POLICE ACADEMY
715 McBride Blvd. New Westminster B.C. V3L 5T4

IN SERVICE:10-8

A PEER READ PUBLICATION

JUSTICE INSTITUTE of BRITISH COLUMBIA

A newsletter devoted to operational police officers across British Columbia.

IN MEMORIAL

On September 15, 2005, 41 year old **Niagara Regional Police Service Constable Daniel Rathonyi** was participating in a fitness appraisal to become a member of the Emergency Task Force Unit. After finishing the test, he collapsed. Other officers tried to give him first aid but were unsuccessful.

Constable Rathonyi began his career with the Niagara Regional Police Service in 2000 and was currently assigned to Uniform Patrol duties in Niagara Falls. He is survived by his wife, son and daughter.

On November 5, 2005, two Wildlife Protection Officers and an experienced pilot died when their plane crashed. Wildlife Protection Officer Nicolas Rochette and Wildlife Protection Officer Fernand Vachon, along with the pilot Yves Giguère, were conducting a night-hunting operation in the Chaudière-Appalaches area (approximately 30 miles north of the U.S. border) when the crash occurred.

Wildlife Protection Officer Nicolas Rochette began his wildlife protection career in Forestville. In 1997 he was appointed wildlife protection officer for Laurier-Station and Saint-Camille. He took his career very seriously, and was a guest on the Radio Canada program Justice, which examined the duties of wildlife protection officers. His concern for the human aspects of his job also led him to accept a position as union representative. Working in the Chaudière - Appalaches region, Wildlife Protection Officer Rochette frequently took part in aerial surveillance of night-time white-tailed deer hunting and his efforts were greatly appreciated. Over the years he was involved in numerous poaching prevention initiatives and was known for his sense of initiative and productivity. He is survived by his daughter.

Wildlife Protection Officer Fernand Vachon first became a wildlife protection officer in 1972. He was appointed Wildlife Protection Office unit commander for Thetford-Mines and Laurier-Station in 2000 and went on to develop new working methods as well as an innovative approach to the poaching of white-tailed deer involving a combination of ground work and aerial patrols. Wildlife Protection Officer Vachon was known for his expertise, professionalism, and persistence. He was an inspiration to his colleagues from Québec in the battle against poaching. Wildlife protection was his passion, and he devoted 33 years of his life to the cause with the enthusiasm and commitment that were his trademark.

The preceding information was provided with the permission of the Officer Down Memorial Page: available at www.odmp.org/Canada

**"They are our heroes,
We shall not forget them"**

HIGHLIGHTS IN THIS ISSUE

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

National Library of Canada Cataloguing in Publication Data

Main entry under title:

In service:10-8. -- Vol. 1, no. 1 (June 2001)-

Monthly.

Title from caption.

"A newsletter devoted to operational police officers across British Columbia."

ISSN 1705-5717 = In service, 10-8

1. Police - British Columbia - Periodicals. 2. Police – Legal status, laws, etc. – Canada – Cases – Periodicals. I. Justice Institute of British Columbia. Police Academy. II. Title: In service, 10-8. III. Title: In service, ten - eight.

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

"I miss getting the newsletter since I graduated from the JI in January 2004. I go on-line occasionally and read it but I would like to get it at work...[T]he rest of my squad would like to read it also and I can make copies of it there. Thanks very much, it is a very informative read and a good way to stay up to date"—**Police Constable, British Columbia**

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"The edition of your latest newsletter (Volume 5, Issue 5) was just forwarded to me by a… constable. I found the information well put together and easy to read. Great job!"—**Police Sergeant, Alberta**

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"I'm a Sergeant…and read your newsletter. It was extremely informative and would like to be on your mailing list"—**Police Sergeant, Alberta**

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"I was hoping that you could add me to your distribution list for your newsletter. The articles are excellent tools for any police officer to stay up to date on current legislation. I appreciate the quality of your work and look forward to future readings"—**Police Constable, Alberta**

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"I have never seen this publication before and I noted several very informative cases and would ask that you place me on your electronic distribution list so that I can share [In] Service 10-8 with the other members of our unit"—**RCMP Corporal, British Columbia**

****

"Love your newsletter"—**RCMP Constable, British Columbia**

****

"I find your publication extremely informative and practical for operational members. Thank you"—**RCMP Corporal, British Columbia**

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

www.jibc.bc.ca

DESTROYED DISC BREACHES DISCLOSURE RULES

R. v. Forster et al, 2005 SKCA 107

A police officer conducted a drug investigation using confidential informants, electrical consumption records, infrared imaging, drive-bys and other information to build his grounds for a search warrant. His many observations were committed to memory or written on his hands or scraps of paper and then were edited and recorded onto a computer disc. This information then formed the contents of the information to obtain the search warrant. The computer disc and all of the original notes and source information were destroyed by the officer except those related to the execution of the search warrant. This left the entire original record of the six to seven month investigation destroyed after the officer used its contents to draft the information to obtain.

The three accused were charged with growing marihuana and possession for the purpose of trafficking. The Crown disclosed the notes made during the execution of the warrant and a copy of the information to obtain, which had information blacked out to protect the identity of the confidential informants. At the beginning of the trial in Saskatchewan Provincial Court the charges were stayed because the officer destroyed the source material and computer disc which breached the Crown's duty in preserving material produced during the investigation. The Crown appealed to the Saskatchewan Court of Appeal.

Non disclosure of evidence can result in such prejudice to an accused that their s.7 *Charter* right to full answer and defence, a principle of fundamental justice, will be violated. In determining whether a s.7 breach has occurred from the destruction of documents, a two prong enquiry will be undertaken. First, were the destroyed notes and disc relevant evidence. And second, if the evidence was relevant, did the Crown fail to meet its obligation to preserve that evidence.

In this case Justice Sherstobitoff, writing the judgment of the court, concluded that both branches of the test had been met. In ruling on the first branch, whether the destroyed material was relevant evidence, he wrote:

> While the officer swore that everything on the disc was contained in the Information, it is obvious that the conversion of that information from the form of entries made from time to time over a period of many months into the form of an Information to Obtain a Search Warrant involved not only reorganizing, rewording and editing all of the material, but, almost certainly, some selection and discarding of material that was, in the opinion of the officer, not significant or useful. These processes would, in all likelihood, put all of the information in the very best light for the Crown in its application for the search warrant, as opposed to its original form, and would tend to minimize the aspects unfavourable to the success of the application. They would have certainly changed the form of the content of the disc, and very probably, to some degree, also the substance of the content of the disc. Those changes could have been of use to the defence.
>
> In addition, it must be borne in mind that there were two kinds of notes destroyed: those written on his hand or on scraps of paper, and those on the disc. We do not know what sort of editing or copying was done in transferring the information from the first kind of notes to the disc. The transcript is silent in this respect as none of the counsel asked about the process, but it is self-evident from an examination of the Information that it does not merely reflect the unedited and unchanged content of the sorts of notes that

would be written on a scrap of paper or on a hand.

