



IN SERVICE:10-8

A newsletter devoted to operational police officers across British Columbia.

DRIVER AWARE OF JEOPARDY IN DEATH OF PASSENGER: NO NEED TO RE-CHARTER

R. v. Boomer, 2001 BCCA 220



Police attended the scene of a single vehicle accident where the accused driver left the roadway and crashed his vehicle. Unfortunately, the passenger sustained injuries that later turned out to be fatal. The attending constable arrived at the accident scene and spoke to the accused. As a result of his observations, the constable concluded that the accused was impaired and the passenger was seriously injured. The officer provided the accused with the customary "Charter warning" and the accused indicated he did not wish to contact counsel. Although the evidence suggested that the accused was aware his passenger was seriously injured, at no time did the officer inform the accused that his passenger was deceased. The accused argued that his s.10 rights were violated because the police failed to inform him of the potential greater jeopardy he faced resulting from his wife's death and therefore the breathalyser readings should be excluded as evidence. In dismissing the appeal, the British Columbia Court of Appeal held, at paras. 16,17:

[O]n numerous occasions [the accused] expressed concern about the condition of the passenger and directed queries to the police about this. He apparently had been attempting to render assistance when the police arrived at the scene. It was therefore clear from the evidence that it must have been apparent to the [the accused] that the passenger... was seriously injured and it seems to me that it would be stretching language to say that he was not aware that he faced jeopardy on a serious matter, namely, being involved in an accident where someone had been seriously injured and possibly was going to die.

It does not seem to me that there was in any real sense any change in jeopardy in this matter ... and, accordingly, it does not seem to me that there was any breach of the

rights afforded to the accused under s. 10 of the Charter.

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

WHAT IS A POLICE OFFICER?

Author Unknown

A police officer is a composite of what all people are, a mingling of saint and sinner, dust and deity. They underscore instances of dishonesty and brutality. A police officer is unusual, exceptional, not common place and often commands news attention. The fact remains that less than one-half of one percent misfit that uniform and that's a better average than you find among clergymen. What is a police officer made of? They are at once the most wanted and the most unwanted - "sir" or "madam" to their face, "pig" behind their back. They must be such a diplomat that they can settle differences between two individuals so that each will think they've won. If they're neat, they're conceited; if not, they're a bum. If they're pleasant, they're a flirt, if not, they're a grouch. In an instant, they must make decisions which might require months for a lawyer. If they hurry, they're careless; if they deliberate, they're lazy. They must be first to an accident, infallible with their diagnosis; start breathing, stop bleeding and tie splints. A police officer must know every gun, shoot on the run and hit where it will do the least damage. They must be able to whip two men twice their size and half their age, without being brutal. If you hit them, they're a coward; if they hit you, they're a bully. A police officer must know everything and not tell- must know where sin is and not partake- deduce a crime scene with very little evidence. If they catch the criminal, they're lucky; if they don't they're a dunce. If they are promoted they've got pull, if not they're a dummy.

A police officer must chase bum leads to a dead end-stake out 10 nights to tag one witness who saw it happen but refuses to remember.

They fill files to bring some hoodlum to justice, then watch them escape via legal maneuvering.

A police officer must be a minister, a diplomat, a tough person and gentle.

Think of these things the next time you want to call them pig or fuzz.

Makes you want to think doesn't it folks?

SUICIDE: RISK ASSESSMENT & CRISIS MANAGEMENT

Part 4 of 6

Mr. Richard Dolman

The following notes are from an Internet website under development at the Justice Institute of BC to assist police to handle a psychiatric crisis and to promote wider understanding of mental illness. The project was initiated by the BC Association of Chiefs of Police Mental Health Committee, and is supported by a multi-agency group. Funding is from the Ministry of Health Services and the Justice Institute. Comments and suggestions to the author are welcome at: almond@direct.ca

ASSESSING SUICIDE RISK. There are some warning signs, but it is not possible to predict accurately who will or will not attempt to die by suicide. Risk factors include: depression or other mental disorder, psychotic voices urging suicide, a previous suicide attempt, lack of concerned support, frequent use of drugs or alcohol, severe stress, or recent trauma.

