

CBC INVESTIGATES

Criminal consequences for police officers are rare when a civilian dies

Out of 461 fatal encounters over 18 years, 2 officers convicted

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Const. James Forcillo leaves court in Toronto on May 16, 2016. A jury found him guilty of attempted murder of 18-year-old Sammy Yatim on a streetcar in Toronto in 2013. Forcillo is one of two officers convicted of 18 charged after 461 people died in encounters with police in Canada over 18 years. He is appealing his conviction. (Canadian Press)

*This story is part of **Deadly Force**, a CBC News investigation into police-involved fatalities in Canada.*

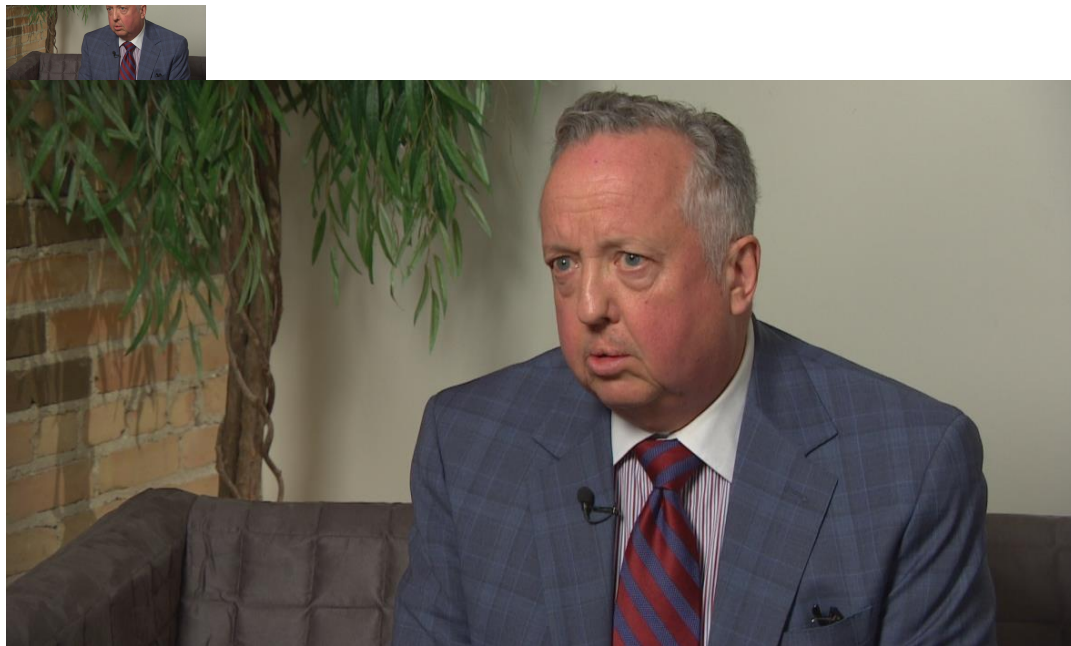
Critics say changes are needed to a system that sees hundreds of people die following fatal police encounters, and virtually no criminal consequences for officers.

The comments come in reaction to a CBC News investigation that found criminal charges were laid against 18 police officers involved in fatal encounters since 2000, with only two ending in convictions. The research shows 461 people have died in encounters with police over 18 years.

Police representatives say with the amount of scrutiny following a fatality, if an officer isn't charged, it means charges weren't warranted. But critics say the way these cases are investigated needs to be examined in depth.

"It's shocking when you look at the numbers," said Peter Rosenthal, a Toronto-based lawyer who has represented families of victims of police shootings.

"In my opinion, in many cases where there'd be a real possibility of a conviction, they're not even charged."



Winnipeg-based defence attorney James Lowry said investigating police can be difficult because officers are often reluctant to betray a fellow officer. (CBC)

Winnipeg-based defence attorney James Lowry understands the barriers to investigating cops, because for 33 years he was a Toronto police officer. Part of his job

included investigating corruption in Toronto's police ranks while working in internal affairs.

Gathering evidence always proved difficult because officers are often reluctant to betray a fellow officer, he said.

He calls it the "blue wall of silence."

"It is the idea that you don't want to place a fellow officer not only in harm's way, but in harm's way from an investigation," he said. "So that's what I ran into a significant amount of time as an internal investigator. People not wanting to talk, people hesitant to talk, people not disclosing things."

