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

IN SERVICE:10-8

A PEER READ PUBLICATION

JUSTICE INSTITUTE of BRITISH COLUMBIA

A newsletter devoted to operational police officers across British Columbia.

LEGALLY SPEAKING:

Reasonable Doubt

It is important for police to understand the meaning of the phrase "beyond a reasonable doubt". This legal standard is much more onerous than the legal standard for most police actions requiring reasonable grounds for belief, such as arrests or searches. So what may justify an arrest and submission of a Report to Crown Counsel, will is some cases not meet the proof beyond a reasonable doubt standard required for a criminal conviction. Thus the reason for a Crown charge approval standard of a substantial likelihood of conviction (or reasonable prospect of conviction). In short, just because an officer meets the reasonable grounds standard does not necessarily mean a charge and conviction will follow. "The phrase 'beyond a reasonable doubt', is composed of words which are commonly used in everyday speech," said Justice Cory for the majority of the Supreme Court of Canada in *R. v. Lifchus*, [1997] 3 S.C.R. 320. "Yet, these words have a specific meaning in the legal context. This special meaning of the words "reasonable doubt" may not correspond precisely to the meaning ordinarily attributed to them. In criminal proceedings, where the liberty of the subject is at stake, it is of fundamental importance that jurors fully understand the nature of the burden of proof that the law requires them to apply." To better understand the meaning of this standard, the Canadian Judicial Council drafted the following model jury instruction for explaining "proof beyond a reasonable doubt". By reading this, it may also assist the police in understanding this onerous standard:

[1] The principle of "proof beyond a reasonable doubt" is an essential part of the presumption of innocence.

[2] A reasonable doubt is not a far-fetched or frivolous doubt. It is not a doubt based on sympathy or prejudice. It is a doubt based on reason and common sense. It is a doubt that arises at the end of the case based not only on what the evidence tells you but also on what that evidence does not tell you.

[3] It is not enough for you to believe that [the accused] is probably or likely guilty. In those circumstances, you must find him/her not guilty, because the Crown would have failed to satisfy you of his/her guilt beyond a reasonable doubt. Proof of probable or likely guilt is not proof of guilt beyond a reasonable doubt.

[4] You should also remember, however, that it is nearly impossible to prove anything with absolute certainty. The Crown is not required to do so. Absolute certainty is a standard of proof that does not exist in law.

[5] If, at the end of the case, and after assessing all of the evidence, you are not sure that [the accused] committed the (an) offence, you must find him/her not guilty.

[6] If, at the end of the case, based on all the evidence, you are sure that [the accused] committed the (an) offence, you should find [the accused] guilty.

HIGHLIGHTS IN THIS ISSUE

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

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POLICE LEADERSHIP APRIL 10-13, 2011

Mark your calendars!!! 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 2011 Conference in Vancouver, British Columbia. This is Canada's largest police leadership conference and will provide an opportunity for delegates to discuss leadership topics presented by world-renowned speakers.

www.policeleadershipconference.com

SUPPORT THE BADGE: RELATIONAL SURVIVAL FOR POLICE FAMILIES

"The true weight of the badge is not overcome by muscle, not found in the gym, not measured on a scale. This weight requires a strength and conditioning for which few officers are trained. The badge is not just pinned on a chest, it is pinned on a lifestyle." - Police Officer

www.supportthebadge.ca

JUSTICE INSTITUTE of BRITISH COLUMBIA

Police Academy

Advanced Programs

The Police Academy at the Justice Institute of British Columbia will be delivering a half-day workshop focusing on **Education Based Discipline for Police Officers** on **Tuesday, February 24th from 1300-1600 at the JIBC New Westminster Campus.**

The Los Angeles County Sheriff's Department (LASD) is currently making dramatic changes to the disciplinary system for all of its personnel. These comprehensive procedures, which are most likely the first of their kind in the nation, emphasize "Education-Based Discipline" (EBD). EBD is an *alternative* to the traditional approach of suspensions without pay, which are often perceived as punitive.

It is expected that an EBD system will reduce management-employee conflict, including the bitterness that results from withholding employees' pay. Instead, optional behavior-focused education and training opportunities will be offered to employees whose actions warrant some form of discipline. This new approach to discipline will build character as well as competence, while enhancing communication. It should also reduce representation costs for the unions.

Lt. Mike Parker is the Unit Commander of the EBD Unit. He will explain EBD and discuss the challenges and successes of its implementation for the 18,000 personnel of the LASD.

Mike Parker is a lieutenant and 24 year veteran of the LASD. He has worked patrol and jail assignments at three ranks, has managed as many as 160 patrol personnel, is multilingual, and has worked several administrative assignments including Chief's Aide, Internal Affairs, Press Relations, and International Liaison. He has co-developed, written about, and lectured on award winning programs including criminal abatements, transients, and the mentally ill. He has earned recognition awards for supervision, and co-created and authored "Operation Outreach," the winner of the 1996 International Assn. of Chiefs of Police (IACP) Webber Seavey Award.

He is the author of scores of nationally published policing articles, with an emphasis on successful policing partnerships. He is the editor of the *Peace Officers Association of Los Angeles County Journal* (www.poalac.org) and is Chairman of the Communications Committee of the California Peace Officers Assn. (http://www.cpoa.org). Utilizing experience gained while working Internal Affairs, he created California POST-certified classes to explain employee rights, and since 2007 has taught them to over 1,500 peace officers from over 50 agencies. He also co-created and co-presents training on "Preparing for Promotional Exams."

The Los Angeles County Sheriff's Department www.lasd.org is the largest sheriff's department in the U.S. Its 18,000 budgeted sworn and civilian employees provide law enforcement services to 40 incorporated cities, 90 unincorporated communities, nine community colleges, and over a million daily commuters of the L.A. Metro. Transportation Authority and the So. Cal. Regional Rail Authority. Over four million people are directly protected by the LASD. Additional jurisdictions include the 58 Superior Courts and 600 bench officers of the largest county court system in the U.S., as well as the nation's largest jail system, which houses nearly 20,000 inmates.

There is ***no charge*** to attend this workshop. The topic involved would be of interest to all police officers, police union executives and agents, police executives, police board members, and members of civilian oversight groups. **Register by emailing: advancedpolicetraining@jibc.ca**

ON-DUTY DEATHS DOWN

On-duty peace officer deaths in Canada fell by two last year, the lowest total in 55 years. This is the third consecutive year that on-duty deaths have declined. In 2008, two peace officers lost their lives on the job. This low number has not been seen since 1952 and 1953, when in those years only two on-duty peace officers deaths were recorded, as reported by the Officer Down Memorial Page.

Motor vehicles, not guns, continue to pose the greatest risk to officers over the last 10 years. Since 1999, 32 officers have lost their lives in circumstances involving vehicles, including automobile and motorcycle accidents (21), vehicular assault (4), and being struck by a vehicle (7). These deaths account for 44% of all on-duty deaths, which is more than twice the next leading cause of gunfire (15) in the same 10 year period. 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

2008 Roll of Honour

C.O. Joseph McKeown
Correctional Services Branch, AB
End of Watch: July 22, 2008
Cause of Death: Heart Attack

Constable Eric Lavoie
Laval Police Department, QC
End of Watch: September 8, 2008
Cause of Death: Automobile Accident

They are our heroes. We shall not forget them.

"Police officers are the front line of society's defence against crime. ... [A]n attack on a police officer is an attack on society itself. Parliament has deemed it necessary to clearly denounce the murder of a police officer."

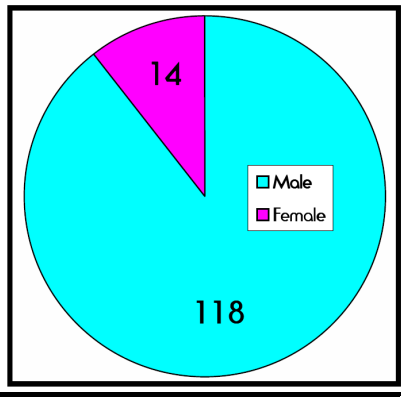
Manitoba Court of Queen's Bench Justice Menzies in R. v. Sand, 2003 MBQB 43, upholding the constitutionality of s.234(1)(a) of the Criminal Code in the murder of Royal Canadian Mounted Police Constable Dennis Strongquill.

Canadian Peace Officer On-Duty Deaths (by year)

Cause	2008	2007	2006	2005	2004	2003	2002	2001	2000	1999	Total
Aircraft accident				2		2		1	2	1	8
Assault					1						1
Auto accident	1		1	2	1	3	6	2	1	1	18
Drowned				1				1			2
Duty related illness			1								1
Fall									1		1
Gunfire		3	3	5	1		1	2			15
Heart attack	1			1	2		1		1		6
Motorcycle accident						1			2		3
Natural disaster							1				1
Stabbed					1						1
Struck by vehicle							3		2	2	7
Training accident								1		1	2
Vehicular assault		1	1		1					1	4
Total	**2**	**4**	**6**	**11**	**7**	**6**	**12**	**7**	**9**	**6**	**72**

U.S. On-Duty Deaths Drop

During 2008, the U.S. lost 132 peace officers, down 54 from 2007. The top cause of death was motor vehicle accidents (46) — including autos and motor cycles — followed by gunfire (36), vehicular assaults (12), and being struck by a vehicle (11). The state of Texas lost the most officers (14), followed by California (11), Florida (8), Pennsylvania (7), the U.S. Government (6), Ohio (6) and the states of Louisiana, Maryland, Missouri, New York, and Ohio each with five. The average age of deceased officers was 39 years and the average tour of duty was 10 years and 11 months. Men accounted for 89% of officer deaths while women made up the remaining 11%.



