an officer breaks the law, members of the public react in a variety of ways: with curiosity, fear, indignation, and a sense of scandal. The public’s respect for authority is an important element in an officer’s successful interaction with the public. Corruption serves to diminish this respect.⁶

According to Stansfield (1996), corruption occurs when an officer uses the power associated with his or her position to obtain a benefit or advantage. Stansfield (1996) identifies three factors that influence police corruption: the risk of being caught, the strength of the code of silence, and the incentive to be corrupt. He argues that as the level of corruption increases, the level of police moral authority decreases. In contrast, Delattre (2011) defines incorruptibility as a personal freedom that results from one’s life being controlled by standards of excellence and self-respect, both of which are more important than life itself.

5 Visit <http://www.courts.gov.bc.ca> to obtain and read a copy of *R v. Lam*, 2003 BCCA 593, particularly paragraphs 1–6, 10, and 32–37. Consider whether the officer abused his authority, and if so, what ethical theory was relied upon.

6 For a recent examination relating to corruption and policing in the United Kingdom, visit <http://www.hmic.gov.uk/media/revisiting-police-relationships.pdf> to read the report of Her Majesty’s Inspectorate of Constabulary, *Revisiting Police Relationships: A Progress Report* (2012).

Barker (2011) argues that policing is morally dangerous. This moral danger occurs first because officers work independently in situations in which close supervision is impossible and, second, because they have considerable discretion that exposes them to the temptations of money, goods, services, drugs, and sexual favours. The types of corruption possible are varied (see Table 6.2).

Miller, Blackler, and Alexandra (2006) conclude that because of the moral danger or moral vulnerability associated with the public safety professions, corruption should be seen as an occupational hazard to be managed. They suggest that the potential for corruption can be managed by various means: through the recruitment process, by reducing opportunities for corruption, through detection and deterrence strategies, and by reinforcing right behaviour. Delattre (2011) links police corruption to organizational characteristics. It is our contention that the crucial factor in police corruption is the level of each individual officer and the setting in which he or she works. Barker (2011) lists a number of sites where an officer may be tempted to become involved in corruption, such as bars, construction sites, hotels and restaurants, parking lots, repair shops, garages, and trucking companies. Barker suggests that situations involving traffic violations and prostitution can also lead to police corruption. For each instance, he identifies the hazard, the indicators of possible corruption, and methods that can be used to control it.

Corruption has been defined as the intentional violation of the rules and regulations of an organization by an employee for his or her material gain (McCarthy, 2012). This is a general definition that is applicable to policing, corrections, and security. While there is extensive literature published about police corruption, there has been far less written about corruption in corrections. Types of corrupt behaviour found among officers in correctional settings are theft, conspiracy to smuggle contraband, embezzlement, the acceptance of gratuities from inmates, and extortion from inmates. McCarthy (2012) argues that the opportunity for corruption stems from the discretion available to correctional personnel. On the one hand, special privileges and their possible withdrawal are used to control inmates,

TABLE 6.2 Types of Corruption

Activity	Behaviours
Corruption of authority	Free meals; goods and services; discounts
Kickbacks	Money, goods, or services from suppliers of services to the police, correctional facilities, or clients, or from inmates
Opportunistic theft	Thefts from those being arrested, clients, inmates, victims, crime scenes; thefts of unprotected property
Extortion	Money, goods, or services from criminals, traffic offenders, inmates, or clients
Protection of illegal activities	Protection money from criminals or other vice organizations operating illegally; conspiracies to smuggle contraband
Fixes	Fixing evidence or traffic tickets for money, goods, or services
Criminal activity	Officers engaging in crimes such as burglary and robbery
Internal payoffs	Sale of work assignments, days off, evidence, and promotions

SOURCE: Based on material from Barker (2011) and McCarthy (2012).

and, on the other, some inmates attempt to corrupt staff in order to improve the quality of life in the prisons. Upgrading the general correctional environment is an important step in controlling corruption. Equally important is the staff's development of a sense of professionalism and an appreciation of the importance of ethical behaviour.

The Criminal Code and Corruption

Two particular sections of the *Criminal Code* deal with corruption in the form of bribery of officers and breach of trust:

Bribery of officers

120. Every one is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years who

(a) being a justice, police commissioner, peace officer, public officer or officer of a juvenile court, or being employed in the administration of criminal law, directly or indirectly, corruptly accepts, obtains, agrees to accept or attempts to obtain, for themselves or another person, any money, valuable consideration, office, place or employment with intent

(i) to interfere with the administration of justice,

(ii) to procure or facilitate the commission of an offence, or

(iii) to protect from detection or punishment a person who has committed or who intends to commit an offence; or

(b) directly or indirectly, corruptly gives or offers to a person mentioned in paragraph (a) or to anyone for the benefit of that person, any money, valuable consideration, office, place or employment with intent that the person should do anything mentioned in subparagraph (a)(i), (ii) or (iii).

Breach of trust by public officer

122. Every official who, in connection with the duties of his office, commits fraud or a breach of trust is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years, whether or not the fraud or breach of trust would be an offence if it were committed in relation to a private person.

In the 2006 case of *R v. Boulanger* (where the director of public security in a municipality in Quebec asked the officer investigating an accident involving the director's daughter to complete a second supplementary report), the Supreme Court of Canada held (at para. 58) that the offence of breach of trust by a public officer is established where the Crown proves beyond a reasonable doubt that: (1) the accused is an official; (2) the accused was acting in connection with the duties of his or her office; (3) the accused breached the standard of responsibility and conduct demanded of him or her by the nature of the office; (4) the accused's conduct represented a serious and marked departure from the standards expected of an individual in the accused's position of public trust; and (5) the accused acted with the intention to use his or her public office for a purpose other than the public good, for example, a dishonest, partial, corrupt, or oppressive purpose.

The grave importance of corruption is indicated by the fact that it is dealt with under the *Criminal Code*.

