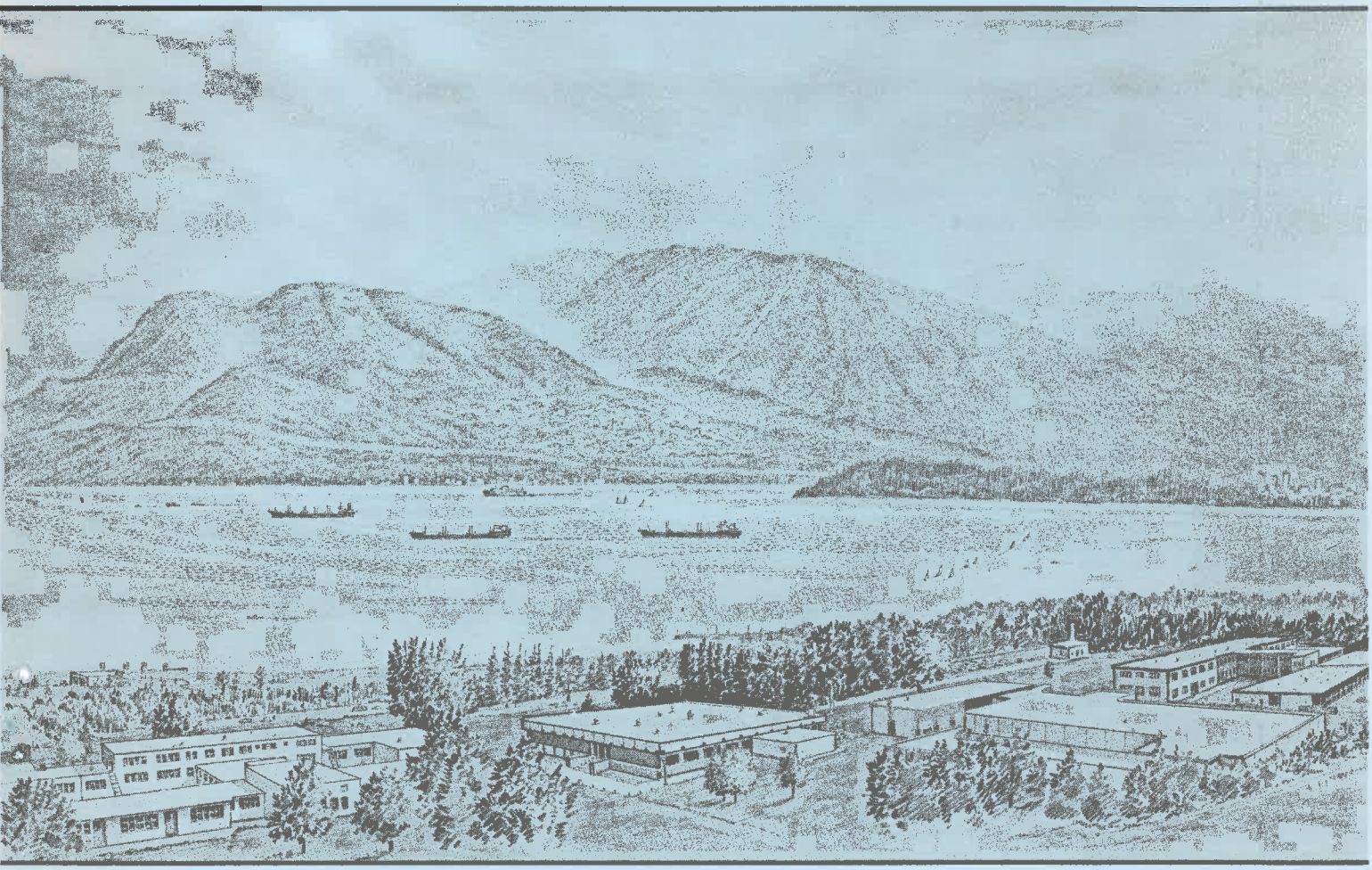
ISSUES OF INTEREST

VOLUME #2



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ISSUES OF INTEREST

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1981 September 24

Dear Readers:

In our first issue we asked for reaction to our publication, particularly to its content. The response was very gratifying and encouraging. We were also pleased, though somewhat embarrassed, to receive to one of the synopses a reaction by R.C.M.P. personnel who are familiar with the details of the case.

On page 32 of our first publication we dealt with R. v. Ridge and imply that "B", an informant, purchased M.D.A. with funds supplied by police and was then allowed to deal with it for his own benefit after having given a sample of each purchase to police for the purpose of analysis. This was erroneously and carelessly inferred from the reasons for judgment, which state:

> "The police furnished B with the funds to make the initial purchase of drugs from W. On subsequent occasions when B purchased drugs from W, Cpl. K permitted B to retain the bulk of the drugs after police had taken small samples for the purpose of analysis. Cpl. K knew that B was going to traffic in those drugs for his own benefit and that he was purchasing them from and receiving deliveries through Ridge with that intention. The reason B was permitted to do so was in order to maintain the supply of this drug to the market so as not to cause Williams to become suspicious".

The facts are that the 'initial purchase' of M.D.A. by B with public funds was in its entirety retained by police. B was not allowed to traffic drugs purchased with tax dollars. The subsequent purchases B made were financed by him personally. Only to gather sufficient evidence against the suppliers was B allowed to traffic his own drugs after he surrendered a sample for the purpose of analysis. One of the most ethical and

experienced drug investigators, R.C.M.P. Inspector Dave Staples, writes the following in response to my synopsis:

> "I recently read the first issue of your training bulletin -- "Issues of Interest". This letter is some of the feedback you have requested.
>
> I was one of the original fans of your Camosun College publication and I observed the same easily comprehended reviews of recent court decisions in this circular.
>
> I was particularly disappointed however, when I read your account of Regina versus RIDGE, 51 C.C.C. (2d) 261 British Columbia Court of Appeal. I refer particularly to paragraphs 1 and 14, both of which are totally inaccurate.
>
> The facts (and the evidence) were:
>
> 1. Informant "B", an already-active multi drug trafficker, was utilized.
>
> 2. "B" was provided with police funds to effect a single evidentiary purchase of M.D.A. The entire exhibit was retained by the police as evidence and none was allowed to flow to the street.
>
> 3. On two much later occasions, M.D.A., purchased by "B" from "W" (entirely with his own funds), was delivered to "B" by RIDGE. The deliveries were sampled by police. The remainder was left in the possession of "B" in order to:
>
>   (a) preserve "B"s credentials with "W"; and
>   (b) protect "B"s life because "W" was able to monitor "B"s trafficking activities through a group of outlaw bikers.
>
> I cannot understand how you might have reached the erroneous conclusion that there was an "improper arrangement" in the RIDGE case "which allowed "B" to traffick profitably in drugs purchased with tax dollars". There was, of course, no such improper arrangement.

