ISSUES OF INTEREST

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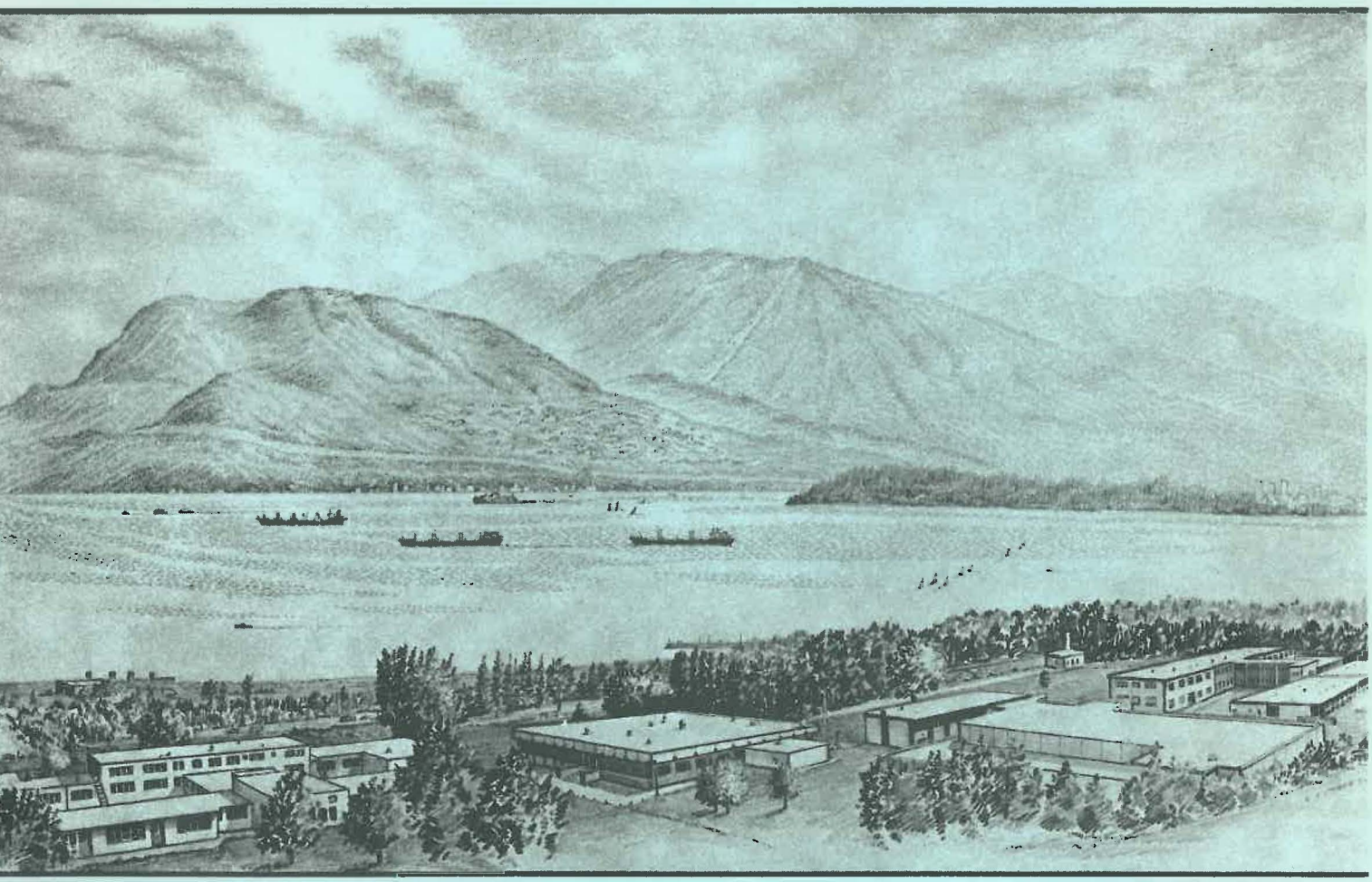

POLICE ACADEMY

Written by John M. Post

July 1984

Justice Institute
Of British Columbia

4180 West 4th Avenue
Vancouver, B.C.
V6B 4J5

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OUR FREEDOMS AND PROVINCIAL AND MUNICIPAL ENACTMENTS

Regina v. Reed, County Court of Westminster, Chilliwack Registry #385/82, January 1984.

In our free and democratic society there has always been a strong support for our fundamental freedoms History has recorded persecutions of those who did not subscribe to the same theological theories of the state church or the supression of those who dared to speak out against tyrannic or oppressive governments. It taught us never to erode the freedoms of religion, speech, association and the like. Thomas Jefferson, in the beginning of the last century, warned that when these freedoms are exercised adversely to our personal interests they are inclined to become unpopular with the majority. Particularly when "freedoms" are exploited by the criminal element or by those perceived to belong to the lunatic fringe, society is inclined to allow or even demand exceptions to or limitations of these freedoms. President Jefferson concluded that if they can be restricted or removed to silence those who annoy us, they can equally be limited for social, political, economic or religious purposes. He warned that relinquishing any of these freedoms for things like national security or administrative convenience would, considering human nature and the omnipresence of those addicted to power, cause us to lose them all. (Truer words were never spoken).

However, our right to tranquility and privacy must also be considered. Distinct from the exercise of a "right", the exercise of a "freedom" by one individual does not place an obligation on another (he or she is free to speak but I am not obligated to listen). Exercise of freedoms is inclined to create conflict and excessive exercise may well render someone liable. Slander is a prime example of this.

The common law has always attempted to balance these conflicting interests and prevented erosion of our freedoms, which are summarized and reiterated in a statute known as the Bill of Rights. It was claimed by many that the common law and an ordinary statute like the Bill of Rights were inadequate to ensure us that these rights were more than a stroke of the pen in the Parliament of Canada.

The Bill of Rights which can be repealed or amended by a simple majority in the Canadian Parliament does not apply to the provinces or

municipalities. It was considered akin to a pledge by John to love Mary by the former putting it on his arm with ink. It simply would wash off when John would start to feel differently. On the 17th of April of 1982, by including a Charter of Rights and Freedoms in our patriated constitution, we tattooed the assurance of these freedoms on Canada's chest. This entrenchment of these rights and freedoms includes a complicated means to amend or repeal them, which would be equivalent to cosmetic surgery in our analogy.

Our tattoo is one we must not cover up or only display when we are in company that appreciates such decoration. It is something we must have consistently on display regardless of the mood of the season. Being bare chested like that at all times may bring considerable discomfort and at other times, relief. However, that is the price we pay for consistency. Human propensities considered, not being able to shut up those who annoy us or to rid ourselves of nuisances is a discomfort.

Necessary restrictions of the freedoms we are constitutionally assured of, must be consistently applied to all Canadians, and only the Federal government can legislate those restrictions. Consequently, the regulatory type laws the provinces and municipalities create, are not operable when used in situations where it deprives a person of guaranteed freedoms.