US On-Duty Deaths by Year					
Year	2004	2005	2006	2007	2008
Deaths	163	162	153	188	132

Source: The Officer Down Memorial Page, www.odmp.org (accessed January 3, 2009)

2008 U.S. Peace Officer On-Duty Deaths

Cause	Total
9/11 related illness	1
Accidental	1
Aircraft accident	4
Assault	1
Auto accident	38
Bomb	2
Drowned	1
Duty Related Illness	2
Electrocuted	1
Exposure to Toxins	1
Gunfire	36
Gunfire (accidental)	2
Heart attack	5
Motorcycle accident	8
Stabbed	2
Struck by vehicle	11
Train Accident	1
Vehicle pursuit	3
Vehicular assault	12
Total	**132**

LEGALLY SPEAKING:

Wiretap Authorization Legal Standard

"The trial judge has to consider whether there is sufficient reliable information on the basis of which the authorizing judge could have granted the authorization.

The authorizing judge must be satisfied that there are reasonable and probable grounds to believe that an offence has been, is being, or is about to be committed, and that the authorization sought will afford evidence of that offence. However, the trial judge does not stand in the shoes of the authorizing judge when conducting the review. The question for the trial judge is whether there was any basis on which the authorizing judge could have granted the authorization.

The trial judge should only set aside an authorization if satisfied on all the material presented, and on considering "the totality of the circumstances", that there was no basis on which the authorization could be sustained. The trial judge's function is to examine the supporting affidavit as a whole, and not to subject it to a 'microscopic analysis'". - British Columbia Court of Appeal Chief Justice Finch, *R. v. Lee*, 2008 BCCA 240, paras. 12-14, references omitted.

LATER STATEMENT NOT TAINTED: CONNECTION TO EARLIER STATEMENT WEAK

R. v. Woods, 2008 ONCA 713

The accused was arrested at 6:16 pm on assault and weapons charges after his wife was shot in the kitchen of their home. In the police cruiser, he made a number of statements to police. He said the shooting was an unintended accident. He did not expect the gun to go off and did not think he could shoot or think straight. He said he was a gunsmith and was cleaning his gun when his wife "started bugging" him. He also claimed that he had previously been of assistance to police. In response to specific questions from a police officer about the ownership and type of gun, the accused admitted it was his gun and said that it was a ".38 police special".

The accused was transported to the police station, arriving at about 6:49 pm. He was taken to an interview room with working videotape equipment and his entire contact with police in the interview room was recorded. He was promptly advised that he was now charged with murder and was cautioned about his rights, but was not told he should not be influenced by anything he had said earlier to other officers when he was in the cruiser. After attempts to contact his counsel of choice were unsuccessful, he spoke to duty counsel by telephone for about 14 minutes. The police later located his lawyer of choice and he spoke to her for about five minutes and later met for about 30 minutes with another lawyer. In total, he consulted with three different lawyers for over 50 minutes in a four-hour period, during which time the police made no effort to question him except about the victim's next-of-kin.

At 12:54 a.m. a detective interviewed the accused for two hours and twenty minutes and took a statement from him. The accused willingly talked about the shooting, giving various contradictory accounts of his actions and those of his wife, whether he knew the gun was loaded or whether he had loaded the gun, how he reacted or even knew about a telephone call his wife made to a male friend, the amount of alcohol consumed by his wife on the evening of the shooting, his reactions to the telephone call and his wife's drinking, his knowledge of guns, the mechanics of the .38 calibre gun in question, and his repeated statement that the shooting was an accident. He explained that he had pointed the gun at the kitchen door with the intention of scaring, not shooting, his wife.

At trial in the Ontario Superior Court of Justice the judge excluded the accused's statements to police taken in the cruiser after his arrest because the Crown failed to prove voluntariness and reliability. The experienced police officer specifically asked the accused about the gun in contravention of the his s.10(b) *Charter* rights—he wanted to consult with his lawyer. The judge was also concerned about the reliability and trustworthiness of the accused's statements in the cruiser because the police officer typed his notes with his right hand at the same time that he was driving the cruiser. In the judge's view, the admission of the cruiser statements would tend to render the trial unfair.

As for the accused's videotaped statement at the police station, it was ruled admissible. The judge recognized that the detective was not involved in the accused's statements in the cruiser and "there is

nothing in the confessions rule which prohibits the police from questioning the accused in the absence of counsel after the accused has contacted or retained counsel." The manner or duration of questioning was not oppressive and the accused willingly volunteered information, even though he knew he did not have to and was told by counsel not to talk to the police. The questions by police were simple and straightforward and appropriate to the accused's limited cognitive abilities. There also were no attempts to use aggressive techniques or non-existing or fabricated evidence to elicit answers. And he was not asked any questions about the statements he gave in the cruiser. He was convicted by a jury of second degree murder.

"The is nothing in the confessions rule which prohibits the police from questioning the accused in the absence of counsel after the accused has contacted or retained counsel."

The accused appealed to the Ontario Court of Appeal arguing, among other grounds, that the trial judge erred in admitting the videotaped statement he gave at the police station on the basis that the statement was tainted by the circumstances of his earlier statements in the police cruiser. Justice Lang, writing the Court's opinion, rejected the accused's assertion:

> [I]n our view, the police station statement was not tainted by the earlier cruiser statement. It was taken more than six hours after the [accused] was advised of the new charges of murder. The statement, which was extensive, was taken in a different location by a different officer after the [accused] had been given his right to counsel, had consulted three different lawyers and had acknowledged that he understood he was not required to answer the officer's questions.
>
> The officer who took the cruiser statement was not present during the station interview and, indeed, had left the station some two hours earlier. During the course of the station interview, the [accused] willingly volunteered information, sometimes without prompting. The interviewing officer did not refer to nor rely on the cruiser statement in his questioning of the [accused], nor was there anything in the cruiser statement that would have compelled the [accused] to want to give a further explanation to the police. In both interviews, the [accused] consistently maintained that the shooting was an accident. Accordingly, there was no nexus between the cruiser and station statements. In my view, the station statement was a "fresh start"…
>
> While it would undoubtedly have been ideal, with the benefit of hindsight, if [the detective] had also cautioned the [accused] not to be influenced by anything he had said earlier to other officers, such a caution was not required in the circumstances of this case where the combination of the temporal, causal and contextual connections between the two statements was so weak. [paras. 9-11].

The accused's appeal was dismissed.

Complete case available at www.ontariocourts.on.ca

BY THE BOOK:

s.11.2(5) Ontario's *SPCA Act:* Protecting Law Enforcement Animals

On November 27, 2008, Ontario's Bill 50, the Provincial Animal Welfare Act, , received Royal Assent and amends the Ontario *Society for the Prevention of Cruelty to Animals Act*. In it, a new section makes it an offence to harm a law enforcement animal.

Prohibitions re distress, harm to an animal Harming law enforcement animals

11.2 (5) No person shall harm or cause harm to a dog, horse or other animal that works with peace officers in the execution of their duties, whether or not the animal is working at the time of the harm.

Offences

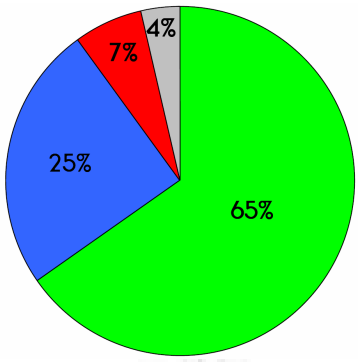
18.1 (1) Every person is guilty of an offence who … (c) contravenes subsection [11.2(5)]…

"""""""""

(3) Every individual who commits an offence under clause (1) …(c) is liable on conviction to a fine of not more than $60,000 or to imprisonment for a term of not more than two years, or to both.

POLICING NUMBERS ACROSS THE NATION

According to a 2008 report recently released by Statistics Canada there were 65,283 police officers across Canada last year, up 1,149 (1.8%) from the previous year. Ontario had the most officers (24,945) while the Yukon had the least (117) (see map below for all provincial/ territorial numbers). With a population of 33,223,840, Canada's average cop per pop ratio was 196 police officers per 100,000 residents.



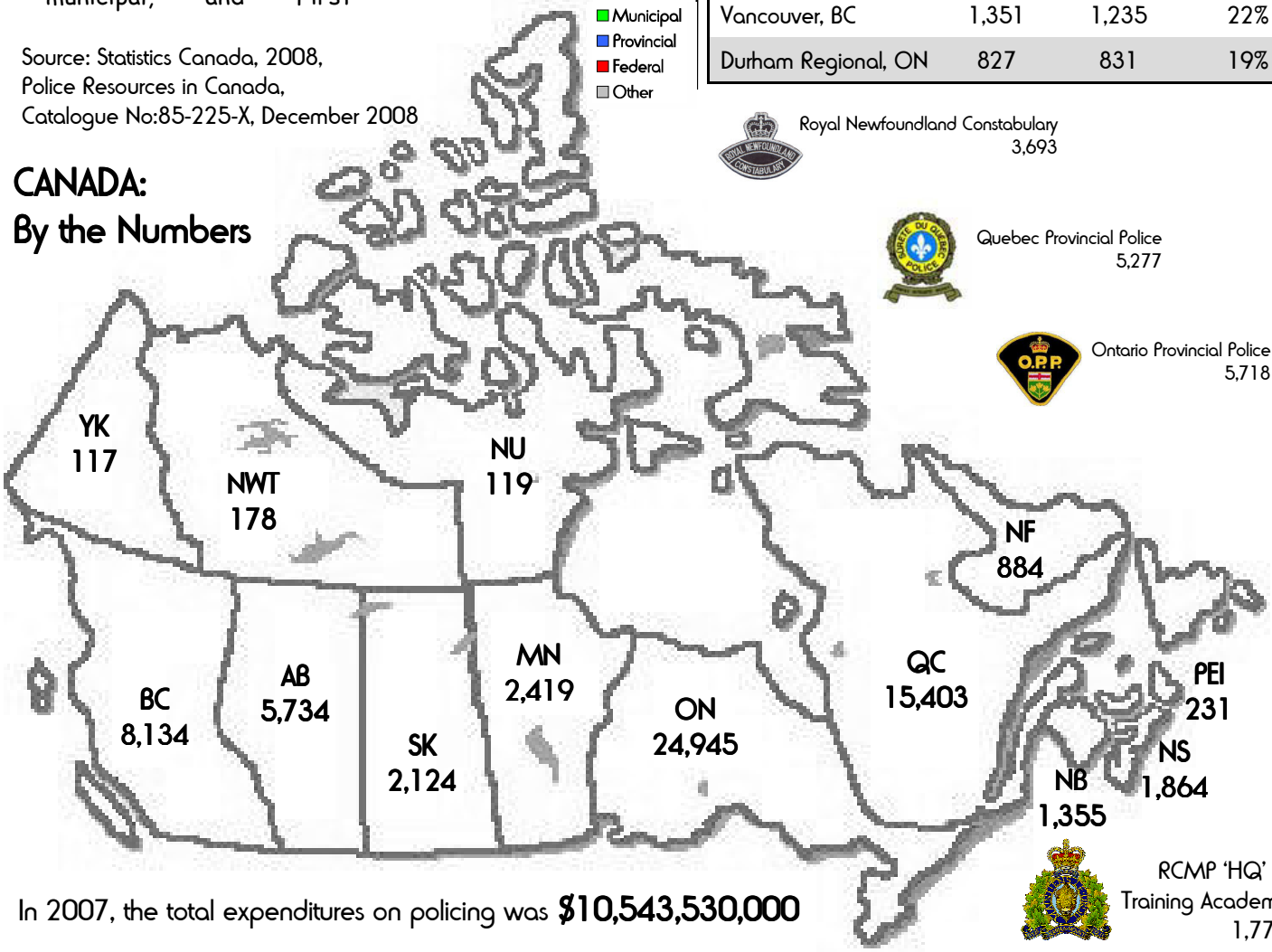
The report included all levels of policing: federal, provincial / territorial, municipal, and First Nations. In terms of percentages, municipal policing accounted for about 65% of officers, provincial policing 25%, federal policing 7% and others (such as the RCMP HQ and Training Academy) 4%.

