POLICE ACADEMY
715 McBride Blvd. New Westminster B.C. V3L 5T4

IN SERVICE:10-8

JUSTICE INSTITUTE OF B.C.

A newsletter devoted to operational police officers across British Columbia.

POLICE LEADERSHIP 2002

S/Sgt. Murray Lunn

The British Columbia Association of Chiefs of Police, the Ministry of the Attorney General, Police Services, and the JIBC are hosting the **"Police Leadership 2002 Conference**", April 10 to 12, 2002. The venue for the Conference is the beautiful Westin Bayshore Resort and Marina, near Stanley Park in Vancouver.

An impressive list of speakers will be presenting. This years theme is "**Managing Change Through Principled Leadership**". Confirmed speakers include:

- Sir Ronnie Flanagan, Chief Constable, Royal Ulster Constabulary
- John Murray, Chief Police Officer, Australian Federal Police,
- Dr. James Reese, FBI, (ret.)
- Mr. Bob Vernon, Assistant Chief of Police, LAPD (ret.)
- Canadian Olympic Rower, Ms. Silken Lauman.

The Conference will emphasize leadership as an activity, not a position, and provide an opportunity for participants of all ranks from Police Services across Canada, the US, and beyond to engage in leadership initiatives.

In association with **Police Leadership 2002,** the JI will be hosting Mr. Bob Vernon of Pointman Leadership Institute for a further two-day seminar on Ethics Training. This additional two days, along with the Conference, will qualify participants for an incremental course under their department's educational incentive program.

Cost for the conference is $300, which includes a reception dinner, a banquet, and lunches. The incremental seminar is an additional $100. Registration is expected to fill quickly. If you are interested, contact S/Sgt. Murray Lunn at the JI (604) 528-5824 or check the Leadership 2002 web-site at **www.policeleadership.org**

IN THIS ISSUE

Alta.CA OVERTURNS OFFICER's ASSAULT CONVICTION

R. v. Yum, 2001 ABCA 80

The Alberta Court of Appeal overturned the conviction of an Edmonton police officer who was convicted of assault after he kicked a suspect on the ground. The uniformed officer attended an apartment building to execute an arrest warrant. The officer was familiar with the apartment building as a location from where numerous family assaults, intravenous drug use, and weapons complaints had previously occurred. The suspect (alleged victim) was smoking crack cocaine in one of the apartment suites and fled the premises on seeing the police vehicle. The officer commanded the suspect to stop and a chase ensued. In an effort to conceal his location, the suspect laid on the ground by a vehicle. The officer noticed the suspect but was initially concerned he was armed. The Court described the suspect as "an unknown, but criminally inclined risk". Avoiding risk by not crawling under the vehicle to arrest the suspect, the officer kicked the suspect in the chest to gain control. In overturning the officer's earlier conviction, the Appeal Court held:

> *We assess the circumstance as a decision taken by a police officer in the clear performance of his duty, a decision taken neither from revenge, anger or malice and which could only be characterized as an*

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application of situational force designed to dissolve a potential risk to his own personal safety.

.....

[T]he kick was administered under a legitimate motive. … Had the force been applied without a weapon or in some other way, i.e. by a nightstick or a flashlight, and without injury to the suspect, the matter may well have rested at that. But a kick as an instrument of force must be assessed carefully. The optics here are far worse than the actual force employed. It is the package, not the content, that offends. (emphasis added)

Complete case available at www.albertacourts.ab.ca.

RANDOM VEHICLE STOPS: CHERRY PICKING

Sgt. Mike Novakowski

Does the stopping of a vehicle at "random", without having reasonable grounds to believe nor an articulable cause to suspect an offence has been committed, violate s.9 of the *Charter* to be free from arbitrary detention? A detention will be considered arbitrary when it is made without "articulable cause"[1]. In BC, s.73(1) of the *Motor Vehicle Act* (*MVA*) authorizes the arbitrary stopping of motorists:

> s.73(1) *MVA*
> A peace officer may require the driver of a motor vehicle to stop and the driver of a motor vehicle, when signalled or requested to stop by a police officer to stop by a peace officer who is readily identifiable as a peace officer, must immediately come to a safe stop.

Although permitting arbitrary detentions, s.73(1) is justified under s.1 of the *Charter* as a reasonable limit to be free from arbitrary detention[2]. However, the detention of the motorist must be rationally connected[3] and limited by the purpose of the stop (highway traffic matters), and must be brief, unless other grounds are established to justify further detention[4]. Legitimate purposes related to enforcing driving laws and traffic safety include:

- producing documents drivers are by law required to possess such as driver's licences and insurance[5] and checking those documents against information available on CPIC[6]
- assessing the mechanical fitness of a vehicle[7]
- checking the sobriety of drivers[8]

When the justification for continued detention is neither related to the original purpose nor based on an articulable cause of other unlawful activity, the extension of the detention becomes arbitrary.