Police Codes and Corruption

In contrast to the *Criminal Code* and most police codes of conduct, the United Nations Code of Conduct for Law Enforcement Officials is more proactive in how it addresses corruption:

Article 7

Law enforcement officials shall not commit any act of corruption. They shall also rigorously oppose and combat all such acts.⁷

In terms of the legislative codes, corruption⁸ is dealt with in various ways:

TABLE 6.3 Definition of Corrupt Practice in Provincial Codes of Conduct

AB	BC	NB	NL	NS	ON	PE	SK
ss. 5(1)(c), 5(2)(c)	s. 77(3)(c)	ss. 35(e), 40	s. 7(1)(q)	s. 24(6)	Sch., s. 2(1)(f)	ss. 3(e), 8	s. 36(e)

Corrupt Practice

- Failing to properly account for or to make a prompt and true return of any money or property received by the member in the course of duty (AB, NB, ON, PE).
- Without lawful excuse, failing to make a prompt and true return of, or misappropriating, any money or property received in the performance of duties as a member (BC).
- Failing to account for, improperly withholding, misappropriating, or misapplying public money or property coming into his or her possession during the course of duty.
- Placing himself or herself under a financial, contractual, or other obligation to a person in respect of whom the police officer could reasonably expect he or she may be required to report or give evidence (AB).
- Agreeing or allowing to be under a pecuniary or other obligation to any person in a manner that would likely affect or be seen to affect the member's proper performance of his or her duties (BC, NB, NS, PE, SK).
- Placing himself or herself under a pecuniary or other obligation to a licensee if he or she may have to report or give evidence concerning the granting or refusing of a licence to the licensee (ON).
- Without adequate reason, using his or her position as a police officer for his or her personal or another person's advantage (AB).
- Without adequate reason, using or attempting to use one's position as a member for personal gain or other purposes unrelated to the proper performance of duties as a member (BC, NB, NS, PE).
- Improperly using his or her character and position as a member of a police force for private advantage (ON, SK).
- Using or attempting to use any equipment or facilities of a police service or law enforcement agency for purposes unrelated to the performance of duties as a member (BC).
- Accepting a bribe (NB, PE, SK).
- Offering or taking a bribe (ON).
- Directly or indirectly soliciting or receiving a payment, gratuity, gift, pass, subscription, benefit, testimonial, or favour
 - (a) that might affect the proper performance of his or her duties (NB, PE), or
 - (b) without the consent of the chief of police (AB, NS, ON).

7 See also the British Columbia Police Code of Ethics, which affirms that police officers "must have a clear idea of how to separate private advantage from public service and to make decisions that avoid conflicts of interest and the appearance of personal gain."

8 Klockars et al. (2000) outline a number of dimensions relating to the issue of integrity and corruption.

In s. 2(1)(f) of the Code of Conduct for police officers in Ontario, an officer is deemed to have committed misconduct if he or she engages in:

- (f) Corrupt Practice, in that he or she,
 - (i) offers or takes a bribe,
 - (ii) fails to account for or to make a prompt, true return of money or property received in an official capacity,
 - (iii) directly or indirectly solicits or receives a gratuity or present without the consent of,
 - (A) the chief of police, ... or
 - (B) the person who appointed the police officer ...
 - (iv) places himself or herself under a pecuniary or other obligation to a licensee ... concerning the granting or refusing of a licence to the licensee, ... or
 - (v) improperly uses his or her character and position as a member of the police force for private advantage.

Section 77(3) of the BC *Police Act* (1996) approaches corruption as follows:

- (c) “corrupt practice,” which is
 - (i) without lawful excuse, failing to make a prompt and true return of, or misappropriating, any money or property received in the performance of duties as a member,
 - (ii) agreeing or allowing to be under a pecuniary or other obligation to any person in a manner that would likely be seen to affect the member’s ability to properly perform the duties of a member,
 - (iii) using or attempting to use one’s position as a member for personal gain or other purposes unrelated to the proper performance of duties as a member, or
 - (iv) using or attempting to use any equipment or facilities of a municipal police department, or any other police force or law enforcement agency, for purposes unrelated to the performance of duties as a member.

Correctional Codes and Corruption

In the Correctional Service of Canada Code of Discipline, there are a number of infractions, listed under several different sections, that relate to corruption:

Conduct and Appearance

• • •

Infractions

- 8. An employee has committed an infraction, if he/she: ...
 - f. fails to account for, improperly withholds, misappropriates or misapplies any public money or property or any money/property of any other person(s) coming into his/her possession in the course of duty or by reason of his/her being a member of the Service.

The Correctional Service of Canada Code of Discipline also contains a section entitled “Relationships with Offenders” that focuses on the corruption of correctional officers’ authority:

Relationships with Offenders

- 11. Staff must actively encourage and assist offenders to become law abiding citizens. This includes establishing constructive relationships with offenders to encourage their successful reintegration into the community. Relationships shall

demonstrate honesty, fairness and integrity. Staff shall promote a safe and secure workplace, free of mistreatment, harassment and discrimination, and respect an offender's cultural, racial, religious and ethnic background, and his/her civil and legal rights. Staff shall avoid conflicts of interest with offenders and their families.

Infractions

12. An employee has committed an infraction, if he/she: ...
 - b. improperly uses his/her title or authority to personal gain or advantage;
 - c. enters into any kind of personal or business relationship not approved by his/her authorized superior with an offender or ex-offender, or the offender's or ex-offender's friends or relatives;
 - d. gives, or receives, any gift, gratuities, benefits or favours, or engages in personal business transactions with an offender or ex-offender or the offender's or ex-offender's friends or relatives;
 - e. hires an offender to perform any work or provide any service without first obtaining the written permission of his/her supervisor;
 - f. gives to, or receives from any offender or ex-offender, or the offender's or ex-offender's friends or relatives, either directly or indirectly, any contraband; ...

Conflict of Interest

• • •

Infractions

14. An employee has committed an infraction, if he/she: ...
 - b. improperly uses his or her title or authority to personal gain or advantage.

Security Codes and Corruption

In the ICCPSSP, the primary language around the commitment on corruption is:

E. General Commitment

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26. Signatory Companies will not, and will require that their Personnel do not, consistent with applicable national and international law, promise, offer, or give to any public official, directly or indirectly, anything of value for the public official himself or herself or another person or entity, in order that the public official act or refrain from acting in the exercise of his or her official duties if such inducement is illegal. Signatory Companies will not, and will require their Personnel do not, solicit or accept, directly or indirectly, anything of value in exchange for not complying with national and international law and/or standards, or with the principles contained within this Code.

The Code of Conduct for security personnel in Ontario has several sections relating to corruption:

- 2(1) Every individual licensee, while working as a private investigator or security guard, shall,
 - (a) act with honesty and integrity; ...
 - (c) comply with all federal, provincial and municipal laws; ...
 - (g) refrain from behaviour that is either prohibited or not authorized by law.

Based on the preceding excerpts from the various codes of ethics and conduct for police, correctional, and security officers, it is clear that the corruption of an officer's authority is not only unethical and inappropriate; in some cases it is even illegal.

