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.

SEASON'S GREETINGS

The staff at the Police Academy would like to wish our **"In-Service:10-8"** readers and their families all the best for this holiday season. It has been a pleasure serving British Columbia's police officers by bringing them up-to-date on many of the issues facing them daily as they go about their arduous duties protecting the citizens of their communities. May this holiday season bring you good cheer and all the best in the New Year. Have a safe and happy holiday. Remember, in God we trust, all others we run on CPIC!!!

TOP COURT RULES STRIP SEARCHES PRESUMPTIVELY UNREASONABLE

R. v. Golden, 2001 SCC 83

Toronto police had an operation underway involving a number of officers in an area where drug trafficking was known to take place. A police officer using a telescope was located in an unoccupied building approximately 70 feet across the street from a sandwich shop. The officer had a clear view into the shop and could see what went on there. He witnessed two transactions in which people went into the shop, receiving from the accused a white substance. The officer saw the accused take the substance, believed to be cocaine, out of his hand with the thumb and forefinger and give it to the others. After the second transaction, the officer transmitted to other members of the team a description of the accused. Two other officers entered the shop and arrested the accused.

One of the officers patted down the accused, looked in his pockets and found nothing. The officers then opened a door leading to the basement and brought the accused there and continued the search. An officer pulled back the accused's pants and underwear. Looking down, he saw some clear plastic wrap between the accused's buttocks as well as a white substance within the wrap. The accused was flexing the muscles of his buttocks in order to prevent the officers from retrieving the package. On the landing at the top of a flight of stairs there was some physical interaction between the accused and the officers. An officer testified that the accused pushed him at one point and that he almost went down the stairs. The officer thereupon pushed the accused against the wall face-first. There being concern that the landing was not a safe place in which to continue to search, and not wishing to go down a flight of steps, the officers brought the accused into the store. They excluded the patrons from the shop and secured the premises. The sole employee present remained in the shop. In a back area of the shop they had the accused bend over a table. From the street, it would have been possible to see only one of the accused's legs. The officers once again tried to retrieve the package. The accused was still using his muscles in such a way as to hold onto it. The accused then accidentally defecated. An officer found some dish gloves in the shop that he put on. He then succeeded in retrieving the package.

The accused was convicted of possession of a narcotic for the purpose of trafficking and appealed his conviction on the basis that the evidence should have been excluded pursuant to ss. 8 and 24 of the *Charter*.

The majority of the Court examined the long-standing common law rule respecting the power to search incidental to arrest. In reviewing the jurisprudence, the Court continued to recognize that searches conducted in the absence of a warrant are prima facie unreasonable, although a search performed incidental to arrest is an exception to this presumption. At common law, the police have the right to search an arrested person for weapons or evidence related to the arrest. Although a search incidental to arrest does not generally require reasonable grounds beyond the grounds necessary to support the arrest, the Court carved out an exemption to this common rule in cases of strip searches. In identifying strip searches as representing a significant invasion of privacy, and often humiliating, degrading, and traumatic experiences, the majority held that to undertake this type of intrusive

search, the officer must possess reasonable grounds justifying the strip search in addition to justifying the arrest. Strip searches carried out as a matter of routine or policy, or abusively or for the purpose of humiliating or punishing the arrestee will be unreasonable. Furthermore, the Court stated that strip searches should be conducted at the police station unless there are exigencies requiring the search be conducted in the field. For practical purposes, the following points are noteworthy:

- The common law power to search incident to arrest does include the power to strip search.
- Although permissible as an incident to arrest, strip searches are presumptively unreasonable and the onus lies with the police in justifying the search.
- In conducting a strip search the police must possess reasonable grounds that the search is necessary for safety or evidentiary concerns. These reasonable grounds are independent from the grounds justifying the arrest. Mere possibility that a person has weapons or evidence upon their person is insufficient.
- Searches conducted as a matter of routine or policy, or to humiliate or punish are unreasonable.
- There is a distinction between strip searches on arrest and strip searches related to safety in full custodial settings such as a prison. The appropriateness of routine strip searches of individuals integrated into a prison population cannot be used to justify strip searches of individuals briefly detained by police or held overnight in cells. Although police officers have legitimate concerns that short term detainees may conceal weapons, these concerns cannot justify routine strip searches of all arrestees and must be addressed on a case-by-case basis.
- Strip searches are to be generally conducted at a police station except in cases of exigent circumstances where the police have reasonable grounds to believe that the search is necessary in the field such as an urgency to search for weapons that could be used to harm the officer, others, or the arrestee.
- A person should be provided the opportunity to remove items themselves or the assistance or advice of trained medical professionals should be sought to ensure material can be safely removed.

In this case, the majority found the manner in which the search was conducted unreasonable. Firstly, the officer lacked independent grounds to believe the accused had weapons or evidence secreted on his body. Secondly, the officer lacked reasonable grounds that the search needed to be carried out at the scene. Finally, even though the accused resisted the officer's attempts to remove the package by clenching his buttocks, the way the search was carried out demonstrated considerable disregard for the accused's dignity and physical integrity. As a result, an acquittal was entered.

Editor's Note: It is important for officers to recognize that this case applies to a specific type of search, a strip search, and does not apply to the pat down or other area searches police officers encounter on a daily basis. Those types of searches, such as searching a vehicle in the control of an arrested person, do not require independent grounds to believe that weapons or evidence will be located and they continue to be an exemption to the presumption requiring a warrant provided there are reasonable grounds justifying the arrest.

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

ARREST FOLLOWING CONSENT ENTRY LAWFUL: BREATH TESTS ADMISSIBLE

R. v. Grothiem, 2001 SKCA 116

A police officer received a complaint that a vehicle had struck a tree. The officer responded and found a damaged evergreen but no vehicle nor any debris. The officer noted tire tracks in front of the tree and a fluid stain on the pavement. A trail of fluid and a long black skid mark lead up a nearby driveway. The officer saw a half ton truck in the driveway and upon going over to look, observed that the front end of the truck had extensive damage. The officer knocked on the door of the house, knowing that the accused lived there with a number of roommates, to ask them about the accident. Someone yelled, "Come in".

The officer entered, smelled alcohol, heard someone shout "cops", and noticed three men with whom he was familiar. One of the men had blood on his forehead and hand, and his injuries were being attended to by his mother. The accused appeared, was unsteady on his

feet, and looked drunk to the officer. The accused immediately presented the officer with a work-order relating to the truck's steering and was about to explain what happened when the officer asked the accused who was driving the vehicle. The accused stated he had been driving and accidentally ran into the tree while turning into the driveway. Based on previous dealings with the accused and his demeanour, gait, slurred speech, and bloodshot eyes, the officer concluded the accused was intoxicated and was going to take him into custody for impaired driving causing bodily harm.