For instance, a municipality may regulate the use of sound systems. Despite the nuisance in each situation being the same, there is a distinction between using it to profess one's political or religious beliefs or using it for commercial purposes.

In this case, Mr. Reed, the accused, was a dissident Jehovah Witness who had been expelled from the Assembly. He sincerely believed he should make an effort to get his message across to his fellow believers. For this purpose he used a bull horn and addressed the congregation members when they approached the church building to attend services.

The municipality in which he did this (the District of Chilliwack) has a by-law which obliges a person who wants to use a public address system in the outdoors, to obtain permission from council.

Mr. Reed who found himself charged under the by-law conceded to all of the circumstances but argued that a by-law cannot stand in his way to "his right to freedom of religion and of expression" as guaranteed by the Charter of Rights. The trial Judge did not accept Reed's arguments and convicted him. Mr. Reed appealed.

The County Court emphasized that the Charter made the freedoms of religion and expression a constitutional fact and supreme to all law. The by-law was an expression of a popular wish which could not interfere with the accused's freedom to believe what he wished and to express those beliefs.

Conviction set aside.

* * * * *

AS SOON AS PRACTICABLE" - UNEXPLAINED DELAY

Regina v. Wardlaw, County Court of Vancouver, Vancouver Registry #CC831585, February 1984.

At 11:23 p.m. a constable stopped the accused and demanded breath samples from him. At 11:35 p.m. they arrived at the police station. The technician, a Corporal, arrived at 11:45 p.m. All three met in the breathalyzer room where the Corporal prepared the instrument. When this was completed the Corporal ordered the constable to wait with the accused in another room. Approximately 30 minutes later the Corporal called the two back in and analyzed the accused's breath.

The corporal did not testify and the constable could not explain why he and the accused had been ordered out of the room.

The accused was convicted of over 80 mlg., and appealed. The County Court Judge held that the Crown must justify any delay in the taking of breath samples. Contrary to the trial judge's views, the County Court held that the unexplained delay caused a lack of showing that the samples were taken as soon as practicable.

Accused acquitted.

* * * * *

CONVICTION ON FINGERPRINT EVIDENCE ONLY

Regina v. Gibbs, County Court of Cariboo, Quesnel Registry #44/82, April 1983.

Gibbs, the accused, was fingerprinted in June of 1982 under the provisions of the Identification of Criminals Act. His prints were compared with those a robber left at the scene of the crime four years ago. The prints were found to be a perfect match. As a consequence a charge of robbery was preferred.

The robbery had taken place in the office of a motel. Two young men had come in and had filled out a registration card. When the proprieter saw that no licence number was given he informed the prospective guests that without that information he would not rent them a room. This led to the young men assaulting the proprietor and demanding all the money he had. A scuffle resulted and the robbers took off without getting anything. The fingerprint was found on the registration card.

The accused did not call any witnesses and did not testify. The motel proprietor could not identify the accused. The question was whether there was evidence upon which the Court could convict the accused.

The registration cards were out of reach of persons who are on the customer's side of the office counter. It was, therefore, a perfectly reasonable inference that the accused committed the offence of robbery.

Accused convicted.

Note: One may wonder how the facts add up to robbery. On the surface it seems an attempted robbery. However, the charge depended on the definition of robbery in s. 302(c) C.C. which states:

> "Everyone commits robbery who assaults any person with intent to steal from him".

* * * * *

PROTECTION OF PRIVACY
WINDFALL OR ANTICIPATED EVIDENCE RESULTING FROM AN AUTHORIZATION

The Queen v. Commisso, Supreme Court of Canada, October 1983.

The Court had granted an authorization to intercept the private communications of the accused and others in respect to the importing of heroin. A day before the authorization expired the police told Crown counsel that the interceptions had revealed that the persons mentioned in the authorization and an additional person, were now into counterfeit money and that they had a quantity of it in their possession. They asked that the authorization be amended to include that crime as well as the additional person. Crown counsel deemed this unnecessary and the authorization was simply renewed unamended.

Charges arose from the counterfeit money and as predicted, the accused counted on the exclusionary rule in the Privacy Act which states that evidence obtained by the interception of a private communication is inadmissible unless the interception was lawfully made. The B. C. Court of Appeal* agreed with the accused and held that where evidence like in this case is anticipated, the Crown must inform the Court. If it fails to do so, the authorization in respect to offences other than the one for which it was issued, is void. Please note that the Court referred to incidents where the evidence is anticipated and not where it is "a windfall" situation.

The Crown took the B. C. Court of Appeal ruling to the Supreme Court of Canada which by a 5:4 decision reversed the B. C. Court of Appeal precedent.

Firstly the Supreme Court of Canada held that it was wrong to make a distinction between "anticipated" and "windfall" evidence. This means that if an authorization is obtained in regards to, for instance, the importing and trafficking of heroin, and the interceptions reveal a conspiracy to rob financial institutions, the authorization can be renewed in respect to the heroin (if indeed that investigation is continued) and all of the evidence obtained by the interception in respect to the robberies is perfectly admissible in evidence. The Supreme Court of Canada held that the protection of privacy is there for precisely what its title indicates. The exclusionary rule is there to render valueless evidence that is obtained by violating the provision of the Act. However, if it has been shown to the Court

* See page 6 of Volume 9 of this publication. Also 66 CCC (2d) 65

that a person is involved in criminal activities and an authorization issues, then the exclusionary rule has lost its purpose of discouraging authorities from invading someone's privacy.

An authorized interception of a private communication is lawful and the evidence thereby obtained therefore admissible in evidence.

Crown's appeal allowed.
Conviction restored.

Note: It is predictable that despite this majority decision, we have not heard the last of this issue. It was, for me at least, surprising that the Court held as it did. However, there are many other legal conflicts ongoing in respect to the meaning of a lawful interception and some of them are on the doorsteps of provincial Courts of Appeal and the Supreme Court of Canada.

What I am implying is that informing the court at the time of renewal of newly discovered criminal activities seems reasonable, and will in the end be least harmful to law enforcement interest. Someday someone will draw a comparison between the Privacy Act provisions and those related to search warrants. In the section that states that during a lawful search we may seize anything not mentioned in the search warrant, of which we have reason to believe was obtained by the commission of an indictable offence, Parliament must be referring to "windfall" evidence. If it is "anticipated" evidence the judiciary has told us many times that it should have been included in the application for the warrant. Although there are, from a practical point of view, distinctions between the documents, a search warrant and an authorization are both judicial licences to invade someone's privacy. This relaxation of the search of private communications comes therefore unexpected and is surprising.

* * * * *

ADMISSIBILITY AND RELEVANCY OF EVIDENCE OF PROPENSITY

Morris and The Queen, Supreme Court of Canada, October 1983.