I know that you have not forgotten that the use of informants is essential to all phases of police work and particularly for the detection of consentaneous crimes such as drug trafficking. In order to be at all effective, the informer must be actively involved in the business about which he is providing information. It is very difficult, in other words, to learn about the activities of a major drug manufacturer from a clergyman. You may be interested in the remarks on this subject made by Chief Justice Laskin in Regina versus KIRZNER (1977) 38 C.C.C."

Signed: Best Regards,
Dave Staples

The case of Regina v. Kirzner (38 C.C.C. (2d) 131) which Inspector Staples refers to, should be read and studied by all law enforcement officers. In this case the Chief Justice of the Supreme Court deals with police use of "Informants, stool pigeons and agents provocateurs" and 'entrapment' in general. One of the interesting portions of the reason for judgment is:

> "The use of spies and informers is an inevitable requirement for detection of consensual crimes and of discouraging their commission; otherwise, it would be necessary to await a complaint by a "victim" or to try to apprehend offenders in flagrante delicto, an exercise not likely to be crowned with much success. Such practices do not involve such dirty tricks as to be offensive to the integrity of the judicial process. Nor can objection on this ground be taken to the use of decoys who provide the opportunity to others intent upon the commission of a consensual offence. In all such cases, the offender can claim no extenuation that would mitigate either his culpability or the use of evidence to establish it or his punishment upon conviction.

> The problem which has caused judicial concern is the one which arises from the police-instigated crime, where the police have gone beyond mere solicitation or mere decoy work and have actively organized a scheme of ensnarement, of entrapment, in order to prosecute the person so caught. In my opinion, it is only in this situation that it is proper to speak of entrapment and to consider what effect this should have on the prosecution of a person who has thus been drawn into the commission of an offence.
>
> There is no doubt that it may be difficult in particular cases to draw the line between mere use of spies, decoys or informers and the use of agents provocateurs who go beyond mere solicitation or encouragement and initiate a criminal design for the purpose of entrapping a person in order to prosecute him. The principle of the distinction has, however, been recognized in a series of cases in the Supreme Court of the United States which has established that entrapment, in the ensnarement sense above-mentioned, is available as a defence".

Reviewing the leading cases the Supreme Court agreed that the defence of entrapment was not available in Canada although it had detected leanings in that direction in the lower courts. The tenor of the judgment leaves one to infer that the Supreme Court would favor a subjective approach to entrapment if such defence was created in Canada; meaning that if the accused was predispositioned to the crime he should not have the benefit of the defence.

In any event, even if there was such a defence, the Supreme Court of Canada decided it would not have been available to Kirzner.

Insp. Staples is correct; the use of decoys, informants and agents are an essential aid in investigations of concensual crimes, (particularly drugs, prostitution, gambling, etc.) The ferreting out of the authors of these crimes would otherwise be stifled.

I have met with Insp. Staples and we went over the reasons for judgment by the B. C. Court of Appeal. It appeared that Dave understood how I arrived at my erroneous conclusion. It was amiably decided that this response sets matters straight.

Yours truly,

John M. Post

John M. Post
Director
Police Academy

LEGAL TID BITS

(Written by John M. Post)
June - September, 1981

Bergstrom v. The Queen Supreme Court of Canada May 11, 1981.

Section 17 of the Criminal Code excuses a person from committing a criminal offence if he committed it "under compulsion by threat of immediate death or grievous bodily harm". This section stipulates that this defence of compulsion is not available where the offence committed is (among other serious crimes) "assisting in rape".

An accused had raped a woman upon the command of a man who threatened him with a knife. The accused was acquitted upon raising the defence of compulsion claiming that "assisting in rape" was not rape and that the defence was available.

The Supreme Court of Canada held that the "assisting in rape" is synonimous with rape and ordered the accused to be retried.

Regina v. Kowalski Vancouver Island County Court

The accused was charged with care and control of a motor vehicle while his ability was impaired. The evidence proved that the accused in fact drove the car. The Provincial Court Judge acquitted him, being of the opinion that driving does not include care and control.

Upon appeal, the County Court held that "evidence of driving may be sufficient to prove either of the offences".

R. v. Zeck 53 C.C.C. (2d) 551

The accused was seen destroying parking tickets placed on cars. As a consequence he was convicted of obstructing justice and appealed.

The Ontario Court of Appeal held that the section of the Criminal Code creating this offence must be given a broad interpretation and "applies to steps which are taken to the normal enforcement by the police to the contravention of a municipal by-law".

Conviction upheld.

"As Soon as is Practicable"

B. C. Court of Appeal in R. v. Carter - October 22, 1980 and R. v. Cander - May 6, 1981

Defence counsel argued in two cases that police had not made a demand or had taken the breath samples as soon as was practicable. Both accused were acquitted. The Crown successfully appealed on this point of law. The Court of Appeal said:

> "I am not at all satisfied that the language of s 235 and 237 require the term 'as soon as practicable' to be read other than as within a reasonable prompt time under the circumstances and I am satisfied that the 20 to 25 minutes for observation as found by the learned trial judge does not of itself infringe it".

As far as the delay to make a demand is concerned, the Court found that a hasty decision is not in the interest of the accused or the public. It would result in:

> "...the test be taken possibly with improper investigative time spent to determine whether, in fact, the test should properly be demanded".

Regina v. Balazsy 54 C.C.C.(2) 346 Ontario Provincial Court

The accused, showing his disrespect for a group of men he called "ass holes", emphasized his opinion by showing them what that part of the anatomy looks like. He dropped his pants and wiggled his naked buttocks at them. This resulted in a charge under s. 169 C.C. "exposing his private person in a public place".

The accused claimed that the Crown, perhaps knowing the law, was ignorant of the fact that "his private person" was distinct from what he displayed in that it was attached to the other side of him.

The Court agreed with the accused that "the private person" is the genital area of the body. However, the Court amended the information to conform with the evidence and substituted for "private person" the words "bare buttocks". The accused was convicted.

(R. v. Oda and R. v. Lawson, B. C. Court of Appeal April 1980 54 C.C.C. (2d) 466).

In July an undercover constable obtained 399 capsules of heroin. As a consequence, in January of the following year two persons were separately charged with trafficking. A preliminary inquiry was conducted in early May at the conclusion of which the accused were committed for trial. In July of that year the constable started to suffer a mental disorder, sought psychiatric help in September and committed suicide in October. When the accused were tried in February of the following year, the evidence of the constable was placed before the jury by reading his evidence given during the preliminary hearing into the record (s. 643 C.C.) of the trial. The accused were convicted but appealed claiming that had the jury known the constable's mental condition prior to his death as they are known now, it may have created a reasonable doubt in their minds as to the guilt of the accused.

The B. C. Court of Appeal rejected the reasons for appeal and said it was far from persuaded that a jury, knowing what had happened to the constable, would have a justification for a reasonable doubt about the guilt of the accused. The mental problems came after the testimony at the preliminary inquiry. Furthermore, the manner in which the testimony was given and the evidence supporting it, rendered it incapable of raising a reasonable doubt. Convictions upheld.

R. v. McLaughlin 53 C.C.C. (2d) 417
Supreme Court of Canada

The accused gained unauthorized access to the computer of the University of Alberta and used the information stored in the central processing unit for his own gain and purposes.