Source: Statistics Canada, 2008,
Police Resources in Canada,
Catalogue No:85-225-X, December 2008

Canada's Largest Municipal Police Services 2008

Service	Officers		% Female
	Actual	Authorized	
Toronto, ON	5,535	5,510	17%
Montreal, QC	4,481	4,538	29%
Peel Regional, ON	1,700	1,829	16%
Calgary, AB	1,620	1,670	14%
Edmonton, AB	1,345	1,375	18%
York Regional, ON	1,318	1,364	17%
Winnipeg, MN	1,311	1,318	15%
Ottawa, ON	1,273	1,301	22%
Vancouver, BC	1,351	1,235	22%
Durham Regional, ON	827	831	19%

CANADA: By the Numbers



Royal Newfoundland Constabulary
3,693

Quebec Provincial Police
5,277

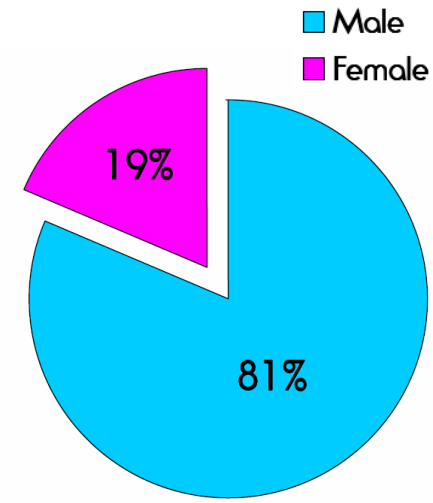
Ontario Provincial Police
5,718

RCMP 'HQ' & Training Academy
1,776

In 2007, the total expenditures on policing was **$10,543,530,000**

Gender

There were 12,207 female officers accounting for 18.7% overall. Quebec had the greatest percentage of female officers (21.8%) while Nunavut had the lowest (10.1%). Female officers accounted for 7.7% of senior officers, 13.3% of non-commissioned officers, and 21.2% of constables.



Area	% Female
QC	21.8%
BC	21.3%
NWT	18.0%
NF	17.8%
SK	17.7%
ON	17.5%
AB	16.4%
NB	15.3%
NS	14.9%
MB	14.8%
YK	13.7%
PEI	12.6%
NU	10.1%

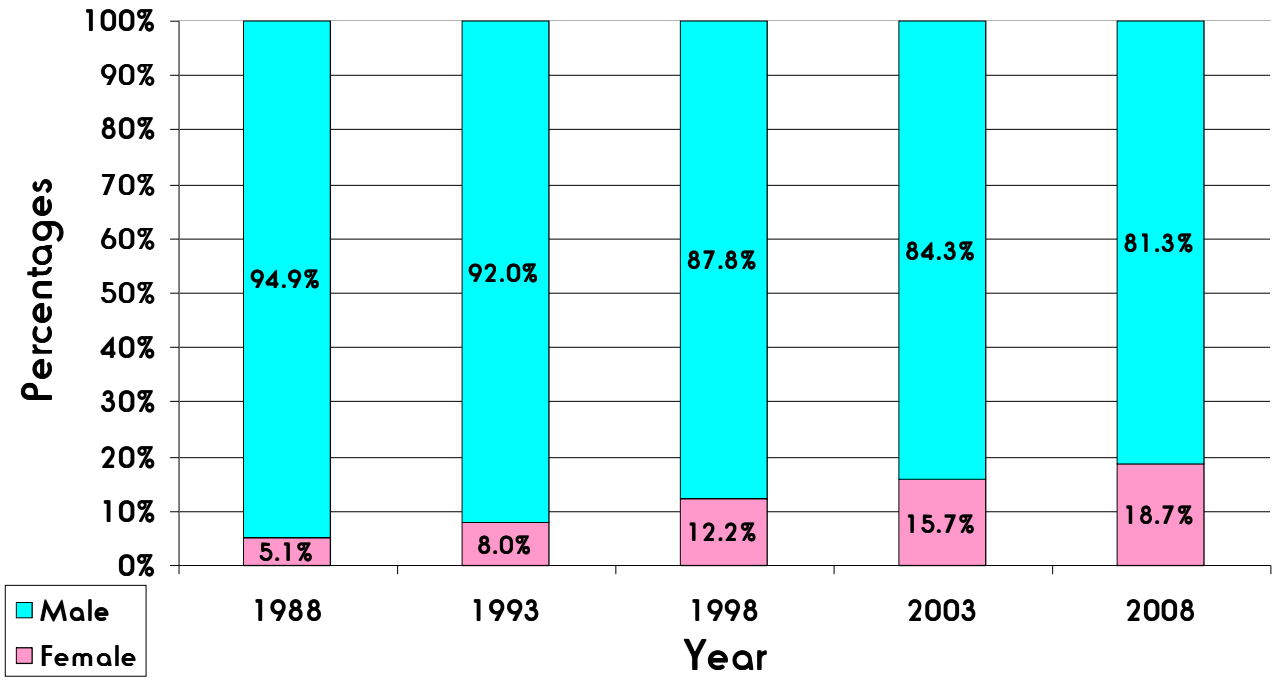
RCMP

The RCMP had the largest presence in British Columbia with 5,742 officers, followed by Alberta (2,417), Ontario (1,335) and Saskatchewan (1,176).

Canada's Largest Municipal RCMP Detachments 2008

Service	Officers		% Female
	Actual	Authorized	
Surrey, BC	546	588	24%
Burnaby, BC	272	265	31%
Richmond, BC	206	206	23%
Kelowna, BC	141	141	25%
Coquitlam, BC	130	140	29%
Langley Township, BC	111	129	29%
Prince George, BC	118	128	23%
Red Deer, AB	111	125	25%
Kamloops, BC	109	120	26%
Nanaimo, BC	118	118	25%

Police Officers by Gender-Canada 2008



CMA Police Officers & Crime Rates

CMA	Officers - 2008	Crime Rate - 2007
Toronto, ON	9,585	4,461 (26)
Montreal, QC	6,997	5,958 (16)
Vancouver, BC	3,410	9,136 (7)
Calgary, AB	1,711	6,202 (13)
Edmonton, AB	1,667	9,572 (5)
Winnipeg, MN	1,364	9,644 (4)
Ottawa, ON	1,350	5,457 (21)
Hamilton, ON	1,081	5,511 (20)
Quebec, QC	1,019	4,524 (24)
Kitchener, ON	743	4,906 (22)
St. Catharines-Niagara, ON	727	5,711 (18)
London, ON	693	7,296 (12)
Halifax, NS	679	7,954 (10)
Windsor, ON	603	6,138 (14)
Victoria, BC	511	9,335 (6)
Saskatoon, SK	449	11,560 (2)
Gatineau, QC	431	5,718 (17)
Regina, SK	386	11,827 (1)
St. John's, NL	303	7,325 (11)
Thunder Bay, ON	266	8,819 (8)
Greater Sudbury, ON	249	5,627 (19)
Abbotsford, BC	242	10,341 (3)
Trois-Rivieres, QC	227	4,478 (25)
Sherbrooke, QC	227	4,831 (23)
Kingston, ON	218	5,970 (15)
Saint John, NB	208	8,292 (9)
Saguenay, QC	179	4,398 (27)

CMA=Census Metropolitan Area
Source: Statistics Canada, 2008, Police Resources in Canada, Catalogue No:85-225-X, December 2008

MORE FACTS, FIGURES, & FOOTNOTES

- 101,525 - number of private security personnel in Canada in 2006. This includes private security guards (91,325) and private investigators (10,200).
- 24% - percentage of private security personnel who were women. This is up from 20% in 1996 and 23% in 2001.
- $31,029 - average income in 2005 dollars for private security guards.
- $49,762 - average income in 2005 dollars for private investigators.
- $73,582 - average income in 2005 dollars for police officers.
- 37% - percentage of private security guards in 2006 that had completed at least a college certification.
- 55% - percentage of private security investigators in 2006 that had completed at least a college certification.
- 75% - percentage of police officers in 2006 that had completed at least a college certification.
- 321 - rate of private security personnel per 100,000 Canadian population in 2006.
- 192 - rate of police officers per 100,000 Canadian population in 2006.
- 20% - proportion of private security personnel belonging to a visible minority in 2006. This is up from 10% in 1996 In 2006, all occupations in Canada were 15% visible minority, while police officers were only 6% visible minority.
- 5% - proportion of private security personnel who were Aboriginal in 2006. This is up from 3% in 1996. In 2006, all occupations in Canada were 3% Aboriginal, while police officers were 4% Aboriginal.