Morris was convicted of conspiracy to import and traffic heroin. The Crown had put in evidence a newspaper article found in the possession of the accused Morris entitled: "The heroin trade moves to Pakistan". The trial judge had admitted the newspaper clipping in evidence and the central issue in the accused's appeal was the admissibility of that clipping. Needless to say the Crown tended to imply that the accused had an inclination and was predisposed to deal in heroin. At least it showed his interest in heroin being available in Pakistan.

The interesting question is when such evidence of propensity and inclinations of an accused are admissible. Needless to say that this question can arise in many circumstances. A person may have a list of addresses on him, of places which were all broken into; cheque forms may be found on a person suspected of fraudulent dealings with cheques; a book on how to cultivate marihuana along with other necessary paraphernalia to grow the plant may be found in possession of a person who claims that he thought the seedlings he had in his greenhouse were geraniums, etc.

The question has never been whether such evidence is relevant, but if it is fair to admit it. Its probative value may be limited in determining the guilt or innocence of an accused. It is not very likely that a judge, or any judge of the facts for that matter, will read too much in such evidence.

In any event, the question in respect to the newspaper clipping was put to the Supreme Court of Canada and in a 4:3 decision that Court spelled out the law on this issue. Firstly all the Justices are of the opinion that the newspaper article was relevant. Secondly, the Court referred to the possession as "unexplained possession". In other words, it is important what the accused had to say about the possession. Thirdly, there must be a connection between the evidence that demonstrates a propensity and the offence alleged. In one case an accused was charged with importing marihuana and the Crown sought to have evidence admitted that showed the accused was a user*. The Supreme Court had held that there "is no connection or nexus between these two facts".

* Cloutier v. The Queen [1979] 2 S.C.R. 709.

In this Morris case, however there was a connection between wanting to import heroin and an article that informs the accused where and by what means it is available. As a matter of fact, it ought to be of "vital interest" to such a person.

In this case, the evidence showed that Hong Kong was the source of the heroin while the article referred to the drug trade in Pakistan.

The Supreme Court said that that simply means that the evidence is of less weight than had the article referred to the Hong Kong trade. The evidence is relevant and admissible. The fact that the article referred to Pakistan while the accused's source was Hong Kong was simply a difference "in degree, not kind"

Accused's appeal
dismissed.
Conviction upheld.

* * * * *

CERTIFICATE OF ANALYSIS REFERRING TO "POT" AS AN ABBREVIATION OF POTASSIUM.

Regina v. Gardner, County Court of Prince Rupert, Smithers Registry #3600Z, August 1983.

The accused appealed his conviction of "over 80 mlg." on the basis of the technician's certificate mentioning a substance which is not suitable for the purpose of analysis in the Borkenstein Breathalyzer.

The certificate said the "an alex pot. bichromate breath test soln. lot ..." was used. According to the Concise Chemical and Technical Dictionary, "pot." is an abbreviation for something entirely distinct from potassium. This "pot" is a substance not suitable for the breathalyzer. The the defence claimed that this was "evidence to the contrary" and the readings recorded in the certificate should not be accepted as the blood-alcohol content at the time of driving. However, the technician testified and told the Court that by using the abbreviation "pot." he referred to potassium. The trial judge felt that the testimony negated the defect and the accused was convicted.

The County Court Judge held likewise and said that the technician's testimony confirmed that the solution used was suitable for the breathalyzer and the certificate evidence was of assistance to the Crown.

Accused's appeal
dismissed.
Conviction upheld.

* * * * *

Note: There is at least one other case* where an argument arose over the same abbreviation. The lesson to be learned is not to abbreviate on certificates.

* R. v. McDonald Vancouver Registry County Court CC820937

DOES TRANSPORTING AN UNSUSPECTING VICTIM TO A PLACE WHERE HE IS THEN UNLAWFULLY CONFINED, AMOUNT TO KIDNAPPING?

Regina v. Metcalf, B. C. Court of Appeal, Vancouver CA 000218, December 1983.

Mr. Whyte, a friend of the accused, had attended secondary school with a Mr. Molner. Whyte phoned Molner to say that he would like to meet him at a certain place to reminisce. They met and Mr. Molner entered the car to sit next to Whyte who was driving. Whyte introduced Molner to the accused who was in the back seat. Whyte invited Molner to come with him to his place (Whyte's) to have a beer. Molner accepted and they drove to a garage where Whyte claimed to live. The conversation was consistent with a reunion of old school mates and there was nothing to trigger suspicion on the part of Molner. After they did some drugs and drank some beer, the accused and Whyte threatened Molner with a knife and tied and gagged him. The rest of the facts are similar to what we see in movies in terms of messages, demands, rendez-vous and a garbage can in which to deposit the ransom. It all led to the apprehension of the accused and the liberation of Mr. Molner who was in need of medical attention due to consequences of physical abuse, pills he was forced to take, and lack of food during the ordeal.

The accused Metcalfe was tried and sentenced to life imprisonment for kidnapping. Appealing his conviction, the accused claimed that it was Whyte who transported Mr. Molner and that his involvement started at the garage. Therefore, he could at the most be convicted of unlawfully confining Mr. Molner. He relied on the distinction between these two crimes. Kidnapping includes transporting the victim while unlawful confinement does not have such an ingredient. The accused claimed that Mr. Molner was transported not against his will, and in any event if there was any transporting involved which would convert the unlawful confinement into kidnapping, Whyte was the culprit and not he. In any event, Mr. Molner was not induced to come for the ride. However, should the Court find that the accused was a party to the transporting of Molner, he submitted that it was not linked to the unlawful confinement because there was no threat, violence, or inducement used to make him come along.

The B. C. Court of Appeal disagreed with the accused's interpretation of the law and adopted the definition given to kidnapping by the North Carolina State Supreme Court*:

> "Kidnap means the unlawful taking and carrying away of a person by force or fraud against his will".

* State of North Carolina v. Gough (1962) 126 S.E. 2d. 118.

The Court held unanimously that an inducement was held out to the accused to take the ride. It was the "talking over of old times and having a beer". It was also found as a fact that the accused and Whyte had, from the outset, a common purpose. Therefore, the accused was a party to the transporting of Molner. The inducement was false and, therefore, amounted to fraud.

The B. C. Court of Appeal was of the opinion that saying that forcible taking can only constitute kidnapping is too restrictive a view.

> "The fact that the person is not forcibly conveyed by a strategem of an inducement can make no difference. The crime is complete when the person is picked up and then transported by fraud to his place of confinement".

Accused's Appeal
dismissed.
Conviction upheld.

* * * * *

WHEN MAY A COURT DRAW AN INFERENCE ADVERSE TO THE ACCUSED, FROM EVIDENCE THAT HE FAILED TO GIVE SAMPLES OF HIS BREATH?