He was, as a result, charged with theft of telecommunications (s 287(1)(b) C.C.). The accused had used one of 300 remote terminals which were by wires connected to the computer. The Supreme Court of Canada held that 'what was involved in this case was a data processing facility rather than a telecommunications facility although it incorporated electronic equipment. The Court said also:

> "The internal processing of data by the central processing unit of the computer and the transfer of the results of the operation of that device to a remote terminal for reproduction is not within the ordinary concept of the transmission of information from one point or person to another point or person".

The accused's acquittal was upheld.

(R. v. J. V. May 1981 B. C. Supreme Court No. C.C. 801256 Vancouver Registry)

A B. C. Provincial Court Judge ordered a child he found to be "almost incorrigible", in the custody of a specific person at the William Roper Hull Home in Alberta. In addition, the Judge ordered the B. C. municipality the child "belonged to", to contribute to the child's support. The municipality appealed the decision claiming that Alberta is out of the Court's jurisdiction; that the municipality owed no support to the child as no child belongs to a municipality.

The municipality lost on all counts. The B. C. Supreme Court held that:

1. The definition of "industrial school" under the Juvenile Delinquents Act "includes such an institution in a province other than that in which the committal is made ...". Therefore, the committal under the Juvenile Delinquents Act to an Alberta institution was proper;

2. There is "a clear parallel between alimony and maintenance for children as necessarily incidental to the consequences of divorce and an order for contributing to the support of a juvenile delinquent who is removed by the state from his family setting..." Therefore (with some hesitation on whether it should be the province or the municipality) the Court ruled that support had to be paid by the municipality for the maintenance of the child while in the Alberta institute; and

3. The Provincial Court Judge was correct in holding that the child belonged to the B. C. municipality within the provisions of s. 20(2) of the Juvenile Delinquents Act.

(Klippenstein v. The Queen January 2, 1981)

The Supreme Court of Canada held in 1979* that the confession of one accused cannot be used in the case against a co-accused.

Statements made by an accused are admissible in evidence as an exception to the hearsay rule. Another exception to the rule is res gestae, which means evidence so closely related to an act that it explains the character and nature of it. A statement, quite apart from the well known evidence rules in regard to its admissibility, can be part of the res gestae. This means (held the Alberta Court of Appeal) that where a statement is admitted as part of the res gestae, it is evidence for or against all participants in the trial affected by it.

(R. v. Zimmer January 1981 Vancouver Registry CA800646)

A man discharged a firearm for the purpose of scaring rather than injuring other persons. As a result he was charged with using a firearm in a careless manner under the Criminal Code.

In Provincial Court, the accused was acquitted as the trial judge found that there was no actual danger to anyone in the manner in which the firearm was used. The County Court reversed this decision on appeal and the accused took the matter to the B. C. Court of Appeal. This Court held that discharging a firearm for the purpose of scaring someone is capable of being categorized as being "careless" and upheld the conviction.

One Justice of the Court of Appeal reasoned that "the issue would be more accurately put as to whether, on the facts, the intentional discharge is careless, instead of is capable of being categorized as being careless".

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* McFall v. The Queen 100 D.L.R. (3d) 403.

(Rothman v. The Queen March 2, 1981 (unreported))

An accused refused to give a statement and was placed in a cell. An undercover officer shared the cell with him. The accused was apparently suspicious of his cell mate and "satisfied himself" that he was not an informant or a police officer. After the accused was, by falsehoods, persuaded that the man was not "a person in authority" he made some incriminating statements to him.

The trial judge obviously disapproved of the methods used by police to obtain admissions from the accused and he, in essence, applied the exclusionary rule by not admitting the statements in evidence.

This issue reached the Supreme Court of Canada which reiterated once again that a statement made by an accused to a person in authority must have been made voluntarily to be admissible in evidence. However, the test whether or not the person to whom the statement was made, was a person in authority, depends on whether the accused knew that the person to whom he made the statement was one who may effect the path of prosecution. In other words, the test is subjective rather than objective. In this case, the accused was satisfied he did not speak to a person in authority and therefore the statements he made were admissible without the Crown having to establish voluntariness on the part of the accused.

Author's Note

Two justices dissented. They favored the exclusionary rule out of concern "for the integrity of the criminal justice system" which of necessity requires the support and respect of the community it serves. In this case, 'tricks and lies' were applied 'to subvert the accused's express decision to stand mute'.

It is strongly predicted that if the proposed Charter of Rights becomes part of an entrenched Canadian Constitution, the exclusionary rule is inevitable.

R. v. H. Vancouver

A youth committed to the Willingdon Youth Detention Center accompanied a security officer to a movie. Without permission he left the theatre and disappeared. He was charged with escaping lawful custody. The Provincial Court Judge held

> ..."that a child confined to an Industrial School such as Willingdon is not in a penal confinement but in confinement for his benefit and reformation and accordingly is not in lawful custody as envisaged by s. 133(1) of the Criminal Code ..."

This was also the view of the Manitoba Court of Queen's Bench in R. v. L.W. in March of 1980 (53 C.C.C. (2d) 411). L.W. was committed 'for all purposes, to the care and custody of the Director of Child Welfare'. The Director placed the juvenile in a provincial industrial school from which the youth escaped. Such escape is not one described by section 133(1) C.C., said the Court. The detention was intended for the well being of the child and was not a penal confinement.

R. v. McBay County Court New Westminster Registry X80-5318 February 23, 1981

At his trial of 'refusing to blow', the accused testified that after driving he had swallowed three mouthfuls of mouth wash to reduce the smell of alcoholic beverage on his breath. Prior to actually having to blow in the breathalyzer the accused realized the mouth wash contained alcohol which would result in an inaccurate analysis. This, he claimed, gave him a reasonable excuse to refuse supplying a sample of breath.

Like the Quebec Court of Appeal did with an accused who drank liquor after driving his car*, the County Court of Westminster held that the fact of intake of alcohol after driving does not give a suspect a reasonable excuse to refuse giving a sample of breath. The evidence of such intake may at best be 'evidence to the contrary' to rebut the statutory presumption (s 237(1)(c) C.C.) that his blood-alcohol level at the time of analysis is the same as his blood-alcohol level at the time of driving.

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* R. v. Roy 11 C.R. (3d) 178

Legality of Ontario's Road Safety Program

(The Queen v. Dedman Toronto Motions Court December 19, 1980)

Where is the dividing line between

> **"the right of the individual to peacefully go about his affairs, free from needless and arbitrary interference"**
>
> **and**
>
> **"the right of the state to intervene and carry out all actions necessary for the protection of society as a whole".**

Under the Ontario Road Safety Program, a program known as R.I.D.E. (Reduce Impaired Driving in Etobicoke) was developed. It had as objectives the detection, deterence, and reduction of impaired driving. To this end it included the setting up of roadblocks where drivers are asked to produce driver's licenses, registration and insurance documents. If any evidence of drinking is detected, a demand persuant to s. 234.1 C.C. is made for the so-called road-side breath test.