It is particularly important to determine whether your employer has specific policies on the acceptance of gifts. In some instances there may be no policy direction; in others, it may be possible to accept gifts subject to rigorous reporting and remittance requirements, such as turning the gift over to the appropriate internal authority for recording and disposition. For example, see the *Commissioner's Standing Orders (Gifts or Sponsorship)*, signed February 10, 1995 (as amended), used in the RCMP and s. 37(f) of the *RCMP Act*, which states that it is the responsibility of every member

(f) to be incorruptible, never accepting or seeking special privilege in the performance of the member's duties or otherwise placing the member under any obligation that may prejudice the proper performance of the member's duties.

Cases Involving Corruption

Case 1

You stop a young woman who is driving 20 km/h over the posted limit. She appears to be impaired. You ask to see her driver's licence, vehicle registration, and insurance. She rummages around in her purse, and presents the requested documents along with her business card and a voucher for two free oil changes at the garage she owns. You try to return the voucher, but relent after being told to keep it. You check the young woman's documents, issue a warning against speeding, and send her on her way.

This sequence of events suggests a number of questions:

1. What should you have done in this situation?
2. What will be the impact on the reputation of the police when the young woman tells her friends what happened?
3. What does the *Criminal Code* say about the young woman's or your actions?

Case 2

At the local lumberyard you are well known as a correctional officer. You are undertaking major renovations on your house. The clerk who serves you is the brother of one of the offenders under your charge. He waives the posted \$25 delivery charge on your order. When the order is delivered, you find that there are five more sheets of drywall than you ordered. You know you will need the extra drywall for a future job.

This situation raises a number of questions respecting corruption of authority:

1. What impact might a decision to overlook the clerk's actions have in the event that you have to discipline the clerk's brother in the future?
2. What should you do in this situation?
3. What might the effect be of the clerk telling his brother about this situation?

Case 3

You are out on patrol and notice a very attractive person walking in a store parking lot. You pull into the parking lot, and observe the person getting into a vehicle. You notice the licence plate of the vehicle and check it on your computer. Since the registered owner's name is of the same gender as the person you observed, you conclude the person is the owner. Your further computer queries reveal that the person has no criminal record and appears to be single. With this information, you now decide to stop the vehicle when it leaves the parking lot in order to meet the driver.

This situation raises a number of questions respecting corruption of authority:

1. Is the use of the computer databases in this circumstance appropriate or within your authority?
2. Is there any concern about using your authority to stop the vehicle in this circumstance?

Case 4

You are doing security checks of a building and, when you come around the back of the building, you notice that someone has left a crate on the loading dock with four new tablets still inside their boxes. You know that the security cameras are not working because your company was hired to provide services until the repairs can be made. You call a friend and tell the friend about what you saw and then continue with your security patrols, advising that you will not be back in the area for another hour.

This situation raises a number of questions regarding corruption of authority:

1. Is the failure to secure the property contrary to any employment obligations as a security officer?
2. Is there any concern about calling your friend and then continuing with patrols?

Use of Discretion

The Meaning and Dimensions of Discretion

Having considered the scope of an officer's authority and the potential for the corruption of that authority, either for personal or other reasons, it is time to discuss the important matter of the discretion permitted within that authority. Kleinig (1996, p. 82) defines discretion as "a power ... to exercise [one's] own judgment in situations in which action is called for." Delattre (2011) observes that officers have discretion because no set of laws can define what action to take in many of the situations they confront. The variety and complexity of the situations an officer encounters are too great for there to be rules that can fit every occurrence. Delattre (2011) suggests that while good laws set boundaries on discretion by defining the appropriate use of authority, they also leave room to identify which alternative is best. Another important point made by Delattre (2011) concerns the importance of knowing the boundaries of one's discretion and acting within those boundaries. Pollock and Williams (2012) describe a range of dilemmas identified by officers as involving discretion.

Kleinig (1996) notes that the scope of a police officer's discretion is most limited in his or her law enforcement function, and much broader in the social service function. Further, he argues that there is discretion involved in deciding whether to act. If the decision is to act, then there is discretion involved in deciding how to characterize the situation and in determining what priority it should have. Finally, discretion may be needed in calculating the type of action to take in a given situation. What is evident is that discretion can take many forms. The availability of resources and the need to allocate them wisely often pose problems for officers trying to exercise discretion. Carter and Radelet (1999) identified a number of other factors the officer needs to consider, such as the seriousness of the offence, the psychological state of the offender, the offender's past criminal record, the level of threat to the public or the officer, and the level of respect shown for authority. In the case of discretion, the concern is often whether an officer has considered appropriate factors when

making a decision or taking an action. Neyroud and Beckley (2001) conclude that officers must demonstrate clear and justified decision-making that is open to constant review. If you visit any of the civilian review or oversight bodies that are dedicated to ensuring the accountability of public safety officers, you will find that the exercise of discretion is frequently the subject of scrutiny.⁹

The Criminal Code and Discretion

In 2007, the Supreme Court of Canada announced that the improper exercise of discretion by police officers can, in limited circumstances, be subject to scrutiny under the criminal law. Section 139 of the *Criminal Code* states:

(2) Every one who wilfully attempts in any manner ... to obstruct, pervert or defeat the course of justice is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

In *R v. Beaudry*, the Supreme Court of Canada confirmed (paras. 37–39) that a police officer who has reasonable grounds to believe that an offence has been committed, or that a more thorough investigation might produce evidence that could form the basis of a criminal charge, may exercise his or her discretion in not engaging the legal process. But that discretion is not absolute, and any exercise of discretion must be justified: (1) subjectively (that is, exercised honestly and transparently based on valid and reasonable grounds); and (2) objectively. In determining whether the exercise of discretion has been appropriate, the court will examine the “material circumstances” in which it was exercised, and (para. 40) “the justification offered must be proportionate to the seriousness of the conduct and it must be clear that the discretion was exercised in the public interest.” The court expressly noted that (para. 38) “a decision based on favouritism, or on cultural, social or racial stereotypes, cannot constitute a proper exercise of police discretion.” Further, while administrative directives or policies can shed light on the circumstances of the exercise of the discretion, the court made it clear that they are not determinative because they do not have the force of law and cannot alter the scope of discretion that is found in the common law or a statute. Noting that a simple error in judgment in the exercise of discretion is not enough for a conviction, the court stated the prosecution must prove beyond a reasonable doubt that the accused did in fact intend to act in a way tending to obstruct, pervert, or defeat the course of justice.

