

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.

POLICE LEADERSHIP CONFERENCE COMING SOON

April 14-16, 2008

"One World, One Voice, One Purpose"



Mark your calendar! The British Columbia Association of Chiefs of Police, the Ministry of Public Safety and Solicitor General, and the Justice Institute of British

Columbia, Police Academy are hosting the **Police Leadership 2008 Conference** in Vancouver, location of the 2010 Winter Olympics. This is Canada's largest police leadership conference held every two years, attracting international speakers and participants. This police leadership conference will provide an opportunity for delegates to hear leadership topics discussed by world-renowned speakers. Due to the world-class nature of this conference organizers are anticipating over 700 delegates from across Canada, the U.S., and Europe.

Leadership in policing is not bound by position or rank and this conference will provide delegates from the police community an opportunity to engage in a variety of leadership areas. The Police Leadership 2008 Conference will bring together experts who will provide current, lively, and interesting topics on leadership. The carefully chosen list of keynote speakers will also provide a first class opportunity at a first class venue to hear some of the world's outstanding authorities on leadership, the challenges facing the policing community, and how to overcome those challenges.

The conference theme is "The Future of Police Leadership" - **One World** (to recognize globalization

of law enforcement and crime), **One Voice** (to recognize the convergence of communications and technology), **One Purpose** (to break down some of the institutional barriers and recognize law enforcement's primary goal of crime reduction and prevention).

Conference speakers include:

- ❖ Micheal Abrashoff
- ❖ Dr. Linda Duxbury
- ❖ Los Angeles County Sheriff Lee Baca
- ❖ James Mapes
- ❖ San Jose Police Chief Rob Davis
- ❖ Nick Kaldas



And don't miss out on Emmy award winning comedian and improvisational entertainer **Wayne Brady**, one of the most versatile men in show business, who will be the featured entertainment during the banquet dinner. He sings, dances, acts, and is an improvisational genius. He recently hosted the Simon Cowell produced "Celebrity Duets" on Fox and was seen in guest starring roles on the hit shows "Everybody Hates Chris", "How I Met Your Mother", and the hit NBC show, "30 Rock." Known for hosting his own syndicated talk/variety show "The Wayne Brady Show" for two years, Brady picked up two Emmys for Outstanding Talk Show Host for his ability to do it all and make audiences laugh. The show also won an Emmy for Outstanding Talk Show. Prior to "The Wayne Brady Show," Brady was best known for his improvisational skills on ABC's "Whose Line Is It Anyway?" for which he won an Emmy and earned four Emmy nominations. Wayne can also be seen as host of the new game show "Don't Forget the Lyrics!" on FOX. **See pages 27-29** for more registration information or check out the website at:

www.policingleadershipconference.com

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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.ca

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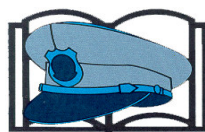
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'IN SERVICE: 10-8' e-LETTERS TO THE EDITOR



"I was introduced to your publication by our detachment commander.



Finally, I can actually say that I enjoy reading about case law. Some of the folks in our office think I'm nuts but obviously they have yet to discover your newsletter." - Police Constable, Ontario

"I find the publication excellent for the case law especially !!!" - RCMP Sergeant, Major Crimes, Saskatchewan



"I've become an avid reader of your articles/newsletter. Great info! I'm glad to have access to such a valuable information resource." - Police Officer, Alberta



"Thanks for the great publication. I enjoy reading the rulings and your analysis and explanations of them. Keep up the great work." - Police Constable, British Columbia



"I love 10-8 and find it invaluable to keep up on the latest case law. Thanks." - RCMP Constable, British Columbia



"I have been reading your 10-8 Newsletter and have really enjoyed the content and perspective." - Police Sergeant, Alberta



"This is an excellent source of information and I'd truly appreciate being added to the distribution list. I'm particularly grateful that I passed the quiz with flying colours!" - Crown Prosecutor, Saskatchewan



"This is a wealth of information for the 21st century police officer. In today's policing you need to stay on top of the latest case law rulings, and to do that you need to read, read, and read some more! With more than 25 years now in policing I still learn something new each and every day I come to work!" - Police Constable, Alberta



"In today's policing you need to stay on top of the latest case law rulings and I find [the "In Service 10-8" publication] to be an outstanding tool for the rulings and your analysis and explanations of them." - **RCMP Constable, British Columbia**



"I am the Station NCO...and look forward to the next issue of the In Service 10-8 newsletter just so I know the most recent case laws when reviewing the reports generated by patrol. Can you add me to your email list for the future issues so I don't have to go looking for it anymore?" - **Police Sergeant, British Columbia**



"A colleague recently e-mailed me the Nov/Dec 07 issue of 10-8, and I found it quite informative; particularly in the realm of case law. I am requesting your assistance to add me to your distribution list for future mailings." - **Intelligence Officer Strategic Enforcement and Intelligence Unit, Ontario**



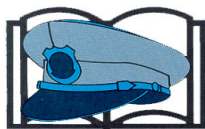
"I have read the publication for many years and find it as a great resource. Would it be possible to have a copy mailed. ... It is difficult to get one here at the office as they disappear very quickly." - **Police Constable, British Columbia**



"I found the information contained in the issue forwarded to me (Volume 7, Issue 6) to be very informative and valuable. Police across Canada can all benefit from the timely distribution of such materials." - **Police Sergeant, Saskatchewan**



'IN SERVICE: 10-8' ENTERS 8th YEAR



The "In Service: 10-8" newsletter is now into its 8th year of publication. The inaugural issue was printed in 2001 and now, several years later, continues to go strong. Its readership spans coast to coast and includes readers from beyond Canada.

WWW.10-8.CA

IN-SERVICE LEGAL ROAD TEST



The "In Service" Legal Road Test is a simple multiple choice quiz designed to challenge your understanding of the law.

Each question is based on a case featured in this issue. See page 43 for the answers.

- Police photo line-ups not complying with the recommendations of the Sophonow Inquiry are *ipso facto* inadmissible as evidence.
(a) True
(b) False
- What was the number one cause of peace officer deaths in Canada over the last 10 years?
(a) Auto accidents
(b) Aircraft accidents
(c) Gunfire
(d) Struck by vehicle
(e) Heart attack
- An investigative detention does not necessary need to follow immediately on the heels of the commission of a crime.
(a) True
(b) False
- The odour of burned marihuana, by itself, will provide reasonable grounds to arrest a person as one found committing a criminal offence (s.495(1)(b) *Criminal Code*).
(a) True
(b) False
- The charge of resisting a peace officer under s.129(a) of the *Criminal Code* does not require an arrest, but rather only resistance to a peace officer in the execution of their duties.
(a) True
(b) False
- More than a person's mere presence at the scene of a crime is required to support a conviction for a criminal offence.
(a) True
(b) False

ON-DUTY DEATHS DOWN



On-duty peace officer deaths in Canada fell by two last year. In 2007, four peace officers lost their lives on the job. This is the second year in a row with a decline in on-duty

deaths and represents the fewest on duty deaths since 1953 - more than 50 years.

Motor vehicles, not guns, continue to pose the greatest risk to officers over the last 10 years. Since 1998, 34 officers have lost their lives in circumstances involving vehicles, including automobile and motorcycle accidents (22), vehicular assault (4), and being struck by a vehicle (8). These deaths account for 46% of all on-duty deaths, which is more than twice the next leading cause of gunfire (15). On average, seven officers lost their lives each year during the last decade, while 2002 had the most deaths at 12.

Source: The Officer Down Memorial Page, www.odmp.org

2007 Roll of Honour

Constable Daniel Tessier

Laval Police Department, QC
End of Watch: March 2, 2007
Cause of Death: Gunfire



Constable Robert Plunkett

York Regional Police Service, ON
End of Watch: August 2, 2007
Cause of Death: Vehicular Assault



Constable Christopher Worden

Royal Canadian Mounted Police, NWT
End of Watch: October 6, 2007
Cause of Death: Gunfire



Constable Douglas Scott

Royal Canadian Mounted Police, NU
End of Watch: November 5, 2007
Cause of Death: Gunfire



They are our heroes. We shall not forget them.

Canadian Peace Officer On-Duty Deaths (by year)

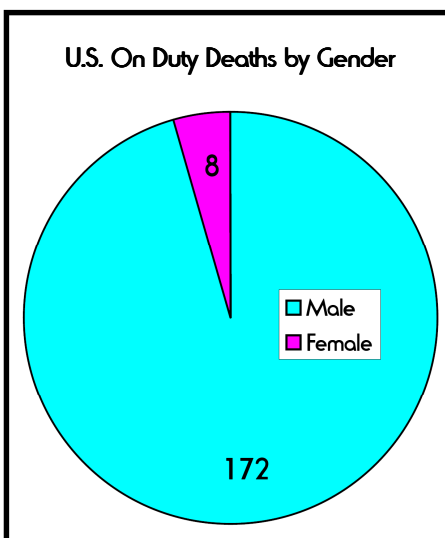
Cause	2007	2006	2005	2004	2003	2002	2001	2000	1999	1998	Total
Aircraft accident			2		2		1	2	1		8
Assault				1							1
Auto accident		1	2	1	3	6	2	1	1	2	19
Drowned			1				1			1	3
Duty related illness		1									1
Fall								1			1
Gunfire	3	3	5	1		1	2				15
Heart attack			1	2		1		1		1	6
Motorcycle accident					1			2			3
Natural disaster						1					1
Stabbed				1						1	2
Struck by vehicle						3		2	2	1	8
Training accident							1		1		2
Vehicular assault	1	1		1					1		4
Total	4	6	11	7	6	12	7	9	6	6	74

U.S. On-Duty Deaths Rise



During 2007, the U.S. lost 180 peace officers, up 33 from 2006. The top cause of death was gunfire (67) — including accidents — followed by automobile accidents (47), vehicular assaults (10),

and being struck by a vehicle (9). The state of Texas lost the most officers (22), followed by Florida and the U.S. Government (16), New York (13), California (10) and the states of Louisiana and North Carolina each with eight. The average age of deceased officers was 38 years and the average tour of duty was 10 years and 8 months.



2007 U.S. Peace Officer On-Duty Deaths

Cause	Total
9/11 related illness	7
Accidental	3
Aircraft accident	3
Animal related	1
Auto accident	47
Boating accident	1
Bomb	5
Drowned	3
Exposure to toxins	1
Fall	2
Gunfire	63
Gunfire (accidental)	4
Heart attack	7
Heat exhaustion	1
Motorcycle accident	5
Struck by vehicle	9
Vehicle pursuit	6
Vehicular assault	10
Weather/Natural disaster	2
Total	180

US On-Duty Deaths by Year

Year	2003	2004	2005	2006	2007
Deaths	147	163	161	147	180

Source: The Officer Down Memorial Page, www.odmp.org

GUN WOULD HAVE BEEN FOUND ANYWAY DURING PAT DOWN

R. v. Burke,
(2006) Docket:C39828 (OntCA)



Two patrol officers saw the accused riding an inappropriately sized bicycle on the sidewalk and decided to follow him to see what he was up to. They observed him speaking with two other individuals and they all fled when they saw the police. The accused rode across an intersection against a red light and was followed by police into the lobby of an apartment complex where they questioned him, with an officer quite close on each side of him. As part of their questioning, the police asked him if he had any outstanding charges. He admitted that he was before the court on cocaine charges. The officer then spotted what was confirmed to be a cell phone. When asked if it was a cell phone, the accused replied that it was a cell phone, but it wasn't his coat. The police officers arrested him for failing to comply with the terms of his recognizance because it was believed that his answer was evasive and an attempt to distance himself from the cell phone. It was an officer's experience that a condition of bail in narcotics cases prohibits possession of cell phones. A pat down search following his arrest revealed a loaded .45-calibre handgun, a magazine with bullets, more bullets, a small amount of crack cocaine, and a "tear-away business card".

At trial in the Ontario Superior Court of Justice, the judge found that the questioning by police did not constitute an unlawful detention. The possession of a cell phone with a possible ban, and the accused's answer to the police officers' questions, provided a reasonable basis for the arrest. Therefore, the search and seizure were incidental to arrest and no *Charter* breaches occurred. And even if there was a *Charter* breach, the trial judge would have admitted the gun and drug evidence under s.24(2), but exclude the tear away business card. The officers were acting in good faith in the honest belief that they had grounds for arrest and the evidence was non-conscriptive. He concluded that its exclusion, rather than its inclusion, would bring the administration into disrepute.

The accused appealed to the Ontario Court of Appeal arguing the trial judge erred by finding he was not detained until arrested. Although he acknowledged he was not physically detained, he contended he was psychologically detained even though he didn't testify. Objectively, he submitted he was stopped, in part, for violating Ontario's *Highway Traffic Act* (HTA) when he rode his bike on the sidewalk and crossed the street diagonally on a red light. He said he was required under the HTA to answer the initial questions about identity, restricted in movement by the positioning of the officers, and was never told that he was free to leave.

The "fact an accused does not testify is not definitive of whether there has been a detention and that the surrounding circumstances must be considered." In this case, the trial judge chose not to draw the inference of detention and the Ontario Court of Appeal did not find he erred. The detention was not arbitrary. As for whether or not the police had reasonable grounds to arrest, the appeal court concluded this case was a close one. The accused conceded the police subjectively had reasonable grounds to arrest so the issue was whether there were objective grounds. But in the end it didn't matter. The Ontario Court of Appeal ruled the evidence admissible under s.24(2) of the *Charter* even if there were no reasonable grounds to arrest:

Whether or not the police had grounds to lawfully arrest the [accused], we are of the opinion that the evidence was admissible pursuant to s. 24(2). The officers acted in good faith. The arrest was not arbitrary. The gun could have been found pursuant to a patdown officer safety search pursuant to a lawful detention and therefore the fairness of the trial was not affected. The search was minimally intrusive and, although some force was used in effecting the arrest, it was after the gun was discovered and it appears that the amount of force involved was inadvertent. There is no evidence that the [accused] was injured. The offences in question are serious. [para. 13]

The accused's appeal was dismissed.

Complete case available at www.ontariocourts.on.ca

Note-able Quote

"Choose a job that you love and you will never have to work a day in your life." - Confucius

CONFIRMATION OF TIP'S CRIMINAL ASPECT NOT REQUIRED

R. v. Caissey, 2007 ABCA 380



A police officer received information from a first time informant that he/she had been in a certain apartment within the preceding 72 hours and had observed a large quantity of marijuana being held by the accused for resale. The informant identified the accused, the address of the apartment, and also indicated that while the accused had a roommate (Kelsey Coenen) it was only the accused who was involved in selling drugs and that he had done so for a period of one year. The informant provided details relating to the interior of the apartment and the accused's motor vehicle, and indicated that no children lived at the address.

The investigating officer confirmed from independent sources that the accused lived with Kelsey Coenen at the address provided, and that the accused drove a vehicle that matched the informant's description. The officer prepared an information to obtain a search warrant in which he set out the information he received and disclosed the extent and result of his investigation. While the officer verified the information provided, the police had not corroborated certain details, such as the fact that marijuana could be found in the apartment.

The search warrant was issued and executed. In a locked bedroom within the residence the police located and seized 180 grams of marijuana, drug paraphernalia, and documents in the accused's name. He was charged with possession of marijuana for the purpose of trafficking.

At trial in Alberta Provincial Court the accused challenged the validity of the search warrant. He argued, among other grounds, that the information provided was insufficient to support the issuance of the search warrant. The trial judge ruled the information established those details that had been confirmed, which provided a sufficient basis to issue the search warrant. She concluded that it was reasonable to believe that there was marijuana in the apartment and the accused was convicted of simple possession.

The accused then appealed his conviction to the Alberta Court of Appeal submitting, in part, that the trial judge erred in failing to apply the proper legal test when determining the validity of the search warrant. He contended that confirmation of information received from a confidential informant must include confirmation of criminal activity. In his view, information provided by a first-time informant can only constitute sufficient grounds for the issuance of a search warrant if there is independent confirmation of the allegations relating to the crime. Consequently, he argued that the search warrant should not have issued because the police failed to independently confirm the first-time informant's information that the accused had marijuana in the apartment. The accused submitted that some independent confirmation relating to the criminal aspect of the tip is required in a case where the police are relying on a tip from an informant of unknown reliability in order to negate the possibility that the informant is offering false information.

The Crown, on the other hand, submitted that the trial judge applied the correct test in reviewing the issuance of the search warrant and that the jurisprudence did not require confirmation of the criminal aspect of the information. Rather, the court must take into account the totality of the circumstances to determine whether the search warrant could have issued on the evidence. The Crown further submitted that the evidence was sufficient to meet that test.

In a 2:1 majority, the Alberta Court of Appeal upheld the issuance of the search warrant. When the validity of a search warrant is challenged, it may be necessary to inquire into the source and quality of the information provided to the police at the time of the search in order to establish that there were reasonable and probable grounds for the search. Mere conclusory statements by an informant are insufficient to constitute reasonable and probable belief. Details relating to the confidential informant, the information received or the background investigation must be provided.