There are many uses to which the destroyed notes and the original content of the disc as well as the changes between that content and the content of the Information to Obtain a Search Warrant could have been put to by the defence at trial. The credibility of [the officer] would be important at a trial since it was his sworn evidence that obtained the search warrant and it was the search warrant that uncovered the evidence to support the prosecution. The information on the disc in its original form would be invaluable in any attack on the validity of the search warrant. If there were inconsistencies between the notes, the content of the disc, the Information, or the constable's evidence on a *voir dire*, or at trial, his credibility could have been challenged. This is a frequent and necessary use of police notes and often the only effective way to test the credibility of a police witness. The defence in this case has been deprived of all that.

We must conclude that it was open to the trial judge in this case to find, as she impliedly did, that the destroyed notes and the disc contained material which the defence could have used even though it is difficult to specify the precise manner in which the information could have been used without knowing the exact content of the disc…Given the broad scope of the material, and its importance to the prosecution of the case, it was material that should have been available to the defence. [references omitted, paras. 26-29]

As for the second branch, whether the officer failed to meet his obligation in preserving the evidence, Justice Sherstobitoff stated:

The next question is whether [the officer] failed in his obligation to preserve relevant evidence. In this case, the disc in question was deliberately destroyed in order to protect the identity of confidential informants. Since the disc served as [the officer's] notebook respecting his entire investigation of this matter, it amounted to destruction of his notebook. Curiously, although the constable was examined or cross-examined by four separate counsel, none asked him if he was aware of the duty of the Crown and its representatives to preserve all relevant material for the purpose of disclosure to the defence, and in particular, notes of the investigation. It is hard to believe that in the decade or so since *Stinchcombe* any police officer could be unaware of the duty to preserve his notes. Nor did any counsel ask the officer why, in order to protect the identity of the informants, the content of the disc could not have been transcribed with confidential portions omitted (as was done with the Information to Obtain a Search Warrant). Nor was he asked why it was not left to Crown counsel or the judge to decide whether or what part of the contents of the disc should be disclosed to the defence in order to comply with the rules of privilege respecting informants. Since these questions remain unanswered, and [the officer's] evidence was taken by all to be credible, we must assume that his motive in destroying the disc was his stated motive, and not an improper one, and that he believed that he had preserved the content of the disc in the Information to Obtain a Search Warrant. The innocent motive, in the circumstances of this case, cannot affect the result.

If the officer knew of his duty to preserve and produce the disc, he acted in bad faith in destroying it.…If he did not know of the duty to preserve and produce the disc, that amounted to inexcusable negligence… As noted above, it is almost inconceivable that a police officer could be unaware of the obligation to preserve material such as his notes of an investigation, and the disc in this case, constituted his notes of the investigation. If he did not know of his obligation to preserve evidence, he should have known. [paras. 30-31]

In dismissing the Crown's appeal and holding that the trial judge's granting of a stay of proceedings was not improper, the court held:

The difficulty in this case is that the material in issue has been destroyed. It cannot be recreated. Since it could have been of use to the defence, the defence has

> been prejudiced by its loss. Accordingly, both branches of the test are met. The prejudice caused by the destruction will be manifested through the trial and its outcome. Perhaps most importantly, no other remedy is capable of removing that prejudice. [para. 33]

Complete case available at www.canlii.org

STRIP SEARCH OF 'SHORT TERM' DETAINEE UNREASONABLE

Ilnicki v. MacLeod, 2005 ABCA 349

Two police officers attended the plaintiff's residence and arrested him on an outstanding arrest warrant for no insurance. The officers had become aware of the arrest warrant while investigating another matter. The officers patted down the plaintiff and he later resisted a strip search at the police station and was injured when force was applied. He was taken to the hospital, treated for a sprain and then taken to the detention centre where he was held for about 10 minutes before seeing a justice of the peace. He was released on $250 bail.

The plaintiff sued and the Alberta Court of Queen's Bench judge found the defendants breached the plaintiff's s.8 *Charter* rights and committed a battery in conducting the strip search. He was awarded $5,000 for the indignities of the strip search and $6,000 for the injury. The defendants, however, appealed to the Alberta Court of Appeal arguing the trial judge erred by finding the strip search unreasonable and that an unreasonable amount of force was used in conducting it.

Unreasonable Search

In *R. v. Golden, [2001] 3 S.C.R. 679*, the Supreme Court of Canada recognized that the power to search as an incident to arrest can include a strip search, provided the police have reasonable grounds to believe it is necessary. In other words, merely having reasonable grounds to effect an arrest does not automatically carry with it the right to strip search. Furthermore, the Supreme Court outlined a distinction between a person held in short term detention from that of a person entering a prison population. In the latter, the Supreme Court noted, there was a greater need to ensure no weapons or illegal drugs are smuggled into the prison where prisoners often come into contact with each other. This, it was suggested, may justify routine strip searches of all prisoners. However, strip searches of short term detainees in police custody must be assessed on a case-by-case basis and cannot be carried out routinely.

In this case, the Alberta Court of Appeal agreed with the trial judge. This was a short term detention. The Court stated:

> In the present case, the [plaintiff] was arrested on an outstanding warrant related to a traffic violation. The only purpose in taking him to the Detention Unit was to bring him before a justice of the peace so the warrant could be vacated and the [plaintiff] released on bail. The police did not intend to oppose bail. [The officer] testified that if a justice had been available when they reached the detention centre, no incarceration would have been necessary. Even if a justice had not been available immediately however, any possible incarceration would have been "short term."
>
> It follows the only reasonable expectation the arresting officers could have had, at the time they conducted the strip search, was that the [plaintiff] would not need to be incarcerated, or, if he did, it would be for a short time. This is borne out by the facts of this case. The [plaintiff] spent only about ten minutes in a cell before he was taken before the justice of the peace. He was released within 45 minutes of entering the detention centre.
>
> The police officers, therefore, were not entitled to conduct a strip search simply because there was a possibility the [plaintiff] would be detained briefly in police cells. This

> does not mean, as the Supreme Court pointed out in Golden, that police officers are prohibited from conducting a strip search if other circumstances gave them a legitimate safety concern. But there were no such concerns in this case. The [plaintiff] was arrested at his house, in front of his wife and children, because of an unpaid traffic fine. When he was arrested, the police had no apparent reason to suspect he was carrying either weapons or drugs, and he was under constant surveillance thereafter. If they were concerned about their safety, they were entitled to a "pat down" or " frisk" search as an incident to arrest.
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> In fact, they had carried out a pat down search on arrest.
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> The only reason the police officers gave for later conducting the strip search, was that the [plaintiff] had to go before a justice of the peace and to do that he would have to go to the detention centre where he might be placed in a cell with other detainees. This was not enough to justify the strip search.[paras. 15-19]

Furthermore, it was not a reasonable inference that even if the plaintiff was to go to the detention centre that he would come into contact with another detainee. The officer testified that because this was a traffic matter the plaintiff would have been taken to the justice directly, or if not available, he would have been placed in a single occupancy cell at the detention centre. Moreover, even if it was necessary for the arresting officers to consider future contact between the plaintiff and other detainees, they had an obligation to consider ways of avoiding such contact. By minimizing the chance of contact the need for a strip search is also minimized.

