POLICE ACADEMY
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IN SERVICE:10-8

A PEER READ PUBLICATION

JUSTICE INSTITUTE of BRITISH COLUMBIA

A newsletter devoted to operational police officers across British Columbia.

CDSA TELEWARRANTS MAY BE EXECUTED AT ANY TIME

R. v. Dueck, 2005 BCCA 448

Police executed a telewarrant to search the accused's residence using s.11(2) of the *Controlled Drugs and Substances Act* (*CDSA*). The warrant was executed just before midnight and police found 461 marihuana plants along with 20 pounds of harvested marihuana. The accused were convicted in British Columbia Supreme Court on charges of production, possession for the purpose of trafficking, and fraudulently diverting electricity.

The accused appealed to the British Columbia Court of Appeal arguing, in part, that the warrant should not have been executed during the night. Although s.11(1) of the *CDSA* authorizes the execution of its warrants "at any time", the accused submitted that the telewarrant procedures via s.11(2) of the *CDSA* are outlined under s.487.1 of the *Criminal Code*, which restrict the execution of warrants by day, unless night warrants are expressly authorized. In the accused's view, the warrant in this case should have not been executed at night.

Justice Ryan, for the unanimous British Columbia Court of Appeal, rejected this argument. She concluded there were two types of warrants that could be obtained under either the *CDSA* or the *Criminal Code*—warrants or telewarrants. In the case of *CDSA* warrants, they may be executed at any time. *Criminal Code* warrants, on the other hand, may be executed only by day unless specific authorization is granted.

In interpreting the *CDSA* provisions that allow for the authorization of telewarrants, the provisions of s.488 of the *Criminal Code* prohibiting nighttime execution of telewarrants unless the justice is satisfied there are reasonable grounds included in the information to obtain that the warrant should be executed at night do not apply. In Justice Ryan's opinion, there was "no sensible reason…that would require the provisions of a warrant obtained over the telephone or by fax under the CDSA to be different in substance from one obtained in person where the substantive requirements to obtain them are the same." The appeal was dismissed.

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

Note-able Quote

On Police Duty—*The well known saying from Gilbert & Sullivan that "A policeman's lot is not a happy one" is true -- at times, but it is also true with regard to all public officials. They must expect more or less so called abuse. It is an incident of democratic government and free speech; and they should bear it, if not in good humour, at least with reasonable tolerance and that fact which is a very necessary part of the equipment of a servant of the public. In this country a policeman is a peace officer, and his duty is not only to the public generally but to every individual citizen, and to protect that citizen, and to protect him, as far as possible, even against his own weakness, and not to hail him before the Magistrate for every foolish thing he does*—Co. Crt. J. Roberts[1]

[1] R. v. Zwicker, (1937) 69 *CCC* 301 (N.S.Co.Crt.)

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Unless otherwise noted, all articles are authored by Sgt. Mike Novakowski, MA (Abbotsford Police). The articles contained herein are provided for information purposes only and are not to be construed as legal or other professional advice. The opinions expressed are not necessarily the opinions of the Justice Institute of British Columbia. "**In Service: 10-8**" welcomes your comments on or contributions to this newsletter. If you would like to be added to our electronic distribution list e-mail Mike Novakowski at mnovakowski@jibc.bc.ca

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'IN SERVICE: 10-8' e-LETTERS TO THE EDITOR

"Once again, you provide a great service to the LEO's of this country."—**Police Officer, British Columbia**

****

"Great newsletter and keep them coming!"—**Military Police Officer, Alberta**

****

"I would be grateful if you could place me on your news letter e-mail distribution list. I just recently found your website, and have passed it around to some of the guys in my department. As I also teach a police foundations course in a community college, I found your case law items of particular interest."—**Police Officer, Ontario**

****

"I just read an edition of 10-8.... I learned more from that newsletter than I have from any other recent publication."—**Police Constable, British Columbia**

****

"Could I get on the mailing list for future editions? I can print it off and share it with the troops here. Everybody loves to read it."—**Police Constable, RCMP British Columbia**

****

"I am a member of the Military Police… and I have had the opportunity to read a couple copies of the 10-8 Newsletter and find it to be a great source of information. I would like to be placed on your email list so that I can be kept up to date on recent cases that may affect me. Thank you."—**Military Police Officer, British Columbia**

****

"I receive the 10-8 newsletter by e-mail and it is an exceptional resource on many levels - thanks!"—**Police Detective, British Columbia**

"I teach Law 12…and, after looking at one of the [newsletter] issues, I was quite impressed. Your articles add some flesh to the bare bones of Law, and help my students."—**High School Teacher, British Columbia**

All past editions of this newsletter are available online by clicking on the Police Academy link at:

www.jibc.bc.ca

ABSENCE OF GOOD FAITH MAY BE NEUTRAL IN ASSESSING ADMISIBILITY

R. v. Smith, 2005 BCCA 334

The British Columbia Court of Appeal recently reviewed the meaning of good faith in a case where a police officer applied for a telewarrant under the *Criminal Code* to search the accused's home and computer for child pornography evidence. Under the s.24(2) *Charter* analysis to determine the admissibility of evidence, the good faith of a police officer is often a factor to consider in determining the seriousness of a *Charter* breach. In this decision, Justice Ryan provided a review of good faith and had this to say:

> As I understand the case-law that has followed, good faith on the part of the offending police officers mitigates the seriousness of the offence while a deliberate or flagrant disregard will enhance its seriousness. It is a question of degree. The cases have not equated a finding of no good faith with a finding of bad faith. I would suggest that this is because of the way good faith has been defined. [para. 56]

She further went on to note that the actions of the police must be knowingly or intentionally wrong to qualify as bad faith. She stated:

> To sum up, good faith connotes an honest and reasonably held belief. If the belief is honest, but not reasonably held, it cannot be said to constitute good faith. But it does not follow that it is therefore bad faith. To constitute bad faith the actions must be knowingly or intentionally wrong.

> It is interesting to note that in *Kokesch* Sopinka J. concluded (at p. 231) that the *Charter* violation in that case was "very serious, and was in no sense mitigated by good faith". In the passage above he characterized the actions of the police in *Genest* as enhancing the seriousness of the *Charter* violation. I take from all of this that while good faith will mitigate, and bad faith will invariably increase the seriousness of the breach, the *absence* of good faith may be a neutral factor or an enhancing factor depending on the circumstances of the case.
>
> In the case at bar, the trial judge concluded that the information to obtain contained a misleading error because the officer who prepared it was sloppy. He did not do it with the intention of deceiving the judicial justice of the peace. It is somewhat unclear whether the trial judge was prepared to make the crucial finding that the mistake was unreasonable. He seems to have treated the error as within the range of unfortunate but acceptable human error. In any case even if it was something that the police officer ought to have noticed, the trial judge did not find that the error compounded the seriousness of the *Charter* breach.
>
> In my view the trial judge did not err in failing to find that the police officer acted in bad faith. [paras. 61-64]

As for the admission of the evidence, Justice Ryan would not interfere with the trial judge's decision. In her view, the police work in this case was poor but was not motivated by an ulterior motive or bad faith. The accused's appeal seeking exclusion was dismissed.