Source: Statistics Canada, 2008, Private Security and Public Policing, 85-002-X, Vol. 28, no. 10, December 2008.

RCMP FAST FACTS

The Royal Canadian Mounted Police is Canada's largest police organization. As of April 15, 2008 the force's on-strength establishment was 26,292, including 17,618 police officers, 60 special constables, 3,244 civilian members and 5,370 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)

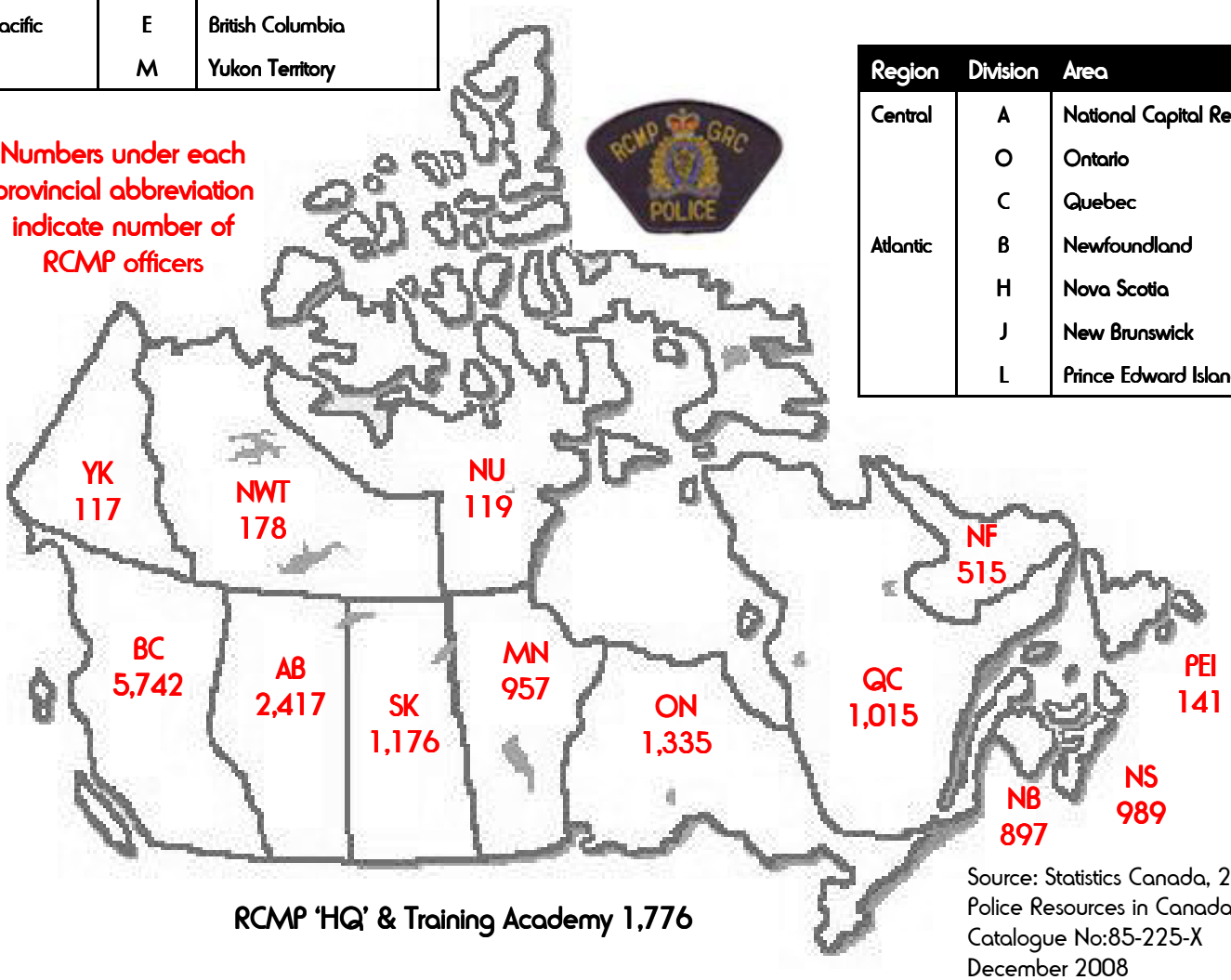
Region	Division	Area
North West	D	Manitoba
	F	Saskatchewan
	G	Northwest Territories
	V	Nunavut Territory
	K	Alberta
	Depot	Regina, Saskatchewan
Pacific	E	British Columbia
	M	Yukon Territory

RCMP On-Strength Establishment as of April 15, 2008	
Rank	# of Positions
Commissioner	1
Officers	685
Staff Sergeants	826
Sergeants	1,779
Corporals	3,209
Constables	11,118
Total	17,618

Source: www.rcmp-grc.gc.ca, accessed December 24, 2008

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

Numbers under each provincial abbreviation indicate number of RCMP officers



RCMP 'HQ' & Training Academy 1,776

Source: Statistics Canada, 2008, Police Resources in Canada, Catalogue No:85-225-X December 2008

30 DAY CONDITIONAL SENTENCE HEARING TRIGGERED ON ARREST

R. v. Kabosos, 2008 ONCA 711

Five weeks after the accused was given a 12 month conditional sentence and a two year probation order for break and enter x 3 and failure to comply with probation, he was arrested and charged with break and enter, possessing break-in instruments, and possessing stolen property stemming from a new incident. About a month later, the accused's conditional sentence supervisor prepared documents for the conditional sentence breach. A warrant for the accused's arrest was issued a week later and was subsequently executed about three weeks after issue.

Ninety-six days after the accused's arrest for the new offences (or 56 days after the warrant was issued, and 33 days after the warrant was executed) the hearing related to the alleged breach of condition took place. However, under s.742.6(3) of the *Criminal Code* "The hearing of an allegation of a breach of condition shall be commenced within thirty days, or as soon thereafter as is practicable, after (a) the offender's arrest…". The Ontario Superior Court judge hearing the case found the 33 day delay (from when the warrant was executed until the commencement of the hearing) was close to the statutory 30 day period and was as soon as is practicable.

The accused then challenged the judge's ruling to the Ontario Court of Appeal arguing, in part, that the issuance of the warrant should trigger the 30 day time period even though it was not an "arrest". In his view, the underlying policy of s.742.6 of the *Criminal Code* is to address alleged breaches of a conditional sentence urgently. As well, he submitted the conditional sentence is potentially suspended when the arrest warrant is issued and if its execution, rather than its issuance, triggers the 30 day period there would be no incentive for police to execute the warrant expeditiously.

Justice MacPherson, delivering the unanimous judgment for the Court, first noted there were three possible triggers for the statutory 30 day time period:

1) the accused's arrest on the new offence which led to the conditional sentence breach;
2) the issuance of the arrest warrant for the conditional breach;
3) the execution of the conditional breach arrest warrant.

Justice MacPherson concluded that the triggering event was the accused's arrest on the breach warrant, not the day the warrant was issued. First, the legislation is clear that the 30 day period is triggered by the "offender's arrest":

> [T]he wording of s. 742.6(3) is clear. The 30 day period leading up to the commencement of the breach hearing is triggered by "the offender's arrest". The arrest of the offender on the new offence is an arrest. So is the execution of the warrant which compels the offender to appear to answer the charge of breach of condition. However, the issuance of the warrant is not an arrest; it compels nothing of the offender until he receives it.
>
> ……
>
> This leaves a final question: does "the offender's arrest" as stated in s. 742.6(3)(a) of the Criminal Code refer to the [accused's] arrest for the new offence, or to his arrest … for a breach of his conditional sentence?
>
> In my view, the answer is obvious; the relevant date is when the warrant is executed. Section 742.6 is entitled Procedure on Breach of Condition and contains the subheading Warrant or arrest – suspension of running of conditional sentence. Further, the entire provision deals with a specific offence: the breach of condition of a sentence. In addition, there will be some cases (not this one) where the offender commits no new offence; all he does is breach a condition of the sentence he is already serving. Accordingly, both the wording and the logic of s. 742.6 compel the conclusion that "the offender's arrest" in s. 742.6(3)(a) refers to his arrest for breach of condition, not for the new offence. [references omitted, paras. 15-18]

Justice MacPherson also rejected the accused's delay argument. Section s. 742.6 (14) of the *Criminal Code* allows a court to deem unreasonable delay in the execution of an arrest warrant as time served under the conditional sentence order. "This provision, coupled with the policy underlying the provision and judicial statements… combine to ensure that the police and court administrators will not delay steps they must take in an alleged breach of condition scenario," he said.

Complete case available at .ontariocourts.on.ca

DNA DATABANK ORDER DOES NOT REQUIRE PROOF OF FORENSIC VALUE

R. v. Boskoyous, 2008 ABCA 359

The accused pled guilty in Alberta Provincial Court to trafficking in cocaine, a secondary designated offence under ss.487.051(3) and 487.04 of the *Criminal Code* for the purposes of a DNA databank order. The sentencing judge therefore had the discretion to make a DNA databank order, but did not order it. The judge was not satisfied the accused tended to leave DNA at crime scenes, nor was a DNA order appropriate based on the accused's past criminal behaviour because many of his crimes would not even be secondary offences. The Crown appealed the sentencing judge's decision not to impose the DNA data bank order to the Alberta Court of Appeal.