Two alternatives the Court suggested of avoiding contact were:

1. the police could have contacted the detention centre before conducting the strip search to determine whether a justice was immediately available;
2. the police could have contacted the detention centre before conducting the strip search to determine whether there were single occupancy cells available. If there were not, and the plaintiff would have been detained in the overflow with other prisoners, there were search facilities in the detention centre to conduct the strip search.

Unreasonable Force

As for the trial judge's decision about the amount of force used in conducting the strip search, the Court could not say she was clearly wrong. The court deferred to the trial judge's decision finding the police controlled the agenda and could have tried other techniques to comply with the strip search—such as warning force could be used or that the plaintiff would be left in the search room until he complied or consulting with a sergeant about other ways of gaining compliance.

The appeal was dismissed.

Complete case available at www.albertacourts.ab.ca

GROUNDS FOR ARREST VIEWED CUMULATIVELY, NOT SEPARATELY

R. v. Bracchi, 2005 BCCA 461

A police officer set up surveillance on a mobile home surrounded by a large wooden and chain link fence known for many years to be associated with cocaine trafficking and colloquially referred to as "the compound". He would watch visitors attend the home (either by vehicle or on foot) and leave within five minutes. He stopped about 20 vehicles he saw leave the place and seized cocaine from all but one. He also was inside the trailer on one occasion and seized an ounce of cocaine lying on the kitchen counter. The police also received other reliable information that the owner of the compound was trafficking in

cocaine and that the accused was working for the owner. It was also believed that the cocaine was packaged in sealed salmon tins.

Police set up surveillance on the accused's residence several times. On one occasion they stopped a young male who had driven up to the accused's house, entered, and left a short time later. Police seized 0.5 grms of cocaine from the male who told them he bought it from the accused for $40. The accused then moved to another house and police continued periodic surveillance. Two weeks before his arrest, the accused was seen leave his house, drive erratically, but he lost the police following him. They subsequently located him at another trafficker's residence and saw him pull into the driveway and get out of his vehicle. As the police drove by he turned and walked up the street.

On the day of the accused's arrest police saw him leave his residence in his vehicle and drive three blocks before turning on his lights. He drove in an unusual, circuitous route, rapidly accelerating at times. As he approached the compound, police stopped him, believing he was probably making a cocaine delivery. He was arrested for possession of cocaine. In an open fanny pack on the floor by the driver's seat police found 0.5 grms. of cocaine in a clear plastic baggie and $1,550 in cash. Also located was a sealed salmon tin under the driver's seat. It was opened and found to contain two plastic baggies of cocaine totaling 55 grms. The accused was then arrested for possession of cocaine for the purpose of trafficking. The police seized the cocaine and cash and continued their search, finding a cell phone and pager as well as a list, from the glove compartment, containing licence plates and descriptions of unmarked police vehicles and private vehicles belonging to police members.

At his trial in British Columbia Provincial Court the accused was acquitted. The trial judge ruled that the arrest was unlawful because the police did not have reasonable grounds to effect an arrest. He gave no weight to the cocaine found in the 19 vehicles stopped leaving the compound and found the accused's suspicious driving prior to his arrest insufficient to provide reasonable grounds. Since the arrest was unlawful, the resultant search incidental to that unlawful arrest was unreasonable and a violation of s.8 of the *Charter*. As a consequence, the evidence was excluded under s.24(2).

The Crown appealed to the British Columbia Court of Appeal arguing the trial judged applied the reasonable grounds standard incorrectly by evaluating each factor individually rather than assessing the totality of the circumstances. Justice Smith, authoring the unanimous judgment, agreed. Rather than evaluating each item of evidence separately, the trial judge "should have determined whether the circumstances upon which the Crown relied as objective justification for the arrest, considered cumulatively, amounted to reasonable and probable grounds for the arrest."

In this case, Justice Smith ruled that the police did have reasonable grounds, both subjectively and objectively. He stated:

> [The officer's] surveillance observations, his seizure of cocaine from the kitchen table of the trailer, and his discovery of cocaine on several occasions in vehicles leaving the compound were confirmatory of the information received by the police about drug trafficking generally at [the compound].
>
> The information that the [accused] was involved in trafficking and was delivering cocaine to the compound was detailed. It included names of several individuals involved and the specific location where the trafficking was allegedly taking place. It was particular as to the amounts of cocaine involved and the novel manner of packaging the cocaine. Moreover, the information was provided by a number of sources on an ongoing basis over an extended period of time. Thus, it was internally corroborative. One of the sources was an associate of the Pasanen group who apparently had direct knowledge of the

trafficking and the persons involved. These factors tend to indicate that the information was reliable.

As well, the information that the [accused] was involved in trafficking cocaine was corroborated by the seizure of cocaine by [the officer] from a person who had just been in the [accused's] house and that person's statement that he had purchased the cocaine from the [accused].

Further, the parallels between the [accused's] conduct on the day he travelled to Cumberland and on the night of his arrest are striking. On both occasions, he drove in a manner that would reasonably support a hypothesis that he was attempting to avoid surveillance. His trip to Cumberland terminated at the home of a person known to the police to be a cocaine trafficker. His trip on the night of his arrest was terminated by the police just doors away from the compound…known by the police to be a place where cocaine was trafficked. The reputation of these places for drug trafficking is a relevant circumstance and can be taken into account…. Thus, there was objective evidence to reasonably support a hypothesis that the [accused] was attempting to avoid surveillance on the night of his arrest because he had cocaine in his vehicle.

The actions of the [accused] from the time he entered his vehicle until he was stopped and arrested were compelling evidence, in light of the other evidence in possession of the police, that he was engaged in the commission of an indictable offence. Considering all of the circumstances, I think a reasonable person could reasonably infer that the [accused] was probably in possession of cocaine that he was delivering cocaine to the compound…when the police stopped him and arrested him. [references omitted, paras. 27-31]

Since the arrest was valid the search that arose from that arrest was also valid. The appeal was allowed, the acquittal quashed, and a new trial was ordered.