The accused Dedman was stopped in a roadblock. Nothing improper had been observed about his driving or his ability to drive. There was a smell of alcoholic beverage on the accused's breath and a demand under s. 234.1 C.C. was made. The accused made four attempts to blow but all were inadequate for an analysis of his breath. He was charged with failure to give a breath sample and was acquitted in Provincial Court. The Court held the accused had a reasonable excuse to refuse giving a breath sample because:

1. police had no power by statute or otherwise to randomly stop motorists to detect if they are perhaps committing an offence;

2. the accused was not obliged to stop for such a check unless he committed an offence; and

3. if there was a provincial provision for a random checking of motorists, that provision would be ultra vires the provincial legislature as such measures can only be imposed by the Parliament of Canada (s.91 (27) B.N.A. Act).

The Crown appealed the acquittal by stated case.

The Appeal Court applied what is known as the "Waterfield test"*. In the Waterfield dispute the British Criminal Court of Appeal explored the general functions of constables" which must be derived from statute or common law. However, even when a constable is "within the general scope of such a duty" the use of powers associated with it must be justified.

> "Thus, while it is no doubt right to say in general terms that police constables have a duty to prevent crime and a duty, when crime is committed, to bring the offender to justice, it is also clear from the decided cases that when the execution of these general duties involves interference with the person or property of a private person, the powers of constables are not unlimited".

This means that the Waterfield test consists of two sub-tests as it were: the first being the determination if the action of constables is within the scope of duty and the second whether the powers exercised associated with that duty were justified.

Applying the Waterfield test, as the Supreme Court of Canada did on two occasions**, the Ontario Court of Motions held that detecting impaired drivers and thereby preventing injuries and damage is without a doubt a "conduct that falls within the general scope of police duties imposed by statute and recognized at common law". It was the other sub-test, whether it was justified to exercise that duty by means of arbitrary checks of persons using the highway, the Court had problems with.

The Crown relied on the provisions of the Ontario Highway Traffic Act to show the authority for the stopping of motor vehicles as was done in this road block. The Act provides, as do all its counter parts in other provinces, that a driver must, upon demand of a constable, produce the driver's license for the purpose of inspection; that a constable when he deems it reasonably necessary, may direct traffic to ensure orderly movement, prevent injury or damage or to take action in an emergency.

These submissions failed to pursuade the Court. It was very clear from all of the evidence that the purpose for the stopping was not for drivers to produce their driver's licenses or for the constables to direct traffic, but rather to detect impaired drivers. Hence the Court found that the stopping of the accused was not authorized by any law and an unjustifiable interference with his personal liberty.

* R. v. Waterfield et. al. [1964] 1 Q.B. 164 (C.C.A.)
** R. v. Stenning (1970) 10 D.L.R. (3d) 224.
Knowlton v. The Queen (1973) 10 C.C.C. (2d) 377.

Now the key question was whether this unjustifiable interference provided the accused with a reasonable excuse for failing to comply with the officer's demand for a breath test. The Court held that as much as the evidence of the analysis would have been admissible had the accused given a sample of his breath*, he had a "reasonable excuse" for failing to give a sample.

The Court considered the R.I.D.E. programme "laudable": deplored the sinfulness of the senseless slaughter drunken drivers cause on our highways; considered it 'distasteful' that one should escape conviction on what must appear to the public a "technicality"; and concluded that this case had received 'anxious consideration'. Yet, only a 'lawful' effort to reduce this adversity may be supported by the Courts. Said the Court:

> "A refusal to conclude that such circumstances afford a reasonable excuse within the meaning of s. 234.1(2) C.C., would rob these findings of any legal significance and would result in mere lip service being paid to the right of a law abiding citizen who is above reproach to peacefully go about his own affairs free from being stopped, questioned and interfered with by police for no apparent reason".

Crown's Appeal dismissed
Acquittal upheld.

Author's Note:

This is an Ontario decision and is not binding on the B. C. courts though it is likely to be very influential.

From our inquiries it seems that no further appeal from this decision is being considered.

* Hogan v. The Queen (1974) 18 C.C.C. (2d) 65 Supreme Court of Canada.

It may be of interest what circumstances have been raised in leading cases as a reasonable excuse and what the Courts' reactions have been:
*

1. A Jehovah Witness claimed the breathalyzer provisions interfered with his religious belief. His argument was rejected as the interference was coincidental and not the intent of the legislation.

2. The accused was acquitted of impaired driving. In the subsequent trial for "refusal" he claimed the acquittal proved he was not impaired at the time the demand was made and he therefore had a 'reasonable excuse' to refuse to give a sample. The Court held the acquittal did not afford him with such an excuse as the grounds and beliefs of the officer are the prerequisites to a lawful demand.

3. The accused was at the police station under arrest for impaired driving and refused to give a sample until he contacted his counsel. He was denied his right and was held to have a reasonable excuse.

4. The accused refused to give a sample of breath when demanded to do so under the 'roadside demand' provision of the Criminal Code (s 234.1 C.C.). He refused and demanded to firstly consult his lawyer. This was denied. The Court held that he was not 'detained' and therefore was not denied his right under the Bill of Rights. He did not have a reasonable excuse.

5. The accused had to be taken back 100 miles for the tests. After the demand was made the officer told him that there was no guarantee the accused would get a ride home. As the accused had no means to pay for accommodation or transportation, he refused to accompany the officer. He was held to have a reasonable excuse to refuse.

6. The lack of reasonable and probable grounds prerequisite to a lawful demand under s 234(1) C.C. has constituted a reasonable excuse to refuse giving a sample of breath. (Note that prerequisite to a demand under s 234.1 C.C. is 'reasonable suspicion').

* 1. R v. Chromokowski (1973) 11 C.C.C. (2d) 562 Man. Court of Appeal
2. Taraschuk v. The Queen (1976) 25 C.C.C. (2d) 108. Sup. Court of Appeal
3. Brownridge v. The Queen (1972) 7 C.C.C. (2d) 417 Supreme Court of Canada
4. Chromiak v. The Queen 49 C.C.C.(2d) 257 Supreme Court of Canada
5. R. v. Iron (1977) 35 C.C.C. (2d) 279 Saskatchewan Queen's Bench
6. R. v. Showell (1971) 15 C.R.N.S. Also see 5 C.C.C. (2d) 89
R v. Verischagin (1972) 6 C.C.C. (2d) 473. Sask. Court of Appeal
Rilling v. The Queen (1975) 31 C.R.N.S. 142 Supreme Court of Canada

I also remember reading a case where a man was about to comply with a demand made of him. While waiting for the instrument to be readied his very domineering wife arrived. She ordered him not to do anything of the sort. The accused explained to the officer and the Court that he was afraid of his wife and had to live with her and not the officer or the Judge. He was held not to have a reasonable excuse to refuse.

There have also been cases where the proven attitude or actions of police officers have demonstrated a possible malice or prejudice on their part. Also where certain circumstances have given a suspected impaired driver justified reasons to believe that the test would be inaccurate. These have been held to be reasonable excuses for failing to supply a sample of breath.