The unanimous Appeal Court allowed the appeal. In delivering the Court's judgment from the bench, Justice Watson noted that the sentencing judge appeared to have assumed that DNA testing was inappropriate if he was not persuaded that there was a present forensic purpose for the testing process, which is specific to the individual offender. The sentencing judge also appeared to dismiss the accused's criminal record as relevant in determining whether DNA testing would be appropriate. Justice Watson found the sentencing judge erred in both respects:

> As to the first error, Parliament has defined eligibility for DNA databank orders by categories of offences, not by a requirement of proof of present and individual forensic value. Parliament's intention to create and maintain a large comparative databank of persons who commit offences within those categories is reflected in the language it has used. This serves the administration of justice and the interests of justice broadly as well as by individual. Parliament's intentions could include the acquisition of statistical information; category offenders can be said to be volunteers for such research. Parliament did not stipulate a requirement that, before an order is made, the offender must be proven to likely be implicated in past or future crimes by DNA traces that have evidential significance. DNA residue may be a potential source of evidence in almost any crime situation. DNA evidence can be exculpatory also. It is not for courts, absent unconstitutionality, to judicially narrow the categories chosen by Parliament.
>
> As to the second error, the trial judge's approach to the [accused's] criminal record of 35 prior convictions, including some for violent conduct, is similar to the first error. He seems to say that in order for a criminal record to be relevant, it must also include prior convictions for offences designated for inclusion in the DNA databank. In mandating consideration of the criminal record under s. 487.051(3), Parliament did not state any such limitation. The criminal record of an offender can be relevant for a variety of reasons, one of which may be its indication that the person is defiant to the laws of society generally, in which case his future conduct is of concern. Further, the statistical objectives of the databank may also be served by such further information about the source donors. Further still, the "impact" of the taking of the DNA samples upon the privacy and security of the person of the specific offender may be better appreciated in light of his experience with the administration of justice. Once again, it will be recalled that DNA evidence may be exculpatory. It will also be recalled that when an offender's DNA profile is already included in the DNA databank and has not been removed under law, further sampling may not be necessary: s. 487.071 of the Code. [references omitted, paras. 4-5]

"Parliament has defined eligibility for DNA databank orders by categories of offences, not by a requirement of proof of present and individual forensic value ... Parliament did not stipulate a requirement that, before an order is made, the offender must be proven to likely be implicated in past or future crimes by DNA traces that have evidential significance."

The reasons of the sentencing judge in this case did not support a decision to exempt the accused from a DNA databank order. The Crown's appeal was successful and, in the best interests of justice, a DNA databank order was made by the Alberta Court of Appeal.

Complete case available at albertacourts.ab.ca

Note-able Quote

"Laws too gentle are seldom obeyed; too severe, seldom executed." - Benjamin Franklin

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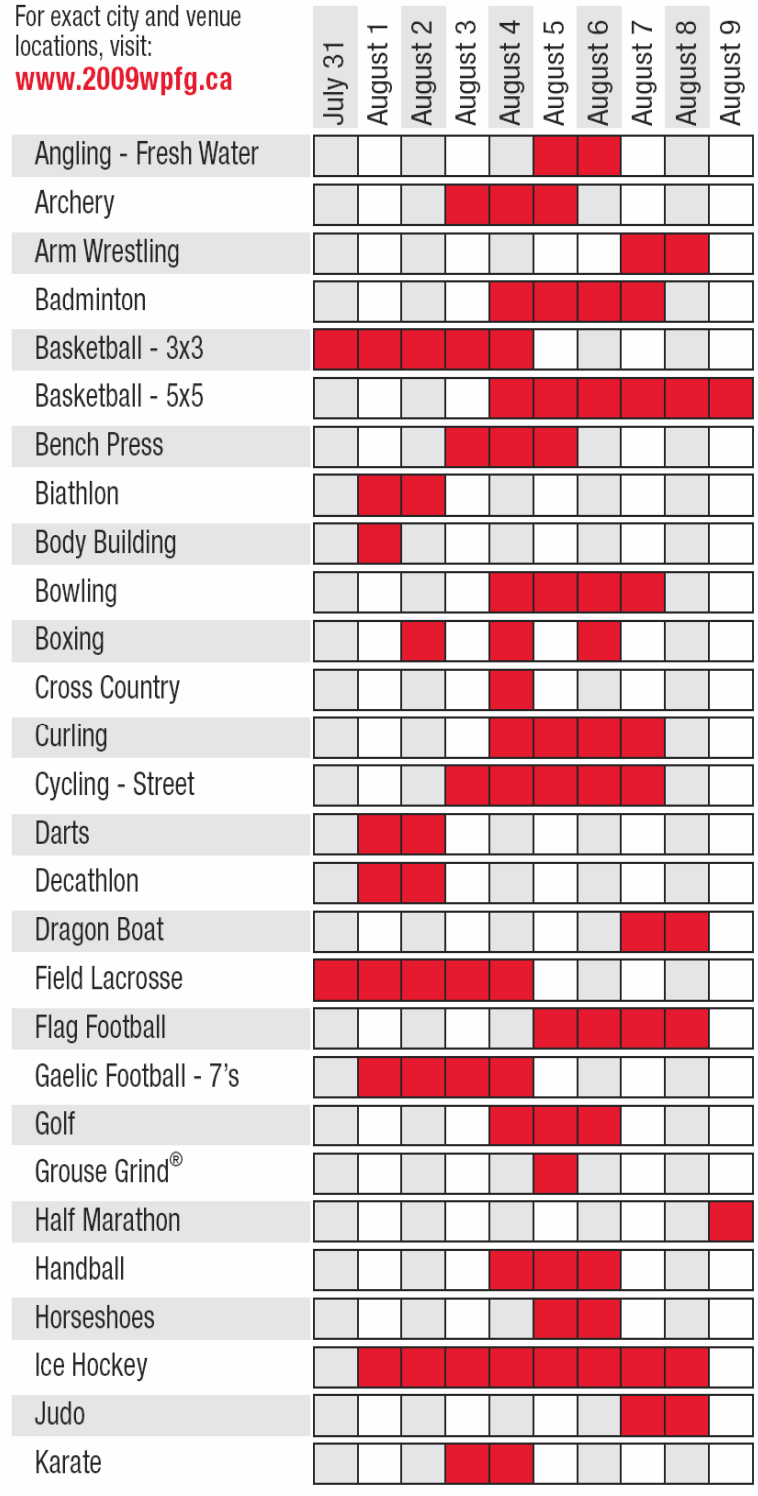

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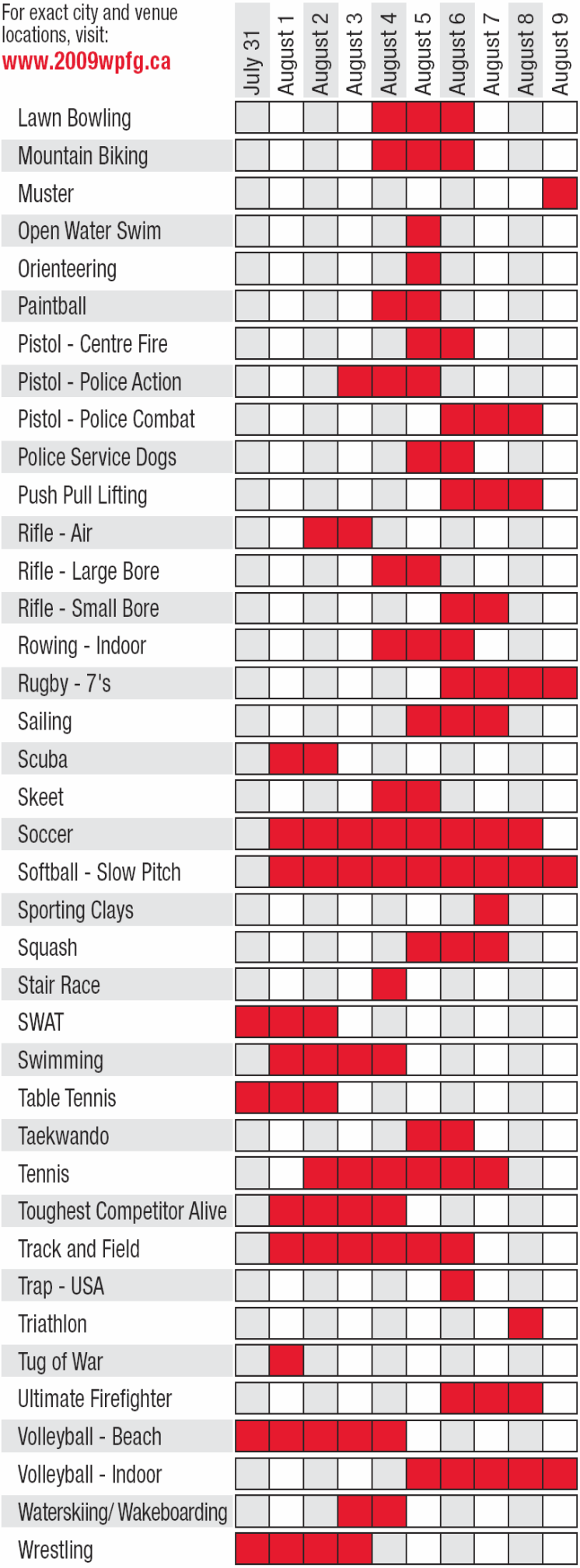

Schedule subject to change.

VEHICLE THEFTS: CANADA 2007

According to a Statistics Canada report released in December 2008, there were 146,142 vehicles stolen in Canada in 2007. Other highlights include:

- 400 - average number of vehicles stolen in Canada each day.
- 54% - percentage of stolen motor vehicles that were cars, followed by trucks, vans, or SUVs at 35%, motorcycles at 4%, and other types of vehicles accounted for the remaining 8%.
- 2,500 - the number of motor vehicles that were stolen during the commission of another, more serious offence.
- 11% - percentage of vehicles thefts where an accused was identified by police.
- 40 - the number of people who die each year as a result of motor vehicle thefts.
- 15 -18 year olds - represent the highest rate of accused motor vehicle thieves. As one ages, the rate gradually tapers off.

