POLICE ACADEMY
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JUSTICE INSTITUTE OF B.C.

A newsletter devoted to operational police officers across British Columbia.

FORCING ENTRY TO ARREST: THE COMMON LAW

Sgt. Mike Novakowski

The legal authority to arrest a person does not, by itself, justify an entry into a private premise to effect an arrest. There is a recognized distinction between the police power to arrest and the police power to enter to carry out the arrest. At common law, the police may make a warrantless and non-consensual forced entry into **private property other than a dwelling house**, such as a business, detached garage, barn, non-dwelling out buildings, land, or vehicles, to effect an arrest provided the following criteria are met[1]:

- **The police officer must have the power to arrest[2].** Generally, this will require the officer having reasonable grounds[3] (subjectively held/objectively verifiable) to arrest. The power to enter to arrest is not restricted to criminal offences but would include situations where the arrest authority exists under provincial legislation such as a hit and run arrest under the *Motor Vehicle Act*[4].

- **the police officer has reasonable grounds to believe (subjectively held/objectively verifiable) the person sought is within the premise.** The belief that the arrestee is an occupant of the premise/property must exist at the time the police are about to enter. Grounds may include information the officer receives, observing the suspect through an opening, or telephone contact with the suspect.

- **proper announcement is made prior to entry.** Before forcing entry (in the absence of exigent circumstances), police should knock, seek admission, and have admission denied[5]. Proper announcement requires the following[6]:

  - **Notice of presence**. The police, in some way, must notify the occupant(s) of the premise/ property that the police are there. This can be accomplished by knocking or ringing the doorbell.

  - **Notice of authority**. The police must identify themselves as police officers. Verbal identification or the production of a badge of identification may fulfil this requirement. In some instances, the uniformed nature of the police may make their character as law enforcement officers readily apparent[7].

  - **Notice of purpose**. The police must provide a lawful reason for entry such as announcing to the person(s) within that the purpose of demanding entry is to arrest an occupant.

In providing proper announcement, "learned legal statements" are not required and a statement similar to "I am here to arrest you" is sufficient[8].

Entry is limited to circumstances of arrest and does not provide the authorization to enter for the purpose of

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[1] R. v. Feeney [1997] 2 S.C.R. 13 at para. 24, R. v. Haglof 2000 BCCA 604.
[2] R. v. Landry (1986) 25 C.C.C. (3d) 1 (S.C.C.), R. v. Haglof 2000 BCCA 604, R. v. Feeney [1997] 2 S.C.R. 13.
[3] See Volume 1 Issue 3 of this publication.
[4] R. v. Haglof 2000 BCCA 604.
[5] R. v. Feeney [1997] 2 S.C.R. 13 at para. 26.
[6] R. v. Feeney [1997] 2 S.C.R. 13 at para. 26, Eccles v. Bourque [1975] 2 S.C.R. 739.
[7] R. v. Anderson (1996) 108 C.C.C. (3d) 37 (Ont.C.H.J.). at p.48-49.
[8] R. v. Dupuis (1994) 162 A.R. 97 (Alta.C.A.)

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pursuing an investigation[9]. To comport with *Charter* values, forced entry without a warrant into **dwelling houses** to effect arrests is generally prohibited unless the privacy interest in the home is outweighed by the interests of law enforcement[10]. One exception to this rule are cases of hot pursuit[11] (other circumstances include the suspect posing an immediate threat to arresting officers or the public, or immediate police action is necessary to prevent the loss of evidence[12]).

Hot Pursuit

A person cannot defeat a lawful arrest that has been set in motion by seeking refuge in a private premise (including a home). In the words of C.J. Lamer in *R. v. Macooh* [1993] 2 S.C.R. 802 (S.C.C.):

> [I]t would be unacceptable for police officers who were about to make a completely lawful arrest to be prevented from doing so merely because the offender had taken refuge in his home or that of a third party.