We don't just lay charges just for the sake of laying charges. There has to be evidence.— *Tom Stamatakis, Canadian Police Association*

Tom Stamatakis, president of the Canadian Police Association, says the idea that more officers need to be charged is misguided.

"We don't just lay charges just for the sake of laying charges. There has to be evidence. There needs to be a thoughtful consideration of what occurred," he said.

"So this notion of the way we're going to solve this problem is to charge more police officers with offences, I don't know what offences, but with offences and somehow that's going to have the desired effect, I think that's a very poorly informed view to hold."

2 officers convicted, both appealing

The only two officers convicted in relation to a use-of-force death were Const. James Forcillo in Ontario and Sgt. Éric Deslauriers in Quebec, according to the CBC News database.

Forcillo was found guilty in a jury trial of attempted murder in the death of 18-year-old Sammy Yatim in Toronto in 2013. In 2017, a judge found Deslauriers guilty of manslaughter in the death of 17-year-old David-Hughes Lacour in Sainte-Adèle, Que.

Both are appealing their convictions, and their lawyers declined to comment so as not to jeopardize a case before the courts.

- **Sûreté du Québec officer guilty of manslaughter**
- **Forcillo's conviction justified, Crown says**

Rosenthal sees the Forcillo case as a conviction achieved under "extraordinary circumstances," where there was clear video evidence against the officer. That's not common, he said.

"Without the videotape, it's hard to know what would have happened, what evidence the officers would have given to justify the shooting," he said.



WARNING GRAPHIC CONTENT: Sammy Yatim interaction with Toronto Police on streetcar 1:21

He argues there needs to be more pressure on investigation units like the Ontario's Special Investigations Unit (SIU) to thoroughly investigate and press charges, regardless of the outcomes.

"They're concerned, they don't want to have a lot of acquittals. They figure it will make them look bad. So then they don't charge in order to avoid [it]," he said.

"I think a kind of a public campaign is crucial."

- **James Forcillo guilty of attempted murder**

Of the remaining 16 officers charged since 2000, six cases are still before the courts, four officers were acquitted in jury trials, three officers were discharged by a judge at preliminary hearing and three charges were withdrawn or stayed by Crown prosecutors.

The CPA says to be careful when looking at numbers of victims of fatal encounters and of officers charged. They don't count how many incidents end by a cop de-escalating a volatile situation, Stamatakis said.



Tom Stamatakis, president of the Canadian Police Association, says the idea that more officers need to be charged is misguided and 'poorly informed'. (Harold Dupuis/CBC)

"I think it's a bit more complicated than to say that because there's only 18 charges and therefore there's something wrong — it's a complex issue," he said.

"I think people rightly pay attention to it and we should always be learning from these incidents to see what we can do better, what we can improve."

The SIU declined an interview, but in a statement said, "In the vast majority of cases investigated by the SIU, the director finds there was no criminal wrongdoing on the part of the officers, and hence no charges are laid. Based on the facts of the investigation, the finding is that the officers were acting in the confines of the law."

Ian Scott says he charged about 50 police officers in his five years as the civilian director of Ontario's Special Investigations Unit, but those cases rarely followed a death.

"There are just not that many charges laid of intentional homicide by police," Scott said.

Between 2008 and 2013, Scott says, he charged two officers: Const. David Cavanagh and Forcillo. Cavanagh was charged with manslaughter in the 2010 death of Eric Osawe. The charge was subsequently upgraded to second-degree murder. Cavanagh was discharged after a judge ruled there wasn't enough evidence to proceed to trial.

- **Toronto police officer cleared in fatal 2010 shooting**

Scott said there are many reasons why officers aren't charged, most notably the protection offered to police under the Criminal Code. Officers are justified under the code in using force if they have reasonable grounds to believe it necessary to protect the officer or any other person from death or grievous bodily harm.

"The nature of policing is that they are going to be using force in circumstances where virtually no other citizen of this country will be using it," he said.

Of the dozens of cases Scott reviewed where someone died after an encounter with cops, there are none where he thinks someone should have been charged who wasn't.

One solution he has long advocated is the use of body cameras by officers. He argues it would help clear officers when there are suspicions and give investigators a clearer picture of what occurred.

"I think it would be the benefit of all of us, it would be the benefit of the police to protect them against frivolous and vexatious allegations," he said.