In March of 1980, the Court of Appeal of Nova Scotia also applied the 'Waterfield test' in a case where a family sued police officers for unjustifiable seizure of their car and assault.*

Constable 'B' was working radar and clocked a car at 100 k.p.h. in a 80 k.p.h. zone. The car was occupied by seven members of a Lebanese family, 'some young and some quite elderly'. They were on their way to the family owned restaurant, the corporate entity that owned the car. Constable 'B' stopped the car and asked the driver to go with him to the police car. There the constable formed the opinion that the driver had been drinking and made the standard breathalyzer demand. The driver agreed to drop in at the station on his way back from dinner and said when asked if anyone else in the car could drive it: "nobody is permitted to drive my car". In his testimony regarding his intention at this point, Constable 'B' said: "At that point I had determined that I would be taking Leo Ramia back to the police station for a breathalyzer test and I also determined that I would be seizing the vehicle".

From hereon in Constable 'B' became "the moving spirit in all that happened". Upon directions from 'B', two additional patrol cars, a paddy wagon, and a tow truck arrived at the scene. One patrol car was directed to transport the suspected impaired driver to the police station. Then Constable 'B' directed, without ascertaining if anyone else in the family could drive the car (two were licensed and had nothing to drink) that all occupants be removed from the car and it be hooked up to the tow truck and taken away. This was done. The family, inquiring on how they would get to their destination were told 'they had better walk'.. It was also suggested the family go back from where they came. (Lebanon).

The evidence of the officers was conflicting. Constable 'B' testified that the car was parked in a travelled lane of the three laned roadway, while the first officer who arrived to assist, said it was parked off the travelled portion of the road.

* Ramia et al. v. Burgess et al. 53 C.C.C. (2d) 384.

The other officers testified to be aware of occupants in the car who "were willing and capable of operating the car" while Constable 'B' maintained that the driver had told him that all occupants had been drinking.

The trial judge had said that Constable 'B' had acted in "an officious, overbearing way and showed lack of good judgement in what he did'. He should not have relied on the information passed on to him by a man he claims was impaired. He should have ascertained for himself if it was justified to have the vehicle towed away and the occupants left stranded.

Where the Waterfield test was applied in this civil dispute was to the defense that the seizing of the car was authorized by statute. The police officers (the defendants) relied on Section 245 of the Nova Scotia Motor Vehicle Act which in essence states that a peace officer may seize a motor vehicle with which an offence under the Act or the Criminal Code has been committed that has particular relation to motor vehicles. The vehicle may then be detained until the final disposition of a prosecution instituted for that offence. The section further provides that an officer may cause a vehicle parked in a tow-away zone to be removed and impounded.

In regards to the latter provision, the Court of Appeal said that the trial judge "had made very strong findings of facts against the appellants". In other words, the car was not in a tow-away zone.

The Court of Appeal held that the provision of the Motor Vehicle Act goes not beyond the limitations common law has placed on the seizing of property. Before the taking of property is justified, "it must be clear that it is relevant to the offence charged". Quoting the common law prerequisites to such justification, the Court reiterated that the property must:

1. be the fruit of the crime;
2. be the instrument by which it was committed; OR
3. constitute material evidence to prove the commission of the crime.

The Court did not have to go to the sub-test if authorized action by police was justified in the circumstances. The Court simply held that the Motor Vehicle Act section does not grant authority to seize a vehicle as was done in this case. The Court of Appeal found that the section was there "to provide security for a fine or indeed to facilitate the clearing from the road of a vehicle abandoned or wrongfully parked".

It may well justify seizure, "where an offence has been committed, if in the circumstances the vehicle cannot be left unattended and must be removed for safekeeping".

Accordingly, there was no justification to seize the vehicle. The plaintiffs were awarded $200 each in damages and $50 to the corporate owner of the car for damage and towing fees.

There was no majority judgement as to reasons, only as to the conclusion of this appeal.

Another of the three justices (also referring to Waterfield) held that section 245 of the Nova Scotia Motor Vehicle Act is "to a certain extent a statement of the common law". It only allows the seizure of a motor vehicle if it is required for evidentiary purposes or in addition to the common law, "payment of any fine later imposed". He did not see this to apply when a person is demanded to accompany an officer for a breath test, and also voted to dismiss the appeal by the officers.

The third justice rendered a dissenting judgement. He could not be disuaded by the reasoning that if the section was taken at face value a police officer could seize cars for the slightest infractions. He said that that was a problem for the legislature to solve. The statute was unambiguous and the authority granted by section 245 (N.S.-M.V.A.) was discretinary. That the officers had used poor judgement in this case was irrelevant and not for the Courts to review. He would have allowed the appeal by the officers.

The Supreme Court of Canada on 'Recent or Early Complaint of Rape'

Tim v. The Queen December 4, 1980

A girl arrived home and said to her sister: "Larry hurt me". An investigation resulted in a charge of rape being preferred against the accused. During his trial before a jury, the complainant insisted that she said, "Larry hurt me" and the sister testified, "Well, she just said that Larry had raped her". On a voir dire, the trial judge allowed the complainant to testify before the jury that she told her sister, "Larry hurt me". The accused was acquitted by the Jury but the Alberta Court of Appeal set aside the acquittal and ordered a new trial. This decision was appealed by the accused to the Supreme Court of Canada.

The evidence of "Larry hurt me" was admitted under the common law rule known as "recent complaint" (also known as "early complaint").

"Recent complaint" is a complaint by the victim of a sex offence given voluntarily or spontaneously at the earliest opportunity after the offence. Though the complaint seemed to be spontaneous and "early", 'Larry hurt me' is not a complaint of a sex offence. This meant, as far as the evidence rule is concerned, that there was no complaint and the jury should not have heart it, argued the defence.

The Supreme Court of Canada recognized that this evidence rule is being misunderstood by many and in need of reconsideration and revision. Firstly, 'recent complaint' evidence is not allowed, as popular belief has it, to prove facts or to corroborate the evidence of the victim. It is simply permitted to determine the credibility of the victim. Evidence of no complaint and silence on the part of a ravished victim, would make one doubt about her testimony. Therefore, the fact that she did complain spontaneously and as soon as reasonably opportune, is admissible in evidence to demonstrate her credibility. In other words, the absence of raising a hue and cry when so terribly offended makes anyone doubt if in fact the offending took place.

The Supreme Court decided that the trial judge had been correct in allowing the victim to testify before the jury that she told her sister 'Larry hurt me'. The Court said:

> "In my view, any statement made by the alleged victim, which is of some probative value in negating the adverse conclusions, the jury might be invited to make and could draw as regards her credibility had she remained silent, is to be considered a complaint".

To prove that a complaint was made, the Court held that the alleged victim must testify in regards to her ravishment. Then the recipient of the complaint can testify to support the credibility of the victim and not as evidence of the facts complained of.