Taking the foregoing framework into account, the majority (five justices) of the court in *Beaudry* upheld the conviction of a police sergeant based on the trial judge’s finding that he had beyond a reasonable doubt breached his duty by giving preferential treatment to an off-duty police officer from another department by not taking breath samples that would have been needed to lay a charge of impaired driving against that off-duty officer. The dissent (four justices) strongly disagreed, asserting that the trial judge’s reasons were unreasonable and suffered from flaws in the evaluation and analysis of the evidence, and arguing that the evidence did not demonstrate the sergeant acted corruptly or dishonestly with the intent

9 For examples related to policing, visit the website of the Ontario Civilian Police Commission at <http://www.ocpc.ca>; the Office of the Independent Police Review Director at <https://www.oiprd.on.ca>; the Special Investigations Unit in Ontario at <http://www.siu.on.ca>; or the Office of the Police Complaint Commissioner of British Columbia at <http://www.opcc.bc.ca>. For examples related to the Correctional Service of Canada, visit the website of the Office of the Correctional Investigator at <http://www.oci-bec.gc.ca>. For examples related to public complaints against private security personnel in Ontario, visit the website of the Ministry of Community Safety and Correctional Services at <http://www.mcscs.jus.gov.on.ca> and look under Private Security and Investigative Services and then Public Complaints.

of obstructing justice. While mistakes or errors in judgment with respect to the exercise of discretion will normally not be subject to criminal scrutiny, this case provides a clear indication of the serious consequences that may arise from the improper exercise of discretion, especially where it relates to preferential treatment for a fellow officer.

Based on this case, consider in what circumstances an on-duty police officer may be able to exercise any discretion when dealing with a potential offence involving an off-duty police officer. For example, what if the formal or informal policy of the police agency is to drive a person home who may be impaired where it is a first-time situation and there are no aggravating circumstances such as a car accident or threat to safety (for example, the car never left the parking lot and the person just got into the vehicle), and the policy is applied equally to police and non-police? Is the result any different if you did not know until after that the person was a police officer?

Police Codes and Discretion

In terms of conduct, the exercise of discretion is usually not dealt with under one heading, and may arise under exercise of authority, discreditable conduct, neglect, use of force, or corruption.

Discreditable Conduct

- Failing to treat or protect persons equally without discrimination with respect to police services because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status, or disability (ON).
- Differentially applying the law or exercising authority on the basis of race, colour, religion, sex, physical disability, mental disability, marital status, age, ancestry, or place of origin (AB).
- Using profane, abusive, or insulting language to any member of a police service or to any member of the general public or being otherwise uncivil to a member of the public (AB, ON).
- Being discourteous or uncivil to a member of the public, having regard to all the circumstances (NB).
- While on duty, being oppressive or abusive to any person (NB, PE).

For example, the United Nations Code of Conduct for Law Enforcement Officials addresses discretion in several articles:

Article 1

Law enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.

Article 2

In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

• • •

Article 5

No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as

a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

Article 6

Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.

However, the International Association of Chiefs of Police (IACP) 1991 Law Enforcement Code of Conduct¹⁰ does deal directly with the exercise of discretion, stating:

Discretion

A police officer will use responsibly the discretion vested in his position and exercise it within the law. The principle of reasonableness will guide the officer's determinations and the officer will consider all surrounding circumstances in determining whether any legal action shall be taken.

Consistent and wise use of discretion, based on professional policing competence, will do much to preserve good relationships and retain the confidence of the public. There can be difficulty in choosing between conflicting courses of action. It is important to remember that a timely word of advice rather than arrest—which may be correct in appropriate circumstances—can be a more effective means of achieving a desired end.

The British Columbia Police Code of Ethics also directs that officers, in fulfilling their duties, “must strive for excellence, which includes the exercise of professional discretion and judgment in a manner consistent with our Fundamental Principles and Guiding Values.”

Several sections of the Code of Conduct in Ontario also identify the bounds of discretion, including the following:

- 2(1) Any chief of police or other police officer commits misconduct if he or she engages in,
 - (a) Discreditable Conduct, in that he or she,
 - (i) fails to treat or protect persons equally without discrimination with respect to police services because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability, ...
 - (c) Neglect of Duty, in that he or she,
 - (i) without lawful excuse, neglects or omits promptly and diligently to perform a duty ...
 - (vi) fails to report a matter that it is his or her duty to report,
 - (vii) fails to report anything that he or she knows concerning a criminal or other charge, or fails to disclose any evidence that he or she, or any person within his or her knowledge, can give for or against any prisoner or defendant,
 - (viii) omits to make any necessary entry in a record.

¹⁰ To access the code in the Police Chiefs Desk Reference, go to <http://www.mschiefs.org/wp-content/uploads/2011/09/PC-DESK-REFERENCE.pdf>.

Similarly, the British Columbia *Police Act* (1996) has a number of similar provisions dealing with the exercise of discretion. Section 77(3) sets out:

(h) “discreditable conduct,” which is, when on or off duty, conducting oneself in a manner that the member knows, or ought to know, would be likely to bring discredit on the municipal police department, including, without limitation, doing any of the following: ...

(iii) without lawful excuse, failing to report to a peace officer whose duty it is to receive the report, or to a Crown counsel, any information or evidence, either for or against any prisoner or defendant, that is material to an alleged offence under an enactment of British Columbia or Canada;

• • •

(m) “neglect of duty,” which is neglecting, without good or sufficient cause, to do any of the following: ...

(ii) promptly and diligently do anything that it is one’s duty as a member to do.

Section 37 of the *Royal Canadian Mounted Police Act* states: “It is incumbent on every member (a) to respect the rights of all persons; (b) to maintain the integrity of the law, law enforcement and the administration of justice; (c) to perform the member’s duties promptly, impartially and diligently, in accordance with the law and without abusing the member’s authority.”

The police codes we have examined emphasize that discretion must be based on appropriate considerations, and, more specifically, that disparate or unequal treatment is not to be tolerated, especially where it is discriminatory or otherwise inappropriate. The oath of office taken by every new police officer involves a promise to execute his or her duties faithfully, diligently, and impartially. In recent years, the issue of racial profiling has received attention in several jurisdictions, and as such, it is important to consider this issue as it relates to the exercise of discretion by public safety officers.¹¹

Correctional Codes and Discretion

In the Correctional Service of Canada Code of Discipline, the section on “Responsible Discharge of Duties” focuses on discretion and the limits placed on it:

Responsible Discharge of Duties

5. ... Staff shall fulfil their duties in a diligent and competent manner with due regard for the values and principles contained in the Mission Document, as well as in accordance with policies and procedures laid out in legislation, directives, manuals and other official documents. ...

Infractions

6. An employee has committed an infraction, if he/she: ...
- f. fails to take action or otherwise neglects his/her duty as a peace officer;
 - g. fails to conform to, or to apply, any relevant legislation, Commissioner’s Directive, Standing Order, or other directive as it relates to his/her duty;
 - h. fails to promptly obey the lawful orders or commands of any other employee who is in charge or superior in line of authority; ...