Early warning: severe depression. Many people who contemplate or attempt suicide have suffered long-lasting symptoms of severe depression including sadness, crying, slowdown in actions, lost interest, low motivation, preoccupied feelings of being hopeless, inadequate or guilty (these symptoms may be partly hidden or may be masking another underlying mental disorder such as schizophrenia or bipolar). Biological signs of depression include changes in appetite and weight, disturbed digestion, disturbed sleep pattern, easily tired, loss of interest or pleasure in life activities. Having thoughts about suicide and making plans are major warning signs.

Ask about it. If a suicide impulse appears to be in the cards, but has not been attempted yet, discussing suicide frankly may help. Don't be afraid to ask, it will

not make the subject more likely to proceed: *"Have you had any suicidal thoughts recently? Have your thoughts included harming anyone else? Have you attempted suicide before? Do you have definite plans for suicide?"* Detailed plans pose the highest risk and urgently need medical attention. (Police can apprehend under s.28 for apparent attempts or serious threats of suicide or serious self-harm).

Medication and risk. A wide range of medications is available to control symptoms of mental disorder. Often they work very well. But in psychiatric disorders, extra caution is needed when meds are restoring energy and insight, because the subject may suddenly gain insight into the extent of their problems, and suffer from the loss of personal hopes and dreams. This can revive suicidal impulses. Symptoms can rebound severely after abruptly going off medication, or medication can fail: the relentless return of symptoms may cause suicidal depression. Any combination of these risk factors may build up to a suicide attempt. Sudden stress or trauma can provide the trigger.

Unexpected or hidden risk. Many people give hints and warnings of deep despair in the weeks or months ahead of a completed suicide. But some give no warning and do not tell others about their thoughts, intentions or plans. The decision to proceed may be hidden; it may be motivated by a combination of rational and psychotic impulses, or it may be purely psychotic: thus, suicide cannot always be predicted or stopped, and survivors should not blame themselves. But warning signs must be taken seriously.

CRISIS MANAGEMENT. Police have authority to act on suicide risk. Police can apprehend under s.28 for apparent attempts or serious threats of suicide or serious self-harm. Such behaviour is likely to endanger; and likely to be caused by a mental disorder that requires treatment - which can only be confirmed or negated by a physician.

What to say and do: First, check safety concerns at the scene, collect collateral information from family/friends, get their cooperation. If diagnosis is not known in advance, ask them about typical behaviour symptoms and recent history. If some in attendance are not taking the suicide threat seriously, assure them it cannot be ignored. Ask agitated people to step back and stand by in another area. Offer to arrange later for appropriate counseling for them (trauma stress or grief). Get a trusted relative or friend of

the subject to accompany you (if circumstances are safe) and to calmly introduce you to the subject.

Immediate action or talk? If there is an immediate dangerous threat or action underway, it may require rapid physical response. Otherwise use a calm non-confrontational approach in voice and body language. Move slowly, normal eye contact. Allow space and time for panic, fear, anger, grief or other emotions to cool. If subject is highly agitated or threatening, say *"we need to have a friendly talk about your troubles and your safety."* Sit down or casually turn a light chair around and straddle it, facing subject. The suicidal person needs to feel non-threatened as well as getting offers of help.

Use first names and speak slowly: *"Bob, I'm a police officer. My name is Joe. Don't be afraid of us. We are here to help you. Are you able to understand me?"* Wait for answer and explain: *"This is a rescue effort. We need to make sure you are safe."* Wait for answer. *"I understand if you are feeling a lot of pain and maybe it's difficult to talk. Can you tell me what's troubling you, so we can help?"* Wait for answer. If subject is unable to respond coherently to these questions, medical attention may well be needed urgently.