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

VALID DETENTION BASED ON COMPELLING CUMULATIVE FACTORS

R. v. Bui & Vu, 2005 BCCA 482

Police in Vancouver saw the two accused deplane off a flight from Toronto. An officer knew they were previously involved in transporting contraband and believed Vu was Bui's aunt. The officer also knew that couriers took marihuana from Vancouver to Toronto, returning with tobacco products and money. As the accused walked to the terminal, they stared at the officer nervously, maintained prolonged eye contact, and looked back at him over their shoulders. The accused did not talk to each other and went in opposite directions once in the terminal. The officer believed they were pretending not to know each other. One officer then followed Bui while a second officer followed Vu.

Both accused were detained and it was determined that they had arrived from Toronto that day and were scheduled to return three days later, a short turnaround consistent with transporting contraband. After learning from the airline that neither accused checked in baggage in Toronto, the investigation changed from tobacco contraband transport to proceeds of crime. The accused were moved to a storefront police office and told they could contact a lawyer, but they were not formally advised of their s.10(b) *Charter* rights. They both indicated a desire to speak to a lawyer.

Vu was taken to a small office and read her s.10(b) rights from a card. As she stood up, her jacket fell open and a currency shaped package was seen protruding from an inside pocket, while a contoured lumpiness around her waist was also observed. She was arrested, searched, and $83,500 was found. Bui was also taken to an office and again advised he was being detained for possession of proceeds of crime and properly

advised of his s.10(b) rights. Outlines of two thick bundles could be seen in his pockets. The officer learned what was found on Vu and then arrested Bui. He was searched and police found $13,360 on his person and many open, vacuum-sealed plastic bags containing marihuana flakes in his carry-on bag. Both accused were given access to a lawyer at the main police station about an hour after the detentions began because they could not be afforded privacy at the storefront office.

At trial in British Columbia Provincial Court the trial judge concluded that both accused were validly detained by police because the detentions were based on articulable cause. Since the detentions were based on a constellation of objectively discernible facts, they were not arbitrary and therefore did not violate s.9 of the *Charter*. The money was seen during a lawful detention and confirmed during a search incidental to lawful arrest. As for the delay in accessing counsel, the trial judge ruled that the police should have given the accused the option of calling a lawyer without privacy. This violated the accused's s.10(b) *Charter* rights, but the evidence was admissible under s.24(2). They were convicted of proceeds of crime offences.

The accused then both appealed to the British Columbia Court of Appeal arguing, in part, that the trial judge erred in finding the police had reasonable grounds to detain them. Since the detention violated s.9 of the *Charter*, it was submitted, the search and money seizure violated s.8 and should be excluded from evidence under s.24(2). However, Justice Low, authoring the unanimous decision, found the trial judge did not err. The cumulative effect of the factors considered by the trial judge were compelling. As for the trial judge's s.24(2) *Charter* analysis and the effect of the s.10(b) breach on the admission of evidence, there was no error. The appeal was dismissed.

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

DETAINEE MUST BE DILIGENT OR POLICE MAY PROCEED WITH BREATH TESTS

R. v. Jones, 2005 ABCA 289

The accused was arrested for impaired driving, advised of his right to counsel, and read the demand for breath samples. He said he wanted to speak to counsel of his choice. At the police station the accused was taken to a private phone room containing a phone, phone books, and a list of lawyers. He was told to knock on the door when he was done and seven minutes later he did just that. The officer entered the room and asked whether the accused had contacted counsel. The accused said he had not contacted his lawyer so the officer again told him about legal aid and the phone book and that he could call another lawyer. The accused said he only wanted to talk to counsel of his choice. He did not say he wanted more time or that he required any assistance. He was escorted to the breathalyser room and provided samples of his breath.

At trial in Alberta Provincial Court the judge found the accused was provided with a reasonable opportunity to consult counsel, which he was not reasonably diligent in exercising. The breathalyser certificate was admitted and the accused was convicted of over 80mg%. The accused appealed to the Alberta Court of Queen's Bench, but his appeal was dismissed. He then appealed to the Alberta Court of Appeal arguing his right to counsel under s.10(b) of the *Charter* had been violated because the police should have asked him why he was not able to reach a lawyer, should have read a further caution (Prosper warning) or at least asked him if he

BC's PROPSER WARNING

You have the right to a reasonable opportunity to contact counsel. I am obliged not to take a statement from you or to ask you to participate in any process which could provide incriminating evidence until you are certain about whether you wish to exercise that right. Do you understand? What do you wish to do?

needed more time, and should not have suggested contacting other counsel.

In dismissing the appeal, Justices McFayden and Ritter first summarized the duties on the police with respect to s.10(b) of the *Charter*. They wrote:

> Section 10(b) of the Charter imposes two duties on police officers. They must inform the detainee of his right to consult counsel without delay and of the existence and availability of legal aid and duty counsel. If the detained person wishes to consult counsel, the police must provide a reasonable opportunity for the detained person to exercise that right, and refrain from eliciting evidence until he or she has had that opportunity. Where the trial judge concludes that a reasonable opportunity has been provided, the trial judge must consider whether the detained person was reasonably diligent in exercising that opportunity. The burden is on the detainee to establish reasonable diligence. If the detainee is unable to reach counsel after reasonably diligent efforts, then the issue of waiver will arise and a Prosper warning may be required. [para. 8]

In finding the police complied with their responsibilities under s.10(b), the majority held:

> Here, the police officer carried out the duties imposed on him. He did not interrupt the [accused] in his efforts to reach counsel, nor did he do anything that interfered with the [accused's] exercise of his right to consult his lawyer. It was the [accused] who terminated his efforts by knocking on the door, which signified that he had finished with the phone room. The only evidence establishes that the [accused] could have remained in the phone room had he required further time to contact his lawyer. He did not suggest that he needed more time, nor did he ask the police officer to assist him in reaching his counsel.
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> Counsel for the [accused] suggests that the police officer should have questioned the [accused] regarding the reasons for his inability to reach counsel. We do not agree. Such questioning could be viewed as an interference with the [accused's] right to privacy in his consultation with counsel.
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> The [accused] also suggests that the police officer should have asked him whether he required further time. However, the police officer had not interrupted the [accused] nor had he suggested to him that his time was up. On the only evidence, the [accused] knocked on the door because he had terminated his efforts and was ready to proceed to the next step. The police officer reasonably concluded from the [accused's] actions that the [accused] had terminated his efforts to try to call his own lawyer. In the circumstances, an inquiry about whether the [accused] needed more time would have been redundant. As he knew that the [accused] had been unable to reach his own lawyer, the police officer reminded the [accused] that he could seek the assistance of legal aid counsel or other counsel. The [accused] responded that he did not wish to do so. We do not agree with the suggestion of counsel for the [accused] that the police officer's attempt to provide additional information to the [accused] constituted an improper interference with the [accused's] right to consult counsel of his own choice.
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> The [accused] also suggests that an additional Prosper warning should have been read to the [accused]. That warning may be required where the detained person, who has been reasonably diligent in exercising his right but has not been successful, subsequently wishes to waive his right to counsel. It is not applicable here. [references omitted, paras. 9-12]