Hot or fresh pursuit has been defined as a continuous pursuit, conducted with reasonable diligence, so that pursuit and capture along with the commission of the offence may be considered as forming part of a single transaction**[13]**. Fresh pursuit does not require continuous and uninterrupted visual contact with the fleeing suspect. A suspect rounding a corner and briefly lost from sight will not defeat the hot pursuit doctrine. Likewise, a person fleeing into a dwelling may be pursued by police even if the police do not observe that person enter. Similarly, a pursuit that ends almost as soon as it begins will still amount to hot pursuit, such as a person fleeing from a driveway into a dwelling.

It is not necessary that the offence be a criminal offence for which the person is being pursued. Where the police have the power to arrest for a provincial offence, such as running a stop sign, entry into a dwelling is also justified**[14]**. Two common field situations are worthy of consideration in determining whether the circumstances of the officer/citizen interaction amount to hot or fresh pursuit.

- **Classic Pursuit.** Classic pursuit occurs when the police are lawfully in a position to effect an arrest and the suspect takes flight from the officer's presence. This may occur when the officer witnesses an offence, attempts to effect an arrest, and the perpetrator flees. This may also occur when the officer, although not observing the offence, arrives on scene and forms reasonable grounds following a delay while gathering information. While attempting to effect the arrest, the suspect flees and the officer pursues. Again, the evasion is contemporaneous with the arrest attempt. Similarly, hot pursuit occurs when an attempt to arrest a person on an outstanding arrest warrant results in flight[15]. The police need not witness the initial crime but do require the necessary power of arrest prior to flight.

- **Shadow Pursuit.** Cases will arise where the officer arrives on the scene of an offence and the suspect has already fled prior to police arrival. While at the scene the police engage in further investigative techniques that provide information causing police to "shadow", or "track", the suspect to a dwelling. In such a case the police neither observed the offence nor the suspect's entry into the dwelling, nor was an arrest yet attempted or set in motion. The test is whether the events linking the offence to the capture are sufficiently proximate to be considered as forming part of a single transaction[16]. There must be "real continuity between the commission of the offence and the pursuit undertaken by police"[17]. There is no fixed formula for when a fresh pursuit becomes stale and each circumstance will need to be taken in context and turn on the facts of the individual case. For instance, entry following the application of a police tracking dog shortly after the commission of an offence may amount to fresh pursuit.

  In *R. v. Haglof* 2000 BCCA 604, police attended a hit and run accident where the driver had fled. After obtaining information on the registered owner of the licence plate number provided by a witness, police attended the owner's residence 15 minutes after the accident. The police, although knocking at the door of the residence and receiving no response,

[9] R. v. Plamondon (1997) Docket: CA022460 (B.C.C.A.) at para.33.
[10] R. v. Feeney [1997] 2 S.C.R. 13, R. v. Golub (1997) 117 C.C.C. (3d) 193 (Ont.C.A.)
[11] R. v. Feeney [1997] 2 S.C.R. 13.
[12] See s.529.3 Criminal Code.
[13] See R. v. Macooh [1993] 2 S.C.R. 802 (S.C.C.)
[14] R. v. Macooh [1993] 2 S.C.R. 802 (S.C.C.), R. v. Haglof 2000 BCCA 604.
[15] City of Vancouver v. Dennis 2001 BCSC 615.
[16] R. v. Haglof 2000 BCCA 604 at para. 38.
[17] R. v. Macooh [1993] 2 S.C.R. 802 (S.C.C.)

observed the movement of window blinds from someone peeking out. After 25 minutes on scene (a total of 40 minutes after the offence) police entered the residence through a rear sliding door that was slightly ajar but secured with a piece of wood (which was removed by police). The accused was located in the residence and arrested for hit and run under the *Motor Vehicle Act*. Police conducted a sweep of the residence to ensure no one else was present, no one was injured or hiding, and to secure the home. During this process police located a marihuana operation in the basement. The accused argued the entry was unlawful but the Court found the chain of events were sufficiently proximate and amounted to fresh pursuit. The evidence obtained following police entry was untainted and could properly support a search warrant the police subsequently applied for and were granted.