Multi or Dual Purpose Stops

There may be occasions where the police properly rely on motor vehicle legislation while at the same time have a secondary purpose in connection with the traffic detention. The stop will not be rendered arbitrary by having a collateral purpose provided the additional purpose is a "legitimate police interest" such as gathering police intelligence, investigating criminal activity, or the maintenance of the public peace[9]. Legitimate police interests carried out congruently with a properly circumscribed traffic stop will not render the stop invalid if "the decision to stop is made pursuant to some standard or standards which promote the legislative purpose underlying the statutory authorization to stop" (highway regulation and safety)[10]. For example, only questions that may justifiably be asked are questions related to driving offences[11]. However, illicit police motives will transform an otherwise lawful traffic stop into an improper detention regardless of legitimate highway safety concerns factoring into the decision to effectuate the stop. For instance, stopping a motorist on the basis of gender or colour will render the stop improper[12].

Note-able Quote

"Tact is the ability to close your mouth before someone else wants to[13]".

[1] R. v. Griffin (1996) 111 C.C.C. (3d) 490 (Nfld.C.A.) appeal to S.C.C. dismissed [1997] S.C.C.A. No. 32
[2] R. v. Wilson (1993) 86 C.C.C. (3d) 145 (B.C.C.A.), see also R. v. Ladouceur (1990) 56 C.C.C. (3d) 22 (S.C.C.), R. v. Hufsky [1988] 1 S.C.R. 621,
[3] R. v. Del Ben [2000] O.J. No. 812 (Ont.S.C.J.)
[4] Brown v. Durham Regional Police Force (1998) 43 O.R. (3d) 223 (Ont.C.A.), R. v. J.R. [2000] O.J. No. 930 (Ont.S.C.J.)
[5] R. v. Ladouceur [1990] 1 S.C.R. 1257 at p.1287, R. v. Wilson (1993) 86 C.C.C. (3d) 145 (B.C.C.A.).
[6] Brown v. Durham Regional Police Force (1998) 43 O.R. (3d) 223 (Ont.C.A.)
[7] R. v. Ladouceur [1990] 1 S.C.R. 1257 at p.1287, Brown v. Durham Regional Police Force (1998) 43 O.R. (3d) 223 (Ont.C.A.),
[8] R. v. Ladouceur [1990] 1 S.C.R. 1257 at p.1287, R. v. Wilson (1993) 86 C.C.C. (3d) 145 (B.C.C.A.)
[9] Brown v. Durham Regional Police Force (1998) 43 O.R. (3d) 223 (Ont.C.A.)
[10] Brown v. Durham Regional Police Force (1998) 43 O.R. (3d) 223 (Ont.C.A.)
[11] R. v. Ladouceur [1990] 1 S.C.R. 1257 at p.1287.
[12] Brown v. Durham Regional Police Force (1998) 43 O.R. (3d) 223 (Ont.C.A.)
[13] Author unknown.

Sask.CA EXAMINES PLAIN VIEW

R. v. SPINDLOE, 2001 SKCA 58

Saskatoon police officers entered the premises of the Vinyl Exchange (a store that sells LPs, CDs, collectibles and "smoking accessories") armed with a warrant to search for instruments and literature for illicit drug use. Although the warrant was found to be invalid, the court examined the application of the plain view doctrine. Plain view requires lawful presence by police, inadvertent discovery, and the item must be apparently subject to seizure. In determining whether the police were lawfully present, the Court agreed with the trial judge that a business establishment open to all members of the public is not immune from police entering under implied invitation. Respecting inadvertent discovery, the Court recognized that police had foreknowledge of the existence of the items (after all they had obtained a warrant, albeit invalid). If the police have a right to be present at a location in the first place, the "inadvertence requirement becomes less important". The Court held:

> *The plain view seizure power cannot be exercised as a pretext for a planned warrantless seizure, but if the police are lawfully present in premises, they may seize property in plain view as long as there is probable cause to associate the discovered property with criminal activity.*

While at the premises, police seized items that were placed into four categories and addressed by the Court in the following manner:

- Items located on counters or in locations a customer could pick them up (pipes, scales, magazines). These items were clearly in plain view and subject to seizure.

- Items located behind a glass display that a customer could see but would have to ask for assistance to handle and see closely (pipes, bongs, literature, roach clips, scales, etc.). These items were also found to be in plain view. There was "no legitimate expectation of privacy shielding the interior of the display counter in the store".

- Items located in boxes with a sample item on top (ornamental bongs). The sample item on top was clearly in plain view. With respect to the box, the court acknowledged there may be proper circumstances where a seizure could be justified by plain view. The sample on top is an invitation to open the boxes. However, the trial judge made no finding on this issue and the Court proceeded on the assumption this seizure was unreasonable.