Regina v. Ranger, B. C. Court of Appeal, Vancouver Registry CA 000224, December 1983

The police officer who made the demand of the accused to give samples of his breath failed to testify that he had reasonable and probable grounds to believe that the accused had been driving a motor vehicle within the last two hours while his ability to do so was impaired by alcohol. Neither was evidence adduced from which such belief could be inferred. This had caused an acquittal of a charge of "failing to blow". However, the accused was convicted of impaired driving. The Court had to rely on the provision in section 237(3) of the Criminal Code which simply states that where a person is tried for impaired driving an adverse inference may be drawn from evidence that he failed to comply with a demand for breath samples. The Court had held that despite the acquittal of "failing to blow", it could still draw adverse inferences from the evidence that was before the Court. After all, an acquittal may mean that there was no proof beyond a reasonable doubt that all the ingredients for "failing to blow" were met. This does not mean that there was no evidence of such failure. The accused disagreed with this view. Claiming that the acquittal precluded the Court from drawing any inferences adverse to him in regards to his "impaired drivng" charge, he appealed his conviction to the B. C. Court of Appeal.

The Court of Appeal fairly predictably held that there cannot be a hard and fast rule on the issue raised by the accused. Whether or not evidence of "failing to blow" may be considered for the purpose of section 237(3) following an acquittal on that charge, depends entirely on the reasons for the acquittal. The evidence eligible for the adverse inference must be "evidence that the accused, without reasonable excuse failed or refused to comply with a demand made to him by a peace officer under section ... 235(1)".

In this case the Crown's position had to fail. The subsection refers to evidence of a failure to comply with a demand made under section 235(1) C.C. In this case the accused was acquitted because there was no demand under section 235(1) C.C. due to no evidence of grounds prerequisite to it. Hence, section 237(3) C.C. could not be applied.

However, the Court of Appeal did not hold that the subsection can only be applied if there is a conviction or evidence sufficient to support a conviction of "failing to blow".

The Court stated unanimously:

> "If the conclusion (the acquittal) is based on something other than a finding that the elements of a lawful demand under s. 235(1) were not present, then it will be open to the judge to rely on the inference authorized by s. 237(3)".

Appeal allowed.
New trial on impaired driving ordered.

Comment: There is (in my view at least) some confusion on the issues argued in this case. Courts having deliberated similar patterns of facts and procedures, have held that where there is an acquittal for "failing to blow" the matter cannot be tried again in subsequent proceedings. After all there are doctrines in place (res judicata, issue estoppel, both related to double jeopardy) to prevent inconsistent conclusions. I think the B. C. Court of Appeal in essence held that there is a considerable distinction between the accused being acquitted due to the burden of proof not having been met, and there being no evidence of "failure to blow". The Court of Appeal hinted that particularly where the acquittal of "failing to blow" is based on "purely technical grounds", the chances of section 237(3) C.C. applying increase.

Although this was not used as an example but it seems fair to predict that where an accused who is found to have had a "reasonable excuse" for "failing to blow", and is consequently acquitted, evidence that he in fact did not give samples of his breath may not be eligible to be used for the purpose of the adverse inference provided in section 237(3) C.C. The law states that if the accused's excuse is reasonable he can refuse to blow with impunity. It is not likely that the Courts will exclude the inference authorized in section 237(3) C.C. from that form of impunity.

What should also be mentioned here is that the officer's failure to establish his grounds necessary for making a proper demand for samples of breath, is perhaps caused by a misconception regarding the rules of evidence. The accused had been involved in an accident. The officer attended the scene and received information about the accused and his condition. Although the reasons for judgment are not clear, it seems that the accused left the scene and went home. That is where the officer made the demand. The officer, perhaps believing that he could not relate to the Court what he had learned from others, had simply testified that he had gone to the accused's home and made his demand. If the witnesses at the scene were called, perhaps they did not testify that they had told the officer what they saw.

Consequently there was no evidence of the officer having the reasonable and probable grounds to make the demand.

Crown counsel should have asked the officer in direct examination what grounds he had to make the demand. Said the Court of Appeal on this point:

> "Evidence from the officer of what he learned from others before making the demand is admissible on the question of reasonable and probable grounds, and that is so whether or not the trial is only of a charge under s. 234 or 236 or also of a charge under s. 235(1)."

* * * * *

INFORMATION OF AN INFORMANT BEING THE GROUNDS FOR A SEARCH WARRANT
VALIDITY - ADMISSIBILITY OF EVIDENCE OBTAINED
BY THE EXECUTION OF THE WARRANT

Regina v. Hartley and Graham, County Court of Yale, Kamloops No. 593 C.C., October 1983.

A police officer swore when applying for a search warrant that he had reasonable grounds for believing that a narcotic was kept in the dwelling of the accused Hartley. He attested that his grounds for so believing were based on confidential information. In his testimony at the accused's trial the officer told the Court how his informant had overheard a conversation (to which Hartley was a party) which indicated that a quantity of narcotics was stored at the Hartley home. The search paid off, the accused were charged and challenged the admissibility of the evidence found.

The application for a search warrant did not contain any of the overheard conversation and only mentioned that there was "confidential information" that gave the officer grounds for his beliefs. However, the officer had gone to the home of the Justice of the Peace where he had told him in casual conversation, what the informant had passed on to him. The Narcotics Control Act stipulates that the Justice must be satisfied by information on oath that there are reasonable grounds for believing that a narcotic is in a home before he can grant a search warrant. Defence counsel claimed that although the officer told the Justice of his grounds, he did not give them under oath and they were therefore not part of the sworn application. Crown counsel disagreed and submitted that what the officer told the Justice was included in the application and was adequate to satisfy the Justice.

Reviewing an abundance of cases on this point the County Court Judge concluded that the wording in section 10 N.C.A., being identical to its counterparts in the Criminal Code, means that the information which must satisfy the justice that the officer has the necessary reasonable and probable grounds, has to be information committed to writing in the sworn application for a search warrant.

Evidence of the found narcotics was excluded

Comment: Despite section 8 of the Charter of Rights and Freedoms it is doubtful that an invalid search warrant automatically results in

the evidence obtained from its execution being excluded.

It seems that the Court first has to call on the accused to show on the balance of probabilities that his right to be secure from unreasonable search had been infringed because on account of the search warrant being technically invalid. Then, after having considered all circumstances, the Judge has to find that admitting the evidence would bring the administration of justice into disrepute. Only then could he have rejected the good fruits that were harvested from the poisonous tree.

It seems that the Judge in this case applied the strict exclusionary rule, which we, by virtue of section 24 of the Charter, do not have.

* * * * *

IS ADMISSIBILITY OF A BREATH ANALYSIS CERTIFICATE DEPENDENT ON THE DEMAND FOR BREATH SAMPLES HAVING BEEN MADE ON THE REQUISITE REASONABLE AND PROBABLE GROUNDS?

Regina v. Gibson, County Court of Westminster, New Westminster Registry X82-10226, November 1983.