NIGHT TIME SEARCH UNREASONABLE

R. v Sutherland, 2000 Docket:C32762 Ont.C.A.

The Ontario Court of Appeal has recently held that a search conducted by the police during the night violated the s.8 *Charter* rights of the accused. In this case, the police searched the accused's residence using a s.487(1) *Criminal Code* search warrant. The Court noted that s.488 of the Code requires that a search warrant under 487(1) be executed by day:

> s.488 Criminal Code
> A warrant issued under 487 or 487.1 shall be executed by day, unless
> (a) the justice is satisfied that there are reasonable grounds for it to be executed by night;
> (b) the reasonable grounds are included in the information; and
> (c) the warrant authorizes that it be executed at night.

The Court recognized that "a search of a dwelling house must be approached with the degree of responsibility appropriate to an invasion of a place where the highest degree of privacy is expected":

> *The mere presence of police officer's at one's home in the middle of the night, for whatever reason, is a frightening event. Parliament has recognized that only in exceptional circumstances can the police exercise this unusually invasive procedure.*

Although the warrant, on its face, authourized the execution of it by night, the information did not provide the necessary grounds to support its execution by night. The Court held the "the failure to satisfy s.488(b) is a strong indicator, if not conclusive" of a s.8 violation. Again, the Court is recognizing that conformity to the law is an essential component of the reasonableness of a search.

Complete case available at www.ontariocourts.on.ca.

SHOTGUN TRAINING RETURNS

Sgt. Steve Wade

Shotgun training has been re-introduced to the Block 3 recruit firearms program, piloted with Class 83. Recruits receive 7 hours of instruction in shotgun nomenclature, ammunition, loading, unloading, carrying, firing positions, cleaning, disassembling, stoppage clearance, and live firing (aimed and from the hip). Live firing includes a qualification course of fire using tactical rounds (OO Buck) and rifled slugs.

This training has returned to address shotgun deployment by some departments and the increased use of intermediate weapons (beanbag). Although this training is not specifically targeted at beanbag rounds, it provides a basic shotgun users program that can be built upon at the member's home department.

PASSENGER IN STOLEN AUTO: PARTY TO POSSESSION

R. v. Barnhardt, 2001 BCCA 191

The accused passenger was charged with theft and possession of stolen property jointly with the driver of a stolen vehicle. In the early morning hours, the owner of a Jeep heard its alarm and saw a male taking the vehicle from the owner's driveway. The homeowners were the victims of a break and enter in which the keys to a Jeep and a GMC vehicle were stolen a week earlier. After the Jeep had maneuvered out of

the driveway, the horn was honked three times and a second male ran from some bushes and got into the passenger seat. Five minutes later a police officer saw the vehicle stopped. As the officer turned his patrol car around, the two males had fled. A police dog was dispatched and tracked to a grass through-way, but was unable to track any further. Police continued to look for the suspects and their attention was drawn to male voices and splashing in a ditch. As the two males walked from the bush, breathing heavily and with wet feet, they were arrested. One of the males, who later plead guilty, had a screwdriver and the GMC keys (stolen the week earlier) in his pocket. The suspects were arrested 20-25 minutes after the officer spotted the Jeep and 15 minutes after the dog had lost the track.

In a 2-1 decision, the BCCA upheld the accused's conviction for possession of stolen property. Without deciding whether the accused was in possession as defined by s.4(3) of the *Criminal Code*, the Court nonetheless found the accused's occupation of the vehicle in the circumstances amounted to "abetting" and the accused was culpable as a party to the offence:

> The only reasonable inference open to the trier of fact in the circumstances described is that the appellant was a voluntary passenger in a vehicle he knew to be stolen, and that he thereby encouraged [the driver] in possessing the stolen property.

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

DID YOU KNOW.....

...there was a recent amendment to the *Criminal Code* concerning "spouses". As a result of Bill C-23, the *Modernization of Benefits and Obligations Act*, the definition of "common-law partner" was added to s.2 of the *Code*.