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

Don't miss out!!!

www.policeleadership.org

(see p. 20)

DID YOU KNOW…

…that men are three times more likely to report being dishonest with police officers than women. In a recent Leger Marketing Report entitled "*The Honesty of Canadians*," only 3% of women said they would be more likely to be less honest with police officers compared to 9% of men[2].

CONFEDERATION BRIDGE OFF LIMITS TO PROVINCIAL HIGHWAY TRAFFIC ACT

R. v. Noel, 2005 PESCAD 16

The accused was stopped for speeding on the Confederation Bridge which joins Prince Edward Island to New Brunswick. He was issued a ticket under Prince Edward Island's *Highway Traffic Act* and plead not guilty. At trial he was convicted and fined $36. His appeal was dismissed. He then again appealed, this time to the Prince Edward Island Court of Appeal.

Chief Justice Mitchell, writing the unanimous decision, granted the appeal and set aside the conviction. Only the Parliament of Canada can regulate traffic or create offences on the Confederation Bridge pursuant to the *Government Property Traffic Act*. Neither the legislature of Prince Edward Island nor New Brunswick has any authority related to creating driving related offences on the Bridge. As Chief Justice Mitchell noted, "A person who speeds on the Confederation Bridge no more commits an offence under the Prince Edward Island *Highway Traffic Act* than does someone who speeds in British Columbia."

Complete case available at www.canlii.org

[2] Source: www.legermarketing.com (June 5, 2005)

VALID TRAFFIC STOP JUSTIFIES DETENTION

R. v. Yague, 2005 ABCA 140

The accused was pulled over by uniformed traffic officers after other members conducting site surveillance on an unrelated matter requested his vehicle be stopped. One of the surveillance officers had recognized the accused as someone who was involved in the drug trade. The uniformed members following him saw the vehicle speed through a construction zone and noted the rear licence plate light was not working. The vehicle was stopped and the accused was arrested on an outstanding arrest warrant. The other occupants were identified, including passenger Lau who was also arrested. He was on a recognizance not to be in possession of cell phones or pagers and an officer could see a cell phone and pager within his reach. The vehicle was then searched and police found other drug trafficking paraphernalia including a kilogram of cocaine in a knapsack under the rear seat.

At trial in the Alberta Court of Queen's Bench the accused was convicted of possession of cocaine for the purpose of trafficking. The judge erroneously concluded that the police had the power to stop motor vehicles for the purpose of gathering intelligence and dismissed the accused's application to exclude evidence. He then appealed to the Alberta Court of Appeal arguing that the detention and search violated the *Charter*. In his view, the police arbitrarily detained him under s.9 because they did not have reasonable grounds for stopping his vehicle. Furthermore, he submitted the search was unlawful, a s.8 violation, and the evidence should have been excluded under s.24(2).

A unanimous three member Alberta Court of Appeal dismissed the accused's appeal. Although the trial judge erred in his reasons, the admission of the evidence was the correct

result. In this case, the traffic officer witnessed traffic violations before stopping the accused's vehicle. The police, therefore, had reasonable grounds and a proper basis on which to pull the vehicle over. The Court held:

> Even though the initial request to uniformed traffic officers to stop the vehicle was made when the police in the surveillance team did not realize that they had sufficient grounds to support a stop (the outstanding warrant), the stop which was made later was not arbitrary since there were reasonable grounds to believe that the [accused] had committed traffic violations. The uniformed traffic officer testified that whatever the surveillance team wanted, the uniformed officer was not going to stop this car unless he saw a traffic violation…
>
> Once the initial stop had been lawfully made, a further search on the suspicion of illegal drugs does not taint the stop [references omitted, paras. 7-8]

The detention was not arbitrary and therefore, did not violate s. 9 of the *Charter*. As for the search, it was lawful as an incident to arrest. The police had reasonable grounds to arrest Lau for breaching his recognizance "Where the police have reasonable and probable grounds for arrest, a search, as incidental to an arrest, is legal and not in violation of s. 8 of the *Charter*," said the Court. "A search is incidental to an arrest when there is some valid purpose for the search, such as, a reasonable prospect of securing evidence of the offence for which the accused is being arrested. It does not require reasonable and probable grounds, only some reasonable basis for the search". Here, the police could search the vehicle incident to arrest in order to secure evidence of Lau's breach of recognizance, which meant searching for other cell phones and pagers. In upholding the search, Alberta's top court stated:

> The police seized the phone and pager observed near Lau. They then found another cell phone in the front of the vehicle and a box on the rear seat next to where Lau was sitting. The box contained, in addition to an empty cell phone box, drug trafficking paraphernalia. The contents of the box further substantiated the grounds which the police would already have had to search for drugs. Lau's release condition, prohibiting possession of a cell phone, is common in a recognizance for drug charges as it is intended to assist in preventing the continued trafficking of illegal drugs by taking away one of the common tools of the trade. As well, the [accused] and Lau were known to be involved in the illegal drug trade. The circumstances suggested the three occupants of the vehicle were involved in trafficking cocaine. Thus, the search, which eventually found the knapsack under the back seat containing cocaine, and the seizure of the cocaine and drug trafficking paraphernalia were reasonable and therefore, no violation of s. 8 occurred. [para. 12]

Finally, even if the accused's rights had been violated, the evidence was admissible under s.24(2).

Complete case available at www.albertacourts.ab.ca

BY THE NUMBERS: FATAL MVAs

Fatal MVAs—BC's 2004 Top 10	
City/Town	**Number**
Surrey (RCMP)	26
Vancouver	21
Victoria	15
Abbotsford	14
Squamish (RCMP)	13
Langley (RCMP)	12
Hope (RCMP)	11
Burnaby (RCMP)	10
Coquitlam (RCMP)	10
Prince George (RCMP)	10

Source: BC Coroners Service, Motor Vehicle Accident Deaths-1997 to 2004, August 23, 2005

Note-able Quote

For every mile of road there is two miles of ditch—Leon Fontaine

NO AUTOMATIC RIGHT TO SEARCH VEHICLE INCIDENT TO ARREST

R. v. Bulmer, 2005 SKCA 90

A police officer stopped the accused's vehicle after he noticed it did not have a front licence plate and had been weaving on the road. After producing a driver's licence and vehicle registration, the officer queried the accused on CPIC and learned he had an outstanding traffic warrant for an unpaid fine of failing to wear a seatbelt. The accused said he thought he had paid the fine, but the warrant was confirmed to be valid and still in effect. He was arrested on the outstanding warrant and the officer saw a pocket knife clipped to the inside of his waistband. The knife was removed and the accused was patted down, advised of his rights, and placed in the backseat of the police car.