The accused was charged with "over 80 mlg.". The trial judge admitted the certificate of analysis in evidence but then held that, due to a lack of evidence to show that the demand for the breath samples was made on the well known requisite reasonable and probable grounds, the certificate could not serve as proof what the accused's blood-alcohol level was at the time of driving. The Crown appealed this decision.

The County Court Judge held that the trial Judge had erred in law. The Supreme Court of Canada* made it clear that when a suspect accedes to a breath test within two hours from driving, the results of those tests are, in the absence of evidence to the contrary, proof of the blood-alcohol level at the time of driving. Whether or not the officer had the required grounds to make a demand has no bearing on the proof the certificate is of the accused's blood-alcohol level. The grounds for a demand are essential in a prosecution for failing or refusing to give samples of breath, but not to substantiate the evidential value of the certificate.

Crown's appeal allowed.
Acquittal set aside.
Case referred back to Provincial court for trial.

* * * * *

* Rilling v. The Queen (1975), 31 C.R. (new series) 142.

ARE PROCEEDS OF BOOKMAKING OR BENEFITS FROM ILLEGAL BUSINESS A TAXABLE INCOME?

Regina v. Christensen, British Columbia Supreme Court, Vancouver Registry CC830423, June 1983

The accused was acquitted of income tax violations because the Provincial Court Judge ruled that benefits from illegal business (bookmaking in this case) was not an income as defined in the Income Tax Act. He had reasoned that if the Receiver General of Canada would tax such income, he would in fact be guilty of possession of property obtained by an indictable offence. The trial judge held that other means could be applied to deter persons engaged in illegal business. The Crown appealed this decision.

The Supreme Court Justice rejected the trial judge's reasons for acquitting the accused. She held:

> "The monies used to satisfy the tax debt may come from lawful means, even though they are calculated in unlawful activities, so there is no necessary contradiction between section 312 of the Criminal Code and the requirement of the Income Tax Act that tax be paid on income as there defined".

The Justice concluded that the trial judge had erred in law on this issue and she referred the case back to him to continue the trial.

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ARBITRARY DETENTION

NOT RELEASING AN IMPAIRED DRIVER WHEN THERE IS NO FURTHER NEED FOR CUSTODY

Regina v. McIntosh, County Court of Kooteney, Nelson Registry CC33-83 Febuary 1984.

The accused appealed his conviction of "over 80 mlg." He argued that an acquittal was an appropriate remedy for the infringement of his right not to be arbitrarily detained. At the conclusion of the officer's investigation, the accused asked if he could have his wife pick him up or take a taxi home. The officer refused to release the accused and detained him in cells from 22:30 till 9:10 the following day.

Section 452 C.C. dictates that a peace officer shall not arrest if public interest is satisfied and in any event shall release a prisoner as soon as practicable when that interest has been satisfied. In this case it was conceded that the officer had no reason for continuing the custody of the accused. The only reason advanced by the constable was that the accused might have driven again. However, he admitted that by 3:00 hours the accused was in shape to drive.

This left the Court to determine if the unjustified continuation of custody was an infringement of the accused's right not to be arbitrarily detained or imprisoned (section 9 of the Charter). If so, can such an infringement entitle the arbitrarily imprisoned person to an acquittal as a remedy under section 24(1) of the Charter?

The County Court Judge prefaced his consideration of this constitutional issue by holding

> "In my view, the onus is upon the peace officer to satisfy himself on reasonable and probable grounds that for one or more of the reasons set forth in section 452, the person should be detained in custody".

The officer's beliefs in this case were admittedly "mere speculation". The accused was described as "very co-operative" and not the slightest grounds were adduced in evidence to believe the accused would go back to his car and drive again.

The Judge concluded that at least the detention of the accused beyond 4:00 hours, when he, according to all calculations would have been able to drive again legally, was without justification and thereby

arbitrary The appropriate remedy, the Court held, was acquittal.

Appeal allowed.
Conviction set aside and acquittal substituted.

Comment: It is important to point out that what occurred here is distinct from the exclusionary rule. All the evidence was admitted and what caused the arbitrary detention was separate from the investigation and the collecting of evidence. Many of the legal philosophers and the judiciary have problems with the exclusionary rule in that its consequences amount to exonerating one person for a wrong on account of the wrong committed by another. However, when the evidence a Court accepts was surreptitiously or unlawfully obtained, the impartial Court (which must be seen as an institution enforcing the rights of everyone) becomes, in the eyes of those who ought to have faith in that Court, a party to the means by which the evidence was obtained. Furthermore, evidence on the say-so of those who themselves have infringed the rights of others and committed offences to obtain that evidence, may encounter credibility problems which also reflects on the Courts. At least, that is part of the philosophy that supports the exclusionary rule. Furthermore, it must be remembered that remedial measures for infringements of a person's rights and freedoms has been separated from the exclusionary rule. They were created by section 24, subsection (1) and (2) respectively.

It seems predictable that acquittal in these circumstances is not the remedy the Superior Courts will prescribe. To remove criminal liability in compensation for an infringement of a person's rights seems, in the circumstances, out of order. The arbitrary confinement may have flowed from the offence the accused allegedly committed and the investigation into it, but it was not part of it. The remedy should perhaps have been a compensation that was equal to the fine levied or something innovative like that but not acquittal. There are several other arguments one could advance to show that the remedy this Court considered appropriate will not likely be so considered by other members of the judiciary.

In any event, the events in this case should never have occurred as they did.

* * * * *

RIGHT TO COUNSEL

DETAINED PERSON NOT ABLE TO INSTRUCT COUNSEL DUE TO BREAKDOWN OF TELEPHONE SYSTEM

Regina v. Rosenon, County Court of Cariboo, Prince George Registry C 43/83, January 1984.

The accused was arrested for impaired driving and a demand for breath samples was made of him. He was informed of his right to counsel and the accused asked to be provided with a telephone. This was done but no call was made due to a breakdown of the telephone system in the police station with the exception of the emergency phone in a secured area of the building. Without making any further requests the accused then gave samples of his breath.

The Provincial Court Trial Judge held that what had occurred amounted to an infringement of the accused's right to counsel. He remedied that by not allowing the certificate of analyses in evidence (under section 24(1) of the Charter). Consequently the accused was acquitted. The Crown appealed.

The County Court Judge found that the Provincial Court Judge had erred in law. He could only have excluded the certificate evidence under section 24(2) of the Charter if it was shown by the accused on the balance of probabilities that his right had been infringed and that considering the circumstances, the admission of the certificate evidence would have brought the administration of justice into disrepute. However, the County Court Judge decided, despite this error on the part of the trial judge, to consider on the merits of this case if there had been an infringement of the accused's right to counsel.

In view of the fact that the accused did not request to be taken to another telephone and due to the unavailabiliy of a phone, what transpired was reasonable. The Judge pointed out the Supreme Court of Canada's* view that police had a duty to provide a telephone, if one is available (beware that the Brownridge case was decided prior to the Charter coming into effect).