Fearing the other men might intervene if he confronted the accused in the house, the officer placed his hand on the accused's arm and suggested the two step outside or go to the police car to discuss the matter. The accused brushed the officer's hand aside and braced himself against the door jam, suggesting through his actions he was not going to accompany the officer willingly. The officer grabbed the accused and pulled him through the doorway, hastily advising him he was under arrest and of his right to counsel. Once at the car, the officer read the demand and fully informed the accused of his right to counsel. The accused was transported to the police station, exercised his right to counsel, and provided breath samples over the legal limit.

At his trial, the accused argued the results of the breath tests should be excluded because the officer violated the accused rights by arresting him in his home. The trial judge found the officer had been lawfully in the accused's home and had made a lawful arrest. The accused appealed, and the Court of Queen's Bench, although satisfied the officer was lawfully in the home, found the arrest to be unnecessary because the officer had identified the driver and could have achieved breath samples by demand alone (without arrest) and inappropriate because the arrest in a home absent exigent circumstances was a grave matter. In holding that the officer "should have left the premises and attempted to obtain an arrest warrant…", the Appeal Court judge found the arrest unjustified, contrary to s.9 of the *Charter*, and excluded the results of the breath tests. The conviction for driving while over 80mg% was set aside.

On appeal by the Crown, the Saskatchewan Court of Appeal divided the issues of the constitutionality of the officer's actions along three lines:

- the lawfulness of the officer's presence in the home at the time of arrest
- whether the arrest itself was lawful
- whether the arrest, even if lawful, constituted an arbitrary detention

Lawful Presence?

The Court found the officer was lawfully present in the home of the accused at the time of arrest. Cameron, J.A. for a unanimous Court stated:

> … [the officer] was lawfully in the home at the time of the arrest. He went to the door not for the purpose of making an arrest-or of conducting a search or seizure-but for the purpose alone of talking to the occupants about the apparent accident. That was his intention. And, on knocking on the door he was invited in. In advance of his being invited in, he had been seen by the occupants driving up and down the street in the police car and [the accused] had readied his work-order to present to the policeman. So the constable's presence at the door, as a police officer, was more or less expected. Still he was invited in. During the short time he was there prior to the arrest, neither [the accused] nor any of the others had told him to leave. Taken together, these facts make for a lawful presence in the home
>
> The importance of the fact the police officer was present in the home lawfully lies in what would otherwise have been a trespass and an illegal entry, accompanied by a violation of [the accused's] expectations of privacy in relation to his home and by an in-home arrest without warrant. Had that been the case, the first of the questions in issue would have taken on a decidedly different complexion in keeping, for example, with R. v. Feeney, …. As it is, however, the central principles of that case are not engaged. (references omitted)

Lawful Arrest?

An arrest made pursuant to s.495(1)(a) of the *Criminal Code* for an indictable offence will be lawful if the officer had reasonable grounds the accused committed the offence. Since impaired driving causing bodily harm is a strictly indictable offence and not one found in s.553 of the *Code*, the officer need not consider s.495(2) (public interest), at least at the time the arrest is made. In determining whether the officer possessed the requisite grounds upon which to justify the arrest, the Court reviewed the applicable standard, and at para.30 stated:

> This requirement … requires that police officers personally believe they have reasonable and probable grounds for an arrest and that reasonable and probable

> grounds in fact exist. Whether such grounds in fact exist depends upon whether a reasonable person, standing in the shoes of the police officer, would have believed that there were reasonable and probable grounds for making an arrest.

And further, at para.42:

> The question of reasonable and probable grounds depends upon a bona fide reasonable belief in a state of facts that, if true, would justify the course taken. That the supposed fact proves not to exist does not render the belief unreasonable… Second, the assessment did not fall to be made on the basis a prima facie case in relation to each element of the suspected offence has to be made out… (references omitted)

In this case, the Court found the officer believed in good faith that the accused had committed the offence of impaired driving (based on the accused's condition, the fact and nature of the accident, and the officer's experience with the accused on prior occasions) and that bodily harm resulted (based on an inference the officer made from the male bleeding about the forehead and blood on his hand).

Arbitrary Arrest?

In finding the arrest lawful under subsection 495(1)(a) of the *Code*, the Court found the reasonable ground standard "serves to shield an arrest, made in accordance with the requirements of subsection 495(1)(a) and suffering no other defect, from attack on the basis of arbitrariness, at least at the point the arrest is made".

The Saskatchewan Court of Appeal set aside the judgement of the Court of Queen's bench and restored the conviction.

ENTRY INTO DWELLING TECHNICAL VIOLATION: CONFESSION ADMITTED

R. v. M.C.G., 2001 MBCA 178

Two police officers attended the apartment of a young offender. The officers were aware the young offender had a warrant for his arrest for failure to appear in court on a robbery charge. The officers did not possess the warrant and it did not authorize forced entry into a residence. The officers knocked on the door and it was opened by a woman, the sister of the young offender. As a police officer spoke to the woman, the young offender came up a stairway to the entrance hall where the officers were standing. It was unclear how the officers came to be in the hallway. The officers did not claim they were expressly invited in, however they did not force their way in nor take advantage of an open door. The Court found it was likely that, "as often happens with Winnipeg's cold climate, no impediment was placed in their way in order that the conversation might take place in greater comfort". An officer informed the young offender of the outstanding warrant and asked if the young offender was willing to come to police headquarters to deal with the matter. The youth replied "sure" and the officer also told him that police wanted to speak to him about some other robberies. The Court framed this encounter in the following manner, at para. 7:

> At no time did the police officers stray beyond the entrance hall. They did not tell the young offender directly that he need not agree to accompany them, but the words spoken were clearly in the nature of a request rather than a demand. There was no attempt to place the young offender under arrest until he had agreed to accompany them to headquarters.

Once at police headquarters, the young offender made a full confession of his involvement in two robberies after being provided his full *Charter* rights and the additional rights accorded to young offenders. The young offender sought to have his confession excluded as it was the product of a s.8 violation; the entry of the police into the residence.

Two appeal court judges, in the absence of clearer evidence, were unable to conclude that the officers had "informed consent" to enter the dwelling. "Assuming" there was a breach of s.8 of the *Charter*, the majority concluded, "any *Charter* violation was of a technical nature". Turning to the young offender's application to exclude the confession, the majority held, at para. 21:

> Finally, in my opinion, the circumstances surrounding the arrest of the young offender do not constitute a serious *Charter* breach. The police officers acted in good faith. They did not mislead. They did not overstep what they believed to be a tacit invitation to cross the threshold. The arrest occurred only after the young offender agreed to accompany them to deal with the subject-matter of the outstanding warrant and to discuss other matters. It was implicit in the language

used that the young offender had the right to refuse. No force was exercised by the police.