- Items in closed drawers or behind the counter only a search would reveal (water pipes, hash pipes, hash vials, roach clips, scales, etc.). Plain view is limited to those items that are visible. The police exceeded plain view in searching for these items.

Complete case available at www.canlii.org.

FORCING ENTRY TO EFFECT MHA APPREHENSIONS

Sgt. Mike Novakowski

There is no express provision in the *Mental Health Act* (*MHA*) permitting forced entry into private premises to effect an apprehension of a mentally disordered person. In *R. v. Nicholls* (1999) 139 C.C.C. (3d) 253 (Ont.C.A.), police responded to an emergency call involving a psychiatric patient who was a threat to himself and others. Efforts were made to contact the patient by telephone and knocking at the door. Police, in the company of an ambulance attendant, forced entry into the apartment. The accused was located lying in his bed with his hands under the covers. Following repeated requests to show his hands, the accused jumped from the bed with a butcher knife and was subsequently shot by police. The accused was convicted of weapons offences for his attack on the police officers. The accused appealed his convictions arguing the police were not justified in entering the apartment and therefore were not in the lawful execution of their duties. The Ontario Court of Appeal found the police common law duty to protect life and prevent injury was engaged and the accompanying authority to force entry under the circumstances was justified:

> *The police and ambulance crew were responding to a serious 911 call and had a duty to investigate the situation to ensure the appellant was not a danger to himself or others. In order to locate the appellant and do so, forced entry was necessary.*

In many cases, police entry to apprehend a mentally disordered person satisfying the requirements of s.28 *MHA* will involve an emergent situation (preservation of injury/protection of life):

> s.28(1) *MHA*
> A police officer or constable may apprehend and immediately take a person to a physician for examination if satisfied from personal observations, or information received, that the person
> (a) is acting in a manner likely to endanger that person's own safety or the safety of others, and
> (b) is apparently a person with a mental disorder.

A necessary requirement to apprehend under s.28 is the belief a person is a danger to themselves or others. Endangerment itself has an element of exigency or urgency requiring immediate police intervention. The interest in preserving life outweighs the privacy interest of the person within the sanctity of their dwelling[14] and by not entering, police would be derelict in their duty.

BCSC RULES WARRANTLESS FLY-OVER VIOLATES S.8

R. v. Kuitenen et al., 2001 BCSC 677

A police officer received information, believed to be reliable, that a property in the 100 Mile House area was the site of a significant marihuana grow operation. Despite this information, the police officer did not believe he had sufficient grounds to obtain a search warrant under s.487 CC or s.11 CDSA. Police flew over the property in a police helicopter equipped with forward-looking infrared radar (FLIR) and videotape technology. Police testified that they flew low enough they could see two people in the yard, one of whom was urinating. Police reviewed the videotape taken during the fly-over and observed what appeared to be an underground bunker on the property. As a result of the information provided and the results of the fly-over, police applied for and were granted a general search warrant under s.487.01 CC. Among other issues, Justice Oppal found the fly-over by police violated the accused's right to privacy protected by s.8 of the *Charter*:

> *There is no doubt that police have the right to secure evidence through the use of technology such as airplanes and helicopters. Furthermore, the police are entitled in appropriate cases to use electronic surveillance. That was precisely the reason for the enactment of the general warrant section. However, in this case the police chose not to get a warrant before embarking upon the fly-overs. The accused's right to privacy was clearly violated by the inordinately low altitude of the flights. The police admitted that the altitude of the fly-overs was so low that they could see one of the parties urinating. This was a private residence. The fly-overs together with the use of the intrusive technology constituted an unlawful search and seizure.* (emphasis added)

Complete case available at www.courts.gov.bc.ca.

Q: **What do you call a drug case without a Charter argument?**

A: **A Guilty Plea!!!!**

POLICE ACADEMY STAFF RECEIVE HONOURS IN TEXAS

Recently, two instructors from the Police Academy received awards for excellence in teaching from the National Institute for Staff and Organizational Development (NISOD) at the University of Texas. Mr. Mark Lalonde, program coordinator for Contract Law Enforcement and Sgt. Steve Wade, the recruit firearm/drill instructor were among the recipients at the National Conference in May. Awards of Excellence were instituted by NISOD in 1989 to recognize outstanding performances in the field of adult education. Recipients are selected by their institutions and receive medals at the annual NISOD conference held in Austin, Texas. Great job!

For comments or topics you would like to see published in this newsletter contact Sgt. Mike Novakowski at the JIBC Police Academy at (604) 528-5733 or e-mail at mnovakowski@jibc.bc.ca

[14] See for example R. v. Godoy (1999) 131 C.C.C. (3d) 129 (S.C.C.), R. v. Custer (1984) 12 C.C.C. (3d) 372 (Sask.C.A.), R. v. Hardt 1999 Docket :CC970747 B.C.S.C.