The officer then searched the vehicle for further weapons and for evidence of the accused's assertion that he paid the ticket, such as a receipt or copy of the seatbelt ticket. As the officer looked through the driver's side window he saw a black cloth sheath for the pocket knife lying by the accelerator. He opened the door and could then smell a strong odour of raw marihuana. In the trunk the officer found 2.4 kgs. of marihuana vacuum sealed in a backpack. The accused was then arrested for possession of marihuana for the purpose of trafficking. At his trial in Saskatchewan Provincial Court, the judge found the search valid as an incident to arrest and the accused was convicted.

The accused then appealed to the Saskatchewan Court of Appeal. Justice Jackson, writing the unanimous appeal court judgment, first examined the law regarding searches incident to arrest. She noted that such searches of vehicles can only be undertaken if the police have a valid reason for the search, such as ensuring the safety of the police and public, protecting evidence from destruction, or to discover evidence. But in this case, Justice Jackson found the search could not be justified for safety. In dismissing the safety reason, Justice Jackson noted the following:

- The accused was young (18 years old), had no prior record, was fully cooperative, and was locked in the back of the police car;
- The jackknife had a 2 ½ inch blade and was not a prohibited weapon; and
- Two other officers were present as back-up.

As for looking for more evidence, it could not be said that further evidence was required with respect to the seatbelt ticket. Nor did seeing the pocket knife sheath give the officer a new reason to search. Only when he smelled the marihuana did the officer have new and reasonable grounds that marihuana was in the vehicle. Since the accused had a reasonable expectation of privacy in his vehicle and the officer lacked a valid purpose in mind when searching the vehicle, the accused's s.8 *Charter* right protecting him against unreasonable search and seizure was violated.

As for the admission of the evidence, it was excluded under s.24(2) even though vehicles attract a reduced expectation of privacy. Although the evidence was non-conscriptive and necessary to prove the Crown's case for a serious offence, there was no urgency and no reasonable grounds for the search once the accused was arrested and secured in the back of the police car.

"[The accused] was not under arrest in furtherance of a suspected new crime [but] was arrested pursuant to a warrant for arrest," said Justice Jackson. "And the warrant for the arrest was for the failure to appear in relation to a summons to pay a seatbelt infraction. If one contrasts the seriousness of the reason for which [the accused] was arrested with the

ultimate consequence of the unlawful search, the disproportion alone seems to dictate exclusion." Moreover, the legal limits of a stop like this in relation to a minor traffic offence need to be clearly understood by police and the Court was not prepared to condone this unacceptable police conduct. To do so would further bring the administration of justice into disrepute. The evidence was excluded and an acquittal was entered.

Complete case available at www.canlii.org

CHARTER DOES NOT APPLY TO PRIVATE INVESTIGATIVE DETENTIONS

R. v. Dell, 2005 ABCA 246

A bouncer entered the men's washroom of a bar, looked into a cubicle through a crack, and saw the accused fiddling with a black film canister. Suspecting it was drugs, the bouncer detained the accused and alerted the manager who patted him down for weapons. The manager found the canister, opened it up, and saw rocks—later determined to be cocaine—wrapped in cellophane. The manager returned the canister, called police, and detained the accused until police arrived. The accused was arrested and subsequently charged with possession of cocaine.

At trial in the Alberta Court of Queen's Bench the accused unsuccessfully argued his *Charter* rights were violated. In the judge's view, the *Charter* did not apply to the manager's search of the accused because it occurred between private individuals. The cocaine was admitted as evidence and the accused was convicted. However, he appealed to the Alberta Court of Appeal arguing he was arbitrarily detained by bar staff contrary to s.9 of the *Charter* and that the cocaine should have been excluded under s.24(2).

Justice Fruman, with Justice Hunt and Cote concurring, first outlined the difference between an arrest and a detention:

> [T]he legal distinction in Charter cases between mere detention for investigative purposes and actual arrest is well established. An investigative detention is brief, based on a reasonable suspicion that an individual is connected to a particular crime…An arrest is a continuing act, based on reasonable and probable grounds a crime has been committed. It involves a detention and a measure of ongoing restraint until the arrested person is delivered to the police…[references omitted, para. 4]

The *Charter* has limited application in that it applies only to government actions, not private individuals (such as private security officers) or private institutions. However, there are two exceptions:

1. when a private individual acts as an agent of the state (such as the police). The relevant question to be asked is whether the exchange between the private individual and the accused would have taken place in the form and manner in which it did, had the police not intervened; or
2. when a private individual can be categorized as "part of government" because they are performing a specific government function or implementing a specific governmental policy or program.

In this case, bar staff could not be characterized as an agent of the state because the police did not intervene until after the accused's detention and search. Nor was the detention a specific government function. Unlike a citizen's arrest, which is a specific government function delegated to private individuals, investigative detentions by private persons do not attract *Charter* protection. In summary, Justice Fruman wrote:

> …the bouncer's work may overlap with the government's interest in preventing and

> investigating crime. However, it cannot be said that in conducting a brief investigative detention, the bouncer was acting as a delegate of the government, carrying out its policies and programs. Accordingly, the Charter does not apply to the actions of the bouncer in detaining Dell, or the search and seizure flowing from the detention. [para. 27]

Although Justice Cote concurred with Justice Fruman, he wished to add further comments. He agreed that the *Charter* did not apply when the bouncer temporarily detained the accused in the washroom. However, if he were wrong in holding that the *Charter* did not apply, he would have found that there was no s.9 breach, or if there was one, that it was justifiable. He stated:

> Such Charter rights are not absolute; they all have limits and exceptions. It would be astonishing if temporary detention was always a Charter breach, regardless of its duration or purpose. It is not: only an arbitrary or unreasonable detention is a breach, even where the Charter applies.
>
> In any event, the bouncer was not snooping because he was bored or curious. His employer had instructed him to check the washrooms regularly for a number of types of people and things, most revolving around safety. That was plainly not altruism: it was sound and necessary preservation of business and property. Disgruntled patrons sometimes try to burn down bars, and sometimes succeed spectacularly. Shootings and stabbings are more common in bars than in (say) bookstores. Drug dealers often try to peddle their wares in bars. People bring date rape drugs to bars and slip them into other patrons' drinks (as Crown counsel reminded us here).
>
> None of that is good for business. Very few patrons will knowingly enter a bar dangerous to their health. Not many more will go to what looks like a lawless dive. And activity which will wreck the physical premises is commercially dangerous too.
>
> If the Charter had any application to this bouncer, it is unthinkable that it would remove the bar owner's right to take reasonable steps to protect the safety of his patrons, employees, and premises. If the bouncer found someone in the washroom with a can of gasoline, or five clips for a machine gun, surely he could detain that person and not let him go out to get the accompanying blowtorch or machine gun.
>
> ……
>
> In my respectful view, the bouncer reasonably thought that the film container contained hard drugs, not film. (Most cameras are now digital, and photography is not common or suitable in bars or their washrooms). That was a danger to the bar's business and patrons. The bouncer took
> reasonable steps to contain the danger, and have a responsible person (his boss) investigate. The delay to the appellant was 2-5 minutes, which the appellant did not protest. Nor does his counsel today argue that that time was undue.
>
> Reasonable safety and defence of property and others has been made out on this evidence…[paras. 41-47]

The evidence was admissible and the appeal was dismissed.