An informant's "tip" must contain sufficient detail to ensure it is based on more than mere rumour or gossip, whether the informer discloses his or her source or means of knowledge and whether there are any indicia of his or her reliability, such as the

supplying of reliable information in the past or confirmation of part of his or her story by police surveillance. The reliability of the tip is to be assessed by recourse to "the totality of the circumstances". There is no formulaic test as to what this entails. Rather, the court must look to a variety of factors including the degree of detail of the "tip"; the informer's source of knowledge; and indicia of the informer's reliability such as past performance or confirmation from other investigative sources. When the police rely on an anonymous tip or on an untried informant the quality of the information and corroborative evidence may have to be such as to compensate for the inability to assess the credibility of the source.

In holding the warrant valid in this case, the majority stated:

Reliability of an informant may be established by past performance as an informant or by confirmation from other investigative sources of part, or all, of the information provided by the informant....

The issue on review is whether there was some evidence that might reasonably be believed to support the issuance of the warrant, not whether there is some guarantee that the informant is telling the truth when he makes the allegation of criminal activity. Information of a crime itself being committed does not have to be confirmed...

We agree with the Crown's submission that the trial judge applied the correct test and made no error in concluding that the search warrant could have been issued on the evidence provided. The trial judge considered whether the information provided was "sufficiently detailed to preclude the possibility that it's based on mere rumour." Regarding the aspect of reliability of the informant, the trial judge relied on the evidence confirming some aspects of the information provided. In this respect, she stated: "We are looking for this confirmation because if the tipster is proven correct about some details it might be safe to rely on other information provided." The trial judge examined the factors set out in *Garofoli* and correctly referred to the standard of

"The issue on review is whether there was some evidence that might reasonably be believed to support the issuance of the warrant, not whether there is some guarantee that the informant is telling the truth when he makes the allegation of criminal activity. Information of a crime itself being committed does not have to be confirmed."

review. She acknowledged that she could not overturn the search warrant simply because she might not have granted it. The trial judge concluded that the authorizing judge could have issued the search warrant based on the record before him, as amplified on review, as there was some information that might reasonably be believed. She based this finding on the information that the informant had recently been in the [accused's] apartment and had personally witnessed the drugs in the [accused's] possession.

The trial judge committed no error. With reference to the three factors set out in *Debot*, the information provided by the informant was detailed and compelling, and was based on his/her personal knowledge that had been recently obtained while in the appellant's apartment. Although the informant had not previously provided confidential information to

the police, he/she was known to the police officer, and the police independently confirmed a number of details, including the identity of the [accused] and his residential address, that no children lived in the home, the name of his roommate, and the description of his vehicle. Confirmation of this information tended to substantiate the reliability of the informant's information, and was sufficient in the context of the other factors to meet the reasonable probability test. While the

police did not obtain any confirmation of the fact that the [accused] possessed marijuana, such confirmation is not necessary in the circumstances of this case. The trial judge correctly stated and applied the law. [paras. 22-25]

A Different View

Justice Martin, in dissent, concluded that the information provided was insufficient to support the search warrant. He said:

Here, the information was sufficiently detailed to guard against rumour and innocent coincidence. However, the informant's credibility was untested and remained unknown at the time the search warrant issued. In terms of corroboration, the police investigator was only able to corroborate non-criminal

particulars, such as the [accused's] address, the identity of his roommate, the make and colour of his motor vehicle. This was innocuous information available to anyone in the neighbourhood and those familiar with the [accused] (or his roommate). Confirmation of these non-criminal particulars shed no light on the reliability of the accusation that the appellant was in possession of marijuana or selling drugs. It did not, in any material way enhance the credibility of this first-time informant.

I accept that in assessing the reliability of the information provided, the totality of circumstances must be examined and short comings in one of the three factors may be compensated by strengths in another. But here, there was no evidence at all to establish the third factor, informant's credibility or meaningful corroboration. This is more than a mere short coming.

To issue this search warrant, the justice of the peace relied exclusively on uncorroborated allegations of criminal conduct provided by a first-time informant. The information relied on to obtain the search warrant did not offer any meaningful assurance that the informant was credible and therefore the allegations of criminal conduct were likely true. In my opinion, this was inadequate legal justification to authorize the search of a home.

.....
In my opinion, when a first-time informant whose credibility has not been previously (or otherwise) established, evidence of his or her credibility is required before allegations of criminal conduct are relied upon....

In my opinion, confirmation of non-criminal particulars offered by a first-time informer does not necessarily alleviate the concern that the information about criminal conduct may be false. Only corroboration of some criminal particular offers that assurance. A malicious informant may falsely offer very detailed information by claiming it was based on personal observation. Therefore, neither a detailed account nor corroboration of an innocent particular of that account offers the needed assurance that the informant is credible and the information likely true. [paras. 31-38]

The accused's appeal was dismissed.

Complete case available at www.albertacourts.ab.ca

POLICE PERSISTENCE IN OBTAINING VOLUNTARY DNA SAMPLE OK

R. v. Karas, 2007 ABCA 362



The partially naked body of a 58 year old female murder victim was found strangled and stabbed at least 30 times. A minute amount of seminal fluid was found on her, thus providing a male DNA profile for police. With no other evidence other than the DNA, police asked various men in the area for voluntary samples of their DNA for comparison purposes. Fred Karas, the accused's father, was one of the men who gave a blood sample. While none of the samples taken provided a match, it appeared that a first degree relative either of Fred Karas, or of another identified person, may provide a match. The police, therefore, sought to obtain samples from Fred Karas' sons.

The 21 year old accused, a son of Fred Karas, attended the police detachment at the request of a police officer to provide a voluntary sample of his blood. The officer interviewed the accused for 38 minutes and established that he knew the victim, that at the time of the murder he was living in the general area of the victim's residence, and that he had been in the house a couple of years before, prior to the victim moving into it. The officer asked the accused for a sample of blood to compare to the DNA found at the scene in order to eliminate him as a potential suspect. The accused was reluctant. The officer read the accused a consent form that told him he was not required to provide a sample, could contact a lawyer, and that the blood sample, if given, would be analyzed in association with the murder.

The officer persisted in requesting a sample, suggesting he would continue to do so until the accused consented. The accused said he was going to say no to giving a sample, but "if you do absolutely need it in the future, I'll, I'll give it then". The officer responded that it was going to come to that because his superiors wanted him to take a sample of the accused's DNA. The accused then agreed to give a sample. It was subsequently determined that his DNA matched the DNA found on the body of the

victim. A DNA warrant under s.487.05 of the *Criminal Code* was later obtained, and he was charged with first degree murder.

At trial in the Alberta Court of Queen's Bench, the accused testified that he agreed to give the sample because he was afraid to raise a suspicion by refusing

and that he did not call a lawyer because he thought it would make him a suspect. He also stated he read the statement on the consent form, but thought he would be arrested if he refused to give a sample even though the police never said that to him. The trial judge found that while the officer was not completely candid in saying that the accused was not a suspect, he was clearly told and clearly understood that the police officer would not (at the time) obtain a blood sample from him without his consent.

The trial judge held the accused's alleged belief that police would get the sample from him by force, if he refused, was not supported by anything said by the police. The police made no threat or promise to the accused, other than that he would be eliminated as a suspect if the DNA did not match. Nor was there any *quid pro quo* made. The accused understood what was being said and the circumstances of the interview did not suggest oppression. Further, the trial judge found that the accused was not detained under the *Charter*; therefore, his rights to a lawyer as provided under s.10(b) were not violated. The trial judge also found that the second blood sample taken pursuant to a warrant on the basis of the earlier admissible DNA match was lawful.

The accused appealed to the Alberta Court of Appeal arguing, among other grounds, that the trial judge erred in admitting the DNA sample as he had not voluntarily given it. He contended that he did not validly waive his rights nor consent to the taking of his blood. In his view, the trial judge focused on whether or not there was an explicit threat and did not focus on his statements to the officer. Even though there were no threats or promises is the

LATIN LEGAL LINGO:

"*quid pro quo*" - something for something; what for what; a mutual consideration; that which a party receives or is promised in return for something promised, given, or done; getting something of value in return for giving something of value; securing an advantage or receiving a concession in return for a similar favour; for example, an express or implied promise that, in return for a suspect's confession, the officer would do something such as reduce charges or suggest a lighter sentence.

classic sense, he was not comfortable with providing a sample of his DNA. He suggested the officer's statement that the police would be insistent in their requests if he did not provide a sample at the time, threatening persistent police contact and questioning such that the authorities would become "a pain in the ass" or a "thorn in [his] side" was a

subtle and sophisticated inducement sufficient to overcome his free will. The accused contended he was persuaded against his will to give the sample as being the only way to relieve the pressure. Those statements and circumstances, he argued, made him feel he had no choice but to provide the sample. Thus, in all the circumstances, there was a *quid pro quo* or at least a reasonable doubt about whether providing a blood sample to police was voluntary. He also submitted that his waiver of his rights was not valid because he was not sufficiently informed allowing him to make a meaningful choice. The police denied that he was a suspect in the murder investigation and this lack of information affected his decision as to whether to seek legal advice before giving a sample of his DNA.

The Crown conceded that when the interview took place, reasonable grounds for a search or seizure did not exist, so that his valid consent was a prerequisite to obtaining a lawful sample of his blood.

Consent

The Alberta Court of Appeal first reviewed the law on consent. "The person making the waiver should be aware of his choices, and possess sufficient information to make a meaningful choice," said the Court. A person waiving their right to be secure against an unreasonable seizure must be possessed of the requisite informational foundation for a true relinquishment of the right. A right to choose requires not only the volition to prefer one option over another, but also sufficient available information to make the preference meaningful. This is equally true whether the individual is choosing to forego consultation with counsel or

choosing to relinquish to the police something which they otherwise have no right to take.

The trial judge rejected the argument that the officer was being coercive in advising the accused that the police would be persistent in their investigation and continuous in their request for a sample. At the time of his interview, the accused was also advised of his right to consult legal counsel. He was aware that he could obtain legal advice about any concern that he may have had about future police contact and requests for samples. In these circumstances, it was not apparent that the promise of further requests for his DNA was oppressive. And the Court held the trial judge reasonably found that the officer did not hold out a reward in return for the giving of the sample when he stated:

The only promise made was that if the sample did not match the DNA found at the scene, the accused would be eliminated as a possible suspect. That was the truth. There was no quid pro quo. There was nothing held out as a reward solely for the giving of a sample.

The Court of Appeal also rejected the accused's assertion that his decision was not an informed choice because the officer misled him when he was told that he was not a suspect at the time the request for the sample was made. The Court held:

The trial judge did find ... that the officer downplayed the focus of the police investigation of [the accused], and did not tell him the whole truth. The police officer told [the accused] that he was not a suspect, and did not tell him that they suspected that one of the first generation male relatives of his father or another man was probably the perpetrator of the crime.

The nub of this issue is whether [the accused] possessed sufficient information to understand the nature of the investigation and the potential consequences of providing the sample. The interview transcript shows that [the accused] knew the purpose of the request, as well as the jeopardy in which it placed him. The following exchange occurred:

[Accused]: Well it, yeah I'll, I'll give.

[Officer]: Ok, are you sure cause I, I'm, I, it has to be by your consent cause like for example the next question I read here is there is or I should say the point the

results of this DNA analysis may be used in evidence against you in a court of law. Now do you understand that?

[Accused]: Uh huh.

[Officer]: What does that mean to you?

[Accused]: That means if my DNA is a match to what you have there, it can be used against me.

[Officer]: That's correct yeah.

[Accused]: In a murder or whatever.

Notwithstanding his finding that [the accused] was not told the full truth as to the reasons motivating the police to seek a sample of his DNA, the trial judge was satisfied that the waiver was valid and the sample voluntarily given. He stated...:

On the whole of the evidence, I find that nothing said or done by [the officer] went beyond permissible police persuasion. The manner in which this sample was obtained would not shock the community, bearing in mind the philosophy behind the obtaining of DNA samples, which is that they are often the best tool for exonerating the innocent and discovering the guilty.

The principles governing the voluntariness of confessions are applicable when considering whether [the accused] voluntarily gave his blood sample. The Supreme Court of Canada has emphasized that the analysis under the confessions rule "must be a contextual one", and that "trial judges must be alert to the entire circumstances surrounding a confession" in making the decision whether or not to admit it.

The careful judgment of the trial judge in this instance discloses an assessment of voluntariness having regard to all relevant circumstances. [references omitted, paras. 29-33]

The Alberta Court of Appeal was not persuaded that the trial judge erred in admitting the DNA evidence and the accused's appeal was dismissed.

Complete case available at www.albertacourts.ab.ca

Note-able Quote

"A person without a sense of humour is like a wagon without springs. It's jolted by every pebble on the road." - Henry Ward Beecher

SOPHONOW INQUIRY's PHOTO LINE-UP RECOMMENDATIONS NOT BINDING LEGAL DICTATES

R. v. Doyle, 2007 BCCA 587



A police detective investigating a robbery decided to organize a photo line-up to show the victim. She arranged a group of six photographs, including one of the accused that was about two months old, which had been selected from part of a larger group depicting persons somewhat similar in appearance to the accused. A different detective, however, showed the photographs to the victim. This detective instructed the victim by means of a written sheet translated into Chinese that any person suspected might or might not be in the line-up, that she was not obliged to select anyone, and that the photographs being shown might or might not be current. The victim picked the accused in the photo line-up without hesitation, but she was not told whether or not he was a suspect.

At trial in British Columbia Provincial Court the trial judge admitted the photo line-up evidence despite the procedures used by police not complying with the recommendations made by the Inquiry into the Wrongful Conviction of Thomas Sophonow. The judge said this:

The line-up appears to me to be a fair test of the recollection of a witness as to the appearance of a suspect, in the sense that it contains six photographs of persons who are very similar in their looks, and without any glaring dissimilarities. That the line-up process was not in accordance with the recommendations of the Sophonow inquiry as has been made an issue by [the accused's lawyer] is to my mind neither here nor there. With great respect to those who think otherwise, those recommendations are not legal prerequisites for reliance on a line-up, or on line-up evidence by a trier of fact. The line-up here was fair, and the process by

"[T]he recommendations arising from the Sophonow Inquiry are not to be viewed as binding legal dictates. The admissibility and weight of lineup identification evidence will fall to be assessed in individual cases having regard to all the circumstances. The governing consideration must always be whether identification procedures have been fairly conducted by investigators."

which it was shown to [the victim] discounted any chance that her identification might be tainted by the investigating officers.

The victim also picked the accused out in court. The accused was convicted of robbery based in part on the photo line-up identification, but appealed to the British Columbia Court of Appeal arguing the trial judge erred in attaching any weight to the witness' identification evidence from the photo line-up because it was not administered in accordance with the recommendations made by the Sophonow Inquiry. This in turn, tainted the in court (docket) identification and little, if any, reliance should be placed on that identification.

The accused suggested there were a number of flaws with the photo line-up not complying with the Sophonow Inquiry recommendations such as:

- 1) it was not videotaped;
- 2) the line-up contained only six photographs and not the recommended minimum of 10 photographs;
- 3) the officer showing the line-up was aware that the suspect's photo was in the line-up.

Because of these variations from recommended practice, the accused submitted the trial judge should have placed no reliance on the identification of the accused.

The British Columbia Court of Appeal dismissed the accused's arguments. Photo line-ups not conducted fully in accord with the procedures outlined in the Sophonow Inquiry will not be *ipso facto* excluded as evidence. Failure to follow the recommendations will not necessarily result in the exclusion of the line-up

identification and the subsequent in-court identification. The Sophonow recommendations, although sound, sensible, and well considered, are only recommendations but do not have the force of law. Justice Hall, on behalf of the unanimous Appeal Court, wrote:

[T]he recommendations arising from the Sophonow Inquiry are not to be viewed

as binding legal dictates. The admissibility and weight of lineup identification evidence will fall to be assessed in individual cases having regard to all the circumstances. The governing consideration must always be whether identification procedures have been fairly conducted by investigators.





.....
I am in respectful agreement with [the] comments of the learned trial judge. In my opinion, this lineup was, in its constitution and conduct, a satisfactory procedure and I consider that there was no unfairness occasioned to the [accused] by the police procedures utilized in this case. Of course, cases will vary infinitely in their facts and it will always be for the trier of fact to assess in the individual case the strength or weakness of the identification evidence. Here the judge properly instructed herself concerning eyewitness identification and found she could place reliance on the identification of the [accused] made by [the victim]. In the circumstances of this case, the judge was entitled to give due weight to the identification evidence. [paras. 13-15]

The accused's appeal was dismissed.





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

THE SOPHONOW INQUIRY:

Photo pack line-up Recommendations

-  The photo pack should contain at least 10 subjects.
-  The photos should resemble as closely as possible the eyewitnesses' description. If that is not possible, the photos should be as close as possible to the suspect.
-  Everything should be recorded on video or audiotape from the time that the officer meets the witness, before the photographs are shown through until the completion of the interview. Once again, it is essential that an officer who does not know who the suspect is and who is not involved in the investigation conducts the photo pack line-up.
-  Before the showing of the photo pack, the officer conducting the line-up should confirm that he does not know who the suspect is or whether his photo is contained in the line-up. In addition, before showing the photo pack to a witness, the

officer should advise the witness that it is just as important to clear the innocent as it is to identify the suspect. The photo pack should be presented by the officer to each witness separately.