The confession was admitted. Kroft, J.A. of the Court agreed with the disposition of the appeal by the majority, but disagreed that there was even a technical breach of the *Charter* regarding police entry, and at para.27 stated:

> I must say, however, that in my opinion, there was no unlawful arrest or breach of s. 8, even of a technical nature. I am unable to see how this case can turn on whether the arrest of the young offender took place on one side of the door sill or the other.

Note-able Quote

"It seems reasonable that a police officer should be given some freedom to exercise his discretion, based on experience and knowledge, to determine if there are reasonable grounds and should not be subject to constant supervision. A police officer can only do his job if he is given some flexibility and can exercise his own judgment[1]". B.C. Co.Crt. Justice Campbell

ISP ACTING AS AGENT IN FORWARDING E-MAIL TO POLICE

R. v. Weir, 2001 ABCA 181

An Internet Service Provider (ISP), who at the request of the accused was conducting a routine repair of the accused's electronic mailbox, discovered an e-mail message that appeared to contain child pornography and called police. Police requested the ISP forward a copy of this message. The police, using this information, obtained a search warrant for the accused's residence and seized the accused's CPU and some diskettes that contained child pornography. Included in this data were the attachments from the original message forwarded to the police from the ISP. The accused was convicted at trial but appealed his conviction arguing the ISP acted as an agent of the state in both opening and in providing the police with the initial e-mail which provided the basis for the warrant and therefore his right to be secure against unreasonable search or seizure was violated.

The Alberta Court of Appeal held the ISP was not an agent of the state at the time it opened the e-mail and before its contact with the police. However, the ISP was acting as an agent when it sent a copy of the message to police at the officer's request; thus there was a warrantless search. In upholding the validity of the warrant, the Court found the information "obtained from this warrantless search was nothing more than a confirmation of the information…already received from the employees of the ISP". In short, even without this confirmatory information there still remained sufficient cause to issue the warrant. The warrant was valid and the evidence was admissible.

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

POLICE INTERVENTION CHECKLIST FOR ENDANGERMENT

Part 6 of 6

Mr. Richard Dolman

The following notes are from an Internet website under development at the Justice Institute of British Columbia to assist police in handling 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 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

One of the key decisions police need to make when intervening under sec.28(1) of the *Mental Health Act* (MHA) is whether the subject's behaviour is "likely to endanger" themselves or others. If the answer is yes, and the subject appears to have a mental disorder (as described in Part 5 of this series), then police may apprehend and transport the person to hospital. The degree of apparent mental disorder must be more than eccentricity or odd ideas. The MHA says it must cause serious impairment of the subject's ability to react appropriately to their environment, or to associate with others. A suicide attempt, violence or psychosis are strong examples.

The degree of endangerment is not defined for police purposes in the MHA, but includes likely endangerment as well as actual immediate danger. Here are examples

[1] R. v. Gordon [1984] B.C.J. No. 1200 (B.C.Co.Crt.)

of endangerment, followed by key questions and answers:

- Apparent or actual attempt at suicide or serious self-harm.
- Strong suicidal or self-harm ideas or impulses, with history of previous attempts or with a plan.
- Unprovoked threats of violence or committing unprovoked violence to self or others.
- Causing or inviting unprovoked serious injury or damage to self or others.
- Taking uncontrolled and reckless risks to physical well-being.
- Suffering - Gross self-neglect causing poor personal hygiene, injury, infection, starvation, or abuse
- Acting or likely to act unsafely due to command hallucinations (feels compelled by dangerous/harmful voices or visions to engage in unsafe behavior).
- Acting or likely to act unsafely on delusional beliefs (examples: Paranoia - "enemies, aliens." Grandiosity - "special powers," superhuman).
- Unsafe status increased by: a) Undiagnosed or unmedicated mental disorder with increasing symptoms; b) Psychiatric symptoms are coupled with chronic intoxication - drug or alcohol abuse; or with treatment failure; or lack of support from health care system; or severe stresses in daily life; c) Previous history of high-risk or violent behavior or disabling symptoms; d) Pattern of deteriorating mental and physical health; e) Previous mental crisis, previous hospitalization; f) Family/friends concerned about changes in habits, behavior or moods.

Q: Is there a duty to warn to protect public safety? Yes. If a subject with an apparent mental disorder seriously threatens a specific person or group, then police have a duty to protect public safety. Others, including health professionals also may have an ethical or legal duty to warn or protect public safety, which over-rides privacy concerns. BC privacy legislation does not prevent public agencies from releasing client information to third parties where the client consents, or the info will be used for the same purpose for which it was collected (e.g. continuity of care), or in compelling circumstances that affect anyone's health or safety (see Appendix N in the Guide to the BC Mental Health Act).

Q: What if criminal behavior is involved, as well as apparent mental disorder? For a minor offence, police have limited discretion to informally divert the subject to a hospital, or arrest and take the subject to a police lockup, where the subject can have a medical examination. The court has several options including diversion, remand, or stay of proceedings. Possible outcomes: Acquittal; Conviction; Unfit to stand trial or Not Criminally Responsible due to Mental Disorder, with committal to Forensic Hospital; or conditional release orders.

Q: What if the situation does not meet police criteria for intervention? a) Advise the family or friends about alternative intervention via judicial warrant, which has broader criteria (aimed at preventing substantial mental or physical deterioration, or protecting the person or others). Anyone can apply for a warrant to a judge or justice of the peace using Form 9, (see pages 62-3 in the Guide to the BC Mental Health Act); b) Telephone the subject's doctor or case worker or family; c) Refer the subject to a Mental Health Center, outreach, advocacy, consumer support groups, or after-hours emergency mental health services.

Q: What if subject is unruly at hospital? Police have authority to help control an unruly subject. Police need to attend at hospital until authorized medical staff can take over custody safely.

Editor's Note: The Police Academy would like to thank Mr. Richard Dolman for his contribution of the 6 part *Mental Health Act* series adapted exclusively for the **"In Service:10-8"** newsletter.