Complete case available at www.albertacourts.ab.ca

FAST FACTS

2004 BC Municipal Police Strengths 100+	
Municipality	**Police Strength**
Vancouver	1,124
Surrey (RCMP)	491
Burnaby (RCMP)	241
Victoria	211
Richmond (RCMP)	190
Abbotsford	175
Delta	145
Saanich	144
Coquitlam (RCMP)	121
Kelowna (RCMP)	121
Prince George (RCMP)	121
Langley Township (RCMP)	117
Kamloops (RCMP)	112
Nanaimo (RCMP)	112
New Westminster	105

Source: Police Services Division, Ministry of Public Safety & Solicitor General, British Columbia—July 2005, Municipal Case Burden Report: www.pssg.gov.bc.ca/police_services

CROWN REQUIRED TO SHOW TAKING OF BREATH SAMPLES REASONABLE

R. v. Haas,
[2005] Docket:C41963 (OntCA)

The accused was stopped by police driving and admitted to consuming alcohol. The officer formed a reasonable suspicion the accused had alcohol in his body and made a demand for a breath sample into an approved screening device. He failed and the officer formed the opinion the accused was over 80mg% and arrested him. He was Chartered, read the breath demand, and agreed to comply, subsequently providing samples over the legal limit.

The accused was charged with operating a motor vehicle with a blood alcohol level over 80mg%. During a *voir dire* in the Ontario Court of Justice the Crown did not call evidence that the police officer making the demand under s.253(4) of the *Criminal Code* had reasonable and probable grounds to do so. The trial judge ruled that the Crown had not proved the necessary grounds thereby violating the accused's s.8 *Charter* right and the breath samples were excluded as evidence. The charge was dismissed.

On appeal to the Ontario Superior Court of Justice, the court ordered a new trial. In the appeal justice's view, the accused bore the onus of proving the absence of reasonable and probable grounds rather than the Crown proving such grounds existed. Since the accused failed to lead evidence that the search was unreasonable, a s.8 violation should not have been found. The accused appealed to the Ontario Court of Appeal arguing that Crown was obliged to call evidence that reasonable and probable grounds existed for the breath demand, and without it, the readings should have been excluded.

Justice Goudge, authoring the unanimous Ontario Court of Appeal judgment, first noted that the taking of breath samples is a seizure for the purposes of s.8 of the *Charter*. Furthermore, all warrantless seizures are *prima facie* unreasonable and once it is demonstrated that a seizure was warrantless, the onus then shifts to the Crown to show it was reasonable (on a balance of probabilities). In this case, the taking of the breath sample was warrantless. The same onus shifting to the Crown in warrantless seizures generally also shifts to the Crown in breath demand seizures. Thus, the Crown bore the burden of demonstrating that the officer had reasonable and probable grounds for the breathalyzer demand. Justice Goudge stated:

> Moreover, both statutory and policy considerations suggest that warrantless breath demands should not be [an exception to the general rule that warrantless searches and seizures are prima facie unreasonable]. To demonstrate compliance with s. 254(3) the Crown must show that the police officer making the breath demand had the necessary reasonable and probable grounds to do so. The evidence of this will normally be the same evidence that would be called to show that the warrantless seizure of breath was reasonable. If the Crown is faced with a s. 8 *Charter* challenge, it is reasonable to require the Crown to call as evidence to resist that challenge the very evidence it would call at trial, particularly if that evidence can be called only once in a proceeding blending the trial and s. 8 *voir dire*.
>
> Moreover, as a matter of policy, to require the accused in a s. 8 *Charter* challenge to demonstrate the unreasonableness of the seizure of breath ignores the reality that the Crown is in the best position to know how and why the seizure took place. From this perspective it is sensible to require the Crown to prove reasonableness, rather than asking the accused to prove the opposite. [paras. 36-37]

Since the Crown called no evidence at the *voir dire* on the seizure of breath, the taking of the

sample was deemed to be unreasonable and a violation of the accused's s.8 *Charter* rights. The accused's appeal was allowed and the trial verdict dismissing the charges was restored.

Complete case available at www.ontariocourts.on.ca

STOP LACKING MOTOR VEHICLE PURPOSE VIOLATES *CHARTER*

R. v. Nguyen & Bui, 2005 BCPC 0202

A plain clothed police officer conducting surveillance of a house suspected of being the site of electricity theft saw persons exit the house and enter a van. The officer then requested a uniformed officer stop the van and identify its occupants. The driver did not have her driver's licence with her and the accused Nguyen, a passenger in the van, provided identification in his name. The van and its occupants were allowed to leave and the uniformed officer provided the occupants' names to the plainclothes officer.

A day or two later the uniformed officer again stopped another vehicle—a GMC Jimmy—seen leaving the house at the request of the plainclothes officer. The plainclothes officer had previously noted a rear taillight was not working and provided this information to the uniformed officer to use as a reason for the stop.

The accused Bui was the driver and the accused Nguyen was the passenger. The accused Bui was issued a notice and order to repair the light and let go, again with the occupants' names being provided to the plainclothes officer, who subsequently applied for a search warrant based, in part, on the information gleaned from the two traffic stops. During the execution of the *Criminal Code* search warrant respecting electricity theft, the police found a marihuana grow operation and obtained another search warrant under the *Controlled Drugs and Substances Act*.

During a *voir dire* in British Columbia Provincial Court, the accused argued that their rights were violated by the traffic stops. Justice Seidemann III agreed and held that the two vehicle stops breached s.9 of the *Charter*. The police may arbitrarily stop motorists for legitimate highway traffic concerns, but in this case the police were purportedly using the highway safety aim for a non-authorized purpose—the general detection of crime. The judge stated:

> I find that that was what occurred in this case. The stop of the gold van was clearly a breach of the defendant's rights. There was no valid *Motor Vehicle Act* purpose for that stop. The officers…who testified were candid that the purpose of that stop was to ascertain the identity of the occupants, although [uniformed officer] was of the opinion that pursuant to the *Motor Vehicle Act*, she was authorized to perform that stop. If she had been doing that for a *Motor Vehicle Act* purpose, it would have been. It was not done for that purpose.
>
> The stop of the red GMC Jimmy was also a breach. There may have been two purposes, but the principal one was unrelated to *Motor Vehicle Act* enforcement, and the *Motor Vehicle Act* cannot save it. This is more akin to that situation…where there may have been two purposes, but in this case, clearly the principal purpose and the only reason why the stop actually occurred was to ascertain the identity of these persons, and that was clearly a breach of their rights pursuant to the *Charter*. [paras. 30-31, references omitted]

Although the information concerning the traffic stops was excised from the search warrants, there was nonetheless sufficient grounds for their issuance. The evidence resulting from the search warrants was therefore admissible.