> "common-law partner", in relation to an individual, means a person who is cohabiting with the individual in a conjugal relationship, having so cohabited for a period of at least one year;

Subsection 23(2) of the *Code*, which provided statutory immunity for a spouse from charges of being an accessory after the fact, was repealed. Similarly, s.329 of the *Code*, which provided a spousal exemption from theft, has also been repealed. Other changes include replacing spouse with "spouse or common-law partner" in s.215(4)(d) (duty of persons to provide necessities), s.423(1)(a) (intimidation), s.718.2(a)(ii) (sentencing principles), s.722(4)(b) (victim impact statement), s.738(1)(c) (restitution of victims), s.810(1) (peace recognizance), and s.810(3.2) (recognizance conditions).

CLASS 83 GRADUATES

The Police Academy is pleased to announce the successful graduation of recruit Class 83 as qualified municipal constables on July 27, 2001.

DELTA
Cst. Tim Cardinal
Cst. Kevin Jones

NEW WESTMINSTER
Cst. Natasha Purba

SAANICH
Cst. Cindy Brown
Cst. Duncan Campbell
Cst. Michael Duquette
Cst. Tara Jefferson
Cst. Tracey Walt

VICTORIA
Cst. Mike Niederlinski
Cst. Rae Robirtis
Cst. Dale Sleightholme

VANCOUVER
Cst. Marie Brown
Cst. Eric Davis
Cst. Steve Dhaliwal
Cst. Lora Dujmovic
Cst. Brodie Haupt
Cst. Roy Janzen
Cst. Jennifer Lee
Cst. Garett MacDonald
Cst. David Menzies
Cst. Kevin Ng
Cst. Fred Oldendorf
Cst. Shayne Savage
Cst. Susan Sharp
Cst. George Specht
Cst. Robert Styles
Cst. Adrian Thomson
Cst. Joel Tuininga
Cst. Byron Yee

Congratulations to Cst. Fred Oldendorf, who was the recipient of the British Columbia Association of Chiefs of Police Shield of Merit for best all around recruit performance in basic training. Cst. Tim Cardinal received the Abbotsford Police Oliver Thomson Trophy for outstanding physical fitness. Cst. Mike Niederlinski was the first time recipient of the new Vancouver Police Union Excellence in Academics award for best academic test results in all disciplines. Cst. Eric Davis received the British Columbia Federation of Police Officers Valedictorian award for being selected by his peers to represent his class at the graduation ceremony. Although not formally recognized at the graduation ceremony, Cst. David Menzies was the recipient of the

new Abbotsford Police Recruit Marksmanship award for highest qualification score during Block 3 training (50/50).

IMPAIRED BLOOD WARRANTS NOW AVAILABLE FOR DETECTION OF DRUGS

A recent amendment to the *Criminal Code* now permits police officers to obtain a warrant for blood samples (to determine the concentration of drugs) from suspected impaired drivers.

s.256 Criminal Code
(1) Subject to subsection (2), if a justice is satisfied, on an information on oath in Form 1 or on an information on oath submitted to the justice under section 487.1 by telephone or other means of telecommunication, that there are reasonable grounds to believe that
(a) a person has, within the preceding four hours, committed, as a result of the consumption of alcohol or a drug, an offence under section 253 and the person was involved in an accident resulting in the death of another person or in bodily harm to himself or herself or to any other person, and
(b) a qualified medical practitioner is of the opinion that
(i) by reason of any physical or mental condition of the person that resulted from the consumption of alcohol or a drug, the accident or any other occurrence related to or resulting from the accident, the person is unable to consent to the taking of samples of his or her blood, and
(ii) the taking of samples of blood from the person would not endanger the life or health of the person,
the justice may issue a warrant authorizing a peace officer to require a qualified medical practitioner to take, or to cause to be taken by a qualified technician under the direction of the qualified medical practitioner, the samples of the blood of the person that in the opinion of the person taking the samples are necessary to enable a proper analysis to be made in order to determine the concentration, if any, of alcohol or drugs in the person's blood.

Unfortunately, the blood demand (s. 254(3) *Criminal Code*) remains the same and an officer may not give the blood demand unless the officer believes impairment is "as a result of the consumption of alcohol" (no drugs).