Establish safety and control. If subject is responsive, *"Bob, how can I help you? Do you want to tell me about the thoughts you're having right now?"* If suicidal impulses are obvious: *"We need to get you some help and medical attention. We need to work together to make sure you are safe, OK? Nothing dangerous should be near you right now (such as pills, weapons or potential weapons, car keys). Anything like that, we need to secure them so you won't be harmed."* Make sure only small amount of medications can be accessed. Don't leave the suicidal person alone until hospital takes custody.

To establish rapport and trust, be non-judgmental. Show empathy for how subject feels. Engage the subject and work together. Keep your remarks short and simple. Listen attentively. Give honest responses. Show that you understand subject's views and concerns (even if you don't agree with them).

Positive steps & problem-solving. *"What are your thoughts about staying alive? What would make it easier for you to cope with your problems?"* Wait for answers. *"Problems can be solved. We will get help for you. What is the one problem that is overwhelming you right now?"* Get an immediate commitment from

trusted family members/friends to work on neutralizing that problem. Have them agree to make arrangements for referral to the support system - mental health centre caseworker, outreach, advocacy group.

Set limits. If necessary be firm and set limits on acceptable behavior. Remain calm: *"Some things are negotiable and some are not."* Or *"You need to tell me the truth. That's the only way I can help you."* Or: *"Put it down and come with us to another room so you will be safe."*

Sudden attempt and use of force. The unexpected can always happen: an interruption of carefully built rapport, a topic that touches a raw nerve, and the subject instantly makes a suicide attempt. It may be risky but the only choice is rapid physical response to interrupt the act. Usually such a crisis fades quickly and the subject probably won't try again at the time.

Medication. Ask the suicidal person about medication (possible overdose or stopped taking meds). Ask one simple question at a time: What? When taken last? How many taken in last 24 hours? Where is it? Bring it to hospital. If medical treatment has failed, different medication and other supports may work better.

To Hospital. *"Now we need to get help for you, some medical attention and support. It's for your personal health and safety. They need repairs. OK, let's go. You can come along quietly, someone can come with you. The ambulance will bring you to hospital to be seen by a doctor."*

ROBBERY DOES NOT REQUIRE VIOLENCE, REASONABLE APPREHENSION SUFFICIENT

R. v. Lecky, (2001) Docket:C36257 (Ont.C.A.)



The Ontario Court of Appeal recently dismissed a conviction appeal after examining the elements to prove a robbery as defined in s.343(a) of the *Criminal Code*.

s.343(a) *Criminal Code*

Every one commits robbery who (a) steals, and for the purpose of extorting whatever is stolen or to prevent or overcome resistance to the stealing, uses violence or threats of violence to a person or property;

The Court found that threats of violence may be established on the totality of the evidence where the accused's actions "could result in a reasonable apprehension of physical injury and did in fact cause the victim to apprehend physical harm". Once the accused's conduct is proven to amount to threats of violence, there is "no additional requirement of some level of violence in order to establish robbery as defined in s.343(a)".

OFFICER CLEARED IN SHOOTING OF VICIOUS DOG

**Schmirler v. Police Complaint Commissioner,
2001 BCCA 573**



The British Columbia Court of Appeal held the decision of an adjudicator appointed under the Police Act was unreasonable when he found a police officer guilty of an alleged disciplinary default for shooting a dangerous pit bull that was attacking another police officer during the execution of a search warrant on a home occupied by several people, including many children. Emergency Response Team members were executing a drug and weapons search warrant on the home of a person "known to police". During the tactical entry to the home, officers ascended the stairway to the living room. While in the living room, a pit bull dog attacked the upper left arm of a police officer. A second officer, who observed the vicious attack, fired two rounds at the dog to incapacitate it. The adjudicator at the Public Hearing into the matter found the officer guilty of discharging his firearm without reasonable grounds and when unsafe to do so, a disciplinary default contrary to s.4(1)(g) of the *Police Act Code of Professional Conduct Regulation*.