Complete case available at www.provincialcourt.bc.ca

LOCATION, TIME, & REACTION PROVIDE REASONABLE SUSPICION

R. v. Chaisson, 2005 NCLA 55

A police officer saw a lone vehicle with two occupants parked in the dark at the rear parking lot of a closed gas station just after midnight. Its lights were out and it was not running. There was a 24-hour donut shop and a closed restaurant nearby. The officer pulled up along the passenger side of the parked vehicle about three feet away. The occupants did not initially see the officer, but when they did they were shocked—the driver threw something onto the floor and tried to stuff something under the seat.

The officer asked the men what they were doing and asked them to get out of the car. As the passenger exited, the officer saw, in plain view, a plastic bag containing marihuana on the floor and a small piece of marihuana on the seat. The accused (driver's seat occupant) was arrested and placed in the back of the police car while the passenger was also arrested and held outside the vehicle. The officer searched the vehicle and found two sets of scales in plain view, more marihuana under the driver's seat, and just over a kilogram of marihuana in the trunk. After the search was complete—about twenty minutes after the arrest—the accused was advised of his right to counsel. The accused was taken to the police station and searched further. In his pockets additional drug items were found.

At trial in the Provincial Court of Newfoundland, the accused was acquitted on a charge of possession of marihuana for the purpose of trafficking. In the trial judge's view the accused's *Charter* rights were violated and the evidence was excluded under s.24(2). The Crown appealed to the Newfoundland Court of Appeal, conceding breaches of the accused's rights under ss. 8 and 9 of the *Charter*, but arguing the trial judge's decision to exclude the evidence under 24(2) was in error. Justice Welsh, however, in authoring the unanimous appeal court judgment (in an unusual turn) rejected the Crown's concessions of the *Charter* breaches.

The Detention

Although the accused was detained when he was asked to get out of the vehicle, it was not arbitrary. The police are entitled to detain persons for investigative purposes. However, in assessing whether an investigative detention is arbitrary, a two prong analysis must be made. First, it must be determined whether the police were acting within the scope of their duties recognized under statute or at common law (which includes the preservation of peace, prevention of crime, and protection of public order). Second, it must be determined whether the detention was necessary for the performance of the recognized duty (that there exists reasonable grounds to detain—formerly known as articulable cause). In holding that the detention passed constitutional muster, Justice Welsh stated:

> As applied to the case before this Court…I conclude that the officer did not arbitrarily detain [the accused] within the meaning of section 9 of the Charter. Given the location of the vehicle, the time of day, and the reactions of [the accused] and the passenger, exhibiting shock and apparently trying to hide something, the officer had reasonable grounds to suspect that the occupants of the vehicle were involved in criminal activity, and that a detention for the purpose of questioning them was necessary. The detention was conducted in a reasonable manner and was very brief in duration. [para. 28]

The Seizures

The seizure of the evidence in this case fell under two categories—plain view and search incident to arrest. Addressing the seizure of the marihuana in plain view, Justice Welsh wrote:

> Reliance on the doctrine depends on three requirements. First, the officer must be lawfully in a position from which the evidence was plainly in view. Second, discovery of the evidence must be inadvertent, that is, the officer must not have knowledge of the evidence in advance. Third, it must be apparent to the officer at the time that the observed item may be evidence of a crime or otherwise subject to seizure.
>
> In this case, these three requirements are satisfied to validate the seizure of the items that were in plain view when the occupants got out of the vehicle. The officer was lawfully in a position to see inside the vehicle…. Discovery of the evidence was inadvertent in the sense that the officer had no preconceived view regarding what he would find when he approached the vehicle. Finally, when the occupants got out of the vehicle and the officer saw the ziplock bag containing what appeared to him to be marihuana, together with a small piece of what he believed to be marihuana on the passenger seat, in plain view, he was aware that these items may be evidence of a drug related offence. [paras. 33-34]

Following the seizure of the bag containing marihuana, the officer arrested the accused. The power to search incident to an arrest may include an automobile provided the police are attempting to achieve some valid purpose connected to the arrest, such as protecting or discovering evidence. Here, "the search was conducted in a reasonable manner and for the purpose of discovering and preserving evidence incidental to arrest," said Justice Welsh. Similarly, the search back at the police station was also conducted in a reasonable manner and for a valid purpose incidental to the arrest.

Right to Counsel

Under s.10(b) of the *Charter* an arrestee is entitled to be advised of his right to counsel without delay (which effectively means immediately) . In this case, the officer did not advise the accused of his rights until some 20 minutes after arrest, which amounted to a breach. However, contrary to the trial judge's decision, Justice Welsh ruled the evidence admissible under s.24(2).

The Crown's appeal was allowed, a conviction was entered, and the matter was remitted back to the trial judge for sentencing.

Complete case available at www.canlii.org

DID YOU KNOW…

…that the average age of a police recruit is 28 years old. The following two tables outline recruit profiles from two recent recruit studies:

British Columbia Municipal Police Recruit Profile	
Age	
Average	28 yrs.
Range	21-42 yrs.
Gender	
Male	72%
Female	28%
Education	
High School only	2%
Some College/University	16%
College Diploma	30%
Undergraduate Degree	48%
Graduate Degree	3%
Previous Police Experience	
No	76%
Yes: Regular Member	3%
No: Reserve/Auxiliary Member	21%

Source: Novakowski, Mike (2003) Exploring Field Training Within British Columbia's Independent Police Agencies: It's the Singer, Not the Song
Data based upon 242 recruits from 2000-2002

Ontario Police College Recruit Profile	
Age	
Average	28 yrs.
Range	20-50 yrs.
Gender	
Male	81%
Female	19%
Education	
No College/University	5%
Some College/University	13%
College Program	49%
BA/BSc	33%

Source: Morris, Ramona (2004) *Canadian Review of Policing Research*
Data based upon 7,900 recruits from 1998 to 2003.

POLICE ALLOWED TO ENTER ONTO PROPERTY TO INVESTIGATE B&E

R. v. Nguyen, 2005 BCSC 963

At 3 am an off-duty police officer, looking out her third story window, saw two men on the sidewalk directly across the street from her apartment. They were walking alongside the front yard fence of a house and peering into the yard. They entered onto the property and began skulking around. One male had a flashlight and peered into a window by the font door while the second male appeared to bend over and pry the window. The officer called 911 and reported a possible grow rip because she had earlier suspected the house contained a marihuana grow operation. As a marked police car arrived, the off duty officer saw one of the men run across the yard, jump a fence and run towards the back alley. A police dog track was unsuccessful, but police found a suspicious vehicle driving nearby containing two passengers who matched the general description of the men seen in the yard. These passengers, along with the driver gave suspicious stories.

Police went into the yard and saw several windows with pry marks, including one with a screen removed and an open window large enough for a person to enter. A strong odour of marihuana could be detected, fans could be heard running, and a Mylar film could be seen. The police felt it necessary to enter the residence and determine whether any more suspects were inside or whether any residents were harmed. Police knocked on the door and the accused answered. He was arrested and police entered to sweep the residence for other persons. No one else was found but a marihuana grow operation was discovered. A search warrant was subsequently obtained and evidence was seized.