Canada Motor Vehicle Thefts & Rates - 2007

Region	Thefts	Rate	Recovered
Quebec	36,216	470	33.6%
Ontario	34,737	271	68.5%
British Columbia	27,112	619	81.6%
Alberta	23,248	669	75.5%
Manitoba	14,671	1,236	81.4%
Saskatchewan	5,526	554	81.4%
Nova Scotia	1,875	201	69.2%
New Brunswick	1,343	179	61.6%
Newfoundland	606	120	77.6%
Northwest Territories	300	704	90.3%
Nunavut	207	665	94.6%
Prince Edward Island	167	121	77.1%
Yukon	134	432	82.3%

Rates are per 100,000 population
Source: Statistics Canada, 2008, Motor Vehicle Theft in Canada, 2007, Catalogue No:85-002-X, Vol. 28, no. 10, December 2008

Canada's Top 10 Stolen Vehicles - 2008

Year	Make	Model
2000	Honda	Civic SiR 2-door
1999	Honda	Civic SiR 2-door
2004	Subaru	Imprezza WRX Sti 4-door AWD
1995	Dodge/Plymouth	Grand Caravan/Voyager
1995	Dodge/Plymouth	Caravan/Voyager
2002	Acura	RSX Type S 2-door
2001	Audi	TT Quatro Roadster
1995	Acura	Integra 2-door
1996	Dodge/Plymouth	Neon 2-door
1996	Dodge/Plymouth	Neon 4-door

Source: Insurance Bureau of Canada, www.Ibc.ca, (December 17, 2008) accessed December 23, 2008

- Quebec - the province having the most motor vehicle thefts (36,216). It also had the lowest recovery percentage (33.6%).
- Manitoba - the province having the highest motor vehicle theft rate per 100,000 population (1,236).
- Nunavut - the province or territory having the highest percentage of stolen motor vehicles recovered (94.6%)

Canada's Least 10 Stolen Vehicles - 2008

Year	Make	Model
2003	Cadillac	Deville 4-door
2002	Lincoln	Continental 4-door
2001	Lincoln	Town Car 4-door
2007	Chevrolet	Impala 4-door
2001	Toyota	Avalon 4-door
1999	Toyota	Tacoma 2 WD
2005	Buick	Terraza EXT
2003	Buick	Regal 4-door
2002	Toyota	Highlander 4-door 2WD
2000	Ford/Mercury	Taurus/Sable Wagon

Source: Insurance Bureau of Canada, www.Ibc.ca, (December 17, 2008) accessed December 23, 2008

- Public areas - the place where most stolen vehicles were taken in 2007. Parking lots accounted for 32% of stolen vehicles, followed by the street or other open area (24%), commercial establishments (eg. shopping centres) (9%), and public institutions (eg. schools) (2%). About 33% were taken from private property while about 1% were stolen from a car dealership or rental company.
- 443 - Canada's rate of motor vehicle theft per 100,000 population.
- 63.6% - Canada's overall stolen vehicle recovery rate.
- -9% - percentage by which motor vehicle theft declined from 2006 to 2007.
- -25.2% - the percent decline in Canada's motor vehicle theft rate from 1997 to 2007.
- $1,000,000,000.00 - the estimated annual financial cost of motor vehicle theft to consumers, police, insurance companies, and governments.

Source: Statistics Canada, 2008, Motor Vehicle Theft in Canada, 2007, Catalogue No:85-002-X, Vol. 28, no. 10, December 2008

- 44 - the average number of vehicles stolen in British Columbia each day.
- 70 - the average number of vehicles broken into in British Columbia each day.
- Ford F-series trucks - most stolen vehicle in British Columbia (as of October 16, 2008).

Source: www.icbc.com, accessed December 28, 2008.

B.C.'s Top 5 Stolen Vehicles - 2007

Make	Model	Model Years
Honda	Civic	93,95,97,98,00
Chrysler (Dodge/Plymouth)	Caravan/Voyager	92-95
Honda	Accord	90-94
Ford	F-series	97,03-06
Jeep	Cherokee	92-96

CMA Motor Vehicle Thefts & Rates 2007

CMA	Total Thefts	Theft Rate	Recovered
Winnipeg, MN	12,548	1,714	81.6%
Abbotsford, BC	1,693	1,001	74.1%
Edmonton, AB	9,120	832	70.0%
Regina, SK	1,495	735	75.3%
Calgary, AB	7,318	639	86.0%
Vancouver, BC	14,411	630	84.1%
Saskatoon, SK	1,541	616	80.8%
Montreal, QC	22,403	601	30.9%
London, ON	2,331	489	73.0%
Hamilton, ON	3,400	481	82.1%
Trois-Rivieres, QC	533	363	44.0%
Victoria, BC	1,204	355	83.0%
Sherbrooke, QC	524	350	43.3%
Gatineau, QC	860	294	53.4%
Toronto, ON	15,392	279	67.2%
Halifax, NS	1,035	269	66.8%
Saguenay, QC	384	265	34.9%
Ottawa, ON	2,353	264	62.5%
St. Catherines-Niagara, ON	1.100	254	72.7%
Kitchener, ON	1,186	239	76.7%
Thunder Bay, ON	286	233	82.1%
Windsor, ON	769	231	76.1%
Greater Sudbury, ON	367	226	82.6%
Quebec, QC	1,585	216	55.1%
St. John's, NF	383	210	78.5%
Kingston. ON	269	176	53.6%
Saint John, NB	170	168	71.0%

CMA=Census Metropolitan Area
Source: Statistics Canada, 2008, Motor Vehicle Theft in Canada, 2007, Catalogue No:85-002-X, Vol. 28, no. 10, December 2008

NO CONSUME CONDITION OK DESPITE NO CONNECTION TO OFFENCE

R. v. Hardenstine, 2008 BCCA 474

The accused pled guilty to possessing ammunition while prohibited arising from an incident where police attended his residence looking for his girlfriend. She had been wanted on a number of outstanding warrants. The accused was sentenced to an additional 30 days imprisonment in addition to time served and was placed on two years probation, which included conditions that he abstain absolutely from the consumption of any alcohol or non-prescription drugs and was not to enter any premises such as a bar, pub or liquor store, where the primary commodity sold was alcohol.

The accused appealed his probation order to the British Columbia Court of Appeal, seeking to vary it by deleting provisions requiring him to refrain from consuming alcohol and from entering certain premises where alcohol was sold. He argued that neither the circumstances of the offence nor his background provided any basis for concluding that the probation conditions would assist in his rehabilitation or protect society. Although his criminal record was appalling, with over 40 criminal convictions, it did not disclose any pattern of alcohol abuse (other than a single over 80mg% conviction). The impugned probation conditions, he suggested, should not have been imposed in the absence of solid evidence of alcohol abuse.

Justice Groberman, delivering the judgment of the Court, disagreed:

> Section 732.1(3)(c) of the Criminal Code specifically authorizes a condition such as [no alcohol consumption] to be imposed where appropriate. [Refraining from entering premises serving alcohol] appears to have been imposed pursuant to s. 732.1(3)(h), which permits a court to prescribe, as a condition of probation, that the accused "comply with such other reasonable conditions as the court considers desirable … for protecting society and for facilitating the offender's successful reintegration into the community."
>
> Probation conditions are generally put in place to aid in the rehabilitation of the accused, and to protect society during the period of probation. As counsel has pointed out, they are not designed to be punitive in nature; i.e. they are not put in place for purposes of denunciation, retribution, or general deterrence. …
>
> In order for conditions of probation to be reasonable, they must be linked to the circumstances of the offender. Often, the circumstances of the offence will be critical to establishing the link, but a court is not limited to a consideration of the circumstances of the offence in determining what conditions of probation are appropriate. The court may consider, as well, other aspects of the offender's situation. [references omitted, paras. 6-8]

Although there was no clear connection between the impugned probation conditions (alcohol consumption or places where alcohol was sold) and his offence (possession of ammunition while prohibited) and any connection with his past criminal record was weak, the conditions were nonetheless reasonable. In holding there was a sufficient basis for concluding that the impugned probation conditions were desirable tools for enhancing the prospects of the accused's rehabilitation and for protecting society during the period of probation, Justice Groberman stated:

> While the case at bar does not represent the strongest case for imposing the conditions with respect to alcohol that were imposed, there were factors in the accused's situation that made the conditions reasonable. This is particularly so when the judge was entitled to take judicial notice of the fact that alcohol consumption generally reduces inhibitions, and that places where alcohol is consumed are not infrequently also associated with drug trafficking and with weapons. In this case,
> 1) the accused had recently overcome an addiction to drugs, and wished to avoid further trouble;
> 2) he had some, albeit limited, past criminal behavior associated with alcohol consumption;
> 3) he had a history of violent crime, and the offence for which he was being sentenced involved ammunition for firearms
> 4) the additional custodial sentence being imposed was very short, such that it provided little time for the accused to be further rehabilitated prior to his release into the community
> [para. 16]

The accused's appeal was dismissed.

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

JUSTICE INSTITUTE of BRITISH COLUMBIA

Police Academy

Counterfeiting and Trade Mark Infringement Offences
April 21, 2009

In an effort to bring timely, relevant information on meaningful topics to front line operational police officers, the Police Academy at the Justice Institute of British Columbia is pleased to present a day-long seminar on **Counterfeiting and Trade Mark Infringement Offences.**

The cost for the course is $125 per person plus GST. Lunch is provided.

Seminar Overview:

This special event will focus on the dramatic increase in the counterfeiting problem, review the link to organized crime and terrorism financing, and discuss the full extent and types of products being counterfeited in Canada and world wide. The session will also deal with the sophistication of counterfeit products, its impact on economies and businesses and illustrate examples of counterfeit seizures that have taken place in Canada, by way of a case study of recent seizures of uncertified counterfeit products and counterfeit products with counterfeit certification labeling.

The second half of the day will focus on the proper investigation of the offences and the evidence required to secure a conviction. S/Sgt Doug Fisher of the Vancouver Police Anti-Fencing/Property Crime Unit will be delivering a presentation on some of the techniques used in investigations of trademark infringement and anti-counterfeiting enforcement, proper seizing and identifying of exhibits and effective courtroom presentation in securing a conviction.