Justice Berger, however, disagreed with his colleagues. He noted there were two ways a person can waive their right to counsel after asserting it:

1) by unequivocal waiver (clear and unambiguous language)

2) by failing to reasonably pursue the right to counsel

In this case, Justice Berger opined that the police did not provide the accused with a reasonable opportunity to contact counsel. They should have clarified the situation before presenting the accused to the breathalyser. He stated:

> There is…no evidence in the record establishing that the [accused] accepted the constable's edict that a knock on the door signalled the termination of his efforts to contact his lawyer of choice. The unilateral imposition of a presumption of waiver cannot, in my opinion, operate to deprive an accused of his right to counsel by equating a knock on the door with waiver of the right. The Charter threshold for clear and unequivocal waiver cannot be displaced by an ambiguous benchmark imposed by the police. After all, a knock on the door by a detainee locked in a telephone room is capable of supporting any number of alternative explanations.
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> When asked whether he wanted to contact another lawyer, the [accused] re-stated his desire to consult only with [his lawyer]. This was a reassertion of his continuing intent to contact his lawyer of choice. The Crown failed to discharge its burden that the [accused] had given "a clear indication that he had changed his mind" and had waived his right to counsel. The test for waiver…is not made out. It was, in my opinion, unreasonable for the police to proceed as if the [accused] (after only seven minutes in the phone room) had waived his right to counsel.
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> … … …
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> In the case at bar, the Crown takes the view that the informational duty to read a "Prosper warning" only arises where the accused person no longer wishes to seek the advice of counsel. The Crown submits that "[a] detainee who has given no indication that he wishes to waive his right to counsel [i.e. the [accused]] should not be read a waiver warning as if he had."…This proposition, in my view, must be rejected. If an informational duty arises after an accused has sought legal advice and then has changed his mind (Prosper), why would it not arise in circumstances where the accused has been duly diligent in exercising the right to counsel of choice and continues to assert his right…? When first efforts fail, it seems to me anomalous that in the absence of an express abandonment of the desire to contact counsel of choice, the police would be at liberty to proceed with their investigation without taking steps to ensure that the accused has genuinely waived his right to counsel. In the instant case, the police failed to take such steps.
>
> The Charter protects the least knowledgeable accused. The contention of the… Crown that the [accused] was obliged to assert "I want to try again" is, I suggest, a recipe for a two-tiered right to counsel. A knowledgeable accused might well assert "I want to try again". A less sophisticated detainee might not. That is precisely why, in my opinion, an informational duty is properly imposed on the police in the circumstances of this case. [references omitted, paras. 22-26]

Justice Berger would have allowed the appeal, quashed the conviction, and entered an acquittal.

Complete case available at www.albertacourts.ab.ca

NO GUILTY INFERENCE FROM EXERCISING RIGHT TO SILENCE

R. v. Turcotte, 2005 SCC 50

The accused attended a police detachment and repeatedly asked the clerk to send a police car to the ranch where he lived. Two police officers took over from the clerk and the accused again repeatedly asked that a police car be sent to the ranch, but would not explain why. He then gave a set of keys to the police and said they were for a truck parked outside that had a rifle in it. The accused was taken to an interview room where he provided his name and date of birth when asked, and again made repeated requests that a police car be sent to the ranch, but refused to explain why. After police arrived at the ranch they found three victims that had died from axe

wounds to the head. The accused was then detained and advised of his rights and was later arrested for the murders.

At trial in the Supreme Court of British Columbia the Crown characterized the accused's silence (refusal to answer questions) at the police detachment as "consciousness of guilt." The trial judge told the jury that the accused's refusal to tell the police what was at the ranch was better characterized as "post-offence conduct" (behaviour after the crime), which could, if the jury decided, provide evidence of guilt. The accused was found guilty on three counts of second degree murder and sentenced to life in prison.

The accused appealed to the British Columbia Court of Appeal and his convictions were set aside and a new trial was ordered. The unanimous three member court ruled that the accused's silence was irrelevant and could not constitute evidence that he committed the offences. Because there was no common law or statutory rule requiring the accused to answer police questions, he had the right to remain silent.

The Crown appealed the decision of the British Columbia Court of Appeal to the Supreme Court of Canada arguing that the accused's refusal to answer some of the police questions could be relied upon as post-offence conduct from which an inference of guilt could be drawn. Justice Abella, authoring the unanimous nine member judgment, first examined the meaning of "post-offence conduct." She noted that it is not a neutral term encompassing all behaviour by an accused following the commission of a crime, but rather only conduct probative of guilt, such as flight from the scene of a crime, attempts to resist arrest, failure to appear for trial, acts of concealment like lying, assuming a false name, changing appearance, or hiding or disposing of evidence.

In this case, the accused had the right to refuse to answer police questions. "Absent statutory compulsion, everyone has the right to be silent in the face of police questioning," said Justice Abella. "It would be an illusory right if the decision not to speak to the police could be used by the Crown as evidence of guilt." She further stated:

> Conduct after a crime has been committed is only admissible as "post-offence conduct" when it provides circumstantial evidence of guilt. The necessary relevance is lost if there is no connection between the conduct and guilt. The law imposes no duty to speak to or cooperate with the police. This fact alone severs any link between silence and guilt. Silence in the face of police questioning will, therefore, rarely be admissible as post-offence conduct because it is rarely probative of guilt. Refusing to do what one has a right to refuse to do reveals nothing. An inference of guilt cannot logically or morally emerge from the exercise of a protected right. Using silence as evidence of guilt artificially creates a duty, despite a right to the contrary, to answer all police questions.
>
> Since there was no duty on [the accused's] part to speak to the police, his failure to do so was irrelevant; because it was irrelevant, no rational conclusion about guilt or innocence can be drawn from it; and because it was not probative of guilt, it could not be characterized for the jury as "post-offence conduct". [paras. 55-56]

The Crown also argued that the right to silence is only engaged when the accused is under the power of the state (such as detention or arrest), and if not, the right has no relevance. In rejecting this submission, Justice Abella wrote:

> In general, absent a statutory requirement to the contrary, individuals have the right to choose whether to speak to the police, even if they are not detained or arrested. The common law right to silence exists at all times against the state, whether or not the person asserting it is within its power or control. Like the confessions rule, an accused's right to silence applies any time he or she interacts with a person in authority,

> whether detained or not. It is a right premised on an individual's freedom to choose the extent of his or her cooperation with the police, and is animated by a recognition of the potentially coercive impact of the state's authority and a concern that individuals not be required to incriminate themselves. These policy considerations exist both before and after arrest or detention. There is, as a result, no principled basis for failing to extend the common law right to silence to both periods.
>
> Nor do I share the Crown's view that by attending at the detachment and answering some of the police's questions, [the accused] waived any right he might otherwise have had. A willingness to impart *some* information to the police does not completely submerge an individual's right not to respond to police questioning. He or she need not be mute to reflect an intention to invoke it. An individual can provide some, none, or all of the information he or she has. A voluntary interaction with the police, even one initiated by an individual, does not constitute a waiver of the right to silence. The right to choose whether to speak is retained throughout the interaction. [paras. 51-52]

The accused's behaviour at the police detachment, albeit not admissible as post offence conduct, was nonetheless admissible as an inextricable part of the narrative. However, the trial judge was required to tell the jury that it could not be used to support an inference of guilt. This failure by the trial judge was highly prejudicial and a significant error. The appeal ordering a new trial was dismissed.