During a *voir dire* in British Columbia Supreme Court on charges of production of marihuana and possession for the purpose of trafficking, the accused argued that the initial police entry into the yard lacked legal justification and therefore violated his rights under s.8 of the *Charter* protecting him against unreasonable search and seizure. Justice Joyce, however, rejected this submission. He stated:

> I have come to the conclusion that the police had lawful authority to go into the yard and look at the windows, in order to investigate whether a break and enter had taken place. I am of the opinion that in the circumstances the police had an implied licence to be on the property and that in investigating the state of the windows they did not exceed the scope of the licence. [para. 26]

And further:

> I am satisfied that in this case the police did not enter onto the property with the intention of gathering evidence against the occupant. While [the off duty officer] strongly suspected that the house was the site of a marihuana grow operation when she and her fellow officers entered onto the property, I accept her evidence and find as a fact that when she went into the yard and went up to the house she was continuing an investigation into a possible break and enter under the Criminal Code, not an investigation of a suspected marihuana grow operation under the *Controlled Drugs and Substances Act*…I am satisfied the entry into the yard was not a ruse, the real purpose of which was to gain evidence in support of a search warrant. When they looked at the windows the police were looking for evidence to confirm a break and enter or attempted break and enter.
>
> In my view, when the police had seen suspicious men lurking around the house and apparently trying to force their way in through a window, they were entitled within the scope of the implied licence to take a look at the windows for signs of forced entry, before knocking on the door to communicate

with the occupants and advise them why they were and what they had seen.

It is my opinion that the owner of a home may be taken to authorize the police, who see persons attempting to break in, to come into their yard and check the front windows or door to see whether the home has been breached, without first having to knock on the door and ask permission. In my view the occupant can be said to have waived his privacy rights to that extent, unless he has a locked gate or has posted signs barring entry onto the property.

Counsel for [the accused] submits that if the police had not suspected a marihuana grow operation they would have been justified in going into the yard and looking at the windows for evidence of a break and enter. He concedes that absent such suspicion the police could act upon an implied licence. However, counsel submits that because of their suspicion the police knew they would likely be unwelcome visitors and that in these circumstances there can be no implied licence of waiver of privacy rights.

I do not accept that submission. The police had only a suspicion. They had no strong evidence when they went into the yard that there was a marihuana grow operation in the residence. Furthermore, [the accused] had taken no steps to limit or nullify the implied licence. [references omitted, paras. 31-42]

The evidence was admissible and the accused was convicted.

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

BY THE NUMBERS: HOMICIDE

Homicide by the Numbers BC's 2004 Top 5	
City/Town	Number
Vancouver	26
Surrey (RCMP)	11
Victoria	7
Prince George (RCMP)	6
Abbotsford	5
Richmond (RCMP)	5

Source: BC Coroners Service, BC Homicide Statistics-1997 to 2004, August 24, 2005

EXTENDED VEHICLE SEARCH INCIDENTAL TO DETENTION UNLAWFUL

R. v. Batzer,
(2005) Docket: C41793 (OntCA)

Two police officers responded to a 911 call from a homeowner that two men dressed in dark clothing were outside his residence armed with a gun. The caller was frantic and police received further information that the men were now believed to be on the roof. The house was one of three located in an isolated area where shots had been fired in a random, unsolved drive-by shooting at one of the other houses two weeks earlier. The officers parked their car nearby and walked to the house where they spoke to the homeowner. The homeowner thought the suspects may have went into a field, but there were no tracks in the snow around the house.

While on scene, the officers approached a vehicle parked a short distance away from their cruiser. They did not hear the vehicle arrive and were concerned that the gunmen may have returned. The two occupants matched the general description of the suspects—both males wearing dark clothing—and were detained for investigation. They were ordered out of the car onto the ground, handcuffed, and asked what they were doing. The accused (driver) explained he had been invited to come over by a resident of the house but got stuck in the snow as they arrived. The men were patted down for weapons and the car was searched once but nothing was found. Then, on a second search, the glove compartment was checked and a zippered, nylon case with "Remington" (a gun manufacturer) written on it was found inside. It was opened and police found it contained 22 grams of cocaine and 13 ecstasy pills. The accused was arrested and charged with possession of drugs for the purpose of trafficking.

At trial in the Ontario Court of Justice the accused was acquitted of the drug charge. Although the initial detention for investigation and incidental pat down for safety was lawful, the extended vehicle search was unreasonable and violated s.8 of the *Charter*. She found the circumstances were not so exigent that the police could have determined whether the accused's innocent explanation for his presence was true. Had they checked out the accused's story there may have been no need to search the car at all. The evidence was subsequently excluded under s.24(2) of the *Charter*. The Crown then appealed to Ontario's top court.

Justice Goudge, authoring the Ontario Court of Appeal's judgment, suggested that "on the right facts, a search incidental to a lawful stop could comply with the common law and pass constitutional muster even though it went beyond a pat down." However, in this case the trial judge's conclusion that it was unreasonable for police to extend the search as they did was well founded. As Justice Goudge noted:

> Ultimately, [the trial judge] found that the [accused's] story could have been checked out by the officers and that the situation faced by them was not sufficiently exigent or critical to warrant extending the search to the contents of the closed box in the glove compartment of the car. It was not reasonably necessary for the search to go that far. She concluded that in all the circumstances the extended search was unreasonable.
>
> Her finding that the circumstances were not sufficiently critical is supported by the fact that the occupants of the car were said to match a description that was only very general and unspecific, the absence of weapons on their person, the innocent explanation offered for their presence, and the apparent absence of footprints fleeing the area of the house.
>
> The same is true of the finding that their innocent explanation could readily have been checked so as to make the extended search unnecessary. The two occupants were handcuffed and on the ground. The officers were a very short distance from the house, and had just spoken to the owner. They were aware that there was a second male in the house. The [accused's] story could easily have been checked, with no meaningful if any extension of the appellant's detention beyond that required for the extended search. If confirmed, the extended search would have been unnecessary. [paras. 18-20]

As for whether the evidence was nonetheless admissible, again the trial judge made no error:

> [T]he extended search could reasonably be viewed as a relatively serious breach of the [accused's] *Charter* rights. It went beyond what was required to mitigate concerns about officer safety. The officers had no reasonable and probable grounds. There is a considerable expectation of privacy in a small case that is zippered shut in the glove compartment of one's car. And where one of the officers makes clear that she would have searched this car and any car coming down the road that night regardless of whether she has the common law power to do so, it is hard for the police to rely on good faith in light of this ignoring of the scope of the officers' authority. Finally, in all the circumstances, including the readily available alternative of checking out the [accused's] explanation for being there, I cannot fault the conclusion that the administration of justice would be brought into disrepute if the evidence obtained by the extended search was admitted. [para. 24]

The appeal was dismissed and the acquittal upheld.

