

Self defence s 15 CLCA

Affirmative defence

Complete defence

STEP 1: SD an affirmative defence thus make out elements of offence first

STEP 2: What was D defending?

Person s 15 CLCA = defence for intentional killing

Property s 15A CLCA = NOT defence for intentional killing

Home Invasion s 15C CLCA = defence for intentional killing

These will be done separately

SD of Person - s 15 CLCA

D genuinely believed conduct necessary and reasonable (subjective) for a defensive purpose **AND** conduct reasonably proportionate (s 15B - objective) given what D believes (subjective – not objectively reasonable).

STEP 1: D genuinely believed conduct necessary and reasonable (subjective) for a defensive purpose s 15(1)(a)CLCA.

15(3) defensive purpose =

(a) defend self or another

(b) prevent/terminate unlawful imprisonment of self or another

- SD = can be pre-emptive force, D not required to wait for the attack Police v Lloyd
- 'force in response to the application of force, or threat of it by another' Police v M
- at the time of the defensive conduct (not before) Clothier
- P must disprove that D genuinely held this belief BRD Gillman

****/e** If she feared for her life = best scope for it to be proportional.

Lavallee v The Queen: Canadian Case: courts have rejected the imminence as a necessary element to establishing D's belief that force was necessary

R v R: woman killed husband in sleep after years of abuse and allegations he raped their daughters, self defence not available bc at the time of the offence there was no 'immediate/foreseeable threat' thus it was not necessary

ASK: Did they subjectively genuinely believe the conduct was necessary and reasonable?

It doesn't matter how unreasonable the threat may be (or whether D will carry it out) it will be sufficient that D genuinely believes there is a threat (Police v Lloyd, Morgan v Coleman).

- did D think he/she absolutely had to engage in the conduct (grab a knife and stab him) in order to protect herself in this situation?

If no genuinely held belief or defensive purpose = defence not made out BOP (don't continue)

If genuinely held belief + defensive purpose

SAY: (insert what D did). D subjectively believed that (insert conduct) was necessary and reasonable in order to (insert defensive purpose/why D did it) s 15(3)(a)/(b) CLCA, as (insert evidence of what D subjectively thought/said) s 15(1)(a)CLCA
Hirschausen v Brady

STEP 2: D's conduct was reasonably proportionate (objective) given what D believed (subjective) 15(1)(b)CLCA

S 15B reasonably proportionate - D *can* exceed force used against him/her

Weight up D's conduct **vs** the threat (as D believed it) to determine proportionality.

○ Consider:

- Size difference – big guy threatening small woman she stabs him
- Where did she stab him
- What was purpose of stabbing him – to disarm, shut up or kill
- How many times did she stab him – Police v Tee
 - Police v Tee: D stabbed the P 2 times in supermarket. Not reasonably proportionate to the threat (police yelled threats + broke down a barrier + punched Tee a couple of times)
- Could she have threatened him with a knife instead? Would have this made him more angry though
- Does he have a history of offending
- Is this something that she has encountered before or is this a first (she doesn't know how he will react)
- Could have she used something else (not a knife, a rolling pin or something to hit him with?)

If was reasonably proportionate to the perceived threat

SAY: (insert D's conduct) was reasonably proportionate given what D genuinely believed (insert the threat to be) S 15B (Viro, Police v Lloyd).

= defence made out BRD, and D acquitted.

If NOT reasonably proportionate to the perceived threat... SD not made out on balance of probabilities = excessive SD...

Excessive SD

SAY: As D's conduct is not reasonably proportionate to the perceived threat, but D still rely on partial defence of excessive SD, as if D convicted of s 11 murder → reduced to voluntary manslaughter by s 15(2) CLCA.

Does D have a defence?

SD

S 15

People

Did D have defensive Purpose
(s 15(3)(a)) protect self or other
(s 15(3)(b)) prevent/terminate unlawful imprisonment of self or other

YES

Based on D's understanding, D genuinely believe that
conduct reasonable and necessary to achieve this
purpose? (s 15(1)(a))
P to disprove BRD, s 15(5)

No, no SD

YES

Defence reasonably proportionate to D's perceived threat?

s 15(1)(b)

NOT objective, based on D's belief of threat or force

s 15B this does not mean can't exceed force used against them

NO

Is the offence murder?
(intentional)

YES

Only partial defence to
murder of excessive SD
available (s 15(2))
reduces conviction to
manslaughter

NO

No defence made
out BOP

UNLESS Home invasion

(no requirement of reasonable proportionality)

Does s 15C apply?

(go to other table)

if so = acquittal

NO

Was D resisting person purporting to make
lawful arrest/action? s 15(4)(a) or
Was D acting in response to unlawful act by
D or by D + others? s 15(4)(a)

YES

No, no SD

Was it (objectively) reasonable for D to believe
other person acting unlawfully?

YES

No, no SD