POLICE PAY USER TO TAG DEALER: NO ABUSE OF PROCESS

R. v. Win, 2001 BCCA 604

The accused sold crack cocaine to an undercover police officer on seven separate occasions. In total, the accused sold the officer 15.4 grams of crack cocaine for $1,225. Prior to

the purchases, the police received information that the accused was selling crack cocaine out of his Quick Stop Food Store. The officer attended the store, advised he wished to make a purchase, produced a $20 bill, but the accused informed the officer that he did not know what the officer was talking about. About one month later, the officer went to a nearby pub and asked a group of labourers where he could "score"; the officer did not mention crack cocaine nor ask anyone to obtain drugs for him. One of the labourers offered to buy the officer a rock of crack for $25 but would not take the officer to the source. The officer gave the man the money and the man left. The officer exited the pub and observed the man coming out of the accused's store. The man delivered the cocaine to the officer and informed him that he obtained it from "a store at the corner". The officer left the pub and attempted a direct purchase from the accused but was unsuccessful. About two weeks later the officer returned to the pub and gave another man $45 for the delivery of 2 rocks of cocaine. The following day a third man in the pub took the officer to the store and introduced him to the accused. In exchange for the introduction, the officer agreed to pay the third man a small fee. As a result, the officer subsequently made several purchases from the accused.

The accused argued that the officer committed an illegal act by paying the three private citizens (two in obtaining the drugs, one for the introduction) and was therefore aiding and abetting the men, who were not employed as police agents. In doing so, it was contended that the police conduct amounted to an abuse of process and the accused was entitled to a judicial stay of proceedings. In agreeing with the trial judge's conclusion that there was no abuse of process, the BCCA dismissed the accused's appeal finding the conduct of the police "would not shock the conscience of the community":

> [The officer] did not recruit the three men to commit a criminal offence for him. He simply responded to their offers to assist him in the purchase of drugs. It is common practice for undercover drug officers to make contact with drug dealers through drug users. In my opinion there was no illegality in the conduct of [the officer] in his dealings with the men in the pub.

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

APARTMENT ENTERED & SEARCHED W/O WARRANT: EVIDENCE ADMITTED

R. v. Hofung (2001), Docket:C31904 (OntCA)

An undercover police officer purchased heroin several times from a suspect. During a culminating drug deal ending the 4-month undercover drug investigation, police arrested one suspect in a car outside an apartment and a second suspect in the lobby of the same apartment building after he had exited an apartment unit. The officers concluded that this unit was the source of the drugs, that a quantity of drugs remained inside the apartment, and the person who supplied the drugs to the two arrested suspects was in the unit. Police forced entry into the apartment without a warrant and arrested the accused. Several firearms were observed in a bedroom cabinet. Police secured the apartment and obtained a search warrant to seize the weapons. Police also located two loaded handguns under a couch in the living room. The Ontario Court of Appeal assumed (without deciding) that the warrantless police entry and search of the apartment was a violation of s.8 *Charter*. Following a s.24(2) *Charter* analysis (in deciding if the admission of the evidence would bring the administration of justice into disrepute) the Court admitted the evidence. In admitting the evidence, the Court recognized that "a warrantless arrest and search incidental thereto in a private dwelling is a serious *Charter* violation" but the police had "well-founded" concerns "about weapons inside the apartment" in light of the unfolding events that day.

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

CLASS 84 GRADUATES

The Police Academy is pleased to announce the successful graduation of recruit Class 84 as qualified municipal constables on November 16, 2001.

DELTA
Cst. Bill Kim

ESQUIMALT
Cst. Teri-Lynn Potter
Cst. Kim Taylor

NEW WESTMINSTER
Cst. Andrew Perry

PORT MOODY
Cst. Chris Burtch

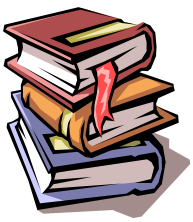
STL'ATL'IMX
Cst. Dwayne Honeyman

VICTORIA
Cst. Marie Bourque
Cst. Michael Miller

VANCOUVER
Cst. Daniel Ames
Cst. Christopher Berda
Cst. Jason Doucette
Cst. Hans Dykman
Cst. Paul Gies
Cst. Philip Heard
Cst. Derek Hill
Cst. Desiree Luebkemann
Cst. Ryan Masales
Cst. Ara Pehlivanian
Cst. Aaron Roed
Cst. Ryley Swanson
Cst. Mark Tasaka
Cst. Michael Thrower

Congratulations to Cst. Derek Hill (Vancouver), 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. Michael Thrower (Vancouver) received the Abbotsford Police Oliver Thomson Trophy for outstanding physical fitness. Cst. Mark Tasaka (Vancouver) was the recipient of the Vancouver Police Union Excellence in Academics award for best academic test results in all disciplines. Cst. Daniel Ames (Vancouver) 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. Hans Dykman (Vancouver) was the recipient of the Abbotsford Police Recruit Marksmanship award for highest qualification score during Block III training (50/50).

UPCOMING POLICE ACADEMY COURSES



The 2002 calendar of courses and programs offered by the Police Academy at the Justice Institute of British Columbia is now available. Call (604) 528-5753 to have one mailed to you, or view it online at www.jibc.bc.ca.

In addition to the regularly scheduled in-service courses offered by Advanced Programs at the Police Academy, several specialty courses are being offered in 2002 that are open to all members:

- **LSI Course on Scientific Content Analysis (Statement Analysis)**
  February 12 – 14, 2002 Basic course, $775 per participant.
  February 18 – 19, 2002 Advanced course, $665 per participant
- **LSI Course on Art of the Confession**
  February 20 – 21, 2002, $665 per participant
- **Reid Technique of Interviewing and Interrogation**
  April 22 – 24, 2002, Basic course, $540 per participant
  April 25, 2002, Advanced course, $220 per participant

Note: for participants who register for both the Reid Technique courses, a reduced registration rate of $710 is available.

To register, contact the Justice Institute of British Columbia Registration Office at (604) 528-5590. Registration is open to all members. Course participants will receive a receipt for income tax purposes.

LACK OF POLICE CANDOUR RESULTS IN ACQUITTAL

R. v. Owen, (2001) Docket:C32794 (OntCA)

The Ontario Court of Appeal overturned the conviction of the accused who had been found guilty of assaulting a police officer and sentenced to 22 days in jail and one year probation. The Court found the trial judge had erred when he applied a different standard in assessing the credibility of the accused than that of the police officers. In this case, the trial judge rejected the evidence of the accused largely on the grounds of his demeanour and identified only one minor contradiction; whether the blinds in the room where the assault occurred were open or closed. The police officers denied collaborating in the preparation of

their notes although the trial judge found they had. Despite this flaw in the police officer's credibility evidenced by their lack of candour and the "importance of their notes as a record of the alleged assault", the OntCA found the trial judge "took a much more lenient approach when assessing the evidence of the police officers despite a serious weakness in their testimony". In doing so, the trial judge committed a legal error in applying a stricter standard of scrutiny to the accused than he did to the Crown witnesses. As a result, the Appeal Court entered an acquittal.