In any event the appeal judge found "... nor do I think that the officer was legally bound to take the respondent outside in search of a telephone". He concluded:

> It seems to me far-fetched to suggest that the administra-

* Brownridge v. The Queen (1972), 7 C.C.C. (2d) 417

tion of justice would be brought in disrepute by the admission of the results of a breath test, unless it can be shown that there was such a serious violation of the accused's right that the balance must be tipped in favour of the accused...".

Acquittal set aside.
Certificate evidence admissible.
New trial ordered.

* * * * *

RIGHT TO COUNSEL

REASONABLE EXCUSE FOR NOT GIVING SAMPLES OF BREATH

Regina v. Ostaforoff, County Court of Yale, Kamloops Registry CCC 550, December 1983.

The accused (claiming that he was "a man off the street") sat next to a telephone and a telephone book for 15 minutes without making any attempt to look up the number of a lawyer or dialing any number. He said he did not have a lawyer and did not want to blow until he spoke to one. As encouragement also failed to get some action, a "final" demand was made. However, again the accused refused unless he spoke to a lawyer first, but again made no effort of any kind to contact one. He was convicted accordingly and appealed.

Defence claimed that lack of privacy had deprived the accused of his right to counsel and that this infringement of his right provided him with a reasonable excuse for the refusal. The answer to his defence were short and to the point:

1. Police need not provide a telephone unless it is requested;

2. There is no duty on police to leave the room or provide privacy in another way, unless the accused embarks on the exercise of his right to instruct counsel; and

3. If the accused is not satisfied with the privacy afforded him or with the facilities provided him, he must request privacy and adequate facilities before he can claim his rights were infringed.

Said the Court: "An accused must exercise his right to consult a lawyer affirmatively".

Appeal dismissed.
Conviction upheld

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CHARTER OF RIGHTS AND FREEDOMS

SURREPTITIOUS ENTRY - UNREASONABLE SEARCH

Regina v. Gordon, Vancouver County Court, Vancouver Registry C.C. 831503, March 1984.

Police gained surreptitious entry to a locked parking area of an apartment building. They then opened a locked car (previous visits were made to gain impressions of the lock) and searched it. A cache of what appeared to be cocaine was found in the trunk. The vehicle was placed under surveillance and the accused arrested when he opened the trunk and handled the substance which in the meantime was analyzed and found to to be cocaine.

The accused was tried for possession for the purpose of trafficking. He raised the obvious defence in this case. He claimed that the search was unlawful and unreasonable. Therefore, the infringement of his right to be secure against unreasonable search should be remedied by the Court excluding the evidence of the cocaine.

The defence subpoenaed the officer who had conducted the surreptitious search. He said he believed that what he did was lawful and in any event, he had been instructed to conduct the search by his superiors. He also expressed the opinion that no warrant could be issued for a parking lot or a car.

The Crown, of course, relied on section 10 of the Narcotic Control Act which authorizes an officer to search any place, other than a dwelling house, if he reasonably believes that the narcotic is had or kept contrary to the Act. The Crown also relied on a comment made by the B. C. Court of Appeal* that if section 10 is read to justify only reasonable searches, it is not in conflict with the Charter. The Crown also argued (and the Court agreed) that in this case the garage was not part of the dwelling house.

Defence counsel raised the old, but interesting argument that section 10(1)(a) N.C.A. is excessive and should be declared inoperable or invalid. This has been argued frequently and the Courts have held that the section is not as excessive as it appears to be on the

* R. v. Collins (1983), 33 C.R. (3d) 130. Also see page 1 Volume 12 of this publication.

surface Grammatically, the section could be interpreted to say that a peace officer only needs to have "reasonable belief" to enter a dwelling house with a writ of assistance or a warrant, but can arbitrarily enter and search any other private or public place without any prerequisite beliefs or grounds. The Courts (with the exception of one Ontario District Court*) have never believed that Parliament had any intentions to grant such sweeping and excessive powers to peace officers. Reasonable belief is requisite to all searches under that subsection the Judges said. This Court agreed with those views and held that the section is operable and valid and that the reasonableness of the search had to be weighed on the basis of the section. Defence counsel, of course, argued that even with s. 10(1)(a) in tact the search was unreasonable.

The Crown had to prove the legality of the search. Then it is up to the accused to show on a balance of probabilities that the search was unreasonable and that acceptance of the evidence obtained thereby would bring the administration of justice into disrepute. Just because a search is legal does not mean that it cannot be unreasonable while an illegal search is capable of being reasonable, held this County Court Judge.

It was proved that the officer who conducted the surreptitious search had adequate reasonable grounds for believing that narcotics were illegally kept in the car. He gained those grounds from his supervisor who had told him of the evidence he and other investigators had of cocaine being stored in the trunk of that car*. Therefore, the search was lawful and the defence failed to show that the search was unreasonable and had infringed the accused's rights.

The County Court Judge concluded:

> "The conduct of the search was not shocking to the community. There was no flagrant abuse of power on the part of the police, nor was there a gross invasion of privacy. The police officer was acting in good faith and reasonably. Indeed, the exact opposite would be true - to exclude the evidence under the circumstances would be more likely to bring the administration of justice into disrepute".

Evidence admitted.

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* R. v. Rao, not reported

CHARTER OF RIGHTS AND FREEDOMS

"WHEN DOES THE CLOCK BEGIN TO TICK IN RESPECT TO A TRIAL WITHIN A REASONABLE TIME?"

The Queen and Carter, B. C. Court of Appeal, Vancouver CA001508 February 1984.

In April of 1980 the accused allegedly committed rape, gross indecency and buggery. Informations were sworn in January 1983. The Provincial Court Judge considered the evidence for the delay and concluded that the accused's right to a trial within a reasonable time was infringed (s. 11(b) Charter). The Crown took this decision to the Supreme Court* and the Provincial Court Judge, who had entered a judicial stay of proceedings to remedy the infringement (s. 24(1) Charter), was ordered to proceed with the trial. The accused appealed this order to the B. C. Court of Appeal.

The Court of Appeal agreed with the Supreme Court Judge that the time period to be considered is that between the laying of the information and the commencement of the trial.

The Supreme Court Judge had also said that in "exceptional cases" the delay before the laying of the charge may be considered to determine if the delay was unreasonable. The B. C. Court of Appeal, in essence, erased that comment by holding that the narrow question in this case before the Court did not warrant the Supreme Court Justice's opinion on pre-information delays.

Appeal dismissed.
Order for Provincial Court to proceed upheld.

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* See page 17 of Volume 15 of this publication.

FALSE ARREST AND IMPRISONMENT

Mason and Basse, Brown and Smith, Ontario County Court, District of Waterloo Registry # 10729/81, September 1983.

The defendants were police officers who had arrested and detained Mr. Mason, the plaintiff. The latter sued for damages.