-  The photo pack must be presented sequentially and not as a package.
-  In addition to the videotape, if possible, or, as a minimum alternative, the audiotape, there should be a form provided for setting out in writing and for signature the comments of both the officer conducting the line-up and the witness. All comments of each witness must be noted and recorded verbatim and signed by the witness.
-  Police officers should not speak to eyewitnesses after the line-ups regarding their identification or their inability to identify anyone. This can only cast suspicion on any identification made and raise concerns that it was reinforced.
-  The interviews of eyewitnesses and the line-up may be conducted by the same force as that investigating the crime, provided that the officers dealing with the eyewitnesses are not involved in the investigation of the crime and do not know the suspect or whether his photo forms part of the line-up.

Source:

www.gov.mb.ca/justice/publications/sophonow/recommendations/english.html

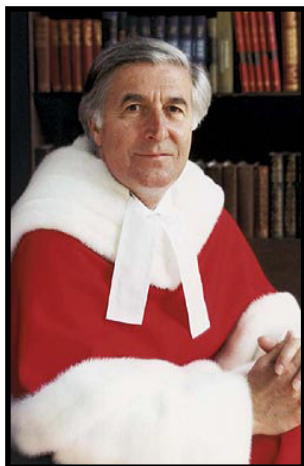
LEGALLY SPEAKING:

Reasonable Grounds for Arrest



"The criterion for the lawfulness of an arrest is the presence of reasonable and probable grounds. That standard has alternatively been described as "reasonable ground to believe", "reasonable grounds", "reasonable belief", "probable cause", and "reasonable probability". It has both a subjective and an objective component. The police officer must subjectively believe that he has reasonable and probable grounds to make the arrest; he must also have objectively justifiable grounds that "a reasonable person, standing in the shoes of the police officer, would have believed that reasonable and probable grounds existed to make the arrest". ... Moreover, it is the cumulative effect of the evidence or the totality of the circumstances that must be weighed in determining if the standard of reasonable and probable grounds has been met." - British Columbia Supreme Court Justice Smith, *R. v. Tetreault*, 2007 BCSC 1624, para. 28-29, references omitted.

FORMER SUPREME COURT JUSTICE DIES



The Honourable Gerald Eric Le Dain, formerly a justice of the Supreme Court of Canada, passed away on December 18, 2007. Justice Le Dain was born in 1924 in Montreal. He served overseas with the armed forces during the Second World War. After returning to Canada in 1946, he enrolled at McGill University, obtained

a B.C.L. degree in 1949, and was awarded the Elizabeth Torrance Gold Medal. That year, he pursued his studies in France, at the University of Lyon, and became a Docteur de l'Université in 1950. He first practised law with Walker, Martineau, Chauvin, Walker & Allison in Montreal.

From 1953 to 1959, and in 1966 and 1967, he taught law at McGill University. He became dean of Osgoode Hall Law School in 1967 and was called to the bar of Ontario the following year. From 1969 to 1973, he chaired the Commission of Inquiry into the Non-Medical Use of Drugs. Two years later, he was appointed to the Federal Court of Appeal and the Court Martial Appeal Court. He was elevated to the Supreme Court of Canada in 1984. Justice Le Dain served on the Supreme Court for four years, retiring in 1988. He was made a Companion of the Order of Canada in 1989.

Chief Justice Beverley McLachlin, on behalf of the members of the Supreme Court of Canada, lamented Justice Le Dain's passing. "Justice Le Dain served on the Court during an important time in its history, taking part in the challenge of breathing life into the rights guaranteed in the Canadian Charter of Rights and Freedoms. Justice Le Dain's decisions in these early Charter cases shaped the interpretation of our fundamental rights, and continue to have relevance to this day."

Note-able Quote

"It's choice - not chance - that determines your destiny." - Jean Nidetch

POLICE MISCONDUCT REDUCES SENTENCE

R. v. Nasogaluak, 2007 ABCA 339



Police received information from a taxi company that an intoxicated male was driving a black truck. Police attempted to stop the truck but a high speed pursuit ensued. On two occasions officers had to reverse to avoid being hit when the accused drove at them. After the accused eventually stopped his vehicle, he resisted arrest and would not comply with police commands. During the ensuing struggle, the accused was struck by police, which resulted in broken ribs and a collapsed lung. The police did not record the force used in subduing the accused and they failed to document his injuries, nor was the arrest or subsequent detention recorded on video. The accused received emergency surgery the following day to treat his injuries.

In the Alberta Court of Queen's Bench the accused pled guilty to impaired driving and evading a police officer. At his sentencing hearing, the judge concluded the police used excessive force in arresting the accused, thereby breaching his s.7 (security of the person) and s.11(d) (presumption of innocence) rights under the *Charter*. Although the sentencing judge noted that the accused's flight from police, the pursuit, and danger to the police would usually require a prison sentence, he imposed a reduced sentence as a remedy under s.24(1) of the *Charter*. A 12 month conditional discharge on each of the two counts was given.

The Crown appealed the lesser sentence to the Alberta Court of Appeal arguing, among other grounds, that the sentencing judge erred in reducing the sentence as a remedy under s.24(1). When an individual's rights under the *Charter* have been violated, the court has the discretion to grant a remedy it considers appropriate and just in the circumstances. In doing so, a judge may exercise this discretion based on their careful perception of the nature of the right and the infringement, the facts of the case, and the application of relevant legal principles.

Justice McFadyen, writing the decision of the Alberta Court of Appeal, concluded that a sentence

reduction below what would normally be imposed is a remedy that is available under s.24(1):

[A] reduction in sentence may be granted as a remedy for a Charter breach where the breach mitigates the seriousness of the offence, or imposes some form of punishment on the individual that should be factored in calculating the sentence. Generally, reductions in the sentence imposed should not be used as a means of punishing or sending a message to the police. While we find that a reduction in sentence is an available remedy under s. 24(1) in some circumstances, it is a remedy to be used sparingly and as a last resort in extraordinary cases. This interpretation respects the provisions of the Criminal Code which set out the objectives and principles of sentencing. [para. 38]

In this case, there was a connection between the *Charter* breaches and the remedy sought. As well, the accused suffered a hardship as a result. The excessive force was found by the sentencing judge to have caused the rib fractures and lung collapse, which required surgery. The sentencing judge also concluded the failure to disclose the force used may have led to the failure to provide medical treatment promptly. Justice McFayden held the sentencing judge did not err in reducing the sentence under s.24(1).

Complete case available at www.albertacourts.ab.ca

FRESH PURSUIT ANALYSIS INCLUDES TRAVEL TIME FOR POLICE TO RESPOND

R. v. Puyenbroek, 2007 ONCA 824



After the intoxicated accused left a Christmas party he hit two pedestrians walking on the shoulder of the highway. Police were called and it took the responding officer, 55 kilometers away, almost 50 minutes to arrive on scene. After spending 20-25 minutes investigating the scene, the officer went to the accused's house about half a kilometer away because of information he obtained at the accident scene. He saw fresh tracks in the snow leading to a Ford F150 pick-up truck and footprints from the truck to the house. The front of the truck was

damaged as well as the side view mirror, consistent with evidence found at the scene.

The accused's wife came out of the house and asked the officer what he was doing there. The officer asked who had been driving the truck and she said her husband had just arrived home. Another officer attended and police knocked on the front door. The accused's wife returned to the door and when asked, told police that her husband was in bed. The officer said he would like to speak to her husband and the accused's wife backed off from the front door and gestured that he was in the bedroom. The officer assumed this was an invitation to enter the house and to follow her to the bedroom, which the officers did.

In the bedroom police found the accused either sleeping or pretending to sleep. He had very red, watery eyes, a strong odour of alcohol on his breath and a slight slurring of his speech. The officers asked him to dress, placed him under arrest and handcuffed him. He was taken to the police car and read his rights. The officers also took possession of a rifle, a 12-gauge shotgun, and ammunition, which they found improperly secured in the bedroom.

At trial in the Ontario Superior Court of Justice the accused was convicted of impaired driving causing bodily harm, dangerous driving causing bodily harm, failing to remain at the scene of the accident, and careless storage of firearms. The trial judge used the hot pursuit doctrine as one justification for the police officers' entry onto the accused's property and into his home and bedroom. He acknowledged that the hot pursuit exception requires a close temporal connection between the accident and police entry, but stated that the time focus should begin at the point when the police first arrived on the accident scene. He concluded that in this case, "the investigation and pursuit was continuous, diligent, and led in a short period of time, about one half hour or slightly more, to arrest." He also found that before they entered the house, the police had reasonable and probable grounds, both subjectively and objectively, to arrest the accused for the offence of leaving the scene of an accident.

The trial judge also found the police had fully informed consent to enter the house from the accused's wife. By gesture, she invited them in and

led them to the room where her husband was resting. She knew her husband had hit something on his way home and the officer showed her the damage to the truck before they entered the house. She appreciated the facts and the implications when she allowed the officers in. Further at no time did she tell police to leave or stay outside.

The accused was sentenced to three years for the dangerous driving charges including a credit of 110 days for pre-trial custody, six months consecutive for leaving the scene of an accident, and sixty days consecutive for the careless storage of firearms. He was also prohibited from driving for five years, from possessing a firearm for ten years, and ordered to provide a DNA sample.

The accused appealed to the Ontario Court of Appeal arguing, in part, that the trial judge erred in concluding that the police were lawfully in the accused's house through the doctrine of fresh pursuit, or in the alternative, by consent. In his view, the evidence of the firearms the police found when they entered the accused's bedroom should have been excluded because the police breached his s.8 *Charter* rights.

Hot Pursuit

The accused submitted that the circumstances of this case did not amount to hot pursuit—neither a continuous pursuit nor a single transaction. He also argued that the police entered to further their investigation and did not have reasonable and probable grounds for arrest before they entered the house. Further, the officer never said he was in hot pursuit, there were exigent circumstances, or he had any safety concerns. Rather, he testified he wanted to enter the home to speak with the accused and not that he already had reasonable grounds to arrest him. Once the officer spoke to his wife, the accused contended the police needed a *Feeney* warrant under s.529 or s. 529.1 of the *Criminal Code* to enter the home and conduct a search.

In *R. v. Feeney* "the Supreme Court of Canada set out the general rule that under the Charter, a warrant is required both for arrest in a dwelling house and to legally search a dwelling house, in order to prevent unreasonable intrusions on an individual's right to privacy in the home. However, the court

confirmed the common law exception where the police were engaged in 'hot pursuit.' In such cases, 'the privacy interest must give way to the interest of society in ensuring adequate police protection'" Hot or fresh pursuit has been defined as "continuous pursuit conducted with reasonable diligence, so that pursuit and capture along with the commission of the offence may be considered as forming part of a single transaction."

Justifications offered for the hot pursuit exception to the sanctity of a private home include:

- 1) where an offender is a fugitive who has gone home while fleeing for the sole purpose of escaping arrest, when the police come, they are not unexpected or intruding on the person's "domestic tranquility";
- 2) from a practical point of view, offenders should not be encouraged to run or drive for home to seek refuge from the police, creating dangerous situations for members of the public;
- 3) the police officer may have personal knowledge of the commission of an offence justifying arrest, thereby greatly reducing the risk of error;
- 4) flight usually indicates awareness of guilt;
- 5) in some circumstances it may be difficult to identify the offender without arresting them on the spot;
- 6) evidence of the offence may be lost, such as evidence of impairment; and
- 7) the offender may again flee or continue the offence while the police are waiting for them to emerge.

The power to enter private premises without a warrant to make an arrest is only available, however, where the police already have the power and grounds to arrest without a warrant. In this case the officer did not observe the offence himself. Rather, he came from a distance in order to reach the accident scene, and he took some time at the scene before heading to the accused's home. The time between the accident and the arrest was about one-and-a-half hours, including the time it took the officer to travel to the accident scene, which was some 55 kilometres away. The trial judge excluded the travel time from his consideration of the total circumstances in order to reach the conclusion that

the commission of the offence, the pursuit, and the accused's capture formed a single transaction, and therefore fit within the definition of "hot pursuit." As Justice Feldman, authoring the unanimous Ontario Court of Appeal decision, noted:

In so doing, the trial judge effectively extended the hot pursuit exception to a situation where the officer arrived at the scene long after the offence was completed and the perpetrator had left; the officer conducted an investigation at the scene; he developed a "suspicion" that the perpetrator of the offence was the [accused] and for that reason went to the [accused's] home; there he conducted a further investigation by observing the truck and speaking with the [accused's] wife from whom he learned that the [accused] was inside the house and had been driving the truck; he entered the home to speak to the [accused], and after observing evidence of inebriation, he arrested the [accused] for impaired driving causing bodily harm.

In other words, the trial judge extended the hot pursuit exception to a situation where the officer had no personal knowledge of the facts of the offence or the identity of the perpetrator because he neither observed the offence nor began or took up any pursuit of that perpetrator. He also extended the exception to a situation where the time that had lapsed between the commission of the offence and the arrest was one-and-a-half hours. I recognize that part of this time was the necessary travel time by the police officer in a northern community. However, the effect in this case was that the officer neither had any personal information about the offence or the offender, nor did he begin or take up a chase or pursuit in the classical sense because the [accused] was already at home by the time the officer arrived on the scene. [paras. 28-29]

Extending the hot pursuit exception as done by the trial judge needed to be examined in light of the amendments to the *Criminal Code* that now specifically provide for a warrant to arrest inside a dwelling house and set out the circumstances when an officer may enter a dwelling house without a warrant. Although the opening words of s.593.3 of the *Criminal Code* appear to leave open the common law hot pursuit exception to the rule requiring a warrant before an officer can enter a dwelling

house, the section only expressly provides a peace officer with the authority to enter a dwelling house without a warrant in situations where there exist exigent circumstances.

The law provides but a very narrow range of circumstances when an officer may enter a dwelling house without a warrant. Hot pursuit is a necessarily narrow exception. "Normally, once an officer has reasonable and probable grounds to arrest a person in a dwelling place, the officer can proceed to obtain a warrant, including a telewarrant if necessary, before entering the home," said Justice Feldman. "However, if there are exigent circumstances, the officer may proceed without a warrant. If there are no exigent circumstances, it is difficult to imagine why an officer could not proceed to obtain the warrant, outside of a "classic" situation of hot pursuit, in which the officer is literally at the heels of a suspect at the moment the suspect enters a dwelling-house."

In this case, the Ontario Court of Appeal said "there appeared to be no justifiable reason [the investigating officer] could not have obtained a warrant to arrest the [accused] if he had reasonable grounds to believe the [accused] had committed an indictable offence." The trial judge found that the officers had "reasonable and probable grounds subjectively and objectively to arrest the accused for failing to remain at the scene of the accident and were justified in entering the house and effecting the arrest, when his condition was noted for impairment causing bodily harm."

Although there were objective grounds to arrest the accused for leaving the scene of an accident, there was nothing in the evidence of the officers that suggests that they intended to enter the house to arrest the accused for that offence. The evidence was that the investigating officer intended to enter the home in order to speak with the accused. Furthermore, once the officers observed the accused's apparent impairment, they arrested him for impaired driving causing bodily harm. It was unclear whether they arrested him for leaving the scene at that time. It may be that the reason the officers did not try to obtain a warrant was because they were not yet satisfied that they had the grounds to arrest him until they spoke to him.

Justice Feldman concluded the trial judge erred in his finding that the officers subjectively believed that they had reasonable grounds to arrest the accused and in finding they were entitled to enter the dwelling-house without a warrant on the basis of hot pursuit.

Consent

In order for the accused's wife's consent to have been valid, it must have been fully informed. This includes the condition that the person giving the consent be aware of their right to refuse. Justice Feldman held there was no evidence or suggestion that the accused's wife was informed of her right to refuse consent and no finding by the trial judge on that aspect of the issue. The trial judge's conclusion on this issue therefore could not stand.

Exclusion of Evidence

The accused sought to exclude the evidence of two long guns, improperly secured and left near loose ammunition the police found when they entered his bedroom in breach of s. 8 of the *Charter*. Although the evidence was real evidence and therefore no trial fairness issue arose, the evidence was nonetheless excluded by the Ontario Court of Appeal. The Court ruled:

In this case, the impugned evidence is two long guns and ammunition, which were neither illegally owned, nor being brandished. Although any firearms offence is serious, the relative seriousness of the careless storage offence in this case does not outweigh the need to exclude the evidence so that the administration of justice in promoting the sanctity of the home will not be brought into disrepute. This court has emphasized that trial courts must give appropriate weight to the seriousness of the Charter breach at issue when considering the effect on the administration of justice under s. 24(2) of admitting or excluding evidence...As with s. 24(2) cases involving illegal arrests and searches of defendants found in possession of relatively small quantities of illegal narcotics or monies obtained from crime, in the present case, the relative magnitude of the careless storage of firearms offence is outweighed by the harm to individual liberty and to the administration of justice that would result

from admitting the evidence obtained from a warrantless search of a dwelling house...I would therefore exclude the evidence of the rifle, shotgun, and ammunition. [references omitted, para. 42]

Complete case available at www.ontariocourts.on.ca

LOCATION OF ARREST IMPORTANT IN HOT PURSUIT ARGUMENT

R. v. Hope, 2007 NSCA 103



The accused, a police officer, responded with another officer to a complaint that Suzanne Silver had uttered a death threat against another woman. Police interviewed the victim, and knew Silver had been involved with drug and weapons offences and had pending charges for assaulting a police officer and breach of probation. The two officer's, along with two other backup officers, attended Silver's residence and went to the doorstep. The accused officer knocked on the door and Silver opened it and stated, "What the f—k do you want?" Her hand was on the doorjamb. The accused officer explained why police were there but Silver said she didn't know the "f—king" victim. The officer felt he needed to arrest Silver to prevent the further commission of an offence by her and that verbal efforts were unlikely to produce compliance. He twice told Silver she was under arrest and touched her sleeve. She retreated into her residence and the officer followed, restraining and handcuffing the physically non-compliant Silver with the help of another officer. Silver was taken to the police station for booking. She physically resisted, assaulted another officer and had to be tasered.