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

IMPORTANCE OF OFFICER's NOTES UNDERSCORED

R. v. Hallman, 2001 BCSC 1355

Police received an anonymous Crime Stoppers tip that a person named "John", who drove a later model Corvette, was growing marihuana. A police officer walked by the premises, noted no odour of marihuana, and thus considered the tip to be unsubstantiated. Another Crime Stoppers tip was received and the tipster provided a licence number of the Corvette. Police queried the license number and found it to be registered to the accused. The officer attended the residence and picked up the garbage bag set out in the alley, examined its contents, and found it to contain an airline ticket and employment insurance statement in the accused's name and some empty containers of nutrients for hydroponics. Again, no odour of marihuana was detected. The following day the officer went onto the neighbour's property, with permission, and smelled growing marihuana and observed one basement window covered with material and the upstairs inside drapes closed; no condensation was observed. Police made no notes of the visit. The following day police attended a justice of the peace with an unsworn information containing the basic information; but there was material facts not disclosed such as; no smell of marihuana on the day the officer examined the garbage bag, police checks of the name and vehicle provided no further information, condensation was not noted on any of the visits, the information stated the basement windows were covered when the officer only observed one of the three windows, and the information described the second tip as an "update" without confirmation the two Crime Stoppers tips were from the same source.

In addition, the officer failed to describe the smell detected as "growing" marihuana, although the J.P. wrote this into the information. The JP also added an additional statement about the officer's familiarity with marihuana growing operations. Although the officer testified the additions were made before the information was sworn, it was apparent from the face of the affidavit that it was re-sworn following the addition of the amendments. The only note in the officer's notebook was "checked and signed by JP".

After returning to the police office and briefing other officers, police attended to the residence to execute the warrant where the front door of the residence was kicked in. One officer testified police knocked while a second officer could not recall whether he knocked or rang the doorbell. The only note in the officer's notebook was "hard entry". Among other issues, the accused argued both his s.8 and s.10 rights were infringed on the following basis:

- conduct of the J.P. (s.8)
- sufficiency of the information to obtain (s.8)
- the no-knock procedure (s.8)
- denial of access to counsel (s.10)

Conduct of the JP

The Court found the justice of the peace had crossed the line between remaining impartial and becoming an agent of the police when he actively suggested material changes to the information to obtain and made the additions himself after the affidavit had been sworn. The manner in which the warrant was issued was unreasonable and thus a violation of the accused's s.8 right to be secure from unreasonable search and seizure.

Sufficiency of Information

In addressing whether the information itself was sufficient to support the issuance of a search warrant, the Court was not satisfied the information was reliable because of misleading assertions and the failure to mention material facts. After excising the unreliable information, the only item left was the nutrient label found in the garbage. This alone was insufficient to justify the search and therefore the search was unreasonable.

No-Knock Procedure

With respect to the entry, the Court found the manner of entry was unreasonable because the police failed to first knock and announce their presence prior to entry. The officer's lack of notes and the accused's testimony that he was a light sleeper and awakened by a loud bang (the door being kicked in) was sufficient to convince the Court police failed to knock:

> I conclude that the police entered the residence without first knocking. The door was kicked open with one blow that awakened the accused in his bedroom down the hall on the main floor. The unlawfulness of this entry into a private residence has been made clear in British Columbia in several authorities….There was no real threat of violent behavior here and no real attempt by police to suggest that there was. Nor was any other explanation offered for the conduct. (references omitted)

Access to Counsel

The accused argued that his right to counsel was violated because he was denied an opportunity to call counsel at the time of his arrest; at his home. The officer testified the accused said he would call his lawyer at the police station. The Court found the accused failed to establish his right to counsel was violated commenting the notes of the officer were "clear, made contemporaneously, and were unchallenged".

In excluding the evidence and acquitting the accused, the Court stated, at para.46:

> The evidence obtained is real evidence of a relatively unsophisticated marihuana grow operation. It existed irrespective of the violations. In this case, the violations are serious. The justice of the peace erred in his duty of impartiality. The officers failed to provide full and frank disclosure to the issuing justice of the peace, following a practice of providing only information that furthered the investigation without regard to whether the information undisclosed was of a material fact. The hard entry to a residential premise is always a serious matter especially when no satisfactory explanation is offered. This is compounded here by the fact that police obtained the search warrant in a manner that violated the accused's s. 8 Charter rights. Exclusion of the evidence is warranted here despite the seriousness of the charges given the seriousness of the combined breaches.

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

BAD HEADACHE NO EXCUSE FOR GUILTY PLEA

R. v. Eastmond,
(2001) Docket:C33638 (OntCA)

The accused, who was represented by counsel, pled guilty to assault. During the preparation of a pre-sentence report, the accused advised the probation officer he knew his actions were "inappropriate" but denied portions of his statement to police and stated he only pled guilty because his lawyer told him to do so. As a result, the accused's lawyer withdrew, and new counsel argued that his guilty plea should be struck because the accused did not understand the proceedings, was confused, upset, and he had a bad headache when he pled guilty. The accused had a grade six education, his ability to read and write English was limited, and he had been before the criminal courts on four previous occasions. In rejecting the accused's appeal that the guilty plea should be struck, the Ontario Court of Appeal found the accused failed to discharge the onus of establishing the plea was invalid:

> A guilty plea entered in open court, particularly by an accused represented by counsel, is presumed to be a valid plea. An accused seeking to set aside that plea bears the onus of demonstrating that the plea is not valid. There is nothing in the record of the proceedings in which the plea was entered that raises any concern about the validity of the plea, or which would have necessitated that the trial judge make some specific inquiries of the appellant personally to satisfy himself that the plea was valid. The facts read in by the Crown were straightforward, simple and fully supported the allegation. The accused pleaded guilty personally and was represented by experienced counsel who acknowledged in open court the correctness of the facts referred to by the Crown.

Complete case available at www.ontariocourts.on.ca

ODOUR OF MARIHUANA JUSTIFIES SEARCH

R. v. Cornell, 2001 BCPC 265

Police were working a Counterattack roadblock when they stopped a vehicle driven by a male and occupied by the accused. The

officer attending to the driver's side of the vehicle "discerned the smell of smoked marihuana emanating from the vehicle". As a result, the officer directed the driver to pull off to the side of the road. A second officer also attended to the vehicle and spoke to the passenger (the accused). The officer asked the driver to step from the vehicle, searched him and the vehicle, but found nothing. The cover officer dealing with the accused (passenger) also detected a "fresh smell of smoked marihuana" emanating from the vehicle, and after asking the accused to exit the vehicle and entering into a conversation smelled smoked marihuana on the breath of the accused. The officer formed the opinion he had reasonable grounds to believe an offence had just been, or was being committed. The officer detained the accused for possession of a controlled substance, provided the appropriate warnings, and searched him. The officer found a white substance believed to be cocaine on the accused that led to the charges before the Court.