SLAP TO FACE AMOUNTS TO SEXUAL ASSAULT

R. v. Alceus (2000) 151 C.C.C. (3d) 91 (Que.C.A.)

The Quebec Court of Appeal has overturned an acquittal for sexual assault and entered a conviction for an accused who had struck the victim twice in the face when she refused to perform fellatio on him. This occurred in the accused's bedroom following other sexual activity. The offence of sexual assault requires a two stage enquiry:

- was there an assault?
- was the assault committed in circumstances of a sexual nature?

The trial court had earlier convicted the accused of assault but entered an acquittal on the sexual assault charge. In overturning the acquittal and finding the assault to be sexual in nature, Fish J.A. for the appellate Court held:

> The bedroom setting, the ongoing sexual activities, the words accompanying the assault, and the undisputed nexus between the sexual gratification demanded and the refusal to "deliver the goods" persuade me that "the sexual or carnal context of the assault [is] visible to a reasonable observer".

COMMENTS OF U.S. JUDGE, PROSECUTOR VIOLATE FUGITIVE'S RIGHTS

Cobb v. USA 2001 SCC 19

The Supreme Court of Canada has ruled that the comments of a U.S. judge and U.S. prosecutor have violated the s.7 *Charter* rights of two Canadian fugitives wanted in the U.S. on charges of fraud and conspiracy to commit fraud. The fugitives were Canadian citizens against whom extradition proceedings had been instituted. The U.S. Judge had made the following impugned comments during the sentencing of the accused's co-accused (they had not fought extradition and voluntarily returned to the U.S.):

> I want you to believe me that those people who don't come in and cooperate and if we get them extradited and they're found guilty; as far as I'm concerned they're going to get the absolute maximum jail sentence that the law permits me to give.

The Assistant U.S. Attorney prosecuting the case was interviewed on CBC's *The Fifth Estate* and in response to a question by the reporter stated:

> You're [the fugitives are] going to be the boyfriend of a very bad man if you wait out your extradition.

The Supreme Court upheld the lower court's decision to stay the extradition proceedings as an abuse of process:

> By placing undue pressure on Canadian citizens to forego due legal process in Canada, the foreign State has disentitled itself from pursuing its recourse before the courts and attempting to show why extradition should legally proceed.

Complete Case available at www.lexum.umontreal.ca/csc-scc.

SUMMARY OFFENCES NOT FOUND COMMITTING: THE NAME GAME

Sgt. Mike Novakowski

Cases will undoubtedly arise where the investigating officer determines that there is sufficient evidence to warrant a charge for a summary conviction offence even though the officer lacks the power to arrest (did not find committing). Provided the officer has reasonable grounds to believe the person has committed the summary conviction offence, the person's identity is required if the officer seeks to procure attendance in court by way of a summons (or warrant). If identity is not known, the process of compelling attendance by summons is defeated and the person would be immune from prosecution. In *R. v. Legault* [1998] B.C.J. No. 1309 (B.C.S.C.) Lamperson J. examined at what stage, short of arrest, people are obligated to identify themselves at the request of a police officer:

> In my opinion, absent some statutory provision to the contrary, a person must only identify himself or herself to a police officer if that police officer is in a position to arrest that person or to issue some form of summons to him.
>
> .....
>
> Furthermore, it is my opinion that to trigger a charge of obstructing a peace officer in the execution of his duty requires some knowledge on the part of the person to be charged that a threshold has been reached and that the police officer is in a position to arrest or issue a summons or appearance notice. (emphasis added)

A person refusing to identify themselves once the legal obligation has arisen, would then be committing an obstruction of the officer in the execution of their duty[18]. Thus, the person could be subject to arrest for the obstructing offence[19]. In *R. v. Marchand* [1993] B.C.J. No. 2473 (B.C.S.C.), police investigating a "cause a disturbance by fighting" (a summary conviction offence not committed in the officers' presence) arrested the accused following his refusal to identify himself. Curtis J. held[20]:

> I am in agreement that there is no logical distinction to be made between a constable actually seeing the offence committed and believing it to have been committed upon reasonable and probable grounds, at least in circumstances where the accused is advised that the police have reasonable and probable grounds to believe that he has committed the offence. In either instance the accused knows himself to be the subject of a bona fide police investigation, and can be taken to know that he obstructs the police officer in the execution of his duty should he refuse to give his identify.