The Crown charged both officers involved in Silver's arrest with common assault under the *Criminal Code* for apprehending her in her home and assault with a weapon for the taser incident at the police station. At trial in Nova Scotia Provincial Court the accused officers were acquitted. The trial judge concluded Silver's arrest was lawful. The officer determined Silver needed to be arrested and placed his hand on her sleeve after pronouncing words of arrest.

The Crown appealed the acquittals to the Nova Scotia Supreme Court. The Supreme Court justice allowed the appeal on the accused's acquittal for the assault at Silver's home. The appeal judge found the accused had reached through the open door and placed his hands on Silver's sleeve. He found the officer was outside the home and Silver was inside the home when the arrest was made. In referencing *Feeney*, the appeal judge noted that the officer neither had consent to enter nor a warrant. Since the arresting touch occurred while Silver was inside her home, the hot pursuit doctrine did not apply. Nor were there exigent circumstances.

The accused officer then appealed to the Nova Scotia Court of Appeal. In a unanimous decision written by Justice Fichaud, the Court of Appeal reinstated the accused's acquittal.

In *Feeney*, the Supreme Court of Canada held that a police officer, absent consent or a warrant, may enter a private residence to arrest a person if they are in hot pursuit and perhaps, in exigent circumstances. Further, implied licence allows the police to go to a dwelling's door to communicate with its occupant. In this case, however, there was no implied consent allowing the accused officer to cross the threshold of Silver's residence, nor did he have a warrant. The hot pursuit doctrine, however, did apply. Justice Fichaud stated:

The Crown acknowledged in the proceedings below and again at the hearing in the Court of Appeal that, if [the accused] lawfully arrested Ms. Silver without entering the home, then her subsequent apprehension was lawful. Ms. Silver's retreat would be an escape from lawful custody, contrary to s. 145(1)(a) of the Code, and [the accused] could lawfully follow her into the home in hot pursuit. I would add that, under *R. v. Maccooh*...a hot pursuit must be a fresh and continuous pursuit such that the offence, pursuit and capture are a single transaction. Ms. Silver's alleged threat...had occurred some time before the events at the Silver residence. It cannot be said that the officers were in hot pursuit of Ms. Silver for that offence.

To accomplish a lawful arrest, it is necessary that the officer have the subjective belief and objective grounds for an arrest, that he informs the individual of the arrest and that either he touches the individual or, if there is

no touch, the individual submits to the constraint of arrest.

In *Feeney*, none of these conditions existed before the officers entered the trailer. In the present case, the trial judge found that, before reaching the Silver residence, the officers had the subjective belief and objective grounds for arrest, based on the information about the threat...and Ms. Silver's background. At the doorstep, without entering, [the accused] twice informed Ms. Silver that she was under arrest. Ms. Silver did not submit to an arrest.

[The accused] did not step into the residence before touching Ms. Silver. So the lawfulness of the arrest, and the outcome of the charge, turned on the esoteric point whether or not [the accused's] hand crossed the plane of the threshold before he touched Ms. Silver. That was an issue of fact. It was not an issue of law that was under appeal to the SCAC.

If the trial judge had found that [the accused] reached into the residence to touch Ms. Silver, then a ruling that [the accused] was in "hot pursuit" would be an error of law. There would be no lawful custody from which Ms. Silver had escaped.

But the trial judge did not find that [the accused's] hand had crossed the plane of the doorway. Rather, the trial judge [found] that [the accused] touched Ms. Silver's sleeve while her hand was on the doorjamb. There was no finding that his hand entered the Silver residence. [paras. 30-35]

And further:

The trial judge ruled that the doorstep arrest was lawful. The [appeal court judge] identified no error in the trial judge's definition or application of the law on the issues that were appealed to the [appeal court]. In my respectful view, the [the appeal court judge] erred in law by overturning that ruling. The Crown acknowledges that, if the doorstep arrest was lawful, [the accused] was entitled to enter the Silver residence in hot pursuit to apprehend Ms. Silver as an individual escaping lawful custody. So the apprehension in the home was lawful. [The accused's] defence under s. 25(1)(b) acquits him of common assault. [para. 41]

Complete case available at www.courts.ns.ca

DNR WARRANT PROVISION CONSTITUTIONAL DESPITE LOWER ISSUANCE STANDARD

R. v. Cody, 2007 QCCA 1276



The accused was tried by a judge and jury in Quebec Superior Court on a charge of importing cocaine. Some of the evidence against the accused included information obtained from 17 digital number recorder (DNR) warrants that were issued during the investigation. At trial the accused argued that the DNR provisions of the *Criminal Code* authorize search and seizure on reasonable suspicion only, thereby failing to meet the minimum constitutional requirement of reasonable grounds. The search and seizure pursuant to the DNR warrants therefore breached s.8 of the *Charter* and could not be saved by s.1. The trial judge dismissed the accused's challenge, found the DNR warrants did not offend s.8, allowed the evidence, and the accused was convicted.

The accused then appealed to the Quebec Court of Appeal arguing, in part, that the trial judge erred by holding s.492.2 of the *Criminal Code* did not violate s.8 of the *Charter*.

Section 492.2 allows the police to obtain a DNR warrant on the basis of "reasonable grounds to suspect" rather than the more stringent standard of "reasonable grounds to believe". A DNR works as follows:

A digital number recorder (DNR) is activated when the subscriber's telephone is taken "off the hook". Electronic impulses emitted from the monitored telephone are recorded on a computer printout tape which discloses the telephone number dialled when an outgoing call is placed. The DNR does not record whether the receiving telephone was answered nor the fact or substance of the conversation, if any, which then ensues. When an incoming call is made to the monitored telephone, the DNR records only that the monitored telephone is "off the hook" when answered and the length of time during which the monitored telephone is in that position.

The Crown conceded that there was an expectation of privacy with respect to the information obtained

from a DNR warrant, but that the expectation was a reduced one, since the only information resulting from these warrants was the duration of a call, the number, the date and the time, unlike private communications such as wiretaps, in which actual conversations are captured and recorded. The Crown contended that a reduced standard of reasonable suspicion to obtain judicial authorization for a DNR warrant was therefore compatible with the reduced expectation of privacy.

Justice Hilton, writing the opinion of the Quebec Court of Appeal, ruled that reasonable suspicion was an appropriate basis for issuing a DNR warrant. In *R. v. Wise* the majority of the Supreme Court of Canada held that the unauthorized installation of an electronic tracking device on a car constituted an unreasonable search that was inconsistent with section 8 of the *Charter*, as did the subsequent monitoring of the vehicle, since it invaded a domain where one had a reasonable expectation of privacy. Nevertheless, the Court found that the intrusion was minimal since there was a reduced expectation of privacy within a car, and that the unsophisticated nature of the device used, as well as its inaccuracy, amounted to nothing more than a rudimentary extension of physical surveillance. In suggesting that legislative measures were in order, the majority noted that the tracking device was a less intrusive means of surveillance than electronic audio or video surveillance and a lower standard such as a "solid ground" for suspicion would be a basis for obtaining an authorization from an independent authority, like a justice, to install a device and monitor the movements of a vehicle.

Parliament then responded and introduced s.492.1 which contemplated the issuance of tracking warrants based on the standard of "reasonable grounds to suspect". It was at this time that Parliament also adopted s.492.2 (DNR provisions). Justice Hilton found it difficult to conclude that Parliament acted unconstitutionally when the legislation was adopted, at least in part, in response to a clear direction from the Supreme Court of Canada.

Citing various cases, the Quebec Court of Appeal recognized that the criterion for issuing warrants, such as reasonable grounds to believe, can vary with the context and the level of privacy expectation in

the circumstances. There is not only one interpretation that will satisfy s. 8 *Charter* concerns. Rather than imposing an inflexible standard, the reasonableness standard under s.8 fluctuates with context. Section 8 does not require that each and every search and seizure be done only on the basis of the existence of reasonable grounds. Thus, the reasonableness of a search and the surrounding standards of belief must be assessed in the context of each case. Since individuals have different expectations of privacy in different contexts and with regard to different kinds of information and documents, it follows that the standard of review of what is "reasonable" in a given context must be flexible if it is to be realistic and meaningful.

In upholding the constitutionality of the DNR provision, Justice Hilton stated:

The very fact that judicial authorization is required to obtain a DNR warrant, however, means that section 8 of the Canadian Charter is engaged. Nevertheless, the context in which such warrants are sought does not necessarily require that there be "reasonable and probable grounds" for their issuance. It is an exaggeration to assimilate the information of a telephone number and the duration that a telephone is off the hook with anything that can reasonably be considered so "private" so as to require the highest standard of protection of section 8 of the Canadian Charter, especially when the information does not indicate which person is using the telephone, whether there was a conversation, and if so, with whom the conversation is taking place, as well as its details....

I also agree with the trial judge that the indication of a target telephone being used to call another number, or the duration of an incoming call, is more akin to information that could be obtained by physical surveillance, such as if a targeted person was seen driving a car to a specific address and entering the premises, or whether someone came and entered the premises occupied by someone under surveillance, although such physical surveillance does not require prior judicial authorization. When considered in the context of the potential utility of the information that can be obtained by DNR warrants, and the immediacy with which the information can

advance criminal investigations, or rule out someone as a suspect, I have no hesitation in concluding that [the accused's] constitutional challenge fails. [paras. 25-26]

Complete case available at www.canlii.org

Editor's note: The Quebec Court of Appeal chose not to adopt the conclusion of the British Columbia Supreme Court in *R. v. Nguyen*, 2004 BCSC 77 holding that the DNR warrant provisions under the *Criminal Code* issued on the basis of reasonable suspicion violate s.8 of the *Charter*.

GUITAR CASE SEARCH PRIOR TO TRANSPORT JUSTIFIED

R. v. Narayan, 2007 BCCA 429



Two police officers responded to a 911 telephone call from the accused at about 3 am. He was outside a residence and had two guitar cases with him. He said he needed police assistance to obtain his crutches and some keys from inside the residence where he had just had an altercation with his girlfriend. Police had been called to the same residence on prior occasions to deal with disputes between the same two people. The police offered to drive the accused to his mother's residence so he got into and sat in the backseat of one of the police vehicles. One of his guitar cases was placed in the front seat and the second guitar case was placed in the trunk.

While one officer remained at the police car, the second officer went back into the residence to have a further conversation with the accused's upset and drunk girlfriend. She told the officer that there was a loaded handgun in one of his guitar cases. The two officers met outside the residence and searched the guitar case in the trunk of the police car. They found a loaded semi-automatic handgun and seized it. The accused was not arrested or otherwise detained and he was driven to his mother's home as police had originally intended to do.

During a *voire dire* in British Columbia Supreme Court, the trial judge found the accused did not have a reasonable expectation of privacy in relation to his guitar cases; especially the one placed in the trunk where possession and control had been turned over to the police. Further, even if he did have a

privacy interest, the search of the guitar case was reasonable; the officers were empowered to make the search at common law for officer safety. As well, he found the search was justified under s.117.02 of the *Criminal Code* (warrantless weapons search). And finally, even if the trial judge was wrong about the reasonableness of the search, he would have admitted the evidence under s.24(2) in any event. The accused was convicted of four charges related to possession of the unregistered, loaded handgun.

The accused appealed to the British Columbia Court of Appeal arguing the warrantless search and seizure breached his s.8 *Charter* rights. Chief Justice Finch, delivering the reasons for the Appeal Court, found the search was justified under s.117.02(1)(b) of the *Criminal Code*. This section allows a peace officer to search a person, vehicle, place or premises (other than a dwelling house), without a warrant, when they believe on reasonable grounds that an offence has been committed involving a firearm (or other listed weapon) and that conditions exist for getting a warrant, but by reason of exigent circumstances it would not be practicable to obtain one. Chief Justice Finch ruled that there were not only grounds to obtain a warrant, but also exigent circumstances. He said this:

Here, the officers were involved in a spontaneous investigation in the early morning hours in a residential area. They were confronted with an immediate need to remove the danger posed by the likelihood a loaded handgun was in one of the guitar cases. There was no need for further investigation before they acted to alleviate their concerns for the need to protect their own safety.

Since the search was authorized under s.117.02, the accused's *Charter* rights under s.8 were not violated, and there was no need to consider s.24(2). The accused's appeal was therefore dismissed.

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

Note-able Quote

"An apology is a good way to have the last word." -
Author unknown

www.10-8.ca

TEST FOR WARRANT REQUIRES RELIABLE EVIDENCE

R. v. Manders, 2007 ONCA 849



A provincial constable responded to an emergency call to an accident scene. At the accident scene the officer noticed that the accused had injuries to his lower body and was belligerent with emergency workers. After a brief preliminary investigation, the officer drove to the hospital where he saw emergency room staff examining and treating the accused. The officer returned to the accident scene where he learned that the speedometer of the car driven by the accused had locked at 140 km/h. He also noticed an empty beer bottle and beer carton in the interior of the vehicle.

When the officer later resumed his regular police duties he spoke with a probationary constable who had seen the accused at a wedding reception within an hour before the accident. The probationary constable told the officer that he had seen the accused make several trips to the bar at the wedding reception and had last seen him, drink in hand, standing unsteadily at the bar. The accused appeared to be under the influence of alcohol.

Three days later the officer confirmed with a hospital employee that all health records about the accused's treatment at the hospital after the accident were kept in its Health Records Department. The next day the officer sought and obtained a warrant to search for and seize the accused's medical records regarding the treatment he received at the hospital "due to a motor vehicle accident". The warrant was then executed.

As a result of the information obtained on execution of the warrant and discussions with a laboratory technician in the Biochemistry Department of the hospital, the officer sought and obtained a second warrant to search for and seize blood samples taken from the accused, as well as documents relating to the care, custody, or control of those samples.

At trial in the Ontario Superior Court of Justice, the accused sought to exclude the results of the toxicological analysis of the blood sample taken from him at the hospital. The trial judge upheld the

warrants and the accused was convicted. He then challenged the constitutionality of the warrants to the Ontario Court of Appeal claiming the information to obtain the first warrant failed to disclose a basis upon which the justice could reasonably conclude that the conditions precedent to the issuance of the search warrant under s.487(1)(b) of the *Criminal Code* had been met.

According to the accused, the information to obtain the first warrant contained nothing upon which the justice could find that there were reasonable grounds to believe that he had committed any offence listed in the warrant (s.253(a) of the *Criminal Code*) and that the medical records relating to his treatment would afford evidence with respect to the commission of an offence, in particular that blood samples had been taken from him. Justice Watt, however, in delivering the unanimous opinion of the court, dismissed the appeal.

The test for determining the constitutional validity of the search warrant in this case "was whether there was reliable evidence in the sworn information before the justice that might reasonably be believed on the basis of which the justice could have granted the warrant," said Justice Watt. "The test is not whether, in the reviewing judge's opinion, the warrants should have issued, much less whether the reviewing judge would have issued the warrants himself if asked." Justice Watt continued:

In my view, there was reliable evidence before the issuing justice that might reasonably be believed upon which the justice could conclude that there were reasonable grounds to believe the [accused] had committed a driving offence described in the information, in particular, an offence contrary to s. 253(a) of the *Criminal Code*. The essential finding, which required no determination that the [accused] was "at fault" for the accident, was amply supported by the cumulative effect of evidence of:

- i. an odour of alcohol on the [accused's] breath;
- ii. an empty beer bottle in the passenger compartment of the vehicle driven by the [accused] and an empty case of beer in the trunk;
- iii. the manner in which the [accused] responded to emergency workers at the scene and the informant at the hospital;
- iv. the advanced state of intoxication of the [accused's] passenger...confirming the likelihood of the [accused] as the driver;

- v. the excessive speed at which the [accused's] vehicle was apparently travelling, nearly 50 km per hour in excess of the posted speed limit; and
- vi. the observations of the probationary constable who had seen the [accused] at a wedding reception within an hour preceding the accident, and noticed that the [accused] was unsteady on his feet, apparently under the influence of alcohol, and had made several trips to the bar area at the wedding reception. [para. 12]

As well, Justice Watt ruled "the supportive information disclosed reliable evidence that might reasonably be believed upon which the issuing justice could conclude that there were reasonable grounds to believe that the [accused's] medical treatment records would provide evidence of [his] impairment":

The informant described the medical treatment administered to the [accused] at the hospital and the nature of the injuries the [accused] had apparently suffered. The officer later confirmed that all health records concerning the [accused's] treatment at the hospital had been retained in its appropriate Health Records Department.