The accused argued the odour of marihuana emanating from a motor vehicle together with the smell of marihuana on the breath of the person did not justify the personal search of the accused. In rejecting the accused's submission, the Court held, at para. 17:

> …when a person detects an odour of marihuana, there is a reasonable causal connection to believe that the person who is in a confined space from which the odour is emanating may reasonably be suspected to have been involved in the creation of the smoke.

And further at para. 21:

> The question is whether experienced police officers who detect a distinct odour of smoked marihuana have reasonable and probable grounds to believe that an offence has been committed or is still being committed. In all the circumstances that are described to me in this case, it is my view that [the officer] had reasonable and probable grounds to form that belief, to detain, and to undertake a search incidental to that detention.

In finding the search lawful, the cocaine evidence was admitted and the accused was convicted.

Complete case available at www.provincialcourt.bc.ca

Note-able Quote

"*Just because it's common sense doesn't mean it's common practice.*" Will Rogers

B.C.'s TOP COURT RULES LAW OFFICE WARRANT PROVISION UNCONSTITUTIONAL BUT SUSPENDS REMEDY

Festing v. Canada, 2001 BCCA 612

In a 2-1 decision the British Columbia Court of Appeal struck down the provisions of s.488.1 of the *Criminal Code* respecting the mechanism for claiming solicitor-client privilege of documents seized from law offices under a warrant. Furthermore, the Court found "that s. 487 of the *Code* breaches s. 8 of the *Charter* to the extent that it authorizes the search of law offices and the seizure of documents therein in the absence of adequate safeguards for solicitor-client privilege"; safeguards s.488.1 does not adequately address. As a remedy, the Court held the words "other than a law office" should be read into the provisions of s.487:

> s.487(1) *Criminal Code*
> A justice who is satisfied by information on oath in Form 1 that there are reasonable grounds to believe that there is in a building, receptacle or place, **other than a law office**, ...

However, the Court suspended both the striking down of s.488.1 and the reading in of "other than a law office" into s.487 pending the decision of the Supreme Court of Canada in four related appeals originating from Ontario, Alberta, Newfoundland, and Nova Scotia scheduled to be heard this month.

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

HIT & RUN: AVOIDING DETECTION DIFFERENT THAN AVOIDING IDENTIFICATION

R. v. Perreault, 2001 BCSC 1481

The accused was operating a vessel in English Bay to see a fireworks display when his boat collided with another vessel at about 10:30 pm causing irreparable damage. Immediately following the accident, the accused asked

the damaged vessel operator (victim) whether he had any insurance. The victim responded he did not. The accused provided a cell phone number of a friend who was on board another boat in English Bay who may be able to assist. The victim called the number but there was no response. The victim told the accused that his two passengers had been injured and that he was going to call 911. As he made the call, the accused left the area; he did not leave his name nor render any assistance. Four hours after the accident the accused called police to report the accident and ensure "everything was okay".

The accused testified to the following: the boat he collided with had no lights; during the collision he was knocked down and was cut over his eye; his passenger was hysterical and he believed she had a broken arm; he asked if the others on the victim's boat were okay and received a response they were fine; he gave his friend's cell phone number for assistance; he left because his passenger was panicky; he had no reason to believe the other people required assistance; and he had not given his name because no one asked for it.

In its analysis, the Court acknowledged s.252 of the *Criminal Code* is to be read disjunctively; if the accused fails to do any one of the activities prescribed by the section, it is presumed their failure to do so was for the intent to escape criminal or civil liability. The Court dismissed the accused's appeal and accepted the trial judge's rejection of the accused's evidence as to why he left the scene of the collision without leaving his name and address:

> The evidence that the [accused] telephoned the police to report the accident four hours after the event is not incongruent with a finding that at the time he left the scene of the collision without giving his name or address he did so "to avoid detection and with intent to avoid civil or criminal liability or both".
>
> Additionally, in my view, the evidence that the [accused] provided the cellular telephone number of a friend… through which it may have been possible to eventually have identified him is also not incongruent with the trial judge's ultimate finding. The term "avoiding detection" is not synonymous with avoiding identification. Avoiding detection has a broader meaning than avoiding identification and includes the notion of taking action to avoid the detection of facts which may lead to criminal or civil liability. For example, if an accused is intoxicated and stops at the scene of an accident he is involved in, but leaves before the police arrive it could be concluded that he left to avoid detection of his condition but not necessarily his identity.
>
> The [accused's] removal of himself from the scene without leaving a name or address would have the effect of preventing an immediate follow-up on his state or his or his passenger's immediate version of the events by any investigating authority and could impede the progress of any investigation into his civil or criminal liability.
>
> Although the [accused] did leave information … (his friend's cellular telephone number) that may have led to his identification eventually, that has been held insufficient to discharge the duty in s. 252(1). (emphasis added)

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

SENIOR OFFICER CHALLENGES APPOINTMENT OF CHIEF & DEPUTY

Stuckel v. Abbotsford Police Board, 2001 BCSC 1492

A senior police officer with the Abbotsford Police Department recently had his application in Supreme Court to set aside the Police Board's appointment of a new Chief Constable and Deputy Chief Constable dismissed. Following the resignation of the former police chief, the Police Board did not announce the vacancies nor conduct a competition prior to appointing the new chief and deputy. The senior officer argued that the police board was obligated to hold a competition for the vacant positions and their failure to do so was unfair. In dismissing the application, Grist J. stated:

> The petitioner's application rests upon there being a duty owed to him by the Police Board requiring a process of appointment that would make the Chief Constable and Deputy Chief Constable positions the subject of a competition open to the Senior Officers of the Department. [T]his obligation can only be found in circumstances where a legitimate expectation of such a practise is founded on the past conduct of the Board or on a personal assurance to the petitioner.
>
> The material falls short of establishing a personal assurance. The petitioner's evidence is that on an earlier occasion he was encouraged to remain with the Abbotsford force by the former Chief Constable. He was told that if he remained with Abbotsford he could expect advancement. At its strongest, this assurance does not stipulate any particular process nor could the Chief Constable bind the Board in its power to appoint to the two senior positions.

And further:

> Lastly, the evidence of past appointments does not demonstrate a practise of conducting competitions in every case, preceding senior appointments. The Board has relied in the past on assessments formed as a result of previous competitions rather than calling for new competitions. The impugned appointments appear to have been determined in like fashion. The past experience cannot therefore found a legitimate expectation of a competition in this instance. Accordingly, the petitioner's application must be dismissed.