Complete case available at www.scc-csc.gc.ca

LET IT FLOW, LET IT FLOW, LET IT FLOW

R. v. Atlas, 2005 BCPC 0456

Police attended an apartment building composed of privately owned suites after receiving a complaint from an occupant that a noise was heard and there was now a water leak. The police spoke with the occupant and determined that the noise and water leak, evidenced by seeping water through the ceiling, had come from the suite above the complainant. The officers attended to the floor above and located the suite where a significant amount of water could be seen coming from under the door of the unit. The police knocked but received no reply. As the caretaker tried to open the door with the master key a voice was heard from inside state, "There is nothing wrong here, go away." Given the circumstances, the officer was concerned with public safety and that someone could be harmed inside the suite. Wanting to see what was going on; the police entered and searched all the rooms in the suite.

During a *voir dire* in British Columbia Provincial Court the trial judge concluded the police were not entitled to make the warrantless entry. Although the police officer acted in good faith, the entry and search was a serious s.8 *Charter* breach. In holding the entry unreasonable, Justice Galati stated:

> In my view, these circumstances do not justify a warrantless entry of a private residence, particularly where the occupant has denied entry, as the occupant here, or one of the occupants here did. I accept that [the officer] believed that he should enter to see what was going on, but there was no sufficient objective basis to support a concern for public safety. The escape of water from an apartment might be nothing more than a plumbing problem. The police cannot enter a private dwelling where there's no sufficient objective reason to believe that entry is necessary to protect the safety of the public, which in most cases, in my view, will not include circumstances where there is potential for damage to property. [para. 6]

The evidence (which was not identified in the judgment) was inadmissible in the undisclosed charges.

Complete case available at www.provincialcourt.bc.ca

GROUNDS FOR IMPAIRMENT 'BLINDINGLY OBVIOUS'

R. v. Bounds, 2005 BCPC

A police officer approached the driver of a vehicle that rear-ended a stopped police car in a very well-marked Counterattack roadblock program. The driver appeared unable to place her vehicle into park and when the police officer spoke with her, there was a strong smell of liquor on her breath and her speech was slurred. At this point the officer formed the opinion that the driver was impaired by alcohol.

At trial in British Columbia Provincial Court the accused argued, in part, that the officer did not have reasonable and probable grounds upon which to form an opinion the accused committed an offence. Justice Antifaev, however, disagreed. She said:

> Defence counsel says that that constellation of factors is insufficient on which to base the making of a breathalyzer demand, and I have to respectfully disagree with that submission. In my view, any reasonable person faced with that constellation of factors would leap to what is surely a blindingly obvious conclusion in the circumstances, based on those factors alone, without more, that this is a driver who has been drinking way too much alcohol to be driving.
>
> I am putting it in a very colloquial manner here, but it is quite clear, I think, that, in my view, even based on the limited number of factors that the officer initially committed herself to…she certainly did, in my view, have not only a subjective belief, but there were objectively present enough factors to support the making of a demand. I am satisfied that she did have reasonable and probable grounds to make the demand. [paras. 6-7]

The breathalyzer certificate was therefore admissible.

Complete case available at www.provincialcourt.bc.ca

SEARCH OF OUTBUILDING PROPER AS INCIDENTAL TO ARREST

R. v. Johnson, 2005 BCPC 0432

The police applied for and were granted a tele-warrant to search a house for a marihuana grow operation. The initial application requested a search of both the residence and an outbuilding. However, the justice crossed out any authorization to search the outbuilding. The warrant was executed and police found a marihuana grow operation in the house and a loaded SKS semi-automatic rifle in a bedroom. The accused and another occupant were cooperative. The police then attended to the outbuilding and heard a television or radio noise inside. For officer safety reasons, given the rifle found at the house, officers wanted to search the outbuilding to see if anyone was inside. The police entered and found no one inside, but did discover a psilocybin grow operation. The accused was charged with offences relating to growing marihuana and psilocybin.

During a *voir dire* in British Columbia Provincial Court the accused argued, in part, that the police violated his s.8 *Charter* right by searching the outbuilding when the warrant did not authorize its search. Although warrantless searches are presumptively unreasonable and a violation of s.8, a search properly conducted as an incident to lawful arrest is an exception to the presumption. As Justice Smith noted, "the police had no right to enter the outbuilding unless there was a legitimate need to enter it for officer safety reasons incidental to the arrest of the accused at the residence." In finding the search in this case justified, the court stated:

> The search warrant was clear that it did not authorize entry into the outbuilding. Were exigent circumstances present for officer

> safety once the loaded gun was found in the residence, given the radio was still playing in the outbuilding? …In the case at bar the out building was fairly close to the residence. I find that the locating of the loaded semi-automatic rifle in the residence, coupled with the continued playing of the radio in the outbuilding, did create exigent circumstances for the need to sweep the out building for officer safety. I find that the sweep of the outbuilding was a lawful search incident to the arrest of the accused and not in breach of his section 8 Charter rights. [para. 22]

The evidence was admissible.

Complete case available at www.provincialcourt.bc.ca

PRE-CHARGE CONDUCT ADMISSIBLE IN CRIMINAL HARASSMENT CASE

R. v. D.D.,
(2005) Docket: C41160 (OntCA)

The accused called the victim, with whom he had had a short relationship eight years earlier that produced a daughter, and yelled at her because her new boyfriend was parked in the victim's driveway. He also told the victim he wanted to take their daughter to school but this request was refused. The telephone call ended and the accused subsequently appeared on the victim's doorstep. The victim went outside and met the accused. The accused complained of the victim having sex with her boyfriend while their daughter was in the house, yelled at the victim while an inch from her face, refused to leave and banged on the door demanding the boyfriend come outside. The victim pushed the accused away from the door so she could get back inside the house and the daughter called 911, but the accused left.

At trial in the Ontario Superior Court of Justice on a charge of criminal harassment, the Crown tried to enter evidence of six prior incidents to help prove the following elements of the offence:

- whether the accused's conduct caused the victim to fear for her safety;
- whether the accused was aware or reckless as to the fear his conduct may have caused; and
- whether the victim's fear was objectively justified.