Presenting on the topic will be Lorne Lipkus. Mr. Lipkus is a founding partner in the Toronto, Ontario, law firm of Kestenberg Siegal Lipkus LLP. He practices throughout Canada in the area of intellectual property litigation with a principle focus on anti-counterfeiting enforcement, including, obtaining and serving Anton Piller Orders and assisting law enforcement in executing criminal search warrants and dealing with all aspects of border enforcement. He has been a member of the IACC since 1998 and is also a member of the Canadian Bar Association. Mr. Lipkus is the Chair of the Counterfeiting and Trade Offenses Committee of the Canadian Bar Association. He graduated from McGill University's Faculty of Law with a Bachelor of Civil Law in 1978 and with a Bachelor of Laws in 1979, and was called to the Ontario Bar in 1981. In addition to the lectures and training sessions Mr. Lipkus conducts in the intellectual property area, he is a published author and lecturer on both franchise litigation and the execution of judgments. He has been qualified as an expert in the identification of counterfeit merchandise in several cases before the Federal Court of Canada.

When:	Tuesday, April 21, 2009 0830 hrs to 1600 hrs
Where:	Theatre, JIBC New Westminster 715 McBride Blvd
Cost:	$125 plus GST * Lunch will be provided (Event Code POLADV595)
To Register:	Call 604-528-5590 Greater Vancouver Area 1.877.528.5591 (Toll Free - North America) Monday – Friday 8:30 am to 4:00 pm
Email:	registration@jibc.ca

CORROBORATION OF TIP's CRIMINAL ASPECT NOT REQUIRED FOR WARRANT

R. v. Caissey, 2008 SCC 65

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. The informant said that the accused had been selling drugs for 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 been 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 was required in a case where the police were relying on a tip from an informant of unknown reliability in order to negate the possibility that the informant was 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 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 [accused'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 [accused] 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 then appealed to the Supreme Court of Canada. In a brief oral judgment Chief Justice McLachlin dismissed the appeal on behalf of the seven member court. She agreed with the legal test adopted by majority of the Alberta Court of Appeal and rejected the view that only corroboration of some criminal particular of the offence was needed to justify the issuance of the search warrant.

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

Editor's note: The facts of this case and the lower judgment of the Alberta Court of Appeal were taken from 2007 ABCA 380.

NEW SUPREME COURT JUSTICE APPOINTED

On December 22, 2008 The Right Honourable Beverley McLachlin, Chief Justice of Canada, welcomed the appointment by Prime Minister Stephen Harper of Mr. Justice Thomas Cromwell to the Supreme Court of Canada. "Justice Cromwell is a judge of the highest ability, integrity and intellect", said Chief Justice McLachlin. "In addition to his vast experience on the Bench, he also brings a profound understanding of the role and the challenges of the Supreme Court. I look forward to the contribution of this distinguished jurist to the work of the Court."

Justice Cromwell, who sat as a judge of the Nova Scotia Court of Appeal, was sworn in as a justice of the Supreme Court of Canada on December 23, 2008.

The Supreme Court for 2009 now consists of the following nine members:

- The Right Honourable Beverley McLachlin, P.C. Chief Justice of Canada
- The Honourable Mr. Justice William Ian Corneil Binnie
- The Honourable Mr. Justice Louis LeBel
- The Honourable Madam Justice Marie Deschamps
- The Honourable Mr. Justice Morris J. Fish
- The Honourable Madam Justice Rosalie Silberman Abella
- The Honourable Madam Justice Louise Charron
- The Honourable Mr. Justice Marshall Rothstein
- The Honourable Mr. Justice Thomas Albert Cromwell

LEGALLY SPEAKING:

Reasonable Grounds-Breath Demand

"The Criminal Code provides that where a police officer believes on reasonable and probable grounds that a person has committed an offence pursuant to s. 253 of the Code, the police officer may demand a breathalyzer. The existence of reasonable and probable grounds entails both an objective and a subjective component. That is, s. 254(3) of the Code requires that the police officer subjectively have an honest belief that the suspect has committed the offence and objectively there must exist reasonable grounds for this belief.' - Supreme Court of Canada Justice Sopinka in *R. v. Bernshaw*, [1995] 1 S.C.R. 254

JUSTICE INSTITUTE of BRITISH COLUMBIA

Police Academy

Advanced Programs

The Mega Trial Phenomenon

In an effort to bring timely, relevant information to operational law enforcement professionals and others involved in the criminal justice system the Police Academy at the Justice Institute of British Columbia is pleased to present **Michael Code** who will deliver his research findings on the **Mega Trial Phenomenon** at the JIBC New Westminster Campus (Theatre) on **Wednesday, May 20 from 0830-1600**. The content of the presentation will be of interest to investigators, police executives, Crown attorneys and defense counsel who have been, or may become involved, in the investigation and trial of a major crime.

Michael Code, B.A. (Toronto) 1972, LL.B. (Toronto) 1976, LL.M. (Toronto) 1991, is an assistant professor at the Faculty of Law. He received his call to the Bar of Ontario in 1981. From 1981 until 1991 he practised with the Toronto firm of Ruby and Edward, where he specialized in criminal and constitutional litigation. Prof. Code has lectured in criminal law at Woodsworth College, University of Toronto, and in evidence law at Osgoode Hall Law School. He was an editor of the *Canadian Rights Reporter* from its inception in 1982 until 1996. He spent 1990 on sabbatical from his law firm studying towards an LL.M at the Faculty of Law. In 1991, Prof. Code was appointed Assistant Deputy Minister, Criminal Law, Ministry of the Attorney General for Ontario. In 1996 he returned to private practice with the firm of Sack Goldblatt Mitchell. He was a visiting scholar at the University of Toronto Faculty of Law in 2005-06, and joined the Faculty full-time in 2006. He received 2007 Mewett Award for Excellence in Teaching.

During his career, Prof. Code has argued some of the leading *Charter of Rights* cases in the Supreme Court of Canada and the Court of Appeal for Ontario. In recent years he has appeared as Commission counsel at the *Driskell Inquiry* into a wrongful conviction in Manitoba, as counsel to the Ontario Securities Commission in the *Rankin*, *YBM Magnex* and *Bre-X* cases, as counsel to the RCMP in a dispute over production of criminal investigative documents to civil litigants in British Columbia, as counsel to the SIU in relation to various police investigation issues in Ontario, as counsel to the Manitoba Crown in a contempt prosecution where the Chief Justice was the victim, in a successful mediation and resolution of a gang-related "mega-trial," and as defense counsel in the "Air India" terrorism trial in Vancouver.

Prof. Code is a member of the Ontario Securities Commission's Enforcement Advisory Committee. In March 2008 he was appointed by the Attorney-General for Ontario to conduct a policy review, together with former Chief Justice LeSage, addressing the problems associated with long and complex criminal trial procedure and to make recommendations for change.

Cost of this one day seminar is $125 (plus GST). Register by calling 604.528.5590 or 1-877-528-5591 or via email at registration@jibc.ca. Seating is limited and seats will be allocated on a first come, first served basis. If you have any questions, or for further information please contact: **advancedpolicetraining@jibc.ca**

INFORMER PRIVILEGE & THE INNOCENCE AT STAKE EXCEPTION

R. v. Zidarov, 2008 NLCA 65

Police received a tip from a regular and confidential informant that the accused was selling marijuana from his car, that it was parked in a mall parking lot, and that the informant had recently seen marijuana in the vehicle. Acting on the tip, police went to the mall and found the accused seated in his vehicle with a significant quantity of marijuana in bags in the back seat (street value of between $2,200 to $3,200). In addition to the drugs, police seized $1,565 in cash and three cell phones from the vehicle.

At trial in Newfoundland Provincial Court the accused testified he was sitting in his car awaiting the return of an acquaintance who he had driven to the mall. The acquaintance and owed the accused $2,000, which was to be repaid that evening. The accused also said he did not know the marihuana was in the back seat and said the acquaintance had placed the packages containing the marijuana in the vehicle. The trial judge refused to order the disclosure of the confidential informant on the basis of the "innocence at stake" exception, so the accused called the acquaintance as a witness. The acquaintance denied having any contact with the accused on the day of his arrest. The trial judge refused to allow a question about whether the acquaintance had been in contact with the police on that date, on the basis the answer might identify the informer. The trial judge found the accused guilty of possessing marihuana for the purpose of trafficking.

The accused appealed his conviction to the Newfoundland Court of Appeal arguing, in part, that the trial judge erred in finding the accused could not establish his innocence was at stake so as to warrant an order that the identity of a confidential informant be revealed. He submitted that the acquaintance had lied to the court if he and the informer were the same person. That is, the acquaintance denied having contact with the accused on the day of his arrest but the informer reported having had contact. This false testimony, it was suggested, would likely raise a reasonable doubt about whether the marijuana belonged to the accused and warrant reconsideration of whether there should be an exception to the informer privilege rule in these circumstances.

Justice Barry, writing the opinion of the Newfoundland Court of Appeal first examined the law surrounding the innocence at stake exception and informer privilege. In *R. v. Leipert*, [1997] 1 S.C.R. 281, the Supreme Court of Canada explained the onus is on an accused to raise the innocence at stake exception to informer privilege and show some "basis on the evidence for concluding that disclosure of the informer's identity is necessary to demonstrate the innocence of the accused". Mere speculation that the information might help the accused is not enough. If an accused is successful in meeting the onus and showing that disclosure is necessary to prove innocence, the "court should only reveal as much information as is essential to allow proof of innocence. Before disclosing the information to the accused, the Crown should be given the option of staying the proceedings. If the Crown chooses to proceed, disclosure of the information essential to establish innocence may be provided to the accused." An example of a circumstance falling within the innocence at stake exception includes a situation where the informer is a material witness to the alleged crime.

In this case, Justice Barry concluded that the trial judge erred in not reconsidering the innocence at stake exception to informer privilege following the acquaintance's testimony that he had not been in contact with the accused. Here, the identity of the informer went to a material element of the offence—whether the accused had possession of the drugs or whether they were only in the possession the acquaintance. If the informant and the acquaintance turn out to be the same person, his credibility may be so damaged as to raise a reasonable doubt as to the accused's guilt and put his innocence at stake if the informant was not identified.