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

SEARCH INCIDENT TO ARREST DOES NOT REQUIRE INDEPENDENT GROUNDS TO SEARCH

R. v. Le, 2001 BCCA 658

Police received information from a reliable informant that narcotics were being sold from a rooming house. As a result, the officer walked by and observed a few people push a buzzer on the building, enter, and exit shortly thereafter. The officer was familiar with the building from a drug search conducted several years earlier. The following day the officer set up surveillance and in a 50 minute period observed 8 people push the buzzer, enter, and "a moment or two later" exit. One of the persons was observed smoking crack cocaine after leaving. The next day, an undercover officer went to the building and made a purchase from an occupant of the upstairs suite. Another officer also had independently received information from an informant about drug trafficking occurring at the building. Police applied for and obtained a warrant to search the upper rear suite of the building. During the time police were obtaining a warrant, police observed 12 other people enter and exit the building.

Police executed the warrant and an officer, who was the last officer to enter the suite, found the accused just inside the front door. Among three other persons arrested in the suite, the accused was arrested for possession of a controlled substance for the purpose of trafficking and advised of his rights. The officer who arrested the accused turned him over to a second officer who identified the accused from a driver's licence that showed an address other than the one being searched. The officer found a key to the suite, $2840 in his front pocket including $140 buy money used by police earlier, $465 in his wallet, and a book containing only handwritten figures and calculations. At trial the accused was convicted on three counts of possession for the purpose of trafficking. The trial judge found the search was not unreasonable because, even if the officer did not have reasonable grounds with respect to the accused, he at least had an articulable cause and the resulting search would be lawful as an incident to the detention for weapons or evidence.

The accused appealed his conviction arguing the police violated his rights to be secure from unreasonable search and seizure. It was asserted the accused's mere presence in the suite for which the police had a search warrant was insufficient to provide reasonable grounds for arrest. The accused submitted the police lacked reasonable grounds to arrest him "because there was no information which identified him as one of the persons involved in the drug trafficking activities taking place from the premises before the police executed the search warrant". Thus, if the arrest was unlawful the resulting search would be unreasonable and therefore the fruits of the search are inadmissible. In dismissing the accused's appeal, the BCCA found the police had the requisite grounds for arrest. It was not necessary for the police to have identified all the persons involved in the drug trafficking activities to support reasonable grounds that persons within the premises were involved. As a result, the subsequent search was valid as an incident to lawful arrest. Rowles J.A. for a unanimous court:

> The scope of the long-standing common law power of search incident to a lawful arrest was first considered by the Supreme Court of Canada in Cloutier v. Langlois …. That case established that a search incident to arrest does not require reasonable and probable grounds beyond the grounds that were sufficient to support the lawfulness of the arrest itself.
>
> The power to arrest, and the power to search as an incident of arrest, are analytically distinct. The doctrine of search incident to a valid arrest is not founded upon considerations of reasonable grounds to search but rather flows from the fact of the arrest itself, and the need to prevent the escape of the arrested person, to check for the presence of weapons, and "... the prompt and effective discovery and preservation of evidence relevant to the guilt or innocence of the arrested person": …. An officer searching need not have any

> reasonable grounds for believing that the search will be productive of evidence of the offence or of weapons: …
>
> The power to search upon arrest depends, however, upon the existence of proper underlying grounds for a lawful arrest. The search must have been carried out as a valid "incident" of that arrest, and the search must be carried out in a reasonable manner: … (references omitted, emphasis added)

With respect to the trial judges comments concerning the search for contraband as a result of the investigative detention supported by articulable cause, the BCCA found the judge erred in this regard:

> [I]nvestigative detention does not provide a foundation for a search for contraband". (emphasis added)

Searches incident to investigative detention are only proper if conducted for safety reasons[2].

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

THE PRINCIPLE OF ABANDONMENT: SEIZING GARBAGE

Sgt. Mike Novakowski

Because s.8 of the *Charter* focuses on a person's reasonable expectation of privacy, a person who deliberately abandons or discards material may no longer have a subjective expectation of privacy concerning the material. Any s.8 *Charter* issue will focus on whether the accused maintains any privacy interest in the thing abandoned or discarded. If the Crown can establish that the thing was "abandoned" (i.e. the accused relinquished their privacy interest in the thing) then there is no seizure and s. 8 does not apply. In *R. v. Krist* (1995) 100 C.C.C. (3d) 58 (B.C.C.A.), police seized two garbage bags that were left on the curbside for sanitation pick up at a residence the police had information was the site of a marihuana grow operation. The seizure of the garbage bags by police was described as "entirely speculative". After examining the contents of the bags, the police applied for and were granted a search warrant that would not have otherwise been issued without the information obtained from the search of the garbage bags. The court held that placing the material in the garbage signified that the material was no longer something of value or importance to the person disposing of it and there was no longer a reasonable expectation of privacy in respect of it[3]. However, garbage collected from a garbage can inside a hotel room still occupied by a person was a seizure because it was not yet abandoned (the person maintained control over the garbage and therefore, a privacy interest in it)[4]. In *R. v. Wells* (2001) Docket:C13744 (Ont.C.A.), police rented a hotel room that had been previously rented by a suspect in their murder investigation. Inside the room police found evidentiary items (including a t-shirt and jeans with blood stains) which were collected. The Court held:

> In my view, the evidence reasonably supported the conclusion that, in his haste to leave the jurisdiction, the [accused] abandoned the items left in his hotel room. Furthermore, the appellant was delinquent in his rental payments and he probably was not maintaining any further lawful possession interest in his personal belongings in the hotel room. (emphasis added)

Where a person does not have an expectation of privacy in a discarded item, such as a tissue obtained by police for DNA testing, the item is not seized by police but is gathered, and is admissible as an exhibit in the trial[5].

Caution must be taken when relying on the principle of abandonment respecting persons who are in the custody and control of the police. In *R. v. Stillman* [1997] 1 S.C.R. 607, the police seized the tissue used by the accused to blow his nose (for DNA testing) while he was in police custody at the police station. The accused had earlier refused to provide bodily samples. In addressing the issue of abandonment in this circumstance Cory J. for the majority at para.58:

> The difficulty with this argument [of abandonment] is that when an accused person is in custody, the production of bodily samples is not an unforeseen occurrence. It is simply the inevitable consequence of the normal functioning of the human body. The police are only able to profit from the production of the samples because the accused is continuously under surveillance. For this reason it is somewhat misleading to speak of "abandonment" in the context of evidence obtained from an accused who is in custody.