¹¹ Visit the BC Civil Liberties Association website at <http://bccla.org/> and view its reports under the Our Work tab. *Racial Profiling: A Special BCCLA Report on Racial Profiling in Canada* can be downloaded from this site.

- j. wilfully or through negligence, makes or signs a false statement in relation to the performance of duty; ...
- l. fails to report to a superior authority any contraband found in the possession of another employee, offender or member of the public.

As can be seen, the exercise of discretion by correctional officers is regarded much like that of police officers.

Security Codes and Discretion

The ICCPSSP has made a number of statements that define the discretion of security personnel:

F. Specific Principles Regarding the Conduct of Personnel

General Conduct

28. Signatory Companies will, and will require their Personnel to, treat all persons humanely and with respect for their dignity and privacy and will report any breach of this Code.

• • •

Detention

33. Signatory Companies will only, and will require their Personnel will only, guard, transport, or question detainees if: (a) the Company has been specifically contracted to do so by a state; and (b) its Personnel are trained in the applicable national and international law. Signatory Companies will, and will require that their Personnel, treat all detained persons humanely and consistent with their status and protections under applicable human rights law or international humanitarian law, including in particular prohibitions on torture or other cruel, inhuman or degrading treatment or punishment.

The Code of Conduct created in Regulation 363/07 under the *Private Security and Investigative Services Act (2005)* governing security personnel in Ontario deals with discretion as follows:

- 2(1) Every individual licensee, while working as a private investigator or security guard, shall, ...
 - (c) comply with all federal, provincial and municipal laws;
 - (d) treat all persons equally, without discrimination based on a person's race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability; ...
 - (g) refrain from behaviour that is either prohibited or not authorized by law;
 - (h) respect the privacy of others by treating all information received while working as a private investigator or security guard as confidential, except where disclosure is required as part of such work or by law.

Cases Involving Discretion

Case 1

You are a security officer at a local department store. You are on routine loss-prevention duties. You become aware that a 75-year-old lady that you are friendly with is in the process of stealing hearing aid batteries. You are aware that she is on a fixed income and unable to afford the batteries.

This case raises a number of issues relevant to discretionary decision-making:

1. What is the reasonable action for you to take in this situation?
2. What further information might you need before deciding what to do?
3. What might be the consequences of your action?

Case 2

You are working the midnight shift as a correctional supervisor in a medium-security institution and have been asked to conduct a routine administrative review of all files on your shift involving instances where corrections officers have submitted formal charges against offenders. The offender population is approximately 50 percent Caucasian, 40 percent First Nations, and 10 percent visible minorities. In reviewing the data, you observe that charges for various inmate infractions roughly approximate the ratio of the offender population, but then you notice that, while most officers have submitted charges against all categories of offenders, one correctional officer has only submitted charges against First Nations inmates. In speaking with the officer, he candidly informs you that he always submits formal charges against First Nations offenders and that, in his view and experience, stricter discipline is required with these offenders than with other ethnic groups.

1. What is the reasonable action for you to take in this situation?
2. What further information might you need before deciding what to do?
3. What might be the consequences of your action if you do not do anything?

Case 3

You graduated from the police academy about six months ago, and you and your trainer are called to a restaurant where a couple is reportedly drunk and causing problems. You arrive and see a male and female outside the front door of the restaurant arguing with the owner. As you approach, unobserved by the trio, you hear both the male and female using racial slurs and profanities toward the restaurant owner. They are apparently arguing over the amount of the bill. As you walk up you hear the female threaten to beat up the owner. It is apparent the male and female are very drunk. Upon seeing you, the couple becomes much quieter, and the male gives some money to the owner. It appears to be enough for the bill, and the owner is satisfied and returns inside the restaurant. You escort the couple to your police car and arrest both for being drunk in public. You decide that you will return with them to the office and decide there what to do about the threat. You search the female's handbag before placing her in the back of the police car. In the bag you find a police badge, and the woman blurts out that she is a police officer from a neighbouring municipality. She asks for a break, saying that the bill has after all been paid. Your trainer takes you aside and says that he thought he recognized the female, but was not sure, and he says that she is an outstanding police officer who was recently decorated for bravery as a result of an armed standoff in which she saved three people. Your trainer suggests that you just give the couple a ride home.

1. What further information might you need before deciding what to do?
2. What might be the consequences of your action if you do not do anything?
3. What is the reasonable action for you to take in this situation?

Use of Force

Deadly and Coercive Force

It is not surprising, given the topic's notoriety, that there has been extensive discussion of the ethical issues involved in the use of force by officers (Barker, 2011; Delattre, 2011; Fridell & Pate, 1997; Miller, Blackler, & Alexandra, 2006; Neyroud & Beckley, 2001). There are two types of force to be considered: deadly and coercive. At one time there was a belief that the use of deadly force by police was increasing, and that the use of such force was increasing in the population at large. However, the evidence suggests that police use of deadly force is on the decline, while the use of deadly force in society is increasing (Fyfe, 1996). Fyfe believes that the decrease in the police use of deadly force is the result of policies that stress the value of human life on the one hand and limit the use of deadly force on the other. One might note as well that the range of force tools available to officers has increased, thereby providing them with coercive measures that fall short of deadly force. Delattre (2011) concludes that if deadly force is required, police officers should use restraint in applying it.

According to Miller, Blackler, and Alexandra (2006), coercive force should be used only to achieve ethically desirable ends. The use of persuasion is to be preferred, wherever possible, over the use of coercive force—a principle recognized in most use-of-force models or continuums. If coercive force is required, it should be the minimum necessary to achieve the desired end. Barker (2011) lists a number of situations that result in the unreasonable and unnecessary use of coercive force. These involve officers who enjoy abusing and hurting others; officers who are fearful and hence overreact; officers who suffer verbal abuse and provocation; officers who use coercive force as a means of punishment; and officers who use coercive force as a means of responding to persons resisting arrest or escaping.

Without question, public safety officers can expect that use of force, particularly deadly force, will be the subject of intense scrutiny by public safety organizations, civilian review and oversight bodies, and courts. Recently, both use of force generally, and use of conducted energy weapons (CEWs) (for example, Tasers) in particular, have been the subject of intense examination and reporting. It is important to be aware of the findings and recommendations in this area because it influences how to approach the use of force.¹²

Another interesting development is how the use of force is being understood not solely in legal terms, but also in terms of the physiological and psychological dynamics involved in such high-stress incidents, and in terms of its impact on reaction, perception, and memory. Police and correctional and security officers must also be aware of the research in this area because it will improve their understanding of their own and others' response to use-of-force encounters.¹³

Police Codes and Regulations and the Use of Force

We will not review the extensive provisions of the *Criminal Code* dealing with use of force (see ss. 25–42), other than to note that using only as much force as is reasonably necessary

12 Visit the Commission for Public Complaints Against the RCMP website at <https://www.cpc-cpp.gc.ca> to view reports on use of force and CEWs (under the Research & Analysis tab, choose Trends in Policing & Special Reports). Read the Braidwood Inquiry (2009–10), which studied and reported on the use of CEWs in British Columbia and also examined the circumstances of the death of Robert Dziekanski at the Vancouver International Airport during an interaction with the RCMP, at <http://www.braidwoodinquiry.ca/report/>.