When the trial judge has decided on a voir dire that there is a complaint, which was made spontaneously and at the earliest opportunity, he must allow it to be heard by the trier of fact.

The discrepancy in this case between the evidence of the victim and the recipient of her complaint was of no significance. As a matter of fact the Supreme Court of Canada held that the jury should have heard both versions of the complaint. It was the victim's conduct as distinct from the versions of that conduct or the consistency of it, that was important. The jury should simply have been told that it was their duty to determine what was said and to "attack whatever probative value" it deserved.

The Supreme Court of Canada gave the following summation to the questions arising from the appeal:

> "1. In a rape case, a complaint is any statement made by the alleged victim which, given the circumstances of the case, will, if believed, be of some probative value in negating the adverse conclusions the trier of fact could draw as regards her credibility had she been silent;
>
> 2. Before admitting a complaint as evidence, the judge shall hold a voir dire to determine:
>
> (a) Whether there is some evidence which if believed by the trier of fact (in this case the jury) would constitute a complaint;
>
> (b) That the complaint was not elicited by questions of a "leading and inducing or intimidating character";
>
> (c) And that it was "made at the first opportunity after the offence which reasonably offers itself".

3. In determining whether there is some evidence which, if believed by the jury, would constitute a complaint, the trial judge shall take into account evidence by the victim, if any, as well as that of any person recipient of that complaint.

4. Evidence by a recipient person is admissible on the voir dire and before the trier of fact only if the victim has testified as to the facts material to the commission of the offence; but it is not necessary that the victim need have testified as to the complaint itself."

Author's Note:

These reasons for judgement indicate that the Supreme Court is of the opinion that this common law rule should be reconsidered as the "soundness" of it is questionable. Other Courts have applied the rule regardless of the sex of the victim and in cases where consent is not in issue; "....those assumptions are even more difficult to accept...." said the Court.

The judgement also seems to indicate that the Court favors the application of the rule in not only sex offences but in all cases where the absence of evidence of a complaint would have an adverse effect on the victim's credibility.

This expansion of the rule has already been applied by some courts in cases of unlawful confinement, threatening and like offences which may result in hysteria or like emotions on the part of the victim.

Admissibility of Lawfully Intercepted Communications Between Husband and Wife

Regina v. Lloyd and Lloyd 53 C.C.C. (2d) 121
British Columbia Court of Appeal

The two accused, husband and wife, appealed their convictions of conspiracy with others to traffic in narcotics.

One of the interesting causes for appeal is their claim that the lawfully intercepted communications between them (man and wife) had been admitted in evidence during their trial. This, they argued was contrary to common law, the Evidence Act and section 178.16(5) of the Criminal Code which stipulates:

> "Any information obtained by an interception that, but for the interception would have been priviliged, remains priviliged and inadmissible as evidence without the consent of the person enjoying the privilege".

The authorization to intercept private communications named the husband and another person. As it turned out the accused lived with another woman away from home and several relevant telephone conversations were between the husband and his wife.

The two categories of privileged communications in Canada are those between husband and wife and solicitor and client. However, the B. C. Court of Appeal held that there is a difference between them.

It held that the information that passes between a solicitor and his client is privileged. Between man and wife what is privileged is the right to divulge or refuse to divulge the information passed between them.

The rule of the privilege respecting communications between lawyer and client is there for the protection of the client, not the lawyer. This means that whatever communication passes between them is privileged and inadmissible in evidence. However, the client may waive the privilege if he wishes the communication to be adduced in evidence. The lawyer has no such right to waive the privilege.

The information conveyed, for instance, by a husband to his wife is not privileged. "Rather the wife has the right to refuse to disclose it. She cannot be compelled to do so, although she may do so if she is properly called as a competent witness".

There is one exception to this. If the matrimonial communication is confidential, then a privilege similar to that of the "client" arises. If a person conveys information to his or her spouse on the basis that it is to be treated as confidential, the maker of the communication may claim the privilege. Should the Crown wish to adduce evidence of such intercepted communication, it could not do so unless that spouse consented.

The majority judgement rejected the appeal by the accused.

Please note that there is no unaniminity on this issue. The Alberta Court of Appeal held in 1979 (R. v. Jean and Piesinger 46 C.C.C. (2d) 176) that intercepted matrimonial communication is privileged.

B. C. Liquor Control and Licensing Act
Minors in Licensed Premises

Capozzi Enterprises Ltd. v. The Queen
B. C. Court of Appeal July 1981 CA800329

Two girls, who were and looked like minors, were served a jug of beer in the accused's pub and disco. Police checked the premises and preferred a charge against the company under section 42 of the Liquor Control and Licensing Act which prohibits the holder of a liquor license to permit an apparent minor to enter or to remain in the licensed establishment.

The accused company raised the defence of "due diligence".*

Where an employer is liable for acts committed by his employees, then if the offence was committed without the employer's direction or approval and if he (the employer) has exercised reasonable care to prevent the offence, the exercise of such "due diligence" may be a defence available to the accused employer.

Section 82 of the Liquor Control and Licensing Act states that "upon proof of the fact that an offence under this Act was committed" by an employee of the establishment the employer is a party to the offence and is liable as the principal offender even if the offence was not proved to have been committed under the employer's direction.

The defence argued that the offence section places liability on the employer if he "authorizes or permits" a minor to be on the premises. How can one authorize or permit anything that he does not know about? It was also submitted that the offence was one of 'strict' rather than 'absolute' liability and that therefore the defence of 'due diligence' was available.

Two of the three justices of the B. C. Court of Appeal who made up the panel could not be persuaded. In their majority reason for judgement they said that though the liability created by the Act was one not welcomed by the employers, the Legislators obviously must have thought that the infractions would be less frequent and the public better served by making the employer responsible and liable for the conduct of their employees. The language of the Act "is clear and governs" and the employer is "deemed to be a party without any of the limitations often used such as 'prima facie' or 'in the absence of evidence to the contrary'".

The Court of Appeal placed some significance to the fact that this Act's predecessor, the Government Liquor Act, stated that the employer was "prima facie" a party to the offence. The new Act does not include this term and the law makers must have wanted to place a greater responsibility on the employer.

Appeal by accused dismissed
Conviction upheld

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* The Queen v. The Corporation of the City of Sault Ste. Marie [1978] 2 S.C.R. 1299.

Admission to a Doctor

Regina v. Stewart 54 C.C.C. (2d) 93 (1980)
Alberta Court of Appeal

The accused, charged with murder in the first degree, was examined by a doctor to determine his fitness to stand trial. The doctor was also the Chief Coroner and had in that capacity examined the body of the woman the accused allegedly murdered.

The doctor, somewhat presumptuously, informed the accused at the introductory stage of the interview, that their communications were confidential and that he (the doctor) was not obliged to relate them to the Court.

When the doctor informed the accused that he had examined the body of the murdered woman, the accused 'blurted' out a statement which amounts to an admission, in that it placed the accused at the scene of the crime.

At the conclusion of the interview the accused asked the doctor to arrange with the prosecutor a change of venue and bail.