The trial judge considered each of the six prior incidents independently and ruled them inadmissible because the prejudicial effect in allowing the evidence of bad character outweighed its probative value. The Crown submitted that an acquittal be entered since the evidence of the most recent incident, by itself, would not prove a charge of criminal harassment. An acquittal was entered, but the Crown then appealed to the Ontario Court of Appeal arguing the evidence of the prior incidents was not submitted to demonstrate propensity, but rather to show the effect of the accused's behaviour on the victim during this most recent incident and whether the accused had an awareness (knowledge or reckless inadvertence) that the victim was afraid of him.

Justice MacFarland, authoring the unanimous appeal court judgment, agreed with the Crown. Pre-charge conduct in cases of criminal harassment is admissible for the purposes of determining whether the victim feared for their safety and whether that fear was reasonable (objectively justifiable) in all of the circumstances. Furthermore, pre-charge conduct is also useful in assessing whether the accused knew that his conduct would cause fear or whether he was reckless as to whether or not the victim was fearful. As a result, the court ruled that the trial just misapprehended the probative value of the evidence and a new trial was ordered.

Complete case available at www.ontariocourts.on.ca

PAT DOWN SEARCH OF DETAINEE REASONABLE

R. v. B.A.D.G., 2005 BCPC 0504

Shortly after midnight police responded to a reported residential break and enter involving four masked men with a baseball bat. The suspects were described as very wet, dark skinned, Indo-Canadian males in their twenties, one over six feet tall, who fled down a back lane. Police set up containment and two young males were seen coming out of a dark lane about seven blocks from the break and enter. Both males were soaking wet, one was over six feet, and one was pushing a bicycle. The officer identified himself and told the men that they were under investigation for a break and enter in the area.

Other officers arrived and the accused, wearing a puffy vest and bandana around his neck, was to be pat frisked for safety reasons. He was asked whether he had anything sharp. He said he had a knife and began to move his hand toward the back of his waist. An officer said no, grabbed the accused's waist, and handcuffed him. The officer then patted the accused's waist down and found a knife tucked into his trousers under his vest. After a further pat down the officer felt something hard in the accused's vest pocket. This item was removed and found to be keys to the residence which was broken into. The accused's bandana was also seized because it was similar to the description of the masks used by the suspects. Minutes after the stop the accused was arrested for carrying a concealed weapon and given his s.10(b) *Charter* rights.

At his trial in British Columbia Provincial Court on charges of carrying a concealed weapon, break and enter, theft, and possession of stolen property, the accused argued that he was arbitrarily detained, unreasonably searched, not properly advised of his rights, and that the evidence should be excluded under s.24(2) of the *Charter*. The Crown, on the other hand, submitted that there were no *Charter* breaches and that even if there were, the evidence was nonetheless admissible under s.24(2).

Judge Ehrcke concluded that the test for investigative detention had been satisfied. She stated:

> Both officers has reasonable grounds to suspect the accused was connected to the break and enter and that his detention was necessary. It was late at night, the two males stopped were young, they were soaking wet, they had come from a laneway seven blocks from the residence, there was no one else around, and it was not long after the police dispatch had been broadcast. Although [the officer] testified that she would have stopped anyone in the area remotely matching the description of the perpetrators, this detention must be evaluated on its own merits.
>
> [The officer] had reasonable grounds to conduct a protective pat down search, based on the circumstances. Again, it was late at night. The alleged offence was serious – it involved entering an occupied home. The police information was that the perpetrators were masked. Unlike in *Mann*, the object in the accused's pocket was hard, not soft. The officer was entitled to check it, especially after she knew the accused had a concealed knife.
>
> Another factor in this case is that once the [the officer] found the knife, she had grounds to arrest the accused. She did not do this immediately, but it would have justified a search incident to arrest.
>
> The manner of search was reasonable. It was a pat down search only.
>
> The seizure of the bandana was justified. By the time this was done, the officer had information that it was similar to the masks worn by the perpetrators. [paras. 26-30]

There were no *Charter* violations and the evidence was admissible.

Complete case available at www.provincialcourts.bc.ca

FLIGHT FROM POLICE REQUIRES CONSECUTIVE SENTENCE

R. v. Prymak, 2005 ABCA 377

The 27 year old accused was convicted of dangerous driving and flight from police after he led police on a 43 minute high speed chase on country roads, through a village and along a highway. He drove at speeds as high as 155 km/h, failed to stop at stop signs, drove the wrong way down a one way street, swerved on the roadway, and encountered other vehicles and pedestrians along the way. Once he was boxed in by pursuing police units the accused and his passenger fled on foot. The car had many empty and full beer cans inside and the accused admitted that he had been drinking.

He had a dated criminal record (driving over 80 mg% x 2) and five speeding convictions on his driving record. He was sentenced to 90 days in jail, placed on probation for two years, and given a two year driving prohibition. At sentencing the judge questioned the decision of the police to chase the accused and found this to reduce his moral blameworthiness, a mitigating factor in sentencing.

The Crown appealed to the Alberta Court of Appeal arguing the sentencing judge made a number of mistakes and the sentence handed down was demonstrably unfit. Citing an earlier Alberta Court of Appeal decision (*R. v. Roberts*, 2005 ABCA 11), Justice Picard noted:

> Parliament intended the flight crime to be dealt with as a serious, aggravated criminal offence. It is an offence potentially very dangerous to the public, the moral turpitude is great, and there can be no deterrence unless the penalties equal or exceed those for the pre-existing offence whose detection or prosecution is being fled. Deterrence and denunciation are paramount considerations in sentencing for this crime. [para. 7]

Furthermore, *Roberts* requires that a consecutive sentence be imposed for flight from police. In this case, the aggravating factors were many; driving after drinking alcohol, the offence was potentially very dangerous, and the moral turpitude was great. The sentencing judge also erred in reducing the accused's moral blameworthiness because the police decided to chase. On the other hand, the mitigating circumstances included the accused's age, family support, a good employment record, and a young family he was responsible for supporting.

The 90 day sentence imposed did not give sufficient weight to denunciation and deterrence. Therefore, the appeal was allowed and the accused was sentenced to six months incarceration for dangerous driving and six months incarceration for the flight consecutive. Applying the globality principle an overall sentence of nine months was imposed.

Complete case available at www.albertacourts.ab.ca

FINGERPRINT NOT ENOUGH

R. v. Yonkman, 2005 BCCA 561

After breaking into a home the suspects fled in a Jeep that was first pursued by a neighbour, then by police. The police chase was called off and the vehicle was later found abandoned less than two hours after the break-in. Three sets of fingerprints were found on the vehicle, including the accused's thumb and palm print on a rear view mirror located on the passenger's side floor. As well, the broad description of the vehicle's driver as seen by the pursuing officers was not inconsistent with the accused's appearance.