According to the informant, the doctors examining the [accused] at the hospital were concerned about back injuries. The [accused] had been thrown from the vehicle. The issuing justice was entitled to draw the inference, at the least from the material contained in the information if not from everyday experience, that a routine hospital procedure in the treatment of accident victims whose serious injuries have not yet been determined is to take a blood sample for medical and hospital purposes.

At trial, the parties argued their respective positions on a basis that included the evidence given by the informant at the preliminary inquiry. There, the officer confirmed the presence of a laboratory technician in the room in which the appellant was being treated. The technician was carrying "a standard small tray ... which has got viles [sic] on them ..." The informant also gave evidence that, in his experience, hospitals usually screened blood samples routinely taken from accident victims for the presence of alcohol.

It was reasonable for the issuing justice to infer that the [accused's] medical treatment records would indicate the existence of a blood sample, and that such a sample would be screened routinely for alcohol or drugs that might have an effect on any medication that might subsequently be administered. Neither would it have been unreasonable for the issuing justice to infer that the treatment records may well include other evidence. After all, the phrase "evidence with respect to the commission of an offence" in s. 487(1)(b) includes anything relevant or rationally connected to the incident under investigation. [references omitted, para. 15-17]

The Ontario Court of Appeal concluded that the warrant to search for and seize medical records was not constitutionally flawed. Therefore, there was no reason to apply s.24(2) of the *Charter* to the evidence of the results of any toxicological analysis.

Complete case available at www.ontariocourts.on.ca

POLICE PROCEDURES FOLLOWED BY CONSCIENTIOUS EMPLOYEE HELP PROVE POSSESSION

R. v. McCallum, 2007 SKCA



Police executed a search warrant at a residence where eleven people were found, including the accused who was arrested along with several other occupants. At the police station they were all searched individually and separately from each other. The search of the accused yielded nothing of interest and his pants and personal belongings were placed in an individual pile, but in proximity to the belongings of other individuals who had been searched already. A book-in sheet bearing the accused's name, address, date of birth, and list of belongings was prepared by another officer assisting in the process. According to normal police procedures, the book-in sheet was then placed on top of the belongings. Neither officer handling the belongings had any specific recollection of the accused, but testified that normal procedures were followed.

An experienced guard of 13 years service was on duty that night. He directed the officer to take the

accused to cell number 10. The guard then picked up the pile of belongings with the accused's book-in sheet. He wrote "Cell 10" on the sheet and placed the belongings and the book-in sheet into a basket also marked "Cell 10". He took the basket to his desk to check the effects once more before they were locked in storage. In so doing, he found a packet containing 10.1 grams of cocaine in a pants pocket that were in the basket holding the book-in sheet for the accused.

At trial in Saskatchewan Provincial Court the accused was convicted of possessing cocaine for the purpose of trafficking contrary to s. 5(2) of the *Controlled Drugs and Substances Act*. Among other findings, the trial judge ruled that the accused's possession of the 10.1 grams of cocaine found at the police station was established by the following:

- (1) The evidence of established police procedure involving searches of a group of individuals one by one, and assembling the belongings of that individual in a distinct pile in a manner that would make them difficult to mix-up;
- (2) The credible evidence of a guard, an employee with some thirteen years' experience, who, in the trial judge's view, did his job properly. The guard testified the piles of belongings were separate, and not sufficiently close to create any mix-up since they were placed in distinct piles on the floor of a large room that was between 15 and 25 feet in length. The guard determined which cell the [accused] would be placed in, located the belongings with the appellant's book-in sheet, marked the sheet with the [accused's] cell number and placed the belongings in the basket also bearing the [accused's] cell number. The guard did the final check of the basket before securing it away and in doing so found the 10.1 grams of cocaine in the belongings with the [accused's] book-in sheet. The trial judge was evidently more than satisfied that the guard performed his duties in a careful and thorough manner; and
- (3) The absence of complaint by anyone that they had not received their proper belongings back. [para. 9]

He was sentenced to one year incarceration, but appealed to the Saskatchewan Court of Appeal arguing, in part, that carelessness and lack of

thoroughness on the part of the police in searching him upon his arrest raised a reasonable doubt as to whether the Crown's evidence was accurate or believable.

Justice Wilkinson, reporting the opinion for the Saskatchewan Court of Appeal, ruled the trial judge's findings of fact and inferences drawn from those findings were reasonably made and he was entitled to make them. Although the accused's search at the station lacked thoroughness, the trial judge was satisfied that the systems and procedures for linking belongings to prisoners was itself manifestly reliable, and that there was no concern in this case that the belongings had been intermingled or mixed up. The trial judge placed considerable emphasis on the evidence of the guard, a long term and conscientious employee. The Saskatchewan Court of Appeal found no basis to intervene in the trial judge's ruling. The accused's conviction appeal was dismissed.

Complete case available at www.canlii.org

PROSPER WARNING NOT NECESSARY WHEN DETAINEE CLEARLY WAIVES RIGHT

R. v. Basko, 2007 SKCA 111



The accused was detained during a routine traffic stop and displayed signs of impairment. Upon being advised of his right to retain counsel

at the scene, the accused responded that he knew of his right to a lawyer and would love to talk to one. He was taken to the police station and booked in. Shortly after arriving, he indicated he wished to speak to Legal Aid.

The police officer dialled the number for Legal Aid and it was busy. He dialled a second time, but it was still busy. After waiting a short interval, the police officer dialled a third time. The accused, upon hearing the busy signal, said to the officer, "I know what they are going to tell me, so I'll call one tomorrow". In total, the officer had

"The Prosper warning ensures that a detainee who wants to waive the right to counsel will know what is being given up. The burden of establishing waiver, which must be unequivocal, voluntary, and free of compulsion, either direct or indirect, is upon the Crown."

spent about five minutes on the telephone attempting unsuccessfully to contact a legal aid lawyer on the accused's behalf. The police officer then asked, "Would you like to try a different lawyer?" and the accused responded, "No, let's get it over", referring to the giving of samples, which were then taken. He was subsequently charged with impaired and over 80mg%.

At trial in Saskatchewan Provincial Court the judge found the accused's right to counsel under s.10(b) of the *Charter* had been breached. In his view the police did not take the opportunity, as required, to give the accused additional information, referred to as the Prosper warning. The Prosper warning is required when a detainee has previously asserted the right to counsel and indicates that they have changed their mind and no longer want that advice. The advice informs the detainee of their right to a reasonable opportunity to contact a lawyer and of the obligation on the police during this time to refrain from having them participate in any process that would incriminate them. As a result, the breathalyzer certificate was excluded as evidence under s.24(2).

The Crown appealed to the Saskatchewan Court of Queen's Bench. The appeal judge ruled, in part, that the Crown had proven that when the accused changed his mind and decided not to obtain legal advice, he gave a clear and unequivocal waiver. The evidence showed the accused chose not to wait for the telephone line to be available nor to telephone a private lawyer. There was no need for the officer to provide the Prosper warning. Therefore, there was no breach of s. 10(b) of the *Charter* and the certificate of analysis was admissible at trial. The Crown's appeal was successful and the case was remitted back to Provincial Court for continuation.

The accused then appealed to the Saskatchewan Court of Appeal. Justice Wilkinson, writing the opinion for the court, first explained the Prosper warning:

The obligation to administer the [Prosper] warning arises if a detained person initially asserts his

or her right to counsel and is duly diligent in exercising it, (having been afforded a reasonable opportunity to exercise it), but has a change of mind and no longer wants to consult counsel. In such cases, according to the Supreme Court of Canada's decision in *R. v. Prosper*..., in a jurisdiction where a duty counsel service does exist but is unavailable at the precise time of detention, s. 10(b) does impose on the police an obligation to "hold off" attempts to elicit incriminatory evidence from the detainee until he or she has had a reasonable opportunity to reach counsel. From that flows an additional informational obligation (the "Prosper warning") to "tell the detainee of (a) his or her right to a reasonable opportunity to contact a lawyer, and (b) the obligation on the part of the police during this time not to take any statements or require the detainee to participate in any potentially incriminating process until he or she has had that reasonable opportunity".

The Prosper warning ensures that a detainee who wants to waive the right to counsel will know what is being given up. The burden of establishing waiver, which must be unequivocal, voluntary, and free of compulsion, either direct or indirect, is upon the Crown. [paras. 2-3]

Here, the Prosper proposition did not apply. The waiver made by the accused was in "decidedly unequivocal terms." The accused simply changed his mind about consulting counsel and was afforded a reasonable opportunity to contact someone other than legal aid. He refused in no uncertain terms, saying "No, let's get it over." He clearly terminated his efforts and indicated a readiness to proceed to the next step. The trial judge failed to consider waiver in his analysis and therefore erred. The accused's appeal was dismissed and the matter remitted back to Provincial Court to continue with the trial.

Complete case available at www.canlii.org

BROKEN LETTER OPENER A WEAPON

R. v. Keizer, 2007 NSCA 125



The accused and his girlfriend were asked to move out of a premises rented by another. He then became upset, pushed the victim onto a couch, pulled out a knife with a three inch blade, cut her neck (causing a laceration), and said, "I'll kill you right now." The accused then left and the police were called. The police found the accused close to the premises in possession of an implement with a broken blade (like a broken letter opener). At trial the accused was convicted of assault with a weapon and uttering a threat. He was sentenced to a two year federal sentence.

The accused appealed his conviction to the Nova Scotia Court of Appeal arguing, in part, that he should not have been found guilty of assault with a weapon because the implement he had in his possession when he was found was not a weapon, but only a broken, decorative letter opener.

Justice Hamilton, for the unanimous Court, dismissed the appeal. "Weapon" is defined in s. 2 of the *Criminal Code* as meaning "any thing used, designed to be used or intended for use (a) in causing death or injury to any person, or (b) for the purpose of threatening or intimidating any person and, without restricting the generality of the foregoing, includes a firearm." As for the implement used in this case, Justice Hamilton stated:

[A]ny thing used to cause injury to a person can be a weapon for the purpose of s. 267(a), including a letter opener, if that is a correct description of what was found in [the accused's] possession when he was arrested. [para. 5]

The accused's conviction was upheld.

Complete case available at

British Columbia's Prosper Warning

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

The Future of Police Leadership

One World, One Voice, One Purpose



POLICE LEADERSHIP 2008 CONFERENCE

April 14 to 16, 2008



Agenda

- April 13, 2008
Pre-Conference Seminar
- April 14, 2008
Pre-Conference Seminar
Delegate Reception
- April 15, 2008
Conference, Day 1
Banquet Dinner
- April 16, 2008
Conference, Day 2



Conference Location

Westin Bayshore
Vancouver, BC
www.westinbayshore.com

Conference Registration

604.528.5590
toll free: 1.877.528.5591
fax: 604.528.5653
email: registration@jibc.ca

Conference Fees

Conference - \$385 plus GST
Pre-Conference Seminar
and Conference \$535 Plus GST

Conference Contact

Ken Davies
604.528.5865
kmdavies@jibc.ca

The British Columbia Association of Chiefs of Police (BCACP), the Ministry of Public Safety and Solicitor General, and the Justice Institute of British Columbia Police Academy are hosting the **Police Leadership 2008 Conference** in Vancouver, BC. This conference is Canada's largest police leadership conference, with over 700 delegates expected to attend.

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Sheriff Lee Baca, Sheriff, Los Angeles County Sheriffs Department
Chief Rob Davis, Chief of Police, San Jose Police Department
Dr. Linda Duxbury Professor at the Carleton University School of Business and one of Canada's leading workplace health researchers
Nick Kaldas, Assistant Commissioner, Commander, Counter Terrorism and Public Order Management, New South Wales Police Force
James Mapes, founder and president of The Quantum Leap Thinking Organization and the creator of The Transformation Coach™

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April 14 to 16, 2008

Current Date:

CORPORATE INFORMATION

Organization

Street Address

City/Town Province/State Postal/Zip Code Country

Contact Person Position

Daytime Number Evening Number Mobile Number Email

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Number of registrants X \$408.10 registration fee – enter amount in the field \$

☐ **POL202 Advanced Strategic Communications Seminar and Conference fee per person - \$535 (plus GST)**

Number of registrants X \$567.10 registration fee – enter amount in the field \$

Registration Total \$

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The next page is required for registering each member of your group.

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April 14 to 16, 2008

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Organization		Rank	<input type="text"/>
Disability/Special Requirements (describe): <input type="text"/>			

CONTACT INFORMATION

The following is my ☐ work address ☐ home address

Street Address			
City/Town	Province/State	Postal/Zip Code	Country
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Daytime Number	Evening Number	Mobile Number	Email
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="checkbox"/> Canadian Citizen <input type="checkbox"/> Permanent Resident <input type="checkbox"/> Student Visa <input type="checkbox"/> Other Visa <input type="checkbox"/> Non-Canadian Studying Outside Canada			
<input type="checkbox"/> Other (specify): <input type="text"/> <input type="checkbox"/> Unknown			

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- ☐ **POL200 Police Leadership 2008 Conference** - \$385 plus GST (\$408.10)
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 - ☐ I will be attending the Tuesday, April 15th, 2008 Banquet Dinner (included in conference fee)*

Enter Total \$

Sizing Information: I take the following size vest:

MENS

☐ Mens S ☐ Mens M ☐ Mens L ☐ Mens XL ☐ Mens 2X

LADIES

☐ Ladies S ☐ Ladies M ☐ Ladies L ☐ Ladies XL ☐ Ladies 2X

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Credit Card Number	Card Expiry Date:	Name of Cardholder	Signature
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

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INVESTIGATIVE DETENTION LAWFUL ALMOST ONE HOUR AFTER REPORT

R. v. Ingle, 2007 BCCA 445



Shortly after midnight a woman called police to report an attempted theft from the backyard of her rural home that was seen by her husband about ten minutes earlier. The report was that two white males, 16 to 17 years of age, one wearing a white T-shirt, had taken a large tool box from a pick-up truck, dropped it, and then fled south in the direction of the nearby elementary school. Police officers responded to the report by setting up containment in the hope of intercepting the two suspects. About 35 minutes after the report had been received an officer parked his patrol car at an intersection located more than 1.5 km. away from the residence. The officer's primary responsibility was to monitor the intersection, which was to the northwest of the residence from which the theft report had come, in an effort to locate the two suspects. Another officer was monitoring the next intersection to the east, a distance of about 1.8 kilometres.

The officer did not stop any of the vehicles which passed him on the main highway, a through road running in an east-west direction, but did, at about 1:00 a.m., see a van northbound approaching the intersection. The van was the first vehicle he had observed traveling northbound after taking up his position and when the vehicle passed him, the officer saw two occupants who appeared to him to be males. He made a U-turn, followed the van for about 1.5 kilometres, determined that the vehicle had not been reported stolen, and then pulled it over, just short of one hour after the attempted theft had been observed at the residence.

As the officer approached the van to speak with the driver, he noticed a strong odour of marihuana and saw several large orange garbage bags in the cargo area. The accused was asked for the vehicle registration and his driver's licence. When backup arrived, the occupants of the van were asked to get out, told of the odour of marihuana coming from the vehicle, frisk-searched for weapons, handcuffed

and placed in patrol vehicles. During an initial search of the van, the officer opened some of the plastic bags and found they contained freshly cut marihuana. He then formally arrested the accused for possession of marihuana and possession for the purpose of trafficking and informed him of his s.10 *Charter* rights. About 37.5 kgs. of marihuana was subsequently seized from the van.

At trial in British Columbia Supreme Court the officer testified that he arrested the accused because he believed there was fresh marihuana in the vehicle. He said he was very familiar with the odour of marihuana, having investigated over 150 marihuana grow operations during his eleven years as a police officer. The trial judge concluded that stopping the van was a valid investigative detention and did not breach s.9 of the *Charter*. She found the officer's decision to stop the only vehicle he saw coming up the road in a semi-rural area in the general vicinity of where an offence had been reported, in which he saw two persons he believed to be male, was reasonably necessary on an objective view of the totality of the circumstances. The trial judge continued:

Although [the officer] did not have much information about the alleged suspects, he stopped the van for the purpose of determining whether its occupants were the theft suspects the police were looking for. He was not stopping all vehicles proceeding east/west, but decided to stop the van proceeding away from the area of the reported theft, based on his observations. His decision to do so was strengthened by the fact that the van contained two individuals who he believed to be white males, who he regarded as engaging in what he called the "thousand-yard stare," and therefore not wanting interaction with the police. Although I appreciate that this stop was based on little actual information about those alleged theft suspects, I cannot ignore all the circumstances that I consider to be relevant, including the layout of the roads in the immediate area of the reported theft and the fact that Bradner Road was a thoroughfare that bounded the semi-rural area of the alleged theft to the west, the time of night, and the fact that the officer had not seen any other vehicles coming up the road since assuming his surveillance. These circumstances strengthened his decision to stop the vehicle.

The rural nature of the area increased the likelihood that the theft suspects would resort to using a vehicle to leave the area. It was a logical place to "set up containment of the area," to use the words of the officer, and his views were shared by other police officers as there was another officer stationed nearby to the east.