It turned out that the admission made to the doctor was the only direct evidence that placed the accused at the scene of the crime and the Crown adduced it in evidence. The Court admitted the statement and the accused was found guilty.

The accused appealed claiming that the doctor was a person in authority and therefore the statement would have to be voluntarily given for it to be admissible. The defence argued that the erroneous information the doctor conveyed to the accused regarding their communications, was an inducement sufficient to make the statement inadmissible.

The test to determine if a person is a person in authority is a subjective one. It is who and what the accused believed the person to be to whom he made the statement, at the time he made it. If he believed that person to be one 'who may influence the course of prosecution', then that person is a person in authority.

The Alberta Court of Appeal said:

> "The evidence is clear that he (the doctor) regarded himself as an agent for the Attorney General in conducting the examination; that he had been instructed to conduct it by the office of the Clerk of the Provincial Court Judges. He made it clear to the appellant that he was aware of the charge; he stated he had seen the body; he had, in fact, to do with the prosecution in his capacity as coroner; he advised the appellant of his conclusion that the appellant was fit to stand trial; and the appellant asked him to speak to the prosecutor about bail and a change of venue".

The Court concluded that there was evidence "on which it could be inferred that the doctor, to the mind of the appellant, was a person in authority."

Having established this, voluntariness became the issue. The reason why this is so important is that the objection of putting a statement in evidence is to prove the truth of its content and threats or false hopes may result in false statements.

The doctor's assurances, which he made in good faith that their conversation was privileged and that the Court would not hear about it, increased the likelihood of voluntariness and consequently the chances that the accused's statement was true. This is why even an untruth told by a person in authority to obtain a statement, may not affect its admissibility where it does not amount to a threat or a promise of temporal advantage. Said the Alberta Court of Appeal:

> "...it would appear to me that common sense dictates that this type of inducement to talk would tend to promote a free and voluntary statement. There is no pressure through fear or hope of a temporal advantage to give a statement that is likely to be untrue. Rather the doctor is offering the accused protection which would allow him to deliver the truth without fear of consequences. It does not seem logical to conclude that that protection would promote the giving of a false confession".

The Court concluded the statement was admissible and the accused's conviction was upheld.

Note: The doctor's presumption is not as flagrant as it may appear. Psychiatrists examine accused persons to determine for the Crown or the Court if a person is insane or was insane when he committed the crime. They have discussed in detail with such accused their actions and thoughts when they committed the alleged crime. As an expert witness, a doctor is allowed to give opinion evidence, but that opinion must be based on facts. Such communications have been allowed in the doctor's testimony, not to prove the guilt or innocence of the accused, but as a basis for the doctor's opinion regarding the accused's mental state.

In this case the statement was not a basis for the doctor's opinion and was given at the tail end of the interview after the doctor had told the accused that in his opinion he was fit to stand trial.

In determining whether the statement made to the doctor (a person in authority) was voluntary, the Court of Appeal explored a number of very interesting cases on this issue.

* 1. While in custody in the U. S., the accused, in need of unburdening his mind, told all to a Deputy Sheriff who gave his 'word of honour' not to tell anyone until the accused gave him permission.

This confession, in spite of the word of honour, was allowed in evidence. The B. C. Court of Appeal held that the fear of prejudice on the part of the accused was 'that he would suffer prejudice by an unauthorized repetition of his statement'. That was not a fear of prejudice if he remained silent.

2. Police falsely claimed that a co-accused had told them everything. Believing this the accused confessed. The B. C. Supreme Court trial judge said that the admitted false statement by police left him not satisfied that the confession was freely and voluntarily given.

3. Two women hit and robbed an elderly man who was released from hospital after a check-up. Police told the women that their victim was in critical condition. After this and a promise that her statement would not be used to incriminate her, one of the women confessed. The issue of voluntariness was finally decided by the Supreme Court of Canada which held that the outright lie did create a doubt about the voluntariness of the statement which had to be resolved in favour of the accused.

* 1. R. v. Frank [1970] 2 C.C.C. 102.
2. R. v. McLean and McKinley (1960) 126 C.C.C. 395.
3. R. v. McLeod (1968) 5 C.R.N.S. 101.

What came out clearly in these cases is that "bare-faced lies" reflect devastatingly on the credibility of the "person in authority". If the officer lied deliberately to extract a statement from the accused, the Court cannot rely on him being truthful about the other circumstances surrounding the taking of the statement. That then creates uncertainty about the voluntariness which must be proved beyond a reasonable doubt.

Police Refusing to Enforce Court Order in a Civil Matter

Contempt of Court

Leponiemi v. Leponiemi
Supreme Court of Ontario (not reported) April 27, 1981

Mrs. L. obtained from the Ontario Supreme Court, an order permitting her to remove her two children from the home of her estranged husband and to have custody of them for a period of five days.

Accompanied by three police officers she attended at Mr. L's home but he refused to release the children to her. Subsequently Mrs. L's lawyer tried to interest police to 'remove' the children, but the constables were advised by Crown Counsel and their superiors that they were to stay out of this. The lawyer was advised that if the sheriff's department would enforce the order police would keep the peace if this was necessary.

Mrs. L. returned to the Supreme Court, told her problems and the Justice responded by adding paragraphs to the original order which commanded:

1. that any peace officer within the County shall take immediate steps to obtain physical custody of the children and deliver them to the mother's home (208 km. away); and

2. that the Crown attorney and the police department be informed of the amendment to the order and that, being so informed, they shall be deemed to have received actual notice of the order's content.

Armed with the amended order Mrs. L. went again to police for assistance but to no avail. They refused to obey the order claiming:

1. that it was not proper for a judge to include, in custody orders, a direction to peace officers to assist in enforcing the order;

2. that the enforcement of the order was the function of the County sheriff;

3. that the order failed to authorize to forcibly enter the home of Mr. L. to remove the children; and

4. that the enforcement of the order was a matter of serious concern as the distance would take officers out of their jurisdiction and Mrs. L. might not have been home when they got there with the children.

As a result of the refusal to enforce the order, an application was made to the Supreme Court for a remedy in respect of an alleged Civil contempt by Mr. L., the police chief, and the two constables who were asked to remove the children as ordered by the Court.

The order was issued by a Court of superior jurisdiction which "possesses a responsibility that is inherent and founded on statutory provision, to oversee the welfare of children, and that includes the supervision and control of the relationship between parents and child". Consequently the Court has authority to enforce compliance with its order concerning custody of children.

The Supreme Court decided therefore that the order was proper and held that for the purpose of the order the constables were peace officers. Expressing curiosity why Mrs. L's counsel or the officers had not called in the sheriff if they felt that enforcing the order was more within his function than that of police, the Justice held that the officers' outright refusal to enforce the order amounted to contempt of the Court. With considerable sympathy for their dilemma they were fined $200 each or one day in jail in default.

Mr. L's defence was that he had refused to obey the original order as he was entitled to receive a copy of the order. He said that when he heard of the amendment he had the children packed and ready to go, but no one came. The contempt displayed by his refusal to comply with the original order resulted in a fine of $300 or 3 days in a common jail in default.