Complete case available at www.ontariocourts.on.ca

Coming soon!!!

www.policeleadership.org

(see p. 20)

EXPERIENCED POLICE OFFICER BEST TO ASSESS CIRCUMSTANCES

R. v. Furness, 2005 BCPC 0389

Two plain clothed police officers driving an unmarked police car were travelling in a high drug trafficking and drug use area. They saw the accused and a known female "drug middler" in an alcove area. The two left and began to walk up the street towards a park, a known location for drug use. The accused was walking purposely and appeared to have a crack pipe in the palm of his hand. Believing they were going to smoke crack, the two were arrested by police on a stairway to the park. The accused had a crack pipe in his hand and police found a rock of cocaine in his pants pocket. He was charged with possession of a controlled substance.

At his trial in British Columbia Provincial Court, the accused argued there were insufficient grounds upon which to make the arrest under s.495 of the *Criminal Code*. Justice Cowling, however, ruled the arrest lawful. In determining whether an officer has reasonable grounds, a two prong analysis is used. First, the officer must honestly have a subjective belief that a person committed the offence. Second, a reasonable person standing in the place of the arresting officer would also believe that reasonable grounds existed to make the arrest.

In this case, Judge Cowling found the officer possessed the requisite subjective belief. As for the objective test he wrote:

> There are, in this world, matters of opinion where reasonable people may reasonably hold different views. Probably the best person to assess the dynamics of [the accused's] situation on the Cavan Street sidewalk would be an experienced police officer or an experienced addict, and for the rest of us it is a question of being an armchair-quarterback. [para. 9]

And further:

> I find it, nevertheless, difficult to evaluate on an "objective" basis an incident, the proper value of which is more the subject of art than science. I accept the evidence of the officers as credible and trustworthy in this matter and that their assessment of the situation was honestly made. In their place, I personally would have been less confident to presume what [the accused] was about, but that is not the same as saying that I consider their decision to be erroneous or unreasonable.
>
> I am prepared to accept that the arrest was valid, although the approach I would take to the matter is that in all of the circumstances, the observation of [the accused] with the additional element of the apparent crack pipe sticking out from his hand, would have justified the investigative detention of him. In this case, that detention would have lawfully led to the confirmation that the item was a crack pipe and the necessary basis for a search which would have disclosed the rock of crack cocaine would, in my view, then exist. [paras. 15-16]

Since the arrest was lawful a search incidental to the arrest was permissible. Furthermore, even if the judge was in error in holding the arrest lawful he would have nonetheless admitted the evidence under s.24(2) of the *Charter*.

Complete case available at www.provincialcourt.bc.ca

BY THE NUMBERS: TEEN SUICIDE DEATHS

Teen Suicide Deaths—BC's 2004 Top 4

City/Town	Number
Surrey (RCMP)	3
Vancouver	3
Abbotsford	2
Campbell River (RCMP)	2

Source: BC Coroners Service, Teen Deaths-1997 to 2004, August 26, 2005

FEENEY WARRANT NOT REQUIRED TO ENTER APARTMENT HALLWAY

R. v. Beune, 2005 BCPC 175

The accused called 911 from his apartment to make a noise complaint about his neighbour. Police responded and became aware that the complainant was wanted on an outstanding warrant for uttering threats. Two officers attended, entered the building without being buzzed in by the accused, and knocked on the accused's door. He was asked to open the door and step into the hall. The police learned the noise had stopped and the warrant then became the focus of the police contact. The accused was told he was under arrest for the warrant and the officer put his hand on the accused's shoulder. The accused bolted towards the suite and began yelling and flailing, but he was handcuffed and taken to jail. As a result of his resistance to being arrested, the accused was charged with obstructing a police officer.

At trial in British Columbia Provincial Court the accused argued, among other grounds, that the hallways of his apartment building were part of his dwelling and the police required a "Feeney" warrant (ss.529/529.1 *Criminal Code*) to enter a dwelling house for the purpose of arresting a person therein, absent exigent circumstances. His submission hinged on an interpretation that the hallway was within the "curtilage" of the dwelling house under the s.2 *Criminal Code* definition of dwelling house. In holding that the area of the hallway was not part of the dwelling, Judge Dhillon wrote:

> In summary, the law has carved out a distinction in the treatment afforded to those occupying a residence in multi-unit buildings by holding that the common areas (such as the lobby, hallways or corridors) are for the use and enjoyment of all occupants and their respective invitees. Persons, including police, are impliedly invited or permitted to be in the common areas of such buildings and are not trespassers at law if they approach the unit door for the purpose of communicating with an occupant.
>
> Moreover, these common areas are for access to and egress from an occupant's home or dwelling. There is no compelling privacy interest in these areas because they are not used for private personal activities normally conducted within one's residence such as eating, grooming, socializing or sleeping.
>
> In the case at bar, a locked door and buzzer is not sufficient to absolutely bar public entry into the common areas of the building at 590 Alexander Street. All residents are deemed to impliedly consent to visitors and invitees. Absent an express revocation of that consent, no case for trespass could be made out against the police or any other person on the common property. I conclude that police are permitted to approach the door of any resident of an apartment without the necessity of a Feeney warrant.
>
> I do not discount the position urged by counsel for the accused that no court appears to have considered whether, in modern society, the relationship between an apartment building and a residential unit within it falls within the area of the dwelling curtilage. There may be a plausible argument to be made that the unit in which [the accused] resided at the time, being connected directly by a hallway or passageway to the front door of the outer building envelope, may fit within the statutory definition of dwelling-house under section 2 of the *Code.*
>
> I prefer to answer the broader question of whether, absent prior judicial authorization, police lack legal authority to enter upon the common areas of apartment buildings for purposes of enforcing process at the suite of an occupant. I find the line of authority referred to above to be compelling and persuasive that police do not trespass when they enter into the common hallways of apartment buildings and prior legal

> authorization in such a case is not required… [references omitted, paras. 47-51]

Despite the ruling on the hallway issue, the accused was acquitted of the obstruction charge. In the trial judge's view, there was a reasonable doubt as to whether the accused had the necessary intent to sustain a conviction. He stated:

> I find that the evidence of [the accused] raises a reasonable doubt as to his guilt. [The accused] is clearly an intelligent person who testified in a forthright manner. He said that when he was told about the arrest warrant, he asked to see a copy in the absence of which he turned immediately to go into his unit to get a phone to call his lawyer. I accept his evidence of his motive to return to his suite. He was in his doorway when the police prevented him from moving any further. At that time, he was not explicitly warned that he was resisting arrest and his actions were obstructing the police. The police agreed that they were not going to let him go back into his unit because they felt they had no lawful authority to follow him inside without a Feeney warrant. They restrained him as he tried to get to the phone to call his lawyer. His resistance to the restraint is the basis for the charge.
>
> In considering whether [the accused] had the necessary criminal intent to obstruct the police in carrying out his arrest, I accept [the accused's] evidence of his intent to call a lawyer. This evidence, coupled with the lack of a warning by police that his conduct amounted to obstruction, leaves me in reasonable doubt on the issue of his intent to obstruct. Had the police themselves not been constrained by their inability to enter his suite, I doubt that the matter would have unfolded in the manner in which it did. [paras. 62-63]