I also note that had the officer not immediately noted the overpowering smell of fresh marihuana coming from the van, he would have queried the presence of the individuals in the area, and upon concluding they were not involved in the reported theft, sent them on their way. His initial investigative detention of the accused's van was extremely fleeting, to say the least, given that he was, upon approaching it, assailed by the overpowering odour of marihuana as he described.

Since the stop was lawful, the officer's observations of the odour of fresh marihuana and the large orange garbage bags in the cargo area of the van immediately behind the driver, provided reasonable grounds to arrest.

The accused appealed to the British Columbia Court of Appeal arguing, in part, that it was not reasonable (objectively or subjectively) for police to believe that a clear nexus existed between the two adult occupants of the van and the attempted theft that had been committed by two teenagers reported to have fled the scene on foot in the opposite direction 40 minutes earlier and more than 3 kilometres away from the location of the stop. He further contended that that odour of marihuana and presence of garbage bags did not provide grounds to arrest. The Crown submitted that the stop was not arbitrary nor based on a mere whim or hunch considering the timing, location, and context of the reported crime. Rather, the circumstances as a whole gave rise to a reasonable suspicion to justify the roadside stop for investigative purposes

The Detention

"Whether an investigative detention infringes s. 9 of the Charter generally turns on the specific facts...about the circumstances surrounding the detention," said Justice Rowles, writing the judgment for the British Columbia Court of Appeal. The accused argued a number of "objective facts"

that, in his view, could not support the officer's subjective or objective basis to connect the accused and the reported offence. He was traveling by van northbound from the scene whereas the suspects were reported to be on foot fleeing southbound; his age did not match that of the suspects, he was detained 40 minutes after the attempted theft 3 kilometres away from the scene; he was driving on a major road and was first noticed stopped at a red light at a major intersection where at least 3 to 5 cars had already gone through the intersection reflecting normal traffic for that time; the city, while rural, has a population of 122,000 with more than 250,000 in the immediate area; and the only information matching both the accused and the suspects was that there were two white male suspects and the occupants of the van were "felt" to be white males.

These facts put forward by the accused, however, did not match with all of the facts found by the trial judge nor with inferences she drew from them. For example, the area was rural and only two roads joined the highway in the area of the theft, one of which the officer was containing. The time of night was also significant as well as the fact the van was the only vehicle driven from the containment area. The trial judge did not err in concluding the stop was lawful.

The Arrest

The arrest was also lawful. The officer testified that he smelled fresh marihuana coming from the van and saw garbage bags in its cargo area. These observations, along with the officer's extensive experience in investigating marihuana cases, provided the necessary reasonable grounds to arrest and search the vehicle as an incident to arrest.

The accused's appeal was dismissed.

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

Note-able Quote

"The arrest is our beachhead. The conviction our battle won." - David Hansen & Thomas Culley

www.10-8.ca

BURNED MARIHUANA ODOUR ALONE INSUFFICIENT FOR ARREST

R. v. Janvier, 2007 SKCA 147



A police officer saw a truck with a broken front headlight and stopped it. When he was within a meter of the truck he could smell a strong, pungent odour of burned marihuana, leading him to conclude that someone had been smoking marihuana in the truck, possibly within the past 20 minutes. The accused, the vehicle's sole occupant, was immediately arrested and his truck searched. The officer found one gram of marihuana in a clothing pocket, seven grams in a boot and a trace amount in the truck's console. The officer also found what he believed to be a list of contacts and money in denominations consistent with trafficking. The accused was charged with possession for the purpose of trafficking.

At trial in Saskatchewan Provincial Court the accused was acquitted. The trial judge ruled that the odour of burned marihuana alone did not provide the necessary grounds to arrest the accused or search the vehicle. In his view, the odour of burned marihuana in a confined space like a vehicle could provide a reasonable suspicion that marihuana was consumed at some time, but did not, without more (such as a cloud of smoke), provide reasonable grounds the person in the vehicle recently consumed it. The warrantless search was unreasonable, breached the accused's s.8 Charter rights, and the evidence was excluded under s.24(2).

The Crown appealed to the Saskatchewan Court of Appeal arguing the trial judge erred in his analysis.

Arrest

Section 495(1) of the *Criminal Code* allows the police to arrest without warrant. In describing the power to arrest provided in this section Justice Jackson, stating the opinion of the Court, said this:

[T]he arrest power depends on the type of offence for which the person is being arrested. A police officer may arrest anyone he or she

finds committing an offence. But if a police officer only believes, albeit on reasonable grounds, that someone has committed or is about to commit an offence, the offence must be an indictable one before the police officer can arrest. The distinction is a significant one in that it means, with respect to summary conviction offences, a police officer can only arrest a person he or she finds committing the offence. [para. 10]

In this case, the accused was initially arrested for possessing marihuana. This is a dual offence, if the quantity of marihuana possessed is 30 grams or more, but only a summary offence if less than 30 grams. However, there was no evidence the officer believed the quantity was more than 30 grams and no basis to determine quantity based on smell alone. Thus, authority to arrest would need to arise from the stricter standard of arrest for summary offences. In other words, the officer would need to find the accused committing the offence, unlike the arrest power for indictable offences which permits arrests based on reasonable grounds.

Here, "the officer did not see, hear, or smell [the accused] committing the offence of possessing marihuana, and therefore, did not find him committing that offence," said Justice Jackson. Nor could it be inferred from the smell of burned marihuana alone that there was more marihuana present. Justice Jackson stated:

"Section 495(1)(b) does not permit an arrest made on inference derived from the smell of burned marihuana alone."

[Section] 495(1)(b) does not permit the officer to say "based on my experience, I believed I would find other marihuana present because I smelled recently burned marihuana." Observation (i.e., the smell) of recently smoked marihuana is not an observation of current possession of additional unsmoked marihuana. One might infer the presence of more marihuana, but one is not observing or smelling it and one is therefore not finding the person committing the offence of possession of additional, unsmoked, marihuana within the meaning of s. 495(1)(b). Section 495(1)(b) does not permit an arrest made on inference derived from the smell of burned marihuana alone. [emphasis in original, para. 30]

And even if such an inference could be drawn from the smell of recently burned marihuana by itself, it was not sufficient to give objectively reasonable

grounds to believe that more, unsmoked marihuana was present. Unlike the odour of raw marihuana, where there is a direct relationship between the smell and the source of the smell such that the smell of raw marihuana is a sensory observation of the presence of raw marihuana (just as seeing it is) and provides grounds for arrest, the smell of burned marihuana is a sensory observation that marihuana has recently been smoked, but which does not provide the power to arrest. Moreover, there was no basis to assume that the accused was the person who consumed the marihuana in the vehicle.

In holding that a reasonable person standing in the shoes of the officer would be unable to objectively conclude from the smell of burned marihuana alone that there was more marihuana present, Justice Jackson wrote:

In summary, as a matter of statutory construction, s. 495(1)(b) does not permit an arrest based on the smell of burned marihuana alone. An officer smelling burned marihuana does not find a person committing the offence of possession of marihuana. If, contrary to my primary conclusion, s.495(1)(b) permits reliance upon an inference based on observation (i.e., smell), the smell of burned marihuana alone is not sufficient to support a reasonable inference that more, unsmoked marihuana will be present. Arresting someone is the penultimate interference with liberty, short of being in custody. In the circumstances of a summary conviction offence, which is recognized to be a less serious offence, Parliament has established a more constrained arrest power. [para. 48]

Since the arrest was not lawful, the search incident to the arrest was also unlawful.

CDSA Search Power

Under s.11(7) of the *Controlled Drugs and Substances Act* (CDSA) "a police officer may exercise any of the powers in ss. 11(1) or (5) without

"Taken alone, the smell of recently burned marihuana does not reasonably support the inference that additional marihuana is present."

"An officer smelling burned marihuana does not find a person committing the offence of possession of marihuana. If...s.495(1)(b) permits reliance upon an inference based on observation (i.e., smell), the smell of burned marihuana alone is not sufficient to support a reasonable inference that more, unsmoked marihuana will be present."

warrant if the conditions for obtaining a warrant exist but exigent circumstances make it impracticable to obtain one." However, "the officer must have

reasonable grounds to believe a controlled substance is on a person or in a place before searching the person or the place, without a warrant, if exigent circumstances exist making it impracticable to obtain a warrant." Before considering whether exigent circumstances exist, there must be reasonable grounds to conduct the search. As discussed, Saskatchewan's top court found there were no such objective grounds for belief that more unsmoked marihuana was present on the basis of a burned marihuana odour. Justice Jackson stated:

Plain smell evidence is recognized by this Court. The smell of burned marihuana is evidence. When the offence is possession of marihuana, the smell of burned marihuana will be one factor to determine whether there are reasonable grounds to search. Taken alone, the smell of recently burned marihuana does not reasonably support the inference that additional marihuana is present. [para. 54]

Thus, the officer did not have reasonable grounds to search the accused or his vehicle under the CDSA.

Evidence Exclusion

Although the evidence was non-conscriptive and its admission would not affect trial fairness, a reduced expectation existed with respect to vehicles, and the evidence was important to the Crown's case, the *Charter* breach was serious. The accused was not only searched without lawfully authority, but he was also arrested without lawful authority. Further, the nature and amount of drug seized indicated that it was not the most serious charge. The trial judge's assessment of s.24(2) was not unreasonable and the Crown's appeal was dismissed.

Complete case available at www.canlii.org

OFFENCE OF RESISTING OFFICER DOES NOT REQUIRE ARREST

R. v. M.L.M., 2007 ABCA 283



The head of the Police Tactical unit received information that the accused was the lone occupant and driver of a stolen vehicle, may have been a member of an Asian gang involved in numerous drive by shootings using stolen vehicles, and may be in possession of a firearm. Police used their Tactical Unit, consisting of seven officers wearing uniforms that clearly indicated they were police officers, as a way to effect the arrest as quickly and as safely as possible. The Tactical Unit responds to high risk situations that may be too dangerous for regular police officers to handle. Each member of the Tactical Unit had been assigned responsibilities that would enhance the probability that both their safety and that of the public would be achieved

The arrest, which occurred mid-afternoon on a clear day, was ultimately made in the parking lot of a major store after the accused exited the store and returned to his vehicle. The vehicle was parked between two other vehicles and blocked in front by a post which protected the glass front of the store. The parking lot was icy in patches and busy with shoppers. When the accused entered his vehicle, the Tactical Unit van with emergency lights flashing was driven up immediately behind the stolen vehicle, about 18 inches away, blocking it. Both windows on the passenger side of the vehicle were smashed by police, they identified themselves, told the accused he was under arrest, and instructed him to place both hands on the dashboard, which he disregarded.

The accused put the keys in the ignition, started the vehicle, and put the vehicle in reverse and accelerated. But because the parking lot was icy, the tires began to spin when the engine accelerated. The driver's side windows were then smashed out. Concerned for public safety police tasered the accused and he was removed through the window and subsequently subdued. During the arrest process the accused had a piece of car window glass lodge in his right eye and, according to an eye physician and surgeon, is considered legally blind in that eye.

The accused pled guilty to possession of a stolen vehicle, but was also charged with other offences, including dangerous driving and resisting a peace officer in the execution of his duties. At trial in Alberta Provincial Court the judge found the accused was operating a motor vehicle even though it may or may not have moved. Once the accused started the vehicle and engaged the reverse gear, he was operating it and "driving". His actions were also dangerous in light of all the circumstances. The vehicle was initially stopped in the parking lot of a major store, open for business, with other cars in the lot and with people in the parking lot going to and from the store. Members of the Tactical Unit had surrounded his vehicle. Engaging the reverse gear and accelerating after having been warned that he was under arrest was dangerous to the public.

As for the resisting charge, the accused knew he was surrounded by police officers and ignored their commands, attempting to drive away. He knew he was being placed under arrest and was afforded more than one opportunity to comply. The taser was not immediately deployed and the fact he would not be allowed to exit the vehicle under his own power did not matter. Further, the officer was in the execution of his duty at the time he attempted to effect the arrest. He was a member of the Tactical Unit dressed in standard issue police tactical uniform with clearly identifiable markings. The accused was convicted of dangerous driving and resisting a peace officer.

The accused appealed his convictions to the Alberta Court of Appeal arguing the trial judge erred in convicting him of dangerous driving because he was not "driving" nor "operating" the vehicle and in finding him guilty of resisting a peace officer because there was no arrest yet when he didn't obey the officers.

Dangerous Driving

Section 249(1)(a) of the *Criminal Code* creates an offence for a person who operates a motor vehicle in a manner that is dangerous to the public, having regard to all the circumstances, including the nature, condition and use of the place at which the motor vehicle is being operated and the amount of traffic that at the time is or might reasonably be expected to be at that place.

Although a driver cannot, under the *Criminal Code*, "operate" a vehicle that is actually immobile or immobilized, for example when lodged on a traffic median such that it could not be moved except by outside assistance, a vehicle that may not move at one instant can still be operated, such as one that may be temporarily stuck and is driven back and forth only a short distance. In this case, there was evidence that the accused attempted to put the car in motion by starting and reversing it. The engine was accelerating and the vehicle actually moved backwards and struck the police van. The vehicle was only partially on ice and could have moved. The accused was therefore operating the vehicle.

In upholding the trial judge's view concluding that the accused operated the car in a manner dangerous to the public, the Court stated:

The test for dangerous driving is well established. The question to be asked is whether a driver's operation of a motor vehicle amounts to a marked departure from the standard of care that a reasonable person would observe in the accused's situation. The mental element of the offence is a modified objective one, meaning that it should be assessed objectively in the context of all the events surrounding the incident.

The trial judge reviewed the actions of the [accused] in light of all of the circumstances including the location, the proximity of members of the public, and the surrounding police officers and other vehicles. Reversing one's vehicle rapidly in close proximity to a number of individuals and in a shopping centre parking lot during shopping hours where it should be reasonably expected that there will be pedestrians and other traffic, demonstrates a marked departure from the standard of care of a reasonable person in the same circumstances. [reference omitted, paras. 16-17]

"Starting a vehicle, placing it in gear, and attempting to drive away from [the officer] who was executing his duties in attempting to carry out an arrest clearly amounts to more than passive resistance. It is an active use of force to resist a peace officer."

Resisting Peace Officer

Section 129(a) of the *Criminal Code* creates an offence for a person who resists a peace officer. This section does not require an arrest, but only requires resisting a police officer in the execution of his duties. In this case, the duty the officer was executing was an attempt to put the accused under arrest, which he was not cooperating with, knowing that the officer was a police officer and that the car was stolen.

The accused was also resisting. The trial judge found that the accused was given a reasonable time to comply with the officer's orders to put his hands on the dashboard but instead started up the car, put it in reverse gear, and stomped on the gas pedal in an attempt to move it. This non-cooperation was resistance and a direct confrontation was not required. The Court of Appeal stated:

Starting a vehicle, placing it in gear, and attempting to drive away from [the officer] who was executing his duties in attempting to carry out an arrest clearly amounts to more than passive resistance. It is an active use of force to resist a peace officer. There is no basis upon which to upset the finding that these actions amounted to resistance as required under s. 129(a). [para. 9]

The accused's appeal was dismissed.

Complete case available at www.albertacourts.ab.ca

MORE THAN MERE PRESENCE AT CRIME SCENE REQUIRED FOR CONVICTION

R. v. Jackson, 2007 SCC 52



The accused was one of five people arrested at the site of a secluded marijuana plantation in a remote area of forest. When police arrived, the accused was sleeping in a camouflaged tent on the site, containing fertilizer and growing equipment. He exited the tent wearing rubber boots, not the running shoes he claimed to have been wearing on his arrival. The boots were his size — but belonged to

someone else he said. He had been at the site for at least two days.

The entire site was dedicated to the production of marijuana on a commercial scale. There was no evidence it was any legitimate business enterprise, wilderness camp or other recreational activity. Its dimensions and equipment indicated the operation involved more than one, or even two, participants. Of the four others present, two were previous acquaintances and at least one admitted being actively engaged in the production of marijuana on the plantation.

At trial the accused was convicted of illegally producing marihuana. The trial judge ruled that the equipment found indicated that five people were involved. The accused's implausible explanation for his presence at the marijuana plantation was rejected. His appeal to the Quebec Court of Appeal was dismissed by a majority, so he appealed to the Supreme Court of Canada arguing his mere presence at the scene of a crime did not prove his culpable participation in its commission.

"[A]n accused's mere presence at the scene of a crime in circumstances consistent with innocence will not support a conviction," said Justice Fish for the five member majority. However, Justice Fish noted there was more to this case than the accused's mere presence on the marijuana plantation. Rather the evidence against him included "the cumulative effect of his apprehension at the scene, the rejection of his explanation for being there, the particular nature of the offence, the context in which it was committed, and other circumstantial evidence of his guilt." It was therefore open to the trial judge to conclude that the accused's presence at the scene of the crime was consistent only with his culpable involvement in the production of marijuana.

The accused's appeal was dismissed and his conviction affirmed.

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

Note-able Quote

"Destiny is no matter of chance. It is a matter of choice. It is not a thing to be waited for, it is a thing to be achieved." - William Jennings Bryan

"IF YOUR TRAINING DOES NOT ASSIST YOU WHEN YOU MOST NEED IT, WHY TRAIN?"