The accused was convicted in British Columbia Provincial Court of break and enter. The judge was satisfied beyond a reasonable doubt that the accused's presence at the break-in was established by his fingerprints found on the mirror. The accused appealed his conviction to

the British Columbia Court of Appeal arguing the judge's verdict was unreasonable because the evidence did not prove beyond a reasonable doubt he was present when the crime was committed.

Justice Lowry, authoring the unanimous judgment, agreed. He wrote:

> The judge gave no explanation as to why the presence of [the accused's] fingerprints on the mirror proved beyond a reasonable doubt that he was at the residence when the break-in occurred. If, as I understand, it is accepted that the mirror was the mirror that was missing from the windshield mount in the Jeep, [the accused's] fingerprints on it proved that [the accused] had been in the Jeep at some time. But the question is whether the evidence proves to the standard required in a criminal case that [the accused] was in the Jeep at the time it was at the residence. It appears to me the judge did not focus on the distinction.
>
> This being a purely circumstantial case, the conviction can be sound only if it was open to the judge to conclude, beyond a reasonable doubt, that the evidence as a whole was consistent with [the accused] being in the Jeep at the residence and inconsistent with any other rational conclusion… This Court has recognized that, in a case of this kind, fingerprint evidence may be sufficient to support a conviction, but the court must be satisfied on the evidence as a whole that the fingerprint was not left by the accused where it was found at some time other than when the crime was committed… There must be a temporal connection between the fingerprint being left and the commission of the crime.
>
> The frailty in the Crown's case is the lack of any evidence that would establish that [the accused's] fingerprint on the mirror was left there when the Jeep was being driven to or from the residence as opposed to some earlier time. The Crown did not establish how long [the accused] had access to the Jeep. Apart from the fact that the ignition appeared to have been tampered with, there was no evidence as to whether the Jeep had been stolen, and, more particularly, if it had, when that had occurred. There is on the evidence then no reason why [the accused's] fingerprint could not have been left on the mirror days, weeks, or months before the crime was committed. [references omitted, paras. 8-10]

And further:

> There was a complete lack of evidence to support the temporal connection necessary to inferring that, because [the accused's] fingerprints were found on the mirror, he was in the Jeep when it travelled to and from the residence where the crime was committed. [para. 14]

The appeal was allowed and the conviction was set aside.

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

ACTUAL ADVANTAGE NOT NECESSARY FOR PERSONATION

R. v. Boyle, 2005 BCCA 537

The accused acquired a birth certificate in the name of a deceased person and then applied for and obtained a social insurance number and BC Identification card. He then used these documents to acquire a BC learner's driver's licence in the deceased's name. He also opened a bank account and postal box. At trial on a charge of personation under s.403(a) of the *Criminal Code* the accused's criminal and driving records were entered as evidence to show proof of motive.

Section 403(a) states that a person commits an indictable offence "who fraudulently personates any person, living or dead, (a) with intent to gain advantage for himself or another person." He was convicted when the trial judge found that it did not matter than it was not proved that he utilized the false identity to further a crime. In the trial judge's view the accused fraudulently

obtained the "false identity to make his past disappear and he thereby gained advantage."

The accused appealed to the British Columbia Court of Appeal arguing, in part, that the Crown did not prove he used his false identity to gain any advantage that he could not have obtained under his own name. Justice Hall, authoring the judgment for the unanimous court, disagreed. He stated:

> I am of the view that, if anything, the approach of the trial judge in this case was more favourable to the [accused] than was warranted. The trial judge held that the [accused] had gained an advantage by being able to adopt a new identity. However, it was only required for a conviction to be registered that the judge find that the [accused] had the intent to gain an advantage by personating someone else. The judge's finding that the [accused] gained an advantage seems to me to be a clear indication that the judge was of the opinion that the [accused] had the necessary intent mandated by the section of the Criminal Code, namely having an intent to obtain an advantage by adopting the false identity of the deceased person…. It seems to me that the obtaining here of a new identity was in and of itself an advantage. While it is true that the learner's licence [the accused] obtained had restrictions on it that his own licence did not have, it was certainly an inference open to the judge that the [accused] intended to obtain a licence document that would enable him to pass himself off as someone without a prior driving record. Likewise, the obtaining of this document plus the other documentation, the social insurance number and the B.C. identification card, opened up a panorama of possibilities to the [accused], a panorama untrammelled by the existence of the criminal or driving record in his name. As the judge observed, it would be a way of "making his past disappear.
>
> It is true that the [accused] did not obtain any money, nor did he avoid arrest by using the identification he had obtained in the name of [the deceased] …but as I said, in my opinion the judge made no error in finding that, based on his actions and his history (which could furnish a motive), the Crown had proven on all the evidence that the [accused] had demonstrated the necessary intent to gain by personation an advantage for himself, the very thing prohibited by the statute. The fact that he came to the attention of the authorities before he was able to obtain any particular monetary or other advantage does not afford a defence to the charge of which he was convicted. [references omitted, paras. 8-9]

The accused's appeal from conviction was dismissed.

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

BC's Top 25 Stolen Vehicles

Rank	Make	Model	Years at most risk
1	Chrysler	Voyager/Caravan	92, 93, 94, 95
2	Honda	Civic	92, 93, 95, 98, 00
3	Chrysler	Neon	95, 96, 98, 00
4	Honda	Accord	88, 90-92, 94
5	Toyota	Camry	87-90
6	Jeep	Cherokee	89, 93-95
7	Nissan	Pathfinder	91, 92, 93, 95
8	Ford	F350	00, 01, 02, 03, 04
9	Chrysler	Intrepid	94, 95, 96, 99, 00
10	Dodge	Dakota	91, 92, 93, 94, 00
11	Acura	Integra	90, 91, 94, 95
12	Plymouth	Acclaim	90, 91, 92
13	Chrysler	Dynasty	90, 91, 92
14	Nissan	240SX	89, 90, 92
15	Plymouth	Sundance	91, 92, 93
16	Honda	Prelude	86, 88
17	Nissan	Sentra	90, 91, 92
18	Ford	Mustang	88, 89, 90
19	Toyota	4Runner	88, 89
20	Ford	Explorer	91, 94, 97
21	Dodge	Shadow	91, 92
22	Chevrolet	Cavalier	89, 90
23	Chrysler	LeBaron	90, 91
24	Nissan	Pulsar	87, 88
25	Oldsmobile	Cutlass	90, 91

Source: www.icbc.com [accessed November 29, 2005) This list records the make and model of vehicles stolen in British Columbia from January 1 to December 31, 2004

2006 POLICE LEADERSHIP CONFERENCE APRIL 10-12, 2006

Leadership Through Emotional Intelligence

Coming soon!!! 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 explore 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 Registration

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