The police chief escaped liability. Although he is vicariously liable in respect to torts committed by members of his force, he cannot be so liable for contempt unless he was directly involved or had knowledge of the contempt.

NOTE:

The dilemma of the constables was not only that they were ordered not to enforce the order and so advised by Crown Counsel, but also their reliance on a memorandum from a Provincial Court Judge. It related how a meeting was held with Judges of the Family Division of the Provincial Court and that it was agreed that authority did not exist for those judges to direct a peace officer to enforce a custody order and that they would refrain from doing so.

The Supreme Court held that the memorandum was not binding on police and that it afforded no excuse to refuse to act under an order of the Supreme Court requiring a peace officer to assist in enforcing a custody or access order.

The Provincial Court is not a Court of Superior Jurisdiction and there are judicial opinions that a Judge of a Provincial Court dealing with provincial family law, cannot issue such an order unless there is specific enabling legislation. In other words, laws that specifically authorize such an order.

It would appear that the Supreme Court holds the view, that in circumstances like these, the distinction between the function of police and sheriff is merely one of administrative policy by the Province in its constitutional mandate to administer justice, rather than some inherent or devine legal assignment. This Court of Superior Jurisdiction ordered any peace officer to enforce the order and it was not about to be concerned with what category of peace officer was organizationally employed to do what. Hence the Justice's curiosity on why no one had called in the sheriff if he was enforcing the order.

"Noisy Party"

Regina v. Barker, B. C. Provincial Court, May 8, 1981 (not reported)

The Esquimalt Police were called to a "large, boisterous, house party" in the early morning hours of a day in June of 1980.

In answer to the complaints from the neighbors, the Esquimalt police attended three times at the accused's residence, the first time to caution, the second time to break up the party (arresting three persons in the process), and finally to arrest the accused for the offence under section 387(1)(d) C.C. (obstructing, interrupting or interfering with any person in the lawful use, enjoyment or operation of property). The accused entered a plea of not guilty and a trial was conducted.

There was an abundance of evidence of bottle throwing, trampling over neighbors' properties, noisy cars, etc. The Court emphasized that the accused could not be held responsible for this. Those individuals are responsible for their own acts. What the Court zeroed in on was her failure "to stop the noise and disturbance that emanated from her house". Said the Court: "She was the only person who lived on the property who was physically present and able to deal with the situation." This remark was made specifically in respect to the third occasion that police attended at her house. It was the noise and disturbance at the time that disturbed "the neighbors who testified in Court."

The kernel of the reason for judgment reads as follows:

> "In my view, it is not necessary for a conviction under this section, that the police should have warned the occupant, or that the occupant should have been given a chance to control the party. The occupant had a duty to make sure that whatever was happening was not going to interfere with the enjoyment by the neighbors of their property. This person should have done something about it. She says she could not. I do not accept that because it appears clear that she did not try. If she had taken steps to have the noisy people leave the property, she might have been successful. It appears that others were successful in having the police attend and clearing the house. She did nothing of that sort; she did nothing at all to carry out the duty which she had to do, namely to stop the noise and disturbance emanating from her house. I am not suggesting that it was entirely her fault. I am not suggesting that she was the main person at fault, but it is clear to me that she was a person who was at fault in this matter; and I therefore find her guilty as charged."

Note: This case was brought to our attention by Deputy Chief Constable W. Wyatt of the Esquimalt Police Department. We thank him for forwarding to us the Reasons for Judgment by Provincial Court Judge G. S. Denroche of Victoria, B. C.

USE OF THE POLICE FIREARM

Written by B. J. Bjornson, Cpl.
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81-07

The use of the police revolver is dealt with in training when discussing dangerous or potentially dangerous situations that a policeman may encounter.

In all of these types of situations, explicit instruction is given to consider the protection of life as paramount. Rather than forcing kindling, or adding to an explosive situation, police should use the least amount of force possible to control the situation. This may mean letting the offender go in order to protect and save the lives of innocent people.

As police, we must fully understand that we will be held responsible for any actions we do in relation to the use of our service revolver. We must therefore be able to justify our actions at all times.

It is impractical to define specifically when to have the revolver out of the holster or when to fire it. This is because every situation is different and has different conditions or variables. This area is neither black nor white.

Police must have an appreciation, awareness, and understanding of when the use of the service revolver may be appropriate. This is accomplished by lecturing in relation to specific areas of potential danger and by class discussion. The class discussion reinforces the aspect of awareness that police must have when confronted with serious situations.

We must evaluate and assess all the variables and conditions of every situation in order to come to a justifiable decision of whether the use of the revolver is appropriate. We must then be able to fully justify this decision and any subsequent action that is taken.

Investigation and Patrol discussion centers around situations where the use of the police revolver may be appropriate.

The use of deadly force or discharging a police revolver with intent to stop an offender is discussed. However, this area is best dealt with in Legal Studies training where the specific criteria that is necessary in order to use this force is studied.

Investigation and Patrol discussions deal with dangerous or potentially dangerous situations where it is considered appropriate to have the police revolver "at the ready". "At the ready" is a phrase which means:

- the constable's hand may be on his revolver butt with the holster strap unsnapped, but where the revolver is still in the holster;

or

- the revolver may be drawn and pointed towards the ground, with the trigger finger resting on the trigger guard, NOT on the trigger.

Types of situations to consider are:

Hold-Up or Bank Alarms

It is not known whether the alarm is a confirmed hold-up or false. The police should react as though the alarm is confirmed. Sufficient back-up units must be requested and attend prior to any action being initiated.

In this situation, it is recommended that the police respond with their revolvers "at the ready".

Searching Commercial or Residential Buildings for Burglars

All the conditions and information received must be assessed before deciding whether the revolver should be "at the ready".

Vehicle Chases - Pursuit Chases

One of the most difficult situations in police work. There are two unknown variables. The speeding vehicle may be driven by a teenager, bank robber, a person who has too many speeding tickets, or a criminal who has just committed a homicide.

Police must be aware of these possibilities. We must also have the ability to effectively control our anxiety level during these stressful situations and be able to cope with the added adrenalin our bodies produce. This ability comes not just with experience but more from making a concerted effort to keep a clear head during these times. The greater the officer's individual ability and stress tolerance, the more likely he is to make an accurate, justifiable decision regarding the use of his revolver in this situation.

This is not a clear cut situation. The policeman must react to the way the chase develops. It is stressed that consideration be given to abandoning the chase and letting the offender go if it becomes apparant that the lives or safety of innocent people, the police, or the offender is in jeopardy. Other situations that lend themselves to becoming dangerous are:

Dwelling House Drug Searches
Man with a gun calls
Barricaded (armed) man calls
Possible suicide attempts

In relation to these situations, we as police should consider having our guns "at the ready".

In conclusion, we must be aware of our revolver and the appropriate times to consider its use; it is stressed that the use must be legally justified. We must have reasonable and probable grounds to believe our lives, or the lives of others, are in jeopardy and no less violent means are available to accomplish this purpose.