The Court first examined the terms "reasonable grounds for believing" as it appeared in the *Regulation* and held the phrase to mean the same as "believes on reasonable grounds"¹. In recognizing this standard and the reality that police officers must make decisions in a moments notice without little time for reflection, the question is not whether the officer was wrong in shooting the dog, but whether the decision was reasonable taking all the circumstances into account. Because the adjudicator did not ask himself the correct question, he erred in law. The court refused to send the matter back to the

adjudicator to decide whether the officer was guilty using the correct test.

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

LANDLORD NOT ACTING AS STATE AGENT WHEN ENTERING TENANT'S RESIDENCE

R. v. Wilkinson, 2001 BCCA 589



The accused appealed his conviction of production and possession of marihuana under the *Controlled Drugs and Substances Act*. Police officers executed a search warrant on the residence of the accused and discovered several hundred marihuana plants and seedlings after police received information from the accused's landlord. The landlord had entered (with a key) the accused's garage without proper notice under the *Residential Tenancy Act* and later advised police of his entry, observations, and also provided a written statement. The police subsequently used this information to support the issuance of the search warrant. Ironically, police were investigating the landlord for a drive without insurance incident and he was scheduled to attend the police office for an interview the day after he entered the accused's garage. It was at this scheduled interview that the landlord informed police of what he had done and the police did not issue the landlord a ticket for the outstanding no insurance investigation. The accused contended that his s.8 right to be secure against unreasonable search and seizure was violated. It is well settled that the *Charter* protects the citizen from the state and not private actors within the private sphere (citizen against citizen). In this case the Court had to determine whether the landlord became a "state actor" as a result of his interactions with the police concerning the outstanding no insurance communications. The investigating police officer denied directing or encouraging the landlord and the landlord himself testified he was frustrated with the police lack of action on the information he had previously provided to police about his suspicions concerning the grow and took it upon himself to enter the accused's residence. Concerning the non-issuance of a no insurance ticket on the landlord, the Court found the evidence was that neither the landlord nor the police officer had a

¹ See Volume 1 Issue 3

"subjective prior expectation" that the entry of the residence by the landlord would benefit him with respect to the ticket. The Court found the landlord was not acting as an agent of the state and therefore there was no *Charter* infringement and no reason to exclude the evidence:

Here, [the landlord] had his own independent interest as a landlord in pursuing his enquiry and the trial judge found that it was not at the initiative of the police, explicitly or implicitly. In my view, that [difference] is critical.

Accordingly...there was no State involvement in the entry and no foundation for a breach of s.8 that could lead to exclusion of the evidence.

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

ENTERING PRIVATE PREMISES TO PROTECT LIFE & PROPERTY

Sgt. Mike Novakowski



The police are tasked with the common law duty of protecting life and property. As such, the common law has recognized that under proper circumstances the police will be justified in entering private property for the purpose of effecting these protective goals.

Protection of Life

The police will be permitted to make a forced entry into private premises, including a dwelling house, if the following preconditions are met²:

- the officer has reasonable grounds to believe an emergent situation exists involving
 - preservation of life, or
 - prevention of serious injury
- proper announcement is made prior to entry
 - notice of presence
 - notice of purpose,
 - notice of authority

This principle not only applies to circumstances involving the prevention of an offence likely to cause death or injury, but equally applies to a situation to prevent death

² R. v. Custer (1984) 12 C.C.C. (3d) 372 (Sask.C.A.) at p.387-388.

or further injury which may result from injuries already sustained during a completed offence. The police must be able to articulate the reasonable grounds upon which they acted. Authorization in these circumstances does not provide authority to force entry into private premises for the purpose of simply pursuing an investigation.

Emergency Calls (9-1-1)

The Supreme Court of Canada has also acknowledged a police officer's duty in checking the health and safety of persons who call 911. In *R. v. Godoy* (1999) 131 C.C.C. (3d) 129 (C.C.C.), the court stated:

The importance of the police duty to protect life warrants and justifies a forced entry into a dwelling in order to ascertain the health and safety of a 911 caller.