[2] See Volume 1 Issue 7 of this publication.

[3] See also R. v. Hallman 2001 BCSC 1355.

[4] R. v. Love (1995) 102 C.C.C. (3d) 393 (Alta. C.A.)

[5] R. v. Legere (1994) 95.C.C.C. (3d) 139 (N.B.C.A.) at p.167.

A person in custody will necessarily produce items containing bodily fluids and because of their custody will have no choice but to discard those substances in receptacles under police control. Whether a person relinquishes any privacy interest in the samples while in custody will be determined on a case-by-case basis.

CUSTOMS ARREST BY MUNICIPAL OFFICER JUSTIFIED UNDER CODE

R. v. Bienvenue,
(2001) 155 CCC (3d) 442 (QueCA)

The accused was stopped by a municipal police officer after the officer received information from the RCMP that the accused entered Canada at a closed border crossing. The RCMP were alerted by the US Border Patrol after they detected the crossing through electronic sensing and photographic devices. The accused, who was driving a 4 x 4 truck matching the description provided, was stopped 26 minutes after the detected crossing in an area in which there was little traffic. In the vehicle police located 200 bottles of wine from the United States. The accused argued he was illegally and arbitrarily detained contrary to the *Charter*, and that the ensuing search and arrest also violated his rights.

The *Customs Act* creates a summary conviction offence for persons who fail to forthwith present themselves at the nearest customs office designated for that purpose that is open for business. In addition, anyone who fails to report all goods imported commits a dual offence. The Quebec Court of Appeal found the officer had reasonable grounds to believe an offence was committed and the grounds offered were both subjectively held and objectively verifiable. The officer had received information from the RCMP that he was entitled to rely upon and had made the stop at a time after the crossing when the accused could not have reported to an open Customs office. Since the officer believed the accused "was in the process of committing an offence under the [Customs] Act when he intercepted him", he was therefore entitled to arrest pursuant to s.495 of the *Criminal Code*.

Alternatively, the Court also reviewed the search, seizure, and detention provisions of the *Customs Act*. In this regard, the Court found the word "detention" in s. 104 of the *Customs Act* does not refer to the detention of people, but only to things. Thus the officer was not entitled to simply rely on s.104 as a power of detention. However, the municipal police officer was entitled to detain the accused by operation of s.99(1)(f) and s.104 of the *Customs Act*:

> In exercising their powers of search, seizure and detention of things, including conveyances, officers will generally-if not invariably-interfere with the freedom of movement of the persons whose conveyances are stopped for that purpose.

Although a municipal police officer does not generally have the authority of an "officer" as defined in the *Customs Act*, s.104 allows an "officer" (which by definition includes an RCMP member but not a municipal member) to call on other persons to assist in exercising any power of search, seizure or detention. Any person so called upon is authorized to exercise these powers. In this case, the RCMP called upon the municipal police for assistance. Thus, the municipal officer acting under s.104 was entitled to detain the accused by operation of s.99(1)(f) which permits the stopping and searching of conveyances.

OFFICER PROTECTED WHEN ACTING ON INVALID CPIC ENTRY

Lord v. A.G. Canada et al,
2001 BCSC 212

The plaintiff sued the Abbotsford Police Department, among others, alleging false arrest and false imprisonment arising from the arrest of the plaintiff. The plaintiff's wife also sought damages for nervous shock resulting from her husband's arrest and imprisonment. The plaintiff was convicted of trespassing under the *Corrections and Conditional Release Act* for refusing to leave Kent Institution where he was visiting his son, an inmate. The plaintiff was placed on probation for one year with the condition that he not attend or enter any federal institution in Canada. A RCMP detachment entered the probation order on CPIC with the one-year expiry date. The plaintiff appealed his sentence and his probation term was reduced by 6 months. Unfortunately, CPIC was not updated and maintained the initial one-year probation order date. The plaintiff began to visit his son again, this time at Matsqui

Institution. An incident occurred where the Abbotsford Police were called and the officer who attended queried the plaintiff on CPIC. On the basis of the outstanding probation order entered on CPIC, the officer arrested the plaintiff for breach of probation and took him to the police jail.

The plaintiff informed the officer of the amended order, but was unable to produce a copy. While at the police office, the officer made two inquiries about the status of the probation order with the RCMP agency responsible for the CPIC entry. The officer was advised the probation order was still in effect and received a copy by fax. The plaintiff's wife attended the Abbotsford Police Department and advised the station NCO that the probation order was no longer in effect. The NCO told the plaintiff's wife that he would act on the new order if she could produce a copy. A relief NCO released the plaintiff after the plaintiff's wife attended with a copy of the valid order. In dismissing the action against the Abbotsford Police, the Court noted an arrest based on an invalid court order or warrant does not necessarily render the arrest a false arrest:

> In this case, the police officers acted in good faith on what they considered to be a valid warrant under the authority of CPIC. They listened to [the plaintiff's] protests and made diligent inquiries to determine if the Probation Order was defective. They asked him to produce the documentation and they asked him if he wanted to speak to a lawyer. They believed that if they released him, he would return to the Institution and continue committing the offence. It was unfortunate that because the incident occurred on November 11, a statutory holiday, the Court Registry was closed. He was released when [the plaintiff's wife] produced the necessary documentation to show that he was not in breach of the apparently valid Probation Order.

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

DIVERSITY IN POLICING CONFERENCE
JANUARY 25-26, 2002
JIBC

"Working Together for Safety & Security"

BRITISH COLUMBIA

The British Columbia Special Committee on Diversity and Policing, along with the British Columbia Association of Chiefs of Police and the Justice Institute of British Columbia (JIBC), will be hosting the "**2002 Diversity in Policing Conference**" at the JIBC.

The conference will emphasize the importance of diversity in policing and will examine the following values:

- understanding individual communities better
- building valuable trusting relationships
- safety and security
- community representation
- proactively solving community concerns
- community policing in action
- responsive and sensitive police service
- communities policing communities
- the police are the community, the community are the police
- partners for life
- stronger together

Location: JIBC
715 McBride Blvd.
New Westminster, BC

JUSTICE INSTITUTE OF B.C.

There is no charge for this conference.

As the facilities can only hold a maximum number of people, registration is required to reserve a seat. Please contact the conference coordinator, S/Sgt. Murray Lunn, via email at mslunn@jibc.bc.ca to register and please be prepared to provide the following information:

- name
- rank
- organization
- postal address
- telephone number
- email address.

Once all seats have been reserved, we will maintain a waiting list in the event a seat becomes available.

For more information, check out the Police Academy website at www.jibc.bc.ca or contact the coordinator, S/Sgt. Murray Lunn at (604) 528-5824.

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
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