The action Mr. Mason undertook was unique in that he conceded that the officers had found him committing two offences under the Ontario Highway Traffic Act and that they also had reasonable and probable grounds for believing that he had committed an offence under the Criminal Code of Canada, namely a breach of probation.

Usually actions of this kind are based on claims that the police did not have the prerequisite grounds to arrest, that no offence was committed or that the wrong person was arrested. In this case the plaintiff relied on section 450(3)(b) of the Criminal Code which, in essence states that where a peace officer made a legal arrest but has failed to comply with the statutory obligation not to arrest where he has grounds to believe that the public interest is satisfied, he (the officer) shall be deemed to be acting lawfully and in the execution of his duty. This, the subsection stipulates, is the case in proceedings under the Criminal Code or any other Act of Parliament. However, in all other proceedings (including civil proceedings) such failure will render his arrest unlawful.

In other words, if a police officer arrests lawfully but ought not to have effected the arrest due to "the public interest being satisfied" then, if he is obstructed or assaulted, his failure to comply with section 450(2) C.C. would not inhibit a successful prosecution. However, the failure does render him liable for damages for unjustified arrest or detention. The same applies to the continuation of the custody of an arrested person after the public interest is satisfied. (See 453(3)(b) C.C.).

In this case the plaintiff is a 75 year old dentist who received a lot of public attention when he was a party to proceedings in civil and criminal courts. Due to financial set backs he sold his home. The new owner reported to police that the plaintiff was on the property collecting items he claimed to be his. The attending officers noted that the plates on the plaintiff's car were those belonging on another vehicle owned by another person. They discovered also that the plaintiff was on probation arising from a conviction of "hit and run", a condition of which was that he was not to drive.

When asked where he lived the plaintiff had answered: "I don't know". As this information was needed to commence proceedings against the plaintiff, the officers arrested him and impounded his car. Subsequent to the arrest it was discovered that the plaintiff had a letter from his probation officer giving him permission to drive. That was the officer's version.

The plaintiff said he produced the letter as soon as he was questioned about his probation. In any event, the plaintiff's detention was approximately one hour in duration. After that the police drove him home.

All a plaintiff has to do in an action for damages for false arrest is prove the arrest or imprisonment and then the onus is on police to show on a balance of probabilities that the arrest or imprisonment was lawful. The sole grounds the officers advanced was the establishing of the plaintiff's identity so they could assure his appearance in Court.

It was found as a fact that the plaintiff was informed of the reason for his arrest. Also it was determined that there was in these circumstances justifiable and "public interest" related reasons to arrest the plaintiff.

Action against police officers dismissed.

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UNREASONABLE SEARCH - EXCLUSION OF EVIDENCE

Regina v. Hurst, County Court of Cariboo, Williams Lake Registry #CC124/83.

Hurst, the accused, was seen walking on the side walk. A police officer timed it to come out of an alley with his police car so it would block the accused's path. The accused was known to the officer, however, he conceded not to have any reason to stop him although "it's common practice to drive up and speak to people in the police car at night" testified the constable.

The officer had stepped out of his car and had asked the accused if by any chance he had any marihuana on him. A denial resulted in an order to empty all his pockets. However, after this order was complied with a bulge indicated that one pocket was not empty. The constable reached in and pulled out a plastic bag containing marihuana. The accused was charged accordingly. The Provincial Court Judge ruled that the search was unlawful and thus contrary to the Charter provision that gives us a right to be secure against unreasonable search or seizure. He then found that admission of the evidence would bring the administration of justice in disrepute. The Crown appealed the acquittal that resulted from this ruling.

In deciding that the search was unreasonable the Court considered:

1. The constable did not have the specific assignment to enforce drug laws (he was not assigned to a drug squad);

2. There was not even suspicion that the accused committed any offence;

3. The accused appeared perfectly normal;

4. It was conceded that if the accused had fled there would have been no reason to pursue him or prevent his walking away; etc.

The aggregate of this is that there were no grounds nor justifiable reasons to search the accused. In the circumstances, the search and seizure were unreasonable and amounted to an infringement in respect to section 8 of the Charter of Rights and Freedoms.

The second question, of course, is whether in the circumstances, the admission of the evidence of the possession of marihuana, would bring the

* R. v. Collins Page 1, Volume 12 of this publication. B.C.C.A. 821475.

administration of justice into disrepute. Reminding this County Court of the decision by the B. C. Court of Appeal in the Collins case*, the Crown submitted that an ordinary citizen would not be shocked if a police officer seized illicit drugs.

The Judge disagreed and held that the B. C. Court of Appeal did not say that any seizure of illicit drugs would not shock an ordinary citizen. It held that in the circumstances as they were in Collins, it would not be shocking. However, the circumstances in this case were quite different from those in Collins. Where here the search was arbitrary to say the least, in Collins the search resulted from a specific investigation. Though the officers had no prerequisite grounds to search Collins, they had grounds for suspicion. The search was perhaps unlawful and unreasonable but not sufficiently so as to bring the administration of justice into disrepute. In this Hurst case the circumstances were such that it would cause disrepute.

Crown's appeal dismissed.
Acquittal upheld.

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HOUSE PARTY - CREATING A DISTURBANCE - OBSTRUCTING POLICE

Regina v. Knight, County Court of Vancouver Island, Port Alberni # C.R. 162, September 1983.

A party was held in one side of a duplex. The magnitude and mood of the festivities concerned the neighbours and police were called. Everything went smoothly: the crowd was pleasant and co-operative and when police suggested that perhaps the guests should go on their way, people left the home in an orderly fashion. However, everybody stopped and became spectators when the accused took on a hostile position by shouting very choice obscenities to the police officers in general and to one in particular. When he continued and attempts to quiet him down failed, and as the other guests started to gather again, the accused was arrested for creating a disturbance in or near a public place (the accused's abusive actions took place outside the home). He resisted arrest and it took two officers to subdue the accused. He appealed his convictions for creating a disturbance and resisting arrest.

The County Court, after a review of the B. C. case law in respect to section 171 C.C., held that the Provincial Court Judge could not from the evidence before him, draw an inference from the officers' testimony that the accused, beyond a reasonable doubt, caused by his shouting a public disturbance. The accused's appeal in respect to that charge was allowed and an acquittal was ordered.

The way our law was at one time (and not all that long ago) this acquittal would have resulted in an acquittal on the "resisting a peace officer" charge was well. Reiterating the law as it stands now the County Court Judge said:

> "It is to be noted that the Supreme Court of Canada has made it abundantly clear the mere fact that an accused is acquitted of the actual charge upon which he is arrested is not a defence to a charge under section 118" (obstructing or resisting a peace officer)

With this the Court upheld the accused's conviction of resisting arrest The officer had good reason for believing that the appellant was creating a disturbance, therefore the arrest was justified and lawful.

Acquittal ordered for "creating a disturbance".
Conviction of "resisting arrest" upheld.