The Court justified police entry as follows:

[E]mergency response systems are established by municipalities to provide effective and immediate assistance to citizens in need. The 911 system is promoted as a system available to handle all manner of crises, including situations which have no criminal involvement whatsoever. When the police are dispatched to aid a 911 caller, they are carrying out their duty to protect life and prevent serious injury. This is especially true where the call is disconnected and the nature of the emergency unknown. When a caller uses a 911 system, he or she has requested direct and immediate intervention and has the right to expect emergency services will arrive and locate the caller. The public interest in maintaining this system may result in a limited intrusion in one's privacy interests while at home. This interference is authorized at common law as it falls within the scope of the police duty to protect life and safety and does not involve an unjustifiable use of the powers associated with this duty.

However, if the overriding concern about the protection of life providing the foundation for police entry has been reasonably satisfied, then the reason for the warrantless entry no longer exists³. The police authority to investigate the 911 call, locate the caller, and determine their reason for making the call, including providing assistance if required, ends once this objective has been met. The entry authority does not extend to further permit the police to search the premises or otherwise intrude on the resident's privacy or property beyond the concern for protecting life.

³ R. v. Kneee 2001 ABPC 23 at para.31.

In *R. v. Neubert* 2001 BCCA 88, police responded to investigate a 911 emergency call reporting concerns about a break and enter and the possible involvement of a gun. After entering and searching the house to satisfy himself that there was no one else present, the officer located a marihuana grow operation. This information provided the basis for an application of a search warrant that was obtained by the officer. In reviewing police entry, the Appeal Court held, at para.10:

There is no dispute that the police officers went into the residence of the accused lawfully. They were responding to a report that had to be investigated and the house had to be searched and secured in the interests of public safety. These facts together with the discovery of the marihuana plants justified the issuance of the search warrant.

In *R. v. Nicholls* (1999) 139 C.C.C. (3d) 253 (Ont.C.A.), police responded to an emergency 911 call involving a psychiatric patient who was a threat to himself and others. The call had been made by the accused's cousin from outside the accused's apartment. Attempts were made to contact the patient including telephone contact and knocking on the door. The fact that the 911 call originated from outside the apartment was held to be a distinction without a difference. Police, in the company of an ambulance attendant, forced entry into the apartment. The Ontario Court of Appeal found the police common law duty to protect life and prevent injury was engaged and in light of the stated nature of the emergency, the police would have been remiss in their duty not to investigate to the point of forcing entry:

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 *R. v. Hardt* 1999 Docket: CC970747 BCSC, a 911 call was made from the accused's apartment. The 911 operator informed police that the caller had been a crying female, with a heavy accent, and who complained that someone came into her apartment and beat her. The police were told the caller refused to answer questions and had hung up the phone. The police were told that when the operator called the number back a male picked up the phone who refused to answer questions and said he did not know what was wrong with his wife. The operator spoke again to the female, who was uncooperative and refused to provide a name. Police attended and the accused's wife answered the door, showing signs of obvious injury. Police entered

the apartment and subsequently arrested the accused for assaulting his wife. During the arrest the accused struck one of the officers and was charged with assaulting a police officer. In justifying police entry, Smith J. held at para.21:

Here, there was a disconnected 911 call in which the caller said she had been struck by an intruder. Calls back to the number produced a male respondent who said he did not know what was wrong with his wife and a female who said she did not want the police. Arrival at the door did not produce reassurance. The police would have been failing in their duty to protect life if they had not insisted on coming into the apartment. ..., it was necessary for the police to enter the apartment because there was no other reasonable alternative to ensure the caller received assistance.