13 Visit the Force Science Institute website at <http://www.forcescience.org> and go to the Articles section for information on use of force.

to respond to a situation is the general requirement, which reflects a general ethical perspective and balance.

The United Nations Code of Conduct for Law Enforcement Officials contains two articles that deal with the use of force:

Article 3

Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

• • •

Article 5

No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

The IACP Law Enforcement Code of Conduct also addresses use of force:

A police officer will never employ unnecessary force or violence and will use only such force in the discharge of duty as is reasonable in all circumstances.

The use of force should be used only with the greatest restraint and only after discussion, negotiation and persuasion have been found to be inappropriate or ineffective. While the use of force is occasionally unavoidable, every police officer will refrain from unnecessary infliction of pain or suffering and will never engage in cruel, degrading or inhuman treatment of any person.

Not surprisingly, the police use of force and weapons is also closely governed by codes of conduct and regulations for each province. Use of force is often dealt with under exercise of authority or discreditable conduct:

Abuse of Authority

- Exercising authority as a police officer when it is unlawful (or unnecessary (AB)) to do so (AB, NS).
- Using unnecessary or inappropriate force (intentionally or recklessly (BC)) on any person (AB, BC, NB, PE).
- Making an (unlawful or unnecessary (ON)) arrest without good and sufficient cause (intentionally or recklessly (BC)) (BC, NS, SK).
- In the performance, or purported performance, of duties, intentionally or recklessly detaining or searching any person without good and sufficient cause (BC).
- Without lawful authority, detaining, arresting, or searching a person (NB, PE).
- Using any unnecessary violence or force against (or cruelly treating (NB)) a prisoner or other person contacted in the exercise of duty (NS, ON, SK).

Discreditable Conduct

- Assaulting any other member of a police force (NS, ON).
- While on duty, being oppressive or abusive to any person (NB, PE).
- Wilfully making a false, misleading, or inaccurate oral or written statement or entry in any official document or record (SK).

The use of firearms and intervention equipment is also dealt with under specific provisions:

TABLE 6.4 Definition of Improper Use/Care of Firearms in Provincial Codes of Conduct

AB	BC	NB	NL	NS	ON	PE	SK
ss. 5(1)(f), 5(2)(f)	s. 77(3)(k)	ss. 35(g), 42		s. 24(8)	See Note	ss. 3(g), 10	s. 36(g)

NOTE: Use of firearms is covered in RRO 1990, reg. 926, Equipment and Use of Force.

Improper Use/Care of Firearms

- When on duty, having in his or her possession any firearm (or intermediate weapon (NS)) other than one that is issued by the police service (AB, NB, NS, PE, SK).
- When on duty, other than when on a firearm training exercise, discharging a firearm, whether intentionally or by accident, and not reporting the discharge of the firearm as soon as practicable (to his superior officer (AB, NS, PE)) (AB, NB, NS, PE, SK).
- Failing to exercise sound judgment and restraint in respect of the use and care of a firearm (AB, NB, PE, SK).
- Failing to use or care for a firearm in accordance with standards or requirements established by law (BC).
- Drawing his or her revolver except when he or she reasonably believes it may be necessary for the protection of his or her life or the life of another, or when he or she believes that it is necessary in the apprehension or detention of a person whom he or she believes to be dangerous (SK).
- Discharging a firearm in the performance of duty except where, on reasonable grounds, he or she believes it necessary for the defence of his or her life or the life of another; to effect the apprehension, when other means are insufficient, of a person whom he or she, on reasonable or probable grounds, believes to be dangerous; to destroy a potentially dangerous animal or one that is so badly injured that humanity requires its removal from further suffering; or to give an alarm or to call assistance for an important purpose when no other means can be used (SK).

For example, reg. 926 under the Ontario *Police Services Act* (1990) (Equipment and Use of Force) deals with firearms, other weapons, training in the use of force, and reports on the use of force. Section 9 of this regulation states the following:

A member of a police force shall not draw a handgun, point a firearm at a person or discharge a firearm unless he or she believes, on reasonable grounds, that to do so is necessary to protect against loss of life or serious bodily harm.

Officers are allowed, however, to discharge their firearms for training purposes, to signal for assistance when there is no alternative, or to destroy an animal that is dangerous or suffering (ss. 9.1 and 10). If a weapon is discharged during the course of an officer's duty or a person is killed or injured, an investigation must be undertaken into the circumstances (ss. 12–13).

Section 14 of the regulation deals with the use of weapons other than firearms. Other weapons are those specified by the solicitor general, and must be used according to standards established by the solicitor general. The use of force is not permitted unless an officer has completed a training course on the use of force. The same is true for the use of a firearm.

Subsequently, officers must receive training every 12 months on the use of firearms and the use of force. An officer is required under s. 14.5(1) to submit a report on Form 1 under the regulation in the event that he or she

- a. draws a handgun in the presence of a member of the public, excluding a member of the police force who is on duty, points a firearm at a person or discharges a firearm;
- b. uses a weapon other than a firearm on another person; or
- c. uses physical force on another person that results in an injury requiring medical attention.

These requirements do not apply to weapons training, practice, and maintenance situations when appropriate police service rules are followed.

The Ontario Code of Conduct has one subsection that applies to the use of force:

2(1) Any chief of police or other police officer commits misconduct if he or she engages in, ...

- (g) Unlawful or Unnecessary Exercise of Authority, in that he or she, ...
 - (ii) uses any unnecessary force against a prisoner or other person contacted in the execution of duty.

It is also important to recognize that other regulations in a specific jurisdiction may directly or indirectly govern the use of force and subsequent investigations. In Ontario, for example, there are various regulations under the *Police Services Act* such as *Suspect Apprehension Pursuits*, O. Reg. 266/10 and *Conduct and Duties of Police Officers Respecting Investigation by the Special Investigations Unit*, O. Reg. 267/10.