In short, a police officer must, before demanding identification, meet the following requirements:

- **have the requisite reasonable grounds to believe the person has committed an offence,**
- **inform the person of this belief ,** and
- **inform the person of the reason for the request** (ie. summons).

[18] See R. v. Moore (1978) 43 C.C.C. (2d) 83 (S.C.C.), R. v. Dilling (1993) 84 C.C.C. (3d) 325 (B.C.C.A.) leave to appeal to S.C.C. refused 88 C.C.C. (3d) vi (S.C.C.),

[19] See s.129 of the Criminal Code; willfully obstructing a peace officer in the execution of their duty.

[20] Curtis J. overturned the conviction of the accused for obstruction because the police did not testify they had reasonable grounds to believe the accused committed the offence and in any case they did not tell the accused they had reasonable grounds to believe he had committed the offence before the request for identification.

POLICE PROSECUTIONS VIOLATE CHARTER

HMTQ v. Cooper 2001 BCSC 855

The BCSC ruled police officers who function as both the prosecutor and a witness in traffic ticket prosecutions violate the right to a fair hearing entrenched in s.11(d) of the *Charter*. However, Justice Metzger has allowed the Crown an opportunity to demonstrate that, although a *Charter* violation, prosecutions by police witnesses are demonstrably justified as a reasonable limit under s.1 of the *Charter*. Stay tuned!!!

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

THE CONFESSIONS RULE: SECURING A VOLUNTARY STATEMENT

Sgt. Mike Novakowski

The confessions rule focuses on the basic requirement that a statement provided to a person in authority must be voluntary. Although at times linked, the voluntariness of statements and s.10(b) enquiries are separate issues. The former is concerned with intimidation or inducements made by persons in authority, including the police. Section 10(b) is more concerned with police control over a person's movements[21]. In the sense that a statement is voluntary, the person must be entitled to choose whether to make a statement or not make a statement. In the voluntariness enquiry, the analysis involves a review of police conduct and whether or not the police deprived the person of making an effective choice[22]. If a person chooses to answer questions put to them by police, the answers are admissible if the prosecution establishes that the statements were voluntary[23].

Unlike a *Charter* violation (established on a balance of probabilities by the accused), the Crown must prove beyond a reasonable doubt that a statement was voluntary. If the Crown is unable to satisfy this burden the statement must be excluded. One of the predominant reasons for the confessions rule is that involuntary confessions are more likely to be (though not always) unreliable or false. Few persons will spontaneously confess to a crime and the police must often use investigative techniques to convince the person that it is in their best interest to confess. Where inducements offered by the police, by themselves or in combination with other factors, are sufficiently strong to raise a reasonable doubt about whether the will of the person has been overborne, the Crown has failed in its burden. Where it has been shown that inducements were made but ceased, the burden rests with the Crown to establish that the prior inducements did not continue to act on the person's mind. To this end, the Crown has an obligation to demonstrate through clear and positive evidence that the influence on the person's mind of the prior inducement has been removed[24]. In reviewing whether a statement was voluntary, the court will assess and consider all the relevant factors concerning the confession including[25]:

- **threats or promises;**
- **oppression;**
- **operating mind;** and
- **police trickery**

Threats or Promises

The types of threats or promises that will raise a reasonable doubt concerning the voluntariness of a confession may include fear of prejudice or hope of advantage. Fear of prejudice includes outright violence, (demanding statement exclusion) or may occur when the police issue veiled threats such as "it would be better" to confess, implying that dire consequences might flow from refusal to talk. Such statements like "it would be better" require exclusion only where the circumstances reveal an implicit threat or promise. However, phrases like "it would be better if you told the truth" will not automatically result in exclusion but must be weighed by the entire context of the confession. Hope of advantage includes an offer to procure lenient treatment or the prospect of leniency from the courts in return for a confession and will warrant exclusion in all but exceptional circumstances.