Protection of Property

The police not only have a right to enter, but a duty to enter in order to preserve property and public peace⁴. In *R. v. Dreysko* (1990) 110 A.R. 317 (Alta.C.A.), police responded to a complaint of a suspected illegal entry to a home. Upon attendance at the home it was obvious to the police that it had been broken into. In finding the entry lawful, the Court found the officers faced "the risks of further damage from earlier vandalism like fire, the risk of injured victims being in the house, and the risk that criminals might yet be in the house. Other exigent circumstances could justify, indeed compel, a search such as a scream for help or the smell of something burning⁵". In *R. v. Hern* [1994] A.J. No.83 (Alta.C.A.), the court reinforced the protection of property as justification to enter a private premise. In the absence of the homeowner, police entered a dwelling following a report of a break and entry in progress. Inside the house police found a marihuana growing operation. The Court held:

[I]t is only good sense that the investigation will not be clearly over if there are reasonable grounds to believe that any of the offenders may still be in the dwelling, if there is any risk of continuing property damage by vandalism, fire, water or power, or that there may be evidence inside the dwelling that could deteriorate while the absent homeowner's permission to continue or a warrant of search is obtained. (emphasis added)

In *R. v. Nguyen and Dang* 2000 BCSC 1547, police responded to a 911 call from a neighbour that intruders were inside the premises next door and the owners were

⁴ *R. v. Dreysko* (1990) 110 A.R. 317 (Alta.C.A.)

⁵ *R. v. Smith* 1998 ABCA 418 at para23

away. On arrival police saw a man appear at a window who refused to open the front door. Police entered after repeatedly knocking and announcing their presence and discovered the accused in a bedroom and a marihuana grow operation in the basement. In describing the police having a "duty" to investigate, Catliff J. stated at para.23:

In response to the 911 call the police arrived and proceeded to investigate. They had a duty to do so. The police witnesses, ... , said they did not know what might be occurring inside the house and felt obliged to break in to investigate and to do so without delay. They discounted the absence of evidence of forced entry as a reason for staying outside. [The officer] said that the intruder may have shut the window behind him after surreptitiously entering the premises. What is crucial in my mind is that the apparent intruder would not respond to the police by coming to the door or speaking to them. His actions were plainly suspicious and confirmation that a break and enter was in progress. In my view, there were "emergent" circumstances in this case which justified a forced entry. The police were acting in good faith. There is nothing in the evidence to suggest they knew a grow operation was being conducted in the home until they got inside. I find the accused have not satisfied me that their Charter rights were infringed by this action of the police.

OPENING DOOR OF OCCUPIED VEHICLE ON A HUNCH UNREASONABLE

R. v. Bissonette (2001) Court File No. 448-99
(Ont.S.C.J.)



A police officer was on routine patrol near a drinking establishment when he drove into the parking lot. The officer had, on 5 or 6 previous occasions found occupants of parked vehicles behind the hotel smoking drugs. The officer exited his patrol vehicle, approached the accused's vehicle on foot, and opened the passenger door to the vehicle. The officer noted car keys on the seat beside the accused. Upon speaking to the accused, the officer noted the accused's speech was slurred. As a result, the officer attended to the driver's side of the vehicle, opened the door, and found a beer bottle between the door and the driver's seat. The officer ordered the accused from the vehicle and noted signs of impairment that led to the arrest of the accused and the breath demand. Charbonneau J. of the Ontario Supreme Court of Justice framed the question concerning the reasonableness of police action

as whether "an occupant of a motor vehicle parked in this hotel parking lot during normal business hours [has] a legitimate privacy interest in seeing that police officers would not walk up to his vehicle and open the door in order to speak to the occupant and see if some illegal activity such as smoking pot was going on in the car". In finding the search by the officer unreasonable, the Court held:

Although [the officer] was entitled to drive into the parking area, he was not authorized by law to open the passenger door in order to investigate the activities of the driver on a mere hunch that the driver could be consuming drugs. Crown counsel concedes that [the officer] could not simply walk to any parked vehicle in which there was an occupant and open the door for the purpose of investigating some possible crime. There is no evidence of how many vehicles were actually parked in the parking area that night. The search was conducted without warrant and can, prima facie, be considered to be unreasonable. That presumption has not been rebutted by the Crown. (emphasis added)

In finding the actions of the officer a serious and non trivial breach of the accused's s.8 rights and underscoring that the officer was acting only on a hunch, the Court excluded the evidence and in setting aside the accused's conviction, entered a verdict of acquittal.