Insp. Kelly Keith, Atlantic Police Academy

As law enforcement officers we are often engaged in close quarter combat whether that be hand-to-hand or firearms. Does your fitness program enhance your ability to win both? If you have a goal of optimizing your ability to win a physical confrontation with your fitness training you must select exercises with mechanical relevance to a physical confrontation.

According to the FBI studies in the United States from 1996 to 2005 the average age of suspects that killed Law Enforcement Officers in the United States was 29. Ninety five percent of these people were male, and the main weapon officers were killed with was a firearm. Fifty percent of the officers who were killed with a firearm were killed within five feet of the suspect, which is fighting distance whether you are fighting with a gun or your fists.

FBI studies also state that from 1996 to 2005 there were 566,626 Law Enforcement Officers assaulted. An important fact is that 80% of the officers were assaulted with the suspects personal weapons such as hands, feet, etc.

The methods of assaults range from kicking, punching, pushing, pulling, tackling the officer. The majority of the fights end up on the ground where the fight continues with grappling and further strikes. As well, most assaults are spontaneous, occur in dim lit situations, and are to facilitate the suspects escape. The fact that the assaults are spontaneous is why officers use their personal weapon such as their hands and feet more than anything else. They must be able to use their personal weapons either to get the suspect into handcuffs or give them time to get to the weapons on their belt.

As law enforcement officers we are not training to fight in a 12 round fight - there is only one round, there is no tapping out, no referees, no doctors to stop the fight or treat you, no gender designations, no weight classes, no padded gloves or padded floors, generally consent is not mutual, there may be

more than one attacker and in some cases we are fighting for our lives. Confrontations can occur in small areas with furniture or vehicles around. All techniques and training must be tailored to work on suspects that are Hulk Hogan's size to half the officer's size. In law enforcement confrontations we may be fighting with an intermediate weapon such as a baton or taser or we may be fighting to give ourselves the space to get to our weapons on our belt. Most real fights regardless of whether they are law enforcement related or not are over in under one minute.

Most fitness programs are built around looking good on the beach such as a bodybuilder physique, losing fat, or long distance training. Long runs and bicep curls will not make the difference in a real assault. Unfortunately most law enforcement officers train with weights or do aerobic activities that will prepare them for a particular sport, not for a real fight. We must make our training more effective in a confrontation by being more specific with it! Most training I see and know law enforcement officers are doing will not give them a harder punch, kick, better footwork, nor a harder baton swing. The physical actions involved in a kick, punch, strike with a baton, or escape from a ground assault are not emulated with most weight training routines. For example, abdominal crunches will make you stronger in the action of bringing your shoulders closer to your hips but how is this assisting you in a confrontation?

Kicks, punches baton swings, and take downs all stress different muscles, however, they generally involve rotational power, speed strength, core and trunk muscles, with force transitioned from one body part to another. For example, a dominant hand punch involves you transitioning your weight and momentum from your back foot to your front foot and rotating your torso in the direction of the target in order to generate your power. You need to strike through the target and not stop the momentum so the weight bar does not fly out of our hands, like traditional weight training does. Most confrontations involve full body movements such as pushing, pulling, and grappling whereas standard weight training routines do not work the muscles in this manner. To be truly prepared for an attack we cannot only concentrate on one form of strength

training or fitness. We need to use full body movements, minimize isolation exercises, develop power in the body movements that will assist us when we most need it, and concentrate on more than just one (strength and/or cardiovascular) component of fitness. There are many fitness components such as:

- Muscular Power / Speed Strength
- Muscular Strength
- Muscular Endurance
- Balance
- Cardiovascular / Aerobic Endurance
- Anaerobic Endurance
- Agility
- Quickness / Reaction time
- Speed
- Coordination

If you want to look like a bodybuilder then train and eat like a body builder. However if you want your time spent in the gym to help you win confrontations then your training must reflect this!

About the Author - Insp. Kelly Keith is a 20 year veteran of law enforcement. He presently teaches Physical Training, Use of Force and Tactical Firearms to Corrections, Law and Security, Conservation Officers and Police Cadets at the Atlantic Police Academy. Kelly is a second degree black belt in Jiu-Jitsu and a Certified Personal Trainer, Strength and Conditioning Instructor, and a Certified Sports Nutrition Specialist. He can be reached by email at KKeith@pei.sympatico.ca

LEGALLY SPEAKING:

Search Incident to Arrest



"A warrantless search incidental to arrest is authorized by the common law power of search incidental to arrest. Its three main purposes include police and public safety, protection of evidence from destruction, and discovery of evidence for trial. The scope of the search is limited by its discretionary nature, the requirement for a valid objective (being at least one of the purposes of the search) and the reasonableness of the manner in which the search is conducted. If these conditions are met, then a search incidental to arrest will be 'authorized by law' for the purposes of s. 8 of the Charter." - British Columbia Supreme Court Justice Smith, *R. v. Tetreault*, 2007 BCSC 1624, para. 25, references omitted.

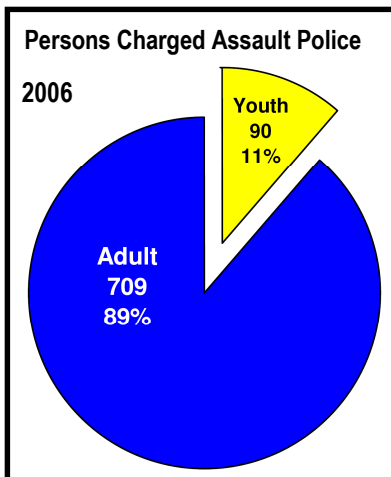
ASSAULTS AGAINST BC POLICE CONTINUE TO RISE

Although the Canadian Centre for Justice Statistics reported in July that Canada's overall crime rate dropped by 3% in 2006, British Columbia's Ministry of Public Safety and Solicitor General again reports that assaults against the police are on the rise. The number of



offences for assaulting police have risen from a 10 year low of 750 in 1997 to a 10 year high of 1,127 in 2006. That is an increase of more than 50%. Of the 1,127

reported offences in 2006, 1,048 were cleared, representing a clearance rate of almost 93%. There



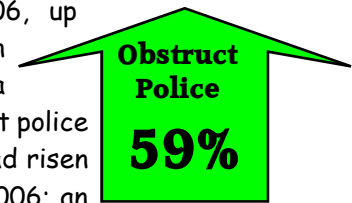
were 799 persons charged with assaults against police, including 709 adults and 90 youths. Perhaps most disturbing, is that the number of youths charged with assaulting a police officer in 2006 rose more than 30% over 2005.

Source: Police and Crime, Summary Statistics, 1997-2006, Ministry of Public Safety and Solicitor General

The rate of assaults against British Columbia police in 2006 was 14.7 per 100 police officers. This is higher than the U.S. average rate of assaults at 11.8 per 100 sworn officers as reported by the U.S. Department of Justice (Federal Bureau of Investigation, Law Enforcement Officers Killed and Assaulted, 2006).

Obstruction

The number of offences of obstructing police have also increased in 2006, up 20% over 2005. In 2000 there were a reported 1,226 obstruct police offences. That total had risen to 1,955 offences in 2006; an increase of more than 59%.

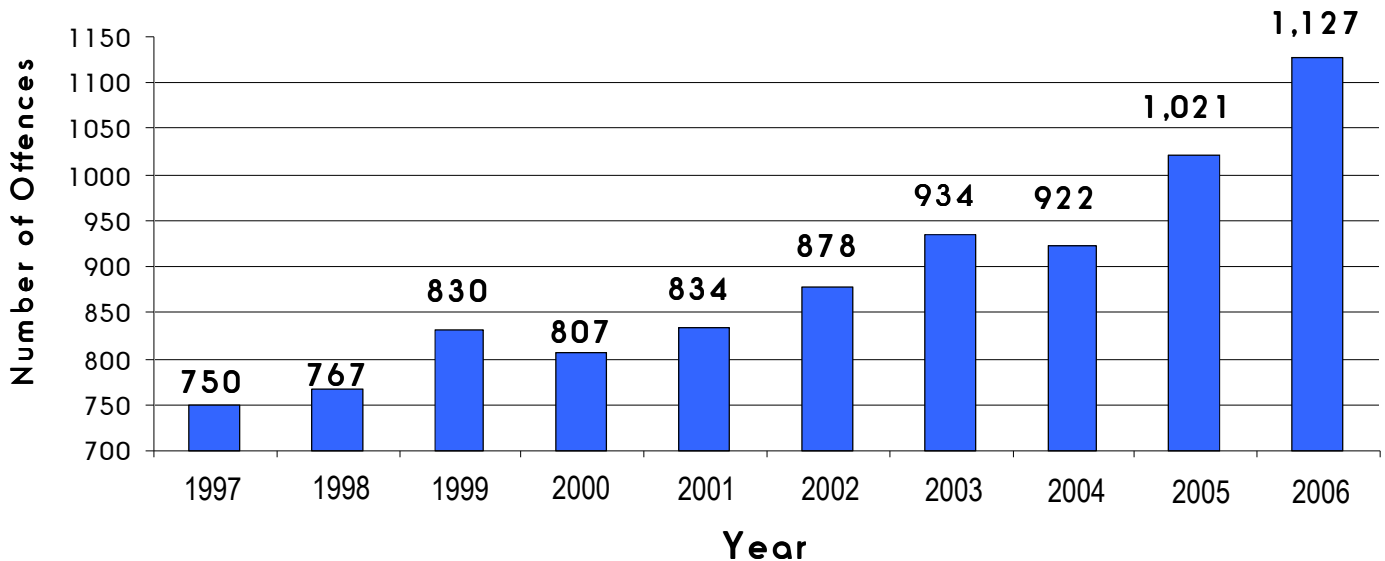


Assault Police Offences & Rates			
Year	Number of Offences	Number of Officers	Rate per 100 Officers
2006	1,127	7,678	14.7
2005	1,021	7,469	13.7
2004	922	7,193	12.8
2003	934	7,106	13.1
2002	878	6,958	12.6
2001	834	6,895	12.1
2000	807	6,708	12.0

Source: Police and Crime, Summary Statistics, 1997-2006, Ministry of Public Safety and Solicitor General

Source: Statistics Canada, Police Resources in Canada, Years 2000-2005, Catalogue No:85-225-XIE

Assault Police Offences: 1997-2006



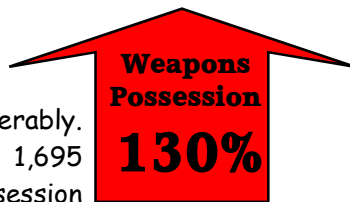
The clearance rate for obstruction was 92%, with 1,800 reported offences cleared in 2006.

Obstruct Police Offences	
Year	Number of Offences
2000	1,226
2001	1,330
2002	1,421
2003	1,384
2004	1,524
2005	1,552
2006	1,955

Source: Police and Crime, Summary Statistics, 1997-2006, Ministry of Public Safety and Solicitor General

Weapons Possession

The rate of weapons possession offences has also risen considerably. In 1999 there were 1,695 reported weapons possession offences. By 2006 that total had more than doubled to 3,902. That's a whopping 130% increase.

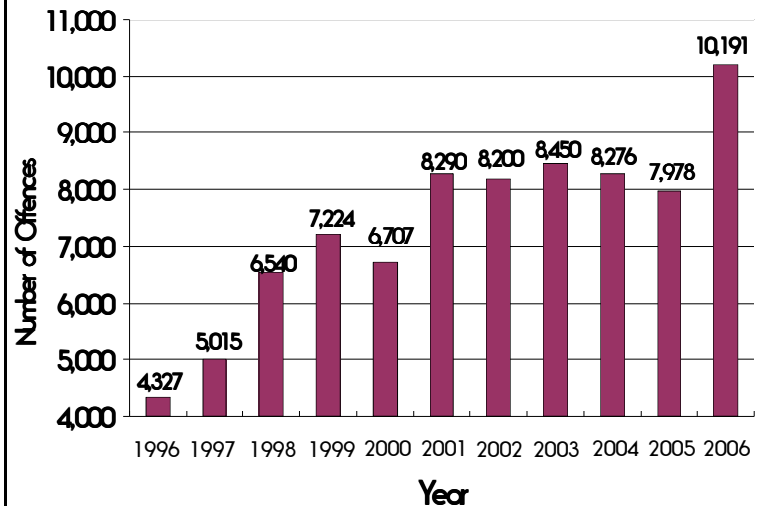


Bail Violations

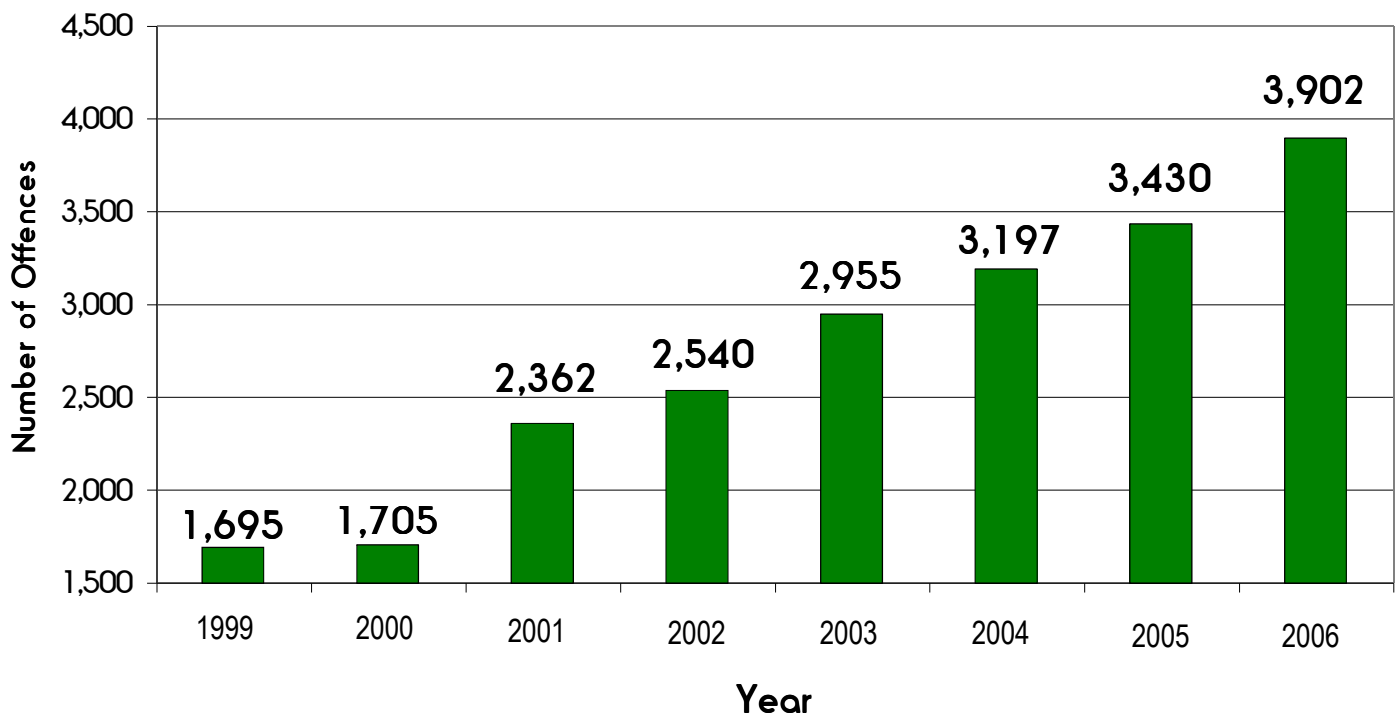
The number of reported bail violations has also increased at a staggering rate. Since 1996, bail violations have more than doubled, rising from 4,327 to more than 10,000. In just the last year, the number of reported bail offences rose 27%, from 7,978 in 2005 to 10,191 in 2006.