The accused's appeal was allowed and a new trial was ordered.

Complete case available at www.canlii.org

Note-able Quote

"Common sense in an uncommon degree is what the world calls wisdom." - Samuel Taylor Coleridge

ARREST OF 'TAKE-AWAY' OBJECTIVELY JUSTIFIED

R. v. Doak, 2008 BCSC 1359

A police investigator, believing there was a marihuana grow operation in one of two outbuildings, applied for a warrant to search the outbuildings and a residence on property owned by the accused and his wife. The justice issued the warrant for the two outbuildings, but refused to allow a search of the residence. While waiting for the warrant, police took up surveillance of the property. The investigator instructed the officers doing surveillance to arrest anyone leaving the property ("take-aways").

The accused, seen near the residence, was observed to enter a pickup truck and leave the property. The vehicle was stopped by an officer and the driver, who was recognized as the accused, was arrested for producing marihuana. He was searched and $10,985 was found in his pocket along with ½ pound of marihuana bud in a shopping bag stuffed behind the driver's seat in his vehicle. The investigator, with this additional information, re-applied for the warrant to search the outbuildings and the residence. It was granted and, upon executing it, police discovered a marihuana grow operation in one of the outbuildings along with a hydro bypass. The police seized evidence from the other outbuilding and from the main residence. He was charged with production of marihuana, possession for the purpose of trafficking, and theft of hydro.

At trial in British Columbia Supreme Court the accused challenged, in part, the validity of the search warrant relating to the residence, asserting it breached s.8 of the *Charter*. He argued that the arresting officer did not have the necessary grounds to arrest him. Thus, the arrest was unlawful and arbitrary, and breached s.9. The search of his person and the vehicle that followed was not lawful as incident to arrest and therefore was unreasonable under s.8 and the information obtained from it must be excised from the ITO. The warrant to search the house was therefore not justified and the evidence should be excluded under s.24(2).

The Crown, on the other hand, conceded that the police lacked reasonable grounds to arrest every person, whether of known or unknown identity, seen leaving the property, even though they had reasonable grounds to believe a marihuana grow operation was located in one or both of the outbuildings. The Crown submitted, however, that the arresting officer was not simply acting on the investigator's direction, but independently had reasonable grounds to arrest the accused. He had been identified as the prime suspect in connection with the suspected marihuana grow operation and was seen coming from the property. The blanket instruction given by the investigator to arrest anyone seen leaving the property did not nullify the grounds possessed by the arresting officer. The search was therefore lawful as an incident to arrest and none of the information in the ITO required excision.

The Arrest

The accused's arrest would be lawful if the arresting officer had the requisite grounds to arrest him for the offence of production of a controlled substance. Under s. 495(1)(a) of the *Criminal Code* a peace officer may arrest, without warrant, a person "who, on reasonable grounds, he believes has committed or is about to commit an indictable offence". The test for reasonable grounds imports both a subjective and an objective component. The arresting officer must subjectively have reasonable grounds for the arrest and those grounds must be objectively justifiable. However, the police need not demonstrate anything more than reasonable grounds and are not required to establish a prima facie case for conviction before making the arrest.

In this case, "the mere fact that a person was seen leaving the Property would not be sufficient to connect that person with the crime that [the investigator] believed was being committed on the Property," said Justice Joyce. He continued:

> [I]t is my view that the police in this case lacked reasonable and probable grounds to arrest everyone found on or found leaving the Property, regardless of who they were. [The accused's] arrest was therefore not lawful if [the arresting officer] simply relied on [the investigator's] general instruction. There is no suggestion that [the investigator] was aware that [the accused] was seen leaving the Property and that he therefore had reasonable and probable grounds to arrest [the accused] and gave specific instructions to [the arresting officer] to arrest [the accused]. [para. 42]

However, despite the investigator lacking grounds for arrest, the arresting officer himself had reasonable grounds and did not simply arrest any person seen leaving the property in accordance with the general instruction given:

> When [the arresting officer's] evidence with respect to the grounds for arrest…is considered as a whole, I am satisfied that he in fact used his own independent judgment to determine that he had reasonable grounds to arrest [the accused] and did not simply rely on the general instruction given by [the investigator]. Clearly, he relied on the information gathered by [the investigator] during his surveillance, which was shared with [the arresting officer] at the police briefing, to conclude, in his mind, that a marijuana grow operation was being conducted on the Property and he was entitled to rely on that information.
>
> But it is important that, in deciding to arrest arrested [the accused], [the arresting officer] also relied on the fact that he was able to identify arrested [the accused], who was the owner of the Property and prime suspect, as the person who had just left the Property. As [the defence lawyer] himself suggested to [the arresting officer], based on the information [the arresting officer] had received from [the investigating officer], he arrested [the accused] "as soon as [he was] able to identify that it was [the accused]."
>
> .....
>
> [The arresting officer] honestly believed that [the accused] was participating in a criminal offence based on the information provided to him at the briefing and his identification of him as the man who had just left the Property. Subjectively, he had grounds to arrest. It is also my opinion that the grounds are objectively reasonable.
>
> In my view, it is the identification of [the accused] by [the arresting officer] as a person who has just left the Property that is critical. … These facts, together with the information that [the arresting officer] had acquired from [the investigator], gave [the arresting officer] the objective grounds to make the arrest. …
>
> The present case is not one in which the police arrested first and then determined whether the person arrested was connected to the offence under investigation.
>
> I am satisfied there were sufficient circumstances to objectively connect [the accused] to the offence under investigation to justify his arrest. He was one of the registered owners of property on which the police had reasonable grounds to believe a marijuana grow operation was located. I note, contrary to what was understood to be the case during the course of submissions, according to the ITO [the accused] had not, to this point, been identified as the subscriber to the Hydro account that the police believed showed elevated usage. Even so, in addition to the fact that he was an owner of the Property, [the accused] was the registered owner of a vehicle (the red Ford Excursion) that was seen leaving the Property six days earlier. More importantly, just prior to his arrest, he was seen leaving the Property in a vehicle that had been parked on the Property in the vicinity of the shed/shop for over three hours. In my view, it was reasonable to infer in these circumstances that he had a present connection to the Property that went beyond mere ownership and, in the absence of any contrary information, that he was in control of the Property.
>
> Prior to the issuance of the first search warrant the investigation provided reasonable grounds to believe that a grow operation was being conducted on the Property in one of the two outbuildings situated near to the residence. … The additional evidence obtained … was, in my opinion, sufficient to raise the connection between [the accused] and the offence being investigated from a mere suspicion to a credibly based probability. [paras. 44-50]

Since there were reasonable grounds to arrest the accused, it was lawful and the police were entitled to search him and the vehicle he was driving incidental to his arrest. As a result, the evidence found as a result of those searches was properly included in the second ITO.

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

LEGALLY SPEAKING:

Reasonable Grounds-Arrest

"In summary then, the Criminal Code requires that an arresting officer must subjectively have reasonable and probable grounds on which to base the arrest. Those grounds must, in addition, be justifiable from an objective point of view. That is to say, a reasonable person placed in the position of the officer must be able to conclude that there were indeed reasonable and probable grounds for the arrest." - Supreme Court of Canada Justice Cory in R. v. Storrey, [1990] 1 S.C.R. 241

SEXUAL ASSAULT: BY THE NUMBERS

In a recent Statistics Canada Canadian Centre for Justice Statistics profile released in December, 2008 entitled "Sexual Assault in Canada 2004 and 2007", victimization and offender data for sexual assaults in Canada were analyzed. Highlights include:

- 24,200 - approximate number of sexual assaults reported to Canadian police in 2007.
- One in Ten - number of sexual assaults reported to police out of the number of assaults reported on a victimization survey.
- 94% - percentage of sexual touching incidents to go unreported to police.
- 78% - percentage of sexual attacks to go unreported to police.
- Not Important Enough - the most commonly stated reason why sexual assault victims did not report an incident to police (58%), followed by the incident was dealt with in another way (54%), it was a personal matter (47%), and the victims did not want to get involved with police (41%). Victims could report more than one response, therefore the sum of percentages could exceed 100%.

Provincial Rates of Police Reported Sexual Offences, 2007	
Province	Rate per 100,000
Saskatchewan	138
Manitoba	113
Newfoundland	89
New Brunswick	87
Nova Scotia	82
British Columbia	79
Alberta	70
Quebec	69
Ontario	61
Prince Edward Island	58

- 73 per 100,000 - the Canadian rate of police reported sexual offences.
- 63% - percentage of reported sexual offences cleared by police. Those cleared by charge accounted for 42%, while 21% were cleared otherwise, such as when the complainant requested charges not be laid, when the accused had died, had diplomatic immunity, or had been diverted, or when the police otherwise exercised discretion in not charging.

2007 Police Reported Sexual Offence Clearance Rates			
Offence	Cleared by charge	Cleared otherwise	Not cleared
Lvl 1 - sexual assault	42%	21%	37%
Lvl 2 - sexual assault with weapon	45%	9%	47%
Lvl 3 - aggravated sexual assault	68%	4%	28%
Other sexual offences	37%	26%	37%

- 49% - adult court conviction (finding of guilt) rate for sexual offence cases (2006/2007).
- 63% - youth court conviction rate for sexual offence cases (2006/2007).
- 54% - proportion of convicted adult sex offenders sentenced to custody. Only 12% of convicted youth sex offenders were sentenced to custody. Sixty six percent of convicted adult sex offenders were sentenced to probation while 78% of youth sex offenders were sentenced to probation (2006/2007).
- Female - gender most often victim of sexual assault.
- Male - gender most often accused of sexual offences. Those charged with sexual offences were 97% male.
- Not a stranger - where relationships are determined, 82% of the time the accused is known to the victim. The accused was a stranger in only 18% of sexual assault incidents.

Source: Statistics Canada, 2008, Sexual Assault in Canada, 2004 and 2007, Catalogue No:85F0033M,, no. 19, December 2008

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