[21] R. v. Voss (1989) 50 C.C.C. (3d) 58 (Ont.C.A.), R. v. Pabani (1994) 89 C.C.C. (3d) 437 (Ont.C.A.)
[22] R. v. Whittle (1994) 92 C.C.C. (3d) 11 (S.C.C.) at p.24.
[23] R. v. Esposito (1985) 24 C.C.C. (3d) 88 (Ont. C.A.) leave to appeal to S.C.C. refused (1986) at p. 95.
[24] R. v. Nugent (1988) 42 C.C.C. (3d) 431 (N.S.C.A.) at p.460.
[25] R. v. Oickle 2000 SCC 38.

Minimizing the seriousness of an offence by downplaying the moral culpability of the crime will usually be an unobjectionable feature of police questioning. Offers of psychiatric help may be permissible provided the police do not make the offer conditional on a confession. Where the police advise the person "maybe you need professional help", they are suggesting the potential benefits of confession and have not improperly induced the statement.

The use of moral or spiritual appeals resulting in confession as a result of internal desire is permissible because the officer is not offering anything. Most spiritual inducements are beyond the control of the police because the inner urge to confess is self-induced by the person. Thus, a police officer who convinces a person they will feel better if they confess has offered nothing.

Oppression

Police oppression, creating distasteful circumstances, may result in false confessions. A person may either wish to escape the distasteful conditions or the conditions may overbear the person's will to the point they doubt their own memory by relentless police accusations. Inhumane conditions such as food, clothing, water, sleep, bathroom, or medical deprivation, denying access to counsel[26], or excessively aggressive, intimidating questioning (inducing, hostile, coercive) over a prolonged period of time may create an atmosphere of oppression. The use of non-existent evidence by the police as a ploy to obtain a confession may also result in oppressive conditions. The courts have been reluctant to exclude a statement where the police have confronted a person with false, inadmissible, of fabricated evidence standing alone, but when combined with other factors this investigative tactic is relevant to the consideration of whether the confession was voluntary.

Operating Mind

The operating mind requirement as an aspect of the confessions rule requires that the person have sufficient cognitive ability to understand what they are saying and to comprehend that what they say may be used in proceedings against them. In determining whether the person made an active choice as to whether or not to speak, no enquiry need be made into whether the person possessed the analytical ability to make a good or wise choice or a choice in their best interests. Inner compulsion alone, whether due to conscience or otherwise, cannot displace the finding of an operating mind unless a statement is found to be involuntary (through conduct of a person in authority). Once an operating mind is established, the person is not exempt from the consequences of their action unless the conduct of the police is found to make the statement involuntary[27].

Trickery

The police are permitted to engage in acts of trickery in obtaining a confession provided the police have not unfairly denied the person of their right to silence. In assessing whether police trickery has exceeded permissible boundaries, the court will determine whether the conduct of the police might "shock the community". The courts recognize that the police must often deal with shrewd and sophisticated criminals and the investigation and detection of crime is "not a game to be governed by the Marquess of Queensbury rules"[28]. Examples of police trickery that may shock the community include a police officer posing as a chaplain or a legal aid lawyer, or injecting a truth serum into a diabetic under the false pretence the injection was insulin. A confession resulting from police deception that shocks the community should be excluded. However where police deception does not reach this level, the trickery used will nonetheless be a relevant factor in the overall analysis. Tricks are permitted, but "dirty tricks" (unfair police methods) shocking the community will render a statement involuntary[29].

Note-able Quote

"The duties of a police officer are onerous and often complex. The Charter has served to complicate their duties. In some instances, police officers can act in an unjustified manner although their intentions were good[30]". ABPC Justice Allen

For comments or topics you would like to see published in this newsletter contact
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[26] A s.10 Charter violation may also warrant exclusion as a Charter remedy.

[27] R. v. Whittle (1994) 92 C.C.C. 11 (S.C.C.)
[28] R. v. Rothman [1981] 1 S.C.R. 640 (S.C.C.) per Lamer J.
[29] R. v. Graham (1991) 62 C.C.C. (3d) 128 (Ont.C.A.).
[30] R. v. Cardinal 2001ABPC 92