Section 77(3) of the BC *Police Act* (1996) addresses use of force under “abuse of authority”:

- (a) “abuse of authority,”¹⁴ which is oppressive conduct towards a member of the public, including, without limitation,
 - (i) intentionally or recklessly making an arrest without good and sufficient cause,
 - (ii) in the performance, or purported performance, of duties, intentionally or recklessly
 - (A) using unnecessary force on any person, or
 - (B) detaining or searching any person without good and sufficient cause.

Section 77(3) indicates that there is misconduct where there has been “improper use or care of firearms,” which is failing to use or care for a firearm in accordance with standards or requirements established by law.

The use of force is also generally governed by extensive policies and procedures created by each police service, and these have obvious bearing on ethical considerations about the use of force.

Correctional Codes and the Use of Force

In addition to being governed by the provisions of the *Criminal Code*, for federal corrections officers, the Correctional Service of Canada Code of Discipline also deals with use of force. Under the section dealing with professional standards, it states:

¹⁴ Visit the Office of the Police Complaint Commissioner website at <https://www.opcc.bc.ca> and research case no. 2010-5401 on abuse of authority.

Responsible Discharge of Duties

5. ... Staff shall fulfil their duties in a diligent and competent manner with due regard for the values and principles contained in the Mission Document, as well as in accordance with policies and procedures laid out in legislation, directives, manuals and other official documents. ...

Infractions

6. An employee has committed an infraction, if he/she: ...
- n. uses excessive force (that is, more force than is reasonable and necessary) to carry out his/her legal duties.

There are four extensive Correctional Service of Canada Commissioner's Directives (CDs 567-1 (Use of Force), 567-3 (Use of Restraint Equipment for Security Purposes), 567-4 (Use of Chemical and Inflammatory Agents), and 567-5 (Use of Firearms)) that deal with the use of force in the service.¹⁵

Security Codes and the Use of Force

Historically, codes of ethics for security personnel in Canada did not deal directly with use of force, but, under the ICCPSSP, several sections deal with this important subject:

F. Specific Principles Regarding the Conduct of Personnel

General Conduct

28. Signatory Companies will, and will require their Personnel to, treat all persons humanely and with respect for their dignity and privacy and will report any breach of this Code.

Rules for the Use of Force

29. Signatory Companies will adopt Rules for the Use of Force consistent with applicable law and the minimum requirements contained in the section on Use of Force in this Code and agree those rules with the Client.

Use of Force

30. Signatory Companies will require their Personnel to take all reasonable steps to avoid the use of force. If force is used, it shall be in a manner consistent with applicable law. In no case shall the use of force exceed what is strictly necessary, and should be proportionate to the threat and appropriate to the situation.

31. Signatory Companies will require that their Personnel not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, or to prevent the perpetration of a particularly serious crime involving grave threat to life.

32. To the extent that Personnel are formally authorized to assist in the exercise of a state's law enforcement authority, Signatory Companies will require that their use of force or weapons will comply with all national and international obligations applicable to regular law enforcement officials of that state and, as a minimum, with the standards expressed in the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990).

¹⁵ You can download each directive from the CSC website at <http://www.csc-scc.gc.ca>. You can also find the associated policy bulletin for each directive, what has changed, why, and the process involved on the same website.

Further, when protecting other persons and property, security officers are subject to the legal requirements governing the use of force under the *Criminal Code*. In addition, provincial legislation also regulates and controls security officers' use of firearms and weapons as part of their duties. See, for example, s. 14(h) of the *Security Services Regulation*, BC Reg. 207/2008 and s. 2(1)(f) of the Code of Conduct under Ontario Reg. 363/07 of the *Private Security and Investigative Services Act*, both of which require security officers to refrain from using unnecessary force.

Case Involving the Use of Force

An abusive individual who resisted arrest (after causing a police pursuit) has been arrested. After seriously assaulting his spouse and young children, the individual fled his residence just as police arrived. The individual is verbally abusive toward officers during the ride to the station, and this can be heard over the radio when the officers are making transmissions back to the office. Upon arrival at the police station, you are summoned to provide help in the security bay. You observe two officers punching the individual in the stomach, although at that moment the individual is not resisting. The individual is taken from the security bay to the holding cell area. The officer in charge of the cells, who was not in the cell area when the individual was being escorted from the security bay, observes a few bruises on the prisoner, but decides that medical attention is not necessary.

Depending on your jurisdiction, this situation raises a number of questions to which both conduct and ethical codes and regulations governing use of force apply:

1. Which code or regulation sections apply to this situation? (Hint: material from an earlier part of the chapter applies here, as well as material from this section.)
2. Should the use of force be reported?
3. What legal or ethical obligations do you have in this circumstance?

CHAPTER SUMMARY

This chapter was developed to expose you to a number of important contemporary ethical issues in police, correctional, and security work. The chief importance of all of these issues is the appropriate use and potential abuse of the powers vested in police, corrections, and security officers. The first major issue we explored was the scope of an officer's authority and the potential corruption of that authority. All officers are given considerable authority over members of the public; in return, the public expects officers to use their authority in a responsible, professional, and ethical manner. Situations with the potential for corruption call for ethical decision-making. It is important that in such situations officers act in a way that is legally and ethically justified, and that their actions do not lead to future corrupt behaviour.

While many activities or duties performed by officers are defined by laws, policies and procedures, and codes of ethics and conduct, there still remains considerable discretion in what

action is to be taken in a given situation. This discretionary power must be subject to an ethical decision-making process in order to determine its appropriate expression and its potential impact on the stakeholders concerned. Abuse of an officer's discretionary power can have many ramifications both for the officer and for others.

All officers are involved in situations that could potentially involve the use of force, including the use of deadly and coercive force. With the potential to use force comes the potential to abuse that force. There are a number of legal provisions that govern the use of force by officers. Ultimately, however, it is the individual officer who must monitor the possibility that he or she may be using excessive force in a given situation. Most situations involving the use of force happen quickly and rarely permit a lengthy decision-making process. It is, however, important to review such situations at a later time using an ethical decision-making approach.

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EXERCISES

To complete the following exercises, make copies of the framework for ethical decision-making in the appendix or print copies from emp.ca/ercjps.

Case Analysis

For each of the following cases, be aware of foundational or fundamental ethical principles, of the ethical values expressed in the codes you have read, and of any law that applies to the situation. Then, apply the framework for ethical decision-making to the case.