Bail Violation Offences: 1996-2006



Weapons Possession Offences: 1999-2006



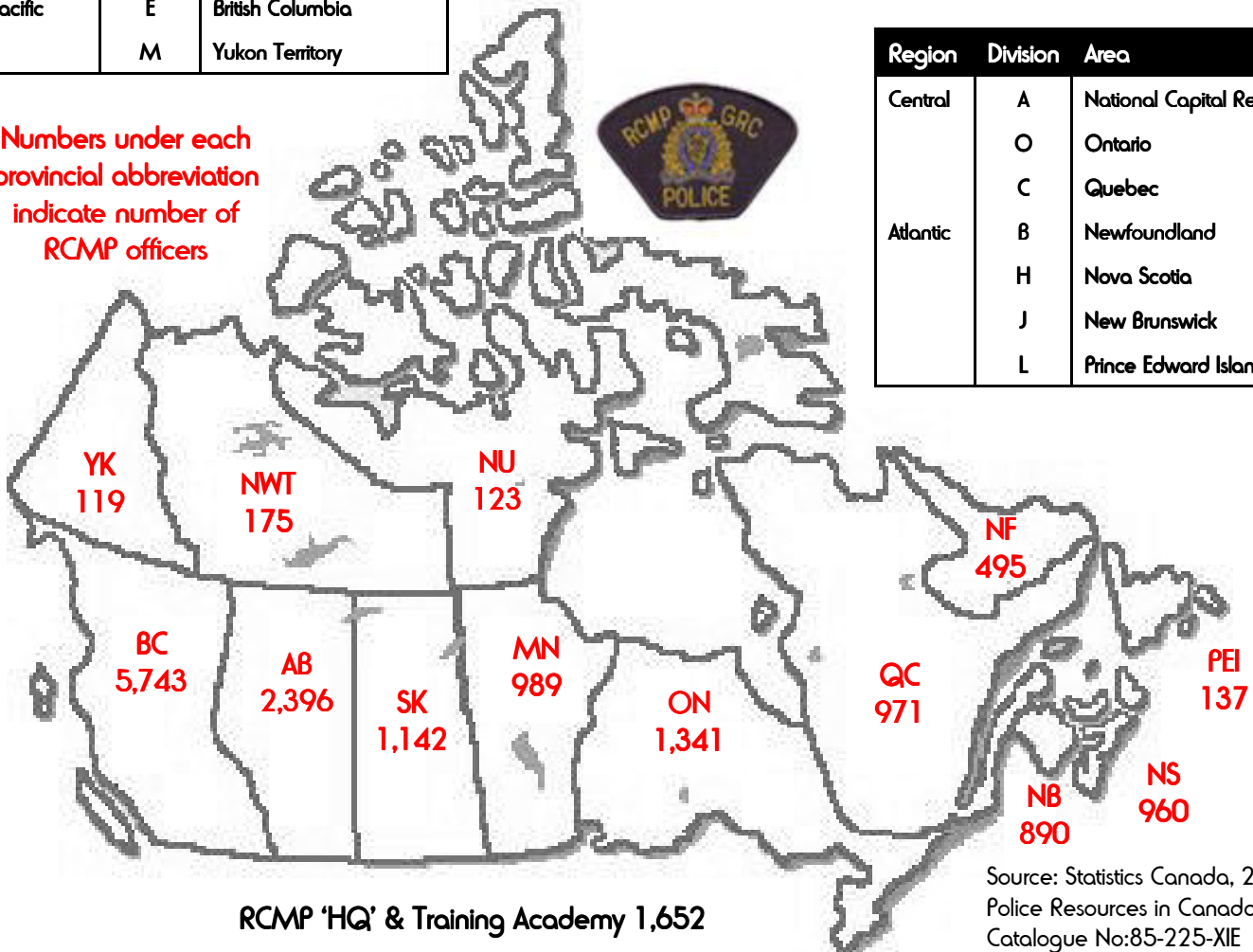
RCMP FAST FACTS



The Royal Canadian Mounted Police is Canada's largest police organization. As of January 1, 2008 the force was 25,417 strong, including 17,150 police officers, 60 special constables, 3,078 civilian members and 5,129 public servants. As well, more than 75,000 volunteers assist the RCMP which is divided into four regions with 15 divisions. (source: www.rcmp-grc.gc.ca)

Region	Division	Area
North West	D	Manitoba
	F	Saskatchewan
	G	Northwest Territories
	V	Nunavut Territory
	K	Alberta
	Depot	Regina, Saskatchewan
Pacific	E	British Columbia
	M	Yukon Territory

Numbers under each provincial abbreviation indicate number of RCMP officers



CANADA'S LARGEST MUNICIPAL RCMP DETACHMENTS













Detachment Police Officers

Surrey BC	477
Richmond BC	306
Burnaby BC	228
Kelowna BC	143
Prince George BC	128
Langley Township BC	126
Coquitlam BC	123
Nanaimo BC	121
Kamloops BC	111
Red Deer AB	107

Source: Statistics Canada, 2007, Police Resources in Canada, Catalogue No:85-225-XIE

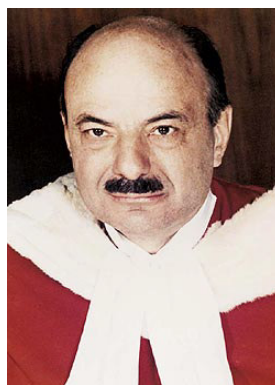
Region	Division	Area
Central	A	National Capital Region
	O	Ontario
	C	Quebec
Atlantic	B	Newfoundland
	H	Nova Scotia
	J	New Brunswick
	L	Prince Edward Island

Source: Statistics Canada, 2007, Police Resources in Canada, Catalogue No:85-225-XIE

Insignia	Rank	# of Positions
	Commissioner	1
	Deputy Commissioner	7
	Assistant Commissioner	26
	Chief Superintendent	59
	Superintendent	157
	Inspector	398
	Corps Sergeant Major	0
	Sergeant Major	7
	Staff Sergeant Major	9
	Staff Sergeant	762
	Sergeant	1,707
	Corporal	3,063
	Constable	10,954
	Total	17,150

source: <http://www.rcmp-grc.gc.ca/about/organizational.htm>, [accessed January 27, 2008]

FORMER SUPREME COURT JUSTICE DIES



The Honourable Louis-Philippe de Grandpré, formerly a justice of the Supreme Court of Canada, passed away in St. Lambert, Quebec, on January 24, 2008. Born in Montreal, Justice de Grandpré studied law at McGill University. He was called to the bar of Quebec in 1938, and practised law in Montreal, eventually co-founding the law firm of Tansey, de Grandpré et de Grandpré.

Justice de Grandpré lectured at McGill University from 1960 to 1963. He was the president of the bars of Montreal and Quebec in 1968 and 1969. In 1971 he was made a Companion of the Order of Canada. From 1972 to 1973, he was the president of the Canadian Bar Association.

Justice de Grandpré was appointed to the Supreme Court of Canada in 1974. He retired from the Court in 1977. Justice de Grandpré returned to the practice of law, and continued to practice for many years. He was made a Grand Officer of the National Order of Quebec in 1998.

Chief Justice Beverley McLachlin, on behalf of the members of the Supreme Court of Canada, mourned Justice de Grandpré's passing, "Louis-Philippe de Grandpré was an eminent jurist. His distinguished career demonstrates his devotion and dedication to the legal profession. As a lawyer, and a judge, he recognized that the law must not be isolated, but must respond to the needs of the society it serves. His presence and contributions to the law and justice will be sorely missed. Members and employees of the Court extend their deepest condolences to his family."

www.10-8.ca

IN BRIEF: SECTION 8 & THE EXCLUSION OF EVIDENCE



Section 8 of the *Charter* gives everyone the right to be secure against unreasonable search and seizure. From a plain reading of this *Charter* guarantee, s.8 is only engaged if there is an unreasonable 'search' and/or 'seizure'. The provisions of s.8 must also be read disjunctively, protecting against searches, seizures in connection with searches, or seizures by themselves [1]. Thus one could say that this constitutional provision is not triggered if there is no 'search' or 'seizure' at all. And if the search or seizure is reasonable, s.8 accepts its validity. Either way, the concept of reasonableness is the touchstone of the constitutionality of a police search or seizure.

The s.8 guarantee can be stated two ways. First, it can be expressed as a "freedom from 'unreasonable' search and seizure", or secondly, as an "entitlement to a 'reasonable' expectation of privacy"[2]. The Supreme Court of Canada has stated that the underlying purpose of s.8 is "to secure the citizen's right to a reasonable expectation of privacy against government encroachments" [3]. (see also *Evans* [4], "the fundamental objective of s.8 is to preserve the privacy interests of individuals"; *Plant* [5], "the purpose of s.8 is to protect against intrusion of the state on an individual's privacy"). It is a personal right and protects people, not places [6]. For example, it could be argued that an unoccupied public washroom stall would not be protected by s. 8. However, if a person were to occupy that same stall, it could be said that a person may have a reasonable expectation of privacy and be afforded some protection by s.8 [7]. Remember though, like any *Charter* right, s.8 is intended to constrain the actions of the police and is not in itself an authorization for the police to act. In other words, it does not confer any powers, even "reasonable" search or seizure, on the police [8]. It does, however, accept searches or seizures that are reasonable as being non offensive to the section.

Why are s.8 violations so vigorously argued in court? Here is how it works. Under the *Charter's* s.24(2) exclusionary provision evidence will only be excluded from being used against an accused if it was obtained in a manner that infringed or denied their *Charter* rights (and the administration of justice would be brought into disrepute). The provision is not designed to protect against conviction of the innocent, but rather to protect the integrity of the justice system. Interestingly, in *Collins*, Supreme Court of Canada Justice Lamer agreed "it is not open to the courts in Canada to exclude evidence to discipline the police, but only to avoid having the administration of justice brought into disrepute." It does, however, have the practical effect of curbing improper police conduct.

Standing

"[Section 24(2)] is not designed to protect against conviction of the innocent, but rather to protect the integrity of the justice system. It also has the effect of curbing improper police conduct."

Under s.24(2) a court may exercise its discretion and exclude evidence obtained by unconstitutional searches or seizures even if the admission of such evidence would clearly establish guilt. However, a claim for relief under s.24(2)

can only be made by a person whose *Charter* rights have been infringed. In other words, the accused needs status, or standing, to complain about the search or seizure and challenge the unlawful conduct that lead to the discovery of the evidence. If they don't have it, the conduct of the police during the search is generally irrelevant [9]. This is so because, as a general rule, the privacy right allegedly infringed must be that of the person who makes the challenge [10] (in criminal cases the defendant). Exclusion of evidence under s.24(2) can only be argued by those whose rights have been violated by the search or seizure itself, not by those who are only aggrieved by the introduction of the damaging evidence. In sum, s.24(2) provides constitutional remedies only to persons whose own *Charter* rights have been infringed and if no personal right is breached, the person cannot contest the admissibility of the evidence under s.24(2) and the police conduct during the search or seizure is not pertinent. For example, in *Hok* [11], the police went onto a neighbour's property to investigate a grow operation against the accused. He tried to argue

that the police trespassed at night on his neighbour's property, an offence under s.177 of the *Criminal Code*, and therefore the evidence obtained during that illegal conduct should be excluded. British Columbia Court of Appeal Justice Southin concluded the court could not exclude illegally obtained evidence unless it was obtained in violation of the accused's rights, not his neighbour's. On the other hand, if standing, violation, and exclusion are successfully argued, the Crown cannot use the evidence to secure a conviction.

More on 24(2)

In s.24(2) jurisprudence the Crown does not have the onus of proving evidence should be admitted. Relevant evidence, even evidence improperly obtained, is *prima facie* admissible [12]. (see also *Khelawon* [13], "The basic rule of evidence is that all relevant evidence is admissible.") The burden, rather, lies on the applicant or party seeking exclusion of the evidence to establish on a balance of probabilities that the admission of the evidence would bring the administration of justice into disrepute [14]. In *Garofoli* [15], Supreme Court of Canada Justice Sopinka described s.24(2) like this:

Section 24(2) is an exclusionary rule and not an inclusionary rule. It operates to exclude evidence that would otherwise be admissible where to admit the evidence would bring the administration of justice into disrepute. Evidence that is inadmissible by reason of some other exclusionary rule cannot be admitted by invoking s.24(2).

The 24(2) assessment in whether the admission of the evidence will bring the administration of justice into disrepute involves three factors:

- 1) trial fairness;
- 2) seriousness of the *Charter* violation (or seriousness of the police conduct [16]). Factors relevant to the seriousness of the breach include:
 - ♦ whether it was committed in good faith, or was inadvertent or of a merely technical nature, or whether it was deliberate, wilful or flagrant [17]
 - ♦ whether the violation was motivated by a situation of urgency or necessity [18]
 - ♦ whether the police officer could have obtained the evidence by other means, thus

rendering their disregard for the *Charter* gratuitous and blatant [19]; or

- ♦ the existence of reasonable and probable grounds [20]
- 3) effect of the exclusion of evidence on the administration of justice.

The exclusion of evidence under s.24(2) reaches not only primary evidence obtained as a direct result of an unreasonable search or seizure but also extends to evidence later discovered to be derivative evidence, or indirect products, of the unconstitutional conduct [21].

- 4 R. v. Dymont [1988] 2 S.C.R. 417 (S.C.C.) per La Forest J. at para. 25.
- 5 Hunter et al v. Southam Inc. (1984), 14 C.C.C. (3d) 97 (S.C.C.) at p.108.
- 6 R. v. Dymont [1988] 2 S.C.R. 417 (S.C.C.).
- 7 R. v. Evans, [1996] 1 S.C.R. 8
- 8 R. v. Plant, [1993] 3 S.C.R. 281
- 9 See Hunter et al v. Southam Inc. (1984), 14 C.C.C. (3d) 97 (S.C.C.), R. v. Edwards (1996), 104 C.C.C. (3d) 136 (S.C.C.).
- 10 See R. v. Baker [1998] B.C.J. No. 1854 (B.C.S.C.), R. v. Sneed [1993] B.C.J. No. 1067 (B.C.S.C.), R. v. LeBeau & R. v. Lofthouse (1988), 41 C.C.C. (3d) 163 (Ont.C.A.).
- 11 Hunter et al v. Southam Inc. (1984), 14 C.C.C. (3d) 97 (S.C.C.)
- 12 R. v. Edwards (1996), 104 C.C.C. (3d) 136 (S.C.C.)
- 13 R. v. Edwards (1996), 104 C.C.C. (3d) 136 (S.C.C.).
- 14 R. v. Hok, 2005 BCCA 132
- 15 R. v. Collins (1987), 33 C.C.C. (3d) 1 (S.C.C.).
- 16 R. v. Khelawon, 2006 SCC 57 at para. 34
- 17 R. v. Collins (1987), 33 C.C.C. (3d) 1 (S.C.C.).
- 18 R. v. Garofoli, [1990] 2 S.C.R. 1421
- 19 R. v. Law, 2002 SCC 10 at para. 33
- 20 R. v. Therens, [1985] 1 S.C.R. 613
- 21 R. v. Therens, [1985] 1 S.C.R. 613 R. v. Silveira, [1995] 2 S.C.R. 297, R. v. Law, 2002 SCC 10
- 22 R. v. Collins (1987), 33 C.C.C. (3d) 1 (S.C.C.), R. v. Law, 2002 SCC 10
- 23 R. v. Caslake, [1998] 1 S.C.R. 51
- 24 The preceding article was an excerpt from the manuscript "Police, Powers, and Practice" by Mike Novakowski.

'IN SERVICE' LEGAL ROAD TEST ANSWERS

1. (b) **False**—see *R. V. Doyle* (at p. 12 of this publication).
2. (a) **Auto accidents**—see *On-Duty Deaths Down* (at p. 4 of this publication).
3. (a) **False**—see *R. v. Ingle* (at p. 30 of this publication).
4. (b) **False**—at least in Saskatchewan, see *R. v. Janvier* (at p. 32 of this publication).
5. (a) **True**—see *R. v. M.L.M.* (at p. 34 of this publication).
6. (a) **True**—see *R. v. Jackson* (at p. 35 of the publication)

THREATENING CONDUCT MUST BE MORE THAN INAPPROPRIATE & UNWANTED

R. v. Burns, 2008 ONCA 6



The accused, a police officer in full police uniform, was on foot downtown in broad daylight when he wolf-whistled at the complainant, who was walking down the street with her five-year old daughter after leaving a bank, said "nice butt" or "nice ass" and then, after the complainant sped up to get away from him, called out "are those pants painted on". The complainant and accused knew one another but had virtually no contact in the three years prior to the incident.

At trial in the Ontario Superior Court of Justice the accused was convicted of criminal harassment. However, he appealed his conviction to the Ontario Court of Appeal arguing the elements of the offence had not been proven. In allowing the appeal, the Court stated:

To establish harassment under s. 264(2)(d) of the Criminal Code, the Crown had to establish that the [accused] engaged in "threatening conduct". ... [I]n order to meet the objectives of s. 264, the threatening conduct must amount to a "tool of intimidation which is designed to instill a sense of fear in the recipient". The impugned conduct is to be viewed objectively, with due consideration for the circumstances in which they took place, and with regard to the effects those acts had on the recipient.

.....

While the [accused's] conduct was clearly inappropriate and unwanted, we do not see the incident as amounting to threatening conduct within the meaning of those words in s. 264(2)(d). Although the complainant justifiably felt upset and scared by the [accused's] conduct, viewed objectively, we do not see it as rising to the level of a "tool of intimidation designed to instill a sense of fear". [references omitted, paras. 2-4]

The accused's conviction for criminal harassment was set aside and an acquittal entered.

Complete case available at www.ontariocourts.on.ca

www.10-8.ca



PROLIFIC AND DANGEROUS OFFENDERS: REDUCING THEIR IMPACT ON PUBLIC SAFETY CONFERENCE

March 31-April 3, 2008

Abbotsford, B.C.

The 2008 Fraser Valley Criminal Justice Conference will bring together BC expertise for a comprehensive look into prolific and dangerous offenders. This conference will provide insight into how various agencies attempt to coordinate their efforts to maximize public safety. Representatives from the Police, Correctional Service Canada, Crown Counsel, local experts from VBC and UCFV, and support services will speak to various topics relating to high risk offenders. This will be an opportunity to learn about prolific and dangerous offenders, the application of research and knowledge, best practice models of supervision, enforcement, treatment and support.

The goal of the conference is to foster relationships between the various professional communities and provide a better understanding of prolific and dangerous offenders. In addition, the conference intends to provide varying points of view so that those in attendance may implement the ideas and measures suggested, or utilize the knowledge from the conference and develop their own ventures of how in fact to manage dangerous and prolific offenders in the community setting.

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