Comment: The cases that best demonstrate the full cycle our Courts have gone on the issue this Court touched on in considering the appeal in respect to the conviction of resisting arrest, were decided in 1960, 1961, and 1975. It is not that there is a direct connection between these cases but they do reflect the recent historical development of our current binding precedent on this issue.

Perhaps we ought to remind ourselves of some basics as a prelude to discussing the issues involved.

Firstly, when a peace officer exercises a statutory or common law discretionary authority, he is in the lawful performance of his duty. This, of course, is not an exhaustive statement of when a peace officer is in such performance of duty.

Secondly, when a peace officer is authorized by law, to arrest a person whom he finds committing an offence, he and that law are in apparent conflict with a basic principle of our legal system. Constitutionally the courts are exclusively assigned the jurisdiction to determine whether or not a person committed an offence.

Thirdly, section 25(1) of the Criminal Code of Canada grants protection to persons who are acting under authority. That portion of this subsection, which is applicable to this issue, is:

> "Everyone who is authorized by law[1] to do anything in the enforcement of the law as a peace officer is, if he acts on reasonable and probable grounds, justified in doing what he is authorized to do and[2] in using as much force as what is necessary for that purpose".

[1] Doing something "by law" can be distinct from doing something "lawfully". To do something "by law" there must be a specific provision in the law compelling or allowing the act. When something is done "lawfully" it simply means that it is done not contrary to law. One can say that if something is done "by law" it is also done "lawfully". However, if something is done "lawfully" it does not necessarily follow that it was done "by law".

[2] This has been held to mean that there must be a statutory or common law provision for the officer to act as he did. This would not apply where the officer acts under a misconception of law about an offence or his authority. For example, if an officer would arrest a person for creating a disturbance in a public place, where it was apparent to him that the person was committing the offence, then a dismissal of that charge will not mean that the officer was unauthorized. But where he would arrest a person for creating a disturbance in a dwelling house (an offence not known to law), no matter how apparent or reasonable and probable the grounds may have been, the officer was not doing what he was authorized to do.

The following cases will be a good example of the making of law through judicial review and, at the same time, make the student aware of interesting and opposing views by members of the judiciary on this legal issue which is of such importance to them. It will also determine what the law is in regards to this question.

Regina v. Shore (1960), 129 C.C.C. 70

A peace officer arrested a person for an offence which he was only authorized to do upon finding that person committing the offence.

Upon a trial, the prisoner was acquitted. This, in essence, meant that what the officer found the prisoner doing did not amount to any offence. The accused had resisted the officer in effecting the arrest. The Crown took the position that, despite the acquittal, the officer was in the lawful performance of his duty. The Court convicted the accused of resisting the officer holding that, in spite of the fact that the officer had not found any offence being committed (the prerequisite to the arrest) he had reasonable and probable grounds that the offence was being committed. This, said the Court, justified the officer to do what he was authorized to do and consequently he was in the lawful performance of his duty (s. 25 C.C.).

Attorney General of Saskatchewan v. Pritchard (1961), 34 W.W.R. 459

In this case, a peace officer also arrested a person for an offence which he was only authorized to do upon finding that person committing the offence. The Crown preferred, in addition to the charge of the offence for which the prisoner was arrested, a criminal charge for which has, as an essential ingredient, that the officer was in the lawful performance of his duty, and that the custody was lawful.

The Court acquitted the accused of the offence the officer claimed he found him committing, and, reasoning quite contrary to the Judge in R. v. Shore, also acquitted the accused of the second charge.

It is difficult to improve on the synopsis of the reason for judgement in the Martin's Criminal Code. It explains the Court's opinion as follows:

> "Where a statute confers powers to arrest without warrant a person found committing a criminal offence, but does not expressly give the right to arrest on reasonable and probable grounds that such a person is committing a criminal offence, the arrest cannot be justified if the person was, in fact, not committing an offence. In other words, if the person is acquitted, the arrest is not lawful".

The Court added, in the same breath, that although the officer may not have been in the lawful performance of his duty in that he did not find the person committing the offence, he was protected under section 25 C.C. for liability as he had acted on reasonable and probable grounds that the person was committing the offence.

The basic distinction between these two cases is that in R. v. Shore, interpreting section 25(1) C.C., the Court held that acting on reasonable and probable grounds where the prerequisite to an arrest is finding the person committing the offence, legalized the arrest. In A.G. v. Pritchard, the Court held that section 25(1) C.C. only protects the officer if he acted on reasonable and probable grounds but that the subsection is incapable of transforming an unlawful act into a lawful one.

The reasoning in the Pritchard case caught on quickly and was pretty well followed everywhere in Canada. This was also the case in British Columbia. In R. v. Cottam and Cottam (1970) 1 C.C.C. 117, a decision by the B. C. Court of Appeal made the Pritchard reasoning a binding precedent for this Province.

Regina v. Biron (1975), 23 C.C.C. (2d) 513

Then the Supreme Court of Canada, in this Biron case, rendered a majority judgement, which basically followed the reasoning in Regina v. Shore. The principle established in A.G. Saskatchewan v. Pritchard was superceded and shelved.

The highest Court in Canada held that where a peace officer makes an arrest upon finding a person committing a criminal offence, the lawfulness of the arrest does not depend on the conviction of that person for the offence but instead on the circumstances which were apparent to the officer at the time.

This Supreme Court of Canada decision in the Biron case was not unanimous and the dissenting judgement was sharp and condemning of the precedent set by the majority judgement. Many in the legal profession vehemently disagree with the principle created by the Biron decision and raise persuasive arguments that the Court totally misinterpreted a decision by the British House of Lords which they believed to follow.

In England a police officer had arrested a person for an offence where he was only authorized to do so if he found that person committing the offence. One essential ingredient of the offence was impairment by alcohol on the part of the offender. At the investigative stage a doctor disagreed with the constable's opinion regarding the impairment and there was no support for charging the prisoner who promptly sued the officer for unlawful confinement. This civil dispute finally reached the House of Lords which held that the officer was not civilly liable as he had acted on

reasonable and probable grounds and as it had been apparent to him that the person was committing the offence at the time of the arrest. Never did the House of Lords say that the arrest was lawful.

In England there is not an enactment that contains a provision such as our section 25(1) C.C. and the House of Lords, to protect persons acting under authority, created, at common law, a provision similar to section 25(1) C.C. Hence the law is known as shield or protective law which must not be used beyond its objectives. To hold that section 25 C.C. is capable of rendering an unlawful act lawful for purposes as described in the synopses of Shore and Biron above, is considered excessive and an abuse of that law. The dissenting judgement in Biron considered the practice equivalent to using as a sword that which was provided and designed to be a shield.

These are some of the strong opinions which oppose the views of the majority of the Supreme Court of Canada.

However, the Biron decision still stands today and is the law until either Parliament legislates a change or until the Court reverses its decision when a similar case is placed before them. The Vancouver County Court simply followed the "Biron Principle" when it dealt with the Knight Appeal.

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