ALBERTA'S TOP COURT RULES CERTIFICATE OF ANALYSIS REQUIRED

R. v. Grant, 2001 ABCA 252



The Alberta Court of Appeal recently ruled that a lay person's opinion as to the legality of a controlled substance would be insufficient in most cases to prove that the substance in question is illegal. A proper scientific analysis by an expert is required:

A proper scientific analysis of a suspected substance is essential. Granted that a lay person can recognize various things such as smell, sights, sounds and speeds, and that such evidence may be admitted, the danger of permitting lay identification of an allegedly illegal substance is manifest and ought not to be encouraged. The chemical or scientific analysis of an illegal substance may well provide, and normally does provide, the court with reliable and trustworthy evidence that the substance was actually illegal according to its components. The certificate of analysis conveys just that. In practice, the certificate

ends any debate about what was seized. Were we to uphold the course followed here the certificate of analysis practice will be at risk in future. The police will rely on nothing but opinion evidence given by themselves. That is a step that should only be permitted by Parliament by way of the repeal of the analysis legislation. The use of the certificate has long been entrenched in the Statute, and for good reason, and can only be replaced by expert testimony by a qualified analyst.

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

Note-able Quote

"Canadian society takes a dim view of the illicit production, sale and use of controlled drugs and substances and the numerous social problems relating to criminal offences arising from these activities. These problems and offences are well documented. They include the breakdown of marriages and families, job and career loss, impoverishment, prostitution and all forms of crime relating to property, and violent crime, from acts of theft and vandalism to robbery and even homicide. The consequential burden that the illicit drug industry imposes on the health care and criminal justice systems is not to be lightly regarded⁶." AltaCA Justice Wittman

OFFICER CONVICTED OF SPEEDING WHILE ENROUTE TO COURSE

R. v. Wlodarczak, 2001 BCPC 81



An on duty police officer enroute to attend a work related course in Vancouver was stopped by a Merritt Highway Patrol Officer and issued a ticket for speeding. The ticketed officer testified he had set his cruise control at 129 to 130 km/h and "it was his belief that there was a 20 km. per hour grace or tolerance with respect to the speed limit, and further that he was traveling on a downhill slope". In addition, the officer argued that he was in the "discharge of his duty" at the time and that he was operating an emergency vehicle and was therefore entitled to exercise the privilege of exceeding the speed limit in accordance with the *Emergency Vehicle Driving Regulation*. In dismissing the officer's defence, the Court recognized the *Regulation* requires a multiple

risk analysis; balancing the risk to the public with the enforcement objective. Attending a work related course was not a "valid enforcement objective that would justify exceeding the speed limit". Secondly, an exemption under s.4(2)(b) of the *Regulation* requires the officer to be engaged in the lawful execution of their duties. On this point, the Court found that the concept requires looking beyond whether the officer was merely "on duty":

Whether a peace officer's action will be found to be part of the lawful execution of his or her duty will depend on the facts in each situation. [The officer in this case] may have been "on duty" if the event occurred during the hours of his enforcement but without a valid enforcement objective I am not satisfied that [the officer] was engaged in the "lawful execution" of his duty at the time that he was observed by [the ticketing officer].

Finding that the Crown had proven the essential elements of speeding, the officer was convicted.

Complete case available at www.provincialcourt.bc.ca.

Note-able Quote

"The police should be permitted to provide protection for the public by administering the [road-side screening test]. To hold otherwise unnecessarily endangers the public. Even in their efforts to serve and protect the public, the policeman's lot is not a happy one. It should not be made an impossible one⁷." OntCA Justice Cory

FEEDBACK WANTED

For comments on this newsletter contact
Sgt. Mike Novakowski at the JIBC Police
Academy at (604) 528-5733 or e-mail at
mnovakowski@jibc.bc.ca
Past issues available online at www.jibc.bc.ca

⁶ R. v. Gisby 2000 ABCA 261 at para.18.

⁷ R. v. Sauders (1988) 41 CCC (3d) 532 (OntCA) at p.541.