Case 6.1

You have three years' service experience and have just transferred to a medium-sized detachment of about 20 officers in a medium-sized city. The detachment commander is very strong on community policing and enjoys considerable support from all segments of the community. On your second day shift, as part of doing targeted traffic enforcement as directed by the detachment commander, you are using radar on a rural highway about one kilometre from a rural school where there have been many complaints of speeding vehicles. Within a few minutes, you end up stopping a vehicle that was travelling 100 km/h in a posted 70 km/h zone. You issue a ticket to the driver for speeding. The driver is polite and cooperative throughout, and apologizes for speeding, saying he just was not paying attention. The next day, the detachment commander approaches you and advises you that the driver you stopped is a minister in a local church who has devoted considerable volunteer time

to community and policing issues, and recently was very supportive of the family of an officer seriously injured on duty. The detachment commander asks you not to process the ticket and to give it to him, as he intends to have it framed and presented to the minister as a joke.

Case 6.2

As a correctional officer, you have just been assigned to monitor a new cell block. You become aware that your predecessor had been paid a small “honorarium” by the inmates. It is Friday and one of the inmates calls you over to give you your money for the week.

Case 6.3

You and your partner are working the midnight shift and a call comes in regarding a minor accident at a local fast food restaurant. You attend the restaurant and a staff member tells you that a blue car ran into the back of a red car in the drive-through lane. The driver of the red car got out and did not find any damage but started yelling profanities and abuse at the other driver, who was very apologetic. When told that the police had been called, the driver of the red car drove away quickly, but the driver of the blue car who caused the accident said okay and simply pulled into a parking spot and waited for the police. You walk over to the blue car and find the driver asleep. Upon waking him you find that he is quite intoxicated. Your partner recognizes the driver as a police officer from a neighbouring department who has an excellent reputation for police work but who has recently separated from his spouse. Upon discussing the matter, you decide to drive the police officer home, as you have done with other persons in similar situations in the past.

Case 6.4

You are on patrol when you receive a call from dispatch that an anonymous caller has just reported that a man in an old yellow truck has a gun and is going to his ex-girlfriend's apartment to kill her. Apparently the man has been drinking all day. Dispatch informs you that a computer check has revealed that the man has a criminal record for violence, and is prohibited from having any contact with his ex-girlfriend. As you drive into the parking lot of the apartment building you see a man sitting in a yellow truck. You call for backup and park your car at a safe angle so that you can take cover behind the engine block. You quickly exit your patrol car. Just as you squat down for cover, the man exits the truck and you see a rifle in his hands. You yell at the driver to stop. He turns his head and looks at you (but does not point the gun at you), ignores your command, and walks toward the entrance of the apartment building, which is about 3 metres away. There are no other people in the immediate area, and you yell, “Police, do not move!” But the man continues walking and is now at the door about 15 metres away from where you are.

Case 6.5

You are a part-time security officer assigned to patrol a local automobile manufacturing company on the weekends. One of the company's vice-presidents offers you \$50 to turn a blind eye when he borrows a vehicle over the weekend for his 17-year-old son to use.

Short-Answer Questions

Read each question carefully. Drawing on the material in this chapter, provide a brief answer of one or two paragraphs (no more than 300 words) to each of the following questions.

1. Discuss how the law affects the scope of police authority.
2. Discuss how accepting goods and services without paying for them affects an officer's authority.
3. Identify factors that limit discretion on the part of officers.
4. Identify three situations that call for the use of deadly force by the police.
5. Describe five corrupt activities that officers could be engaged in.

Multiple-Choice Questions

Read each question carefully. Decide which is the best answer in each case.

1. In which police activity is the scope of police authority most clearly defined?
 - a. public safety
 - b. law enforcement
 - c. crisis intervention
 - d. public welfare
 - e. peacekeeping
2. Which of the following is important in the exercise of authority?
 - a. impartiality
 - b. deportment
 - c. demeanour
 - d. control of personal biases
 - e. all of the above
3. Accepting goods and services without paying for them or at a discount
 - a. can increase an officer's power
 - b. can diminish an officer's power
 - c. may reverse the balance of power
 - d. b and c
 - e. a and c
4. Delattre (2011) suggests that good laws
 - a. set boundaries on discretion, but leave room to identify the best action to be taken
 - b. are necessarily vague so that a wide range of actions is possible
 - c. set boundaries on discretion that leave little room for independent action
 - d. set boundaries on discretion and identify the action to be taken in every situation
 - e. set few boundaries on discretion and leave the decision concerning which action to take in the hands of the individual enforcing the law
5. Discretion in a given situation will be influenced by the law and may be influenced by
 - a. the seriousness of the offence
 - b. the level of threat to the public or the officer
 - c. the availability of resources
 - d. the level of respect the offender shows for authority
 - e. all of the above
6. Evidence suggests that the relationship between police use of deadly force and the public's use of deadly force is as follows:
 - a. police use of deadly force and the public's use of deadly force are both increasing
 - b. police use of deadly force and the public's use of deadly force are both decreasing
 - c. there is no relationship between police use of deadly force and the public's use of deadly force
 - d. police use of deadly force is decreasing, and the public's use of deadly force is increasing
 - e. police use of deadly force is increasing and the public's use of deadly force is decreasing

7. Under reg. 926 (Equipment and Use of Force) of the Ontario *Police Services Act* (1990), police officers may discharge a firearm
 - a. when they believe on reasonable grounds that to do so is necessary to protect against serious bodily harm
 - b. when they are being trained to use the firearm
 - c. to call for assistance where there is no alternative method of doing so
 - d. when they believe on reasonable grounds that to do so is necessary to protect against loss of life
 - e. all of the above

8. Police officers in Ontario are not required to submit a report after they
 - a. draw a handgun in the presence of a member of the public
 - b. draw a handgun in the presence of another member of the police force while on duty
 - c. discharge a firearm
 - d. use a weapon other than a firearm on another person
 - e. use physical force on a member of the public that causes an injury requiring medical attention

9. Delattre (2011) defines incorruptibility
 - a. as a personal freedom that is the result of personal standards of excellence and self-respect
 - b. as behaviour that is governed by professional standards and departmental rules
 - c. as behaviour that is controlled by the individual rather than the peer group
 - d. as a personal set of standards and self-respect that stops just short of life itself
 - e. none of the above

10. Which of the following is not a form of police corruption?
 - a. thefts from crime scenes
 - b. fixing traffic tickets for money
 - c. accepting money for a charitable foundation
 - d. engaging in crimes such as robbery
 - e. accepting money from vice operators

Discussion Questions

Prepare a well-organized answer for each of the following questions (about 2–3 pages each). Be sure to read each question carefully.

1. Develop a position on whether profiling by police officers raises legal or ethical issues.
2. Develop a position on whether breaches of the *Charter of Rights and Freedoms* by public safety officers raise ethical issues.
3. Develop a position on whether corporate sponsorship of a police agency raises ethical issues (for example, donation of police cars, cellphones, bicycles).