Complete case available at www.provincialcourt.bc.ca

Note-able Quote

On Assaulting Police—*Sir Robert Peel, who is considered to be the animator of the modern police force, indicated that "The police are the community, and the community is the police." That is the relationship that should exist between modern police services and their community. In many ways police act as society's surrogates. They do the tasks that society finds unpleasant, and while members of society generally may be able to turn a blind eye to the more unpleasant aspects of our societal interaction, police must not turn a blind eye, they must go out and do those unpleasant tasks. It's the nature of doing their duty which makes them vulnerable. The assault on Constable De Guzman and on Constable MacNeil represents an assault on society at large*—Ontario Court of Justice J. Taylor[3]

INSUFFICIENT NEXUS BETWEEN PERSON & CRIME: DETENTION UNLAWFUL

R. v. Konopski, Lee & McLaughlin, 2005 BCPC 0298

Police executed a search warrant at a residence and found a grow operation in the basement. While the police were still at the residence, the accused Lee arrived with a female and knocked on the door. An officer answered and Lee identified himself. The officer knew Lee was associated to the residence as an owner or landlord and believed he may be associated to the grow operation. The officer was also concerned for his safety with the two people attending the door of an active crime scene. He detained Lee and the female, handcuffed them both and directed them into the residence. Lee and the bag he was carrying were searched. Police found $6,000 cash in Lee's jacket pocket and items that could be used to weigh and package marihuana in his bag. Lee was then arrested.

At trial in British Columbia Provincial Court on charges of marihuana production, possession for

[3] R. v. Swift [2005] O.J. No. 3203

the purpose of trafficking and electricity theft, Lee argued, among other grounds, that he was arbitrarily detained contrary to s.9 of the *Charter* and the searches of both his person and his bag violated s.8 of the *Charter*. The Crown contended, on the other hand, that the detention was not arbitrary and the searches were the lawful product of an investigative detention.

Judge Bastin agreed with the accused. He said:

> In my opinion, it was reasonable for [the officer] to secure Mr. Lee and his female companion because they posed a potential danger to him and to the other officers in the course of their investigation of an active crime scene. It does not follow, however, that there was necessarily a clear nexus between Mr. Lee and the crime or crimes being investigated. Clearly there was no evidence at all to suggest the female was associated to the crimes occurring in the residence.
>
> The difficult issue for the court to decide in this case is whether [the officer] had proper grounds to detain Mr. Lee for investigative detention. I conclude from the evidence on the *voir dire* on the balance of probabilities that [the officer] did not have the required grounds to detain Mr. Lee for investigative purposes. Mr. Lee's presence at the front door, and the fact that he knocked at the door, and [the officer's] belief that he was the landlord for the residence did not amount to the "clear nexus" between Mr. Lee and the marihuana grow operation that was required to meet the legal test for investigative detention that is established by the *Mann* decision.
>
> I therefore find that Mr. Lee and his female companion were both arbitrarily detained by [the officer]. Clearly, then, the s. 9 *Charter* right of Mr. Lee was infringed or denied.
>
> The *Mann* case dealt with police powers of search when a person is lawfully detained for investigative purposes. There are no such powers when a person is not lawfully detained for investigative purposes. I find, therefore, that the search of Mr. Lee's person and the search of his bag resulted in his s. 8 *Charter* rights being infringed or denied.
>
> My finding that Mr. Lee was arbitrarily detained, to use a colloquial phrase, is a "close call". I can appreciate that another court could reach an opposite conclusion; therefore, if I am in error in finding that Mr. Lee was arbitrarily detained, I would rule in the alternative that the search of Mr. Lee's person was still unreasonable as going beyond a pat- down search. The search of Mr. Lee's bag would be also unreasonable as going beyond the limits of police powers of search of a person detained for investigative purposes as that was determined by the *Mann* decision. [paras. 52-56]

As a result the evidence was excluded under s.24(2).

Complete case available at www.provincialcourt.bc.ca

BY THE NUMBERS: ILLICIT DRUG DEATHS

Illicit Drug Deaths—BC's 2004 Top 11

City/Town	Number
Vancouver	64
Surrey (RCMP)	18
Victoria	15
Nanaimo (RCMP)	7
Kamloops (RCMP)	6
Coquitlam (RCMP)	5
Abbotsford	4
Prince George (RCMP)	4
Burnaby (RCMP)	3
Kelowna (RCMP)	3
Maple Ridge (RCMP)	3

Source: BC Coroners Service, Illicit Drug Deaths-1997 to 2004, August 23, 2005

Note-able Quote

If we think we're in a grey area, we may be, but grey is just white tainted with black—Grant Warkentin

2006 POLICE LEADERSHIP CONFERENCE APRIL 10-12, 2006

Mark your calendar! The British Columbia Association of Chief's of Police, the Ministry of Public Safety and Solicitor General and the Justice Institute of British Columbia will be hosting the "**Police Leadership 2006 Conference**" April 10 to 12, 2006 at the Westin Bayshore in Vancouver, British Columbia. This is Canada's largest Police Leadership Conference and was sold out in 2004 with more than 600 delegates attending.

Leadership in policing is not bound by position or rank and this conference will provide delegates from the police community with an opportunity to engage in a variety of leadership areas. Police Leadership 2006 will bring together experts who will provide current, lively, and interesting topics on leadership. This carefully chosen list of speakers will provide a first class opportunity at a first class venue to hear some of the world's outstanding authorities on leadership. Therefore, early registration is encouraged so you do not miss out on this great opportunity.

Beautiful downtown Vancouver will provide the backdrop for the Police Leadership 2006 Conference. The host hotel, the Westin Bayshore Resort and Marina, offers state of the art facilities, excellent accommodation rates, and promises to be an enjoyable venue for the conference. The Westin is located on the shores of Coal Harbour, overlooking Stanley Park, and is a short walk to the downtown's business district, shopping, and entertainment. Or you may choose to jog, bike, or roller blade along Vancouver's famous Seawall.

To date, Police Leadership 2006 has confirmed the following presenters:

Lieutenant-General Roméo Dallaire
O.C., C.M.M., M.S.C., C.D. (Retired)

Stephen Covey
Author, *The 7 Habits of Highly Effective People*

Richard Boyatzis
Author, *Primal Leadership*

Rick Dinse
Chief of Police, Salt Lake City Police Department

John King
Assistant Chief of Police, Montgomery County Department of Police

Eddie Compass
Former Chief of Police, New Orleans Police Department

Conference Cost

The registration fee for the Police Leadership 2006 Conference is **$385** CDN (plus GST) if you register before **March 5, 2006**. The conference fee for registrations received AFTER March 5, 2006 will be **$425** CDN (plus GST). The registration cut off date is April 5, 2006.

The conference fee includes a reception on Monday evening, lunches on Tuesday and Wednesday, and a banquet dinner on Tuesday. Each participant will receive a "welcome package" upon registration. Register early, as the number of delegates is limited and past conferences have sold out prior to the registration cut-off date.

Conference attire is business casual.

For more information visit
www.policeleadership.org